

DREDGING THE PORT OF SAVANNAH TO DEEPEN GEORGIA'S CONNECTIONS WORLDWIDE

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Georgia must invest heavily in Savannah to protect the Port of Savannah's rising role in international trade. The Port of Savannah is the fourth largest cargo port in the United States¹ and processes \$54 billion worth of containerized cargo a year.² This yields Georgia approximately \$18.5 billion in statewide income, sustains 100,000 Metro Atlanta jobs,³ and maintains another 250,000 jobs statewide, making the Port of Savannah a key transportation hub for Georgia.⁴ But the looming completion of the Panama Canal Expansion Project in 2015 puts Savannah's position as a go-to port at risk. The Expansion Project will build a third tier of locks in the Canal in order to accommodate cargo loads three times larger than the current capacity.⁵ As of now, the Port of Savannah is not deep enough to process any of these larger Post-Panamax ships. This is an issue because, as pointed out by Roberto Roy, Panama's Minister for Canal Affairs, the expansion project is a game changer, and ports on the Eastern Seaboard that fail to deepen their ports will be rendered noncompetitive by their inability to handle the larger ships.⁶ Fortunately, as also noted by Minister Roy, Georgia can do two things to protect Savannah. Physically, Georgia can invest in the swift dredging of the Port. Strategically, Georgia can strengthen its trade alliance with Panama through new negotiations that draw on the historically

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¹ Christopher Cook, *Funding Port-Related Infrastructure and Development: The Current Debate and Proposed Reform*, 38 FORDHAM URB. L.J. 1523, 1546 (2011).

² *Economic Impact*, GEORGIA PORTS AUTHORITY (2013), <http://www.gaports.com/corporate/AboutUs/EconomicImpact.aspx>.

³ Dan Chapman, *Corps Cuts Savannah Port Deepening By a Foot*, ATLANTA J.-CONST. (Apr. 11, 2012), <http://www.ajc.com/news/business/corps-cuts-savannah-port-deepening-by-a-foot/nQSyL/>.

⁴ Press Release, *UGA Study: Georgia Ports Support More Than 350,000 Jobs*, OFFICE OF THE GOVERNOR (May 17, 2012), <http://gov.georgia.gov/press-releases/2012-05-17/uga-study-georgia-ports-support-more-350000-jobs>.

⁵ David Farrell, *Short Sea, Post-Panamax, and Arctic Ocean Shipping Opportunities*, 25 U.S.F. MAR. L.J. 175, 183 (2013).

⁶ Maria Saporta, *Panama Canal Minister: Deepen Port of Savannah*, ATLANTA BUS. CHRON. (Mar. 21, 2013), <http://www.bizjournals.com/atlanta/news/2013/03/21/panama-canal-minister-deepen-port-of.html?page=all>.

strong relationship between Panama and Georgia that dates back to President Carter's role in transferring the Panama Canal.⁷

The Port of Savannah must be dredged for Georgia to remain a top destination for international trade. The Port of Savannah's navigation channel is currently forty-two feet deep. This is five feet less than the forty-seven feet needed to accommodate the Post-Panamax ships that will travel through the Panama Canal after the Panama Canal Expansion Project is completed in 2015.⁸ Post-Panamax vessels are container ships too large to fit through the Panama Canal's current locks.⁹ The ships are twenty-five percent longer and fifty percent wider than current transports, handle two to three times the cargo size,¹⁰ and offer shipping companies significantly reduced fueling costs.¹¹

The ability to handle Post-Panamax shipping is critical for modern ports because Post-Panamax ships are estimated to make up sixty-two percent of total container ship capacity by 2030.¹² Whichever ports offer deep channels first are going to attract more international clients and have more time to develop client loyalty. As of now, the only Eastern seaboard ports able to process Post-Panamax shipping are Norfolk, Virginia and Baltimore, Maryland.¹³ That leaves Miami, Florida, and Jacksonville, Florida; Charleston, South Carolina; Houston, Texas; New York, New York; and Savannah racing to deepen their ports.¹⁴

Savannah needs the full support of Georgia's leaders to ensure Savannah's status as an internationally competitive port. Fortunately, political leaders from both major parties have recognized the critical nature

⁷ *Id.*

⁸ Henry Fountain, *Panama Adding a Wider Shortcut for Shipping*, N.Y. TIMES (Aug. 16, 2011), <http://www.nytimes.com/2011/08/17/science/17canal.html?pagewanted=all>.

