



September 29, 2023

BY EMAIL AND FIRST CLASS MAIL

Secretary of the Navy Carlos Del Toro
1000 Navy Pentagon
Washington, DC 20350-1000

Re: Legally Required Protection of Natural Resources at Greenbury Point, Annapolis

Dear Secretary Del Toro,

We write to highlight the illegality of a proposal to build a golf course within the 231 acres of Greenbury Point, a portion of Navy land under the jurisdiction of NSA Annapolis. This letter also flags the Navy's failure to follow applicable rules, and policies regarding transparency of its plans for Greenbury Point.

1. ILLEGALITY OF BUILDING GOLF COURSE: The Integrated Natural Resource Management Plan for Navy land under the jurisdiction of NSA Annapolis designates the entirety of Greenbury Point as a Resource Conservation Area citing its high value for natural resources-based recreation, wildlife habitat, and its location in the Chesapeake Bay Critical Area.

Integrated Natural Resources Management Plan, Naval Support Activity Annapolis, Annapolis, Maryland, signed July 9, 2016 (2016 INRMP) at 2-6, 2-17 to -19, 5-7, 5-11, 5-19, 5-23 to -25, 5-37 to -39. The plan makes no provision for construction of a golf course at Greenbury Point. To the contrary, the plan makes clear that “[b]ecause of the extensive area of undeveloped land, outdoor recreation and environmental awareness are the primary focus of the NRP at NSAA North Severn,” with “recreation” defined as excluding athletics.¹ It further states that “[m]ost of Greenbury Point would remain as a conservation area under this plan.” Id. 2-6. The INRMP also designates all of Greenbury point as constrained from future land use changes and development due to the presence of wetlands, floodplain, and other conditions. Id. 5-3, 5-4.

Under these circumstances, use of all or part of Greenbury Point for a golf course would violate the Sikes Act, 16 USC §§670a-670o. That Act expressly requires the Secretary of each military department to not only prepare an INRMP for each military installation, but also to “implement” it. Id. §670a(a)(1)(B)(i). Implementing the applicable INRMP here necessarily means maintaining Greenbury Point as a conservation area, not converting a large portion of it into a golf course, conservatively estimated at 150 acres.² Further, the Sikes Act restricts the sale or lease of Greenbury point lands for use as a golf course:

¹ See INRMP at 5-37: “Outdoor recreation includes natural resources-based recreation activities and does not refer to sports/athletics or boating, which also occur at NSAA North Severn.”

² According to a Washington Post report, the Naval Academy Athletic Director (who is also president of the Naval Academy Golf Association) envisions a golf course of 280 acres.

<https://www.washingtonpost.com/dc-md-va/2022/08/01/naval-academy-golf-chesapeake/>.

After an integrated natural resources management plan is agreed to under subsection (a)—

- (1) **no sale of land, or forest products from land, that is within a military installation covered by that plan may be made** under section 2665(a) or (b) of Title 10; and
- (2) no leasing of land that is within the installation may be made under section 2667 of such Title 10.

unless the effects of that sale or leasing are compatible with the purposes of the plan.

Id. §670a(c) (emphasis added). Here, the effects of a sale or lease of Greenbury Point for use as a 150-acre (or likely larger) golf course would plainly be incompatible with the plan’s purpose of having most of that land “remain as a conservation area.”

