

TDR Statewide Policy Task Force**Committee #1: Municipal Fiscal Impacts*****Final Recommendations (Subject to final review by committee chair)*****1. Purpose**

- a. Address all categories of municipal TDR expenses, including public education and outreach, planning, design, market analysis, exposure to litigation, infrastructure, affordable housing obligation, potential need for new schools and ongoing community services. The last three categories become acute in TDR towns due to the accelerated pace of growth which TDR can engender.
- b. Make TDR more attractive from a municipal fiscal perspective than the status quo, and reduce the risks associated with implementation.

2. Financial assistance for the planning phase (education and outreach, planning, design, market analysis)

- a. Reduce municipal costs associated with TDR by simplifying statutory planning requirements, including plan endorsement (see Committee 3) and the Real Estate Market Analysis (see Committee 4), by reducing bureaucratic logjams (Committee 3), and by offering simpler transfer tools (Committee 5).
- b. Provide adequate state funding to cover an estimated \$300,000 local planning bill:
 - i. Raise the ceiling on the size of Planning Assistance Grants from the TDR Bank Board from \$40,000 to \$100,000. However, maintain the requirement for 50% local match.
 - ii. Amend the Garden State Preservation Trust Act to authorize the use of locally generated open space funds to cover TDR planning expenses up to \$100,000, once a town's TDR ordinance has been approved.
 - iii. Recommend that the state expend funds in accord with the Global Warming Solutions Fund starting in FY '12, and prioritize TDR planning grants, up to \$100,000 per municipality, as part of the proposed DEP Local Government Greenhouse Gas Reduction Program.
 - iv. Authorize municipalities to impose a development fee to recoup planning costs, by incorporating the provision from the Burlington County TDR Demonstration Act into the Statewide TDR Act¹.
- c. Recommend that a dedicated funding source be created for open space and farmland preservation, with a small share dedicated for the TDR Bank. (Note that the TDR Bank was originally capitalized with funds raised for state land preservation programs.)
- d. Authorize regional Planning Assistance Grants from the TDR Bank Board for counties, Metropolitan Planning Organizations (MPOs) and other entities planning regional TDR programs, provided they have identified willing receiving district communities.

¹ C. 40:55D-117 (6)(c): "The municipality may, through application fees for development in the receiving zone, be reimbursed on a pro rata basis for the cost of amending its master plan and land use regulations."

3. Educational and planning assistance materials

The TDR Bank Board should prepare educational and planning assistance materials including manuals and customizable Powerpoint presentations as follows:

- a. Create a planning manual(s) for municipal officials considering density transfer tools.
 - i. Cover clustering on non-contiguous lots and TDR; and explain when each tool is appropriate.
 - ii. Explain different applications of transfer tools, ranging from small-scale efforts to preserve a single historic façade, for example, to neighborhood/hamlet scale receiving districts, to township-wide TDR. Include applications in urban settings. Provide case studies.
 - iii. Describe community visioning and public outreach techniques.
 - iv. Explain the TDR planning process, and the iterative nature of community input, state government feedback, and the economic reality check; the pros and cons of various sized programs, including the market limits on the receiving district (as expressed in population projections) and thus the sending area; the need to prioritize preservation goals; etc.
 - v. Explain how to conduct a Natural Resource Inventory and how to use that to prioritize locations for preservation through designation as sending areas. Explain how to assess water and wastewater capacity.
 - vi. Emphasize the importance of “right-sizing” the TDR program by starting with population projections and an assessment of how large the receiving area should be. Emphasize that TDR programs need not cover an entire municipality.
 - vii. Explain technical issues such as transfer ratios.
 - viii. Include model plan elements, TDR ordinances and REMAs.
 - ix. Discuss fiscal impacts for different planning scenarios and how to estimate them, including infrastructure construction and maintenance, school costs, demographics of different housing types, etc. Include the costs of land preservation which are avoided if TDR is used.
 - x. Illustrate different development densities and explain options for design standards, green construction, etc.
- b. Create a manual for landowners
 - i. Explain how the different density transfer tools work, how they might impact landowners and what the benefits are for landowners.
 - ii. Address common landowner concerns, including how they are likely to be affected by TDR under various economic scenarios, how they can borrow against TDR credits, how credit sales are taxed, the rights of ownership once credits are severed, how credits can facilitate the dividing up of property after a landowner’s death, the role of the TDR bank, etc.
 - iii. Discuss how the value of land is likely to be affected by severing credits. Note that it will retain significant value.
- c. Create a manual for potential developers

