



FLORIDA DEPARTMENT OF Environmental Protection

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Interim Secretary

South District
PO Box 2549
Fort Myers FL 33902-2549
SouthDistrict@FloridaDEP.gov

August 18, 2021

Mr. Douglas Bradshaw
Port and Marina Services Director
City of Key West
201 William St
Key West, FL 33040
dbradshaw@cityofkeywest-fl.gov

Re: Monroe County - ERP
BOT No. 440360555
Site No. 406657 / Project No. 397275
Key West Bight – Class III Waters
City of Key West - Bar Pilot Vessel Mooring Area
Parcel No. 0072082-002800 - 700 Front Street, Key West, 33041

Dear Mr. Bradshaw:

Enclosed is the fully executed Temporary Use Agreement (TUA) to provide the City of Key West with temporary authorization for the existing Bar Pilot mooring area on state-owned submerged lands waterward of 700 Front Street, Key West. The TUA is effective today, August 18, 2021.

The TUA requires completion of the sovereign submerged lands lease application by no later than **February 14, 2022**. Completion of the lease application includes the following:

- A. Payment of a \$692.31 lease application fee; and
- B. Submission of an acceptable sketch and legal description meeting the Department's requirements (requirements enclosed).

If you have any questions regarding this matter, please contact Mark Miller by phone at (239) 344-5669, or by e-mail at Mark.Miller@floridadep.gov.

Thank you for your continued patience and cooperation in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer L. Carpenter".

For Jennifer L. Carpenter
Assistant Director of District Management
South District Office

JLC/ mrm

Enclosure: Temporary Use Agreement

TEMPORARY USE AGREEMENT
BOT# 440360555

This Temporary Use Agreement (hereinafter referred to as the “Agreement”) is entered into this 18th day of August, 2021, by and between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (hereinafter referred to as the “Board”) and the City of Key West (hereinafter referred to as the “Applicant”).

RECITALS:

A. The Applicant desires to enter into this Agreement for the Bar Pilot vessel mooring area on sovereign submerged lands (hereinafter referred to as “Lands”) and water column waterward of 700 Front Street, Key West.

B. The Applicant desires to obtain the consent of the Board to continue using the existing mooring area located on these lands as shown on Exhibit A.

C. The parties acknowledge that the Florida Department of Environmental Protection (hereinafter referred to as “Department”), as staff to the Board, will expeditiously process the Applicant’s application for a sovereignty submerged lands lease (“Lease”) for the vessel mooring area.

D. The Applicant desires to have the temporary use of the vessel mooring area located on these lands during the processing and review of the Applicant’s Lease application.

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants set forth herein, and pursuant to Rule 18-21.011(1)(b)7, Florida Administrative Code (F.A.C.), the Applicant agrees to pay to the Board a total of **\$ 0.00** for deposit into the Internal Improvement Trust Fund as compensation for the prior and current use of these lands with the Board’s authorization granted herein.

The parties hereto, then, agree as follows:

1. The Applicant acknowledges and understands that the grant of this Agreement does not guarantee that the Board will grant the Applicant a Lease or that the Department will recommend that a Lease be granted. **The Board will issue the Lease if the Applicant meets the lease requirements of Rule 18-21, F.A.C.**

2. The Applicant is hereby granted the temporary exclusive use of the vessel mooring area located on these lands as depicted in Exhibit A, consisting of approximately 1,192 square feet. This temporary exclusive use is for a term expiring one year from the effective date of this Agreement, or until the date of execution of a Lease between the Board and the Applicant, whichever occurs first. The Applicant shall make no claim of title to or interest in the sovereign lands identified in Exhibit A solely by reason of occupancy or use thereof under this Agreement.

3. The existing vessel mooring area can only be utilized as it existed on the date of execution of this Agreement. In the event any part of any of the vessel mooring area is determined by a final adjudication issued by a court of competent jurisdiction to encroach or interfere with riparian rights of the adjacent upland riparian owner, Applicant agrees to either obtain written consent for the offending structure or use from the affected adjacent upland riparian owner or remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement at the sole option of the Board.

4. No lease fee payment is required for this Agreement pursuant to Rule 18-21.011(1)(b)7, F.A.C., as the Department has not affirmatively determined that the vessel mooring is a revenue-generating activity as defined in Rule 18-21.003(60), F.A.C. If the Department subsequently determines that the vessel mooring authorized by this agreement is a revenue-generating activity, lease fees (and sales tax) will be due for the continued use of these lands.

