

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## AGRICULTURE

### (a)

#### STATE TRANSFER OF DEVELOPMENT RIGHTS BANK

##### Transfer of Development Rights

##### Proposed Readoption with Amendments: N.J.A.C. 2:77

##### Proposed Repeal: N.J.A.C. 2:77-8.2

Authorized By: State Transfer of Development Rights Bank, Douglas H. Fisher, Chairman.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-047.

Submit comments by May 17, 2013 to:

Susan E. Payne, Executive Director  
State Transfer of Development Rights Bank  
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Trenton, New Jersey 08625  
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The agency proposal follows:

#### Summary

Pursuant to N.J.S.A. 52:14B-5.1, the rules governing the State Transfer of Development Rights Bank (Bank) are scheduled to expire on July 17, 2013. However, as the State Transfer of Development Rights Bank Board (Board) has filed this notice of readoption with the Office of Administrative Law prior to that date, the expiration date is extended 180 days to January 13, 2014, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Board has reviewed this chapter and finds that it continues to be necessary and appropriate for successful implementation of the Burlington County Transfer of Development Rights Demonstration Act, P.L. 1989, c. 86 (N.J.S.A. 40:55D-113 et seq.), the State Transfer of Development Rights Bank Act, P.L. 1993, c. 339 (N.J.S.A. 40:55D-113 et seq.), and the State Transfer of Development Rights Act, P.L. 2004, c. 2 (N.J.S.A. 40:55D-137 et seq.). Throughout the chapter, many technical amendments correcting cross-references, codification, grammar, and punctuation are proposed. Also, throughout the rules, references to "these rules" have been changed to "this chapter."

The Burlington County Transfer of Development Rights Demonstration Act authorized the establishment of development potential transfer programs by municipalities within Burlington County to demonstrate the feasibility of such programs. It also established requirements and procedures to be followed prior to ordinance adoption. Following successful implementation by two Burlington County municipalities, P.L. 2004, c. 2, the State Transfer of Development Rights

Act (State TDR Act), was enacted which authorized creation of transfer of development rights (TDR) programs Statewide and amended the requirements for establishing TDR ordinances by municipalities under the State TDR Act.

The State TDR Act provides Burlington County municipalities with the option to establish TDR programs pursuant to the Burlington County TDR Demonstration Act or the State TDR Act. While this option has been in existence since enactment of the State TDR Act, references to requirements under the Burlington County TDR Demonstration Act are not reflected in the Board's existing rule. This option is, therefore, proposed to be included in this chapter.

Since the adoption of N.J.A.C. 2:77, Governor Christie's Reorganization Plan No. 002-2011 transferred the State Planning Commission and the Office of Smart Growth from the Department of Community Affairs to the Department of State. The Office of Smart Growth was also renamed the Office of Planning Advocacy. Accordingly, reference to the "Office of Smart Growth" throughout the existing rules has been changed to the "Office of Planning Advocacy."

Subchapter 1, General Provisions, describes the State Transfer of Development Rights Bank and the powers and duties of the Board. Citations to the Burlington County Transfer of Development Rights Demonstration Act, N.J.S.A. 40:55D-113 et seq., were added to N.J.A.C. 2:77-1.1 and 1.3 to clarify that municipalities may establish TDR programs under either the Burlington County TDR Demonstration Act or the State Transfer of Development Rights Act.

Subchapter 2, Interpretations and Definitions, includes a rule on word usage and sets forth the definitions of terms used throughout the rules. The definition of "application" is proposed for amendment to include the Board's provision of planning incentive grants to municipalities as described in N.J.A.C. 2:77-7. A definition of "approved appraiser" is added and relocated without change from N.J.A.C. 2:77-8.2. Also, the statutory citation for the Burlington County TDR Demonstration Act, N.J.S.A. 40:55D-113 et seq., was added to the definitions of "municipal of county development transfer bank," "receiving area" or "receiving zone," and "sending area" or "sending zone."

