



**DEPARTMENT OF NATURAL RESOURCES
OFFICE OF COASTAL MANAGEMENT**

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COASTAL USE PERMIT/CONSISTENCY DETERMINATION

C.U.P. No.: P20181324

C.O.E. No.:

NAME: **COASTAL PROTECTION AND RESTORATION AUTHORITY**
c/o COASTAL PROTECTION AND RESTORATION AUTHORITY
150 TERRACE AVENUE
BATON ROUGE, LA 70802
Attn: Sydney Dobson

LOCATION: **Saint Bernard Parish, LA**
Project centrally located @ Lat. 29-46-24.80 N / Long. -89-19-09.89 W (see plats for additional coordinates); off the shoreline of Eloi Bay and Eloi Point, near the mouth of Bayou la Loutre.

DESCRIPTION: Proposed construction of the Biloxi Marsh Living Shoreline Project (PO-0174). Proposed activities include installation of bioengineered, marsh-fringing oyster reefs to promote the formation of self-sustaining living shoreline protection structures. The project will create functional oyster barrier reef along the shore of the Biloxi Marsh to reduce wave erosion, provide oyster habitat and prevent further marsh degradation. Approximately 2,040,044 cubic yards of native material will be excavated for access and backfilled upon project completion. Approximately 424,021 cubic yards of crushed stone material and 767,560 cubic yards of oyster reef breakwater/marine mattress product will be used for the structures.

In accordance with the rules and regulations of the Louisiana Coastal Resources Program and Louisiana R.S. 49, Sections 214.21 to 214.41, the State and Local Coastal Resources Management Act of 1978, as amended, the permittee agrees to:

1. Carry out, perform, and/or operate the use in accordance with the permit conditions, plans and specifications approved by the Department of Natural Resources.
2. Comply with any permit conditions imposed by the Department of Natural Resources.
3. Adjust, alter or remove any structure or other physical evidence of the permitted use if, in the opinion of the Department of Natural Resources, it proves to be beyond the scope of the use as approved or is abandoned.
4. Provide, if required by the Department of Natural Resources, an acceptable surety bond in an appropriate amount to ensure adjustment, alteration, or removal should the Department of Natural Resources determine it necessary.
5. Hold and save the State of Louisiana, the local government, the department, and their officers and employees harmless from any damage to persons or property which might result from the use, including the work, activity, or structure permitted.
6. Certify that the use has been completed in an acceptable and satisfactory manner and in accordance with the plans and specifications approved by the Department of Natural Resources. The Department of Natural Resources may, when appropriate, require such certification to be given by a registered professional engineer.
7. All terms of the permit shall be subject to all applicable federal and state laws and regulations.
8. This permit, or a copy thereof, shall be available for inspection at the site of work at all times during operations.
9. The applicant will notify the Office of Coastal Management of the date on which initiation of the permitted activity described under the "Coastal Use Description" began. The applicant shall notify the Office of Coastal Management by entering a commencement date through the online system, or by mailing said information to OCM.
10. Unless specified elsewhere in this permit, this permit authorizes the initiation of the coastal use described under "Coastal Use Description" for two (2) years from the date of the signature of the Secretary or his designee on the original permit which was August 14, 2019. If the coastal use is not initiated within this two (2) year period, then this permit will expire and the applicant will be required to submit a new application. Initiation of the coastal use, for the purposes of this permit, means the actual physical beginning of the use of activity for which the permit is required. Initiation does not include preparatory activities, such as movement of equipment onto the coastal use site, expenditure of funds, contracting out of work, or performing activities which by themselves do not require a permit. In addition, the permittee must, in good faith, and with due diligence, reasonably progress toward completion of the project once the coastal use has been initiated.
11. The following special conditions must also be met in order for the use to meet the guidelines of the Coastal Resources Program:
 - a. The water bottom shall not be disturbed during access to the proposed work location, other than that authorized and shown on the attached project plats, whether it be by dredging, wheel washing, propwashing, jetting, mucking, plowing, bull dozing or any other means of moving bottom material. Powered vessels shall be operated so as not to disturb the water bottom by propeller or jet action.



