1.0
PURPOSE OF AND NEED FOR ACTION

CHAPTER 1.0: PURPOSE OF AND NEED FOR ACTION

1.1 INTRODUCTION

This document is a United States Army Corps of Engineers (USACE) Environmental Impact Statement (EIS) that provides a comprehensive environmental analysis to aid in the decision-making process to deny or approve the proposed Destination Broadwater project in Biloxi, Mississippi. The Destination Broadwater project involves the redevelopment and construction of a large-scale casino destination resort in Biloxi, Harrison County, Mississippi.

The USACE is preparing the EIS in accordance with the Council on Environmental Quality (CEQ) Regulations implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), (40 C.F.R. 1500-1508). The NEPA (42 U.S.C. 4321 et seq.) is the "basic national charter for protection of the environment," directing federal agencies to inform the public of and consider the natural and human environmental consequences of actions they propose or provide financial assistance, permit authorization, or regulatory authority that may significantly affect the environment.

The Mississippi Gaming Control Act restricts legalized gaming to "vessels" docked along a shoreline in counties along the Mississippi River and along the coast of the Mississippi Sound (Meyer-Arendt and Abusalih, 1994). This restriction necessitates the construction of mooring space to dock gaming vessels. The construction of mooring space typically results in the discharge of dredge and fill material into waters of the United States. Section 10 of the Rivers and Harbors Act (33 U.S.C. 401) and Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) prohibit the discharge of dredge and fill material into waters of the United States without prior permit approval from the USACE, a federal agency.

The Destination Broadwater project is considered a federal action because the project as proposed (the Proposed Action) is seeking permit approval from the USACE to discharge dredge and fill material into waters of the United States. Because the environmental consequences of the larger project are essentially products of the USACE's permit action, the scope of the federal permit includes all Destination Broadwater project components (33 C.F.R. 325). During the federal permit review process, the USACE determined that an EIS would be necessary to address the environmental consequences of the proposed project and aid in the decision to issue, modify, condition, or deny a permit for this proposed project. It is the USACE's position that each new project proposal will be evaluated on its own merits and impacts, not on the basis of previous projects.

This chapter describes the purpose of and need for the Proposed Action. This chapter also summarizes the USACE's procedures for implementing NEPA and the federal, state, and local regulations, policies, and plans associated with the development of the proposed Destination Broadwater project.

1.2 PROJECT OVERVIEW

On August 18, 1998, President Casinos, LLC (President or applicant) submitted a Joint Permit Application and Notification to the USACE; Mississippi Department of Environmental Quality, Office of Pollution Control (MDEQ, OPC); and Mississippi Department of Marine Resources (MDMR) for the Destination Broadwater project. The Proposed Action involves the redevelopment and construction of a large-scale casino destination resort at the existing Broadwater Resort and President Casino adjacent to US Highway 90 (US 90) in Biloxi, Harrison County, Mississippi (Figure 1.2-1) (President, 1998).

The project proposal encompasses 325 acres of existing or newly created lands for development and can be divided into two distinct geographic areas north and south of US 90. South of US 90 the applicant proposes to expand the Broadwater peninsula by filling the Mississippi Sound to create new land and wharf areas totaling 66 acres. Six dockside casinos, eight hotels, a transportation center, an entertainment complex, retail facilities, a new marina, and related parking would be developed on the expanded Broadwater peninsula. North of US 90 the applicant proposes to develop four hotels and a retail complex, a water and amusement park, Cineplex Theater and related parking, and to improve the Sun Golf Course. Chapter 2.0 provides a more detailed description of the program components of the Destination Broadwater project proposal (Baker, 1998a).

This EIS analyzes the potential impacts of constructing and operating the Destination Broadwater project at the proposed location described above. Several alternatives to the proposed project are also analyzed within this EIS.

1.2.1 Region of Influence

The region of influence (ROI) for an EIS is typically the geographic area over which a proposed project is expected to have direct, indirect, or cumulative impacts on a particular resource. The ROI may change for each resource, depending upon the potential for a specific impact to affect a given geographic area.

The ROI selected for this EIS consists of the Mississippi coastal counties of Harrison, Hancock, and Jackson (the three-county region). Recent growth patterns and the potential for a project of this size to influence population growth, economic development, and the environment over a broad area are the primary reasons for selecting the three-county region as the ROI. The Gulf Regional Planning Commission (GRPC) and the Metropolitan Planning Organization (MPO) also provide a wide range of existing and baseline data for the three-county region.

