DEPARTMENT OF NATURAL RESOURCES
OFFICE OF COASTAL MANAGEMENT
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COASTAL USE PERMIT/CONSISTENCY DETERMINATION

Coastal Use Permit – General Permit-11 (CUP-GP-11)

Name and Address: **Louisiana Department of Natural Resources**
Office of Coastal Management
P.O. Box 44487, Baton Rouge, LA 70804

LOCATION: In the Louisiana Coastal Parishes of Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne and Vermilion.

DESCRIPTION: This General Permit provides for the implementation of individual compensatory mitigation projects and mitigation banks to offset unavoidable impacts to vegetated wetlands due to permitted activities.

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 permitted agrees to:

1. Carry out, perform, operate and maintain 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 (OCM) of the date on which initiation of the permitted activity described under the "Coastal Use Description" began. The applicant shall notify the OCM by mailing the enclosed green initiation card on the date of initiation of the coastal use.
10. Unless specified elsewhere in this permit, this permit authorizes the initiation of the coastal use described under "Coastal Use Description" for two years from the date of the signature of the Secretary or his designee. If the coastal use is not initiated within this two year period, then this permit will expire and the applicant will be required to submit a new application. Initiation of the coastal use, for 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 permitted 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:

I. General Conditions

A. The Secretary of DNR has determined that full individual permit processing by OCM is in the public interest in order to determine whether proposed activities qualify for authorization under the authority of this General Permit. This full individual permit processing will consist of review by the staff of OCM of each authorization request. Therefore, pursuant to the Rules and Procedures for Coastal Use Permits, Title 43, Subpart 723.C.3.a, of the Louisiana Code of Administrative Procedure, an application fee will be assessed for activities proposed for authorization under the authority of this General Permit and, if appropriate, processing fees and appropriate mitigation plan processing fees will also be assessed for activities approved under the authority of this General Permit.

B. A standard Joint Application Form shall be completed and submitted to OCM along with drawings depicting the location and character of work proposed for approval under the authority of this General Permit. The applicant shall submit a complete application packet (forms and plats) to OCM. The application shall be accompanied by a $100.00 application fee or the application fee in effect at the time of application submittal. This General Permit shall not apply if the proposed work is determined not to meet the criteria. The applicant shall be advised by letter within five (5) calendar days of receipt of the complete application that the application shall be processed as an individual CUP if the determination is made that the proposed activity is not consistent with this General Permit.

C. Individual written approvals from OCM must be obtained prior to the commencement of any individual activity proposed under the authority of this General Permit.

D. Should OCM deem that they may have an interest in the project, prior to issuance of authorization for individual activities under this General Permit, the following agencies shall have a ten (10) calendar day period to review the proposed activity: the Louisiana Departments of Wildlife and Fisheries; Health and Hospitals; Environmental Quality; Office of Coastal Protection and Restoration; Culture Recreation, and Tourism; Transportation and Development; State Land Office; and the approved Parish Local Program, if applicable. OCM may issue authorization for the activity after the ten-day review period or after receiving notification by each of the agencies, either in writing or by telephone, that there are no objections to the proposed activity. However, the final decision for the issuance of authorization for individual activities under the authority of this General Permit, to issue approval with modifications or additional Operating Conditions, or to deny approval for the proposed work, shall be made by the Secretary of DNR.

E. Should it be deemed in the public interest, the Secretary shall deny authorization to perform work under the authority of this General Permit and require the applicant to obtain an individual CUP for the proposed activity.

F. Unless otherwise specified in the General Permit or specific work approval, authorization for work under the authority of this General Permit shall expire if the work is not initiated and completed within two (2) years from the date of issuance of the original written approval. Initiation of the Coastal Use, for purposes of this General 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, the permittee must, in good faith and with due diligence, reasonably progress toward completion of the project once the Coastal Use has been initiated. All activities authorized under the authority of this General Permit must be completed within 90 days of initiation of the work, with a one-time mobilization, unless a different time schedule is specifically approved by OCM.

G. The Term of this General Permit shall be five (5) years from the date of issuance, except as provided for in LAC 43 Subpart 723.E.3.b. The term of individual authorizations issued under the authority of this General Permit shall be two years from the date of issuance of the original individual authorization.

H. The permittee shall notify OCM of commencement of work which is authorized under the authority of this General Permit. The permittee shall notify OCM by either providing the information in writing or entering the information through the online system, within three (3) days of the date of initiation of the authorized work.

