ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting January 26, 2008

DATE: January 24, 2008

SUBJECT: Approval of a policy document to guide decisions on Transfers of Development Rights (TDRs). The policy document sets forth purposes for approval of TDRs, a certification process for application of TDRs to specific properties, the eligibility of property for use as sending or receiving sites and the process to be used. The policy document also contains information about the conditions that may be necessary for TDR approval, the types of transfers of rights, and the method the County Board may use to determine how much density is transferred (see Attachment A).

C. M. RECOMMENDATIONS:

1. Approve the Transfer of Development Rights Policy Document (Attachment A).
2. Direct staff to develop a Zoning Ordinance Amendment to allow the consideration of additional density from TDR proposals above the current limits in the "C-O Rosslyn" Zoning District in cases where the total density on two non-contiguous sites does not exceed an average of 10.0 FAR across both sites.

ISSUES:

1. Should the transfer of development rights be limited to receiving sites within the boundaries of the Rosslyn-Ballston and Jefferson Davis Corridors?
2. Should the transfer of development rights be limited to sending and receiving sites within the same station area boundaries within the Rosslyn-Ballston and Jefferson Davis Corridors?
3. Should the sending site locations planned "Public" and zoned for public uses be excluded from being a sending site?
4. Should a receiving site's density be limited to the density and height indicated by the GLUP, zoning or applicable Sector Plan for the site?
5. Should "C-O-Rosslyn" be amended to allow the County Board to exceed 10.0 FAR when transferring density?

SUMMARY: On February 25, 2006, the Arlington County Board approved a Zoning Ordinance amendment allowing for transfers of development rights (Attachment B). The Amendment defined the purposes for the use of TDRs. At the time of adoption of the Ordinance Amendment in 2006, it was determined that additional work was needed to develop the details for the TDR program before it could be fully implemented.

County Manager: _____

County Attorney: _____

Staff: Colleen J. Connor, DCPHD, Planning Division

PLA-4874

In general, the TDR ordinance approved in 2006 allows a site (sending site) to send density and/or other development rights to a receiving site for certain purposes, including, but not limited to, the preservation or facilitation of open space, historic preservation, affordable housing, community facilities, or community recreation. Since County Board approval in 2006, staff has met with community members and groups and has developed a draft Policy Document (Attachment A) to clarify and implement the TDR program. It should also be noted that in order to ensure that the program could work in cases where there is a compelling reason the TDR program must provide sufficient flexibility. With that overall goal in mind, the key policies in the draft Policy Document include:

- Reaffirmation of eligible purposes for sending sites as defined in the Zoning Ordinance to transfer development rights include, among others, the preservation or facilitation of open space, historic preservation, affordable housing, community facilities, and community recreation;
- Eligible sending sites may be located anywhere in the County, for the purposes provided for in the Zoning Ordinance;
- Establishing a TDR Certification Process for sending sites that includes staff evaluation of sending site eligibility and the calculation of TDR quantity, to be forwarded for consideration by the County Board.
- Eligible receiving sites restricted to:
    - sites in the Rosslyn-Ballston or Jefferson Davis Corridors (see Maps in Attachment A)
    - sites that are part of a Special Exception Site Plan application; and
    - sites at least a minimum distance from low residential districts.
- Long-term control of sending and receiving sites through restrictions placed on deeds.

Several issues have been raised throughout the review process for the development of this policy. They are addressed more fully in the discussion section of the staff report. In summary, staff has recommended that the use of TDRs be limited to receiving sites in the two Metro corridors. Since the Zoning Ordinance provision allowing TDRs does not limit the use to any specific area, the County Board could allow receiving sites to be located anywhere in the County where development under site plan is permitted. However, this approach would require a change to the proposed policy. Staff does not recommend that the sending and receiving sites be limited to the same station area since that would be far too limiting. Staff also does not recommend limiting the use of density from County-owned parcels. Staff has included a discussion of existing limitations on the use of density and how TDRs relate to existing General Land Use Plan (GLUP) and area plans. Lastly, staff is recommending that the County Board direct staff to prepare a Zoning Ordinance amendment to allow the use of TDRs to exceed 10.0 FAR on a site in the "C-O-Rosslyn" District.

