

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



FEDERAL FISH AND WILDLIFE PERMIT

3-201
(1/97)

1. PERMITTEE

THE DUNES OF GP, LLC
211 WALKER STREET, SW
ATLANTA, GA 30313
PHONE: 404/522-7535

2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(B)
16 USC 703-712

REGULATIONS (attached)

50 CFR §13, 17 & 21

3. NUMBER

TE079861

4. RENEWABLE

XXXX YES
____ NO

5. MAY COPY

XXXX YES
____ NO

6. EFFECTIVE

11/25/03

7. EXPIRES

11/30/2026

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

RICHARD H. SKELTON, MANAGER

9. TYPE OF PERMIT

ENDANGERED SPECIES - INCIDENTAL TAKE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

SITE 51B WHICH WAS DEVELOPED BY SAGE DEVELOPMENT. THE SAGE DEVELOPMENT SITE IS SOUTH OF HIGHWAY 180, 21 MILES WEST OF HWY 59 IN GULF SHORES, ALABAMA, 9/10 MILE EAST OF FORT MORGAN STATE PARK, BALDWIN COUNTY, ALABAMA, SECTION 23, TOWNSHIP 19S, RANGE 1 EAST, ENCOMPASSING APPROXIMATELY 2.08 ACRES.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS 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, OR 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.

XX BLOCK 11 OF THIS PERMIT CONSISTS OF ITEMS A-Q (8 PAGES TOTAL)

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS M, N, and O OF THIS PERMIT.

ISSUED BY:

TITLE

DATE

DEPUTY REGIONAL DIRECTOR, FWS,
SOUTHEAST REGION

12-1-03

ORIGINAL

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- E. The Permittee owns Lot 51B which is a 2.08 acre tract on the Fort Morgan Peninsula, Baldwin County, Alabama and plans a real estate development called The Dunes of GP on the site (Project). This permit authorizes incidental taking of *Peromyscus polionotus ammobates* on the Project's lands which are north and outside of the designated *Peromyscus polionotus ammobates* critical habitat as described in Title 50 Code of Federal Regulations § 17.95. Incidental take as described above is authorized for construction activities and subsequent human habitation of the project for a period of 23 years, subject to the continued validity of the permit.
- F. The nature of the Project is the development of a condominium building, eventually transferring titles and control of the Project to property owners (Owners) and a Property Owners Association, Incorporated (Association). 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. All conditions of this permit automatically will be assigned and transferred to each Owner and the Association and shall run with the real property encompassed by the Project. The permittee shall be defined as those entities which hold fee simple title to any portion of the real property identified in the HCP and 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. 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(d)(2).
 2. 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*.
 - a. A brief description and information on the need, intent, and purposes of this permit, and conservation of *Peromyscus polionotus ammobates*.
 - 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 unit within the Project. In addition, each Owner shall maintain a

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G. 2. b. (Continued)

copy of the permit in the residential unit for 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 U.S. Fish and Wildlife Service. No turf grasses will be allowed. Variances or exceptions to this requirement for landscaping will be considered by U.S. Fish and Wildlife Service upon written request. This written request may come from an Owner, or for the Project by The Dunes of GP, LLC, or the Association.
 - v. Identification of the requirements of establishing and maintaining a special assessment to fund and monitor the implementation of the requirements of this permit:
 - vi. No lumber, metals, or bulk materials may be allowed to be kept, stored, or accumulate, excepting only building materials during construction. No lumber, metals, or bulk materials may be placed in designated critical habitat areas under any circumstances.
3. Within 60 days of the effective date of this permit, the permittee shall establish an account for purposes of funding the monitoring and reporting requirements of this permit (Sections K and L below). The permittee shall annually assess each dwelling unit \$100 (One Hundred) per year. This annual assessment will stop when the account reaches \$30,750 (Thirty Thousand Seven Hundred Fifty), at which time the assessments shall temporarily cease. At such time thereafter, as the fund balance falls below \$12,300 (Twelve Thousand three hundred), the \$100 per year per dwelling unit assessment will resume and will continue until the fund balance again reaches \$30,750 to ensure the

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G. (Continued)

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.

4. The permittee shall prepare a specific 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.

H. The following measures will be employed by the permittee to provide for permit implementation and monitoring.

1. Within 1 year of the effective date of this permit, 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.

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. 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.

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I. 1. (Continued)

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.3., 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.

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.
3. 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. For each 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.

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J. (Continued)

4. Establishment of educational/informational materials and signage.
5. ~~Dune integrity~~ and status of the common dune crossovers.
6. Progress on landscaping requirements of the Project.
7. The Lighting Plan.
8. ~~The status of dune restoration and maintenance efforts.~~
9. Status of the \$50,000 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.

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 and the U.S. Fish and Wildlife Service shall agree to appropriate measures and begin their implementation within an additional 30 (thirty) working

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K. (Continued)

days. Failure by the Permittee to implement appropriate and reasonable measures within 90 (ninety) days of discovering unforeseen circumstances may constitute grounds for permit suspension or revocation.

- 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, Aronov Building, Room 819, 474 South Court Street, Montgomery, Alabama 36104. The phone number is 334/223-7228. 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: 251/441-5181

- 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

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- 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

- P. All reports required in Condition 11.G, above shall include the following certification from the Permittee or a responsible person who supervised or directed the preparation of the report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

- Q. In the event that any judicial decision or determination, including without limitation the decision from the District Court for the District of Columbia in *Spirit of the Sage, et al v. Norton, et al*, 98-CV-1873 (D.D.C. 2003), may hold that the Department of Interior's "No Surprises" assurances rule (or similar successive rule) is vacated, unenforceable or enjoined for any reason or to any extent, Condition 11.K, above, shall be enforceable only to the degree allowed by any such decision or determination; provided that the remainder of the permit shall remain in full force and effect to the maximum extent permitted by law. In the event that the "No Surprises" assurances rule may be vacated, unenforceable or enjoined by such decision or determination but is later reinstated, this Condition K, above, shall likewise be automatically reinstated and apply to the entire term of this HCP. If, in response to any such judicial decision or determination, the "No Surprises" assurances rule is revised, this Condition K, above, shall be automatically amended in a manner consistent with the revised rule so as to afford the maximum protection to the APPLICANT consistent with the revised rule.

END