I. Issuance of approval under the authority of this General Permit does not relieve the applicant of obtaining other lawfully required permits (local, state, or federal) before commencing work.

J. The permittee shall allow representatives of OCM or authorized agents to make periodic, unannounced inspections to assure the activity is being performed in accordance with the conditions of the permit.

K. Work carried out under the authority of this General Permit shall conform to all appropriate state and federal safety regulations.

L. An authorization issued under the authority of this General Permit may not be transferred to another party without giving prior notice to, and receiving written approval from, the OCM Administrator. A transfer form can be downloaded at http://dnr.louisiana.gov/crm/coastmgt/cup/cup.asp, or can be provided upon request.

M. Work carried out under the authority of this General Permit shall be performed in full compliance with the rules and regulations of DNR which exist at the time of approval for that work.

II. Operating Conditions

A. All logs and stumps unearthed during dredging shall be buried beneath the bottom of the waterway or removed to a disposal site on land.

B. The activities covered by this General Permit shall not adversely affect any threatened or endangered species. Adverse impacts on fish, wildlife and the environment shall be minimized.

C. This General Permit does not convey any property rights, mineral rights, or exclusive privileges, nor does it authorize injury to property.

D. The permittee shall notify the landowner(s), upon whose property the proposed work shall occur, of the fact that the application will be submitted and also provide the results of OCM's review. Copies of the initial notification letters sent to the landowner(s) shall be provided to OCM with the authorization request.

E. If archaeological, historical or other cultural resources are encountered during activities authorized under the authority of this General Permit, work shall cease and the applicant shall immediately notify the Division of Archaeology, Louisiana Department of Culture, Recreation, and Tourism (CRT) (P. O. Box 44247, Baton Rouge, LA 70804) and OCM (P. O. Box 44487, Baton Rouge, LA 70804-4487, (225) 342-7591). Work may not resume until written approval is obtained from CRT.

F. If the project authorized under the authority of this General Permit is located on the aboriginal homelands of the Chitimacha Tribe of Louisiana and/or at any time during the course of work any traditional cultural properties are discovered, the permittee shall immediately contact the Chitimacha Tribe of Louisiana (P.O. Box 661, Charenton, LA 70523 Phone (337) 923-7215).

G. The 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 not be discharged into any of the streams or adjacent waters of the area without authorization from DHH and/or LDEQ 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 and LDEQ regulations. 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 (DHH) for purpose of review and approval prior to any utilization of such provisions.

H. The permittee shall comply with all applicable laws regarding the need to contact the Louisiana One Call System ([800] 272-3020) to locate any buried cables and pipelines.

I. The permittee is subject to all laws related to damages which are demonstrated to have been caused by the permitted activities.

J. All activities involving any discharge of pollutants must be consistent with applicable water quality standards and any necessary permits issued through the Department of Environmental Quality/Office of Water Resources must be obtained.

K. Dredging and/or filling activities authorized under the authority of this General Permit shall not exceed the volume specified in the work statement of the individual authorization.

L. Activities authorized under the authority of this General Permit shall be carried out on a one-time basis, during a one-time mobilization, except in situations where sequential phases (e.g., use of different types of dredging techniques, or phased construction) may be specified in the work statement of the individual authorization. Additional authorizations may be necessary for maintenance activities or work beyond the scope of the authorized activities.

M. If the project authorized under the authority of this General Permit is located on the aboriginal homelands of the Chitimacha Tribe of Louisiana and/or at any time during the course of work any traditional cultural properties are discovered, the permittee shall immediately contact Kimberly S. Walden (Culture Director) or Melanie Aymond (Research Coordinator at (337) 923-9923 or (337)-923-4395. Office hours are Monday through Thursday 7:30 AM – 5:00 PM and on Fridays from 7:30 Am and 11:30 AM. If traditional cultural properties are discovered on the weekend or after business hours, the notification shall be made the next business morning.

N. The permittee shall provide notification of the proposed activity to any oyster lease holder who may be affected by it prior to commencement of the activity. The applicant shall provide the OCM with copies of the notification letters prior to the issuance of authorization under this General Permit.

O. The permittee is subject to all applicable state laws related to damages which are demonstrated to have been caused by the permitted action.