It is important to note that the purpose of the program is to preserve important characteristics or amenities of the community. It is <u>not</u> to move density around the County. The ability to transfer density is not an entitlement. By providing detailed guidance, the Policy Document gives surety that the transfer of density rights are equitable and that the program is manageable by the County. By setting forth parameters for evaluation and calculations of TDRs, the Policy Document will strengthen the efficient and effective implementation of the TDR program. Therefore, staff recommends that the County Board approve the TDR Policy Document and

direct staff to develop a Zoning Ordinance Amendment to allow the consideration of additional density from TDR proposals above the current limits in the "C-O Rosslyn" Zoning District in cases where the total density on two non-contiguous sites does not exceed an average of 10.0 FAR across both sites.

BACKGROUND: On March 26, 2005, the General Assembly of Virginia enacted 15.2-750, enabling Zoning Ordinance provisions for transfer of development rights under the county manager plan of government. This legislation allowed Arlington County to enact a TDR program through its Zoning Ordinance. Subsequently, the County Board adopted a Zoning Ordinance Amendment on February 25, 2006, to establish a TDR Program. The TDR ordinance allows a site (sending site) to send density and/or other development rights to a receiving site for certain purposes including, among others, the preservation or facilitation of open space, historic preservation, affordable housing, community facilities, or community recreation. The TDRs would be transferred to another location (receiving site) only through site plan approval where more density and/or development rights is deemed appropriate by the County Board. At the time of adoption of the Zoning Ordinance Amendment in 2006, it was determined that additional work was needed to develop the details for the TDR program before it could be fully implemented.

The General Assembly adopted new legislation (Section 15.2-2316.2) with an effective date of July 1, 2006, authorizing all localities in Virginia to use TDRs. The statute has many specific requirements for a TDR ordinance than the prior legislation. Arlington County's authority to have a TDR program, however, remains under the parameters of the earlier (2005) legislation.

At the November 13, 2007, County Board meeting, the Board authorized the advertisement of the draft Policy Document (Attachment A).

DISCUSSION: This section summarizes the key policies described in the Policy Document and outlines major issues that have arisen through the process.

Summary of Key TDR Policies:

Eligible Purposes for a Sending Site:
Reaffirms the intent already established in the Zoning Ordinance that the proposed TDR program would allow for the legal transfer of development rights from sending sites where a commitment to, among other things, historic preservation, open space, affordable housing, community facilities, and/or community recreation will be initiated or expanded, to receiving sites where additional development is found to be appropriate.

Eligible Sending Sites:
A TDR sending site could be located anywhere in the County, as long as they comply with the purposes articulated in Section 36. Administration and Procedures, Subsection H. 5.b. 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.

Certification Process and Calculation of Development Rights:
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. County plans and policies will be referred to for guidance on eligible purposes of sending sites, including the Arlington County's Comprehensive Plan and other supporting documents. Staff will refer certification applications to appropriate advisory commissions for their recommendations to help guide the final recommendation on certification.

Staff would forward a recommendation to the County Board on eligibility and on the nature and amount of the rights eligible to be transferred. If the County Board approves the findings and approves the nature and amount of rights to be transferred, the sending site becomes certified. If certified, TDRs on a sending site can then be proposed to be used in conjunction with a Special Exception Site Plan application (see below). The County Board would consider, as part of the site plan approval process, whether the additional density or other certified development rights is appropriate on the receiving site. Certification may assist a property owner of a sending site in making a determination to preserve/conserve the property before a receiving site has been identified and would provide clarity to the process and certainty to property owners and developers.

There would be requirements placed on the sending site through restrictive covenants, historic designation, or other appropriate mechanisms once the development rights transfer is approved as a part of a receiving site's site plan. There would be no control placed on the site prior to approval of the use of the development rights on a receiving site.

Transferable development rights typically consist of density. 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 existing density on the site, such as preserved structures or units. 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 recommendation to give density credit for preserved structures or units is in recognition of the economic challenges of achieving the goals of affordable housing and historic preservation. In some circumstances, the amount of density to be transferred may be determined based on a higher density potential development on the site; for example a privately-owned parcel designated as "Public" on the General Land Use Plan (GLUP).

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

Eligible Receiving Sites:
The transfer of development rights to a receiving site would occur only where a site is zoned or proposed for re-zoning to a district that allows for site plan option under the Zoning Ordinance and where additional density and/or development rights are determined to be appropriate by the

County Board in accordance with the site plan standards of Section 36.H. of the Zoning Ordinance and existing County plans, County goals and policies.