Subchapter 3, Standards for Board's Purchase of Development Potential, Issuance of Matching Funds for Purchase of Development Potential, and Guarantee of Loans, sets forth the standards the Board will use to determine whether it will purchase development potential, issue matching funds for development potential, or guarantee loans. The main standard for such Board activity is a determination that a TDR ordinance is viable. The test of viability is based on whether the ordinance complies with requirements of the Burlington County TDR Demonstration Act or the State TDR Act. Citations for the Burlington County TDR Demonstration Act are added to N.J.A.C. 2:77-3.1(b) to clarify that municipalities may establish TDR programs under either the Burlington County TDR Demonstration Act or the State TDR Act. The phrase "if applicable" was added to N.J.A.C. 2:77-3.1(b)1i and (b)5 and 3.2(a)6 to clarify that requirements for TDR establishment under the State TDR Act may not apply to municipalities establishing TDR programs pursuant to

the Burlington County TDR Demonstration Act. Additions were also made to N.J.A.C. 2:77-3.2(a)2 and 7 to clarify where requirements imposed by the State TDR Act and the Burlington County TDR Demonstration Act differ.

Subchapter 4, Registry of Development Potential Credits, deals with the registry of development potential credits.

Subchapter 5, Purchase of Development Potential, deals with the Board's purchase of "development potential," including application process and requirements, standards for the Board's decision, valuation of development potential, the Board's level of financial participation, and terms and conditions of purchase. Appraisal report submission requirements in N.J.A.C. 2:77-5.5(b)2 are amended to require a digital format appraisal in lieu of multiple paper copies.

Subchapter 6 remains reserved.

Subchapter 7, Planning Assistance Grants, establishes procedures for the approval and issuance of planning assistance grants to municipalities by the Board. References to requirements within the Burlington County TDR Demonstration Act are added to N.J.A.C. 2:77-7.1(b) to clarify grant eligibility for those municipalities. A citation at N.J.A.C. 2:77-7.3(a)2ii is amended to reflect amendments to N.J.A.C. 2:76, effective January 15, 2010. Application submission requirements in N.J.A.C. 2:77-7.4(a) are amended to require documents be submitted in a digital format in lieu of multiple paper copies.

Subchapter 8, Appraisal Handbook Standards, sets forth appraisal handbook standards to be used by independent professional appraisers when conducting appraisals on land for the purpose of acquiring development potential. At N.J.A.C. 2:77-8.1, references to the Burlington County TDR Demonstration Act and the State TDR Act are included as additional sources of statutory authority. Existing N.J.A.C. 2:77-8.2 is proposed for repeal, as the language of the section was relocated to N.J.A.C. 2:77-2.2, Definitions. Recodified N.J.A.C. 2:77-8.4(a) is proposed for amendment to state that the Board will return, rather than reject, any report that is not valued or formatted consistent with this subchapter and will request that such report be modified to conform. At recodified N.J.A.C. 2:77-8.5(a)2, a cross-reference is added to N.J.A.C. 13:40A-7.6, which pertains to appraiser license renewal.

As the Bank has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

**Social Impact**

The rules proposed for re-adoption with amendments and a repeal will have a positive social impact. Transfer of Development Rights programs provide municipalities greater control over the form and location of future growth while simultaneously preserving farmland and protecting natural and historic resources. In a TDR program, the right to develop is transferred from land in a sending zone to land in a receiving zone. Sending zone development rights are converted to "credits" that may be purchased by developers for use in the receiving zone. Once credits are transferred, the sending zone land is restricted from future development with a deed restriction. With a credit purchase, the receiving area may be developed at a density greater than otherwise permitted.

Viable farmland and valuable open space are an important aspect of the cultural fabric of the State. Scattered, haphazard development also does little to foster a strong sense of community and, in agricultural areas, may lead to conflicts between farmers and new residents. TDR implementation, fostered by the rules proposed for re-adoption with amendments and a repeal, can help ameliorate these adverse impacts. The rules proposed for re-adoption with amendments and a repeal directly benefit municipalities that are developing development transfer ordinances by establishing a mechanism to provide financial assistance in their planning processes. In addition to encouraging land preservation, this planning process seeks to direct development into well-designed receiving areas that can, among other things, lead to increased accessibility to public services and facilities, including mass transit, promote pedestrian and bicycle accessibility, ease traffic congestion, and reduce energy consumption.