III. This General Permit does not apply in the following locations without prior written authorization from the appropriate agencies:

A. Work under the authority of this General Permit shall not be approved in the following areas, unless the applicant first provides a letter of no objection from the Louisiana Department of Wildlife and Fisheries (LDWF):

1. Within the boundaries of a LDWF owned or managed Wildlife Management Area or Wildlife Refuge.

2. Within 1,000 feet, or other distance deemed appropriate by LDWF, of a known bald eagle nest.

3. Within 1,500 feet, or other distance deemed appropriate by LDWF, of a known bird rookery area.

4. Within the officially designated critical habitat of a threatened or endangered species.

5. Within 500 feet of an oyster lease.

6. Within one-quarter mile of the boundary of or within a currently productive oyster seed ground, oyster seed reservation or public oyster harvesting area.

B. Work under the authority of this General Permit shall not be approved in the following areas, unless the applicant first provides a letter of no objection from the Louisiana Department of Culture, Recreation, and Tourism:

1. Within a State Park, State Recreation Area or State Commemorative Area; or

2. Within any known historic or archaeological site or within the boundaries of an historical district.

C. Within 1,000 feet of an established navigation channel, fairway or anchorage area constructed, owned, operated, or maintained by federal, state or local governments, or with federal, state or local government funds unless:

1. The request is accompanied by written consent from each appropriate agency or governing body; or

2. There is a physical barrier that isolates the project site from the navigation channel, fairway or anchorage area.

D. Within 1,500 feet of the Mississippi River and Atchafalaya River levees or within 300 feet of all other levees or other flood control structures which are owned, operated or maintained by the federal government, or with federal funds, without the written consent of each appropriate agency or governing body.

E. Within 1,000 feet of levees or other flood control facilities constructed, owned, operated or maintained by state or local governments, or with state or local government funds, without the written consent of each appropriate agency or governing body.

F. Within 1,500 feet of a barrier island, barrier island feature, chenier or other coastal feature without the approval of the appropriate resource agencies that OCM determines to have programmatic interests.

IV. This General Permit does NOT apply in the following situations:

A. Within 1,000 feet of an area determined to be a unique ecological feature by the Secretary of DNR.

B. Within Special Significance Areas designated pursuant to R.S. 49:214.41(F) and those rules and regulations adopted thereunder, where applicable.

C. Within the boundaries of a national park or monument, national wildlife refuge or established buffer zone for any such national site.

D. Within the boundary of a currently productive oyster seed ground, oyster seed reservation or public oyster harvesting area.

V. Special Conditions

A. Individual Mitigation Projects

1. Mitigation proposals submitted for authorization under this General Permit shall be accompanied by a statement declaring that the proposed activity will be used as mitigation and the Coastal Use Permit number for which the mitigation is required; a definition of the physical boundaries of the mitigation proposal and the boundaries of the area to be benefitted; and a specific description of the wetland creation, restoration, and/or enhancement measures to be implemented.

2. Written approval from the landowner(s) of the land on which the mitigation project is proposed must accompany the permit application. Such written approval shall provide permission for OCM personnel to make periodic announced or unannounced site inspections before, during, and after implementation of the mitigation activity.

3. The work authorized under the authority of this General Permit is to compensate for unavoidable adverse impacts to wetlands associated with the implementation of activities authorized by an OCM General Permit or Coastal Use Permit.

4. Examples of work that may be eligible for approval under this General Permit include but are not limited to:

   a. Earthen plugs.
   b. Constructing breaks in levees (e.g. splays) for the purpose of introducing sediments to create marsh.
   c. Breakwaters constructed in open water along eroding shorelines.
   d. Fill operations in shallow open water or broken marsh areas for the purpose of marsh creation, restoration, protection and/or enhancement.
   e. Wetland vegetation plantings.
   f. Water control structures.
   g. Other wetland enhancement, creation, protection, and/or restoration projects subject to the approval of the Secretary.

B. Mitigation Banks/Areas

1. Permittee shall submit a complete Coastal Use Permit application and shall include with the application a Prospectus. The Prospectus will include a detailed description of the mitigation bank, a definition of the physical boundaries, and an ecological description. The Prospectus will:

a. Describe the proposed construction work required to develop the bank and its feasibility.
b. Identify both current and proposed habitat type(s).
c. Identify the amount (acres) of each proposed habitat type that will be provided.
d. Identify both the current state of the hydrology of the site and any proposed improvements to hydrology.
e. Identify long term maintenance and monitoring requirements.
f. Identify adjacent site conditions to include a summary of land use, vegetation and hydrology.
g. Identify any potential threats to the bank site or resource type the bank intends to provide and/or protect.