Staff proposes that potential receiving sites be limited to sites in zoning districts that have a site plan option and are located within the Rosslyn-Ballston or Jefferson-Davis Corridors, as designated on the back of the General Land Use Plan (GLUP) map dated April 27, 2004 and subsequently approved GLUP amendments. As further protection of low-density residential areas, staff proposes to exclude as receiving sites, those parcels with a GLUP designation of "Low" Residential (1-10 u/a and 11-15 u/a) and/or parcels or those portions of a parcel within 165 feet from R-zoned districts that are planned "Low" Residential (see Maps in Attachment A). Other areas could be considered as receiving sites if and when planning efforts are completed in these areas and the resulting plans or policies include recommendations for allowing TDRs.

Community Process and Special Exception Site Plan Conditions:
TDRs from a certified sending site can only be used in conjunction with a Special Exception Site Plan application. The application submittal requirements and a description of the public review process regarding TDRs will be included in the County's Administrative Regulation 4.1.

The TDR public review process builds on the well-established site plan process that provides significant community input on projects in the higher density areas of the County. The site plan process ensures that community concerns regarding additional density or other development rights are addressed. The site plan process and the site plan conditions are established methods for providing significant community input and the imposition of appropriate conditions. It is recommended that through the site plan process, restrictions be placed on the deeds of the receiving, as well as the sending, sites in order to preserve a record of the TDRs and will ensure the long-term achievement of the TDR program goals. The substance and form of that restriction must be acceptable to the County Attorney.

HALRB has raised concern about the review of a receiving site that contains an important historical structure. Staff is not recommending any additional limitations or process as a part of the policy. The HARB would be involved in the review of a site plan for any site that contains an important structure and could make its recommendation in that context.

Issues:

Should the transfer of development rights be limited to receiving sites within the boundaries of the Rosslyn-Ballston and Jefferson Davis Corridors? The Zoning Ordinance currently contains no limitations on the locations for the use of TDRs. Staff initially evaluated incorporating receiving sites in other areas of the County including Lee Highway, Columbia Pike, Four Mile Run, and Shirlington. Staff concluded that extending the receiving zones to these areas could likely raise issues with the adjacent communities and that it may be better to incorporate other areas as a result of specific planning efforts for those areas. However, in order to maintain flexibility to consider good proposals, the County Board could choose to include these areas as receiving zones since they would only be approved as a part of a site plan that would give the adjacent community adequate opportunity to give input into the project prior to approval of

additional density or other development rights. This approach would require an amendment to the proposed policy.

Should the transfer of development rights be limited to sending and receiving sites within the same station area boundaries within the Rosslyn-Ballston and Jefferson Davis Corridors? Staff evaluated this approach to limit TDRs within station areas and determined that this limitation would prevent the flexibility needed for the program to work. Some areas of the Corridors may be more able to accommodate additional density and, with this restriction, areas that are not may be unable to benefit from the program. For example, this restriction would preclude a scenario where a station area with lower density and limited options for additional density contains a historic structure that wishes to transfer density to another station area that has more options to receive density. Also, the use of TDRs goes through the site plan process, and would allow the County Board to ensure that community concerns regarding additional density are addressed. The public benefits that arise from TDRs (preservation and conservation among others) are County-wide benefits and are not restricted to a station area.

Should the sending site locations planned "Public" and zoned for public uses be excluded from being a sending site? Staff evaluated this issue and determined that there was no need to restrict projects involving County-owned land from sending or receiving density. As with site plans by private parties, notification will be provided for County-owned projects and a public hearing would be held in regards to both the sending and receiving sites.

Should a receiving site's density be limited to the density and height indicated by the GLUP, zoning or applicable Sector Plan for the site? Additional density associated with TDRs can, in the Board's discretion in the site plan process, exceed the maximum density of the receiving site's zoning district 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. that 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 or the other development rights in issue, and had adopted ordinances addressing them. For example, the recently adopted Clarendon Sector Plan includes limits based on height and form. 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. Staff is currently developing the Zoning Ordinance amendments to implement this plan. 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.

Rosslyn and TDRs: One of the districts that expressly prohibits exceeding the density limits is the "C-O Rosslyn" Zoning District. Currently, the County Board may approve special exception site plan projects within the "Rosslyn Coordinated Redevelopment District" (RCRD) with additional density up to 10 FAR. One of the areas of the County that could possibly accommodate additional density to help forward the physical and economic development is Rosslyn. One option to consider would be to average FARs across two non-contiguous sites. A potential policy specifically for "C-O Rosslyn" would allow TDRs in cases where the total density on two non-contiguous sites does not exceed an average of 10.0 FAR across the two sites.