- b. This permit does not convey any property rights, mineral rights, or exclusive privileges; nor does it authorize injury to property.
- c. All equipment utilized to perform activities authorized under this permit shall stay within the access routes and work areas designated on the permit plats utilizing the least damaging route and/or open water areas.
- d. All logs, stumps and other debris encountered during dredging activities shall be removed from the site during or immediately after the activity and disposed of in accordance with all applicable laws and regulations.
- e. The La. Department of Wildlife and Fisheries (LDWF) has reviewed the referenced project and has provided the following recommendations:

Oyster Seed Grounds:

Because of the potential habitat creation, shoreline protection, and benefits to marine species, we feel a waiver of the compensation requirements for activities within this project footprint is appropriate at this time. However, if any impacts occur to the Public Oyster Seed Grounds outside of the project footprint due to activities authorized under this permit, the following two conditions will apply in addition to the standard 9 conditions listed below:

A. Applicant shall be liable for, and shall compensate LDWF for, any damages to the oyster seed grounds caused by Applicant or Applicant's contractors during any work done under this permit. A preliminary estimate based on permit application drawings and the water bottom assessment shall be provided to the applicant or designated representative upon request.

B. As outlined in the 2010 LDWF and LDNR Memorandum of understanding, compensation for impacts to the public oyster seed grounds shall be in the form of the planting of cultch material (i.e. crushed concrete, limestone, oyster shell, etc) at the rate of 1 cubic yard per acre of impacted area for barren, nonsupportive areas of the seed grounds, 50 cubic yards per acre of impacted area for supportive areas, and 187 cubic yards per acre of impacted area for reef areas plus the value of any living oyster resources destroyed. Applicant shall bear the expense of acquisition and deposition of cultch. The cultch shall be deposited by the Applicant, Applicant's contractor, or sub-contractor, under the direct supervision of LDWF, and shall be deposited at a time, place, and in a manner prescribed by the LDWF. In lieu of planting cultch material, the Applicant may make payment directly to the Public Oyster Seed Ground Development Account.

Standard Conditions for Operations within Public Oyster Seed Grounds:

- 1. Applicant, Applicant's contractors and sub-contractors shall not discharge any produced waters, human waste that does not meet or exceed the requirements of the Department of Health and Hospitals, or drilling and/or workover effluent except for flocculated filtered water into the waters in the areas of the proposed activity or along any proposed access routes. Discharge rate of water shall not exceed the rate of filtering. If deemed appropriate Applicant shall have at the project location float booms for containing any spills.
- 2. All vessels utilized under this permit shall be of such size and loaded in such a manner as to not impact the water bottoms over which they pass. If access route traverses a currently productive public oyster area, the Applicant shall secure approval of the access route from LDWF and shall ingress and egress to the project location only along the approved route. If deemed appropriate by LDWF Applicant shall establish and maintain, until the project is complete, along the access route appropriate access route markings for vessels traveling to and from the project location. These markings may be subject to applicable local, state, and federal navigation requirements. These markings shall be sufficient to be used during day and night operations as well as in any climatic and sea condition which may occur during permitted activities.
- f. 3. Applicant shall provide legal representation and indemnification to LDWF for any and all lawsuits and legal claims that may be filed or made against LDWF as a result of the activities by Applicant.



4. This permit specifically does not authorize prop washing, wheel washing, dredging, or jetting beyond what is shown in the application and drawings. Any changes or variances in the location, access route, volume of material moved and/or magnitude of the area of impact shall require formal application to, and prior written authorization from, the Department of Natural Resources (DNR). The decision by DNR whether to authorize those changes will require consultation by DNR with LDWF in strict adherence to all applicable provisions of the February 3, 2005 Memorandum of Agreement between those two agencies.
5. At the discretion of the Secretary or Assistant Secretary of the Louisiana Department of Wildlife and Fisheries, any activities may be suspended until more favorable conditions prevail.
6. Applicant shall provide a letter of completion or as-built drawings of the completed project to the Department no later than 30 days following completion of the permitted activity.
7. A post-project bottom contour and side-scan survey may be required, covering the permitted project area or any other area outside the project footprint suspected of being directly impacted by permitted activities. The results of these surveys will be made available to the Department within 14 days of completion.
8. At the discretion of LDWF, the Applicant may be required to return all or part of water bottoms to pre-project conditions. Applicant shall remove or spread any dredged material which is greater than 0.5 feet above original water bottom contours unless otherwise specified in the coastal use permit.
9. If it is determined that any structure installed under this permit is not performing as intended or becomes a hazard, the applicant shall remove it in its entirety.

Wildlife Diversity Program:

Our database indicates the presence of bird nesting colonies within one mile of this proposed project. Please be aware that entry into or disturbance of active breeding colonies is prohibited by the Louisiana Department of Wildlife and Fisheries (LDWF). In addition, LDWF prohibits work within a certain radius of an active nesting colony.

