

STATE OF GEORGIA
COUNTY OF GLYNN
Georgia Department of Natural Resources
Coastal Resources Division
Pursuant to Georgia’s “Shore Protection Act,” O.C.G.A. §§ 12-5-230 through 12-5-248

CONSENT ORDER

)	Consent Order No.
)	SPA-2020-001
)	
IN RE:)	
Sea Island Acquisition, LLC,)	
Respondent.)	

WHEREAS, the Georgia Department of Natural Resources (hereinafter “the Department”) is vested with authority to enforce Georgia’s “Shore Protection Act,” O.C.G.A. §§12-5-230 through 12-5-248 (hereinafter “the Act”) and make reasonable inspection of jurisdictional lands to investigate reported violations of the Act; and

WHEREAS, the Georgia General Assembly at O.C.G.A. §12-5-231 declared, in part, that the management of the sand sharing system has more than local significance, is of equal importance to all citizens of the state, is of statewide concern, and consequently is properly a matter for regulation under the police power of the state; and

WHEREAS, the Act at O.C.G.A. §12-5-237(a) provides: “No person shall construct or erect any structure or construct, erect, conduct, or engage in any shoreline engineering activity or engage in any land alteration which alters the natural topography or vegetation of any area within the jurisdiction of this part, except in accordance with the terms and conditions of a permit...”; and

WHEREAS, the Act at O.C.G.A. §12-5-232(17)(A) defines in part shoreline engineering activity as “an activity which encompasses any artificial method of altering the natural topography or vegetation of the sand dunes” which definition includes but is not limited to activities such as grading and clearing vegetation, artificial dune construction, beach restoration or renourishment, erosion control activities, shoreline stabilization activities, and the construction and maintenance of pipelines and piers; and

WHEREAS, the Department has broad authority to take enforcement action, which may include imposition of a civil penalty, injunctive relief, and/or issuance of an administrative order, if the Department determines that any person is violating any provision of the Act or the regulations adopted pursuant to the Act, or of a permit issued under the Act; and

WHEREAS, Respondent is the record owner of all that certain lot, tract or parcel of land situate, lying and being in the 25th GM District, Glynn County, Georgia on Sea Island abutting the Atlantic Ocean on the east and Black Banks Creek to the west that is commonly known as “The Reserve;” and

WHEREAS, Respondent submitted a complete Shore Protection Committee permit application and on December 11, 2015, the Shore Protection Committee issued Permit #438 to the Respondent; and

WHEREAS, Permit #438 authorizes the construction and maintenance of a T-shaped groin, beach nourishment, and dune creation at The Reserve; and

WHEREAS, Standard Permit Condition 3 of Permit #438 provides that all plans, documents, and materials contained in the application for Permit #438 are a part of the permit and no change or deviation from the plans, documents, and materials is permitted without prior notification and approval by the Department or Committee; and

WHEREAS, third parties appealed the Shore Protection Committee's issuance of Permit #438 and the Committee's action was affirmed by the Office of State Administrative Hearings and on judicial review by the Fulton County Superior Court; and

WHEREAS, after issuance of Permit #438 Sea Island was hit by two hurricanes (Matthew and Irma); and

WHEREAS, as a result of those storms, The Reserve and much of Sea Island beach experienced additional significant erosion and shoreline retreat; and

WHEREAS, Respondent also obtained a permit from the U.S. Army Corps of Engineers to construct and maintain the T-shaped groin, beach nourishment and dune creation at The Reserve and to construct and maintain the beach nourishment project to place up to 2,500,000 cy of beach quality sand via hydraulic dredge from an offshore borrow area along with the creation of constructed dunes and the maintenance and recycling of sand (SAS-2015-00742, issued 9/12/2018) (the "Corps Permit"); and

WHEREAS, Respondent submitted a complete Shore Protection Committee permit application and on June 29, 2018 the Shore Protection Committee issued Permit #461 to the Respondent; and

WHEREAS, Permit #461 authorizes a beach nourishment project that includes the placement of up to 2,500,000 cubic yards of beach quality sand via hydraulic dredge from an offshore borrow area along with the creation of constructed dunes and the maintenance and recycling of sand; and

WHEREAS, Standard Permit Condition 3 of Permit #461 provides that all plans, documents, and materials contained in the application for Permit #461 are a part of the permit and no change or deviation from the plans, documents, and materials is permitted without prior notification and approval by the Department or Committee; and

WHEREAS, given the significant erosion, Respondent commenced work authorized by Permit #438 and #461 as soon as it was able to, after issuance of all necessary permits and after the close of sea turtle hatching season, which was on or about November 1, 2018; and

