

NOTE: Due to the large volume of material, additional correspondence after March 2011 with the State of South Carolina concerning Section 401 water quality certification and coastal zone consistency can be found in Appendix N, Record of Interagency Coordination.

#22



Bureau of Water
2600 Bull St
Columbia SC 29201

Water Quality Certification

Applicant: US Army Corps of Engineers, Savannah District P/N: 2010 SHEP

Pursuant to R.101.C., Water Quality Certification, the SC Department of Health and Environmental Control (Department) will not consider your application complete for processing until you publish notice of the application in a newspaper and submit the required fee. In addition, the names and addresses of all adjacent property are required before your application is considered complete. Please be advised that other information may be required in order for the Department to determine if the application is deemed complete for processing. Details of the additional requirements follow:

1. **Public Notice:** Pursuant to R. 61-101, Water Quality Certification, a notice in the newspaper must contain information explaining the location, nature and extent of the proposed activity. The notice must indicate a fifteen (15) day comment period and be published in a newspaper of local or general circulation in the county where the activity is proposed to take place for one day. **You must provide SC DHEC with an affidavit of publication from the newspaper within fifteen (15) days of publication. You must publish the following notice and submit an affidavit of publication before SC DHEC can continue processing your application.**

PUBLIC NOTICE P/N: 2010 SHEP
(Applicant) has applied to the South Carolina Department of Health and Environmental Control for a Water Quality Certification to (Brief description of work) for (Public/Private) use in (Name and Location of Waterbody). Comments will be received by the South Carolina Department of Health and Environmental Control at 2600 Bull St, Columbia SC 29201-1797, Attn: Chris Beckham, Division of Water Quality until (Insert Date - 15 days from date of this notice).

2. **List of Adjacent Property Owners:** The Department requires a list containing the names and addresses of all property owners who own property adjacent to the project area.
3. **Fee:** Pursuant to R. 61-30, Environmental Protection Fees, the SC Department of Health and Environmental Control is authorized to collect application fees for Water Quality Certification. The following fee is now due to the Department of Health and Environmental Control:

US Army Corps of Engineers, Savannah District
Joint Public Notice Number: 2010 SHEP
Issue Date: November 15, 2010
Total Due: \$ 1,000.00

- The Department has 180 days to complete action on an application for 401 Water Quality Certification or the assessed fee must be returned. The 180 days includes only those days in which the application is actively being reviewed by the Department; the clock stops when information is requested and the SC Department of Health and Environmental Control is waiting on a response. **Accordingly, the 180 day clock will not start until we have received an affidavit of publication, the list of adjacent property owners, and the appropriate fee.**
- If you have questions regarding this 401 Water Quality Certification public notice requirement, please contact the Project Manager, Chris Beckham, at 803-898-4261 or other available 401 Water Quality Certification staff at 803-898-4300.

401 Water Quality Certification Application Fee

US Army Corps of Engineers, Savannah District
Joint Public Notice Number: 2010 SHEP
Issue Date: November 15, 2010
Total Due: \$ 1,000.00

Please return this page with your check (made payable to SC Department of Health and Environmental Control) and your affidavit of publication to:

SC Department of Health and Environmental Control
Bureau of Water
Attn: Chris Beckham, Project Manager
2600 Bull St
Columbia SC 29201-1797



Bureau of Water
2600 Bull St
Columbia SC 29201

Public Notice # 2010-SHEP

Public Notice Date: December 30, 2010

**DEPARTMENT DECISION
NOTICE OF DEPARTMENT DECISION
WATER QUALITY CERTIFICATION AND
CONSTRUCTION IN NAVIGABLE WATERS PERMIT**

The South Carolina Department of Health and Environmental Control (Department), acting on an application for Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act, and Construction in Navigable Waters Permit pursuant to R. 19-450. et. Seq., 1976 SC Code of Laws has reached a proposed decision for the project described below:

US Army Corps of Engineers, Savannah District
Savannah Harbor Expansion Project
Savannah River
Jasper County
P/N 2010 SHEP

Section 401 of the Clean Water Act allows the State a reasonable period of time not to exceed one year to act upon an application for a 401 Water Quality Certification. The Savannah District of the US Army Corps of Engineers (Corps) has notified the Department that the Water Quality Certification for this project must be received by the end of the public comment period in late January 2011. This time period is not adequate to conduct the necessary review to fulfill the regulatory obligations pursuant to Section 401 of the Clean Water Act; Department Regulation 61-101, Water Quality Certification; and Department Regulation 19-450, Permits for Construction in Navigable Waters.

The proposed project includes extensive environmental impacts that must be thoroughly reviewed by the Department. The public notice that was issued by the Corps on November 15, 2010, notes that the project violates water quality standards and the applicant proposes to mitigate for these impacts through a mechanical oxygenation system. The project could also potentially cause direct and indirect impacts to over 1,000 acres of wetlands. These impacts and the extensive mitigation proposal that is included in the draft EIS must also be reviewed by the Department. The Department must also determine if there are feasible alternatives that reduce the adverse consequences on water quality and classified uses. The timeframe imposed by the Corps prevents the Department from reviewing comments from the public and the resource agencies prior to noticing a decision on the project. Coordination with the resource agencies is necessary for the Department to determine if the project has the potential to impact waters containing Federally recognized rare, threatened, or endangered species. Because the Savannah District did not allow adequate time to acquire and consider all of the information necessary to conduct a thorough review of the project, the Department has not been able to determine if the project is consistent with the certification requirements of Section 401 of the Clean Water Act, and does not have a reasonable assurance that the proposed project will be conducted in a manner consistent with the certification

requirements of Section 401 of the Clean Water Act. Accordingly, the Department proposes to deny Water Quality Certification for the proposed project without prejudice.

A copy of the plans submitted by the applicant is available for review in the office of the Division of Water Quality, Bureau of Water.

Additional information about the technical aspects of this application is available from Chris Beckham, the project manager, at 803-898-4261.

The issuance of this Notice of Department Decision represents a final staff decision that may be appealed. Please see the attached page titled "Notice of Appeal Procedure" for details.



