



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
1520 ROYAL PALM SQUARE SUITE 310
FORT MYERS, FLORIDA 33919

Fort Myers Regulatory Office
SAJ-2009-02645(LP-BEM)

MAY 09 2012

Florida Gulf Coast University
C/o David Ceilley
10501 FGCU Boulevard South
Fort Myers, FL 33965-6565

Dear Mr. Ceilley:

This is in reference to your request for a Department of the Army (DA) permit to perform work in or affecting waters of the United States. If you determine that the permit provided is acceptable in its entirety and you have chosen to proceed with the authorized activity, then upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), you are authorized under a Letter of Permission

to maintain 25 existing square meter native tape grass (*Vallisneria americana*) planting plots and cages at sites 1 and 2 and install one large cage (4 cages total) measuring six (6) meters by two (2) meters and associated plantings at sites 3, 4, 5, and 6. The cages are constructed of PVC and mesh and will be anchored with plastic PVC into the sediment. A metal tag will be attached to each cage for identification along with a permanent marker identifying the treatment. PVC pipe will be installed along the perimeter of the study site with reflective tape around the top to help identify the restoration boundaries. The cages are expected to remain in place for through September 2013.

at 6 different sites within the Caloosahatchee River east of Franklin Lock (see below coordinates, section, township and ranges).

Geographic Position: Site #1 26.722678, -81.687317
Section 23, Township 43 S, Range 26 E

Site #2 26.719169, -81.666542
Section 24, Township 43 S, Range 26 E

Site #3 26.719111, -81.666
Section 24, Township 43 S, Range 26 E

Site #4 26.718833, -81.654333
Section 19, Township 43 S, Range 26 E

Site #5 26.720028, -81.651722
Section 19, Township 43 S, Range 26 E

Site #6 26.719083, -81.648361
Section 19, Township 43 S, Range 26 E

The project must be completed in accordance with the six (6) enclosed construction drawings, and the general and special conditions which are incorporated in, and made a part of, the permit.

Special Conditions:

1. **Reporting Requirements:** All reports, documentation and correspondence required by the conditions of this permit shall be submitted to the following address: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, 1520 Royal Palm Square Boulevard, Suite 310, Ft. Myers, FL 33919. The Permittee shall reference this permit number, SAJ-2009-02645 (LP-BEM), on all submittals
2. **Self-Certification Statement of Compliance:** Within 60 days of completion of the authorized work or at the expiration of the construction authorization of this permit, whichever occurs first, the Permittee shall complete the attached "Self-Certification Statement of Compliance" form (see Attachment B) and submit to the Corps. In the event that the completed work deviates, in any manner, from the authorized work, the Permittee shall describe, on the Self-Certification Form, the deviations between the work authorized by the permit and the work as constructed. Please note that the description of any deviations on the Self-Certification Form does not constitute approval of any deviations by the Corps.
3. **Navigation Assurance:** The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
4. **Manatee Construction Conditions:** The Permittee shall comply with the "Standard Manatee Conditions for In-Water Work (FWC 2011) provided in Attachment C of this permit.

If the work authorized is not completed on or before MAY 09 2012, authorization, if not previously revoked or specifically extended, shall cease and be null and void.

Instructions for Objecting to Permit Terms and Conditions: This letter contains an initial proffered permit for your proposed project/permit application. If you object to certain terms and conditions contained within the permit, you may request that the permit be modified. Enclosed you will find a Notification of Administrative Appeal Options and Process fact sheet and Request for Appeal (RFA) form. If you choose to object to certain terms and conditions of the permit, you must follow the directions provided in Section 1, Part A and submit the completed RFA form to the letterhead address.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria under 33 CFR Part 331.5, and that it has been received by the District office within 60 days of the date of the RFA. Should you decide to submit an RFA form, it must be received at the letterhead address by JUL 08 2012.

