

Testimony of the Advocates for Herring Bay Wetland Case 07-WL-0212

Regarding Proposed Dredging and Storage Operations
At Town Point, Maryland

Statements Submitted by:

Paul Rensted

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March 8, 2007

The Chesapeake Bay is North America's largest and most biologically diverse estuary, home to more than 3,600 species of plants, fish and animals. For more than 300 years, the Bay and its tributaries have sustained the region's economy and defined its traditions and culture. It is a resource of extraordinary productivity, worthy of the highest levels of protection and restoration.... In order to achieve our existing goals and meet the challenges that lie ahead, we....must manage for the future. We must have a vision for our desired destiny and put programs into place that will secure it.

—Preamble, Chesapeake 2000 Agreement

Wetland Case 07-WL-0212 is a test of our willingness to manage for the future. Anne Arundel County faces growing demands from citizens to dredge recreational waterways and needs a place to dispose of the spoils. This application to dredge Town Point Cove is the first step in the County's plan to establish a new type of disposal facility. Although not mentioned in the permit application, the new containment structure at Town Point would be used to store dredged materials on an interim basis, after which spoils would be excavated and trucked to a nearby landfill. A key issue in this case is whether this type and size of operation should be permitted at an undeveloped, biologically productive site within the Critical Area.

The Advocates for Herring Bay urge the State of Maryland to protect our ecological assets by prohibiting the use of the Town Point site for anything other than passive storage of dredged materials. Further, we believe that the Maryland Department of the Environment must remedy the procedural and substantive deficiencies in the application process before issuing any permits to dredge Town Point Cove. Finally, we believe that any permits for dredging or off-loading spoils must include strong and enforceable performance standards to ensure that the environmental problems that have occurred in the past are not repeated in the future.

To assist in the State's deliberations, the Advocates for Herring Bay have prepared comments on various aspects of this permit application:

- Paul Rensted discusses deficiencies in the planning and permitting for this state-funded project;
- Stephen Marley explains the nature of the activities that would be triggered by this permit and discusses alternative approaches that would avoid the adverse environmental and social impacts of the County's current plan;
- Kathleen Gramp shows that the proposed storage activities would conflict with laws and policies regarding the Critical Area, bald eagles, wetlands, air quality, and scenic and historic roads;
- Kelly Myers illustrates the conflict between the proposed storage activities and policies promoting the State's recreational access for bicycling and pedestrian activities; and
- Michael Brewer documents the operational deficiencies in the County's previous dredge management activities at Town Point that must be corrected before we go forward.

Respectfully submitted by the Advocates for Herring Bay, March 8, 2007

Wetland Case No. 07-WL-0212
Comments on Procedural Deficiencies in the Permitting and Review Process
Submitted by Paul Rensted
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Before granting any permits in this case, the State must rectify the procedural deficiencies in the permit application and review process for this project. Anne Arundel County's dredging application is contingent upon storage capacity that does not exist at this time, and neither the application nor the Maryland Department of the Environment's (MDE) hearing notice gave any indication that this proceeding would address the development of a new containment facility.

In addition, the County has not sought or received express approval from State or local legislators to spend government funds to establish a quasi-industrial operation at Town Point. Thus, it is premature for MDE to allow the County to initiate any activities related to the development or use of the Town Point site as an interim storage and transfer facility.

This is a State-funded public works project, and as such it should be held to the highest standards. Government projects should be a model of best practices, not just in engineering designs but in their compliance with the letter and spirit of our public laws and policies. All State agencies, not just MDE, have a fiduciary obligation to the public to ensure that this project achieves those standards.

Deficiencies in the Permit Application and Notice

There is more to this project than meets the eye. Approval of the dredging permit for Town Point is contingent on the availability of storage capacity that does not exist. The notice of this hearing states that the permit would authorize the dredging of about 30,000 cubic yards of material from Town Point Cove that would be "transported" to "the Anne Arundel County Town Point DMP." The existing containment facility at Town Point can only hold 2,000 cubic yards of material. Thus, the MDE and the Corps cannot authorize a larger volume under this permit until there is a clear basis in the public record that sufficient capacity exists at Town Point.

What is left unsaid in the permit application—and in the hearing notice—is that the County will treat approval of the dredging application as sufficient authorization to launch three activities: (1) build a new containment facility on top of the existing site, (2) operate it in a new way, namely as a dredged material transfer facility (DMTF) that is repeatedly excavated and refilled with spoils, and (3) operate the site as a DMTF until at least 2023, the year the County's lease of the Town Point site expires. The integrity of the permitting process demands that MDE require the County to submit complete applications for each of those components and allow for full review by the public.

Deficiencies Resulting from Self-Regulation of Government Projects

Anne Arundel County is both the developer and self-regulator of the Town Point project. In cases like this, the State serves as the “check” on the actions of the local government. This means that agencies like MDE must independently validate determinations that might otherwise be left up to the County, such as decisions regarding the project’s compliance with environmental, land use, and public safety laws.

For example, the County cannot legitimately claim that its new containment facility would be grandfathered under past permits. The County will be building and operating a new structure on top of a containment facility that was built and operated by the Army Corps of Engineers; any permits for the facility were issued to the federal government, not the County. The County signed a lease for the property in 2003, well after the site had been largely filled to capacity and revegetated.

Similarly, what the County is characterizing as an “upgrade” is in fact a dramatically different type of operation and must be reviewed and licensed as such. Using the site as a DMTF would transform what is now a passive, land-based storage facility into a truck-based, heavy-equipment operation analogous to borrow pits or mining operations. This new use must be reviewed for consistency with all State laws and policies, including the Critical Area law.

Deficiencies in the Legislative Oversight of Funding for a DMTF

It is premature to authorize an industrial use of the Town Point site until our elected officials at the State and local levels have been made aware of the impacts and have expressly approved or disapproved using this site in this way. The February 7, 2007 hearing was the first time that the public was given information about what the County plans to do at Town Point.

Public records suggest it’s likely that our State and County legislators were unaware of the operational impacts of this project when they approved its initial funding. For example, in the County’s 2007 budget justification, the Town Point Project was labeled as an “upgrade.” The 50-word description alludes to the dredging, design, and construction associated with the “upgrade.” The document does not indicate that the County is building an entirely new facility. Nor do the materials mention that spoils would be repeatedly excavated from the site and trucked to Sudley Landfill. Furthermore, the budget document states that the upgrade would provide capacity for projects in South County. It makes no mention of using the site to handle spoils from areas outside of South County, like Whitehall and Duvall Creeks.

