

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE



FEDERAL FISH AND WILDLIFE PERMIT
AMENDMENT #1

3-201
(10/86)

2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(B)

REGULATIONS (attached)

50 CFR §13 & 17

3. NUMBER

PRT-811416

4. RENEWABLE

XXXX YES

NO

5. MAY COPY

XXXX YES

NO

6. EFFECTIVE

5/5/1997

7. EXPIRES

5/31/2027

1. PERMITTEE

SAGE DEVELOPMENT COMPANY, LLC
307 WOODBRIDGE CIRCLE
DAPHNE, ALABAMA 36526
PHONE: 334/626-8123

8. NAME AND TITLE OF PRINCIPAL OFFICER (if # 1 is a business)

KEN STRIPLIN, MANAGING MEMBER

9. TYPE OF PERMIT

ENDANGERED SPECIES - INCIDENTAL TAKE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

A PROJECT SITE SOUTH OF HIGHWAY 180, 21 MILES WEST OF HWY 59 IN GULF SHORES, ALABAMA, 9/10 MILE EA
OF FORT MORGAN STATE PARK, BALDWIN COUNTY, ALABAMA, SECTION 23, TOWNSHIP 19S, RANGE 1 EAST,
ENCOMPASSING 35.27 ACRES.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATION CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE, AND ANY AUTHORIZED AGENTS.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE AND ITS AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 11 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS. THE PERMIT, EFFECTIVE MAY 15, 1996, IS HEREBY AMENDED, REPLACED, AND SUBSTITUTED IN ITS ENTIRETY BY THIS AMENDMENT #1.

XX BLOCK 11 OF THIS PERMIT CONSISTS OF ITEMS A-O (10 PAGES TOTAL)

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS M, N, O, and P OF THIS PERMIT. THE FIRST REPORT IS DUE: MAY 30, 1997.

ISSUED BY:

TITLE

DATE

John D. ...
Acting
DEPUTY REGIONAL DIRECTOR, FWS,
SOUTHEAST REGION

5-5-97

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 PRT-811416
 AMENDMENT #1

- E. The Permittee owns a ±35.27-acre tract on the Fort Morgan Peninsula, Baldwin County, Alabama and plans a real estate development called The Dünes on the site (Project). This permit authorizes incidental taking of *Peromyscus polionotus ammobates* on all of the Project's lands north and outside of the designated *Peromyscus polionotus ammobates* critical habitat as described in Title 50 Code of Federal Regulations § 17.95. For all areas within the critical habitat of the project, encompassing approximately 10.8 acres, incidental taking of *Peromyscus polionotus ammobates* is restricted to only those reasonable activities associated with construction and maintenance of 1 (one) dune walkover. Incidental take as described above is authorized for construction activities and subsequent human habitation of the project for a period of 30 years, subject to the continued validity of the permit.
- F. The nature of the Project is a residential development, eventually transferring titles and control of the Project to individual property owners (Owners) and a Property Owners Association, Incorporated (Association). Prior to the sale of any lot and/or residential unit of the Project, the Permittee must develop a Declaration of Covenants and Restrictions (The Declaration). The contact office of the U.S. Fish and Wildlife must approve The Declaration. The Permittee must inform each Owner and the Association, using The Declaration (see Condition G.3., below), of their responsibilities and mandates as described in this permit. The Permittee shall record The Declaration as an encumbrance of title, to ensure that all conditions of this permit automatically will be assigned and transferred to each Owner and the Association and to ensure that The Declaration shall run with the real property encompassed by the Project. After execution of The Declaration for that parcel and/or residential unit, the Permittee shall be defined as those entities which hold fee simple title to any portion of the real property identified in this permit over the duration of the permit.
- G. The following measures will be employed by the permittee to ensure that *Peromyscus polionotus ammobates* take is minimized and fully mitigated.
1. For an approximately 10.8-acre area within *Peromyscus polionotus ammobates* designated critical habitat, the Permittee shall limit any disturbances to that reasonably expected to occur during construction of the Project's one elevated boardwalk. No vehicular equipment is allowed to operate within critical habitat for construction of the Project's boardwalk. Withstanding this exception, the permittee shall not disturb, nor grant permission to any person, firm, or entity which would result in a disturbance to this 10.8-acre area.
 2. The Permittee shall permit the U.S. Fish and Wildlife Service personnel, State of Alabama Department of Conservation personnel or other properly permitted and qualified persons designated by either agency to enter the Project boundaries at reasonable hours and times for the general purposes specified in Part 50 Code of Federal Regulations § 13.21(e)(2).

