December 11, 2018
Council Workshop
12191 Magnolia Springs Hwy.
Magnolia Springs, Alabama 36555
5:00 P.M.

1. Call to Order:
Mayor, Bob Holk, called the meeting to order at 5:00 p.m.

2. Roll Call:
Present: Mayor, Bob Holk; Councilmember, Dotty Johnson;
Councilmember, Steve Mobley; Councilmember, Marley Gardner;
Councilmember, Nick Shields, and Councilmember Ben Dykema
Also present: Town Attorney, Brad Hicks, and Town Clerk, Jenny Opal White

3. Invocation and Pledge: Mayor, Bob Holk, asked, Rodney Hubble to give invocation and
lead pledge.

4. Presentation:
Matthew R. Taylor, CPA, Grant, Sanders & Taylor, P.C.
Matthew R. Taylor presented the Town of Magnolia Springs, FY 2017-2018 Annual
Audit Report to Council for review and gave recap of report.

5. Discussion of December 2018 Minutes:
Mayor, Bob Holk, asked, Council to review the Council Workshop Meeting minutes of
November 13, 2018 and the Regular Council Meeting minutes of November 27, 2018.
There were no comments. Mayor, Bob Holk, asked, Council, to contact Jenny Opal White,
Town Clerk for any corrections.

6. Discussion of Financials and Expenditures: November 30, 2018
Mayor, Bob Holk, reported, balances as of November 30, 2018.
- General Fund - $156,527.67
- Tiered Money Market - $282,720.41
- CD #326955 - $54,666.76
- CD #355610 - $200,000.00
- 4 and 5 Cents Gas Tax - $13,370.22
- 7 Cent Gas Tax - $6,415.52
- Capital Improvement Fund - $9,979.70
- Special Revenue Accounts – Income $302.26
- Special Revenue Accounts – Balance $30,103.70
Mayor, Bob Holk, reported. Ad Valorem Tax, $5,841.23.
Mayor, asked, Council to review and comment. Mayor, Bob Holk, asked, Council to
contact, Town Clerk, Jenny Opal White, for corrections.

Mayor, Bob Holk, asked, Deputy, Greg Smith, to present report.
Arrests Off Traffic Stops: 2
On View Arrests: None
Calls: Report taken for a stolen cell phone at the Pure Gas Station.
Traffic Stops: 81
Citations: 40
Warnings: 33
Verbal: 8
Deputy, Greg Smith, reported, a red, Ford F-150 casing houses in community.
Mayor, Bob Holk, thanked, Deputy, Greg Smith for report.

8. Public Comment:
Todd H. Puckett and Rivers Y. Puckett, 112 River Route, addressed, Council, for
consideration of security street lights.
Mayor, Bob Holk, reported, the City of Foley has transferred twelve (12) lights over to the
Town of Magnolia Springs. Councilmember, Nick Shields, is working on list. Twelve
(12) security street lights reported. One (1) missing.
9. Resolutions:

Resolution 2018-17, Town of Magnolia Springs enter Intergovernmental Service Agreement with Baldwin County Commission to use the County’s Voting Machines and Services of the County Voting Machine Custodian for Municipal Elections

Mayor, Bob Holk, asked, Council, to review Resolution 2018-17 to allow Mayor to enter into an Intergovernmental Agreement with Baldwin County Commission to use the county voting machines and services of the County Voting Machine Custodian for Municipal Elections. Mayor, commented, the resolution would be on agenda for Regular Council Meeting on December 18, 2018 for approval and adoption.

10. Discussion:

No further discussion.

11. Committee-Commission Reports:

(a) Finance Committee: Mayor, Bob Holk, reported, no meeting. Mayor, addressed, completion of FY2017-2018 Audit. Mayor, acknowledged, we’re awaiting transfer of title on School Property.

