

December 21, 2023

Via Electronic Mail

Col. Ronald J. Sturgeon
District Engineer
U.S. Army Corps of Engineers Savannah District
100 West Oglethorpe Avenue
Savannah, Georgia 31401-3604
Attn: Sarah Wise
sarah.e.wise@usace.army.mil

Re: Proposed Savannah Container Terminal—No. SAS-2013-00406

Dear Colonel Sturgeon:

The Southern Environmental Law Center (SELC) submits these comments on behalf of our partners, Savannah Riverkeeper, Georgia Conservancy, Ogeechee Riverkeeper, One Hundred Miles, South Carolina Coastal Conservation League, and South Carolina Wildlife Federation, regarding the U.S. Army Corps of Engineers' (Corps) Public Notice for the proposed Savannah Container Terminal on Hutchinson Island—Permit Application No. SAS-2013-00406. As described in more detail below, this proposal raises serious problems regarding compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*; the federal Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*; and the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, among other applicable state and federal laws.

I. Introduction

A. The proposed container terminal will expand the capacity of the Savannah Harbor substantially, providing 20% more capacity than projected demand.

The Georgia Ports Authority's (GPA) proposed Savannah Container Terminal ("SCT" or "Proposed Project") aims to create a new import and export facility for containerized cargo to access the Port of Savannah.¹ This new deepwater container terminal will supplement the six existing terminals across Brunswick and Savannah.² Two of these six terminals currently handle containerized cargo, Ocean Terminal and Garden City Terminal, both located in Savannah. Garden City Terminal already serves as the Georgia Ports Authority's "dedicated container port . . . and America's largest and busiest single-terminal container port."³

GPA has proposed the construction of this new terminal to address the rapidly growing demand for shipping. GPA estimates that the SCT will increase port capacity by 2.7 million

¹ U.S. Army Corps of Engineers Savannah District, Joint Public Notice: Savannah District/State of Georgia 1 (Oct. 26, 2023) [hereinafter Public Notice].

² *Id.* at 5.

³ *Id.* at 5–6.

twenty-foot equivalent units (TEUs). The Proposed Project will allow GPA to maintain a “20% above-demand cushion,” meaning that the new terminal will allow GPA to maintain the port’s capacity at a level significantly greater than projected demand.⁴ GPA projects that its ongoing operational improvement projects will increase the port’s capacity to about 9 million TEUs and that demand will not reach 9 million TEUs until 2033.⁵ However, GPA believes this new containerized cargo terminal is needed to respond to additional growth through 2035 and to maintain the 20% cushion above projected demand.⁶

The Proposed Project will require 2,522,500 cubic yards of material to be dredged from jurisdictional waters.⁷ Uplands that serve as habitat for marine life will need to be excavated to create the additional 5.43 acres of open water necessary to serve the project.⁸ Additionally, an estimated 250,000 cubic yards of maintenance dredging will be needed each year to support the project.⁹ The Proposed Project will have equally significant consequences for wetlands, requiring 26.58 acres of freshwater wetlands, 5.59 acres of salt marsh, and 0.44 acres of tidal canals to be filled to construct the new terminal.¹⁰

This containerized cargo terminal will be located on Hutchinson Island, on the northern border of the Savannah River, directly across from the existing Ocean Terminal.¹¹ A significant portion of the Proposed Project site is currently undeveloped, but much of the island supports “highly disturbed and industrial land use[s].”¹² Of the 503 acres surveyed for the project, 299 acres are upland, 127 acres are salt marsh, 40.8 acres are intertidal or subtidal water bottoms, and 36.2 acres are freshwater wetlands.¹³ The project site contains various aquatic habitats, including estuarine waters, freshwater marsh, freshwater forested wetlands, and mixed hardwood uplands.¹⁴ As discussed further below, this major development project will have serious implications for these important natural resources, and the Corps must fully assess these impacts before approving the project.

B. It is vital that the natural and human environments surrounding the Proposed Project are protected from its adverse impacts.

The proposed Savannah Container Terminal would bring a new containerized cargo terminal to Hutchinson Island to allow for increased shipping activity at the Port of Savannah.¹⁵ If approved, this development project will have a range of negative environmental impacts on the areas surrounding the terminal, as discussed in greater detail below. It is important to understand the environmental and cultural significance of the spaces surrounding the terminal to fully evaluate the costs of this development project.

⁴ *Id.* at 7.

⁵ *Id.*

⁶ *Id.* at 7–8.

⁷ *Id.* at 10.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1–2.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.* at 3–5.

¹⁵ *Id.* at 1.

Founded in 1733, Savannah was established by the English crown and became Georgia's first city.¹⁶ The City of Savannah is known as "America's first planned city" because General James Oglethorpe mapped out the city in a series of grids, with 24 public squares providing green spaces and places of business for the settlers.¹⁷ The city's deep history spans centuries, and it has continued to evolve through the Revolutionary War, Civil War, Reconstruction Era, and Great Depression into modern day.¹⁸ Formerly enslaved African Americans cultivated the Gullah Geechee culture in coastal Georgia and South Carolina, and this cultural legacy persists in and around Savannah today.¹⁹ Savannah now serves as a metropolitan destination, rich in history and bustling with tourism. Its Historic District has been recognized as a National Historic Landmark since 1966, and it is "one of the largest historic landmarks in the country."²⁰

Savannah's historic charm attracts more than 14 million visitors each year, and its \$3 billion tourism industry generates significant economic benefits for the city and the region.²¹ However, the National Park Service announced in 2018 that years of commercial growth and development has eroded the value of Savannah's Historic District.²² The Park Service made a similar announcement in 2002, when a proposed bus terminal threatened to damage the character of the national landmark.²³ With the continued expansion of the Savannah Harbor, and related development projects both in the harbor and further inland, the city's Historic District once again faces a threat to its integrity. The Historic District is located just southeast of the Proposed Project, on the opposite bank of the Savannah River. Increased industrial development and shipping activity near Hutchinson Island will alter the overall character of the area and may have detrimental effects on quality of life and tourism.

On the opposite side of the Proposed Project, to the northwest of Hutchinson Island, lies the Savannah National Wildlife Refuge, which was established in 1927 and remains a key sanctuary for migratory birds.²⁴ The refuge comprises over 30,000 acres of tidal freshwater marsh, bottomland hardwood forest, and other important wildlife habitat.²⁵ Countless species call the refuge home, including migratory birds and butterflies, wintering waterfowl, alligators, bald eagles, river otters, fiddler crabs, and striped bass.²⁶ The refuge is also home to various threatened and endangered species, including the shortnose sturgeon, wood stork, and manatee.²⁷ In addition to its value as a nesting habitat, the refuge serves as an important site for tourism and

¹⁶ *History of Savannah*, VISIT SAVANNAH, <https://visitsavannah.com/article/history-savannah> (last visited Nov. 17, 2023).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* See also *The Gullah Geechee Cultural Heritage Center*, GA. S. UNIV., <https://academics.georgiasouthern.edu/the-gullah-geechee> (last visited Nov. 17, 2023).

²⁰ *History of Savannah*, *supra* note 16.

²¹ *Modernization Creating Threat to Savannah's Tourist District*, STATESBORO HERALD (Sept. 1, 2018, 8:57 PM), <https://www.statesboroherald.com/local/modernization-creating-threat-savannahs-tourist-district>.

²² *Id.*

²³ *Id.*

²⁴ *Savannah National Wildlife Refuge*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/refuge/savannah/about-us> (last visited Nov. 17, 2023).

²⁵ *Id.*

²⁶ *Id.*

²⁷ SAVANNAH NWR MAP AND TRAIL GUIDE, U.S. FISH & WILDLIFE SERV. (2018), <http://npshistory.com/brochures/nwr/savannah-coastal-hiking-2019.pdf>.

environmental education.²⁸ Just a few miles away from Hutchinson Island and the Proposed Project site, the Savannah National Wildlife Refuge faces the risk of environmental degradation related to the terminal project.

The Savannah River borders the southern portion of the Proposed Project, and its rich biodiversity has been described as “rivaling that of a South American rain forest.”²⁹ This biodiversity provides numerous benefits to both the species that inhabit the river basin and to human health and well-being throughout the region.³⁰ The Savannah River Basin supports over 75 species of rare plants and animals, 5 federally-listed threatened species, and 13 endangered species.³¹ The river basin is home to over 100 species of fish, including the federally-listed endangered shortnose sturgeon.³² Near the mouth of the Savannah River, in the shallow coastal waters of the Atlantic, are the calving grounds for the North Atlantic right whale, Georgia’s state marine mammal and a critically endangered species.³³ Right whales are especially vulnerable to vessel strikes,³⁴ which will likely increase as more and larger ships enter and leave Savannah.