A smaller and more detailed study area may be appropriate to supplement the three-county ROI for each resource type. Detailed descriptions of resource-specific study areas are provided for each resource section in Chapter 3.0 of this EIS.

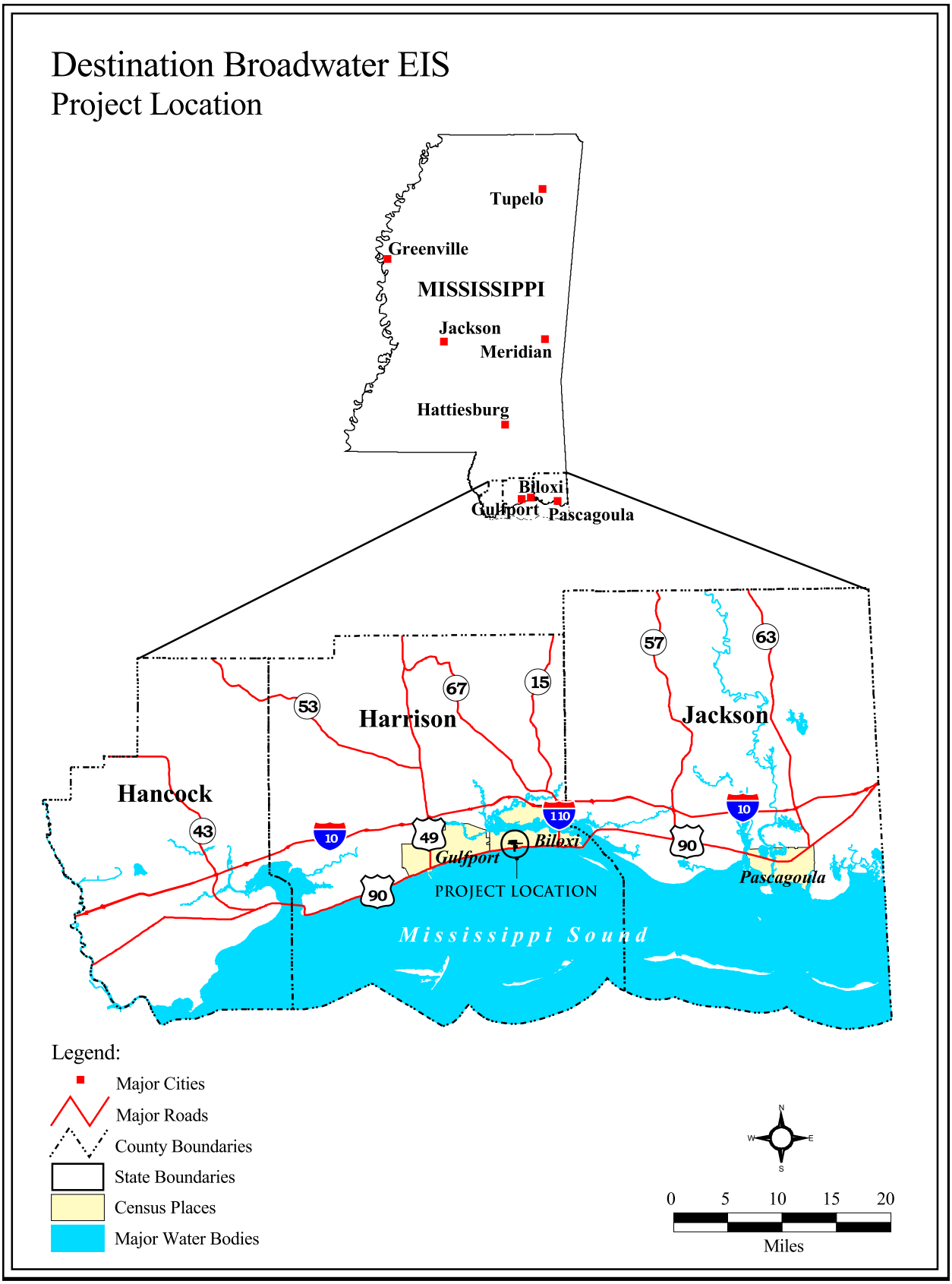

Figure 1.2-1: Project location

1.3 PURPOSE OF AND NEED FOR PROPOSED ACTION

The Destination Broadwater project is described in the Joint Permit Application (Baker, 1998a) as a preferred destination resort that will provide a unique mixture of floating casinos, hotels, a marina, retail establishments, an enhanced golf course, and family entertainment opportunities. Based on the current facilities in the area and the development proposed, Destination Broadwater would provide a world-class destination resort market that is not currently available along the Mississippi Coast (Baker, 1999a).