⁹ William Booth, *Expanded Panama Canal Sparks Race to be Ready for Bigger Cargo Ships*, WASH. POST (Jan. 12, 2013) http://www.washingtonpost.com/world/the_americas/expanded-panama-canal-sparks-race-to-be-ready-for-bigger-cargo-ships/2013/01/12/f3c85d52-5785-11e2-8a12-5dfdfa9ea795_story.html.

¹⁰ Fountain, *supra* note 8.

¹¹ Saporta, *supra* note 6.

¹² The Miami Herald, *New Locks for Panama Canal are Half Done*, WATERWAYS COUNCIL (2013), <http://www.washingtonpost.com/wp-srv/special/world/modernization-of-panama-canal/index.html>.

¹³ Americas, *Race for Deep Water*, MIAMI HERALD (Nov. 18, 2012), <http://www.miamiherald.com/2012/11/18/3104323/competition-heats-up-as-us-ports.html>.

¹⁴ *Id.*

of the Savannah Harbor Extension Project (SHEP)¹⁵ and have worked hard on the project's behalf. Governor Nathan Deal stated that deepening the Port is a "matter of urgency" for the state.¹⁶ He backed up those words by seeking \$50 million in upfront funding for SHEP in Georgia's 2014 budget.¹⁷ Atlanta Mayor Kasim Reed said that dredging project's successful completion is "vital for the economy of metropolitan Atlanta, the state of Georgia and the Southeast, and will allow us to remain competitive now and in the future."¹⁸ Mayor Reed followed up those words with extensive lobbying on behalf of Savannah statewide and nationally.¹⁹

Georgia has faced three significant obstacles in getting SHEP underway. First, it has been difficult to procure sufficient funding. Financially, SHEP is estimated to cost \$652 million to complete.²⁰ That hefty price tag requires federal help. General federal funds were allocated back in 1999²¹ and were set at \$390 million.²² Of that amount, the federal government has delivered only \$1.28 million.²³ But President Obama recently assured Savannah of the federal government's commitment to the project. President Obama promised full support to expedite the modernization of the Port of Savannah and

¹⁵ The Savannah Harbor Expansion Project (SHEP) proposes deepening the Harbor by up to six feet, which would more efficiently accommodate larger shipping vessels. Savannah Harbor Expansion Project, Georgia Ports Authority, <http://www.gaports.com/shep/>.

¹⁶ *Gov. Deal Speaks Out About Savannah Harbor Deepening*, GA. DAILY NEWS (2013), <http://www.gadailynews.com/news/savannah/157782-gov-deal-speaks-out-about-savannah-harbor-deepening.html>.

¹⁷ Press Releases, *Deal Calls for \$50 Million in New Funds For Deepening Port*, GEORGIA PORTS AUTHORITY (Nov. 11, 2012), <http://www.gaports.com/corporate/tabid/379/xmmid/1097/xmid/7714/xmview/2/default.aspx>.

¹⁸ Press Releases, *Port of Savannah Harbor Deepening Reaches Major Milestone*, GEORGIA PORTS AUTHORITY (Apr. 11, 2012), <http://www.gaports.com/corporate/tabid/379/xmmid/1097/xmid/6873/xmview/2/default.aspx>.

¹⁹ Bill Dawers, *Despite Significant Infrastructure Spending in Obama's Proposed Budget, Only a Pittance for Savannah Port Expansion*, PEACH PUNDIT (Apr. 10, 2013), <http://www.peachpundit.com/2013/04/10/despite-significant-infrastructure-spending-in-obamas-proposed-budget-only-a-pittance-for-savannah-port-expansion/>.

²⁰ *Obama Mentions Jacksonville and Savannah Port-Deepening Projects on Leno Tuesday Night*, FLA. TIMES-UNION (Aug. 7, 2013), <http://jacksonville.com/news/georgia/2013-08-07/story/obama-mentions-jacksonville-and-savannah-port-deepening-projects-leno>.

²¹ *Georgia Lawmaker Predicts Fall Votes on Savannah Port Hurdle*, POST & COURIER (Sept. 2, 2013), <http://www.postandcourier.com/article/20130902/PC05/130909956/1011/georgia-lawmaker-predicts-fall-votes-on-savannah-port-hurdle>.

²² Saporta, *supra* note 6.

