

League of Women Voters of Frederick County

**FACT SHEET ON THE
USE AND IMPACT OF DRRAs IN FREDERICK COUNTY**

Executive Summary

The goal of land use planning is to provide for orderly development and at the same time to protect the health, safety and welfare of the public. Frederick County adopted its first Comprehensive Plan in 1959 that created a vision of how and where the county may grow.

Growth management policies and tools are dynamic and have been evolving to address problems and opportunities as they arise. In 1991, Frederick County responded to rapid growth by adopting an Adequate Public Facilities Ordinance (APFO) for road, water, sewerage and school facilities. The intent of the APFO at that time was to ensure that adequate public facilities and services are available concurrent with new development.

Development Rights and Responsibilities Agreements (DRRAs) are a tool created by the Maryland General Assembly in 1995 to address late “vesting” in light of the changing character of development projects. Projects were becoming larger and more complex, requiring capital intensive infrastructure and longer lead time before building could get under way. Under Maryland law the ability to develop property for a specific use can be subject to a change in local land use laws up until construction is noticeable. DRRAs provide for earlier vesting and “freeze” county land management laws for a length of time agreed upon between the County and the developer.

DRRAs are intended to be a “win-win” for the developer and the local government, providing both with benefits that would not otherwise be available.

The Frederick County Board of County Commissioners has embraced DRRAs as a growth management “tool” for a single project but has also adopted it as a "development strategy" to make development approvals permanent through a freezing of laws for two decades or more.

Yes, DRRAs are a legal tool. What is less certain is whether the DRRAs approved and pending in Frederick County provide an appropriate balance between benefits to the developer and benefits to the County; the extent to which adequate public facilities will be in place concurrent with new development; and whether additional safeguards are necessary given the intensity of use for this tool that is occurring in Frederick County. There are many unanswered questions about the extensive use of DRRAs in Frederick County.

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I. LWV Positions on Land Use

In 2013, the League of Women Voters of Frederick County (LWVFC) began a study of the use and impact of Development Rights and Responsibilities Agreements (DRRAs) and related land use policies on the ability of local government to ensure the availability of public facilities concurrent with new development as called for in the Comprehensive Plan of Frederick County.

- The study committee gathered information through review of public documents and interviews with knowledgeable individuals in the private and public sectors.
- This fact sheet provides a summary of the information we have gathered, concerns we have identified, and questions for consideration.

The League of Women Voters of the U.S. (LWVUS) policy position on land use is to “promote policies that manage land as a finite resource and that incorporate principles of stewardship.”

The League of Women Voters of Frederick County has taken positions in support of adequate public facilities and land use policies, including support for continuation and revision of the Comprehensive Plan of Frederick County and of zoning that limits rural residential development in designated areas of Frederick County.

- The LWVFC position refers to the “responsibility [of local governments] for ensuring that adequate public facilities and services are available concurrent with new development.”

II. Terminology

Adequate Public Facilities Ordinance: The intent of the Frederick County Adequate Public Facilities Ordinance (APFO) is “that new residential, commercial, industrial and other development take place in accordance with the Frederick County Comprehensive Plan and the Capital Improvements Program and to ensure that adequate public facilities and services are reasonably available concurrent with new development so that orderly development and growth can occur,” according to the ordinance. Public facilities addressed in the APFO include roads, water, sewerage, and schools. For a link to the Frederick County APFO, see *Other Sources Cited*, item 1, page 19.

Comprehensive Plan: The Frederick County Comprehensive Plan consists of maps and written text, the purpose of which is to guide the physical development of the county. The Comprehensive Plan is adopted by the Board of County Commissioners.

Development Rights and Responsibilities Agreement: A Development Rights and Responsibilities Agreement (DRRA) “provides property owners with the means to ‘vest’ certain rights to develop property under the zoning and regulations in place at the time of execution of the agreement, in return for accepting certain responsibilities and conditions for the manner in which the property is developed. The public benefits which are bargained for from the property owner generally exceed those minimum requirements otherwise mandated or obtainable by application of other relevant laws,” according to Frederick County Ordinance No. 12-02-599. For a link to the Frederick County DRRA ordinance, see *Other Sources Cited*, item 2, page 19.

Impact Fee: Recognizing that all new development creates additional demands on public facilities provided by local government, development impact fees are used “to recover the cost of development-related facilities, but only to the extent that the need for facilities is a consequence of development that is subject to the fees,” according to the Frederick County *2014 Impact Fee Update*. Frederick County imposes impact fees on new residential development for schools and for libraries. For a link to the *Impact Fee Update*, see *Other Sources Cited*, item 3, page 19.

Mitigation Fee: The School Construction Fee, also referred to as the mitigation fee, is a new option in the APFO that is available to residential developments where one or more schools serving the development is at capacity or overcrowded (up to 120% capacity in the first year of construction of the development). According to the APFO, “School construction fees shall be paid in addition to, and not in lieu of, public school development impact fees...The developer may elect to satisfy the school adequacy standards...by any combination of: (1) constructing the required public school facilities; or (2) waiting for the public school facilities to become adequate; or (3) paying the school construction fee.”

Mixed Use Development: The mixed use development (MXD) zone can include a mix of commercial, employment, and residential units. The MXD zone can only be applied to properties designated Office/Research, Limited Industrial, or Mixed Use on the County Comprehensive Plan. For more information on the MXD zoning district, see *Attachment 3*, page 23.

Planned Unit Development: The planned unit development (PUD) zone is primarily residential but may also include commercial and employment uses. The PUD zone can only be applied to properties designated Low/Medium/High density residential on the County Comprehensive Plan. For more information on the PUD zoning district, see *Attachment 3*, page 23.

Vesting: The vested rights doctrine is used by Courts and legislatures in Maryland to determine the point at which a landowner has proceeded far enough in developing land that the local government should not change zoning and related regulations pertaining to that land which could seriously affect the density or other governmental approvals of a development project.

III. Overview of Recent Land-Use Changes in Frederick County

When the current Board of County Commissioners (BOCC) took office, they pledged to restore property rights to owners of land that had been downzoned by the prior board and included, as a goal of their strategic plan, to provide predictability for businesses. They have since made a number of changes in land-use regulations, as well as revised the Frederick County Comprehensive Plan. *Attachment 1*, page 20, provides a summary.

The following changes set the stage for the extensive use of DRRAs in Frederick County.

Revised Comprehensive Plan and Rezoning

In May 2011 the BOCC initiated a Comprehensive Plan and Zoning Review to address down-zonings or changes in land-use designations that had occurred under the prior BOCC. Zoning had been changed on approximately 700 properties.

- Many developers claimed these earlier down-zonings had a negative impact on their property and development rights, particularly because it coincided with the nationwide economic recession.
- The current BOCC received 215 requests for zoning changes and approved 174, most of them to restore prior zoning and/or land use plan designation on the Comprehensive Plan.
- A total of 4,166 acres were affected by these zoning changes—more than half (2,521 acres) have potential for residential development.

In September 2012 the BOCC adopted a revised Comprehensive Plan.

Changes in Required Contributions for Public Facilities

Beginning in July 2011, the BOCC has made changes in requirements for contributions from developers, including:

- modification of infrastructure requirements, reducing the potential support required of developers by the APFO;
- increased flexibility in requirements and standards; and
- reduction of the building excise tax for road improvements to zero.

They also adopted an option to allow the BOCC, rather than the Planning Commission, to approve APFO requirements as part of the DRRAs process. This potentially narrows the oversight of the APFO.

These changes in required contributions for public facilities were intended to help jump-start the local economy and encourage development, which was severely impacted by the recession that began in 2008.

- These changes apply to all new developments.
- While future county elected officials can revise or reverse these changes, new county regulations will not apply to developments with DRRAs—which freeze current land-use regulations, and in some cases certain fees, for 18 to 25 years.
 - This provides a particular benefit for projects with DRRAs and a constraint on future elected officials.

IV. Development Rights and Responsibilities Agreements (DRRAs)

Ideally, DRRAs strike a balance between the developer's rights to develop a property and the local government's rights to regulate development. The DRRAs as a land use planning tool:

- confers vesting on a project earlier in the process than would otherwise be the case, so that the project does not get short-circuited before construction is under way;
- requires infrastructure improvements that exceed what would otherwise be required of a developer, to support the county's capital-intensive infrastructure needs; and
- provides predictability for the county and the developer

Phasing of infrastructure laid out in the DRRAs is critical to the goal of ensuring adequate infrastructure throughout the development process.

