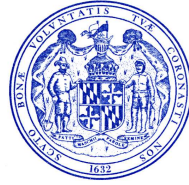


Larry Hogan
Governor

Boyd K. Rutherford
Lt. Governor



Charles C. Deegan
Chairman

Katherine Charbonneau
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

January 22, 2021

The Honorable Kumar P. Barve
Chair, Environment and Transportation Committee
Room 251, House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: Information Only – House Bill 160 - Environment – Wetlands and Waterways – Riparian Rights

Dear Chair Barve and Committee Members:

I am writing to provide feedback on House Bill 160 and how it may impact Critical Area law and regulations. This bill amends the Tidal Wetlands Act to add a new section, § 16-201.1, related to the riparian rights held by a community association. Specifically, HB 160 would prohibit the termination or impairment of a community association's riparian rights as a result of (1) erosion or sea level rise; or (2) the issuance of an approval by a county, MDE, or BPW to a waterfront property owner, "including the issuance of a wetlands and waterways or a building permit, license, or other approval." Our understanding is that this legislation was introduced because of a riparian rights issue related to the Cape St. Claire community association.

This bill, as proposed, may have unintended consequences on Critical Area law and regulations. If passed, "or other approval" (p. 2, line 5) encompasses Critical Area approvals by a local jurisdiction for lot consolidation and configuration. Specifically, the bill would prohibit a local jurisdiction from denying or conditioning an application for lot consolidation or reconfiguration. Lot consolidation/reconfiguration of existing grandfathered lots in the Critical Area must include an assessment of the number of riparian access points before and after the consolidation/reconfiguration. That number may decrease, but must not be increased. Allowing a community association or other entity to retain rights to submerged land and potentially incorporate those rights into a consolidation/reconfiguration, creates conflict where none exists right now. This could lead to an intensification in impacts to the shoreline and Buffer associated with riparian access and waterfront lots. This bill, then, substantially alters current local Critical Area Programs and their ability to deny or conditionally approve a lot consolidation and reconfiguration application.

In contrast with current common law, this bill may also allow for submerged land to retain a private status and be included in calculations used to increase density in the Critical Area or increase lot coverage in the Critical Area. Traditionally, land below Mean High Water belongs to

the State and thus may not be used to meet private development standards for Critical Area purposes.

If a community association is allowed to retain riparian rights to submerged land as proposed in the Bill, significant conflicts could be created with the Critical Area law, specifically in its recognition that the shoreline and adjacent lands are valuable, fragile and sensitive part of the estuarine system and human activity can have a particularly immediate and adverse impact on water quality and natural habitats.

Respectfully Submitted,

A handwritten signature in black ink, reading "Charles C. Deegan". The signature is written in a cursive style with a long horizontal flourish at the end.

Charles C. Deegan
Chairman, Critical Area Commission
Chesapeake and Atlantic Coastal Bays