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November 2, 2010

Judy Broersma
Wetlands Specialist
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230-1708

Re: Wetlands Application, 08-NT-0377/200864539
Turtle Run Residential Subdivision, Deale, Anne Arundel County

Dear Ms. Broersma

The Chesapeake Bay Foundation (CBF) appreciates the opportunity to provide comments on the above-referenced wetlands application for the roadways connected with the Turtle Run Residential Subdivision in Deale, Maryland. As proposed the roadways portion of the project would permanently impact 7,874 square feet of forested nontidal wetlands and 39,158 square feet of the 25-foot wetland buffer. There are also temporary disturbances connected with the proposed project as well. We have multiple concerns with the proposed project application.

Piecemeal Approach to Permit Approvals

We disagree with the applicant's piecemeal approach to the required permitting and project approval process. We feel that by applying for a permit to fill only those wetlands impacted by the roadways, the applicant is hiding the true impacts, including cumulative, that the Turtle Run subdivision will have on the surrounding wetlands and water quality. The agency should require the applicant to submit one application that covers the entire project so that the Maryland Department of the Environment, Anne Arundel County, and the Critical Area Commission can evaluate the project and its impacts as a whole. It is absurd to think that the applicant would build a road to "no where;" one can imagine that they are breaking the project up into discrete proportions so that they can eventually use the road's construction as a reason that they should be allowed to proceed with the remainder of the project.

Under Maryland's Nontidal Wetlands law, the burden is on the permit applicant to demonstrate that proposed activity will not "cause or contribute to a degradation of groundwater or surface water" before MDE grants a nontidal wetland permit. Md. Code Env. § 5-

901(a)(3) (2008). Maryland regulations prohibit a regulated activity (here the filling of nontidal wetlands) that may “cause an individual or cumulative effect that degrades: (1) aquatic ecosystem diversity, productivity, and stability, (b) plankton, fish, shellfish, and wildlife, (c) recreational and economic values, and (d) public welfare.” COMAR 26.23.02.06(A). The Maryland Department of Environment Wetlands and Waterways Program defines three categories of impacts to wetlands: direct, indirect and cumulative and specifies that cumulative impacts, which include direct and indirect, are those that happen over time, as opposed to just the immediate result of the regulated activity.¹ Following the above referenced regulations and guidelines, MDE has to consider past, present and future impacts when making their permit decision on this proposal and therefore cannot look at the impacts of the roadways in isolation; the agency must look at the impacts of the roadways, the construction of the 18 proposed dwellings and the ongoing impacts associated with the conversion of forest and wetlands to developed land. To do otherwise would be to ignore Federal and State law. Without all the project details presented for consideration by the applicant we fail to see how the application has meet its legal burden and how MDE has the information necessary to issue a sound project approval.

Additional Loadings to Impaired Waterways

CBF is concerned about the additional loadings that this roadway and the proposed subdivision will add to already impaired waters. While the application claims that there will be no impacts to streams, we fail to see how the proposed roadway and accompanying subdivision will not impact the surrounding water quality given that the land is primarily being converted from wetlands and forest which serve as natural filters to developed land that lacks the same protective qualities. According to MDE mapping, Deep Cove Creek appears to be part of an adjacent Chesapeake Bay segment that is listed on Maryland’s 303(d) as impaired for both nutrients and sediments. Given that there is no TMDL for this segment for either nutrient or sediment impairments the increase in nutrient and sediment loads due to construction of the roadways and the proposed subdivision would violate 40 C.F.R. § 122.4(i) which specifically prohibits additional pollutant loads to listed waters in the absence of a TMDL for that impairment.

The type of land conversion being proposed by the applicant, from natural filters such as wetland and forest land to low-density development, will increase the pollutant loads generated within this watershed while simultaneously decreasing the watershed’s ability to naturally absorb such pollution. On average, on a pound-per-acre basis, developed lands produce roughly nine times more nitrogen pollution than forested lands. In a watershed already listed as impaired for nutrients the additional impact being proposed will “cause or contribute” to the degradation of water quality in violation of Maryland’s Nontidal Wetlands law and therefore MDE should deny the application. Md. Code Env. § 5-901(a)(3) (2008).

Inconsistent and Inaccurate Site Plans & Application

CBF feels that MDE has no other choice but to deny the permit application given the number of inconsistent and ever-changing site plans submitted by the applicant. We do not think that MDE can adequately evaluate the proposed project and make a determination that the project will not “cause or contribute to a degradation of ground water or surface water” when the applicant continues to submit different site plans and site plans that only delineate a portion of the overall project at a time. COMAR 26.23.02.04 A (3). Additionally, it is unreasonable and prejudicial to

¹ http://www.mde.maryland.gov/Programs/WaterPrograms/Wetlands_Waterways/about_wetlands/disturbance.asp

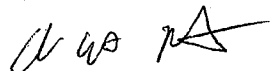
the public for the applicant to submit for the first time yet another new site plan at the public hearing and expect the public to constructively offer public comments on the most recent submittal that very same evening.

CBF also would like to raise the following additional concerns on the site maps and application materials submitted thus far by the applicant:

- The wetlands delineation appears to be inaccurate. According to the application, the wetlands delineated by the applicant have been approved by the Army Corps of Engineers ("Corps") but that was based on a site visit that took place in May 2006 and based on flags on the subject property at the time of that visit. The "current" site plan differs from the 2006 plan submitted to the Corps and CBF doubts that the current proposal matches the flags used in 2005 site visit;
- The application fails to accurately describe the extent of wetlands disturbance;
- The application fails to fully describe the wetlands functions proposed for disturbance and the impacts to those functions by the proposed disturbance;
- The application fails to establish consistency with the Section 404(b) guidelines and Maryland SPGP-3;
- The application fails to accurately describe the critical area boundaries under current law. The application only shows a 100 foot buffer when under current law the buffer extends 200 feet;
- The application fails to describe the secondary impacts associated with the proposed disturbance. For example, there will be a number of trees removed that are currently acting as a buffer but the application fails to discuss this secondary impact;
- Although the application states that threatened and endangered species exist on the site, the application fails to identify the types of threatened or endangered species on the site or the nature and extent of impacts the proposed disturbance will have on those species;
- While the cover letter to the October 2010 application states that stormwater management will be installed the application fails to identify what types of management practices will be installed or where;
- CBF questions the assertion that only nontidal wetlands are impacted by the proposed disturbance and suspects that some of the wetlands being impacted along Deep Cove Creek may be tidally influenced.

We appreciate the opportunity to comment on this permit application and we request that MDE hold off on making any permit decisions related to Turtle Run until the entire subdivision plan is presented to MDE, the county and the Critical Area Commission. We hope that MDE will honor the sentiments expressed by the chief of the Wetlands and Waterways Division, Amanda Sigillito, at the hearing that the agency will hold their decision until other agencies had the opportunity to review the plans. Should MDE reject this request, we ask that the wetlands permit application be denied.

Sincerely,



Alison Hooper Prost
Maryland Office Attorney
Chesapeake Bay Foundation