



Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary

January 27, 2021

The Honorable Kumar Barve
Chair, Environment and Transportation Committee
Room 251, House Office Building
Annapolis, MD 21401

The Honorable Dana Stein
Vice Chair, Environment and Transportation Committee
Room 251, House Office Building
Annapolis, MD 21401

Re: Letter of Information – House Bill 160 – Environment – Wetlands and Waterways – Riparian Rights

Dear Chair, Vice Chair, and Committee Members,

The Maryland Department of Natural Resources is providing the following information on House Bill 160. This bill establishes that the riparian rights of a community association or entity may not be terminated or impaired as a result of erosion or sea level rise or the issuance of an approval by a county, the Maryland Department of the Environment (MDE), or the Board of Public Works (BPW) to a waterfront property owner.

House Bill 160 would significantly change long-established riparian rights law, which provides that land lost by erosion becomes State wetlands, held in trust for the benefit of the citizens of Maryland. It is concerning that this bill singles out community associations as the subject of these riparian rights changes, and not all riparian landowners. This mismatch in the rights afforded based on ownership status will create confusion.

The bill also potentially impacts actions of the department and the Critical Area Commission because of the reference to "other approvals" on page 2, line 5. This interpretation seems unlikely because the lead-in language seems to capture only "approvals" issued by a county, MDE, or BPW, but it's not clear what they intended to capture with that phrase. It might be read to include a county's decision to deny or conditionally approve certain Critical Area approvals. Even if this bill is read to impact only MDE, BPW and counties, if this bill is enacted, it would be potentially problematic for DNR to ignore the fact that community associations would have these statutorily established riparian rights recognized by other government bodies.

Finally, HB 160 ambiguously prohibits the termination or impairment of a community association's riparian rights from "erosion or sea level rise." It is unclear from this phrasing when and how MDE should start measuring erosion and sea level rise.

Thank you for allowing the department to submit this information on HB 160 for the committee's careful consideration.

Respectfully submitted,

James W. McKittrick
Director, Legislative and Constituent Services