(b) Public Works/Safety: Mayor, Bob Holk, reported, eight (8) contractors at Pre-Bid Conference this morning reference Magnolia Springs Pavement & Drainage Project. Town Attorney, Brad Hicks, commented, we need contract on services. Mayor, Bob Holk, addressed, Council, that he would be stepping down as Chairman, of the Public Works/Safety Committee. Mayor, acknowledged, Councilmember, Steve Mobley, would step up as Chairman of committee with official start date of December 12, 2018. Committee members, are Steve Mobley, Nick Shields, and Rodney Hubble.

(c) Public Lands/Beautification: Councilmember, Ben Dykema, reported, we have received Rock Street signage. Signage will be installed after parking spaces are completed.

(d) Tree & Streetscape: Councilmember, Nick Shields, reported, no meeting. Next meeting, January 2, 2019.

(e) Public Relations: Councilmember, Marley Gardner, discussed, Magnolia Springs Elves, are supporting seven (7) local kids at the Magnolia School in need of Christmas this year. Mayor, Bob Holk, thanked, Lolly Holk and Councilmember Marley Gardner for support on Christmas Banners.

12. Council, Legal Counsel, and Staff Comments

Town Attorney, Brad Hicks, working on (Draft) Sewer Franchise Agreement with Baldwin County Sewer Service.

Town Attorney, Brad Hicks, asked, Mayor Pro-Tempore, Ben Dykema, to introduce Gena Todia, Wetland Resources Environmental Consultant. Gena was hired, to review and assess Holk Property reference, resubmitted, Land Use Certificate, 2019-06, 05-55-08-28-0-000-104.000, 14744 Oak Street. Gena, discussed, General Observations, Corps of Engineers Permit, Town of Magnolia Springs Ordinance 2009-02, Zoning Ordinance No. 2010-06, and Recommendations as submitted in letter, dated, December 10, 2018. Submitted letter, dated December 10, 2018 will be included with minutes, along with ADEM letter, dated, January 30, 2017.

Mayor, Bob Holk, commented, he was disappointed, consultant did not ask to speak with land owners during assessment. Mayor, Bob Holk, agreed, with Gena Todia, discussion. Mayor, commented, he was in the process of doing, prior to being stopped. Mayor, asked, Gena, if she reviewed Corps of Engineers Permit reference 14 ft. driveway. Gena, commented, she would confirm. Mayor, noted, he didn’t ask to build house. Septic tank not asked for in Land Use Certificate. Mayor, asked, for item to be removed.

Mayor Pro-Tempore, Ben Dykema, discussed, erosion problem, white sand base, and crush limestone. Erosion Control Plan does not apply to single family. Cottage appeared on prior submittal.

Mayor, Bob Holk, commented, the permit was just for a driveway.

Gena Todia, commented, the width authorized of 14 ft. driveway should be fine.
Town Clerk, Jenny Opal White, thanked Hadley and Kristin Weaver for the poinsettias given to the Mayor, Council, and Town Clerk in appreciation of their support for the Town. Town Attorney, Brad Hicks, discussed, the recommendations should go thru Executive on behalf of Town, Mayor Pro-Tempore, Ben Dykema. Brad, asked, Ben, to move forward in process.

Town Attorney, Brad Hicks, discussed, drainage ditch issue on Holly Street.

13. Any Other Business That Might Come Before the Meeting
Co-Chair, Friends of Magnolia River, Ben Dykema, discussed, Friends of Magnolia River, Brett Gaar, brought forward proposal to Friends of Magnolia River for environmental assessment on Magnolia River by environmental consultant in Birmingham. Hadley and Kristin Weaver offered a grant of $5,000 for assessment.

Councilmember, Steve Mobley, discussed, public nuisance on Magnolia Street with demolition sign on property. Mayor, Bob Holk, noted, he has talked with them and it's all coming down.

14. Public Comment
Brett Gaar, inquired, on recommendation for consultant with clearance on Holk Property by the Corp. of Engineers and ADEM.
Kenneth Underwood, commented, ALDOT, paved road and culvert on Holly Street.

15. Adjourn
Motion by Councilmember, Dotty Johnson, to adjourn meeting. Second, Councilmember, Marley Gardner. All in favor. Motion carried.
Meeting adjourned at 6:06 p.m.

