

Chesapeake Bay Critical Area Commission Public Hearing
Regarding the Proposed Town Point DMP Rehabilitation Plan
Anne Arundel County Capital Improvement Project
Grading Permit # G02012451

Testimony of the Advocates for Herring Bay
September 21, 2007

When Anne Arundel County mapped Town Point as a resource conservation area (RCA) in the mid-1980s, it made a commitment to the state that this land was and would continue to be used to “conserve, protect, and enhance the overall ecological value of the Critical Area, its biological productivity, and its diversity” (27.01.02.05). In the application being considered here, the county is proposing to use over nine acres of RCA land to store spoils from dredging projects. The way that this state-funded project is implemented will determine whether the county will make good on its commitments under the Critical Area law.

The Advocates for Herring Bay (AHB) are among those who raised red flags about the county’s original plans for Town Point. The county initially planned to operate a recycling center for spoils at Town Point, proposing to build an 80,000 cubic yard storage pit that would have been repeatedly excavated and refilled with spoils from numerous waterways for an indefinite period of time.¹ Operating Town Point as a dredge material transfer facility—essentially treating it as a nine-acre borrow-pit for spoils—would have impaired the ecological value of this resource conservation area and adversely affected those who live nearby. That intensive use also would have deviated from the historical use of this land for farming and for the passive storage of dredged materials by the Army Corps of Engineers. AHB wrote to the Critical Area Commission on February 27, 2007 expressing our concerns about this plan, which seemed inconsistent with state and local guidelines for RCA areas and scenic and historic roadways.

Thanks to leadership at all levels of the county government, the facts of this case have changed since February. The details of the county’s revised plan, which are documented in the July 24, 2007 letter from County Executive John Leopold to AHB, suggest that the County will:

- only use Town Point to store spoils from three local waterways, Town Point Cove and Broadwater and Carrs Creeks, for which state funds have already been appropriated;
- end the county’s use of the site by June 30, 2011, a deadline that reflects current schedules and the time limits on the state appropriations;

¹ Permitting documents focus on construction features, not on the way the site would be operated. Documentation on the original operating plan for Town Point is limited to the county’s internal planning charts and a presentation by Bay Land Consultants at a hearing held by the Maryland Department of the Environment on February 7, 2007.

- limit the new capacity to 80,000 cubic yards, and
- work with the property owner to restore the site by vegetating it with native materials and pursuing the possibility of placing it under a conservation easement.

The county's revised plan holds great promise. By providing for the limited, one-time, passive storage of spoils at Town Point, the county should be able to meet the dredging needs of three major South-County waterways in a manner compatible with the land use guidelines for RCA sites. Operating a fill-and-cap storage facility also would be consistent with the way the site was previously used by the Army Corps of Engineers. As a result, the Advocates for Herring Bay would support Commission approval of this application if it is expressly subject to the condition that Anne Arundel County develop, operate, and restore the Town Point facility according to the terms of Mr. Leopold's July 24, 2007 letter to AHB. We assume that the county would agree to the inclusion of this condition by the Critical Area Commission, because the County Executive's letter is the only official record of the county's revised plan and the letter is directly tied to the project's "permitting circumstances."

AHB believes it is essential that the Critical Area Commission make its approval expressly contingent on compliance with Mr. Leopold's letter for at least two reasons. First, much of the documentation supporting this application predated that letter and includes ambiguous descriptions regarding the scope of the project. Making Commission approval contingent on adhering to the terms of that letter would eliminate uncertainty that may stem from such inconsistencies and avoid possible confusion in the future about the county's or the Commission's intent with regard to this project.

Second, accountability and transparency are especially important for government-run projects. From a land-use perspective, Anne Arundel County is both the developer and regulator of the Town Point facility. This Commission is one of the only "checks" on the county's actions, the only agency that will consider the project holistically and in the context of our Critical Area law. While we believe the county has every intention of adhering to the plans outlined in the letter sent to AHB, the fact remains that without effective oversight by this Commission, the county could change those plans in the future without being accountable to anyone but itself. Any reversal or departure from the land-use commitments in Mr. Leopold's letter should warrant a fresh review by this Commission, but that will only occur if you condition your approval of this application on compliance with the terms of that letter.

As taxpayers, we also ask that you include performance stipulations that will maximize the long-term benefits to the Bay. Last winter's offloading operation at Town Point showed that going with the cheapest method will likely be more costly in the long run,

both financially and environmentally.² We ask, for example, that you require the county to do more than just plant grass seed on the disturbed areas. Proactive management of phragmites during the construction, operation, and closure of the site may reduce the cost to federal and state agencies trying to eradicate this invasive species from Trotts Branch and other areas around Town Point. Similarly, adhering to the 2:1 ratio for mitigating impacts on the 100-foot buffer would add to the cost of this project but may reduce future spending on measures to mitigate the impacts of excess sediment in the Chesapeake Bay. Private developers may invest for near-term profit, but government investments should balance public costs and benefits over time.

Herring Bay is a special place and we ask you to protect it. Much of the shoreline south of Deale is—like Town Point—designated as a resource conservation area. It supports a wealth of native vegetation as well as raptors, shorebirds, amphibians, and other species. We hope your decisions in this case will protect what is left of this scarce and vital resource.

Respectfully submitted by

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² The county expects to spend hundreds of thousands of dollars to remediate the damage to Town Point Cove caused by the offloading operation for materials dredged from Parkers Creek during the winter of 2006-2007. See the AHB testimony submitted to the MDE in March 2007 (statement of Michael Brewer) for more details.