WHEREAS, Permit #438 includes permit drawings that authorized construction of the T-head groin that commenced at the then-existing scarp, extended seaward approximately 350 feet, and the T-head was located landward of the existing 500 foot south groin to create a taper relative to

the seaward limit of the existing 500 foot south groin, consistent with the Corps of Engineers Manual as cited by the Respondent in their application; and

WHEREAS, given the recent erosion, construction of the groin replicating the drawings in Permit #438 would have left a gap between the landward end of the groin and the location of ordinary high water as it existed at the time of construction; and

WHEREAS, prior to construction of the groin tie-in and the access ramp, Respondent discussed the erosion that had occurred after issuance of Permit #438 with the Coastal Resources Division staff and Respondent expressed the view that minor changes to the groin and access ramp relative to the drawings were appropriate; and

WHEREAS, Coastal Resources Division staff advised Respondent that Permit #438 required Respondent to submit any proposed deviations from the permitted plans for the groin and access ramp to the Department for review and approval prior to construction; and

WHEREAS, upon request for review and in accordance with standard permit conditions, the Department may approve minor changes to the location of a permitted activity or other minor modifications to address changed conditions resulting from continued erosion; and

WHEREAS, in March 2019 Respondent reported to Coastal Resources Division staff that its construction of the groin tie-in and access ramp deviated from the drawings approved by Permit #438; and

WHEREAS, although Respondent constructed the T-head groin as permitted, Respondent deviated from the drawings in Permit #438 by constructing a rock groin tie-in, which extended landward beyond the landward limit of the groin shown in the permit drawings; and

WHEREAS, Respondent also deviated from the drawings in Permit #438 by constructing an access ramp on the south side of the T-head groin that varied in alignment from the access ramp shown in the permit drawings; and

WHEREAS, SPA Permit #438 Standard Condition Four (4) provides: No further encroachment or construction shall take place within State jurisdiction, except as permitted by the Shore Protection Committee. Any modification of the plans or structure in the jurisdictional area must be reviewed and approved by the Department prior to construction; and

WHEREAS, SPA Permit #438 Standard Condition Six (6) provides: The exact location and configuration of this project must be reviewed onsite and approved by Department staff immediately prior to beginning construction. Minor changes to the location may be allowed or required in areas that have eroded or accreted to the original jurisdictional determination; and

WHEREAS, Respondent did not submit a written request for review and approval or obtain written approval from the Department before making modifications to the plans for the T-head groin by constructing the rock groin tie-in; and

WHEREAS, Respondent did not submit a written request for review and approval or obtain written approval from the Department before making modifications to the plans for the access ramp; and

WHEREAS, the groin tie-in was buried under the beach nourishment and constructed dunes and has resulted in no apparent adverse impacts to the sand-sharing system; and

WHEREAS, the access ramp as drawn on permit drawings would have been too far seaward to function as intended; and

WHEREAS, work under Permits #438 and #461 was underway at The Reserve area when it was suspended on or before April 30, 2019, because of the start of turtle nesting season, and the condition of both the groin tie-in and access ramp has remained unchanged since that date; and

WHEREAS, on July 10, 2019 staff of the Coastal Resources Division received an email from Respondent's agent containing three documents including two Army Corps of Engineers documents dated June 28, 2019 and July 5, 2019, respectively, and a third document that was a construction drawing generally depicting the as-built groin, groin tie-in and access ramp, labeled "SEA ISLAND RESERVE GROIN," stamped "For Review Only," and revised June 27, 2019; and

WHEREAS, the Army Corps of Engineers document dated June 28, 2019 states in regard to the Corps' review of the access ramp, "The Corps has determined that the deviation from the approved drawings is minor and that it did not change any of the effect determinations made during the evaluation of the application."; and

WHEREAS, based upon review of the June 27, 2019 construction drawing and a Coastal Resources Division site visit on July 26, 2019, staff calculated the additional impact of the activities conducted by the Respondent within the State's Shore Protection Act jurisdiction to be approximately 4,050 square feet as a result of the groin tie-in and 1,125 square feet from the access ramp, totaling approximately 5,175 square feet; and

WHEREAS, Respondent contends that the groin tie-in and the adjustments to the access ramp are minor adjustments to the permitted structures that were appropriate because of erosion in the project area after issuance of Permit #438 and are either allowed by the Permit or are minor modifications that the Department staff has discretion to approve under Standard Conditions Four and Six of SPA Permit #438; and

WHEREAS, upon review of the information, Coastal Resources Division staff concluded that the groin and access ramp were not constructed as permitted by the Shore Protection Committee under Permit #438 and were not minor deviations of the permit; and

WHEREAS, during the July 26, 2019 site visit Coastal Resources Division staff discovered that the access ramp had been constructed, in part, with inappropriate and unauthorized materials such as brick and other construction related debris; and

