

TRANSFER OF
DEVELOPMENT RIGHTS

POLICY DOCUMENT



ARLINGTON COUNTY
DEPARTMENT OF COMMUNITY PLANNING, HOUSING, AND DEVELOPMENT
PLANNING DIVISION
January 2008

Transfer of Development Rights Policy Document

The Transfer of Development Rights (TDRs) – Policy Document sets forth the major elements of the TDR Program. The intent of the Policy Document is to serve as a basis for staff recommendations to the County Board on the application and use of TDRs.

The Policy Document includes:

PREFACE

1. Summary of Approach
2. Eligible Purposes for Sending Sites;
3. TDR Certification Process;
4. Eligible Sending Site Locations;
5. Special Exception Site Plan and TDR Application Process;
6. Site Plan Conditions;
7. Eligible Receiving Site Locations;
8. Eligible Types of Transfers
9. Conversion Table (units/acre to GFA); and
10. Other TDR programs.
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PREFACE

Approved by the County Board on January 26, 2008, the Transfer of Development Rights (TDR) Policy Document sets forth the program policies for those interested in utilizing TDRs in Arlington County. This is a guiding document that outlines the general policies for the TDR Program and guides the implementation of the program. It is not, however, a regulatory document. The Zoning Ordinance is the regulating document for TDRs. TDR provisions in Section 36. Administration and Procedures of the Arlington County Zoning Ordinance provide the County Board with the authority to approve the use of TDRs through the special exception site plan process for various purposes and outline a number of specific restrictions related to the use of TDRs.

This Policy Document is intended to be used by diverse sectors of the community, ranging from those looking for a tool to increase open space to a developer looking to preserve affordable housing. It is intended to inform and provide guidance to those interested in utilizing TDRs in Arlington County.

1. **SUMMARY OF APPROACH:** The Transfer of Development Rights (TDR) program details are located in three documents: the Policy Document; the Zoning Ordinance, and the Section 4.1 Administrative Regulations. Program policies on TDRs can be found in this document.

Section 36.H. 5.b. Administration and Procedures of the *Arlington County Zoning Ordinance* provides the County Board with the authority to approve the use of TDRs through the special exception site plan process for various purposes and outlines a number of specific restrictions related to the use of TDRs. The County's *Administrative Regulation 4.1* provides application submittal requirements and a description of a public review process regarding TDRs.

The Policy Document is intended to set forth the program policies for those interested in utilizing TDRs in Arlington County for the following specific topic areas including:

- eligible purposes for sending sites;
- eligible locations for sending and receiving sites; and
- evaluation and calculation of TDRs.

The TDR program would allow for the legal transfer of development rights from sites with, among others, existing (or proposed) historic preservation, open space, affordable housing, community facilities and/or community recreation -- through the site plan application process -- to receiving sites that can accommodate additional density and/or development rights. TDRs could occur only through a site plan process on the receiving site. The sending site, however, is not under the same site plan and is not required to be located in a zoning area that allows the special exception site plan option.

There are two major steps an applicant must undertake to pursue the use of TDRs. The first step is for an applicant to submit a TDR Certification application to the County for evaluation. The reason for this application is to determine whether or not a proposed sending site meets the eligible purposes and location criteria described in this policy document and to determine the nature and amount of development rights that are eligible to be transferred. A recommendation would be forwarded to the County Board and, if approved, the sending site becomes Certified.

The second step involves the County's special exception site plan process. TDRs from a Certified sending site can only be used in conjunction with a special exception site plan application on a proposed receiving site. Once a site plan application with TDRs is presented, the County Board would take into consideration the appropriateness of the additional density or other development rights at the proposed receiving site, and whether TDR approval is consistent with the Zoning

Ordinance and approved land use policies and plans, and the public health, safety and welfare, generally. The sending site, however, is not part of the same site plan and need not be located in a zoning district that allows a site plan option.