PUBLIC PROCESS: Staff presented the TDR Policy Document to various commissions and groups. The groups included the Civic Federation, the Civic Federation Planning and Zoning Committee, the Chamber of Commerce, and the Ballston-Virginia Square Partnership. In addition, staff responded to many public inquiries and posted information on the web throughout the process. Following the list of meetings below is a description of the most recent issues raised on the draft Policy Document by the commissions and groups, and a staff response, along with a discussion on how the document was amended based on these comments:

- Housing Commission on May 11, 2006, and January 15, 2008, at the Tools and Trends Housing Subcommittee;
- Public Forum on June 24, 2006;
- Parks and Recreation Commission on May 23, 2006 and on December 18, 2007
- Transportation Commission on June 22, 2006;
- HALRB on August 16, 2006 and November 28, 2007;
- Zoning Committee (ZOCO) on January 31, March 13, May 4, May 24, and October 11 of 2006, and November 14, 2007, and December 12, 2007;
- Planning Commission on January 16, 2007; and
- County Board/Planning Commission Work Session on January 17, 2007.

Public Forum:
A public forum was held on June 24, 2006 for broad community input. Questions focused on the identification of sending and receiving site areas, notification of affected property owners and interested parties early enough in the process, and impacts on transportation infrastructure. Specifically, the major issues included a recommendation to restrict sending and receiving areas to the same sector and to restrict receiving areas to a certain distance from low residential areas. Staff revised the Policy Document to include restrictions on the receiving sites; 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) are excluded as receiving sites. The approach to limit TDRs within station areas was evaluated and determined to be too restrictive for the program to work. Also, the use of TDRs is evaluated through the site plan process, and would allow community concerns and the County Board to ensure that community concerns regarding additional density or other development rights are addressed. The public benefits that arise from TDRs (preservation and conservation among others) are County-wide benefits.

Zoning Committee:
Staff reviewed the Draft Policy Document with the Zoning Committee (ZOCO) at its November 14, 2007 and December 12, 2007 meetings and a list of questions and staff responses is included as Attachment C. ZOCO comments focused on the desire for more specificity in certain sections of the Zoning Ordinance and the Policy Document. Specifically, ZOCO recommended that eligible receiving site locations maps provide greater detail and be incorporated into the Zoning Ordinance. ZOCO also recommended that many other of the other policies be included in the Zoning Ordinance and refer to the Policy Document in the Ordinance. The Committee also requested more specificity on the type and contents of the document(s) to be recorded on land deeds for the sending sites. ZOCO requested identification of a publicly-available mechanism to keep track of sending and receiving sites. Members expressed concern that the purposes of the Zoning Ordinance were too vague and that that Policy Document needed clarification on how the TDR program defers to policies identified in various area and Sector Plans. In response to these concerns, staff did include more detail in the maps of receiving areas included in the Policy Document. A number of the issues related to the Zoning Ordinance cannot be responded to because the Zoning Ordinance is not being amended at this time. Additionally, some of the items are more appropriately policies rather than regulations to be included in the Ordinance

Parks and Recreation Commission:
In a letter to the County Board Chairman Walter Tejada of January 9, 2007 (Attachment D), the Arlington County Park and Recreation Commission (PRC) generally supports the TDR program. The PRC comments came out of its December 19, 2007 meeting on TDRs. The major comment on the draft Policy Document focused on the administration of benefits from the transfer of density from County park land. PRCR requests that a policy be added to ensure that the benefits accruing from TDRs sent from County park land be utilized to establish new parks or recreations areas. Staff has evaluated this issue and is concerned that this restriction may limit the Board's flexibility to respond to opportunities for different types of amenities throughout the County. The public benefits that arise from TDRs (preservation and conservation among others) are County-wide benefits and flexibility is necessary to allow for County-wide public improvements.

HALRB:
In a letter to the County Board Chairman Paul Ferguson of December 21, 2007 (Attachment E), the Arlington County Historical Affairs and Landmark Review Board (HALRB), generally supports the TDR program. Many of the comments came out of its November 28, 2007 meeting on TDRs. Specific comments were made on the draft Policy Document and language used in the Request to Advertise County Board report of November 13, 2007. These comments focused on review of applications by HALRB and the administration of historic protections. Staff has analyzed this and added language to the Policy Document that certification applications be referred to appropriate advisory commissions for their recommendations to the County Board. While HALRB requested that historic protections to be administered through the established preservation easement process or through official designation as a local historic district, at the property owner's choice, staff does not support this level of specificity. Staff is concerned that language to require all applicants to conform to one of these protections is too restrictive. Rather, staff recommends that during its review process of TDR applications, the HALRB make a recommendation on a case by case basis to staff and the County Board as to the type of appropriate protection.