Approved this 22nd day of January 2019

\[Signature\]  
Bob Holk, Mayor

ATTEST:

\[Signature\]  
Jenny Opal White, Town Clerk
December 10, 2018

The Honorable Ben Dykema
Mayor Pro Tempore of Magnolia Springs
Post Office Box 890
Magnolia Springs, Alabama 36555

Subject: Robert and Lorena Holk Property

Dear Mayor Dykema:

As requested, I met with you on December 3rd on the Holk property to assess site conditions and discuss the town’s concerns with the landowners’ activities and development plans. I have also reviewed certain town ordinances as well as the Corps of Engineers permit letter that authorizes placement of fill in wetlands for the purpose of constructing a driveway on the Holk property. My observations, comments, and recommendations are as follows:

General Observations

- The forest understory over essentially the entire property was recently brush-cut/mowed and piles of woody debris are scattered over the property. Large trees were left in place. Sandy fill material has been hauled in and partially spread to construct a driveway between Oak Street and an upland area near Magnolia River.

- Volkert, Inc. conducted a wetland delineation on the entire property earlier this year that involved marking wetland boundary with survey flagging and generating a map showing the location of wetlands on the property, the driveway footprint, wetland impacts, and house location.

- The great majority of the wetland boundary flagging is no longer in place due to the recent brush-cutting/mowing. Apparently, the Corps of Engineers was satisfied with the accuracy of the delineation since their permit letter included a Preliminary Jurisdictional Determination.

- The property owners have made some attempts to control erosion and sedimentation, but better erosion control measures are needed.

- If a house is to be built in uplands near the river, it will be necessary to install utilities at least partially through wetlands.

Corps of Engineers Permit

The Corps permit authorizes 0.04 acre of wetland fill for the purpose of constructing a driveway that is to be 14 ft. wide by 450 ft. long. The Corps permit letter lists certain special conditions that must be followed in order to be in compliance with the permit. The permit letter also references conditions listed in the Nationwide Permit Program document. Those conditions most pertinent to this project are as follows:

Special Condition 10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements. Does the driveway fill and proposed structure(s) comply with FEMA requirements?

Special Condition 12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high-water mark or high tide line, must be permanently stabilized at the earliest practicable date.
Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides. During the December 3rd site visit, it was observed that erosion control measures in the form of silt fencing and straw had been installed in some areas; however, some sections of silt fencing were not installed properly (toe of fence was not buried in at least one area near the river) and some sections of the driveway that appeared prone to erosion had inadequate or no erosion control measures in place.

The Alabama Dept. of Environmental Management (ADEM) has issued water quality certification for the 2017 Nationwide Permit Program. The ADEM certification lists certain water quality conditions that must be followed under the program (see attached letter).

Other conditions listed in the Corps permit letter include:

- **Condition b.** Requires that the yellow Notice of Authorization card be posted at the site during construction. The card was not posted on December 3rd.
- **Condition c.** States, in part, that “Best management practices shall be implemented to adequately retain fill material minimizing erosion, siltation, turbidity and damage to adjacent wetlands and water of the United States. Appropriate erosion and siltation control measures must be used and maintained in effective operating condition during construction and shall remain in place until permanent stabilization measures have been installed and have become fully effective.” See comments under Special Condition 12 above.
- **Condition d.** It is the permittee’s responsibility to ensure that contractors working on this project are aware of all general and special permit conditions. It should be determined whether the Holks have contractors who have been, or will be, working on this project and assure that this condition is followed.
- **Condition e.** Within 30 days of completion of the work authorized, the enclosed Compliance Certification form must be completed and submitted to the USACE, Mobile District. This condition should be followed so that the Corps project manager can conduct an inspection of the project to determine whether it was done in compliance with the permit. In the meantime, I have requested that the project manager conduct a compliance inspection at her earliest convenience to ensure that the project is being constructed as permitted.
- **Condition f.** The movement of equipment within wetlands and streams shall be limited to the minimum necessary to accomplish the work authorized herein. All equipment required to traverse through wetlands and waters of the United States shall be supported on mats or other appropriate measures shall be implemented to minimize soil compaction, rutting, and other damage. The mowing of vegetation such as has been done in wetlands on the property is not regulated by the Corps. No apparent rutting or other damage was observed. Unfortunately, mowing was conducted up to the banks of the ephemeral stream channel that runs between Oak Street and the river. Removal of vegetation from the streambanks and adjacent flood plain will make the stream bed and banks more prone to erosion, head-cutting, and down-cutting, potentially resulting in sediment being deposited in the river.
- **Condition g.** No building materials, tools or other equipment shall be stockpiled or staged in wetland or other waters of the United States. All excess materials, tools and equipment shall be removed from waters of the United States immediately upon completion of the activity. A large pile of fill dirt was observed within the driveway footprint that is potentially in wetlands. Erosion control measures in the vicinity of the dirt pile should be properly installed and maintained until the material is utilized.