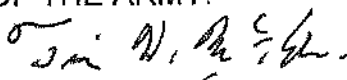
Should you have any questions regarding this letter, please contact the project manager Brianne McGuffie in writing the letterhead address, by telephone at 239-334-1975 x33, or by email at Brianne.McGuffie@usace.army.mil.

The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit the following link and complete our automated Customer Service Survey:

<http://per2.nwp.usace.army.mil/survey.html>.

Your input is appreciated – favorable or otherwise.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:


FOR
Alfred A. Pantano, Jr.
Colonel, U.S. Army
District Commander

Enclosures

REQUEST PERMIT TRANSFER: PERMIT NUMBER: SAJ-2009-02645

When the structures or work verified by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, the present permittee and the transferee should sign and date below. This document must then be provided to the U.S. Army Corps of Engineers, Regulatory Division, Post Office Box 4970, Jacksonville, Florida 32232-0019.

(TRANSFeree SIGNATURE)

(DATE)

(Name - Printed)

Lot/Block of site

(Street Address)

(City, State, and Zip Code)

Flood Plain Information:

This Department of the Army permit does not give absolute authority to perform the work as specified on your application. The proposed work may be subject to local building restrictions. You should contact the local office in your area that issues building permits to determine if your site is located in a flood-prone or floodway area, and if you must comply with the local building requirements mandated by the National Flood Insurance Program. If your local office cannot provide you the necessary information, you may request a flood hazard evaluation of the site by providing this office with a letter and a small scale map showing the location of the site. The request should be addressed to the **Chief, Flood Control and Floodplain Management Branch, Jacksonville District, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232-0019.** Phone inquiries may be made at 904-232-2515.

GENERAL CONDITIONS
33 CFR PART 320-330
PUBLISHED FR DATED 13 NOVEMBER 1986

1. The time limit for completing the work authorized ends on MAY 09 2017. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow a representative from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: FGCU		File Number: SAJ-2009-02645	Date: MAY 09 2012
Attached is:			See Section below
☒	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
☐	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
☐	PERMIT DENIAL	C	
☐	APPROVED JURISDICTIONAL DETERMINATION	D	
☐	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:

Project Manager as noted in letter

If you only have questions regarding the appeal process you may also contact:

**for process:
Stuart Santos 904-232-2018**

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

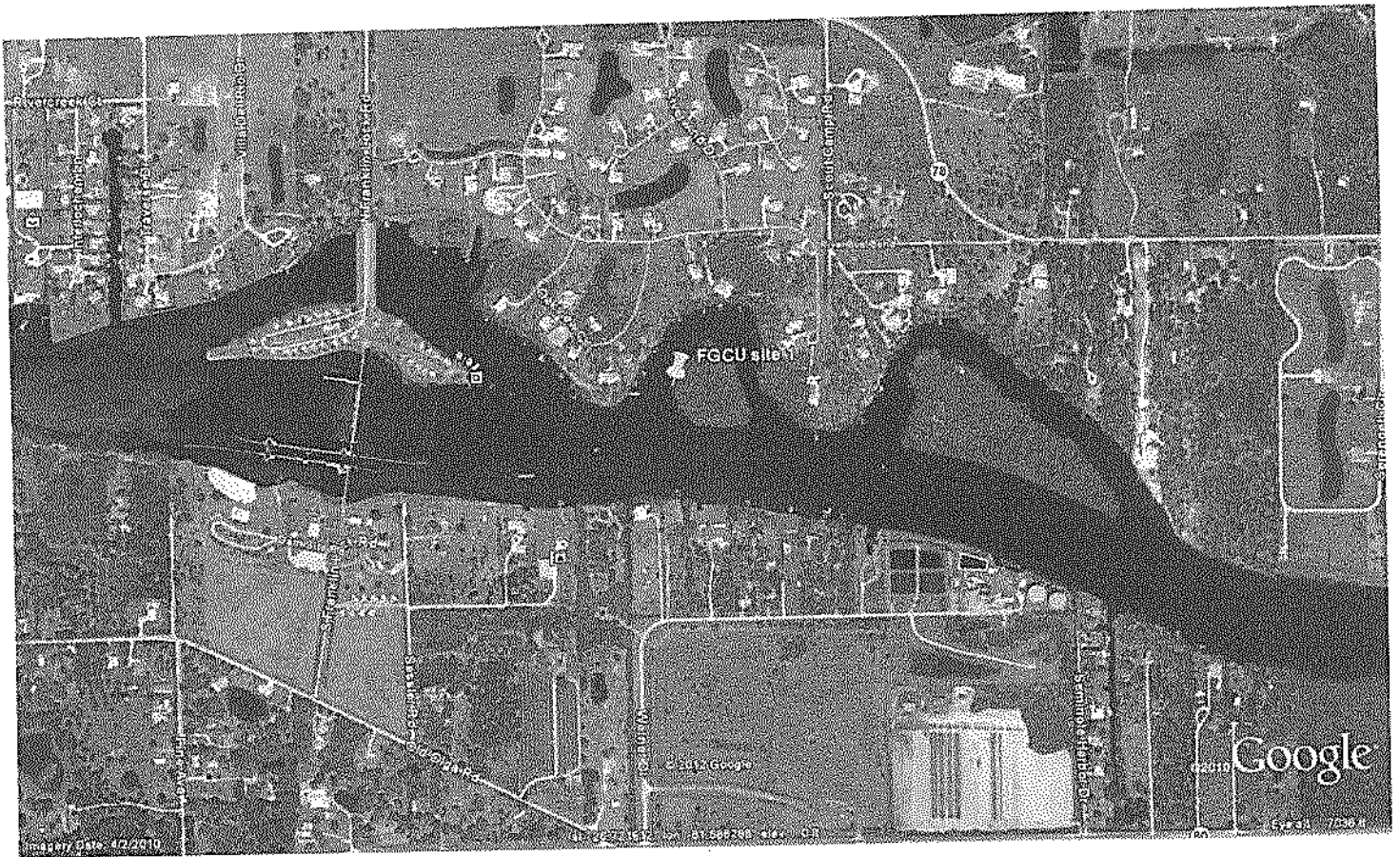
Date:

Telephone number:

SAJ-2009-02645(LP-BEM)
FGCU-Tape Grass Plantings and Cages

ATTACHMENT A: PERMIT DRAWINGS

6 pages





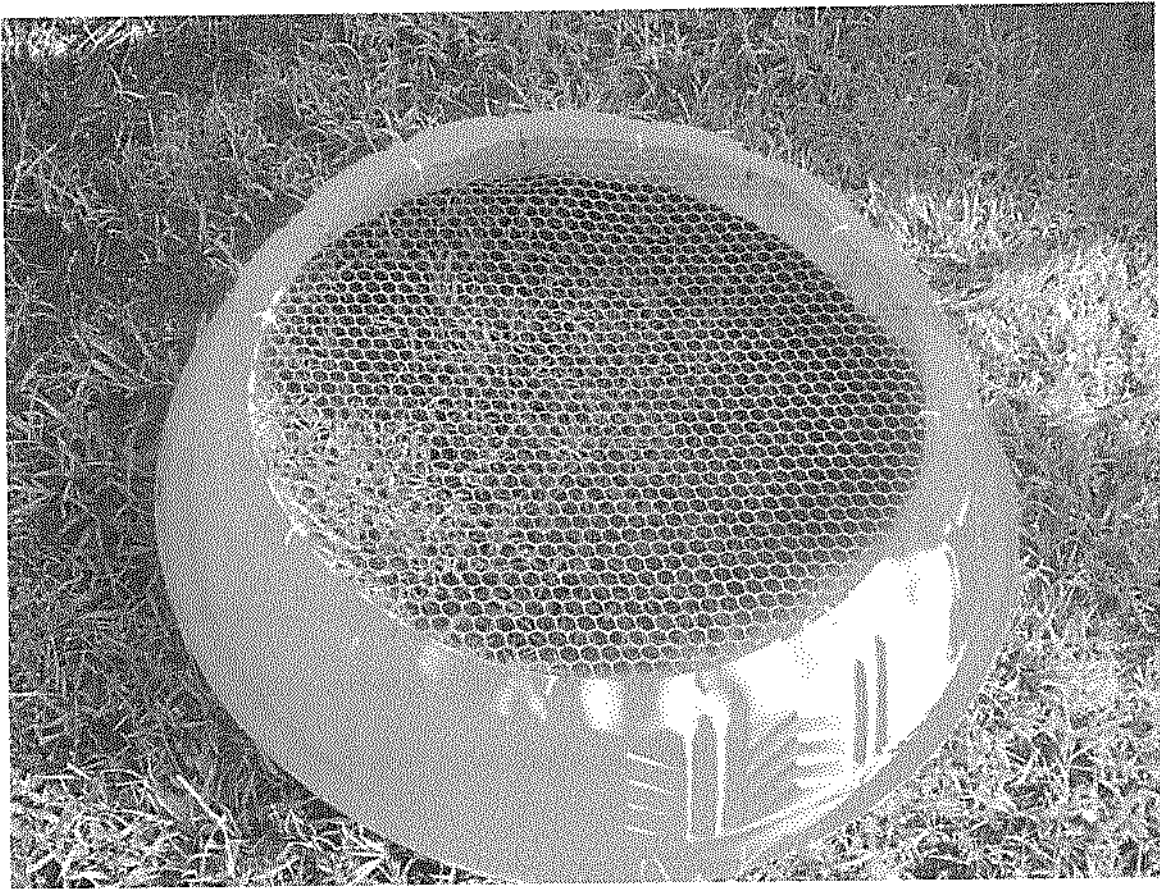


Figure 1. Circular Tape Grass (eel grass) *Vallisneria americana* enclosure device (Ceilley et al. 2003). Dimensions: 1-meter diameter x 0.25 meter in height The enclosure is constructed from a plastic wading pool with hexagonal plastic mesh connected with plastic cable ties.