Destination Broadwater is designed to be a consolidated development of individually owned and operated gaming, retail, entertainment, and hospitality facilities. The proposed project involves redevelopment and construction of a large-scale casino destination resort at the existing Broadwater Resort and President Casino adjacent to US Highway 90 (US 90) in Biloxi, Harrison County, Mississippi. President Casino will be the master developer of the site, as well as one of multiple tenants that manage a hotel and/or a floating casino. Opportunity will be created within Destination Broadwater for five other casino sites in addition to President's facility.

1.3.1 Project Purpose

For the purposes of this EIS, the USACE has determined that the basic purpose of the Proposed Action is to develop gaming activities and a marina on the Mississippi Sound.

The overall purpose of the Destination Broadwater project is to develop a multi-attraction destination resort centered on gaming in coastal Mississippi.

1.3.2 Need for the Proposed Action

The applicant has conducted in-depth design, engineering, economic, and market analysis for the Destination Broadwater project. The Joint Permit Application (Baker, 1998a) and supporting materials (Baker, 1999a) provide information regarding the justification for the project, its size and design, the need for supporting facilities, and their location. A complete description of the Proposed Action is provided in Chapter 2.

Based on the information presented by the applicant, the USACE has assumed that appropriate economic evaluations have been completed, the proposal is economically viable, and is needed in the marketplace. However, the district engineer may make an independent review of the need for the project from the perspective of the overall public interest if warranted [33 C.F.R. 320.4(q)].

The following sections provide a summary, from the applicant's perspective, of the need for the project and its justification. The elements presented below include the applicant's definition of a destination resort, justification for the size of the project and the number of casinos, and the rationale for the location and clustering of the project elements. The full details of the applicant's description of project purpose and statement need can be found in Appendix B, which contains excerpts from the Joint Permit Application (Baker 1998a; Baker, 1999a).

Destination Resort

Essential to President Casino's proposal is the fact that the proposed project is designed to be a destination resort. Information presented by President Casino defines a destination resort as the clustering of multiple venues of entertainment, hospitality, and activities that provide the guest many different and varied recreational opportunities. In its statement of purpose and need, President Casino further defines the term destination resort. In addition to the basic features above, five significant characteristics that distinguish Destination Broadwater as a "destination resort" from a "non-destination resort" were identified as follows:

- The proximity of the resort to its primary market;
- The means by which the resort user reaches the resort;
- The frequency with which a user patronizes the resort;
- The typical length of stay; and
- The quality of the resort setting (Baker, 1999a).

President Casino further clarified by saying that destination resorts such as Destination Broadwater tend to be a considerable distance from their primary markets, usually several hundred miles or more. Users travel to destination resorts by air rather than by car and tend to visit infrequently, usually once a year or less (Baker, 1999a). Non-destination or regional resorts, on the other hand, are often located within a two- to three-hour trip of their primary market and are not positioned or marketed to attract visitors from farther away. Users generally travel to non-destination resorts by car, although some may rely on commuter air services.

According to the applicant, the byproduct of these distinctions is that destination resorts generally tend to be more upscale and expansive and include far more amenities than regional resorts (Baker, 1999a). As an example, Destination Broadwater's array of facilities and entertainment attractions include, in addition to gaming facilities, premier hotels, a water park, amusements, 18-hole professional quality golf course, enlarged marina, high-end retail complex, and movie theaters. The applicant contends that Destination Broadwater will provide a national market that has, as yet, been untouched by the current casino development in the area (Baker, 1999a). The other casinos in the area simply provide gaming facilities with additional amenities, but not to the extent of Destination Broadwater (Baker, 1999a).

