

SOUTHERN ENVIRONMENTAL LAW CENTER

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March 7, 2016

Mr. Larry Johnson, Chairman
Planning Commission
City of St. Marys
418 Osborne Street
St. Marys, Georgia 31558
cdcomments@stmarysga.gov

Re: Mill Site Rezoning Application

Dear Chairman and Members of the Planning Commission:

The Southern Environmental Law Center (SELC) submits the following comments on the request submitted by Port of St. Marys, LLC (the Applicant) to rezone 722 acres of the former Durango Mill Site located within the City of St. Marys (Tax Parcel 149-004) from Planned Development Mixed Use to Planned Development Industrial. The request seeks the rezoning of the property in order to permit the development of industrial and maritime logistics facilities.

SELC is a regional legal and policy organization with a commitment to coastal protection and preservation. In an effort to learn more about this development proposal on the Georgia coast, we have met and corresponded with representatives from the City of St. Marys, including the City Manager, the Community Development Director, the City Attorney, members of City Council, members of the Planning Commission, the Camden County Joint Development Authority's Executive Director, residents, and the Applicant. From our discussions, we learned that certain development on this parcel could benefit the City of St. Marys and its residents, due to the potential for economic investment. The property is currently blighted and registered as a brownfield site with the Georgia Environmental Protection Division (EPD). We strongly support efforts to clean up this site, considering its historic use as an industrial site for many decades.

The question remains, however, exactly what type of development would be most beneficial while maintaining the important natural resources on the site and nearby, as well as the community's historic character. The property at issue is located in close proximity to state marshlands and the North River, and located on the property are U.S. Army Corps of Engineers jurisdictional wetlands and Georgia's second-most important rookery for wood storks. The presence of these important natural resources raises concerns about potential environmental impacts if the property is rezoned to allow industrial and port facilities. Should the Planning Commission elect to recommend approval of the zoning application, we propose that approval be subject to the following conditions upon the rezoning. Under the City of St. Marys zoning

ordinances, the Planning Commission can recommend and the City Council can require conditions be included in zoning amendments. City of St. Marys Zoning Ordinances § 110-185(b)(7)(d). If these proposed conditions cannot be included in the Port of St. Marys Industrial & Logistics Center Planned Development District Text, the Planning Commission should recommend denial of the application.

- 1) **Brownfield program:** The City of St. Marys should require by condition to the proposed rezoning that the site remain in EPD's Brownfield Program. Currently the property (under the bankruptcy trustee's control) is subject to a brownfield corrective action plan on a voluntary basis. As a condition to rezoning, the City of St. Marys should require the owner of the property to continue this corrective action plan. As a long-time industrial site, and considering risks posed to surrounding areas upon land disturbance, it is important to bind the Applicant to clean up plans for the property.
- 2) **Conservation easement for wood stork rookery:** A significant wood stork colony nests on the property. The wood stork is listed as a threatened species under the Endangered Species Act by the U.S. Fish and Wildlife Service. In addition, this rookery is the second-most important rookery in Georgia, second to the rookery at Harris Neck, and is a rookery of regional importance. Therefore, the Planning Commission and the City should seriously consider the impact that rezoning will have on wood stork habitat on the property and the health of the wood stork colony. The buffer that the Applicant has proposed to encircle the conservation area does not adequately preserve this habitat, nor does it guarantee public viewing of the rookery. The Applicant's statement in the rezoning application that "it is the intent of the PD zoning to preserve this natural resource as long as wood storks are present on the property" does not provide a sufficient level of protection. As a condition to rezoning, a conservation easement should be imposed on this part of the property, with the opportunity to provide viewing areas for eco-tourists and greenway space for public access.
- 3) **Stormwater ponds:** The stormwater ponds on the property are an important part of the wood stork habitat. As a condition to rezoning, the existing industrial stormwater ponds between the North River and the area designated as the conservation area should be stabilized and maintained in conjunction with the overall site stormwater management plan. Moreover, the stormwater ponds should be subject to a permanent stormwater easement area.
- 4) **Wetlands and salt marsh:** The property includes 165 acres of salt marsh, in addition to U.S. Army Corps of Engineers jurisdictional freshwater wetlands. Industrial and port activity on the property, as well as construction, will have significant environmental impacts on the surrounding salt marsh and freshwater wetlands. Therefore, as a condition

to rezoning, the wetlands on the property should be protected and maintained as part of the overall project development plan, and in accordance with state and federal law.

