

RECORD OF DECISION  
ALABAMA STATE PORT AUTHORITY  
CHOCTAW POINT TERMINAL

1. NAME OF APPLICANT AND APPLICATION NUMBER: Alabama State Port Authority (ASPA), AL01-04269-U.
2. LOCATION OF PROPOSED ACTIVITY: The project is located at Choctaw Point on the right descending bank of the Mobile River, Mobile, Mobile County, Alabama.
3. APPLICABLE STATUTORY AUTHORITY AND ADMINISTRATIVE DETERMINATIONS CONFERRING CORPS OF ENGINEERS REGULATORY AUTHORITY: The proposed project involves dredging, the placement of structures and the discharge of fill material into navigable waters of the United States and therefore, requires a Department of the Army (DOA) permit pursuant to Section 10 of the River and Harbor Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).
4. BACKGROUND: In 1920, the Alabama Legislature submitted a constitutional amendment to the people for development of Alabama's seaport with State financial assistance. The amendment was passed in 1922, and the State Docks Commission was established with the power to build, operate, and maintain wharves, piers, docks, quays, grain elevators, cotton compresses, warehouses, and other water and rail terminals, structures, and facilities. The State Docks Commission, which operated as a self-supporting, enterprise agency of the Executive Branch of the State government since 1928, was the predecessor of the ASPA.

Section 33-1-1 of the Code of Alabama allows the ASPA, acting as an agent for the State of Alabama, to engage in "works of internal improvement, and of promoting, developing, constructing, maintaining and operating all harbors, seaports or riverports within the state or its jurisdiction, including the acquisition or construction, maintaining and operating at seaports and riverports of harbor watercraft and terminal railroads, as well as all other kinds of terminal facilities." Section 33-1-12 gives the ASPA the power to acquire, purchase, install, lease, construct, own, hold, maintain, equip, use, control, and operate wharves, piers, docks, quays, grain elevators, cotton compresses, warehouses, other water and rail terminals, and other structures.

Section 1-.04 of the Alabama Coastal Area Management Program (ACAMP), Alabama Department of Environmental Management (ADEM) Administrative Code R. 335-8, designates the Port of

Mobile as a Special Management Area. More specifically, the port (including Garrows Bend) is recognized as a Geographical Area of Particular Concern (GAPC). ADEM Administrative Code R. 335-8-1-.04 (1)(a)(1) states that "within the Port of Mobile GAPC, uses which are water dependent or water related and improve or promote port operations and development shall be permissible." The proposed Choctaw Point Terminal project meets those criteria and conditions required to qualify the project as consistent with the intent of the ACAMP. ADEM certified the proposed project to be consistent with the ACAMP by letter dated 2 February 2005.

Recent measures to address needs for increased port expansion and development began in the 1970s with the purchase of land in the Choctaw Point-Garrows Bend area. A 1978 resolution approved by the Governor reads in part: "The Alabama State Docks Department by resolution duly adopted on 21 December 1978 and approved by the Governor of Alabama has declared that the acquisition of said land is necessary for the construction, operation, and expansion of the Alabama State Docks facilities and has authorized commencement of these proceedings to condemn the parcels of land hereinafter described for the uses and purposes herein set forth."

In 1982, a similar resolution was approved by the Governor to purchase additional land in the Garrows Bend area. In part, it stated: ". . . the area commonly referred to as the Garrows Bend area is available to highway access from Interstate 10, has excellent railway transportation and is served by deep water being Mobile Bay Channel, Arlington Channel and Garrows Bend. . . ."

On 18 May 2000, Alabama Governor Siegelman said, "Reviving the State Docks is not only vital for the city of Mobile's economic goals, it is vital for the long-range economic development goal for the State of Alabama. With the advent of Alabama as a leading automotive manufacturing state, and with Mercedes being the state's largest exporter, it's now imperative that we revive the State Docks so that the Port of Mobile thrives as one of the premier ports of trade in the nation and in the world." The State Docks conducts trade with more than 125 nations. The financial and employment impacts of the State Docks is spread throughout all 67 counties in the state, with eight of the top ten affected counties located in the northern half of the state. The Alabama Commerce Commission described the Port of Mobile as vital to Alabama's economic future and identified the need for a container facility to fully participate in expanding overseas trade.

On 17 December 2001, the ASPA submitted a Joint Permit Application and Notification to the U.S. Army Corps of

Engineers Mobile District, and the Alabama Department of Environmental Management (ADEM) for the Choctaw Point Terminal project (Permit Application Number AL01-04269-U). Based on a review of the level of impacts associated with the proposed action, the Mobile District in accordance with the National Environmental Policy Act (NEPA) determined that an Environmental Impact Statement was necessary to properly evaluate project impacts on the environment and the public interest. A Notice of Intent to Prepare an EIS on was published in the Federal Register on 23 January, 2002. The following were cooperating agencies in the NEPA process: U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), ASPA, Alabama Department of Environmental Management (ADEM), Alabama Department of Conservation and Natural Resources (ADCNR), Alabama Department of Transportation (ALDOT), Alabama Historical Commission (AHC) and the Mobile Bay National Estuary Program (MBNEP).

NEPA requires Federal agencies to interpret and administer policies, regulations, and public laws of the United States in a manner that encourages and facilitates public involvement and restores and enhances the quality of the human environment. A public scoping meeting was held on 21 February 2002 and an open-house public workshop was held on 7 November 2002. A second public hearing was held on 13 November 2003, to solicit comments concerning the adequacy of the Draft EIS which was made available to the public on 17 October 2003. The USACE has considered all comments, both individually and collectively, provided by the public and agencies on the Draft EIS. The Final EIS was made available to the public and the Notice of Availability (NOA) published in the Federal Register on 20 August 2004. The Final EIS incorporated changes suggested by comments on the Draft EIS, as appropriate, and contains responses to comments received during the review period. The Final EIS also incorporates additional information obtained since the Draft EIS was issued. Comments on the Final EIS were considered and are addressed paragraph 9 of this document.

5. PROJECT DESCRIPTION: The proposed action is to construct and operate a modern world-class, deep water, integrated intermodal terminal complex adjacent to the Mobile River and Garrows Bend in the City of Mobile, Mobile County, Alabama. The project proposal encompasses approximately 370 acres of lands for development of the overall project. Major elements of the proposed project are summarized in the following paragraphs. A detailed description of the project is contained in Section 3.3.1 of the EIS.

Docking Facilities, Dredging, Wharves, and Cranes -  
The Proposed Action includes construction of a wharf parallel

to the Mobile Ship Channel by constructing a 2,000-foot cellular cofferdam retention system and 2,000 feet of wharf structure supported on top of the cofferdam. Construction of the cellular cofferdam retention system could require dredging the entire area under the bulkhead to -55 feet to remove extremely soft soils. Approximately 350,000 cubic yards of material would be mechanically dredged and transported for disposal. The material to be dredged has been tested for contamination and determined to be suitable for normal disposal operations in the Gaillard Island Dredged Material Disposal Area. An adequate number of cranes of sufficient size would be provided to service the container ships that would be expected to call on the Choctaw Point Terminal.

Container Yard and Support Facilities - The ASPA plans to develop the area adjacent to the wharf for container processing and storage, support and operations facilities, control gate access, and roadways. These facilities would be constructed in stages depending on available funding.

Intermodal Rail Yard - The ASPA plans to develop an intermodal rail yard. The north end of the project site would serve as the water-truck interface, and the truck-rail interface would be located near the south end. The two operational terminals would be linked through a grade separation roadway, designed to minimize transfer time and costs. The rail yard would be connected to the existing rail lines adjacent to the western boundary of the site. Truck access to the Interstate Highway system would be via the Broad and the Virginia Street I-10 interchanges.

Storm water Management Facilities - It is anticipated that site drainage systems would consist of trench drains, inlets with underground pipe systems, channelization improvements, and combination thereof. All off-site drainage tributaries to the site would be accommodated in the site design and conveyed to outfalls in Garrows Bend and the Mobile River. On-site drainage associated with site development would also be conveyed to either Garrows Bend or the Mobile River. Best Management Practices (BMPs) would also be incorporated into the design of the project. National Pollutant Discharge Elimination System (NPDES) permits would be obtained for both the construction and post-construction phases of the proposed project.

Public Access - The ASPA currently intends to provide public access and public use amenities on or in the proximity of the project area. Early in the Master Plan development for the Choctaw Point Terminal project, the ASPA identified the opportunity to enhance public waterfront access to the western shore of Mobile Bay complementing the proposed Crepe

Myrtle Trail (CMT) which is an ongoing civic movement to provide linear parks and recreational facilities that celebrate the history and past of the region. The ASPA is evaluating two different alternatives regarding public access near the proposed Choctaw Point Terminal site.

An alternative being considered would complete a defined section of the proposed CMT. The ASPA, in conjunction with the Mobile Airport Authority (MAA), Mobile Transit Authority (MTA), and the South Alabama Regional Planning Commission (SARPC), has identified the potential to complete an extensive section of the proposed CMT as part of the Choctaw Point Terminal public access plan. The project would consist of the construction of 4,100 feet of a bicycle path and pedestrian walkway from near the Broad Street entrance to Brookley Field (Arlington Point) on the south to the existing Broad Street/I-10 interchange to the north. The proposed alignment of the bicycle path and pedestrian walkway is on the east side of Broad Street.

The second alternative, Arlington Cove is the potential location for a rest area, limited parking, a new and improved transit stop, and greenspace setting of approximately 48 acres for expanded public use amenities. The development of the Arlington Cove properties, owned and maintained by the MAA and the U.S. Coast Guard (USCG) would require the participation and consent of these entities. The development of public access and public use facilities would be coordinated with the City of Mobile. The ASPA has entered into a Memorandum of Agreement (MOA) with the MAA and initiated discussions with local government officials/agencies regarding opportunities for the potential project at Arlington Cove. The ASPA is willing to actively participate in the consideration of reasonable efforts to enhance such waterfront access and facilities. The ASPA is planning a series of public meetings to finalize plans for the public access facilities. The first of these was held February 22, 2005.

Value-Added Facilities - The proposed plan envisions the construction of commercial, value-added distribution and warehousing facilities on the remaining property west of the intermodal rail yard. Value-added services are activities performed to increase the potential resale value of the commodities being handled, such as bar-coding, quoting, product manipulation, "pick and pack," and assembly of components and marketing materials. Peripherally associated activities, such as product returns handling, may also exist. Locating value-added activities on under-utilized land immediately adjacent to gateway ports throughout the world strengthens the ports' competitiveness and would do the same

for Mobile. These facilities would be constructed and operated by private companies on land leased from the ASPA.

Navigation Improvements - The 2,000-foot-long berthing area between the ship channel and the wharf would require deepening of approximately 15 acres of previously dredged river bottom to - 42 feet to accommodate the container ships initially expected to call on the Port of Mobile. The existing depth within the 15-acre area ranges from approximately 40 feet to five feet near McDuffie Island. Dredged material from the berthing area would be placed in the Gaillard Island Dredged Material Disposal Area.

Tennessee Street Drain Relocation - It is proposed that the Tennessee Street Drain be relocated to direct the storm water to the Southern Drain to alleviate recurring flooding and to minimize penetration(s) in the proposed dike at Garrows Bend. The proposed relocation would create a new channel that diverts flows away from the existing undersized underground box culvert that is located under the Armstrong World Industries (AWI) warehouse and ties into the existing Southern Drain just south of the AWI loop road. A portion of the existing box culvert would be removed, and an open channel would be constructed upstream of the AWI culvert to carry up to 5,000 cubic feet per second (cfs) to the Southern Drain. Details of the proposed relocation, including the channel design and the flow dissipation features would be addressed during the design phase.

The Tennessee Street Drain relocation would only transfer low flow to the Southern Drain since high flow already enters the Southern Drain through the Tennessee Street Drain Floodway. The relocation would impact less than 0.2 acre of fringe wetlands adjacent to the Southern Drain. No impacts to navigation would be expected from the relocation. Also, the relocation would divert flow from one discharge point to another and would not be expected to exacerbate water quality problems.

Additionally, the existing AWI culvert provides storm water conveyance for the AWI site, and it would need to remain operational if the existing culvert is blocked at the upper end and flow is diverted. It is proposed that AWI site drainage would be accommodated by construction of a diversion channel along the east boundary of the AWI property.

6. Project Purpose: The overall purpose of the Choctaw Point Terminal project is to develop a world-class, deep water, integrated intermodal terminal complex to service existing and emerging industries, to create new economic activities in the Mobile area, and to support similar opportunities on a statewide level.

7. Need for Proposed Project: In recent years the ASPA has witnessed a growing statewide move away from heavy industry to light manufacturing and value-added activities. Traditionally, the Port of Mobile has been an import and export location for high volume bulk products, such as coal and iron ore, with a lesser emphasis on the classes of cargo needed by modern light industry. The Port has become a distribution center for forest products, steel, iron, and aluminum cargoes. The ASPA makes a substantial contribution to the local and state economy through jobs, revenues, and associated tax revenues. However, until now, the ASPA has not endeavored to develop a major container terminal.

