

Introduced	<u>7/2/18</u>
Public Hearing	<u>7/16 & 23/18</u>
Council Action	<u>7/27/18</u>
Executive Action	<u>7/27/18</u>
Effective Date	<u>7/27/18</u>

County Council of Howard County, Maryland

2018 Legislative Session

Legislative Day No. 10

Bill No. 56-2018

Introduced by: Jon Weinstein
 Co-sponsored by: Calvin Ball, Jennifer Terrasa, Greg Fox, and Mary Kay Sigaty

AN ACT temporarily prohibiting issuance of certain permits and certain approvals of development plans and zoning changes for property that drains in whole or in part to the Tiber Branch Watershed or the Plumtree Branch Watershed in Howard County to study flooding events that threaten public health, safety, and welfare; requesting the Department of Planning and Zoning, the Department of Public Works, and other County agencies to study past, present, and future land uses, drainage infrastructure, storm water management, and flood mitigation, and all other factors related to flooding in the Tiber Branch Watershed or the Plumtree Branch Watershed, and report and make recommendations on changes to land uses, drainage infrastructure, stormwater management, and flood mitigation; defining certain terms; providing certain exemptions from the Act; providing that this Act shall be abrogated and of no further force and effect after a certain period; and generally relating to land use, storm water management, drainage and flood mitigation; and declaring this to be an emergency Act.

Introduced and read first time July 2, 2018. Ordered posted and hearing scheduled.
 By order Jessica Feldmark
 Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on July 16 & 23, 2018.
 By order Jessica Feldmark
 Jessica Feldmark, Administrator

This Bill was read the third time on July 27, 2018 and Passed , Passed with amendments , Failed .
 By order Jessica Feldmark
 Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 27th day of July, 2018 at 2 a.m./p.m.
 By order Jessica Feldmark
 Jessica Feldmark, Administrator

Approved Vetoed by the County Executive July 27, 2018
Allan H. Kittleman
 Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; Text in small capitals indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS** the Tiber Branch and its tributaries constitute the natural drainage for the Tiber
2 Branch Watershed to the Patapsco River; and

3
4 **WHEREAS** the Tiber Branch Watershed contains various land uses including older and newer
5 commercial and residential development, public facilities and public schools, State and County
6 road networks, unimproved property, and Historic Ellicott City, which is located at a low-point
7 in the Tiber Branch Watershed and along the Patapsco River; and

8
9 **WHEREAS** the Tiber Branch and its tributaries drain through Historic Ellicott City, are
10 confined by steep topography surrounding Historic Ellicott City’s Main Street, and are lined
11 along their banks by historic buildings that are unique and pose challenges for meeting modern
12 construction practices; and

13
14 **WHEREAS** Historic Ellicott City is a national and local designated historic district and contains
15 architectural, historic, and cultural resources that cannot be replaced and which have been
16 severely damaged by repeated flooding; and

17
18 **WHEREAS**, on May 27, 2018, Historic Ellicott City and other areas of the County were
19 subjected to devastating flooding for the second time in twenty-two months, resulting in the loss
20 of human life, the catastrophic destruction of private and public property, and the interruption of
21 public road networks and public, commercial, and personal activities and necessitating the
22 County Executive to exercise Emergency Powers through Executive Order 2018-07, which
23 declared a State of Emergency that was subsequently extended through July 3, 2018, by the
24 County Council with the passage of Council Resolution No. 84-2018 on June 1, 2018, and is
25 subject to further extension to address the devastating effects of flooding in Historic Ellicott City
26 and other areas of the County; and

27
28 **WHEREAS**, extreme weather events have recently become more frequent and severe as
29 documented by the National Oceanic and Atmospheric Administration in the 2016 U.S. Climate
30 Extremes Index and by the United States Environmental Protection Agency, which noted in its
31 2016 report of Climate Change Indicators in the United States that:

1 “In recent years, a larger percentage of precipitation has come in the form of intense
2 single-day events. Nine of the top 10 years for extreme one-day precipitation events have
3 occurred since 1990” ([https://www.epa.gov/climate-indicators/climate-change-indicators-
4 heavy-precipitation](https://www.epa.gov/climate-indicators/climate-change-indicators-heavy-precipitation)); and
5

6 **WHEREAS**, after the catastrophic flooding in the Tiber Branch Watershed in July 2016, the
7 Howard County Department of Public Works (DPW) conducted a Hydraulic and Hydrologic
8 (H&H) analysis of the area in and around Historic Ellicott City, along with other analyses of the
9 July 2016 flood event in Historic Ellicott City and other areas of the County; and
10

11 **WHEREAS**, the H&H study, entitled, “2016 Ellicott City Hydrology/Hydraulic Study and
12 Concept Mitigation Analysis,” concluded the following:

13 “The results of this study demonstrate that construction of stormwater storage facilities
14 throughout the watershed, combined with stormwater conveyance infrastructure
15 improvements, can make an appreciable difference in the severity of flooding from a 100-
16 year or other similar storm event. However, the nature and scope of such improvements is
17 significant in scope, impact and cost. It will require a long-term planning and
18 implementation effort, supplemental to the Master Plan process, to prioritize, design and
19 construct improvements based on the concepts represented in this report.”; and
20

21 **WHEREAS**, in the current State of Emergency, where much of Main Street in Historic Ellicott
22 City is temporarily closed to the public to assess and repair flood damage, the Howard County
23 community made up of residents, property owners, business owners, government workers, non-
24 profit groups, and volunteers has again galvanized to begin the task of clean-up, repair, and
25 restoration of Historic Ellicott City; and
26

27 **WHEREAS**, the cost to County taxpayers for the repair of public facilities damaged by the 2018
28 flood is currently estimated at over \$20 million and the cost from the 2016 flood was \$10
29 million; and
30

31 **WHEREAS**, the Plumtree Branch and its tributaries constitute the natural drainage for the

1 Plumtree Branch Watershed to the Little Patuxent River; and

2
3 WHEREAS, the Plumtree Branch Watershed is home to many neighborhoods, including but not
4 limited to Valley Mede, Chatham, Nob Hill, and Dunloggin, and contains various land uses
5 including older and newer commercial and residential developments, public facilities, State and
6 County road networks, and unimproved property; and

7
8 WHEREAS, the Plumtree Branch and its tributaries are, in some areas, in close proximity to
9 roads, private properties, and homes in the floodplain that have been severely damaged by
10 repeated flooding; and

11
12 WHEREAS, after the catastrophic flooding in the Plumtree Branch Watershed in July 2016, the
13 Maryland State Highway Administration (SHA) in coordination with the Howard County
14 Department of Public Works (DPW) conducted a Hydraulic and Hydrologic (H&H) analysis of
15 the Plumtree Branch area, along with other analyses of the July 2016 flood event in Ellicott
16 City, entitled, “Valley Mede Hydrology/Hydraulic Study and Concept Mitigation Analysis for
17 Plumtree Branch and Little Plumtree Branch,” which evaluated stormwater management options
18 (storage via ponds) and conveyance improvements (culvert upsizing and replacement, additional
19 storm drain) that could provide a significant reduction in discharges and water surface elevations
20 for the 100-year and more frequent storm events; and

21
22 WHEREAS, the increased severity and frequency of flooding in the Plumtree Watershed has led
23 to homes flooding, roads flooding, damage to culverts and storm drain infrastructure, and public
24 safety concerns warranting the need for the County to study, make recommendations, and
25 consider implementation of best practices in the watershed; and

26
27 WHEREAS, due to the potential that zoning changes may be necessary in the Tiber Branch
28 Watershed or the Plumtree Branch Watershed in response to the studies, reports, and
29 recommendations requested by this Bill and because the County Council is prohibited from
30 taking any zoning action until January 2019, it is imperative that the County have sufficient time
31 to consider, share with the public, and act on any recommendation concerning zoning changes in

1 the Tiber Branch Watershed or the Plumtree Branch Watershed.