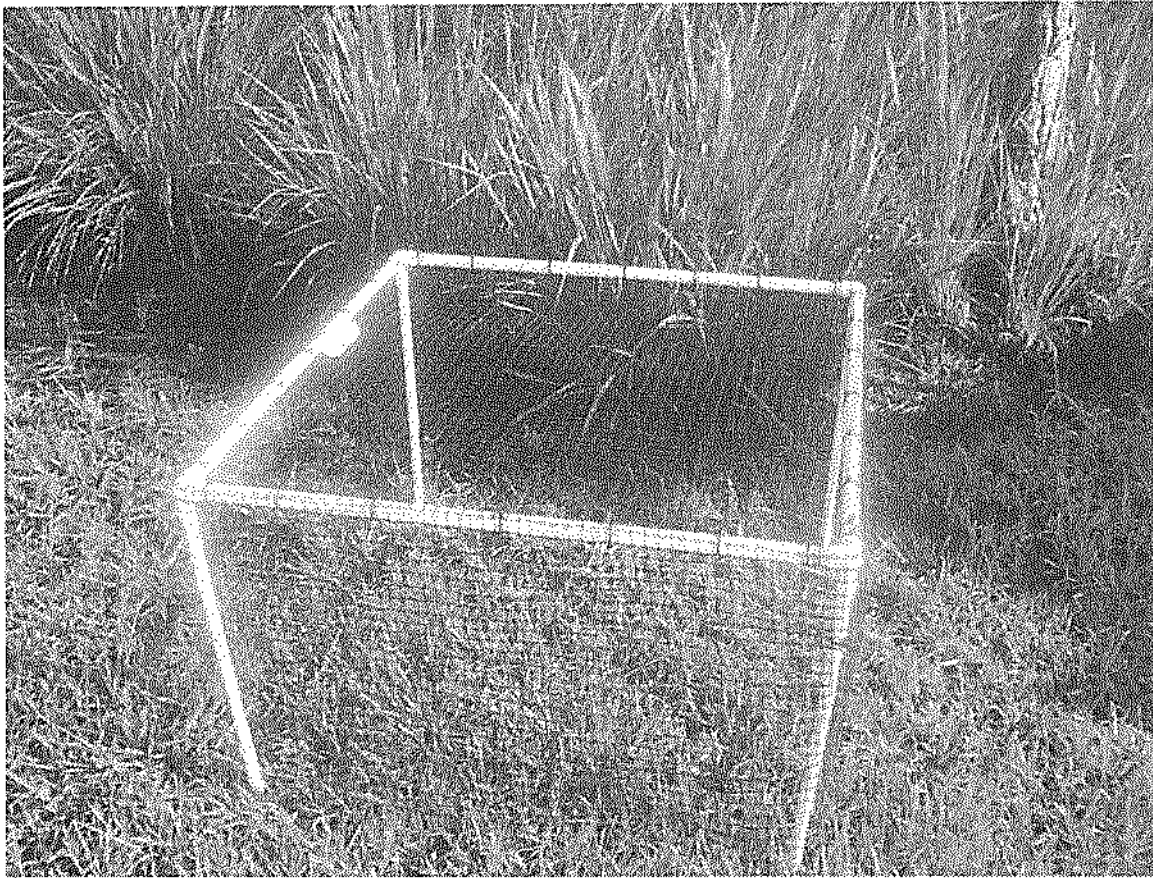
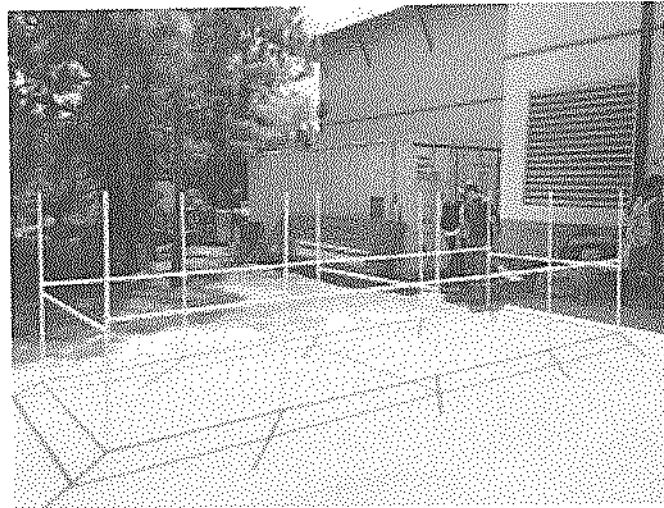


Figure 2. Square Tape Grass (eel grass) *Vallisneria americana* enclosure device to be tested with circular design. Dimensions: 1-meter square x 0.6 meter high to be anchored in sediment so that total height at installation will be approximately 0.5 meters. Construction consisted of PVC frame with 1 inch plastic mesh connected with plastic cable ties. Each enclosure was anchored with PVC pipes that are cut as stakes with holes drilled to attach cable ties.



Proposed 6m x 2m large cage (mesh not applied yet)



Figure 6 (top) FGCU research area sign and Figure 7 (bottom) restoration education sign about *Vallisneria americana* restoration for the benefit of fish and wildlife in the River.