Impetus for DRRA Legislation: Maryland's Late Vesting of Development Rights

In Maryland, a developer's rights are "vested" only when a substantial portion of the project is completed—generally construed as having building foundations coming out of the ground.

- Prior to that point, local government can change zoning, as well as land-use regulations.
- Many states vest a developer's rights at the time a property is zoned.

While late vesting made sense 20 years ago when most developments were relatively small, most development projects today are large and long-term, requiring complex studies before construction can get under way.

- When infrastructure must be completed up-front, developers make substantial investment—often millions of dollars—before a shovel goes into the ground.
 - In creating the Villages of Urbana, for example, the developer had to invest in running three miles of water and sewer lines before any housing construction could begin.
- Uncertainty about whether the zoning of the property may change before building gets underway creates problems in securing financing, among other concerns.

The Maryland Legislature in 1995 enacted DRRA enabling legislation to provide local governments and developers with an alternative to Maryland's late vesting policy. (They did not change the late vesting policy.)

- This legislation reflected the concern that "developers of long term projects were sometimes disadvantaged in that local government could change its land use regulations in the midst of such a project to the detriment of the developer," according to the Maryland Department of Planning's *Planning Commission, Planning Board and Board of Appeals Education Course* materials.
- For a link to these materials, see *Other Sources Cited*, item 4, on page 19.

In November 2007, the Frederick County Board of County Commissioners enacted a DRRA ordinance that closely mirrored the State enabling legislation.

- For a link to the current DRRA ordinance, see *Other Sources Cited*, item 2, on page 19.
- DRRAs fix the local zoning and county ordinances in place as of the date of approval (except for new county regulations or laws that are essential to ensure the health, safety or welfare of County residents).
- The terms of DRRAs are for a period of five years unless otherwise established by the two parties, according to the ordinance.

DRRA Process in Frederick County

DRRAs are developer driven. A developer prepares a DRRA draft and petitions the Board of County Commissioners (BOCC) to accept it for review; the BOCC decides whether to accept it for review and if they do so, then county staff reviews the agreement. Planning staff solicits comments from county agencies affected (schools, parks, fire and rescue, etc.) and may or may not include their recommendations.

- *Attachment 2*, page 21, provides an overview of the DRRA process in Frederick County.

The first request for a DRRRA in Frederick County was in 2007 from the developer of Lake Linganore, a project that had been on the books since 1968 and was only partially developed due to a number of factors that included economic downturns, multiple bankruptcies by the developers, and damage to infrastructure.

- County officials and the developer could not agree on terms of the DRRRA related to funding for a highway interchange.
- No further DRRAs were requested until 2012 when the current BOCC began to use this planning tool extensively—as a development strategy rather than a tool targeted to securing support for capital-intensive infrastructure.

The DRRRA enabling legislation is broad and leaves it up to public officials in each locality whether to apply restrictions or specify particular circumstances that apply to a DRRRA in that locality.

- Frederick County has no restrictions or guidelines regarding size, location, or type of project.
- In addition, the BOCC decided to review each DRRRA application on a case-by-case basis.

V. Developer-Provided Support for Schools

School Construction Costs and Capacity

Current estimated costs for school construction in Frederick County (including design, construction, site, and furniture/equipment) are:

- \$31 million for one elementary school
- \$40 million for one middle school
- \$75-80 million for one high school (The total budget for the new Frederick High is \$87 million.)

The following is information on Frederick County Public Schools capacity for the 2013-14 school year:

- Elementary schools, including charter schools, were at 95% of capacity system wide.
 - Eleven of the 39 elementary schools were over 100% of capacity.
- Middle schools were at 81% of capacity system wide.
 - Three of the 15 middle schools were over 100% of capacity.
- High schools were at 84% of capacity system wide.
 - None of the 10 high schools was over 100% capacity.
- The FCPS operates 187 portable classroom units across the system, in order to provide adequate space to meet classroom and academic needs.
- The student-rated capacity is based on state formulas and may not reflect local decisions on staffing, student-teacher ratios, or individual schools.

School Impact Fee

New residential developments must pay school impact fees, even if school capacity is adequate, with the exception of housing units designated exclusively for senior citizens, which are exempted from this fee.

- Based on the number and housing unit types in the development, school impact fees are intended to cover the development's proportionate share of the capital costs of the public facilities required to accommodate new residents.
- School impact fees can only be used for projects that add student capacity to the school system; they cannot be used to renovate older schools in order to bring them up to current standards.

According to the County's *Impacts on Growth Task Force Report*, the County projects collection of \$45.5 million from school impact fees from FY 2014 through 2019. More than 99% of this revenue—\$45.4 million—will be applied to debt service payments during that period.

- For a link to the *Impact Fee Update*, see *Other Sources Cited*, item 3, on page 19

Residential growth in the 1980s and 1990s outpaced the county's ability to provide adequate school capacity, which started the current practice of borrowing to finance school infrastructure needs.

- Borrowing of funds was also a function of the need to renovate some old schools—projects that did not qualify for impact fees.

School Construction (or Mitigation) Fee Option Added to the APFO

The Frederick County APFO considers schools to be adequate if the enrollment for each school serving the development is less than 100% of state-rated capacity during the entire period for which APFO approval is granted, taking into account the enrollment growth generated by the new development.

Under the prior BOCC, if a development failed the APFO test for school capacity, the developer either could wait for the county to fund the required school expansion or could themselves fund the needed addition or new construction.

- This was intended to ensure that in an area where schools were inadequate, the infrastructure would be brought up to a standard of adequacy before a new development was built.
- Developers make the case that it is not economically feasible for a developer to build or pay the full cost of a renovation or adding to an over-capacity school, or constructing a new school.

In July 2011, the current BOCC amended the APFO to provide a new option—the School Construction Fee or mitigation fee—for meeting school adequacy standards.

- Developers now can choose to pay the School Construction (mitigation) Fee if schools serving their development fail the APFO test. This is in addition to paying the school impact fee.
- However, if a school is at 120% of capacity in the first year of construction of the development, the developer does not have the option to choose the School Construction Fee, and therefore cannot move forward until adequate school facilities are available or the percentage of capacity at the school drops below 120%.
- School Construction Fee revenues can be used for renovation as well as new school capacity projects. The BOCC decides when and where School Construction Fee revenues will be used.

The County's *Impacts on Growth Report* estimates that more than \$52.4 million in School Construction Fees will be collected from future developments that have been APFO tested, and another \$16.9 million may

come from projects that are pending—a potential total of \$69.3 million. The report acknowledges that it is not possible to determine if or when these revenues will be received.

The timing as to when these new developments will begin is beyond the county’s control. The revenues are dependent on developer decisions to move ahead with a new housing project.

While the School Construction Fee is a new revenue source, the total new funds that may be generated are small in comparison to the costs of constructing new schools. For example, a single middle school costs \$40 million.

School Site Donation

In addition to school impact and—if applicable, school construction—fees, a PUD or MXD may also be required to donate a school site in areas where the development is large and the Comprehensive Plan indicates a future school site. This is a long-standing policy.

- More than half of schools built in the last 20-25 years have been on developer-dedicated sites.
- Five of the seven developments approved for DRRAs as of May 2014 had agreed to provide sites for new schools (three elementary, one high school, and one unspecified). This number is expected to grow with approval of additional DRRAs.

VI. Developer-Provided Support for Roads

Transportation Infrastructure Contributions by Developers

The funding of roadway infrastructure is a shared responsibility of federal, state, and local governments. The majority of the county roads are a local responsibility.

Through the APFO, the county requires developers to:

- construct roadway improvements, where there are inadequacies, to mitigate the impact of traffic that will be generated by the development and/or
- in the case of smaller developments having less impact, make a “fair share” contribution to escrow accounts.
 - The county has about 90 escrow accounts for road infrastructure projects, totaling about \$4 million as of September 2014.

For example, several DRRAs have been approved that will impact a section of MD 75. DRRAs for the Lansdale, Monrovia Town Center, Casey, and Eaglehead/Linganore projects obligate the developers to make improvements and contributions on MD 75, between and including MD 355 and I-70.

- The combined dollar value of these improvements is more than \$23.3 million.
 - This includes \$3,324,000 from Lansdale; \$12,453,691 from Monrovia Town Center; \$6,419,070 from Casey; and \$1,147,431 from Eaglehead/Lake Linganore (Hamptons).
 - An additional \$488,115 will come from several small to moderate sized developments that are not subject to DRRAs.