5. In the event that the Applicant's Lease application is not approved by the Board, or the Applicant fails to execute the Lease prior to the expiration or termination of this Agreement, whichever occurs first, the Applicant shall remove all structures and cease all activities referenced herein on the Lands at the Applicant's sole expense. In the event that the Applicant asserts title to the Lands identified in Exhibit A, and either the Applicant fails to timely submit the information concerning title as required herein, or the Board denies the Applicant's claim of title and the Applicant has not commenced an action to quiet title as specified herein, the Applicant shall remove all structures and cease all activities referenced herein on the Lands at the Applicant's sole expense. If the Applicant fails to complete the requirements of paragraph 6 of this Agreement, the Applicant shall remove all structures and cease all activities referenced herein on the Lands at the Applicant's sole expense. The complete removal of the structures and elimination of activities as required by this paragraph shall be accomplished within 180 days following the expiration or termination of this Agreement, whichever occurs first. The complete cessation of the activities shall occur immediately following the expiration or termination of this Agreement, whichever occurs first.

6. If the Applicant asserts title to the sovereign lands identified in Exhibit A, the Applicant must submit an application, accompanied by all evidence upon which Applicant relies for the assertion of title, to the Department's Division of State Lands (hereinafter referred to as "DSL"), within 90 days after the execution of this Agreement. DSL will review the application and accompanying evidence and give a response to Applicant as to whether the Board will assert title to the sovereign lands described in Exhibit A. If DSL responds that the Board will assert title to said sovereign lands, the Applicant must file an appropriate action in circuit court within 90 days of DSL's response to obtain a legal determination of title to the sovereign lands. If DSL, after consultation with the Board, responds that the Board does not assert title to the sovereign lands, then the Applicant shall not have to apply for a sovereign lands lease, and that portion of the consideration representing lease fees and interest shall be refunded. If DSL, after its review, responds that the Board does not assert title to a portion of the sovereign lands, any consideration for that portion representing lease fees and interest will be refunded. Failure to submit the initial

application and evidence within 90 days after execution of this Agreement, or failure to file the appropriate court action within 90 days after DSL's response, shall constitute a waiver by the Applicant of all of its claim of title to the sovereign lands and an acknowledgment that the Board owns the sovereign lands.

7. The Applicant shall complete the Lease application by no later than **180** days of the effective date of this Agreement for the lands identified in Exhibit A. Completion of the lease application includes the following:

- A. Payment of a \$692.31 Lease application fee; and
- B. Submission of an acceptable sketch and legal description meeting the Department's requirements (requirement attached to fully executed Agreement).

8. This Agreement is temporary in nature and may not be extended or modified except upon the express written agreement of the Board. No request for an extension of the Agreement shall be considered by the Board except upon a demonstration by the Applicant that the Applicant is in full compliance with the terms and conditions of this Agreement and has exercised due diligence in its efforts to procure a Lease from the Board.

9. As a material condition of this Agreement, Applicant agrees to comply with all applicable requirements of Chapters 253, 373, 376, and 403, Florida Statutes, and the rules promulgated pursuant thereto. The Board has the right to immediately rescind this Agreement upon the failure of Applicant to comply with either the terms of this Agreement, statutes, rules, or any permits or exemptions. Upon written notice that the Board has exercised its right to rescind under this paragraph, Applicant shall immediately cease and desist all activity authorized by this Agreement, or within the timeframe specified in the notice, or within twenty days of receipt of the notice if no timeframe is specified. Notice may be given by the Board by certified mail or hand delivery to Mr. Douglas Bradshaw, Port and Marina Services Director, City of Key West, 201 William St., Key West, FL 33040 or by email at dbradshaw@cityofkeywest-fl.gov, or by posting the notice at the property described in Paragraph A.

10. The Applicant shall save and hold harmless and indemnify the Board, Department, and the State of Florida against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of, any person or persons and for loss or damage to any property arising out of or connected with Applicant's occupation and use of the Lands and the structures or activities located thereon. By execution of this Agreement, applicant waives any claim it may have against the Department concerning the submerged lands described on Exhibit A except as described in Paragraph 6 above.

11. Applicant agrees that any litigation arising from matters relating to this Agreement between the Board and the Applicant shall be initiated and maintained only in Leon County, Florida.

12. This Agreement, and any rights and privileges contained herein, are for the sole benefit and use of the Applicant and shall not be assigned or transferred by the Applicant to any other

party without the prior written consent of the Board, which consent shall not be unreasonably withheld.

