



June 27, 2008

Mr. John Dwelley  
The Nature Conservancy  
4245 North Fairfax Drive  
Suite 100  
Arlington, VA 22203

Dear Mr. Dwelley,

Virginia Quigley's bequest of Old Colony Cove Farm is a prime opportunity for the Nature Conservancy (TNC) to advance its mission of preserving ecologically significant properties. As discussed in more detail below, this property contains biologically diverse habitats and is part of a larger network of intact forests and wetlands along the western shore of the Chesapeake Bay. The Advocates for Herring Bay believe that TNC is uniquely positioned to protect those habitats because of the organization's commitment to environmental preservation and expertise in achieving that goal. We urge TNC to devise the additional covenants or agreements necessary to ensure that this ecological asset is truly protected in perpetuity.

### **Ecological Significance of Old Colony Cove Farm**

Old Colony Cove Farm is located along the shores of the Chesapeake Bay, in the Herring Bay watershed in Anne Arundel County, Maryland. This 311+ acre property supports the types of habitat that the State of Maryland has suggested may warrant special conservation measures.<sup>1</sup> They include, but may not be limited to:

- beaches that serve as breeding and nesting areas for horseshoe crabs and terrapins (see attachment 1)
- forests that have been identified as "green infrastructure" corridor and hub, as well as potential forest-interior dwelling species (FIDS) habitat (see attachment 2)
- nesting and foraging area for a well-established and productive pair of bald eagles (see attachment 3),

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<sup>1</sup> "Identifying Potential Protection and Restoration Sites within a Sensitive Area Analysis," Department of Natural Resources, *A Users Guide to Watershed Planning in Maryland*, Table 4.6, (2005); and "Draft Targeting and Ranking Framework," DNR Land Conservation, August 22, 2007.

- shoreline that often supports submerged aquatic vegetation (see attachment 4), and
- classification as a “resource conservation area” under Maryland’s Critical Area law.

Old Colony Cove Farm is also integral to the Herring Bay watershed. As evident from aerial views, this property adjoins a larger, contiguous block of forests and wetlands classified as a green infrastructure “hub” and FIDS habitat (see attachment 5). Such intact ecosystems are rare in Anne Arundel County. Piecemeal development would fragment the hub, leading to the loss of habitat and degradation of streams that support the biodiversity of nearby Fairhaven cove as well as Herring Bay.

### **Limitations of Regulatory Controls**

Regulatory controls offer little protection for sensitive habitats like those at Old Colony Cove Farm. For example, Anne Arundel County’s zoning rules allow resource conservation areas to be used for golf courses, recreational piers, swimming pools, stables and riding clubs, and other similar activities (County Code Section 18-13-208). Allowing such uses at Old Colony Cove Farm could result in a hardening of the shoreline, the clearing of foraging habitat, and an increase in human activity sufficient to impede productivity of the horseshoe crab, terrapin, bald eagle, and SAV populations. Because the Critical Area Commission has approved such uses for some RCA properties, it would be difficult for the county or the Commission to deny it here.

Experience also shows that regulatory standards are undermined by variances and weak enforcement. According to a 2006 study, Anne Arundel County routinely grants variances to Critical Area regulations.<sup>2</sup> In the case of Old Colony Cove Farm, a developer might be eligible for variances from the state’s new restrictions on bulkheads and other “hard” shorelines because the site faces open waters (see Maryland HB 1253). Another risk is that a developer could go forward with projects without getting permits or variances, as occurred on Little Dobbins Island in the Magothy River and at Herrington Harbour South, the marina that adjoins Old Colony Cove Farm.<sup>3</sup> The legal wrangling that ensues from such cases often results in the issuance of retroactive variances and financial penalties that offer little deterrent because they are dwarfed by the economic value of the developments.