- Essential improvements to this section of MD 75 are estimated to cost between \$250 million and \$500 million, depending on the level of improvements.
- The total commitment from developers is a relatively small proportion of the overall cost of the needed improvements.
- The Maryland Department of Transportation’s Draft 2015-2020 Consolidated Transportation Program report indicates that regarding Frederick County’s first priority, MD 75 from I-70 to I-270, there are significant challenges to construction outside of priority funding areas.

Proponents of the DRRAs approved in Frederick County believe that locking in road improvements and a phasing schedule gives the developer and the county certainty about what improvements will be made to meet the demand for adequate roads. At the same time, DRRAs carry the risk that much can change over the 18 to 25 year term of these agreements.

Building Excise Tax for Roads

In November 2011, the BOCC reduced the building excise tax to zero. This tax had generated annual revenue averaging more than \$1.7 million to support road-related capital projects or indebtedness incurred for capital road projects.

- The tax was assessed on the basis of the gross square footage of construction for residential and nonresidential projects.
- For fiscal years 2003-2011, the average yearly revenue from residential construction was \$790,040 and from nonresidential construction was \$956,859, according to the *Impacts on Growth* report.
- The excise tax is paid in addition to road improvement contributions discussed above.

Although the elimination of this fee was expected to slow the County’s progress on transportation projects, BOCC members who voted for the cut said it would encourage economic growth by reinforcing the county’s “business friendly” image and attracting more businesses to the area, according to a report in the *Frederick News Post* (11/2/11).

- However, some of the DRRAs approved by the BOCC hold the excise tax at the current rate of zero for the full term of the agreement in consideration of the overall road improvements that developers have agreed to undertake.
- Some questions have been raised about whether a DRRA should freeze fees.

VII. Extensive Use of DRRAs in Frederick County

The use of DRRAs as a planning tool in Frederick County is far beyond what has occurred in any other Maryland county or municipality.

- As of September 15, 2014, the BOCC had accepted all DRRA applications submitted by developers.
- Most of those received to date have been tied to a rezoning application.

Use of DRRAs Throughout Maryland

The Maryland Department of Planning (MDP) issued a report in May 2014 on *Use of DRRAs in All Maryland Counties* that includes information on how this planning tool has been used, how extensively DRRAs have been used, and the typical length of DRRA agreements. See *Attachment 4*, page 26 for this report.

Based on the LWVFC's review of MDP report, only Frederick and Charles Counties have used this tool more than a few times. Of the 23 counties, 10 have adopted local DRRA enabling legislation; six have rarely used this tool.

- Anne Arundel County has successfully used DRRAs for large projects, such as the Odenton Town Center which requires the developer to provide significant infrastructure improvements.
- Charles County uses DRRAs as a forward funding mechanism for the state share of school construction. The MDP report notes that in 2010 Charles County “considered five DRRAs for a total of 460 units. The developments ranged in size from 30 to 179 units with phasing schedules from 3 to 7 years. All agreements had a term of 20 years, but the effective term of the agreements corresponded to the construction phasing.”
- Talbot County drafted one DRRA for a new hospital, proposing a 30 year term.
- Queen Anne's County has approved only one DRRA for the Four Seasons development. The MDP report indicates this county will probably not enter into another. According to news reports, this development, approved in 2002, has been stalled due to wetlands issues and challenges in the courts.

Use of DRRAs in Frederick County

As of September 15, Frederick County had approved nine DRRAs:

- **Landsdale PUD** (Urbana Planning Region/North of MD80 and west of Ed McClain Road)
- **Jefferson Tech Park MXD** (Frederick Planning Region/ South side of MD180 at the southwest corner of I70 and I270)
- **Urbana Natelli communities** (Urbana Planning Region/ Between MD 355 and I-270, south of Park Mills Rd.)
- **Eaglehead/Lake Linganore PUD** (New Market Planning Region/ vicinity of Old National Pike, Boyers Mill, Gas House Pike)
- **Westview South MXD** (Frederick Planning Region/ Between New Design Rd. and MD 85 on both north and side sides of Executive Way)
- **Monrovia Town Center PUD** (Urbana Planning Region/ North side of MD 80 both sides of MD 75, east of Ed McClain Road, west of Lynn Burke Road)
- **Ballenger Run PUD** (Frederick Planning Region/ East of Ballenger Creek Pike/MD351, north of Ballenger Creek, South of Kingsbrook)
- **Casey PUD** (New Market Planning Region/ West of MD 75 along Crickenberger Road, North of New Market)
- **Woodbourne Manor PUD** (Brunswick Planning Region/west side of MD 180 at Broad Run Rd.)

In May 2014, the MDP issued a report on *DRRAs in Frederick County*. See *Attachment 5*, page 26, that provides details on the seven DRRAs that had been approved as of mid-May (Landsdale, Jefferson Tech Park, Urbana, Eaglehead/Lake Linganore, Westview South, and Ballenger Run).

Based on the information in the MDP report:

- All seven DRRAs approved as of May 2014 in Frederick County would be considered greenfield developments (i.e., low density or undeveloped land); only one or two could be considered a logical extension of Frederick's urban core.
- Three of the seven approved agreements are for 25 years, three are for 20 years, and one is for 18 years. Casey, which has since been approved, is for 20 years.
- Together, the seven approved DRRAs plus the Casey DRRA encompass:
 - 4,472 acres
 - 8,490 new dwelling units (approximately 3,000 single family; 2,300 townhouse/duplex; and 1500 multi-family units)
 - 330,800 square feet of commercial space
 - 3.344 million square feet of employment facilities

As of September 15, six DRRA applications were pending. (The MDP's report lists six not yet approved as of May. Two of these, Casey and Woodborne Manor, have since been approved; and two additional applications have been filed.)

- **Hogan Property** (Frederick Planning Region/ West side of New Design Rd.)
- **Ratley PUD** (New Market Planning Region/ East and West sides of Terra Firma Road, between I-70 and MD 144)
- **Rayburn PUD** (New Market Planning Region/ South side of Baltimore Road and Old National Pike (MD 144), 2,000 feet west of Ijamsville Road)
- **Blentlinger PUD** (New Market Planning Region/ East side of Boyers Mill Road across from the Summerfield and Pinehurst sections of the Linganore PUD)
- **Daysville Glen PUD** (Walkersville Planning Region/ South side of Daysville Road, north of Liberty Road/ MD 26)
- **Monocacy Glen PUD** (Adamstown Planning Region/ South side of Michaels Mill Rd., east of Buckeytown Pike)

Public hearings are expected to be held this fall on the first five; the Monocacy Glen case is not scheduled due to the rezoning still being undecided.

The rapid pace of review and approval raises concerns about the time available for adequate review between BOCC acceptance of DRRA petitions and public hearings.

Responsibilities: Benefits Provided to the County by Developers

Based on information in the MDP's status report, for the seven DRRAs approved as of May developer responsibilities include the following:

- roadway improvements (included in all seven DRRAs)

- dedication of public lands for various purposes—parks, school sites, and/or fire/EMS sites (included in all seven DRRAs)
- school construction fees where a school or schools failed APFO testing (included in six DRRAs)
- design and construction costs for sewer and water improvements (included in four DRRAs)

There is a lack of agreement on the question of whether the developer responsibilities in the DRRAs approved as of May exceed the APFO requirements for MXDs and PUDs in the standard development process (that is, not subject to a DRRA).

- All developments with PUD and MXD designations are subject to impact fees, APFO requirements, and may require sites for schools, libraries, and fire stations based on need.
- See *Attachment 3*, page 23, for more information about PUDs and MXDs.

Rights: Benefits Granted to Developers by the County

The rights specified in the DRRAs approved as of May in Frederick County are similar but not identical. Based on information in the MDP Status Report, development rights for all seven DRRAs approved as of mid-May include the following:

- maintain the development’s zoning with the maximum dwelling units possible
- maintain or obtain other approvals based on current regulations or, if applicable, the regulation in effect when the approvals were granted
- receive revised APFO approval concurrent with the DRRA approval
- proceed with the project build out for the various phases as outlined in the DRRA
- freeze the current county development regulations for the duration of the DRRA

In addition, based on the LWVFC’s review of the seven approved DRRAs discussed in the MDP Status Report:

- All freeze the building excise tax at \$0 for the duration of the agreement.
- All indicate that the developer will have the option to pay the School Construction Fee for the duration of the DRRA, even though this provision is set to expire in July 2016.
- Four state that if any impact fees—including the School Construction Fee—are eliminated or replaced with a requirement that would “impose some other burden on the developer,” the developer may pay the impact fee in effect prior to the change in the law.
 - Jefferson Tech Park, Monrovia, Westview, and Ballenger Run

VIII. DRRAs: Looking to the Future under Charter Government

The County’s transition to charter government will change the way DRRAs are handled. Final decisions will not be made until the new Executive and Council take office.