The TDR Bank anticipates minimal reaction to the rules proposed for re-adoption with amendments and a repeal, which merely effectuate the authority of the TDR Bank to provide planning assistance grants to

municipalities whose TDR ordinances conform with the standards set forth in the Burlington County TDR Demonstration Act or State TDR Act, and to purchase development potential or provide loan guarantees based on that potential. The Board believes that the standards set forth in the rules proposed for re-adoption with amendments and a repeal for the issuance of planning assistance grants and for the Bank's purchase of development potential are fair to municipalities, the development community, and landowners. Citizens concerned with wise use of land will be in favor of the rules proposed for re-adoption with amendments and a repeal. Individuals and entities affected by municipally-proposed TDR schemes will have the opportunity to provide input and comment at their town's planning board meetings prior to adoption of the ordinances.

**Economic Impact**

The State of New Jersey has a long and successful history of open space, farmland, and historic preservation. Successful implementation of TDR programs further those aims and can provide substantial economic benefits through the use of private funds to supplement State, county, and local public investment in resource protection. The Bank, which is publicly funded, may initially pay for the development potential on some sending area properties, but will be able, in turn, to sell the potential to developers to replace the spent funds. As more farmland, open space, and natural/historic resources are conserved by the transfer of development rights, pressure on public funding sources to achieve conservation goals may be decreased.

Despite increased investment in up-front planning costs, local governments should realize a positive economic impact. Directing growth into compact centers is expected to result in long-term savings due to efficiencies in infrastructure and in the provision of municipal services.

The rules proposed for re-adoption with amendments and a repeal could economically benefit sending area landowners by allowing the Bank to purchase their development potential. Landowners also have the option of taking loans using the value of development credits as collateral and having the value of those credits guaranteed by the Bank. Under the rules proposed for re-adoption with amendments and a repeal, the municipal TDR ordinance must comply with the standards set forth in either the Burlington County TDR Demonstration Act or the State TDR Act in order for the Bank to purchase development potential from landowners or guarantee loans. In a viable TDR program, a market for development credits is established which, when purchased by a receiving area developer, provides equity for the sending area landowner. If, however, a landowner in a sending area decides to sell the development potential but there is not a ready buyer/user, under the rules proposed for re-adoption with amendments and a repeal, the Bank will be able to purchase the development potential if it sees fit.

TDR implementation should provide a positive net economic impact on the development community. Any negative economic impact on individuals who want to develop property in sending areas where development potential is removed should be offset by the positive economic impact on individuals who want to develop in receiving areas where the sending area development potential is transferred, and where higher density development is encouraged. Receiving area development does require developers to purchase credits. This cost, however, is offset by reductions in the cost of development due to the up-front planning performed by the municipality with respect to receiving area design and infrastructure provision.

Over the long-term, growth management through TDR programs should improve the overall economic position of residents because the natural resources that make a region unique and on which the local economy depends will be conserved and protected. In addition, the preserved land can remain privately owned and will continue to be assessed for local property taxes. Residents of municipalities participating in a TDR program will also realize more stable property taxes and more stable communities based on development of well-planned pedestrian-oriented neighborhoods.

**Federal Standards Statement**

A Federal standards analysis is not required because the rulemaking requirements of the Transfer of Development Rights Bank are dictated by the State Transfer of Development Rights Bank Act, N.J.S.A. 4:1C-49 et

seq., P.L. 1989, c. 86, and are not subject to any Federal requirements or standards.

**Jobs Impact**

Implementation of TDR programs is expected to result in redirecting private investment into compact receiving areas where infrastructure to support increased development exists or is planned. Receiving area development is likely to increase the development density and the pace at which participating municipalities develop, thus resulting in an increase in construction-related jobs in the near-term. Receiving area development often includes a mix of residential and commercial development. It is anticipated that development of TDR programs will increase opportunities for commercial hiring. The TDR Bank also anticipates the rules proposed for readoption with amendments and a repeal will produce greater job creation and retention as a result of increased financing available for TDR projects.

