District Engineer June 20, 2013
c/o Steve Harman via email: steve.harman@usace.army.mil
U.S. Army Corps of Engineers
Baltimore District
PO Box 1715, Baltimore, Maryland 21203-1715

Re: CENAB-OP-RMS (WALDORF CROSSING-PROPERTY/WESTERN PARKWAY PHASE 2&3) 2007-66063

Dear Steve Harman:

The undersigned are responding to Public Notice 13-30 to request a hearing on the subject application, and to submit comments in support of our view that the direct and cumulative effects of this project necessitate that permits be denied for the present configuration of the project. Absent a denial, we request that a full NEPA\(^1\) review, including an Environment Impact Statement (“EIS”), be undertaken to fully analyze the benefits and costs of the proposal, and to seek less damaging alternatives. In light of the significant impacts detailed below, refusal to conduct an EIS would be arbitrary and capricious. We request that all citations be included in the record by reference.

Waldorf Crossing is a proposed 140 acre development pressed against Mattawoman Creek at a primary gateway to Charles County. Its location is key to several interacting transportation projects. It involves extensive infrastructure, including completion of the Western Parkway and proposed rail lines that could have profound effects on both public

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\(^1\) Acronyms
ACOE: Army Corps of Engineers
CWAP: Clean Water Action Plan
DNR: Maryland Dept. of Natural Resources
EIS: Environmental Impact Statement
EPA: U.S. Environmental Protection Agency
FWS: U.S. Fish and Wildlife Service
MDE: Maryland Dept. of the Environment
MOU: Memorandum of Understanding
NEPA: National Environmental Policy Act
NPS: National Park Service
NRI: Nationwide Rivers Inventory
PN: Public Notice
SHA: State Highway Administration
TOD: transit oriented development
WC: Waldorf Crossing
WMP: Mattawoman Creek Watershed Management Plan
WQC: Water Quality Certification
WQS: Water Quality Standard
WRR: Watershed Resources Registry
WWTP: Wastewater Treatment Plan
and federal interests. The project’s direct impacts to aquatic resources are significant and have not been demonstrated in the Public Notice (‘‘PN’’) to have been avoided or minimized, as required under Section 404(b)(1) guidelines of the Clean Water Act. In accordance with the Environmental Protection Agency’s Guidelines for Specification of Disposal Sites for Dredged or Fill Material (the ‘‘404 (b)(1) Guidelines’’) in 40 CFR Part 230.10(a)(1) through (3), non water dependent alternatives which do not involve a discharge into special aquatic sites (including wetlands) to fulfill their basic purpose are presumed avoidable unless clearly demonstrated otherwise. The burden of proof to clearly demonstrate that the proposed discharge represents the ‘‘least environmentally damaging practicable alternative’’ rests with the applicant. 40 C.F.R. 230.10(a). There is no evidence that the applicant in this case has presented such alternatives.

The adverse impacts are substantially magnified when viewed in light of past cumulative effects on Mattawoman Creek—at a ‘‘tipping point’’ according to an interagency Task Force—and in light of ongoing or proposed projects. Therefore, we believe that it is in the public and federal interest to hold a hearing on this project as a first step in examining the effects of this project in greater detail than allowed by the brief comment period subsequent to the PN. A hearing is necessary to scope an Environmental Impact Assessment under NEPA for the potential cumulative impacts described below.

Federal interests in this project are extensive.

The project cannot be built in its present configuration without federal wetland permits. Under NEPA, the permitting decision must account for cumulative impacts to the affected water body or bodies. 42 USCS §4332. In particular, we emphasize that the decision must be examined in the context of past federal actions that have brought Mattawoman Creek to a tipping point [Task Force, 2012], and in fact to a demonstrable decline in the biological integrity of the downstream estuary through loss of fish species richness and abundance [DNR, 2010; DNR, 2011; Task Force, 2012], and the river through biological impairment [MDE, 2005].

The Army Corps of Engineers (‘‘ACOE’’), through various roles such as its authorship of the Lower Potomac River Basin Reconnaissance Study [ACOE, 1997] and the Mattawoman Creek Watershed Management Plan (the ‘‘WMP’’) [ACOE, 2003], is aware of the value and vulnerability of Mattawoman Creek and its watershed. In the WMP, the Corps analyzed the projected urbanization of the watershed and predicted that it would lead to impacts to streams and to the estuary that were deemed ‘‘major,’’ ‘‘dramatic,’’ and ‘‘severe.’’

Among past federal actions contributing to cumulative impacts are:

- State and federal funds ($2.3 million and $3.8 million, respectively) contributed to the construction of the Mattawoman Wastewater Treatment Plant (‘‘WWTP’’) [MOU, 1990]. Adjusted by the Consumer Price Index, these amounts are
equivalent to $4.1 million and $6.8 million in 2013. The construction of the Plant led directly to the establishment of a development district in the Mattawoman watershed that is over 30% larger than the District of Columbia. The plant was controversial because of concern for environmental impacts resulting from its size and location in a valuable watershed. As a consequence, Charles County, the state, and the Environmental Protection Agency (“EPA”) entered into a Memorandum of Agreement to protect Mattawoman Creek in the face of the growth inducing impacts of the plant [MOU, 1990].

The present decline of Mattawoman Creek’s living resources [DNR, 2012; Task Force, 2013] can be traced directly to the growth enabled by this WWTP.

- In 2007, the ACOE issued a permit to fill wetlands, fill a stream valley, and confine a tributary to a box culvert for the controversial Maryland Airport expansion, despite strongly worded concerns from Federal agencies, including the ACOE itself, of the significant direct and secondary impacts [ACOE, 2007]. In addition, the thirty million dollars in federal funds are enabling the expansion. [Independent, 2009].

The airport expansion has prompted the Charles County Planning Commission to include an enlarged industrial zone around the airport that overlays the headwaters to a high-quality stream important to spawning anadromous fish (Fig. 1) [Comp Plan, 2013].

Other federal interests and involvement include:

- Federal oversight of MDE’s enforcement of anti-degradation regulations and Clean Water Act requirement. A Tier II segment of the Mattawoman main stem lies downstream of the subject property (Fig. 2). This segment has no assimilative capacity remaining. Tier II waters require an antidegradation review to assure consistency with antidegradation requirements. COMAR 26.08.02.04-1(A). The present project configuration will discharge additional pollutant loads to Mattawoman, especially considering the new roadway surfaces proposed so close to the river: (i) a
deceleration lane over the creek itself; (ii) the Western Parkway paralleling and close to the river. Significant additional impervious surface is also proposed, and two large stormwater outfalls discharge very near the river. Maryland law requires that applicants for discharge permits to Tier II waters must evaluate alternatives to eliminate or reduce discharges. COMAR 26.08.02.04-1(B). The applicant has made no showing that alternatives were evaluated to eliminate discharges to the Tier II waters.