Finally, governmental protections are only temporary. A case in point is the legislative remapping of the Critical Area at Herrington Harbour North, a marina under the same ownership as Herrington Harbour South. When the Critical Area maps were adopted in 1985, roughly 80 percent of this 60-acre site was classified as resource conservation or limited development areas. In 2005, the owner filed a request to have the whole property reclassified as an “intensely developed area” (IDA) based on an assertion that the original mapping was a mistake. He needed the approval of both the county and the state Critical Area Commission to have the

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<sup>2</sup> *Enforcement in the Critical Area: Perception and Practice*, University of Maryland Environmental Law Clinic, May 2006.

<sup>3</sup> See “Who Has the Right to Protect the Magothy River?” by Kim Coble, *Maryland Gazette*, August 4, 2007; “County sues huge marina owner: Herrington Harbour accused of violating permit laws,” by Erin Cox, *The Capital*, March 29, 2007; and “County settles lawsuit with Herrington Harbour,” by E.B. Furgurson III, *The Capital*, March 8, 2008.

designations changed, but only succeeded in getting the county's consent. He withdrew his application in March 2006 after it became apparent that the Commission was unlikely to approve it. Now, two years later, the entire marina has been redesignated as IDA by the Maryland legislature through a special provision in the recently enacted reforms to the Critical Area law (HB 1253, section 8-1802(a)(13)(II)(3)).

### **Limitations of Existing Covenants**

Thanks to Mrs. Quigley, Old Colony Cove Farm has the benefit of two added layers of protection: an environmental easement and stewardship by the Nature Conservancy. In her will and testament, she stated that she wanted the properties to be kept “essentially in their present form of woods and open fields...” and hoped that the Nature Conservancy would “use the properties to the extent possible for one or more nature sanctuaries.” She added that her personal representatives could use “restrictions or any other means available to maintain the unique character of such properties for the future” (see Last Will and Testament, Section 5). As the new owners of this estate, TNC is in a position to freshly evaluate the effectiveness of the existing environmental covenants and to make any changes necessary to ensure that Mrs. Quigley's hope of permanent protection will be a reality.

Based on our preliminary review, we believe that there are at least three major shortcomings in the existing environmental easement. First, the easement allows the property to be used for “private recreational uses” (Article II, A). This term could be interpreted to allow Old Colony Cove Farm to be developed for use by “private” clubs whose impacts would far exceed those resulting from recreational uses incidental to residential ownership. Private clubs might, for example, expand and fortify boating piers and bulkheads, clear forests for recreational activities, construct accessory structures near the waterfront, build roads and trails through the forest, and routinely hold events on the beach. The potential for such large-scale private use at Old Colony Cove Farm is real: Herring Bay was designated as one of two “no discharge zones” in the State of Maryland in part because its marinas are home to about 2,100 slips for recreational boats.

Second, the waivers authorized by the easement are likely to result in the loss or degradation of the property's natural habitat. For example, limits on excavating soil, sand, and other materials can be waived for such purposes as “combating erosion” or for “means of access” (Article II, D). Such exemptions could be used to justify new bulkheads or riprap along the beach and new structures elsewhere. The easement also establishes a 100-foot buffer along the Chesapeake Bay but allows for disturbances if “reasonably necessary” for recreational water uses and associated structures, access to the water, or access to the remainder of the property (Article II, I). The forestry management provisions rely on the submission of plans that comply with state regulations (Article II, F), which may not recognize or address best practices for green infrastructure hubs and corridors.

Third, the easement lacks covenants tailored to the property's special ecological attributes. There are no contractual requirements to preserve the beach and associated waters as a breeding sanctuary for horseshoe crabs and terrapins. Its requirement for vegetative buffers may not be sufficient to protect the breeding and foraging needs of the bald eagles and numerous other avian species that inhabit the property. Similarly, its management guidelines do not require protection of the land and forests as green infrastructure corridor and hub, nor do they include measures to promote the growth of submerged aquatic vegetation in the streams and along the shore.