**Agriculture Industry Impact**

The TDR Bank anticipates that the rules proposed for readoption with amendments and a repeal will have a positive impact on the agriculture industry in New Jersey. The primary benefit will be the creation of another method of farmland preservation and enhancement of the agriculture industry in the State, whose future is dependent upon a stable land base. The landowners who sell development potential on farmland will have the opportunity to reinvest the proceeds from the sale in their farming operations. This will strengthen the viability of these farms, which cumulatively help to ensure the viability of New Jersey's agriculture industry.

By reducing non-agricultural sending area development in municipalities that implement TDR programs, existing agricultural operations would benefit from a reduction of conflicts with neighbors regarding agricultural practices.

**Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments and a repeal impose compliance requirements on holders of an interest in development potential and appraisers, two groups that may be considered small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

A participating person or entity holding an interest in development potential that is subject to development transfer under this chapter must submit an application, including documentation related to the interest, to the Board. If the Board offers to purchase the development potential, the holder has 30 days in which to accept or reject the offer in writing. Holders of an interest in development potential who elect to participate will incur whatever administrative costs would be involved in completing the application, and, if they accept a purchase offer, those costs typically attendant to a real estate transaction. Beyond those that may be used in a real estate transaction, no other professional services should be needed.

Appraisers selected by the Board to establish the value of an interest in development potential are required to follow the appraisal standards in N.J.A.C. 2:77-8. The standards set forth valuation methods to be used and the structure of, and information to be provided in, the appraisers' reports to the Board. Appraisers will not incur any capital costs, as the Board will pay them an agreed-upon fee. The appraisal requirements are within an appraiser's professional expertise, and no other professional services should be needed to comply.

The requirements imposed on participating holders of an interest in development potential and on appraisers are considered the minimum necessary for the Board to be able to identify and evaluate development potential. Therefore, no lesser requirements or exceptions for small businesses can be provided.

**Housing Affordability Impact Analysis**

Transfer of Development Rights programs typically provide for a variety of receiving area housing types resulting in an overall increase in the total amount of housing units available at various levels of affordability. Decisions affecting housing number and cost are made by the municipality, county, or regional entity establishing the TDR program. The rules proposed for readoption with amendments and a repeal do not impact how these TDR programs are designed and,

therefore, would not affect the amount or cost of housing units in the State.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments and a repeal would have a positive impact on smart growth and the implementation of the State Development and Redevelopment Plan (State Plan). Consistent with the goals of the State Plan, TDR program implementation is anticipated to create a new development pattern that conserves important resources in a sending area while concentrating development within planned receiving areas. The rules proposed for readoption with amendments and a repeal do not impact how these TDR programs are designed and, therefore, the rules proposed for readoption with amendments and a repeal would not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Plan, in and of, themselves. The rules proposed for readoption with amendments and a repeal provide for funding to municipalities to plan for TDR program development. Further, the proposed rules require that the TDR Bank Board find that a municipal TDR ordinance is consistent with the State Development and Redevelopment Plan before it will purchase development potential, provide matching funds for the purchase of development potential, or provide loan guarantees.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:77.

**Full text** of the proposed amendments and repeal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

2:77-1.1 Scope

Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Board of Directors of the State Transfer of Development Rights Bank governing the procedures and standards for carrying out the duties and responsibilities of the Board pursuant to **the Burlington County Transfer of Development Rights Demonstration Act, N.J.S.A. 40:55D-113 et seq.**, the State Transfer of Development Rights Bank Act, N.J.S.A. 4:1C-49 et seq., and the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq.

2:77-1.3 Applicability

The rules contained in this chapter shall apply to all sales, transfers, conveyances, encumbrances, and redemptions of development potential credits, any loan guarantees provided by the Board, which are secured with development potential as collateral, and the issuance of planning assistance grants, as authorized under N.J.S.A. 40:55D-113 et seq., [and] 4:1C-49 et seq., **and 40:55D-137 et seq.**

2:77-1.5 Severability

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

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

2:77-2.1 Word usage

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

1.-4. (No change.)