The PN states that comments on MDE’s Section 401 Water Quality Certification (“WQC”) are due at the same time as these 404 comments to the ACOE. Accordingly, we prepared comments on a potential WQC in good faith. However, we have learned that MDE issued a Wetland Permit and WQC for the project in March, 2013, without informing parties of record. We have appended comments originally intended for MDE, and request that the ACOE review these as part of federal oversight responsibilities, and as part of the 404 process, as they detail a decline in Water Quality Standards (“WQSs” of the Mattawoman estuary and river. We note that no mention is made of TMDLs, nor of the loss of WQSs in either the wetland permit or WQC, nor of impacted Tier II waters, in apparent contradiction to COMAR 26.08.02.04-1(B).

As noted above, the ACOE conducted extensive hydrological modeling and land-use analysis in the Mattawoman Creek WMP [ACOE, 2003]. The WMP made a number of recommendations in an effort to mitigate planned development. A primary recommendation constituted protection of the Mattawoman stream valley. The present configuration of WC significantly violates this recommendation, as illustrated in Fig. 3, which shows that about half of the northern segment lies in the stream valley (green cross hatch) as delineated by the Department of Natural Resources (“DNR”) to ACOE specifications [DNR, 2007] In particular, the Western Parkway essentially bisects the southside stream valley.

From 2006 to 2008, the Maryland State Highway Administration (“SHA”) convened the U.S. 301 Waldorf Area Transportation Improvements Project, which included involvement by the EPA, Federal Highway Administration, U.S. Fish and Wildlife Service (“FWS”), National Marine Fisheries Service, and ACOE. (SHA, 2008) As part of this project, a Natural Resources Work Group was assembled, which included the FWS, that examined the green infrastructure in the watershed to identify and evaluate conservation stewardship priorities.
An interagency Task Force that included federal representation was convened in 2011 to make recommendations on Charles County’s ongoing revision of its Comprehensive Plan. Federal agencies included the Department of Transportation, the Fish and Wildlife Service, and the Environmental Protection Agency. The Task Force reiterated Mattawoman’s high value, outlined the declining health of its fish communities, linked the decline to land-use, and issued a comprehensive report making dozens of recommendations to better protect the Mattawoman ecosystem [Task Force, 2012].

The recommendations were intended to guide local land-use decisions to stem the decline of Mattawoman Creek because cumulative impacts have brought Mattawoman to a tipping point. In the words of the Task Force [Task Force, 2012; p. 51]:

Abrupt declines in both the number of species (or species richness) and relative abundance of all species in channel waters of Mattawoman Creek began in the early 2000s at about 0.7 structures per hectare. These abrupt declines indicated that an ecological tipping point (threshold) had been reached.

Among the Task Force recommendations are:

- …fully enforce existing regulations and policies.
- Where possible, use 300-foot vegetated buffers along shorelines, streams and wetland and hydric soils.
- Pre-identify mitigation sites as part of capital improvement planning and include acquisition and construction costs in capital budgets.
- For growth and annexation areas, plan development to avoid wetland and stream impacts, and maintain contiguous green corridors.
- Provide consideration of stream valleys as part of parcel development negotiations.
- Protect high priority wetland areas to maintain natural protection for public and private infrastructure.
- Review proposed growth and resource areas to plan to increase utilization of existing floodplain wetland functions to take advantage of natural riverine hydrology to prevent the need for future restoration.
- Protect and restore wetlands and streams within the headwaters, working with Prince George’s County as necessary to accomplish this objective.
Viewed in the light of cumulative impacts, it becomes clear that similar considerations should be given weight in a full NEPA review, which could find that every one of the above bullets would be violated if a permit were issued for the present project configuration.

- The Interstate Commission on the Potomac River Basin produced for MDE and EPA a Watershed Resources Registry (“WRR”) for the Mattawoman watershed. [ICPRB, 2011]. The registry is a geospatial project intended to identify and prioritize restoration and preservation opportunities in the watershed. One of the specific goals of the registry is to facilitate mitigation. Fig. 4 illustrates two of the several values considered, upland preservation and upland restoration. The northern section shows that the Western Parkway and proposed development would affect these areas. Additional resource issues identified by the WRR that should be examined in the NEPA process include wetland preservation, riparian preservation and restoration, and stormwater issues, e.g., natural infrastructure [WRR, 2013].

- Federal interest is high in maintaining Mattawoman’s exceptional value

  - The EPA lists the tidal estuary on the 303(d) list for excess nutrients [MDE, 2005], and has approved a Total Maximum Daily Load (“TMDL”). According to NPDES regulations, if a TMDL is in place, a permit may be issued only if it is demonstrated that there is sufficient pollution allocation available to accommodate the discharge and that the dischargers into that segment are subject to a compliance schedule designed to bring the segment into compliance with water quality standards (40 CFR Section 122.4(i)). There appears to no such analysis for the present case in the PN or in MDE’s WQC.

  - The non-tidal river is listed as impaired for biological resources [MDE, 2005]. As it relates to the state’s water quality certification under Section 401 of the CWA, the Surface Water Use Designation for Mattawoman Creek is Use I: water contact recreation, fishing, and protection of aquatic life and wildlife. Maryland’s general water quality criteria prohibits pollution of waters of the state by any material in amounts sufficient to create a nuisance or interfere with designated uses. (COMAR 26.08.02.03 B(2)). There appears to be not analysis of the quantity and

  - Mattawoman is listed on the Nationwide Rivers Inventory by the National Park Service, in recognition of the “Outstandingly Remarkable Values” of Mattawoman’s fish species diversity and fishing values (tournaments). In the
NRI designation of nearby Pomonkey Creek, NPS also recognized Mattawoman specifically for largemouth bass proliferation. [NPS, 1995]

- Nontidal and freshwater-tidal wetlands (Mrytle Grove, Mattawoman Natural Environment Area) are attributed international importance through inclusion in the U.S. Fish and Wildlife Service inventory of sites within the Chesapeake Bay Estuarine Complex, which is recognized by the international Ramsar Convention on Wetlands [Ramsar, 2004].

