

**Joint Legislative Committee on Performance  
Evaluation and Expenditure Review (PEER)**

Report to  
the Mississippi Legislature



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## **The Status of the Port of Gulfport Restoration Program**

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In 2005, Hurricane Katrina inflicted significant damage and destruction on the Port of Gulfport. In December 2007, the Mississippi Development Authority (MDA) requested the U. S. Department of Housing and Urban Development (HUD) to reprogram Community Development Block Grant Disaster Recovery funds from Phase 1 of the Homeowners Assistance Program to a newly created Port of Gulfport Restoration Program. The stated purpose of the program was to provide funding to the Mississippi State Port Authority (MSPA) to facilitate the restoration of the port's infrastructure and facilities, to provide for the long-term recovery of the port's operating capacity, and to provide mitigation against future damage. MDA requested the reprogramming of Community Development Block Grant Disaster Recovery funds on the grounds that restoration of the Port of Gulfport was crucial to the economy and long-term recovery of the state and to the Gulf Coast region in particular.

As of January 14, 2013, four years into the Port of Gulfport Restoration Program and less than three years from the program's targeted completion date of December 2015, MSPA had expended 15% of the approximately \$567 million in available funds. Construction contracts accounted for approximately half of the \$84 million in expenditures, while the remainder was used for program management (27%), design and engineering (21%), and environmental and permitting (3%) contracts.

Regarding the program's primary objectives of restoration, mitigation, and economic development through the creation of new permanent maritime jobs, PEER found the following:

- in total, MSPA has spent or plans to expend approximately \$90 million in Port Restoration Program funds on projects that included a restoration component;
- MSPA believes that the fourteen-foot elevation will protect the port from the majority of storms that Gulfport experiences; and,
- the port will be unable to meet its objective of creating or retaining 2,586 permanent direct maritime jobs by 2015.

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September 10, 2013

Honorable Phil Bryant, Governor  
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Honorable Philip Gunn, Speaker of the House  
Members of the Mississippi State Legislature

On September 10, 2013, the PEER Committee authorized release of the report entitled **The Status of the Port of Gulfport Restoration Program**.

A handwritten signature in cursive script that reads "Ray Rogers".

Representative Ray Rogers, Chair

**This report does not recommend increased funding or additional staff.**



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# The Status of the Port of Gulfport Restoration Program

## Executive Summary

### Introduction

The PEER Committee analyzed the status of the Port of Gulfport Restoration Program. The primary purpose of this review was to determine whether the program is on track to deliver the results agreed to in its grant agreement with the U. S. Department of Housing and Urban Development (HUD).

In making this determination, PEER sought to answer the following specific questions:

- What is the Port of Gulfport Restoration Program?
- What were the requirements governing expenditure of Community Development Block Grant (CDBG) disaster recovery funds for the Port of Gulfport Restoration Program?
- What was the port's plan for expenditure of CDBG disaster recovery funds allocated to the Port of Gulfport Restoration Program?
- How has the port expended CDBG funds to date?
- What progress has been made toward achieving the program's objectives of restoration, mitigation, and economic development?

### Background

State law authorizes the Mississippi Development Authority (MDA) and the Mississippi State Port Authority (MSPA) Board of Commissioners to govern the Port of Gulfport. The MSPA is responsible for daily operations, management, and infrastructure of the Port of Gulfport on behalf of MDA.

Prior to Hurricane Katrina, the Port of Gulfport reported having 2,058 permanent direct maritime jobs and handling approximately 2.4 million short tons of cargo (96% of which was foreign) annually. At that time, 67% of the port's cargo was containerized.

In 2002, MSPA commissioned the JWD Group to develop a twenty-year Master/Vision Plan to help guide future development of the port. Among the projects included in the plan were: an eighty-four-acre expansion of the port's footprint to facilitate and accommodate expected growth in its maritime business; development of terminals and berths to attract and accommodate the cruise ship industry; and expansion of the port's non-maritime business, including gaming and hotels.

On August 29, 2005, Hurricane Katrina made landfall in Mississippi, bringing unprecedented destruction to the Gulf Coast region, including the Port of Gulfport. The hurricane significantly damaged the port and adversely affected its commercial activity, resulting in a significant decline in the number of permanent direct maritime jobs attributable to the port. In 2005, the port experienced an approximately 18% decline in its container traffic, resulting in a 2% decline in its share of total Gulf of Mexico foreign container traffic. The port had not regained its pre-Katrina share by 2011, the last full year of data available.

The port had already begun the expansion program noted above prior to Hurricane Katrina. As of January 31, 2013, the port had expended approximately \$99.8 million in non-Port of Gulfport Restoration Program funds to complete capital projects to repair and improve the port and an additional \$2.2 million on ongoing capital projects.

### **What is the Port of Gulfport Restoration Program?**

In December 2007, MDA requested HUD to reprogram Community Development Block Grant Disaster Recovery funds in an amount not to exceed \$600 million from Phase 1 of the Homeowners Assistance Program to a newly created Port of Gulfport Restoration Program. The stated purpose of the program was to provide funding to the Mississippi State Port Authority to facilitate the restoration of the port's infrastructure and facilities, to provide for the long-term recovery of the port's operating capacity, and to provide mitigation against future damage. MDA requested the reprogramming of CDBG Disaster Recovery funds on the grounds that restoration of the Port of Gulfport was crucial to the economy and long-term recovery of the state and to the Gulf Coast region in particular.

## **What were the requirements governing expenditure of Community Development Block Grant disaster recovery funds for the Port of Gulfport Restoration Program?**

The port restoration program's CDBG disaster recovery funds must be used for HUD-approved eligible activities related to disaster relief, long-term recovery, and restoration of infrastructure. Federal regulations require entities receiving CDBG funds for economic development purposes to create or retain a specified number of jobs for low- and moderate-income individuals in order to "ensure a minimal level of public benefit," but in recognition of the disaster recovery conditions under which the funds were granted to Mississippi, HUD granted MDA a waiver that reduced the number of jobs that the program must create or retain.

Appendix B, page 58 of the report, summarizes the accountability requirements for CDBG funds.

## **What was the port's plan for expenditure of the CDBG disaster recovery funds allocated to the Port of Gulfport Restoration Program?**

The plan for the Port of Gulfport Restoration Program has evolved since its inception. The most recent changes, which include changing the elevation of the West Pier to fourteen feet and modifying the terminal layout to attract new tenants, were implemented to expedite program completion, thus hopefully attracting new tenants and creating or retaining new jobs more quickly. According to MSPA, the Port of Gulfport Restoration Program will be completed by December 15, 2015, and is estimated to cost approximately \$569.3 million. Exhibit A, page x of this executive summary, shows the program's projected costs, by contract category, as of January 14, 2013.

## **How has the port expended CDBG funds to date?**

As of January 14, 2013, four years into the Port of Gulfport Restoration Program and less than three years from the program's targeted completion date of December 2015, MSPA had expended 15% of the approximately \$567 million in available funds. Construction contracts accounted for approximately half of the \$84 million in expenditures, while the remainder was used for construction management (27%), design and engineering (21%), and environmental and permitting (3%) contracts.

Exhibit A, page x of this executive summary, shows the program's total budgeted contract values and contract payments to date, by contract category, as of January 14,

2013. Appendix C, page 60 of the report, lists subcontract awards for the program's projects.

**Exhibit A: Port of Gulfport Restoration Program, Total Budgeted Contract Values and Contract Payments to Date for All Categories, as of January 14, 2013\***

Category	Projected Costs to Complete Projects	Total Budgeted Contract Value	Contract Payments	Contract Payments as a Percentage of Total Contract Payments
Program Management	\$ 46,717,505.02	\$ 46,571,625.73	\$20,019,599.15	27%
Environmental and Permitting	20,000,000.00	4,372,721.04	2,154,386.32	3%
Design and Engineering Services**	27,150,000.00	35,150,142.06	7,843,210.04	21%
Construction	475,484,683.41	84,166,908.37	54,463,946.62	49%
Total	\$569,352,188.43	\$170,261,397.20	\$84,481,142.13	100%

\* Does not include \$1,371,683.48 for administrative expenses.

\*\* As discussed on pages 39 and 40 of the report, this category is not "over budget."

SOURCE: MSPA Requests for Cash, 4/9/09 thru 1/14/13.

**What progress has been made toward achieving the program's objectives of restoration, mitigation, and economic development?**

According to the action plan submitted to HUD by the Mississippi Development Authority for the Port of Gulfport Restoration Program, the program had three primary objectives: restoration, mitigation, and economic development through the creation of new permanent maritime jobs. Regarding each of these objectives, PEER found the following:

- in total, MSPA has spent or plans to expend approximately \$90 million in Port Restoration Program funds on projects that included a restoration component;

- MSPA believes that the fourteen-foot elevation will protect the port from the majority of storms that Gulfport experiences; and,
- the port will be unable to meet its objective of creating or retaining 2,586 permanent direct maritime jobs by 2015.

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Tupelo, MS

Senator Kelvin Butler, Secretary  
McComb, MS



# The Status of the Port of Gulfport Restoration Program

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## Introduction

### Authority

The PEER Committee analyzed the status of the Port of Gulfport Restoration Program.

PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972). The Committee acted in accordance with MISS. CODE ANN. Section 5-3-51 et seq.

### Problem Statement

Four years and three months into the Port of Gulfport Restoration Program and seven and a half years after Hurricane Katrina made landfall on the coast of Mississippi, there is growing concern that the program is not achieving the results expected (e. g., new permanent jobs, increased commercial activity, a significant positive impact on the local economy, mitigation against damage from future storms) from approximately \$567 million in federal funding.

After a review of the status of the program by the Mississippi Development Authority, the Mississippi State Port Authority's Board of Commissioners voted to reduce the planned elevation of the port from twenty-five feet to fourteen feet to mitigate against the impact of future storms, thus adding to concerns that the port restoration program may be struggling. Some believe that the port could be in danger not only of losing \$482.5 million in unspent federal funds but of having to repay funds already spent if the port is unable to achieve the outcomes specified in its grant agreement.

The requestor asked PEER to provide a clear, objective review of the "current situation," including determining:

- current plans for the port;
- when the plans will be fully operational; and,

- what accountability requirements are in place for governing the expenditure of restoration program funds.

## Purpose and Scope

The primary purpose of this review is to determine whether the Port of Gulfport Restoration Program is on track to deliver the results agreed to in its grant agreement with the U. S. Department of Housing and Urban Development (HUD).

In making this determination, PEER sought to answer the following specific questions:

- What is the Port of Gulfport Restoration Program?
- What were the requirements governing expenditure of Community Development Block Grant (CDBG) disaster recovery funds for the Port of Gulfport Restoration Program?
- What was the port's plan for expenditure of CDBG disaster recovery funds allocated to the Port of Gulfport Restoration Program?
- How has the port expended CDBG funds to date?
- What progress has been made toward achieving the program's objectives of restoration, mitigation, and economic development?

## Method

In conducting fieldwork, PEER

- reviewed:
  - *After Katrina: Building Back Better Than Ever*, the report to Governor Haley Barbour from the Governor's Commission on Recovery, Rebuilding, and Renewal;
  - the grant agreement between the U. S. Department of Housing and Urban Development and the Mississippi Development Authority;
  - the sub-grant agreements between the Mississippi Development Authority and the Mississippi State Port Authority;
  - applicable state and federal laws and regulations;
  - maps, aerial views, artist renderings, and diagrams provided by the Mississippi State Port Authority;



- financial and administrative records of the Mississippi State Port Authority;
- relevant documentation from HUD;
- contracts of consultants, contractors, and subcontractors of the Port of Gulfport Restoration Program;
- interviewed staff of:
  - the Mississippi Development Authority ;
  - the Mississippi State Port Authority;
  - the Mississippi Department of Finance and Administration;
  - the Mississippi Emergency Management Agency; and,
  - the Mississippi Attorney General's Office.
- researched literature on restoration and expansion of the Port of Gulfport; and,
- analyzed records, including plans, board minutes, data, audit reports, and performance reports maintained by the Mississippi Development Authority and the Mississippi State Port Authority.

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## Background

In 2005, Hurricane Katrina inflicted significant damage and destruction on the Port of Gulfport from which the port's commercial activity has not yet fully recovered. While the subject of this report is the port's utilization of federal Port of Gulfport Restoration Program funds, PEER notes that non-Port Restoration Program dollars funded initial clean-up and debris removal at the port following the storm, as well as approximately \$102 million in post-Katrina port restoration and expansion projects as of January 31, 2013.

The Port of Gulfport is one of two state ports established by Mississippi law and is the only state port on the Gulf of Mexico.<sup>1</sup>

### Statutory Authority for Creation and Operation of the Port of Gulfport

*State law authorizes the Mississippi Development Authority (MDA) and the Mississippi State Port Authority (MSPA) Board of Commissioners to govern the Port of Gulfport. The MSPA is responsible for daily operations, management, and infrastructure of the Port of Gulfport on behalf of MDA.*

The State Ports and Harbors Law (MISS. CODE ANN. Section 59-5-1 et seq. [1972]) establishes the Mississippi State Port Authority. MSPA is an enterprise state agency<sup>2</sup> responsible for the daily operations, management, and infrastructure of the Port of Gulfport. The law authorizes MDA and the MSPA Board of Commissioners to govern the port, which began operations as a state port in 1960.

The MSPA Board of Commissioners is composed of five members who must be qualified electors of Harrison County or the City of Gulfport. The Governor appoints three members of the board, the Harrison County Board of Supervisors appoints one board member, and the Gulfport City Council appoints one board member. Members serve staggered five-year terms.

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<sup>1</sup>Other Mississippi Gulf Coast ports are the Port of Pascagoula and Port Bienville, but these are local ports established by MISS. CODE ANN. Section 59-9-1 et seq. (1972) and are under the control of local port commissions.

<sup>2</sup>As an enterprise agency of the State of Mississippi, the port receives no annual general fund allocation from the state, but instead operates as a private business. Its income is derived from port usage, service fees, lease agreements, and other tenant-related fees.

## Pre-Katrina Description of the Port of Gulfport

***Prior to Hurricane Katrina, the Port of Gulfport reported having 2,058 permanent direct maritime jobs and handling approximately 2.4 million short tons of cargo (96% of which was foreign) annually. At that time, 67% of the port's cargo was containerized.***

Prior to Hurricane Katrina, the Port of Gulfport encompassed 184 acres; 6,700 linear feet of dock space; and 840,000 square feet of warehouse space. The port's shipping channel had a depth of thirty-two to thirty-six feet.

In terms of commercial activity, in 2005 pre-Katrina, the port had 2,058 permanent direct maritime<sup>3</sup> jobs and handled approximately 2.4 million short tons, approximately 96% of which was foreign commerce and 4% domestic. The primary commodity shipped through the port in 2004 was bananas (30% of total tonnage), followed by paper and paperboard (17%) and textile products (13%). Exhibit 1, page 6, summarizes the port's 2004 shipping tonnage by commodity.

While in 2004 the Port of Gulfport was the third busiest container port on the Gulf of Mexico, it handled only approximately 11% of total Gulf foreign container traffic<sup>4</sup> and .8% of the total foreign container traffic of all U. S. ports.

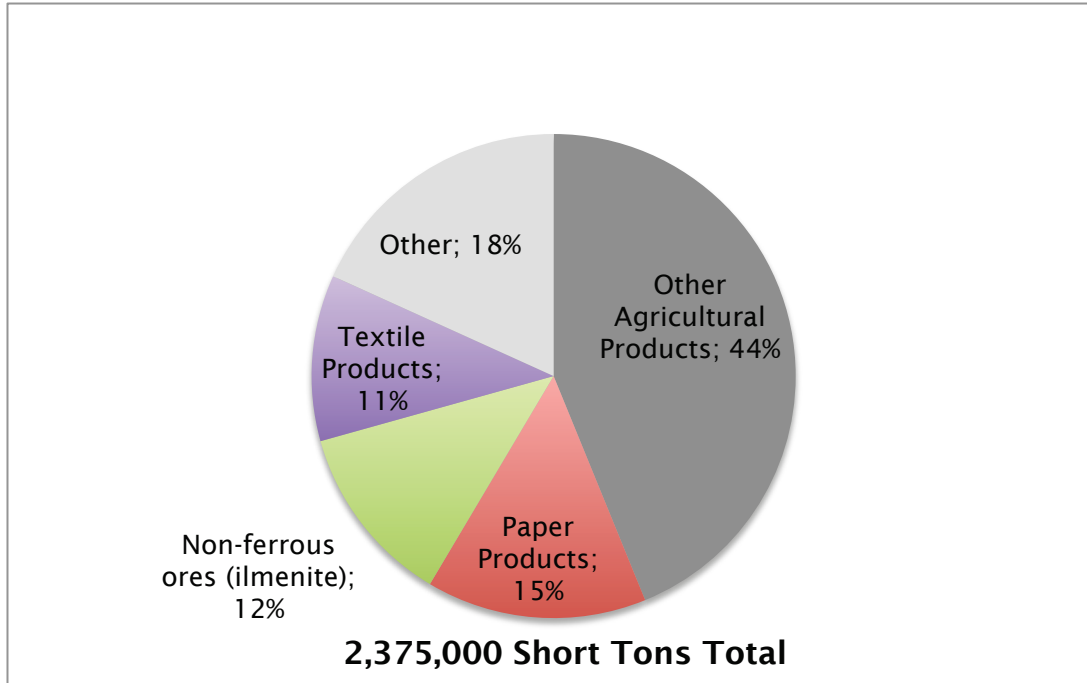
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<sup>3</sup>Maritime jobs are those jobs directly related to servicing the port's waterborne commerce, including management and administration of port tenant and non-tenant companies, drivers of trucks hauling waterborne commodities, dispatchers, longshore workers, stevedores, mechanics, tugboat operators, and persons employed in port logistics services.

<sup>4</sup>While 96% of the Port of Gulfport's total tonnage in 2004 was foreign (versus domestic), 100% of the port's container traffic was foreign. In terms of tonnage, in 2004, the port's container traffic comprised approximately 67% of the total, followed by break-bulk (18%) and bulk (15%).

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## Exhibit 1: Port of Gulfport Tonnage, by Commodity and Percentage of Total, 2004



SOURCE: PEER analysis of information from U. S. Army Corps of Engineers Navigation Data Center, Waterborne Commerce Statistics Center.

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### Pre-Katrina Plans for Development of the Port of Gulfport

*In 2002, MSPA commissioned the JWD Group to develop a twenty-year Master/Vision Plan to help guide future development of the Port of Gulfport. Among the projects included in the plan were: an eighty-four-acre expansion of the port's footprint to facilitate and accommodate expected growth in its maritime business; development of terminals and berths to attract and accommodate the cruise ship industry; and expansion of the port's non-maritime business, including gaming and hotels.*

In 2002, MSPA commissioned the JWD Group to prepare a Twenty-Year Master/Vision Plan and market forecast to help guide future port development. The port's Twenty-Year Master/Vision Plan encompassed the following objectives:

- to consolidate terminal activities to maximize efficiency and minimize traffic conflicts and congestion;

- to accommodate future growth anticipated in the market; and,
- to expand gaming activities without interfering with the port's business operations.

Based on the JWD Group's market study findings that there was potential for strong cargo growth and an emerging cruise market in Gulfport, the Master Plan proposed the following developments over a twenty-year period:

- expansion of the footprint of the port through approximately sixty acres on the West Pier and twenty-four acres on the East Pier;
- consolidation of container terminal operations on the West Pier and bulk operations on the East Pier;
- creation of a new truck road linking Interstate 10 with the port over Highway 90 and into the port facility;
- revitalization of the port's commercial entertainment and gaming areas by rerouting Highway 90 inland toward downtown; and,
- creation of "four gaming facilities including support areas with hotels, parking, etc., [and] a total of two cruise terminals and [two] berths."

The Master Plan also suggested potential areas for a near-dock rail yard and evaluated potential truck/rail access corridors into the port.

MSPA staff estimated that costs of implementing the 2003 Master/Vision Plan would have totaled approximately \$1.7 billion.

## **Impact of Hurricane Katrina on the Port of Gulfport**

*Hurricane Katrina significantly damaged the Port of Gulfport and adversely affected its commercial activity, resulting in a significant decline in the number of permanent direct maritime jobs attributable to the port.*

### **Physical Damage to the Port of Gulfport**

*Hurricane Katrina significantly damaged buildings, equipment, and infrastructure of the Port of Gulfport.*

On August 29, 2005, Hurricane Katrina made landfall in Mississippi, bringing unprecedented destruction to the Gulf Coast region, including the Port of Gulfport. As

reported in the Port of Gulfport Restoration Program Action Plan, the storm inflicted the following damage on the port:

*The Port of Gulfport's electrical power supply, roads, water and sewer, rail, small craft harbor fendering systems, navigational aids, and lighting and security systems were all destroyed or damaged beyond repair by the storm.*

*Approximately 430,000 square feet of waterfront warehouses and freezer facilities were completely destroyed by the hurricane. The container gantry crane, bulk vessel loader, conveyer system and support buildings were lost. The wharf area on the West Pier was severely damaged and unusable, including approximately 2,100 linear feet of berthing area and 420,000 square feet of wharf deck.*

As reported in PEER Report #487, *The Impact of Hurricane Katrina on Mississippi's Commercial Public Ports and Opportunities for Expansion of the Ports* (June 20, 2006), the storm destroyed the Dole, Chiquita, Crowley, and Mississippi State Port Authority maintenance, operations, and administrative offices and inflicted heavy damage to DuPont's ilmenite ore handling facility. Further, the storm left a heavy debris field, including containers, railcars, lumber bundles, and steel sheeting from warehouses that had to be cleared before ships were able to regain access to the port's berths.