**Town of Magnolia Springs Ordinance 2009-02**

Sections of the ordinance that appear to be pertinent to this project include:

**Section 3. General Design Principles, b.** States, “Natural vegetation shall be maintained and protected wherever and whenever possible. Areas immediately adjacent to watercourses, wetland and lakes shall be left undisturbed wherever possible so that the smallest practical area of land will be exposed for the shortest practical period of time during
development." *Mowing of vegetation in wetlands and along the ephemeral stream channel appears to be in conflict with this part of the ordinance.*

Section 3. General Design Principles, c., d., e. all address soil erosion and sedimentation control. *See previous comments.*

Section 4. Design Criteria, Standards and Specifications: All erosion and sediment control measures, including, but not limited to those required to comply with this ordinance, shall at a minimum meet the design criteria, standards and specifications given in the most current version of the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas. The handbook can be found at the following link: https://alconservationdistricts.gov/resources/erosion-and-sediment-control/.

Section 5. Specific Requirements, g. states, "Storage piles of soil left for longer than three (3) days shall be completed encircled with silt fence. If left inactive or unused for longer that twenty-one (21) days the piles shall be seeded, sodded, or covered with a mulching fabric or tarpaulins." *The soil pile present was not encircled with silt fencing.*

Section 5. Specific Requirements, i. states, "Based on individual site characteristics, silt fences shall be installed along the down slope edges of all disturbed areas on the site. Silt fence shall be installed in such a manner to prevent sediment from leaving the site and shall be property maintained throughout their period of use." *Areas were observed to have improperly installed silt fencing or no silt fencing present.*

Section 5. Specific Requirements, j. states, "Prevention of wetland degradation. Temporary sediment barriers shall be installed where needed on all exposed slopes which meet or exceed four horizontal to one vertical (4:1) and are within fifty (50) feet of wetlands, waters of the state, or any surface water feature not bounded entirely by the limits of the development. These shall be placed and maintained such that drainage will not overflow or bypass the barrier and shall remain in place until the slope is leveled or permanently stabilized." *Sediment barriers were not present along some sections of the driveway that is under construction.*

Section 6. Maintenance of Erosion Control Measures During Construction Activity states, "All erosion control measures shall be maintained throughout the course of the construction or until the growth of vegetation has made them unnecessary. If silt fence is temporarily removed to allow access to a portion of the site it shall be re-installed at the end of the same workday. The applicant is responsible for the maintenance of all erosion control measures throughout the life of the project."