- The federal/state Clean Water Action Plan (“CWAP”) notes that the Lower Potomac basin, of which Mattawoman is part, is a Federal Category 1 basin, requiring restoration [CWAP, 1998]. The CWAP also rated Mattawoman specifically as both a Priority Category 1 watershed (requiring restoration) and a Select Category 3 watershed (for its many pristine attributes). This combination of ranking singled out only 17 of Maryland’s 138 eight-digit watersheds, leading to the conclusion:

  The State considers that these watersheds deserve special attention in order to address degradation that already is experienced in some areas before the pristine resources in the watershed are lost.

- Mattawoman is a NOAA trust habitat of concern, because it supports the American Eel and anadromous fish [NOAA, 2003].

- At least two superfund sites are located in the watershed: (i) The Brandywine Defense Reutilization and Marketing Office facility in Brandywine, Prince George’s County has potential to leach polychlorinated biphenyls into Timothy Branch [GOA, 2009]; (ii) the Mattawoman estuary is part of an EPA Superfund site, which is listed on the National Priorities list as a result of prior operations at Naval Support Facility, Indian Head. 60 Fed. Ref. 50437 (Sept. 29, 1995).

- The U.S. Fish and Wildlife Service has interest in Mattawoman’s highly valued anadromous-fish estuarine nursery and tidal and riverine spawning grounds through its oversight of the Anadromous Fish Conservation Act. River Herring in particular have historically spawned in the river downstream of WC. The National Marine Fisheries Service River recognizes River Herring as Species of Concern, and the Atlantic States Marine Fisheries Commission has recently imposed a moratorium on the possession of River Herring. We note that, coincident with Mattawoman having reached a threshold for irreversible decline, spawning usage of the river by River Herring has plummeted from historical levels as one progresses upstream from the tidal area [DNR, 2010].

- The FWS also has interest through its leadership in drafting the National Strategy for the Conservation of Native Freshwater Mussels. At least four species of mussels have been recorded in the Mattawoman river downstream of the WC site [Long, 1996]. Of these, the Tidewater Mucket (Leptodea ochracea) is of national
concern [Williams, 1993] and the Alewife Floater (*Anodonta implicata*) is on the state watch list [DNR Heritage, 2010]

- The FWS has additional interest in the high avian and herpetological biodiversity found in Mattawoman’s riparian forests [FWS, 2006]. Audubon Maryland-DC has effectively ground-truthed FWS analysis through quantitative surveys and designated much of the Mattawoman forest cover as an Important Bird Area, including riparian forest adjacent to the WC site. This analysis is corroborated by the WRR Forest Interior mapping [WRR, 2013].

**Fig. 5** Relation of the Waldorf Crossing site (black) with the Audubon MD-DC Important Bird Area (green).

**Purpose and need as stated in the Public Notice is incomplete; the purpose as stated in the record is not met.**

The ACOE Public Notice states:

“PROPOSED WORK AND PURPOSE: To redevelop the 140-acre Waldorf Crossing property into a mixed use residential, office and retail project and to construct the Phase 2 and 3 extensions of Western Parkway.

Missing is a reference to transit-oriented development (‘TOD’), a designation successfully sought by the applicant to gain advantages from a local zoning ordinance, *including incorporation of the Western Parkway* [Chas. Co., 2012]. A report by county planning staff submitted to the Charles County Planning Commission on October 1, 2012, states [Chas. Co., 2012]:

The applicant, Southstar Limited Partnership, seeks approval for the Step Two: General Development Plan (GDP) for *Waldorf Crossing TOD*, PDZA #00-07.

...Property re-zoned to Transit Oriented Development (TOD) by the Charles County Commissioners on November 6, 2004.

Similarly, a private firm associated with project states on its website [LS Assoc., 2013]:

Waldorf Crossing: Located on Route 301 at the County boundary with Prince George's County, Maryland, *this transit oriented development is a 140-acre project that will include residential, office and retail components. [emphasis added]*

Hence it is beyond dispute that a central purpose of the project is to provide an integrated TOD project. Contrary to fulfilling this purpose, Charles County planning staff finds (emphasis added) [Chas. Co., 2012]:

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The proposed TOD development does not adequately fulfill the intent and character of the Transit Oriented Development Zone.

Though it is addressed generally in the Design Code, the General Development Plan does not demonstrate how the pedestrian oriented commercial uses will be integrated with the transit facilities.

We conclude that the Purpose and Need as given in the PN appears to be incomplete, and that the purpose of the project is in fact not met with the present configuration.

Aquatic impacts are significant; Western Parkway alignment unnecessarily impacts wetlands and floodplain.

The PN distinguishes among nontidal wetlands (including a pond), nontidal-wetlands along streams, and non-federally regulated isolated wetlands. The acreages amount to:
- 1.55 acres of nontidal wetlands;
- 1.69 acres of nontidal wetlands when those along streams are added;
- 1.74 acres if non regulated wetlands are added.

The ACOE PN also cites impacts to 0.29 miles of stream.

MDE regulates all wetland types, as well as wetland buffer and 100-year floodplain. The PN for MDE’s wetland hearing cites impacts of:
- 2.03 acres of nontidal wetlands
- 3.56 acres of 100-year floodplain.
- 2.86 acres of wetland buffer;
- 0.36 miles of streams

We deem these impacts to be significant. This is especially true when one considers that Mattawoman’s recently documented decline is attributed to land-use decisions.

Of the 1.69 impacted acres of wetlands, ponds, and wetlands along streams, 99% are associated with roadways, calling into question the proposed alignment of the Western Parkway, its associated deceleration lane over the Mattawoman, road crossings, etc. Previously proposed alignments appear to reduce these impacts (Fig. 6), but other alignments may reduce impacts further, underscoring the need for a comprehensive NEPA review.

In fact, the proposed alignment of the Western Parkway appears to have been viewed as a possible “future extension” at the time a 2007 Memorandum of Understanding (“MOU”) was executed between the county and the applicants of the time. See Fig. 6 and its caption.

A comparison with the rate of impact of completed Route 228 illustrates the intensity of the direct impacts of the currently proposed alignment. The section of Western Parkway in question, from Holly Lane to U.S. 301, appears to be about 1.4 miles long, giving a
a wetland impact of about 1.2 acres per mile. The Western Parkway appears to impact wetlands at a rate about 25% greater than Rte. 228, which impacted 0.94 acres/mile, according to the Route 228 Final Environmental Impact Statement [FEIS 228, Table S1, p. S-7].