### **Impact on Commercial Activity at the Port of Gulfport**

*In 2005, the year that Hurricane Katrina made landfall, the port experienced an approximately 18% decline in its container traffic, resulting in a 2% decline in its share of total Gulf foreign container traffic. The port had not regained its pre-Katrina share by 2011, the last full year of data available.*

According to MSPA staff, despite the extensive physical damage to the Port of Gulfport resulting from Hurricane Katrina, the port was able to resume some level of containerized cargo activity within three weeks of the storm's landfall. However, as shown in Exhibit 2 on page 9, as expected, Hurricane Katrina did have an immediate negative impact on the port's commercial activity, as evidenced by container traffic falling from 183,493 TEUs<sup>5</sup>

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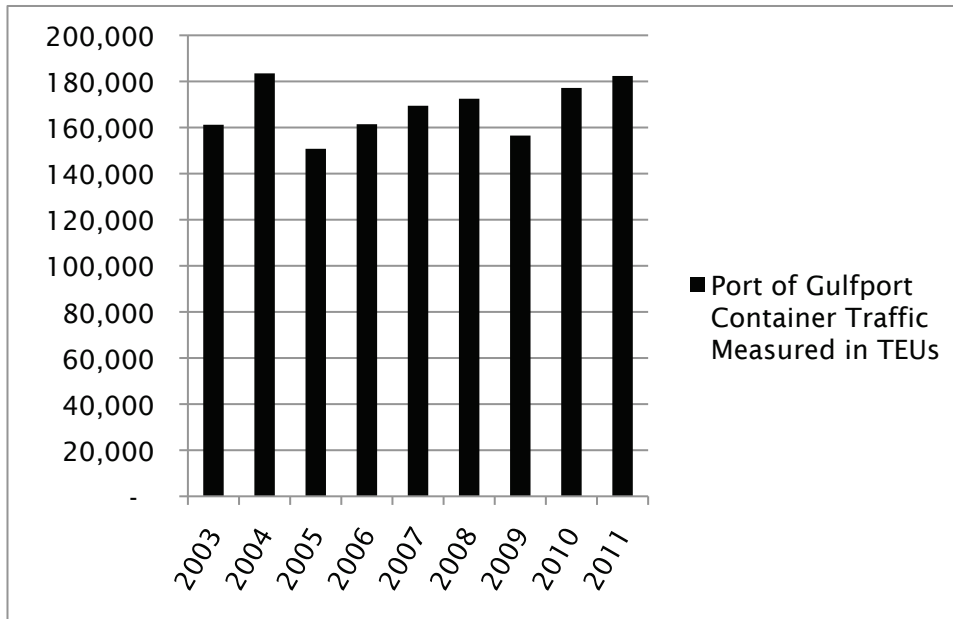
<sup>5</sup>The volume of container cargo transported through a port is reported in TEUs (twenty-foot equivalent units). The standard TEU is a metal box that is roughly twenty feet long and eight feet wide. Shippers can easily transfer these standard-sized containers between different modes of transportation such as ships, trains, and trucks. This data was reported by the U. S. Army Corps

in 2004 to 150,770 TEUs in 2005, an 18% decline. In that same period, both total Gulf and total U. S. foreign container traffic increased by approximately 2% and 9%, respectively. Further, following Hurricane Katrina, the port handled no break-bulk tonnage until January 2006, and even then at a significantly lower level than before the storm. Bulk cargo activity at the port did not resume until March 2007.

This decline in commercial activity negatively affected the number of permanent direct maritime jobs attributable to the port, dropping to 1,286 in 2007, a 37.5% decline from pre-Katrina in 2005.

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**Exhibit 2: Port of Gulfport Container Traffic by Calendar Year, 2003 through 2011**



NOTE: The volume of container cargo transported through a port is reported in *TEUs* (twenty-foot equivalent units). The standard TEU is a metal box that is roughly twenty feet long and eight feet wide. Shippers can easily transfer these standard sized containers between different modes of transportation such as ships, trains, and trucks.

SOURCE: U.S. Army Corps of Engineers Navigation Data Center; Waterborne Commerce Statistics Center (<http://www.ndc.iwr.usace.army.mil/wcsc/wcsc.htm>). (While the U. S. Army Corps of Engineers' TEU data excludes empty containers from its TEU count, MSPA TEU data includes empty containers in its TEU count.)

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As shown in Exhibit 3 on page 10, in 2005 the port lost approximately two percent of its share of the foreign container traffic in the Gulf (declining from approximately 11% to approximately 8.9%) and had not regained its pre-

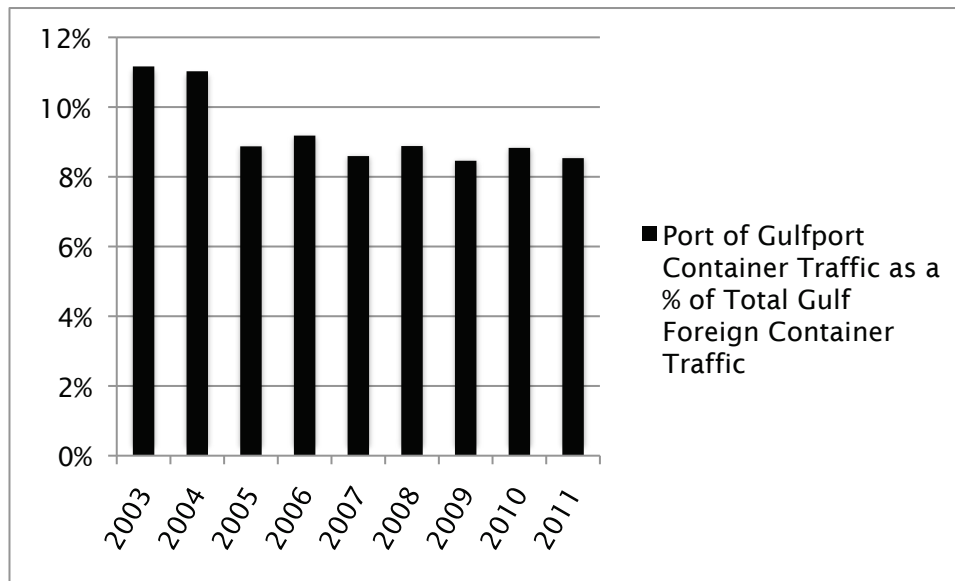
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of Engineers. While the Corps of Engineers' TEU data excludes empty containers from its TEU count, MSPA's TEU data includes empty containers.

Katrina share by 2011, the last year of data available from the U.S. Army Corps of Engineers website at the time of this review.

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**Exhibit 3: Port of Gulfport Container Traffic as a Percentage of Total Gulf Foreign Container Traffic, by Calendar Year, from 2003 through 2011**



SOURCE: U.S. Army Corps of Engineers Navigation Data Center; Waterborne Commerce Statistics Center (<http://www.ndc.iwr.usace.army.mil/wcsc/wcsc.htm>).

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The following nine commodities comprised approximately 85% of total port tonnage in CY 2010: bananas and plantains (31.6%), non-ferrous ores (ilmenite) (13.9%), textile products (13.6%), paper and paperboard (9.1%), paper products (6.7%), meat (fresh and frozen) (3.5%), sand and gravel (2.3%), plastics (2.3%), and manufactured products (2.2%).

Exhibit 4 on page 11 compares tonnage of selected commodities shipped through the port before Hurricane Katrina (2004 data) to tonnage shipped in 2010. Of the ten commodities shown in the exhibit, eight experienced declines in tonnage while only two, paper products NEC<sup>6</sup> and non-ferrous ores NEC, experienced increases (of 134 and 138 thousands of short tons, respectively). In terms of thousands of short tons lost, the largest decline was in paper and paperboard (216), followed by meat, fresh frozen (97), pig iron (77; 100% of shipments) and aluminum (56; 99% of shipments). Also during this period, the port lost approximately 50,000 short tons of primary

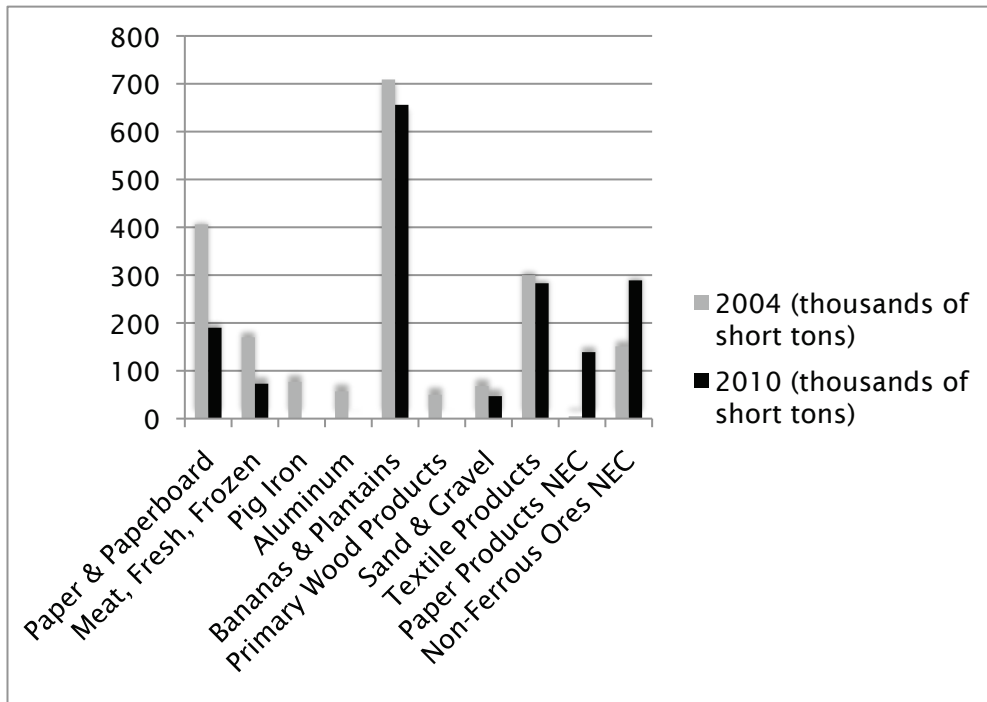
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<sup>6</sup>The acronym NEC stands for “not elsewhere classified.”



wood products shipments, almost 100% of the port's commercial activity for this commodity.

**Exhibit 4: Comparison of Tonnage of Selected\* Commodities Shipped Through the Port of Gulfport in 2004 (Pre-Katrina) to 2010**



NEC=not elsewhere classified

\* The exhibit includes those commodities shipped through the Port of Gulfport with tonnage equal to or exceeding 50,000 short tons in either 2004 or 2010.

SOURCE: PEER analysis of information from U. S. Army Corps of Engineers Navigation Data Center, Waterborne Commerce Statistics Center.

By 2012, 81.3% of the port's tonnage was containerized, 18.6% was bulk, and 0.1% was break-bulk.

**Improvements and Repairs to the Port Using Non-Port Restoration Program Funds**

*As of January 31, 2013, the port had expended approximately \$99.8 million in non-Port of Gulfport Restoration Program funds to complete capital projects to repair and improve the port and an additional \$2.2 million on ongoing capital projects.*

When Hurricane Katrina hit the Port of Gulfport, the port had already begun the expansion program discussed on page 6. As shown in Exhibit 5 on page 12, by the time that the hurricane made landfall in Mississippi, the port had

**Exhibit 5: Port of Gulfport Capital Projects, Ongoing and Completed Post-Katrina, Funded with Non-Port of Gulfport Restoration Program Revenues,\* as of January 31, 2013**

		Project Costs	Total Project Costs	
	Total Project	Incurred Prior to	Incurred Subsequent	Completion
Project Description	Costs	8/29/05	to 08/29/2005	Date
<i>Completed Projects</i>				
RO/RO Ramp - W. P. Berth 7	\$ 1,445,937.06	\$ 1,405,647.32	\$ 40,289.74	01/2006
Dredging - W.P. Berth 7 Turning Basin	3,782,328.99	2,160,178.51	1,622,150.48	01/2006
Shed 16 Repairs - W.P.	2,246,062.13		2,246,062.13	09/2006
Shed 53 Repairs - E.P.	2,874,966.04		2,874,966.04	03/2007
Land - 35 Acre Expansion W.P.	27,121,985.07	20,313,758.69	6,808,226.38	08/2007
High Mast Lighting	743,705.08		743,705.08	10/2007
Rail Repair	1,573,146.65		1,573,146.65	07/2007
Shed 50 Repairs - E.P.	12,358,988.87		12,358,988.87	05/2008
North Harbor-Paving and Drainage	4,384,608.42		4,384,608.42	08/2007
Walkway - W.P. 7	104,688.05		104,688.05	02/2008
North Harbor - Roadway Lighting	55,927.72		55,927.72	02/2008
Port Perimeter Fencing	521,782.71		521,782.71	11/2008
Berths 1, 2 & 3 Repairs - E.P.	1,388,874.37		1,388,874.37	02/2009
Chiquita M&R Access Road	300,654.98		300,654.98	06/2009
Berths 1 & 2 Rehab. - W.P.	32,867,884.39	952,134.94	31,915,749.45	10/2009
RO/RO Ramp Extension - W.P.	1,588,904.24		1,588,904.24	06/2010
Limestone Paving - W.P. 26 Acres	2,579,303.67		2,579,303.67	07/2010
Berth 3 Rehab. - W.P.	19,383,447.11		19,383,447.11	02/2011
Land - 25 Acres Expansion W.P.	576,472.58		576,472.58	06/2011
Security Lighting	1,410,701.28		1,410,701.28	11/2011
Fender System Repairs - E.P. & W.P.	1,421,517.10		1,421,517.10	05/2012
W.P. Terminal Canopy w/Lighting	210,298.30		210,298.30	05/2012
Rail Upgrades	961,440.17		961,440.17	03/2012
Chiquita Office and M&R Facility	4,757,421.70		4,757,421.70	01/2013
Subtotal	\$124,661,046.68	\$24,831,719.46	\$ 99,829,327.22	
<i>Ongoing Projects</i>				
Inland Site Development	\$189,221.80		\$189,221.80	
Crowley M&R Facility	928,174.63		928,174.63	
Freezer	3,170.00		3,170.00	
Ilmenite Facility	59,128.03		59,128.03	
Security Gate Complex - W.P.	287,506.20		287,506.20	
Shed 50 Railroad Dock	247,869.55		247,869.55	
Crowley Tire Shop Facility	505,574.18		505,574.18	
Subtotal	\$ 2,220,644.39		\$ 2,220,644.39	
Total	\$126,881,691.07	\$24,831,719.46	\$102,049,971.61	
Note: E.P.= East Pier, W.P. = West Pier				
*Non-Port of Gulfport Restoration Program revenues include: MSPA, insurance proceeds, FEMA grants, Port Security grants, Multi-Modal (MDOT) grants and Series 16 bond funds.				

SOURCE: MSPA.

already expended approximately \$20.3 million on the first phase (thirty-five acres) of its eighty-four-acre West Pier expansion project. The port had also expended approximately \$3.6 million on projects to improve Berth 7 of the West Pier (including a roll-on/roll-off ramp and dredging of the turning basin) and almost \$1 million to rehabilitate berths 1 and 2 of the West Pier.

In the period immediately following Hurricane Katrina, while some port tenants performed their own clearing and removal of debris, MSPA conducted the majority of the post-Katrina cleanup of leased premises using insurance proceeds and reimbursements from the Federal Emergency Management Agency (FEMA).

In addition, between Hurricane Katrina's landfall on August 29, 2005, and January 31, 2013, the port expended approximately \$99.8 million in funds from MSPA, FEMA, insurance proceeds, bond proceeds, and non-CDBG grants to complete the capital projects begun before the storm and other capital projects initiated after the storm to repair and improve the port. The port expended approximately \$34.7 million of these funds on capital projects completed prior to receiving federal funding for the Port of Gulfport Restoration Program in February 2009.

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## What is the Port of Gulfport Restoration Program?

In December 2007, MDA requested HUD to reprogram Community Development Block Grant Disaster Recovery funds in an amount not to exceed \$600 million from Phase 1 of the Homeowners Assistance Program to a newly created Port of Gulfport Restoration Program. The stated purpose of the program was to provide funding to the Mississippi State Port Authority to facilitate the restoration of the port's infrastructure and facilities, to provide for the long-term recovery of the port's operating capacity, and to provide mitigation against future damage. MDA requested the reprogramming of CDBG Disaster Recovery funds on the grounds that restoration of the Port of Gulfport was crucial to the economy and long-term recovery of the state and to the Gulf Coast region in particular.

This chapter addresses the following:

- What recommendations did the Governor's post-Katrina Commission on Recovery, Rebuilding, and Renewal make relative to the Port of Gulfport?
- How did the Port of Gulfport Restoration Program come into being?
- What are the roles of the Mississippi Development Authority and the Mississippi State Port Authority regarding funding and accountability for the expenditure of program funds?
- What was the controversy surrounding the reprogramming of funds from Phase 1 of the Homeowners Assistance Program to the Port of Gulfport Restoration Program?

### What recommendations did the Governor's Commission on Recovery, Rebuilding, and Renewal make relative to the Port of Gulfport?

*In December 2005, the Governor's Commission on Recovery, Rebuilding, and Renewal recommended formation of a Coastal Port Council to work with MDA to study and evaluate the role and mission of the ports of Gulfport and Pascagoula post-Katrina and to develop a master plan to maximize the growth potential of each and minimize duplication of operations and services. The commission also recommended the redesign of a connector road from the port to Interstate 10 to reduce traffic congestion on Highway 49 and accommodate port activities and development of an inland "port" or staging facility where cargo from the port would be held and prepared for shipment to its final destination.*

Following the devastation of Hurricane Katrina in 2005, Governor Haley Barbour created a commission to study and offer recommendations for the Mississippi Gulf Coast's recovery. (For a chronology of the Port of

Gulfport’s post-Katrina restoration, see Appendix A on page 57.) The commission’s mandate was to explore options and recommend approaches to rebuild the Gulf Coast and to make it “better than ever.” On December 31, 2005, the Governor’s Commission on Recovery, Rebuilding, and Renewal released its report entitled *After Katrina: Building Back Better Than Ever*. The report offered recommendations on a wide array of topics including but not limited to education, land use, housing, tourism and transportation, including recommendations specific to the coastal ports.

According to the report, although recovery efforts to repair damaged roads, bridges, and ports were immediate and ongoing, the commission envisioned addressing challenges and opportunities facing transportation that extend beyond the initial period of recovery to twenty or more years into the future.

Specific to the coastal ports, the commission recommended that the Governor establish a Coastal Port Council to work directly with MDA to study and evaluate the role and mission of the Port of Gulfport and the Port of Pascagoula. The commission also recommended that an experienced, qualified consultant conduct a study of the two ports and develop a master plan designed to maximize the growth potential of each port and minimize duplication of operations and services. The commission recommended that the Governor appoint council members representing the two coastal ports, the local chairman of Local 1303 of the International Longshoremen’s Association, and any other persons deemed appropriate for membership by the Governor. While the Coastal Port Council was never created, the Port of Gulfport hired consultants to prepare a Gulfport Master Plan Update that was completed in June 2007.

The commission also made the following two intermodal transportation recommendations intended to help promote maritime growth at the Port of Gulfport, both of which were included in the port’s 2003 Master Plan (as discussed on pages 6-7):

- development of a bypass road (proposed Interstate 310) directly connecting the Port of Gulfport to Interstate 10;<sup>7</sup> and,
- development of an inland “port”--i. e., a land-based staging facility where cargo from the Port of Gulfport

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<sup>7</sup>The commission also intended for the proposed connector road to accommodate plans to convert Highway 90 to a pedestrian-friendly “beach boulevard” and to develop a new east-west transportation thoroughfare.

would be prepared for shipment to its final destination.

With respect to the proposed connector road, the commission noted that prior to Hurricane Katrina, the growth and expansion of Gulfport, primarily fueled by the gaming and tourism industries, had created significant traffic congestion problems on Highway 49 from points north of Gulfport to the intersection with Highway 90. To address the congestion, the Mississippi Department of Transportation (MDOT) had designed a connector road, Interstate 310, to reduce traffic flow on Highway 49. The commission, with MDOT's agreement, recommended that MDOT redesign the connector road to accommodate and support Port of Gulfport activities that, according to the commission, were evolving into a mix of commercial businesses and gaming.

Further, the commission recommended the acquisition and development of property north of Highway 90 into an inland "port" or staging facility where cargo shipped into the Port of Gulfport could be held until moved by truck or rail to its final destination. The commission envisioned that the proposed inland staging facility would reduce the amount of land area needed by the Port of Gulfport at its commercial maritime operations, open land for casino and related developments, and eliminate the railroad grade crossing over Highway 90 as it enters the port.

### **How did the Port of Gulfport Restoration Program come into being?**

*During the period of September through December 2005, Congress appropriated approximately \$5.5 billion in CDBG disaster recovery funds to Mississippi for disaster relief, recovery, and restoration. In December 2007, MDA requested HUD to reprogram an amount not to exceed \$600 million in CDBG disaster recovery funds that the state had previously allocated to Phase 1 of the Homeowners Assistance Program to the Port of Gulfport Restoration Program.*

In accordance with the FY 2006 Department of Defense Appropriations Act and FY 2006 Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, from September through December 2005 Congress appropriated approximately \$5.5 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funding to Mississippi for disaster relief, long-term recovery, and restoration of infrastructure.<sup>8</sup> HUD disburses the CDBG-DR

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<sup>8</sup>The FY 2006 Department of Defense Appropriations Act appropriated approximately \$5.058 billion in CDBG-DR funds. The restoration program received its funds from this act. The FY 2006 Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global

funds authorized by the appropriations acts. (See page 23 for information on the purpose of and expenditure criteria for CDBG-DR funding.)

HUD regulations permit state recipients of CDBG-DR funding to designate a sub-recipient to receive and administer the funds. The state of Mississippi designated the Mississippi Development Authority (MDA) as the agency responsible for receiving CDBG-DR funds from HUD and for administering the funds. See Appendix B, page 58, for a list of accountability requirements for grantees of CDBG-DR funding.

Under the 2006 Department of Defense Appropriations Act, funding was provided to Mississippi for relief efforts and mitigation activities, including housing assistance, infrastructure development, and assistance to public services. Funding under the act was divided by MDA into the following four disaster recovery assistance programs:

- Hurricane Katrina Homeowner Grant Program, also referred to as Phase I - Homeowners Assistance Program;
- Public Housing Program;
- Ratepayer and Wind Pool Mitigation; and,
- Gulf Coast Regional Infrastructure.