Section 7. Erosion and Sediment Control Plan states, "An erosion and sediment control plan shall be submitted with each application and shall be available for review by members of the public. The applicant shall certify that all land disturbance activity shall be done in accordance with the erosion and sediment control plan as approved by the Town of Magnolia Springs. The Town of Magnolia Springs may ask the applicant to supplement information contained in the application.

a. Minor Projects – The erosion and sediment control plan for minor projects shall be made a part of the site plan provided with the application for a Land Use Certificate. It shall be prepared by an Alabama Licensed Professional Land Surveyor, Engineer, Architect, Landscape Architect, a Certified Professional in Erosion and Sediment Control, a QCI, a licensed home builder or licensed general contractor. The site plan shall show, at a minimum, the direction of surface slopes, any watercourse on the lot, and the location of all erosion control installations proposed. *An erosion and sediment control plan was not included in the documents provided to me for review. Was such a plan completed and submitted to the town?*

Section 10. Undisturbed Riparian Buffer Zone states, "No land-disturbing activity during periods of construction or improvement to land shall be permitted within 75 feet of a perennial or intermittent surface stream." *The stream channel running through the wetlands on the property appears to be ephemeral, at least between Oak Street and for some distance toward the river rather than perennial or intermittent. For this reason, this section of the ordinance may not apply to the stream up to the point where it becomes intermittent and/or perennial. To clarify, listed below are definitions of Perennial, Intermittent, and Ephemeral Streams, as defined by the Mobile District Corps of Engineers Regulatory Division and the North Carolina Division of Water Quality, 2010:*
Perennial Stream - A perennial stream has bed and bank features with flowing water year-round during a typical year (Federal Register 2012). The water table is located above the streambed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from precipitation is a supplemental source of water for stream flow. Perennial streams support a diverse aquatic community of organisms year-round and are typically the streams that support major fisheries.

Intermittent Stream – An intermittent stream has bed and bank features with seasonal flowing water, when ground water provides water for stream flow. During drier periods, an intermittent stream may not have flowing water. Runoff from precipitation is a supplemental source of water for stream flow. The biological community of an intermittent stream is composed of species that are aquatic during a part of their life history or move to perennial water sources.

Ephemeral Stream – An ephemeral stream has bed and bank features with flowing stormwater only during and for a short duration after precipitation events in a typical year. The streambed of an ephemeral stream is located above the water table year-round and groundwater is not a source of water for the stream. Precipitation runoff is the primary source of water for stream flow and it typically has flowing water for a few hours to a few days after a storm event and typically has no discernable floodplain.

Zoning Ordinance No. 2010-06

Pertinent sections of the zoning ordinance include the following:

E. Stormwater and Environmental Protection:

8. Erosion Control: All projects shall submit an erosion control plan. At a minimum the plan shall provide for the staged construction of the project with appropriately designed erosion control methods and implementation. All projects shall adhere to the ADEM 13-day rule. Erosion control shall be designed and implemented in conjunction with the recommendations of the Alabama Handbook on Erosion and Sedimentation Control that is produced by ADEM. Was an erosion control plan submitted for the project?

F. Utilities and Septic Tanks:

1. All projects with lots smaller than 3 acres shall connect to a public water system if it is located within 300 feet of the property. This parcel is smaller than 3 acres, but the proposed located for a structure is more than 300 feet from the street.
2. All projects shall meet the requirements of the Baldwin County Health Department, any coastal program requirement, and any other applicable regulations.
3. A project that is to be served by a water and/or sewer provider shall provide documentation of capacity to serve.
4. Septic tanks are permitted at the discretion of the property owner, subject to the approval of the Baldwin County Health Department. If the septic system must be some certain distance from the banks of the river and stream, it may be necessary to construct it in wetlands, which would mean that the landowners would be required to apply to the Corps of Engineers for a permit to fill additional wetland area. If the health department allowed construction of a system in wetlands, it would be a mound system most likely.
5. All utilities shall be placed underground to include, but not limited to electric, telephone, cable, water, and sewer. It appears that utilities will also be required to cross through wetlands, which will require another, separate Corps of Engineers permit. Nationwide Permit 12 – Utility Line Activities, can be used to authorize the installation of utilities. The Corps should be consulted to determine whether a Pre-Construction Notification is required in this case.