Between the Savannah Historic District, the Savannah National Wildlife Refuge, and the Savannah River Basin, the area surrounding the Proposed Project contains countless cultural and natural treasures and must be protected. The proposed Savannah Container Terminal poses a grave risk to the integrity of these resources, and the Corps must fully analyze the costs associated with the project before allowing it to move forward.

II. Legal Analysis

Before the Corps can authorize the Georgia Ports Authority to construct the Proposed Project under Section 404 of the CWA, the Corps must analyze the impacts of the project not only under that Act but also under other federal statutes such as NEPA and the ESA. If during this analysis, GPA cannot demonstrate that the Proposed Project complies with these federal statutes, the Corps cannot issue a permit for the Project.

Many of the requirements contained in these federal statutes are similar, and in many cases, overlap. Since NEPA is the most comprehensive, we offer comment on that statute first and then progress to the CWA and finally to the ESA.

²⁸ *Id.*

²⁹ *Savannah River*, GA. RIVER NETWORK, <https://garivers.org/savannah-river> (last visited Nov. 17, 2023).

³⁰ See Danielle Buttke et al., *Benefits of Biodiversity to Human Health and Well-Being*, NAT’L PARK SERV., https://www.nps.gov/articles/parksciencev31-n1_buttke_etal-hm.htm (last visited Nov. 17, 2023).

³¹ *Savannah River*, *supra* note 29.

³² *Id.*

³³ *North Atlantic Right Whale*, NAT’L OCEANIC & ATMOSPHERIC ASS’N, <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale> (last visited Nov. 17, 2012); *The North Atlantic Right Whale*, GA. CONSERVANCY, <https://www.georgiaconservancy.org/coast/right-whale> (last visited Nov. 17, 2023).

³⁴ *The North Atlantic Right Whale*, *supra* note 33.

A. The Corps must prepare an Environmental Impact Statement under the National Environmental Policy Act before authorizing the Proposed Project.

NEPA is the nation's keystone environmental law, passed by Congress to "encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man."³⁵ NEPA has two primary aims: "First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process."³⁶

NEPA is "designed to prevent agencies from acting on incomplete information and to 'ensure that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.'"³⁷ To this end, NEPA obligates the Corps to prepare an Environmental Impact Statement (EIS) if "any significant environmental impacts *might* result" from the issuance of a permit.³⁸

When evaluating whether any significant environmental impacts might result, the agency should consider "the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act."³⁹ In so doing, the agency should assess: "(i) both short- and long-term effects; (ii) both beneficial and adverse effects; (iii) effects on public health and safety; and (iv) effects that would violate Federal, State, Tribal, or local law protecting the environment."⁴⁰

The following sections clearly demonstrate that the proposed project is likely to result in significant environmental impacts to water quality, wildlife, and other resources. Therefore, an EIS is warranted. Without conducting an EIS, the Corps would not have the data to meaningfully evaluate the cumulative impacts of this project—such as induced development and truck traffic related to the port expansion—which are discussed in greater detail below.

1. The Corps must require GPA to adopt an acceptable statement of purpose and need.

As part of its NEPA analysis and CWA analysis, the Corps must specify the underlying "purpose and need" for the proposed action.⁴¹ The framing of the project's "purpose and need" is

³⁵ 42 U.S.C. § 4321.

³⁶ *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council (NRDC), Inc.*, 462 U.S. 87, 97 (1983) (internal citations and quotations omitted).

³⁷ *Sierra Club v. U.S. Army Corps of Eng'rs*, 295 F.3d 1209, 1214 (11th Cir. 2002) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)) (internal quotation marks omitted).

³⁸ *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (first emphasis in original); 42 U.S.C. § 4332(2)(C).

³⁹ 40 U.S.C. § 1501.3(b)(1).

⁴⁰ *Id.*

⁴¹ 40 C.F.R. § 1502.13.

crucial because it provides a context which defines the range of “reasonable alternatives” that must be evaluated under NEPA.⁴²

The Corps may not uncritically accept the project proponents’ stated need for the Project. Rather, the agency must independently assess forecasted growth in the demand for containerized cargo within the region and whether likely shipping demand can be reasonably accommodated at existing regional ports, including, but not limited to, Charleston, Wilmington, and Jacksonville. The Corps should project containerized cargo traffic in the region using detailed data regarding throughput at individual ports, regional manufacturing capacity and output, and other detailed economic data.

The Corps must also critically analyze and document any assumptions regarding: (1) future capacity upgrades at existing regional port facilities; (2) overall trends in global trade; (3) projected changes to U.S. trade policy, including new import tariffs or changes to existing trade agreements that may affect trade volume; (4) projected regional trends in manufacturing capacity; (5) projected regional trends in population growth; and (6) any other factors that may influence the regional demand for containerized cargo.

Only by thoroughly analyzing all these factors can the Corps determine the need for the proposed new port facilities, which represent a significant expansion of total regional shipping capacity. If projected demand cannot be reasonably accommodated by existing facilities, the Corps must consider how much additional capacity is needed to meet demand and to what extent that capacity can be provided by alternatives to the proposal, such as upgrades to existing regional port facilities.

Below are specific questions pertaining to the purpose and need of the Proposed Project, which serve to supplement the issues raised throughout the body of this letter.

- According to information in the public notice, GPA will move approximately 6 million TEUs through Savannah Harbor in 2023. For the past 20 years GPA has maintained a 7.3% TEU compound annual growth rate and expects to maintain an approximate 6% TEU annual growth rate into the future. Ongoing improvements at Ocean and Garden City Terminals will accommodate a 9 million TEU throughput and meet GPA’s shipping needs through 2030. GPA will approach 11.7 million TEU’s in 2034 and expects to exceed current existing terminal capacity in 2035. GPA’s stated project purpose is to build a new container terminal serving the Port of Savannah that can accommodate projected throughput growth for containerized cargo from 2030 to 2035. GPA also states that their overall Savannah Harbor operational strategy is to maintain a minimum 20% excess TEU capacity. It appears that the proposed terminal is not necessarily needed to meet projected demand, but rather for GPA to maintain a 20% excess TEU capacity. What is a reasonable or industry standard excess TEU capacity, if any?
- According to GPA, by 2035 there will be an almost 100% increase in TEUs passing through Savannah Harbor (6 million TEUs in 2023 up to 11.7 million in 2034). Can the number of Post-Panamax vessels required to deliver nearly 12 million TEUs physically

⁴² *City of Carmel-by-the-Sea v. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1995) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 192 (D.C. Cir. 1991)).

enter, offload, and leave Savannah Harbor at the current authorized federal channel depth of 47 feet MLLW?

- Would a 50-foot MLLW depth channel and larger vessels (e.g., Neo-Panamax) be required in order for the SCT, Ocean Terminal, and Garden City Terminal to accommodate 12 million TEUs? If yes, could the Corps evaluate this proposal and/or authorize the proposed SCT based on a speculative harbor depth and vessel size?
- Is the Corps currently maintaining a 47-foot MLLW federal channel depth in Savannah Harbor, authorized by the Savannah Harbor Expansion Project (SHEP)? Will the Corps be able to adequately maintain a 47-foot MLLW federal channel in Savannah Harbor, necessary to accommodate vessels that would call on the SCT?
- GPA states that the capacity of the proposed berthing facility closely matches the capacity of the adjacent proposed yard. What is the maximum TEU throughput of the three proposed berth facilities? What is the maximum TEU capacity of the yard, as proposed? Would a larger yard be required to fully accommodate the maximum three-berth TEU throughput capacity?

2. The Corps must ensure that GPA conducts a complete alternatives analysis under NEPA.

NEPA requires federal agencies to “study, develop, and describe appropriate alternatives” to the agency’s proposed course of action.⁴³ The purpose of an agency’s alternatives analysis is to provide a full and complete picture of the environmental impacts of the agency’s proposed action and to determine whether there are “other options [the agency] could take that might be *less damaging* to the natural environment.”⁴⁴ An agency must consider a range of alternatives “sufficient to permit a reasoned choice.”⁴⁵ “Only alternatives that accomplish the purposes of the proposed action are considered reasonable, and only reasonable alternatives require detailed study. So how the agency defines the purpose of the proposed action sets the contours for its of available alternatives.”⁴⁶

The agency’s review of alternatives should “serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.”⁴⁷ The alternatives analysis is “the linchpin of the entire impact statement,” and it is “absolutely essential to the NEPA process that the decisionmaker be provided with a detailed and careful analysis of the relative environmental merits and demerits of the proposed action and possible alternatives.”⁴⁸

⁴³ 42 U.S.C. § 4332(E); *see also id.* § 4332(C)(iii) (requiring a “detailed statement on . . . alternatives to the proposed action”).