Because this is a State-funded project, the State has a say in whether the County is making the right trade-offs. Is it the State’s policy to industrialize a “resource conservation area” because it is easier and cheaper than finding a new site in an “intensely developed area”? Is it in the public interest to increase air pollution so that more creeks can be dredged? Is it right to industrialize scenic roads in a historically significant residential area for the convenience of the County’s recreational dredging program? In our view, the truck and dozer method of managing spoils is only cheaper if you assign no value to the environment or local community.

Deficiencies in the Planning Process

Finally, MDE cannot assume that the County's plans for Town Point conform to all local policies and regulations because of shortcomings in the County's deliberative process. As noted in our January 25, 2007 letter to County Executive John Leopold, the County has not seriously examined alternatives or considered the environmental and socioeconomic impacts of locating a DMTF at Town Point.

The Town Point project is a poster child for why public works projects need active public input early in the process. Town Point's unique features make it unsuitable for recycling spoils, but the County's planners not could tell that by looking at a flat map. Approval of this project should not go forward until there has been a holistic assessment of its impacts, and those impacts have expressly been considered by the elected officials who are accountable to all citizens in the State.

Wetland Case No.: 07-WL-0212
Comments on Storage Capacity at Town Point

Submitted by Stephen R. Marley

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Implicit in Anne Arundel County's dredging permit application is the assumption that the County will build a new type of storage facility at Town Point. In the absence of any written documentation on how the County plans to build or operate the new facility, it is difficult— if not impossible—for MDE to decide whether the project is necessary or consistent with the State's environmental laws and policies. To help fill this informational void, the Advocates for Herring Bay (AHB) developed a profile of the proposed dredged material transfer facility (DMTF) and have analyzed the relationship between the proposed capacity and storage needs.

The major findings of our review and analysis include the following:

- Other than using Town Point as a DMTF, the County has not done a comprehensive analysis of alternative disposal options, as required under Maryland law (Title 26.24.02.03.B.9);
- All of the spoils projected to be deposited at Town Point under the County's plans through 2011 can be accommodated at Town Point without using the site as a DMTF. Consequently, the adverse environmental and social impacts associated with such operations could be avoided by authorizing a passive storage facility that would meet the needs of South County waterways;
- Town Point Cove is unsuited to mechanical off-loading operations and therefore may not be a cost-effective solution for managing spoils after the initial five-year period; and
- The formulas used to evaluate projects and assign costs exclude disposal costs, thereby artificially inflating the demand for dredging and increasing the burden on the disposal system.

Based on this assessment, the Advocates for Herring Bay strongly urge the State to reject the County's plan to use Town Point as an environmentally damaging, industrial-scale transfer facility and instead authorize a passive containment facility that meets the needs of South County waterways.

We also recommend that the State partner with local governments to provide technical and financial support for local shoreline restoration projects that use dredged materials. Such investments would restore the rapidly diminishing County shoreline, while providing a genuine beneficial reuse for otherwise valueless spoils.

Overview of the County's Plans for Town Point

Granting the requested dredging permits would effectively initiate three major activities:

1. The dredging of Town Point Cove to make it accessible for off-loading spoils;
2. The construction of a new dredge containment facility at an existing site that would hold an additional 80,000 cubic yards of material directly on top of an existing 48,000 cubic yards, representing a 160% expansion of the original Corps of Engineers facility.
3. Increasing the cumulative capacity of the Town Point site by repeatedly excavating material, trucking that material to Sudley Landfill, and refilling the site with spoils from subsequent projects.

While MDE is only being asked to permit the first activity (dredging), granting that permit is dependent on sufficient storage capacity for the spoils. The site identified in the permit application, Town Point, currently has a capacity of less than 2,000 cubic yards, and is therefore unsuitable as a containment facility for the requested permits without an increase in capacity. Thus, the County's permit application assumes that the second activity (construction of a new containment facility) will occur.

The unspoken, barely documented linchpin in the County's plan is to use Town Point as an interim, rather than permanent, storage facility. This fact is only evident from the set of charts developed by the County for internal planning purposes. Those plans show that, over the six-year period covered by the proposed MDE permit (2007-2013), the County plans to deposit a total of 120,000 cubic yards of wet spoil and excavate 70,000 cubic yards of dried material. The current plans provide for the dumping and excavation of spoil materials from local creeks (Town Point, Broadwater and Carrs) as well as creeks along the South and Severn Rivers (Whitehall, Duvall, Weems, Church & Saltworks) for which other storage sites are closer.

At the completion of the current plan (2011) Town Point DMTF will have been excavated to the point that it will have ~70,000 cubic yards of capacity available for use, not as a regional site serving South Anne Arundel County, but as a County-wide transfer facility, with very little benefit provided directly to South County residents.

The heavy equipment and truck-intensive operations associated with rotating spoils would dramatically alter the character of the existing storage facility, changing it from passive land use into what is essentially an industrial-scale activity. Specifically, in the period of peak recreational use of local roads (July – October), the plan would call for 7,000 trucks¹ (~1 every 6 minutes) to move along narrow winding country roads where no shoulders exist to protect pedestrians and bicyclists. Although not explicit in County plans, which only extend through 2011, such excavations would likely occur every two years or so until the County's lease expires or is extended. Another major excavation and trucking operation would be needed at the end of the lease term because the lease currently requires the County to restore the site to its original condition.

¹ This calculation is based on excavating 35,000 cubic yards in a 100-day period. Each truck has a capacity of 10 cubic yards, implying 3,500 trucks in each direction to and from the DMTF.

Finally, the County’s current plan does not anticipate any beneficial use for the material being transferred from Town Point. The anticipated quality of the spoil from Town Point Cove, as well as Broadwater and Carrs Creeks, makes it unsuitable for activities such as beach replenishment. Instead, the plan is to deposit the material at the long-closed Sudley Landfill, where it will have the same public utility as if it were left at Town Point.

Relationship Between Needs and Capacity Under The County Plan

Any permits for new containment facilities should be based on a clear assessment of the County’s need for storage capacity and the suitability of Town Point in meeting that need. As described in more detail below, we found that all of the spoils projected to be deposited at Town Point under the County’s five-year plan can be accommodated without excavating the dewatered material. Consequently, the adverse environmental and social impacts caused by repeated excavation and trucking can be avoided without jeopardizing any of the near-term dredging projects.