Recommendations

- The streambanks and a zone at least 20-30 ft. wide, or as prescribed by ordinance, along each bank should be allowed to revegetate. Vegetation will help to slow down the flow of water through the channel and adjacent floodplain. The
associated roots will help hold the soil in place and prevent erosion. Vegetation will also help to capture sediment flowing in from upstream, off-site areas and help prevent it from reaching the river.

- Measure the width of the driveway fill footprint to determine whether it meets or exceeds the Corps-authorized 14 ft. of width. If wider than 14 ft. through wetland areas, it should be narrowed to 14 ft. or less. Pre-filling elevations and contours should be restored to wetlands where fill is removed.

- Where appropriate, install additional erosion and sediment control measures to prevent fill from leaving the permitted fill footprint. Monitor and maintain all control measures until the project is completed and all disturbed areas are stabilized.

- Once the driveway width is determined to be the permitted width, permanently stabilize the footprint by topping it with aggregate (i.e., limestone, gravel, crushed concrete) or paving as soon as possible. Any portions of the driveway that are subject to flooding, as indicated in documentation provided by the Mayor Pro Tempore, should be paved to prevent erosion of aggregate and soil into wetlands, the stream channel, and river.

- Any excess fill material should either be spread in uplands and stabilized with vegetation or removed from the site.

- Determine whether additional Corps permitting will be required for a septic system and utility lines.

- Require that the landowners provide a scaled drawing prepared by a professional engineer or land surveyor that shows property lines, all required setback lines, wetland boundaries, and the proposed driveway and house footprints. This drawing should include dimensions so that it can be determined whether the proposed house meets the setback requirements. (If all of this information is included on the drawing attached to the Corps permit letter, it is not legible on the copy provided.)

I am available to meet again on site with you, Mr. Holzk, his environmental consultant, and anyone else who should participate. In the meantime, please let me know if you or the town’s attorney, Brad Hicks, would like to discuss.

Sincerely,

Gena Todia
January 30, 2017

Colonel Jim DeLapp
Commander, Mobile District
U.S. Army Corps of Engineers
P.O. Box 2288
Mobile, AL 36628-0001

RE: Clean Water Act (CWA) Section 401 Water Quality Certification (WQC), U.S. Army Corps of Engineers (COE) Proposed 2017 Reissuance of Alabama Nationwide Permits (ALNWP) For Activities Within the State of Alabama With Minimal Individual And Cumulative Adverse Impacts On The Aquatic Environment, January 6, 2017 CESAM-RD, SAM-2016-00407-MBM

Dear Colonel DeLapp:

This office has completed a review of the above-referenced notice and all associated materials submitted related to the proposed ALNWP. Any comments made during the public notice period have also been forwarded to us for review.

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines

Because action pertinent to WQC is required by Section 401(a)(1) of the CWA, 33 U.S.C. Section 1251, et seq., we hereby issue certification until March 18, 2022, that there is reasonable assurance that the discharge resulting from the proposed activities as submitted will not violate applicable water quality standards established under Section 303 of the CWA and Title 22, Section 22-22-9(g), Code of Alabama, 1975, provided the applicant acts in accordance with the following conditions as specified. We further certify that there are no applicable effluent limitations under Sections 301 and 302 nor applicable standards under Sections 306 and 307 of the CWA in regard to the activities specified.

To minimize adverse impacts to State waters, by copy of this letter we are requesting the Mobile District Corps of Engineers to incorporate the following as special conditions appropriate to each activity in Alabama authorized by the COE NWPs:

1. During project implementation, the applicant shall ensure compliance with applicable requirements of ADEM. Admin. Code Chapter 335-6-6 [National Pollutant Discharge Elimination System (NPDES)], Chapter 335-6-10 (Water Quality Criteria), and Chapter 335-6-11 (Water Use Classifications for Interstate and Intrastate Waters).

2. ADEM permit coverage may be required prior to commencing and/or continuing certain activities/operations relating to or resulting from the project. If an applicant has any questions regarding ADEM regulated activity or the need for NPDES permit coverage, the applicant can contact ADEM's Water Division at (334) 271-7823. If an applicant has any questions regarding ADEM regulated activity or the need for air permit coverage, the applicant can contact ADEM's Air
Division at (334) 271-7869. If the applicant has any questions regarding ADEM regulated activity or the need for hazardous, toxic, and/or solid waste permit coverage, the applicant can contact ADEM’s Land Division at (334) 271-7730.