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 PRT-811416
 AMENDMENT #1

G. (Continued)

3. The permittee shall establish covenants, restrictions, and conditions, on each Owner and the Association (The Declaration). The Declaration must be approved by the U.S. Fish and Wildlife Service and properly executed as a legal instrument bound to any subsequent owners of the real property of the project. The Declaration must mandate the following minimum performance standards for purposes of protecting *Peromyscus polionotus ammobates* and nesting marine sea turtles.
- a. A brief description and information on the need, intent, and purposes of this permit, and conservation of *Peromyscus polionotus ammobates* and nesting marine sea turtles.
 - b. Identification of the requirements and responsibilities contained in the permit. Permittee is required to provide a copy of the permit to each Owner at or before closing of each lot within the Project. In addition, each Owner shall maintain a copy of the permit in the residence or use by lessees or others who hold under the Owner. The responsibilities to be identified include the following:
 - i. Cats are prohibited at all times within the Project.
 - ii. Use of refuse containers which are scavenger-proof and rodent-proof.
 - iii. The necessity of compliance with the Project's Lighting Plan, including the requirements of specific performance and design standards for each dwelling unit and common areas as established in the Lighting Plan.
 - iv. All plant species used for landscaping individual lots must be selected from an indigenous plant list approved by the U.S. Fish and Wildlife Service. No turf grasses will be allowed. Variances or exceptions to this requirement for landscaping of individual lots will be considered by the U.S. Fish and Wildlife Service upon request. This request may come from an Owner, or for the Project by Sage Development Company, LLC, or the Association.
 - v. Dune walkover design and placement shall be coordinated with the U.S. Fish and Wildlife Service so as to minimize damage to the dune system and *Peromyscus polionotus ammobates*. Only one dune walkover shall be allowed for the Project.

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 PRT-811416
 AMENDMENT #1

G. 3. b. (Continued)

- vi. Identification of the requirements of establishing and maintaining a special assessment to fund and monitor the implementation of the requirements of this permit.
- vii. For those platted lots located immediately adjacent to the designated critical habitat, incorporation of the requirements of Condition G.6., below.
- viii. No lumber, metals, or bulk materials may be allowed to be kept, stored, or accumulate on any lot, excepting only building materials during home construction. No lumber, metals, or bulk materials may be placed in designated critical habitat areas under any circumstances.
- ix. Common areas of the Project, as defined in The Declaration, shall not be altered by construction, landscaping, or any other development activity associated with the Project unless with the express written consent of the contact office of the U.S. Fish and Wildlife Service.
4. By July 16, 1996, the Permittee shall have established an account for purposes of funding the monitoring and reporting requirements of this permit (Sections K and L below). The permittee shall initially deposit \$5,000 (Five Thousand) in good funds and annually assess each dwelling unit \$100 (One Hundred) per year. This annual assessment will stop when the account reaches \$35,000 (Thirty-five Thousand); at which time the assessments shall temporarily cease. At such time thereafter, as the fund balance falls below \$15,000 (Fifteen Thousand), the \$100 per year per dwelling unit assessment will resume and will continue until the fund balance again reaches \$15,000 to ensure the permit conditions are successfully implemented. The Declaration must identify that the special assessment for implementation of the permit cannot be dissolved under any procedures or circumstances outlined in the Declaration.
5. By July 16, 1996, the permittee shall have deposited in a federally chartered bank or other financial institution acceptable to the U.S. Fish and Wildlife Service, \$50,000 (Fifty Thousand) in good funds. By July 1, 1997, the permittee shall deposit in the aforementioned account additional monies in the amount of \$11,340 (Eleven Thousand, Three Hundred and Forty). These monies will be used to acquire property of quantity and quality sufficient to compensate for unavoidable and minimize impacts in the project area, and may include pre-acquisition expenses. These funds may also be used for other purposes consistent with the conservation and recovery of *Peromyscus polionotus ammobates*. The U.S. Fish and Wildlife Service will direct the permittee on appropriate expenditures for this condition. The U.S. Fish and Wildlife Service must approve all fund expenditures.