5. In case of any difference of meaning or implication between the text of [these rules] **this chapter** and any caption, the text shall control.

2:77-2.2 Definitions

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

...

“Application” as relates to the purchase of development potential, [or the securing of a loan using development potential as collateral, **or the provision of a planning incentive grant** means a standard form adopted by the State Transfer of Development Rights Bank.

“**Approved appraiser**” means an independent State-certified, general real estate appraiser approved by the Board and re-approved by the Board annually.

“Municipal or county development transfer bank” means a development transfer bank established pursuant to N.J.S.A. **40:55D-113 et seq. or 40:55D-[159]158.**

“Receiving area[.]” or [“]receiving zone” means an area or areas designated in a master plan and zoning ordinance, adopted pursuant to N.J.S.A. 40:55D-1 et seq., within which development may be increased, and which is otherwise consistent with the provisions of N.J.S.A. **40:55D-118 or 40:55D-145.**

“Sending area[.]” or [“]sending zone” means an area or areas designated in a master plan and zoning ordinance, adopted pursuant to N.J.S.A. 40:55D-1 et seq., within which development may be restricted and which is otherwise consistent with the provisions of N.J.S.A. **40:55D-118 or 40:55D-144.**

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

- 2:77-3.1 Board’s review of ordinance and determination of viability
  - (a) (No change.)
  - (b) To be deemed a viable development transfer ordinance pursuant to this subchapter, the Board must find that:
    - 1. The municipality has complied with N.J.S.A. **40:55D-113 et seq. or 40:55D-137 et seq.** and any rules [or regulations] promulgated thereunder. Compliance shall be determined upon a showing that the municipality has:
      - i. Received approvals from the State Planning Commission required by N.J.S.A. 40:55D-137 et seq. and any rules promulgated thereunder, **if applicable;**
      - ii. Received certification by the Pinelands Commission pursuant to N.J.S.A. **40:55D-120** or 40:55D-142, if applicable;
      - iii. Received recommendation of adoption of ordinance by the respective county planning board pursuant to N.J.S.A. **40:55D-121 or 40:55D-149** or approval of Office of [Smart Growth] **Planning Advocacy** pursuant to N.J.S.A. **40:55D-121 or 40:55D-150** through 152 and provided a statement as to whether such approval has been appealed; and
      - iv. Submitted information to the respective county agriculture development board pursuant to N.J.S.A. **40:55D-120 or 40:55D-149;**
    - 2. The ordinance requires the instrument of transfer to include the following:
      - i.-ii. (No change.)
      - iii. A provision stating the restrictions are enforceable by the Board if the landowner sells development potential to, or has loans guaranteed by, the Board[.];
    - 3. The ordinance contains the following provisions:
      - i. (No change.)
      - ii. No person shall purchase or otherwise acquire, encumber, or utilize any development potential without recording that fact, within 10 business days thereof, with the Board; [and]
    - 4. The ordinance is consistent with the State Highway Access Code, N.J.A.C. 16:47, including, but not limited to, Desirable Typical Sections (DTS), as set forth in Appendix B thereto;
    - 5. The municipality has received approval of its initial petition for endorsement of its master plan, including the development transfer ordinance, or approval of the development transfer ordinance as an amendment to a previously approved petition for master plan

endorsement, by the State Planning Commission, as required by N.J.S.A. 40:55D-140e, **if applicable;** and

- 6. (No change.)
- (c) (No change.)
- 2:77-3.2 Procedure for Board’s review
  - (a) A municipality that adopts a development transfer ordinance shall provide the following information to the Board:
    - 1. (No change.)
    - 2. A **copy of the report and plans required pursuant to N.J.S.A. 40:55D-117 or a copy of the current municipal Master Plan;** including the TDR and utility service elements required pursuant to N.J.S.A. 40:55D-140 and 40:55D-28;
    - 3.-5. (No change.)
    - 6. A real estate market analysis prepared pursuant to N.J.S.A. 40:55D-140 and any rules promulgated thereunder[.], **if applicable;**
    - 7. A capital improvement program prepared pursuant to N.J.S.A. 40:55D-140 and 40:55D-29 and any rules promulgated thereunder **or an infrastructure plan prepared pursuant to N.J.S.A. 40:55D-117 and any rules promulgated thereunder;** and
    - 8. (No change.)