3. Upon the loss or failure of any treatment facility, Best Management Practice (BMP), or other control, the applicant shall, where necessary to maintain compliance with this certification, suspend, cease, reduce or otherwise control work/activity and all discharges until effective treatment is restored. It shall not be a defense for the applicant in a compliance action that it would have been necessary to halt or reduce work or other activities in order to maintain compliance with the conditions of this certification.

4. The applicant shall retain records adequate to document activities authorized by this certification for a period of at least three years after completion of work/activity authorized by the certification. Upon written request, the applicant shall provide ADEM with a copy of any record/information required to be retained by this paragraph.

5. The applicant shall conduct or have conducted, at a minimum, weekly comprehensive site inspections until completion of the proposed activity to ensure that effective BMPs are properly designed, implemented, and regularly maintained (i.e. repair, replace, add to, improve, implement more effective practice, etc.) to prevent/minimize to the maximum extent practicable discharges of pollutants in order to provide for the protection of water quality.

6. The applicant shall implement a project-specific or a detailed general BMP Plan prepared by an ADEM recognized qualified credentialied professional (QCP) applicable to and commensurate with activities of the type proposed. Effective BMPs shall be implemented and continually maintained for the prevention and control of turbidity, sediment, and other sources of pollutants, including measures to ensure permanent revegetation or cover of all disturbed areas, during and after project implementation.

7. The applicant shall implement a Spill Prevention Control and Countermeasures (SPCC) Plan for all temporary and permanent onsite fuel or chemical storage tanks or facilities consistent with the requirements of ADEM Admin. Code R. 335-6-6-.12(1), Section 311 of the Federal Water Pollution Control Act, and 40 CFR Part 112. The applicant shall maintain onsite or have readily available sufficient oil & grease absorbing material and flotation booms to contain and clean-up fuel or chemical spills and leaks. The applicant shall immediately notify ADEM after becoming aware of a significant visible oil sheen in the vicinity of the proposed activity. In the event of a spill with the potential to impact groundwater or other waters of the State, the applicant should immediately call the National Response Center at 1-800-424-8802 and the Alabama Emergency Management Agency at 1-800-843-0699. The caller should be prepared to report the name, address and telephone number of person reporting spill, the exact location of the spill, the company name and location, the material spilled, the estimated quantity, the source of spill, the cause of the spill, the nearest downstream water with the potential to receive the spill, and the actions taken for containment and cleanup.

8. Additional, effective BMPs shall be fully implemented and maintained on a daily basis as needed to prevent to the maximum extent possible potential discharges of pollutants from activities authorized by this certification, directly to or to a tributary or other stream segment, that have the potential to impact a State water currently considered impaired [waterbody is identified on the Alabama 303(d) list, a total maximum daily load (TMDL) has been finalized for the waterbody, and/or the waterbody is otherwise considered a Tier 1 water pursuant to ADEM Admin. Code Ch. 335-6-10]. The applicant
shall inspect all BMPs as often as is necessary (daily if needed) for effectiveness, need for maintenance, and the need to implement additional, effective BMPs. Additional effective BMPs shall immediately be implemented as needed to ensure full compliance with ADEM requirements and the protection of water quality in the impaired waterbody.

9. All construction and worker debris (e.g. trash, garbage, etc.) must be immediately removed and disposed in an approved manner. If acceptable offsite options are unavailable, effective onsite provisions for collection and control of onsite worker toilet wastes or gray waste waters (i.e. port-o-let, shower washdown, etc.) must be implemented and maintained. Soil contaminated by paint or chemical spills, oil spills, etc. must be immediately cleaned up or be removed and disposed in an approved manner. Also, the applicant shall manage and dispose of any trash, debris, and solid waste according to applicable state and federal requirements.