13. The terms of this Agreement may be enforced by the Board notwithstanding that the authorization granted hereunder has expired.

Executed on the date first written above.

CITY OF KEY WEST

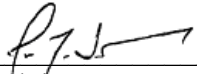
By: 
Original Signature

David Sanchez
Typed/Printed Name

City Manager
Title

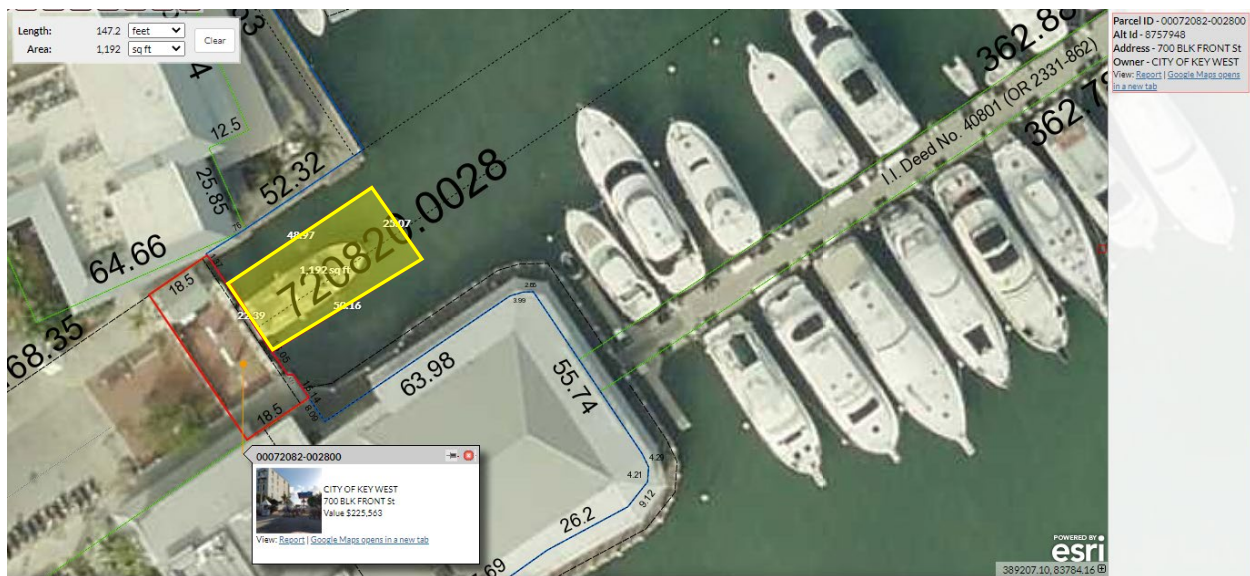
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BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND OF THE STATE OF FLORIDA

By:  _____

Jon. M. Iglehart

Director of District Management,
Department of Environmental Protection, as
agent for and on behalf of the Board of
Trustees of the Internal Improvement Trust
Fund of the State of Florida



Authorized Vessel Mooring Area in Yellow Polygon

BOT No. 440360555

Site No. 406657 / Project No. 397275

Exhibit A

SKETCH OF DESCRIPTION REQUIREMENTS
**For Leases and Private Easements that preempt $\leq 3,000$ Square Feet and for
All Public Easements (any size)**

INSTRUCTIONS TO STAFF

1. Provide the applicant/agent the [Sketch of Description Requirements](#) package when the project will require a sovereign submerged lands lease or private easement that will preempt **3,000 square feet or less**, or will require a public easement. Include as page 5 either the easement or lease checklist. If the applicant or agent chooses to submit a survey, provide them with [SLER 0950](#).
2. After you receive the sketch and easement/lease area description, use the lease or easement checklist as a guideline for review. The completed checklist must be included in the file submitted to the Division of State Lands.

Background:

Chapter 18-21, Florida Administrative Code, requires that a land survey be provided for sovereignty submerged land leases. However, on May 14, 1991, the Board of Trustees of the Internal Improvement Trust Fund authorized a waiver of the survey requirement in the following situations:

- When registered grandfathered structures or unregistered grandfathered structures are brought under lease (regardless of the total square footage of sovereignty submerged lands preempted); and
- When existing or proposed facilities are brought under lease that preempt less than or equal to 3,000 square feet.

The above guidance for a “survey waiver” was originally provided in SLER 0955, but was rescinded in February 2005. The former procedure allowed for the lease area to be depicted in association with the upland property description as a hand-drawn sketch that the owner signed.