- i. Explain how the mechanics of TDR credits work and how it affects their bottom line.
 - ii. Provide examples of successful projects
 - iii. Discuss demographic and other trends that increase the demand for compact, environmentally-friendly development.
 - d. Create a manual for the general public
 - i. Describe TDR and what difference it can make through comparisons of full build-out under existing zoning and under a TDR program.
 - ii. Explain the costs of sprawl in NJ and the benefits TDR provides.
 - iii. Describe impacts on affected landowners and all municipal residents.
4. **Infrastructure**
 - a. Clarify the authority of TDR municipalities to charge receiving district developers for their proportional share of district-wide improvements for both gray and green infrastructure such as stormwater, drinking water, sewer, roads and recreation.
 - b. Explore the viability of directing the School Development Authority to prioritize TDR receiving districts for school construction funding.
 - c. Direct the New Jersey Environmental Infrastructure Trust (NJEIT) to include TDR municipalities in their “smart growth financing” program that provides loans for water infrastructure at 75% below market rate. Seek flexible repayment terms.
 - d. Direct the Green Acres program to increase its share of funding for local park acquisition and development projects in TDR receiving districts.
 - e. Direct the DOT to prioritize TDR municipalities by providing extra points for receiving district projects in the DOT Local Aid formula.
5. **General early costs related to the fast pace of growth in TDR municipalities (infrastructure, schools and ongoing municipal services)**
 - a. Direct the Division on Local Government Services to study the fiscal impact of TDR on municipalities and recommend ways to provide transitional financial support for towns to cover the early costs of accelerated growth that arise before sufficient new taxpayers are in place to reasonably carry them, especially in situations where development stalls and/or the municipality approaches their debt limit.
 - b. Direct realty transfer tax proceeds generated from a TDR receiving district to the municipality, provided at least 50% of the growth in the receiving district is due to purchase of TDR credits.
 - c. Authorize municipalities with an approved TDR program to assess a local realty transfer tax, with proceeds dedicated to municipal expenses.
 - d. Expand the role of the TDR Bank Board to provide bridge loans to towns for infrastructure and other early costs, provided a source of funds to capitalize the loan program can be found.

6. Incentives for Developers

- a. Work with the DCA Commissioner and the EDA to identify Urban Enterprise Zone-type incentives that could be applied (by statute) in TDR Receiving Districts, starting in FY '12, such as an exemption from sales and use taxes on construction materials.

7. Legal protections to reduce risk

These legal protections would be available to any municipality that has had their TDR master plan elements and ordinances reviewed and approved by the state in accord with the provisions of the TDR statute. Because they received state approval, they should enjoy stronger legal standing.

- a. Establish a heightened legal “presumption of validity” for TDR master plan elements and ordinances that have been reviewed and approved by the state in accord with the provisions of the TDR statute. (Note that this presumption would raise the burden of proof required to challenge an approved amended master plan or development regulation. It mirrors a provision in the Highlands Act for municipal master plans and development regulations that have been approved by the Highlands Council as in conformance with the Regional Master Plan.)
- b. Consider limiting the time period within which TDR ordinances can be challenged by reducing the period from 45 to 30 days and preventing an extension of the deadline.
- c. Require that any action in lieu of prerogative writs concerning a TDR element or ordinance already approved by a State agency be reviewed by the Appellate Division only. In this way, a municipality would not be required to prepare for and litigate the validity of the TDR element or development transfer ordinance at trial in the Superior Court.

TDR Statewide Policy Task Force**Committee #2 - Infrastructure*****Final Recommendations***

Based on the May 3rd meeting with Tony DiLodovico, Jim Coe, Rick Brown, Joy Farber, Dave Fisher, Christine Marion, Diane Strauss, Larry Baier, Tim Dillingham, Liz Semple, Jenn Feltis, Diane Strauss, Chris Sturm

To ensure TDR planning efforts effectively preserve land without creating a host of new problems:

- The TDR program should seek to maximize resource protection while promoting smart growth development. Regulatory conflicts should be avoided to the greatest extent possible by locating receiving districts away from regulated resources.
 - The process and requirements for getting approvals for infrastructure and development in TDR receiving districts must be simplified and made more predictable.
 - State and county infrastructure funding should prioritize TDR programs, since they address multiple public goals.
 - Providing certainty in regulatory requirements would be a major incentive for TDR municipalities and developers.
1. **Use a phased planning process based on resource protection** – the state and municipality should work together through the TDR planning process, culminating in a joint commitment to make the TDR program work. (See the attached chart, which the committee on State Agency Support is refining.) Through this process, sending and receiving areas should be based on an assessment of natural, agricultural and/or cultural resources, seeking to protect them in the sending area and avoiding them to the greatest extent possible in the receiving area. Where the receiving area includes environmental features, plans and ordinances should minimize the impact of development.
 2. **Facilitate SSA designations.** Where a TDR programs propose a receiving district outside of existing Sewer Service Areas (SSAs), an updated WMP should be adopted or deemed viable by DEP before the state approves a TDR plan. However, in situations like Woolwich, where the state has approved a TDR program before a wastewater alternative has been identified, it should help the municipality obtain SSA designation for the receiving area by:
 - Formally acknowledging that the geography of the proposed receiving district is acceptable for designation of an SSA, but cannot be instated until a wastewater solution is approved as viable by DEP. This could be accomplished in a letter to the wastewater agent (typically the county) and ultimately in an approved WQMP. Essentially this would be an acknowledgement by DEP that it has reviewed the proposed SSA geography and agrees that it can be included in the SSA and that the

environs protections afforded by the plan are adequate. The purpose of this conditional approval is to give the town and county the confidence they need to move forward and bond for needed improvements.