Further, any proposal to revise the INRMP to authorize such a golf course would face significant hurdles. First, the Sikes Act requires that INRMP must be written “in cooperation with” the U.S. Fish and Wildlife Service and the head of each appropriate state fish and wildlife agency, in this case the Maryland Department of Natural Resources, and any plan “shall reflect the mutual agreement of the parties concerning conservation, protection, and management of fish and wildlife resources.” 16 U.S.C. §670a(a)(2). Thus, the Navy cannot unilaterally decide to convert a large swath of this conservation area into a golf course but must first secure agreement from the U.S. Fish & Wildlife Service and the Maryland Department of Natural Resources. Given the significant wildlife, cultural, and recreation resources that would be lost, those agencies would be hard pressed to agree to such a plan. Greenbury Point is home to more than 150 bird species, including three state-endangered bird species, one state-threatened bird species, two bird species state listed as in need of conservation, seven bird species of federal conservation concern, and three state-rare plant species. 2016 INRMP 5-7 to -11, 5-23 to -24. Much of Greenbury point is wetland habitat protected by Maryland law. Id. 5-4, 5-12. Also, according to the INRMP, “NSAA North Severn is recognized for its historical and archaeological significance dating back centuries....Areas of high probability for 17th Century significance occur throughout NSAA North Severn and are generally located within previously undisturbed areas.” 2016 INRMP 5-40. The INRMP shows about half of the acreage at Greenbury Point as a High Probability Area for Cultural Resources. Id., figure 5-12 at 5-41.

In addition, before deciding on a plan revision, the Navy would have to conduct a thorough environmental review as required by the National Environmental Policy Act (NEPA), 42 U.S.C. §4331-4335. Among other things, such a review would need to explain the purpose and need for a new golf course, something the Navy cannot rationally do, given that there is already an 18-hole golf course rebuilt at a cost of \$6 million to “world class” levels in 2020-2021 that is within a few hundred yards of the resource conservation area. *See* Navy Sports, Sept. 25, 2020, available at <https://navysports.com/news/2020/9/25/mens-golf-naaa-officially-dedicates-restored-golf-course.aspx>; 40 C.F.R. §§1501.5, 1502.13. NEPA review would also need to thoroughly evaluate potential environmental impacts from construction and operation of a golf course, including harms to wildlife and cultural resources, and would require a proactive public participation process. 40 C.F.R. §§1502.16, 1506.6; OPNAV Manual 5090.1 ¶ 12-3. The NEPA

review process would have to take place before any decision on whether to allow a golf course is made.

In summary, under existing laws, regulations, and the INRMP, the Navy cannot construct or allow construction of a golf course on Greenbury Point. Construction of a golf course would violate the conservation dictates of the Sikes Act for such a designated conservation area with significant wildlife and cultural resources. Any consideration of a proposal to build a golf course would require a major revision of the INRMP with the concurrence of federal and state wildlife officials, and only after completion of a thorough NEPA process. As the Navy has indicated that authorization for a golf course will not appear in the next update of the INRMP, there is no lawful basis for proceeding with a golf course proposal. *See* Greenbury Point Frequently Asked Questions, updated February 1, 2023 (FAQs) (“The INRMP update will not mention the golf course as one is not currently planned”), posted at <https://ndw.cnic.navy.mil/Installations/NSA-Annapolis/Operations-and-Management/Greenbury-Point/Greenbury-Point-FAQ/> (last visited September 29, 2023).

This matter is of continuing concern despite the Navy’s disavowal of any current plans for a golf course. According to a June 13, 2023, Washington Post [report](#),³ a naval academy graduate has agreed to fund planning and feasibility studies for a golf course at Greenbury Point. The report quoted a spokesperson for the Naval District Washington as saying that its “current position” is that it is not entertaining any proposals to build a golf course, but that “people are free to do their planning.” The fact that golf course planning is ongoing with the Navy’s knowledge and forbearance provides conservation groups with legitimate cause for concern about an ongoing threat of a golf course at Greenbury Point.

2. FAILURE OF TRANSPARENCY:

The Sikes Act requires a Navy installation to review its INRMP every five years. 16 U.S.C. §670a(b)(2). The installation must update or revise the INRMP as necessary based on the results of this review. Department of Defense Manual Number 4715.03, November 25, 2013 Incorporating Change 2, August 31, 2018, Enclosure 3, 3.a(3). The last review of the INRMP for NSA Annapolis was completed on July 8, 2016. See signature page, 2016 INRMP. The subsequent 5-year review is now more than two years overdue. Each day of delay exacerbates the Navy’s noncompliance with the 5-year review and updating requirement.

