

Testimony of Advocates for Herring Bay
Submitted to the State of Maryland Critical Area Commission
Regarding the Proposed Reclassification of Portions of Herrington Harbor North
February 14, 2006

The Advocates for Herring Bay is a group of long-time residents from the Fairhaven area who are committed to preserving and enhancing the environment of the Herring Bay region. We believe that the property at issue here did NOT meet the standard for an IDA classification at the time of the original mapping and we urge you to disapprove Anne Arundel County's request to reclassify this land from RCA and LDA to IDA.

We maintain that the acreage did not qualify for an IDA designation at the time of the original mapping for three reasons:

- the acreage used for dredge material containment did not qualify as IDA in 1985;
- the economic use of the acreage did not have sufficient capital investment or revenues to justify classification as intense commercial or industrial activity in 1985; and
- designations must follow the land use of the area, not ownership patterns.

Classification of Acreage Used for Dredge Materials Containment

Your decision partly hinges on the classification of land used for dredge material containment facilities. Because the state permitted such uses in RCA areas at that time, that activity was not—by your definition—an intense commercial or industrial use. It is our understanding that the State's Critical Area regulations do not prohibit dredge materials facilities in RCA areas. Why is that? Is it possible that dredge sites, like agricultural land, can eventually be reclaimed and restored to their natural habitat? Is it because dredge containment facilities—unlike mainstream industrial or commercial activities—do not involve significant structural improvements, making it less difficult and less costly to reclaim the property? Or did it simply qualify as “barren land,” which is classified as RCA?

While we may not agree with the State's view of such facilities, your past position is determinative: If dredge containment facilities WERE deemed suitable by the State for RCA areas in 1985, then it is clear that the State did not equate that activity with other types of industrial or commercial uses. Thus, the County had no basis for classifying that portion of the property as IDA at the time of the original mapping.

If dredge containment structures are a RCA activity, why did the County classify other properties as IDA? Not all containment areas are alike: some are Superfund sites, some store relatively benign materials. The applicant did not compare the toxicity of the materials at the other containment sites to those on his property. If any of those sites were storing hazardous materials—which is likely if they were used for coal or paint products—an IDA classification would have been appropriate. Some of the other examples cited by the applicant involved much smaller containment facilities (a few acres) that may not have warranted a RCA designation because of their size.

On the other hand, if dredge materials facilities do not belong in RCA areas, why do you allow them there? As you may know, Anne Arundel County will soon be proposing the development of a 40,000-70,000 cubic yard dredge placement facility in the Critical Area barely mile away from Herrington Harbor North. If dredge material facilities are IDA activities, then this new facility should not be allowed in that RCA area. You can't have it both ways.

Eligibility Criteria for Industrial and Commercial Uses

You are being asked to determine if industrial, institutional, or commercial uses were concentrated in the affected area at the time of the mapping. Business activities span a wide spectrum—from lemonade stands to Bethlehem Steel. The Commission would be remiss if it did not have credible and consistent benchmarks for measuring the economic intensity of “commercial” and “industrial” uses. Approving this application would effectively define as IDA any land use associated with a business activity. We disagree. Passive uses of land by a business are not the same as an industrial or commercial use.

Consider the following hypothetical situation: What if a County tax assessor could have evaluated these specific blocks of land as separate parcels?¹ As is clear from the aerial photos, there were no major structural improvements, particularly in the RCA areas. The applicant himself noted that much of the acreage at issue was used for containing dredge materials, storing surplus materials, and other passive activities. Clearly, a property tax assessment of such parcels in 1985 would have been based largely on the value of the land, not on any improvements. From a tax assessor's perspective, how would such parcels differ from agricultural properties, which—after all—have storage facilities, utility lines, and vehicles on their property that serve a business purpose?

¹ This is a hypothetical case because any tax records on Herrington Harbor North would be for the entire 61 acres rather than for the discrete acreage at issue here.

In 1985, this 61-acre site was a marina “cluster,” not the integrated operation now known as Herrington Harbor North². These were sleepy little marinas at that time, as evident by the limited and circuitous access to the yards. The land designated as LDA supported piers and boat storage but little or no retail activity. As long-time residents of the area, we can tell you that this cluster was not comparable to the concentrated activity in Deale. You cannot rely on the applicant’s comparisons to other marinas because he self-defines 97 percent of his property as commercial (a number that includes the dredge containment areas). The fact that the applicant has since intensified the use of land designated as RCA and IDA has no bearing on its use in 1985.

We maintain that the use of the acreage at issue here involved too little capital investment and generated too little revenue in 1985 to be eligible for IDA. Furthermore, as noted above, we submit that neither the County nor this Commission can reverse past precedent and now claim that the presence of dredge material placement facilities made the land eligible for IDA in 1985.

Ownership Patterns Should Not Dictate Classifications

Finally, size matters. At 61 acres, Herrington Harbor North is now the largest marina in the county. The applicant is coming to you 21 years after the original mapping and asking that you reclassify 50 acres—or 82 percent of his property—from RCA and LDA to IDA. In approving this request, you would be ratifying a one-designation-per-property approach to Critical Area mapping and redrawing those lines according to ownership patterns that took effect after 1985. We disagree with those policies.

The economic use of the land in this area in 1985 made it possible for the county to designate sizable, coherent blocks of land to be designated as RCA. The applicant argues that his land is eligible for reclassification because it was “adjacent” to self-defined “commercial” areas. But in 1985, this land also was adjacent to undeveloped land and farmland. The original mapping balanced land use in the entire area, not just within specific property lines.

Basing designations on ever changing property lines is fraught with peril. What if this applicant (or other property owners in similar situations) continually acquires more land “adjacent” to the operations? At what point do you draw the line? Maps of the Critical Area were not supposed to be tied to property lines, so neither the County nor this Commission could or should blindly assign one designation for the entire site based on ownership patterns.

² The applicant purchased the South Yard in 1982, just three years prior to the Critical Area mapping, and the North Yard in 1986, AFTER the original mapping.

In sum, we believe that the properties classified as RCA and LDA did NOT meet the standard for an IDA classification at the time of the original mapping. One thing is clear, however: if you approve the proposed reclassification of this property, you will truly be giving a green light for the entire 61 acres to become a very “intensively” developed.

Consider the Precedents

Now that Anne Arundel County has nearly exhausted its growth allocation within the Critical Area, we expect that more and more developers will come to you with requests to rectify alleged “mistakes” that were made 20 years ago in classifying their properties as RCA or LDA. Each decision you make will affect the outcome of the next appeal, the next application for development in such areas. A lot of us can talk about the damage done to the bay by human activities; you are among the few who can do something about it. We hope your decision in this case will protect what is left of this scarce and vital resource.

Past stewardship by this Commission—in the form of Critical Area controls on development—has protected much of the 1,000 foot buffer along Herring Bay. As a result, the area just south of Herrington Harbor North currently hosts several families of bald eagles, migrating swans from Alaska, osprey, and other native species. We urge you to err on the side of protecting the long-term health of this ecosystem, not on the side of the developers.

Respectfully submitted by

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