



# THE PRINCE GEORGE'S COUNTY GOVERNMENT

## Office of Audits and Investigations

October 12, 2020

### MEMORANDUM

TO: Robert J. Williams, Jr.  
Council Administrator

William M. Hunt  
Deputy Council Administrator

THRU: Josh Hamlin  
Senior Legislative Budget and Policy Analyst

FROM: Warren E. Burris, Sr.  
Senior Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement  
CB-084-2020 – Water Requirements for Development in Floodplains (Draft 1)

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**CR-084-2020** (sponsored by: Councilmember Anderson-Walker)

Assigned to Committee of the Whole (COW)

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**AN ACT CONCERNING WATER REQUIREMENTS FOR DEVELOPMENT IN FLOODPLAINS FOR THE PURPOSE** of amending the water requirements for development in the floodplains to include studies conducted by an independent third party and generally relating to requirements for development in floodplains.

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#### Fiscal Summary

**Direct Impact:**

*Expenditures:* None

*Revenues:* None

**Indirect Impact:**

Potentially positive

### **Legislative Summary:**

CB-084-2020, sponsored by Councilman Anderson Walker was introduced on September 29, 2020 and referred to the Committee of the Whole. CB-084-2020 would require third party independent studies conducted for any potential development in the 100-year flood plain. CB-084-2020 would repeal and reenact Subtitle 32, Division 4 Section 32-206 of the County Code.

If enacted, CB-084-2020 would explicitly:

- Require a flood study for any development in the floodplain.
- Authorize and encourage use of independent third party (i.e. Army Corp of Engineers) to conduct study.
- Make applicant liable of any and all losses resulting from flooding in floodplain should applicant be approved for development in floodplain using their own engineering firm rather than the encouraged independent third party.
- Ensure that any studies submitted for approval provide evidentiary verification that development in the floodplain will not result in any flooding or loss for the surrounding community.

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### **Current Law/Background:**

Subtitle 32, Division 4, Section 32-206 of the Prince George's County Code currently provides guidance for requirement of a waiver for development in the floodplain. The current law provides as follows:

1. *Section 32-206(c)* - Required plans and studies. The Department may require plans and studies to be submitted. All studies shall be subject to approval by the Department. All studies and calculations furnished to satisfy this provision shall become the property of the County and may be used by the County for reviewing other development or for other purposes. The request for a waiver shall include all necessary documentation, including analysis of hydrology and hydraulic requirements, as defined in the Prince George's County Stormwater Management Design Manual (latest edition) for technical analysis by the Department.
2. *Section 32-206 (d)(1)* - The Director shall grant a waiver only upon determining that:
  - a. There is good and sufficient cause that is based solely on the physical characteristics of the property and cannot be based on the character of the improvement, the personal characteristics of the owner/inhabitant, or local provision that regulate standards other than health and public safety;
  - b. The granting of the waiver will not result in additional threats to public safety, or other adverse impacts on other public or private property either upstream, downstream or adjacent to the subject property;
  - c. The granting of the waiver will not result in fraud or victimization of the public;
  - d. The waiver is the minimum necessary, considering the flood hazard, to afford relief to the owner, and public funds shall not be expended to mitigate the results of the waiver;
  - e. The development will not violate other Federal, State or local laws or regulations;
  - f. The waiver does not violate the purpose and intent of this Division;
  - g. The failure to grant the waiver would result in exceptional hardship due to the physical characteristics of the property.
  - h. A building, structure or other development is protected by methods to minimize flood damages; and

- i. A waiver is the minimum necessary to afford relief, considering the flood hazard.

As currently written, the County code in Section 32-206 (c) indicates that studies MAY be required. Enactment of CB-84-2020, would expressly require a flood plain study for any proposed development in the Prince George’s 100-year floodplain. In addition, “Development” is broadly defined to include any man-made change to land, including grading, filling, dredging, extraction, storage, subdivision of land, and the construction or improvement of structures<sup>1</sup>.