- Legally, the “public principal” has sole authority to sign contracts and agreements, including DRRAs. It would likely be the Executive who approves the content of DRRAs and who holds public hearings on these agreements, but that is not certain.
- Given that DRRAs involve freezing local laws/regulations, the new Executive and Council could decide to make decisions on DRRAs a joint executive/legislative function.

- The newly elected Executive and Council will make final decisions on how these and other matters will be handled under charter government.

While it is possible that DRRAs can be modified by future county elected officials if changes are essential for the health, safety and welfare of the public, the requirements present a high hurdle.

- The Maryland enabling legislation and the county DRRA ordinance both contain a section on termination that says
 - “(1) The parties to an agreement may terminate the agreement by mutual consent.
 - (2) If the public principal of the local government body determines that suspension or termination is essential to ensure the public health, safety, or welfare, the public principal or the local governing body may suspend or terminate an agreement after a public hearing.”

Many of the DRRAs approved in Frederick County have been challenged by a variety of groups and so far have been upheld by the Circuit Court. The challenges were all based on the legal requirements that apply to DRRAs and they were all upheld by the Circuit Court judges as being within the legal authority of the BOCC and consistent with applicable law.

All of the DRRA appeals that went to the Circuit Court have been appealed to the Court of Special Appeals, which will consider the cases on the same legal bases as they were appealed to the Circuit Court.

IX. Issues for Further Consideration

Challenges Presented by Growth in Frederick County

While there is no way to predict when or if the developments governed by DRRAs will move forward, there is tremendous potential for growth.

The County’s *Impacts on Growth Report*—which focuses on options available to fund infrastructure needed to support new residential growth—acknowledges that “growth, while a source of positive energy for the County, also creates challenges.” See *Other Sources Cited*, item 5, on page 19 for a link to the report.

It states on page 2 that “If Frederick County is to remain a desirable place to work and live, as we grow, we must invest in our infrastructure. This means that new roads, schools, public safety facilities and libraries must be planned, designed and built. But, the prerequisite of providing such facilities is the ability to pay the cost of those improvements.”

It further states, “Either public facilities must lag behind the needs or there must be an ever-increasing tax burden upon all taxpayers.” It is unclear what that tax burden will be for future taxpayers.

Benefits Offered by DRRAs

There is agreement among those we interviewed that Maryland’s late vesting is a significant concern for developers of complex large-scale projects.

There also was agreement that DRRAs—when used appropriately—can be a useful land-use tool in securing developer support beyond what would routinely be provided for capital-intensive infrastructure needed by the county, and in providing the certainty developers need to secure financing for large and complex projects.

Most of those we interviewed for this study agreed that the future of residential development in Frederick County should focus primarily on large high-density projects requiring significant infrastructure in areas already served by appropriate and adequate infrastructure, along with infill development in urban areas where infrastructure is already in place.

This recognizes that it is efficient and environmentally sound to build higher density housing. DRRAs are envisioned as a tool to assist "smart growth" capital-intensive projects with infrastructure for public transportation (transit-oriented development) rather than low density greenfield developments serviced by roads.

The potential benefits of DRRAs that reflect a win-win approach include:

- For developers, certainty that zoning and local land use rules will not change between the time a project is approved and construction begins (which is not otherwise available to developers through rezoning approval)
 - Enhances the developer's ability to secure financing for large, complex projects that will be built over a period of years
 - Reduces risk of losing zoning and other development approvals after potential expenditure of significant amount of time and money
 - Allows the developer to lock in land-use regulations and possibly fees for the duration of the DRRA
- For the county, support for infrastructure improvements that exceeds what could otherwise be required
 - Certainty as to how and when a project will develop over time and that infrastructure is timed with development

Concerns About the Impact of DRRAs in Frederick County

The potential risks of DRRAs that we have identified include:

- For developers, less flexibility in terms of
 - ability to respond to changing market conditions
- For the county, more complexity in terms of
 - predicting costs of needed infrastructure two decades or more into the future to ensure adequacy
 - no guarantee when or if development projects governed by DRRAs will move forward
 - the approval of each DRRA requires the copying of all land-use laws that pertain to that development. This could cause potential administrative and legal problems that could arise in monitoring multiple developments governed by different land use regulations tied to a particular development, with inconsistent standards as new land use requirements emerge

- constraints on future county officials' ability to respond to unforeseeable issues (except in the case of something that affects health, safety or welfare)

The following are the most pressing concerns we have identified related to the impact of DRRAs and mitigation fees on Frederick County government's ability to ensure the availability of public facilities concurrent with new development:

- The extent to which infrastructure provided by developers under the terms of the DRRAs will be adequate to support the new development.
 - Many of the larger DRRAs approved so far are for developments in areas where there are existing problems, particularly with the capacity of transportation infrastructure.
 - Specifying needed road improvements so early in the development review, when DRRAs are approved, carries the risk that conditions and needs can change significantly over the term of these projects.
 - School construction (mitigation) fees provide a relatively small amount relative to the costs of constructing and renovating schools.
- Whether developer responsibilities—that is, benefits developers provide to the county—are greater than infrastructure support required for projects without DRRAs.
- Whether approving a DRRA at the time a property is rezoned creates a critical problem: much that could relate to developer rights and responsibilities remains unclear so early in the process and will not start to become clear until the site plan is reviewed and approved.
 - Restoring zoning potential, combined with reviewing of the DRRA, moves the process forward substantially and limits the consideration of infrastructure needs that become apparent later in the development process.
- Whether the rapid review and approval process now in progress allows for adequate time to evaluate new DRRAs.

X. LWVFC Consensus Questions on DRRAs and Related Land-use Issues in Frederick County

As Frederick County looks to the future, the LWVFC believes the following questions should be considered.

1. Do you support the use of DRRAs as a planning tool?

_____ Yes

_____ No

_____ With defined limitations and with types of benefits to the county to be delineated

_____ Without defined limitations

2. Should there be an analysis for every DRRA that clearly defines the benefits to the county beyond what would be provided through the standard development process (by developments not covered by DRRAs)?

_____ Yes

_____ No

_____ Uncertain

3. If yes, what information should this analysis include?

_____ The extent to which the responsibilities of the developer exceed what is normally required for comparable projects not covered by DRRAs

_____ Total costs of future infrastructure needs required and amount the new development will provide

_____ Other [explain in detail]

4. Should the county's approval criteria for DRRAs be limited? (Currently there are no limits on the size, location or purpose.)

_____ Yes

_____ No

_____ Uncertain

5. If yes, which of the following should be considered?

_____ DRRA Application Area: Limit DRRAs to areas identified in the Comprehensive Plan. This would increase transparency. DRRA Application Areas could identify desirable locations for

- areas with public transit options
- new town centers
- intensive employment or commercial areas
- infill projects that advance the goals of smart growth

_____ Size: Adopt a minimum acreage requirement for DRRAs

_____ Scope: Limit the scope of DRRAs to exclude freezing fees

_____ Length: Tie the length of DRRAs to the size and complexity of the proposed project

_____ Transparency: Create opportunities for public discussion of where and how DRRAs should be applied in Frederick County

_____ Additional Input: Broader participation in the DRRA process, before the agreement is finalized, by the Board of Education, in addition to input from FCPS staff, and by other county agencies affected (Fire and Public Safety, Parks and Recreation, Libraries, Department of Public Works, etc.)

6. **Under the new charter, how should decisions be made about DRRAs?**

_____ Role of Executive alone

_____ Role of Council

_____ Joint responsibility (checks and balances) of the Executive and the County Council

_____ Uncertain

7. **Should Maryland's late vesting policy and/or DRRA legislation be changed? If so, how?**

_____ Vest developer rights at the time a property is zoned

_____ Continue to use DRRAs but specify limitations

_____ Require posting of notice of DRRA application on the property

_____ Other options

8. **Given that the county's *Impacts on Growth* report indicates that current revenue sources are not sufficient to provide public facilities required by growth, is further public discussion needed about potential funding options?** Options might include the following (some of which are discussed in the county's *Impacts on Growth* report).

