



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
P.O. BOX 1715  
BALTIMORE, MD 21203-1715

Operations Division

SEP 12 2002

Dear Mr. Kemp:

I am replying to your application, **CENAB-OP-RMN (Kemp, David/Mill Creek Spur Dredging & Pier) 01-64973-18**, for a Department of the Army permit to construct a 6' x 70' pier; and to dredge by mechanical method approximately 140 cubic yards (1,227 square feet) of sand, silt, and clay from the headwaters of Mill Creek for a 49' long by 10' to 25' wide to a depth of -3' MLW spur channel. A six month maintenance dredging provision in conjunction with the proposed main channel extension was also requested. It has been proposed that the dredged material will be deposited at the regional dredge material placement (DMP) site on Edwin Raynor Boulevard in Anne Arundel County, Maryland. The project is located in Mill Creek, a tidal tributary of the Magothy River in Arnold, Anne Arundel County, Maryland.

On September 26, 2001, a MDE/Corps joint public notice was issued soliciting comments on your proposal to dredge a main channel and four riparian property owners' proposals to dredge spur channels and construct piers. In response to the public notice, we received comments and recommendations from federal and state resource agencies including the U.S. Fish and Wildlife Service (FWS), and Maryland Department of Natural Resources (DNR) regarding the proposed project. Copies of all correspondence that we currently received are enclosed.

The agencies were concerned with the potential adverse impacts to finfish species and their essential fish habitat (EFH), which are managed under the Magnuson-Stevens Fishery Conservation and Management Act. The agencies have documented that the Magothy River, in the vicinity of the project site, is a spawning and nursery area for several species of anadromous fish including; alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), white perch (*Morone americana*) and yellow perch (*Perca flavescens*).

The agencies expressed particular concern that dredging in submerged aquatic vegetation (SAV) would result in adverse effects on this resource, including a permanent loss of SAV. In addition to SAV beds, extensive mudflats and shallow water habitat currently exist in the headwaters proposed to be dredged. The proposed dredging project for the headwaters of Mill Creek has been documented to impact SAV for over 90% of the entire project area. SAV beds and shallow water provide important ecological habitat for various finfish and crustacean life stages. The horned pondweed attracts juvenile crabs, which graze on it during high tide events. The daily exposure of the mudflat creates conditions that enhance ecosystem productivity, which in turn attracts minnows and juvenile fish on incoming tides. Many of these fishery resources that would be affected are highly valued for their commercial importance and depend on SAV

beds and shallow water for shelter, feeding, and spawning. SAV resources are also valued because they provide food for waterfowl, absorb nutrients, oxygenate the water column, reduce wave energy, retard shoreline erosion and promote settling of suspended sediments. Furthermore, the headwaters of this creek is a habitat and spawning/nursery ground for many prey species that are dependent on SAV habitats. FWS noted that mudflats and vegetated shallows are designated as special aquatic sites under the Clean Water Act.


Currently, there is essentially no information in the scientific literature about whether or not dredging to the depths of the proposed projects will result in a permanent loss of SAV. Therefore, Anne Arundel County, in coordination with the Baltimore District, implemented a study to provide information on how dredging in areas where SAV is known to grow affects this resource over time and whether the dredging will prevent SAV from growing in these areas after the dredging is completed. The study will be conducted over a minimum of two years. It began with the spring 2001 dredging of main channels and spur channels, including some areas where SAV is known to grow, within Cypress Creek and Grays Creek in Anne Arundel County, and is expected to conclude at the end of 2003. The Baltimore District will use the information produced by the study to make more informed permit decisions in the future. Therefore, because the proposed Mill Creek dredging has the potential to result in more than minimal individual and cumulative adverse effects on the aquatic environment, we are returning your application pending the results of this study.

You will be advised when the study evaluation is completed. At that time, you may resubmit the subject application to this office for our re-evaluation. Please reference the application number cited above and do not change the name of the project without referencing the former name.

