



Commentary: Buffer Ordinance - One Step Forward, One Step Backward for Environment

Delaware Center for the Inland Bays

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On May 17, Sussex County Council passed an ordinance intended to better protect wetlands and waterways by enhancing buffers between them and new subdivisions. The result is both a clear step forward and clear step backward for protections at a crucial moment for waterway health. While the Council is commended for the gains realized, much more effective buffers are needed to protect and restore the Inland Bays.

The abundant wetlands and waterways of Sussex County define its very nature and are pillars of its coastal economy. Their role in filtering pollution, stopping floods, and providing habitat for fish and wildlife led the County to include them prominently in its 2018 Comprehensive Plan. That is a good thing, because for decades the County's wetlands and waters have been seriously damaged. Most of its waterways fail to meet their uses intended under the United States Clean Water Act, and pollution entering its most important waterways is going up. The Nanticoke River and Little Assawoman Bay are actually experiencing increasing loads of the nutrient pollution that fuel algal blooms, rob waters of their oxygen, and destroy aquatic habitats.

Development and the associated loss of forestland has long been recognized as an important contributor to this situation. Thankfully, requiring forested buffers along wetlands, streams, and bays has been shown to be an important means to protect waterway health.

Since 1988, the County has required 50-foot-wide buffers on tidal wetlands and waters and on large non-tidal streams in new subdivisions. Sadly, enforcement of the code has been spotty, resulting in irreparable damage to natural resources. Lawns instead of forests came to be permitted in buffers, and disturbances to existing forested buffers are common. For years, buffers on large streams were sometimes not required at all. Even very recently, homes in the Bay Point subdivision were built to the edge of a Herring Creek saltmarsh without penalty.

In the past, commitments for better buffers have been made to address this situation, but not acted on. One exception was the Delaware Department of Natural Resources and Environmental Controls' passage of its own buffer regulations for the Inland Bays in 2008. However, these were voided by a lawsuit led by the County in 2011. So, when the County set out to improve its buffer requirements in 2019, there were high hopes.



After extensive stakeholder input and a remarkable amount of public outcry for better buffers, the new ordinance includes both steps forward and steps backwards to protect wetlands and water resources.

The steps forward include the addition of measures to better protect buffers from disturbance. Examples are a prohibition of residential lot lines within buffers, a requirement for buffer management plans, and specific penalties for violations.

The extent and width of buffers was also increased. Buffers of 30 feet were added to small streams and non-tidal wetlands, and buffers on tidal waters and wetlands were enlarged from 50 to 100 feet. These increases are effective because any size buffer helps to protect waterways, and wider buffers do a better job. The 50-foot buffer on large streams was not increased, however, with no explanation why.

The steps backward include allowing non-forested buffers. This is a significant rollback from the previous ordinance's requirement of "natural vegetation," which in our neck of the woods is – well, woods. Forests provide better pollution control, better protection from disturbance, and provide the essential habitat needed for many sensitive species in the adjacent waters and wetlands. The ordinance also made it clear that if forests are removed prior to applying for a subdivision permit, they do not have to be re-established.

Another step backward is the inclusion of options to reduce buffers on a new development in exchange for protecting buffers or other natural areas offsite. Because these other areas could be miles away, the options defeat the purpose of buffers to protect the wetlands and waters impacted by the new development. In one option, buffers of large streams can be reduced from 50 feet to 25 feet. Another option allows the removal of a buffer that separates an existing subdivision from a new subdivision in exchange for protecting the forest in a waterway buffer.

While the gains in protection are a step in the right direction, they are inadequate to meet the unprecedented stresses to the County's water resources from development and climate change. The widths of the new buffers remain far less than what is recommended by the peer-reviewed scientific literature to protect waterway health. For example, buffers of a minimum 100 feet are recommended for large streams. The new buffers are also far less protective than overall wider and forested buffers required by nearby jurisdictions in Delaware, Maryland, and New Jersey.

In contrast to the ordinance's achievements, the rollbacks on protection present a fundamental challenge to the protection of the County's water resources. During the roughly three years it took to pass the ordinance, the County received applications for over 84 major new subdivisions. This breathtaking amount of growth is often near waterways and in areas vulnerable to



accelerating sea level rise. The costs and consequences of this to private property and public waterways in the coming decades will be extreme.

Simply put, to protect and actually restore the health of the waters of Sussex County, more effective policies are needed now. One step forward and one step back is not a solution. It is encouraging that hundreds of people provided thoughtful comments that helped improve earlier drafts of the ordinance. We ask the Council to begin work on amendments to the ordinance that increase the width of the buffers, require forests in the buffers, remove options to reduce the width of buffers, and extend buffer requirements to commercial and mixed-use developments. We encourage more people to express their desires for policies that will clearly protect and restore their waterways. The Center for the Inland Bays is committed to increasing its efforts to provide the science needed to develop effective policies and to support all those who desire to advocate for them.

Photo below: Example of a forested buffer along Love Creek.

