

To: Montgomery County Councilmembers

From: Friends of Ten Mile Creek and Little Seneca Reservoir and Coalition Partners

RE: ZTA to improve protection of our drinking water supply by eliminating exemptions from Environmental Overlay Zones' caps on impervious surfaces in Ten Mile Creek watershed

Date: Thursday, July 2, 2020

\* The Ten Mile Creek Limited Master Plan Amendment, enacted by the Montgomery County Council and adopted by the Planning Board in 2014, is implemented in part via the Clarksburg East and West Environmental Overlay Zones (EOZs).

\* **The Ten Mile Creek plan and Clarksburg EOZs are based on the science of watershed protection, that indicates that in order to protect high-quality, clean streams such as Ten Mile Creek, we must enforce the strictest-possible limits on development and specifically, on addition of hard, paved, impervious surfaces. The Save Ten Mile Creek Coalition asks the Council to strengthen protection of Ten Mile Creek by eliminating exemptions from the impervious surface limits that the County established in 2014.**

\* The Clarksburg EOZs establish science-based impervious surface limits that are applied site-plan by site-plan, with a 15% imperviousness limit for Clarksburg East, and a 6% limit for Clarksburg West.

\* **The Ten Mile Creek plan, including its impervious surface limits, withstood a court challenge** by the Pulte development corporation when in 2018, the Fourth Circuit Federal Court upheld them, declaring they do not amount to a "taking."

\* When the council enacted these limits in its approval of the Ten Mile Creek plan and EOZs, it also added a set of **four categories of exemptions from these limits** for the following types of properties: existing developments staying as-is or being reconstructed; additions to existing detached houses; development on parcels less than two acres; and publicly-funded roads or bikeways. The Save Ten Mile Creek Coalition objected to these exemptions, noting that because they allow additional imperviousness not subject to the caps, they don't follow the science indicating that we must restrict additions of imperviousness to the lowest-possible levels in order to maintain the high quality of Ten Mile Creek and avoiding further pollution of Little Seneca Reservoir.

\* **The existing exemption for any "publicly funded road or bikeway" if left to stand, enables Governor Hogan's proposed expansion of I-270 to add approximately 7.5 acres of pavement to Ten Mile Creek,** without a mandate to reduce pavement in the project's footprint and elsewhere in Ten Mile Creek. There is a precedent where SHA reduced imperviousness associated with a 2002 road project in Upper Paint Branch. Upper Paint Branch has an 8% imperviousness cap, and no exemptions for public projects.

\* **Given these facts, the Friends of Ten Mile Creek and our allies in the Save Ten Mile Creek Coalition propose to strengthen the Ten Mile Creek regulations by removing three of the four categories of exemptions.**

### Further Background

\* In the six years following enactment of these Ten Mile Creek regulations, we've experienced toxic algae blooms at Lakes Frank and Needwood, and also at the Patuxent reservoirs. Climate disruption, with its bigger storms, is intensifying erosion and sediment pollution caused by impervious surfaces. The climate and toxics lessons we've learned indicate that we need to strengthen, not weaken, our clean water protections including those we apply and enforce to protect Ten Mile Creek. We must reduce, not add to, the stock of impervious surfaces in Ten Mile Creek's watershed.

\* The Planning Board's proposed Zoning Text Amendment, submitted to the Council via a letter from Chair Anderson on April 2, 2020, would broaden one of the existing exemptions from the imperviousness limits in the Clarksburg Environmental Overlay Zones – the one pertaining to publicly funded roads and bikeways. This proposed ZTA would extend this exemption to all bikeways regardless of how they are funded.

\* Contrary to the claims made by some, the Planning Board's proposed ZTA would not be a "clarification," it would be a change in policy as noted by the Council's Zoning expert, Jeff Zyontz. According to our own analysis, shared with letters sent to the County Council in May and June of this year, the proposed "change in policy" would result in more pollution of Ten Mile Creek and Little Seneca Reservoir – a regionally-important drinking water supply.

\* The Planning Board's proposal is not a wise way to accommodate bikeways in the Ten Mile Creek watershed. In order to accommodate bikeways, which we support, while enforcing clean-water rules, the Planning Board and staff must work with developers to offset pavement increases due to any bikeways, with equal or greater decreases in pavement from other built features, such as through narrowing of driveways and parking areas. This "offset" method is well-known to Montgomery County planners, who've applied it for years in other areas with imperviousness caps – including Upper Paint Branch and Upper Rock Creek.