Following this initial allocation of CDBG disaster recovery funds to the state of Mississippi, on March 7, 2006, Governor Haley Barbour appeared before the U. S. Senate Committee on Appropriations to request funds to help rebuild and redevelop the Port of Gulfport. In his request for funding, the former governor described the plan to rebuild and redevelop the port as an “integral transportation [project] dealing with hazard mitigation, safety, economic and community development.” In June of 2007, MSPA adopted an updated Master Plan for the Port of Gulfport compiled by JWD Group, a division of DMJM Harris, which adopted most of the projects previously laid out in the port’s 2003 Twenty-Year Master/Vision Plan (see discussion on page 6). The port’s 2007 Master Plan Update included a Five-Year Vision Plan that emphasized concentrating container terminal operations on the West Pier, reconstructing the freezer facility damaged by Hurricane Katrina on the West Pier, concentrating break bulk operations on the East Pier, clearing the North Harbor area for waterfront commercial and gaming development, creating a centralized track and rail access corridor at the

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War on Terror, and Hurricane Recovery appropriated approximately \$423 million in CDBG-DR funds.

intersection of 30<sup>th</sup> Avenue and Highway 90, and relocating truck access roads to a central location.

On December 12, 2007, MDA submitted a formal request to HUD (“Port of Gulfport Restoration Program Action Plan Amendment 5”) to create the Port of Gulfport Restoration Program by reprogramming an amount not to exceed \$600 million, including administrative costs, from Phase 1 of the Homeowners Assistance Program. In justifying its request for funding the Port of Gulfport Restoration Program, MDA stated “The Port of Gulfport is crucial to the economy and long-term recovery of the State of Mississippi and to the Gulf Coast region in particular.” According to MDA’s request for funding, the purpose of the Port of Gulfport Restoration Program was “to facilitate the restoration of public infrastructure and publicly owned facilities that were destroyed by Hurricane Katrina, to provide mitigation against future damage and to provide for the long term recovery of the operating capacity of the Port.” As discussed further on page 28, Action Plan Amendment 5 included the following examples of projects that the Port of Gulfport Restoration Program might include, but would not be limited to:

- the inland “port” staging facility, included in the port’s 2003 Master Plan and recommended by the Governor’s Commission on Recovery, Rebuilding, and Renewal (see discussion on page 15);
- a dredging/wharf construction program that would include deepening of the port’s channel from thirty-six to forty-two feet;
- a terminal/backlands program that would develop and improve both the East Pier and the existing and expanded West Pier; and,
- a terminal gates program that would construct a new centralized security access gate on the West Pier.

In the public comment section of Action Plan Amendment 5, MDA also stated that CDBG Disaster Recovery Funds would be “utilized for maritime restoration only.” In addition to the listed possible projects, Action Plan Amendment 5 set forth the expectation that the completion of the program would result in 2,586 permanent direct maritime jobs associated with the port by 2015, many of which would be made available to low-to moderate-income workers.

While on January 25, 2008, the Secretary of HUD authorized MDA to “reprogram” \$600 million from Phase I of the Homeowners Assistance Program to the Port of Gulfport Restoration Program, as requested, this decision



was not without controversy, as discussed on page 21. Subsequent to this authorization, MDA reallocated \$30 million from the \$600 million Port Restoration Program allocation to the Gulf Coast Regional Infrastructure program and retained an additional approximately \$3 million of the \$600 million allocation to cover costs of administering the two projects. In December 2008, MDA made available \$567 million in CDBG-DR funds for the Port of Gulfport Restoration Program to MSPA.

Subsequent to receiving funding, MSPA hired a staff of five professionals to oversee the Port of Gulfport Restoration Program. The staff of the Restoration Program is solely responsible for the restoration of the port and not the day-to-day business of the port. The Director of Port Restoration reports directly to the Executive Director of the Port of Gulfport and the remaining four staff members report to the Director of Port Restoration. The following staff positions are assigned to the Restoration Program:

- Director of Port Restoration;
- Compliance Officer;
- Contract Administrator;
- Finance Manager; and,
- Administrative Assistant.

**What are the roles of the Mississippi Development Authority and the Mississippi State Port Authority regarding the program's funding and accountability for the expenditure of program funds?**

*The Mississippi Development Authority was designated to make funding available to the Mississippi State Port Authority to facilitate the rebuilding and restoration of Gulfport port facilities and to ensure that Port of Gulfport Restoration Program funds are expended in accordance with state and federal accountability requirements.*

Action Plan Amendment 5 set forth the following requirements governing the disbursement of CDBG disaster assistance funds allocated to the Port of Gulfport Restoration Program:

*MDA will enter into sub-recipient agreement(s) with the Port, which will define the individual activities/projects to be funded. The Port will be responsible for construction including managing the bidding process for all construction projects and determining that all work is completed in a satisfactory manner. The Port's Commissioners, engineers, and managers must review and approve any request for*

*cash before it is submitted to MDA. MDA will then review and approve the request for cash and send the approved amount to the Port, which will be responsible for paying their vendors.*

As the federally designated authority for administering the state's CDBG disaster assistance funds, MDA is responsible for ensuring that the funds are expended in accordance with applicable federal and state laws. After the MSPA Board of Commissioners approves Port of Gulfport Restoration Program construction and contract bids, MDA reviews the contracts to ensure that they meet federal requirements and that projects are consistent with the approved Action Plan. To fulfill its responsibility, MDA requires the port to enter into contracts with its contractors that, among other provisions, require the contractors to make regular progress reports, permit MDA access to contractor records and sites, and require that all procurement is in accordance with state and federal requirements. (Refer to page 42 for a discussion of a Port of Gulfport Restoration Program contract dispute that highlighted disagreement over whether MSPA, as an enterprise state agency, was subject to the jurisdiction of DFA, the Public Procurement Review Board, and the Bureau of Building, Grounds, and Real Property Management to determine compliance with state procurement regulations.) While the Attorney General opined in December 2011 that MSPA was a state agency subject to the state's purchasing laws, in 2012, the Legislature amended MISS. CODE ANN. Section 31-7-1 (1972) to include the MSPA in the list of entities considered to be governmental authorities. In the same year, the Legislature also amended CODE Section 59-5-37 to provide that the port is a governing authority for purposes of the state's purchasing laws, and further is not subject to the jurisdiction of DFA, the Public Procurement Review Board, or the Bureau of Building, Grounds and Real Property Management.

Action Plan Amendment 5 also requires MDA CDBG monitors to perform on-site inspections, conduct reviews to ensure that costs are accounted for properly, and to report their oversight findings concurrently to the Chief Financial Officer of MDA and the Office of the Governor.

See pages 23 through 26 of this report for a discussion of the specific requirements for expenditure of CDBG disaster recovery funds for the Port of Gulfport Restoration Program. (See Appendix B, page 58, for accountability requirements for the use of HUD CDBG funds.)

## What was the controversy surrounding the reprogramming of funds from Phase 1 of the Homeowners Assistance Program to the Port of Gulfport Restoration Program?

***HUD's approval of MDA's request to reprogram an amount not exceed \$600 million in Community Development Block Grant Disaster Recovery funds from Homeowners Assistance Program funds to the Port of Gulfport Restoration Program resulted in a lawsuit. The lawsuit was settled out of court, whereby the state of Mississippi agreed to direct \$133 million in CDBG funds to unmet disaster housing recovery needs of lower-income households.***

In his January 25, 2008, letter authorizing MDA to "reprogram" \$600 million from Phase I of the Homeowners Assistance Program to the Port of Gulfport Restoration Program, the HUD Secretary noted his concern that the port expansion would divert emergency federal funding from other pressing recovery needs, most notably affordable housing.

MDA's request to reprogram the funds triggered reactions from the press, members of Congress, and certain HUD officials arguing that the block grant funds should be spent on homeowner grants and not the port. The chairs of U. S. House committees overseeing HUD and the CDBG program wrote to the HUD Secretary that "[w]e strongly believe that approving this diversion is a mistake and would violate the intended purpose of these CDBG funds to benefit the Gulf Coast's low and moderate income families."

At an oversight hearing on March 11, 2008, the HUD Secretary acknowledged that more resources should have been provided to low- and moderate-income people for housing or infrastructure and that he disagreed with the use of CDBG funds designated for Homeowners Assistance grants to fund the Port Restoration Program. On December 10, 2008, the Mississippi Center for Justice filed a lawsuit on behalf of the Mississippi State Conference of the NAACP, the Gulf Coast Fair Housing Center, and four individual plaintiffs against HUD addressing the agency's approval of the state's "reprogramming" of Homeowners Assistance Program funds. On November 15, 2010, HUD and the State of Mississippi negotiated a settlement with the plaintiffs in which the state agreed to direct \$133 million to disaster housing recovery of lower-income households in south Mississippi whose needs were not served by the state's previous programs in the wake of the 2005 hurricane. According to the Mississippi Center for Justice, the settlement includes a new Neighborhood Home Program (NHP) that will repair lower-income homes damaged by Hurricane Katrina, either as a result of wind

or flooding, and programs for qualified low-income persons to occupy Mississippi cottages and rental housing.

According to documentation provided by MDA, \$40 million of the \$600 million in CDBG-DR funds allocated to the Port of Gulfport Restoration Program was held in reserve for use by the NHP. Exhibit 6, below, shows the sources of funding for the settlement.

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**Exhibit 6: Sources of Funding for the Settlement of the Lawsuit between the Mississippi Center for Justice and U.S. Department of Housing and Urban Development**

	<b>Katrina CDBG Funds</b>	<b>Mississippi Alternative Housing Pilot Program (Mississippi Emergency Management Agency program)</b>	<b>Private Funds from the Gulf Coast Renaissance Corporation</b>	<b>Total</b>
<b>Total by Category</b>	\$101,571,267	\$30,000,000	\$1,292,500	\$132,863,767

SOURCE: Mississippi Development Authority Katrina Disaster Assistance Program Long Term Workforce Housing Action Plan, October 28, 2010.

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## What were the requirements governing expenditure of Community Development Block Grant disaster recovery funds for the Port of Gulfport Restoration Program?

The port restoration program's CDBG disaster recovery funds must be used for HUD-approved eligible activities related to disaster relief, long-term recovery, and restoration of infrastructure. Federal regulations require entities receiving CDBG funds for economic development purposes to create or retain a specified number of jobs for low- and moderate-income individuals in order to "ensure a minimal level of public benefit," but in recognition of the disaster recovery conditions under which the funds were granted to Mississippi, HUD granted MDA a waiver that reduced the number of jobs that the program must create or retain.

This chapter addresses the following:

- What was the purpose of CDBG disaster recovery funds and what were the criteria for their use?
- Did HUD allow changes in the criteria for use of the program's CDBG disaster recovery funds?

### What was the purpose of CDBG disaster recovery funds and what were the criteria for their use?

*The Port of Gulfport Restoration Program must use CDBG disaster recovery funds for disaster relief, long-term recovery, and restoration of infrastructure related to the consequences of Hurricane Katrina. Federal regulations require entities receiving CDBG funds for local economic development purposes to create or retain a specified number of jobs for low- and moderate-income individuals.*

As noted on page 16, Congress appropriated CDBG disaster recovery (CDBG-DR) funds to Mississippi for hurricane recovery. The federal government provides such funds through supplemental appropriations to states, units of general local governments, Indian tribes, and insular areas<sup>9</sup> in presidentially designated disaster areas. Each appropriation that provides CDBG-DR assistance specifies the disasters or period of disaster declarations for which funding is available. These funds are to be used to rebuild the affected areas and provide crucial seed money to start the recovery process. The money must be used for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure

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<sup>9</sup>According to HUD, *insular areas* are four designated areas: American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands.

directly related to the consequences of the covered disasters.

The FY 2006 Department of Defense Appropriations Act, from which the port restoration program received its CDBG-DR funds, directs that these funds be available until expended unless HUD determines that the purpose for the funds has been carried out and no disbursements have been made from the appropriation for two consecutive fiscal years. In such cases, the act requires that HUD close out the grant prior to expenditure of all funds.

HUD administers the CDBG-DR funds through formula-based grants<sup>10</sup> that are noncompetitive and nonrecurring. Disaster recovery grants often supplement funds from other disaster programs (e. g., the Federal Emergency Management Agency, the Small Business Administration, and the U.S. Army Corps of Engineers); however, CDBG disaster recovery funding cannot duplicate funding made available by these agencies.

CDBG-DR funds must be used for activities eligible under section 105(a) of the Housing and Community Development Act of 1974 (HCDA), as amended, that meet a national objective under the act and are related to the disaster. The HCDA enumerates twenty-five categories of eligible activities (e. g., economic development and job creation, housing assistance, demolition) for grantees. As an economic development program, the Port of Gulfport Restoration Program qualifies as an eligible activity as defined by the HCDA.

One of the national objectives of the HCDA is to use CDBG funds to finance activities that help low- and moderate-income individuals. In order to meet this national objective, as a local economic development project, the Port of Gulfport Restoration Program must create or retain jobs for low- and moderate-income persons. (See discussion on page 25 for job requirements.) Federal regulations require that at least fifty-one percent of the jobs created (computed on a full-time equivalent basis) or retained be made available to or held by low- and moderate-income persons.<sup>11</sup>

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<sup>10</sup>CDBG supplemental disaster appropriations are generally allocated based on unmet disaster recovery needs for activities not reimbursable by or for which funds are made available by the Federal Emergency Management Agency, the Small Business Administration, or the Army Corps of Engineers.

<sup>11</sup>For retained jobs, 24 CFR 570.483 (b) (4) (ii) states: “The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover.”

As a recipient of CDBG-DR funds, the Port of Gulfport Restoration Program is also required to comply with certain accountability requirements such as environmental review and Davis-Bacon wage rate requirements. See Appendix B, page 58, for a summary of the accountability requirements for CDBG funds.

## Did HUD allow changes in the criteria for use of the program's CDBG disaster recovery funds?

*The Mississippi Development Authority requested a waiver from the “public benefit” standards for job creation/retention in order to implement the program successfully.*

The federal act appropriating CDBG-DR funds for the Port of Gulfport Restoration Program authorized the HUD Secretary to waive, or specify alternative requirements for, standard statutory or regulatory provisions administered by HUD upon:

- a request by the state; and,
- a finding by the HUD Secretary that such a waiver would not be inconsistent with the overall purpose of the statute.<sup>12</sup>

Mississippi has received a program waiver from HUD, discussed below.

Federal regulations require that entities receiving CDBG funds for economic development purposes create or retain a certain number of jobs for low- and moderate-income persons to ensure a “minimum level of public benefit.” In recognition of the disaster recovery conditions under which the CDBG funds were granted to Mississippi, HUD granted a waiver reducing the number of jobs for low- and moderate-income individuals that the port had to create or retain as part of the grant agreement.

24 CFR Section 570.482 requires that state grantees of CDBG funding ensure that a minimum level of public benefit<sup>13</sup> is obtained when CDBG funds are used for special economic development projects and when used for public facilities and improvements projects undertaken for economic development purposes. HUD regulations set

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<sup>12</sup>HUD cannot waive statutory and regulatory requirements related to fair housing, nondiscrimination, labor standards, and the environment.

<sup>13</sup>*Public benefit* refers to the justification for making CDBG assistance available in a particular community for a particular project. Generally, this is demonstrated by the need for jobs, or higher paying jobs, and the economic factors of the community compared to state and federal averages.

mandatory standards that states must use in order to determine that a minimum level of public benefit is obtained. The requirement is that such activities must, in the aggregate, create or retain at least one full-time equivalent, permanent job per \$35,000 to \$50,000 of CDBG funds.

At the request of MDA, on March 6, 2007, HUD granted a waiver of the standards for evaluating the public benefit of CDBG disaster recovery grant funds provided under P.L. 109-148 and P.L. 109-234 for economic development programs. According to the waiver notice, in removing the specific dollar thresholds, HUD stated:

*These dollar thresholds were set more than a decade ago and under disaster recovery conditions (which often require a larger investment to achieve a given result) can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. **The State has made public in its Action Plan the disaster recovery needs each activity is addressing and the public benefits expected.***

[PEER emphasis added in bold type]

In granting the “public benefit standards” waiver, HUD reasoned that “the dollar thresholds established in the regulations were outdated and under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.” HUD, however, requires the state to report and maintain documentation on the creation and retention of total jobs, number of jobs within certain salary ranges, the average amount of assistance per job and activity or program, and the types of jobs.

MDA requested an extension of the waiver from HUD from the job creation/retention requirement as part of its December 12, 2007, request for the reprogramming of funds to the Port of Gulfport Restoration Program, believing that the high post-hurricane costs of construction and repairs would result in an unrealistic number of jobs that would be required to be created or retained without the requested waiver (approximately 16,176 jobs, according to PEER’s calculations). According to MDA staff, HUD granted the requested waiver through its acceptance of the restoration program action plan, which set forth a job creation goal of 5,400 total jobs (2,586 permanent direct maritime jobs) by 2015.



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## What was the port's plan for expenditure of the CDBG disaster recovery funds allocated to the Port of Gulfport Restoration Program?

The plan for the Port of Gulfport Restoration Program has evolved since its inception. The most recent changes, which include changing the elevation of the West Pier to fourteen feet and modifying the terminal layout to attract new tenants, were implemented to expedite program completion, thus hopefully attracting new tenants and creating new jobs more quickly. According to MSPA, the Port of Gulfport Restoration Program will be completed by December 15, 2015, and is estimated to cost approximately \$569.3 million.

This chapter addresses the following:

- What was the port's plan for expenditure of the funds and how has the plan changed since inception?
- What were the projected costs of the program?

### What was the port's plan for expenditure of the funds and how has the plan changed since inception?

*Recent changes in plans for expenditure of Port of Gulfport Restoration Program funds, which include lowering the elevation of the West Pier to fourteen feet, were made in order to expedite completion of the program, thereby speeding up the process of attracting new tenants and creating new jobs.*

As discussed on page 6, prior to Hurricane Katrina, the 2003 Twenty-Year Master/Vision Plan for the Port of Gulfport proposed various maritime and non-maritime projects that were estimated to cost approximately \$1.7 billion. The port's 2007 Master Update Plan, discussed on page 15, focused on identifying new opportunities for the growth of the port's maritime and gaming markets (including the development of casinos, hotels, restaurants) post-Katrina. Like the port's 2003 Master/Vision Plan the 2007 Master Update Plan anticipated funding would be available from multiple sources, including the federal government (through disaster recovery funding), private entities and the State of Mississippi.

The first plan that focused solely on the expenditure of Port of Gulfport Restoration Program funds was the Action Plan submitted to HUD by MDA in its application for program funding. While a Ten-Year Work Plan for the Port of Restoration Program adopted by MSPA in April of 2009 contemplated total program funding of \$1.5 billion from multiple sources, in April 2010 the governor, in light of the

economic downturn, encouraged MSPA and MDA to re-budget and revise the Ten-Year Work Plan for the Port of Gulfport Restoration Program based on what could be constructed with the existing CDBG-DR funding.<sup>14</sup> Subsequent plans for the Port of Gulfport Restoration Program focused on the expenditure of available CDBG-DR funds only.

Exhibit 7, page 29, provides an overview of major capital projects included in the Action Plan and in subsequent plans for spending Port of Gulfport Restoration Program funds (i. e., 2008 Modification 1 to Amendment 5 Action Plan, 2010 Implementation Plan, and MSPA Port of Gulfport Restoration Program project update as of February 2013). As shown in the exhibit, while some projects have remained consistent throughout the program's history (e. g., completion of the eighty-four-acre dredge and fill West Pier expansion project, redevelopment of existing West Pier terminals and development of terminals on expanded West Pier, construction of a new centralized security access gate on the West Pier), other planned projects using restoration program funds have been deleted (e. g., construction of an inland "port" or staging facility, deepening of the ship channel, creating a new approach channel, turning basin, berthing basin, and container wharf on the western side of the West Pier, replacing the freezer facility, repair and improvement of the East Pier) and yet other projects have been added (e. g., replacing and improving the port's capital equipment such as installing rail-mounted gantry cranes).

As discussed on page 46, plans to elevate the port using restoration program funds have changed over time. In an effort to expedite completion of the restoration program and add jobs sooner, Governor Phil Bryant asked MSPA to consider other mitigation efforts rather than raising the port's West Pier to twenty-five feet. MSPA agreed and the MSPA Board of Commissioners approved elevating the West Pier to only fourteen feet.

Also, while explicitly excluded from the Action Plan, the February 1, 2013, Gulfport Restoration Program Schedule includes a planned expenditure for the non-maritime development of the East-North Harbor. According to staff of MSPA, this was a mislabeled project category and funds

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<sup>14</sup>The resulting Implementation Plan, submitted by CH2M Hill in August 2010 acknowledged that the existing amount of CDBG-DR funding "is not sufficient to complete everything that will be required to fully achieve maximum terminal through-put capacities or meet the projected 15 to 30 year market needs of the Port." According to CH2M Hill, the 2010 Implementation Plan only included projects discussed in previous plans that would provide "a framework for any potential long-term expansion of the Port."

### Exhibit 7: Planned Capital Projects using Port of Gulfport Restoration Program Funds

Planned Capital Projects using Port of Gulfport Restoration Program Funds	2007	2008	2010	2013
Construct inland "port" (near dock rail yard and distribution center)	√	X	X	X
Deepen ship channel	42 ft.	√	X	X
Create new approach channel, turning basin, berthing basin and breakwater structure on western side of expanded West Pier	√	√	X	X
Complete permitted 84 acre fill of Mississippi water bottoms and related site work to expand the port's West Pier footprint	√	√	√	√
Construct 3,600 linear feet of new container wharf on western side of expanded West Pier	√	√	X	X
Redevelop existing and develop expanded West Pier terminals	√	√	√	√
Replace 100,000 square foot freezer facility	√	√	X	X
Repair and improve East Pier to take advantage of existing break bulk facilities	√	√	X	X
Construct new centralized security access gate on West Pier	√	√	√	√
Elevate port to 25 feet, or an accepted elevation (wharf remains at 10 feet)	√	√	√	14 ft.
Replace capital equipment such as cranes, yard handling equipment; 2010 plan included 100 ft. wide or wider gauge crane rail for rail-mounted gantry cranes for full length of the wharf	√	√	√	√
Construct a rail intermodal transfer facility along the western side of the West Pier	√	√	√	√
Landscape and create possible public access along the "bench" (10 foot elevation) of the north and west sides of West Pier	√	√	√	X
Non-maritime development of East-North Harbor	√	√	√	√

√ indicates that the project was part of the plan in the indicated plan year

X indicates that the project was removed from the plan in the indicated plan year

Shading indicates projects that were not in the plan in the indicated plan year

SOURCE: 2007: Port of Gulfport Restoration Program Action Plan Amendment 5 (December 2007); 2008: Modification 1 to Amendment 5 (October 2008); 2010: Implementation Plan (August 2010); and, 2013: MSPA Port of Gulfport Restoration Program project update as of February 2013

\* See discussion on pages 28 and 30.

from the grant will only be used for maritime demolition and restoration purposes.<sup>15</sup>

In addition to the previously discussed restoration program projects, the port's plans for the expenditure of Port of Gulfport Restoration Program funds included a new emphasis on recruiting new port tenants and creating or retaining jobs for low- and moderate-income individuals in order to comply with HUD regulations as a recipient of CDBG-DR funds.