Location and Clustering of Facilities

The Gaming Law in Mississippi requires the location of casinos in coastal Mississippi to be on navigable waters (Mississippi Gaming Control Act, 1990). At the Broadwater site, development of six independent casinos would occur to the south of US 90 at the existing Broadwater Marina. President proposes the adjacent hotels, parking, and other amenities to be as close as possible to the casinos to generate the patronage needed to economically sustain the casinos. President states that without these close links, the project will not be economically viable and will result in the continuation of the piecemeal casino development. The applicant contends that there is strong economic justification for the necessary co-location of hotel, entertainment and parking with the casino, and cites gaming industry trends, economic performance studies, urban planning

and design studies, Mississippi state agency findings, and studies of human response factors to support its case (Appendix B).

The applicant's proposal clusters casinos, hotels, and other amenities on the peninsula created, in part, by filling bottoms of the Mississippi Sound. Although the applicant's Destination Broadwater project proposes to cluster casinos, hotels, and other amenities in this manner, the USACE does not consider all of these project elements to be "water dependent" under Section 404 of the Clean Water Act. The USACE recognizes marinas or other similar facilities to be water dependent. Because Mississippi State law requires casinos to be sited on navigable waters, and because there is no practicable alternative, the USACE also recognizes casinos to be water dependent. All other facilities are considered by the USACE to be non-water dependent.

The Mississippi Gaming Commission requires that casino plans include considerable investment in parking facilities in proximity and infrastructure facilities such as hotels, theme parks, golf courses, marinas, tennis complexes, and entertainment facilities. The infrastructure facilities must amount to at least 100 percent of the casino construction cost (Mississippi Gaming Commission, 1998). However, the Gaming Commission's regulations are not specific as to the relative proximity of the associated facilities.

President Casinos also contends that clustered development would safeguard against the negative effects of sprawl development (stand-alone properties) characteristic of more established casino and entertainment markets around the country (e.g., Atlantic City, NJ, Las Vegas, NV, and Branson, MO). The applicant contends that traditional, non-clustered casino development has contributed to urban sprawl in more established casino and entertainment markets, typically resulting in increased public infrastructure and service costs due to excessive land consumption. Currently, in the Gulf Coast marketplace, all projects are stand-alone hotel/parking/casino structures requiring independent ingress and egress from the main transportation corridor. Finally, President makes the case that by clustering the casinos and related development, the environmental impacts are less than would occur if development of equal size were to be distributed among a number of dispersed sites.

Applicant's Justification for Size and Design of Destination Broadwater

The economic feasibility analysis for Destination Broadwater included the definition and testing of the project concept for a destination resort in Biloxi, Mississippi. It included the preparation of a detailed market analysis and financial model and a financing plan to determine whether the economic, legal, political, physical, financial, and marketing environments favor implementation of the project (David Miller and Associates, Inc., 1998; Baker, 1999a).

The feasibility analysis and programming process identified the future demand for casino floor space and hotel rooms and the minimum amount of development for a destination resort that will succeed financially. Using assumptions outlined by Baker (1999a) (Appendix B), President provided historic and projected growth in both the total number of casino visits and the number of overnight casino visits through the year 2010 for the United States and for the Mississippi Gulf Coast region (David Miller and Associates, Inc., 1998).

President concluded that its analysis shows that the anticipated growth in demand for gaming space on the Gulf Coast will be sufficient to absorb the scale of development proposed for Destination Broadwater and that reserve demand remains in the Biloxi market. In its supporting documents, the applicant considers the demand for gaming space requirements, hotel space requirements, and related waterfront and public access needs, and provides a justification for Destination Broadwater on that basis (Appendix B).

Regarding the size of the development and the number of casinos it proposes, the applicant made several points of justification. President states that only a large, fully integrated development with the myriad of amenities will reach the critical mass required to attract resort customers from across the country and achieve the concept of a destination resort.

The scale of the Destination Broadwater development, President purports, is also conducive to clustering of multiple operations to achieve economic synergy. President states that multiple operations having shared infrastructure also has the added benefit of minimizing financial risk away from a single operator, and minimizing environmental and community impacts through the concentration of activities on one site. Infrastructure cost on a per-casino basis is very high with the fewer number of casinos, but decreases dramatically with higher numbers of casinos sharing the infrastructure. The applicant presents findings that suggests that significant savings in infrastructure costs are realized when the number of casinos approaches six and becomes essentially fixed for six or more (Appendix B). President states that multiple casinos at a single location offer a synergy not possible with individual casinos and is essential to create a total destination resort environment.