2. Permittee shall not sell any credits associated with this authorized mitigation bank until final approval has been received from the Interagency Review Team and a Mitigation Banking Instrument has been executed. Once executed, the Mitigation Banking Instrument shall become a part of the administrative record and an enforceable provision of this permit.

3. The permittee shall provide proof of notification to adjacent landowner(s) whose property may be adversely impacted by changes in features such as hydrology and/or land use, or potential access issues.

4. The permittee shall provide proof of notification to the appropriate parish agencies for proposed activities.

5. The permittee/Sponsor shall cease credit sales if the OCM determines that the permittee/Sponsor is in violation of the authorization or if the Interagency Review Team determines that the permittee/Sponsor is in default of any provision of the approved Mitigation Banking Instrument. The sale of credits shall be suspended until the appropriate deficiencies have been remedied and approved by the Interagency Review Team.

C. The permittee shall notify OCM of the completion date of the authorized mitigation project within fifteen (15) days of that date.

D. Work carried out under the authority of this General Permit must be maintained in conformance with the plans and specifications of the individual authorization.

E. The permittee shall maintain compensatory mitigation projects and mitigation banks/areas authorized under the authority of this General Permit for a minimum of twenty (20) years for marsh habitats and fifty (50) years for forested habitats, or as otherwise specified in the individual authorization.

F. The compensatory mitigation plan/mitigation bank shall be developed prior to issuance of approval under this General Permit. The expiration of the term of this General Permit does not absolve the permittee, its transferees, or assignees from the obligation and responsibility of implementing and maintaining the compensatory mitigation plan/mitigation bank.

G. Wetlands that are not specifically part of the mitigation plan/mitigation bank authorized under this General Permit but are disturbed during project implementation shall be restored to pre-project elevations and conditions, including vegetation. This does not preclude the necessity of obtaining a Coastal Use Permit for the restoration.

H. All seedlings must be obtained from a registered, licensed Louisiana nursery grower. The contractor must obtain, and provide to DNR/OCM, certification from the contracting nursery that plant materials are of a Louisiana ecotype species and have been acclimated to Louisiana climatic and habitable conditions as least ninety (90) days prior to planting.

I. Dredged and/or fill material used for the work authorized under this General Permit shall be clean and free of waste material, construction materials, metal products, chemical pollutants and other debris or contaminants.

J. Fill material required for implementation of the proposed mitigation projects/ mitigation banks may be obtained from OCM-approved non-wetland areas, including non-vegetated waterbottoms, or OCM-approved off-site sources.

M. Final OCM approval for individual compensatory mitigation projects/mitigation banks authorized under this General Permit shall, at a minimum:

a. Specify the period of operation and maintenance of the mitigation proposal/mitigation bank.
b. Specify monitoring responsibilities, and
c. Specify remedial actions for situations where the permittee fails to perform necessary remediation, operation, or maintenance of the mitigation proposal/mitigation bank.

I. Definitions

Coastal Use Permit - a permit required by R.S. 49:214.30 of the State and Local Coastal Resource Management Act (SLCRMA). The term does not mean or refer to, and is in addition to, any other permit or approval required or established pursuant to any other constitutional provision or statute.

Compensatory Mitigation - replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of ecological values caused by a permitted activity.

Ecological Value - the ability of an area to support vegetation and fish and wildlife populations.

Mitigation - all actions taken by a permittee to avoid, minimize, restore, and compensate for ecological values lost due to a permitted activity.

Wetlands - for the purposes of §724 and this General Permit (as defined in R.S. 49:214.41), an open water area or an area that is inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, but specifically excluding fastlands and lands more than five feet above sea level which occur in the

designated coastal zone of the state. Wetlands generally include swamps, marshes, bogs and similar areas.

Permittee - shall refer to companies or individuals, or their successors and assigns, who have received any sort of authorization (CUP, GP, emergency authorization) from OCM.

Mitigation Banking Instrument - the document that outlines the physical and legal characteristics of the establishment, operation, and maintenance of the wetland mitigation bank.

Sponsor – the entity responsible for establishing, and in most circumstances operating Mitigation Bank.

Interagency Review Team – the group of state and federal resource agencies that evaluates mitigation issues and that develops, reviews, and oversees the implementation and operation of mitigation banks.

**********END OF CONDITIONS**********

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

I affix my signature and issue this permit this 24th day of March, 2011.

DEPARTMENT OF NATURAL RESOURCES

Karl L Morgan

Karl Morgan, Acting Administrator
Office of Coastal Management

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