The basic components of the port's current restoration program plan, which is expected to be completed by December 31, 2015, at a total cost of approximately \$569 million, include completion of the eighty-four-acre West Pier expansion project; elevating the West Pier for mitigation; and, design, construction and upgrading or procurement of warehouses, offices and equipment.

### **What were the projected costs of the program?**

*According to the latest revised program schedule for the Port of Gulfport Restoration Program (February 1, 2013), the MSPA estimates that at least \$569 million will be required to complete the projects planned for the Port of Gulfport Restoration Program. Completion of the program is expected to occur by December 31, 2015.*

According to the latest revised program schedule for the Port of Gulfport Restoration Program, dated February 1, 2013, the MSPA estimates that at least \$569 million will be required to complete the planned projects for the Port of Gulfport Restoration Program. Completion of the program is expected to occur by December 31, 2015.

MSPA divided essential program tasks and accompanying costs into four main categories for contract awards. The largest category, Construction, represents all actions needed to build the actual physical structures developed by MSPA for the Port of Gulfport Restoration Program. In order to ensure compliance with timetables and quality, MSPA has identified Program Management as the second category. The Design and Engineering category represents all work needed to prepare plans and provide technical assistance for port projects. The Environmental and Permitting category refers to the processing of environmental impact statements and environmental mitigation actions required by federal law.

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<sup>15</sup>PEER notes that if the port were subsequently to develop the East-North Harbor of the port for non-maritime use, it could call into question the previous expenditure of restoration funds for demolition and restoration, as this work would have been in service for a non-maritime purpose, which is prohibited under the Action Plan.

Of the \$569 million that MSPA estimates will be required, the majority, \$475 million, will go toward the completion of construction projects. Program management of the construction site will cost an estimated \$47 million, while Design and Engineering and Environmental and Permitting projects are each expected to cost \$27 million and \$20 million, respectively.

Exhibit 8, below, shows the total projected costs of the Port of Gulfport Restoration Program by category as of February 1, 2013. Exhibits 9 through 12, pages 32 through 36, break down these projected costs by category into projected costs for each subcategory.

**Exhibit 8: Port of Gulfport Restoration Program, Total Projected Program Costs, as of February 1, 2013**

Category	Port of Gulfport Restoration Program Projected Costs to Complete Projects	Projected Percentage of CDBG Grant *
Program Management	\$46,717,505.02	8%
Environmental and Permitting	20,000,000.00	4%
Design and Engineering	27,150,000.00	4%
Construction	475,484,683.41	84%
Total	\$569,352,188.43	100%

\* Some percentages are rounded.

SOURCE: Port of Gulfport Restoration Program Schedule.

### Projected Costs for Program Management

Projected costs for the Port of Gulfport Restoration Program's Program Management category are \$46,717,505.02 (see Exhibit 9, page 32).

Program Management involves coordination of the planning, permitting, design, construction, and commissioning of multiple, interrelated projects. Additionally, this includes the need to address changes in scope and direction while maintaining schedules and costs. This work also requires the contractor to be responsible for ensuring that construction contractors

perform the work in accordance with plans and specifications as intended by the designer.

Activities included under Program Administration include Pre-Development Program Administration performed by MDA and MSPA, MSPA set aside (i. e., anticipated administrative costs incurred by MSPA), and attorney services contracted by MSPA.

Program Planning includes the preparation of work plans, financial services, development of an Implementation Plan, basis of design and planning documentation, and planning support during design.

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**Exhibit 9: Port of Gulfport Restoration Program, Projected Costs for Program Management Category, as of February 1, 2013**

Subcategory	Expected Completion Date	Estimated Total Cost	Percentage of Category's Cost *
Program Management	December 31, 2015	\$35,378,477.16	75%
Program Administration	December 31, 2015	9,035,527.86	20%
Program Planning	December 31, 2015	2,303,500.00	5%
Total		\$46,717,505.02	100%

\* Some percentages are rounded.

SOURCE: Port of Gulfport Restoration Program Schedule.

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**Projected Costs for Environmental and Permitting**

Projected costs for the Port of Gulfport Restoration Program's Environmental and Permitting category are \$20,000,000 (see Exhibit 10, page 33).

Phase I: Restoration Projects are composed of environmental assessments for new construction to be presented to HUD and preparing permitting letters for the twenty-four-acre fill project.

Phase II: Expansion Activities are composed of the Expansion Fill Permit application activities, environmental studies on the work site, contingency plans for environmental and permitting process, and third-party expansions on environmental impact statements.

Mitigation work encompasses all work necessary to offset the social and environmental impacts of port projects, which includes but is not limited to habitat disruption of local bird populations.

**Exhibit 10: Port of Gulfport Restoration Program, Projected Costs for Environmental and Permitting Category, as of February 1, 2013**

Subcategory	Expected Completion Date	Estimated Total Cost	Percentage of Category's Cost *
Phase I: Restoration Projects	December 13, 2010	\$ 99,443.40	1%
Phase II: Expansion Projects	April 30, 2015	14,900,556.60	74%
Mitigation	December 31, 2015	5,000,000.00	25%
Total		\$20,000,000.00	100%

\* Some percentages are rounded.

SOURCE: Port of Gulfport Restoration Program Schedule.

**Projected Costs for Design and Engineering**

Projected costs for the Port of Gulfport Restoration Program's Design and Engineering category are expected to total \$27,150,000 (see Exhibit 11, page 34).

Projects listed under the category of Design and Engineering encompass activities performed by engineering firms for current and previous planning and design work, including program sequencing on MSPA projects, conceptual design for future projects, and technical support for current and future projects under the Port of Gulfport Restoration Program.

**Projected Costs for Construction**

Projected costs for the Port of Gulfport Restoration Program's Construction category are expected to total \$475,484,683.41 (see Exhibit 12, page 35).

This category includes any and all work necessary for the preparation and completion of physical projects on MSPA grounds. This includes, but is not limited to: construction of temporary access roads to the port, earth moving and fill work, construction site preparation, utilities and infrastructure construction, and construction of scheduled buildings or expansions.

**Exhibit 11: Port of Gulfport Restoration Program, Projected Costs for Design and Engineering Category, as of February 1, 2013**

<b>Subcategory</b>	<b>Expected Completion Date</b>	<b>Estimated Total Cost</b>	<b>Percentage of Category's Cost<sup>*</sup></b>
Design for West Pier Site Work and Infrastructure Phase I, II, and III	May 14, 2014	\$5,192,755.50	19.12%
Contingency (Design and Engineering)	May 7, 2014	4,858,249.17	17.89%
Design for West Pier Tenant Facilities	April 20, 2014	4,657,800.00	17.16%
Design for Wharf Crane Rail Upgrades	March 13, 2013	3,692,745.00	13.60%
Design for West Pier +25 Fill	June 10, 2013	1,876,016.24	6.91%
Restoration Planning and Preliminary Design	December 31, 2015	1,500,000.00	5.52%
Vision Plan/Planning and Preliminary Design	September 9, 2010	1,495,818.53	5.51%
Design for West Pier Shore Protection	May 13, 2013	1,060,500.00	3.91%
Design for 24 Acre Fill	February 1, 2013	939,420.46	3.46%
West Pier Construction Sequence	February 1, 2013	550,000.00	2.03%
Design for Crowley-North Harbor	April 20, 2015	445,750.00	1.64%
Design for Storm Water Management	February 10, 2013	297,358.20	1.10%
Design Port Equipment	October 31, 2013	225,000.00	.83%
Designs for Port Operation Building/Security	December 31, 2013	147,000.00	.54%
Design for West Pier PVD Completion	March 19, 2013	86,250.00	.32%
Sequencing Planning	December 31, 2010	65,336.90	.24%



Design for Non-Maritime Development, East-North Harbor	April 20, 2015	50,000.00	.18%
South Dike Stabilization	December 1, 2012	10,000.00	.04%
Total		\$27,150,000.00	100%

\* Some percentages are rounded.

SOURCE: Port of Gulfport Restoration Program Schedule

### Exhibit 12: Port of Gulfport Restoration Program, Projected Costs for Construction Category, as of February 1, 2013

Subcategory	Expected Completion Date	Estimated Total Cost	Percentage of Category's Cost*
West Pier Site Work and Infrastructure Phase I, II, and III	December 31, 2015	\$ 96,065,976.76	20%
Wharf Crane Rail Upgrades	December 31, 2015	88,477,800.00	19%
60 Acre Fill Project	June 17, 2013	74,032,021.69	15%
West Pier Facility Buildings	July 19, 2015	73,526,700.00	15%
Port Equipment	December 31, 2015	51,750,000.00	11%
Contingency	December 31, 2015	33,769,461.80	7%
West Pier +25 Fill	July 23, 2013	22,597,394.97	5%
West Pier Shore Protection	May 8, 2014	16,589,250.00	3%
Crowley-North Harbor	November 16, 2015	9,895,650.00	2%
Port IDIQ (Indefinite Duration and Indefinite Quantity) Projects	December 31, 2015	3,000,000.00	1%
North Harbor Demolition	September 18, 2010	456,553.19	1%
Port Operations Building/Security	July 29, 2015	2,320,500.00	.5%

West Pier PVD (Prefabricated Vertical Drains) Completion	October 16, 2013	1,923,375.00	.4%
Non-Maritime Development East-North Harbor	October 17, 2015	1,080,000.00	.1%
Total		\$475,484,683.41	100%

\* Some percentages are rounded.

SOURCE: Port of Gulfport Restoration Program Schedule.

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## How has the port expended CDBG funds to date?

As of January 14, 2013, four years into the Port of Gulfport Restoration Program and less than three years from the program's targeted completion date of December 2015, MSPA had expended 15% of the approximately \$567 million in available funds. Construction contracts accounted for approximately half of the \$84 million in expenditures, while the remainder was used for program management (27%), design and engineering (21%), and environmental and permitting (3%) contracts.

This chapter addresses the following:

- How much has been spent on contracts for the program and who has received the money?
- How much has been spent on the program's administration?

### How much has been spent on contracts for the program and who has received the money?

*As of January 14, 2013, three firms had received 73% of all money expended on the Port of Gulfport Restoration Program contracts thus far. W. C. Fore has received the largest sum at approximately \$26.7 million, followed by Archer Western at approximately \$18.5 million and CH2M Hill at approximately \$16.5 million.*

As shown in Exhibit 13 on page 38, as of January 14, 2013, MSPA had expended approximately \$84 million of the \$170.2 million in total budgeted restoration program contract values. Four years into construction and restoration on the port facilities, MSPA has spent 15% of available CDBG funds, while obligating 30%. Construction contracts represented 49% of total contract values as of January 14, 2013, followed by Program Management (27%), Design and Engineering Services (21%), and Environmental and Permitting (3%).

According to the data supplied by MSPA, the budgeted Design and Engineering category contract values appear to have already exceeded projected costs (see Exhibit 13, page 38). The projected cost for this category was \$27,150,000 and as of January 14, 2013, budgeted contract values for Design and Engineering totaled \$35,150,142. According to MSPA, these higher than projected contract values for the Design and Engineering category are the result of engineering firms being given dual roles of engineering and construction responsibilities such as construction material testing. Thus while the

Design and Engineering category appears to be over budget, this is a result of grouping activities of the engineering firms by PEER for purposes of this report and as of the time of the publishing of this report, neither PEER nor MSPA anticipated the Design and Engineering category to exceed the allocated budget amount. MSPA still anticipates that the cost of the entire program will not exceed the projected amount.

**Exhibit 13: Port of Gulfport Restoration Program, Total Budgeted Contract Values and Contract Payments to Date for All Categories, as of January 14, 2013\***

Category	Projected Costs to Complete Projects	Total Budgeted Contract Value	Contract Payments	Contract Payments as a Percentage of Total Contract Payments
Program Management	\$ 46,717,505.02	\$ 46,571,625.73	\$20,019,599.15	27%
Environmental and Permitting	20,000,000.00	4,372,721.04	2,154,386.32	3%
Design and Engineering Services**	27,150,000.00	35,150,142.06	7,843,210.04	21%
Construction	475,484,683.41	84,166,908.37	54,463,946.62	49%
Total	\$569,352,188.43	\$170,261,397.20	\$84,481,142.13	100%

\* Does not include \$1,371,683.48 for administrative expenses.

\*\* As discussed on pages 39 and 40, this category is not "over budget."

SOURCE: MSPA Requests for Cash, 4/9/09 thru 1/14/13.

### Program Management Contract Expenditures to Date

Appendix C, page 60, lists the contractors the port has used for program management in the restoration program. Exhibit 14, page 39, shows total budgeted contract values and contract payments for program management as of January 14, 2013.

**Exhibit 14: Port of Gulfport Restoration Program, Total Budgeted Contract Values and Contract Payments for Program Management, as of January 14, 2013**

<b>Contractor</b>	<b>Contract</b>	<b>Budgeted Contract Value</b>	<b>Contract Payment</b>
CH2M Hill**	Program Management	\$35,017,816.66	\$16,564,005.33
Yates Anderson**	Construction Management	10,000,000.00	2,120,022.95
Lanier & Associates Consulting Engineering, Inc.	Construction Management of West Pier Fill	942,000.00	443,752.93
KPMG Corporate Finance, LLC	Financial Services	97,809.07	97,809.07
Gibbes	Public Relations/Outreach	335,000.00	260,223.53
Balch and Bingham	Legal Services	Hourly rate contract for attorney and paralegal services*	370,051.17
R K Johns and Associates, Inc.	Financial Consulting	179,000.00	163,734.17
<b>Total</b>		<b>\$46,571,625.73</b>	<b>\$20,019,599.15</b>

\* 2008-10 hourly rates: \$170-Attorney, \$70-Paralegal; 2011-13 hourly rates: \$185-Attorney, \$95-Paralegal.

\*\* See Appendix D, page 66, for additional information on subcontractors.

SOURCE: MSPA Requests for Cash, 4/9/09 thru 1/14/13.

**Environmental and Permitting Contract Expenditures to Date**

Appendix C, page 60, lists the contractors the port has used for environmental and permitting work in the restoration program. Exhibit 15, page 40, shows total budgeted contract values and contract payments for environmental and permitting work as of January 14, 2013.

**Design and Engineering Contract Expenditures to Date**

Appendix C, page 60, lists the contractors the port has used for design and engineering in the restoration program. Exhibit 16, page 40, shows total budgeted contract values and contract payments for design and engineering as of January 14, 2013.

As noted on page 37, as of January 14, 2013, budgeted contract values in the engineering and design category had already exceeded projected costs for this category, but this anomaly appears only as the result of engineering firms being given dual roles as conceptual developers as well as

having construction responsibilities (i. e., construction material testing) (see Exhibit 13, page 38).

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**Exhibit 15: Port of Gulfport Restoration Program, Total Budgeted Contract Values and Contract Payments for Environmental and Permitting, as of January 14, 2013**

Contractor	Contract	Budgeted Contract Value	Contract Payment
Volkert, Inc.*	Environmental Services	\$1,300,000.00	\$805,226.75
Atkins North America	Environmental Impact Statement Documentation	3,072,721.04	1,349,159.57
<b>Total</b>		<b>\$4,372,721.04</b>	<b>\$2,154,386.32</b>

\* See Appendix D, page 66, for additional information on subcontractors.

SOURCE: MSPA Requests for Cash, 4/9/09 thru 1/14/13.

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**Exhibit 16: Port of Gulfport Restoration Program, Total Budgeted Contract Values and Contract Payments for Design and Engineering, as of January 14, 2013**

Contractor	Contract	Budgeted Contract Value	Contract Payment
William Stackhouse Inc.	Aerial Surveying and Mapping	\$ 68,746.00	\$ 68,746.00
Mississippi Engineering Group	Utility and Underground Surveying	373,396.06	373,396.06
Quality Engineering Services, Inc.	Construction Material Testing	2,800,000.00	490,494.17
Neel-Schaffer, Inc.*	General Engineering	17,000,000.00	3,486,445.44
Thompson Engineering*	Geotechnical Investigation and Engineering	5,000,000.00	1,513,095.50
C.D.M., Inc.	General Utility Engineering	1,968,000.00	581,009.30
Michael Baker Jr., Inc.*	Coastal Engineering Design and Services	800,000.00	115,660.70
Anchor QEA*	Dredging Design and Services	4,940,000.00	1,022,872.87
Atwell & Gent	Electrical Engineering Services	2,200,000.00	191,490.00
<b>Total</b>		<b>\$35,150,142.06</b>	<b>\$7,843,210.04</b>

\* See Appendix D, page 66, for additional information on subcontractors.

SOURCE: MSPA Requests for Cash, 4/9/09 thru 1/14/13.

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## Construction Contract Expenditures to Date

Fifty-four percent of the program's budgeted construction contract value was awarded to W. C. Fore for fill and fourteen-foot elevation work related to completion of the port's sixty-acre expansion project (see page 42 for a discussion of a contract dispute involving W. C. Fore that resulted in a six-month delay to one of the restoration program's construction projects). The remainder of the budgeted construction contract value was awarded to Archer Western for dredging, fill, and shore protection services. (See Exhibit 17, below.)

Construction on the Port of Gulfport Restoration Program has for the majority of its existence concentrated on completion of the sixty-acre expansion of the port facilities and the fourteen-foot elevation of those expansions. The construction projects include dredging material from the area of the port that is to be expanded, bringing in sand to create new land, providing shore protection, and finally raising and sloping the new land for drainage and storm damage protection.

Appendix C, page 60, lists the contractors the port has used for construction in the restoration program. Exhibit 17, below, shows total budgeted contract values and contract payments for construction as of January 14, 2013.

**Exhibit 17: Port of Gulfport Restoration Program, Total Budgeted Contract Values and Contract Payments for Construction, as of January 14, 2013**

Contractor	Contract	Budgeted Contract Value	Contract Payment
WC Fore *	Completion of sixty-acre fill	\$26,719,176.39	*\$26,719,176.39
Archer Western *	Dredging services and twenty-four acre fill	38,331,284.00	18,556,260.21
W. C. Fore	+14 ft. expansion elevation	19,116,447.98	9,188,510.02
<b>Total</b>		<b>\$84,166,908.37</b>	<b>\$54,463,946.62</b>

\* See Appendix D, page 66, for additional information on subcontractors.

SOURCE: MSPA Requests for Cash, 4/9/09 thru 1/14/13 and W. C. Fore contract amendment.

## Contract Dispute Resulting in Construction Delay

*A disagreement between MSPA and the Public Procurement Review Board over the applicability of state agency contracting laws to the Port of Gulfport resulted in a delay of approximately six months to one of the restoration program's construction projects.*

On May 27, 2011, the MSPA solicited proposals for a twenty-four-acre dredging construction project. MSPA received five bids for the project and awarded Matthews Marine, Inc., of Pass Christian the contract for approximately \$6.7 million. MSPA did not seek the approval/acknowledgment of the Public Procurement Review Board<sup>16</sup> (PPRB) before issuing the request for proposals or awarding the contract.

On July 21, 2011, W.C. Fore, the lowest bidder for the project, protested MSPA's awarding of the contract to Matthews Marine. Matthews Marine was the second-lowest bidder for the project, but had received the highest evaluation score during MSPA's evaluation process due to MSPA's process for evaluating the bids.

MSPA denied the protest, as it believed it was required to under the *Mississippi Procurement Manual*, and informed W. C. Fore of its right to appeal the decision to the PPRB. In August 2011, the MSPA Board of Commissioners halted the contract and W. C. Fore appealed to the PPRB; however, the PPRB ruled that the appeal was not properly before it and refused to hear the appeal. The PPRB maintained that the MSPA, as an agency of the state, should have obtained the approval of the PPRB prior to making any award for a construction contract over \$5 million and because MSPA did not do so, the PPRB believed that it lacked jurisdiction to hear the appeal and advised the MSPA that the contract award should be canceled in accordance with the *Procurement Manual*.

MSPA filed a motion for reconsideration of the PPRB's decision. The PPRB granted the MSPA's motion and submitted an opinion request to the Attorney General's Office in order to determine whether MSPA was a "state agency" subject to DFA oversight and thus was required to obtain prior approval for the construction contract awarded to Matthews Marine.

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<sup>16</sup>The Public Procurement Review Board, established by MISS. CODE ANN. Section 27-104-7 (2) (b) (1972) to regulate the approval of contracts for the construction of state buildings and state facilities, must approve state agencies' construction projects that exceed \$1 million.



MISS. CODE ANN. Section 59-5-21 (1972), the MSPA's enabling statute, states that the MSPA is a "state agency;" however, CODE Section 31-7-1 (b) states that a "governing authority" is not a "state agency" for purposes of the state's purchasing laws and is not subject to the jurisdiction of DFA, the Public Procurement Review Board, or the Bureau of Building, Grounds and Real Property Management. CODE Section 31-7-1 (b) defines "governing authority" as including port authorities. MSPA maintained that it was a "governing authority" and not a "state agency" and therefore was not required to seek PPRB approval or acknowledgement prior to awarding the contract for the twenty-four-acre dredging project.

On December 13, 2011, the Attorney General opined that the MSPA was a "state agency" subject to PPRB's regulations. However, on April 26, 2012, the Legislature amended MISS. CODE ANN. Section 59-5-37 (1972) and exempted the Port of Gulfport from bidding and purchasing oversight of DFA, the Public Procurement Review Board, and the Bureau of Building, Grounds and Real Property Management, thus declaring it to be a "governing authority." MSPA still must follow certain state bid laws (e. g., CODE Section 59-5-37 [2] [a] requires MDA and MSPA to advertise contracts according to law and award contracts to the lowest and best bidder).