- Evaluate a county transfer tax assessed on the sale of any residence, new or existing, and direct the revenues toward infrastructure support
- Evaluate infrastructure contributions required of developers
- Review road contributions and escrow account funding
- Evaluate the School Construction (mitigation) Fee and impact fees to determine the extent to which they provide adequate funding for capital costs
- Other options [explain in detail]

_____ Yes

_____ No

_____ Uncertain

9. **Comments**

Attachments:

1. **Summary of BOCC Changes in Land Use Regulations** (page 20)
2. **DRRA Process** (page 21)
3. **PUD and MXD Zoning District Summaries** (page 23)
4. **Use of DRRAs in All Maryland Counties, Maryland Department of Planning, May 2014** (page 26)
5. **Status Report on DRRAs in Frederick County, Maryland Department of Planning** (page 26)

Other Sources Cited:

1. Frederick County Adequate Public Facilities Ordinance

[http://www.amlegal.com/nxt/gateway.dll/Maryland/frederickco_md/partifrederickcountycode/chapter1-20adequatepublicfacilities?f=templates\\$fn=document-frame.htm\\$3.0](http://www.amlegal.com/nxt/gateway.dll/Maryland/frederickco_md/partifrederickcountycode/chapter1-20adequatepublicfacilities?f=templates$fn=document-frame.htm$3.0)

2. Frederick County DRRA Ordinance

[http://www.amlegal.com/nxt/gateway.dll/Maryland/frederickco_md/frederickcountymarylandcodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:frederickco_md](http://www.amlegal.com/nxt/gateway.dll/Maryland/frederickco_md/frederickcountymarylandcodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:frederickco_md)

3. Frederick County *2014 Impact Fee Update*

http://md-frederickcounty2.civicplus.com/documents/264/8055/8120/5.22%20Impact%20Fee%20Study_201405191248254620.pdf

4. *Planning Commission, Planning Board and Board of Appeals Education Course*, Maryland Department of Planning

http://planning.maryland.gov/PDF/YourPart/PlanningCommissionerTraining/PlanningCommissionerTraining_AllModules.pdf

5. Frederick County *Impacts on Growth Task Force Final Report*

https://frederickcountymd.gov/documents/67/8279/FINAL%20REPORT%20REVISED_201401281428368396.pdf

Attachment 1: Summary of BOCC Changes in Land Use Regulations

- 7/2011 BOCC amended Frederick County Adequate Public Facilities Ordinance (APFO) to provide a new option—the School Construction Fee or “mitigation” fee—for meeting school adequacy standards in addition to the existing options of funding the necessary school facilities or delaying the project until school facilities became available; this new option is not available if school capacity is at 120% or higher. This amendment is set to expire July 20, 2016. [*Ordinance 11-18-584*]
- 9/2011 BOCC amended the APFO to modify certain language and to change road adequacy requirements “to be more job friendly, fair and simpler to interpret and apply.” Among the changes was revision of the intent of the APFO as follows: “...to ensure that adequate public facilities and services are REASONABLY available concurrent with new development so that orderly growth can occur.” [*Ordinance 11-21-587*]
- 11/2011 BOCC voted to reduce the building excise tax to zero for all properties, eliminating estimated annual revenues averaging \$1.7 million that had been directed toward road improvements. [*Ordinance 11-23-589*]
- 3/2012 BOCC amended the APFO, zoning, and DRRA ordinances to provide the option for the BOCC, not the Planning Commission, to approve APFO requirements as part of the DRRA process. [*Ordinance 12-04-599*]
- 6/2012 BOCC voted to broaden the application of the School Construction (or mitigation) fee option to developments that already had received APFO approval, allowing them to modify their APFO approvals. [*Ordinance 12-15-610*]
- 7/2012 BOCC amended the APFO Ordinance to remove provisions requiring automatic adjustment of impact fees and school construction fees and requiring that any changes to these fees be approved through a public hearing process. [*Ord.12-14-609*]
- 9/2012 BOCC adopted a revised Frederick County Comprehensive Plan.
- 7/2014 BOCC revised the amount of school and library impact fees, based on a study by TischlerBise, reducing the school impact fee for single family homes by 7% and for libraries by 4%; increasing the school impact fee for townhouses/duplexes by 8% and for multi-family dwellings by 136%; and decreasing the library impact fee for townhouses by 7% and for multi-family units by 23%. [*Ord. 14-7-6620*]

Attachment 2: The DRRA Process in Frederick County

Initiating the process

A developer initiates the process by submitting a petition. Fees for applying include a processing fee of \$383 for submission of the petition; if accepted a filing fee of \$2177 plus \$20 per acre is then submitted.

Determining whether to accept the petition

Once the petition is complete and officially submitted, the BOCC determines whether or not to accept it.

Developing a draft DRRA

Once the BOCC accepts the application, county staff reviews it; this includes input from staff who deal with water and sewer, schools, parks and recreation, planning, and legal issues. The APFO is not considered at this point. There is back-and-forth communication between staff and the applicant until all parties concur. This draft DRRA agreement is then taken to the BOCC in an administrative workshop (not a public hearing). If the BOCC agrees with the draft, the formal review begins.

Formal review

In the formal review, the county Planning Commission reviews the DRRA draft agreement to determine if it is consistent with the Comprehensive Plan. This is not done in a public hearing; it is simply an agenda item. However, following a staff report and a presentation by the applicant, the Commission takes public comment.

The DRRA draft does not have to be consistent with the Comprehensive Plan to move forward.

Public hearing on the DRRA

Next, the BOCC schedules a public hearing, placing a notice in the newspaper; adjacent property owners are not notified. At the public hearing on the DRRA, the BOCC can ask for changes.

Public hearing when rezoning is requested

When a DRRA is tied in with a re-zoning (as has been the case for most of the DRRA applications in Frederick County), the property owners are notified about the zoning request. A public hearing can include the zoning request, then the DRRA. The APFO is a separate item.

Changes in the APFO process

In 2013, the BOCC amended the DRRA ordinance to specify that APFO could be attached to a DRRA and that the APFO could be approved by the BOCC rather than the Planning Commission.

Before this BOCC, the APFO (focused on ensuring adequate roads, water/sewer, and schools) was on an independent path. It was developed at the time of subdivision or site plan submission and was the responsibility of the Planning Commission. The new process means that the APFO is done earlier, before subdivision. The APFO is not subordinate to the length of the DRRA. It may expire before the end of the DRRA agreement timespan; but because it is tied to the DRRA, the re-test will be based on regulations in force at the time the DRRA was approved. The Planning Commission rules on re-tests.

DRRA approval

Once a DRRA is approved, it fixes the zoning and county ordinances in place as of the date of approval. For each DRRA that is approved, the Planning Department copies all local rules (subdivision regulations, APFO, zoning ordinance) in force at the time of the approval and attaches these to the DRRA so that future county staff will be able to determine what rules apply. The APFO has added another layer of complexity in that staff has to be sure the language in the DRRA and the APFO is consistent.

Attachment 3: PUD and MXD Zoning District Summaries

May 2012

Frederick County Community Development Division Planned Unit Development (PUD) Zoning District Summary

The Planned Unit Development (PUD) zone was established in the early/mid 1960's and was approved for the first project in 1967. The PUD is a floating zone, which can only be applied to properties designated Low/Medium/High Density Residential on the County Comprehensive Plan. The PUD may also be applied over land designated Natural Resource if it is a minor portion of the project. Amendments to the PUD zone, which are referenced below, were adopted in 2010.

The regulations for the PUD and MXD floating zone districts are now combined into a single section: **1-19-10.500 Planned Development Districts**

General Requirements

- There is no minimum tract size for the application of PUD zoning (except for CCRC's).
- Lot sizes, setbacks, and building heights shall be established by the Planning Commission at the Phase II review.
- Open Space/Green Area – Require a minimum of 30% of the gross land use area for PUD's with a gross density of 3-6 dwellings/acre, 35% at 6-12 du/ac, and 40% at 12-20 du/ac. Public parks and recreation land may also be required at discretion of BOCC.
- Water and Sewer - Property shall have PS – Planned Service classification to apply for PUD Phase I. Phase II review requires a W-4/S-4 classification.
- Public Facilities – The 500 and 1,000 dwelling thresholds that were used to determine amount of land for schools, libraries, or fire stations has been deleted. The 1 acre/100 dwelling ratio for school sites has also been deleted. May require sites for schools, libraries, fire stations as part of the Phase I review using established county standards of service. (10.500.8 (B))
- Review Process – Has been changed to a two step process consist with the MXD zone. Phase I rezoning step and Phase II Execution Phase which follows subdivision or site plan reviews as applicable.