The source data for our analysis is derived from materials provided to representatives of the Advocates for Herring Bay by Merrill Plait (Chief, Environmental Engineering, Bureau of Engineering, Anne Arundel County Department of Public Works) at a meeting held at the County offices on January 19, 2007. During this meeting we were provided with a thorough account of the details of the County’s dredging schedule through FY11. It is the County’s own planning data that has been used to build the analysis presented.

Figure 1 shows the County’s planned use for the Town Point DMTF. The plan currently extends out through the end of the FY11 dredging season (February 15, 2011).

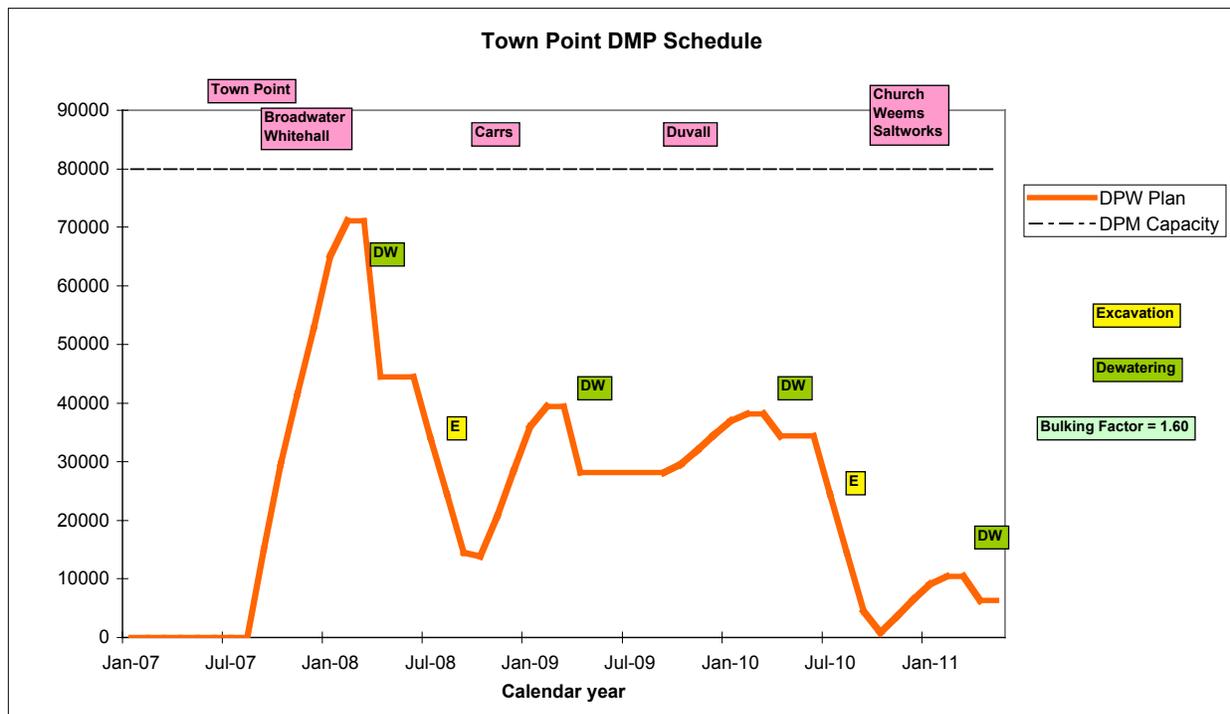


Figure 1 - County planned use of Town Point DMTF

Figure 1 shows the dredging schedules for FY08 (Town Point, Broadwater & Whitehall Creeks), FY09 (Carrs Creek), FY10 (Duvall Creek), and FY11 (Saltworks, Weems & Church Creeks). At the completion of each year's dredge in mid-February a period of monitored dewatering takes place. This activity significantly reduces the volume of the dredge material. The planning performed by the County assumes that materials will be hydraulically dredged, and so we have assumed a volume reduction during dewatering on that basis. If in actuality some or all of the rivers are mechanically dredged, the initial volumes deposited at the DMTF will be less than planned. When calculating the volume reduction due to dewatering we have made the conservative assumption for the bulking factor of 1.6 (typically a bulking factor of between 2 and 3 is observed for hydraulic dredging). Thus our calculations err on the side of underestimating the volume reduction, and so overestimate the total volume of dried spoil being contained.

The current County plans call for two periods of excavation of the Town Point DMTF: one in the summer of 2008 the other in 2010. During each of these excavations 35,000 cubic yards of dried spoil will be removed from the DMTF. The excavation effectively removes all the spoil that was previously deposited, so that by the end of FY11 there is less than 10,000 cubic yards of spoil held at Town Point, and the facility will have approximately 70,000 cubic yards of capacity available for dredge material placement from around the County.

Viability of a Passive Storage Alternative

Figure 2 shows an alternative approach for the use of the planned capacity at Town Point DMTF that eliminates the need for environmentally insensitive excavation activities, but which still permits the County to complete its current planned dredging program.