On January 2012, the MSPA Board of Commissioners resolved the procurement dispute by W. C. Fore by approving the cancellation of the award of the twenty-four-acre dredge. The board decided to rebid the contract by combining the twenty-four-acre dredge construction work with the twenty-four-acre fill construction work into one procurement.

As a result of this disagreement over contract procurement requirements, construction on the Port of Gulfport Restoration Program was delayed from August 2011 (i. e., the date that the MSPA Board of Commissioners halted the twenty-four-acre dredging project due to the protest by W.C. Fore) until January 2012 (i. e., the date when the MSPA Board of Commissioners resolved the procurement by canceling and re-bidding the contract). Notwithstanding the delay in construction, according to MSPA work schedules, design and engineering work on the Port of Gulfport Restoration Program continued during this period.

## How much has been spent on the program's administration?

*Administrative expenditures are not necessarily connected with a contract with any particular group or company. Apart from a rental agreement with the Hancock Bank for lease space, expenditures in this category range from business supplies to travel expenses. Administrative expenses have been paid from CDBG funds.*

As shown in the note to Exhibit 13, page 38, MSPA has spent over \$1 million on administrative expenses related to the Port of Gulfport Restoration Program. This administrative expenditure amount represented .2% of the total value of the CDBG funds as of January 14, 2013, and to date complies with HUD requirements that the state's administrative costs not exceed five percent of the total grant award.

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## What progress has been made toward achieving the program's objectives of restoration, mitigation, and economic development?

According to the action plan submitted to HUD by the Mississippi Development Authority for the Port of Gulfport Restoration Program, the program had three primary objectives: restoration, mitigation, and economic development through the creation of new permanent maritime jobs. Regarding each of these objectives, PEER found the following:

- in total, MSPA has spent or plans to expend approximately \$90 million in Port Restoration Program funds on projects that included a restoration component;
- MSPA believes that the fourteen-foot elevation will protect the port from the majority of storms that Gulfport experiences; and,
- the port will be unable to meet its objective of creating or retaining 2,586 permanent direct maritime jobs by 2015.

This chapter will address the following:

- What progress has been made toward achieving the restoration objective?
- What progress has been made toward achieving the mitigation objective?
- What progress has been made toward achieving the economic development objective?

### What progress has been made toward achieving the restoration objective?

*In the aftermath of Hurricane Katrina, as of January 31, 2013, the port had expended approximately \$102 million in non-CDBG revenues on capital projects to restore, repair, and improve the port. In total, MSPA has expended or plans to expend approximately \$90 million in Port Restoration Program funds on projects that included a restoration component (approximately 16% of the approximately \$567 million in available program funds).*

As shown in Exhibit 5, page 12, as of January 31, 2013, the port had spent approximately \$102 million on capital projects to restore, repair, and improve the port with non-CDBG funds.

As of January 14, 2013, PEER was able to identify three projects that MSPA has paid or plans to pay with \$90,014,353 in CDBG disaster recovery funds that include a restoration component (i. e., a component that helps to

return the facility to its pre-Katrina condition). The first project, which cost \$456,553 and was completed on September 18, 2010, consisted of demolition of infrastructure on the North Harbor that was damaged by Hurricane Katrina.

The MSPA plans to pay for the following remaining two projects with a restoration component, using CDBG disaster recovery funds to pay for:

- Wharf Crane rail upgrades (\$88,477,800); and,
- Non-Maritime Development of the east and north harbors (\$1,080,000).<sup>17</sup>

PEER questions whether the latter project is an allowable expenditure of CDBG disaster recovery funds for the Restoration Program. In the Citizen Participation/Public Comment section of the Port Restoration Program's Action Plan, MSPA states, "CDBG Disaster Recovery Funds will be utilized for maritime restoration only."

### **What progress has been made toward achieving the mitigation objective?**

*In response to a request from the Governor, on January 14, 2013, MSPA's Board of Commissioners decided to reduce the elevation of the West Pier from twenty-five feet to fourteen feet. Reportedly, this decision will shorten the project's completion timeline by approximately two years and create jobs sooner. MSPA believes that the fourteen-foot elevation will protect the port from the majority of storms that Gulfport experiences.*

Mitigation against future massive destruction from storms similar to Hurricane Katrina has been a persistent purpose stated in the different iterations of the plans for the Port of Gulfport Restoration Program. However, MDA and the MSPA Board of Commissioners have changed the method of achieving mitigation several times.

Initially, the action plan for the Port of Gulfport Restoration Program, dated December 12, 2007, proposed the creation of an inland port facility, which would necessitate construction of a rail yard and distribution warehouse off-site that would be used to house cargo containers and provide job opportunities. The action plan also stated:

*This site will also serve as a potential hurricane evacuations site to support evacuation efforts of port tenants. During Hurricane Katrina, damage was caused by cargo containers being washed from the*

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<sup>17</sup>See discussion on pages 31 and 33.

*Port inland. This inland port will mitigate such damage during future storms.*

Subsequently, in MDA's modification to the action plan in October 27, 2008, MDA decided against mitigation via the inland port facility in favor of raising the elevation of the West Pier of the port to an estimated twenty-five feet and securing containers in the event of a storm by strapping them down. In the modification, MDA justified the change in mitigation by explaining that the inland port facility was "an enterprise limiting constraint as well as an unquantifiable business risk to potential facility users" because the cost of shipping containers offsite would make the port "less attractive and less competitive to maritime carriers."

In July 2012, according to MSPA, in an effort to speed up the restoration and add jobs sooner, Governor Phil Bryant requested that MSPA and MDA consider mitigation efforts other than raising the port's West Pier to twenty-five feet. MSPA agreed and on October 30, 2012, MSPA's Board of Commissioners decided to elevate the port to less than twenty-five feet. According to MSPA, reducing the elevation would save approximately two years and would also create jobs sooner. On January 14, 2013, the board decided to elevate the West Pier to fourteen feet.

Furthermore, according to MSPA staff, the twenty-five-foot elevation was not intended to mitigate against storms such as Katrina, but offered as a unique attribute of the port to distinguish it from other Gulf ports as a more hurricane-resistant facility. However, MSPA staff stated that the agency expects the fourteen-foot elevation to protect the port from the majority of the storms that the Gulfport area experiences.

## **What progress has been made toward achieving the economic development objective?**

***While the Port Restoration Program has created temporary planning and construction jobs, as of December 2012 the port had created no new permanent direct maritime jobs. Because the construction necessary to attract new tenants and associated jobs will not be complete until the end of 2015 at the earliest, and the port's current tenants are only reporting 1,113 permanent direct maritime jobs as of February 2013, the port will be unable to meet its objective of creating or retaining 2,586 permanent direct maritime jobs by 2015. In its latest reports to HUD, MDA projects that the port will not complete its job creation objective until 2035.***

This report section addresses the following topics:

- HUD requirements for job creation and retention;
- job creation and retention data reported to HUD;

- low- and moderate-income compliance information reported to HUD; and,
- the likelihood of the port reaching its job creation objectives.

## **HUD Requirements for Job Creation and Retention**

*As discussed on page 26, while HUD waived its economic development project requirement to create or retain one job for every \$35,000 to \$50,000 of CDBG economic development program funds, HUD's waiver justification stated that the state laid out the expected public benefits to be achieved by the Port Restoration Program in its Action Plan, specifically to create or retain 5,400 total jobs (2,586 permanent direct maritime jobs) by 2015. Further, federal regulations governing use of the CDBG funds for job creation or retention require that at least 51 percent of the jobs created or retained, computed on a full-time equivalent basis, will be held by or will be made available to low- and moderate-income persons.*

As discussed on page 26, the Port of Gulfport Restoration Program Action Plan (Amendment 5, Table 3) dated December 12, 2007, contained the expected public benefits regarding job creation and retention shown in Exhibit 18, page 49.

Federal regulations require that at least 51% of the jobs created or retained (see footnote 11 on page 24) as a result of the expenditure of Port Restoration Program funds “will be held by, or will be made available to low and moderate income persons.” A *low and moderate income person* is defined as a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD (\$43,750 for a family of four in Harrison County in FFY 2013).

## **Job Creation and Retention Data Reported to HUD**

*While the port reported the creation of 280 temporary construction- and planning-related jobs as of December 31, 2012, and the “retention” of 1,113 direct port jobs through the expenditure of CDBG funds as of February 8, 2013, the funds have yet to create any new permanent jobs. MSPA has implemented plans for helping to ensure that 51% of any jobs created or retained, computed on a full-time equivalent basis, are held by or made available to low- and moderate-income persons.*

As a condition of receiving CDBG disaster assistance funds for an economic development project, HUD requires grantees to submit quarterly program progress reports. As discussed on page 26, as a condition of the state’s public benefits waiver, HUD also requires the state to report and maintain documentation on job creation and retention.

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**Exhibit 18: Current and Potential Maritime Jobs at the Port of Gulfport, as Presented in Amendment 5 dated December 12, 2007**

Type of Job	2005 Actual (Pre-Katrina)	2007 Actual	2010 Projected	2015 Projected***
Direct*	2,058	1,286	2,348	2,586
Indirect and Induced**	1,142	714	2,555	2,814
Total	3,200	2,000	4,903	5,400

\* *Direct jobs* are those jobs generated by the movement of cargo, including jobs at the port terminal (e.g., truck drivers, longshore workers) and others involved in the distribution channel (e. g., steamship agents, freight forwarders, warehousing).

\*\* *Induced jobs* are those jobs generated through the local economy from the spending on local goods and services by those employed in direct jobs. *Indirect jobs* are those jobs generated by the local purchase of goods and services by firms active in the cargo handling and distribution process.

\*\*\*The Port of Gulfport’s “Port of the Future” website states: “Our commitment to the U. S. Department of Housing and Urban Development is that the Port will add another 1,200 jobs within three years of completion of the restoration.” With completion of the restoration now scheduled for December 2015 at the earliest, the port does not anticipate reaching the port restoration job creation goal until 2019 or later. PEER notes that MDA’s quarterly reports to HUD project that the port will not reach the restoration program’s direct job creation goal until 2035.

SOURCE: Table: Mississippi Development Authority Amendment 5 Port of Gulfport Restoration Program, December 12, 2007; Definitions: *The Projected Economic Impacts from Container Terminal Development at Gulfport*, Update, June 2011, prepared for MSPA by TranSystems; [www.portofthefuture.com](http://www.portofthefuture.com).

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Exhibit 19, page 50, summarizes job creation and retention data reported to HUD by MDA since inception of the Port of Gulfport Restoration Program. As shown in the exhibit, while the port’s expenditure of CDBG disaster assistance funds has resulted in the creation of temporary port planning and construction jobs (280 reported as of December 31, 2012) and the reported retention of 1,111 direct jobs as of December 31, 2012 (1,113 direct jobs, as of February 8, 2013, as discussed on page 51), the CDBG funds have created no new permanent jobs.

Also, as shown in Exhibit 19, in its progress reports to HUD through the second quarter of 2011, MDA increased the total number of permanent jobs expected from the Port of Gulfport Restoration Program from the 5,400 direct, indirect, and induced jobs reported in its Action Plan (see discussion on page 26) to 6,500. In the third quarter of 2011, MDA increased the expected number of total permanent jobs from the program to 12,980. In the fourth quarter of 2011, MDA lowered the number of expected permanent jobs to 2,586, the number of direct jobs expected from the restoration program as reported in

**Exhibit 19: Number of Jobs Created (Temporary, Permanent, and Total Permanent Jobs Expected) and Retained by the Port of Gulfport Restoration Program, by Quarter through December 31, 2012, as Reported by MDA to HUD**

Quarter	Quarter Ending Date	Number of Temporary Jobs*	Number of Permanent Jobs	Expected Total Number of Permanent Jobs Created**	Number of Jobs Retained
1Q09	3/31/09	not reported	0	6,500	not reported
2Q09	6/30/09	not reported	0	6,500	not reported
3Q09	9/30/09	not reported	0	6,500	not reported
4Q09	12/31/09	106	0	6,500	not reported
1Q10	3/31/10	106	0	6,500	not reported
2Q10	6/30/10	104	0	6,500	not reported
3Q10	9/30/10	80	0	6,500	not reported
4Q10	12/31/10	80	0	6,500	not reported
1Q11	3/31/11	80	0	6,500	not reported
2Q11	6/30/11	80	0	6,500	not reported
3Q11	9/30/11	120	0	12,980	not reported
4Q11	12/31/11	129	0	2,586	not reported
1Q12	3/31/12	136	0	1,300	1,013
2Q12	6/30/12	140	0	1,300	1,031
3Q12	9/30/12	not reported	0	1,300	1,103
4Q12	12/31/12	280	0	1,300	1,111

\**Temporary Jobs* are jobs related to project permitting, environmental work, design and engineering, construction, and project management.

\*\**Total Permanent Jobs Expected* refers to the number of direct, indirect, and induced jobs the port expects to create or retain through the Port of Gulfport Restoration Program.

SOURCE: Mississippi Development Authority

the Action Plan. In the first quarter of 2012, MDA lowered the expected number of permanent, presumably direct, jobs to be created or retained by the program even further to 1,300 and has reported this lower number in every quarter since then--i. e., through the fourth quarter of 2012. Because MDA began reporting the number of jobs retained at the same time that it lowered the expected number of jobs to be created or retained as a result of the restoration program, it is probable that MDA expects to document eventually the retention of 1,286 jobs (the number of actual jobs reported in its Action Plan for 2007), thereby necessitating the creation of 1,300 jobs in order to meet the Action Plan's expectation of 2,586 total direct jobs created or retained. PEER also notes that beginning in the first quarter of 2012 and in every quarter since then, MDA has reported to HUD in its quarterly performance reports that the "projected date for job



creation completion” is 2035, twenty years later than the projected date of 2015 that was set forth in the Port of Gulfport Restoration Program Action Plan.

In addition to the quarterly job counts reported by MDA to HUD, MSPA also compiled a National Objective report for HUD that included MSPA’s verified job count as of February 8, 2013 (1,113 total permanent direct maritime jobs), by company, job category, and average wage. MSPA reportedly compiled this information by contacting each of the port’s tenant companies (i. e., companies that lease space from the port) and non-tenant companies (i. e., companies whose employees are involved in the movement or distribution of cargo for the port’s tenant companies). PEER presents this information exactly as reported by MSPA to HUD and did not attempt to verify independently the reported information by contacting the companies for whom data was reported.

Appendix E on page 68 shows MSPA’s job count data, by company. As the appendix shows, while fifty employees of the port’s tenant companies work at the port, the majority of direct port employees (1,063, or approximately 96% of total) worked for non-tenant companies, primarily as truck drivers and longshore workers. By company, Dole Fresh Fruit Company was the tenant company with the most employees (nineteen), followed by Chiquita Fresh North America LLC and Ports of America Gulfport, Inc. (a stevedoring company), with eleven employees each. Of the non-tenant companies, the International Longshoremen’s Association, the union that pays longshore workers, reported the most employees (388), followed by Hirschbach Motor Lines, a refrigerated carrier (313), and VF Jeanswear (70).

Subsequent to PEER’s receipt of the “verified” MSPA job count data, a May 14, 2013, newspaper article reported that “members of the International Longshoremen’s Association say the port employs only about 60 to 110 full-time workers to load and unload cargo, even though the port claims 388 ILA jobs.” Even though MDA and MSPA told PEER staff that the February 8, 2013, job count reported to HUD was verified job count data, in response to ILA’s assertion that the reported number of longshore workers at the port is significantly overstated, MDA told PEER that MSPA is “in the process of verifying the numbers supplied by the ILA.” As discussed on page 53, MDA is under a directive from HUD to provide documentation of its retained jobs by June 6, 2013, or risk having to repay CDBG disaster recovery funds.

## Low and Moderate Income Compliance Information Reported to HUD

*While the Port of Gulfport Restoration Program has yet to create any permanent direct maritime jobs, it has taken steps intended to help ensure that persons of low- to moderate-income will be made aware of and trained for job opportunities at the port. However, in a recent management review report on the restoration program's compliance with the CDBG national objective of creation or retention of jobs for low-to-moderate income persons, HUD concluded that MDA's documentation was insufficient to prove compliance.*

MSPA also included in its National Objective report descriptions of its efforts to help ensure compliance with the HUD requirement of making at least 51% of new direct jobs created "available to persons of low to moderate income." According to MSPA, "in November 2011 and 2012," the port authority entered into memoranda of agreement with its business tenants. The memoranda of agreement state that the tenants agree to "make available a minimum of 51 percent of the new jobs available to persons of low and moderate income families by participating in the MSPA's jobs program." In 2012, MSPA established a "Pathways to the Port Program" that provides a centralized process for job placement and workforce training through programs already operated by the Mississippi Department of Employment Security and through port job-related training programs offered by Mississippi Gulf Coast Community College, Pearl River Community College, and the Ship Building Academy in Jackson County. In April 2013, MSPA contracted with a "Workforce Development Coordinator" to manage and oversee the Pathways Program. Other more specific duties of the coordinator include, but are not limited to, conducting a needs analysis with port tenants and their subcontractors, developing an inventory of available training in the geographical area to meet tenant needs, developing a plan for addressing any deficiencies in available training, advertising training and employment positions, and maintaining partner coordination.

On April 22, 2013, HUD issued a management review report on MDA's administration of the State of Mississippi's disaster recovery supplemental appropriations under the CDBG program, including a review of the Port of Gulfport Restoration Program's compliance with the national objective of creating or retaining jobs for low- and moderate-income persons. In its report, HUD expressed the following concern:

*MDA did not have sufficient records available to facilitate HUD's review of compliance with CDBG national objective of creation or retention of jobs for low-and moderate-income persons for the Port of*

*Gulfport project. In HUD's review of the files, MDA only provided supporting documentation (payroll records for calendar year 2012) to demonstrate that 50 of the proposed 1286 jobs had been retained.*

HUD further noted that "failure to provide documentation to demonstrate that the activity meets the national objective of creation or retention of jobs for low- and moderate-income persons may result in repayment of CDBG disaster recovery funds." While HUD acknowledged that job creation activities on the restoration program had just begun, "it has been more than seven years since Katrina and HUD expects that the State can document the number of jobs retained at this stage of the project." HUD ordered MDA to provide records that verify that at least fifty-one percent of the retained jobs are held by low- and moderate-income persons within forty-five days of its report (i. e., by June 6, 2013).

PEER notes that while HUD has raised serious concerns over the restoration program's compliance with the national objective of creating or retaining jobs for low- and moderate-income persons, MDA disagrees with HUD's findings and will express its position in its written response to HUD. Because MDA has not yet submitted its response to HUD, the issue was unresolved as of the completion of PEER's review.

## **Likelihood of the Port Reaching its Job Creation Objectives**

*Given the fact that the port is not scheduled to complete the construction work necessary to attract new tenants until the end of 2015 at the earliest, combined with the port's declining ratio of jobs to TEUs, the Port of Gulfport Restoration Program will be unable to achieve the objective set forth in its Action Plan of 2,586 permanent direct maritime jobs by 2015.*

As discussed on page 30, the port is not scheduled to complete the construction work necessary to attract new tenants until the end of 2015 at the earliest, but more likely in 2016. As a result, the new direct maritime jobs expected from new port tenants will not begin to materialize until after the 2015 target date set forth in the action plan.

Aside from the expected delay in creating or retaining permanent direct maritime jobs, the following factors are working against the port in achieving the number of permanent maritime jobs set forth in the action plan.

First, the port has been unable to obtain authorization from the U. S. Army Corps of Engineers to deepen its shipping channel which, while outside the scope of the Port Restoration Program, negatively affects growth in the

port's commercial activity as measured in TEUs.<sup>18</sup> The shallower depth of the port's channel puts it at a competitive disadvantage with the ports of Mobile and New Orleans, which both have a depth of forty-five feet. As noted by the port's market analysis consultants, "without dredging to 45 feet, the port is likely to be limited to serving the local trades--Central America and the Caribbean--because carriers are already utilizing larger ships in longer-haul trades (Asia and Europe)."

Also, the ratio of jobs to TEUs at the port has declined at a faster rate than anticipated. Container port jobs are driven by commercial activity (measured in TEUs) and the methods used to move the containers, ranging from more labor-intensive methods (e. g., transporting containers by truck) to highly automated processes. With no ship to rail access for container shipments at present at the Port of Gulfport, the port falls on the more labor-intensive end of the container port spectrum, relying on trucks to move containers.

Despite falling on the more labor-intensive end of the container port spectrum, since inception of the Port Restoration Program, the ratio of jobs to TEUs has declined at a faster rate than anticipated by the consultants hired by the port to project the economic impacts from container terminal development at Gulfport. As shown in Exhibit 20 on page 55, the actual number of direct port jobs per 1,000 TEUs declined from 9.16 in 2003 to 5.25 in 2013.

While the port's consultants projected that direct jobs per 1,000 TEUs would decline from 9.81 in 2008 to 8.83 in 2013, Exhibit 20 shows that the reported number of direct jobs per 1,000 TEUs at the port in 2013 under the actual conditions of no further dredging or new carrier services had declined to 5.25, which is 3.58 jobs per 1,000 TEUs below projections.

