

**BOARD OF SUPERVISORS
PUBLIC HEARING
STAFF REPORT**

SUBJECT: **Ordinance to Establish a New Chapter of the Codified Ordinances of Loudoun County – Chapter 1099 Flood Mitigation and Protection Grant Program**

ELECTION DISTRICT(S): Countywide

CRITICAL ACTION DATE: At the pleasure of the Board

STAFF CONTACT(S): Dennis Cumbie, General Services
Ernest N. Brown, General Services

PURPOSE: To propose a new Codified Ordinance of Loudoun County (Attachment 1) that would create the legal mechanism for a Flood Mitigation and Protection Grant Program.

RECOMMENDATIONS: Staff recommends that the Board of Supervisors (Board) adopt the proposed Chapter 1099 of the Codified Ordinances (Attachment 1), establishing the legal mechanism for a Flood Mitigation and Protection Grant Program effective upon adoption.

BACKGROUND: At the [October 18, 2022, Board Business Meeting](#), the Board took the following action (9-0):

- 1) Approved the Loudoun County Local Resilience Plan;
- 2) Directed staff to advertise the Flood Mitigation and Protection Grant Program Ordinance for the December 14, 2022, Board of Supervisors Public Hearing; and
- 3) Endorsed the Floodplain Mitigation and Protection Guidelines (Guidelines) that set forth criteria to implement mitigation efforts in Selma Estates.

During the 2021 Special Session of the General Assembly, the General Assembly amended [§ 15.2-2114.01](#), Local Stormwater Management Fund; grant moneys, to expand the use of local Stormwater Management Funds to include flood mitigation and protection measures that are part of a comprehensive flood mitigation and protection plan adopted by the locality. This section of the Virginia Code allows localities by ordinance to “create a local Stormwater Management Fund consisting of appropriated local moneys for the purpose of granting funds to an owner of private property or a common interest community for stormwater management and erosion prevention on previously developed lands. Grants from such a fund shall be used only for (i) the construction, improvement, or repair of a stormwater management facility; (ii) erosion and sediment control; or (iii) flood mitigation and protection measures that are part of a comprehensive flood mitigation

and protection plan adopted by the locality. Grants made pursuant to clause (iii) shall, where practicable, prioritize projects that include nature-based practices.” These changes by the General Assembly allow for the County, based on an approved Flood Resilience Plan, and an adopted ordinance establishing a grant program, to provide grants for flood mitigation and protection. For Loudoun County purposes, this program is specifically focusing on clause (iii) of the legislation and is therefore being named and referred to as the “Flood Mitigation and Protection Grant Program (the Grant Program).”

At the [May 5, 2020, Board Business Meeting](#), the Board directed (9-0) staff to apply for a Flood Mitigation Assistance (FMA) grant offered through the Federal Emergency Management Agency (FEMA) to allow localized flood mitigation improvements for individual homes within FEMA’s Special Flood Hazard Area (SFHA) in the Selma Estates subdivision. Funds in the amount of \$3,410,000 for Fiscal Year 2022 were programmed in the Capital Improvement Program to serve as the grant match required as part of the FMA application. FEMA considered the proposed project cost-effective; however, the application did not score a high enough ranking, and FEMA did not select the application for grant funding. Based on Staff’s recommendation, the Board approved (7-0-2: Supervisors Buffington and Letourneau absent) the Administrative Items Report Item 2i, at the [June 7, 2022, Board Business Meeting](#), expanding the scope of the Selma Estates Flood Mitigation Capital Improvement Program Project to include flood mitigation projects, payments for release of claims, grants, the acquisition of interests in real property, and stormwater improvements within the project area.

The Guidelines (Attachment 2) were developed per the Board’s October 18, 2022 direction, the purpose of which is to provide a procedure to implement the one-time mitigation effort in Selma Estates and define the applicable Grant Program eligibility and application procedures. The Guidelines provide the ability for homeowners to request and use grant funds provided through the Grant Program for approved flood mitigation measures.