SUBCHAPTER 5. PURCHASE OF DEVELOPMENT POTENTIAL

- 2:77-5.2 Application process for the Board’s purchase of development potential
  - (a) Any person or entity holding the interest in development potential that is subject to development transfer in a municipality that has adopted a development transfer ordinance that has been deemed viable by the Board pursuant to N.J.A.C. 2:77-[3.1 through 3.3]3, may apply to sell the development potential to the Board.
    - (b) (No change.)
    - (c) At a minimum, the following information shall be included in the application:
      - 1.-2. (No change.)
      - 3. The county, municipality, block, and lot of the property from which the development potential was transferred;
      - 4.-9. (No change.)
      - 10. A determination if any municipal and/or county funds will be provided[; and].
    - (d) (No change.)
  - 2:77-5.3 Standards governing the Board’s decision to purchase
    - (a) The Board shall determine whether to authorize the purchase of all or a portion of the development potential proposed for sale in accordance with the following criteria:
      - 1. The municipal ordinance is deemed to be viable pursuant to N.J.A.C. 2:77-[3.1 through 3.3]3;
      - 2.-4. (No change.)
      - 5. Whether the expenditure of funds substantially impairs the private sale, exchange, or other method of conveyance of the development potential.
  - 2:77-5.5 Valuation of development potential
    - (a) (No change.)
    - (b) In the event that the Board determines to establish the fair market value of the development potential by appraisal, it shall select two independent professional appraisers from the list of appraisers adopted by the State Agriculture Development Committee pursuant to N.J.A.C. 2:76-6.7.
      - 1. (No change.)
      - 2. Upon completion of the appraisals, the appraisers shall forward [one original and one] a copy of the appraisal report, **in digital format,** to the Board.
      - 3.-6. (No change.)
      - (c)-(d) (No change.)
  - 2:77-5.9 Terms, contingencies, and conditions of purchase
    - (a) Upon the owner’s acceptance of an offer, the Board shall complete any and all administrative procedures necessary to consummate the purchase of development potential including, but not limited to, the following:

1. (No change.)
2. Execution of an instrument of transfer that shall be recorded with the deed of the land in the same manner as a deed, and which shall comply with the requirements set forth in N.J.A.C. 2:77-[3.1(b)2i through iii]**3.1(b)2**.

#### SUBCHAPTER 7. PLANNING ASSISTANCE GRANTS

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

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

**(b) The Board may provide municipalities establishing development transfer programs pursuant to N.J.S.A. 40:55D-113 et seq. with planning assistance grants for up to 50 percent of the cost of preparing, for development potential transfer purposes, the report and plans required under N.J.S.A. 40:55D-117 and incurred by a municipality, or \$40,000, whichever is less.**

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

- (a) (No change.)
- (b) Allowable costs include legal, planning, and other ancillary costs that the municipality incurs to prepare a transfer of development rights ordinance and associated elements pursuant to N.J.A.C. 2:77-3.

##### 2:77-7.3 Eligibility

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

1. (No change.)
2. The Master Plan shall include the plan element appropriately corresponding to the type of Transfer of Development Rights (TDR) program being proposed:
  - i. (No change.)
  - ii. Farmland Preservation Plan pursuant to N.J.S.A. 40:55D-28b(13) and N.J.A.C. 2:76-[17.6]**17A.4**;
  - iii.-v. (No change.)
- 3.-6. (No change.)