The following agencies are being provided a courtesy copy of this letter for informational purposes: Environmental Protection Agency, U. S. Fish and Wildlife Service, National Marine Fisheries Service, Maryland Historical Trust, Maryland Department of the Environment, Maryland Department of Natural Resources, and Andrews, Miller & Associates, Inc.

If you have any questions concerning this matter, please call Richard Kibby of this office at (410) 962-0694.

Sincerely,



Janet M. Wine  
Chief, Maryland Section Northern

Enclosures



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Chesapeake Bay Field Office  
177 Admiral Cochrane Drive  
Annapolis, MD 21401

February 22, 2002

Colonel Charles J. Fiala, Jr., PE  
District Engineer  
Baltimore District, Corps of Engineers  
P.O. Box 1715  
Baltimore, MD 21203

Attn: Mr. Richard Kibby

Re: *Anne Arundel County Department of Public Works Mill Creek Dredging CENAB-OP-R  
01-64972-18*

Dear Sir:

The U.S. Fish and Wildlife Service has reviewed the referenced permit application. The applicant proposes to dredge a 389-foot long by 30-foot wide by -3-foot deep channel through a mudflat at the head of Mill Creek. Four spur channels, two piers, and one pier extension are also proposed. The project is located in Mill Creek, a tidal tributary of the Magothy River in Arnold, Anne Arundel County, Maryland. This letter constitutes the report of the Service and the Department of the Interior on the proposed permit and is submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*).

The Service has major concerns with this project. It may be instructive to note that this is not included with the main channel dredging project previously authorized. We had believed that progress was being made with Anne Arundel County dredging proposals to eliminate these types of projects prior to applying for permits. We could find no sounding deeper than -0.63 feet. In fact many of the depths are above the mean low water line. The fact that three of the four spur channel applicants do not have piers and the one proposed pier extension is from a very short existing pier should establish the fact that these property owners never had access and their perceived "right" to access needs to be carefully balanced against the adverse impacts expected with this project. The Public Notice indicates that dredging was authorized in 1984 but it does not indicate whether the dredging was actually done. From the soundings it would appear that dredging never occurred. If this creek was dredged then, it would appear that no permit should be issued to dredge until the County retrofits its stormwater management systems on this creek. Additionally, the whole mudflat had horned pondweed (*Zannichellia palustris*) growing on it as would be expected in similar areas throughout the tidal Chesapeake Bay.

Although this permit would be authorized under Section 10 of the River and Harbor Act of 1899, it is instructive to note that mudflats and vegetated shallows are designated as special aquatic sites under the Clean Water Act. The daily exposure of the mudflat creates conditions that enhance productivity which in turn attracts minnows and juvenile fish on incoming tides. The horned pondweed attracts juvenile crabs which graze on it during high tide events.

The Chesapeake Bay has been designated as a wetland of international importance under the Ramsar Convention. Additionally, through the 2002 Chesapeake Bay Agreement, a strong State-Federal partnership has been forged to protect the Bay's living resources. It is the Service's position that this project, located in a Bay tributary, may result in substantial and unacceptable impacts to aquatic resources of national importance. With concerns for the protection of wetlands, and in light of restoration efforts planned for the Chesapeake Bay, the Service recommends denial of this application.

We appreciate the opportunity to provide information relevant to fish and wildlife resources. If you have any questions about these comments, please contact Bob Zepp at (410) 573-4536.

Sincerely,

A handwritten signature in black ink, appearing to read "J. P. Wolflin". The signature is fluid and cursive, with a large initial "J" and "W".