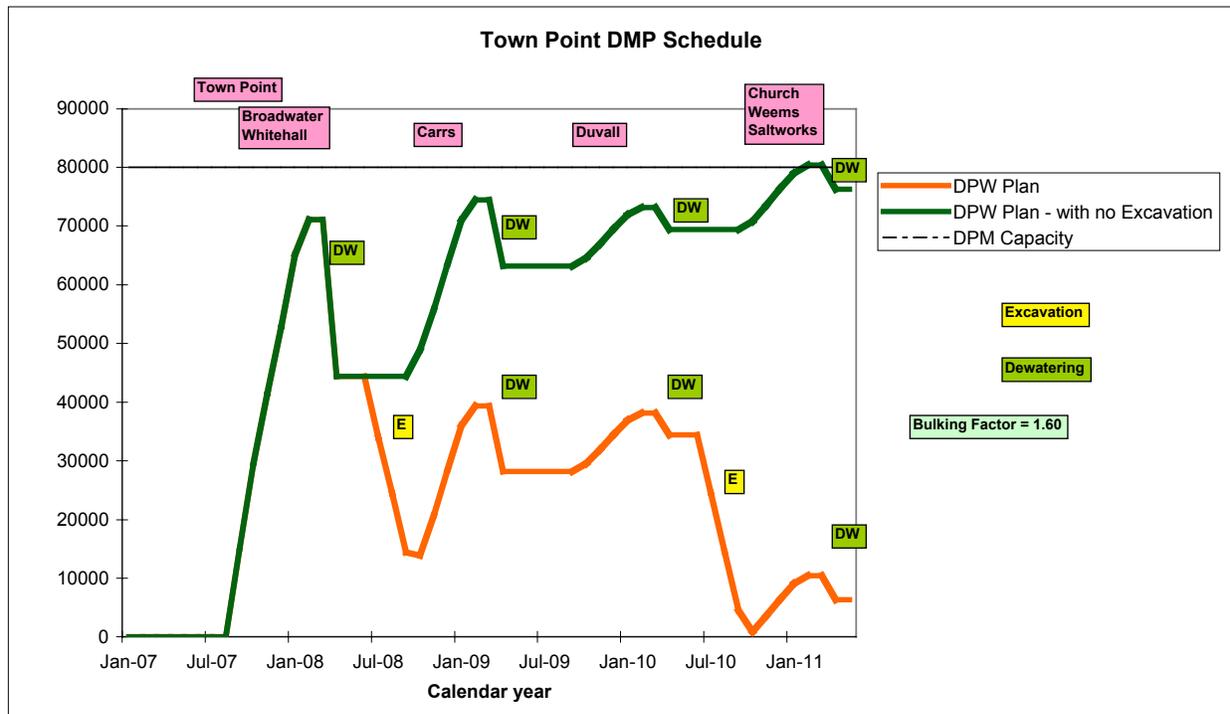


Figure 2 - Passive Use Alternative

Continuing from analysis presented earlier, Figure 2 shows what the cumulative capacity use at Town Point DMTF looks like if no material is ever excavated. As can be seen, even with the conservative bulking factor assumptions, dredge spoil deposits for the major South County waterways (Broadwater, Town Point, and Carrs) can be accommodated at Town Point DMTF without the need to excavate. Indeed, it is very likely that all the planned dredge spoils deposits can be accommodated. This passive use alternative would require the one-time only fill of Town Point DMTF, and would permit the commencement of site rehabilitation activities as early as the summer of 2012.

Other Alternatives for Managing Spoils

When asked in 2005 about alternate locations for dredge storage sites, County staff noted that they had evaluated “Beverly-Triton Beach, shoreline area of Carrs and Broadwater Creeks (not used), Bay Ridge Community Beach and the North Grays Bog Restoration Site.”² The sites on that list are beach replenishment and bog restoration projects that require a particular type of spoils material. Because the anticipated quality of the spoil from Town Point Cove, Broadwater, and Carrs Creeks is unsuitable for activities such as beach replenishment, the County has not explored any practical alternatives for managing the spoils being generated by those projects. Thus, the current application does not satisfy the statutory finding that “alternatives for the disposal of dredged materials have been explored” (26.24.02.03.B.9).

Fresh thinking could lead to new innovations. The State relied on open-water dumping of spoils for decades because it was cheap and easy. Now the State of Maryland has partnered with the federal government to use spoils to create, rather than despoil, habitat. Habitat creation is more expensive than dumping or trucking spoils, but the incremental investment creates an environmental asset that will benefit generations to come. To our knowledge, the County has not yet studied the possibility of using spoils to rebuild local shorelines. We urge the State to partner with the County in developing containment sites that would rebuild habitat along the western shore of the Bay in a manner similar to, though in smaller scale than, Poplar Island.

The County also could increase storage capacity by correctly assigning costs to public and private dredging projects. Current assessments artificially inflate demand because they do not include any of the costs associated with disposing of the spoils. Sending the right price signals to consumers would either reduce the volume dredged on behalf of private citizens or generate revenues that would help cover the cost of new storage facilities.

Finally, our recent experience with the off-loading operations at Town Point raises doubts about the long-term viability of using Town Point for anything other than local projects that can be hydraulically dredged. Given its small size, tidal variations, and shallow depths, Town Point Cove cannot effectively handle mechanical off-loading operations of any significant scale. This means that the materials that theoretically would be placed at Town Point after the initial excavations would have to be transferred to barges located outside of the cove to allow for

² Correspondence from Nancy Heagerty, DPW, August 2005.

hydraulic deposition. Based on the comments of Keith Tate³ at the public hearing, this would be costly and perhaps impractical because few firms provide that service in Anne Arundel County. Off-loading limitations are just one more reason why using Town Point as a DMTF is not a cost-effective, long-term solution for managing spoils.

Other Policy Issues

Anne Arundel DPW prides itself on the environmental sensitivity of its dredge program and the lengths it goes to develop sustainable waterway improvement and use. However, this enlightened approach does not currently extend to the full life cycle of dredge spoil management. It is time to shift the focus of the dredge management program away from maximizing the quantity of spoils that can be dredged in any year to maximizing the quality of the government's "cradle to grave" management of spoils from County waterways.

Plans Lack Public Input. Neither the expansion of Town Point DMTF, nor the change in the manner of its operation, has undergone any form of public review. The lack of public review has permitted the County to both hide the true cost of its dredging from State funding agencies, and to ignore County code by incorrectly describing the plans as being within the scope of the permitted existing use of the site.

Plans Ignore the Full Cost of Dredge Management. State and local criteria used to award waterway grants need to factor in all costs, including disposal. If the full cost of adding new capacity were to be included, policymakers would have a more accurate measure of cost to the State and community at large, including operational costs and quantitative measure of impacts on the State's ecological and environmental assets (such as habitat and clean air).

The County's dredging program is partly financed through matching State funds from the Department of Natural Resources. The prioritization of dredge projects is based on a cost-benefit ratio that does not account for any of the costs or impacts associated with dredge management. This encourages the County to minimize the money it spends on its dredge management program in order to maximize the funds it can apply to dredging activities. This approach inevitably leads to a program that is biased in favor of dredging and discounts the costs borne by the environment and communities affected by dredge disposal.