The objective of the ASPA development program is to address the need for the effective and efficient movement of containers to Alabama industry, especially in light of the State's recent success in attracting new industries such as Mercedes, Honda, Toyota, Hyundai, and others. The ASPA Board of Directors has determined that future port development must go hand-in-hand with the provision, expansion, and marketing of value-added services to optimize its value to the State. The proposed Choctaw Point Terminal project would provide needed container terminal facilities and would generate new employment opportunities.

Container throughput for the Port of Mobile varied from 8,000 to 12,000 Twenty-foot Equivalent Units (TEUs) between 1991 and 2001. The ASPA handled 18,439 TEUs and 23,960 TEUs in 2002 and 2003, respectively. Container shipments continue to increase with 18,277 TEUs being handled during the first six months of FY 2004. A TEU is the industry standard of measure for containerized cargo based on the volume of a single 20-foot-long container. Recent operational changes and equipment upgrades at the existing container handling area are expected to increase container throughput capacity to 50,000 to 75,000 TEUs per year.

The existing container handling area (Berth 2) at the Port of Mobile is very small (approximately 16 acres) and will reach capacity at 75,000 TEUs. Expansion opportunities are extremely limited by surrounding development. The Mobile Convention Center is immediately south of Berth 2, and the main dock area for the Port of Mobile is north of the site. Railroads, highways and downtown Mobile block expansion to the west.

The estimated maximum throughput of the new terminal would be approximately 614,000 TEUs per year, which is considered adequate to offer sufficient capacity to meet expected demand until approximately 2020 (See FEIS, Section 2.3).

In order to be competitive, the proposed project must produce enough transportation cost savings to attract existing and future container shipments. The facility must also provide an integrated marine, rail, and highway transportation system to be competitive. The rail and truck intermodal facilities must be contiguous or immediately adjacent to the marine terminal to function in a cost-effective manner. Also, U.S. Customs regulations, port security concerns, and operational efficiencies require that containers must stay within a secure fenced area until they leave the facility by rail, truck, or vessel.

8. SUMMARY OF ALTERNATIVES EVALUATED: Only alternatives that would reasonably meet the defined purpose and need for the Proposed Action require detailed analysis in this EIS. A tiered alternative screening and evaluation approach was utilized to identify potential reasonable alternative sites for development. All of the areas in close proximity to the Mobile Harbor and Theodore Ship Channels were initially considered because these areas could potentially meet the deep draft navigation requirements for the proposed project. These areas can generally be considered in three segments: (1) Mobile Harbor East Bank, (2) Mobile Harbor West Bank, and (3) the Theodore Ship Channel area. The east bank segment was eliminated from consideration because of the lack of rail access and lack of undeveloped land. The remaining segments were screened for potentially available property. Five potential terminal sites were initially identified and assessed against site selection criteria to identify the potential alternatives to be analyzed in detail in this EIS.

The alternatives evaluated during the first phase of screening were displayed at a public workshop for the Proposed Action. Based upon concerns expressed and questions asked by workshop participants, a second tier evaluation of potential alternatives was undertaken. The workshop participants suggested several site location alternatives that they felt warranted further evaluation. Several of these alternatives were not considered reasonable alternatives for various reasons. The alternatives screened during the second tier were: Choctaw Point Terminal - Garrows Bend Intermodal Rail Option; Choctaw Point Terminal - West Intermodal Rail Option; Choctaw Point Terminal - North Intermodal Rail Option; Middle Bay Port - West Intermodal Rail Option and No Action Alternative.

The Choctaw Point Terminal in combination with both the West Intermodal Rail Option and the North Intermodal Rail Option were determined not to be reasonable alternatives based on their economic viability and a number of other factors, including impacts to land use, air quality, noise, natural resources, socioeconomic resources, etc.



The Middle Bay Port and West Intermodal Rail Option was determined not to be a reasonable alternative to the Choctaw Point Terminal project based on economic viability and a number of other factors, including impacts to air quality, noise, natural resources, socioeconomic resources, etc.

Two alternatives were evaluated in detail, the No-Action Alternative and the Proposed Action Alternative (Choctaw Point Terminal - Garrows Bend Intermodal Rail Option). Section 3.0 of the Final EIS contains a detailed discussion of the alternatives considered.

7. SUMMARY OF ENVIRONMENTAL IMPACTS FOR THE PROPOSED ACTION:  
Hazardous Air Pollutants: The proposed project would produce approximately 5.5 pounds of polyaromatic hydrocarbons (PAH) in 2020. This quantity is extremely small when compared to the national, state, and Mobile County quantities of PAH produced. The Proposed Action would use solvents, lubricants, antifreeze and air conditioner coolant during its maintenance operations. It is estimated that the quantities of these materials would be minimal.

Air Quality Cumulative Impacts: The Proposed Action, located in Mobile County, is in an attainment area. Nevertheless, no project can result in jeopardizing the existing attainment status by significantly deteriorating the air quality. The calculated emissions resulting from the construction phase of the Proposed Action would result in short-term impacts to the air quality in the Mobile area. The emissions that would result from daily operations at the Choctaw Point Terminal project would result in long-term effects to the local air quality. More than 95 percent of these total emissions would result from operations of mobile sources: locomotives, cargo vessels, heavy-duty diesel trucks, and private automobiles. Heavy-duty diesel trucks are by far the largest source of emissions from operations of the proposed project. For comparison purposes, the project would generate an average of 870 trucks per day in 2020. That number of trucks would increase overall traffic on I-10 between Virginia Street and Broad Street by 0.9 percent and truck traffic by 8.2 percent with proportional increases in air emissions. Recent ADEM reports indicate the ozone monitors in the Mobile area are not frequent violators due to the volatile coastal weather that breaks up stagnant air before ozone forms. Therefore, air pollutants resulting from the proposed project would mix and disperse with the coastal weather winds.

Noise: An average of 22 freight trains per day currently pass by the Nellie-Duval neighborhood. By the year 2025, that number is expected to increase to 32 trains per day without development of the proposed project. The proposed project is expected to increase the train traffic passing the

neighborhood in 2025 by three trains per day, resulting in an average frequency of 35 trains per day. The increase in train traffic would result in elevated noise levels for approximately 1.07 hours or 4.44 percent of the day. Hence, the increase of three trains per day or 9.4 percent by the Proposed Action equates to an increase of time that the neighborhood would experience elevated noise levels of 0.10 hour or 0.42 percent of the 24-hour day. The increase due to the train traffic associated with the Choctaw Point Terminal project would be considered negligible and should not cause perceptible degradation of the noise environment.

**Lighting:** The proposed project would change the visual characteristics of the project site from a relatively underdeveloped area to a well-lit industrial facility. Nighttime ambient light levels at the site would increase due to high mast lighting and rail and highway traffic. BMPs would be incorporated into the project design to minimize glare, light spill, light trespass, and light pollution to the surrounding area.

**Physiography and Surface Drainage:** The Proposed Action would include alteration of the topography and surface drainage patterns on most of the project site. The project site would be filled or graded to between +12 and +16 feet except for the Southern Drain and wetlands along its floodplain. This area would be bridged to avoid impacting wetlands and to avoid creating any upstream flooding problems.

During significant storm events, flood waters from the Tennessee Street Floodway flow over land in an area designated as a regulated floodway between Armstrong World Industries and McPhillips Manufacturing and enter the Southern Drain channel prior to flowing into Garrows Bend. Construction of a drainage channel from the Tennessee Street Drain to the Southern Drain would redirect low flow from the Tennessee Street Drain to the Southern Drain. High flows downstream of Baker Street would be contained within the drainage channel of the relocated Tennessee Street Drain and discharged into the Southern Drain.

**Coastal Processes:** The Proposed Action would alter the shoreline of the project site. The proposed cofferdam retention system and wharf would extend into the Mobile River, but the impacts to circulation and velocities would be minimal. The southern portion of the project site does not experience river currents and is sheltered from high-energy wave action by McDuffie Island. The construction of the dike and railroad embankment along the Garrows Bend shoreline would not affect coastal processes. The eastern sides of the dike and embankment would be protected from the erosive effects of wave energy, even in this low energy environment.

Sediment deposition from the Tennessee Street and Southern Drain watercourses has created deltas where they flow into Garrows Bend. The Tennessee Street Drain would be rerouted through an open channel to the Southern Drain. This would increase the sediment load in the Southern Drain and would likely increase its delta formation. The Southern Drain channel and adjacent wetlands would be bridged and would avoid impacts to these features.

**Short-Term Construction Water Quality Impacts:** Construction of the proposed facilities would result in minor short-term impacts due to disturbance of the material during construction. These impacts would primarily be in the form of increases in suspended material within the water column and reduced water clarity. Measures would be incorporated into the project to control the release of suspended solids, especially in areas containing contamination. Dredging and dredged material disposal operations would be designed to comply with state water quality standards.

**Long-Term Operational Water Quality Impacts:** Water quality impacts associated with the Proposed Action would result primarily from the alteration in land use on the project site and the proposed changes to non-point source loadings from the drainage areas to Garrows Bend and the Mobile River. Because no direct point source discharges are associated with the proposed facility, the potential impacts are limited to changes in non-point source loads and their resultant impacts on instream water quality. The impacts associated with land use alterations on the water quality loading to Garrows Bend and Mobile River would result in long-term impacts to water quality conditions. Treatment BMPs would be incorporated into the project design to mitigate these water quality impacts.

**Regulated Floodways:** The regulated floodway portion of the Tennessee Street Drain is located approximately 600 feet outside of the western boundary of the project site and therefore, is not directly impacted by the proposed project. The Tennessee Street Drain would be rerouted from under the Armstrong World Industries facility in an open channel along the north side of the facility to the Southern Drain. The rerouted Tennessee Street Drain would utilize portions of the regulated floodway. The open channel would improve the conveyance of flood waters and would be designed to avoid impacting upstream flood elevations.

**Special Flood Hazard Areas:** Portions of the project site occur within special flood hazard zones AE, VE, and X. These special flood hazard zones require specific design considerations for the proposed plan. The proposed plan would include filling the project site, where required, to

elevate it above the 100-year flood elevation (+12 feet NGVD). In flood hazard 'Zone VE,' the facilities would be designed to withstand wave energy velocity hazards resulting from a 100-year flood event. Increasing the elevation on 293 acres of the project site within the 100-year floodplain would not measurably affect flood elevations on adjacent property or in Mobile Bay.

**Storm and Hurricane Vulnerability:** The project site is vulnerable to the effects of storms and hurricanes. The proposed project would be designed to withstand the primary destructive forces of storms and hurricanes: wind, rain, and storm surge. Proper wind loading and storm water design and elevation of the facilities above the 100-year flood elevation would reduce the vulnerability and minimize potential damage, but it cannot be completely eliminated.

**Circulation and Velocities:** Under the proposed project, various areas that are presently open water would be filled to provide for the container berthing and rail transport. These areas include a total of 47.4 acres of open water. Along the Mobile River, an existing short channel would be filled immediately to the north of McDuffie Island to provide for the container berths which would extend out toward the existing navigation channel. Dredging to the existing channel depth of 40 feet would also occur between the container berths and the navigation channel.

In order to evaluate the impacts of these activities on the circulation and transport within the Mobile River, a hydrodynamic sub-model was developed for the area immediately adjacent to the proposed project. The velocity magnitudes increase by less than one percent while the direction of the current is more directed along the channel during flood flow conditions.

**Topography:** The proposed project would require the project site to be filled and graded to between +12 and +16 feet NGVD.

**Soils:** Soils on the project site have been greatly impacted by past activities so there would be no significant impact to soils.

**Stratigraphy:** There would be no impacts to the underlying stratigraphy of the project site except for localized near surface changes that would occur because of excavation and filling required for the proposed project.

**Groundwater Aquifers:** The quality of groundwater in the aquifer under the project site would be expected to improve with the proposed project. The ASPA would continue to

remediate soil and groundwater contamination on the project site. Also, the proposed project would cap the contaminated areas on the project site, preventing the further migration of the contamination.

**Mining Activities:** There would be no impacts to mining activities since none exists on the project site.

**Potable Water Supply:** Construction and operation of the proposed project would not require additional water treatment capacity or supply infrastructure to meet the anticipated demand. However, new water supply infrastructure, such as supply line and fire hydrants, would be constructed on the project site. Water would be supplied to the project site by the Mobile Area Water and Sewer System (MAWSS). No groundwater extraction wells are planned for the proposed project.