Similarly, floodplain impacts of 3.6 acres/mile for the present proposal are about 33% higher than for Route 228 (~1.9 acres/mile) [FEIS 228, Table S1, p. S-7], and are very significant in their own right.

There also appears to be at least two stream crossings by the proposed highway. The rate of ~1.4 crossings/mile is not only nearly five times greater than Route 228 (0.3 crossings/mile), but a number on par with the total of three crossings for Route 228, a roadway ten times longer [FEIS 228, Table S1, p. S-7]. Furthermore, it has not been proven that the present alignment of Western Parkway is necessary or in the best interests of the people of Maryland.

**Fig. 6** (a) County-proposed route of Western Parkway abandoned in a 2007 MOU [Chas. Co, 2007]. (b) Schematic of an alternative path approved in the same MOU. The present path follows what is notated in the red box to be a “Future expansion of Western Parkway into Prince George’s Co.” (c) Slide from a county staff presentation sketching a previous alignment of the Western Parkway terminating at Mattawoman Drive [Chas. Co., 2010].

**Proposed configuration may preclude in-place U.S. 301 upgrade.**

Maps in the PN do not appear to show new rail lines hugging Rte. 301 proposed in the General Plan, Step 2, approved by the Charles County Planning Commission in 2012; see Fig. 7 [Chas. Co., 2012]. These rail lines appear to preclude plans for an in-place upgrade of U.S. 301, which includes an overpass of Route 5 over the Conrail lines to the east with a decent to an at-grade intersection with U.S. 301. Permit approval for the present configuration of Waldorf Crossing could thus have profound implications for future transportation options. For example, it is reasonably foreseeable that such obstructions to a U.S. 301 upgrade could act to limit alternatives if the Western Waldorf Bypass were proposed in the future. We emphasize that past analyses of Waldorf Bypass options have found that the 301 upgrade is the only environmentally acceptable option, specifically because of its impacts to aquatic resources [EPA, 2000; ACOE, 2000; ACOE, 2001; FWS, 2000].
Mitigation outside the Mattawoman watershed is contrary to ACOE rules, is contrary to the goals of the EPA-sanctioned Watershed Resources Registry, and is unacceptable for a watershed at the threshold for irreversible degradation.

The PN proposes that a significant component of required mitigation be achieved through purchase of credits at a mitigation bank located outside the Mattawoman watershed. This is contrary to ACOE rules (33 CFR PART 33) that state [ACOE, 2008]:

In general, the required compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions and services…

Further, considerable investment was expended to produce the Watershed Resources Registry for the EPA and MDE regulatory agencies to identify and rank mitigation opportunities specifically in the Mattawoman watershed [ICPRB, 2011]. The 404 permitting process should begin incorporating the WRR with this application.

That mitigation should occur within the watershed is given emphasis by Mattawoman’s being at the threshold for irreversible degradation [ACOE, 2003; DNR, 2010; ICPRB, 2011; Task Force, 2012]. Continued loss of wetlands and the aquatic functions provided by wetland buffers, streams, and floodplain can be expected exacerbate and hasten the decline of this impaired waterway. It seems clear that permits should not be issued for projects that mitigate outside the watershed.
The potential effects of the project have made it controversial.

Aspects of both the north and south sectors of the Waldorf Crossing proposal have been challenged by the public and questioned by the Charles County Department of Planning and Growth Management.

A recent example of public controversy occurred at an October 1, 2012 hearing before the Charles County Planning Commission, as summarized in a news article [Independent, 2012].

The potential for Waldorf Crossing to negatively influence transportation options in the region in the context of Federal actions concerning the Nice Bridge replacement was included in a letter to EPA signed by twenty local and statewide organizations [SGACC, 2013].

As noted in the discussion of purpose and need, county staff have testified that that project does not meet the county’s requirements for TOD.

Cumulative and secondary impacts require thorough review

- In addition to the previously discussed transportation issues of rail and Western Parkway alignment, a past version of the Waldorf Crossing master plan referred to:

  A conceptual alignment for a future extension of Western Parkway and a parallel crossing of the Mattawoman Creek through the Waldorf Crossing property is shown on the Master Plan.

  The NEPA review should determine if this very significant secondary impact remains viable, or if the present configuration is aimed at facilitating this new highway.

- As noted above, this 404 application occurs at a time when cumulative impacts from development to the Mattawoman watershed have indisputably brought it from being one the most outstanding in the Chesapeake Bay watershed for both aquatic and terrestrial ecological assets, to one were these assets are showing signs of decline.

- This permit decision occurs in the context of future cumulative land-use impacts that are reasonably foreseeable through a draft Comprehensive Plan revision that has garnered unusually strong condemnation from state and federal agencies [MD, 2013; DNR, 2013; GIT, 2012; FWS, 2013].

- As discussed below, because of the location of the site, the configuration of any development on it could have disproportionate effects that significantly impact the human environment of the region.
The effects of this permit decision could have lasting and significant impacts on the human environment throughout the region.

As discussion above makes clear, the location of the Waldorf Crossing proposal is clearly problematical from the perspective of protecting aquatic resources because it presses unnecessarily close to Mattawoman Creek, occupies floodplain and stream valley, and contains a concentration of streams and wetlands.

In addition, the project site occupies a unique location with potential to affect land-use throughout Charles County, with consequent potential impacts to other aquatic resources including the Zekiah Swamp, and the 303(d)-listed Nanjemoy Creek and Port Tobacco River.

Furthermore, the site occupies a key location with respect to transportation options. It occurs at the intersection between state MD Route 5 and U.S. 301, and incorporates the county’s Western Parkway. Much of the site is within walking distance of an existing rail corridor proposed for rail transit, but new rail lines are proposed. Hence, decisions made with this permit could have far-reaching impacts on the U.S. 301 Improvement Project, and interacts with federal actions on the Nice Bridge replacement [SGACC, 2013]. As noted above, if the project introduces impediments to a U.S. 301 in-place upgrade, as seems likely, future transportation alternatives could be constrained, with deep deleterious effects throughout the region.

Taken together, the direct impacts to Mattawoman, and the indirect impacts via land-use and transportation ramifications to other aquatic resources, could affect the Potomac River and the Chesapeake Bay.

In addition, to aquatic resources per se, the location of the site also has potential to disproportionately control other economic and social benefits or costs throughout the region.

Specifically, the project site appears to occupy a keystone location that could profoundly affect Charles County’s stated goals for revitalizing and improving the business and housing opportunities in Waldorf, and in particular for providing TOD development in the county’s urban core.