Chuck Hightower, Section Manager
Water Quality Certification and
Wetland Program Section

cc: US Army Corps of Engineers,
Charleston District Office
SCDHEC, Region 8 Offices
SCDHEC-OCRM, Charleston Office

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of \$100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.
4. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
 - c. a copy of the Department's decision for which review is requested
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

July 1, 2010



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3640

JAN 10 2011

Executive Office

Mr. Chuck Hightower
Water Quality Certification and Wetland Program Section, Section Manager
South Carolina Department of Health and Environmental Control
Bureau of Water
2600 Bull Street
Columbia, South Carolina 29201-1797

Dear Mr. Hightower:

The purpose of this letter is to address the proposed South Carolina Department of Health and Environmental Control (SC DHEC), Department Decision, Public Notice # 2010-SHEP, Public Notice Date: December 30, 2010.

In this proposed Department Decision, you indicated that SC DHEC proposes to deny, without prejudice, water quality certification for the Savannah Harbor Expansion Project (SHEP). The SC DHEC based its proposed decision on not having an adequate amount of time to acquire and consider all of the information necessary to conduct a thorough review in order to determine that the proposed project will be conducted in a manner consistent with the requirements of Section 401 of the Clean Water Act (CWA).

It appears that the proposed SC DHEC decision is based upon a misunderstanding concerning the pertinent time periods. I believe that SC DHEC may want to withdraw its proposed decision and not waive its obligations under Section 401 of the CWA.

The November 15, 2010 Joint Public Notice (JPN) and the November 26, 2010 publication of the Draft EIS and GRR in the Federal Register (FR) triggered two separate time periods under two different federal statutes. The JPN triggered a CWA time period and the FR notice triggered a National Environmental Policy Act (NEPA) time period.

Pursuant to the White House Council on Environmental Quality (CEQ) federal regulations that implement NEPA (40 C.F.R. § 1506.10(c)), the Corps must provide a minimum 45-day public comment period. Initially, the Corps set the closing date of the NEPA public comment period on January 10, 2011. Upon several requests, including one from SC DHEC, I extended the public comment period and agreed to accept comments until January 25, 2011. The time period established under NEPA is only intended to apply to comments on the Draft GRR and Draft EIS from the public and federal, state, and local agencies. Given the extensive public and resource agency involvement in this project over the past decade, this is a reasonable amount of time for the initial NEPA public comment period.

Under the CWA, SC DHEC has a reasonable period of time (which shall not exceed one year) to act on the Corps' request for water quality certification. The closing of the NEPA public comment period does not change the fact that SC DHEC has a reasonable period of time under the CWA to act on the Corps' request for water quality certification.

The Corps' request for Section 401 water quality certification under the CWA began on November 15, 2010, which was the date of the JPN. Please tell me what you consider to be a reasonable period of time for SC DHEC action, and when SC DHEC anticipates rendering a final determination on the Corps' water quality certification request.

We appreciate and look forward to our continued collaboration on this project with you, other federal and state resource agencies, and the public. If you have any questions, please let me know.

Sincerely,



Jeffrey M. Hall
Colonel, US Army
Commanding

CF:

Mr. Henry McMaster, Attorney General, State of South Carolina
Mr. Earl Hunter, Commissioner, SC Department of Health and Environmental Control
Clerk of the Board, SC Department of Health and Environmental Control

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Glenn A. McCall
Coleman F. Buckhouse, MD

January 13, 2011

Jeffrey M. Hall, Colonel, US Army, Commanding
US Army Corps of Engineers, Savannah District
100 West Oglethorpe Avenue
Savannah, Georgia 31401

Re: Savannah Harbor Expansion Project

Dear Colonel Hall:

The South Carolina Department of Health and Environmental Control (Department) has received your letter dated January 10, 2011. In this letter, you suggested that the Department might want to withdraw its proposed decision on the Savannah Harbor Expansion Project (SHEP) and not waive its obligation under Section 401 of the Clean Water Act. The letter also asked that the Department tell you what we would consider a reasonable timeframe to make a decision on the project.

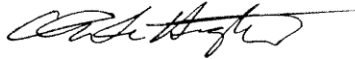
During a meeting of the Savannah Maritime Commission in September 2010, the US Army Corps of Engineers (Corps) announced that the project schedule for the SHEP allowed 60 days to obtain the Section 401 Water Quality Certification (Certification). Following this meeting, the Department sent a letter dated September 29, 2010, in which a request was made to allow additional time to complete the Certification for this project. In a letter dated November 4, 2010, you made note that the project schedule calls for the Certification to be obtained at the end of the public comment period in late January 2011. On November 15, 2010, the Corps issued the public notice for the draft Environmental Impact Statement (EIS) and concurrently submitted the application for the Certification. This public notice allowed the public 60 days to submit comments to the Department. Thus, in accordance with your November 4, 2010 letter, the Certification was to be obtained at the end of this 60-day time period.

In a subsequent letter, dated December 3, 2010, the Department informed you that the allotted time frame of 60 days was not adequate, and asked for a time period of one year to make a 401 Water Quality Certification decision on the SHEP project. The Department considers one year to be a reasonable period of time to review the multiple volumes of documents and reports that comprise the draft EIS and to provide for public input as required by S.C. Regulation 61-101, *Water Quality Certification*. Since the Department received no response to our request for additional time, the decision was made to move forward with the Notice of Department Decision published on December 30, 2010. Furthermore, this decision does not constitute a waiver of the Department's obligation under Section 401 of the Clean Water Act. Rather, this decision proposes to deny the 401 Water Quality Certification for the project. According to South

Carolina state law, this decision becomes final 15 days after it was mailed to the applicant, unless a timely appeal is received; however, since this proposal is to deny the project without prejudice, the Corps has the option to resubmit the application for a 401 Water Quality Certification.

Please do not hesitate to contact me at 803-898-0369, if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Hightower", with a long horizontal flourish extending to the right.

Chuck Hightower, Section Manager
Water Quality Certification & Wetlands Section

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January 14, 2011

Jeffrey M. Hall, Colonel, US Army, Commanding
US Army Corps of Engineers, Savannah District
100 West Oglethorpe Avenue
Savannah, Georgia 31401

Re: Permit - Savannah Harbor Expansion Project (SHEP)

Dear Colonel Hall:

The South Carolina Department of Health and Environmental Control (Department) received your letter dated January 13, 2011. As you are aware, the Department issued a Notice of Department Decision on December 30, 2010, in which we proposed to deny the 401 Water Quality Certification for the SHEP due to the fact that the time provided for Department review was inadequate. In your recent letter, you state that the Corps' request for 401 certification under the Clean Water Act began on November 15, 2010, and that "SC DHEC can take until November 2011" to provide its 401 certification in this matter. The Department also confirmed with you in a January 14, 2011, telephone conversation that the project schedule now provides for the November 2011 date for the 401 certification decision.