**Waste water Collection and Treatment:** The Williams Waste water Treatment Plant on McDuffie Island has sufficient capacity to accommodate sanitary sewage from the proposed project. However, new waste water infrastructure would have to be constructed on the project site. Two MAWSS sanitary sewer force mains traverse portions of the project site. A 48-inch force main is located in the southern portion of the Garrows Bend area. A 36-inch force main from the Virginia Street pumping station traverses a portion of the northern part of the project site. The design and site development of the proposed project would have to assure protection or appropriate relocation of these force mains.

**Storm water Drainage System:** Storm water management facilities would be designed to meet design criteria of the applicable regulatory agency. Site drainage systems would consist of appropriate combinations of trench drains, inlets with underground pipe systems, and channelization improvements. Storm water from the project site would be discharged to either Garrows Bend or the Mobile River. Off-site storm water would continue to pass through the project site. The Tennessee Street Drain would be rerouted in an open channel along the north side of Armstrong World Industries to pass storm water flows through the project site to Garrows Bend. The rerouted Tennessee Street Drain would utilize portions of the regulated floodway. The open channel would improve conveyance of flood water and would be designed to avoid impacting upstream flood elevations. The proposed project includes bridging the Southern Drain to avoid impacting the off-site storm water discharges and upstream flood elevations.

**Solid Waste Disposal and Landfills:** The proposed project would require land clearing and demolition of structures and

various water, waste water, storm water, electrical, natural gas, and communication infrastructure on the project site. These actions would increase solid waste disposal requirements and decrease available landfill capacity. No large solid waste disposal and landfill requirement would be associated with operation of the container terminal.

Utilities or Energy Resources: The existing 4 kv electrical lines, natural gas lines, communication lines, and infrastructure on the project site would be removed or abandoned in place and replaced with new lines constructed to meet the requirements of the proposed project. Other than solid waste disposal impacts discussed above, there would be no additional environmental impacts associated with providing the required infrastructure.

Highways and Roadways: The proposed project would increase projected average daily traffic on I-10 between Virginia and Broad Streets by approximately one percent when it reaches capacity in 2020. No upgrades to I-10 would be required as a result of the increased traffic.

Surface Streets: The proposed project would increase average daily traffic on local streets by 500 cars and 870 trucks in 2020 when it reaches capacity. The increase in traffic would require improvements to laneage, intersection turning radii, intersections, and pavement thickness (strength) on Broad Street, Baker Street, Yeend Street, Ezra Trice Boulevard, and Virginia Street.

Rail Transportation: The proposed project would generate additional train traffic ranging from 0.25 per day in 2005 to approximately three per day when the project reaches its maximum throughput in 2020. The majority of the existing tracks could handle the increased traffic. Only the tracks between the CSX corridor and the project site would have to be upgraded.

Air Transportation: Containers from the proposed project would move either by rail or by truck. However, the proposed project would be expected to increase package shipments by air from both the Mobile Downtown Airport and the Mobile Regional Airport. The amount of this increase is unknown but would be directly related to the number and types of value-added facilities that locate in the Mobile area.

Water Transportation: The proposed project is projected to generate approximately eight vessel calls per week (416 per year) when it reaches capacity in 2020. The total number of ships calling on the Port of Mobile could reach 1,413 per year in 2020. However, some of the ships using the Choctaw

Point Terminal project would already be calling on the Port of Mobile so the actual increase would be somewhat less.

**Public Transportation:** Improved public transportation accommodations would occur in the Garrows Bend area under a U.S. Department of Transportation Grant. New transit stops would be provided to serve new public access facilities along the south side of the project site and the additional public access facilities that are part of the proposed project, including an additional walking/running/bicycle path.

**Use, Storage, Handling, and Disposal of Hazardous Materials:** Between one and two percent of the cargo passing through the Choctaw Point Terminal in containers may be designated hazardous materials. Construction and operation of the proposed project would require the use, storage, handling, and disposal of hazardous materials, such as fuel, paint, etc. No disposal would occur on the project site. ASPA would comply with their established policies and procedures relating to the proper handling of hazardous and toxic materials.

**Contaminated Sites:** The ASPA would continue to remediate contaminated areas on the project site. The proposed project would be designed to convert the existing brownfield (Choctaw Point portion) site into an environmentally acceptable water-dependent facility. The goal is to redevelop the contaminated property into a beneficial use that does not affect public health and safety. The proposed redevelopment is being fully coordinated with ADEM and the EPA. The design of the proposed project includes capping the contaminated areas and continuing the remediation process. This approach would produce an overall positive environmental benefit.

**Asbestos, Radon, Polychlorinated Biphenyls (PCBs), Lead Based Paint:** The proposed project would require demolition of the existing buildings on the project site. There is a high likelihood that many of these buildings contain Asbestos-Containing Materials (ACM) and Lead Based Paint (LBP) since they were constructed prior to 1980. The buildings on Choctaw Point have been surveyed for ACM and LBP since publication of the DEIS and some have been demolished, after completion of ACM and LBP abatement. The other buildings on the project site would be surveyed for ACM and LBP and any necessary abatement measures completed prior to the start of demolition activities. Radon is not considered to be a problem on the project site. Further investigation has been conducted on one site where roofing tar containing PCBs was stored in drums. The investigation confirmed a release of PCBs which are in the process of being remediated.

Permits and Regulatory Authorizations: Existing facilities authorized under Section 10 and Section 404 permits would be removed. The Central Gulf Rail Ferry operation would be relocated to Pier E in the main docks area north of the project site, and the Barge Unloading Wharf serving the Corus DRI Plant would be relocated to the east side of McDuffie Island. None of the other existing facilities would be replaced. Resource Conservation and Recovery Act (RCRA) permits and the State Indirect Discharge (SID) and NPDES permits for discharges from the closed wood treating facility would continue in effect and would be modified and renewed as required until remediation is complete.

Upland Plant Communities: The Proposed Action at the Choctaw Point Terminal project site would necessitate disturbing approximately 277 acres of upland habitat within the 370-acre site. Considering the extremely limited value and biological integrity of the existing habitat, the proposed development at the Choctaw Point Terminal site would not cause a large impact upon the natural biological features.

Upland Animal Species: The project site is exclusively inhabited by common fauna, including small mammal, reptile, and avian species. No large mammal species were seen or detected on-site during field reviews. Thus, no impacts to large mammals would occur as a result of the Proposed Action.

Invasive Species: Invasive exotic vegetation and common weedy species dominate the undeveloped areas and previously developed landscape of the project site. The most prevalent variety present at the site is Chinese tallow. The understory is dominated by Chinese privet, and cogon grass dominates the herbaceous development in open fields on the site. Development of the project site would eliminate the existing exotic vegetation on the project site.

Endangered, Threatened, and Other Listed Species: The Proposed Action may result in effects to Federally-listed threatened or endangered species. Aquatic species (Florida manatee, Gulf sturgeon, and sea turtles), which would not normally use the project area, would not likely exhibit incidental use of the area during project implementation. Because the project area is not a major provider of life history requirements for these species, no impacts to these Federally-listed species are anticipated.

By letter dated 19 March 2004, the FWS stated that no further consultation on endangered species will be required. By letters dated January 13, 2004 and February 13, 2004, the NMFS stated that consultation under Section 7 of the Endangered Species Act was complete pending completion of consultation regarding Essential Fish Habitat.



Short-term impacts to state-listed species (reddish egret, Mississippi diamondback terrapin, and Gulf salt marsh snake) could occur. No risk to continued survival of local populations would be expected.

**Wetlands and Floodplains:** There are basically two types of wetlands found in the Choctaw Point Terminal project area. These wetlands are best described as scrub shrub wetlands and fringing marsh wetlands. Approximately 24.5 acres of wetlands would be filled, including 7.8 acres of scrub shrub wetlands and 16.7 acres of fringing marsh.

**Freshwater Wetlands:** While the drainage features and their associated wetlands lend diversity to the site, their overall contribution to wildlife habitat is diminished due to the fact that the channels convey and discharge untreated urban storm water across the southern portion of the project site and into Garrows Bend. As described, these wetlands are vegetated by invasive, nuisance, or common wetland plant species, and contain large amounts of trash and wrack. Evaluation of the wetlands at the project site using the Hydrogeomorphic (HGM) approach indicates that these areas are not well suited for providing land-based wildlife habitat. Small mammals such as raccoon, feral cats and nine-banded armadillos, along with common avian and reptile species, can be expected to occur along the edges of the wetlands at the project site.

**Estuarine Wetlands:** The fringing tidal wetlands are predominantly vegetated by herbaceous species and are dominated by common reed (*Phragmites australis*), along the upland/wetland interface. Wax myrtle (*Myrica cerifera*), false willow (*Baccharis halimifolia*) and marsh elder (*Iva frutescens*) can be found along the upland edge of the high marsh area. Beyond the area vegetated by common reed, there is an abrupt transition to cattail (*Typha* sp.) dominated marsh, which extends to the waters edge. Scattered patches of three-square, bulrush (*Scirpus* sp.) and smooth cordgrass (*Spartina alterniflora*) are also present. The width of the wetland fringe marsh varies between twenty and six hundred feet. As identified by the results of the modified HGM approach, the tidal marsh areas at the project site, the fringing tidal marsh wetlands do not provide optimum wildlife habitat.

Within the northern reaches of Garrows Bend, direct impacts to tidal marsh areas have been avoided in the vicinity of the outfall from the Southern Drain waterway. This channelized drain flows directly through the floodplain wetlands and fringing tidal marsh before discharging storm water into Garrows Bend.

The Southern Drain wetlands were recognized as containing more diverse plant species than the other wetland areas impacted by the project. Thus, efforts were made to avoid filling those wetlands. The wetlands will be bridged to minimize impacts. A total of approximately 15 acres of wetlands have been avoided within this specific area.

While avoidance and minimization of impacts has been accomplished, the Proposed Action would require filling approximately 16.7 acres of wetlands within fringing tidal marsh areas. A total of 7.9 acres of the fringing tidal marsh areas and the Tennessee Street Drain that would be impacted have been identified as containing contamination. As described, these impacts will occur along the shorelines of the project area within the upper and lower Garrows Bend. Impacts would be attributable to construction of a large retention berm and installation of an intermodal rail yard. In addition, pilings or large abutments will be installed to support the bridges that have been proposed for construction over the Southern Drain outfall and the associated wetlands. Shading of the wetlands may occur as a result of the construction of the proposed bridges. Construction impacts can also be expected. However, these impacts would be temporary in nature. Mitigation will be provided to compensate for the proposed wetland impacts.

**Freshwater Wildlife:** The waters and wetlands of Garrows Bend exhibit aspects of severe human disturbance. There is little undisturbed habitat to provide for a significant diversity of wildlife. Except for an alligator, there are no indications of the presence or use of the freshwater habitats by large predator species.

The primary bird species that visit the freshwater areas are common small species that are primarily upland species. Some small fish appear to use the freshwater channels. Insect use of the freshwater areas is limited. No amphibian species were detected in the freshwater areas during site visits. Some turtles were found within the project site, but these are primarily associated with estuarine habitat.

In general, any wildlife using the freshwater habitat is expected to move upon commencement of construction. Relocation of these species to the upper freshwater reaches of the Southern Drain and Tennessee Street Drain is expected.

**Estuarine Wildlife:** Numerous field site visits have documented an active bird population associated with the fringing marsh wetlands. The open waters of Garrows Bend also have active bird use by various predatory bird species. Approximately 23.3 acres of shallow bottoms will be filled by the proposed project. No impacts to the Arlington and

Garrows Bend navigation channels are planned. Thus, some foraging habitat for predatory birds will be lost as a result of the project.

Fill of shallow water bottoms and fringe wetlands will result in the loss of approximately 47.6 acres. However, the mitigation plan provides for the creation of fringe wetlands in the vicinity of the project site that will be built to offset the loss of habitat. The proposed created wetlands will be located adjacent to the Southern Drain, the southwest peninsula of McDuffie Island, and a nearby area called Arlington Cove. A total of 56.6 acres of created and enhanced wetlands will offset the loss of wetlands and water bottoms.

**Shallow Water Habitat and Submerged Aquatic Vegetation:**  
No continuous areas of Submerged Aquatic Vegetation (SAV) would be impacted by the proposed project. While no significant SAVs would be impacted by the proposed project, approximately 47.4 acres of open water would be filled, including 23.3 acres of shallow water habitat. The occurrence of SAVs within Garrows Bend is extremely rare, with only sago pond weed (a common weed) and Eurasian water-milfoil (an invasive species) present.

The mudflats proposed for impact can provide habitat for benthic macroinvertebrates, fish, and invertebrate species. However, analytical testing of the benthic sediments within the Garrows Bend area indicate that elevated levels of dioxin, lead, mercury, PCB and PAH contaminants are present. Sediments containing contamination occur in the vicinity of the Tennessee Street Drain, Southern Drain, and the upper end of Garrows Bend.