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PRT-811416
AMENDMENT #1

G. (Continued)

6. The following conservation measures are mandatory for all lots of the Project which are platted immediately adjacent to and abutting designated critical habitat:
- a. The Permittee will post signs and monument permanent reference points for the inland boundary of critical habitat prior to the initiation of any construction and/or land alteration. The Permittee's engineering consultant will relocate the position of critical habitat based on instrument survey from reference control points established during the aforementioned survey. At least two permanent monuments delimiting the inland boundary of critical habitat will be required. The surveyor must also mark the location of critical habitat along the boundary between each lot adjacent to critical habitat. The Applicant must post signs denoting critical habitat at each point on the north-south boundary between these lots.
 - b. A temporary fence will be placed on the boundary of critical habitat during residential construction on lots adjacent to critical habitat. The fence may consist of wire, wood, or plastic (e.g. silt fence), extending from the ground surface upward to a height of at least four feet. The fence must consist of materials and a design so that construction workers or their equipment may not pass, unphazardly or incidentally pass onto critical habitat. Construction personnel and their equipment will be prohibited from working or otherwise operating within critical habitat, on the seaward side of the construction fence.
 - c. The Permittee will establish covenants that prohibit construction, storage, and recreational or related uses in critical habitat.
 - d. All construction contractors must be notified of the prohibitions against construction, equipment, or personnel within critical habitat.
 - e. Landings and stairways to all decks located on the south side of residences abutting and/or adjacent to critical habitat, must be placed on the east or west side of the deck structure. Stairs and landings are prohibited on the south side of decks facing critical habitat. These measures will be identified and established as covenants on these lots in the Declaration (Condition G.3., above).

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 PRT-811416
 AMENDMENT #1

G. 6. (Continued)

f. After completion of the habitable structure on each lot, the respective owner shall restore all area not within the footprint with native landscaping. Upon approval and completion of construction, this area shall be surveyed and recorded on the individual lots as a preserve area for *Peromyscus polionotus ammobates*. A certified survey, "As built" of each lot's construction and associated Dune Restoration Plan shall be provided to the U.S. Fish and Wildlife Service in the permittee's annual reporting.

The Permittee shall restore dunes impacted by construction of the boardwalk and those dune features impacted by Hurricane Opal. Permittee must notify the U.S. Fish and Wildlife Service prior to commencement of the dune restoration activities. To ensure that the Permittee meets the requirements of this permit and is in compliance with the Alabama Department of Environmental Management permit (ADEM), the Permittee shall notify the U.S. Fish and Wildlife Service simultaneous to notification of ADEM. The U.S. Fish and Wildlife Service, ADEM, and the permittee shall meet on-site to discuss the requirements and performance standards of this condition. The U.S. Fish and Wildlife Service must approve all requirements and standards of the restoration effort described in this condition. The objective of this condition will ensure that any damaged or disturbed area is restored. The Permittee shall also provide a funding source for implementation of the Dune Restoration Plan, which is independent of the funding as described in Items G.4. and G.5. of this permit.

8. Prior to human habitation of the Project, the permittee shall have an approved lighting plan for the Project (Lighting Plan). The Lighting Plan must be incorporated into the project's construction plan. The goals of the Lighting Plan will be: 1) No outdoor light sources will illuminate the wet beach or primary dune line; 2) All exterior lighting will be recessed or shielded so light will not fall on adjacent undeveloped areas; and, 3) Interior lighting should be reduced using tinted glass on structures abutting critical habitat.

Impact reduction methodologies should follow those outlined in attached document (*Understanding, Assessing, and Resolving Light-Pollution Problems on Sea Turtle Nesting Beaches*) which is incorporated as a technical appendix to this permit. The U.S. Fish and Wildlife Service must approve the Lighting Plan.