- The committee discussed how DEP could facilitate phased implementation of a TDR program in a situation like Woolwich, by allowing for incremental approvals of the SSA through site-specific WMP amendments, as developers, the municipality or the wastewater provider propose specific wastewater solutions for all or part of the SSA, provided that the proposed development utilizes TDR credits and results in permanent land preservation. Issues such as threatened and endangered species habitats would not have to be revisited as part of the site-specific amendment process. The site-specific amendment would only have to address the wastewater flow for the site, identify the wastewater management alternative selected, and water supply source (if that had not previously been determined), thus shortening the review time required and increasing the certainty of the outcome. This practice would allow for phased development of large receiving districts.
3. **Clarify support for small-scale wastewater solutions.** Many towns are interested in small-scale density transfers or TDR programs with multiple small receiving areas on the scale of hamlets (under 200 dwelling units). Such transfer programs have proven difficult to implement, though, because it is unclear what small-scale wastewater treatment options are acceptable to DEP. To facilitate small-scale density transfers, DEP should:
- Define acceptable management entities, including the municipality, the utility authority, or a private wastewater provider, but not including a homeowners' association.
 - Clarify the specific types of package treatment plants and technologies that are likely to be appropriate for different scales of development and what standards they are required to meet. See the Addendum, which begins this clarification.
 - Post information on package treatment plants that have received approvals from DEP in the recent past.
 - Provided the DEP finds a proposed growth area to be acceptable according to the WQMP rule "clipping", it should help the municipality obtain SSA designation by formally acknowledging that the geography of the growth area is acceptable for designation of an SSA, as described in 2 (a) above and allow for site-specific WMP amendments or revisions (for approved TDR programs) conditioned upon land preservation, as described in 2 (b) above.
4. **Facilitate "Discharge to Groundwater" systems through TDR educational materials -** For TDR districts using a new wastewater treatment plant with a groundwater discharge and drip irrigation, significant acquisition of existing farmland in the sending area may be needed to site the disposal facilities. DEP and the municipality should work together to determine whether this land can be eligible for TDR credits, so that the developer who acquires such parcels to advance the establishment of infrastructure is compensated for helping solve this critical element of TDR under such circumstances. Education material about this option should be prepared and made available.

5. **Adopt Priority Permitting** - The DEP should pilot priority permitting, as recommended by the Permit Efficiency Task Force, for infrastructure and development in all approved TDR programs, by providing:
 - a. A unique point of entry to facilitate reviews (one-stop permitting)
 - b. Project concept review, a team approach to coordinating multiple permit projects and a case manager to follow the project from inception to decision. Additionally, identification of permit critical path parameters, including identification of fatal flaws and establishment of timelines for action by DEP and the developer, should be implemented to bring more predictability, transparency, timeliness and efficiency to the review process.

6. **Develop a “Sector Permitting” “General Development Plan” approach to provide regulatory predictability** - Because the TDR planning process is so comprehensive, lengthy and expensive, and because TDR is recognized as benefiting the general public and the environment by preserving land from sprawl, every effort should be made to provide consistency in regulatory requirements for development in approved TDR receiving districts². The committee recommends developing the following conceptual approach for an area-wide sector permit, similar to what was done in Long Branch.

An area-wide sector permit/GDP approach should be made available for receiving districts whereby:

- DEP would approve a town’s general development plan for the receiving district, and provide guidelines for municipal approval/permitting of conforming development projects that would be good for ten years.
- DEP would retain the right to rescind any inappropriate approvals.
- The sector permit guidelines would be tailored to the site, based on a comprehensive assessment of natural resources on the site. The guidelines would allow for management of environmental constraints that reconciled environmental protection with support for the TDR program. The guidelines would operate in a variety of ways: a) evaluating in detail the nature of the issue; b) avoiding them where possible; c) allowing for a site-specific solution, etc. For example, a sector permit approach might allow for reduced riparian buffers in certain situations, provided environmental conditions were maintained or improved.
- A “time of decision” provision would allow all permit applications to be subject to the rules, including DOT, DEP and affordable housing rules, as they existed when the the REMA was approved by OSG, unless the applicant chose to accept newer regulations, and except as needed to address pressing public health and safety concerns.
- The portion of the WMP covering the TDR sending and receiving district would be held constant during the time period, unless health or public safety concerns arose.

² This could apply to all TDR programs, or just mandatory programs.

- The municipality would agree not to change the TDR master plan elements and TDR ordinance, unless as approved by the State Planning Commission.

7. **Integrating Habitat Planning & Mitigation**

If an approved TDR plan impairs regulated habitat, every reasonable consideration should be taken to allow the TDR program to mitigate the impacts. DEP should develop an easy-to-use tool that measures the level of impairment and offers the ability to determine options for equivalent mitigation.

8. **The DEP should act expeditiously to provide clear, public information on where water and wastewater capacity exists**, in order to clarify where TDR will work best.

9. **Facilitate transportation access permits.** The DOT should modify the access permit process for TDR receiving districts based on performance criteria that balance access with regional mobility and transit use. Ensure that DOT does not deny access permits simply because a project increases traffic congestion, especially if it is also becoming “transit ready”. County road departments should also prioritize support for TDR projects.

10. **Align infrastructure funding** – The state, county and regional bodies should align their programs and capital investments to support TDR programs. *Note: the municipal fiscal impact committee is providing more detailed recommendations.*

Decentralized Wastewater Plants

Written by Larry Baier based on conversation with Ed Clerico

5/4/2010

The per gallon cost of wastewater treatment by small scale decentralized e treatment plants will vary depending on the degree of treatment required, the nature of the waste, and the size of the facility. Since we are really talking about domestic wastewater, we can remove the “nature of waste” variable.

In general the per gallon cost of treatment increases with increasing levels of treatment and decreases with increasing facility size.