The connection between a successfully executed revitalization of Waldorf and the county at large can be understood through the land-use approach often termed “smart growth.” The approach recognizes the social, environmental, and economic benefits of accommodating population growth in more concentrated urban cores to relieve the tendency to sprawl over wide areas. When properly implemented with zoning controls, this approach fosters a resilient and sustainable economic model while relieving the public of the financial costs to provide widely dispersed services, including the costs of public safety and building and maintaining infrastructure in the form of highways, schools, sewer and water, etc. At the same time, the public benefits from reduced
restoration costs while enjoying sustained recreational opportunities, cleaner air and water, and the economic opportunities offered by natural- and historical-heritage tourism.

That the public recognizes and supports the benefits of the smart-growth approach was made clear during a public process that played out during 2011 concerning the revision to Charles County’s land-use plan. The resulting compromise scenario crafted by the county planning-staff and consultants—termed the Merged Scenario—incorporated many of the elements described above, including an emphasis on TOD. Subsequent to the Merged Scenario proposal, a slim majority on Charles County’s Planning Commission rejected the proposal in favor of the present draft plan that is based a tiered septic/sewer plan (the “Tier Map”) that was produced by the development industry. The resulting draft Comprehensive Plan has earned widespread rebuke from state and federal agencies, as noted above.

A substantial portion of the project site occurs within walking distance of proposed rapid transit lines that would be placed within an existing rail right-of-way. However, the present plan fails to meet the county’s TOD guidelines for density and configuration as noted above [Chas. Co., 2012]. The site also interacts, possibly deleteriously, with the TOD-oriented Activity Centers to the south as specified in the Waldorf Urban Design study and addressed in the Waldorf sub-area plan.

We note that the project site offers the possibility of providing much needed green space for Waldorf residents, for example a stream-valley park. Presently this urban core lacks parkland, an important element for attracting residents to an urban living environment.

**Summary:** The above considerations show that the current configuration of Waldorf Crossing and the integrated Western Parkway appear to unnecessarily affect aquatic resources of the state and U.S. Furthermore, because of the site’s location at a concentration of major transportation corridors, and its potential role in affecting land-use throughout the county, permitting decisions for the project could have far reaching implications for the human environment through the region, including the Chesapeake Bay. In this context, it is clear that alternatives to the project have not been sufficiently vetted. We therefore request that permits be denied for the present configuration of the project, or that a widely scoped NEPA review be conducted to examine the effects of various alternatives.

Respectfully submitted,

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References

ACOE, 1997. *Lower Potomac River Basin Reconnaissance Study* in 1997 to determine priority watersheds for restoration and protection. The Mattawoman Watershed was one of the eight watersheds in the Basin found to be priority.


EPA, 2000. Letter from Thomas A. Slenkamp, Deputy Director, Office of Environmental Programs, to Cynthia Simpson, Deputy Director, Office of Planning and Preliminary Engineering, Maryland State Highway Administration, dated October 10, 2000.

FEIS 228. *Final Environmental Impact Statement*, prepared by the U.S. Department of Transportation, Federal Highway Administration and the State Highway Administration, Maryland Department of Transportation, Contract No. AW 760-101-071.


GIT, 2013. Letter from Peyton Robinson, Chair, Fisheries Goal Implementation Team of the Chesapeake Bay Program, to Candice Quinn Kelly, President, Charles County Commissioners, dated February 4, 2012.


Long, 1996 *Abbreviated report of freshwater mussel species found in Mattawoman Creek*, report summarizing a survey by Friends of Mattawoman Creek and Malacological Consultants, Inc., submitted to Maryland DNR under Scientific Collecting Permit #0224 for the period 6-10-96 to 12-31-96.

LS Assoc., 2013. Website for Loiederman Soltesz Associates, Inc. current as of May 18, 2013. The full quote is:
Waldorf Crossing  
Located on Route 301 at the County boundary with Prince George's County, Maryland, 
this transit oriented development is a 140-acre project that will include residential, office 
and retail components. The residential portion will be comprised of single family homes, 
townhouses and multifamily units. The high density project is the first of its kind in 
Southern Maryland and centers around a bus Park and Ride facility and a rail line that 
will eventually accommodate commuter rail plans. Loiederman Soltesz Associates, Inc. 
provided planning, design, engineering, surveying and environmental services for the 
project. The firm also wrote the zoning code for the County, which allowed the developer 
to proceed with the project.

http://www.lsassociates.net/markets/redevelopment/WaldorfCrossing/index.html

MDP, 2013. Maryland clearinghouse agency 60 day review, February 4, 2013.  


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Fisheries 18, 6-22 (1993).

Attachment A: Comments in response to ACOE Public Notice 13-30 requesting comments on MDE’s Water Quality Certification.

Secretary Robert Summers via email: rsummers@mde.state.md.us
Non-Tidal Wetlands Division
1800 Washington Boulevard
Baltimore, Maryland 21230

Re: Water Quality Certification, Waldorf Crossing and Western Parkway Phases 2 and 3

Dear Secretary Summers:

We are writing in response to the Army Corps of Engineers’ Public Notice 13-30, which asks for comments on MDE’s possible issuance of a Water Quality Certification (“WQC”) for the integrated project comprising Waldorf Crossing and Charles County’s Western Parkway (the “project”).

We are party to separate comments submitted to the Army Corps of Engineers (“ACOE”) concerning the 404 permit application, which we include by reference, along with all citations herein.

We believe it would be impossible to issue a WQC for this project in its current configuration and comply with Section 401 requirements to maintain Water Quality Standards (“WQSs”). Among our concerns are:

- The project would discharge stormwater and associated pollutants to Mattawoman Creek that could be substantially reduced with alternative configurations.

- The effects of the discharges must be viewed in light of past cumulative effects that have brought Mattawoman to a “tipping point” [Task Force, 2012]. Hence, additional discharges could degrade WQSs irreversibly. A demonstrable inability of past permitting decisions to maintain WQSs for Mattawoman Creek dictates that the certification be especially stringent in ensuring that excess stormwater and pollutants remain on site.

- Finally, Section 401 directs that the WQC must consider the indirect effects of the project, which we believe could be far-reaching because the present project configuration appears to constrain future transportation options.

Project configuration discharges polluted stormwater to Mattawoman Creek. The amounts have not been minimized nor quality maximized to the maximum extent practicable. As mapped and described in the Public Notice, the proposed project discharges stormwater (“SW”) from at least two large outfalls in very close proximity to the Mattawoman main stem. In fact, the location of these outfalls would impact state-regulated wetlands. It appears that the SW management facilities do not implement
Environmental Site Design, but instead employ an older approach that was recognized as inadequate when the Maryland Stormwater Bill was enacted in 2007.

