



December 21, 2009

Ms. Margaret McHale
Chair, Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Dear Ms. McHale

The Advocates for Herring Bay (AHB) support strong and effective protections for the land within the “buffer area” that adjoins the shoreline, wetlands, and streams in Maryland’s Critical Area. We believe that the Commission’s October 7, 2009 draft regulations would advance that goal by resolving many of the ambiguities in the existing rules that have undermined past efforts to preserve and restore buffer areas. As noted by Barbara Miller, who testified on behalf of AHB at the Commission’s December 10th public hearing, the new rules correctly emphasize the ecological quality of the buffer and provide clear guidelines for us to follow in managing these sensitive areas.

We would like to take this opportunity to identify certain strengths and weaknesses in the draft regulations. For example, we strongly endorse provisions that would: restrict the use of fees and offsite planting as a means of compliance; prevent localities from diverting such fees for other purposes; prohibit locally granted exceptions from the standards; require measures that optimize habitat value and water quality; and require protective easements to be recorded on buffer areas within newly platted subdivisions. Before adopting the final rules, however, we urge the Commission to make the following changes:

- Index the fees paid in lieu of planting for inflation and the growth in project costs. Unless the minimum fee in section .01-4(A)(2)(a)(ii) is adjusted regularly for rising prices, especially in the cost of acquiring land or easements, localities will lack sufficient funds needed to offset the degradation resulting from development in the buffer.
- Include eligibility criteria for determining when there is “no feasible alternative” to buffer mitigation (see sections .01-02(C)(2) and (C)(3)). We have little hope of stemming or reversing the loss of habitat in the buffer if developers can comply with the law by paying a small fee or planting trees offsite. While this section aims to limit those practices, it will remain vulnerable to abuse unless there are strict standards that preclude the use of fees and offsite planting except in rare and unusual circumstances.

- Add a square footage metric to the definition of “substantial alteration” in section .01-A(19). As drafted, the rules for such alterations would apply if the proposed footprint would increase by 50 percent or more. Percentages alone may not be a useful indicator of the ecological impact of the disturbance. That approach also could result in different standards for similarly sized projects because of differences in the size of existing homes and other structures. Including a quantitative measure tied to habitat requirements would better protect the buffer and ensure consistent treatment among property owners.
- Require areas that are disturbed as a result of measures to control invasive species to be replanted with species appropriate to the ecology of the site. For example, wetlands being treated to eradicate phragmites should be restored with marsh species, while upland areas should be replanted with the appropriate shrubs and trees.
- Authorize localities, in conjunction with the Commission, to develop programs that would encourage individual property owners to record protective easements on buffer areas. Much of the buffer has already been subdivided, so the new easement provisions will only protect a fraction of the land within the buffer. State and local governments could narrow that gap by providing incentives and streamlined procedures for adding protective covenants on existing lots.

Thank you for considering our views on the proposed buffer regulations. If you have any questions about our comments, please do not hesitate to contact us.

Sincerely,

Kathleen Gramp
President