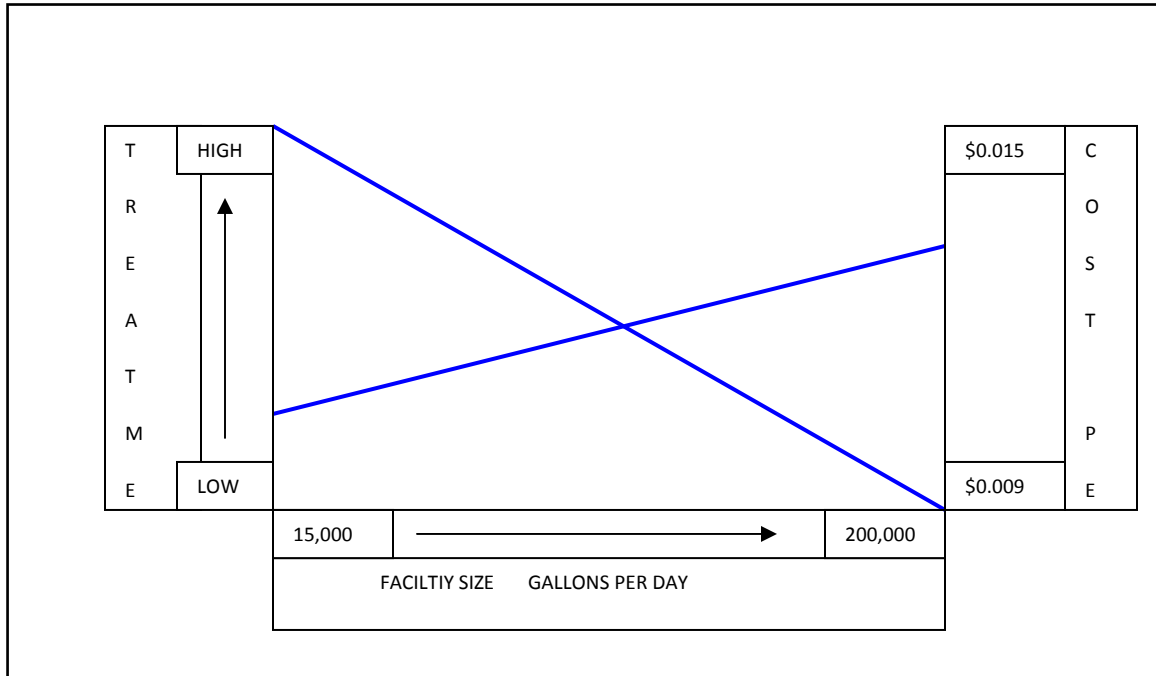
A small facility (10,000 GPD) with a very high level of treatment can cost \$100/gallon of capacity or more (\$1,000,000). The operation and maintenance costs for such a facility would be around \$0.01/gallon. A facility with this degree of treatment could supply nonpotable water for direct reuse for purposes such as toilet flushing, irrigation and laundry, thereby serving the dual purpose of water supply and wastewater treatment. Systems with this configuration have been shown to use about 50% less water than typical residential units and are now common in urban as well as rural settings.

Note, a very small (10,000 GPD) facility would serve about 33 houses (300GPD/house) and the capital costs is therefore approximate \$30,000 per house, or about the same as an expensive septic system. Including amortization of the facility with the operating costs the total charge per gallon of wastewater would be about \$0.015 or about \$1650 / year / house.

A large facility, (200,000 GPD) with a low level of treatment would only cost about \$15/gallon of capacity (\$3,000,000) with an operation and maintenance cost of about \$0.004/gallon. Including amortization of the facility with the operating cost the total charge per gallon would be about \$0.009 or about \$985 / year / house. The capital cost of a facility of this size is approximately \$4,500 per home, or considerably less than a septic system.

Generally the economics make systems serving less than 50 units cost prohibitive (15,000 GPD) other than for high value properties which can afford that capital cost or where a subsidy is provided. Also, it is important to recognize that the use of a natural systems approach (created wetlands treatment and polishing) will make these systems more cost effective for all sizes, therefore accommodating smaller scale projects more readily As the size increase to 150 to 200

homes (45,000 - 60,000 GPD) decentralized plants become cost competitive with municipal or regional treatment.



TDR Statewide Policy Task Force
Committee #3: Coordinated State Agency Support
Final recommendations

Based on the May 5th meeting of Bob Melvin, Brent Barnes, Susan Craft, Monique Purcell, Karl Hartkopf, Keith Henderson, Diane Strauss, Rick Brown and Chris Sturm

To make TDR work, the town(s) and the state must share joint ownership of the plan where both parties work together in a proactive, collaborative, problem-solving relationship. The state must move from a mode of regulation to one of partnership.

We need to find ways to solidify support for a TDR plan, at both the local and the state level, that transcends election cycles.

1. Create a state-local TDR partnership, where the state, county and municipality progress from early exchanges to a commitment to make TDR work. *See the attached chart, which details each stage of the "State Local TDR Partnership".*

2. Reconcile the state-local TDR partnership with the statutory requirement for plan endorsement. Ensure that the required process:
 - a. Matches the requirements to the type of TDR program, as follows: Identify a few categories of TDR programs (based on the setting: urban, rural, etc., the scale: township-wide, district-wide, etc.). Provide a checklist of requirements and standards for each, to ensure both flexibility and predictability. Codify limits to the ability of OSG and state agencies to add to established requirements.
 - b. Offers tangible benefits commensurate with the local planning effort and expected outcomes. Ensure all agencies work with the municipality to identify costs for infrastructure/other and a funding approach, and incorporate their contribution into an official functional plan. For example, the DOT should place any agreed-upon transportation improvements into its ten-year capital program.
 - c. Provides high-level support within state agencies to ensure conflict resolution and follow-through. Aligns with, and coordinates, state agency policies, programs and regulatory requirements.