The Western Parkway is proposed to closely approach and parallel Mattawoman Creek before intersecting U.S. 301 essentially at its crossing of the river itself. A substantial fraction of the impacts to wetlands, wetland buffers, and floodplain is associated with this route. We therefore question if a thorough alternatives analysis has been conducted aimed at reducing these impacts, as required by NEPA.

It can be reasonably expected that this highway route would lead to long-term discharges of SW to Mattawoman. There is very real likelihood of elevating river temperature with thermal pollution, and the discharges can be expected to contain exhaust-pipe deposits, heavy metals and other pollutants, oil, tire debris and other hydrocarbons, roadside herbicides, and de-icing agents that are implicated in the loss of anadromous fish spawning downstream.

The highway path also appears to push new development, with extensive parking lots, against the floodplain at the extreme northeast section of the project, with impacts to the floodplain itself that appear totally unnecessary. The highway path also forces one of the SW outfalls into wetlands and close proximity to the river.

Additional development in such close proximity to the floodplain can be expected to discharge stormwater containing not only pesticides and other pollutants, but also nutrients from fertilizers at a time when Mattawoman’s TMDL calls for a 40% reduction in nitrogen and phosphorus.

At the MDE wetland-hearing for this project held on September 22, 2011, it was divulged that the path of the Western Parkway was originally proposed to occur further from the Mattawoman river, and to intersect U.S. 301 further from the Mattawoman bridge. This path appears to reduce impacts, and other routes might reduce impacts even further. In fact, at least two previous alignments have been proposed, as appear in a 2007 Memorandum of

Fig. 4 (a) County-proposed route of Western Parkway abandoned in a 2007 MOU [Chas. Co, 2007]. (b) Schematic of an alternative path approved in the same MOU. The present path follows what is notated in the red box to be a “Future expansion of Western Parkway into Prince George’s Co.” (c) Slide from a county staff presentation sketching a previous alignment of the Western Parkway terminating at Mattawoman Drive [Chas. Co., 2010].
Understanding (“MOU”) between Charles County and the applicants at the time, as shown in Figs. 1(a) and 1(b) [Chas. Co., 2007]. Figure 1(c) also shows an alignment akin to Fig. 1(a) presented in 2010 to county staff [Chas. Co., 2010].

The project is marketed to the public, the county, and to regulatory agencies as a Transit Oriented Development (“TOD”). This designation gained certain advantages from a local zoning ordinance, including incorporation of the Western Parkway [Chas. Co., 2012]. However, the Charles County planning staff has determined the project fails to meet TOD criteria [Chas. Co., 2012]. The proposed path of the Western Parkway is clearly aimed toward converting much of the site into an automobile-dependent development. An alternative approach would be to reroute the Western Parkway and to concentrate density nearer the Conrail right-of-way, while providing recreational amenities and parkland to residents of Waldorf that would also buffer and protect Mattawoman Creek. Waldorf presently has no parkland, a serious deficiency when attracting residents to an urban lifestyle.

*It appears that less damaging highway routes are likely; therefore, the WQC should not be issued for the present configuration.*

**Water Quality Standards**

Citing case law relevant to the Clean Water Act, the Environmental Protection Agency (“EPA”) considers Water Quality Standards, in the broadest sense, to be fundamental to a WQC [EPA, 2010]. Water quality standards consist of designated uses, criteria (narrative and numeric), and an antidegradation policy [EPA, 2010]. As such, in EPA’s words, “Section 401 certification allows States to address associated chemical, physical and biological impacts such as low dissolved oxygen levels, turbidity, inundation of habitat, stream volumes and fluctuations, filling of habitat, impacts on fish migration, and loss of aquatic species as a result of habitat alterations” [EPA, 2010].

Below, we review (i) the lack of progress toward Mattawoman’s approved Total Maximum Daily Load (“TMDL”) for nutrients; (ii) the loss of designated uses; and (iii) Tier II antidegradation concerns, all of which support the conclusion that the *WQC should not be issued until the project is designed to ensure no additional discharges to Mattawoman Creek.*

Mattawoman’s TMDL requires a 40% reduction in nitrogen and phosphorus from baseline loads. Since 1996, the Mattawoman Creek estuary has been listed as impaired on EPA’s 303(d) list for excess nitrogen and phosphorus, for which a TMDL was approved in 2005. The nontidal river, to which the project would directly discharge, was listed in 2002 for biological impairment [MDE, 2005]. The state has been delegated certain responsibilities to implement the goals of the Clean Water Act, including meeting TMDLs, and restoring impaired waters. These responsibilities are executed primarily through the writing and enforcement of permits, and through administration of WQCs.
Furthermore, MDE assumes a special responsibility because the Department signed a MOU promising to mediate the growth-inducing impacts of the Mattawoman wastewater treatment plant (“WWTP”), to wit:

MDE agrees to develop, implement, seek compliance with, and enforce, those regulations that which will avoid or mitigate the critical secondary environmental impacts identified with Section II [of the Environmental Assessment]. [MOU, 1990]

In spite of this MOU, ramifications of the growth enabled by the WWTP continue. In particular, normalized nutrient loads are evidently increasing [USGS, 2012a], and aquatic integrity is demonstrably declining [Task Force, 2012], two areas that fall within MDE jurisdiction. According to hydrological modeling by the ACOE that was uniquely calibrated against continuous monitoring data [SERC, 2000], nutrient and sediment loads to Mattawoman are expected to rise dramatically with continued development of the watershed [ACOE, 2003]. The ACOE based its predictions on Charles County land-use policies, which continue apace as a result of the WWTP. For example, the Water Resources Element of the draft revised-Comprehensive Plan projects an increase in impervious surface for the Mattawoman watershed to 15% by 2040 [Chas. Co., 2013]. The subject project exemplifies the increase in impervious surface. Importantly, the projects’ discharges conform to assumptions that led the ACOE to predict 50% increases in nutrient loads over a twenty year period [ACOE, 2003]. Therefore, to fulfill the covenant represented by an approved TMDL, it is incumbent on the WQC to ensure that additional loadings of nutrients do not occur with this project.

The ACOE predictions are not merely theoretical. The measured trend in loads for Mattawoman for both phosphorus (specifically regulated through the approved TMDL) and sediment is listed as “degrading” over the period 2001-2010 [USGS, 2012a]. The landscape yield (tons/square mile) for sediment falls in the “high” category among 33 sites monitored throughout the Chesapeake Bay watershed [USGS, 2012a].