SAJ-2009-02645(LP-BEM)
FGCU-Tape Grass Plantings and Cages

**ATTACHMENT B:
SELF-CERTIFICATION STATEMENT OF
COMPLIANCE**

1 page

SELF-CERTIFICATION STATEMENT OF COMPLIANCE

Permit Number: SAJ- 2009-02645(LP-BEM)

Permittee's Name & Address (please print or type): _____

Telephone Number: _____

Location of the Work: _____

Date Work Started: _____ Date Work Completed: _____

Description of the Work (e.g. bank stabilization, residential or commercial filling, docks, dredging, etc.): _____

Acreage or Square Feet of Impacts to Waters of the United States:

Describe Mitigation completed (if applicable): _____

Describe any Deviations from Permit (attach drawing(s) depicting the deviations):

I certify that all work, and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

Signature of Permittee

Date

SAJ-2009-02645(LP-BEM)
FGCU-Tape Grass Plantings and Cages

ATTACHMENT C: STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

3 pages

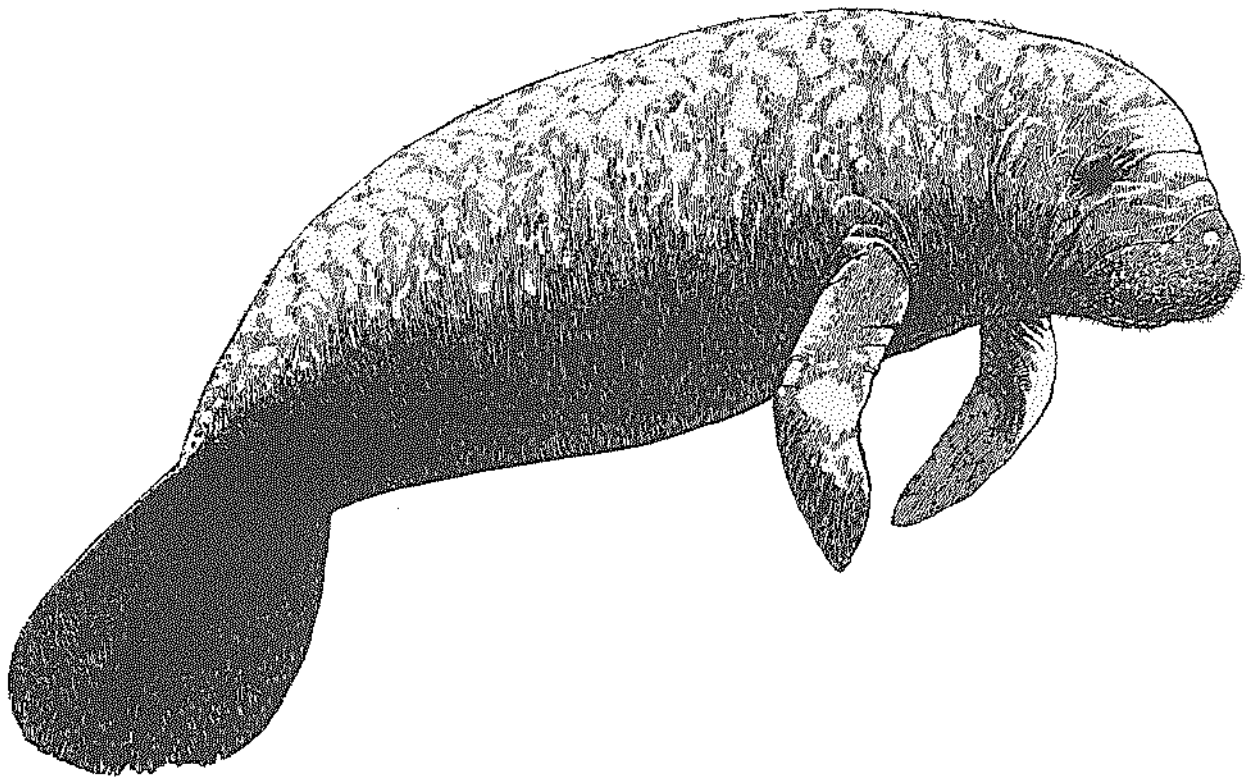
STANDARD MANATEE CONDITIONS FOR IN-WATER WORK 2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at ImperiledSpecies@myFWC.com
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 ½" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to the email address listed above.