Mitigation is proposed to compensate for impacts to water bottoms, essential fish habitat (EFH), and living marine resources that would occur from project development. The goal of the proposed mitigation plan is to create a wetland system that compensates for lost functions and values of the impacted resources that can provide beneficial habitat for the diverse array of fishery and avian species that forage within the nearshore waters of Mobile Bay. The additional habitat edge provided by the tidal channels and the vegetated marsh will add topographic diversity to the wetland complexes and increase the amount of usable habitat available to resident and transient bird, fish, and invertebrate species.

**Essential Fish Habitat:** EFH within the project area includes nearshore, fresh to brackish water tidal marshes as well as the water column and offshore benthic areas. Marshes occur within the littoral zone along the entire shoreline of the southern portion of the project site, as well as along one

small area of the shoreline within the northern portion of the site. The marsh varies in width between 20 and 600 feet, depending upon location.

Within the northern section of the project area, relatively deep, open water lies within a cove off of the Mobile River. This area has historically been dredged to provide adequate water depths for mooring large vessels. This area is thought to become anoxic during certain times of the year. Benthic habitat adjacent to the southern site at the project area consists of broad shallow water habitat that becomes exposed during periods of extremely low tide. This habitat is contiguous to fringe wetlands that could provide some habitat for developing or prey species. It is believed that, in general, the salinity characteristics for Garrows Bend are too low to provide optimal habitat for the majority of the eight estuarine species depicted on the NMFS EFH relative abundance maps for Mobile Bay.

The EFH located in Garrows Bend may be a productive nursery according to the AMDR fisheries surveys. Data has shown that EFH within the waters of Garrows Bend and the associated wetlands is provided for two species, brown shrimp and white shrimp, due to their relative tolerance of a wider range of water salinity values. These species are two of the eight species that are identified by the Gulf of Mexico Fishery Management Council as relying upon the waters of the Mobile Bay estuary as EFH during some portion of their life cycle. Mitigation will be provided to compensate for the proposed impacts to EFH.

**Special Interest Natural Areas:** The proposed project would fill approximately 24.5 acres of wetlands and 47.4 acres of water bottoms within the area designated as the Mobile Bay National Estuary.

**Cultural Resources:** The Alabama Historical Commission (AHC) previously determined that the proposed project would have no effect on any known significant cultural resources within the Choctaw Point tract. For the Garrows Bend tract, additional backhoe trenching was conducted to ascertain the presence/absence of significant subsurface Civil War deposits. The remains of Fort Sidney Johnston are believed to have been found. Documentation of the backhoe testing has been coordinated with the AHC. The remains of Fort Sidney Johnston would be avoided and appropriate protective measures implemented.

No properties listed on the National Register of Historic Places (NRHP) are within or near the Garrows Bend study area. No previously recorded archaeological sites are located within the tract boundaries. Likewise, no previously

identified historic structures are present within the study tract.

The historic Horst House (addition) could be physically altered by project development at some future time. If avoidance is not feasible, protection or mitigation measures could be undertaken to include relocation of the Horst House to a site available to public access and viewing. The public access site would include interpretive facilities to explain the Horst House and other historical information. Other historic properties in proximity to but outside of the project site, such as the Fort Whiting Armory, would not be adversely affected. Overall, impacts to cultural resources would be minor.

Cultural resource surveys of the proposed mitigation areas have been conducted and are being coordinated with the AHC. No impacts to cultural resources are anticipated.

Impacts to the Region of Influence (ROI) Economy: Short-term and long-term beneficial economic impacts would be expected. At the height of construction activity, Impacts Analysis for Planning Model (IMPLAN) estimated that 1,397 jobs would be generated. The employment increases and associated benefits to the ROI economy would be short-term, lasting for the duration of the construction of the Choctaw Point Terminal. The additional construction jobs generated during the Choctaw Point Terminal construction phase would be filled by the existing regional labor force. Hence, there would be no effect on population growth, housing, or the demand for public services, such as schools.

The economic activity generated by the operation of the Choctaw Point Terminal would have long-term minor beneficial effects on the ROI economy. By 2020, up to 250 people would be directly employed in the operation of the Choctaw Point Terminal. In addition, 263 jobs would be generated from related business spending, and another 135 jobs from induced household spending, for a total employment increase of 648 jobs.

In summary, the Proposed Action would confer economic benefits on the regional economy by generating short-term and long-term increases in employment, industry output, income, and tax revenue. The magnitude of these benefits compared to the size of the regional economy is minor, and the resulting changes in the demand for goods and services would be readily accommodated by existing resources.

Population and Housing: No effects on population and housing would be expected. Because the labor force needed to construct and operate the Choctaw Point Terminal would come

from within the ROI, there would be no change in ROI population and therefore no change in demand for housing. Furthermore, there would be no change in demand for schools, shopping facilities, recreational facilities, or public services, such as law enforcement and fire protection.

**Public Services:** Minor short and long-term benefits would be expected. Although the construction and operation of the Choctaw Point Terminal would not affect the demand for public services because there would be no increase in population, the proposed project would generate additional tax revenues for local governments as a result of increased employment and spending. Some portion of these additional tax revenues would likely be used to maintain or improve public service facilities and their associated staff.

**Quality of Life:** The Proposed Action would have a minor beneficial effect on fire protection, emergency, and law enforcement services; medical services; crime; schools; shopping; neighborhoods; family support services and shops; health facilities; and recreation/parks. Increases in tax revenue associated with project development and operation would likely be beneficial to the school system and to various public services. The ASPA currently intends to provide public access to the area and has initiated discussions with local government officials/agencies and other interested parties regarding opportunities for re-establishing recreational access to the historic Bay shoreline. The ASPA is willing to actively participate in the consideration of reasonable efforts to enhance such waterfront access and facilities.

Development of the public access on, or in proximity to, the project site would provide an opportunity to link to the proposed Crepe Myrtle Trail and the access associated with the Federal Department of Transportation Grant. These actions would enhance public access in the area.

**Environmental Justice:** No direct impacts to the Nellie-Duval neighborhood are projected. Indirect impacts primarily related to increased vehicular and train traffic would occur. The closest truck traffic to a house in the Nellie-Duval neighborhood would be approximately 1,500 feet away. No significant adverse noise impacts from vehicular traffic related to the proposed project are projected. Increased train traffic due to the proposed project would increase noise levels in the neighborhood by 0.10 hour, or 0.42 percent of the 24-hour day. This increase would be considered negligible and should not cause perceptible degradation of the noise environment.

Another potential impact to the neighborhood would be from light intrusion. Project lighting would be designed to minimize any adverse effects from this source.

The public access facilities and associated public use amenities that would be provided as a component of the Proposed Action would be convenient for use by residents of the neighborhood. Currently, there is no public access to the waterfront in close proximity to the Nellie-Duval neighborhood.

The Choctaw Point Terminal project would produce employment opportunities that would be available to the neighborhood residents as well as others. The project would be convenient for access to work if employment opportunities were to materialize.

In summary, while some indirect impacts would occur, adverse and beneficial, no disproportionately high and adverse environmental or human health impacts are anticipated for the Nellie-Duval neighborhood.

Protection of Children: Development of the Choctaw Point Terminal would produce a small increase in noise levels associated with train traffic. The increase represents a small increment, approximately 0.42 percent per day. There would be an increase in truck traffic between the project and I-10. This traffic would not, for the most part, traverse the Nellie-Duval neighborhood or other residences where children may reside. The terminal site, including the contaminated areas, would be made less accessible to children by security fencing and control gates that would effectively prevent children from entering the site. Overall, the potential for children experiencing disproportionate risks from environmental health risks or safety risks due to the Proposed Action are minimal.

8. ACTIONS TO MINIMIZE ADVERSE EFFECTS: All practicable measures have been incorporated into the proposed action to minimize adverse environmental effects.

Aquatic Resources: The original configuration in the Joint Permit Application included a 60-acre treatment wetland and green space area that extended into Garrows Bend. After further engineering and analyses, the ASPA modified its plan to eliminate this concept. This configuration will avoid direct impacts to that area and eliminate potential conflicts with the Federal Garrows Bend Restoration Project. The containment dike parallel to Garrows Bend has been moved further to the west. The Southern Drain will be bridged rather than filled to avoid impacts to wetlands and water

bottoms. These project modifications reduce the filling of wetlands and water bottoms by approximately 51 acres.

**Aquatic Resources Compensatory Mitigation:** The development of a mitigation plan for unavoidable impacts to aquatic resources (wetlands and water bottoms) evolved during the EIS process. The final mitigation plan was developed utilizing a collaborative interagency process to evaluate the impacts and to determine appropriate mitigation measures. The plan requires the creation/enhancement and long-term monitoring/management of 56.6 acres of tidal marsh and tidal creeks in the Garrows Bend/Arlington Channel area. The mitigation plan is detailed in Appendix I of the FEIS.

**Operational Efficiencies:** Refinements in the project design have improved the overall operational efficiency of the proposed project. These refinements include changes in the layout of the intermodal rail yard, intermodal container yard, and traffic control areas.

**Water Quality:** In order to minimize the impacts to water quality, the project will be built and operated in accordance with the requirements of the ADEM's Clean Water Act, Section 401 Water Quality Certification and Section 402 National Pollutant Discharge Elimination System (NPDES) permit. The following special conditions of the State 401 Certification will be incorporated by reference into the special conditions of the DOA permit.

**Air Quality:** Initial construction of the new facilities would occur over a two-year period. Fugitive dust from construction activities would be controlled and minimized by using water trucks or acceptable soil binders. The use of more, if not all, later model year trucks meeting the newer EPA standards would be encouraged. Limiting truck idling would also be included, along with the use of retrofitted trucks and locomotives if later model (more efficient) units are not used. All vehicles and support equipment would be maintained to the highest degree of operational efficiency to ensure minimum emissions. Further reductions in criteria pollutant emissions could be realized in the out-years if more containers were shipped by rail rather than by trucks. Shipping containers by train rather than by truck results in an approximate 80 to 90 percent reduction in NOx emissions and particulate matter emissions.

**Navigation Safety:** The Mobile Bar and Harbor Pilots identified navigation safety issues with the original berthing configuration. The narrow space between Choctaw Point and McDuffie Island and maneuvering ships into high currents in the ship channel, especially during high river



discharges, were concerns that resulted in the berth configuration being changed.

Cultural Resources: Fort Sidney Johnston, a Civil War era property eligible for the National Register of Historic Places, is located in the project area but will be avoided.

9. Response to Comments on Final EIS:

a. Environmental Protection Agency Region IV letter dated 13 September 2004, Mr. Heinz J. Muller, Chief, NEPA Program Office.

Comment 1. Pursuant to Section 309 of the Clean Air Act and Section 102(2) of the National Environmental Policy Act (NEPA), EPA, Region 4, has continued its review of the environmental consequences attendant to the three stage construction/operation of a container-handling facility, intermodal rail yard, and warehouse complex on a 370-acre parcel in the Choctaw Point area. Approximately 350,000 cubic yards (c.y.) of material will initially be removed to construct the specialized dock (CRS) and associated infrastructure followed by an additional 70,000 c.y. annually (to maintain controlling depths). The terminal component will eventually include a 2,000-foot CRS and two 1,000-foot wharf structures. Fifteen acres between the ship channel and wharf will be dredged to berth larger container ships. All excavated material is scheduled for placement in the Gaillard Island disposal area.

Response: Comment noted.

Comment 2. As a result of further interagency coordination, there is consensus regarding the water dependency of the terminal's footprint (90 acres of uplands, less than an acre of wetlands, and 29 acres of previously dredged water bottoms) as well as the criteria which would be used to determine how/what would be mitigated. Supporting infrastructure which lies adjacent to the wharf complex will impact 23.3 acres of wetlands, 18.4 acres of water bottoms, and 118.3 acres of upland habitat. The majority of the wetlands and associated shallow water habitat losses would occur within the footprint of these supporting elements of the project. While there is an important linkage of the supporting infrastructure (warehousing and distribution facilities) to the dock-side component of the terminal (wharf and container unloading equipment), the former do not need to be located in aquatic environments to perform their functions.

Response: Comment noted. See response to Comment 3 below.

Comment 3. The issue of availability of property (as it relates to the water dependency issue) for the supporting element(s) of the project has not been definitively determined. An integrated container shipping complex must logically have closely aligned support facilities in order to be financially viable. Nonetheless, the question remains whether a project configuration exists that is less environmentally damaging than the currently proposed design alternative, achieves the basic project purpose, and has reasonable profitability. It was originally acknowledged that there are underutilized parcels available for future value-added facilities within the immediate Mobile area (see Figure 3-7). If these properties (singly or in combination) were used in lieu of the proposed layout for support facilities, the intermodal rail yard could be reoriented to minimize impacts to the Garrows Bend wetlands. If this were accomplished, EPA concerns (noted on the Draft EIS) regarding the avoidance and/or minimization stipulations of the Section 404(b)(1) guidelines would be addressed. This modification to the applicant's proposal needs to be examined during the deliberations attendant to formulating the Record of Decision. When this document is finalized, we would appreciate a copy.