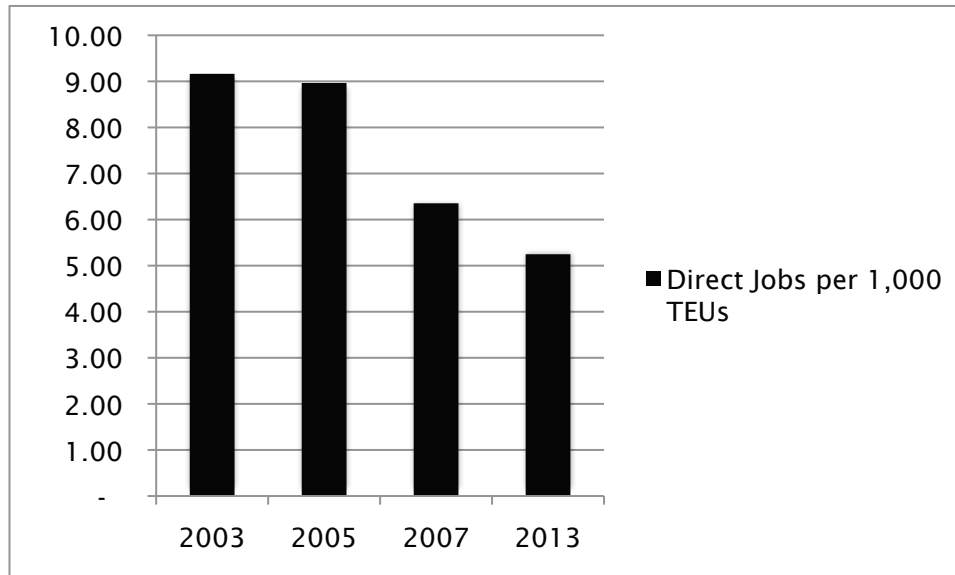
To estimate the permanent direct maritime job creation potential of new tenants, PEER made the following assumptions:

- Once construction under the Port of Gulfport Restoration Program is complete, the port will be able to attract two new tenants of similar size to its current tenants, or one large tenant approximately equal in size to the two current tenants, expected by MSPA's Director of Port Restoration.

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<sup>18</sup>According to the Director of Port Restoration, MSPA is currently gathering information to submit an Environmental Impact Statement to the U. S. Army Corps of Engineers requesting permission to dredge the shipping channel to between forty-two and forty-five feet. According to the director, a draft of the Environmental Impact Statement will be available for public review and comment in early 2014.

**Exhibit 20: Direct Port Jobs per 1,000 TEUs, by State Fiscal Year for which Jobs Data was Reported from 2003 through 2013**



SOURCE: PEER calculations based on job and TEU data provided by MSPA. It should be noted that MSPA includes empty containers in its TEU data. While the U. S. Army Corps of Engineers' TEU data excludes empty containers from its TEU count, MSPA TEU data includes empty containers in its TEU count.

- Each of the two new tenants will bring approximately the same level of commercial activity to the port as the average commercial activity of the port's current tenants.
- Each of the two new tenants will create new permanent direct maritime jobs at approximately the same ratio of jobs to TEUs as the port's current tenants.
- Once the new tenants are fully operational, each at approximately the same level of container activity (in TEUs) as each of the port's current tenants, this new increased level of container activity at the port will increase by 3.5% annually (based on an assumption used by the Port of New Orleans in projecting growth of its container traffic).

In accordance with these assumptions, PEER divided the port's reported TEUs in 2012 (212,100) by the number of current port container tenants (three) to determine the average TEUs per tenant (70,700). Multiplying this average by two (the expected number of tenants that can be accommodated by the port's expanded container lot acreage, according to MSPA staff) and adding this number

(141,400) to the 2012 TEUs of the port's current tenants (212,100) yields 353,500 TEUs.

$$212,100 / 3 = 70,700 \times 2 = 141,400 + 212,100 = 353,500$$

Applying the port's actual 2012 multiplier of 5.25 direct jobs per 1,000 TEUs yields 1,855 total jobs, 742 of which are attributable to the new tenants, roughly half of the 1,473 new jobs needed to reach the 2,586 total permanent direct maritime jobs projected in the port's action plan for 2015--i. e., 2,586 total permanent direct maritime jobs projected in the Action Plan minus 1,113 direct jobs retained as of February 2013. PEER calculated that if the expected new tenants were fully operational in 2016 at the same level of commercial activity as the port's current tenants, assuming the number of jobs per 1,000 TEUs in 2012 (5.25) holds constant and container traffic begins to grow at a constant rate of 3.5% per year (a rate used by the Port of New Orleans to project its container traffic growth), the port would not achieve the number of permanent direct maritime jobs projected in the action plan for 2015 (2,586) until 2027.

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## Appendix A: Chronology of Port of Gulfport Restoration Program

- *August 2005*--Hurricane Katrina caused devastation on the Mississippi Gulf Coast.
- *December 2007*--The U.S. Department of Housing and Urban Development (HUD) receives the Action Plan for the Port of Gulfport Restoration Program.
- *January 2008*--HUD Secretary authorizes reprogramming of \$600 million.
- *October 2008*--HUD approves modification to action plan.
- *December 2008*--The Mississippi Development Authority (MDA) makes available approximately \$567 million in CDBG-disaster recovery (CDBG-DR) funds to the Mississippi State Port Authority (MSPA).
- *December 10, 2008*--Mississippi Center for Justice (MCJ) files a lawsuit against HUD.
- *April 2009*--CH2M HILL submits Ten-Year Work Plan.
- *July 2009*--The MSPA commemorates start of the sixty-acre West Pier fill project--i. e., the first phase of construction of the restoration program.
- *January 2010*--William Stackhouse completes aerial survey and mapping.
- *August 2010*--CH2M Hill submits the Implementation Plan and Revised Expansion Plan.
- *September 2010*--Virginia Wrecking Co., Inc., completes demolition of remaining concrete piers and casino ramp on North Harbor of the port.
- *September 9, 2010*--Mississippi Engineering Group, Inc., completes utility and underground surveying.
- *November 2010*--HUD and the State of Mississippi reach a \$132 million settlement with the MCJ.
- *March 2011*--W. C. Fore completes the sixty-acre West Pier fill project.
- *November 2011*--CH2M Hill submits Option 9.
- *October 2012*--The MDA and MSPA Board of Commissioners (MSPA Board) approve elevating port less than twenty-five feet.
- *January 2013*--MSPA Board approves elevating the West Pier of the port to fourteen feet and a new terminal layout.
- *February 2013*--MSPA suspends the twenty-five-foot fill project.

SOURCE: Mississippi State Port Authority.

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## Appendix B: Accountability Requirements for Use of HUD CDBG Money

Grantees are responsible for carrying out activities in accordance with applicable statutes, regulations, and *Federal Register* notice requirements. These requirements include:

- *Performance Management of Entities*: Disaster Recovery CDBG grantees that award funds to sub recipients or contractors are required to track performance at all levels throughout the life of the activity in every contact with the sub recipient, unit of general local government, or contractor.
- *Environmental Review Process*: Federally funded projects require environmental reviews to determine the applicability of federal environmental laws and policies. Those projects involving construction often require more extensive examination to determine both the impact of environmental conditions on the proposed project and the potential impact of the proposed project on the environment. These requirements are established and outlined in the National Environmental Policy Act 1969 and 24 CFR Part 85.
- *Uniform Relocation Act*: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and associated regulations protect the rights of property owners affected by federally funded projects and provide assistance to persons displaced by those projects. Waivers may affect how these requirements apply to federally funded disaster recovery projects.
- *Federal labor requirements adherence*: Davis-Bacon wage rate requirements apply to many contractors and subcontractors for federally funded construction projects. Grantees are responsible for ensuring compliance with these requirements by including applicable language in procurement actions and contracts as well as developing systems to monitor compliance with wage requirements.
- *Economic Development*: Except as modified by disaster recovery waivers, CDBG funds used for economic development must meet a national objective, be an eligible activity, and meet public benefit standards.
- *Civil Rights guarantees*: The Civil Rights and Fair Housing Acts affect CDBG programs in a number of ways. These include requirements to affirmatively further fair housing in Action Plans and PHA plans.



Steps in this process include the analysis of impediments for accessibility in multifamily housing developments.

- *Affordable Housing Construction:* CDBG Disaster Recovery funds may be used for several housing assistance activities. To date, these have included homeowner buyouts, compensation for homeowners when damages exceed insurance or other government assistance, residential grants to reduce vacancies in areas affected by disasters, and the development of affordable rental housing.
- *Tracking Compliance:* HUD and grantees have several methods for ensuring compliance with applicable federal requirements. Some methods may include standard reports required under sub grant agreements. These also include commercial or custom-built information technology systems to track and/or analyze financial and performance reports from grant/sub grant recipients, as well as the results of monitoring.
- *Citizen Participation:* Disaster recovery waivers may include a streamlined citizen participation process relative to Action Plans and removing these plans from the grantee's regular consolidated plan needs assessments. Grantees have also used other means to disseminate information on disaster recovery efforts, including use of the Internet.

SOURCE:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/communitydevelopment/programs/drsi/drctraining.](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi/drctraining)

**Appendix C: Contractors Used for the Port of Gulfport Restoration Program, as of January 14, 2013**

<b>Program Management Contractors</b>	<i>(See Exhibit 14, page 39, for budgeted contract values and contract payments for program management as of January 14, 2013)</i>
<b>CH2M Hill</b>	a consulting, design, design-build, operations, and program management company. Program management typically involves coordination of the planning, permitting, design, construction, and commissioning of multiple, interrelated projects. Another aspect of program management is the need to address changes in scope and direction while maintaining schedule and costs. This company is assisting with both goals for the program, including meeting environmental and marketplace objectives, along with identifying alternatives to maximize economic impact.
<b>Yates Anderson</b>	construction manager for all construction projects. This company is located on-site and provides daily monitoring of all construction activities. This company is responsible for ensuring that construction contractors perform the work in accordance with plans and specifications as intended by the designer. Yates Anderson is responsible for holding weekly meetings to provide updates to MSPA on the status of construction. The company also serves as the liaison between the contractor and the port when the contractor has questions or issues with a construction project.
<b>Lanier and Associates</b>	an engineering firm specializing in industrial, marine, and environmental projects. Lanier provides professional engineering services such as preliminary engineering, field surveying, design and drafting services, equipment selection and procurement, contractor selection, contract negotiation, construction management, quality control, clerical assistance, and feasibility and economic considerations.

<b>KPMG</b>	a financial consulting group. KPMG is tasked with furnishing financial consulting and related services as MSPA may request. This includes providing financial studies, economic studies, business plans, development plans, and advisory services for the program.
<b>Gibbes</b>	a full-service strategic communication firm. The company is tasked with providing marketing, advertising, research, design, development, and implementation of specific information strategies in connection with MSPA.
<b>Balch and Bingham</b>	a corporate law firm retained by MSPA. The legal services provided include draft of legal documents related to the PGRP, review and advice of contracts granted by MSPA, review and advice of land titles, assisting directors of MSPA, assisting in environmental permitting, assist in issuance of bonds, advise on labor matter, interpret administrative law, advise on tax matters, and draft legislation.
<b>R K Johns and Associates</b>	a management consulting services company. For MSPA, the company is responsible for providing transportation and economic studies and other related services as requested by MSPA.

<b>Environmental and Permitting Contractors</b>	<i>(See Exhibit 15, page 40, for budgeted contract values and contract payments for environmental and permitting as of January 14, 2013)</i>
<b>Volkert, Inc.</b>	provides environmental services for the Port of Gulfport Restoration Program. The company prepared the HUD Environmental Assessment and the Finding of No Significant Impacts documents, which were required for the program to move from planning to construction. The company prepared and updated program permits as needed for the twenty-four-acre fill project and the permit applications for the Environmental Impact Statement (EIS). The company also provided least tern (a threatened species) monitoring in the summer of 2012. The company is currently revising the Environmental Impact Statement permit application to include deepening of the navigation channel as part of the future expansion project.
<b>Atkins North America</b>	a design, engineering, and project management consulting firm. Atkins North America is preparing the Environmental Impact Statement required to obtain a United States Army Corps of Engineers (USACE) permit to expand the port. The Environmental Impact Statement scope has been modified several times based on requirements of federal agencies and changes to the EIS based on MSPA's direction. The most recent change in scope is to add construction of the federal navigation channel to the EIS.

<b>Design and Engineering Contractors</b>	<i>(See Exhibit 16, page 40, for budgeted contract values and contract payments for design and engineering as of January 14, 2013)</i>
<b>William Stackhouse, Inc.</b>	a professional land surveying company. William Stackhouse is to provide design level aerial mapping, digital terrain models, digital orthophotography, and photo control surveys in support of engineering services for design of transportation and port facilities.
<b>MSEG</b>	a civil engineering firm. MSEG was tasked with conducting utility and underground surveys of the entire West Pier and North Harbor areas. This information is being used by design consultants for the port restoration program.
<b>QES</b>	an engineering services company specializing in mechanical and thermal testing services and related consulting services. QES provides on-site construction material monitoring and testing. They have inspectors on-site twenty-four hours a day when construction contractors are working. They conduct random tests of fill material to ensure that the contractor is meeting the specifications for fill defined in the contract documents.
<b>Neel-Schaffer, Inc.</b>	the civil engineer of record. The company prepares design documents for program construction projects. Current and previous planning and design work include program sequencing, conceptual design for future road and rail service for the West Pier, all wharf upgrade planning and design work utilizing KPFF, one of the sub-consultants, and design of the West Pier facilities at 14ft.
<b>Thompson Engineering</b>	the geotechnical engineer of record. The company provided the technical support for the + twenty-five Phase 1 fill project and the twenty-four acre combined projects. The company provides geotechnical constructability reviews of the wharf upgrade.

<b>CDM</b>	the engineer of record for general utility engineering, including preparing conceptual and design documents for storm water, potable water, and water used for fire-related emergencies. The company has prepared conceptual designs for several different water layouts. Recently company representatives met with the Department of Environmental Quality to gain approval on the conceptual storm water plan for the + fourteen-foot elevation of the port.
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<b>Michael Baker Jr., Inc.</b>	the coastal engineer of record. The company has provided evaluations of breakwater needed for the expansion footprint for the Environmental Impact Statement and has conducted peer review of the Anchor QEA riprap designs to ensure design details and quantities proposed by Anchor were reasonable. Most recently Michael Baker provided technical support for the program's consultation with the Federal Emergency Management Administration and the Mississippi Emergency Management Administration.
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<b>Anchor QEA</b>	provides dredging engineering services. The company prepared the design for the twenty-four-acre fill dredging project, the new beneficial use site on Deer Island, and shore protection for the port. Shore protection includes determining the amount and size of riprap for the port to protect it from storms. The company also supports the Environmental Impact Statement by preparing dredging quantities and management plans for dredged material, which are required for the EIS.
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<b>Atwell and Gent</b>	provides electrical utilities engineering support. The company is responsible for determining power and communication needs and designing the layout for all power and communication for the West Pier and new construction in the North Harbor. The company has also conducted a study to determine the feasibility of alternative power sources for the Port of Gulfport Restoration Program.
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<b>Construction Contractors</b>	<i>(See Exhibit 17, page 41, for budgeted contract values and contract payments for construction as of January 14, 2013)</i>
<b>W. C. Fore</b>	a civil and marine construction company. W. C. Fore was tasked with performing any and all things required to complete "West Pier Expansion Project-Completion of 60 Acre Fill." This firm is also responsible for elevating the sixty-acre expansion from +9 ft to +14 ft.
<b>Archer Western</b>	a general contracting, construction management, and design-build firm. Archer is currently responsible for the twenty-four-acre dredge and fill project, which included dredging the twenty-four-acre fill site, removing unwanted sediment, and barging it to Deer Island to be used to restore wetlands on the island, as well as filling the twenty-four-acre site with sand to +4 ft. for final expansion of the West Pier.

SOURCE: Mississippi State Port Authority.

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**Appendix D: Subcontract Awards for MSPA Projects**

<b>Contractor</b>	<b>Subcontractors</b>	<b>Amount of Subcontract</b>	<b>Sub Scope of Work</b>
<b>Neel Schaffer</b>	KPFF	\$2,320,894.33	Port Specialist
	SOL Engineering	412,626.43	Civil Engineer
	JBHM Architects	136,210.00	Architectural
	HDR Engineering	62,198.16	Rail Specialist
	BCD, Inc.	44,150.20	Geotechnical
	Wings of Angler, LLC	875.00	Aerial Photography
<b>Total Subcontract Amount</b>			
<b>Thompson Engineering</b>	MA Howard	\$85,000.00	Project Management/QA
	Lawler & Co	4,000.00	Surveying
<b>Total Subcontract Amount</b>			
<b>Yates Anderson</b>	Quality Engineering	\$105,000.00	Construction Material Testing/Monitoring
<b>Volkert &amp; Associates</b>	Anchor QEA	\$65,974.04	Environmental Services
	Coastal Environments, Inc.	872.00	Cultural Resource Studies
	Garrett Enterprises/Construction	28,114.42	Environmental Assessment Support
	Geotechnical Engineering Testing, Inc.	2,195.44	Geotechnical Studies
	University of Southern Mississippi (GCRL)	102,987.68	Marine Environmental Studies and Gulf Sturgeon
	ERDC (CRADA)	28,142.28	Gulf Sturgeon Studies
<b>Total Subcontract Amount</b>			
<b>Michael Baker, Jr.</b>	Ben C. Gerwick, Inc.	\$41,725.21	Data Analysis, Conceptual planning/Coastal Engineering
<b>Anchor QEA</b>	Natural Capital Development	\$12,000.00	Nesting bird colony surveys and bird management plan
	Quality Engineering Services	190,000.00	Geotechnical field investigations, Shore protection
	DIMCO	120,000.00	Hydrographic and Topographic Surveys
	Geotechnical Engineering Testing	30,000.00	Jet probing, Geotechnical Investigations @ Deer Island
	Environmental Enterprises, USA	36,000.00	Biological testing prescribed by MS DMR
	Test America	200,000.00	US Environmental Protection Agency lab for Sediment
<b>Total Subcontract Amount</b>			
<b>W. C. Fore</b>	Landshapers	\$2,867,467.19	Trucking Fill Material
	US Wicks	5,909,504.00	Install Pre Fabricated Vertical Drains
	Pat Fore Truck Lines	[3.00 Per Ton]	Trucking Fill Material
	Benecorp	13,000.00	Install SWPPP Measures
<b>Total Subcontract Amount</b>			
		\$8,789,971.19	



<b>Contractor</b>	<b>Subcontractors</b>	<b>Amount of Subcontract</b>	<b>Sub Scope of Work</b>
<b>Archer Western</b>	Fisher Construction Gulf South Associates CF Bean Hensley R. Lee Luhr Brothers US Wicks	\$38,600.00 11,188.63 6,255,548.50 14,533,968.05 13,333,000.00 1,522,500.00	Onsite Trucking Survey Dredging Select sand fill supply and placement Rip rap armor supply and placement Prefabricated drain supply and installation
<b>Total Subcontract Amount</b>		<b>\$35,694,805.18</b>	
<b>CH2M Hill</b>	Andrews Moving & Storage Bradley Julian Bradley Julian Bradley Julian CDE Integrated Systems Corrough Consulting Critigen, LLC David Miller & Assoc JJR, LLC KPFF Consulting Engineers Labor Ready Logista Macports Holdings Martin Associates Mid South Building NY Associates NY Associates Office Furniture Solutions Precious Coast Cleaning Richard Woodman RJ Young TL Wallace TL Wallace Tracy Weeks Transystems Corp Transystems Corp Transystems Corp	\$6,255.00 5,000.00 30,000.00 73,150.00 7,514.61 3,500.00 6,051.56 38,392.00 172,500.00 6,000.00 358.56 10,648.62 9,950.00 28,000.00 25,888.54 248,001.00 2,452,443.30 25,133.73 2,500.00 5,000.00 29,400.00 3,115,901.85 765,836.27 1,820.00 36,568.00 113,200.00 23,000.00	Office Relocation Consulting Services for Master Plan review 2007 Port Infrastructure Consulting Consulting Services Installation of Phone System Consulting Services for Master Plan review 2007 Quality Assurance Services Economic and Port Consulting Services Planning and design services Consulting Services for Master Plan review 2007 Temporary Labor for Office Relocation Computer Equipment Consulting Services for Master Plan review 2007 Economic Impact Assessment Janitorial Services Engineering and design services Engineering oversight services Office Furniture Cleaning services Consulting Services for Master Plan review 2007 Copier lease/supplies Construction Management Services Consulting Services Cleaning services Port Market Analysis and Cargo Forecast Economic Analysis Economic Impact Assessment
<b>Total Subcontract Amount</b>		<b>\$7,242,013.04</b>	

SOURCE: Mississippi Development Authority.

## Appendix E: Direct Port Jobs, by Company, as of February 8, 2013

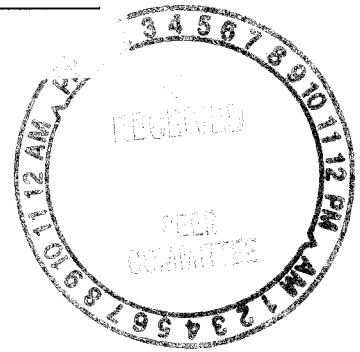
Company	# of Jobs
<b>Tenant Companies</b>	
Dole Fresh Fruit Company	19
Chiquita Fresh North America, LLC	11
Ports of America Gulfport, Inc. (stevedoring)	11
E.N.Bisso & Son, LLC (tugboat operators)	6
Crowley Liner Services, Inc.	3
E.I. Dupont De Nemours and Company	<u>0</u>
Subtotal for Tenant Companies	50
<b>Non-Tenant Companies</b>	
International Longshoremen's Association	388
Hirschbach Motor Lines (refrigerated carrier)	313
VF Jeanswear (makers of Rider, Lee, Wrangler Jeans)	70
Cieutat inc. (trucking line)	48
Blue Ribbon Transport (fresh produce refrigerated truckload carrier)	38
Greatwide (logistics services)	26
JW Transportation	20
Schroeder Transportation Services LLC (trucking company)	20
Marten Transport, Ltd. (specialize in transporting time-sensitive products)	19
SSA Marine (stevedores)	18
GM Express (trucking)	17
John Fayard Fast Freight, Inc. (general freight trucking)	17
Valley Express, LLC (trucking company)	16
Henderschiedt (trucking)	14
Coastal Transportation Services Inc.	10
The Mason and Dixon Lines, Inc. (trucking line)	9
Segal Trucking Corporation	5
Coastal Truck Brokers, LLC (carrier service)	4
RWI/R&O Transportation LLC	4
KLLM Transport Services	2
Colonial Freight	1
Keystone Lines, Inc.	1
Page & Jones, Inc. (freight forwarders)	1
Teton Transportation (trucking company)	1
Uher (trucking)	1
KCS Railroad	0
Midwest Coast Transport (refrigerated trucking)	<u>0</u>
Subtotal for Non-Tenant Companies	<u>1,063</u>
Total Direct Jobs	<u><u>1,113</u></u>

SOURCE: Mississippi State Port Authority at Gulfport

# Agency Response



**STATE OF MISSISSIPPI**  
PHIL BRYANT, GOVERNOR  
**MISSISSIPPI DEVELOPMENT AUTHORITY**  
BRENT CHRISTENSEN  
EXECUTIVE DIRECTOR



June 4, 2013

Max K. Arinder, Ph.D., Executive Director  
Joint Committee on Performance  
Evaluation and Expenditure Review (PEER)  
Post Office Box 1204  
Jackson MS 39215-1204

Re: "The Status of the Port of Gulfport Restoration Program," Comments and Requested Revisions from the Mississippi Development Authority and the Mississippi State Port Authority

Dear Dr. Arinder:

The Mississippi Development Authority (MDA) and the Mississippi State Port Authority (MSPA) are in receipt of and have reviewed the revisions made by PEER staff to the proposed PEER report entitled "The Status of the Port of Gulfport Restoration Program" (the proposed, final version is hereinafter referred to as the "Report"). The Report states that:

[t]he requestor asked PEER to provide a clear, objective review of the 'current situation' including determining the current plans for the Port; when the plans will be fully operational; and, what accountability system is in place for governing the expenditure of restoration program funds.