Caution Boaters

Watch for Manatees



Wildlife Alert:
1-888-404-FWCC(3922)
cell *FWC or #FWC

**Report collisions, sick, dead or injured manatees
and any wildlife or boating law violations.**

CAUTION: MANATEE HABITAT

All project vessels

IDLE SPEED / NO WAKE

When a manatee is within 50 feet of work
all in-water activities must

SHUT DOWN

Report any collision with or injury to a manatee:

Wildlife Alert:

1-888-404-FWCC(3922)

cell *FWC or #FWC



SAJ-2009-02645(LP-BEM)
FGCU-Tape Grass Plantings and Cages

**ATTACHMENT D:
CZM CONSISTENCY/DEP EXEMPTION
VERIFICATION**

6 pages



Florida Department of Environmental Protection

South District Office
Post Office Box 2549
Fort Myers, Florida 33902-2549

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

VIA ELECTRONIC MAIL

March 21, 2012

Florida Gulf Coast University
c/o David Ceilley
10501 FGCU Blvd South
Fort Myers, FL 33965
dceilley@fgcu.edu

Re: Lee County - ERP
File No. 36-0296493-002

Dear Mr. Ceilley:

Thank you for your application to maintain 25 existing square meter native tape grass (*Vallisneria americana*) planting plots and cages at sites 1 and 2 and install one large cage (4 cages total) measuring six (6) meters by two (2) meters and associated plantings at sites 3, 4, 5, and 6. The cages are constructed of PVC and mesh and will be anchored with plastic PVC into the sediment. A metal tag will be attached to each cage for identification along with a permanent marker identifying the treatment. PVC pipe will be installed along the perimeter of the study site with reflective tape around the top to help identify the restoration boundaries. The cages are expected to remain in place through September 2013. The cages will be placed in the Caloosahatchee River, Class III Waters, Lee County, at the following locations:

- 1) 26° 43' 21.64"N, 81° 41' 14.34"W;
- 2) 26° 43' 9.01"N, 81° 39' 59.55"W;
- 3) 26° 43' 8.80"N, 81° 39' 57.60"W;
- 4) 26° 43' 7.80"N, 81° 39' 15.60"W;
- 5) 26° 43' 12.10"N, 81° 39' 6.20"W;
- 6) 26° 43' 8.70"N, 81° 38' 54.10"W;

This type of activity may require authorization for construction and operation of the project (regulatory authorization), unless otherwise exempt by statute or rule, authorization to use state-owned submerged lands (proprietary authorization), and federal authorization for works in waters of the United States through the State Programmatic General Permit (SPGP) program (SPGP IV). Your request has been reviewed for all three authorizations.

The authorizations you have been granted are listed below. Please read each section carefully. Your project **MAY NOT** have qualified for all three authorizations. If your project did not qualify for one or more of the authorizations, then that specific section will advise you how to obtain it. You may **NOT** commence your project without all three authorizations. **If you change the project from what you submitted, the authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact the Department prior to beginning your project if you wish to make any changes.**

REGULATORY REVIEW - EXEMPTION VERIFIED

Based on the information submitted, the Department has determined that the maintenance of 25 existing square meter native tape grass (*Vallisneria americana*) planting plots and cages at sites 1 and 2 and the installation of one large cage (4 cages total) measuring six (6) meters by two (2) meters and associated plantings at sites 3, 4, 5, and 6 is exempt, under Section 373.406(6) of the Florida Statutes (F.S.), from the need to obtain a regulatory permit under part IV of Chapter 373, F.S. This determination is made because the activity, in consideration of its type, size, nature, location, use, and operation, is expected to have only minimal or insignificant individual or cumulative adverse impacts on the water resources.