Nesting colonies can move from year to year and no current information is available on the status of these colonies. If work for the proposed project will commence during the nesting season, conduct a field visit to the worksite to look for evidence of nesting colonies. This field visit should take place no more than two weeks before the project begins. If no nesting colonies are found within 1000 feet (2000 feet for Brown Pelicans) of the proposed project, no further consultation with LDWF will be necessary. If active nesting colonies are found within the previously stated distances of the proposed project, further consultation with LDWF will be required. In addition, colonies should be surveyed by a qualified biologist to document species present and the extent of colonies. Provide LDWF with a survey report which is to include the following information:

- g.
 1. qualifications of survey personnel;
 2. survey methodology including dates, site characteristics, and size of survey area;
 3. species of birds present, activity, estimates of number of nests present, and general vegetation type including digital photographs representing the site; and
 4. topographic maps and ArcView shapefiles projected in UTM NAD83 Zone 15 to illustrate the location and extent of the colony.

Please mail survey reports on CD to: Wildlife Diversity Program
La. Dept. of Wildlife & Fisheries
P.O. Box 98000
Baton Rouge, LA 70898-9000

To minimize disturbance to colonial nesting birds, the following restrictions on activity should be observed:

- For colonies containing nesting wading birds (i.e., herons, egrets, night-herons, ibis, Roseate Spoonbills, Anhingas, or cormorants), all project activity occurring within 1000 feet of an active nesting colony should be restricted to the non-nesting period (i.e., September 1 through February 15).



- For colonies containing nesting gulls, terns, or Black Skimmers, all project activity occurring within 650 feet (2000 feet for Brown Pelicans) of an active nesting colony should be restricted to the non-nesting period (i.e., September 16 through April 1).

Manatee (*Trichechus manatus*) may occur in the surrounding water bodies of your site location. Manatees are large mammals inhabiting both fresh and salt water. Although most manatees are year round residents of Florida or Central America, they have been known to migrate to areas along the Atlantic and Gulf coast during the summer months. Manatee is a threatened species protected under the Endangered Species Act of 1973 and the Federal Marine Mammal Protection Act of 1972. In Louisiana, taking or harassment of a manatee is in violation of state and federal law. Critical habitat for manatee includes marine submergent vascular vegetation (sea-grass beds). Areas with sea-grass beds should be avoided during project activities if possible. Report all manatee sightings to the Louisiana Department of Wildlife and Fisheries at 337-735-8676 or 1-800-442-2511.

The Diamondback terrapin (*Malaclemys terrapin*) may occur in your project area and is considered imperiled in Louisiana. It inhabits brackish water habitats, especially coastal marshes. Primary threats to this species include pollution, disturbed habitat, nest destruction near populated coastal sites, and coastal erosion. The Diamondback terrapin may breed and nest from April to July with nest cavities dug at the sandy edges of marshes and dunes. Hatchlings usually emerge from nests during August and September but may overwinter in nests until the following spring. Nest searches should be conducted if project activities are initiated at any time during the nesting season without the use of a barrier fence. If project activities will be conducted during the nesting season, we recommend constructing a barrier fence, prior to nesting season and project activities to avoid enclosing hatchlings, that surrounds terrapin habitat in the project area and consists of corrugated plastic tubing at least 10 inches in diameter; cut in half, buried, and back-filled with sediment. All barrier fence material must be removed after project activities are completed. If nests are found at any time prior to and during project activities, the applicant must contact Keri Landry at 225-765-2809 for further guidance.

No other impacts to rare, threatened or endangered species or critical habitats are anticipated from the proposed project. No state or federal parks, wildlife refuges, wildlife management areas or scenic rivers are known at the specified site or within ¼ mile of the proposed project.

h. The Wildlife Diversity Program (WDP) reports summarize the existing information known at the time of the request regarding the location in question. WDP reports should not be considered final statements on the biological elements or areas being considered, nor should they be substituted for on-site surveys required for environmental assessments. If at any time WDP tracked species are encountered within the project area, please contact our biologist at 225-765-2643.

i. Applicant shall not discharge any drilling and/or workover effluent except for flocculated filtered water.

Applicant shall not discharge any human waste which does not meet or exceed the requirements of the Department of Health and Hospitals.

Applicant shall not discharge any produced waters.

Applicant is subject to all applicable state laws related to damages which are demonstrated to have been caused by this proposed action.

Applicant shall use any dredged material beneficially to create/restore emergent wetlands or place the material in open water in such a manner not to decrease the water depth greater than six inches.

Applicant shall provide to the LDWF a water bottom assessment (unless waived by LDWF) that meets LDWF protocol prior to commencement of the activity. A waiver request must be submitted to LDWF in writing and must state the justification for the request. Applicant may, at the request of LDWF and prior written approval of OCM, be required to modify the project if the proposed location unnecessarily impacts oyster reefs.