Housing Commission:
The Tools and Trends Subcommittee of the Housing Commission discussed the draft Policy Document on January 15, 2008 and recommended that the receiving areas be expanded along current and future transportation corridors. The Housing Commission met on January 17, 2007, the same night as the Planning Commission and County Board work session, and the Housing Commission did not take up the TDR issue at its meeting.

The Planning Commission:
The Planning Commission heard this item at its January 16, 2008, meeting and voted 7-3 to recommend that the County Board defer the item to a future meeting to allow for a full discussion of TDRs at the Planning Commission and County Board Work Session on January 17, 2008. The Commission's major policy issue was whether the Policy Document should have broad flexibility to allow the use of TDRs to achieve community goals or whether there should be tighter program controls. Specifically, the Commission requested a further discussion of the issue of limiting sending and receiving sites to the same sector area, and the issue regarding the impact of County-owned land as potential sending sites. Another major issue concerned the pros and cons of a County-run TDR bank. Finally, the Commission questioned if TDRs would have an effect on the viability and desirability of existing tools for allowing additional density (e.g., LEED bonus, affordable housing bonus, consolidation of site plan areas, street vacations, GLUP change, rezoning).

County Board/Planning Commission Work Session:
The Planning Commission and the County Board member discussed the draft Policy Document at a work session on January 17, 2008. The issues discussed included how the Policy Document relates to existing and future plans, and Section 36.H. findings for site plans. Specifically, there was a discussion on the recently adopted Clarendon Sector Plan and how the Plan's goals and recommended physical forms might be impacted by the proposed TDR Policy Document. There was also a discussion of a need for additional language in the Policy Document regarding a restrictive covenant or historic designation on historic sending sites.

In response, staff has added a fuller discussion in the Policy Document on how the additional density that could be absorbed on the Receiving site could be above the development that is otherwise permitted by the General Land Use Plan and the Zoning Ordinance, except where exceeding the limits is expressly prohibited by the Zoning Ordinance. Staff added a discussion in the Policy Document on the relationship of the TDRs and existing and future sector plans. Although most existing plans do not have specific limits, 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. Regarding historic sites, staff added language to the Policy Document that referred the TDR application to HALRB for comment prior to certification, and that with the approval of a receiving site either a restrictive covenant or historic designation would be required for the sending site and that the HALRB will be involved in the review of any receiving site that contains an important structure.

CONCLUSION: In combination, the proposed Policy Document and the existing Zoning Ordinance form the boundaries of the TDR program. Section 36.H.5.b. *Administration and*

Procedures of the *Arlington County Zoning Ordinance*, adopted by the County Board in 2006, provides the Board with the authority to approve the use of TDRs through the Special Exception Site Plan process for various purposes.

Specifically, the proposed Policy Document provides guidance for those interested in utilizing TDRs and for those evaluating TDR applications. The Policy Document outlines the general policies for the TDR Program and guides the implementation of the program. The Policy Document is intended to set forth the program policies for the following specific topic areas:

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

By providing detailed guidance, the Policy Document gives surety that the transfer of density and other development rights is equitable and that the program is manageable. By setting forth parameters for evaluation and calculations of TDRs, the Policy Document will strengthen the efficient and effective implementation of the TDR program.

The Policy Document will effectively assist in the protection against destruction of or encroachment upon, among others, historic areas; preserve and facilitate open space; preserve and enhance community recreation and facilities; and encourage the creation and retention of affordable housing. Therefore, staff recommends that the County Board approve the TDR Policy Document that sets forth the program policies for the topic areas, among others, application submittal, sending sites, receiving sites, and density evaluation and calculation criteria. Staff also recommends that the County Board direct staff to develop a Zoning Ordinance Amendment to allow the consideration of additional density from TDR proposals above the current limits in the "C-O Rosslyn" Zoning District in cases where the total density on two non-contiguous sites does not exceed an average of 10.0 FAR across both sites.

ATTACHMENT B

ZONING ORDINANCE SECTION 36.H.5.b.