Based on this new information, the Department hereby rescinds the Notice of Department Decision dated December 30, 2010, for the above-referenced permit. The Department will continue to process the permit application with the new 401 certification timeframe expiring November 2011.

Please do not hesitate to contact me at 803-898-0369, if I can be of further assistance.

Sincerely,

Chuck Hightower, Section Manager
Water Quality Certification & Wetlands Section
SCDHEC – Bureau of Water

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Coleman F. Buckhouse, MD

March 3, 2011

William Bailey
US Army Corps of Engineers, Savannah District
100 West Oglethorpe Avenue
Savannah, Georgia 31401

Re: P/N 2010 SHEP; Savannah Harbor Expansion Project (SHEP); Water Quality Certification

Dear Mr. Bailey:

The South Carolina Department of Health and Environmental Control (Department) received your application on November 15, 2010, for a 401 Water Quality Certification to deepen the navigation channel in the Savannah River. After reviewing the General Re-Evaluation Report (GRR) and the draft Tier II Environmental Impact Statement (EIS) submitted with the permit application, the Department is concerned that the project, as proposed, does not meet the requirements for issuance of a Water Quality Certification pursuant to Section 401 of the Clean Water Act and the requirements of State Regulation 61-101, Water Quality Certification.

In assessing the water quality impacts of this project, Regulation 61-101 requires that the Department address and consider whether there are feasible alternatives to the activity. Section F.(5)(b) of this regulation states that certification will be denied if there is a feasible alternative to the activity which reduces adverse consequences on water quality and classified water uses. The GRR and the EIS mentioned several alternatives that would alter the project impacts. Some of these alternatives include dredging to various project depths, various mitigation plans, and several alternative sites. Although the documents consider some alternatives, the analysis does not thoroughly evaluate all feasible alternatives for a project of this magnitude. For example, it seems reasonable to consider alternatives on a regional basis for such a large-scale project involving significant environmental impacts. The GRR and EIS do not consider whether or not other southeastern ports could be expanded with less cost or environmental impacts.

The Savannah River Maritime Commission, the South Carolina Department of Natural Resources, and the Southern Environmental Law Center each submitted comments on the GRR and EIS. These letters suggest that the Jasper Port Terminal alternative is viable and may have less environmental impacts than the proposed deepening. For these reasons, the establishment of a Jasper Port Terminal should be given detailed consideration as an option to the extensive cost and environmental impacts associated with the proposed expansion of the Garden City Terminal. The Department cannot meet its obligation under Regulation 61-101 by issuing a certification without a thorough investigation of all feasible alternatives. It is recommended that the

alternatives analysis for the project be amended to include the evaluation of all feasible alternatives to the proposed project.

In evaluating any project pursuant to Regulation 61-101, the Department must certify that there is reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards. The Water Classifications and Standards listed in Regulation 61-68 were promulgated in accordance with Section 303 of the Clean Water Act. This regulation also contains antidegradation rules that were established to ensure the protection of existing uses and water quality regardless of the water classification.

Existing conditions in the Savannah River have resulted in contraventions of the dissolved oxygen (DO) standard, particularly in the river estuaries during the warm summer months. The studies conducted for the SHEP indicate that the project will cause additional impacts to DO levels in the river system. Adding DO impacts to a waterbody that is currently experiencing low DO at certain times of the year is not consistent with the antidegradation rules of Regulation 61-68. The Corps plans to use Speece Cones to inject oxygen into the river to mitigate for the DO impacts resulting from the proposed deepening.

After evaluating the DO modeling data, and the mitigation proposal outlined in the GRR and EIS, the Department is concerned with the uncertainty relating to the use of mechanical injection as mitigation for the DO impacts, especially in the shallow water areas of the Back River. The Corps is relying entirely on modeling data to support the conclusion that the Speece Cones will adequately restore DO in the river system to pre-project conditions. Furthermore, the oxygen injection system is a very costly method to mitigate for the projected impacts, and the funding for the long-term operational costs depends on unpredictable annual appropriations. Until the uncertainty from the DO impacts and mitigation has been thoroughly investigated, and reasonable assurance is provided that the project will protect existing uses and water quality standards for the life of the project, the Department cannot find the project consistent with the requirements of Regulation 61-101.

In addition to the impacts from DO, the ecosystem will also sustain significant wetland impacts. The project will impact 14.08 acres of salt marsh wetlands from excavation and indirectly impact 1,212 acres of freshwater wetlands due to increased salinity at the maximum project depth. The Corps has proposed a mitigation plan to offset these impacts. This plan includes the preservation of various properties that will become part of the Savannah National Wildlife Refuge (SNWR), the restoration of wetlands through flow altering structures, and the creation of salt marsh by grading down an area of high ground that was previously used as a dredge disposal area.

Section F.(5)(a) of Regulation 61-101 states that certification will be denied if the proposed activity alters the ecosystem in the vicinity of the project such that its functions and values are eliminated or impaired. The mitigation proposal submitted in the GRR and EIS fails to give reasonable assurance that the ecosystem will not be permanently impaired by the extensive wetland impacts from salinity intrusion. The preservation component of the mitigation plan lists several properties that would be acquired and subsequently placed under control of the SNWR. Although the EIS states that these properties contain desirable ecological resources, the

amount of wetland acreage or type of wetlands contained in these properties was not included in the EIS. In addition, the mitigation credit taken by the Corps for restoration includes the creation of 1,068 acres of brackish marsh for the 48 ft depth alternative. The flow altering structures will reduce salinity in some of the marsh areas; however, these structures will cause the conversion of salt and freshwater marsh to brackish marsh. The loss of any type of marsh should be considered an impact. Given the extensive loss of existing freshwater marsh within the ecosystem and the lack of an appropriate mitigation plan, the Department cannot certify that this project complies with the mandates in Regulations 61-101 and 61-68.