ISSUES: The proposed Grant Program provides a mechanism for the County to work with private property owners to address vulnerable property and infrastructure. Staff recommends that the Board create, by ordinance, a “Flood Mitigation and Protection Grant Program” (Attachment 1) to provide financial assistance to property owners through grants for flood mitigation and protection projects on their property. The new proposed ordinance provides eligibility requirements, identifies the allowable uses of grant funds, the general application process, and program administration. The proposed ordinance also notes that the County will only approve an application in accordance with the procedures of the Guidelines. The grants provided through the Grant Program are subject to appropriations and applicable Guidelines for the funding.

In addition to the Board’s approval of the Loudoun County Flood Resilience Plan and endorsement of the Guidelines that set forth criteria and eligibility to implement mitigation efforts, the Board must also adopt the Flood Mitigation and Protection Program Ordinance proposed in Attachment 1.

FISCAL IMPACT: The local tax funding appropriation for the Selma Estates Flood Mitigation Project was \$3.41 million. In 2022, the County made payments from the Project fund for the release of claims in the amount of \$550,000 and encumbered \$25,000 for engineering services, leaving approximately \$2.84 million available to support the proposed Grant Program.

ALTERNATIVES:

1. The Board may choose to adopt the proposed Flood Mitigation and Protection Grant Program Ordinance.
2. The Board may choose not to adopt the proposed Flood Mitigation and Protection Grant Program Ordinance.

DRAFT MOTIONS:

1. I move that the Board of Supervisors forward the Ordinance to Establish a New Chapter of the Codified Ordinances of Loudoun County – Chapter 1099 Flood Mitigation and Protection Grant Program to the January 17, 2023, Board of Supervisors Business Meeting for action.

OR

- 2a. I move that the Board of Supervisors suspend the rules.

AND

- 2b. I move that the Board of Supervisors adopt the Ordinance to Establish a New Chapter of the Codified Ordinances of Loudoun County – Chapter 1099 Flood Mitigation and Protection Grant Program provided as Attachment 1 to the December 14, 2022, Board of Supervisors Public Hearing Staff Report, effective upon adoption.

OR

3. I move an alternate motion.

ATTACHMENTS:

1. New Proposed Codified Ordinance of Loudoun County – Chapter 1099 Flood Mitigation and Protection Grant Program
2. Flood Mitigation and Protection Grant Guidelines

CHAPTER 1099

Flood Mitigation and Protection Grant Program

1099.01 Purpose.

1099.02 Establishment of flood mitigation and protection grant program.

1099.03 Definitions.

1099.04 Program administration and funding.

1099.05 Grant eligibility and application process.

1099.06 Project implementation and reimbursement.

1099.01 PURPOSE.

The purpose of this chapter is to promote the general health, safety, and welfare of the citizens of Loudoun County and protect state waters from the potential harm of unmanaged floodwaters by providing citizens with funding opportunities to implement flood mitigation and protection measures on private property.

1099.02 ESTABLISHMENT OF FLOOD MITIGATION AND PROTECTIONS GRANT FUND.

Pursuant to § 15.2-2114.01, Local Stormwater Management Fund; grant moneys, of the Code of Virginia, there is hereby established a local Flood Mitigation and Protection Grant Program (hereinafter the “Program”) consisting of local moneys budgeted for the purpose of granting funds to owners of private property or a common interest community in Loudoun County for flood mitigation and protection measures that are part of the Loudoun County, Virginia Local Resilience Plan. Grants made pursuant to this ordinance shall, where practicable, prioritize projects that include nature-based practices.

1099.03 DEFINITIONS.

The following words and phrases used in this chapter shall have the following meanings.

(a) “Applicant” means a person or entity applying for grant funding under the Program.

(b) “Flood mitigation” means actions taken that are designed to reduce or eliminate risk to people and property damage from flooding.

