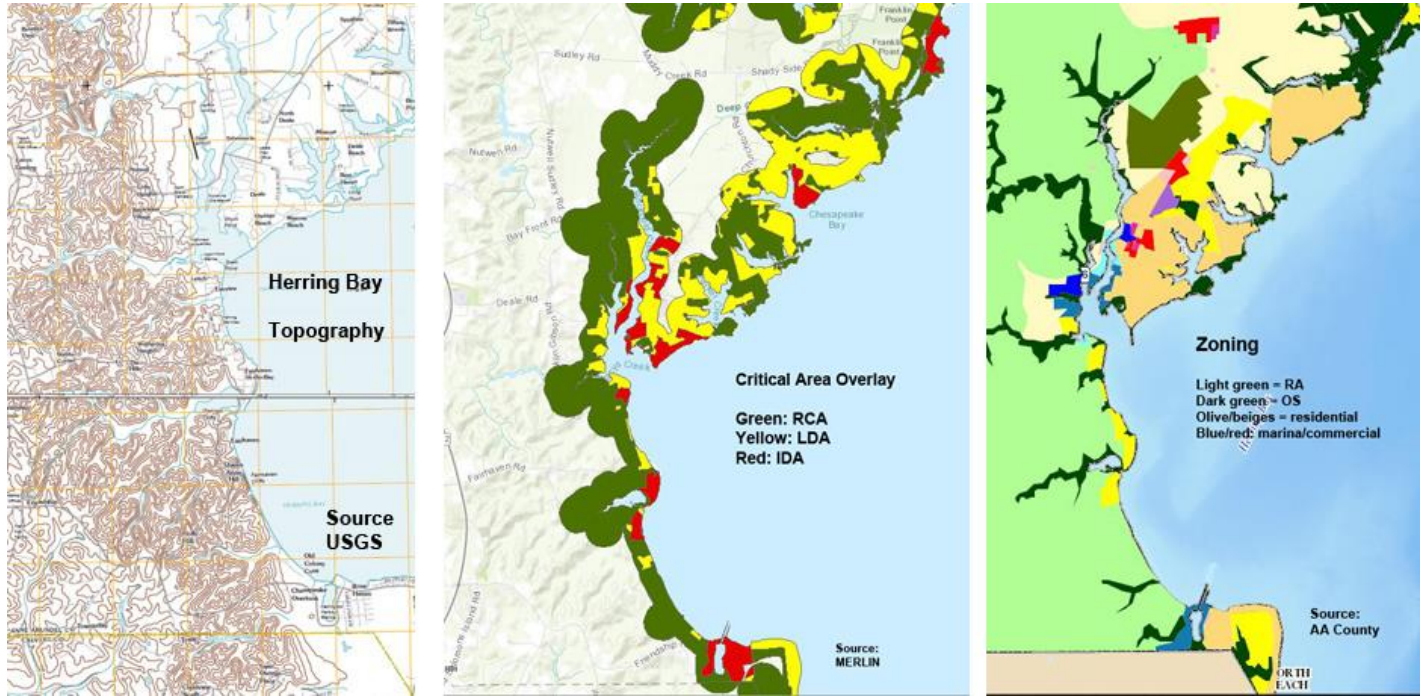


To: Elizabeth Rosborg, Chair, Citizens' Advisory Committee  
 Cindy Carrier, Head, Department of Long-Range Planning  
 From: Advocates for Herring Bay (AHB)<sup>1</sup>  
 Date: March 13, 2020  
 Re: Recommendations regarding zoning decisions affecting Herring Bay watershed

The Advocates for Herring Bay support land use policies that will preserve and protect the ecological resources in our watershed. This memo outlines four guiding principles that we believe should govern future decisions regarding zoning policies for Herring Bay. Our perspective is rooted in the environmental features of our watershed, which is characterized by steep slopes carved by streams and lowlands vulnerable to storm surges and sea level rise. Like us, “the County recognizes that preservation is a critical factor in Herring Bay,” and has made preservation the centerpiece of its watershed management strategy for our area.<sup>2</sup>

In our view, the two most important zoning policies currently protecting Herring Bay are the Critical Area Overlay—particularly standards for Resource Conservation Areas—and the use of Rural/Agriculture (RA) or Open Space (OS) zoning for environmentally sensitive areas like steep slopes, wetlands, and intact forests. The maps below show the relationship between the topography of the Herring Bay watershed and current Critical Area Overlay and zoning districts.



<sup>1</sup> The Advocates for Herring Bay is a community-based environmental group in South County.  
<sup>2</sup> See Anne Arundel County, Department of Public Works, *Herring Bay, Middle Patuxent, and Lower Patuxent Watershed Assessment, Final Report*, June 2018, p. 91.

We recommend that any proposed changes to the land use in Herring Bay be examined through the lens of the following four questions:

- Is the land in a Resource Conservation Area (RCA) in the Critical Area?
- If the land currently is zoned RA or OS, does it include lands with environmentally important features?
- Is the parcel vulnerable to inundation by storms or sea level rise, especially if water levels were to rise by a few feet by 2100?
- Would a proposed change be a form of “spot” zoning, which could lead to the unravelling of the zoning framework for other areas in the watershed?