The planned use of Town Point DMTF is perceived by AAC-DPW as being the most cost effective because many of the true costs are not borne by DPW but by the impacted communities and the other County departments that will inevitably have to address the effects of the degradation of the environment resulting from its operation. If the full cost to the County and State were to be calculated and the impact to existing road infrastructure, long-term public health, and local tourism properly evaluated from a holistic perspective, AHB is confident that a very different plan from that proposed would emerge.

³ Bayland Consultants and Designers.

Wetland Permit No. 07-WL-0212
Comments on Conflicts with Environmental Laws and Policies
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A central issue in this case is whether Anne Arundel County should be allowed to operate an environmentally disruptive activity in a biologically productive, legally protected site within the Critical Area. AHB's analysis suggests that the repeated excavations and trucking associated with using Town Point as an interim storage and transfer facility are inconsistent with the letter and spirit of the Critical Area law as well as State policies regarding bald eagles, wetlands, and air quality.

As a result, the storage activities implied in this application fail to meet the statutory criteria for permit approval that requires a showing that "proposed activity is consistent with State, federal, and local land use plans and laws, including Critical Area laws" (26.24.02.03.B.8). In addition, the application lacks the documentation necessary to show that the off-loading and dewatering operations would not adversely affect the "natural water flow, water temperature, water quality, and natural tidal circulation regimes" of Trotts Branch and Town Point Cove (26.24.02.03.B.4).

Minor mitigation measures or tweaks to operational plans would not remedy the environmental and policy conflicts arising from the use of the Town Point site as a transfer facility. "Managing" conflicts with the law is not the same as adhering to the law. The Advocates for Herring Bay believe this case requires clear directives from the State prohibiting the County from using the Town Point site as a DMTF. In addition, we recommend that the State impose conditions on the construction and use of a passive containment facility, including limits on off-loading methods, in order to avoid adverse impacts on the biota in this area.

We often bemoan our lack of progress in achieving the goals in the Chesapeake 2000 agreement, which include conserving all streams and forests and expanding riparian forest buffers. The choice between passive and industrial use at Town Point is a choice between going forward or backward on the road toward a healthier Bay.

Framework for Making Economic and Environmental Tradeoffs

The County's engineers prize Town Point's proximity to Rockhold Creek, arguing that access to a federally maintained waterway will reduce the cost of getting spoils in and out of a storage site. No one doubts the cost-effectiveness of waterborne transportation; it is why so many heavy industries are located along the shores of the nation's rivers and harbors, including those of the Chesapeake Bay. Left to economic forces alone, it is plausible to assume that all of the Bay's shoreline would eventually be developed for intensive use, whether for industry, recreation, or communities.

The State of Maryland created a statutory framework for balancing economic and environmental benefits when it enacted the Critical Area law in 1984. The State made a conscious decision to

close off some areas from intense development, notwithstanding their value to developers. One of the areas designated as a “resource conservation area” (RCA) is Town Point.

Under the Critical Area law, lands designated RCA are meant to “conserve, protect, and enhance the overall ecological value of the Critical Area, its biological productivity, and its diversity” and to “provide adequate breeding, feeding, and wintering habitat for those wildlife populations that require the Chesapeake Bay, its tributaries, or coastal habitats in order to sustain populations of those species.” The types of land uses allowed in RCA areas are defined by law as “those areas characterized by nature-dominated environments and resource-utilization activities” like agriculture, forestry, and fisheries (27.01.02.05). Town Point’s agricultural zoning reinforces those Critical Area protections.

The County’s dredging program must live within this framework like everyone else. If the County wants to have disposal facilities in the Critical Area, it must locate them in areas that are suited to the intensity of the operation. The economic preferences of local governments do not trump the law.

Critical Area Guidelines Do Not Allow Disruptive Activities In RCA Districts

As documented in the testimony of Stephen Marley, the County’s plans for Town Point call for building a new 80,000 cubic yard containment structure, depositing spoils, and then excavating 35,000 cubic yards of dewatered material every two years or so. Such rotations would likely continue on a regular basis until the County’s lease for the land expires in 2023, but could run indefinitely if the lease is extended.

Rotating spoils in and out of the site would involve extensive use of heavy, diesel-powered equipment, both at the site and on local roadways. Excavators would be needed to remove the materials, loaders to transfer the material to the trucks. The excavation planned for the summer of 2008 would generate an estimated 7,000 truck-trips over the summer months, resulting in an average of about 80 truck-trips per day, or one truck coming or going every 6 minutes.

At least nine acres of land would be rendered biologically unproductive if the County is allowed to use Town Point as a dredged material transfer facility. That acreage would not support any plant or animal life because it would either be filled with fresh spoils or covered with bulldozers and trucks. According to County staff, the Town Point site would not be re-vegetated prior to final closure because of the repeated deposition and excavation. Likewise, the diesel emissions and dust from the heavy equipment used to excavate and truck the materials could impede the growth of vegetation; the noise and traffic would disrupt the natural patterns of the bald eagles, herons, turtles, and many other species that inhabit that area.

Disruptive activities like DMTFs do not belong in resource conservation areas that have been set aside specifically to protect and conserve the Bay’s biological assets. The type of operation planned for Town Point is more analogous to commercial borrow pits or mining, neither of which are allowed to be located in RCA districts under the County’s zoning code. (18-13-206-6).

Critical Area Restrictions Are Based on Substance, Not Labels

Anne Arundel County has characterized the new DMTF as “an upgrade consistent with previous use.” We disagree. Using Town Point as a “recycling” center for spoils is a new land use. Moreover, this new use is in stark contrast to the way the Town Point site was used by the Army Corps of Engineers. The Corps built the existing 50,000 cubic yard containment facility about 20 years ago to handle spoils from Rockhold Creek. As shown in the photos included in our February 27, 2007 letter to the Critical Area Commission, the land was quickly re-vegetated by natural processes. The Corps facility was never excavated, as is evident from photos, anecdotal reports of long-time residents, and the fact that it still holds 48,000 cubic yards of material.

The only thing the old and new projects have in common is that they will handle dredged materials. Having the same purpose does not make the new land use “consistent” with the site’s Critical Area classification. What matters is how *intensely* you use the land. For example, residences are allowed throughout the Critical area, but the density allowed in each category varies, ranging from townhouses in “intensely developed areas”(IDA) to one-house per acre in RCA districts.