Much of the marsh areas that will be impacted by this project are located in the SNWR. Much of these impacts are to freshwater tidally influenced wetlands. These areas have been in decline for many years due to salinity intrusion from natural causes and from past harbor deepening activities. The proposed project poses a significant threat to these unique areas. The mitigation plan includes preservation of land that will be acquired by the refuge. As stated previously, the Department is concerned that the out-of-kind preservation of land does not adequately offset the significant loss of ecological resources due to this project. Regulation 61-101 states that certification will be denied if the proposed activity impacts special or unique habitats. The SNWR is considered a unique area, as such, the Department cannot issue a certification for the proposed activity unless the United States Fish and Wildlife Service (USFWS) gives concurrence that this project will not cause adverse impacts to the SNWR.

The proposed deepening will occur in waters containing Federally recognized threatened or endangered species. Species such as Shortnosed sturgeon, Atlantic sturgeon, various sea turtles, and West Indian manatees may all be impacted by the project. The loss of a significant portion of Shortnose sturgeon habitat due to lower DO levels and salinity intrusion is of particular concern. Regulation 61-101 states in Section 5(c) that certification will be denied if the project adversely impacts waters containing State or Federally recognized rare, threatened, or endangered species. Although the Corps proposes to mitigate for the loss of Shortnose sturgeon habitat by installing fish passage at the Savannah Bluff Lock and Dam, it is not known if this measure will adequately mitigate for the impacts to sturgeon. Endangered species impacts are typically evaluated by resource agencies such as the USFWS and the National Marine Fisheries Service (NMFS). Without concurrence from these agencies that the project will not cause adverse impacts to threatened or endangered species, the Department cannot certify this project.

In addition to the above list of concerns about the proposed project, the Department has not received a complete response to our previous request for information. On November 23, 2010, the Department sent a letter requesting an affidavit of public notice for the project, a list of adjacent property owners, and the application fee of \$1,000. We received the affidavit and list of property owners, but we have not received the requested fee. Pursuant to Regulation 61-30, Environmental Protection Fees, the Department is authorized to collect application fees for Water Quality Certification.

In conclusion, the Department has several concerns about issuing a certification for this project. As currently proposed, this project does not meet the requirements for issuance of a Water Quality Certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, and the requirements of State Regulation 61-101, Water Quality Certification. It is

Page 3 of 4

strongly recommended that the Corps withdraw the current application and address the issues outlined in this letter before continuing the 401 Certification process. If the Corps determines that it is necessary to move forward with a certification decision at this time, the fee should be submitted as soon as possible. Pursuant to Regulation 61-30, and Regulation 61-101, the Department has 180 days to complete action on an application for 401 Water Quality Certification or the assessed fee must be returned. These 180 days include only those days in which the Department is actively reviewing the application; the clock stops when information is requested and the Department is waiting on a response. Accordingly, the 180-day clock for this project will not start until the Department receives the requested fee and subsequent information. Should you have any questions, you may call me at (803) 898-4261 or you may e-mail beckhajc@dhec.sc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Beckham". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Chris Beckham, Project Manager
Water Quality Certification & Wetlands Section



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3640

MAR 30 2011

Planning Division

Mr. J. Christopher Beckham
Water Quality Certification
and Wetlands Section
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. Beckham:

I refer to the March 3, 2011 letter from South Carolina Department of Health and Environmental Control (SC DHEC) concerning the Savannah Harbor Expansion Project (SHEP) and our November 15, 2010 application for Water Quality Certification pursuant to Section 401 of the Clean Water Act. In the letter, you strongly recommended the US Army Corps of Engineers (Corps) withdraw its application and address issues outlined in the letter.

Enclosed, you will find a comment/response document that addresses the issues you raised and provides the information requested. Based on the contents of your letter, it is our understanding that upon receiving concurrence of the project from US Fish and Wildlife Service and National Marine Fisheries Service, SC DHEC would be satisfied with the proposed project's mitigation for impacts to fish, wildlife, and the Savannah National Wildlife Refuge.

With regard to payment of application fees and completion date of the requested action, SC DHEC has not traditionally charged the Corps for water quality certifications and we look forward to receiving the same courtesy on this request.

The Corps believes that the issues and concerns outlined in your March 3, 2011 letter were adequately addressed in the draft reports provided in November 2010. Construction of the SHEP and its proposed mitigation features would not adversely affect the dissolved oxygen regime in South Carolina waters, nor would it adversely affect tidal freshwater wetlands or endangered species habitat in South Carolina waters. Consequently, the Corps looks forward to South Carolina issuing its Section 401 Water Certification for the Savannah Harbor Expansion Project.

We appreciate your continued support of the Corps' efforts to establish and maintain navigable waterways for the benefit of national commerce.

-2-

If you have any questions or concerns regarding the contents of this letter, please do not hesitate to contact me at (912) 652-5781.

Sincerely,



William G. Bailey
Chief, Planning Division

Enclosure

US ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT

RESPONSES TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

LETTER DATED 3 MARCH 2011

Comment. *Although the document considers some alternatives, this analysis does not thoroughly evaluate all feasible alternatives for a project of this magnitude. For example, it seems reasonable to consider alternatives on a regional basis for such a large-scale project involving significant environmental impacts. The GRR and EIS do not consider whether or not other southeastern ports could be expanded with less cost or environmental impacts.*

Response. The Corps conducted a Regional Port Analysis and a Multiport Analysis as discussed on Page 3-3 of the DEIS and Pages 117-119 of the GRR, respectively. The full reports are included as attachments to the Economic Appendix of the GRR. The regional port analysis indicated that (1) the volume of Twenty-foot Equivalent Units (TEUs) expected to move through the southeastern US ports in the future exceeds the total capacity of any US east coast port; (2) USACE participation in planning and construction of a regional port would require Congressional authorization and a non-Federal sponsor; (3) there is no centralized planning jurisdiction that would encourage development of a regional port hub and discourage competitive development of local ports; and (4) local port planning and development is already underway (Savannah, Charleston, Jacksonville, Norfolk, Cape Fear) which would make a regional port redundant. For the foregoing reasons, the District determined that further evaluation of a single regional port is not warranted for the Savannah Harbor Expansion Project.