## **Additional Measures to Preserve the Ecological Integrity of Old Colony Cove Farm**

Through her easements and bequest, Mrs. Quigley has entrusted TNC with an increasingly scarce commodity: a large tract of natural habitat along the western shore of the Chesapeake Bay. Given your mission and expertise, the Advocates for Herring Bay believe that TNC's stewardship of Old Colony Cove Farm is a chance to "get it right," an opportunity to create legal and financial mechanisms that could serve as precedents for protecting the Bay's other vanishing resources. Toward that end, we urge you to:

- work with the scientific community to determine the optimal parameters for protecting the area's forest habitat and aquatic, avian, plant, and other species;
- impose additional covenants on the property based on that guidance that will ensure that such species and habitat are preserved under all alternative uses of the site; and
- evaluate alternative stewardship approaches that would maximize the long-term viability and preservation of this habitat.

As citizens who live along the shores of Herring Bay, we share Mrs. Quigley's commitment to protect and restore the natural habitat in our watershed. We appreciate the Nature Conservancy's interest in preserving the biodiversity of this area and stand ready to provide whatever assistance we can to make that goal a reality.

Sincerely,

Kathleen Gramp  
President

Cc:

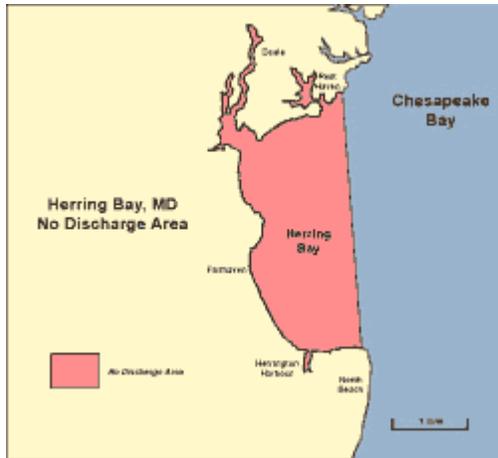
John Chapman, Maryland Environmental Trust  
Ren Serey, Critical Area Commission  
Neal Welch, Maryland DNR, Land Acquisition and Planning  
Michael Luisi, Maryland DNR, Estuarine and Marine Fisheries, Atlantic Program  
Paula Henry, USGS Patuxent Wildlife Research Center  
Peter Bergstrom, Fisheries Biologist, NOAA Chesapeake Bay Office

Attachments

1. EPA Description of Herring Bay No Discharge Zone
2. Map of Green Infrastructure Corridor and Hub, Old Colony Cove Farm
3. Map of Bald Eagle Nests in Maryland
4. Map of submerged aquatic vegetation at Old Colony Cove Farm
5. Map of FIDS habitat in Fairhaven/Old Colony Cove Farm area

## Attachment 1, Herring Bay “No Discharge Zone”

Source: U.S. Environmental Protection Agency,  
<http://www.epa.gov/reg3wapd/nodischarge/maryland.htm>



The Herring Bay No Discharge Zone (NDZ) is a 3,145-acre area of water located along the western shore of the Chesapeake Bay in southern Anne Arundel County. The area includes Rockhold, Tracy, and Parker creeks on the north and Rose Haven Harbor on the south. The NDZ includes tidal waters west of the following:

Beginning on Holland Point at or near 38°43'34.9"N/ 76°31'37.3"W (Latitude/Longitude), then running in a northerly direction to Crab Pile A at or near 38°46'33.0"N/ 76°32'10.1"W (Latitude/Longitude), then running to a point on the north shore of Parkers Creek at or near 38°46'39.1"N/ 76°32'10.8"W (Latitude/Longitude).

The Herring Bay watershed is approximately 25 square miles. Although traditionally a farming area, several residential communities are located within the watershed including some that are located along the shoreline. The town of Deale sits adjacent to Rockhold Creek. Herring Bay is also a very popular recreational boating area and is home to 16 marinas containing 2,090 slips.