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

(a) A municipality applying to the Board for a planning assistance grant shall submit an application [(an original and one copy)], **in digital format**, containing all of the following:

1. (No change.)
2. Any comments received by the municipality regarding its application for a planning assistance grant as a result of the notification letters required in N.J.A.C. 2:77-7.3[.];
3. A scope of work including:
  - i. A description of the [following] work products **under (a)3i(1) through (4) below that the grant will be used for or the report and plans required under N.J.S.A. 40:55D-117:**
    - (1)-(4) (No change.)
    - ii. (No change.)
    - iii. A summary of work already completed toward the creation of a TDR ordinance that will be required for its initial petition for master plan endorsement or for an amendment to a previously approved petition for master plan endorsement by the State Planning Commission pursuant to N.J.S.A. 52:18A-196 et seq., **if applicable**;
  - 4.-9. (No change.)
- (b) (No change.)
- (c) The Board shall send a copy of the application and accompanying documents to the Office of [Smart Growth] **Planning Advocacy** for a 45-day review and comment period.
  1. (No change.)

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

- (a) The Board shall evaluate the applications based on the following criteria:
  1. TDR Concept Plan criterion (weight 50):

- i. (No change.)
- ii. The receiving zone shall be evaluated based on the following (25 points):

- (1) (No change.)
- (2) Availability and capacity of required infrastructure, including, but not limited to sewer, water, and transportation facilities; and
- (3) Suitability of planning area designation[.];
- 2.-4. (No change.)

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

- (a)-(b) (No change.)
- (c) The Board shall disburse the grant as follows:
  1. (No change.)
  2. Fifty percent of the awarded amount shall be disbursed upon submission of the TDR ordinance and associated elements to the **Burlington County Planning Board pursuant to N.J.S.A. 40:55D-121** or the State Planning Commission as a part of a municipality's initial petition for plan endorsement by the State Planning Commission pursuant to N.J.S.A. 52:18A-196 et seq. or as an amendment to a previously approved petition pursuant to N.J.S.A. 52:18A-196 et seq.
    - i. The municipality shall notify and submit a request for payment to the Board when the above requirement has been met[.];
    - ii. The municipality shall submit a letter of receipt from the **Burlington County Planning Board or the State Planning Commission**;
    - iii. The municipality shall submit an itemized statement of the legal, planning, and other ancillary costs pursuant to N.J.A.C. 2:77-7.2 incurred to develop the TDR ordinance and associated elements, certified by the municipal treasurer or chief financial officer; and
    - iv. (No change.)

#### SUBCHAPTER 8. APPRAISAL HANDBOOK STANDARDS

##### 2:77-8.1 Applicability

This subchapter provides the standards established by the Board for independent professional appraisers or the Board to follow when conducting appraisals of land for the purpose of acquiring, or providing a loan guarantee for, development potential pursuant to **the Burlington County Transfer of Development Rights Demonstration Act, N.J.S.A. 40:55D-113 et seq.**, the State Transfer of Development Rights Bank Act, N.J.S.A. 4:1C-49 et seq., [P.L. 1993, c. 339] **and the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq.**

##### [2:77-8.2 Definitions

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

##### 2:77-[8.3]**8.2** [Board approved] **Board-approved** appraisers

- (a)-(b) (No change.)

##### 2:77-[8.4]**8.3** Development potential valuation

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

- 1.-8. (No change.)
- (b) (No change.)

##### 2:77-[8.5]**8.4** Appraisal report format

(a) The appraisal reports prepared by the approved appraiser shall follow the following format. All values in the report shall be expressed in dollars per acre and dollars per TDR credit where appropriate. The final

value shall be expressed in both dollars per acre, dollars per TDR credit, and total dollars. Each report will be examined and [rejected if] **the Board shall return any report that is not valued or formatted [as requested] consistent with this subchapter and shall request that any such report be modified consistent with this subchapter.** Any factual or mathematical errors, which could result in a value change, may be referred to the appraisers for correction and/or clarification:

1.-6. (No change.)

(b) The requirements for each section of the appraisal reports are described in N.J.A.C. 2:77-[8.6]8.5 through [8.11]8.10.

2:77-[8.6]8.5 Summary

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

1. (No change.)