(See Report pp. 1-2).<sup>1</sup> After extensive correspondence with PEER staff to assist in the Report's reflection of the Project's history, regulatory requirements, structure, goals, and Project information, and after several meetings we initiated with PEER staff to further assist in any way possible, the Report has still failed to meet its primary objectives. As previously discussed with PEER staff, the Port of Gulfport Restoration Program (referred to as both the "PGRP" and the "Project") is a complex and highly technical project, and despite continued discussions with PEER staff, the Report contains mistakes and misstatements regarding the Project. Because the Report fails to present a "clear, objective review of the 'current situation'" of the PGRP, we maintain that the Report should not be released as currently drafted.

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<sup>1</sup> In contrast, MDA and MSPA were only informed that the Port of Gulfport Restoration Project was to undergo a "review of the management of Community Development Block Grant projects by the Mississippi Development Authority related to the U.S. Department of Housing and Urban Development funds for the Port of Gulfport Restoration Plan." (See PEER letter dated January 9, 2010 to Mississippi Development Authority).

### **“Current Status of the Port of Gulfport Restoration Project”**

The Report indicates that it is intended to provide a review of the current status of the PGRP. To this end, the Report dedicates some eighteen pages to discussing expenditures on the PGRP and some fourteen pages discussing the Report’s opinions as to progress that has been made towards achieving the PGRP’s goals of restoring the Port from damage suffered during Hurricane Katrina, providing for storm mitigation, and providing an economic development engine for the Mississippi Gulf Coast.

Despite the volume of the 71 page Report, several of the PGRP’s accomplishments are not included. Consider the PGRP’s progress towards providing for the long-term recovery of the Mississippi coast: the Port currently supports over 1200 direct jobs, which results in an estimated \$34 million in wages and \$12.6 million in state and local taxes. The PGRP currently has over \$220 million under contract for design, engineering and construction and will have another \$100 million under contract this year. The PGRP has dredged 330,000 cubic yards of unsuitable materials from the Mississippi Sound, depositing the dredged materials at a beneficial use site at Deer Island in coordination with the Mississippi Department of Marine Resources. This application of otherwise unsuitable materials helped reconstruct Deer Island, providing Biloxi with protection from storm surge and nourishing the island’s marshes. The Project has completed the filling of 84 acres in the Mississippi Sound, creating land in what was formerly water, and is developing an additional 50 acres for the use of new tenants at the Port. The MSPA Board of Commissioners voted to expedite the completion of the Project by almost two years, ensuring that the Port of Gulfport would be operational with new acreage to market as soon as 2015 rather than 2017. This will allow new tenants to be recruited and jobs to be created much faster. This new, available acreage has grown from fifteen acres on the West Pier to almost 50 acres on the West Pier for a new, high capacity tenant. In addition, there are approximately 50 additional acres for development on the North Harbor and East Pier. The PGRP’s request for a deeper channel is currently under environmental review, hopefully clearing that hurdle while the State attempts to secure the funding needed for dredging from the federal government. These very tangible results are simply not discussed in the Report.

This brings us to a second, but equally important, point: the Report has overlooked the fact that, even at a high-level review (which the Report does not purport to be), the PGRP is a multi-phased project. For example, the economic development component of the PGRP could be summed up in two, broad phases:

Phase 1: Restore the Port by rebuilding infrastructure and preparing areas to address the needs of current and future tenants. These areas include the North Harbor, the East Pier, and the West Pier, to name a few. However, the Report’s discussion of the PGRP’s progress neglects to consider how the PGRP is maximizing the use of the Port’s property. Specifically, the Report fails to consider how both the North Harbor and the East Pier will be utilized to increase capacity, resulting in additional throughput and—ultimately—additional jobs. The Report fails to understand the relationship between providing a high-capacity terminal and how the additional throughput will result in additional jobs in the service and transportation sectors. These oversights not only result in a failure to consider the use of 50 acres of the Port’s waterfront property, but also evidence a fundamental lack of understanding regarding maritime commerce.

The second phase could be summed up as follows: Phase 2—Utilize the capacity that the restored Port provides. The Report fails to mention any discussions with the Port’s current tenants regarding their commitments to increase throughput once they are moved to their

respective permanent locations at the Port. Additionally, the Report does not consider any of the steps the Port has taken regarding the attraction of *new* tenants to utilize the capacity of the restored Port. For example, following a national search, the Board of Commissioners of the MSPA named Jonathan Daniels as the MSPA's new executive director. Mr. Daniels brings significant port and economic development expertise to MSPA, and will be instrumental in bringing in new tenants to utilize the additional capacity that will result from the efforts of the PGRP.

In sum, the Report cannot provide an accurate discussion of the PGRP's current status because it has failed to consider steps taken to advance the Project to date, and the Report has failed to consider any of the subsequent, future steps towards realizing the PGRP's ultimate goals.

In an effort to address the PGRP's ability to meet its goals, the Report also attempts to analyze tonnage, throughput and job projections. Unlike the economic impact studies provided to PEER by the PGRP (written by some of the leading economics and maritime experts in the world), the estimations contained in the Report are not based upon **any** industry methodology or standards, as PEER staff admittedly supplied their own methodology and assumptions. For example the report prepared by R. K. Johns & Associates contemplates throughput of 5,000 TEUs<sup>2</sup> per acre based upon capacity resulting from the design of the tenant terminals and the use of shore-mounted gantry cranes—even with no additional work to the Federal Navigational Channel.<sup>3</sup> This represents a five-fold increase over existing tenant throughput. In contrast, the Report ignores the issue of capacity and instead simply assumes that any new tenant “will bring approximately the same level of commercial activity to the port” as the current tenants. Accordingly, PEER's projections fail to focus on one of the most fundamental economic benchmarks for ports: a port's capacity for throughput. Capacity is realized, not only through an efficient design for the use of the terminals and the use of equipment to facilitate the transfer of cargo, but also through the use of available space at the Port. As discussed previously, the East Pier and the North Harbor will both provide space for tenant operations, increasing the Port's ultimate capacity to handle cargo, but the Report fails to contemplate the use of this additional 50 acres in projecting the Project's “success.” We understand and appreciate the import of an accurate final report regarding the PGRP. To the extent that economic data and an analysis of the maritime industry are helpful and necessary in formulating the final Report, we encourage the PEER Committee to utilize industry-accepted methodologies.

As final issue, please also note our concern regarding the unrealistic timeline imposed upon our review of the Report. MDA received copies of the draft Report on May 15, 2013, and the MSPA received the draft Report on May 16, 2013.

We reviewed the draft Report and formulated a list of our concerns regarding same for discussion with PEER staff on Friday, May 24, 2013, which was originally intended to be the “Exit Conference.” However, when PEER staff was presented with our analysis and supporting documentation regarding multiple misstatements contained in the draft, PEER staff adjourned the Exit Conference and indicated it would resume at a later time.

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<sup>2</sup> A TEU is a twenty foot equivalent unit, utilized in the shipping industry to measure capacity in the containerized cargo industry.

<sup>3</sup> See Port Market Study: Port of Gulfport Restoration Program by R. K. Johns & Associates, April 12, 2010

Max K. Arinder, Ph.D.  
June 4, 2013  
Page 4 of 4

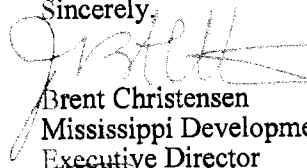
We received PEER's revised report on Thursday, May 30, and, in an effort to cooperate in the development of an accurate final report, we attended an Exit Conference with PEER staff on May 31, 2013. During the Exit Conference, we again presented our concerns regarding misstatements in the Report as well as the Report's misunderstanding about the structure of the PGRP; the nature of the relationships between HUD and MDA, MDA and MSPA, and MSPA and other state agencies; the expenditure of PGRP funds; and the intricacies of maritime commerce.

Yesterday, June 3, 2013, we received the proposed final Report and hereby submit our response to it, and have attached a list of our more technical concerns as Exhibit A to this response. However, we encourage PEER to afford a more reasonable time for an agency to review, analyze and respond to its reports.

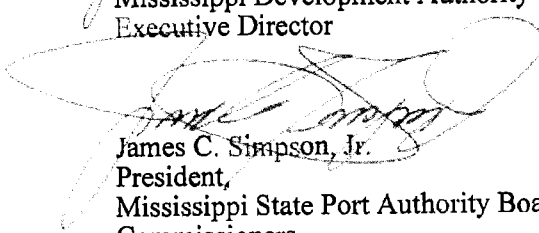
### Conclusion

As expressed above and on multiple occasions with PEER staff, as set forth in our analysis, and as discussed in the Exit Conference, we are concerned that the proposed Report fails to provide an accurate account of the current status of the PGRP. A factually incorrect and misleading report by PEER could jeopardize the Project and threaten the State's ability to utilize this disaster recovery grant, as well as any future grants from HUD. We respectfully submit that the Report should not be issued as currently drafted, and we offer our continued assistance to both the PEER Committee and PEER staff in an effort to formulate a report that reflects a true and accurate depiction of a Project that will restore the Port of Gulfport to a competitive position in the market and position it to be a stronger economic engine for the Mississippi Gulf Coast and the State in its entirety.

Sincerely,



Brent Christensen  
Mississippi Development Authority  
Executive Director



James C. Simpson, Jr.  
President,  
Mississippi State Port Authority Board of  
Commissioners

CC: Representative Ray Rogers, Chair of the Mississippi PEER Committee  
Senator Nancy Collins, Vice Chair

## EXHIBIT A

(A) Report, p. 1:

**ISSUE:** The introduction contains unsubstantiated and factually incorrect language about the MSPA Board of Commissioner's decision to elevate the footprint of the West Pier to 14 feet mean sea level.

**MDA and MSPA RESPONSE:** The below language reflects the facts regarding the MSPA Board of Commissioners decision to elevate the West Pier to 14 feet:

After a review of the status of the program by the State, the Mississippi State Port Authority's Board of Commissioners voted to reduce the planned elevation of the West Pier from twenty-five feet to fourteen feet to expedite the completion of the project and, ultimately, job creation.

(B) Report, p. 3:

**ISSUE:** The Report does not clearly identify all source documents used during the fieldwork for the Report, including the news article referenced on p. 52 and the source documents attributed to the Mississippi Center for Justice on p. 23.

**MDA and MSPA RESPONSE:** The report should identify the documents referenced. These are not even vaguely referenced.

(C) Report, p. 17:

**ISSUE:** The Report is using a footnote to clarify that the Governor's Commission on Recovery, Renewal, and Rebuilding recommended the redesign of I-310 to accommodate several recommendations made by the Commission, including (1) a new east-west thoroughfare; (2) converting Highway 90 to a pedestrian-friendly beach boulevard and (3) the Port's activities.

**MDA and MSPA RESPONSE:** Consistent with other cross-references in the document, the first paragraph should contain a cross reference to FN7 on p. 10 regarding the three reasons why the Governor's Commission on Recovery, Renewal and Rebuilding recommended the redesign of I-310, namely, to accommodate: (1) a new east-west thoroughfare; (2) converting Highway 90 to a pedestrian-friendly beach boulevard and (3) the Port's activities.

(D) Report, p. 22:

**ISSUE:** In discussing HUD Secretary Jackson's approval of Mississippi's reprogramming funds for the Port of Gulfport Restoration Program, the Report omits several important facts.

**MDA and MSPA RESPONSE:** The underlined language provides a more accurate representation of Secretary Jackson's letter:

In his January 25, 2008, letter authorizing MDA to 'reprogram' \$600 million from Phase I of the Homeowners Assistance Program to the Port of Gulfport Restoration Program, the HUD Secretary noted his concern that the port expansion would divert emergency federal funding from other pressing recovery needs, most notably affordable housing. However, the Secretary did note that the State had

just “announced an additional \$100 million to be reprogrammed to address the critical housing needs of low-and-moderate income households in the Gulf region of Mississippi. This additional \$100 million brings the State of Mississippi’s total financial obligation to affordable housing [as of 2008] to over \$615 million.” MDA reports that as of March 2012, \$3,213,331,644.00 has been obligated to affordable housing for low and moderate-income households in the Mississippi Gulf coast region.

(E) Report, p. 23:

**ISSUE:** The Report references undocumented statements regarding the establishment of the Neighborhood Home Program.

**MDA and MSPA RESPONSE:** MDA provided substantial documentation to PEER regarding the creation of the Neighborhood Home Program, including copies of the Memorandum of Understanding and Agreement, the Neighborhood Home Action Plan, and the Joint Motion to Dismiss with Prejudice.

Additionally, MDA provided PEER with documentation regarding the State’s establishment of an additional \$40MM reserve to further address unmet housing needs identified through the Neighborhood Home Program.

(F) Report, p. 30:

**ISSUE:** Without any supporting reference, PEER questions whether the use of PGRP funding to clear the eastern area of the North Harbor of temporary tenant facilities is an allowable expense if development plans for that area are uncertain.

**MDA and MSPA RESPONSE:** This is an unsubstantiated conclusion and should be removed. MDA and MSPA’s position is that the expenditure of these funds to clear the area of the temporary facilities and to prepare it for future tenant use is an allowable expense.

(G) Report, p. 29:

**ISSUE:** Exhibit 7 presents 3 plans by year as well as one monthly project update:

Action Plan (2007);  
Modification to the Action Plan (2008);  
Implementation Plan (2010) and  
MSPA PGRP project update as of 2/2013.

**MDA and MSPA RESPONSE:** The reference to the monthly project update should be deleted as it is not an official plan that has been adopted by the MSPA Board of Commissioners. Alternatively, indicate that the Report is referencing an internal, monthly project update that is revised on a regular basis.

(H) Report, p. 42:

**ISSUE:** The Report fails to mention the 24 acre dredge and fill project awarded to Archer Western.

**MDA and MSPA RESPONSE:** The underlined language provides a more accurate representation of the work awarded to Archer Western:



The remainder of the contract value was awarded to Archer Western for the 24 acre dredging, fill and shore protection services.

(I) Report, p. 42:

**ISSUE:** Again, the Report fails to discuss the 24 acre dredge and fill project, by which 24 previously permitted acres of land were created. Furthermore the report misstates the extent of the fourteen foot elevation project.

**MDA and MSPA RESPONSE:** The underlined language provides a factual representation of the construction work of the PGRP:

Construction on the Gulfport Restoration Project has for the majority of its existence concentrated on completion of the sixty-acre expansion of the port facilities, the completion of the previously permitted 24 acre fill project, and the fourteen-foot elevation of those expansions the West Pier. The construction projects include dredging material from the area of the port that is to be expanded on, bringing in by truck sand and other to create new land, providing shore protection, and finally raising and sloping the new land for drainage and storm damage.

(J) Report, p. 43:

**ISSUE:** Archer Western's contract is identified as "Dredging Services."

**MDA and MSPA RESPONSE:** This should be changed to "Dredge and Fill 24 Acre Project" to more accurately reflect the scope of the work awarded to Archer Western.

(K) Report, p. 46:

**ISSUE:** The Report fails to identify multiple projects under the PGRP that meet the Report's definition of "including a restoration component."

**MDA and MSPA RESPONSE:** The MSPA plans to use CDBG disaster recovery funds to pay for (or has used such funds to pay for): completion and repair of the balance of the 60 acre fill (\$27,852,353.79); wharf crane rail upgrades (\$88,477,800); clearing the tenant areas in the North Harbor (\$1,080,000); and rebuilding and restoring the tenant terminals, including facilities and infrastructure (189,784,632.25).

(L) Report, p. 51:

**ISSUE:** The Report ignores the PGRP's obligations regarding the creation of jobs to fulfill its national objective of benefitting low and moderate income persons.

**MDA and MSPA RESPONSE:** Given the nature of job creation in the maritime industry, jobs generally are not created in small measures over time, but rather in larger, more immediate groupings each time a new business tenant locates to a port. Despite this, MDA and the MSPA are working toward achieving the job creation goals within the 3 year timeline demanded by the subrecipient agreement with MSPA, implementation guidelines, and other project documents. As a result of technical assistance by HUD,

MDA followed HUD's direction and created a timeline for job creation within HUD's internal reporting system going out to 2035. Accordingly, the numbers reported in the internal system are intended solely as demonstration of distributing job data across the expected lifetime of the Project's primary impact, as directed by HUD technical staff. Regardless of HUD's internal tracking systems, MDA and the MSPA are working toward achieving the job creation goals within the 3 year timeline demanded. This 2035 date at HUD does not represent the position of the State, but is an absolute worst-case scenario as we were directed by HUD to input into the system.

(M) Report, p. 52:

**ISSUE:** The Report inaccurately represents information from the Action Plan regarding the estimated completion of the Project.

**MDA and MSPA RESPONSE:** The requested changes provide a factual representation of when then jobs must be created for compliance purposes.

As discussed on page \_\_, the port is not scheduled to complete the construction work necessary to attract new tenants until the end of 2015 at the earliest, but more likely in 2016. Under State policy, the port has three (3) years from the completion of construction to meet its national objective through job creation.

(N) Report, pp. 52-60:

**ISSUE:** Instead of using industry-accepted methodology, the Report applies its own assumptions, ignores industry standards and overlooks critical assets of the Port.

**MDA AND MSPA RESPONSE:** These issues are addressed in the cover letter attached hereto, as well as "The Status of the Port of Gulfport Restoration Program: Issues and Clarifications on the Application of Economic Impact Analysis in the PEER Committee Report," dated May 23, 2103 which Exhibit was submitted to PEER and has been re-attached to this response as Exhibit A-1.

(O) Report, p. 71:

**ISSUE:** The Report incorrectly details the number of direct jobs associated with the Port.

**MDA and MSPA RESPONSE:** The Report should reflect the 1,144 jobs currently identified with the Port, which include Port staff, direct employees of the tenants, stevedores, ILA, transportation providers, and longshoremen, to name a few.

**The Status of the Port of Gulfport  
Restoration Program:  
Issues & Clarifications on the Application of Economic  
Impact Analyses in the PEER Committee Report**

*Prepared by:*

**R. K. Johns & Associates**

**May 23, 2013**

***Confidential Work Product***

## Current Analysis Requirements

- R K Johns & Associates consulting engagement has been extended to conduct a review of the job creation assumptions and findings reported in the state's PEER Committee draft report. This analysis is found in the report pages 48 – 56. Of particular interest is this consultant's independent and practiced assessment of the assumptions, conclusions and completeness of the job creation analysis.
- Our analysis is focused on:
  1. Identifying and validating the key assumptions noted by the PEER Committee regarding how "direct" jobs are created at the Port
  2. Commenting on the report's methodology for determining future job creation numbers
  3. Highlighting any issues or concerns we have about the report conclusions

## PEER Committee Report: assumptions on job creation

- Pg 48. The report references the pre-Katrina direct job count at 2,058, with a corresponding projection of 2,586 jobs upon completion of the restoration program (original source: Port of Gulfport Restoration Program Amendment 5, December 12, 2007, pg. 4)
- a) Clarity is needed on what jobs are included in the pre-Katrina direct count. Are all Port commodities/functions included? For example, are the jobs related to bulk ore imports, lumber imports and poultry exports included? Are the Port Authority staff and required U.S. Customs officials included in these figures?

The following is taken from the Port of Baltimore's 2010 Economic Impact Report:

*The direct jobs are with the International Longshoremen's Association, terminal operators, stevedores, trucking firms, railroads, steamship agents, freight forwarders and customhouse brokers, warehousemen, federal and state government agencies, towing companies, pilot organizations, and marine construction companies, etc.*

- b) It is stated that HUD requires that the jobs be created by 2015. Does this date imply that the jobs are to be created immediately at completion of the restoration? Should job creation be timed to the introduction of specific Port features and the "ramp-up" of new operations?

It is important that both the timing and magnitude of job creation be consistent in terms of defined coverage pre/post Katrina.

## PEER Committee Report: assumptions on job creation

- Pg 50. The report references 1,113 total direct permanent maritime jobs in place now (original source: MSPA National Objective Report, February 8, 2013). Details are included in Appendix E, pg. 68 of the PEER Report.
  - a) Clarity is needed as to why the PEER Report uses this job count as its base level for calculating the number and timing of future jobs (detailed on pg. 55). A quick review of the Appendix detail shows zero (0) jobs for Dupont. The Port's staff numbers and any Customs or Inspection officials are also omitted. The future job creation figures required by HUD would include all direct activities on the restored Port property, not just container related employment.
- Pg 53. The report states that the MSPA expected volume to double between 2008 and 2012. The report explains this on this page, and shows it graphically in Exhibit 20 on pg. 54.
  - a) The original source for this analysis and accompanying chart is listed as the Transystems' June 2011 report, "The Projected Economic Impacts from Container Terminal Development at Gulfport, Update". A review of that report (pg. 3) validates the expected volume figures but indicates activity for the years 2015 through 2030; in 5-year increments. The PEER Committee report lists these as 2009 through 2012. This inconsistency (and the related statement regarding doubling Port volume in 4 years) needs to be rectified.
- Pg 53. The report states that jobs per 1,000 TEU declined steadily from 2003 to 2012 based on their own research.
  - a) The sources for this research should be documented. The Transystems' report (2011) references the 2009 Martin Associates report showing 9.8 jobs per 1,000 TEU in 2008. There appears to be a significant discrepancy and the overall analysis would benefit from a consistent appraisal of both historical metrics, as well as a comparison to other ports with a similar cargo mix. It is acknowledged in the PEER Committee report that the job/TEU metric is likely to be lower in the future due to container operations automation.