1.4 NEPA PROCESS

The NEPA requires federal agencies to interpret and administer policies, regulations, and public laws of the United States in a manner that encourages and facilitates public involvement and restores and enhances the quality of the human environment. The proposed Destination Broadwater project is seeking permit approval from the USACE to discharge dredge and fill material into waters of the United States under Section 10 of the Rivers and Harbors Act and Section 404 of the CWA. As the federal agency issuing or denying the federal permit, the USACE is the lead agency in NEPA compliance and the evaluation of the natural and human environmental consequences of the action. The Project Approval Framework (see Section 1.5) provides a description of other federal, state, and local government requirements for the proposed Destination Broadwater project.

1.4.1 NEPA Public Involvement

The USACE encourages full public participation in the NEPA process to promote open communication and better decision making. All persons and organizations that have a potential interest in the proposed Destination Broadwater project are invited to participate in the NEPA environmental analysis process.

1.4.2 Notice of Intent

The Notice of Intent (NOI) to prepare an EIS is the first formal step in the NEPA public involvement process. It notifies the public that an EIS will be prepared. The agency proposing the action publishes the notice in the *Federal Register* prior to the start of the scoping process. The NOI includes a description of the Proposed Action and gives the name and address of an agency contact person. The NOI announcing the USACE's intent to prepare an EIS for the Destination Broadwater project was published in the *Federal Register* on May 5, 1999.

1.4.3 Scoping

The NEPA regulations recommend that the environmental review process include a scoping process in which interested parties and agencies provide input on issues and concerns that should be addressed in the EIS (40 C.F.R. Part 1501.7). This input may include recommendations for alternatives to the Proposed Action, potential beneficial or adverse impacts of the Proposed Action, and mitigation measures. Scoping is intended to identify public and agency issues and concerns early in the EIS process, ensure that issues of little significance do not consume time and effort, and avoid delays caused by an inadequate EIS.

Input is solicited primarily through agency and public scoping meetings. Although informal comments are welcome at any time throughout the process, the scoping period and the scoping meeting provide formal opportunities for public participation in and comment on the environmental impact analysis process. All comments received during the USACE's environmental review process are reviewed and considered for inclusion within the EIS.

An additional source of input for the Destination Broadwater project included agency and public comments received in response to the USACE; MDEQ, OPC; and MDMR Joint Public Notice (Public Notice Number MS98-03981-P), and the MDMR Public Notice (Public Notice Number DMR-M99101-Z) and Public Hearing. These comments and meetings occurred prior to the USACE's decision to prepare an EIS but are part of the public and agency comment record for the proposed project.

1.4.3.1 Public Scoping

A public scoping meeting was held on Tuesday, June 8, 1999 at 7:00 PM in the Crown Room at the Broadwater Beach Resort, 2110 Beach Boulevard, Biloxi, Mississippi. On May 14, 1999, the USACE issued a public notice in the *Federal Register* stating the date, time, and location for the public scoping meeting. Notice of the public scoping meeting was also published in the legal section of the *Hattiesburg American* and *Biloxi Sun Herald* newspapers on June 6, 1999 and June 7, 1999.

USACE staff members conducted the meeting, and representatives of the applicant were in attendance to address any questions related to the proposed project. Approximately 130 private citizens and agency representatives, including 15 speakers, attended the public scoping meeting. Handouts describing the purpose of the public scoping meeting and how to be heard were available at the registration desk. A one-page description of the proposed Destination Broadwater project was also available.

All attendees were invited to make oral comments and submit written comments or suggestions concerning relevant environmental or socioeconomic issues. Attendees were provided a comment sheet with the option to return the comment sheet at the conclusion of the meeting or mail the card directly to the USACE by July 8, 1999. Approximately twenty comment sheets were received. A transcriber recorded public testimony, and transcripts of the oral public comments were prepared.

Additional opportunities for public input were provided at the agency scoping meetings held during late June and July 1999 at MDMR in Biloxi, Mississippi (see Section 1.4.3.2). The Concerned Citizens to Protect the Isles and Point, Inc., the Gulf Island Conservancy, and the Canizaro Heirs, L.P., et al were asked to participate in a separate scoping meeting held on June 25, 1999 to solicit additional public input on the scope of the EIS.