WHEREAS, the Respondent: (i) owns the contiguous down drift real property (where Respondent has placed over 70 acres into a Conservation Easement); (ii) Respondent conducts extensive activities (daily during turtle nesting season) in support of wildlife habitat in the area of the Conservation Easement by use of the access ramp; (iii) under Permit #461, has placed more than 1,000,000 cubic yards of sand into the sand-sharing system with extensive benefits to the project area and beyond; (iv) self-reported the modified groin structure and access ramp; and (v) has at

all times offered to make any corrective repairs to the groin structure and access ramp as directed by the Department; and

WHEREAS, Respondent's activities related to SPA Permits #438 and #461 are ongoing and not yet complete and the Department will continue to monitor the Respondent's activities to ensure they comply with SPA Permits #438 and #461; and

WHEREAS, the Department and Respondent have reached this negotiated settlement of all disputed claims relative to Respondent's ongoing construction in the area of The Reserve under SPA Permit #438, including work performed related to the access ramp and groin tie-in; and

WHEREAS, upon review of the evidence in this matter, the applicable law, and careful consideration of the contentions of the Respondent, the Department finds this Consent Order is in the best interests of the citizens of this state.

NOW, before the taking of testimony and without adjudicating the merits of the parties' positions in this matter, they hereby resolve the issues in this matter by this Consent Order and the Department hereby orders, and the Respondent agrees, as follows:

THEREFORE, it is hereby ordered and agreed that:

1. Respondent shall not engage in any shoreline engineering activity or any land alteration which alters the natural topography or vegetation in the State's shore jurisdiction in the area known as The Reserve, except in accordance with the specific terms of this Consent Order, a Department approved Corrective Action Plan, or other written authorization from the Department. This prohibition from engaging in shoreline engineering activity or land alteration which alters the natural topography or vegetation in the State's shore jurisdiction in the area known as The Reserve will be effective notwithstanding the authorizations in SPA Permits #438 or #461 until the Respondent has satisfied the terms of this Consent Order. The Department will notify the Respondent in writing when the terms of this Consent Order have been satisfied.
2. To ensure protections for sea turtles, Respondent shall continue to comply with the requirements in Permit #438, Special Conditions 10, 11, 12 and 13, and Permit #461, Special Conditions 6,7, and 8.
3. Within thirty (30) days of signing this Consent Order, Respondent shall submit to the Department for approval a Correction Action Plan (CAP). The CAP shall describe in detail the Respondent's plan for removal of the groin tie-in and access ramp and placing the affected areas in a condition consistent with the requirements of Permits 438 and 461.
4. Respondent shall notify the Department upon completion of the CAP so the Department may conduct a site visit and confirm the removal of the groin tie-in and access ramp has been performed satisfactorily.
5. Respondent may submit a written request to construct an access ramp to the Department. If the department determines the request to be a minor change that is consistent with Permit #438, the Department will authorize the request provided,

however, that construction on the access ramp may not commence until the Respondent has fully complied with the approved CAP and the Department has conducted a site visit and confirmed the satisfactory completion of the CAP.

6. Respondent shall pay a fine of \$40,000.00 by check made payable to the Georgia Department of Natural Resources within five (5) days of signing this Consent Order.
7. Respondent shall inform all employees, agents, contractors, and subcontractors involved in activities within a project area as to Respondent's obligations and duties with respect to the jurisdictional area of the Act, as set forth in the Act, the rules and regulations of the Department, and the terms and conditions of this Consent Order.
8. This Consent Order shall not constitute a finding, adjudication or evidence of any legal liability or of a violation of any law, rule, or regulation by Respondent, nor does Respondent admit to any factual allegation contained herein or to any violations of State law. Respondent likewise does not admit to any liability to the State. Further, this Consent Order is not intended to create and shall not be construed or otherwise deemed to recognize any claim, right, liability, estoppel, or waiver of rights of any third party or parties.
9. This Consent Order shall not constitute a waiver of any rights relating to enforcement actions of the Department under the Act, the rules and regulations of the Department, or any other state or federal law for any additional alleged violations not addressed by the Parties in this Consent Order. This Consent Order shall not constitute a covenant not to take enforcement action against the Respondent for failure to fully satisfy the conditions set forth above.
10. By agreement of the parties, this Consent Order shall be immediately considered final and effective, and shall not be appealable, and the Respondent hereby waives any hearing on the terms and conditions of this Consent Order or any portion thereof.

It is so ORDERED, CONSENTED, AND AGREED, this 4th day of March, 2020.

FOR RESPONDENT:

By: 

SCOTT STEILEN, CEO

FOR THE DEPARTMENT:

By: 

JILL ANDREWS, Chief
Coastal Resources Division
Georgia Department of Natural Resources
For Commissioner Mark Williams

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