

September 30, 2002

Ms. Janet M. Vine
Mr. Richard Kibbe
U.S. Army Corps of Engineers
P.O. Box 1715
Baltimore, MD 21203-1715

Dear Ms. Vine:

I received your September 12 reply to application **CENAB-OP-RMN (Kemp, David/Mill Creek Spur Dredging & Pier) 0164973-18**, including comments and recommendations from the U.S. Fish and Wildlife Service (FWS) and the Maryland Department of Natural Resources (DNR). After reading the agency comments, it becomes apparent that the FWS did not examine all of the material provided by Andrews, Miller & Associates before preparing its response. The FWS response contains several assumptions that are shown to be incorrect by material included with the application:

- *“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.”*

The application included a letter from Mr. Daniel J. Werner, P.E. Mr. Werner was a civil engineer at Anarex, Inc., the firm that managed the 1984 project. Mr. Werner states that he inspected the dredging of Mill Creek while it was being performed by Anderson Marine Construction, and that the dredging was done in accordance with Wetlands License #84-106.

- *“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 that these property owners never had access ...”*

The application shows that Mr. Wheatley has a short existing pier to be extended, and that Mr. Kemp has an existing pier that will be replaced by a new pier closer to the proposed channel.

The application includes a Vessel and Mooring Survey showing that Mr. Kemp has a 20 foot boat and Mr. Wheatley has a 24 foot boat docked at their respective existing piers. These boats were present before the Survey was conducted and are present today. Andrews, Miller has photographed these boats while visiting the site.

The original application included additional spur channels for Koudelka, Bates, Turner, and Millar, and the final application shows existing piers for all four of these

property owners. However, spur channels for the additional owners were excluded from the final application in order to remain within the 1984 channel and minimize the area to be dredged.

The fact that two of the four applicants have existing piers with large boats and four additional property owners in the area have piers with small boats demonstrates that the FWS assumption about lack of access is incorrect.

- *“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.”*

Hurricane Floyd dumped 11 inches of rain on Anne Arundel County in September 1999. Water flowed into Mill Creek with such volume as to create whitewater conditions, and during the storm neighborhood children rode inner tubes down the rapids that formed adjacent to the Bates and Millar properties. The storm cut a new channel through the marsh adjacent to the Bates property and all but destroyed the channel between the Kemp / Wheatley properties and the main section of Mill Creek. The effects of the storm are visible today not only in the filling-in of the lower channel, but also in the deposition of a new “river delta” of silt one hundred feet downstream toward Birchwood.

Prior to 1999, the Kemp and Wheatley boats were usable at most times of most days. Planning was required to avoid being caught away from home at low tide, but the water was otherwise accessible. After 1999, the channel has been unusable by those boats except at the highest tides that occur on only a few days of the month. The difference between daily usability and sporadic usability represents a significant loss of navigational access.

It would be an engineering triumph for the County to construct a stormwater management system sufficient to handle runoff from two Middle Schools and other areas above Mill Creek during a storm equivalent to Floyd. However, a permit to repair the damage from such a storm should not be conditioned on construction of a perfect stormwater system. It is no more realistic for FWS to require a hurricane-proof Mill Creek than it would be for building codes to require a tornado-proof LaPlata. A reasonable stormwater management system is needed, and reasonable creek restoration is needed when the capacity of the system is exceeded by extraordinary events.

The MDE response contains assumptions similar to the FWS response, but it specifies the conditions that would permit dredging:

- *“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 ... dredging projects should not be permitted.”*

As noted above, Andrews, Miller has already provided eyewitness documentation that the previous dredging was actually performed. The Corps should request a copy of the Anarex letter to confirm that the MDE requirement has been met.

It is not clear how historical boat usage could possibly be “fully documented to the depths proposed”, but the Vessel and Mooring Surveys document that boats of a certain draft were present prior in 1999. The fact that the piers were previously used and that they are now practically unusable indicates that the 1999 storm caused a significant reduction in water depth. This is not “full documentation”, but it is a bit of confirming evidence that the creek was either previously dredged or previously deep enough to permit navigation.

- *“If the proposed dredging is permitted, ... no instream work should be conducted during the period of February 15 through October 15 of any year.”*

This reasonable restriction provides a timeframe for approval of the wetlands license. In light of this restriction, it is not clear why MDE waited until August 30 to provide its response when FWS was able to respond in February.

In summary, the application is for a main channel that is contained entirely within, and is considerably smaller than, the area dredged in 1984. The application has already been scaled back from eight spur channels to four. The requested depth is only three feet, in contrast to depths of five and six feet in the already-dredged main channel. The engineers at Andrews, Miller have expended considerable effort to scope the project for minimum environmental impact and collect the available documentation of past dredging and boating activity. I request that the Corps approve this project after performing an expedited independent review of the Anarex letter and the Vessel Surveys. The Corps’ review will confirm that: 1) the assumptions made by FWS are incorrect, and 2) the MDE’s requirements for approving this project have been met. Please confirm receipt of this letter, and in your decision-making process please consider the County’s need to award a contract in time for work to be completed by 15 February.

Sincerely,

David Kemp