Comment. *For these reasons, the establishment of a Jasper Port Terminal should be given detailed consideration as an option to the extensive cost and environmental impacts associated with the proposed expansion of the Garden City Terminal. The Department cannot meet its obligation under Regulation 61-101 by issuing a certification without a thorough investigation of all feasible alternatives. It is recommended that the alternatives analysis be amended to include the evaluation of all feasible alternatives to the proposed project.*

Response. The SHEP EIS and GRR do not evaluate the environmental aspects of the expected future expansion of the Garden City Terminal. The District expects GPA to increase the throughput capability of that terminal in response to future demand independent of a harbor deepening. The SHEP EIS and GRR were prepared as directed by the US Congress to address the identified inefficiencies of the current operation of **Savannah Harbor**. In Section 3.1 of the GRR, the Corps identified the present navigation inefficiencies:

1. Increased/ inflated operations costs due to light loading and tidal delays;
2. Light loading and tidal delays will increase as present harbor users increase their annual tonnage and as larger, more efficient ships replace older, smaller ones;

3. Existing ships are experiencing problems associated with turning capabilities and overall maneuverability in certain reaches of the inner harbor;
4. The severity of problems associated with turning capabilities and overall maneuverability in certain reaches of the inner harbor will increase as vessel size increases.

Some of these situations are expected to worsen in the near future as larger, Post-Panamax Generation 2 vessels begin to replace older, smaller vessels.

Alternative container terminal locations were thoroughly evaluated in the EIS and GRR (Chapter 3 and Appendix O (Formulation of Alternatives) of the EIS). This analysis considered methods in which the harbor's navigation problems could be reduced, including structural and non-structural methods. The structural methods included providing a deep-water channel to alternate terminal locations, four of which were in South Carolina. This analysis included a new marine container terminal at the harbor's present confined dredged material disposal facilities (CDFs) 12A, 14A, 14B, and at Jones/Oysterbed Island. The CDF 14A and 14B sites are the ones presently under consideration for a Jasper Ocean Terminal. The analysis concluded that the Garden City Terminal of the Georgia Ports Authority best met the criteria of Completeness, Effectiveness, Efficiency, and Acceptability. Consequently, the Corps concluded that the detailed studies would concentrate on evaluating the feasibility of various channel depth alternatives (42 feet to 48 feet) to the Garden City Terminal. The project's Cooperating Agencies (US Environmental Protection Agency (EPA), US Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries), and the Georgia Ports Authority) concurred in this finding. The Corps provided that analysis to your agency and the public in 2005; you provided no comments.

The Corps' analysis concluded that construction of a container terminal in Jasper County and deepening to that facility is not the best alternative to solve the existing navigation problems in Savannah Harbor. A series of sensitivity analyses (Pages 224-229 of the GRR) were conducted to identify the potential impact that a new terminal in Jasper County might have on the justification to deepen Savannah Harbor to the Garden City Terminal. This analysis showed that economic justification for deepening the channel between a Jasper County terminal and the Garden City Terminal is not particularly sensitive to the development of a container terminal in Jasper County. Rather, the proposed harbor deepening has independent utility apart from the potential Jasper County terminal. In other words, even if a container terminal in Jasper County was already constructed and operational, deepening the channel to the Garden City Terminal would still be economically justified.

Capital improvements at the Garden City Terminal have occurred in the past and the Corps expects GPA to continue to take similar actions in the future in response to increases in container traffic volumes through that facility. The Corps expects those increases in container volumes to occur with or without SHEP.

Comment. *After evaluating the DO modeling data and the mitigation proposal outlined in the GRR and EIS, the Department is concerned with the uncertainty relating to the use of mechanical injection as mitigation for the DO impacts, especially in the shallow areas of the Back River. The Corps is relying entirely on modeling data to support the conclusion that the Speece cones will adequately restore DO in the river system to pre-project conditions. Furthermore, the oxygen injection system is a costly method to mitigate for the projected impacts, and the funding for the long-term operational costs depends on unpredictable annual appropriations. Until the uncertainty from the DO impacts and mitigation has been thoroughly investigated, and reasonable assurance is provided that the project will protect existing uses and water quality standards for the life of the project, the Department cannot find the project consistent with the requirements of 61-101.*

Response. The models employed in the analysis of the impacts of the SHEP on the dissolved oxygen regime in Savannah Harbor were developed over a number of years by subject matter experts with integrated input from the Cooperating Agencies and the state resource agencies (including SC DHEC) to ensure the results are meaningful and accurate. While all models have uncertainty, the SHEP hydrodynamic and water quality models are the best prediction tool available to understand future conditions in the harbor under various scenarios. In 2006, your agency approved the use of those models on this project. In 2010, your agency concurred in use of these basic models in EPA's Revised Draft Total Maximum Daily Load (TMDL) for Dissolved Oxygen in Savannah Harbor.

The Corps used the same models to design the oxygen injection systems as it did to identify the impacts expected from the proposed project. There should be no difference in uncertainty about the effectiveness of the proposed mitigation from that for the impacts from the harbor deepening alternatives. The Corps remains confident that the flow diversion measures and the dissolved oxygen injection system would remove the incremental effects of SHEP on the dissolved oxygen regime in Savannah Harbor. In fact, when the dissolved oxygen injection system is operational, the dissolved oxygen regime is expected to improve in over 90 percent of the estuary over the without project condition.

Comment. *Section F.(5)(a) of Regulation 61-101 states that certification will be denied if the proposed activity alters the ecosystem in the vicinity of the project such that its functions and values are eliminated or impaired. The mitigation proposal submitted in the GRR and EIS fails to give reasonable assurance that the ecosystem will not be permanently impaired by the extensive wetland impacts from salinity intrusion. The preservation component of the mitigation plan lists several properties that would be acquired and subsequently placed under control of the SNWR. Although the EIS states these properties contain desirable ecological resources, the amount of wetland acreage or type of wetlands contained in these properties was not included in the EIS. In addition, the mitigation credit taken by the Corps for restoration includes the creation of 1,068 acres of brackish marsh for the 48 ft depth alternative. The flow altering structures will reduce salinities in some of the marsh areas; however, these structures will cause the conversion of salt and freshwater marsh to brackish marsh. The loss of any type of marsh should be considered an impact. Given the extensive loss of existing freshwater marsh within the*

ecosystem and the lack of an appropriate mitigation plan, the Department cannot certify that this project complies with the mandates in Regulations 61-101 and 61-68.