1099.04 PROGRAM ADMINISTRATION AND FUNDING.

(a) The Program will be administered by the Director of the Department of General Services (DGS) or his/her designee in collaboration with the Department of Finance and Budget (DFB). Technical review of applications will be performed by DGS staff, with any regulatory approvals to be provided by appropriate agencies.

(b) Grant opportunities under the Program are subject to the County's budgetary process. Nothing contained in this Chapter shall be construed as a requirement for the Board of Supervisors to budget and/or appropriate funds to the Program.

1099.05 GRANT ELIGIBILITY AND APPLICATION PROCESS.

(a) The County may provide grant funding to owners of property located in the County for flood mitigation and protection projects that meet Program eligibility requirements.

(b) Applications must meet the standards and criteria set forth in this chapter in accordance with the requirements and procedures of the Flood Mitigation and Protection Guidelines (Guidelines).

(c) Applicants must demonstrate:

- (1) The proposed project involves a habitable structure located in an area prone to repetitive localized flooding, or is in the Loudoun County Floodplain Overlay District, Major or Minor Floodplain;
- (2) Project is technically feasible; and
- (3) Project is cost-effective.

(e) All projects must be designed, developed, improved, operated, maintained, and monitored in accordance with all applicable federal, state, and local laws, statutes, ordinances, and policies, including but not limited to Chapter 1096 and Chapter 1220 of the Codified Ordinances of Loudoun County, the Land Subdivision Ordinance (LSDO), and the Loudoun County Zoning Ordinance.

(f) Projects must not increase flood risk to other dwellings or create adverse impacts to offsite properties as determined by the Floodplain Administrator in consultation with the Department of General Service, Department of Finance and Budget, and the County Attorney's Office (CAO).

(g) Only activities described in the Guidelines are eligible for funding.

(h) Application Process.

- (1) The applicant must submit a Program application pursuant to the application process developed in the Guidelines.
- (2) The County will evaluate applications according to the purposes of the Program and eligibility requirements contained in this chapter and the Guidelines.
- (3) Property owners must sign a waiver acknowledging that the flood mitigation project may not eliminate flood risk or damage.
- (4) The County will award grant funds based on available funding and project eligibility.

1099.06 PROJECT IMPLEMENTATION AND REIMBURSEMENT.

(a) Flood mitigation work completed in accordance with an approved application is reimbursable up to 100% of project costs incurred or the funding caps set forth in the Guidelines, whichever is less. Property owners will not receive reimbursement for funds associated with aesthetic improvements or upgrades to the electrical or mechanical systems unless applicable regulatory codes require the upgrades to complete the project.

(b) Property owners must start the project within 60-days of receiving approval from the County. Applicants can request an extension to the start date.

(d) Projects completion dates will be determined by the provided project schedule as required by the Guidelines. Applicants must ensure the project is complete by the agreed upon time after which if the project is not complete, funding authorization shall lapse.

(e) At the completion of the project, the applicant must provide documentation that they have obtained all required permits and approvals and provide itemized receipts showing payments made for eligible project work.

FLOOD MITIGATION AND PROTECTION GUIDELINES

Selma Estates Flood Mitigation Project

PROJECT SUMMARY

Upon adoption of the Flood Mitigation and Protection Grant Program (the “Grant Program”) ordinance, Loudoun County will offer financial assistance to eligible property owners in the Selma Estates Subdivision for projects that reduce the potential for loss of life and property due to flooding. Section 15.2-2114.01 of the Code of Virginia permits localities to adopt the Grant Program and potentially make the Grant Program available county-wide. Staff is only proposing that access to the Grant Program be available to eligible properties in the Selma Estates Subdivision to meet direction given by the Board of Supervisors.

BACKGROUND

At the Board Business Meeting on October 05, 2021,¹ the Board directed (9-0) staff to develop guidelines and establish criteria for a flood mitigation effort in the Selma Estates subdivision.