Response: As stated in Section 3.5.8.5 of the FEIS, "Design constraints associated with the alignment of the railroad tracks in the ICTF prevent further avoidance of impacts to the Garrows Bend wetlands." A major design constraint involved placing both road and railroad tracks around Armstrong World Industries and connecting the railroad tracks with the main CSX tracks as well as being accessible to the other Class One Railroads serving the Mobile Area. It is not considered practical to buy out AWI, an industry that is expanding its operations. The proposed alignment allows a connection to the CN railroad as well as the CSX railroad. Changes in the alignment would result in the loss of the ability to provide access to CN or any other railroad. The rail layout was also established to efficiently arrive/depart a unit train on tracks of adequate length. Relocating the value-added facilities would not allow ICTF reorientation to minimize impacts to Garrows Bend wetlands. The planned Value Added Distribution areas are an added economic stimulus and an economically beneficial use of otherwise non-productive upland areas on the ASPA's property adjacent to the Marine and Intermodal facilities. It is further noted that none of the value-added facilities are located in wetlands or on water bottoms. Any available non-wetlands acreage on the project site could be used for value-added facilities after the requirements of the ICTF are met. Also, see response to comment 8 below.

Comment 4. The detailed Section 404(b)(1) evaluation for this action has been prepared by Mr. Darryl Williams (404-562-9297) of the Region 4's Wetland Section and will be sent under separate cover. Thank you for providing the opportunity to provide comments. If you would like to discuss any procedural questions regarding the EIS, please contact Dr. Gerald Miller (404) 562-9626 of my staff.

Response: Comment noted.

b. Environmental Protection Agency Region IV e-mail dated 4 October 2004, Mr. Darryl Williams, Wetlands Unit.

Comment 5. I am e-mailing you our final comments on the FEIS for the Choctaw Point Terminal Project. These comments are being sent in conjunction with overall NEPA comments from EPA which have been sent by Mr. Heinz J. Mueller, Chief, NEPA Program Office, U.S. Environmental Protection Agency (EPA), Region 4, under separate cover.

Response: Comment noted.

Comment 6. EPA has reviewed the FEIS for the subject project pursuant to Section 404 of the CWA. The comments raised in our January 15, 2004, letter have been adequately addressed with the exception of the avoidance and minimization stipulations of the 404(b)(1) Guidelines.

Response: Comment noted.

Comment 7. Although we understand ASPA's need to develop an integrated intermodal transportation container storage complex with closely aligned support facilities in order to be profitable, we continue to question whether a project alternative still exists that is less environmentally damaging than the currently proposed alternative, achieves the basic project purpose, and is still profitable.

Response: Comment noted.

Comment 8. The alternatives analysis in the FEIS appeared to focus more on evaluating alternative sites for the location of the intermodal rail yard. An option that should be explored more fully includes the use of alternative site locations for the value-added support facilities. By utilizing these underutilized areas initially for some of the support facilities, perhaps further avoidance or minimization of impacts to the Garrows Bend wetlands could be realized by shifting the intermodal rail yard slightly to the west or reorienting it where the flyover terminates just south of the causeway from a southwesterly orientation to a more westerly one.

Response: The statement is correct. The alternatives analysis in the EIS is focused on evaluating alternative sites for the container terminal and the intermodal container transfer facility (ICTF). Alternative sites were evaluated to determine if impacts to wetlands and water bottoms in the Garrows Bend area could be avoided or further minimized. Any further shifts to the west or reorientation of the ICTF dike would make the ICTF unworkable. The layout of the ICTF dictates how much land remains for possible development as value-added facilities. See response to comment 3 above regarding alignment.

Comment 9. Thank you for the opportunity to provide comments on the FEIS. If you have any comments or questions, please contact me at (404) 562-9297.

Response: Comment noted.

c. National Marine Fisheries Service letter dated 4 October 2004, Mr. Mark Thompson.

Comment 10. The National Oceanic Atmospheric Administration's, National Marine Fisheries Service (NMFS), Habitat Conservation Division has reviewed the Final Environmental Impact Statement (FEIS), dated August 2004, for the Choctaw Point Terminal Project (CPTP), Mobile, Alabama. The FEIS provides a comprehensive environmental analysis regarding the construction and operation of the CPTP in and adjacent to the Mobile River and Garrows Bend, Mobile Bay.

Response: Comment noted.

Comment 11. The construction of the CPTP will impact approximately 72 acres of estuarine habitats that are identified in the FEIS as important essential fish habitat and significant to the living marine resources of Mobile Bay. The project will require a Clean Water Act Section 404 permit from the Corps of Engineers and should be consistent with the guidance provided through the Memorandum of Agreement between the Environmental Protection Agency and the Corps of Engineers Concerning the Determination of Mitigation under the 404(b)(1) Guidelines. The mitigation measures should be sequential, the first step being avoidance. In this regard, NMFS continues to believe that certain non-water dependent activities such as the rail yard, warehouses, and distribution facilities should not be placed within these estuarine habitats of the project area and mitigation should be provided for any unavoidable impacts.

Response: Comment noted. See responses to comments 3 and 8 above. It should be noted that the proposed value-added

facilities (warehouses and distribution centers) would be on upland areas and therefore do not impact estuarine habitats.

Comment 12.. The current mitigation plan proposes the creation of 56.6 acres of estuarine wetlands to offset the impacts of filling 72 acres of estuarine habitat. Impacts to 24.5 acres of tidally influenced wetlands will be mitigated at a one-to-one ratio, per Corps of Engineers (COE) policy. However, the 47.2 acres of estuarine bottom and open water will be mitigated by the creation of 31.9 acres of estuarine wetlands, a 0.67 to 1.0 ratio. NMFS recognizes the difficulty of identifying and quantifying functional values for open water habitat and generally uses a best professional judgment in these cases. While the Alabama Department of Conservation and Natural Resources fishery sampling survey has information on Garrows Bend and shows it to be very productive, there are no data for the slip north of the causeway. Per our discussion with the COE, this area is considered unproductive. However, in consideration of the data for Garrows Bend, a dead-end area subject to significant storm water runoff, we believe it is inappropriate to assume the slip off the river would not provide certain benefits to Essential Fish Habitat and Living Marine Resources. Therefore, we urge your reconsideration of the level of mitigation necessary to offset adverse impacts associated with fill placement. Accordingly, we believe that the open-water areas to be filled within the CPTP should be mitigated at a one-to-one ratio as well. We appreciate the opportunity to provide these comments. If you have any questions, please contact Mark Thompson at 850-234-5061.

Response: The proposed project would impact 18.4 acres of shallow water habitat in Garrows Bend along with 4.9 acres of shallow water habitat and 24.1 acres of deep water habitat in the area north of the causeway to McDuffie Island. There is no shortage of water bottoms in the Mobile Bay Estuary (see Sections 4.5.3 and 5.14 of the FEIS). According to the MBNEP's Preliminary Characterization of Habitat Loss, non-fresh marsh habitat declined by 35 percent in Mobile Bay while mud and/or sand bottoms increased by 269 percent between 1955 and 1979. The proposed mitigation plan was developed with this fact in mind and with input from the cooperating agencies who expressed strong support for wetland creation over in-kind mitigation that would involve creation of additional water bottoms.

d. Southern Environmental Law Center (SELC) letter dated 20 September 2004, Messrs. Gilbert B. Rogers, Staff Attorney, and Christopher K. DeScherer, Staff Attorney.

Comment 13. The Southern Environmental Law Center ("SELC") submits these comments on behalf of Mobile Baykeeper. This

letter addresses the Final Environmental Impact Statement ("FEIS") released by the United State Army Corps of Engineers ("the Corps") on August 20, 2004, for the Choctaw Point Terminal Project in the Garrows Bend area of northwestern Mobile Bay. For the reasons discussed below, which largely reiterate the comments we submitted on June 22, 2004, we believe that the FEIS violates the National Environmental Policy Act ("NEPA") and the Clean Water Act ("CWA") and must be revised.

Response: Comment noted. Disagree that the FEIS violates NEPA and CWA and must be revised.

Comment 14. The Corps' inadequate analysis of practicable alternatives to siting an intermodal rail yard on the wetlands of Garrows Bend violates the CWA's Section 404(b) (1) guidelines, promulgated pursuant to 33 U.S.C. 1344(b) (1). The FEIS ignores the concerns raised in our June 22, 2004 letter, namely that a rail yard is not a water-dependent activity, and that practicable alternatives are presumed to be available in such a case unless clearly demonstrated otherwise. Bundling the rail yard with the water-dependent port facility does not make this infrastructure water-dependent, any more than the use of I-10 to bring trucks to the container port makes I-10 a water-dependent project.

Response: Comment noted. See response to comments 3 and 8 above. Concerns raised in SELC's June 22, 2004 letter were addressed in the FEIS (See Appendix B).

Comment 15. The conclusory dismissal of McDuffie Island as an alternative for the rail yard is particularly frustrating, considering its proximity to the proposed container facility, the potential for complete avoidance of wetland impacts to Garrows Bend, and the FEIS's acknowledgement that the site "would make an excellent location for the proposed project." FEIS at 40. The reason given for eliminating this alternative is "conflicts with other port uses," such as the Corus DRI site and the McDuffie coal terminal. We understand that the Alabama State Port Authority ("ASPA") has recently terminated its lease with Corus DRI, so that this site could be available for development. The FEIS is not clear as to whether McDuffie Island's existing rail infrastructure, coupled with the use of lands such as the Corus DRI site that would not interfere with the island's existing uses, could be configured for a rail yard to service the Choctaw Point Container Terminal. Indeed, the FEIS does not answer the question as to whether McDuffie Island was analyzed solely for its potential as a rail yard site; the FEIS implies that the island was considered only as a site for both the container port and the rail yard. See FEIS at 40.

Response: McDuffie Island was considered as an alternative for the entire project as well as an alternative for the container terminal and the ICTF. A significant portion of the McDuffie Terminal was ruled out as an alternative due to its current usage, which represents a significant source of revenue (FEIS Section 3.4.2.4, pages 39-40) and employment for the ASPA, in addition to serving as the region's only economically viable transportation network for utility fuel distribution needs. Further, the McDuffie Terminal has been approved for a \$27 million expansion that will increase capacity and throughput efficiencies at the terminal to service existing coal shipments and future contracted shipments. The land use and rail infrastructure demands currently in place and generated by the coal terminal expansion further diminishes the viability of McDuffie as an alternative site for either the container terminal or the ICTF. The existing railroad tracks on McDuffie Island are heavily utilized now, and usage will increase in the future. Any other usage or blockage of these tracks is not considered practical. Also, a flyover that would avoid the rail use conflict cannot be built. The Corus acreage was also evaluated and does not represent a viable alternative, because the 35-acre Corus DRI site is too small, in area, and not oriented properly to serve either the container terminal or the ICTF, as stated in the FEIS (see FEIS page 40); and the Corus DRI site remains committed under long-term lease with no active requests by the tenant to vacate the lease.

Comment 16. We know that the Corps is still proposing to remediate contaminated sediments in Garrows Bend and is evaluating the environmental effects of the project in a separate EIS. Although the Corps has altered the remediation project slightly so that it no longer overlaps physically with the Choctaw Point Terminal Project, the close geographic proximity of these two project sites, and the inevitable effects that the remediation project could have on both the site for the intermodal rail yard and the proposed mitigation areas in Garrows Bend, mandate the preparation of a single EIS for the two projects. This will allow for a comprehensive consideration of the best use of the waters of and extant functioning marshlands around Garrows Bend, as well as facilitation of more informed public participation.

Response: As to a suggested "link" between the restoration of Garrows Bend and the permitting of the Choctaw Point Terminal project as proposed by the ASPA, the Mobile District will strictly adhere to Department of Army policies and regulations and Federal Law. No funds allocated to the Mobile District for the restoration project will benefit the ASPA. Issuing a permit for the ASPA project will be evaluated solely on the merits of that project and that project alone. Expenditure of Federal funds for the

restoration project will be based solely on whether there is a value in isolating the contaminated sediments in the area with the subsequent creation of wetlands in the area.

Comment 17. The FEIS has added some language concerning the cumulative impacts of the proposed container port and intermodal rail yard on Mobile Bay's wetlands. FEIS at 234. The analysis is incomplete at best, asserting that the mitigation plan will result in a net gain of wetlands and a net loss of water bottoms. The FEIS contains no assessment of the ecological importance of the remaining marshlands in Garrows Bend given the historic depletion of the wetlands throughout Mobile Bay, particularly in the areas of the Bay and near the mouth of the Mobile River. We remain concerned, based on first-hand observations, that the existing wetlands in Garrows Bend, while not pristine, are performing an ecologically crucial role by providing habitat in the middle of what is otherwise an almost completely industrialized area. By eliminating large portions of this remaining marsh, the Choctaw Point Terminal Project will have a significant cumulative effect that has not been acknowledged or analyzed.