* * *

SECTION 36. ADMINISTRATION AND PROCEDURES

* * *

H. Site Plan Approval

5. *a.* *Uses and Regulations Modified*. The County Board may, in appropriate cases, modify the uses permitted and use regulations in harmony with the general purpose and intent of the districts as follow:

* * *

b. Transfer of Development Rights: In approving and accepting a site plan, the County Board may, subject to such conditions as the Board may approve, permit the dedication of density or other rights to develop, as determined by the Board, from one or more parcels that are not the subject of a particular site plan application to one or more parcels of property that are the subject of that same site plan application for purposes of, among others, open space, historic preservation, affordable housing, community recreation, and/or community facilities. In considering the approval of such dedication, the County Board shall consider the appropriateness of the dedicated density or other development rights at the proposed location, and whether the dedication is consistent with the Zoning Ordinance, approved land use policies and plans, and the public health, safety and welfare generally.

ZOCO

Staff has responded below to items raised during a review with the Zoning Committee (ZOCO) on the Draft Policy Document. ZOCO comments focused on the desire for more specificity in certain sections of the Zoning Ordinance and the Policy Document. Specifically, the major issues or recommended changes include the following

1. Include the Eligible Receiving Site Locations maps in the ZOA.
   Staff response: The Zoning Ordinance is not being amended at this time.
2. Provide a greater level of detail in the Eligible Receiving Site Locations maps.
   Staff response: Staff has revised the maps to illustrate parcel-level detail and has included them in the Policy Document.
3. Include many of the items currently in the Policy Document (including Section #7) in the ZOA.
   Staff response: The approach to include items currently proposed in the Policy Document in the ZOA was evaluated by staff. Staff determined that most of the items in the Policy documents are policies rather than standards usually incorporated into the Zoning Ordinance. Therefore, these items are more appropriate in a policy document. Also, the Zoning Ordinance is not being amended at this time.
4. Refer to the Policy Document in the ZOA.
   Staff response: The Zoning Ordinance is not being amended at this time.
5. Include more specificity/clarity on the type and contents of the document(s) to be recorded on land deeds for the sending sites.
   Staff response: Staff has evaluated this recommendation and determined that listing the types and contents of documents to be recorded would be difficult to specify in the Policy Document and may be too restrictive if interpreted to be a limiting list of options. Because of the potentially unique characteristics of each site, the program requires some level of flexibility on the types of documents required for review and approval by the County Attorney.
6. Identify a publicly-available mechanism to keep track of sending and receiving sites.
   Staff response: The approach to identify a publicly-available mechanism to keep track of sending and receiving sites is being evaluated. One option under consideration is a web page on the County's web site that could include a list and/or map of the sending and receiving sites.
7. Clarify if a restrictive covenant running with the land will override future zoning on a sending site, would be subject to the restrictions resulting from the TDR.
   Staff response: Staff has evaluated this and concluded that the covenants would override future zoning on a sending site.
8. Clarify if and how the TDR program defers to policies identified in various area and Sector Plans.
   Staff response: Staff has evaluated this recommendation and has determined that the Policy Document, Section #5 as well as the language of Section 36.H.5.b of the Zoning Ordinance explains how the TDR program will work with existing area and Sector Plans. A transfer of development rights to a receiving site can only occurs as part of a site plan process and the draft Policy Document language indicates that the County Board would

take into consideration whether TDR approval is consistent with existing County plans, goals, and policies.

9. Conduct a work session with the Planning Commission and the County Board on TDRs.
   Staff response: Staff agrees that this can be the subject of a future work session between the Planning Commission and the County Board. A joint work session on TDRs and other issues was held on January 17, 2008.
10. Specify if deed restrictions will be in perpetuity; If not in perpetuity, specify the term/time limits. Also, could the sites be re-zoned at the time limit, and is that in effect, upzoning the property?
    Staff response: Staff has evaluated this recommendation and has determined that the restrictions will be in perpetuity. This issue is addressed in Section 6 of the Policy Document, which calls for the form of the covenants or conditions to run with the land and in a substance and form acceptable to the County Attorney.
11. Remove the phrase in the ZOA that refers to "for purposes of, among others" as being too vague.
    Staff response: There is no Zoning Ordinance Amendment being considered at this time.
12. Clarify the process for cases involving County-owned land to ensure that there is no conflict of interest.
    Staff response: Staff has evaluated this recommendation and determined that the process is clearly articulated, and as with site plans by private parties, notification will be provided for County-owned projects and a public hearing would be held.
13. Include a discussion about whether TDRs will cause pressure to upzone in the Metro corridors.
    Staff response: Staff has evaluated this recommendation and determined that any additional pressure to upzone in the Metro corridors as a result of the TDR program would be funneled through the well-established long-range planning processes the County currently has in place. Any changes to the General Land Use Plan and any re-zonings (as they currently do in other cases) would go through the public process. This process ensures that community concerns regarding additional density or other changes are addressed.