2. A certification of appraisal, which shall include the market value per TDR credit and total value, and market value restricted per acre and total value, date of valuation, a statement that the appraisal conforms to Uniform Standards of Professional Appraisal Practice (USPAP) and to the Standards for Appraisals **set forth** in N.J.A.C. 13:40A-5.1, [and] 6.1, **and 7.6** and the signature of the approved appraiser responsible for the report;

3. A summary of salient facts, which shall include the unrestricted value per TDR and total value and the restricted value per acre and total restricted value, and the easement value both per acre and total. The format shall conform with the sample[,] **located at N.J.A.C. 2:77-8 Appendix A** [of this subchapter], incorporated herein by reference; and

4. A table of contents that shall include the topic listings contained in the appraisal report with corresponding page numbers. The format shall conform with the sample[,] **located at N.J.A.C. 2:77-8 Appendix B** [of this subchapter], incorporated herein by reference.

2:77-[8.7]8.6 General information

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

1.-5. (No change.)

6. Any title changes in the last five years, easements, agreements of sale, or options;

7.-9. (No change.)

2:77-[8.8]8.7 Property valuation before development and transfer acquisition (a/k/a market value unrestricted), where applicable

(a)-(b) (No change.)

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

1. When considering the direct sales comparison method of valuation, the appraiser shall compare vacant acreage sales to the subject property. At a minimum, this section of the report shall address the following for each vacant acreage sale compared:

i.-v. (No change.)

vi. The location, block, and lot, if applicable;

vii.-xiv. (No change.)

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

i. The appraiser shall provide a land sale comparative rating grid in conformance with the sample[,] **located at N.J.A.C. 2:77-8 Appendix C** [of this subchapter], incorporated herein by reference.

ii. (No change.)

3.-4. (No change.)

2:77-[8.9]8.8 Property valuation after development acquisition (a/k/a market value restricted), where applicable

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

1. A description of the property in conformance with N.J.A.C. 2:77-[8.7(a)]8.6(a)1. In addition, a discussion of the restrictions/enhancements and their effect on the subject property, the subject's adaptability for agricultural use (or other uses), soils and their productivity, and other items [which] **that** are significant to the valuation of the subject property shall be included;

2.-3. (No change.)

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

i.-v. (No change.)

vi. The location, block, and lot (including approximate distance to the subject), if applicable;

vii.-xiv. (No change.)

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

i. The appraiser shall provide a land sale comparative rating grid in conformance with the sample[,] **located at N.J.A.C. 2:77-8 Appendix C** [of this subchapter, incorporated herein by reference].

ii. (No change.)

iii. In addition, the appraiser may consider the methods of valuation as described in N.J.A.C. 2:77-[8.4(a)]8.3(a).

Recodify existing 2:77-8.10 and 8.11 as **8.9 and 8.10** (No change in text.)

**CIVIL SERVICE**

**(a)**

**CIVIL SERVICE COMMISSION**

**Job Banding Program**

**Proposed Amendments: N.J.A.C. 4A:1-1.3; 4A:2-3.7; 4A:3-1.2, 2.3, 2.6, 2.9, 3.2, 3.3, 3.5, 3.6, 3.7, 3.9, and 4.9; 4A:4-1.9, 2.4, 2.5, 3.2, 5.1, 6.3, 6.6, 7.1, 7.1A, 7.6, and 7.8; 4A:7-3.1; 4A:8-1.1 and 2.2; and 4A:10-1.1**

**Proposed New Rule: N.J.A.C. 4A:3-3.2A**

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-11, 11A:2-20, 11A:3-1, 11A:3-3, 11A:3-7, 11A:4-9, 11A:4-12, 11A:4-13, 11A:4-16, 11A:6-15, 11A:6-26, 11A:6-28, 11A:7-1 et seq., and 11A:8-1 et seq.; and P.L. 2008, c. 29.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-049.

A **public hearing** concerning the proposed amendments and new rule will be held on:

Wednesday, April 10, 2013 at 3:00 P.M.  
Civil Service Commission Room  
44 South Clinton Avenue  
Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by May 17, 2013 to:

Henry Maurer, Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P.O. Box 312  
Trenton, NJ 08625-0312