Response: Comment noted. Disagree with conclusions reached regarding cumulative impacts. Overall, there would be a net increase of 8.2 acres of wetlands in Garrows Bend and an overall net increase of 32.1 acres of wetlands in the project area if the project and mitigation plan are constructed as proposed in the FEIS. The 56.6 acres of tidal fringe marsh that will be created from uplands is designed to provide high-quality wetlands that will compensate for the wetland functions and values that would be lost. As stated in Appendix I of the FEIS, implementation of the Mitigation Plan would be accomplished concurrently with project site development. Therefore, the overall ecology will be sustained.

Comment 18. The mitigation plan purports to address some of these impacts, but there is no examination of whether ecological functions will be irretrievably lost while the mitigation sites are constructed. Indeed, the Corps' downplaying of the quality of the wetlands in Garrows Bend has adversely affected the mitigation proposals. By focusing so heavily on the question of the extent of contamination of the wetlands to be filled to accommodate the rail yard, the fact that these wetlands shoulder an additional burden to support more wildlife than they otherwise would is lost. This consideration of the wetlands of Garrows Bend as an "oasis" of sorts counsels in favor of more extensive mitigation to compensate for their loss.

Response: The HGM methodology examines ecological functions and provides both with and without projections of wetland



functions and values (see Appendix I). The quality of the wetlands in Garrows Bend has been evaluated using the HGM approach recommended by the USFWS, USEPA, and ADEM. An interagency team approach was utilized to reach consensus on the value and function of the wetland impacts. USFWS led the HGM process. Representatives from the USEPA, USACE, USFWS, ADEM, ADCNR, and the ASPA conducted field studies and utilized the HGM approach to determine the function and value of the wetlands in Garrows Bend. The HGM Compensation Ratio Calculator includes consideration of both timing and risk of failure in determining a mitigation ratio. As presented in Appendix I, the HGM computed mitigation ratio is 0.7 to 1.0. As an added factor of safety and to assure functions and values of the impacted wetlands are adequately replaced, a mitigation ratio of 1 to 1 was used. Therefore, there is no net loss of wetland functions and values. Contamination was not considered during the HGM evaluation. As noted in Section 5.11.3.2.7 of the FEIS, impacts to wetlands in the Garrows Bend area were avoided and wetland impacts were minimized. A total of 56 acres of wetlands existing in Garrows Bend will not be impacted by the proposed project and will remain as wetland habitat. Also, there would be a net increase of 8.2 acres of wetlands in Garrows Bend and an overall net increase of 32.1 acres of wetlands in the project area if the project and mitigation plan are constructed as proposed in the FEIS.

Comment 19. For the reasons discussed above, we recommend that the Corps reevaluate the Choctaw Point FEIS, particularly the document's analysis of alternatives and of cumulative impacts as well as its inadequate mitigation plan. To reiterate our position, we are not opposed to the siting of a new container facility at Choctaw Point. However, we do not believe that the marshes of Garrows Bend are a suitable location for an intermodal rail yard, because of the functionality and importance of the ecosystem and the existence of other practicable alternatives that are not water-dependent.

Response: Disagree regarding need to reevaluate the FEIS. As discussed in Section 5.11.3.2.7 and Appendix I of the FEIS, the mitigation plan was developed in coordination with Cooperating Agencies and represents an overall consensus regarding the appropriate type and amount of mitigation to compensate for project impacts. See responses to comments 3 and 13-18 above.

Comment 20. Thank you for your consideration of these comments and for taking the time to meet with us on August 5, 2004. Please do not hesitate to contact us if you have any further questions.

Response: Comment noted.

e. Letter dated 31 August Ms. Myrt Jones and Dorothea Webster.

Comment 21. Years ago, the COE District Engineer was seriously concerned about the public image of the Corps of Engineers. In recent reports it seems that problem continues to exist but the agency appears to ignore this concern - continuing to ignore NEPA and other environmental laws in their rampart destruction of public resources in questionable, costly, destructive projects.

Response: Comment noted. NEPA and other environmental laws have not been ignored. The FEIS is a component of the NEPA process.

Comment 22. If you haven't read this recent FEIS on this local project, then you are not aware of what I'm really talking about and I would suggest that you get a copy of this document to see what arrogance is going on.

Response: Comment noted.

Comment 23. When I was president of Audubon Society for 30 years, I met with the District Engineer of the Corps of Engineers and he mentioned to me about this being a major concern. Out of this conversation a Citizen's Advisory Committee was set up, making major changes in what the Alabama State Docks and COE intended to do. This committee was eventually ruled to be illegal by someone --?? People power and concern perhaps made too much difference. My book about this era, A Gadfly's Memoirs, documents all the shenanigans we had to go through and they continue today.

Response: Comment noted.

Comment 24. Myrt Jones & Dorothea Webster to Susan Rees As a major taxpayer, I resent having millions of taxpayer dollars being spent in preparing documents "to promote the construction and operation of a modern, world-class container handling facility in the City of Mobile by the COE" that will cause the potential for another catastrophic boondoggle by the Corps of Engineers for the Alabama State Docks.

Response: Comment noted. The USACE is not constructing or operating the proposed project. Also, the ASPA is funding preparation of the EIS.

Comment 25. In the 80's and up to today, we have spent over 4 billion dollars on the speculative, massive, destructive Tenn Tom Waterway using this same type of rhetoric and

misinformation in the assumption of potential use as now being presented in this FEIS to promote another questionable container facility; another speculative, destructive boondoggle.

Response: Comment noted.

Comment 26. Coastal residents went through a very lengthy process when the Mobile Bay was named to the National Estuary Program with high hopes this stressed estuary would be provided proper protection. It appears after reading through these two documents, both the COE and the ASD are in "business as usual" in the taking and destruction of public lands, wetlands, and bay bottoms for a facility that the citizens do not want to happen. A similar plan was proposed in the 80's for a container port and it involved wetlands and bay bottoms, and this monster was stopped because of the catastrophic impacts it would have on Mobile Bay. This present plan should receive this same death notice.

Response: Comment noted. The Mobile Bay National Estuary Program (MBNEP) is a Cooperating Agency on the EIS. The MBNEP participated in interagency meetings regarding the proposed project and the EIS.

Comment 27. NEPA (National Environmental Policy Act) is part of the decision-making mechanism that the Corps of Engineers has to comply with a determination of its overall public interest is essential. The major question is: IS THERE A NEED FOR THIS FACILITY? To promote this questionable project on a potential market distribution based on assumed overall excess capacity in other ports is speculative and under the questionable blanket of assumptions. The overall socio-economic-environmental benefits and impacts have to be fully examined, evaluated, identified, explored and all negative impacts must be either minimized or identified, changed - or stop the project until this is corrected. People pay for bad mistakes and this project is another bad project. It is only being promoted to construct a questionable project because the ASD says this is needed in order to be competitive, no matter the cost to the citizens or the estuary.

Response: Comment noted. Disagree with conclusions. See 33CFR 320.4 General Policies for evaluating permit applications: 33 CFR 320.4(q) Economics. When private enterprise makes application for a permit, it will generally be assumed that appropriate economic evaluations have been completed, the proposal is economically viable, and is needed in the market place. However, the district engineer in appropriate cases, may make an independent review of the need for the project from the perspective of the overall public interest. The economic benefits of many projects are

important to the local community and contribute to needed improvements in the local economic base, affecting such factors as employment, tax revenues, community cohesion, ~~community services, and property values.~~ Many projects also contribute to the National Economic Development (NED), (i.e., the increase in the net value of the national output of goods and services). The Mobile District has evaluated the applicant's purpose for constructing the project and the need for the project in Section 2.0 of the EIS. We believe the data contained in Section 2.0 is sufficient for the District to make an informed decision on the need for the project in the market place as well as its potential for economic viability.

Comment 28. According to the permit, dredging will disturb and remove 2,780,000 cu. yds. This is, of course, just an assumption. It's always a lot more material that is dredged. Then there has to be the proper place to handle the material as it is identified as having very TOXIC CHEMICALS NOW contained in the sediments: dioxins, furans, lead, mercury, PAH's, PCB's and DDT, to mention a few. In the dredging, these fixed chemicals, now settled in the sediment, will be stirred up and extremely huge loads of turbidity with "the witches brew" of chemicals will be released throughout the bay waters, spreading these poisons and threatening fish, bird life, and man. It's no wonder there are toxic chemicals in the sediment and wetlands, as Garrows Bend has the coal handling facility dripping toxins into the bay waters continuously. There is McDuffie Sewage TREATMENT OUTFALL and two very important storm-water outfalls carrying non-point pollution loads into the area. It's necessary to stop this planned facility, as we the taxpayers have spent multimillions of dollars to put in these facilities to hopefully handle treated sewage, and to capture our heavy loads of storm water and flood waters. These outfalls will have to be relocated in this project, another huge expense. Filling in this area and removing these outfalls can cause catastrophic problems that the citizens will have to again address as the City of Mobile already has extremely serious flooding problems. Anyone driving the streets of Mobile during and after a heavy rain can agree to this. Now this COE and the ASD expects you to give them carte blanche to undo what elected officials and taxpayers have done to try and alleviate some of our public problems in order for them to put in a speculative multi-million dollar boondoggle.

Response: Comment noted. The amount of dredging has been reduced since the original permit application as discussed in Section 3.0 of the FEIS. The material that would be dredged has been tested and found to be suitable for normal disposal operations on the Gaillard Island CDF. See Appendix M of the FEIS. The proposed project would not impact the sewage

treatment plant on McDuffie Island, that discharges to the Mobile River, or any of the City of Mobile's storm water conveyance or treatment facilities. Storm water sampling data has been included in the FEIS (see Appendix N). There are two major storm water outfalls that cross the project site, the Tennessee Street Drain and the Southern Drain. Only the Tennessee Street Drain will be impacted by the proposed project. The Tennessee Street Drain will be relocated at ASPA's expense. The relocated drain will be designated to improve the conveyance of flood waters and would be designed to avoid impacting upstream flood elevations (see Section 5.7.3.3 of the FEIS). The proposed project would not adversely affect upstream flooding. Also, there is no evidence that the McDuffie Terminal facility is a source of toxins. This statement is not supported by factual information.

Comment 29. Ecotourism should be receiving our biggest support as this is where the clean industry brings in lots of money in more ways than one expects. We are in the process of constructing a Maritime Marine Museum and a Cruise Port. Getting a cruise line to dock in Mobile will entice visitors to spend one or more nights in our city, resulting in additional tourist dollars - especially since the paper mills have left and we don't have that nasty odor we had in the past.

Response: Comment noted.

Comment 30. Mitigation plays a vital part in these two documents released by the COE based on the U.S. Fish & Wildlife Service input, as wetlands will be destroyed. Rebuilding wetlands has never been successful in our area, but the ASD tell us they can do it??? The rebuilt wetlands will be made up of 5-8 plants - if they live! In reading the documents, there is a difference of opinion as to whether the wetlands in the site are contaminated or if they are truly beneficial. If you believe the COE, they have you believe the Garrows Bend area is contaminated and inhabited by exotic, nuisance and common wetland species such as the invasive exotic European genotype of phragmites (common reed) and cattails, but in reality both of these plants play a critical role in marsh ecosystem benefits.

Response: Comment noted. See response to comment 18 above. The comment regarding the lack of success in building wetlands in our area is not correct. The Middle Bay Port site and Dauphin Island Sea Lab site are two marsh creation success stories. Middle Bay Port, one of the reference sites evaluated in the HGM process, has an average function score of 0.601 based on the HGM evaluation of reference wetlands (see Appendix I). This average functional score is greater

than the functional score of the Garrows Bend wetlands that would be impacted. The average functional score of the impacted wetlands range from 0.490 to 0.535. The Dauphin Island Sea Lab site was not evaluated during the HGM process but is considered to be a successful wetland creation project. The USACE permit will require ongoing monitoring, corrective measures, and adaptive management to ensure that the mitigation wetlands survive and thrive.

Comment 31. Myrt Jones and Dorothea Webster continue, citing comments in the FEIS by Wildlaw: In the comment section of one of the documents - Wildlaw, a non-profit environmental law firm states, "Many of the species of indigenous marsh plants currently living in the proposed project area were not mentioned in the DEIS's. For example, Garrows Bend supports what may be the largest single population of salt marsh bulrush (*Scirpus robustus*) in Alabama. This distinctive bulrush, which produces unusually large fruiting heads and seeds that are considered desirable for ducks and wildlife, thrives only in certain brackish water conditions. The bulrush was not mentioned in the DEIS. This omission is unacceptable considering that site measurements made by the Register with Fish & Wildlife indicates that this is the most frequently encountered plant on about 5 of the 20 or so acres of frequently flooded marsh habitat in Garrows Bend."