As stated by the Federal Emergency Management Agency (FEMA)<sup>2</sup> and the Maryland Department<sup>3</sup> of the Environment, a permit is required for all construction or development in the 100-year floodplain. The National Flood Insurance Program (NFIP) requires counties and towns to issue permits for all development in the 100-year floodplain. According to FEMA, the NFIP provides flood insurance to property owners, renters and businesses, and having this coverage helps them recover faster when floodwaters recede. The NFIP also encourages communities to adopt and enforce floodplain management regulations that help mitigate the effects of flooding.”<sup>4</sup> “As a part of the National Flood Insurance Program (NFIP), the Community Rating System is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements. As a result, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the community actions meeting the three goals of the Community Rating System”<sup>5</sup>

Unlike the NFIP, enactment of CB-84-2020 would require a Flood Plain study for all development in the Floodplain to ensure there is no risk to county residents. The bill would require an independent third party but would require the applicant to assume all risks associated with the development for the 10 years after the development (if approved) should the applicant decides to use its own engineering firm. As evidenced by the NFIP program, this system of evaluating developing in the flood plain is looked at through a monetary process regarding insurance rates and risk, as opposed to evaluating the risk for substantial loss of property and/or life. “Nationally, much of the development that’s taken place in floodplains is a consequence of federal regulations that do little to discourage construction in flood-prone areas. Larry Larson, director emeritus of the Association of State Floodplain Managers, sees it as a system of perverse incentives. Regardless of whether states take any steps to discourage risky developments, they still receive generous disaster relief assistance when devastation occurs.”<sup>67</sup>

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**Resource Personnel:**

Council District 8 Staff  
DPIE  
DOE

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<sup>1</sup> <https://mde.maryland.gov/programs/water/floodhazardmitigation/pages/floodplainregs.aspx>

<sup>2</sup> <https://www.fema.gov/glossary/permit-floodplain-development>

<sup>3</sup> <https://mde.maryland.gov/programs/water/floodhazardmitigation/pages/floodplainregs.aspx>

<sup>4</sup> <https://www.fema.gov/flood-insurance>

<sup>5</sup> <https://www.fema.gov/flood-insurance/rules-legislation/community-rating-system>

<sup>7</sup> [\(August 2018\) “Building Homes in Flood Zones: Why Does This Bad Idea Keep Happening?” Governing](#)

**Discussion/Policy Analysis:**

- *Potential Benefits of Enacting CB-84-2020 – Water Requirements for Development in Floodplain*

Enacting CB-84-2020 would potential provide the District Council with assurances that a detailed study was performed by the requisite authority indicating that any dwelling units developed in a floodplain would be reasonably protected for existential threats and devastation. The nation’s rivers and floodplains have become physically disconnected, leading to loss of floodplain functions. Thereby, completion of floodplain study would examine the existing or current state of the flood plain to assure that development would be sustainable, which could avoid future property damage, destruction and possible loss of human life from development in flood plain. This would result in a possible indirect impact for future residents in the new development.

- *Potential Costs of Enacting CB-84-2020 - Water Requirements for Development in Floodplain*

Enactment of CB-84-2020 would be relatively no cost or burden to the County government as the cost of the study would be borne by the development team proposing the development consistent with the County Code. This may result in less development in areas covered by the requirements, but that is not necessarily a “cost.”

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**Fiscal Impact:**

- *Direct Impact*

Enactment of CB-84-2020 would no fiscal impact to the County government expenditures, since the cost of the required studies are to be borne by applicants.

- *Indirect Impact*

Enactment of CB-84-2020 may promote positive indirect impact through the increase of sustainable development and have assurances that no future losses or property damage would result from the new development in floodplains. This could result in cost savings in reduced County response to (avoided) flood-related damage.

- *Appropriated in the Current Fiscal Year Budget*

No.

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**Effective Date of Proposed Legislation:**

This Act shall take effect forty-five (45) days after it becomes law.

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If you require additional information, or have questions about this fiscal impact statement, please reach me via phone or email