



# Howard County Council

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District 1

CB-4 aims to better protect County wetlands, streams and steep slopes from development. By State law, this County is obligated to enact and enforce certain environmental protections that meet or are more stringent than the requirements and standards of applicable State law (*see, e.g., Md Code Ann., Nat. Res. § 5-1603*). This County, however—by routinely granting Developers various requested waivers, “alternative compliances” and/or “necessary disturbance” exemptions from State environmental mandates—has permitted development activity even in and immediately adjacent to these most vulnerable environmental resources. Not surprisingly, Developers’ permitted intrusion into and disturbance of this County’s wetlands, streams and steep slopes has only exacerbated real and consequential harm there and downstream.

In our initial survey, this office identified several projects—just in D1—where the County’s Department of Planning and Zoning had granted (in its sole discretion) “necessary” or “essential disturbance” exemptions to proposed Developer activity in wetlands, streams and steep slopes, without regard to State or County law, or resulting damage to adjoining waterways and property. (*See, e.g., “Terrapin Woods,”* approved *after* the 2018 flood in the old Ellicott City watershed, note 24; “[Dorsey Overlook](#),” note 6; and “[Riverwatch I](#),” note 41.) The “gazebo” feature, particularly, emerged as the marker on proposed plans for environmental-laws-won’t-apply-here Developer entitlement.

Consider the Riverwatch I project, in historic Elkridge, along the banks of the Patapsco River. Within the steeply sloped stream banks into the Patapsco—and a 100-year flood plain—this County apparently granted an “essential disturbance” exemption for an “underlying SWM [stormwater management piping length and] outfall and [riprap] channel.” Also allowed within the 75” buffer—reportedly by waiver—was construction of a walkway and a gazebo. Less clear is by what authority Developer also removed (but did not replace) portions of the existing tree line along the river bank and installed sodding and two lengths of sediment fencing. Regardless, the intruded-upon environmental features have now failed, requiring some sort of likely equally intrusive (and costly) repair and downstream damage in the form of—at least—increased sediment load and felled trees. The exact same necessary disturbance/waiver combination seems to have followed to the benefit of the Developer of Dorsey Overlook; this time the permitted intrusion would be into wetlands (*see* [May 16, 2016 DPZ letter to Developers of Dorsey Overlook](#)).

This bill proposes to remove from the Department of Planning and Zoning its discretion to excuse proposed development from compliance with State-mandated environmental laws, so long as the offensive structure is not the proposed housing itself. Section [§16.116\(c\)](#) of the County Code states as follows:

*Necessary Disturbance:*

*(1) Grading, removal of vegetative cover and trees, and paving are not permitted in wetlands, streams, wetland buffers, stream buffers or steep slopes unless the Department of Planning and Zoning determines based on a detailed justification provided by the developer that: (i) It is **necessary for construction of public or private roads, driveways, utilities, trails, pathways, or stormwater management facilities which are essential for reasonable development of the property**; (ii) The design minimizes disturbance; (iii) There is no other reasonable alternative; and (iv) The cost of an alternative improvement shall not be a factor in deciding whether the criteria in subject subsection (i) above can be met.*

*(2) Reasonable development, for the purpose of this subsection, does not guarantee maximum possible development under the zoning regulations for density receiving subdivisions in the RC and RR zoning districts. In any zoning district, achieving the maximum possible density is not sufficient justification alone to allow disturbance.*

*(3) If permitted, the grading, removal of vegetative cover and trees, or construction shall only be to the extent required to accommodate the necessary improvements. In these cases, the Department of Planning and Zoning may require the least damaging designs, such as bridges, bottomless culverts or retaining walls, as well as planting of the areas where grading or removal of vegetative cover has taken place.*

Removing the potential loophole presented in County Code Section 16.116(c):

- Confirms County mandates to protect its wetlands, streams and steep slopes; and
- Confirms County law—in application—is more likely to comply with State mandates to protect these most vulnerable environmental features.

Reference Materials:

1. CB-4, [Legislative Summary](#)
2. Timeline photos (five total) of Riverwatch I “necessary disturbance” location along Patapsco River (from 2014 construction to present day)











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