2
3 **NOW THEREFORE,**

4
5 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the
6 Department of Inspections, Licenses and Permits shall not issue Permits for property that drains,
7 in whole or in part, to the Tiber Branch Watershed or the Plumtree Branch Watershed, as
8 highlighted in green on the ~~map~~ maps attached to this Bill as Exhibit A and Exhibit B,
9 respectively, during the Effective Period.

10
11 **Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland,
12 that, subject to the exception for emergency legislation as provided in the County Charter, the
13 County Council shall not pass any zoning regulation text amendment for property that drains, in
14 whole or in part, to the Tiber Branch Watershed or the Plumtree Branch Watershed during the
15 Effective Period.

16
17 **Section 3. And Be It Further Enacted** by the County Council of Howard County, Maryland that
18 the Zoning Board shall not take final action on any petition for approval of a development plan
19 or for piecemeal map amendment for property that drains, in whole or in part, to the Tiber
20 Branch Watershed or the Plumtree Branch Watershed during the Effective Period.

21
22 **Section 4. And Be It Further Enacted** by the County Council of Howard County, Maryland that
23 the Hearing Authority shall not hear or take final action on any application or petition related to
24 the zoning or development of a property that drains, in whole or in part, to the Tiber Branch
25 Watershed or the Plumtree Branch Watershed during the Effective Period. This prohibition
26 shall not apply to any appeal of an administrative decision which is not related to zoning or
27 development nor shall it apply to any enforcement action.

28
29 **Section-4. 5. And Be It Further Enacted** by the County Council of Howard County, Maryland
30 that the Department of Planning and Zoning and the Department of Public Works, along with
31 other appropriate units of County Government, are requested to study, as expeditiously as

1 practicable without compromising quality, the extent to which existing, planned, and future land
2 use, storm water management, drainage infrastructure, and flood mitigation for property that
3 drains in whole or in part to the Tiber Branch Watershed or the Plumtree Branch Watershed,
4 and any other relevant factor, may contribute to flooding in the each Watershed, share findings
5 as they become available with the public, and on or before May 31, 2019, submit to the County
6 Council a report of such study or studies and any recommendations about changes in law and
7 procedures that may help protect the Watershed from the effects of future flood events. Areas of
8 inquiry are to include, but not be limited to the following:

- 9
- 10 (1) An analysis of the May 27, 2018, flood based on the models and findings of the 2016
11 Ellicott City Hydrology/Hydraulic Study and Concept Mitigation Analysis and Valley
12 Mede Hydrology/Hydraulic Study and Concept Mitigation Analysis for Plumtree
13 Branch and Little Plumtree Branch; and
- 14 (2) Designs or plans for construction of stormwater storage facilities combined with
15 stormwater conveyance infrastructure improvements, and drainage infrastructure and
16 flood mitigation for property that drains in whole or in part to the Tiber Branch
17 Watershed or the Plumtree Branch Watershed; and
- 18 (3) An analysis of how any existing or proposed development or redevelopment of property
19 that drains in whole or in part to the Tiber Branch Watershed or the Plumtree Branch
20 Watershed may impact flooding in the Watershed Watersheds; and
- 21 (4) Proposed changes to the County's Stormwater Management regulations as they apply to
22 property that drains in whole or in part to the Tiber Branch Watershed or the Plumtree
23 Branch Watershed; and
- 24 (5) An analysis of public and private options for retrofitting existing public and private
25 property that drains in whole or in part to the Tiber Branch Watershed or the Plumtree
26 Branch Watershed that was developed with no or superseded stormwater management
27 requirements; and
- 28 (6) An analysis of potential general plan and density and open space zoning regulations
29 changes with respect to future development and redevelopment of property that drains
30 in whole or in part to the Tiber Branch Watershed or the Plumtree Branch Watershed;
31 and