Therefore, the Department grants a *de minimis* exemption for the proposed activity under Section 373.406(6), F.S.

This exemption verification is based on the information you provided the Department and the statutes and rules in effect when the information was submitted. This verification will expire after one year, and will not be valid at any other time if site conditions materially change, the project design is modified, or the statutes or rules governing the exempt activity are amended. However, the activity may still be conducted without further notification to or verification from the Department after the one-year expiration of this verification, provided: 1) the project design does not change; 2) site conditions do not materially change; and 3) there are no changes to the statutes or rules governing the exempt activity. In the event you need to re-verify the exempt status for the activity after the one-year expiration of this verification, a new application and verification fee will be required. Any substantial modifications to the project design should be submitted to the Department for review, as changes may result in a permit being required.

PROPRIETARY REVIEW - GRANTED

Your project occurs on state-owned, submerged land and will require authorization from the Department to use these lands. The Department has reviewed your project as described above and on the documents and/or drawings attached to your application, and as long as the work performed is located within the boundaries as described and is consistent with the terms and conditions therein, we find your project qualifies for consent to use state-owned submerged lands. **As such, consider this letter to also constitute authorization to perform the activity. This consent is conditioned upon acceptance of and compliance with the attached General Consent Conditions.**

Consider this the authority sought under Section 253.77, Florida Statutes (F.S.), and Chapter 18-21, Florida Administrative Code (F.A.C.), to pursue this project.

SPGP (FEDERAL) REVIEW -NOT APPROVED

A copy of your notice was sent to the U.S. Army Corps of Engineers (Corps) for review. The Corps determined that your proposed activity as outlined in your application is **NOT in compliance with the Corps State Programmatic General Permit (SPGP IV-R1) effective July 25, 2011.** The Corps may require a separate permit. **Failure to obtain this authorization prior to construction could subject you to enforcement action by that agency.** For further information you should contact the Corps at 239-334-1975.

Authority for review - an agreement with the U.S. Army Corps of Engineers entitled "Coordination Agreement between the U.S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection State Programmatic General Permit, Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act."

This notice constitutes final agency action and is subject to the provisions of Chapter 120, F.S., which does not apply to the SPGP review.

ADDITIONAL INFORMATION

This letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity.

Please retain this letter. The activities may be inspected by authorized state personnel in the future to ensure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS

This letter acknowledges that the proposed activity is exempt from environmental resource permitting requirements under Section 373.406(6), F.S. and 40E-4.051, F.A.C., and qualifies for authorization to use sovereign submerged lands pursuant to Chapter 253, F.S., and Chapter 18-21, F.A.C. This determination is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., as provided below. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes only proposed agency action subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 21 days of receipt of this written notice. Petitions, filed by any persons other than the applicant and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

The petition must contain the information set forth above and must be filed (received by the clerk) in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. The petitioner shall mail a copy of the petition to the applicant at the applicant's address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing or pursue mediation as provided below within the appropriate time period shall constitute a waiver of those rights.

Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Because an administrative hearing may result in the reversal or substantial modification of this action, the applicant is advised not to commence construction or other activities until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time have expired and until the exemption(s) has(have) been executed and delivered.

This letter acknowledging that the proposed activity is exempt from environmental resource permitting requirements under Section 373.406(6), F.S., and 40E-4.051, F.A.C., and qualifies for to use sovereign submerged lands pursuant to Chapter 253, F.S., and Chapter 18-20, F.A.C., constitutes an order of the Department. Subject to the provisions of Section 120.68(7)(a), F.S., which may require a remand for an administrative hearing, the applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the order is filed with the Clerk of the Department. The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of the order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the order is filed with the Clerk of the Department.

Mediation is not available.

Complete copies of all documents relating to this determination of exemption are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, at Florida Department of Environmental Protection, South District Office, 2295 Victoria Avenue, Fort Myers, FL 33901.

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