⁴⁴ *Soda Mountain Wilderness Council v. Norton*, 424 F. Supp. 2d 1241, 1263 (E.D. Cal. 2006) (emphasis added) (citing *Headwaters, Inc. v. Bureau of Land Mgmt.*, 914 F.2d 1174, 1180 (9th Cir. 1990)).

⁴⁵ *Nat. Res. Def. Council v. Morton*, 458 F.2d 827, 836 (D.C. Cir. 1972); *see also W. Watershed Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (applying reasonableness standard to EA alternatives analysis).

⁴⁶ *Webster v. U.S. Dep’t of Agric.*, 685 F.3d 411, 22 (4th Cir. 2012) (citations omitted).

⁴⁷ 40 C.F.R. § 1502.2(g).

⁴⁸ *NRDC v. Callaway*, 524 F.2d 79, 92 (2d Cir. 1975).

The alternatives analysis performed by the Corps is lacking because it does not consider whether the projected demand for berthing space could be satisfied at other existing port facilities in the region. Also, the analysis does not include any meaningful discussion of the Jasper Ocean Terminal (JOT) Site. The Corps dismisses the JOT site as not feasible because it would not be “for sole use by the GPA.”⁴⁹ Yet in 2007, the governors of both South Carolina and Georgia entered into a bi-state agreement that purported to facilitate the sale of the port site and allow the “two ports authorities to form and fund a joint project” for a new port.⁵⁰ If there is in fact an existing agreement between the Charleston and Georgia ports authorities to construct a new port at the JOT site, then the Corps must explain why such a joint effort is not feasible.

3. The Corps must evaluate all direct and indirect impacts of the Proposed Project on the abundant coastal resources of the region.

Direct impacts are those that “are caused by the action and occur at the same time and place.”⁵¹ Indirect impacts “are caused by the action and are later in time or farther removed in distance, but still reasonably foreseeable.”⁵² The direct and indirect impacts of expanding the Savannah Harbor must be fully assessed in the EIS, particularly with respect to the disruption of the coastal and estuarine ecosystem and the coastal economies that rely on these natural resources. Without conducting an EIS, the Corps would have little insight into the many direct and indirect impacts of the project discussed below. Without an EIS, Chatham County residents would be unaware of the many ways in which the Proposed Project could directly impact their lives, through increased truck traffic, air and noise pollution, water quality impacts, and more.

In the following sections, we provide comments on the direct and indirect impacts of the Proposed Project, which could only be meaningfully measured through an EIS. After many of these comments we ask specific questions to put a further point on the information we are seeking. These questions supplement our comments and do not represent the full extent of issues to be addressed by the Corps.

Induced Development

The Corps must evaluate the impact of induced development resulting from the Proposed Project. Development along the Georgia coast has surged in recent years, primarily driven by increased shipping activity at the Port of Savannah. Savannah’s port has seen record-breaking shipping activity over the last few years in response to the expansion of the Panama Canal and the COVID-19 pandemic.⁵³ The Port of Savannah already ranks as the second busiest port on the

⁴⁹ Public Notice at 14.

⁵⁰ *Georgia, South Carolina Agreement Moves Jasper Port Closer to Reality*, SAVANNAH MORNING NEWS (Nov. 10, 2007), <https://www.savannahnow.com/story/news/2007/11/10/georgia-south-carolina-agreement-moves-jasper-port-closer-reality/13781304007>.

⁵¹ 40 C.F.R. § 1508.8(a).

⁵² *Id.* § 1508.8(b).

⁵³ J. Scott Trubey, *Georgia Ports to Expand Savannah’s Ocean Terminal for More Containers*, ATLANTA J.-CONST. (Dec. 5, 2022), <https://www.ajc.com/news/georgia-ports-to-expand-savannahs-ocean-terminal-for-more-containers/CW4QC4PE4ZBK5B25QJQGVS3JPM>; Benjamin Payne, *‘The Perfect Time to Double Down’: What the Port of Savannah’s Expansion Means for Georgia’s Economy*, GA. PUB. BROAD. NEWS (Mar. 1, 2023, 10:30 AM), <https://www.gpb.org/news/2023/03/01/the-perfect-time-double-down-what-the-port-of-savannahs-expansion-means-for>.

East Coast,⁵⁴ and it is currently undergoing an expansion project set to increase its annual container capacity by 50 percent over the next two years.⁵⁵

The heightened investment in the Savannah port has already triggered a parallel surge in the development of warehouses and distribution centers near the port.⁵⁶ As of February 2023, over 11 million square feet of speculative development was underway in the Savannah area, with many more facilities in the planning stage.⁵⁷ Despite a recent slowdown in shipping demand, developers continue to break ground on new warehousing facilities, even before identifying tenants to fill the space.⁵⁸ Due to warehouse development, an estimated 800 acres of wetlands have been filled in Chatham, Bryan, and Effingham counties alone since January 2020.⁵⁹

This unprecedented development has overwhelmed coastal Georgia municipalities, prompting several to implement moratoriums on industrial rezoning and development applications, concerned about their capacity to support rapid industrialization.⁶⁰ Local residents and experts are also concerned about the environmental consequences of this development boom, such as increased flooding and compromised water quality.⁶¹ Rural communities are being overrun with construction, which is dramatically changing the character of the region. Truck traffic is clogging the highways in and around these warehouses, adding additional frustration to those living in the communities located near this rampant development. The Proposed Project will only exacerbate this worsening problem. Thus, the EIS must carefully consider how and where the Proposed Project might induce growth throughout the region, including the resulting impacts to communities and natural resources.

- In the applications for warehouse facilities, most applicants state that their proposed warehouse must be located within 50 miles of the Savannah Harbor. How many warehouses has the Corps permitted within this 50-mile radius around the Savannah Harbor over the last two decades?
- How many acres of wetlands and linear feet of streams have been filled to accommodate the construction of these warehouses?

⁵⁴ Payne, *supra* note 53.

⁵⁵ *Savannah, Atlanta Industrial Markets Booming*, GA. PORTS (Feb. 22, 2023), <https://gaports.com/blog/savannah-atlanta-industrial-markets-booming>.

⁵⁶ *Savannah, Atlanta Industrial Markets Booming*, *supra* note 55.

⁵⁷ *Id.*

⁵⁸ Kailey Cota, 'Tidal Wave' of New Warehouses Pushes Residents Out, Changes Coastal Landscape, CURRENT (Aug. 28, 2023), <https://thecurrentga.org/2023/08/28/tidal-wave-of-new-warehouses-pushes-residents-out-changes-coastal-landscape>.

⁵⁹ John Deem, *Warehouse Boom Threatens Coastal Georgia Communities, Environmental Groups Say*, SAVANNAH MORNING NEWS (Nov. 6, 2023, 9:00 AM), <https://www.savannahnow.com/story/news/environment/2023/11/06/environmental-maps-show-how-warehouse-development-impacts-coastal-georgia/71471422007>.

⁶⁰ Nancy Guan, *Industrial Moratoriums in Chatham County Expire Soon. What Have These Cities Accomplished?*, SAVANNAH MORNING NEWS (Jan. 12, 2023, 5:03 AM), <https://www.savannahnow.com/story/news/2023/01/12/industrial-moratoriums-to-expire-in-west-chatham-ga-cities-whats-next/69796683007>.

⁶¹ Cota, *supra* note 58.

- How many additional warehouses will have to be constructed to warehouse the goods that would be shipped as a result of each phase of the Proposed Project?
- When the Corps permits the filling of wetlands on a warehouse site, does it consider in its cumulative impact analysis under NEPA any of the wetlands that were filled on other warehouse sites in the region?

General Water Quality Impacts

In addition to contamination and sedimentation from dredge material disposal, the activity of dredging itself can negatively impact water quality by stirring up sediments and toxic materials that may be found on the bottom of the river. Sediments underlying the Savannah River are known to contain high levels of cadmium and other contaminants. The Corps must consider the impacts associated with disturbing these sediments through dredging activities, as well as the safe disposal of all dredged material.

Since Hutchinson Island was constructed of dredged material removed from the Savannah Harbor, it is a safe assumption that the material that will be dredged to construct the berths will contain toxic contaminants. The Corps must analyze the materials excavated and dredged to determine whether they can be disposed of safely.

The construction of the three berths may alter the horizontal and vertical salinity profiles of the river. Such changes in the aquatic chemistry of the region can imperil wildlife and fisheries⁶² and must be studied carefully in the EIS. Moreover, the Corps must comprehensively evaluate anticipated impacts to wetlands in the vicinity of the Port, whether they are considered jurisdictional or not.

The Corps should also assess the water quality impacts associated with increased vessel traffic, including wastewater discharges and the potential introduction of invasive species from ballast water discharges.

- How will the Corps go about considering cadmium and other contamination in the material dredged during the construction of the Proposed Project?
- Will the Corps evaluate any possible changes in the horizontal and vertical salinity profiles that could result from the Proposed Project?

Dissolved Oxygen Levels

The stretch of the Savannah River through the harbor and into the estuary currently fails to meet Georgia's water quality standards for dissolved oxygen (DO). The Corps should take a hard look at whether the Proposed Project, including associated dredging activities, may exacerbate the dissolved oxygen problem.

⁶² Thomas R. Reinert & James T. Peterson, *Modeling the Effects of Potential Salinity Shifts on the Recovery of Striped Bass in the Savannah River Estuary, Georgia-South Carolina, United States*, ENV'T MGMT. (Feb. 22, 2008).

As part of the Savannah Harbor Expansion Proposed Project, because it was anticipated that the deepening would cause dissolved oxygen levels to decrease significantly within the Harbor, Speece cones had to be used to mitigate these impacts by injecting dissolved oxygen into the water column. Whether this approach will raise the levels of dissolved oxygen sufficiently over the long term remains an open question.

The Proposed Project is located in the portion of the harbor that is most prone to low dissolved oxygen levels. As the Corps explained in the Final Environmental Impact Statement for SHEP, “This condition [low levels of dissolved oxygen] is accentuated at the upper end of the navigation channel, where summer dissolved oxygen levels are generally low in the Front River between the Houlihan Bridge (Mile 21.5) and the junction with Back River (Mile 11.2).”⁶³ The Corps went on to report that “Model predictions from the SHEP studies indicate that further deepening will have *additional impacts on the dissolved oxygen regime in Savannah Harbor.*”⁶⁴ Under the proposed project, GPA would be authorized to dredge the berths to -50 feet MLLW, even deeper than the Federal Navigation Channel. Before the Corps authorizes the construction of the berths, it must ensure that their construction will not further exacerbate the dissolved oxygen deficits in the Harbor.

- How much does the Corps anticipate the Proposed Project will contribute to the dissolved oxygen deficits in the Savannah Harbor?
- If the construction of the berths does lower the dissolved oxygen to unacceptable levels, how will these impacts be mitigated?

Stormwater Runoff

The Corps should consider the impacts of stormwater runoff from the Proposed Project site, associated new railway and roadway infrastructure, and areas of likely induced development. The Corps should pay particular attention to the potential for runoff from dredge disposal areas that likely contain high levels of cadmium and other contaminants.

- What is the total amount of impervious surface that will be constructed as part of the Proposed Project?
- How does GPA intend to limit these impervious surfaces?
- Does GPA intend to use any green infrastructure, such as permeable pavers, to mitigate the adverse impacts associated with the Proposed Project’s impervious surfaces?

⁶³ U.S. ARMY CORPS OF ENG’RS, FINAL ENVIRONMENTAL IMPACT STATEMENT FOR SAVANNAH HARBOR EXPANSION PROJECT, at 5-42 (2012) [hereinafter SHEP FEIS].

⁶⁴ *Id.* (emphasis added).

Flooding

The Proposed Project site is located in a FEMA-Designated Community Disaster Resilience Zone, meaning this area has been designated as one of the “most at-risk and in-need communities.”⁶⁵ This area of Hutchinson Island received this federal designation because it scored within the top 50 nationally or within the top one percent of the state for its National Risk Index, and because the White House Climate & Economic Justice Screening Tool identifies this area as disadvantaged.⁶⁶ According to FEMA, Community Disaster Resilience Zones “will be prioritized for targeted federal support, such as increased cost-share for resilience and mitigation projects, lessening the financial burden on communities to perform resilience-related activities.”⁶⁷ The proposed container terminal will exacerbate existing flood risk and inequities and runs contrary to the federal policy to protect this area and the people who live there.

Given that the proposed project’s king pile wall will harden almost a mile of shoreline upstream and across the river from River Street in downtown Savannah, the Proposed Project has the potential to cause additional flooding on River Street and in other locations down river. The EIS should consider the added potential of increased flood hazards resulting from the Proposed Project, which has been observed after other harbor expansion proposed projects.⁶⁸ Moreover, storms are becoming more intense as a result of climate change, as warmer air can hold more moisture and add more fuel to storm systems.⁶⁹ Storm surge and rainfall become even more damaging when added to rising sea levels. This evaluation should take into account proposed projections of these impacts over the next 100 years, including an assessment of potential flooding in areas likely to be developed in response to the Proposed Project.

The Corps’ evaluation should also account for how loss of both jurisdictional and non-jurisdictional wetlands from the Proposed Project would affect the flooding and storm surge vulnerability of surrounding communities. Wetlands provide many valuable services to the ecosystem and surrounding communities in the form of floodwater storage, flow control, and water purification, and other benefits.⁷⁰ Maintaining existing wetlands so that they continue to provide natural flood storage and storm buffering helps minimize the need for costly flood control and armoring proposed projects in the future.

- Has GPA informed FEMA of the Proposed Project?
- What measures has GPA proposed to address the flooding impacts of the Proposed Project?

⁶⁵ *Community Disaster Resilience Zones*, FED. EMERGENCY MGMT. AGENCY, <https://experience.arcgis.com/experience/3fd0639ba0403e9414d05654449d32/page/Home> (last visited Nov. 22, 2023).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Jim Morrison, *As Port Cities Dredge Deeper to Accommodate Growing Cargo Ships, the Risk of Inland Flooding May Rise*, SMITHSONIAN MAG. (Nov. 30, 2018), <https://www.smithsonianmag.com/science-nature/port-cities-dredge-deeper-accomodate-cargo-ships-risk-flooding-rise-180970928/>.

⁶⁹ D.R. Easterling et al., *Precipitation Change in the United States*, CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT 207–30 (Donald J. Wuebbles et al. eds., 2017).

⁷⁰ William J. Mitsch et al., *Ecosystem Services of Wetlands*, INT’L J. BIODIVERSITY SCI., ECOSYSTEM SERV. & MGMT. (Feb. 16, 2015).

- Has GPA proposed using any nature-based techniques to minimize or mitigate the flooding impacts of the Proposed Project?
- How many acres of non-jurisdictional wetlands will be filled or adversely affected by the Proposed Project?
- During Phase 1 of the Proposed Project, GPA intends to remove the shoreline along the entire site and install the king pile wall. Considering that there is no guarantee that Phases 2 and 3 of the Proposed Project will ever be constructed, why is it necessary to destroy the waterfront along all three phases of the Proposed Project in the initial phase of the Project?

Marsh Migration

The EIS should also consider impacts to tidal marshes, which serve important ecosystem functions within the Savannah River estuary. Tidal marshes protect communities in the form of flood storage and wave buffering,⁷¹ and they also provide wildlife habitat, fish nurseries, water purification, erosion control, food supply, and carbon storage.⁷² The future of marshes and the ecosystem services they provide are at risk as sea levels continue to rise, as the plants in this habitat have adapted to live at very specific water levels and can drown in higher water. In the absence of bulkheads, these marsh systems are able to migrate to higher ground as seas rise.⁷³ Shoreline armoring associated with the Proposed Project would prevent any marsh from getting a foothold on the shoreline where the king pile wall is installed. Also, activities on the back side of the Proposed Project, to include shoreline armoring, could prevent marsh grasses from advancing up that shoreline as sea levels rise. These impacts should be considered in the EIS.

- What measures will GPA take to allow marsh migration to occur?
- Compared to other berths within the Savannah Harbor, the storage area behind the proposed berths appears to be extremely limited. Will the Corps require GPA to place a conservation easement on the marsh behind the planned storage area so that it is preserved in perpetuity and not filled to expand the storage area in the future?

⁷¹ Katie K. Arkema et al., *Coastal Habitats Shield People and Property from Sea-Level Rise and Storms*, NATURE CLIMATE CHANGE (Jul. 14, 2013); see also Christine C. Shepard et al., *The Protective Role of Coastal Marshes: A Systematic Review and Meta-Analysis*, PLOS ONE (Nov. 23, 2011).

⁷² Denise Sanger & Catharine Parker, *Guide to the Salt Marshes and Tidal Creeks of the Southeastern United States*, S.C. DEP'T OF NAT. RES. (2016).

⁷³ Marshes naturally respond to rising seas by gradually migrating inland along with the water. As sea levels rise, tidal waters reach further into formerly dry land, creating new habitat space for marsh grass. Through a process of plant colonization, the marsh grasses send out new shoots from their roots and shift into the new tidal area. As the marsh grasses and other plants shift, the lowest lying patches of marsh grass become open water. Evidence of marsh migration can already be observed up and down the coast along natural shorelines. See Lindsey Smart, *Unraveling Mysteries of Ghost Forests*, N.C. SEA GRANT, <https://ncseagrant.ncsu.edu/coastwatch/previous-issues/2017-2/holiday-2017/unraveling-mysteries-of-ghost-forests/> (last visited Oct. 10, 2019).

Navigation

If all three phases of the Proposed Project are completed, three Neo-Panamax vessels will be able to berth simultaneously. The Corps must evaluate whether such an occurrence is even possible in light of the fact that the Savannah Harbor is already congested with ships traveling to the existing berths, commercial barge traffic is using the harbor, recreational boats are using the Intracoastal Waterway, the depth of the Federal Navigation Channel is limited to -47 feet MLLW, the height of the Talmadge Bridge is set, and LNG ships will be using the Elba Island terminal. If GPA cannot demonstrate that the Savannah Harbor under its current restrictions could handle three ships berthing at the Proposed Project simultaneously, then the Corps should not permit all three phases of the Project.

- Is the Corps aware of any other GPA or private port projects that will further inhibit the navigation of the Savannah Harbor?
- It is our understanding that GPA intends to seek authorization to deepen and widen the Savannah Harbor again. How will the widening of the Federal Navigation Channel impact the Proposed Project?
- If the Savannah Harbor is not deepened or widened and the Talmadge Bridge is not raised, will the Proposed Project achieve the usage projections contained in the Project Description?
- In the Public Notice it says that “[t]he maintained depth of -50 feet MLLW was designed to accommodate the design draft of 14K TEU vessels (+/- 48) and would allow these (and larger) vessels to access the berths at all tidal stages.”⁷⁴ Since the authorized depth of the Federal Navigation Channel is -47 feet MLLW, how will the larger ships be able to access the berths at all tidal stages unless the Federal Navigation Channel is deepened further? If these ships would be able to access the proposed berths at all tidal stages at the current depth of the Federal Navigation Channel, why do the berths have to be deepened to -50 feet MLLW?
- Since the berths will be dredged to a depth three feet below the Federal Navigation Channel, how often will they have to be dredged to prevent shoaling within the berths?

⁷⁴ Public Notice at 2.

Saltwater Intrusion

Deepening estuaries causes saltwater from the Atlantic Ocean to intrude upstream in ways that can significantly alter a waterbody's natural interface of saltwater and freshwater. Saltwater intrusion can result in many serious problems, including contamination of surface and groundwater supplies. In the FEIS for SHEP, the Corps describes concerns that the harbor deepening would cause unacceptable chloride levels at the city of Savannah's drinking water intake on Abercorn Creek.⁷⁵ The EIS should discuss how those concerns were addressed and whether the Proposed Project could have any impact on those chloride levels.

Another concern of saltwater intrusion is freshwater wetlands located upriver from the Proposed Project, such as those in the Savannah National Wildlife Refuge, will suffer from higher chloride levels. Over time, plants that are adapted to live in freshwater conditions may no longer be able to survive when the water becomes saltier. The EIS should discuss the potential impact of the Proposed Project on the Savannah National Wildlife Refuge.

The SHEP FEIS also includes a discussion concerning the risk of saltwater intruding into the Upper Floridan aquifer due to harbor deepening projects. Since the berth will be deepened to -50 MLLW for the Proposed Project, three feet deeper than the current depth of the Federal Navigation Channel, the EIS should discuss the risk of saltwater intrusion due to the proposed depth of the berths and related dredging within the confining layer.

- Has GPA analyzed potential impacts of the Proposed Project on Savannah's drinking water intake?
- Has GPA analyzed potential impacts of the Proposed Project on the Floridan Aquifer?

Sea Level Rise

Rising sea levels will continue to put additional stress on the coastline, through increased erosion and higher storm surges, and this must be considered in the EIS.⁷⁶ Changes in wave action along the coast, combined with intensifying storms fueled by climate change, have led to dramatic shifts in longshore sediment transport gradients.⁷⁷ Because sea level rise is exacerbated by storm surge and rainfall, it is crucial to consider proposed projected storm surge and rainfall vulnerabilities in addition to sea level rise. Potential effects of sea level rise under scenarios that reflect low, moderate, and high rates of change should be considered.

- What sea level rise scenario will the Corps use to evaluate the Proposed Project?

⁷⁵ SHEP FEIS, *supra* note 63, at 5-59.

⁷⁶ See Stephen P. Leatherman et al., *Sea Level Rise Shown to Drive Coastal Erosion*, EARTH & SPACE SCI. NEWS (2000); Roshanka Ranasinghe et al., *Climate Change Impact Assessment for Inlet-Interrupted Coastlines*, NATURE CLIMATE CHANGE (Sep. 2, 2012).

⁷⁷ Jennifer M. Johnson et al., *Recent Shifts in Coastline Change and Shoreline Stabilization Linked to Storm Climate Change*, EARTH SURFACE PROCESSES & LANDFORMS (2015).

Protected Species and Wildlife Impacts

There are significant potential impacts from the Proposed Project on protected species and wildlife that require serious consideration under NEPA and appropriate consultation under the ESA, as discussed below.⁷⁸ First, the EIS must evaluate the Proposed Project's impacts on threatened and endangered species listed under the federal ESA, as well as species protected under Georgia state law. This evaluation should cover, at minimum, shortnose and Atlantic sturgeon, manatees, turtles, piping plovers, red knots, and the critically endangered North Atlantic right whale, including any critical habitat for these and other federally listed species within or near the Proposed Project site.

Increased ship traffic and larger ships are likely to lead to more vessel strikes of protected species and must be considered in the EIS. Globally, shipping collisions are one of the most troubling threats facing marine mammals and sea turtles. All species of marine mammal and sea turtle are vulnerable to ship strikes because they must surface regularly to breathe. Increased shipping traffic is known to be directly correlated with collisions with whales.⁷⁹ North Atlantic right whales are particularly vulnerable to ship strikes, which are one of the greatest threats to their recovery.⁸⁰

Additionally, the EIS must examine any impacts of increased erosion and shoreline hardening on nearby sea turtle and bird nesting habitats. Repeated dredging, ship traffic, and sea level rise are already contributing to the erosion and decline of these important habitats, and the EIS should take care to study the impact of deeper dredging and larger wakes from larger ships on these habitats. Moreover, sediment removal required by the Proposed Project could deprive sandbars and mudflats of sediments, degrading essential bird resting and foraging habitats that are used during the non-breeding season, including the federally listed piping plover and red knot as well as many other Arctic-nesting shorebirds whose populations are already in decline. The EIS should also include a discussion of the ways in which dredged materials from the Harbor would be used for beach nourishment or to protect or enhance nesting habitats, as well as all related monitoring data collected with respect to the use of dredged materials for these purposes.

The EIS should also evaluate the ways in which increased light pollution from the Proposed Project, all road and railway infrastructure, and induced development and associated habitat loss are likely to affect migratory birds, sea turtles, and other species.

- We understand that endangered species have experienced greater adverse impacts as a result of the Savannah Harbor Expansion Project than were anticipated when the project was approved. Please explain these adverse impacts and what was done to mitigate those impacts, as this information is directly related to the Hutchison Island terminal project and the adverse impacts it could cause to endangered species.

⁷⁸ See 16 U.S.C. § 1536 (interagency consultation requirement); 50 C.F.R. § 402.01 *et seq.*

⁷⁹ Manuel Carrillo & Fabian Ritter, *Increasing Numbers of Ship Strikes in the Canary Islands: Proposals for Immediate Action to Reduce Risk of Vessel-Whale Collisions*, J. CETACEAN RES. MGMT. (Jan. 2010).

⁸⁰ Gregory K. Silber & Shannon Bettridge, *Vessel Operations in Right Whale Protection Areas in 2009* (NOAA Tech. Memo. NMFS-OPR-44), NMFS (July 2010).

Noise Pollution

The EIS should carefully analyze the impacts of noise associated with the Proposed Project. In addition to noise from direct activities like construction (e.g., pile driving) or sediment excavation (e.g., blasting) activities, the EIS must also look at long-term, indirect noise impacts associated with increased vessel traffic (e.g., engine noise and fog horns), crane container operations, and land-based transportation (at the site, on new roads and railways, and extending onto the existing regional transportation network).

This evaluation should not only encompass impacts on the human environment but must also include impacts to fish and wildlife. Construction and dredging activities like those that may be required for the Proposed Project can introduce a considerable amount of noise into the aquatic environment. Of particular concern, for example, is the potential for sturgeon mortality from localized blasting, which may be required to break apart underground rocks.⁸¹ In addition, the sounds produced during pile driving can be intense enough to induce hearing loss in some marine mammal species⁸² and rupture swim bladders in some fish species.⁸³ Finally, shipping traffic elevates the level of ambient noise in the marine environment, which induces stress⁸⁴ and shrinks the area over which whales can effectively communicate.⁸⁵

- What measures will GPA employ to minimize the adverse noise impacts of the construction of the Proposed Project on both humans and wildlife?

Disposal of Dredge Material

Dredging the three berths and maintenance activities can directly destroy or degrade wildlife habitat via the placement of dredged spoil. The Public Notice states that this disposal would occur at a dredged material disposal site or a landfill.⁸⁶ The EIS must rigorously assess how contaminants potentially found in this dredged material may harm human health and wildlife. The EIS must also consider how dredged material can be used to create, protect, and enhance habitat, such as nesting bird habitat that would be harmed by the proposed project.

- Will the Proposed Project use any of the materials excavated or dredged for beneficial purposes?

Air Quality Impacts

The EIS must carefully examine impacts to air quality from the Proposed Project, particularly how the dredging and construction would impact the type and number of ships

⁸¹ See *Harbor Deepening: Potential Habitat and Natural Resources Issues*, ATL. ST. MARINE FISHERIES COMM'N (Feb. 2013).

⁸² Helen Bailey et al., *Assessing Underwater Noise Levels During Pile-Driving at an Offshore Windfarm and Its Potential Effects on Marine Mammals*, MARINE POLLUTION BULL. (June 2010).

⁸³ Brandon M. Casper et al., *Recovery of Barotrauma Injuries Resulting from Exposure to Pile Driving Sound in Two Sizes of Hybrid Striped Bass*, PLOS ONE (Sept. 11, 2013).

⁸⁴ Rosalind M. Rolland et al., *Evidence that Ship Noise Increases Stress in Right Whales*, PROC. ROYAL SOC'Y B (Feb. 8, 2012).

⁸⁵ Christopher W. Clark et al., *Acoustic Masking in Marine Ecosystems: Intuitions, Analysis, and Implication*, MARINE ECOLOGY PROGRESS SERIES (Dec. 3, 2009).

⁸⁶ Public Notice at 2.

visiting Savannah Harbor, and how the nature of this new shipping traffic would impact air quality. Marine shipping operations constitute a major source of harmful air pollutants. Ocean-going vessels, land-side equipment, and secondary emissions from port development have significant impacts to air quality.⁸⁷

Emissions of greatest concern include nitrogen oxides (NO_x), particulate matter (PM), sulfur oxide (SO_x), carbon monoxide (CO), hydrocarbons, and diesel exhaust.⁸⁸ The U.S. Environmental Protection Agency has recognized that impacts of port-related air pollution extend beyond local communities to “contribute significantly to regional air pollution.”⁸⁹ In addition, the EIS must also examine how increased truck trips would contribute to air quality problems in the region. Specifically, we recommend that additional truck emissions and congestion be evaluated for the entire port.

The EIS should assess the proposed project’s impacts to the region’s status under the Clean Air Act, 42 U.S.C. § 7401 *et seq.* The EIS should analyze and disclose whether the proposed project would push impacted areas into non-attainment or maintenance status and what the proposed project’s incremental impacts on compliance, or lack thereof, with applicable National Ambient Air Quality Standards will be.

In addition, the Corps must evaluate the public health impacts of declining air quality associated with the Proposed Project. This must include detailed dispersion modeling to accurately assess impacts to local communities and to account for the fact that those nearest the source face the greatest threat from exposure to air pollutants. Given the wide and growing recognition of the significant harm port-generated air pollution can do to human health, the Corps should include a risk-based health impact study.

Finally, global trade is a major contributor to greenhouse gas (GHG) emissions. The EIS should take a hard look at the Proposed Project’s resulting increase in energy use and GHG emissions from transportation to and from the port, including evaluating how the Proposed Project could impact land-based vehicle miles traveled and corresponding GHG emissions. The Corps must also consider the energy use and emissions from regional development induced by the Proposed Project.

- How has the air quality in the area surrounding the Savannah Harbor changed since SHEP?
- Will the Corps require GPA to demonstrate that the air quality in the Savannah Area will not worsen as a result of the Proposed Project?

⁸⁷ See John Bishop et al., *EPA Needs to Improve Its Efforts to Reduce Air Emissions at U.S. Ports* (Report No. 09-P-0125), U.S. ENV’T. PROT. AGENCY (Mar. 23, 2009) (explaining that air pollution from port activities “impact[s] communities surrounding port areas” and has “significant environmental and human health impacts, such as cancer and asthma”).

⁸⁸ *Id.* at 2.

⁸⁹ *Id.* at 2–3; see also Daniel Lack et al., *Light Absorbing Carbon Emissions from Commercial Shipping*, GEOPHYSICAL RES. LETTERS (Jul. 2008) (finding that commercial shipping considerably impacts air quality and human health on “local and regional scales”).

Socioeconomic and Environmental Justice Impacts

Under NEPA, the federal agency must consider the “human environment,” “interpreted comprehensively” to include “the natural and physical environment and the relationship of people with that environment.”⁹⁰ In this analysis, agencies need to assess “aesthetic, historic, cultural, economic, social, or health” effects, “whether direct, indirect, or cumulative.”⁹¹

There are many public health and safety concerns associated with the Proposed Project that should be evaluated in the EIS. These include the increased risk of cancer and respiratory disease related to increased air pollution, the risk of additional injuries associated with increased traffic, and emergency response delays caused by such congestion.

The EIS should also assess impacts on recreational activities, with particular focus on water-borne recreation, including boating, fishing, oyster harvesting, shrimping, and bird-watching. These activities face a significant risk of impairment from increased container vessel traffic, particularly in light of the increased size of the larger vessels that would enter the harbor. There are further public safety risks associated with conflicts between passing ships and recreational vessels.

Finally, the EIS must evaluate disproportionate impacts of the Proposed Project on low-income and minority populations. Executive Order 12898, which addresses the federal government’s responsibility to carry out its activities in keeping with environmental justice principles, mandates that each federal agency “identify[] and address[], as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”⁹² The Presidential Memorandum accompanying Executive Order 12898 emphasized the importance of using the NEPA review process to promote environmental justice and directed federal agencies to analyze the environmental effects, including human health, economic, and social effects, of their proposed actions on minority and low-income communities when required by NEPA.⁹³

Within a one-mile radius of the Proposed Project site, about 96 percent of residents are people of color, and 60 percent are low-income.⁹⁴ According to EPA’s EJScreen tool, those living in this area are already above the 90th percentile nationally for 11 different environmental justice indices, including particulate matter, air toxics, traffic proximity, hazardous waste proximity, and wastewater discharge.⁹⁵ Within a two-mile radius of the proposed terminal, 70 percent of residents are people of color, and 60 percent are low-income.⁹⁶ This community is similarly exposed to alarmingly high levels of pollution, with exposure to toxic releases, traffic,

⁹⁰ 40 C.F.R. § 1508.14.

⁹¹ *Id.* § 1508.8.

⁹² Exec. Order 12,898, 59 Fed. Reg. 7,629 (Feb. 16, 1994).

⁹³ Memorandum on Environmental Justice, 1 PUB. PAPERS 241 (Feb. 11, 1994).

⁹⁴ *EJScreen*, U.S. ENV’T PROT. AGENCY, <https://ejscreen.epa.gov/mapper> (type “Hutchinson Island” into search bar; then select “Drop a Pin” from dropdown menu under “Reports”; then drop pin on Proposed Project site; then enter 1 mile into the buffer field; then click “EJScreen Community Report”) (report on file with author).

⁹⁵ *Id.*

⁹⁶ *EJScreen*, U.S. ENV’T PROT. AGENCY, <https://ejscreen.epa.gov/mapper> (type “Hutchinson Island” into search bar; then select “Drop a Pin” from dropdown menu under “Reports”; then drop pin on Proposed Project site; then enter 2 miles into the buffer field; then click “EJScreen Community Report”) (report on file with author).

hazardous waste, and wastewater discharge at levels greater than 90 percent of Georgians and Americans.⁹⁷

Just across the river from the Proposed Project site are the neighborhoods of Hudson Hill, Bayview, and West Savannah, three predominantly Black communities that have faced “long-standing issues posed by the adjacency of industrial and heavy commercial uses and . . . single and multifamily residential uses.”⁹⁸ The EIS should consider, at a minimum, impacts to these and other environmental justice communities from increased land-based traffic, toxic air pollution, water quality impacts, and potential displacement as a result of the Proposed Project.

- How will the Proposed Project contribute to levels of particulate matter, air toxics, traffic, and wastewater discharge within a one-mile radius of the terminal? Within a two-mile radius of the terminal?
- Will GPA or the Corps conduct an environmental justice assessment to determine to what extent people of color and low-income communities will face disproportionate environmental impacts from the Proposed Project?
- Will GPA or the Corps engage stakeholders from the affected communities to allow public participation in the decision-making process for the Proposed Project?
- How does GPA or the Corps plan to minimize or mitigate environmental justice impacts from the Proposed Project?

Roadways and Traffic

With 2.7 million TEUs projected to move through the terminal each year, the local and regional impacts to roadway congestion are likely to be considerable. The Corps should carefully assess the capacity of existing road and rail infrastructure in the region and evaluate whether additional infrastructure will be needed to accommodate this additional road and rail traffic. In addition to freight movement, the traffic impact evaluation should include an assessment of construction-related impacts, impacts from workers traveling to and from the Proposed Project, and impacts associated with the additional industrial, warehouse, commercial, and residential development likely to be induced by the development of the Proposed Project. The Corps should include a preliminary cost estimate of any road and railway improvements needed to accommodate this increased traffic to allow for the public and decision-makers to make an informed cost-benefit assessment regarding the Project.

⁹⁷ *Id.*

⁹⁸ CITY OF SAVANNAH & HUDSON HILL COMMUNITY ORGANIZATION, DRAFT HUDSON HILL/BAYVIEW NEIGHBORHOOD PLAN 17 (2019), https://agenda.savannahga.gov/content/files/hhplanfinaldraft_04_12_19.pdf.

GDOT has announced the need for billions of dollars of upgrades to roadways and bridges in and around Savannah, in order to accommodate increasing shipping activity in the Savannah Harbor.⁹⁹ The Talmadge Bridge is currently too low to accommodate increasingly large container ships, and GDOT plans to add 20 feet to its height by 2028, to “increase the Port of Savannah’s competitiveness with East Coast port rivals.”¹⁰⁰ In the longer term, GDOT is reportedly considering replacing the bridge altogether.¹⁰¹ In addition to this major bridge modification project, GDOT has recommended over 20 roadway expansion projects across Chatham, Bryan, Effingham, and Bulloch Counties, including adding two lanes of traffic to I-16, widening US 80, and improving roadways near the Hyundai plant.¹⁰² GDOT attributes these projects in large part to freight mobility at the port and the desire for “a shipment from the ports to make it to its destination in an hour or less.”¹⁰³

The Corps must analyze these indirect impacts of the Proposed Project. It cannot simply dismiss these impacts because GPA does not own or operate these roadways. While the Georgia and South Carolina Departments of Transportation may be responsible for any improvements to the roads that would have to carry the additional traffic, the traffic itself is directly related to the operation of the Proposed Project. The increase in traffic is going to occur regardless of any decisions made by GDOT or SCDOT. The Corps must conduct traffic studies to determine the extent of the burden that will be imposed on the public as a result of the Proposed Project.

- Once all phases of the Proposed Project are completed, and the terminal is operating at full TEU capacity, excluding the proposed 20 percent excess TEU capacity, how many TEUs could pass through the proposed terminal on a daily basis?
- How many trucks would be required to transport the maximum number of TEUs the terminal is capable of handling daily?
- At full operational capacity, how many trucks leaving the terminal each day will travel north on Highway 17, and how many will travel south over the Talmadge Bridge?
- Has GPA, the Corps, or the Georgia Department of Transportation completed a traffic study for the SCT, operating at full capacity? If yes, what impact would this level of truck traffic have on traffic and public safety? If not, how will the Corps evaluate these impacts without this necessary data?

⁹⁹ See Adam Van Brimmer, *Exclusive: Talmadge Bridge to Be Replaced. The Price? Up to \$2 Billion*, ATLANTA J.-CONST. (Dec. 7, 2023), <https://www.ajc.com/news/georgia-news/exclusive-talmadge-bridge-to-be-replaced-the-price-up-to-2-billion/VSV4Y5H4XZGBVJ5DKUCMGAE07A>; Eden Hodges, *GDOT: Coastal Empire Needs \$1.4 Billion in Road Work over the Next 27 Years*, WSAV (Nov. 28, 2023), <https://www.wsav.com/news/local-news/georgia-news/gdot-coastal-empire-needs-1-4-billion-in-road-work-over-the-next-27-years>.

¹⁰⁰ Van Brimmer, *supra* note 99.

¹⁰¹ Tyler Carmona, *Georgia Department of Transportation Plans to Replace Talmadge Bridge Entirely*, WSAV (Dec. 14, 2023), <https://www.wsav.com/news/local-news/savannah/georgia-department-of-transportation-plans-to-replace-talmadge-bridge-entirely>.

¹⁰² Hodges, *supra* note 99.

¹⁰³ *Id.*

- Trucks exiting the terminal and traveling south will be traveling slowly, up a very steep incline, over the Talmadge Bridge. Heightening of the bridge will exacerbate this issue. How will the slow speeds of numerous trucks on the Talmadge Bridge impact traffic?
- Highway 17 and the Talmadge Bridge are heavily used by the public, particularly during weekdays, for commuting from South Carolina to Savannah. How will the volume of truck traffic, at full operational capacity, impact weekday commuting traffic?
- GPA states that potential improvements to the interchange on Hutchinson Island at US Highway 17 may occur, but that those improvements are not part of their proposed project or on property owned by GPA. Would these road improvements be necessary in order for GPA to operate the terminal at full design capacity? If yes, will the Corps evaluate these impacts as part of this project?
- Is the modification or replacement of the Talmadge Bridge necessary for the viability of the Savannah Container Terminal? If not, how will the current bridge handle the increased shipping container volume? If yes, will the Corps evaluate these impacts as part of this project?
- Are roadway expansion and improvement projects necessary for the viability of the SCT? If not, how will the current roads handle the increased traffic volume? If yes, will the Corps evaluate these impacts as part of this project?

Rail

The Corps states in the Project Description an intermodal yard will be constructed in phase two of the Proposed Project because “rail connectivity will be important for the future movement of goods throughout the United States.”¹⁰⁴ This suggestion that CSX will extend rail service to Hutchinson Island appears to be entirely specious. One decommissioned line leaving the island has been converted into a rails to trails bike path in South Carolina and dead ends in the Sun City Hilton Head residential community. To reactivate the other line, CSX would have to build a rail bridge across the Savannah River into downtown Savannah. The Corps must explain whether CSX has any plans to extend rail service to Hutchinson Island and, if so, what route they would use so the environmental impacts associated with such work can be considered as indirect impacts of the Proposed Project.

- Will the Corps incorporate into their permit review aquatic impacts that would be associated with re-activation (i.e., reconstruction) associated with a rail line to this proposed project?
- If CSX were to decide to construct a new rail line to the Proposed Project, what path would the rail line follow?
- Has CSX stated to GPA or the Corps that it is interested in or even considering extending rail service to the Proposed Project?

¹⁰⁴ Public Notice at 24.

4. The Corps must fully assess the cumulative impacts of the Proposed Project on the coastal environment.

In determining the scope of the required NEPA analysis, an agency must consider not only the proposed action, but also three types of related actions—“connected actions,” “similar actions,” and “cumulative actions.”¹⁰⁵ “Cumulative actions” are those “which when viewed with other proposed actions have cumulatively significant impacts.”¹⁰⁶

NEPA regulations define “cumulative impact” as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”¹⁰⁷ NEPA’s hard look “requires analysis of the combined impact that may result from [the same activities occurring] over or near the same geographic area.”¹⁰⁸ The cumulative impact analysis must be more than perfunctory; it must provide a “useful analysis of the cumulative impacts of past, present, and future proposed projects.”¹⁰⁹ Here, the Corps must consider in the EIS the interaction of the construction of the proposed terminal with the other proposed projects planned or underway in this area.

In fact, under NEPA, where “several proposals for [proposed projects] that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together.”¹¹⁰ Accordingly, a comprehensive or programmatic analysis is appropriate where the proposal itself is regional or systemic in scope, or where the proposal is one of a series of interrelated proposals that will produce cumulative system-wide effects that can be meaningfully evaluated together.¹¹¹

In this case, GPA is completing a massive harbor deepening project (SHEP),¹¹² proposing this additional expansion project, and may soon be seeking authorization to further deepen and widen the Federal Navigation Channel. All these projects must be discussed in the EIS.

- It is our understanding that GPA will seek to widen the Federal Navigation Channel. How will this widening impact the Proposed Project?

B. GPA must demonstrate that the Proposed Project complies with Section 404 of the CWA.

In addition to considering all the environmental impacts discussed above in the context of NEPA, the Corps must pay particular attention to impacts to waters protected by the CWA when it determines whether to issue a Section 404 permit. The CWA 404(b)(1)

¹⁰⁵ 40 C.F.R. § 1508.25(a).

¹⁰⁶ *Id.* § 1508.25(a)(2).

¹⁰⁷ *Id.* § 1508.7.

¹⁰⁸ *Nat’l Audubon Soc’y v. Dep’t of Navy*, 422 F.3d 174, 197 (4th Cir. 2005) (finding the Navy’s cumulative impacts analysis for an airfield in eastern North Carolina insufficient and ultimately finding the challenged EIS unlawful).

¹⁰⁹ *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 810 (9th Cir. 1999) (citing *City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997)).

¹¹⁰ *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976).

¹¹¹ *Ga. River Network v. U.S. Army Corps of Eng’rs*, 334 F. Supp. 2d 1329, 1342 (N.D. Ga. 2003) (quoting *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 374 (D.C. Cir. 1981)).

¹¹² The Corps has not completed the fish passage at the New Savannah Bluff Lock and Dam in Augusta, Georgia.

Guidelines are the substantive environmental criteria used to evaluate these impacts and to determine whether a proposed activity complies with Section 404.

The Guidelines reflect two key principles. First, the degradation or destruction of wetlands and other “waters of the United States” may represent an irreversible loss,¹¹³ and second, the Corps should not permit the discharge of dredged or fill material “unless it can be demonstrated” that the discharge will not have an unacceptable adverse impact.¹¹⁴ In other words, unless GPA can prove that the Proposed Project would not have an unacceptable impact on waters protected under the CWA, the Corps may not grant a Section 404 permit.

To determine whether a proposed project would significantly degrade wetlands or other waters, the Corps must consider direct, secondary, and cumulative impacts, including impacts to wildlife, recreation, aesthetics, and economics.¹¹⁵ All of the water-related adverse impacts that must be considered under the Guidelines are covered under the NEPA analysis described above, but in greater detail. Consequently, there are some components of the CWA analysis that bear further discussion here.

Before an applicant for a Section 404 permit can obtain a permit for impacting a jurisdictional wetland or other water protected under the CWA, they must demonstrate that they have avoided all impacts to the extent that they can, then minimized the remaining impacts, and finally mitigated any impacts that cannot be minimized further.¹¹⁶ Any unavoidable impacts to waters of the United States must be mitigated in accordance with the EPA and Corps’ 2008 regulation on compensatory mitigation.¹¹⁷ Under the regulation the preferred mitigation option is to buy credits in a mitigation bank. It also explains that when such credits are not available, an in-lieu fee program can be used or permittee-responsible compensatory mitigation can be performed.¹¹⁸ The number of credits required to offset the waters of the United States that will be destroyed by GPA for the Proposed Project will be determined by the Corps under the Savannah District’s 2018 Standard Operating Procedure for Compensatory Mitigation (SOP).¹¹⁹

In making the credit calculations under the SOP, the Corps should take into account the type of waters being impacted and require GPA to use a mitigation bank that contains similar

¹¹³ 40 C.F.R. § 230.1 (“The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.”).

¹¹⁴ *Id.* (“Fundamental to [the] Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.”).

¹¹⁵ 40 C.F.R. § 230.10(c).

¹¹⁶ Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines, 2 (1990), https://www.epa.gov/sites/default/files/2019-05/documents/1990_army-epa_mitigation_moa.pdf.

¹¹⁷ Department of Defense and Environmental Protection Agency, Compensatory Mitigation for Losses of Aquatic Resources, 73 Fed. Reg. 19,594 (April 10, 2008).

¹¹⁸ *Id.* at 19,594.

¹¹⁹ U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT’S 2018 STANDARD OPERATING PROCEDURE FOR COMPENSATORY MITIGATION, <https://www.sas.usace.army.mil/Portals/61/docs/Regulatory/Mitigation%20Documents/SOP.pdf?ver=2018-07-03-144058-600>.

waters. The Corps should require GPA to pursue in-kind mitigation to offset specific impacts of the Proposed Project. For example, GPA should mitigate the loss of sturgeon habitat through replacement of sturgeon habitat. The Corps should also insist that the mitigation bank selected is as close as possible to the site of the Proposed Project. Too often the Corps allows applicants to mitigate impacts to waters in banks located far from where the wetlands or other waters are destroyed.

- In light of the demand for mitigation banking credits in Savannah due to the rampant development in the area, is it likely that GPA will be able to purchase mitigation banking credits for the Proposed Project?
- Will the Corps require in-kind mitigation for the impacts of the Proposed Project?

C. GPA must demonstrate that the Proposed Project complies with the Endangered Species Act.

The Corps may not issue a Section 404 permit if the proposed project would jeopardize the continued existence of threatened or endangered species or would result in the likely “destruction or adverse modification” of critical habitat.¹²⁰ The burden is on the applicant to demonstrate that such harms would not occur.¹²¹

The Public Notice recognizes that several endangered and threatened species may occur in the proposed project area, including the Northern Long-eared bat (*Myotis septentrionalis*); West Indian manatee (*Trichechus manatus*); Eastern black rail (*Laterallus jamaicensis*); wood stork (*Mycteria americana*); Eastern indigo snake (*Drymarchon corais couperi*); gopher tortoise (*Gopherus polyphemus*); frosted flatwoods salamander (*Ambystoma cingulatum*); the Monarch butterfly (*Danaus plexippus*) and pondberry (*Lindera melissifolia*); Green sea turtle (*Chelonia mydas*); Kemp's Ridley sea turtle (*Lepidochelys kempii*); Loggerhead sea turtle (*Caretta caretta*); Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) and Shortnose sturgeon (*Acipenser brevirostrum*). The project site is also located within the boundary of the Atlantic sturgeon South Atlantic Unit 3 (SA3; Savannah River) designated critical habitat (DCH). The Corps should also consider impacts to the critically endangered North Atlantic right whale.

As discussed above, increased ship traffic and larger ships are likely to lead to more vessel strikes of protected species, including sea turtles and North Atlantic right whales. In addition, Atlantic and shortnose sturgeon in the Savannah Harbor are likely to be negatively impacted by dredging activities, particularly in light of the waterway's current impaired status due to low levels of dissolved oxygen. Dredging activities associated with SHEP already caused lethal take of Atlantic sturgeon and loggerhead, Kemp's Ridley, and green turtles, as well and additional non-lethal take (relocation) of threatened and endangered species.¹²²

It should also be noted that GPA has not completed its mitigation for the adverse impacts to Atlantic and shortnose sturgeon caused by SHEP. The expansion of the Savannah Harbor

¹²⁰ 40 C.F.R. § 230.10 (b)(3).

¹²¹ See *Riverside Irr. Dist. v. Andrews*, 1985, 758 F.2d 508 (10th Cir. 1985).

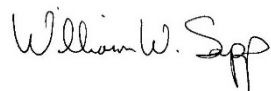
¹²² Mary Landers, *Dredging Stirs Up More Sturgeon Than Expected*, SAVANNAH MORNING NEWS (Apr. 12, 2016), <http://savannahnow.com/news/2016-06-17/dredging-stirs-more-sturgeon-predicted>.

through this terminal project should not proceed until the mitigation from the last expansion project has been completed.

III. Conclusion

We appreciate the opportunity to provide the above comments on the Public Notice for the proposed Savannah Container Terminal. We look forward to remaining engaged with the Corps and other agencies throughout the NEPA process and Section 404 permit analysis to gain a thorough understanding of the Proposed Project's significant environmental impacts.

Sincerely,



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Brittany Shaar
Associate Attorney

cc: Savannah Riverkeeper
Georgia Conservancy
Ogeechee Riverkeeper
One Hundred Miles
South Carolina Coastal Conservation League
South Carolina Wildlife Federation