1 (7) An analysis of creating a special benefits district for the Tiber Branch Watershed An
2 analysis of creating a special benefits district for the Tiber Branch Watershed and for
3 the Plumtree Branch Watershed, respectively, or other funding mechanisms to finance
4 stormwater and drainage infrastructure, and flood mitigation, and retrofitting
5 improvements for property that drains in whole or in part to the ~~Watershed~~ Watersheds;
6 and

7 (8) Any other matter that may assist the County in identifying and clarifying the various
8 complex factors contributing to flooding in the Tiber Branch Watershed or the Plumtree
9 Branch Watershed and in establishing a comprehensive plan for managing and
10 controlling such factors to the maximum extent practicable to protect public safety,
11 health, and welfare in the ~~Watershed~~ Watersheds.

12
13 **Section 5.6. And Be It Further Enacted** by the County Council of Howard County, Maryland
14 *that:*

15 A. *Short Title.* This Act shall be known as the “Tiber Branch Watershed and
16 Plumtree Branch Watershed Safety Act.”

17
18 B. *Purpose.* The purpose of this Act is to protect the public health, safety, and
19 welfare in the Tiber Branch Watershed and the Plumtree Branch Watershed. Based on the 2016
20 Ellicott City Hydrology/Hydraulic Study and Concept Mitigation Analysis, development in the
21 Tiber Branch Watershed or the Plumtree Branch Watershed may have contributed to flooding
22 events in the Watershed, especially in Historic Ellicott City. Also, based on the 2016 Valley
23 Mede Hydrology/Hydraulic Study and Concept Mitigation Analysis, development in the Plumtree
24 Branch Watershed may have contributed to flooding events in the Watershed. Planned and
25 future development of property that drains in whole or in part to the Tiber Branch Watershed or
26 the Plumtree Branch Watershed may pose a threat to public health, safety, and welfare in the
27 ~~Watershed~~ respective Watersheds, including to Historic Ellicott City, Valley Mede, and
28 Dunloggin. To combat this threat, this Act is necessary:

- 29 1. To provide the Department of Planning and Zoning and the Department of Public
30 Works, with help from other appropriate units of County government, time to
31 study the extent to which existing, planned and future development or

1 *redevelopment of property that drains in whole or in part to the Tiber Branch*
2 *Watershed or the Plumtree Branch Watershed and any other relevant factor may*
3 *contribute to future flooding in the ~~Watershed~~ respective Watersheds, identify*
4 *potential public policy and private solutions, and make recommendations for*
5 *changes in law and procedures to the County Council to protect public health,*
6 *safety, and welfare in the ~~Watershed~~ respective Watersheds, including in Historic*
7 *Ellicott City, Valley Mede, and Dunloggin; and*

8 2. *To provide the County Council time to study and act on any recommendations.*

9 C. *Definitions. For the purposes of this Act:*

10 1. *“Permit” means a building or grading permit issued by the Department of*
11 *Inspections, Licenses and Permits for property that drains in whole or in part to*
12 *the Tiber Branch Watershed or the Plumtree Branch Watershed.*

13 2. *“Development Review Process” means the process of review and decision on an*
14 *application submitted to the Department of Planning and Zoning or any other*
15 *applicable authorized County agency for a proposed subdivision or development*
16 *or redevelopment plan for property that drains in whole or in part to the Tiber*
17 *Branch Watershed or the Plumtree Branch Watershed.*

18 D. *Exemptions. The restrictions in this Act shall not apply to the following:*

19 1. *Any proposed construction on real property that drains in whole or in part to the*
20 *Tiber-Hudson Watershed or the Plumtree Branch Watershed involving the*
21 *reconstruction or repair of improvements on real property damaged by fire, flood,*
22 *or other natural disaster which results in no change of the square footage of*
23 *impervious surfaces that existed on the property prior to the natural disaster; or*