\* According to the large body of science, in peer-reviewed reports based on local, regional, and national studies, the more imperviousness that's added to the watershed of a highly-sensitive, clean, biologically-diverse stream, the more pollution and biological loss is observed in the stream. So, any addition of imperviousness to a watershed and stream as sensitive as Ten Mile Creek – even "one or two acres of additional pavement here and there" is damaging, and worsens pollution problems.

\* In order to fulfill the intent of the 2014 Ten Mile Creek Limited Master Plan Amendment to protect Ten Mile Creek by following the science of watershed protection, the Friends of Ten Mile Creek and Little Seneca Reservoir and our coalition allies, propose a Zoning Text Amendment to eliminate three out of the existing four types of exemptions from the Clarksburg East and Clarksburg West Environmental Overlay Zones.

## ATTACHMENT 1

Zoning Text Amendment No.: 20-\*\*

Concerning: Overlay Zones – Clarksburg East & West

Environmental Exemptions

Draft No. & Date: 1 – 6/29/2020

Introduced:

Public Hearing:

Adopted:

Effective:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF

THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN

MONTGOMERY COUNTY, MARYLAND

Lead Sponsor:

---

AN AMENDMENT to the Montgomery County Zoning Ordinance to: - Remove exemptions from the overlay zones' impervious surface restrictions

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

ARTICLE 59-4 . “ Development Standards for Euclidean Zones”

ARTICLE 59-4 . “ Development Standards for Euclidean Zones”

Section 4.9.5. “ Clarksburg East Environmental (CEE) Overlay Zone”

Section 4.9.6. “ Clarksburg West Environmental (CWE) Overlay Zone”

EXPLANATION: Boldface indicates a Heading or a defined term.

Underlining indicates text that is added to existing law by the original text amendment.

[ Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

\* \* \* indicates existing law unaffected by the text amendment.

OPINION

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Zoning Text Amendment No.: 19-\*\*

3

1 Sec. 1. ARTICLE 59-4 is amended as follows:

2 DIVISION 4. 9. Overlay Zones

3 \* \* \*

4 Section 4.9.5. Clarksburg East Environmental (CEE) Overlay Zone

5 \* \* \*

6 **B. Exemptions**

7 1. Any impervious surface lawfully existing under a building permit or  
8 sediment control permit issued before August 4, 2014 that exceeds the  
9 applicable impervious surface restriction may continue or be  
10 reconstructed with the same or less impervious surface area under the  
11 development standards in effect when the building permit or sediment  
12 control permit was issued.

13 [2. An impervious surface resulting from an addition to an existing detached  
14 house or an accessory structure to a detached house, not approved as part  
15 of a site plan under Section 7.3.4, is exempt from this Overlay zone's  
16 impervious surface restriction.]

17 [3. On any lot or parcel with an area less than 2 acres as of January 1, 2014,  
18 any development is exempt from this Overlay zone's impervious surface  
19 restriction.]

20 [4. Impervious surface for any publicly funded road or bikeway  
21 [identified by the Ten Mile Creek Area Limited Amendment to  
22 the Clarksburg Master Plan and Hyattstown Special Study Area] is  
23 exempt from this Overlay zone's impervious surface restriction.]

24 \* \* \*

25 Section 4.9.6. Clarksburg West Environmental (CWE) Overlay Zone

26 \* \* \*

27 B. Exemptions

Zoning Text Amendment No.: 19-\*\*

4

28 1. Any impervious surface lawfully existing under a building permit or  
29 sediment control permit issued before August 4, 2014 that exceeds the  
30 applicable impervious surface restriction may continue or be  
31 reconstructed with the same or less impervious surface area under the  
32 development standards in effect when the building permit or sediment  
33 control permit was issued.

34 [2. An impervious surface resulting from an addition to an existing  
35 detached house or an accessory structure to a detached house, not  
36 approved as part of a site plan under Section 7.3.4, is exempt from this  
37 Overlay zone's impervious surface restriction.]

38 [3. On any lot or parcel with an area less than 2 acres as of January 1,  
39 2014, any development is exempt from this Overlay zone's impervious  
40 surface restriction.]

41 [4. Impervious surface for any publicly funded road or bikeway  
42 [identified by the Ten Mile Creek Area Limited  
43 Amendment to the Clarksburg Master Plan and Hyattstown Special  
44 Study Area] is exempt from this Overlay zone's impervious surface

45 restriction.]

46 \* \* \*

47 Sec. 2. Effective date. This ordinance becomes effective 20 days after the

48 date of Council adoption.

49

50 This is a correct copy of Council action.

51

52 \_\_\_\_\_

53 Selena Mendy Singleton, Esq.

54 Clerk of the Council