²³ Russ Bynum, *Deal "Ready to Spend" State Funds to Deepen Harbor*, MARIETTA DAILY J. (June 4, 2013), http://www.mdjonline.com/view/full_story/22794147/article-Deal--ready-to-spend--state-funds-to-deepen-harbor-?instance=home_top_bullets.

helped accelerate the project past bureaucratic federal reviews of the project in 2012.²⁴ Furthermore, the U.S. House recently passed the 2013 Water Resources Reform and Development Act, which approved the final steps needed to release federal funds for the project.²⁵ The rest of the \$652 million is to be paid by the state of Georgia. The state has already set aside \$231 million in state funding for the project.²⁶ And as Governor Deal made clear with his allocation of \$50 million in Georgia's 2014 budget, Georgia is ready to act now.²⁷

The second main obstacle has been state regulation. The Savannah Harbor Expansion Project faced state regulatory action from Georgia and South Carolina. In 2011, the project required approval from the Georgia Environmental Protection Division to receive a water quality permit.²⁸ That same year, environmental regulators in South Carolina denied the project a permit required for the deepening of Savannah's river channel,²⁹ that permit application failed, despite support from the Army Corps of Engineers. It ultimately took two years for this settlement and other regulatory concerns to be approved in a South Carolina District Court.³⁰

The third main obstacle has been environmental lawsuits. Organizations dedicated to protecting coastal wildlife areas, such as Ducks Unlimited and the S.C. Conservation Bank, sought an injunction to prevent the dredging of the Savannah River. These organizations and others like them feared that dredging the port would lower oxygen levels in the water and deteriorate the quality of nearby aquatic life.³¹ But in early 2013, as part of the mediation between South Carolina and the Port of Savannah, these environmental

²⁴ *We Can't Wait: Obama Administration Announces 5 Port Projects to Be Expedited*, WHITE HOUSE (July 19, 2012), <http://www.whitehouse.gov/the-press-office/2012/07/19/we-cant-wait-obama-administration-announces-5-major-port-projects-be-ex>.

²⁵ Press Release, CONGRESSMAN JACK KINGSTON (Sept. 11, 2013), <http://kingston.house.gov/news/documentsingle.aspx?DocumentID=349221>.

²⁶ Bynum, *supra* note 23.

²⁷ Press Release, *Deal Calls for \$50 million in funds for Deepening Port*, GOVERNOR NATHAN DEAL, available at <http://gov.georgia.gov/press-releases/2012-11-19/deal-calls-50-million-new-funds-deepening-port> (Nov. 19, 2012).

²⁸ *South Carolina Regulators Deny Permit for Deepening River Channel to Savannah Port*, AUGUSTA CHRON. (Oct. 1, 2011), <http://chronicle.augusta.com/news/2011-10-01/south-carolina-regulators-deny-permit-deepening-river-channel-savannah-port>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *SC Officials Agree to Savannah Port Expansion Deal*, THE STATE (Apr. 17, 2013), <http://www.thestate.com/2013/04/17/2728518/sc-officials-agree-to-savannah.html>.

organizations agreed to settle and allow the deepening project to continue.³² They did so after the Georgia Ports Authority agreed to put \$35.5 million dollars towards environmental mitigation efforts.³³

Having overcome the obstacles presented by funding, state regulation, and environmental lawsuits, the tentative target completion date is set for 2017.³⁴ This puts Savannah a year behind New York and Miami, both of which plan to be ready by 2015, a year ahead of Charleston, which may be ready in late 2017,³⁵ and well ahead of other ports on the Eastern Seaboard.³⁶ At the very worst, Savannah will be in the middle of the pack of ports coming out with Post-Panamax capacity, and it remains the only port with world class infrastructure, consisting of two Class 1 railroad facilities on terminal with access to Hartsfield-Jackson Airport's three cargo complexes.³⁷

Even as Georgia races to stay competitive physically with the timing of Savannah's expansion, it is critical strategically that Georgia draw on its connections to Panama to promote transnational co-economic development. Georgia has a rich history with Panama, beginning with Georgia-born President Jimmy Carter transferring the Panama Canal to Panama in the 1977 Torrijos-Carter Treaties.³⁸ Today that connection continues with many of

³² COMPROMISE AND SETTLEMENT AGREEMENT (Apr. 17, 2013), [http://www.sas.usace.army.mil/Portals/61/docs/SHEP/Settlement%20Agreement%20\(FINAL%20-%20executed\)%202013-05-20.pdf](http://www.sas.usace.army.mil/Portals/61/docs/SHEP/Settlement%20Agreement%20(FINAL%20-%20executed)%202013-05-20.pdf).

³³ *Georgia Ports to Settle Lawsuit Against River Deepening*, J. COM. (Apr. 17, 2013), http://www.joc.com/port-news/dredging/georgia-ports-settle-lawsuit-against-river-deepening_2013-0417.html.