John P. Wolflin  
Supervisor

cc: Kate Meade, DNR Annapolis, MD  
John Nichols, NMFS Oxford, MD  
Ralph Spagnolo, EPA Philadelphia, PA  
Bob Cuthbertson, MDE Baltimore, MD



Parris N. Glendening  
Governor

Maryland Department of Natural Resources  
ENVIRONMENTAL REVIEW  
Tawes State Office Building, B-3  
Annapolis, Maryland 21401

Stanley K. Arthur  
Acting Secretary

August 30, 2001

Memorandum

To: Bob Cuthbertson, Tidal Wetlands Division, MDE

From: <sup>RD</sup> Ray C. Dintaman, Jr., Director, Environmental Review Unit

Subject: MDE File No. 02-WL-0051/200164973; Anne Arundel County Dept. of Public Works; Mill Creek, Magothy River; Upper Chesapeake Bay Area; Anne Arundel County

The above referenced project has been reviewed by the Department of Natural Resources for associated ecological impacts. The applicant proposes to maintenance dredge a 389 foot long by 30 foot wide main channel and four spur channels (02-WL-0052/200164975; 02-GL-0053/200164977; 02-WL-0054/200164979; 02-WL-0055/200164981) varying in length from 25 to 113 feet long by 10 to 33 feet wide to the minus 3 foot depth at mean low water; transport 2, 483 cubic yards of dredged material to the existing Anne Arundel County Regional Dredged Material Placement site; provide for periodic maintenance dredging for six years; construct a 70 foot long by 6 foot wide pier, a 40 x 5 foot pier and a 35 foot by 4 foot wide pier extension. The purpose of the proposed project is to improve navigational access.

The Department has the following concerns related to the potential adverse impacts to natural and living resources resulting from this project:

1. Surveys by biologists from the Department's Fisheries Service have identified Mill Creek in the vicinity of the proposed project as a spawning area for anadromous fish species including: herring (*Alosa* sp.), white perch (*Morone americana*), and yellow perch (*Perca flavescens*).
2. The applicant's plans indicate that the proposed project would is entirely within a submerged aquatic vegetation (SAV) bed. SAV beds provide shelter and food for many species of finfish and invertebrates as well as serving as nursery grounds for juvenile finfish and molting crabs. Small fish species, as well as the juveniles of larger fish species, and developing juvenile crabs seek refuge from predators in

Bob Cuthbertson  
August 30, 2001  
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SAV. A variety of finfish food sources such as algae, eggs and small invertebrates are found in SAV beds. In addition to providing habitat for the Bay's living resources; SAV helps to improve water quality by absorbing nutrients from the water, removing suspended sediments from the water column, reducing resuspension of sediments and by retarding shore line erosion by reducing wave energy. Because of the importance of SAV beds to the health of the Bay, the Department seeks to protect existing SAV beds from perturbation.

To ensure that impacts to natural and living resources on the project site and vicinity are first avoided and then, if unavoidable, minimized to the maximum extent possible, the Department requests that the following recommendations be fully incorporated into the review of the proposed activities:

1. It is our understanding that the proposed main channel was authorized in the late 1980's by another applicant and that the current applicant is seeking to maintenance dredge a channel within the dimension that were previously authorized. Unless the applicant can demonstrate that the previously authorized dredging was actually performed or historical boat usage can be fully documented to the depths proposed, the proposed main channel and associated spur channels dredging projects in Mill Creek should not be permitted because of the impacts to submerged aquatic vegetation and shallow water habitat.
2. If the proposed dredging is permitted, to protect anadromous fish and submerged aquatic vegetation resources, no instream work should be conducted during the period of February 15 through October 15 of any year. Final dredge depths, including any over dredge, should not exceed the proposed final channel depth on minus 3 feet at mean low water.
3. We continue to be concerned with the scope of applicant's dredging program and its impact on shallow water habitat and submerged aquatic vegetation. At a recent Joint Evaluation meeting a request was made for the regulatory agencies to arrange a presentation by the applicant on the status and scope of their dredging program. Please let us know if any progress has been made in arranging such a presentation.

If you have any questions concerning these comments, or if any of the above listed recommendations cannot be implemented, please contact Roland Limpert of my staff at 410-260-8330.

cc: Janet Vine, USCOE-Baltimore