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PRT-811416
AMENDMENT #1

- H. The following measures will be employed by the permittee to provide for permit implementation and monitoring.
1. Prior to human occupancy of the Project, the permittee shall prepare and publish for distribution within the Project an information and educational brochure on the conservation of *Peromyscus polionotus ammobates* and nesting marine sea turtles.
 2. Prior to human occupancy of the Project, the permittee shall install and maintain a sign describing *Peromyscus polionotus ammobates*, and nesting marine sea turtles and its habitat. The sign shall be placed at the entrance of the common dune walkover of the Project frequented by residents and visitors.
- I. The following measures will be employed by the permittee to provide for permit monitoring. All items in this condition commence when construction and/or land clearing activities have been initiated on four of the lots abutting the designated *Peromyscus polionotus ammobates* critical habitat. Where appropriate, specific performance measurements for noncompliance have been identified. Where non-compliance is indicated or discovered during routine or required reporting periods, immediate notification and remedial actions are required.
1. During spring, summer, and fall quarters of the calendar year, the permittee shall perform a survey documenting presence or absence of *Peromyscus polionotus ammobates* and of house mice, *Mus musculus*, a known competitor of *Peromyscus polionotus ammobates*. The survey shall be performed by qualified and permitted agents of the permittee, approved by the U.S. Fish and Wildlife Service. The methodology and design of the survey must be acceptable to the U.S. Fish and Wildlife Service. The presence of competitors shall not constitute noncompliance with protection of *Peromyscus polionotus ammobates* unless the presence of *Mus musculus* constitutes 15 percent or greater of the total captures. All *Mus musculus* are to be destroyed upon capture.
- If the number of *Mus musculus* exceeds 15 percent of total captured rodents, then the permittee is not in compliance. The permittee shall immediately institute a monthly competitor control trapping program funded by the special assessment fund identified in Item G.4. above. The trapping program shall remove all *Mus musculus* until such time this species' occurrence falls below 15 percent of the sample. Once *Mus musculus* occurrence falls below 15 percent, the control program shall cease, and the routine sampling (e.g., spring, summer, and fall) shall be reinstated.

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 AMENDMENT #1

I. (Continued)

2. Simultaneous with the monitoring program as outlined in I.1., above, the permittee shall conduct a census for the presence or absence of free roaming cats (*Felis domesticus*) within the Project. The survey shall be performed by qualified and permitted agents of the permittee, approved by the U.S. Fish and Wildlife Service. Walking transects shall be established so as to provide census coverage of 100 percent of the Project's total area. Track and occurrence data should be recorded. If available, information on free-roaming cats obtained by residents should also be summarized in this report. Should the surveys or other reports document presence of free roaming cats, the permittee shall immediately institute a trapping program. Trapped animals will be transported to the nearest animal shelter or adoption facility. Funded by the special assessment, the trapping program shall be employed until weekly trapping/surveys fail to document the presence of free roaming cats in the Project.

Within 45 days after the completion of the trapping effort, the permittee shall provide a report to the U.S. Fish and Wildlife Service. The report will document the results of the sampling efforts and update the status and progress of the competitor control program if necessary. Information collected as a result of the activities in I.1. and I.2. must also be provided to the U.S. Fish and Wildlife Service during each annual reporting period.

- J. Beginning in 1997, and for each subsequent year the permit is valid, the permittee will submit an annual report to U.S. Fish and Wildlife Service by May 30. The annual report shall outline and describe implementation and success of minimization measures. The permittee shall identify non-compliance and measures employed to remediate the non-compliance. The annual report shall address the following:
1. Control of *Mus musculus*.
 2. Free-roaming cat control.
 3. Garbage and refuse control.
 4. Establishment of educational/informational materials and signage.
 5. Integrity of the Protected Area, dune integrity, and status of the common dune crossover.
 6. Progress on landscaping requirements of the Project.
 7. Status and effectiveness of The Lighting Plan.

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PRT-811416
AMENDMENT #1

J. (Continued)

8. The status of dune restoration and maintenance efforts.
9. Status of the \$61,340 endowment fund.
10. Status, and a description of changes made, if any, to the Declaration.
11. Information explaining the extent of construction of the Project.
12. An accounting of the special assessment fund.
13. Report any employee or contractor training.
14. Include any corrective measures or other changes that may be necessary to improve the efficacy of the permit.
15. Status and effectiveness of The Declaration.