³⁴ *Port Deepening Project Advanced in 2013*, ATLANTA BUSINESS CHRONICLE (Dec. 16, 2013), <http://www.bizjournals.com/atlanta/print-edition/2013/12/13/port-deepening-project-advanced-in-2013.html?page=all>.

³⁵ *Ports to be Ready for Big Ships by 2015*, CARGONEWS ASIA (June 10, 2013), <http://www.cargonewsasia.com/secured/article.aspx?article=31110>.

³⁶ Jacksonville and Houston are uncompetitive. Houston's port can only reach a maximum depth of forty-five feet due to the prohibitive costs of dredging the Gulf of Mexico. Meanwhile, Jacksonville's port simply does not have the infrastructure to handle increased container traffic. Jacksonville would need significant upgraded port investment in rail capacity and dock space before being able to handle any increased ship sizes and larger container loads from Post-Panamax shipping. Andrew Schneider, *Luring Post-Panamax Trade Won't Come Easy to Houston*, 88.7 KUHFM NEWS (Jan. 7, 2013), <http://app1.kuhf.org/articles/1357507652-Luring-Post-Panamax-Trade-Wont-Come-Easy-For-Houston.html>); Carole Hawkins, *Big Docks for Big Ships*, JACKSONVILLE BUS. J. (Sept. 6, 2013), <http://www.bizjournals.com/jacksonville/print-edition/2013/09/06/big-docks-for-big-ships.html?page=all>.

³⁷ *Competitive Advantages*, INFRASTRUCTURE GA. (2013), <http://www.georgia.org/competetive-advantages/infrastructure/Pages/default.aspx>.

³⁸ Marian Nash Leich, *Treaties and Other International Agreements*, 78 AM. J. INT'L L. 204, 205 (1984).

Panama's prominent citizens attending college at Georgia's Universities.³⁹ Panama's Canal Affairs Minister Roberto Roy, for example, is a proud graduate of Georgia Tech.⁴⁰ These sorts of ties run parallel to a robust trading relationship, in which Georgia exports \$175 million worth of goods to Panama and imports \$29 million worth of goods in return.⁴¹

The strong connections between Panama and Georgia should be used to forge stronger trade agreements for Savannah. Currently, Georgia and Panama's relationship is framed primarily by two government organizations, the Georgia Ports Authority and the Panama Canal Authority. These two organizations are empowered to make international trade commitments on behalf of their governments. The Panama Canal Authority is an entity of the Panamanian Government constitutionally empowered with the "operation, administration, management, and modernization of the Canal."⁴² The Panama Canal Authority is also in charge of activities and related services that earn the Canal a profit.⁴³ The Georgia Ports Authority is a quasi-state administrative agency dedicated to the development, maintenance, and operation of Georgia's deep-water and inland ports.⁴⁴

The Georgia Ports Authority and the Panama Canal Authority have worked together to create Memoranda of Understandings (MOUs) in 2003 and 2011. MOUs are bilateral international instruments that set out operational arrangements under a framework of international agreement.⁴⁵ The MOUs were signed with the intent of creating "an alliance of cooperation . . . aimed at generating new business."⁴⁶ Specifically, the 2003 and 2011 MOUs were signed with the intent of promoting the following six objectives: joint marketing, data interchange, marketing studies, modernization and improvements, joint training, and technological

³⁹ Saporta, *supra* note 6.

⁴⁰ *Id.*

⁴¹ *Georgia-Panama Economic Development Connection*, GOV'T & COM., GA. (2013), http://www.georgia.org/SiteCollectionDocuments/Business/International/Country_Connections/Georgia_Panama_Connection_2013.pdf.

⁴² *ACP Overview*, CANAL DE PANAMÁ (2013), <http://www.pancanal.com/eng/acp/acp-overview.html>.

⁴³ *Id.*

⁴⁴ *GPA Overview*, GA. PORTS AUTHORITY (2013), <http://www.gaports.com/corporate/AboutUs/GPAOverview.aspx>.

⁴⁵ *Definition of Key Terms Used in the UN Treaty Collection*, UNITED NATIONS TREATY COLLECTION (2013), http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml#memoranda.