Options for reconciliation include: 1) customizing plan endorsement requirements for TDR municipalities, 2) offering an alternative path for SPC approval, 3) allowing TDR towns to implement their program once they've reached the "action plan" state of plan

endorsement, or 4) some combination of the above. *Note that committee members are comparing the plan endorsement requirements with the requirements of the TDR statute and the “State-local TDR partnership” in order to make a more specific recommendation.*

3. The state should provide single point of contact for municipalities pursuing TDR, which can 1) market TDR to towns and provide education, 2) assist towns with implementation, including helping them overcome obstacles, and 3) coordinate work with other state agencies. If the State Planning Commission (SPC) is strengthened, as recommended by the Red Tape Review Commission, this point of contact should be located under the auspices of the SPC. The role of the SPC and its staff and the TDR Bank Board must be coordinated to maximize assistance given to towns.
 - a. Establish a TDR Implementation Group with high-level membership and quarterly meetings to make the state accountable for TDR, to be an advocate for TDR before the agencies, to remove obstacles and ensure coordination. Provide it with a high-level leader.
 - b. Provide adequate staff support for TDR implementation, both under the SPC and in DEP, DOT and the TDR Bank Board.

4. Ensure permit facilitation. Once state and town are committed to a TDR plan, the state should facilitate permits as follows:
 - a. Make each agency accountable to the TDR Implementation Group to resolve permit issues within a specified timeframe.
 - b. Work within the flexibility allowed under existing regulations.
 - c. Within the agencies, make division directors accountable for progress within timelines. Incorporate performance into their annual review.
 - d. Change the agency culture at DOT and DEP that supports regulators who interpret rules narrowly and intentionally block progress. Educate all permit staff on the agency’s policy toward TDR, the TDR review process (and how it is different from a project advanced by political connections), the appropriate range of permitting flexibility within existing regulations, etc., such that arising environmental issues in agreed-upon growth (receiving) areas be “managed” so as to protect the environment, but not to derail the TDR program.
 - e. Within DEP, implement the recommendations of the permit efficiency task force for priority projects, by assigning a “team leader” for each approved town to shepherd it through the permitting process. Create a permitting team of the best staff from each permit program. Assign timelines for each permit. Make the team accountable to an assistant commissioner (and give them access.)
 - f. Identify point people from the other agencies as well.
 - g. Pilot this approach with a few high profile projects.

5. Find a way to stabilize support for the TDR program by both the state and the municipality for a period of at least ten years. Explore a TDR General Development Permit approach where the municipality is the applicant and the state is the reviewer. The town would agree not to change its TDR plan and ordinance in exchange for a state agreement to lock-in certain rules or modify its approach to rule implementation, including affordable housing rules. *Note: members of this committee and the infrastructure committee are exploring this approach.*

6. Explore ways to prioritize the allocation of wastewater and water capacity for TDR programs.

Phase	Purpose	Starting Point	Local Role	State* Role	Outcome
1.Exploration Phase	Town develops TDR concept with assistance from the state as desired	Town decides to explore TDR	<p>Town conducts community outreach, identifies goals and objectives for the TDR program, prepares build-out analysis, growth projections, sets preservation priorities, planning scenarios, conceptual TDR planning (testing notion of sending and receiving areas, densities for growth area), etc.</p> <p>Should draft “TDR planning parameters” for size of sending/rec. districts. Can engage market analyst.</p> <p>Might apply for Planning Assistance Grant (PAG)</p>	<p>State provides primary contact (at OSG or TDR Bank Board)</p> <p>Provides educational materials, presentations, and technical assistance.</p> <p>Provides feedback to town, if requested, identifying any “fatal flaws”, esp for the size and location of the receiving district.</p> <p>Could provide Planning Assistance Grant</p>	<p>Town decides whether or not to pursue TDR</p> <p>State provides checklist of requirements for plan endorsement or replacement process.</p>
2. Assessment Phase (Identify Problems)	State provides feedback on the preliminary TDR plan, including identification of problems and issues	Town presents “the state” with its conceptual TDR plan.	<p>Town submits planning documents to the state describing the conceptual TDR program.</p> <p>Town engages county.</p> <p>Town engages REMA consultant to begin Economic Feasibility Analysis.</p> <p>Might apply for PAG</p> <p>Town engages infrastructure providers: water, wastewater, utilities, transit agency, etc.</p>	<p>Agencies conduct “Opportunity & Constraints Analysis”. Provide feedback on population projections, receiving district: location and enviro constraints, water/wastewater capacity, transportation issues, transit score, affordable housing, consistency with regional and state land use plans, etc.</p> <p>Agencies identify problems/issues with TDR plan, potential solutions and sense of difficulty</p> <p>OSG reviews draft REMA. State facilitates conversations between town and others if needed.</p>	State agencies provide Opportunities and Constraints Analysis with specific feedback on viability of TDR plan.