Permitted Land Uses (see Section 1-19-10.500.6)

PUD's may be all residential with the mix of dwelling types based on need, existing and proposed projects in the vicinity, and on recommendations from adopted community/corridor plans. Commercial and employment uses may be proposed based on several factors including need, existing/proposed uses in the vicinity, and on recommendations from the community/corridor plans. The mixture of land uses will be determined by the BOCC at the Phase I rezoning review.

- Residential – Goal is to provide a mix of dwelling types. Permits all residential types including single-family, duplex, townhouses, multi-family, and CCRC's. Gross density may not exceed the following:
 - Low density – 3-6 dwellings/acre
 - Medium density – 6-12 dwellings/acre
 - High density – 12-20 dwellings/acre
- Commercial – allows for any uses permitted within the Village Center (VC) zoning district. There is no longer a threshold of 500 dwellings to allow for commercial uses. The 1 acre of commercial/100 du's allowance has also been deleted.
- Employment – allows for any uses permitted in the Office/Research/Industrial (ORI) zoning district. There is no longer a threshold of a 1,000 dwellings to allow employment uses. The 5 acres of employment use/100 du's has also been deleted.
- Institutional - allow for recreational and community activities, public services/facilities, health care facilities, schools, and institutional uses referenced in Section 1-19-5.310 Use Table.

- Continuing Care Retirement Community (CCRC) – This is a new use reference in the PUD. A CCRC may be approved for an entire PUD development (shall have a minimum 5 acre site) or as a portion of a PUD. CCRC’s may include a mix of independent living, assisting living and skilled nursing care facilities. (see Sections 10.500.6 (A) 6) and 10.500.10)

General Development Standards (See Section 10.500.9)

- Site and building design - addresses integration of land uses, orientation of buildings, parking design and access, pedestrian access, landscaping and open space design.
- Natural Features – addresses protection of natural features such as forest areas and visual impacts of development on surrounding properties. Lands with PUD zoning, but with a land use plan designation of Natural Resource may not be developed with residential or commercial/employment structures.
- Public Facilities and Utilities – location, design, and extent of proposed facilities shall be in accordance with County standards and the Comprehensive Plan.
- Modifications - as part of the Phase II Execution review the Planning Commission may approve modifications to parking, street design, landscaping, buffering, and general development standards in Section 10.500.9 (A).

August 2012

**Frederick County Community Development Division
Mixed Use Development (MXD) Zoning District Summary**

The MXD zoning district is a floating zone, established in 1993, and allows for an integrated mix of commercial, employment, residential, recreational, and civic/cultural uses. As a floating zone the MXD zone can only be applied to properties, which are designated either Office/Research, Limited Industrial, or Mixed Use on the Frederick County Comprehensive Plan. The MXD may also be applied over land designated Natural Resource if it is a minor portion of the project. Amendments to the MXD zone, which are referenced below, were adopted in 2010.

The regulations for the PUD and MXD floating zone districts are now combined into a single section:
1-19-10.500 Planned Development Districts

General requirements

- There is no longer a minimum tract size when applying for MXD.
- Lot sizes, setbacks, and building heights shall be established by the Planning Commission at the Phase II review.
- Building heights would be established by the Planning Commission (10. 500.7 (F) (2)).
- Open space/Green Area - shall be no less than 30% of the total area shown for residential development and 20% of the total area devoted to commercial and employment uses. BOCC has discretion to reduce this by no more than 50% (10.500.7 (B)).
- Water and Sewer - Property shall have PS – Planned Service classification to apply for MXD Phase I. Phase II review requires a W-4/S-4 classification.
- Public Facilities – May require sites for schools, libraries, fire stations based on need using established county standards of service. (10.500.8 (B))
- Review Process – Two step process, Phase I rezoning step and Phase II: Execution Phase which follows subdivision or site plan reviews as applicable.

Permitted Land Uses (see Section 10.500.7)

The land use mix is established during the Phase I rezoning review and is still oriented to the employment uses. The BOCC has discretion to deny or modify the land use mix. FcPc may approve minor modification of individual land use locations. Any land use mix changes to an approved Phase I plan must be approved through a revised/new Phase I application. The allowable mix of residential and commercial uses remains unchanged.

- Residential – Oriented to medium/high density residential and allows all types of residential uses now including single-family detached dwellings. Residential uses cannot exceed 25% of the gross project acreage.
- Commercial - includes all uses permitted in the General Commercial zone with exceptions noted in section 10.500.7 (A) (2). Cannot exceed 25% of gross project acreage when project includes a residential component. If there is no residential component, the commercial portion could include up to 45% of the gross project acreage exclusive of floodplain. When combined with a residential component cannot exceed 40% (both residential and commercial areas) of gross acreage or 50% exclusive of floodplain, whichever is less.
- Employment – employment uses, regardless of whether the MXD is applied to LI or ORI designated land, shall be limited to those uses permitted in the Office/Research/Industrial zoning district. Old language required MXD's applied to LI designation follow LI zone uses.
For projects with a residential component it is no longer required that some minimal amount of non-residential development be constructed first.
- Institutional - allow for recreational and community activities, public services/facilities, health care facilities, schools, and institutional uses referenced in Section 1-19-5.310 Use Table.

General Development Standards (See Section 10.500.9)

- Site and building design - addresses integration of land uses, orientation of buildings, parking design and access, pedestrian access, landscaping and open space design.
- Natural Features – addresses protection of natural features such as forest areas and visual impacts of development on surrounding properties. Lands with PUD zoning, but with a land use plan designation of Natural Resource may not be developed with residential or commercial/employment structures.
- Public Facilities and Utilities – location, design, and extent of proposed facilities shall be in accordance with County standards and the Comprehensive Plan.
- Modifications - as part of the Phase II Execution review the Planning Commission may approve modifications to parking, street design, landscaping, buffering, and general development standards in Section 10.500.9 (A).

Attachment 4: Use of DRRAs in All Maryland Counties

Maryland Department of Planning, May 2014

Attachment 5: DRRAs in Frederick County

Status Report as of May 16, 2014

Maryland Department of Planning

Maryland Department of Planning
 Local Planning Assistance Survey of County Use of Development Rights & Responsibilities Agreements
 May 2014

County	Adopted Enabling Regs?	Have they Use DRRAs?	How Extensive Do they Use them?	What is the typical "term"	Notes
Allegany	No	No		N/A	
Anne Arundel	Yes	Yes	Used only once for a large town center project	Use only once for a 40 year term	MDP has received a copy of an Anne Arundel County DRRRA. Formally adopted legislation in 2003 that allows their use. An example of an Anne Arundel County DRRRA is the Halle Development of the Odenton Town Center Property, which has a detailed master plan with significant required infrastructure improvements. This particular DRRRA is for 40 years. DRRRA's are used regularly in AA CO for the larger development projects.
Baltimore	No	No - they do use public works agreements			The county uses public works agreements as part of the development approval process. For more details on how and when they are used, please follow up with Colleen Kelly in Development Management. She can be reached at 410 887 3321.
Calvert	Yes	Yes	Rarely		MDP has received a copy of a DRRRA from Calvert County. They are very seldom used.
Caroline	Yes	No			The Development Rights and Responsibilities Agreements zoning amendment was adopted in 2006. Although the county has the ability to enter into DRRRA, they have not actually used it.
Carroll	No	No		N/A	
Cecil	No	No		N/A	Cecil County reports that they haven't used DRRAs in the last decade because of lack of development.