⁴⁶ MEMORANDUM OF UNDERSTANDING BETWEEN THE PANAMA CANAL AUTHORITY AND THE GEORGIA PORTS AUTHORITY, <http://www.pancanal.com/eng/acp/acuerdos/mou-georgia.pdf>.

interchange.⁴⁷ Ultimately, these MOUs have played an important role in developing the Port of Savannah. The Director of the Georgia Ports Authority, Curtis Foltz, has explicitly credited these MOUs with helping Savannah to become the fastest-growing port in the country over the past decade, saying “this [growth] would not have been possible without our close partnership with Panama.”⁴⁸

But the success of previous MOUs is not enough to keep Savannah a thriving port. For one thing, Panama enters into similar MOUs with other ports throughout the world.⁴⁹ For another, the looming completion of the Panama Canal expansion project and the resulting port deepening race place the loyalty of international exporters and shipping clients at risk.⁵⁰ The prompt physical dredging of the port is part of the solution, but Georgia must also get involved in trade negotiations with Panama to secure a favorable trade position vis-à-vis other U.S. Atlantic ports.

Georgia, through the Georgia Ports Authority, should act to negotiate a renewed bilateral treaty with Panama, through the Panama Canal Authority. This treaty should outline specific target goals to promote clientele growth. These goals should be far more particular than the broad objective of past MOUs’ “generating new business.”⁵¹ This new MOU—with a vision towards growth in the Post-Panamax world—should keep in mind the needs of leading container lines like Maersk Line, who have indicated they are looking for high security and safety standards, environmental sustainability, and a strong focus on reliability and performance levels.⁵² Given this industry’s indicated needs, Georgia should institute a new MOU focused on two pillars. The first pillar should outline new industry leading safety standards for the Port of Savannah, detail environmental sustainability goals for 2025, and propose reliability improvements with the assessment of third

⁴⁷ Mary Carr Mayle, *GPA, Panama Canal Extend Strategic Alliance*, SAVANNAH NOW (Sept. 11, 2008), <http://dining.savannahnow.com/exchange/2008-09-11/gpa-panama-canal-extend-strategic-alliance#.UiY6gWQ6VFs>.

⁴⁸ Trevor Williams, *Georgia Ports Renew Panama Canal Ties*, GLOBAL ATLANTA (July 27, 2011), <http://www.globalatlanta.com/article/24962/georgia-ports-renew-panama-canal-ties/>.

⁴⁹ MEMORANDUM OF UNDERSTANDING BETWEEN THE PANAMA CANAL AND THE ANTWERP PORT AUTHORITY, <http://www.pancanal.com/eng/acp/acuerdos/mou-antwerp.pdf>.

⁵⁰ Ryan Holeywell, *Panama Canal Expansion Has U.S. Ports Rushing*, *Governing the States and Localities* (July 2012), <http://www.governing.com/panama-canal-expansion-has-ports-rushing.html>.

⁵¹ MEMORANDUM OF UNDERSTANDING, *supra* note 49.

⁵² Port Focus, *Foresight and Future-Proofing How to Attract the World’s Biggest Shipping Line*, PORT TECH. INT’L (2013), http://www.porttechnology.org/images/uploads/technical_papers/13-15.pdf.

party engineering and transportation experts. These standards must be established through the research and approval of the Georgia Ports Authority. The second pillar should propose annual dates and locations for the Georgia ports Authority and Panama Canal Authority to *jointly* appear to give presentations on the advantages on trading with the Port of Savannah. These presentations should be geared towards shipping companies and those in the export industry. The effect of the first pillar would be to provide shipping companies with goals tailored to shipping needs. The second pillar would provide potential clients with convincing information about Savannah's superior services, with the added bonus of coming with the Panama Canal Authority support and credibility. Combined, the two pillars could separate Savannah from other Atlantic Ports, positioning Savannah strategically and physically in the Post-Panamax world for continued success as "the fastest-growing [large] port in the nation."⁵³

Ultimately, it is critical to Georgia's economy that the Port of Savannah be prepared physically and strategically for the twenty-first century. In a recent visit to the Port, Vice President Biden made clear that the deepening of the Port of Savannah is such a critical economic issue that Georgia and the federal government must get "this done, come hell or high water."⁵⁴ Fortunately, the project's outlook is bright. Physically, the Port is ready for dredging now that sufficient funding is available, bureaucratic red tape has been broken, and environmental lawsuits have been overcome. Furthermore, Georgia is in a position to strategically promote closer Georgia-Panama ties to further international investment in the Port of Savannah. Following this trajectory, Savannah will continue to grow into a thriving international port.

⁵³ *Logistics and Transportation*, GA. SEA PORTS (2013), <http://www.georgia.org/industries/logistics-services/Pages/sea-port.aspx>.

⁵⁴ Greg Bluestein, *Vice President Vows Savannah Dredging Will Happen*, ATLANTA J.-CONST. (Sept. 16, 2013), <http://www.ajc.com/news/news/breaking-news/vice-president-vows-savannah-dredging-will-happen-/nZyTG/>.