<p>3. Refinement Phase (Identify and Pick Solutions)</p>	<p>Town refines TDR plan through iterative planning process, based on state assessments, REMA, developer feedback, and community input.</p>	<p>State meets with town to discuss possible solutions to problems/issues</p>	<p>Town engages local stakeholders. Town works with county to refine all aspects of TDR plan (sending/receiving area, credit allocation, transfer ratios, preliminary receiving area design, preliminary engineering design for infrastructure) Town completes REMA Town adopts Transfer element of master plan, capital improvement program, utility element; drafts TDR ordinance.</p>	<p>State and county provide ongoing technical assistance as needed to resolve problems/issues. OSG reviews and approves REMA. DEP approves any WMP changes or deems wastewater solution to be viable, pending future WMP review. Agencies place agreed-upon financial contributions & support into their functional plans.</p>	<p>State approves TDR plan through plan endorsement or replacement process MOA* between state and town and county is prepared.</p>
<p>4. Implementation Partnership</p>	<p>State and town work as partners to implement TDR plan, according to MOA</p>	<p>State and town sign MOA</p>	<p>According to MOA schedule, town adopts TDR ordinance, facilitates infrastructure for receiving district, etc., etc. County approves TDR ordinance.</p>	<p>State helps town advance TDR implementation, according to MOA. Could include facilitating state approvals, conditioned upon local follow-through. State provides final Planning Assistance Grant payment upon ordinance adoption. State provides financial assistance as spelled out in MOA.</p>	<p>Development and preservation occur according to TDR program.</p>

- Note that the MOA is similar to a Planning and Implementation Agreement.

TDR Statewide Policy Task Force**Committee #4: Market Viability
Final Recommendations**

Based on the April 26th meeting with Jim Hartling, Steven Bruder, Phil Caton, Don Asay, Dave Fisher, Keith Henderson, Helen Heinrich, Diane Strauss and Chris Sturm. Written comments were submitted by Candy Ashmun in advance of the meeting.

1. Ensure that municipalities interested in TDR consider market constraints very early in the planning process:
 - a. See chart on the “state-town relationship”, attached.
 - b. The state should encourage municipalities exploring TDR to draft “TDR Planning Parameters”. The purpose of the draft parameters is to arrive at a reasonably-sized TDR program by starting with a look at the receiving area. The town should (1) identify acceptable (state-approved) 30-year population projections to assess the town’s potential for growth; (2) estimate what portion of that growth should be absorbed in the receiving area; (3) estimate what portion of receiving area growth could be accommodated through credit purchase; and (4) determine how big the sending area could be given the potential receiving area credit absorption.
 - i. When a municipality that is exploring TDR first reaches out to the state, the state should encourage them to draft these TDR Planning Parameters as part of the town’s early TDR planning process.
 - ii. This effort should be encouraged in TDR educational materials.
 - iii. The TDR Bank Board should require towns to include this analysis in their application for a Planning Assistance Grant.
 - c. The REMA rule should be revised to break the process into two phases:
 - i. **Economic Feasibility Analysis**, which affirms the guts of the TDR program – the size of sending and receiving districts based on a precise determination of the number of credits and acres; types of units in the receiving district, transfer ratios, etc. This is done as an iterative planning process with the town, where the consultant provides feedback at each state of the planning process to help the town refine the program. The cost is roughly half of the total cost of a REMA. Products are in memo form. This should be started by the beginning of the “assessment phase”, and completed during the “refinement phase” of the “state town” relationship.
 - ii. **Documentation and Final Report**, which meets the requirements of the rule and allows a town to defend its TDR ordinance in court. This must be submitted to the Office of Smart Growth according to the REMA rule.

2. Developers building in TDR receiving districts may occasionally have trouble finding enough willing sellers of TDR credits at the time they are ready to build. (Sending area landowners may not be ready to sell their credits at the same time developers are interested in building.)

This situation can be ameliorated if, when the program is set up, the town allocates a certain number of credits to itself. (This amount should be limited to 10% of the total number of credits.) If there were a shortage of willing sellers³, the town could offer these credits for sale at a public auction, provided there were fewer than three other sellers. The town would be required to use the proceeds to purchase (and retire) development credits in the sending area within three years, or the funds would go to the SADC or the Green Acres program. This practice should be described in any TDR training materials.

3. Incentives should be offered to sending area landowners to encourage their support for the TDR program. This can help overcome sending area landowners' concerns that the TDR program may curtail their options or affect their equity.

We recommend exploring whether the state could offer landowners a tax credit on taxes paid upon the sale of TDR credits.

4. Affordable housing requirements for development in a TDR receiving district should be held constant for at least ten years after a TDR ordinance is adopted.
5. The committee made two recommendations to the "Transfer Options" committee:
 - a. To encourage towns to set the underlying zoning for receiving districts for large-lot residential, in order to facilitate mandatory clustering there. (This will prevent the receiving district from being built-out without the use of credits.)
 - b. To clarify that TDR programs only work with a reasonably large number of sending area landowners (at least seven). Non-contiguous cluster programs are appropriate in situations where there are fewer sending area landowners, and one or two developers can build out an entire receiving district.

³ The town could be precluded from selling credits, unless "in a manner that does not substantially impair the private sale or transfer of development potential." (This restriction is applied to TDR Banks in section 23 (c).)