- 5) **Building height:** The City of St. Marys should deny the building height exception that the Applicant seeks to allow building height of 100' in some areas of the property. Building height should not exceed the 60' limit that the zoning ordinances impose on industrial districts. § 110-73(c)(6). The Applicant suggests that a building height limit of 100' is consistent with the property's current zoning classification as PD Mixed Used, but to proceed with that land use, the Applicant would also be required to make the property fit for residential use. Moreover, PD Mixed Use would not allow the same level of industrial consequences, such as noise, smells, lights, emissions, or traffic. Therefore, an exception to the industrial building height requirements is inappropriate.
- 6) **Maritime Heritage District:** The City of St. Marys should deny the Applicant's proposed exception to the requirements of the Maritime Heritage District (MHD). The special standards for the MHD exist to "allow the waterfront area to thrive as an important institution in the city" and to "provid[e] opportunities for exploring the maritime heritage of the city," both of which are important drivers of tourism in St. Marys. § 110-78(a)-(b). This site is the gateway to the downtown district and borders the North River. An exception to the MHD requirements would therefore be inappropriate.
- 7) **Special use permits:** The City of St. Marys should deny the exceptions the Applicant proposes relating to special use permits. Under the existing zoning ordinances, special use permits are required to be renewed annually for a nominal fee, and once issued, special use permits are not transferable or assignable to a different entity, *even if the use is unchanged*. § 110-145(4)-(5) (emphasis added). These provisions provide the important function of annual oversight by the City. There is no reason to diminish the City's oversight of the Applicant and potential uses of the property.
- 8) **Storage:** The storage of waste generated off-site, including coal ash, should not be permitted on this property. In addition, the visibility of certain storage containers, such as gas or oil barrels stored on the property should be limited. These prohibitions and limitations should be made a condition of the rezoning.
- 9) **Heavy industrial use:** Heavy industrial uses of this property (such as an LNG facility, wood pellet manufacturing, or other heavy manufacturing) are inconsistent with the character of downtown St. Marys and the surrounding natural resources. Such uses should be disallowed as a condition of rezoning.

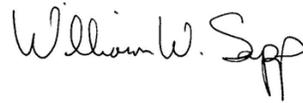
10) Port facilities: The City of St. Marys should limit the number of barges that may access the property on a daily basis and also limit the portion of the property that can be used for port facilities. Such limitations should be included as a condition of rezoning.

11) Dredging: As a condition to the rezoning, the City should prohibit any property owner or user, or any such agents, from seeking any permit to dredge in the North River for increased port access on the property, or actually dredging in the North River.

It should also be noted that in a Planned Development District, the City may require a contract with safeguards to guarantee completion of the development according to the special conditions imposed on the rezoning. § 110-68(b)(4). Therefore, we encourage the City to impose these special conditions on the rezoning, and to seek a contract and a guarantee in the form of a performance bond to ensure compliance, as permitted by ordinance. *Id.*

Thank you for your consideration of these comments. If you have any questions, please contact us at (404) 521-9900, or by email at bsapp@selcga.org and hbarnes@selcga.org.

Sincerely,



William W. Sapp
Senior Attorney



Helen Barnes
Associate Attorney

cc (via email):

Jeff Adams, Community Development Director
John Holman, City Manager
John Morrissey, Mayor
Robert Nutter, City Council Member
Elaine Powierski, City Council Member
Jim Gant, City Council Member
David Reilly, City Council Member
Sam Colville, City Council Member
Linda Williams, City Council Member