There are four bathing beaches on Herring Bay: Mason's Beach, Town Point, Owings Cliffs, and Rose Haven. ***Other beaches are specifically designated as terrapin and horseshoe crab nesting and spawning areas.*** Herring Bay is also a general aquatic nursery and feeding area providing habitat for a rich mixture of blue crabs, Atlantic croaker (hardhead), spot, bluefish, gray sea trout (weakfish), Atlantic menhaden, bay anchovy, striped bass, summer flounder, and white perch. Herring Bay also contains natural oyster bars as well as bottom habitat for soft clams. Herring Bay is bounded by productive crab potting areas in the Chesapeake Bay. Wildlife includes great blue heron, American black duck, canvasback duck, and scaup, as well as nesting areas for osprey and bald eagle. Finally, the area along the shoreline contains submerged aquatic vegetation.

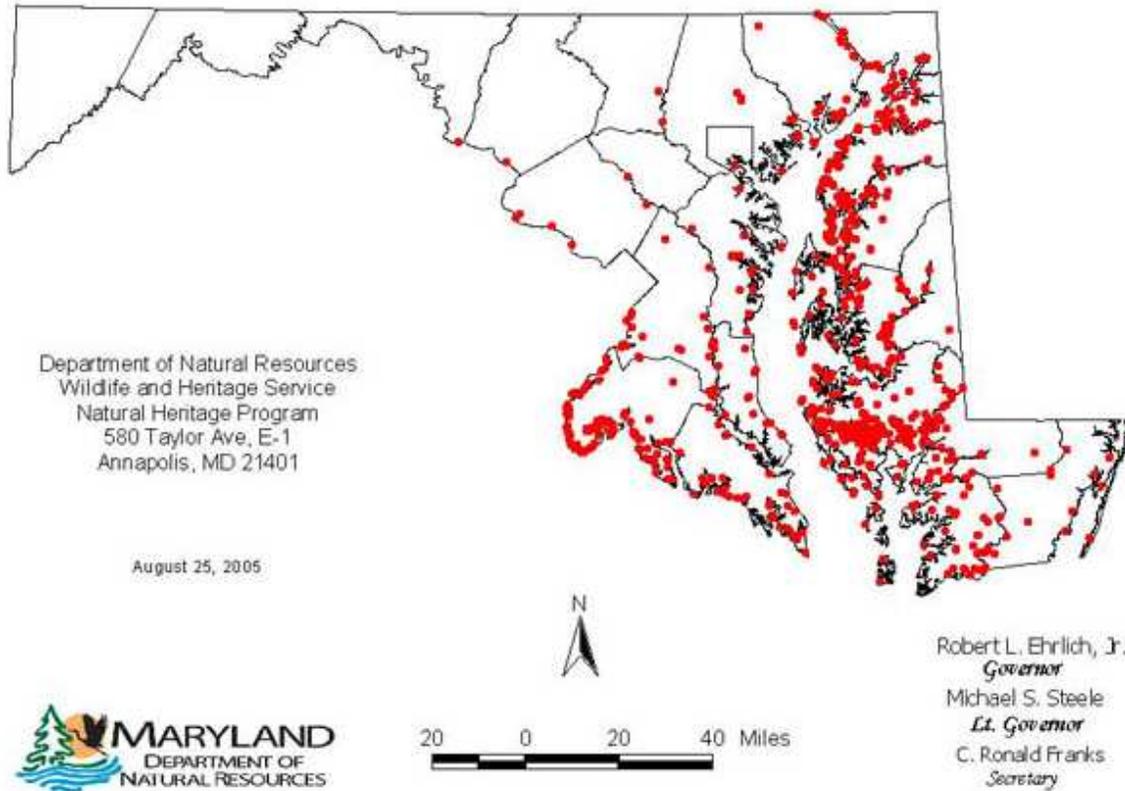
*Note: emphasis added by Advocates for Herring Bay.*

## Attachment 2, Maryland's Green Infrastructure Corridor and Hub, Old Colony Cove Farm



**Attachment 3, Map of Bald Eagle Nests, including Old Colony Cove Farm**

**Bald Eagle nest locations in Maryland from 1977 - 2003**



Attachment 4, Submerged Aquatic Vegetation at Old Colony Cove Farm, 2003



Attachment 5, Forest Interior-Dwelling Species Areas, Fairhaven area