2. **ELIGIBLE PURPOSES FOR SENDING SITES:** The TDR Program would allow a property owner who has committed to restrict the use and density or other development rights of a property (i.e., a “Sending” site) for the purposes of, among other things, open space, historic preservation, affordable housing, community recreation and/or community facilities, to “transfer” that property’s unused development density and/or other development rights to another location (i.e., a “Receiving” site) that can accommodate the additional development rights. The purposes for transferring development rights are listed in Section 36 Administration and Procedures, Subsection H. 5.b. of the Arlington County Zoning Ordinance. This Subsection provides the County Board with the authority to approve the use of TDRs through the special exception site plan process for various purposes. County plans and policies (including the Arlington County’s Comprehensive Plan and other supporting documents) will be referred to for guidance on eligible purposes of sending sites.
3. **TDR CERTIFICATION PROCESS:** There are two major steps an applicant must undertake to pursue the use of TDRs. The first step is an application for Certification of the Sending site. Based on an evaluation by staff, Certification of the Sending site would determine if the Sending site meets the eligible purposes as articulated in the Zoning Ordinance. Staff will refer certification applications to appropriate advisory commissions for their recommendations to the County Board.

Staff would forward a recommendation to the County Board on eligibility and on the quantity of density or other development rights eligible to be transferred. If the County Board approves the findings and approves the amount of density or other development rights to be transferred, the Sending site becomes Certified. If Certified, TDRs on a sending site can then be used in conjunction with a special exception site plan application on a proposed Receiving site (see Section #6 below).

Transferable development rights typically consist of density. Other than density, there could be other types of development rights that may be requested by an applicant for certification which this policy document does not specifically address, such as height or modifications of other requirements. These requests would need additional study by staff before any recommendation is forwarded to the County Board for their consideration.

The amount of density transferred would generally be based on the unused by-right density on the site. In some circumstances, however, such as historic preservation

and affordable housing, density credit may be given for preserved structures or rents. The approach to give density credit for preserved structures or rents is in recognition of the economic challenges of achieving the goals of affordable housing and historic preservation. Other variables might include the economic value and/or cost of preserving the parcel/structures on the Sending site and the individual circumstances of the application. The Certification approach would: one, assist a property owner of a Sending site in making a determination to preserve/conservate the property before a Receiving site has been identified; and two, provide clarity to the process and certainty to property owners and developers.

In some instances, the Sending site may be rezoned to a higher density zoning district if consistent with the General Land Use Plan designation at that location. This could increase the amount of density that could be transferred. Staff would evaluate each application and forward a recommendation to the County Board for its consideration.

4. **ELIGIBLE SENDING SITE LOCATIONS:** Sending sites may be located anywhere in the County, but only for the purposes identified in Section 36. *Administration and Procedures*, Subsection H. 5.b. (see #1 above). The Sending site is not part of the same site plan and need not be located in a zoning district that allows a site plan option. County plans and policies (including the Arlington County's Comprehensive Plan and other supporting documents) will be referred to for guidance on determining eligible sending sites. In cases where certification was based on historic preservation, either a restrictive covenant or historic designation would be required on a sending site at the time that development rights are transferred.

To provide flexibility in achieving County goals, eligibility is based on purposes related to the Sending site rather than other criteria such as location or size. This approach also acknowledges that there are potential opportunities for these goals throughout the County.

5. **SPECIAL EXCEPTION SITE PLAN AND TDR APPLICATION PROCESS:** This step involves the County's special exception site plan process. The County's Administrative Regulation 4.1 provides application submittal requirements and a description of a public review process regarding TDRs.

TDRs from a Certified Sending site can be used only in conjunction with a special exception site plan application on a proposed Receiving site. Once a site plan application with TDRs is presented, the County Board would take into consideration the appropriateness of the additional density or other development rights at the proposed Receiving site, whether TDR approval is consistent with the site plan standards of Section 36.H.5. of the Zoning Ordinance, and existing County plans,

County goals. The Sending site may not be part of the site plan application, but certain deed restrictions on the sending site would be required. For the Receiving site, there would be certain site plan conditions.