To reflect accurate preemption areas and to provide the Division of State Lands with accurate data, it was decided that the Department would no longer allow for the description of the upland property to be submitted with a hand-drawn sketch. The majority of the grandfathered structures should have already come under lease and if they have not, they should not be allowed the benefit of providing a hand-drawn sketch. In addition, as riparian areas get more crowded and waterfront property becomes more limited, it is to the benefit of the Department to have a professional sketch submitted for these smaller leases.

The following procedures require submittal of a sketch of description, prepared by a Professional Surveyor and Mapper.

SKETCH OF DESCRIPTION REQUIREMENTS

**For Leases and Private Easements (≤3,000 Square Feet Preempted Area Over
Sovereignty Submerged Lands) and All Public Easements**

INSTRUCTIONS TO APPLICANT

IMPORTANT:

THIS PACKAGE PROVIDES THE SUBMERGED LANDS AND ENVIRONMENTAL
RESOURCES PROGRAM REQUIREMENTS THAT MUST BE MET IF YOUR PROJECT
QUALIFIES FOR A LEASE OR EASEMENT AS DESCRIBED ABOVE

IF YOU CONTRACT WITH A DESIGNATED AGENT/ENTITY TO PROCESS YOUR
SUBMERGED LANDS PUBLIC EASEMENT OR LEASE APPLICATION, YOU MUST PROVIDE
THEM THIS PROFESSIONAL SKETCH OF DESCRIPTION REQUIREMENTS PACKAGE

SKETCH OF DESCRIPTION REQUIREMENTS
**For Leases and Private Easements ($\leq 3,000$ Square Feet Preempted Area Over
Sovereignty Submerged Lands) and All Public Easements**

When a project involves an activity on sovereignty submerged lands that requires an easement or lease, an application for a Board of Trustees (BOT) easement or lease must be filed and processed by the appropriate DEP District Office. The information identified below must be submitted to the DEP District Office in order for your application for easement or lease to be processed. The following procedures are specific to sovereign submerged lands leases or private easements that will preempt **less than or equal to 3,000 square feet** and all public easements.

The information must be prepared from the most recent records (i.e., existing rights-of-way maps, existing surveys, deeds). At the minimum, the following will be required:

**SKETCH OF DESCRIPTION (OF THE EASEMENT/LEASE AREA ON SOVEREIGNTY
SUBMERGED LANDS)**

1. Two 8 1/2" x 11" prints of the sketch of description. If the prints are reduced from a larger drawing, a copy of the original drawing must also be submitted for clarity purposes.
2. The sketch of description must be clearly labeled "NOT A FIELD SURVEY."
3. All copies must be dated, signed (original signatures), and sealed by a surveyor registered with the Florida State Board of Professional Surveyors and Mappers stating that the sketch of description (sketch of the easement/lease area) is in compliance with the Minimum Technical Standards pursuant to Rules 5J-17.050 through 5J-17.052 Florida Administrative Code.
4. The size and dimensions of all proposed and existing structures within the right-of-way must be shown on the sketch; or engineering drawings (8 1/2" x 11" prints) including this information must be provided.
5. An *approximate* mean high water line (MHWL) in tidally influenced waters or an *approximate* ordinary high water line (OHWL) in non-tidally influenced waters must be **shown** on the sketch with a note clearly stating that the *approximate* line is not intended to be the legal boundary between private and state ownership. (Note: the **description** must refer to the *actual* mean or ordinary high water line-- see "Boundary Lines" below.)
6. Scaled or surveyed NAD 1927 or 1983 coordinates of the point of beginning (POB) of the easement/lease area must be shown on the sketch. The coordinates may be scaled from a USGS quad sheet or other suitable maps. The method used to determine the coordinates must be noted on the drawing.

LEASE AREA DESCRIPTION

A metes and bounds description of the perimeter of the lease sought must be provided on a separate 8 1/2" x 11" sheet and must include the county, section, township and range, the name of the affected waterbody and the approximate square footage of the lease. The lease description must call for the MHWL or OHWL even though the water boundary may be represented on the sketch by an approximate line or safe upland line.

EASEMENT AREA DESCRIPTION

A metes and bounds description of the perimeter of the easement sought must be provided on a separate 8 1/2" x 11" sheet and must include the county, section, township and range, the name of the affected waterbody and the approximate acreage of the easement. The easement description must call (bearing and distance) for an actual MHWL or OHWL. (A call for the approximate line of MHWL or OHWL will not be accepted in the description (the line must be known), but is acceptable on the sketch.) A centerline description will not be accepted, unless pre-approved by the Division of State Lands.