The Advocates for Herring Bay believe decisions in such cases should be guided by the following principles:

**1. Adhere to the statutory terms and procedures governing RCA lands in the Critical Area.**

Under the 1984 Critical Area law, land designated as RCA must be managed in ways that “conserve, protect and enhance the overall ecological values of the Critical Area, its biological productivity, and its diversity” (COMAR 27.01.02.05). In keeping with that mandate, the state-approved list of uses allowed in RCA areas is limited to passive activities that minimize impervious surfaces and allow for the growth of forests and other vegetation that filters pollutants and absorbs floodwaters. The county has reinforced the state’s statutory standards by zoning most RCA parcels as RA or Open Space.

We oppose zoning changes that would allow more intensive land uses in the RCA overlay. Having biologically robust habitat along waterways is essential to the survival of aquatic and terrestrial species and the health of our maritime economy and communities. The RCA overlay also is one of the county’s best defenses against the growing risk of storm surges and sea level rise. As shown in attachment 1, land within 1,000 feet of our waterways will be the first and most severely affected by those changes. Maximizing natural vegetation in the Critical Area increases our capacity to absorb rising waters and minimizes the economic and social cost of storm damage.

We also oppose circumventing the procedures in state law for changing the intensity of development on an RCA parcel. Under the Critical Area law, counties were allowed to convert about five percent of the land originally mapped as RCA to limited development or intense development (LDA or IDA) through a “growth allocation process.”<sup>3</sup> Going out of sequence—changing the zoning before changing the Critical Area designation through the growth allocation process—would subvert this statutory framework and trigger litigation over whether the development rights in the new zoning category trump the limits in the RCA overlay.

**2. Maintain RA and OS zoning for parcels with environmentally important features.** Zoning categories allow varying degrees of impervious surfaces, forest clearing, and other development actions that degrade environmental assets. For example, owners can cover 75 to 85 percent of land zoned for commercial use, but only 15 or 20 percent if the parcel is zoned OS or RA, respectively. We oppose up-zoning parcels that currently are zoned RA or OS that include important ecological features, such as those used by the county to identify lands in Herring Bay that warrant preservation. As shown in Figure 4-2 in the county’s 2018 watershed assessment, part of which is shown on the next page, indicators of environmentally important lands include forest and wetland cover, the presence of

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<sup>3</sup> As of 2020, Anne Arundel County has 40 acres remaining in its growth allocation.

FIGURE 4-2: PRESERVATION INDICATOR RESULTS SUMMARY

Subshed Code	Subshed Name	Priority Rank	Final Habitat Score	Bioassessment Score	Percent Future Departure of Total Nitrogen	Percent Future Departure of Total Phosphorous	NRCS erodibility Factor	Percent Forest Cover	Percent Wetland Cover	Density of Headwater Streams in feet/Acre	Percent of Land within the Greenway Master Plan	Presence of Bog Wetlands	Acres of RCA Lands within the Critical Area	Percent of Protected Lands	Presence of Wellhead Protection Areas	Presence of Trout & Anadromous Spawning, and SSPRA
HBQ	Unnamed Tributary III	1	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████
HBV	Chesapeake Bay II	2	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████
HB9	Deep Cove Creek	3	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████
HB8	Broadwater Creek	4	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████
HB8	Deep Creek	5	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████
HB8	Carrs Creek	6	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████	██████

Source: Anne Arundel County Assessment of the Herring Bay Watershed, June 2018, page 102.

headwater streams or wellhead protection areas, the erodibility of soils, and inclusion of the land in the county’s greenway plan or in Maryland’s Targeted Ecological Areas.

**3. Minimize development on any lands vulnerable to inundation from storm surges or sea level rise.** Like private investors, Anne Arundel County must adopt a new paradigm for managing land use as we grapple with the impacts of sea level rise and storm surges. Those challenges go beyond shorelines and building codes, and include risks to the fiscal, financial, and personal health of our communities. For example, Mr. Larry Fink, the CEO of BlackRock—one of the world’s largest equity investment firms—recently asked:

*Will cities, for example, be able to afford their infrastructure needs as climate risk reshapes the market for municipal bonds? What will happen to the 30-year mortgage – a key building block of finance – if lenders can’t estimate the impact of climate risk over such a long timeline, and if there is no viable market for flood or fire insurance in impacted areas? <sup>4</sup>*

While planning for an uncertain future is a daunting task, we can begin by adopting zoning policies that are likely to reduce future risks. Specifically, we recommend that the county deny requests to up-zone parcels in areas projected to be at risk by 2100, especially those in the Critical Area; promote conservation easements on parcels in marsh and shoreline migration zones; and limit the addition of non-essential infrastructure and impervious surfaces in such areas.

**4. Finally, safeguard against “spot zoning.”** Up-zoning individual parcels on a piecemeal basis could have a domino effect on the surrounding area. Setting precedents for more intense development would be especially harmful in areas like Herring Bay, which benefit from having environmentally sensitive lands zoned RA and OS. We urge the county to deny spot-zoning requests.