TDR Statewide Policy Task Force**Committee #5: Transfer Program Options/Statute*****Final Recommendations***

Based on the April 29th committee meeting attended by Phil Caton, Fred Hardt, John Hasse, Steven Bruder, Diane Strauss, Tom Beaver and Chris Sturm. Written comments were submitted by Candy Ashmun.

- 1.
2. **Municipalities need more options for preserving farmland and open space through density transfer programs.** In particular:
 - a. The non-contiguous cluster tool authorized by the MLUL should continue to offer towns a relatively simple, inexpensive program for small-scale density transfers, but be enhanced so that it is easier to use, and have statutory authorization that clarifies the distinction between it and TDR. This would address the demand by many municipalities interested in preserving land through transfer programs but intimidated by the cost and complexity of TDR.
 - b. Today's TDR legislation should be amended to offer two clear alternatives: a mandatory TDR program similar to what exists today, and a voluntary TDR program that offers sending area landowners multiple good options for selling land or credits, and imposes fewer planning requirements on the municipality.

These options are described in greater detail below and in the attached chart.

3. **The non-contiguous cluster tool should be enhanced** to offer greater flexibility. These changes would clarify that this tool could be legally used instead of a full TDR program as long as severable credits were not utilized. As such, it would be best suited for situations where one or two developers could manage the transactions needed build the entire receiving area. It could also be used on a smaller scale such as for preserving a single historic site and/or landscape. No REMA would be required but a master plan amendment would be in order. In addition, the non-contiguous cluster would:
 - a. Be voluntary on the part of landowners, as it is now.
 - b. Not have to be executed through a Planned Development. Although a developer would still be required to "control" both the sending and receiving sites, he could do so either through purchase of an easement or fee ownership. However, the use of severable credits would be prohibited. (The developer would pay to have an easement recorded on the deed but would not actually control it. Another entity would be assigned to hold the easement into perpetuity.)

- c. Allow municipalities several *options*:
 - i. To designate receiving areas, maybe called something else like: “cluster growth areas” and/or sending areas, or “cluster preservation areas”.
 - ii. To require sewage treatment in the growth area.
 - iii. To create a transfer ratio (provided it was justified by a simple financial feasibility analysis) and to allow bonus units as an incentive to transfer.
 - iv. To allow towns to consolidate sending and receiving lots for tax and stewardship purposes, as is done in the Pinelands.
4. **The TDR Statute should authorize voluntary TDR programs for situations where the sending area has not been recently significantly downzoned in association with a TDR program⁴.** Sending area landowners would retain the ability to sell their land for development or to sell it for preservation, but would also be able to sell TDR credits. In the voluntary program, landowners have good alternatives to TDR, so many of the program requirements imposed upon municipalities to protect landowner equity in the current TDR statute can be relaxed, specifically:
- a. Towns can be required to do only the first part of the full REMA referred to as the “Economic Feasibility Analysis”, which affirms the guts of the TDR program—the size of sending and receiving districts based on a precise determination of the number of credits and acres; types of units in the receiving district, transfer ratios, etc. This is done in an iterative process with the town, where the consultant provides feedback at each stage of the TDR planning process to help the town refine the program. This analysis would thus proceed on a parallel track with the TDR planning process. The cost would be roughly half of the total cost of a REMA. Products would be in memo form and a final summary report. Towns would not be required to do all the formal documentation required for the full REMA, which is essentially needed to formally demonstrate that sending area lands will retain their value and thus to protect the town from a lawsuit from a sending area.
 - b. Towns would need to periodically review their zoning and transfer ratios, but would not be subject to the statutory performance requirements that could nullify a mandatory TDR program after five years.
 - c. Towns need not make the receiving district large enough to accommodate all of the credits from the sending area, since sending area landowners retain all the other options to realize the value of their land. Towns could consider phasing in receiving areas as needed.
 - d. Since preservation of all of the sending area lands is not guaranteed, towns should not necessarily be eligible for some of the permitting enhancements being considered for the receiving area in a mandatory TDR program.
 - e. It is possible that towns might not need to obtain full plan endorsement. This is under consideration by the “state support” committee.

⁴ Note: This needs a more precise definition of both the timeframe and extent of any zoning changes.

It is important to note here that it is easier for municipalities to implement voluntary TDR programs because landowners in the sending area are more likely to support them than mandatory TDR. It is also important to note that Chesterfield's successful TDR program was fully voluntary. No major subdivisions have been approved in the sending area since TDR was enacted, but not because subdivision was prohibited; rather because landowners have chosen to sell TDR credits.

5. **All TDR programs, whether voluntary or mandatory, should be able to require development in the receiving area to be clustered.** The Municipal Land Use Law (MLUL) should be amended to clearly authorize mandatory clustering. Although municipalities in NJ have adopted mandatory cluster provisions, there is no clear statutory authorization.

This was done in Chesterfield Township's TDR program to ensure that, in the event that a receiving district developer did not want to build using credits, they would be prevented from building out their parcel at low densities thus precluding future development with credits.

6. **Amend section 10 of the Statewide TDR Act to increase the threshold and to allow for an exception in urban/urbanized municipalities.** This section designates any parcel for which a density variance increasing development potential by more than 5% has been approved in a municipality with an approved TDR program to automatically be considered a receiving district (if it is not already in one). It is recommended that the triggering threshold be increased from 5% to 25%. Also, municipalities should be provided with the option to exclude highly urbanized planning areas (State Plan Urban Centers and land in Planning Area 1) from this provision.