1.4.3.2 Agency Scoping

Agency scoping meetings were held with relevant federal, state, and local resource agencies during the period June through September 1999 (see Table 1.4-1). Four separate meetings were held to discuss issues and concerns regarding the environment, land use, socioeconomics, transportation, emergency management, utilities and infrastructure, and transportation. The administrative record for this EIS provides a list of the agencies invited to attend and those who attended. During the scoping process a number of informal meetings were held with various agencies, including the U.S. Environmental Protection Agency (USEPA), the MDMR, the Mississippi Department of Transportation (MDOT), and the city of Biloxi. Agency

representatives raised issues to be addressed within the EIS and provided relevant background material.

Table 1.4-1
Meetings Locations, Dates, and Times during the Scoping Process

Topic	Location	Date	Time
Natural Resources	MDMR, Biloxi, MS	06/24/99	1:30 PM
Land Use and Socioeconomics	MDMR, Biloxi, MS	07/22/99	9:00 AM
Transportation and Emergency Management	MDMR, Biloxi, MS	07/22/99	1:00 PM
Utilities and Community Infrastructure	MDMR, Biloxi, MS	07/23/99	9:00 AM

Source: Staff analysis.

1.4.3.3 Scoping Issues, Questions, and Concerns

Public and agency issues and concerns regarding the environment collected during the scoping process involved the following issues:

- Coastal conditions, including beach erosion and water circulation
- Hydrologic regimes, including flooding, storm surge, and hurricanes
- Water quality in the Back Bay and the Mississippi Sound
- Wetlands, wildlife, and other biological resources
- Marine resources, including coastal habitats and Essential Fish Habitat
- Threatened and endangered species
- Air quality
- Cultural resources, including Beauvoir
- Traffic and transportation systems
- Infrastructure systems, including wastewater
- Economic and fiscal conditions
- Land use patterns and growth
- Socioeconomic conditions, including employment and housing
- Community services and crime
- Visual and aesthetic conditions
- Emergency management, including hurricane evacuation
- Cumulative impacts

1.4.4 Cooperating Agencies

The USACE invited each of the federal and state resource agencies that had permit authorization or regulatory authority to participate as a cooperating agency for the EIS. A cooperating agency is one with regulatory jurisdiction or a particular area of expertise with respect to the Proposed Action. The ultimate goals of this combined agency effort is to produce an EIS that, in addition

to fulfilling the basic intent of NEPA, also encompasses all the environmental and public involvement requirements of federal, state, and local policies and regulations.

The U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and National Oceanic and Atmospheric Administration (NOAA) elected to cooperate in the preparation and review of the document. The MDEQ, MDMR, Mississippi Department of Transportation (MDOT), and Mississippi Secretary of State (MSOS) also elected to participate as cooperating state agencies.

1.4.5 Public Review of Draft EIS

This draft EIS is being made available for public review and comment. A Notice of Availability of the draft EIS will be published in the *Federal Register* and the *Hattiesburg American* and *Biloxi Sun Herald* newspapers. In addition, copies of the draft EIS will be provided to local libraries. Agencies, organizations, and individuals will be invited to review and comment on the document. A 45-day review period will allow reviewers the opportunity to comment on the analysis or on other aspects of the EIS process.

1.4.6 Public Meeting

The USACE will conduct a public meeting to solicit comments concerning the adequacy of the draft EIS and the merits of the alternatives analyzed. This public meeting will occur during the 45-day public comment period following publication of a Notice of Availability of the draft EIS. The location and time of the public meeting will be announced in the *Hattiesburg American* and *Biloxi Sun Herald* newspapers.

1.4.7 Final EIS

The USACE will consider all comments, both individually and collectively, provided by the public and agencies on the draft EIS. The final EIS will incorporate changes suggested by comments on the draft EIS, as appropriate, and will contain responses to all comments received during the review period. A copy of the final EIS will be provided to all those who comment on the draft EIS. Copies of the final EIS will be mailed to selected federal, state, and local agencies. Copies will also be placed in local public libraries for review, and a Notice of Availability of the final EIS will be published in the *Federal Register*. No sooner than 30 days following completion of the final EIS, during which time further comments may be submitted for USACE consideration, the USACE will prepare a Record of Decision (ROD), which will state the decision to approve or deny the Department of the Army permit for the Destination Broadwater project. If the proposed project is approved, the ROD will include any conditions or mitigation measures associated with its approval.