24
25 2. *Any proposed construction on real property that drains in whole or in part to the*
26 *Tiber Branch Watershed or the Plumtree Branch Watershed that does not change*
27 *the square footage of the impervious surfaces on the property over the square*
28 *footage of impervious surfaces that existed on the property prior to the Effective*
29 *Date of this Act; or*

30

1 3. *Any proposed construction that is exclusively devoted to improving storm water*
2 *management on existing developed property that drains in whole or in part to the*
3 *Tiber Branch Watershed or the Plumtree Branch Watershed.*

4
5 E. *Development Review Process. The development review process specified in Title 16*
6 *of the Howard County Code may continue notwithstanding this Act becoming*
7 *effective. Applications made to the Department of Planning and Zoning under the*
8 *development review process, filed before, on, or after the Effective Date of this Act*
9 *may proceed but shall not be considered for plan approval by the Department of*
10 *Planning and Zoning until the expiration of this Act. ~~The Department of Planning and~~*
11 *Zoning shall notify any current or future applicant in the development review process*
12 *of this Act and of the potential for changes to County law that might become*
13 *applicable to the plans under the development review process before a Permit is*
14 *issued. During the Effective Period, the Department of Planning and Zoning shall*
15 *grant an applicant's written request for an extension of a development review process*
16 *deadline for development or redevelopment of property that drains in whole or in*
17 *part to the Tiber Branch Watershed or the Plumtree Branch Watershed. No fees shall*
18 *be charged for requesting, processing, or granting such an extension.*

19 F. *Notice. During the Effective Period, the Department of Planning and Zoning shall*
20 *notify any current or future applicant in the development review process, any current*
21 *or future petitioner to the Zoning Board, or any current or future applicant to the*
22 *Hearing Authority of this Act and of the potential for changes to County law that*
23 *might become applicable to the plans under the development review process before a*
24 *Permit is issued.*

25 F. ~~Permitting deadlines~~ G. *Deadlines suspended. During the Effective Period, any*
26 *applicable ~~review~~ deadline or timeframe for a Permit, application, or petition that is*
27 *subject to this Act shall be suspended until this Act is no longer in effect.*

28 GH. *Severability. Should any part of this Act be declared unconstitutional or invalid*
29 *by a court of competent jurisdiction, such decision shall not affect the validity of the*
30 *remaining parts of this Act.*

1 *HI. Conflict with Existing Law. In case of a conflict between this Act and other applicable*
2 *law, this Act shall prevail.*

3
4 *IJ. Effective Date & Effective Period. This Act is adopted as an interim measure and*
5 *shall be in effect for twelve months (the Effective Period) from its Effective Date, and,*
6 *at the end of the day on the final day of the Effective Period, with no further action*
7 *required by the County Council, this Act shall be abrogated and of no further force*
8 *and effect unless this Act is modified, extended, replaced or terminated through a*
9 *subsequent legislative act of the Council.*