10. All materials used as fill, or materials used for construction of structures in a waterbody, must be non-toxic, non-leaching, non-acid forming, and free of solid waste or other debris. This requirement does not preclude the use of construction materials authorized by the COE that are typically utilized in marine or other aquatic applications.

11. The applicant shall implement appropriate measures to minimize the potential for a decrease of instream dissolved oxygen concentrations as a result of project implementation. In addition, the applicant shall ensure that the activities authorized by this certification do not significantly contribute to or cause a violation of applicable water quality standards for instream dissolved oxygen.

12. The applicant shall implement appropriate, effective BMPs, including installation of floating turbidity screens as necessary, to minimize downstream turbidity to the maximum extent practicable. The applicant shall visually monitor or measure background turbidity. The applicant must suspend operations should turbidity resulting from project implementation exceed background turbidity by more than 50 NTUs. Operations may resume when the turbidity decreases to within acceptable levels.

13. The applicant shall evaluate, characterize, and as necessary, conduct regular analysis of any material proposed to be dredged/removed/disturbed in order to ensure that potential pollutants are not present in concentrations that could cause or contribute to a violation of applicable water quality standards. Information regarding the evaluation, characterization, or detailed results of any analyses shall be made available to ADEM upon request.

14. If upland disposal areas are utilized, the applicant shall be responsible for the condition of the disposal area, including the structural integrity of any embankments, until the disposal area is permanently reclaimed or adequately stabilized, to ensure that sediment and/or turbidity in the return water and/or stormwater runoff will not cause substantial visible contrast with the receiving waters, or result in an increase of 50 NTUs above background turbidity levels in the receiving waters.

15. For proposed activities associated with new or updated docks, marinas, multiple boat slips, floating docks, large or multiple piers, etc. or that increase the number of berthing areas, the applicant shall ensure that these facilities are equipped with appurtenances (i.e. trash receptacles, receptacles for fish offal and carcasses, SPCC for fueling facilities, and a sewage pump out system where appropriate) as needed to protect water quality.

16. The applicant is encouraged to consider additional pollution prevention practices, low impact development (LID), and other alternatives to assist in complying with applicable regulatory
requirements and possible reduction/elimination of pollutant discharges. LID is an approach to land development or re-development that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to implement these sustainable ideas such as bioretention facilities, rain gardens, vegetated rooftops, rain barrels, and permeable pavements. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within an ecosystem or watershed.

17. The applicant is encouraged to consider and implement a site design plan/strategy for post-construction hydrology to mimic pre-construction hydrology to the extent feasible, and for post-construction stormwater runoff peak flows and total stormwater volume to minimize potential downstream channel and stream bank erosion.

18. In recognition that projects are site specific in nature and conditions can change during project implementation, ADEM reserves the right to require the submission of additional information or require additional management measures to be implemented, as necessary on a case-by-case basis, in order to ensure the protection of water quality. Liability and responsibility for compliance with this certification are not delegable by contract or otherwise. The applicant shall ensure that any agent, contractor, subcontractor, or other person employed by, under contract, or paid a salary by the applicant complies with this certification. Any violations resulting from the actions of such person may be considered violations of this certification.

19. Issuance of a certification by ADEM neither precludes nor negates an operator/owner's responsibility or liability to apply for, obtain, or comply with other ADEM, federal, state, or local government permits, certifications, licenses, or other approvals. This certification does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, trespass, or any infringement of Federal, State, or local laws or regulations, and in no way purports to vest in the applicant title to lands now owned by the State of Alabama, nor shall it be construed as acquiescence by the State of Alabama of lands owned by the State of Alabama that may be in the applicant's possession.

Should you have any questions on this or related matters, please do not hesitate to contact Richard Hulcher, Office of Field Services, by email at rfh@adem.alabama.gov or by phone at 334-394-4311.

Sincerely,

Anthony Scott Hughes, Chief
Field Operations Division

File: WQ401
c: Nashville District COE
EPA Region IV