As we noted in our letter to the Critical Area Commission, not all dredge storage facilities are alike. Dredged materials are being used to create habitat at Poplar Island and other areas on the Eastern Shore. That land use clearly warrants an RCA designation. So too would the County’s beach replenishment and bog rehabilitation projects. Similarly, the Corps of Engineers and other businesses and localities rely on permanent, passive storage methods where spoils are simply deposited and immediately re-vegetated. Properly managed, such passive storage is analogous to agricultural uses that only temporarily disturb habitat and therefore also may be appropriate for RCA districts.

Anne Arundel County, however, is planning to expand its dredge storage capacity by having a small number of facilities that can be used intensively by rotating spoil in and out of the site. As noted elsewhere, the associated excavation and trucking activities would repeatedly disturb land, air, and water at the site and adjacent wetlands. A spoils recycling center probably should be located in an IDA or limited development area.

Disruptive Activities Would Adversely Affect Bald Eagle Habitat

As indicated in our December 1, 2006 request for a public hearing, the Town Point area provides habitat for bald eagles as well as other biota. The enclosed picture of a mature bald eagle was taken in the summer of 2006 within a few hundred feet of the Town Point dredge containment area.

While eagle sightings are becoming more common in the State of Maryland, they are still unusual in Anne Arundel County. Despite having over 500 miles of shoreline, Anne Arundel County hosts relatively few bald eagles. When the Department of Natural Resources (DNR) last did a nest count in 2004, they identified only seven active nests in the County, two more than in nearby Baltimore County. The Herring Bay area, of which Town Point is a part, provides

important habitat for the County's eagle population, currently supporting two or three pairs of mature eagles.



Creating a two-story, nine-acre lake of spoils at Town Point will impair the eagles' habitat. Because the site would be barren for at least 15 years, the eagles or their prey would be at risk of contamination from minerals or toxins in the spoils. The noise, dust, and disturbance caused by each excavation would also increase the odds that the eagles will abandon the area.

Disrupting the bald eagles' habitat is inconsistent with federal and State policies. The Fish and Wildlife Service's February 2006 draft National Bald Eagle Management Guidelines recommends that new construction or mining activities:

- occur at least 660 feet from a nest
- be done outside of the nesting season
- avoid blasting and other loud intermittent noises
- avoid disruptive activities and development in the eagles' flight path between their nest, roost site, and foraging areas.

In a 2002 press report, a DNR official indicated that the eagles' comeback was primarily the result of the habitat protections in the Critical Area law.⁴ This is yet one more reason why the County should not be allowed to locate a DMTF in an RCA zone.

Increasing Air Pollution Would Be Inconsistent With Law and Policies

At a time when State and County officials are making a concerted effort to reduce air pollution and emissions of the gasses that cause global warming, it makes no sense for the government itself to create a new source of pollution, especially when it is unnecessary to do so.

Anne Arundel County already has some of the worst air quality in the nation, and is ranked in the top 20 most polluted counties in the nation. That pollution hurts the health of County citizens and the Chesapeake Bay. Studies have found that roughly one-third of the Bay's annual nitrogen load is from airborne sources. Scientists have also found that ozone damages forests and other plant species.

The County's strategy of repeatedly excavating the Town Point site would increase the local concentration of various air pollutants, particularly nitrogen oxide (NOx), a precursor of ozone, and fine particulate matter. According to MDE, heavy-duty diesel trucks, especially the older trucks used by the County's contractors, are one of the top three sources of NOx emissions in the State. Emissions from the excavators and loaders would dump thousands of pounds of NOx and particulate on the site, further impairing the biological productivity of the vegetation and other biota in the area.

⁴ Martha Blume, "The Peaceable Kingdom," *Bay Weekly*, April 18-24, 2002.

The 7,000 truck trips associated with each excavation would exacerbate Anne Arundel's non-attainment problems, adding significant quantities of NOx and particulate to the air during the summer, the very time that the County experiences its worst air quality. Homes located at the intersection of Fairhaven and Town Point roads would be especially hard hit by these emissions because trucks would have to accelerate uphill from a full stop within 30 yards of their doorsteps.

Off-loading and Dewatering Activities Could Adversely Affect Wetlands

Dredge storage operations are not rocket science. Engineers know how to design and build them and have experience operating them at various locations. However, low-tech does not necessarily mean low impact. In this case, location is everything.



The site slated to serve as a DMTF is immediately adjacent to the wetlands associated with Trotts Branch, a tributary that flows into Town Point Cove, Rockhold Creek, Herring Bay, and the Chesapeake Bay. While characterized as an “upland” location, the elevation of the northern perimeter of the site is naturally less than 20 feet higher than the Trotts Branch wetland itself. At some points the site is less than 50 feet from Trotts Branch. As is evident from this 2001 aerial photo, Trotts Branch is a very small, slow-flowing tidal waterway.

Similarly, Town Point Cove is a narrow, tidal body of water with limited room to maneuver for boats or barges. This is especially so during the winter dredging season, when much of the wetland area is drained by the effects of westerly winds. Even after Town Point is dredged, the off-loading area will be no more than 150 feet wide, the channel about 75 feet wide. The barges used to mechanically off-load spoils have virtually no turning radius, nor is there room for more than one at a time.

Before granting a wetlands permit, MDE must have scientifically valid evidence that the proposed operations will not adversely affect the “natural water flow, water temperature, water quality, and natural tidal circulation regimes” of Trotts Branch and Town Point Cove. There is nothing in the public record supporting this application that shows the County has measured the stream flow of Trotts Branch or examined the hydrology of the Cove. As a result, it is clear that the County has not analyzed the impact of the off-loading operations or the direct discharge of water on these particular wetland areas. These assessments must examine the cumulative impacts over the 15-year life of the project, not just during the month-long dewatering period.

MDE cannot simply assume that these operations will have no adverse effects on the wetlands in Town Point. Experience with this winter's off-loading operation, which is discussed by Michael Brewer and others, suggests the opposite is true: we have good reason to expect that the operation could damage the Cove and Trotts Branch. Experience at other County sites that abut much larger waterways would not be predictive of the impacts on small tributaries like Trotts Branch. Likewise, experience from the Corps of Engineers' past operations would not be

comparable to future operations because of the topographical changes being made to the site and the unregulated use of both hydraulic and mechanical off-loading methods.



Creeks and waterways like Trotts Branch and Town Point Cove are an integral part of the Bay’s drainage network, serving as a filter for sediments and habitat for aquatic species. MDE should not issue permits for new dredging or storage operations—even passive storage facilities—until the potential adverse impacts on these wetland areas are understood and prevented.