The WQC is one of the few means to directly enforce TMDLs. In light of calibrated predictions for increased loads as verified by analysis of gaging data, the discharges from the project compel that a WQC must not be issued for the present project configuration.

Mattawoman Creek is passing a threshold for irreversible degradation for Designated Uses, requiring that new discharges be avoided to maintain WQS. Mattawoman was recently recognized by an interagency Task Force (that included MDE representation) to be at a “tipping point.” The term describes a situation where cumulative development and permitting decisions have caused the watershed to be covered with about 10% impervious surface, a threshold beyond which irreversible declines in living resources are expected [Task Force, 2012]. The threshold is not theoretical: linked to the increasingly developed watershed is a precipitous decline in the health of the estuarine fish community that began in the past decade, as measured by long-term surveys of fish abundance, community trophic structure, and species richness [DNR, 2010; DNR, 2011]. Figure 2 summarizes detailed survey data by the Department of Natural Resources (“DNR”)
connecting a decline in species richness and fish abundance with the number of structures in the watershed, which serves as an accurate but database-accessible proxy to impervious surface [DNR, 2011].

Included in the estuarine decline is a loss of anadromous fish abundance. In the non-tidal river, spawning usage by anadromous species has concomitantly plummeted, as illustrated in Fig. 3(a) [MWS, 2000; DNR, 2011]. Migratory fish are to be specifically considered in WQC decisions.

The aforementioned declines in the tidal estuary clearly represent a loss in defining elements for designated Use II waters that are tidally influenced, specifically in the subcategories of Estuarine and Marine Aquatic Life (COMAR 26.08.02.02) and Open-Water Fish and Shellfish and Seasonal Migratory Fish Spawning and Nursery (COMAR 26.08.02.02-1).

The decline in anadromous fish numbers in the nontidal river represents a loss Use I waters, e.g., the designated use of Aquatic Life and Wildlife (COMAR 26.08.02.02).

Fig. 5 In the Mattawoman estuary, historical trends in the number of species and fish abundance mirror each other as illustrated by the curve labeled “fish community health.” A threshold in the biological response is evident as the number of structures in the watershed increases. Curves are based on data in DNR, 2010; DNR, 2011.

Fig. 6 Spatiotemporal trends in the non-tidal river. Note that Charles County’s comprehensive plan began promoting dense development in the watershed in 1990. (a) Dramatic decline over the past decade in upstream anadromous-fish egg-density averaged over the spawning season (March-May). Note logarithmic vertical axis. (b) Reversal in spatial gradient and elevation of electrical–conductivity of water as the watershed has developed. The increasing conductivity as one approaches the more intensely developed portions of the watershed demonstrate the non-local influence of upstream development [MWS, 2000; DNR, 2011]
In addition to loss of aquatic life, numerical criteria defining water quality standards appear to be routinely violated downstream of the project, as revealed by continuous monitoring data.

**Non-tidal pH**: A monitoring station in the non-tidal Mattawoman at Pomfret, MD, was operated continuously by the U.S. Geological Survey (“USGS”) from October 2003 through June 2011 [USGS, 2011]. Among other parameters, the station recorded pH and turbidity at 15 minute intervals. State criteria for pH levels in a Use I water are given as: “Normal pH values may not be less than 6.5 or greater than 8.5” (COMAR 26.08.02.03-3). An analysis of the data finds that pH fell below 6.5 for fully 30% of the days for which measurements were taken [USGS, 2011]. Such frequent excursions below 6.5 would appear to violate the WQS.

**Non-tidal turbidity**: State criteria for turbidity in Use I waters are given as: “Turbidity in the surface water resulting from any discharge may not exceed 150 [nephelometer turbidity] units at any time” (emphasis added). The USGS gage recorded that turbidity exceeded 150 NTU for 2.7% of the days the gage was active. The USGS conducted a “fingerprint” analysis of the sources of transport-weighted sediment loads during high-flow events, a primary component of turbidity. The results identified, in order of contribution, streambank erosion (30%), forest (29%), construction sites (25%), and agriculture (17%) [USGS, 2008]. Bank erosion may signify the increase in stormwater created by impervious surface, of especial concern to this WQC. Similarly, the dramatically disproportionate contribution of construction sites, which covered 1.3% of the watershed compared to 60% forest [USGS, 2008] should also be of concern to this WQS, given that turbidity is exceeding Use I criteria during high flow events.

**Estuarine dissolved oxygen (“DO”)**: Two continuous monitoring stations have operated in Mattawoman’s tidal freshwater estuary [ConMon, 2012]. These record data every 15 minutes over a season lasting from April through October, with end and start dates depending on conditions. Monitors have been operating at mid-estuary since 2009 (at Indian Head), and at the lower estuary since 2004 (at Smallwood State Park). The estuary has designated-use subcategories appropriate for Use II freshwater tidal waters. The supporting water quality criteria for DO applicable year round, as given in COMAR 26.08.02.03-3, are that DO must be greater than or equal to: 5.5 mg/L when averaged over 30 days; 4 mg/L when averaged over 7 days, and 3.2 mg/L at all times. Comparing the criteria with the monitoring data, we find that violations of numerical WQS are routine, as summarized in Table 1.

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2 Tidal-Mattawoman designated uses for which DO criteria are listed in COMAR 26.08.02.03-3: Seasonal Migratory Fish Spawning and Nursery; Open-Water Fish and Shellfish; Seasonal Shallow-Water SAV.
<table>
<thead>
<tr>
<th>Station</th>
<th>Year</th>
<th>Hours &lt; 5.5 mg/L</th>
<th>Hours &lt; 4 mg/L</th>
<th>Hours &lt; 3.2 mg/L</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>30-day running</td>
<td>7 day running</td>
<td>instantaneous</td>
</tr>
<tr>
<td>Mid-estuary</td>
<td>2010</td>
<td>384</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>813</td>
<td>0</td>
<td>113</td>
</tr>
<tr>
<td></td>
<td>2012</td>
<td>501</td>
<td>0</td>
<td>55</td>
</tr>
<tr>
<td>Lower estuary</td>
<td>2010</td>
<td>880</td>
<td>736</td>
<td>742</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>301</td>
<td>120</td>
<td>115</td>
</tr>
<tr>
<td></td>
<td>2012</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
</tbody>
</table>

The above table shows violations for DO at both stations in the estuary. Note that, except for the instance in the lower estuary in 2012, the 30-day average criterion was violated, for total times equivalent to up to 5 weeks in a given year, indicating that the problem is neither isolated nor incidental.