Response. It is important to note that installation of the flow diversion structures would not result in the conversion of any freshwater marsh to brackish marsh in South Carolina. On the contrary, the diversion of flow would reduce the upstream movement of salinity in Middle River and Little Back River from harbor deepening, thereby minimizing impacts to tidal freshwater marsh in South Carolina. On the other hand, flow diversion would result in the conversion of some saltmarsh located in the lower ends of these two streams to more brackish species, which the USFWS identified as being more ecologically valuable.

Upstream salinity increases resulting from construction of the SHEP would not eliminate the functions of any wetland. Construction of the 48-foot channel (with flow diversion) would result in the conversion of the dominant vegetative species typically observed in approximately 337 acres (net) of freshwater marsh to more brackish species. It is important to note that many of the emergent plant species associated with this freshwater marsh system would still be readily observed in the brackish environment (Latham et. al., 1994). Likewise, the 48-foot depth (with flow diversion) would result in a conversion of the dominant vegetative species typically observed in 730 acres (net) of saltmarsh to more brackish species. However, dominant saltmarsh species like *Spartina alterniflora* are still expected to be observed in those areas. While the SHEP would result in changes to the dominant wetland vegetation, the overall basic wetland functions typically associated with these systems would not change.

A review of the changes that occur to the elements of wetland functions (water purification, groundwater recharge, streamflow maintenance, fish and wildlife habitat, etc.) when freshwater marsh is converted to more a brackish marsh indicates that there are only negligible changes to these functions with the exception of fish and wildlife habitat. The wetland conversion is classified as a minor effect when considering the total function of the wetland and the continued existence of some freshwater vegetation in the areas that would become brackish marsh.

The proposed preservation lands consist of 2,683 acres (for the 48-foot channel) characterized by bottomland hardwoods, maritime forest and dispersed uplands dominated by deciduous forest and regrowth. These bottomland hardwoods are classified as palustrine, forested, broad-leaved deciduous systems that are both temporarily and seasonally flooded. Preserving these areas would ensure wildlife habitat is protected in perpetuity. The USFWS had previously identified those tracts as potentially being valuable additions to the Savannah National Wildlife Refuge (SNWR). Those lands would buffer the SNWR from future threats of development such that changes in land use would not occur immediately adjacent to existing areas of emergent wetlands within the Refuge. Thus, the acquisition and preservation of 2,683 acres of wetland and upland buffer would provide a functional replacement for the reduction in the only wetland function (i.e., fish and wildlife habitat) that would be expected to be impacted from the 337 acre freshwater to brackish marsh conversion. Consequently, the Corps believes the proposed mitigation satisfies the no-net loss of wetland function criterion.

Modeling indicates that the expected conversion of tidal freshwater marsh to brackish marsh would occur within the waters of the State of Georgia. That conversion would be confined to areas of Middle River and Front River from just below the Georgia Highway 25 crossing to just upstream of the confluence of Front River and Steamboat River. Those model studies indicate that there would be an increase in tidal freshwater marshes in the State of South Carolina in marshes associated with Little Back River in the vicinity of the SNWR intake on Little Back River.

Comment. *Regulation 61-101 states that certification will be denied if the proposed activity impacts special or unique habitat. The SNWR is considered a unique area, as such, the Department cannot issue a certification for the proposed activity unless the United States Fish and Wildlife Service (USFWS) gives concurrence that this project will not cause adverse impacts to the SNWR.*

Response. The adverse impacts of the SHEP on the SNWR are readily acknowledged and addressed in the DEIS and the GRR. Specifically, there will be direct impacts to marsh caused by excavation to expand the Kings Island Turning Basin and indirect impacts to tidal freshwater marsh caused by an increase in upstream salinity levels. Plans to minimize and mitigate those adverse impacts are also addressed. Mitigation includes restoring 28 acres of saltwater marsh, constructing flow diversion measures to reduce salinity levels in upstream areas where tidal freshwater marsh would be impacted, and purchasing and preserving lands that would be beneficial to the SNWR. The Corps believes that the SHEP Mitigation Plan adequately addresses adverse impacts to the SNWR. Also, all of the described adverse impacts to the SNWR occur in the State of Georgia. Construction of the SHEP would not adversely affect any unique areas in the State of South Carolina.

Comment. *The proposed deepening will occur in waters containing Federally recognized threatened or endangered species. Species such as Shortnose sturgeon, Atlantic sturgeon various sea turtles and West Indian manatees may all be impacted by the project. The loss of a significant portion of Shortnose sturgeon habitat due to lower DO levels and salinity intrusion is of particular concern. Regulation 61-101 states in Section 5(c) that certification will be denied if the project adversely impacts waters containing state or Federally recognized rare, threatened, or endangered species. Although the Corps proposes to mitigate for the loss of Shortnose sturgeon habitat by installing fish passage at the Savannah Bluff Lock and Dam, it is not known if this measure will adequately mitigate for the impacts to sturgeon. Endangered species impacts are typically evaluated by resource agencies such as the USFWS and the National Marine Fisheries Service (NMFS). Without concurrence from these agencies that the project will not cause adverse impacts to threatened or endangered species, the Department cannot certify this project.*

Response. The modeling studies presented in the DEIS indicate that approximately 11.0% (439 acres) of Shortnose sturgeon adult winter habitat, 8.2% (113.0 acres) of adult summer habitat, and 1.6% (21.6 acres) of juvenile winter habitat would be adversely affected by the 48-foot alternative. There would be no loss of Shortnose sturgeon habitat in South Carolina waters for any of the alternative harbor depths

analyzed. Loss of Shortnose sturgeon habitat due to SHEP would mainly occur in portions of Front River just above the Georgia Highway 25 crossing and in a small portion of Middle River near its confluence with Front River. Modeling results indicate that implementation of the SHEP with its mitigation features would result in a slight increase in Shortnose sturgeon habitat in South Carolina waters.

The proposed fishway at the New Savannah Bluff Lock and Dam was included in the mitigation plan for the project to ameliorate the remaining effects of Shortnose sturgeon habitat after the Corps and the natural resource agencies were unable to identify any measures that could be implemented in the estuary to restore sturgeon habitat or enhance existing habitat. The horseshoe rock ramp design is the current state-of-the-art measure that could be constructed at the New Savannah Bluff Lock and Dam to allow Shortnose sturgeon and other species of anadromous fish an opportunity to bypass the dam and gain access to traditional upstream spawning areas.