Operating a DMTF Would Conflict with Scenic and Historic Roadway Laws

It also is inappropriate to locate this type of operation on roads designated as Scenic and Historic. The dump trucks leaving the Town Point site would drive on Leitch Road, Town Point Road, and portions of Fairhaven Road, all of which have received that designation because of their beautiful vistas of the Chesapeake Bay as well as historic significance. Under the County’s zoning code, commercial activities that would generate similar types and volumes of traffic cannot be located on those roads (see for example, 18-11-113, which prohibits use of Scenic or Historic roads by borrow pits and sand and gravel operations located in agricultural zones).

Changing the hours of trucking operations would not change the nature or volume of heavy trucks on these roads. All that would do is spread them over a longer period of time or increase their frequency. Either way, the industrial truck traffic would be the same and would conflict with established public policy.

Wetland Case No.: 07-WL-0212
Comments on Conflicts with State Bicycle and Pedestrian Plans
Submitted by Kelly Myers
524 Herring Avenue
Fairhaven, MD 20779

Though there are many great things about this community, the recreational value of our spectacular country roads is a big part of the mix. They are narrow, hilly, and winding, and promise something special every time you're on them--if you take the time to soak it in. The natural, scenic, historic, and aesthetic values of our communities are put at risk by this proposed activity. Tourism, commerce, recreation, and aesthetic enjoyment of the area would be greatly diminished if it proceeds. State law requires that projects show that "the natural, scenic, historic properties, and aesthetic values can be retained or enhanced" (26.24.02.03.B.10). The County's proposed dredge storage facility fails that test.

We use these roads at various times of the day, every day of the week, and every season of the year. We walk: we walk to visit our neighbors; we walk the dogs; we walk to see and listen to the swans; we walk to spy on the peepers; we walk to exercise. We jog. We ride our bikes. Riding these roads is fun and challenging and it is so incredibly beautiful here.

Our roads are well-known and attract tourists. Leitch, Town Point, and Fairhaven Roads are favored by many cyclists, locally and from far away. They are published in books and guides as desirable routes and part of circuits. Fairhaven Road is noted on the County's Prioritized Bicycle Route Network, as are many of the roads the trucks will have to take to get to the Sudley Landfill. The Maryland Department of Transportation's (MDOT's) most recent Maryland Bicycle Map shows Fairhaven Road as one of its suggested routes, giving it their most favorable rating.

Cycling clubs plan regular major events featuring rides on these roads. We see 1,500 cyclists at the time for single events. And, it's not just on the weekends--rides during the week and during the winter are common, too. It's not just cyclists who have discovered our roads, though. The occasional antique car club passes by and we are definitely on the radar of motorcycle clubs.

Two groups asked us to convey their concerns at the hearing by sharing letters that they sent to County Executive Leopold. Here are some of their points:

- Centaur Motorcycle Club (Washington, DC)
 - The attraction of the area for motorcycle enthusiasts is the natural beauty of Chesapeake Bay and the quiet rural qualities of that area.
 - The narrow winding roads beckon cyclists of many generations and experiences.
 - Bike riders travel to this region to enjoy and relish these attributes.

- The bonus: they also bring their wallets to shop and patronize the local establishments.
- The prospect of encountering large volumes of heavy truck traffic is about as appealing for a *chopper ride* as a trip to Tyson's Corner.
- Annapolis Bicycle Club:
 - Many cyclists use these roads for exercise and recreation.
 - The prospect of frequent encounters with large, heavily laden multi-ton trucks while riding a 25-pound bike on these roads is daunting.
 - In particular, riding on Leitch road with constant truck traffic would be so daunting that they would have to stop using it and recommend that their members and all other cyclists do the same.
 - This would also limit the use of Town Point Road, since without Leitch, there'd be no exit from the north end.
 - Heavy truck traffic on Town Point and Fairhaven Roads would also be dangerous, as those roads are straight enough to allow high speeds, but have little or no shoulders available for a cyclist to use to avoid an accident.

During the recent trucking of dredge spoils, neighbors noticed that the trucks created patches of mud from spills and material tracked by their tires and dropped from their undercarriages. Hitting a mud patch at speed is a dangerous situation for a bike. We are very concerned about the amount of debris the proposed number of trucks would leave behind.

We also are very concerned about the impact of the truck emissions not only on our air quality, but also on our quality of life, especially since the bulk of the traffic will occur during the summer, the time when so many of us are most likely to be either on the roads or at home with our windows open.

Proposed Activity Conflicts with Municipal Planning

Allowing the truck traffic necessary for the proposed Town Point Dredged Transfer Facility is contrary to years of planning by both the County and State:

- **1997 Anne Arundel County General Development Plan**

The County's General Development Plan promotes and encourages a safe, efficient, multi-modal transportation system that adequately serves the public, minimizes negative environmental impacts, improves air quality, reduces resource consumption and reflects and strengthens the County's land use goals.

- **2002 Statewide Bicycle and Pedestrian Plan**

During the development of Maryland's Bicycle and Pedestrian Plan, John Porcari, then Maryland Secretary of Transportation said, "Our goal is to make Maryland the best State for bicycling and walking."

- **2003 Anne Arundel County Bicycle and Pedestrian Master Plan**

In 2003, the County developed its own Bicycle and Pedestrian Master Plan, presenting a vision where residents and visitors have the convenient and comfortable option of bicycling

and walking for transportation and recreation. It states that bicyclists and pedestrians are legitimate road users who have the legal right to use our roadways. It also recognizes the economic benefits of bicycle tourism, stating:

- Bicycle tourism is big business in the U.S., bringing millions of dollars in revenue to some parts of the country.
- It is clear that bicycle tourism should become a key feature of the region's future tourism strategy.

The County's Master Plan also talks about quality-of-life benefits:

- Providing a livable community is a necessary part of attracting and keeping businesses, keeping our best and brightest young people here at home, and ensuring that AACo remains competitive in the 21st century.
- Bicycling and walking are integral to the County's image as a friendly and welcoming community.

To evaluate its roadways, the County used the Bicycle Level of Service (LOS) Model. The Bicycle LOS is an evaluation of bicyclists' perceived safety with respect to motor vehicle traffic. It is used by planning agencies and provides an A-F grading system for rating bicycle riding conditions on roadway segments. It considers average daily traffic, percentage of heavy vehicles, number of lanes, speed limits, pavement widths, etc.