**Estuarine pH:** The criterion for pH established by COMAR 26.08.02.03-3, which applies to both tidal and non-tidal waters, states that “[n]ormal pH values may not be less than 6.5 or greater than 8.5.” Table 2 shows numerous excursions beyond the limits in the estuary for both these acidic and basic thresholds.

<table>
<thead>
<tr>
<th>Station</th>
<th>Year</th>
<th>Hours &lt; 6.5 mg/L</th>
<th>Hours &gt; 8.5 mg/L</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mid-estuary</td>
<td>2010</td>
<td>147</td>
<td>200</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>447</td>
<td>335</td>
</tr>
<tr>
<td></td>
<td>2012</td>
<td>0</td>
<td>173</td>
</tr>
<tr>
<td>Lower estuary</td>
<td>2010</td>
<td>0</td>
<td>1489</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>171</td>
<td>669</td>
</tr>
<tr>
<td></td>
<td>2012</td>
<td>0</td>
<td>166</td>
</tr>
</tbody>
</table>

The documented loss of aquatic life represents a violation of the Clean Water Act’s requirement to maintain existing WQS in the form of designated uses. The likelihood of violations of numerical criteria similarly may represent a failure of enforcement. The WQS violations are correlated to watershed urbanization [ACOE, 2003; DNR, 2010; DNR, 2011; Task Force, 2012]. Issuing a WQC for the present project configuration would specifically enable additional watershed urbanization in the form of increased impervious surface, permanent impacts to wetlands, wetland buffers, and floodplain, and would lead to new urban discharges to an impaired water. Therefore, issuing a WQC for the proposed project-configuration would be contrary to MDE’s role to enforce the Clean Water Act.
Mitigation outside the watershed: MDE has the authority through a WQC to determine mitigation requirements. Given the loss of aquatic integrity of the watershed as exemplified by (i) declines in fish abundance and species richness in the estuary, (ii) impaired biological function in the nontidal river, (iii) nutrient loads that are not declining despite an approved TMDL, and (iv) numerical water-quality criteria that often fall outside of acceptable bounds, the WQC should not permit mitigation outside the Mattawoman watershed.

Tier II anti-degradation: Approximately two miles downstream of the subject site, a reach of the Mattawoman main stem is designated under MDE’s anti-degradation policy as a Tier II water (Fig. 4). This segment has no remaining assimilative capacity. Since Waldorf Crossing and the Western Parkway would clearly discharge to Mattawoman Creek as established above, the WQC should include an anti-degradation analysis with respect to the Tier II segment. The absence of assimilative capacity to absorb additional pollution should heighten scrutiny.

That the subject project is not immediately adjacent to a Tier II segment does not deflect from anti-degradation requirements, as determined by prior MDE policy [MDE, 2009]. Further, studies of Mattawoman’s electrical-conductivity establish that the main stem exhibits the effects of urban pollution for large distances downstream, as illustrated in Fig. 3(b), which summarizes a detailed historical analysis by DNR [DNR, 2011]. Road de-icing agents are a primary contributor to conductivity, and likely explains the reversal in conductivity gradient and elevated levels as the watershed has been developed. This hypothesis is supported by conclusions of the USGS that find specific conductance to be a robust indicator of watershed urbanization [USGS, 2012b].

Potential indirect effects of the project must be weighed in the WQC decision

The EPA guidance states that “it is important for the §401 certification authority to consider all potential water quality impacts of the project, both direct and indirect, over the life of the project” [EPA, 2010]. Continued activity at the project enabled by a WQC could have far-reaching ramifications because of proposed new rail lines.

Figure 5 shows a proposed new rail line on the General Plan that was given a “Step 2” approval by Charles County’s Planning Commission in 2012 [Chas. Co., 2012]. To our ability to ascertain, these rail lines do not appear in maps supplied to the ACOE for the Public Notice. The rail line appears to preclude plans for an in-place upgrade of U.S. 301, which includes a Route 5 overpass of the Conrail lines to the east with a decent to an at-
grade intersection with U.S. 301. Wetland permits, and an attendant WQC for the present configuration of Waldorf Crossing could thus have profound implications for future transportation options. For example, it is reasonably foreseeable that such obstructions to a U.S. 301 upgrade could act to limit alternatives if the Western Waldorf Bypass were resurrected in the future. We emphasize that past analyses of Waldorf Bypass options have found that the 301 upgrade is the only acceptable alternative, specifically because other options impact aquatic resources to an unacceptable degree [EPA, 2000; ACOE, 2000; ACOE, 2001; FWS, 2000].

Summary Waldorf Crossing and the integrated Western Parkway occupy a site that abuts the nontidal river of Mattawoman Creek, and contains wetlands, tributaries, ponds, floodplains, and riparian forest providing protective functions for this 303(d) impaired waterway. Despite its portrayal by the applicant as a TOD development, the present project configuration is in fact aimed in large part towards automobile-dependent development with significant aquatic impacts that could be substantially reduced with alternative designs. Unnecessary discharges from the project to Mattawoman, including a downstream Tier II segment, would occur at a time when the waterway is on the threshold for irreversible degradation, with ongoing loss or decline of Water Quality Standards. Mitigation is proposed beyond the watershed, contrary to EPA guidance, and unacceptable given the present state of the waterway. For each of these reasons, a Water Quality Certification for the present project configuration would fail to uphold state responsibilities to enforce the Clean Water Act.

Respectfully submitted,

Signatories as above.

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References


ConMon, 2012 Continuous monitoring data online through links at: [http://mddnr.chesapeakebay.net/eyesonthabay/index.cfm#map](http://mddnr.chesapeakebay.net/eyesonthabay/index.cfm#map)


EPA, 2000. Letter from Thomas A. Slenkamp, Deputy Director, Office of Environmental Programs, to Cynthia Simpson, Deputy Director, Office of Planning and Preliminary Engineering, Maryland State Highway Administration, dated October 10, 2000.


MWS, 2000. Icthyoplankton sampling of anadromous fish usage in Mattawoman Creek, one of its unnamed tributaries draining Chapman Forest, and Reeder Run: Spring 1999, J.P. Long, for Friends of Mattawoman Creek, predecessor of the Mattawoman Watershed Society, filed in accordance with Maryland-DNR Scientific Collecting Permit #SCP-99042.