Maryland Department of Planning
 Local Planning Assistance Survey of County Use of Development Rights & Responsibilities Agreements
 May 2014

County	Adopted Enabling Regs?	Have they Use DRRAs?	How Extensive Do they Use them?	What is the typical "term"	Notes
Charles	Yes	Yes	Several	20 years	MDP has received a copy of DRRA from Charles County. Charles County uses DRRAs more frequently than other S MD Counties. The county uses them exclusively to establish an agreement on multi-year allocation of school capacity allocation by the county and corresponding payment of impact fees by the developer associated with approved preliminary plans. Charles County uses DRRAs as a forward funding mechanism for the State's share of School Construction Funding. In 2010, the county considered five DRRAs for total of 460 units. The developments ranged in size from 30 to 179 units with phasing schedules from 3 years to 7 years. All agreements had a term of 20 years, but the effective term of the agreement corresponded to the construction phasing. The county also has used a DRRA for a road project in the past and is currently considering one that covers a county-developer cost sharing for a road construction project.
Dorchester	Yes	No			The county has incorporated enabling legislation for DRRA's into its zoning code in 2004 but has never used it. It was reported that the DRRA provisions were adopted in anticipation of the approval of the Egypt Road project, which failed to materialize.
Frederick	Yes	Yes	Several	18 -25 yrs	See Frederick County Review for more details
Garrett	No	No		N/A	
Harford	No	No		N/A	Harford County doesn't really use these. The County has approval letters that identify the conditions for the development, but it's not really a DRRA.
Howard	Yes	Yes	Only once for Doughoregan Manor		Used in 2010 for the of historic Doughoregan Manor

Maryland Department of Planning
Local Planning Assistance Survey of County Use of Development Rights & Responsibilities Agreements
May 2014

County	Adopted Enabling Regs?	Have they Use DRRAs?	How Extensive Do they Use them?	What is the typical "term"	Notes
Kent	Yes	No			DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT (DRRA) - A letter dated May 10 from Elizabeth H. Morris, Chairman of the Kent County Planning Commission, was received indicating that at its May 5 meeting, the Planning Commission reviewed the draft ordinance which establishes the procedures and requirements for considering and executing developers rights and responsibilities agreements. After a brief discussion, the Planning Commission voted unanimously to recommend approval of the ordinance. The Commission noted that the ordinance provides and opportunity for the County to negotiate infrastructure and other public amenities needed to support growth while providing stability to the private sector. Just heard back from Kent. They considered a DRRA in 2011 for a proposed rubble fill. Project wasn't well received and never materialized.
Montgomery	No	No		N/A	Maryland Land Use Article, Division II, Title 25, Subtitle 5 allows Montgomery County to adopt regulations but no regulations appear to be incorporated into the county's zoning regulations. MDP staff spoke to Development Review staff (Planner of the Day) who indicated that they do not typically use DRRA's. They do have APFO requirements and the developer must agree to adhere to those requirement but no DRRA's are used.
Prince George's	No	No		N/A	Maryland Land Use Article, Division II, Title 25, Subtitle 5 allows Prince George's County to adopt regulations but no regulations appear to be incorporated into the county's zoning regulations.
Queen Anne's	Yes	Yes	Only once for Four Seasons		Queen Anne's has one for the Four Seasons development. It is my understanding that the County wouldn't enter into another one after that. I will have to query the other counties to see if they have ever used the DRRA process.
Somerset	No	No		N/A	Somerset does not use DRRAs.
St. Mary's	Yes	Yes	Seldom used	7 years	Provided a copy of a DRRA from SMCO. They are very seldom used.

Maryland Department of Planning
 Local Planning Assistance Survey of County Use of Development Rights & Responsibilities Agreements
 May 2014

County	Adopted Enabling Regs?	Have they Use DRRAs?	How Extensive Do they Use them?	What is the typical "term"	Notes
Talbot	Yes	Yes	Rarely	Proposed to last 30 years for hospital	County staff drafted one for the new hospital, but that was the only one in the last four years.
Washington	No	No		N/A	Washington County uses Public Works Agreements but not DRRA.
Wicomico	No	No		N/A	Wicomico County has never entered into a DRRA.
Worcester	No	No		N/A	

DRRAs in Frederick County

Status Report as of May 16, 2014

November 16, 2007, the Frederick County Board of County Commissioners (BOCC) adopted ordinance number 07-33-473, which authorized the BOCC to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements (DRRAs). The local DRRA regulations are found in Chapter 1-25 of the Frederick County Code. On March 2, 2012, the BOCC enacted ordinance number 12-04-599, amending chapters 1-19, 1-20 and 1-25 of the Frederick County Code, to allow the BOCC to approve APFO requirements as part of a DRRA.

There have been seven (7) DRRAs approved since being submitted in 2012. These properties are part of the 2012 Frederick County Comprehensive Plan Review Rezonings.

The Casey Property was submitted in 2013 and is currently being reviewed. There are five (5) additional properties that have been proposed DRRAs in 2014. They have not been acted upon.

In most cases, the DRRA commits the developer to infrastructure improvements, i.e., roadway improvements, design and construction costs for sewer and water improvements, dedication of public lands for parks, school sites and fire/EMS. The DRRA also may include the school construction fees for mitigating failures from APFO Testing.

In all cases the DRRA commits the County to maintaining the development's zoning with the maximum dwelling units possible, maintaining or obtaining other approvals based on current regulations or, if applicable, the regulations in effect when the approvals were granted. The developer typically receives revised APFO approval (including an amended and restated LOU) concurrent with the DRRA approval, thereby allowing the developer to proceed with the project's build out for the various phases as outlined in the DRRA. The DRRA also freezes the current county development regulations for the duration of the DRRA. Most of the DRRAs submitted to the BOCC for approval are requested by the developer for a term of 25 years. The BOCC has approved a range of DRRA terms from 25 years to 18 years.

All the DRRA developments would be considered greenfield developments located in designated growth areas. Only one or two could be considered a logical extension of Frederick's urban core. Most are traditional residential developments with a mix of single-family detached and attached housing. Very few propose higher density development.

Summary Statistics of Frederick County DRRRA Projects

	DRRA Term	Acres	Units	Commercial SF	Employment SF
Landsdale PUD	25	396	1,100		
Jefferson Technology Park MXD	20	173	825	123,000	1,375,000
Urbana Natelli (5 separate communities)	20	1,579	1,093	64,300	1,969,000
Eaglehead – Lake Linganore PUD	25	950	1,735		
Westview South MXD	25	210	615	24 ac	68 ac
Monrovia Town Center PUD	18	395	1,250	143,500	
Ballenger Run PUD	20	130	855		
Casey Property (Not Approved)	20	639	1,017		
		4,472	8,490	330,800	3,344,000
Median DRRRA Term Approved	20				
<u>Not Approved</u>					
Woodbourne Manor	20	137.9	198		
Blentlinger Property	25	279	720		
Ratley Property	25	23	61		
Rayburn PUD	25	80	262		
Monocacy Glen PUD	15	37	161		
		557	1,402		
Grand Total		5,028	9,892		

Other County’s Use of DRRRA

According to the research collected by Maryland Department of Planning’s Regional Planners (see attached summary of statewide county use of DRRRA), 10 counties have adopted local DRRRA enabling legislation. Of the jurisdictions that have DRRRA provisions in their code, only eight counties have approved DRRAs – six counties have infrequently used the DRRRA authority. Charles and Frederick Counties are the only two counties that appear to have used DRRAs for multiple developments within their jurisdiction.

A review of sample DRRAs indicates that the term of these agreements has been longer than the specified five year default period established in the enabling legislation, ranging from 18 to 40 years. Refer to the summary for more details on the conditions associated with DRRAs.

The detailed survey of Maryland counties’ use of DRRAs is attached.

The following are details on each of the Frederick County DRRAs

12-01 Landsdale PUD (Case # – R-02-1 (A))

- DRRRA is for 25 Years with an Effective Date of October 4, 2012
- 396 Acres
- 1,100 Dwelling Units (800 Single Family Dwellings, 300 Single Family Attached)

Developer Responsibilities

- Roadway Improvements (widening, turn lanes, traffic control devices)
 - Total road proffers and requirements - \$7,284,000
- Dedication of acreage for school site, public parklands, fire/rescue
- Design and construct Sewage Interceptor

Development Rights

- Maintain the developments zoning with the maximum dwelling units
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulation in effect when the approvals were granted.
- Receive revised APFO approval (including an amended and restated LOU) concurrent with the DRRRA approval.
- Proceed with the project build out for the various phases as outlined in the DRRRA.
- Freeze current County development regulations for the duration of the DRRRA.
- Maintain the terms of the DRRRA for a period of 25 years.