As required, the Corps prepared a Biological Assessment of Threatened and Endangered Species (BATES) which was included in the DEIS as Appendix B. The BATES concluded that the project may affect but is not likely to adversely affect the wood stork, Piping plover, manatee, North Atlantic right whales, humpback or sperm whales, leatherback turtles, loggerhead turtles, Kemp's ridley turtles, hawksbill turtles, and green sea turtles or their critical habitats. The BATES concluded that the SHEP may affect but is not likely to adversely affect Shortnose or Atlantic sturgeon or their critical habitat.

The BATES has been furnished to the USFWS and the NMFS for their review and Biological Opinion. NMFS is the agency that oversees compliance with the Endangered Species Act for Shortnose sturgeon.

Comment: *In addition to the above list of concerns about the proposed project, the Department has not received a complete response to our previous request for information. On November 23, 2010, the Department sent a letter requesting an affidavit of public notice for the project, a list of adjacent property owners, and the application fee of \$1,000.00. We received the affidavit and list of property owners, but we have not received the requested fee.*

Response. South Carolina DHEC has not traditionally charged the Corps for water quality certifications and we look forward to receiving the same courtesy with this request.

Comment. *As currently proposed, this project does not meet the requirements for issuance of a Water Quality Certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, and the requirements of State Regulation 61-101, Water Quality Certification. It is strongly recommended that the Corps withdraw the current application and address the issues outlined in this letter before continuing the 401 Certification process. If the Corps determines that it is necessary to move forward with a certification decision at this time, the fee should be submitted as soon as possible.*

Response. The Corps believes that the issues and concerns outlined in your March 3, 2011 letter were adequately addressed in the draft reports provided in November 2010. Construction of the SHEP and its proposed mitigation features would not adversely affect the dissolved oxygen regime in South Carolina waters nor would it adversely affect tidal freshwater wetlands or endangered species habitat in South Carolina waters. Consequently, the Corps looks forward to South Carolina issuing its Section 401 Water Certification for the Savannah Harbor Expansion Project.

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June 16, 2011

William Bailey
US Army Corps of Engineers, Savannah District
100 West Oglethorpe Avenue
Savannah, Georgia 31401

Re: P/N 2010 SHEP; Savannah Harbor Expansion Project (SHEP); Water Quality Certification

Dear Mr. Bailey:

The South Carolina Department of Health and Environmental Control (Department) sent a letter on March 3, 2011, outlining our concerns about the above referenced project. This letter also requested additional information that must be received to complete the water quality certification process. Subsequent to this letter, the Department received your response dated April 1, 2011, and attended several meetings to discuss the proposed project. After reviewing the additional information obtained in your response letter and at the meetings, the Department continues to have concerns about the project.

As discussed in the meeting held on May 12, 2011, the Department is concerned about the ability of the Speece Cones to adequately oxygenate the shallow water areas of the Back River. The Department is also concerned that the models used by the Corps do not adequately simulate flows in the Back and Middle Rivers. The Department has been working with the Corps to determine what information will be needed to address these concerns. The Corps is currently working with a contractor to develop a report to evaluate the applicability of the oxygen injection system in the shallow water areas of the Back River. The Corps is also working with the contractor to acquire updated modeling data to compare the Corps' hydrodynamic and water quality model with the Environmental Protection Agency's (EPA) revised TMDL model. The Department will require that these reports be submitted with adequate time for review prior to any decision on the Water Quality Certification.

The wetland impacts from the project and the proposed mitigation continue to be a concern of the Department. The project will substantially alter the wetlands located in the lower Savannah River estuary. Section F.(5)(a) of Regulation 61-101, Water Quality Certification, states that certification will be denied if the proposed activity alters the ecosystem in the vicinity of the project such that its functions and values are eliminated or impaired. In order to comply with the provisions in Section F of Regulation 61-101, the Department must require appropriate mitigation to ensure that functions and values in the ecosystem will be protected. Early in the development phase of this project, an Interagency Coordination Team (ICT) was established to assist in evaluating the wetland impacts and mitigation. The results of this interagency coordination lead to the mitigation proposal included in the permit application. The plan places an emphasis on minimizing the loss of freshwater tidally influenced wetlands, because these wetlands have historically been altered by past projects.

A meeting to discuss the wetland impacts and mitigation was held on June 1, 2011, in Atlanta Georgia. The exhibits presented during the meeting show significant areas of salt marsh impacts in South Carolina waters. The Corps used the Savannah District Standard Operating Procedures (SOP) as a tool to quantify the impacts and determine appropriate compensation for the salinity conversion. The reduction

in salinity will cause a vegetative shift by converting the dominant salt marsh plant species to a vegetative community dominated by more brackish species. While the Department has no objection to using the SOP to quantify the impacts from the change in salinity, the Department is concerned about the way some of the factors in the SOP were applied.

During the June 1st meeting, the Corps presented a substantial amount of scientific research to show that the reduced salinity in the salt marsh areas would have a minor effect on the vegetative community in the ecosystem. Since this change will be minimal, a dominant effect level of 0 was used in the SOP calculation sheets to determine the required credits for the salinity change in the salt marsh. Then the Corps used the highest level (1.4) for the net improvement factor to determine that 4,485.6 credits will be generated by the restoration of 1,068 acres of brackish marsh. The high net improvement value is not consistent with the low dominant effect level. Furthermore, the area proposed for restoration is comprised of the same wetlands where the impacts will occur. The Corps agrees that the vegetative shift from the salinity conversion is an impact and is proposing to take restoration credit for these impacts. The Department is concerned about the precedent set by allowing the Corps to take restoration credit for wetlands that are included in the project impacts.

Another concern about the restoration component of the mitigation plan is the level of control for 1,068 acres of brackish marsh. The Corps has acknowledged that the restoration area will be preserved as wetlands included as part of the public trust. This level of control is not appropriate because many of the wetlands impacted by this project currently exist as part of the public trust. There is no mechanism to preclude impacts to these wetlands from any future harbor deepening. In order to generate mitigation credits, the restored wetlands must be preserved with a mechanism to ensure that these wetlands will be protected in perpetuity.