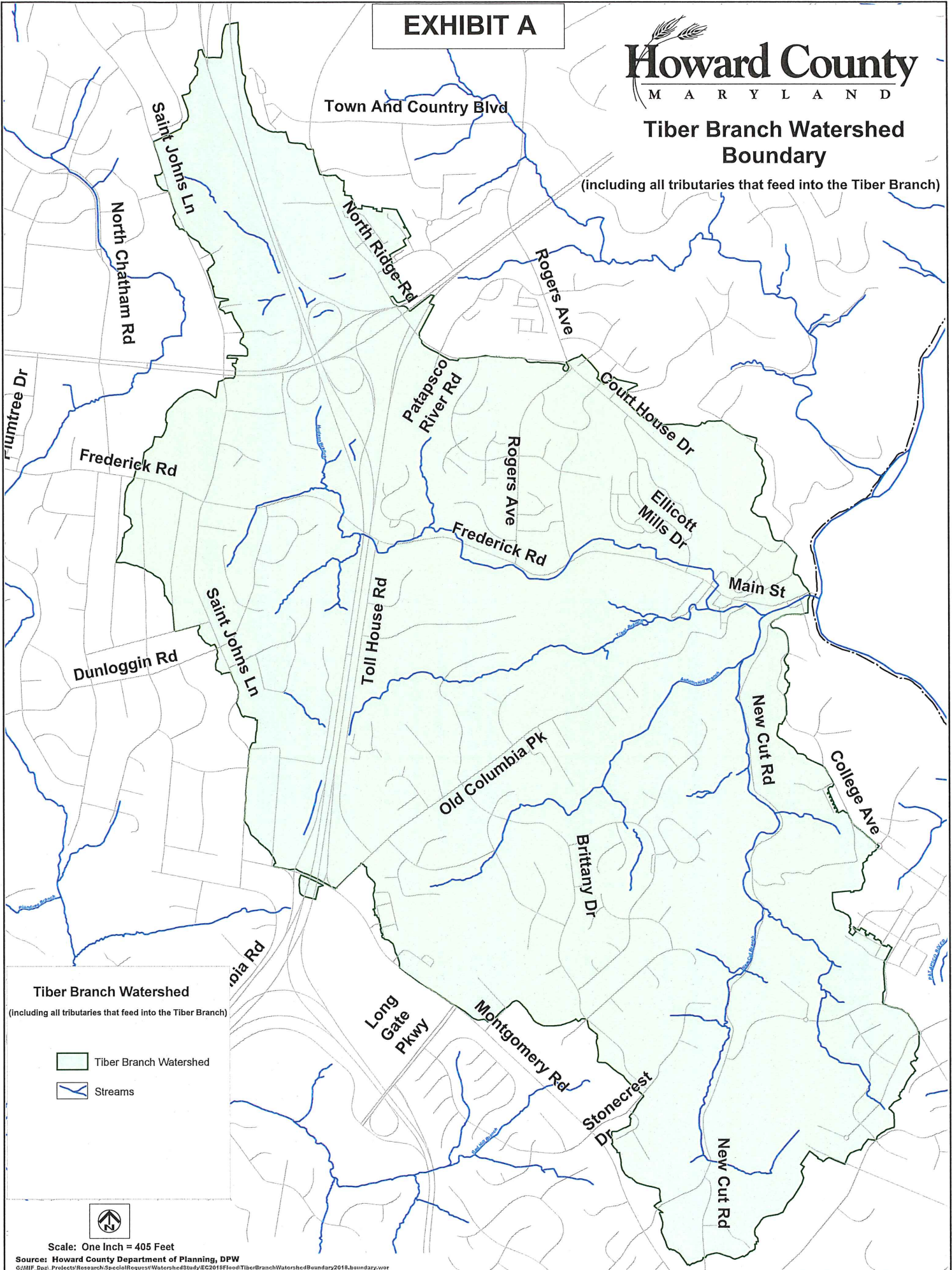
10
11 ***Section-6. 7. And Be It Further Enacted*** by the County Council of Howard County, Maryland
12 *that that this Act is hereby declared an emergency bill and necessary to meet a public emergency*
13 *affecting life, health or property and is effective upon enactment.*

EXHIBIT A



Tiber Branch Watershed Boundary

(including all tributaries that feed into the Tiber Branch)



Tiber Branch Watershed

(including all tributaries that feed into the Tiber Branch)