7. **A technical amendment is necessary to eliminate redundant notice requirements.** Namely, when a municipality is re-zoning based upon a master plan re-examination, the notice to each landowner within 200 feet of boundaries of the zone is not required. In this case, the rules regarding hearings for revision or amendment of the master plan apply. See N.J.S.A. 40:55D-10(a). Accordingly, the provision in the TDR Act with respect to notice needs to be revised to reflect this alternative notice requirement. Since extensive visioning is performed during plan endorsement and includes extensive notice, and since master plan updates equivalent to or greater than a re-examination are performed for TDR, then notice to all residents within 200 feet of the new zones should not be required when rezoning sending and receiving areas. See N.J.S.A. 40:55D-143. This small change in the TDR Act is necessary to accurately reflect MLUL requirements.

8. **New Jersey needs to keep looking for effective approaches that would allow density transfers on a much larger scale.** We should monitor research on alternative transfer programs based on environmental protection goals that might be appropriate for future implementation, such as the Lake Tahoe model, or other approaches.

DEVELOPMENT TRANSFER ALTERNATIVES – PRINCIPAL CHARACTERISTICS

	Non-Contiguous Tract Cluster	TDR	
		Voluntary ¹	Mandatory
REMA	No REMA ²	Basic REMA	Full REMA
Severable Credits or Ownership	Easement or Fee Ownership	Severable Credits	Severable Credits
Credit Allocation	Local Option ³	Required	Required
Transfer Ratio	Local Option	Yes	Yes
Designated Receiving and Sending Area(s)	Local Option	Yes	Yes
Sewage Treatment Required	Local Option	Yes	Yes
Receiving Area sized to utilize all Sending Area Credits	Local Option	Local Option	Yes
Mandatory Cluster in Receiving Area	Local Option ⁴	Yes	Yes
Provisions for Regulatory Predictability	No	No	Yes
State Role in Transfer	State Cooperation ⁵	State Partnership / Endorsement ⁶	State Partnership / Endorsement
Performance / Sunset Requirements	No	No	Yes

¹ A voluntary program will be defined as one in which no downzoning occurred in the sending area within a recent period that is associated with the TDR project.

² If a transfer ratio is proposed it must be justified by a financial feasibility analysis. Bonus development credits as an incentive to transfer are permissible as a local option.

³ Municipalities may utilize a “build-out” or “zoning capacity” analysis, soils characteristics or another suitable basis to determine the number of transferable units assigned to each tax lot in the Sending Area. Alternatively, municipalities may require applicants to prepare conceptual subdivision/site plans to demonstrate the as-of-right zoned capacity of each Sending Area tax lot. This approach could be viable for limited transfer programs but would likely be too labor intensive for more expansive programs.

⁴ Enhanced Non-Contiguous Tract Clusters are intended for use in situations where the Receiving Area is of a scale which would be developed by only one or two builders, and where only a small number of sending area parcels is needed to reach build-out; consequently, mandatory clusters should not typically be required.

⁵ State Cooperation would only be required for those cluster plans which involve sophisticated wastewater management planning or other state-level infrastructure improvements.

⁶ The committee on state agency support is addressing the question about plan endorsement in more detail. They are defining what “state partnership” means.

TDR Statewide Policy Task Force
Affordable Housing / COAH Committee #6
Preliminary Recommendations after February 24th Meeting
Revised on March 22nd based on committee discussion of tone/wording

Present: Ed Schmierer, Keith Henderson, Jennifer Feltis, Phil Caton, Dianne Brake, Sandy Batty, Diane Strauss.

TDR and affordable housing rules should be mutually supportive.

If a town wants to participate in TDR, they must be in compliance with their constitutional obligation to provide affordable housing.

In communities with a transfer ratio greater than one, TDR not only speeds up growth but increases the total number of housing units relative to the build-out under prior zoning. In these cases, affordable housing regulations should ensure that there will not be an increased affordable housing obligation beyond what the town would have provided under pre-existing zoning.

Both Statewide and Burlington TDR regulations require a match between sending and receiving areas. In order to help towns handle accelerated growth, and with TDR Bank's participation buying, holding and/or selling credits, allow mismatch between receiving and sending areas under a voluntary TDR framework, so that the receiving area can be smaller than the sending area. This change would allow towns to phase in designation of receiving areas and preclude the need for timed-growth ordinances.

Allow flexibility in calculations of how much affordable housing is required to be provided in receiving area, as long as town meets its overall obligation.

Clarify that, where affordable housing is included in a receiving area, the densities and transfer ratios determined by the Real Estate Market Analysis (REMA) and based on financial feasibility of project, are permitted to be used in place of any other state guidelines for presumptive minimum densities.

Allow towns to offer developers density bonuses in TDR receiving districts in exchange for providing more low/mod units.

The state must address school / education funding issues upfront to help encourage towns to designate TDR growth areas.

TDR receiving areas should get priority for State government financial subsidies for affordable housing, since receiving areas are relatively compact and the developer is already achieving state goal of protecting open space by compensating sending landowner.

General Affordable Housing Recommendations:

There should be an affordable housing obligation for commercial and mixed use, appropriate to number of jobs created.

Towns should be required to provide a variety of permitted housing opportunities through its zoning ordinance.

Affordable housing obligations should not be one size fits all. There should be different requirements for different types of communities, depending in part on the affordability of a town's existing housing, and its employment and cost of living profiles.