1.5 PROJECT APPROVAL FRAMEWORK

The proposed Destination Broadwater project is subject to regulatory review by several federal, state, and local government agencies. These agencies have planning, review, and regulatory powers over the Proposed Action and its alternatives as a result of established federal, state, and local regulations, policies, or plans. Section 1.4 briefly describes the NEPA federal requirements and the USACE's responsibilities under NEPA. This section describes the NEPA process further and provides a summary of additional federal, state, and local requirements as they relate to NEPA and permit approval.

1.5.1 Federal Agency Responsibilities

Section 10 of the Rivers and Harbors Act and Section 404 of the CWA require that the proposed Destination Broadwater project obtain permit approval from the USACE to discharge dredge and fill material into waters of the United States. Anyone seeking to discharge dredge and fill material into waters of the U.S. in the State of Mississippi is required to submit a Joint Permit Application and Notification to the USACE; MDEQ, OPC; and MDMR. On August 18, 1998, President submitted such an application to the USACE for the Destination Broadwater project (Baker, 1998a).

In accordance with requirements of NEPA, on October 1, 1998 the USACE issued Public Notice Number MS98-03981-P to inform the public of and solicit public and agency comment on the proposed project. The USACE received several public and agency comments throughout the public comment period in which several procedural and environmental issues and concerns were raised about the proposed project. On January 29, 1999, President submitted an Addendum to Environmental Documentation for the proposed Destination Broadwater project in response to the comments received. On May 5, 1999, the USACE issued an NOI to prepare an EIS to address the environmental consequences of the proposed Destination Broadwater project and aid in the decision-making process to deny or approve the project.

Separate from the NEPA process, the USACE would also conduct a Section 404(b)(1) and public interest review of the applicant's proposal. Section 404(b)(1) requires the applicant to consider alternatives to the proposal and comply with environmental standards, such as water quality and endangered species protection.

NEPA and Section 103 of the CWA require the USACE to seek environmental review of the Destination Broadwater project and NEPA compliance review of the EIS from the USEPA.

Section 106 of the National Historic Preservation Act (NHPA) of 1966 requires the USACE to consult with the State Historic Preservation Office (SHPO) and consider the impact that the permit action may have on historic and archeological properties that are included on, or eligible for inclusion on, the National Register of Historic Places prior to granting the permit action. Local historical and archeological societies may also provide useful sources of this kind of information. Other agencies that may be involved in consultation include Tribal Historic Preservation Officers (THPOs) and any interested parties such as concerned citizens or local historic preservation organizations. In the event that conflict resolution is required between any

of the consulting parties, the Advisory Council on Historic Preservation (ACHP) is included in the process for the purpose of mediation. In 1999, revised implementing regulations were published in the *Federal Register* that combine the SHPO review of NEPA documentation and the Section 106 consultation process.

Section 7 of the Endangered Species Act requires the USACE to consult with the USFWS and the NMFS to determine whether the proposed project is likely to jeopardize the continued existence of any federally listed endangered or threatened species or result in the destruction of or substantial damage to critical habitat for the species. If through consultation it is determined that such species may be present, a biological assessment must be conducted in cooperation with the USACE and USFWS and NMFS to identify any endangered species or threatened species likely to be affected by the permit action. The assessment must be completed prior to project construction and within 180 days after the date on which initiated or within such other period as is mutually agreed upon by the USACE and USFWS and NMFS.

The Magnuson-Stevens Fishery Conservation Management Act (MSFCMA) requires the USACE to consult with the NMFS regarding any proposed project's potential to adversely affect Essential Fish Habitat (EFH). EFH include all fisheries that are federally managed under the MSFCMA. The MSFCMA mandates that the USACE respond in writing to EFH conservation recommendations from NMFS and fishery management councils within a given time period.

The proposed project also must comply with Keesler Air Force Base height restrictions (which are based on the specific zone and range from 70 to 370 feet) and other noise level, accident potential, and flight clearance requirements associated with military airfield operations (DOD Instruction 4165.57 and AFI 32-7063). Other relevant regulations that require coordination include DOD Directive 4165.61, AFI 32-7060, and AFI 32-7062.