Response: Comment noted. Wildlaw's comment is not correct. Species of indigenous marsh plants occurring on the project area are discussed in appropriate sub-sections of Section 4.11.2 of the FEIS. There is no scientific basis for the statement that Garrows Bend supports what may be the largest population of salt marsh bulrush (*Scirpus robustus*) in Alabama. Three square bulrush (likely *Scirpus pungens*) is present in Garrows Bend as stated in Section 4.11.2.3 of the FEIS. Wildlaw did not comment on the FEIS.

Comment 32. Continuing to cite Wildlaw: Wildlaw continues: "The DEIS failed to mention a host of other naturally occurring plants as well. At least three species of spartina cordgrass, which are considered indicators of a healthy marsh, are present on the site. A waist-high needle-leaved cordgrass - most likely saltmarsh cordgrass (*Spartina patens*), cover substantial acreage there. Other widespread or prominent plant species evident in late fall included three-square bulrush (*Scirpus pungens*), black needlerush (*Juncus roemerianus*), switch cane (*Panicum virgatum*), Everglades sawfrass [sic] (*Cladium jamaicensis*), Southern water millet (*Zizania miliacea*), wild rice (*Zizania aquatica*), goldenrod species, various asters, boltonias, hibiscus, marsh elder, shoestring lilies and amaranths. With

the possible exception of the lilies, all provide exceptional food or structure for wildlife.

Response:- ~~Comment noted. Wildlaw's comment is not correct.~~ Species present on the project site are discussed in appropriate sub-sections of Section 4.11.1 and 4.11.2 of the FEIS. It is noted that although the commentors cited Wildlaw's earlier comments which are included in the FEIS, Wildlaw did not comment on the FEIS.

Comment 33. In the FEIS, WRAP (Wetland 'Raped' Assessment Procedure) were performed very rapidly, as political pressures were applied and scores are provided for information purposes only (thank goodness) for mitigation for two types of wetlands: fringing tidal marsh and emergent flood plain wetlands that will be lost at the project site. This is like playing Russian roulette with a pistol as there remains a great many unknowns in our area. And this is explicit in WRAP. We do not even know the wetland acreage lost already and their benefits in the MBNEP, but gathering info from other states and putting into a computer and setting up a questionable and improper model is not what we the public want to be the acceptable method. Computers without proper data don't produce proper results.

Response: Comment noted. The comment is in error. Data from other states and computer models were not used in the WRAP. WRAP was not used to evaluate wetland functions and values in the FEIS. Extensive evaluations using the HGM process were presented in the FEIS (see Appendix I). In any event, the results of the HGM process were utilized to evaluate impacts and to determine appropriate mitigation measures. The HGM process was recommended by USFWS and EPA. The WRAP was not relied upon for this purpose. (Also see responses to comments 18 and 30).

Comment 34. EPA concerns are that this project is a foot in the door, as there is involved over 370 acres - 3 stages - over a period of 15 years. Their estimate of dredge material is 700,000 cu. yards that needs to be placed in retention and 70,000 cu. yards of material that will be dredged annually and have to be disposed of. Gaillard Island is one prospective dump site and it had problems for years!

Response: The comment is in error. EPA's concerns are presented in comments 1-9 above. EPA did not estimate dredging quantities; their letter summarized information from the EIS. Annual maintenance dredging would be accomplished in accordance with all applicable Federal, state, and local regulations.

Comment 35. The documents discuss the potential for endangered species, but COE's assumption is: "They are likely to swim away or avoid the area during construction." The historic (Fig. 4-5) shoreline shows vividly how man has altered the area already with no mitigation - just continued "taking" and the majority of the Confederate Defenses would be lost forever! There are seven (7) of these. Our children do not realize their cultural heritage is being wiped out with this questionable project and supporters of this destructive container port should be ashamed of their actions. Battery McIntosh is a unique Civil War Battery south of Battleship Park that is being allowed to wash away. Battery Gladden is lost forever and now it appears the CW Batteries will be wiped out completely. This is a vital part of our local and national history that should be preserved for future generations.

Response: The USFWS and NMFS concurred that the CPT project would not affect endangered species in accordance with Section 7 of the Endangered Species Act. The State Historic Preservation Officer has concurred that no Confederate Defenses or other cultural resources would be lost as a result of the CPT project. In fact, the site of Fort Sidney Johnston was discovered during Phase I Cultural Resource studies for the proposed project. The site of Fort Sidney Johnston will be avoided and protected. The USFWS, NMFS, and State Historic Preservation Officer concurrence letters are included in Appendix B of the FEIS.

Comment 36. Additionally, the Garrows Bend location lies in a high hazard flood zone. Tropical storms and hurricanes frequent to this area have already caused multi-million dollars expenses to the taxpayers, and as a significant part of the container port would be located in this high hazard area, it would add to the taxpayer burden when another storm hits our area. The FEIS mentions 100 year floods, but Mobile has had 500 year floods. Shouldn't FEMA be involved and concerned in the proposed filling and the loss of important storm surge high tides, dispersal, and assimilative areas?

Response: FEMA has been involved and will continue to be involved throughout the CLOMAR and LOMAR process (see Section 5.5.3.4.2 of the FEIS). The City of Mobile administers FEMA's flood insurance program in the project area. The City of Mobile is a cooperating agency on the EIS. ASPA has coordinated the proposed project with the City and is using design criteria that is consistent with or more restrictive than FEMA requirements.

Comment 37. The FEIS plan to provide public access, reestablishing recreational access to the historic Bay shoreline, in my opinion, is ludicrous in this plan. Why not



remove the shameful-destructive floating dike in Pinto Pass to allow flood waters to enter and act as a natural holding basin. The COE and ASD should be required to do this anyway because of their past and ongoing destructive projects.

Response: Disagree with the characterization of the public access plan presented in the FEIS. Removal of the floating dike in Pinto Pass would not provide public access to the historic Bay shoreline.

Comment 38. In the SELC (Southern Environmental Law Center) comments, they cite the Council on Environmental Quality (CEQ) and determine the Corps has erred in creating separate DEIS's for these actions as they are "connected," "cumulative," and "similar." Even EPA agrees. "Given the obvious interaction between these two projects, it would have been helpful if their linked impacts were discussed in one location rather than incrementally in two documents."

Response: The two projects are completely separate. The ASPA's Choctaw Point Terminal project is independent of the Corps' Arlington and Garrows Bend Channels and Adjacent Areas restoration project. Although the two projects are in vicinity of one another, they do not depend on one another to proceed with implementation. The Choctaw Point Terminal project is a regulatory action completely funded by the ASPA. The Arlington and Garrows Bend Channels and Adjacent Areas restoration project is a civil works project conducted by the Corps.

Comment 39. EPA letter also states, "It appears, just on one visit, that more wildlife may be relying on this extant marsh ecosystem than would naturally be the case, since these species have no where else to go." SELC concludes, "We recommend that the COE withdraw both DEIS's currently under consideration and resubmit a revised single DEIS." SEIS's are not unusual requirements.

Response: See response to 38. Furthermore, the resource agencies developed and participated in the HGM model at the project site. As a result, the resource agencies reached a consensus on the wetland quality.

Comment 40. In my previous letter of 1/4/04, I questioned how the COE can support and promote the ASD's request if the COE is supposed to be considering their request for a permit, and I state emphatically that both agencies are in a questionable moral-legal shenanigan AGAIN! Also, would this not be considered a potential conflict of interest?

Response: The Corps is neither a proponent or opponent of any permit application, including this application. In

evaluating this application the Corps is fulfilling its obligations to accept, review, coordinate and evaluate the ASPA's application in accordance with the applicable laws and regulations.

f. Mobile County Wildlife & Conservation Association (MCWDA) handwritten note dated 25 August 2004, Mr. Theo F. Middleton, Jr., Mobile-Tensaw Delta Committee, Past President.

Comment 41. MCWCA still supports the full measure of its February 25, 2004, letter (copy herewith) to the District Engineer Mobile District.

Response: Comment noted. It should be noted that there were numerous changes and refinements from the DEIS to the FEIS.

Comment 42. When MCWCA first became aware that Garrows Bend and its surrounding marsh were to be the location of the Choctaw Point intermodal terminal portion of the Alabama State Port Authority's Choctaw Point Terminal project, it could not help but be reminded of our common experiences with Polecat Bay. That is, Polecat Bay prior to Alcoa's settling basins; Polecat Bay prior to Alcoa's bauxite residue mud lakes; and Polecat Bay prior to the USACE's Upper Polecat Bay Dredged Material Disposal Area. MCWCA was reminded of the Polecat Bay that once was - before the Polecat Bay as it came to exist today. One is put in mind of the South Blakely, North Blakely and North Pinto Island Disposal Areas as well. Today we clearly see and understand the long term cumulative detrimental effects and impacts on places like Polecat Bay, despite the good intentions of all involved at the time. Today we have a new appreciation for the absolute necessity of valid and authentic data in the Environmental Impact Statement process.

Response: Comment noted.

Comment 43. Mobile Bay, the 4th largest estuarine system by volume in the United States and 6th largest in size, is one of the most biologically diverse wetland habitats in the world. According to the Mobile Bay National Estuary Program, "Mobile Bay ranks high as one of our nation's significant estuaries." Mobile Bay's Mobile-Tensaw Delta is an invaluable and irreplaceable nursery for marine species. The protection of this area is crucial to the prosperity of Mobile Bay and its aquatic and other wildlife habitat.

Response: Comment noted.

Comment 44. The location of an intermodal terminal at Choctaw Point along Garrows Bend will result in the severe

degradation, if not total destruction, of one of Mobile Bay's few remaining marshland habitats. MCWCA respectfully submits that an intermodal rail yard is not water dependent and can be located further upland so as not to threaten such a valuable and biologically diverse marshland habitat as the Garrows Bend Marsh area. While mitigation may be required in the event there is degradation or destruction of wetland habitats, no amount of mitigation will replace or even replicate this valuable, irreplaceable and unique upper bay wetland habitat. In short, what little remains of the original Garrows Bend Bay and its surviving wetlands will be gone forever.

Response: Comment was addressed in FEIS (see Appendix B). Also, please see responses to comments 3 and 18 above. There would be a net gain in wetlands in the project area if the Choctaw Point Terminal project and mitigation plan are constructed as proposed in the FEIS.

Comment 45. MCWCA wishes to emphasize that it is neither anti-business nor anti-growth. MCWCA simply asks that the USACE not allow the destruction of this wetland habitat. There are more suitable locations for the proposed intermodal rail yard. Further, there are genuine public and commercial interests in the preservation of the Garrows Bend Marsh and its wildlife habitat. MCWCA simply challenges the USACE to do the right thing.

Response: Comment was addressed in FEIS (see Appendix B). Also, please see response to comment 3 above.

g. Mobile Bay Watch/Mobile Baykeeper letter dated 30 September 2004.

Comment 46. I am writing on behalf of the board, officers and nearly 3,000 members of Mobile Bay Watch, Inc./Mobile Baykeeper (MBW/MBK) in reference to the Final Environmental Impact Statement ("FEIS") for the Choctaw Point Terminal Project released by the United States Army Corps of Engineers ("the Corps") on August 20, 2004. Although the Corps has made a number of positive changes in the FEIS, serious problems remain. Unless these issues are addressed, MBW/MBK must continue its opposition to the project.

Response: Comment noted.

Comment 47. As we noted in our comment letter regarding the Draft EIS, MBW/MBK supports the concept of a container terminal for the Port of Mobile and recognizes the potential economic benefits of such a facility. We cannot support, however, any project that negatively impacts water quality. Many of our concerns regarding the container facility itself

have been resolved in the FEIS, but our objections to the "Garrows Bend Intermodal Container Transfer Facility," or rail yard, remain.

Response: Comment noted.

Comment 48. Water Dependency: While the FEIS considers the rail yard and container facility to be one project, they are in fact separate projects with separate operations. Distinct and separate travel is required between the two facilities - e.g. no boat is required. The rail yard is in no way water-dependent, and it should not be located on a stretch of open wetlands. We feel strongly that the Corps has failed to address our earlier objections to this aspect of the FEIS.

Response: The FEIS acknowledges that the ICTF is not water dependent. Section 3.5.8.5 (Reconsideration of Alternatives) was added to the FEIS specifically to evaluate the alternatives analysis to make sure that no reasonable alternative was overlooked. MBW/MBK comments on the DEIS are addressed in the FEIS (see Appendix B).

Comment 49. Alternatives: Several alternatives exist including the use of the Corus facility. That land is now completely in the hands of the State Docks. Placing the rail yard there would enable the State Docks to use previously impacted lands and leave the undeveloped areas untouched.