To implement the Board’s direction, staff developed the Flood Mitigation and Protection Guidelines (the “Guidelines”). The Guidelines set forth criteria and procedures for participation in the mitigation effort. The Departments of Building and Development (B&D), General Services (DGS), Finance and Budget (DBF), and County Attorney’s Office (CAO) created these guidelines through a collective effort.

Section 15.2-2114.01 of the Code of Virginia enables Loudoun County to adopt a grant program that can reimburse private property owners for flood mitigation projects.

The Selma Estates Flood Mitigation Grant Project (the “Project”), funded through the Grant Program will give affected property owners the opportunity to mitigate their properties against loss and damage due to flooding.

SELMA ESTATES FLOOD MITIGATION GRANT PROJECT

Between 2013 and 2018, significant flooding events had damaging impacts on homes within the Selma Estates community. A Federal Emergency Management Agency (FEMA) map revision, effective June 2019, placed several homes within the Special Flood Hazard Area (SFHA) indicating that they were susceptible to a one percent annual chance flood. The County contracted with a third-party consultant, Wood PLC. (Wood), to conduct a detailed watershed analysis and provide recommendations to reduce the flood risk in the community. Staff presented these at the December 3, 2019, Board Business meeting. Notably, the watershed analysis conducted by Wood more accurately depicts the limits and depth of the SFHA.

County citizens who purchased in the Selma Estates neighborhood prior to the map revisions provided by FEMA in 2019 and 2020, made these property purchase decisions without knowing the property and dwelling’s true risk of flooding. Exposure to dangerous flooding events puts

¹ October 05, 2021 Board item found [here](#).

residents and their property at risk. The implementation of the Project will provide property owners impacted by the flooding in this community potential grant funding for flood mitigation measures.

GOAL

The overall goal of the Project is to provide financial assistance to property owners via reimbursement so that they may reduce or eliminate flood risk for their homes and mitigate potential losses caused by flooding. Staff has assessed the potential for the County to address welfare and safety concerns due to reoccurring flooding issues. Access to financial assistance will allow property owners to undertake improvements that can address these welfare and safety concerns.

SCOPE

The purpose of these guidelines is to serve as a resource for applicants to understand the County's policies and requirements for eligibility, project types, the application process, and receiving funds. The Guidelines provide a means to provide details on the following activities: eligibility determinations, education of property owners on risk awareness and participation procedures, timelines for critical steps, and details on the application process.

CONCEPT

The Guidelines divide the Project into five steps. These steps include:

- Property Selection (Steps 1-2)
- Application Submission and Selection (Steps 3-4)
- Approval and Reimbursement (Step 5)

Each step provides additional details as well as the estimated amount of time for completion.

ADMINISTRATION

The Director of the Department of Finance and Budget (DFB) or his/her designee will be responsible for the administration of the Flood Mitigation and Protection Grant Program and Project. The Board of Supervisors may budget and appropriate for the Fund at its discretion.

LIST OF POTENTIAL MITIGATION ACTIVITIES

The following types of activities may be eligible for funding provided all other criteria are met:

1. Structure elevation
2. Structure demolition
3. Abandon basement and fill
4. Wet and/or dry floodproofing
5. Protecting service equipment

6. Other activities that bring a structure into compliance with the floodplain management requirements in Section 4-1509 of the Revised 1993 Zoning Ordinance (“Zoning Ordinance”).
7. Minor physical flood mitigation projects that reduce localized flooding problems
8. Engineering, design, permit fees, and/or construction of eligible flood mitigation projects.
9. The County will consider other types of practices on a case-by-case basis.

Interested property owners may be eligible for funding to implement flood mitigation measures that reduce the loss and damage of property due to flooding.

PROJECT APPLICATION STEPS

The following steps outline the process with estimated timeframes for administration of the Project.

Step One: Eligibility Determination and Property Owner Notification (15 days)

The Loudoun County Floodplain Administrator (Floodplain Administrator) determines which properties within Selma Estates are eligible to apply for County Assistance. The 15 days begin when the County has adopted the Flood Mitigation and Protection Grant Program ordinance. This determination is based on the eligibility criteria stated in the Guidelines-General section of the Guidelines. The County will provide written notification to the property owners who are eligible for County assistance.

Step Two: Consultation with Eligible Property owners (60 days, concurrent with Step Three)

At the request of the property owners, the Floodplain Administrator and DGS staff will meet with and educate property owners on current floodplain maps, models, project eligibility, and requirements to complete the preliminary application. The purpose of these meetings is not for County staff to provide consultation on specific projects, staff will direct property owners to discuss the viability and effectiveness of any project with a licensed professional.

Step Three: Preliminary Application (120 days, concurrent with Step Two)

Upon receiving written notification of eligibility from the County (Step One), eligible property owners have 120 days to provide written notice via the Preliminary Application. By submitting the Preliminary Application, property owners are stating their interest in participating in the grant process. With the Preliminary Application, property owners must provide an indication of the type of assistance they would like to pursue to include an initial cost estimate. The County will notify property owners who do not submit a Preliminary Application within 120 days of the notice that they are no longer eligible for County assistance.

For projects that propose impacts to the boundary of the floodplain or an increase in the base flood elevation, property owners will need to submit engineering analysis to the County that assess the impacts of the proposed project prior to the Preliminary Application being approved per Step Four. The applicant will have 4 months to have the engineering analysis approved by B&D.

Step Four: Application Evaluation (6 months)

Staff from B&D, DGS, DFB, and CAO will review Preliminary Applications collectively evaluating mitigation options available to each individual home. Staff will review applications for eligibility and cost effectiveness with consideration of the structures flood risk. Staff will ensure all submissions have met the guidelines. At the completion of the application evaluation, the County will send written confirmation of the completed application evaluation to property owners.

Step Five: Homeowner Flood Mitigation Projects (Risk Reduction) – County Grant (9 months)

For projects that are eligible for County assistance through the County-funded grant program, property owners must submit a Final Grant Application to the County. In addition to the completed application, the owner will also need to provide a scope of work for the project, a project timeline, and final cost estimates from three contractors. DGS staff, in collaboration with the Department of Finance and Budget and the Floodplain Administrator will complete reviews of the Final Grant Application and submitted documentation, including the scope of work and cost estimates. Property owners seeking reimbursement should not enter into an agreement with contractors until they have received final approval from the County, and both the County and the property owner have signed a Grant Agreement.

To receive reimbursement property owners must provide a request for reimbursement. Additionally, property owners will need to provide itemized receipts for purchase, installation, and contractor labor or copies of invoices from the contractor. Property owners must also provide proof of the completion for all applicable permits and/or required application reviews. A project may not be eligible for reimbursement if the property owner does not obtain the appropriate permits and/or reviews prior to the installation or project completion.

At the completion of the project, in addition to all required County inspections, staff will also perform a final inspection to verify the completion of the project per the Grant Agreement. Reimbursement will be contingent on the results of this inspection.

Flood mitigation work is reimbursable up to 100% of costs incurred up to the designated cap amount. Only those improvements directly related to flood mitigation for the 1-percent annual chance flood will be eligible for reimbursement. Property owners will not receive reimbursement for funds associated with aesthetic improvements or upgrades to the electrical or mechanical systems unless the County code requires the upgrades to complete the flood mitigation.