1.5.2 State Agency Responsibilities

Section 401 of the CWA requires the MDEQ to certify that the Destination Broadwater proposal to discharge dredge and fill material into waters of the United States will comply with Mississippi state water quality standards. Under Section 401, discharges to waters of the U.S. must be certified by the affected state as complying with applicable state water quality standards. The applicant has applied for the Water Quality Certification (WQC) and is currently consulting with the MDEQ.

The applicant is also proposing to discharge stormwater effluent into the Mississippi Sound during construction and operation of the proposed Destination Broadwater project. Section 402 of the CWA requires the MDEQ to authorize and issue a National Pollutant Discharge Elimination System (NPDES) permit to discharge point source pollution to waters of the U.S. The applicant's proposed storm water discharges are regulated under the NPDES permit program. The applicant is currently consulting with the MDEQ about the NPDES permit.

The Mississippi Legislature passed the Mississippi Coastal Wetlands Protection Act (MISS. CODE ANN. Section 49-27-1 [1972]) and a separate law (MISS. CODE ANN. Section 57-15-6 [1972]) requiring MDMR to prepare and implement a "coastal program" pursuant to the Coastal

Zone Management Act of 1972. As part of the coastal program, MDRM has developed a Coastal Wetlands Use Plan identifying suitable land uses for Mississippi coastal wetland areas. The Mississippi Coastal Wetlands Protection Act prohibits deviation from the Coastal Wetlands Use Plan without prior approval from the MDRM, Office of Coastal Ecology. The Act also requires that the applicant comply with the State Coastal Program and obtain a permit to perform works affecting the coastal wetlands of the State of Mississippi from the MDRM, Office of Coastal Ecology.

The applicant submitted a MDMR permit to adjust the Coastal Wetlands Use Plan from a General Use District to a Commercial Use District for the proposed Destination Broadwater project. As part of the permit process, the MDMR issued a public notice (Public Notice Number DMR-M99101-Z) to inform the public of and solicit comment on the proposed project on October 1, 1998. To promote public awareness of the proposed project and solicit comment, the MDMR held a public meeting on December 10, 1998. Public citizens and agencies raised several environmental issues and concerns during the comment period and public meeting. After review of several factors, the State of Mississippi Commission on Marine Resources approved the request by President to perform certain works affecting the coastal wetlands of the State of Mississippi with conditions on January 19, 1999.

The Mississippi Gaming Commission (Mississippi Gaming Control Act of 1990) requires that all gaming establishments in the state obtain a license. As part of the licensing process, the applicant must submit an application and demonstrate to the Commission that all licensing criteria outlined in the Mississippi Gaming Regulations have been met. New licenses are required every two years. President currently holds a valid license for its President Casino facility at the Broadwater site, and has had the license since 1992. A change to the President Casino facility as proposed may require the Mississippi Gaming Commission to modify the existing permit or issue a new permit.

The Tidelands Act of 1989 requires anyone building or utilizing State of Mississippi public trust tidelands to enter into a lease agreement with the MSOS. Public trust tidelands include isolated bodies of water and extend to approximately three miles south of the barrier islands. In a letter dated December 9, 1998, Eric Clark of the MSOS indicated that a tidelands lease would be negotiated with the applicant if all regulatory permits for the project are secured. The SOS provided a list of issues and conditions to be addressed by the applicant before a lease is issued.

1.5.3 City and County Responsibilities

The proposed Destination Broadwater project must be consistent with the *City of Biloxi Vision 2020 Comprehensive Plan*; the City of Biloxi Zoning Ordinance, Subdivision Ordinance, Tree Ordinance, Landscape Ordinance, and Building Codes; and the *Harrison County Sand Beach Master Plan.*

The City of Biloxi ordinances establish the zoning, subdivision, tree, and landscape rules and regulations of the city with the intent of implementing the goals and objectives of the various elements of the *Vision 2020 Comprehensive Plan.* The *Harrison County Sand Beach Master Plan* identifies suitable land uses for beachfront property and provides a long-range plan for managing the sand beaches within Harrison County.

1.5.4 Applicable Policies

A summary of the regulations, policies, and plans that are applicable to development of the Proposed Action and its alternatives are presented in Appendix A.