12-02 Jefferson Technology Park MXD (Case # – R-05-1 (A))

- DRRRA is for 20 Years with an Effective Date of November 29, 2012
- 173 Acres
- 825 Dwelling Units (223 Townhouse, 224 Apartments, 378 two over two condos)
- Commercial/Employment - (123,000 sf Commercial, 1,375,000 sf Employment)

Developer Responsibilities

- Roadway Improvements MD 180 (interchange)
 - Pay break in access fee \$4,000,000
 - Contribute in escrow accounts \$600,000
- School construction fee for mitigating failure at Middle School from APFO Test.
 - \$600,000
 - Estimated School Impact fee \$4,000,000
- Dedicate Acreage for fire station
- Library Impact Fee \$445,000

Development Rights

- Maintain the developments zoning with the maximum dwelling units
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulation in effect when the approvals were granted.
- Receive revised APFO approval (including an amended and restated LOU) concurrent with the DRRRA approval.

- Proceed with the project build out for the various phases as outlined in the DRRA.
- Freeze current County development regulations for the duration of the DRRA.
- Maintain the terms of the DRRA for a period of 20 years.

12-03 Urbana / Natelli (Case # R-06-1 (A) and Case # – R-98-1 (B))

- DRRA is for 20 Years with an Effective Date of June 13, 2013
- 5 Separate Communities under one DRRA
- Urban Development covers over 1,579 acres
- 1093 Dwelling Units
 - Villages of Urbana PUD - 399 Dwelling Units
 - Northern MXD – 610 Dwelling Units, 50,000 sf commercial, 1.9 M sf of employment
 - Worthington Square – 72 Dwelling Units, 5,000 sf commercial
 - Village Center – 12 Dwelling Units
 - Urbana Office Research Center – 9,300 sf restaurant/retail, 69K employment

Developer Responsibilities

- Roadway improvements I-270, MD 80, MD 355 (widening, interchange and ramps)
- Design and construct water and sewer improvements
- School construction fee for mitigating failure from APFO Test.
 - \$7.5 million mitigation fee
 - \$1 million received to date.
- Payment in lieu fee for MPDU Regulations
- Dedicate acreage for Elementary School site.

Development Rights

- Maintain the developments zoning with the maximum dwelling units
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulation in effect when the approvals were granted.
- Receive revised APFO approval (including an amended and restated LOU) concurrent with the DRRA approval.
- Proceed with the project build out for the various phases as outlined in the DRRA.
- Freeze current County development regulations for the duration of the DRRA.
- Maintain the terms of the DRRA for a period of 20 years.

12-04 Eaglehead – Lake Linganore PUD (Case # R-12-01 and DRRA-12-01)

- DRRA is for 25 Years with an Effective Date of July 11, 2013
- 950 Acres
- 1,735 Dwelling Units (1,100 Single Family Dwellings, 435 Single Family Attached, 200 Multifamily)

Developer Responsibilities

- Roadway improvements (Construct or Pay for/guarantee)

- School construction fee for mitigating failure from APFO Test.
 - \$26 million mitigation fee
 - Pay additional school construction fees from development that will pass APFO.
- Payment in lieu fee for MPDU Regulations
- Dedicate acreage for Elementary School site, Fire/EMS site.

Development Rights

- Maintain the developments zoning with the maximum dwelling units
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulation in effect when the approvals were granted.
- Receive revised APFO approval (including an amended and restated LOU) concurrent with the DRRA approval.
- Proceed with the project build out for the various phases as outlined in the DRRA.
- Freeze current County development regulations for the duration of the DRRA.
- Maintain the terms of the DRRA for a period of 25 years.

12-05 Westview South MXD (Case # R-00-2 (A) and DRRA-12-05)

- DRRA is for 25 Years with an Effective Date of June 13, 2013
- 210 Acres
- 615 Dwelling Units (129 Single family dwellings, 126 Single family attached, 360 Multifamily)
- 24 Acres Commercial, 68 Acres Employment

Developer Responsibilities

- Roadway improvements (Construct or Pay for/guarantee)
- School construction fee for mitigating failure from APFO Test.
 - \$450,000 toward acquisition, design or construction of Elementary school
- Dedicate 22.5 acres for public parkland

Development Rights

- Maintain the developments zoning with the maximum dwelling units
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulation in effect when the approvals were granted.
- Receive revised APFO approval (including an amended and restated LOU) concurrent with the DRRA approval.
- Proceed with the project build out for the various phases as outlined in the DRRA.
- Freeze current County development regulations for the duration of the DRRA.
- Maintain the terms of the DRRA for a period of 25 years.

12-06 Monrovia Town Center PUD (Case # R-12-02 and DRRRA-12-06)

- DRRRA is for 18 Years - Approved on April 23, 2014 but to be signed at later date
- 394.5 Acres
- 1,250 Dwelling Units (50% to be age restricted, 70% SFD, 30% Townhouse)
- 15.4 Acres off site commercial property – 143,500 sf Commercial

Developer Responsibilities

- Roadway improvements - pay into escrow account for various improvements for Urbana, New Market and Monrovia Area.
- Design and construct water and sewer improvements detailed in LOU
- School construction fee for mitigating failure from APFO Test at any level.
- Dedicate 50 acre High School site, 4 acre Fire Station site, 25 acres for public parkland

Development Rights

- Maintain the developments zoning with the maximum dwelling units
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulation in effect when the approvals were granted.
- Receive revised APFO approval (including an amended and restated LOU) concurrent with the DRRRA approval.
- Proceed with the project build out for the various phases as outlined in the DRRRA.
- Freeze current County development regulations for the duration of the DRRRA.
- Maintain the terms of the DRRRA for a period of 18 years.

12-07 Ballenger Run PUD (Case # R-05-09 (A) and DRRRA-12-07)

- DRRRA is for 20 Years with an Effective Date of October 17, 2013
- 130 Acres
- 855 Dwelling Units (180 Single Family Dwellings, 265 Single Family Attached, 210 Multifamily, 200 Units of Assisted Independent Living)

Developer Responsibilities

- Roadway improvements (widening) (Construct or Pay for/guarantee)
- Design and construct water and sewer improvements detailed in LOU
- School construction fee for mitigating failure from APFO Test.
 - \$3.4 Million
- Payment in lieu fee for MPDU Regulations
- Dedicate 13 acre Elementary School site, Trail construction, 34.3 acres for public parkland

Development Rights

- Maintain the developments zoning with the maximum dwelling units
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulation in effect when the approvals were granted.

- Receive revised APFO approval (including an amended and restated LOU) concurrent with the DRRRA approval.
- Proceed with the project build out for the various phases as outlined in the DRRRA.
- Freeze current County development regulations for the duration of the DRRRA.
- Maintain the terms of the DRRRA for a period of 20 years.

13-01 Casey Property (Case # R-13-03 and DRRRA-13-01)

- DRR is pending and not approved. Applicant has proposed at 20 Years.
 - On April 30, 2014, the FcPc voted to recommend approval of PUD rezoning w/conditions.
 - Tentative Schedule to hear case: May 28 (tentative) for DRRRA review and BOCC on July 8 (tentative for both PUD rezoning and DRRRA)
- 639 Acres
- 1,017 Dwelling Units (680 Single Family Dwellings, 235 Townhouses, 102 - 2 over 2 Condo Multifamily)

Developer Responsibilities have not been discussed.

- Roadway improvements
- School Fees
- Dedication of public lands

The following have recently submitted:

1. **Woodbourne Manor** (DRRA Request 20 Years)
 - Application was accepted on April 15, 2014 and public hearing process initiated. Tentative Schedule to hear case: TBA.
 - 137.93 Acres
 - 198 Dwelling Units
2. **Blentlinger Property** (DRRA Request 25 Years)
 - Application was accepted on April 15, 2014 and public hearing process initiated. Tentative Schedule to hear case: FcPc – July; and BOCC – August
 - 279 Acres
 - 720 Dwelling Units
3. **Ratley Property** (DRRA Request 25 Years)
 - Application was accepted on April 3, 2014 and public hearing process initiated. Tentative Schedule to hear case: FcPc – May 21 at 7 pm, Winchester Hall for PUD rezoning only; and BOCC – July
 - 23 Acres
 - 61 Dwelling Units
4. **Rayburn PUD** (DRRA Request 25 Years)

- Application was accepted on April 3, 2014 and public hearing process initiated. Tentative Schedule to hear case: FcPc – July 9 (for DRRRA review) BOCC – August (for DRRRA review/decision)
- 80 Acres
- 262 Dwelling Units

5. **Monocacy Glen PUD** (DRRA Request 15 Years)

- Application was accepted on March 6, 2014 and public hearing process initiated. Tentative Schedule to hear case: FcPc – June; and BOCC – July
- 37 Acres
- 161 Dwelling Units