Thank you for considering our views as you develop the GDP and review proposed zoning changes in Herring Bay (see Attachment 2). If you have any questions or comments on our recommendations, please contact Kathy Gramp or Paul Rensted at herringbay@gmail.org.

Cc: County Executive Stuart Pittman  
Councilwoman Jessica Haire

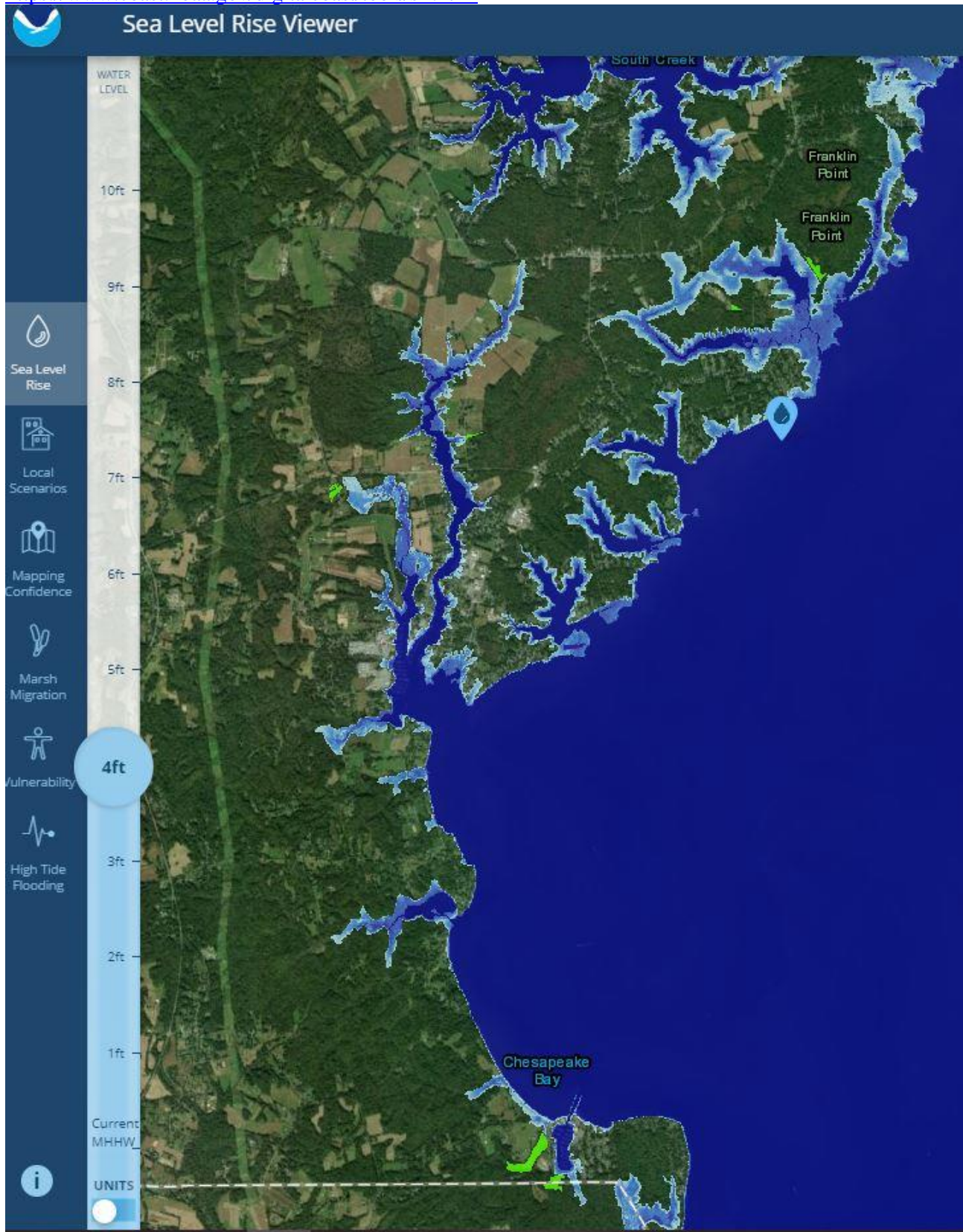
Attachment 1: NOAA map illustrating effects of sea level rise in Herring Bay  
Attachment 2: Extract of map showing location of proposed zoning changes in Herring Bay

<sup>4</sup> See Chairman’s letter to investors, January, 2020.

Attachment 1: Illustrative map of the potential effect of sea level rise on the Herring Bay watershed

Source: National Oceanic and Atmospheric Administration

<https://www.coast.noaa.gov/digitalcoast/tools/slr.html>



Attachment 2: Map showing location of proposed zoning applications in Herring Bay watershed

Source: Anne Arundel County

<http://annearundelmd.maps.arcgis.com/apps/webappviewer/index.html?id=9e467f3db6624e38ad5985dea9d9db7a>

