

BUFFERS AND TAKINGS

What is a “taking”?

The term “taking” stems from the United States Constitution. The Takings Clause of Article V of the United States Constitution states that “nor shall private property be taken for public use, without just compensation.” The Pennsylvania Constitution contains a similar provision.

These constitutional provisions mean that, when the government takes your property for public use, it must compensate you fairly for that loss.

Some overly-restrictive land use regulations can, under the law, constitute a taking. For example, where a regulation authorizes a “physical invasion” of private property, it is a taking. Short of physical invasion, a regulation constitutes a taking only if it goes “too far,” such as when the regulation denies all economic use of the land, or when it unjustly forces one or more persons to bear public burdens that should be borne by the public as a whole.

Does restricting development in buffers along streams constitute a “taking”?

No. It would be exceedingly rare for reasonable limits on land use such as restricting development in riparian buffer areas along streams to constitute a “taking” under the United States or Pennsylvania Constitution. Regulations which are clearly based on preventing a community hazard or harm to others have been consistently upheld in the face of takings challenges. Takings concerns are nonexistent where the buffer regulation remains rationally related to legitimate police powers, draws upon existing science regarding the benefits of riparian buffers, allows for reasonable non-intrusive uses within buffer areas, and grandfathers existing structures.

***Buffers 100* is a well-crafted proposal that does not pose any takings concerns.**

A rule requiring developers to maintain forested buffers along streams within property being developed clearly serves the legitimate interest of promoting health, safety, and welfare. Ensuring that certain land uses do not destroy the important health, safety and environmental functions of forested riparian areas fits squarely within government’s police powers.

Buffers 100 is a proposal grounded in sound science. The benefits of forested buffers—flood protection, pollution removal, increased property values, infrastructure cost savings, erosion control—are numerous and well-documented. So are the benefits of widths proposed in *Buffers 100*—pollution removal is maximized when forested buffer widths are 100 feet or greater.

The proposal also allows reasonable uses of land to continue. Although invasive activities such as construction are prohibited within the buffer, disturbance of soil and vegetation to conduct minimally disruptive activities is still permitted. Moreover, developers are free to develop other portions of their properties outside of the buffer area. Finally, the rule does not apply to existing development, thus protecting any homes and structures already built in buffer areas.

Allowing development in buffers—the hidden taking.

Allowing development to proceed in buffers actually takes from all of us. Clean drinking water, healthy streams for fishing and swimming, protection from stormwater damage and flooding, and robust property values and local economies are all threatened when buffers are not protected.