## PEER Committee Report: assumptions on job creation

- Pg 55. Calculation of future TEU volume based on 2012 performance.
  - a) Clarity is needed as to why the PEER Report assumes two new tenants. It is worth considering future volume potential regardless of the number of tenants. The reconstruction of the West pier provides for a new 50-acre terminal for either new tenants, or expansion by existing Port users. It is reasonable to assume the use of this facility will be incremental over a 3-5 year period for the tenant to ramp-up volume. As such, the capacity per acre could range from 3,000 to 5,000 TEU per acre annually, or the equivalent capacity of 150,000 TEU to 250,000 TEU. The PEER Committee report allocates 141,000 TEU (regardless of number of tenants).
  - b) The formula used in the PEER report for existing tenant growth should be explained better. All three tenants are moving into larger, more modern and more efficient facilities. It should be reviewed as to why the PEER report assumes growth of only 3.5%.
  
- Pg 55. Omission of any job creation at the vacant East pier and by Dupont on the West pier.
  - a) Prior to Katrina, Gulfport moved considerable tonnage in breakbulk commodities including lumber and poultry (PEER Committee report, June 2006 shows nearly 500,000 tons of breakbulk imports & exports). Using an average of .5 jobs per 1,000 tons (standard metric in most Port economic impact reports prepared by Martin Associates using the US government formula) and assuming only half the pre-Katrina breakbulk volume (250,000 tons), the Port could see another 125 direct jobs. These are not related to the growth in container business but are a potential critical component of the Port's Restoration Program.

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## PEER's Response to MDA/MSPA Response

While not unprecedented, it is unusual for the PEER Committee to write a response to an agency's formal written response to a PEER report. In this case, the PEER Committee believed that it could not let stand unanswered MDA's/MSPA's serious assertions calling into question the competence of PEER staff and alleging that the staff failed to follow due diligence in this review of the status of the Port of Gulfport Restoration Program. As this document attests, the PEER Committee stands behind the accuracy and completeness of its review of the status of the program.

PEER has met its objective of presenting a clear, objective review of the status of the Port of Gulfport Restoration Program. PEER accurately reports that four years into the Port of Gulfport Restoration Program, MSPA has expended 15% of the approximately \$567 million in CDBG disaster recovery funds that MDA requested HUD to reprogram from housing assistance to the restoration program.<sup>19</sup> While the expenditure of these funds had resulted in the reported creation of 280 temporary construction jobs as of December 2012, the program has yet to create any permanent direct maritime jobs. In fact, the number of permanent direct maritime jobs attributable to the port has been declining from the 1,286 actual direct maritime jobs reported for 2007 in the state's application to HUD for the reprogramming of funds to the restoration program to 1,113 reported as of February 8, 2013. With construction on the restoration program not scheduled to be complete until December 2015, MSPA will be unable to meet the expectation set forth in its Action Plan of 2,586 permanent direct full-time equivalent maritime jobs by 2015.

The port's own hired consultants project that the port will not likely reach its job creation/restoration objective until into the 2030s. These consultants project much more limited maritime commercial growth opportunities for the Port of Gulfport than those currently being asserted by MDA/MSPA. For example, the port's consulting firms forecast that with completion of the construction funded by the restoration program and without deepening of the shipping channel (permission for which MSPA has been unable to obtain to date from the U. S. Army Corps of Engineers), the port might expect one call from at least one additional weekly service from the Central

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<sup>19</sup>As discussed on page 18 of the report, MDA requested and received the reprogramming of \$600 million in CDBG disaster recovery funds from housing assistance; however, MDA made available \$567 million to MSPA for the Port of Gulfport Restoration Program.



American/Caribbean trades “primarily served by smaller vessels that can use Gulfport” (generating an estimated additional 10,000 TEUs annually).

The consultants also observed that if either Chiquita or Dole (two of the port’s current four tenants), which both call Freeport, TX, in addition to Gulfport, were to combine their service at Gulfport, the port could generate an additional 20,000 TEUs annually.

Combined growth of 30,000 TEUs annually is very modest growth that would only generate approximately 135 new direct maritime jobs according to the consultants’ own multiplier of 4.5 direct jobs per 1,000 TEUs.

Working against the port’s ability to expand its container activity, the port’s consultants note that there is already significant excess container capacity at other newly expanded ports on the Gulf--e. g.,:

- the port of Mobile, with a water depth of forty-five feet, opened a \$300 million dedicated container terminal in 2008 that is only operating at an estimated 30% of capacity;
- the port of New Orleans, which also has a water depth of forty-five feet, is operating at 50% of capacity and has two planned expansions that would nearly double its current capacity.

The consultants further observe that while a limited number of Gulf Coast ports have the availability of new land, “ALL ports have the capability of increasing capacity through the use of improved operating practices.”

Adding to MDA’s/MSPA’s difficulties, HUD is questioning MDA’s/MSPA’s reported job numbers associated with the restoration program (i. e., the number of jobs created or retained for low- and moderate-income persons), noting that very few of the reported jobs are supported by documentation and threatening the possibility of the state’s having to repay CDBG disaster recovery funds if adequate documentation is not forthcoming. At the time of the conclusion of PEER’s fieldwork, this issue had not been resolved.

Because MDA/MSPA is responsible for the prudent expenditure of a large sum of federal funds and because MDA/MSPA is having difficulty meeting the job creation/restoration objective of the restoration program, it is understandable that it is trying to deflect the focus away from its own difficulties by trying to cast aspersions on PEER. Unfortunately, in doing so, MDA/MSPA is only creating bigger problems by creating new and, in some instances, grander unrealistic expectations for the restoration program. For example, in its response, MDA/MSPA equates expanded capacity for throughput with actual throughput. As noted by the port’s

consultants, just because a port has the capacity for 1 million TEUs of throughput does not mean that it will be able to attract that level of throughput.

Also, while the port is making a new promise that the 2,586 direct maritime jobs expected from the restoration program will materialize by 2018--i. e., within three years following the completion of construction, now scheduled for 2015, the port's own consultants forecast that even with harbor deepening (which is not a likely scenario at present), the port would not achieve its 2,586 direct jobs goal until 2025. Under the more likely scenario of limited growth without harbor deepening, the port's consultants forecast that it will not reach its goal of 2,586 direct maritime jobs until sometime between 2030 and 2035.

The following pages present each of MDA's/MSPA's specific issues in its letter to PEER of June 4, 2013, followed by PEER's response to each.<sup>20</sup>

## **MDA's/MSPA's Specific Issues and PEER's Responses to Those Issues**

**Issue A: The introduction contains unsubstantiated and factually incorrect language about the MSPA Board of Commissioners' decision to elevate the footprint of the West Pier to fourteen feet mean sea level.**

**PEER Response:** The sentence that MDA/MSPA questions in the report began with "After a review of the status of the program by the Mississippi Development Authority. . ." (see page 1 of the report). MDA/MSPA wanted PEER to change the phrase "After a review of the status of the program by the State." PEER did not add "the State" to the sentence because the phrase "the State" is indefinite. It does not clarify the entity or actor who acted on behalf of the state. In the field of audit and evaluation, to ensure both transparency and accountability, it is essential to identify the actor responsible for the action (in this case the decision to change the planned elevation of the port from twenty-five feet to fourteen feet).

Further, The purpose of a PEER report Introduction, which in this case includes the Problem Statement, is to orient the reader to concerns that led to the Committee's decision to conduct the review. The sentence in question intended primarily to state one of the concerns that constituted the basis for the report.

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<sup>20</sup>MDA/MSPA based the June 4, 2013, response on a preliminary draft of the report. In cases in which page numbers that MDA/MSPA had referred to changed prior to this final version, PEER corrected MDA's/MSPA's page numbers in the response to the response.

**Issue B: The Report does not clearly identify all source documents used during the fieldwork for the Report, including the news article referenced on p. 51 and the source documents attributed to the Mississippi Center for Justice on p. 21.**

**PEER Response:** In accordance with the PEER Committee's standard operating procedures, all PEER work is supported by and cross-referenced to extensive documentation maintained in formal workpapers. To facilitate the readability of reports, PEER does not write in an academic style wherein every source is documented on every page. Complete documentation is accomplished in the workpapers; footnotes and references within the text are used for definition or clarification. While PEER provides a general description in the Methods section of the steps that it took to complete the review, this section is not intended to be an exhaustive listing of every document that PEER used in preparation of the report.

PEER notes that the newspaper article at issue is posted on MSPA's website, portofthefuture.com, which purports to be "a repository for information pertaining to the restoration project and is designed to inform and educate Gulf Coast and Mississippi residents and others about the project's progress."

**Issue C: The Report is using a footnote to clarify that the Governor's Commission on Recovery, Renewal, and Rebuilding recommended the redesign of I-310 to accommodate several recommendations made by the Commission.**

**PEER Response:** During the May 31 exit conference, PEER staff agreed, at MDA's request, to revise the report draft to incorporate information requested by MDA into a new footnote 7 on page 15. A cross-reference to a footnote that is located on the same page, as proposed by MDA/MSPA in its response, would be superfluous.

**Issue D: In discussing HUD Secretary Jackson's approval of Mississippi's reprogramming funds for the Port of Gulfport Restoration Program, the Report omits several important facts.**

**PEER Response:** During the May 31 exit conference, PEER staff explained that the report section referenced by MDA/MSPA was intended only to discuss the controversy surrounding the reprogramming of funds to the PGRP and that the additional contribution of funds by the state to the Home Assistance Program (HAP) added no value to the review because the funds were not provided by the PGRP; thus, this was not germane to the report.

**Issue E: The Report references undocumented statements regarding the establishment of the Neighborhood Home Program.**

**PEER Response:** During PEER staff's fieldwork, which concluded in March 2013, MDA and MSPA initially told PEER staff that the PGRP did not provide funding to the Neighborhood Home Program (NHP). However, on May 24, MDA provided documentation to PEER staff that established that the PGRP reserved \$40 million for the NHP and that the state of Mississippi had committed another \$40 million to the NHP. Relying on this documentation, PEER staff agreed to include the information regarding the \$40 million held in reserve by the PGRP for the NHP in the report.

However, PEER staff explained that the state's commitment of \$40 million to the NHP was not germane to the report because the \$40 million was not allocated from the PGRP, but from various programs. In addition, the documentation provided by MDA did not identify the various programs or the amounts allocated by each program to the NHP.

**Issue F: Without any supporting reference, PEER questions whether the use of PGRP funding to clear the eastern area of the North Harbor of temporary tenant facilities is an allowable expense if development plans for that are uncertain.**

**PEER Response:** According to MDA's Action Plan for the PGRP, dated December 12, 2007, "CDBG Disaster Recovery Funds will be utilized for maritime restoration only." Based on this language, PEER determined that all projects related to the PGRP using CDBG money must be maritime-related in order to be considered legitimate projects under the agreement with HUD. By not declaring that the use of the East and North Harbor areas will be used for maritime purposes only, PEER questions whether future reviews and audits of the program may question and possibly consider them ineligible activities under the terms agreed to with HUD for proper use of CDBG monies for development of these areas.

PEER bases this statement on a totality of the project costs for a given project. In determining the total cost of a project item, PEER would include the cost of design and development, site preparation (i. e., clearance and removal of obstruction and material on the proposed build site), and actual construction. Taken as a total, it would be possible for a future audit team to consider the removal of temporary facilities and site preparation as part of the new construction costs, and if such new construction is non-maritime, PEER believes MSPA might be found to have violated its agreement with HUD.

Further, PEER would like to draw attention to the fact that nowhere in the footnote does PEER make a declaratory “unsubstantiated conclusion” (MDA/MSPA Response Letter, June 4, 2013); rather, PEER states that use of the East and North Harbor areas for non-maritime use “could” call into question the use of CDBG money for these projects. It was PEER’s intention that this statement be read as a warning of future concern for the port, rather than a statement that the development of these areas would be a violation of the agreement.

**Issue G: Exhibit 7 presents 3 plans by year as well as one monthly project update, which should be deleted as it is not an official plan that has been adopted by the MSPA Board of Commissioners. Alternatively, indicate that the Report is referencing an internal, monthly project update that is revised on a regular basis.**

**PEER Response:** PEER is aware of the fact that the MSPA PGRP project update as of February 2013 is a fluid document meant for internal purposes. The Action Plan, Modification of Action Plan, and Implementation Plan are all documents that focus on big-picture items and projects and give little detail on the day-to-day accomplishments of the port in moving toward the completion of the Restoration Program.

The use of the MSPA PGRP project updates as of February 2013 as an official plan of MSPA resulted from the necessity of this report to have a document that discussed in detail the status of the port’s progress in using CDBG funds. This is the only document PEER was made privy to that included project task, estimated money required for the task, actual cost per task, estimated start date of construction, and estimated construction completion date. As the only document of this type, PEER believed it to be not only prudent, but obligatory, to use this document as an official benchmark to measure the progress of the port in the restoration program.

**Issue H: The Report fails to mention the 24-acre dredge and fill project awarded to Archer Western.**

**PEER Response:** This was a concern of MDA and MSPA at the exit conference meetings held on May 31. At the May 31 meeting, PEER agreed to alter the wording of the report based on MSPA and MDA suggestions made on May 24 to the current report language. Representatives from MSPA, MDA, and counselor to MDA agreed that the revisions made to this section of the report were acceptable and agreeable.

**Issue I: Again, the Report fails to discuss the 24-acre dredge and fill project, by which 24 previously permitted acres of land were created. Furthermore the Report misstates the extent of the fourteen-foot elevation project.**

**PEER Response:** As in the case with Issue H, PEER revised the wording of the Report in this section based on a recommendation made by MSPA and MDA at the May 24 exit conference meeting. At the May 31 exit conference meeting, no objections were made by MSPA or MDA to the language now found in the report. It was the opinion of MSPA and MDA at the May 31 meeting that the alterations made by PEER were acceptable and agreeable to them.

**Issue J: Archer Western's contract is identified as "Dredging Services."**

**PEER Response:** At neither the May 24 nor May 31 exit conference meetings was this an item of concern for either MDA or MSPA. Again, as noted in PEER Response to Issue H, the omission of the "24 acre" was made in an effort for brevity and in PEER staff's opinion this did not skew nor diminish the overall message of the report. However, PEER will alter the language of the report to include "and 24 Acre Fill."

**Issue K: The Report fails to identify multiple projects under the PGRP that meet the Report's definition of "including a restoration component."**

**PEER Response:** Neither before nor during the exit conference on May 31 did MDA and/or MSPA object to this language or request that other projects be included as projects with a restoration component. However, on pages 45-46 of the report, PEER identified three projects that included a restoration component. (Two of these--the wharf crane upgrades and non-maritime development of the east and north harbors--MDA/MSPA refers to as "clearing the tenant areas in the North Harbor" in its response.)

PEER did not include the remaining two projects that MDA/MSPA purports to constitute projects with a restoration component for the following reasons:

- PEER did not include the project labeled by MDA/MSPA as "the completion and repair of the balance of the sixty-acre fill" because although an eighty-four-acre project, which included the sixty-acre fill, had been permitted prior to the PGRP, only thirty-five acres had been filled prior to the PGRP. PEER identified the additional sixty-acre fill as an expansion project because it did not exist prior to the PGRP and thus, there was no land to restore as a result of Hurricane Katrina.

- PEER did not include the project labeled by MDA/MSPA as “rebuilding and restoring the tenant terminals, including facilities and infrastructure” because the port has already resumed operations with current facilities and infrastructure prior to the PGRP. Thus, PEER labeled all additional facility and infrastructure projects as expansion projects, rather than projects with a restoration component.

According to the program schedule provided by MSPA, design and construction work related to facilities and infrastructure is not slated to begin until June 11, 2013 .

In addition, according to Exhibit 5 on p. 14 of the report, numerous tenant facilities and infrastructure projects to repair and improve the port were completed or ongoing prior to the PGRP--e. g., Chiquita Office and maintenance and repair (M & R) Facility and Crowley M & R Facility.

**Issue L: The Report ignores the PGRP’s obligations regarding the creation of jobs to fulfill its national objective of benefitting low and moderate-income persons.**

**PEER Response:** Page 24 of the report details the obligation of the state to ensure that at least 51% of the jobs created or retained as a result of the expenditure of restoration program funds “will be held by, or will be made available to low and moderate income persons.” Also, see clarifying footnote 11 on page 24 regarding retained jobs. Page 26 of the report explains that the HUD waiver notice that reduced the number of jobs that the program had to create or retain as a recipient of CDBG funds stated that the state made public in its Action Plan the public benefits expected from each disaster recovery activity (i. e., 2,586 permanent direct maritime jobs by 2015). The PEER report goes on to note that HUD requires the state to report and maintain documentation on the creation and retention of total jobs, number of jobs within certain salary ranges, the amount of assistance per job and activity or program, and the types of jobs.

Regarding MDA’s/MSPA’s claim that PEER should not have included in its report MDA’s “projected date for job creation completion” of 2035 reported to HUD, PEER notes that this is a date forecasted by the port’s own consultants. While MDA claims that the 2035 date is a “worst-case scenario,” there is no documentation in the quarterly reports that MDA provided to PEER that this is the case, nor did MDA provide documentation to PEER that HUD instructed MDA to project the worst-case scenario. However, even if MDA believes that 2035 is a worst-case scenario, this is the same restoration program job creation time frame projected by the port’s consultants under the scenario of added growth without harbor deepening (which may be what MDA/MSPA is calling a “worst case scenario,” but which may be the most realistic scenario.)

**Issue M: The Report inaccurately represents information from the Action Plan regarding the estimated completion of the Project.**

**PEER Response:** The PEER report accurately replicates Table 3 from the Action Plan, which is the job-related public benefit expected from the restoration program. Table 3 is immediately preceded by the statement: “The 2007 Master Plan update projects approximately 5,400 direct, induced and indirect maritime jobs to be generated by the year 2015.” As presented in the PEER report, Table 3 shows that 2,586 of the 5,400 jobs projected for 2015 are direct jobs.

**Issue N: Instead of using industry-accepted methodology, the Report applies its own assumptions, ignores industry standards and overlooks critical assets of the Port.**

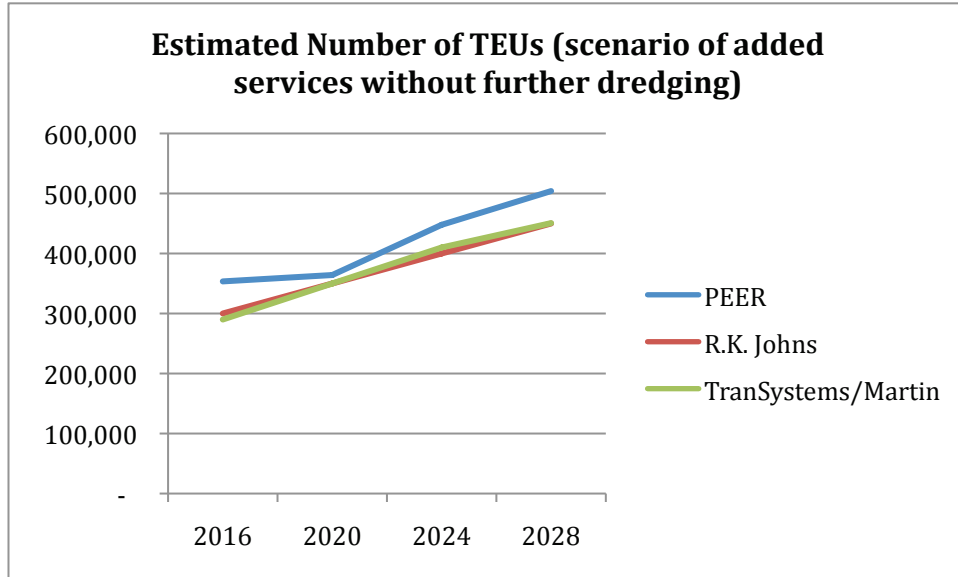
**PEER Response:** In the absence of the more detailed economic data available to the port’s hired consultants (including information concerning actual trade expansion opportunities for the port), PEER made the growth assumptions discussed in detail on page 54 of the PEER report.

As shown in the graph on page 91, PEER’s assumptions yielded TEU projections close to those of the port’s consultants, but slightly more optimistic.

Using the forecasted TEU numbers in the exhibit, the consultants projected under the scenario of market growth without harbor deepening that the port would reach its Action Plan target of 2,586 jobs between 2030 and 2035.

PEER’s analysis projected a date of 2027. Even under the best-case scenario of expansion with harbor deepening, the consultants projected that the port will not reach its targeted number of 2,586 direct jobs until 2025.





**Issue O: The Report incorrectly details the number of direct jobs associated with the Port. (The report should reflect the 1,144 jobs currently identified with the Port.)**

**PEER Response:** During the course of PEER’s review, MSPA staff provided PEER with a “verified” count of 1,113 permanent direct full-time maritime jobs associated with the port as of February 8, 2013. This was the “current job count” that MSPA had included in its National Objective report to HUD. Subsequent to this count, PEER became aware through a newspaper article published on the port’s Port of the Future website that one of the port’s biggest employers (according to MSPA’s National Objectives report), the International Longshoreman’s Association, was questioning the 388 full-time equivalent “longshoreman” jobs that MSPA had reported to HUD. In fact, the International Longshoremen’s Association claimed that the port only employs about 60 to 110 full-time workers to load and unload cargo. In April of 2013, HUD issued a Management Review Report on the restoration program and concluded that MDA only provided supporting documentation (payroll records for calendar year 2012) to demonstrate that 50 of the proposed 1,286 jobs [to be retained] had been retained. Given these serious concerns over the accuracy of the port’s “verified” direct job numbers, combined with the question of whether all of these jobs can actually be counted as retained given the language in 24 CFR Section 570.483 (b) (4) (ii), which stipulates: “For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDBG assistance,” PEER did not believe that it was prudent to increase the number of direct jobs attributable to the port until these issues are resolved.

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## PEER Committee Staff

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Ray Wright

### Performance Budgeting

Brian Dickerson  
David Pray  
Linda Triplett