GUIDELINES - GENERAL

- For a property to be eligible for County assistance it must meet all the following criteria:
 - The dwelling must be in Phase 1 or 2A and Sections 1, 2, or 3 of Selma Estates Subdivision as defined by SBRD-2004-0009, SBRD-2005-0047, or SBRD-2010-0001.
 - The dwelling must fall within the area of revision for LOMR 21-03-1384P; and
 - The FEMA Letter of Map Amendment determination Case No. 22-03-0421A, must include the property address.
- Proposed projects may be eligible for participation if applicants demonstrate the project meets all the following criteria:

- Project is technically feasible. Applicant can demonstrate the project feasibility through conformance with accepted engineering practices, established codes, standards, modeling techniques, or best practices.
- Project is cost-effective and does not exceed the funding cap. The County will assess the effectiveness of the project through a benefit cost analysis.
- The design and implementation of the project is conformance with all local, State, and Federal requirements
- New property owners who close on an eligible property within the 120-day in Step Three, may participate in the Project. However, there will be no extension to the 120-day Determination of Interest period.
- Mitigation must not increase flood risk to other dwellings without that property owner's consent, as determined by the Floodplain Administrator in consultation with DGS, DFB, CAO, and consulting services.
- The approval of grant request applications submitted under the County's Project are at the discretion of the County and subject to funding limitations.
- The Project will consider structures located in the FEMA SFHA per LOMA Case No. 22-03-0421A a priority to receive funds.
- The Project will place a funding cap of \$205,0000 on projects for properties where FEMA has determined that the structure is within the SFHA per LOMA Case No. 22-03-0421A.
- The County reserves the right to adjust funding caps for specific as the Project budget permits.
- All mitigation must comply with all County requirements per the Loudoun County Zoning Ordinance (Zoning Ordinance) and the Facility Standards Manual (FSM).
- The County reserves the right to deny any application that does not meet the criteria outlined in this Project Plan.
- The project area is within the Limestone Overlay District (LOD) and any mitigation must comply with the requirements of the LOD.
- FEMA-regulated floodplain encumbers the project area and any work within the Floodplain Overlay District must follow all County procedures. This includes the approval of a Floodplain Alteration and coordination with FEMA. Coordination with FEMA can include a Conditional Letter of Map Revision if there is an increase in the flood depth as well as a Letter of Map Revision at the completion of the project.
- Property owners that receive County funding must dedicate a Floodplain Easement to the County.
- County funds cannot duplicate funds received from other sources for the purpose of mitigation. This includes legal awards or other benefits associated with properties or damage that are subject of litigation. Any property owner interested in County financial assistance must identify any potential Duplication of Benefits (DOB). [FEMA HMA Guidance Addendum 2015, Section A.6.9.3](#) provides examples of when DOB may occur.
- Staff will advise property owners to consult with a financial advisor concerning possible tax implications of receiving County funds.

- When applicable, the County will refer to FEMA and state resources for reference and guidance, including [FEMA Hazard Mitigation Assistance Guidance](#) and [FEMA HMA Guidance Addendum](#).
- The project is based on voluntary participation; however, the County retains the right to consider any legal means necessary to protect the safety and welfare of the public.

GUIDELINES – HOMEOWNER FLOOD MITIGATION PROJECTS TO **REDUCE RISK-** COUNTY GRANT

- Property owners must sign a waiver acknowledging that the flood mitigation project may not eliminate flood damage to the dwelling.
- Property owners must submit a detailed scope of work that includes a project description, itemized cost estimate and a project timeline. The County must approve the scope of work prior to the work beginning.
- Property owners must commit to flood mitigation efforts that reduce the risk of damage from the 1-percent annual chance flood.
- Property owners must obtain cost estimates from three state licensed contractors.
- Property owners must start the project within 60-days of receiving approval from the County. Applicants can request an extension to the start date.
- Projects completion dates will be determined by the provided project schedule. Depending on the scope of work the completion date may be approximately 6-months after the property owner and County sign the Grant Agreement, the Agreement Date.
- Property owners will be responsible for any necessary contracting and supervising during the project.
- Property owners are responsible for obtaining necessary permits; any project completed without first obtaining the appropriate permits and approvals will not be eligible for reimbursement.
- Property owners will be responsible for maintaining any structural improvements implemented to reduce the risk of flooding.