The Navy has also failed to follow transparency and public participation requirements for review and updating of the INRMP. Although NSA Annapolis has indicated it has prepared a draft of an updated INRMP, it has not made that draft available to local conservation groups or members of the public that have expressed strong interest and concerns about the present and future of Greenbury Point. Nor has the Navy sought input from such parties regarding draft INRMP’s content. Further, the Navy has indicated that there will be no public comment process on the INRMP update. [FAQs](#) (“The INRMP in progress will not require a public comment period”).

³ <https://www.washingtonpost.com/dc-md-virginia/2023/06/13/jack-nicklaus-golf-naval-academy-greenbury-point/>

The lack of transparency or public engagement by NSA Annapolis regarding the INRMP update conflicts with DOD and Navy directives. The Navy's Environmental Readiness Program manual states the following regarding INRMPs:

Natural resources managers also are encouraged to work with other organizations, agencies, and individuals both on and off the installation **throughout the planning and development process**. Building partnerships with the right organization(s) is essential for ecosystem management.

OPNAV §12-3.4.c.(4)(d)(emphasis added). DoDI 4715.3 further requires that “INRMPs incorporate the principles of ecosystem management for natural resources” which require “[i]nvolve[ing] all interested parties (stakeholders) in identifying management goals.” In addition, DOD guidance on INRMPs directs installations to “meet regularly with regional stakeholders (i.e., State, tribal, and local governments; **nongovernmental entities**; private landowners; **public**) to discuss issues and to work toward common goals.” DODM 4715.03, November 25, 2013 (emphasis added). DOD has further stated that in preparing an INRMP, “[i]nstallation managers **should actively involve individuals and organizations with a vested interest in managing the installation’s natural resources early in the planning process**,” and that stakeholders may include “**recreation groups**,” “**environmental and conservation groups**,” “**cultural resources managers**,” and “**neighboring landowners**,” among others. Department of Defense, Integrated Natural Resource Management Plans, November 2020, at 2 (emphasis added), www.denix.osd.mil/nr/denix-files/sites/38/2016/05/INRMP-fact-sheet-11-20-20_508_v3.pdf.

Navy directives also provide for a formal comment period on INRMPs. OPNAV §12-3.4.c(5) (“Each installation shall provide 30 days for the public to comment on the initial draft final INRMP, or on that of a significant revision that requires National Environmental Policy Act (NEPA) analysis”). Further, “[e]ach installation shall allow USFWS and the appropriate state fish and wildlife agency officials to review all public comments to ensure proper consideration of public concerns during INRMP development.” *Id.*

With respect to information, the Justice Department has stressed that agencies should “consider all disclosure determinations with transparency in mind. Records should be reviewed with an eye toward determining what can be disclosed, rather than what can be withheld. As the Attorney General states in the 2022 FOIA Guidelines, “[i]n case of doubt, openness should prevail.” <https://www.justice.gov/oip/oip-guidance-applying-presumption-openness-and-foreseeable-harm-standard>.

For all the foregoing reasons, the Navy needs to provide the draft INRMP to the public, including conservation groups that have expressed an interest in Greenbury Point, without requiring them to resort to formal FOIA requests. DOD and Navy guidance make clear that such organizations are to play an integral role in decision making on natural resources management. To facilitate meaningful input, the Navy needs to make the draft INRMP available immediately on the web and arrange for meetings with nongovernmental organizations and nearby residents

and other members of the public to seek and accept their input well before any final decisions are made on the plan's content.

Conclusion

We call upon the Navy to follow the law, the INRMP, and agency directives as described above.

Earthjustice is a nonprofit environmental law organization that wields the power of law to protect people's health; to preserve natural areas and wildlife; to advance clean energy; and to combat climate change. For more than forty years, our Washington DC Regional Office has worked to protect important natural resources, clean air, and clean water in the mid-Atlantic Region. More information on our accomplishments regionally, nationally, and internationally is available at www.earthjustice.org.

Sincerely,

/s/David S. Baron

David S. Baron
Managing Attorney
Earthjustice Washington, D.C. Office

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