Additional density associated with TDRs can exceed the maximum density of the receiving site's zoning district, the General Land Use Plan (GLUP) and plans for the area, unless the zoning district contains a maximum cap on density or height. For example, the "C-O-Rosslyn" district has a cap of 10.0 FAR that the County Board cannot exceed except by amending the Zoning Ordinance.

The density could also exceed the maximum density under the GLUP. In evaluating density above the GLUP, the Board would look to make findings as set forth in 36.H. if the proposed site plan receiving site substantially complies with the character of master plans, officially approved neighborhood or area development plans; if it functionally relates to other structures permitted in the district and will not be injurious or detrimental to the property or improvements in the neighborhood; and if it is so designed and located that the public health, safety and welfare will be promoted and protected.

The density could also exceed that called for in adopted area or Sector Plans unless the plans specifically addressed additional density and had adopted ordinances addressing density. For example, the recently adopted Clarendon Sector Plan includes limits based on height and form. The Zoning Ordinance amendments associated with these have not yet been implemented. In consideration of the preservation goals to be achieved within Clarendon and the limited amount of additional density that may be allowed, it is anticipated that density transfers into Clarendon may be minimal. Future area and Sector Plans may contain specific limits on height and form that would also be referred to when evaluating additional density or other development rights on a receiving site.

The County Board may consider TDRs in combination with other types of bonuses that developers are eligible for under the site plan process option, but only to the degree that the resulting development is acceptable in terms of scale, design, and impacts.

- 6. SITE PLAN CONDITIONS:** Conditions on the use of TDRs will be agreed to through the site plan process. The owner(s) of both the sending site and the receiving site would be required to record deed restrictions on the sites. Any agreement governing the use or development of the sending or receiving sites will provide that its covenants or conditions shall run with the land. The substance and form of that restriction must be acceptable to the County Attorney.

7. **ELIGIBLE RECEIVING SITE LOCATIONS.** Eligible receiving sites for TDRs are located within the Rosslyn-Ballston Corridor and the Jefferson Davis Corridor as defined on the back of the General Land Use Plan dated April 27, 2004, excluding sites with a GLUP designation of “Low” Residential (1-10 u/a and 11-15 u/a) and/or to parcels or those portions of a parcel within 165 feet from R-zoned districts that are planned “Low” Residential (see Map Attachments). Additionally, Receiving sites are limited to those parcels zoned or proposed for a re-zoning to a district that allows for a site plan option.

Any project to be built on receiving property containing an Essential or Important property also will need to be reviewed by the Historical Affairs and Landmark Review Board to ensure its compatibility with the historic resource.

8. **ELIGIBLE TYPES OF TRANSFERS:** The County Board may allow the following types of transfers: 1) a single transfer of all certified density or other development rights from one sending site to one receiving site, 2) a single transfer of all certified density or other development rights from one sending site to multiple receiving sites, 3) a multiple transfer of certified density or other development rights over time from one sending site to one or more receiving sites, where the total transfer of density or other development rights does not exceed the total amount of the original certified density or other development rights of the sending site. This approach is intended to allow flexibility for property owners of larger historic or affordable housing developments, who may achieve the benefits of the program through a multi-phase approach in situations where they may not be able to transfer density or other development rights in one step and to one location.

9. **CONVERSION TABLE:** The table below is a conversion table to use as guide in circumstances that involve transferring density from units/acre land use districts to FAR land use districts (for the conversion of single-family, townhouse, and multi-family apartment units to square feet). There is no conversion necessary in situation involving a commercial Sending and a commercial Receiving site.

Type of Development	Square Footage Conversion
Single-family and Townhouse	3,000 square feet
Multi-family Apartment Unit	1,500 square feet
Commercial	One square feet for one square feet

10. **OTHER TDR PROGRAMS.** If there are existing or future sector plans or other plans that include TDR policies, the TDR policies within those sector or areas plans supersede this Policy, recognizing that there are a variety of development patterns and community priorities throughout the County.

11. **MAPS:** See Map Attachments.