The approach to mitigation used by the Corps does not offset all of the project impacts since no mitigation is provided for the impacts to 730 acres of salt marsh for the 48' deepening. This plan diminishes the ecological value of salt marsh, while placing an arbitrarily elevated value to the creation of brackish marsh. Even though the vegetative shift that will occur from the change in salinity is minimal, there will be some loss to the habitat functions within the large area of converted salt marsh. This plan may have been acceptable when discussed in the early meetings of the ICT, but it is not consistent with the state's regulatory obligation to protect existing uses in the ecosystem. The plan does not meet the requirements of Regulation 61-101, since no reasonable assurance is given that the project will not eliminate or impair functions within the ecosystem.

Another regulatory obligation of the Department is to receive and acknowledge comments in response to a public notice for a water quality certification. Several comment letters were received during the public comment period. The Department received letters from resource agencies, such as the South Carolina Department of Natural Resources, and from non-governmental organizations including the Southern Environmental Law Center. These letters identified a variety of concerns about the project. The Department is requesting a response to these comment letters. The letters were addressed to the Corps and you should have received copies. If not, please let the Department know and we will forward you a copy each letter.

In our March 3rd letter the Department discussed our concern about the project's potential impacts to endangered and threatened species. Since that time, we received a copy of a letter dated April 28, 2011, from the United States Fish and Wildlife Service (USFWS). This letter gave concurrence on the Biological Assessment of Threatened and Endangered Species (BATES) included as Appendix B in the draft EIS. Some of the endangered species that might be affected by this project fall under the responsibility of the National Marine Fisheries Service (NMFS). It is our understanding that the Corps is

currently in consultation with NMFS. Regulation 61-101 states in Section 5(c) that certification will be denied if the project adversely impacts waters containing State or Federally recognized rare, threatened, or endangered species. To assure that the project complies with the Section 5(c) of the regulation, the Department will need to get concurrence from NMFS prior to making a certification decision.

As stated previously, the Department has several remaining concerns that need to be addressed before we can render a decision on the 401 Water Quality Certification. We appreciate the Corps' continued effort to resolve these concerns and we will continue to work with you through the certification process. Pursuant to Regulation 61-30, and Regulation 61-101, the Department has 180 days to complete action on an application for 401 Water Quality Certification. These 180 days include only those days in which the Department is actively reviewing the application; the clock stops when information is requested and the Department is waiting on a response. Since the Department has agreed to waive the fee for this project, the 180-day clock pursuant to Regulation 61-30 is not applicable. The 180-day clock pursuant to Regulation 61-101 will not start until all of the subsequent information is received. It should be noted that the Department must issue, waive, or deny a decision on a federal permit within one of acceptance of a complete application, so we would appreciate a timely response to this information request. Should you have any questions, you may call me at (803) 898-4261 or you may e-mail beckhajc@dhec.sc.gov.

Sincerely,

A handwritten signature in cursive script that reads "Chris Beckham". The signature is written in black ink and extends across the width of the text block.

Chris Beckham, Project Manager
Water Quality Certification & Wetlands Section

Cc: Blair Williams, OCRM



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY

SAVANNAH DISTRICT, CORPS OF ENGINEERS
P.O. BOX 889
SAVANNAH, GEORGIA 31402-0889

Planning Division

AUG 01 2011

Mr. Chris Beckham
Project Manager
Water Quality Certification and Wetlands Section
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. Beckham:

I am writing to you about the Savannah Harbor Expansion Project. You raised several issues in your June 16, 2011 letter, which I will address.

You requested the Corps' response to letters you had received as a result of the public notice for water quality certification. We provided those responses to you by email on July 13, 2011.

You requested additional information about two water quality modeling issues. The first concerned whether the oxygen injection system design would perform as intended in the shallow waters of Back River. We developed additional information on that issue and provided a report by email last week. The second issue was a comparison of the hydrodynamic model the Corps used to evaluate potential impacts from this project and a later version used by EPA in its TMDL update. We developed additional information on that issue and provided a report by email earlier today. We request a meeting the week of August 15 to discuss any remaining concerns you may have on those issues.

You commented on the values used in the wetland mitigation SOP calculations. We continue to believe the selected values are appropriate. The USFWS concurs with that position, as they adopted those values in the Fish and Wildlife Coordination Act Report that they prepared. As you stated, the values were selected based on years of discussion in the Wetland Interagency Coordination Team, which placed a higher value in this estuary on tidal freshwater wetlands than on brackish marsh or saltmarsh. Your letter correctly identified historic impacts to tidal freshwater wetlands in this estuary as the reason behind those priorities. The team expressed a preference for restoration of

wetlands in the estuary to their former states. The values the Corps used in the SOP calculations reflect those stated agency preferences. Further detailed analysis (provided at the June 1, 2011 interagency meeting) of field investigations conducted in this estuary indicates that vegetative changes identified through modeling likely overstate the effects that would be observed in the field if the harbor is deepened.

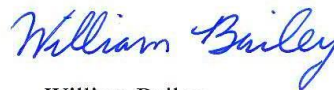
The approach the Corps used in the SOP calculations also reflects the interagency coordination that occurred on this project. The agencies requested the Corps first identify the impacts that would occur if the harbor is deepened, then evaluate mitigation measures that could be included to reduce those impacts.

Due to the unique nature of this project and its secondary effects, the impact predictions and the resulting mitigation are addressed differently than those for a Regulatory project impact or wetland mitigation bank. This application of the SOP differs from a normal Regulatory application because the natural resource agencies requested the Corps provide information on this project's impacts with and without its mitigation features. Savannah District used the SOP's restoration worksheet to capture the effects of the project's mitigation features to comply with that desire of the resource agencies. Since the District is not proposing to establish a commercial wetland mitigation bank with the acreage identified as being "restored" in the with-project but without-mitigation scenario, protection of those wetlands in perpetuity is not appropriate.

The proposed project includes mitigation for all wetland impacts, including the calculated conversion of saltmarsh to brackish marsh. Wherever practicable, in-kind mitigation is proposed. The SOP calculations include the modeled reduction in saltmarsh acreage as an impact that is subsequently compensated by either restoration of brackish marsh or preservation of freshwater wetlands. The ecological value of the saltmarsh is included in the SOP analysis.

We trust that this letter and the information we recently provided by email satisfies the Department's need for additional information. We appreciate your continued coordination throughout the certification process and look forward to receiving certification for a project of such significance to the Nation and the region's economy.

If you have any additional questions, please feel free to contact me at william.g.bailey@usace.army.mil or 912-652-5781.



William Bailey
Chief, Planning Division