Response: The Corus DRI site was also evaluated and rejected as a reasonable alternative for the following reasons: It did not allow the arrival of unit trains without serious impact/blockage of the trains arriving and departing the McDuffie Coal Terminal. Site was too small to handle the projected volume of TEUs, number of rail cars, intermodal train activities, etc. The actual length of each working track that could be constructed would be too short to support an efficient operation (requires too many breaks in the train). The total linear footage of track that could be constructed would not handle the projected volume (throughput). Placement of the intermodal train operations there would impede expansion of either the Choctaw Point Container Terminal or the McDuffie Coal Terminal or both. For the time being, it is under lease to a tenant. The Corus DRI site is not a reasonable alternative as discussed in the FEIS (See Page 40). Also, see FEIS Section 3.5.8.5 Reconsideration of Alternatives and response to comment 15 above.

Comment 50. Public Access: Limited coastal and water access exists in Mobile County. The FEIS makes several proposals for promoting public access, but we believe that the most obvious alternative is the enhancement of the existing areas

surrounding the Container facility. The use of parts of the McDuffie Coal Terminal and the Corus facility for the rail yard would contain the industrial developments and leave the historic Monroe Park area available for public access.

Response: The McDuffie Coal Terminal and Corus DRI site are not reasonable alternatives as discussed in the FEIS. See response to comment 15 above. Also, the ASPA owns the project site and could develop the former Monroe Park area and adjacent lands for other commercial uses if the Choctaw Point Terminal is not developed as described in the No Action Alternative. The Monroe Park area would not be available for public access; however, the ASPA plans to develop public access at Arlington Cove, a more appropriate location.

Comment 51. We also object to the condemnation of wetlands in the Garrow's Bend area. It appears from your model that the Corps has determined that all wetlands in the Bay Area have "relatively low values."

Response: The comment is incorrect. The HGM approach used in the FEIS was recommended by the USFWS and USEPA. The interagency team that conducted the HGM evaluations was led by the USFWS. The HGM evaluation of the ten reference wetlands in Mobile Bay identified some very high quality wetlands. The average function score for the ten reference wetlands ranged from 0.248 to 0.948 on a 0 to 1 scale. The Garrows Bend wetlands that would be impacted by the proposed project fall into the 0.490 to 0.535 range. See Appendix I of the FEIS.

Comment 52. The Hydrogeomorphic (HGM) Evaluation: It appears that the area rated at least average if not better in terms of value for the following characteristics: wildlife function; the wetland assessment area size variable; the Nekton function; the aquatic edge variable; the hydrology variable; the plant community; exotic, invasive, noxious, and nuisance plant variable; the shoreline protection/flood attenuation; the erosion variable; and the nutrient processing/carbon exchange function. Additionally, the majority of those characteristics showed higher than .5 levels. Only two categories scored lower than average and those related to human activities.

Response: Comment noted. See response to comment 51 above. Because an approved HGM methodology did not exist for Alabama coastal fringe marsh habitat, the resource agencies agreed to collaborate on a modified HGM methodology tailored especially for the Choctaw Point Terminal project. The entire modified HGM process was conducted on a consensus basis, and general agreement was reached on the various issues and evaluations involved. The agencies agreed on the wetland functions and

variables to be evaluated, established evaluation criteria, identified reference wetlands, conducted surveys of the reference and impact sites, and then computed the function scores for each wetland. ~~Potential lift for proposed mitigation sites was then determined along with the overall mitigation ratio for the impacted wetlands and the mitigation acreage required.~~ Finally, the proposed mitigation plan was developed (see Appendix I).

Comment 53. Precedent Setting: Regardless of the flawed characterization of this area as "low value," the requirement of only a 1:1 mitigation sets a terrible precedent for all future projects. When you combine the lack of water dependency and then the assertion that these wetlands are "average" or below, you set an unacceptable low standard for coastal development. The "average" rated wetlands in this area are widely considered to be prime fishing and birding grounds by both commercial and recreational area enthusiasts.

Response: Comment noted. The HGM approach determined that the mitigation requirement would be approximately 0.7 to 1.0; however, the USACE Mobile District required 1 to 1 mitigation. (Also see response to comment 18 above).

Comment 54. For the reasons discussed above, we recommend that the Corps reevaluate the Choctaw Point FEIS, particularly the document's analysis of alternatives and cumulative impacts and its inadequate mitigation plan. To reiterate our position, we are not opposed to the siting of a new container facility at Choctaw Point. However, we do not believe that the marshes of Garrow's Bend are a suitable location for an intermodal rail yard, because of the functionality and importance of the area's ecosystem and the existence of other practicable and non-water dependent alternatives.

Response: Comment noted. See response to comment 3 above.

Comment 55. Thank you for your consideration of these comments. Please do not hesitate to contact us if you have any additional questions.

Response: Comment noted.

h. Bob Hanks letter dated 1 October 2004.

Comment 56. I am writing these comments on the Final Environmental Impact Statement (FEIS) released by the Corps on August 20, 2004 for the Choctaw Point Terminal Project in the Garrows Bend area of Mobile Bay. I represent no group; I make these comments as a citizen concerned about a project

which I believe will do serious damage to the quality of life in Mobile.

Response: ~~Comment noted.~~

Comment 57. In ES-5.0 Alternatives Considered and Rejected, the following statement is made: "The Middle Bay Port and West Intermodal Rail Option was determined not to be a reasonable alternative to the Choctaw Point Terminal project based on economic viability and a number of other factors, including impacts to air quality, noise, natural resources, socioeconomic resources, etc." Apparently, Alabama State Port Authority thinks an LNG plant for which they have offered this property would be less disruptive to the surrounding community than a container terminal. I doubt many of their neighbors share this view. Actually, ASPA's concern about the Middle Bay Port area is actually more a reflection of the low evaluation ASPA has of the value to the community of the Monroe Park area. This is not a new view. Several years ago when a site was sought for the new Hank Aaron baseball stadium, the public affairs officer of the State Docks said Monroe Park was not suitable because it was too polluted. Who was and is the primary polluter of this area? ASPA. Actually the area is not too polluted for park use as can be seen from the bay frontage of Gulf Pines Golf Course.

Response: Comment noted. The fact that the Middle Bay Port and West Intermodal Rail Option was determined not to be a reasonable alternative for the proposed project is unrelated to potential use of the site for an LNG plant. Any proposal to construct a LNG facility at Middle Bay Port would be subject to a separate NEPA process. Pollution on the proposed project site was caused by other entities but is being cleaned up by the ASPA. There is no bay frontage at the former Monroe Park area. This area has been severely modified by construction of McDuffie Island and causeway, Arlington Point, Brookley Field, and fill activities between the original shoreline at Monroe Park and the present Garrows Bend shoreline.

Comment 58. I know of no other city that has treated its waterfront as badly as Mobile has. The Cuyahoga river no longer burns in Cleveland; in fact it has become recreational area. The same could happen in Monroe Park if ASPA changed from being a destroyer to being a rescuer.

Response: Comment noted.

Comment 59. The environmental problems in Garrows Bend result primarily from ASPA building a causeway to McDuffie Island. Instead of completing the destruction of Garrows

Bend, culverts should be installed under the causeway to open this area up to natural currents. Certainly ASPA should be required to provide mitigation for the entire area including ~~parts they have already seriously damaged if they are~~ permitted to proceed with their plans.

Response: The ADCNR built the causeway to McDuffie Island. The ASPA will mitigate for all wetland and water bottom impacts associated with the proposed CPT project.

Comment 60. McDuffie Island and the recently returned Corus DRI site should be considered if this project goes forward at this location. Perhaps a little more of Monroe Park could be saved.

Response: See response to comment 15 above.

i. Alabama Department of Transportation e-mail dated 8 October 2004, Alfredo Acoff.

Comment 61. Alabama Department of Transportation As stated on page 102 of the FEIS, our agency is in the process of preparing an EIS concerning improvements to I-10 in which your agency is a cooperating agency. The preliminary studies of the I-10 project have begun and we find no impacts of our project to the Choctaw Point project; however, we will continue to coordinate with your agency as we progress on the I-10 bridge project.

Response: Comment noted.

10. PUBLIC INTEREST REVIEW: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of this general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and



conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines and criteria, a permit will be granted unless the district engineer determines that it would be contrary to the public interest.

11. EVALUATION BY SECTION 404(b)(1) GUIDELINES: In addition to the EIS, the proposal was also evaluated in accordance with 40 CFR 230 in order to specify the disposal sites for this proposed Section 404 action according to the Environmental Protection Agency's guidelines for specification of disposal sites for dredged or fill material. The project was found to be in compliance with these guidelines. The 404(b)(1) Evaluation is attached as Appendix A.

12. DECISION AND FINDINGS: Based upon my review of the Final EIS, 404(b)(1) evaluation, consideration of comments by other agencies and the public and after weighing all known factors involved in the proposed action, I find, that construction of the project will not be contrary to the overall public interest.

While there is some public concern and opposition to this proposal, it appears the underlying concerns center around alternative project sites, adverse impacts to aquatic resources and limiting public access to the Mobile Bay waterfront.

The Final EIS sufficiently demonstrates that the final Choctaw Point Terminal design is the least environmentally damaging practicable alternative. The project's wetland mitigation plan which was developed by an interagency working group will replace unavoidable wetland impacts. Storm water management features, best management practices and drainage improvements as well as the Alabama Department of Environmental Management's Clean Water Act, Section 401 certification demonstrates the project will not degrade water quality in the area. While the project will not limit public access to the Mobile Bay waterfront (no access currently exists at the site) the applicant has included new public transportation accommodations and waterfront access as a component of their project.

Therefore, I have determined that a Department of the Army permit should be issued for the project subject to the following special conditions:

a. The permittee shall comply with the local flood damage ordinance and the regulations of the National Flood Insurance Program.

b. The activity shall be in compliance with 33 CFR 162.75(b)(1) which states, in part, "A clear channel shall at all times be left open to permit free and unobstructed navigation by all types of vessels and tows normally using the various waterways."

c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

d. The permittee shall perform before- and after-dredging surveys of the work area. The surveys shall extend completely across the Federal navigation channel and 150 feet upstream and downstream of the dredging limits. Soundings shall be on intervals of 25 feet in two principle directions. Both surveys shall be controlled from a common baseline (horizontally) and a common vertical datum (mean sea level, mean low water, National Geodetic Vertical Datum, etc.). Surveys shall be in plan view or cross-section and show the limits of the Federal channel. Surveys shall be taken within a 2-week interval of starting and completing dredging. Before-dredging surveys shall be submitted to the Mobile District for review and approval prior to dredging. After-dredging surveys shall be provided to the Mobile District within 30 days. The surveys will be used to compare before- and after-dredging water depths in the Federal channel. If the permittee's work results in shoaling, he will be responsible for restoring the Federal channel to the pre-dredging depth.

e. The permittee shall be responsible for the dredged material disposal activity, and pumping and discharge rates, to ensure settling of suspended solids within the confines of the spoil disposal area sufficient to ensure that turbidity in the return water will not cause substantial visible

contrast with the receiving waters, or result in an increase of 50 Nephelometric Turbidity Units above background turbidity levels in the receiving water.

f. No dredging-related activities shall take place at Gaillard Island Dredged Material Disposal Site between March 31 and August 31 due to bird nesting activities. The use of Gaillard Island for disposal of dredged material will be coordinated with the Mobile District, U.S. Army Corps of Engineers to determine any adjustments in the disposal concept that may be required at the time of the disposal operations. Any dredging at Gaillard Island to allow access for disposal operations must be coordinated with Mobile District, and proper permit authorization obtained prior to the proposed dredging.

g. The mitigation plan contained at Appendix I of the Final Environmental Impact Statement dated August 2004, shall be implemented prior to or concurrent with the filling of "waters of the U.S."

h. The permittee shall develop and coordinate an assessment of effects report and construction plans with the Alabama Historical Commission (AHC). No adverse impacts to Fort Sidney Johnston or the Horst House are authorized without additional coordination with the Corps of Engineers and the AHC.

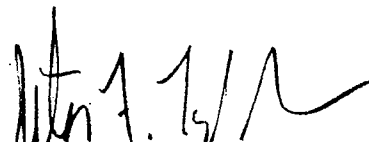
i. The permittee shall implement the "Standard Manatee Construction Conditions" during project construction. Copy enclosed.

j. The permittee shall comply with the requirements of the Irvington Site Office's letter dated July 24, 2004, regarding the use of the Gaillard Island Dredged Material Disposal Site. Copy enclosed.

k. Specific sources that will provide the "clean" fill material will be selected during the design phase of the project based on factors including quantity, structural suitability, quality, and cost. Only material that has been tested in accordance with the EPA/USACE Inland Testing Manual or that meets the exclusion criteria for testing will be used to fill waters of the U.S. Any fill material that has not been tested and does not meet the exclusion criteria would only be placed on upland portions of the project site or placed on the project site after the site has been separated from the waters of the U.S. by containment dikes,

coffercells, etc., to insure protection of the water of the United States outside the discharge site.

BY:



PETER F. TAYLOR, JR.  
Colonel, Corps of Engineers  
District Engineer

DATE:

