October 25, 2018

USACE Mobile District, Regulatory Division
Attn: Ms. Leslie E. Turner
P.O. Box 2288
Mobile, AL 36628-0001

RE: PUBLIC NOTICE NO. SAM-2018-00389-JEB - “Request To Dredge and Discharge Fill Material To Construct A Mixed-use Marina Development With Commercial, Residential, Condominium, and Retail Facilities, Bayou Aloe, Dauphin Island, Mobile County, Alabama”

To Whom It May Concern:

We are Mobile Baykeeper, a twenty-one year old environmental nonprofit organization with the mission of providing citizens a means to protect the beauty, health, and heritage of the Mobile Bay Watershed and our coastal communities. We are submitting comments on behalf of our board, officers, staff, and more than 4,500 members regarding the permit application to construct a mixed-use marina and condominium near Bayou Aloe, Dauphin Island, Alabama.

The proposed project is located on Dauphin Island, an extremely sensitive barrier island susceptible to severe weather, tides, and erosion. Any project taking place in or around Dauphin Island will directly affect the island, its residents, the local economy, Mobile Bay, and the nearby Mississippi Sound. Our ensuing comments detail cumulative environmental impacts anticipated for the project and highlight inappropriate avoidance and minimization with this project proposal. Primarily, upon review of the probable cumulative adverse impacts to this important barrier island, sensitive estuarine environment, local economy, and community, Mobile Baykeeper and its members assert this project is not in the interest of the public. For this reason, Mobile Baykeeper argue the permit application must be denied.

**Cumulative Project Impacts**

The applicant proposes to dredge 336,530 square feet (7.73 acres) of water bottoms, fill 20,250 square feet (0.46 acre) of water bottoms, and fill 6,168.4 square feet (0.143 acre) of jurisdictional wetlands. The stated purpose of the project is to construct “commercial and residential development with an associated marina”.

450-C Government Street
Mobile, Alabama 36602
(251) 433-4229
Fax: (251) 432-8197
Website: www.mobilebaykeeper.org
Email: info@mobilebaykeeper.org
Negative Effects Caused By Dredge and Fill of Water Bottoms

Dredging and fill activities particularly in estuarine areas can have several negative environmental effects including: increased turbidity from sediment disturbing activities; removal of bottom substrate utilized by benthic organisms; and the release of harmful contaminants into the water column. The applicant has indicated the project proposed will impact more than eight (8) acres of water bottoms in an important and sensitive environment.

This evaluation only includes the initial fill and dredging activities needed for the marina and not the continued maintenance dredging that will occur for navigational upkeep. The applicant must acknowledge the anticipated maintenance dredging impacts and indicate the responsible parties for assuming costs and management of ongoing dredging needs. If the Corps will be performing maintenance dredging, the Corps should then subsequently evaluate the frequency and cost of such dredging and the associated impacts. If the applicant envisions the future property owners to fund maintenance dredging costs, then there will be additional economic impacts to consider. In either case, the public (tax payers or property owners) will likely be forced to take on the additional cost and negative impacts to aquatic resources (owned collectively by all citizens) will continue.

Permanent Impacts to Wetlands and Tidal Marsh

Since the land area of Dauphin Island is relatively small, the amount of wetlands and water bottoms to be filled will have an outsized impact. Wetlands provide critical functions including flood conveyance and storage; stormwater detention and purification; valuable habitat; water treatment and pollution abatement; buffer zones that filter additional nonpoint pollution; nursery grounds and sanctuaries for fish; and recreation-use areas.

While only 0.152 acres of the project are listed as “jurisdictional wetlands”, nearly the entire project will impact special aquatic habitats including critically important tidal marsh and salt flats. These habitats provide many similar ecosystem services to those performed by wetlands and are equally important. The significance cannot be underscored, the effects of destruction of wetlands and marsh will be harmful to sensitive nurseries and spawning grounds located in the project area. Many species, including several bird and fish species, are dependent on these areas and are highly valued by the community both recreationally and commercially.

The island’s low elevation and delicate location fronting the Gulf of Mexico further emphasize the important role wetlands play in storing floodwater. By decreasing wetland area on the island, this

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The project increases the threat of flooding for nearby residents and business owners. This is especially important since this wetland area is located adjacent to critical wastewater treatment infrastructure making its flood protection and water quality ecosystem functions even more valuable.

**Alteration of Essential Fish Habitat**

The cumulative 8.2 acres of impacted estuarine water bottoms and intertidal habitat are necessary for several species as “Essential Fish Habitat (EFH)” covered by the Magnuson-Stevens Fishery Conservation and Management Act. The initial determination indicates the proposed project “May Adversely Affect” the EFH for federally managed species. The applicant does not indicate any efforts to minimize impacts to EFH species in question including: Red Drum EFH, Shrimp EFH, and Coastal Migratory Pelagic Resources EFH (see Figure 1).

In addition to Dauphin Island being considered an EFH area for several specific species, it also serves as a nursery area for Lane Snapper, Red Snapper, Gray Snapper, Cobia, and Stone Crab as well as a spawning area for Pink Shrimp. All of these species are important as a critical part of the local aquatic ecosystem. Given the importance of habitat proposed to be dredged and filled, it is vital the applicant reduce impacts to federally managed species or acknowledge unavoidable impacts that must be mitigated. Furthermore, the Corps must consider the detriments to these federally managed species that are essential to the commercial and recreational fishing industry, a foundational component of the local economy, when evaluating the public interest determination.

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Figure 1. Essential Fish Habitat for Shrimp, Red Drum, and Coastal Migratory Pelagics from NOAA.

Potential Impacts on Protected Species

Under the preliminary review, the Corps has determined that the proposed project “May Affect, Not Likely to Adversely Affect” the Florida Manatee, Piping Plover, Red Knot, and Gulf Sturgeon. Manatees have been well documented within the proposed project area by the Dauphin Island Sea Lab’s Manatee Sighting Network (Figure 2) and will likely be adversely impacted from the more than eight (8) acres of dredging and fill activities proposed. Many other species, including numerous bird species, likely use this small undeveloped area on the northern side of the island.

![Figure 2: Excerpt from the Dauphin Island Sea Lab’s Manatee Sighting Network study on Manatee sightings throughout Alabama and Mississippi.](image)

The Corps in coordination with the USFWS should carefully review this determination to ensure species managed by the Endangered Species Act will not be adversely impacted from the implementation of the proposed project.

Inappropriate “Reclamation” of Water bottoms

Mobile Baykeeper has performed a review of the “approximate 2005 shoreline alignment” the applicant states will be reclaimed in the proposal. The 20,250 square feet of water bottoms that are proposed to be filled for the creation of a parking lot, does not match historical satellite imagery of the shoreline configuration in 2005 (Figure 3). The “reclamation” the applicant is using to justify fill of water bottoms is inaccurate and this false assertion is not a sufficient reason to fill water bottoms for a development project.

![Figure 3 – Outline of the historic satellite imagery from 2005 shoreline is compared to the proposed project](image)
Indirect Impacts
There are also several unavoidable indirect impacts that must be addressed in the application as a result of the proposed project’s implementation. Per the guidelines of the CWA Section 404(b)(1) (hereinafter referred to as “the Guidelines”), the project must “mitigate for unavoidable direct and indirect [emphasis added] wetland, stream and open water impacts that result in a loss of aquatic function(s)”. Indirect impacts include but are not limited to: increased vehicle and boat traffic on Dauphin Island, shoreline erosion and harm of salt marsh and submerged aquatic vegetation by increased boat traffic, increased impervious pavement which accelerates stormwater runoff, and increased risk of oil and marine wastewater spills.

Loss of Ecotourism Value
Bayou Aloe currently is an often used spot by tourists for bird watching and kayaking. Several members of Mobile Baykeeper and staff have kayaked in this beautiful shallow bay. The development of this Bay will severely diminish its value to ecotourism and transfer the ability to use the Bay from all residents and tourists of Dauphin Island to a few private citizens.

Public Interest
The cumulative impacts detailed above outweigh all benefits expected to accrue from the proposed project. It is the determination of Mobile Baykeeper and its members that the proposed activity is not in the public’s best interest. Because the Corps is required to ensure the project is not contrary to the public’s interest, the project must be denied as proposed.  

Diametric Opposition with Dauphin Island Strategic Plan
In the 2007, Dauphin Island Strategic Plan the vision for the island is defined as follows, “the Town will lead this small island community through the 21st century by preserving the island’s history, culture, and environmental assets, while planning for a future that capitalizes on its natural resources to promote economic well-being.” [emphasis added]. In determining whether this project is in the public interest, it would be prudent for the Corps to prioritize the town’s stated goal.

Inadequate Avoidance & Minimization
Mobile Baykeeper appreciates the applicant’s efforts to minimize the impact of the proposed boardwalk from a width of 6 feet to 5 feet, and have reduced the shading impacts from spacing between the boards. However, with a project of this scale, there are still several significant issues with the applicants avoidance and minimization compliance.

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6 Department of the Army, Army Corps of Engineers Standard Operating Procedures for the Regulatory Program, 13 (Oct. 15, 1999)
7 33 C.F.R. § 320.4(a)(1)
Inadequate Impact Information
Mobile Baykeeper is concerned by a critical discrepancy in the proposal; the exact acreage of the proposed wetland fill is not clear, two different figures are given to describe the area: 0.143 acres and 0.14 acres in the “Proposed Work” section but a total of 0.152 acres in the “Avoidance and Minimization” section. The Corps must gain clarification from the applicant on which total acreage of wetland impact is correct.

Lack of Minimization of Wetland Fill
The applicant’s argument that attempting to build around the 0.152 acres of wetlands cannot be feasibly avoided but that building around the wetlands would further isolate and diminish the quality of the wetlands, is unacceptable. It is possible for the applicant to avoid these wetlands. The applicant’s own admission states this is true “attempting to build around these wetlands to avoid the impact would further isolate and diminish the quality of these wetlands…” although it may be difficult and diminish their value, diminished value is less of an impact to these wetlands than being destroyed. The Guidelines require the applicant to take all practicable steps to minimize potential adverse impacts on the aquatic ecosystem.9 This requires avoiding the fill of this isolated wetland complex even if it is difficult and may leave these wetlands diminished. Furthermore, since this wetland fill would be utilized to build a “swimming pool facility”, a non-water dependent use, the applicant has to rebut the presumption that an alternative site that is not a special aquatic site exists and such a site will result in less adverse environmental impacts.10 Based on the above argument, it is clear the project does not comply with the Guidelines and must be denied as proposed.

Lack of Minimization of Shoreline Alterations
Another way to fulfill avoidance and minimization requirements is to apply a living shoreline design as opposed to installing a bulkhead to reclaim shoreline lost. It is well established that bulkheads increase erosion adjacent to and on the opposite shoreline from where they are installed, as well as causing degradation of water quality, habitat, and other aquatic resources. Mobile Baykeeper is opposed to the creation and installation of bulkheads because they cause a loss of intertidal habitat11, decrease surrounding intertidal zones (e.g. estuarine beaches and wetlands) and impact fish & wildlife from habitat loss12, and cause adverse impacts on the growth zones of estuarine-dependent fishes and invertebrates habitats.13 On the other hand, “living shorelines are created or enhanced shorelines that make the best use of nature’s ability to abate shoreline erosion while maintaining or improving habitat and water quality. Living shoreline treatments address erosion by providing protection, restoration, enhancement, or creation of vegetated shoreline habitats through strategic placement of plants, stone, sand fill, and other structural organic materials”.14 The applicant indicates the proposed project will contain a 405ft bulkhead but does not consider steps to minimize and

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9 40 C.F.R. § 230.10(d)
10 40 C.F.R. § 230.10(a)(3)
11 Douglass and Pickel, 1999
12 USFWS 2001
13 Peterson et. al. 2007
14 Bilkovic et al, 2016
avoid impacts like living shorelines to adhere to relevant regulations. As mandated by the Clean Water Act § 404 and contained in the § 404(b)(1) guidelines, “no discharge of…fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem”. This again highlights that the project as proposed does not comply with relevant regulations and must be denied as proposed.

**Public Hearing Request**

Due to the significance of the impacts, the magnitude of public concern, and the number of concerned stakeholders, Mobile Baykeeper requests a public hearing be held to discuss the project and use of the Bayou Aloe area. It is vitally important the community is given a venue and opportunity to voice their opinions and affect the process. A public hearing will provide the Corps to address all relevant concerns that may have otherwise been lost given the onerous nature of a written comment letter within thirty (30) days and give the Corps additional information on which to base its public interest decision.

**Comments Summarized**

- In all the cumulative impacts the proposed project will have are significant including but not limited to:
  - Disruption to more than eight (8) acres of water bottoms in an estuarine environment through dredging and filling activities;
  - Removal of 0.152 acres of wetlands on a small barrier island;
  - Ongoing maintenance dredging impacts both on the function of surrounding aquatic systems and the responsible parties bearing the costs;
  - Indirect impacts including increased potential pollution loads associated with generating additional impervious surfaces and the presence of marina activities;
  - Adverse effects to Essential Fish Habitat areas utilized by federally managed species;
  - Adverse effects to vulnerable species that are protected by the Endangered Species Act that exist within the project area;
  - The loss of important areas for ecotourism; and
- The applicant has not taken all appropriate and practicable steps to avoid and minimize potential adverse impacts on the aquatic ecosystem.
  - The applicant did not avoid filling wetlands with a non water dependent aspect of the project at question.
  - The applicant failed to use living shorelines as a viable alternative to the installation of a bulkhead to reclaim shoreline.
- Mobile Baykeeper requests the Corps host a public hearing on the project proposal SAM-2018-00389-JEB to accurately receive community input and concern.

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15 1990 Mitigation MOA, supra note 6 at § II.A; 40 § C.F.R. 230.75.
16 40 C.F.R. 230.10(a)
Because of the cumulative impacts and because the project runs counter to the communities strategic plan it is the determination of Mobile Baykeeper and its members that the proposed activity is not in the public’s best interest and the Corps should evaluate the presented evidence and deny the project.

Given these concerns, Mobile Baykeeper recommends the denial of this permit. If the Corps disagrees and proceeds with the granting of this project, they must at least require substantial avoidance, minimization, and mitigation efforts as the Clean Water Act guides and eliminate adverse impacts to EFH (per the Magnuson-Stevens Fishery Conservation and Management Act) and four protected species (under the Endangered Species Act of 1973). We firmly believe the application does not meet the public interest determination and should be denied, if the Corps allows this project without considerable improvements, it will have detrimental effects to Dauphin Island.

Thank you in advance for your consideration and response to each of these comments. We request a written response to each of the provided comments. Please feel free to contact us with any questions at (251)-433-4229.

Sincerely,

Casi (kc) Callaway
Executive Director & Baykeeper

Cade Kistler
Program Director