K. The Permittee and the U.S. Fish and Wildlife Service acknowledge that even with the above detailed provisions for mitigating and/or minimizing impacts to *Peromyscus polionotus ammobates* or nesting marine sea turtles, circumstances could arise which were not fully anticipated by this Permit and which are considered unforeseen. Such circumstances may become apparent either to the Permittee, the Association, Owners, authorized agents, or to personnel of the U.S. Fish and Wildlife Service. For purposes of implementation of this condition, unforeseen circumstances are defined as any significant, unanticipated adverse change in the status of species; any significant, unanticipated adverse change in impacts of the Project or in other factors upon which the HCP and Permit are based; or any other significant new information relevant to the Permit and Project that was unforeseen by the Permittee and the U.S. Fish and Wildlife Service that could give rise to the need to review the Permittee's conservation program. If unforeseen circumstances arise, the Permittee and the contact office of the U.S. Fish and Wildlife Service shall meet within 20 (twenty) working days following notice of such unforeseen circumstances. The Permittee shall implement appropriate measures within an additional 30 (thirty) working days.

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PRT-811416
AMENDMENT #1

L. Upon locating a dead, injured, or sick *Peromyscus polionotus ammobates*, nesting sea turtles, or any other endangered or threatened species, initial notification must be made immediately to the U.S. Fish and Wildlife Service Law Enforcement Office, Post Office Box 1470, Daphne, Alabama 36526. The phone number is 334 441-5181. Notification should also be made (by the next work day) to the local U.S. Fish and Wildlife Service, address and telephone number noted in Condition M, below. Care should be taken in handling sick, injured, or dead specimens to ensure effective treatment or to preserve biological materials for later analysis. In conjunction with the care of sick or injured endangered species or preservation of biological materials from a dead animal, the finder should take responsible steps to ensure that the site is not unnecessarily disturbed.

M. For purposes of this monitoring compliance of the terms and conditions of this permit, including unforeseen circumstances, the contact, address, and phone number of local U.S. Fish and Wildlife Service office is:

U.S. Fish and Wildlife Service
P.O. Drawer 1190
Daphne, Alabama 36526
Telephone: 334/441-5181

N. Copies of annual reports and any other documentation submitted in response to the operation and management of this permit shall also be provided to:

Endangered and Threatened Species Permits
U.S. Fish and Wildlife Service (AES/TE/P)
1875 Century Boulevard, Suite 200
Atlanta, Georgia 30345
Telephone: 404/679-7110

O. Copies of annual reports and any other documentation submitted in response to the operation and management of this permit shall also be provided to:

Field Supervisor
U.S. Fish and Wildlife Service
6578 Dogwood View Parkway, Suite A
Jackson, Mississippi 39213
Telephone: 601/965-4900

END

EXHIBIT "C"

Indigenous Plant Species Used in Dune Restoration on Gulf Coast

Trees

Magnolia grandiflora (Southern Magnolia)
Osmanthus americanus (Wild Olive)
Persea borbonia (Red Bay)
Pinus clausa (Sand Pine)
Pinus elliotii (Slash Pine)
Quercus geminata (Sand Live Oak)
Quercus myrtifolia (Myrtle Oak)
Quercus virginiana maritima (Sand Live Oak)

Medium to Large Shrubs & Small Trees

Callicarpa americana (Beautyberry)
Erythrina herbacea (Eastern Coralbean)
Ilex vomitoria (Yaupon Holly)
Iva frutescens (Marsh-Elder)
Rhus copallina (Winged Sumac)
Serenoa repens (Saw Palmetto)

Small Shrubs & Ground Covers

Andropogon maritimus (Bunch Grass)
Axolepias humistrata (Sandhill Milkweed)
Bignonia capreolata (Cross vine)
Cakile edentula (Sea Rocket)
Ceratiola ericoides (Seaside Rosemary)
Chrysema pauciflorum (Seaside Goldenrod)
Chrysopsis gossypina cruiseana (Cruise's Golden Aster)
Conradina canescens (Beach Heather)
Cyperus sp. (Sedge)
Heterotheca subaxillaris (Aster-Camphor Weed)
Hydrocotyle bonariensis (Pennywort)
Ipomoea ped-caprae (Railroad vine)
Distichlis spicata (Salt marsh grass)
Ipomoea stolonifera (Beach morning glory)
Juncus scirpoides (Rush)
Licania michauxii (Gopher Apple)
Panicum amarum (Beach grass)
Panicum repens (Beach Grass)
Polygonella macrophylla (Large leaved Jointweed)
Pteridium aquilinum (Bracken-Fern)
Spartina patens (Cordgrass)
Tradescantia ohioensis (Spiderwort)
Uniola paniculata (Sea Oats)