Just a small percentage of the number of trucks necessary to transport the dredge spoils in this proposal would drop the current rating of Fairhaven Road from an A or B to an F, effectively removing it from any list for safe cycling. This is especially true since the heaviest truck traffic will be during the summer months.

Conclusion

The scenic and historic roadways in the Herring Bay area are an essential part of our community. Our historic beach neighborhoods are especially alive in the warm weather; we come out to play en masse. Our population swells with children home from school, the return of part-time residents, and our many visitors. The marinas become active. Our roads fill with walkers, runners, cyclists, and motorcyclists. Unfortunately, it is during these busy summer months that the proposed transfer of dredge spoils by trucks will be taking place.

The plan to turn the Town Point dredge site into a continuous transfer site adds an unacceptable traffic burden to scenic and historic roads never designed for it and precludes their safe recreational use. Additionally, its development and use is contrary to County code and the spirit of law. The permit, as it stands, should not be granted.

Wetland Case No. 07-WL-0212
Operational Deficiencies in the County's Dredging Program
Submitted by Michael Brewer
6605 Revel Road
Tracys Landing, MD 20779

As discussed below, the facts show that Anne Arundel County has not properly maintained or operated its dredge material storage operations at Town Point since it started leasing the site in 2003. Thus, MDE cannot assume that "maintenance and operation of the project is assured" (26.24.02.03.B.16) for the activities covered by this permit application. Any permit issued to Anne Arundel County must be conditioned on strict performance standards backed by independent monitoring, enforcement, and restitution for damages. Having a formal process for independent review by local citizens, as we understand has been done elsewhere, may be one way to strengthen compliance.

Operational Deficiencies in the County's Existing Operations at Town Point

Experience at Town Point suggests that the County simply puts jobs up for bid, selects the lowest bidder, and allows the contractor to decide where and how to dispose of the spoils. Even the monitoring of the contractor is contracted out. Doing things on the cheap carries a high price for the environment and cannot be allowed to continue. For example:

The County mismanaged previous off-loading operations at Town Point. The County hired a contractor to dredge Parkers Creek in Deale, Maryland in the winter of 2006-2007. We were told that the choice of how and where to dispose of spoils was left to the contractor. The contractor chose to mechanically off-load spoils at Town Point Cove and truck the materials to the County's dredge storage facility in Shady Side. Thus, the Town Point operation involved transferring spoils from a barge to a dumpster on shore and then loading materials from the dumpster onto trucks.



According to eyewitness accounts, the contractor plowed the creek with the barge during periods of low tide, breached silt fences, and knocked down pilings. Some of that damage is evident in this photo, which was taken shortly after the community was assured by County officials that they had vigilant, frequent monitoring of the site. Other citizens have given County officials pictures that show the impact of the barge activity on the slips in the marinas. As James Smith and William Conlyn testified at the February 2007 public

hearing, neither the County nor the contractor has been willing to repair the damage done to marina infrastructure or navigational access.

The County failed to revegetate spoils deposited at Town Point a few years ago. Although the precise dates are unknown (despite citizens' requests for this information), aerial photos show

that the County deposited spoils at the existing site some time between 2002 and 2005. The attached site photo from 2007 shows that the spoils are still barren; even phragmites have not yet overtaken the site. This suggests that either State agencies were remiss in not requiring the County to revegetate the site or that the County failed to spend the funds necessary to restore native vegetation.



Nothing in the County's plans for this project indicates that the Town Point site would be managed any better in the future. As everyone knows, dredge containment sites are very vulnerable to infestation with phragmites and other invasive species. We are especially sensitive to this risk after working with the Federal Fish and Wildlife Service last summer to try to eradicate phragmites from an area less than a quarter mile from the Town Point site. Thus, we expressly asked that the vegetation management plan outline ways to prevent the spread of phragmites when we met informally with County staff. Instead of capitalizing on this opportunity to work with the community and "do it right," the County sought and received State approval to go forward with its original plan to simply seed the site with fescue (a type of turf grass).

The County's dredging schedule also ignored information about soft-shell crabbing operations at Town Point. The County wants to start dredging Town Point Cove in September 2007, notwithstanding prior written notice that there are two soft-shell crab shedding operations in that marina. In their August 2005 response to citizen enquires, the County and its contractor indicated that the information on the crabbing operations was "duly noted."⁵ Whether intentional or not, this oversight repeats the pattern of putting the convenience of the County's dredging program ahead of the needs of the affected community.

Need for Stronger and Enforceable Operational Requirements

In light of the shortcomings in the County's existing operations, MDE should not issue any permits unless the County is required to meet explicit and enforceable performance standards. At a minimum, those should address the following areas:

Water Quality Monitoring. Any MDE permit for off-loading or containment operations should require thorough, frequent, and independent water quality monitoring. According to the site plans, the County currently only measures for turbidity, and only does so quarterly once the filling operations stop. There must be a procedure and funding for continued monitoring after the dewatering phase to ensure proper management of any sediment or effluents that may be discharged after major storms or hurricanes. Who will monitor the site for groundwater impacts and for how long will the monitoring be done?

Remediation. The State also must establish funding and procedures that ensure citizens are compensated for damage caused by off-loading operations. The most recent operation left many

⁵ Correspondence from Nancy Heagerty, DPW, August 2005.

slipholders “high and dry,” with no clear process for addressing the damage. Sediment levels need to be measured before and after the operations so that both sides know that any claims will be based on reliable data. Similarly, permits for storage facilities must make the County fully accountable for remedying any adverse impacts on Trotts Branch resulting from an influx of sediments or other contaminants, before or after the dewatering phase.

Vegetative Cover. We do not know why the State does not require the County to immediately revegetate disturbed areas with native plant species suited to the wetland and forest habitats adjacent to the site. It is possible that officials at the Anne Arundel County Soil Conservation District were unaware of our concerns about the degradation of habitat that would result from having barren tracts of land or reinfestations by invasive species. Whatever the cause, this oversight must be corrected before MDE approves permits for any dredging or storage operation.

Finally, the dredging of Town Point Cove should not be allowed to start before October 15 because of its long-standing use by watermen for soft-shell crab shedding operations.