- Tiber Branch Watershed
- Streams



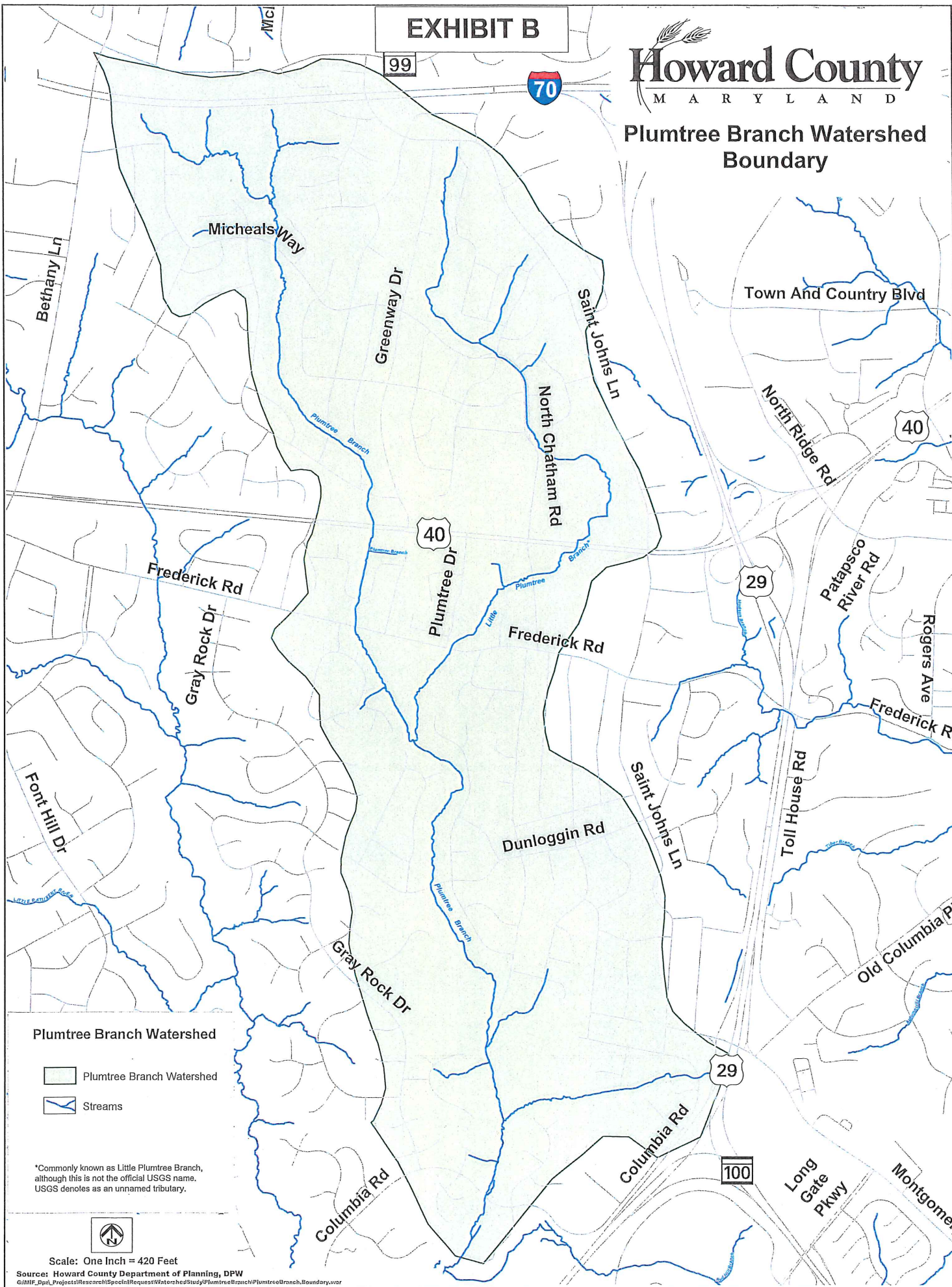
Scale: One Inch = 405 Feet

Source: Howard County Department of Planning, DPW

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EXHIBIT B

Plumtree Branch Watershed Boundary



BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on

July 27, 2018.



Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2018.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2018.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2018.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2018.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2018.

Jessica Feldmark, Administrator to the County Council