- j. All structures built under the authorization and conditions of this permit shall be removed from the site within 120 days of abandonment of the facilities for the herein permitted use, or when these structures fall into a state of disrepair such that they can no longer function as intended. This condition does not preclude the necessity for revising the current permit or obtaining a separate Coastal Use Permit, should one be required, for such removal activities.
- k. Structures must be marked/lighted in accordance with U. S. Coast Guard regulations.
- l. That permittee shall insure that all sanitary sewage and/or related domestic wastes generated during the subject project activity and at the site, thereafter, as may become necessary shall receive the equivalent of secondary treatment (30 mg/l BOD5) with disinfection prior to discharge into any of the streams or adjacent waters of the area or, in the case of total containment, shall be disposed of in approved sewerage and sewage treatment facilities, as is required by the State Sanitary Code. Such opinion as may be served by those comments offered herein shall not be construed to suffice as any more formal approval(s) which may be required of possible sanitary details (i.e. provisions) scheduled to be associated with the subject activity. Such shall generally require that appropriate plans and specifications be submitted to the Department of Health and Hospitals for purpose of review and approval prior to any utilization of such provisions.
- m. All fill material shall be clean and free of contaminants and shall not contain hazardous materials such as asbestos or asbestos residue, shingles, tires, oil/grease residue, exposed rebar, protruding objects, etc.
- n. The area where the project is located is all part of the aboriginal homelands of the Chitimacha Tribe of Louisiana. As such, large villages, burial sites, and sacred sites were in place in that entire area. If at any time during the course of the work, any traditional cultural properties are discovered, Permittee shall immediately contact Kimberly S. Walden (Cultural Director) or Melanie Aymond (Research Coordinator) at (337) 923-9923 or (337) 923-4395. Office hours are Monday through Thursday from 7:30 A.M. - 5:00 P.M. and on Friday between 7:30 A.M. - 11:30 A.M. If traditional cultural properties are discovered on the weekend or after business hours, the notification shall be made the next business morning.
- o. Permittee is subject to all applicable state laws related to damages which are demonstrated to have been caused by this action.
- p. Permittee shall allow representatives of the Office of Coastal Management or authorized agents to make periodic, unannounced inspections to assure the activity being performed is in accordance with the conditions of this permit.
- q. Permittee shall comply with all applicable state laws regarding the need to contact the Louisiana One Call (LOC) system (1-800-272-3020) to locate any buried cables and pipelines.
- r. This permit authorizes the initiation of the Coastal Use described under "Coastal Use Description" for two (2) years from the date of the signature of the Secretary or his designee on the original permit which was August 14, 2019. Initiation of the Coastal Use, for purposes of this permit, means the actual physical beginning of the use or activity for which the permit is required. Initiation does not include preparatory activities, such as movement of equipment onto the Coastal Use site, expenditure of funds, contracting out of work, or performing activities which by themselves do not require a permit. In addition, Permittee must, in good faith and with due diligence, reasonably progress toward completion of the project once the Coastal Use has been initiated. If the Coastal Use is not initiated within this two (2) year period, an extension may be granted pursuant to the requirements contained in the Rules and Procedures for Coastal Use Permits (Title 43:I.723.D.). Please note that a request for permit extension MUST be made no sooner than one hundred eighty (180) days and no later than sixty (60) days prior to the expiration of the permit.

The expiration date of this permit is five (5) years from the date of the signature of the Secretary or his designee on the original permit which was August 14, 2019. If the Coastal Use is not completed within this five (5) year period, an extension may be granted pursuant to the requirements contained in the Rules and Procedures for Coastal Use



Permits (LAC 43:1.723(D)).

Upon expiration of this permit, a new Coastal Use Permit will be required for completion of any unfinished or uncommenced work items and for any maintenance activities involving dredging or fill that may become necessary. Other types of maintenance activities may also require a new Coastal Use Permit.

- s. This determination does not eliminate the need to obtain a permit from the United States Army, Corps of Engineers or any other Federal, state or local approval that may be required by law. The drawings submitted with your referenced application are attached hereto and made a part of the record.

***** End of Conditions *****

By accepting this permit the applicant agrees to its terms and conditions.

I affix my signature and issue this permit this 14th day of August, 2019.

THE DEPARTMENT OF NATURAL RESOURCES

Karl L. Morgan, Administrator
Office of Coastal Management

This agreement becomes binding when signed by Administrator of the Office of Coastal Management Permits/Mitigation Division, Department of Natural Resources.

Attachments



Final Plats:

1) [P20181324](#) [Final Plats](#) [04/29/2019](#)

cc: Martin Mayer, COE w/attachments
Dave Butler, LDWF w/attachments
Jordan Cobbs, OCM w/attachments
Craig Leblanc, Frank Cole, OCM/FI w/attachments
Saint Bernard Parish w/attachments

COASTAL PROTECTION AND RESTORATION AUTHORITY w/attachments