LOCATION SKETCH / VICINITY MAP

A location sketch (vicinity map) must be provided. For clarity purposes, the location sketch must be provided on a separate 8 1/2" x 11" sheet.

BOUNDARY LINES OF SOVEREIGNTY SUBMERGED LANDS

There are two types of waterbodies that define sovereignty submerged lands: tidally influenced waterbodies and non-tidally influenced waterbodies. The boundary line between sovereignty lands and privately-owned riparian lands along tidally influenced waterbodies is the mean high water line (MHWL), and along non-tidally influenced waterbodies is the ordinary high water line (OHWL).

For both types of waterbodies a safe upland line can be used to approximate the ordinary or mean high water line in lieu of the true water boundary to determine an acceptable easement area. Generally, a safe upland line is sufficient if it runs along the edge of mature upland vegetation. If a safe upland line is used for identification of the lease or easement area, the legal description of the parcel bounded by this line must be preceded by a leader containing: "That part of the sovereign lands of the State of Florida that lie within the following described area: . . ." This will ensure that the area to be under easement will be only that part that is actually sovereign submerged land.

In all cases, contact the Bureau of Survey and Mapping if there are any questions.

Definitions:

Preempted area (18-21.003 and 18-20.003, F.A.C., as applicable) means the area of sovereignty lands from which the traditional public uses have been or would be excluded to any extent by an activity. The area may include, but is not limited to, the sovereignty lands occupied by the docks and other structures, the area between the docks and the shoreline and the area between the docks and out to any mooring pilings (the preempted area would also be extended to include the area for the largest [length and width] vessel(s) to be moored at the site). In Aquatic Preserves the area will also include the docking facility turning basin. If the activity is required to be moved waterward to avoid dredging or disturbance of nearshore habitat, a reasonable portion of the nearshore area that is not impacted by the dredging or structures shall not be included in the preempted area.

Sketch of Description: A sketch of a parcel or parcels of land pursuant to Rules 5J.17.050 through 5J.17.052, F.A.C., and prepared by a Florida professional surveyor and mapper that can be derived from direct observation and measurements, and/or from existing available information sufficient to adequately represent the perimeters of a parcel or parcels

of land. The sketch shall be in complete accord with the property description shown on, or attached and referred to, the survey map.

Property Description or Legal Description: The description of a parcel or real property, in technical terms, that is sufficient to accurately locate the parcel. The property or legal description is incorporated as a part of the survey or sketch of description.

Boundary Survey: A process pursuant to Rules 5J.17.050 through 5J-17.052, F.A.C., which is performed and prepared by a Florida professional surveyor and mapper from direct observation and measurements and presented in map form, the primary purpose of which is to define and document the perimeters of a parcel or parcels of land. The surveyor and mapper shall make a determination of the position of the boundary of real property in complete accord with the property description shown on, or attached and referred to, the survey map.

Metes and Bounds: A method of describing land by boundary lines (bounds) and measures of length and direction (metes). The most common method is to recite the directions and lengths as one would walk around the perimeter of the parcel.

CHECKLIST FOR REVIEW OF "SKETCH" AND EASEMENT AREA DESCRIPTION

Use for reviews of sketches for **all public easements**
(any size) and for **private easements** that preempt $\leq 3,000$
square feet.

Applicant: _____ File No.: _____

Reviewed by: _____ Date: _____

[] ACCEPTABLE [] UNACCEPTABLE

<u>Sketch</u>	<u>Remarks</u>
Two prints of sketch provided on 8½ x 11 sheets Sketch clearly labeled "NOT A FIELD SURVEY"	
Surveyor's original signature and original seal	
Surveyor's certification number	
Sketch is dated	
Sketch is drawn to scale	
Location, size and dimensions of existing and proposed structure(s) are shown on the sketch	
Approximate MHWL shown on sketch -OR-	
Approximate OHWL shown on sketch -OR-	
Approximate SUL/Apparent shoreline shown	
Easement boundary abuts MHWL/OHWL/SUL	
North arrow shown on the sketch	
Description matches drawing (must call for an "actual" M/OHWL, vs. "approx." line as shown on sketch) [see note below]	
Separate location sketch (vicinity map)-8½ x 11"	
<u>Description</u>	
Approximate square footage/acreage of easement	
Description of easement area that includes: Section, Township, Range _____	
County _____	
Waterbody _____	
<u>COMMENTS:</u>	[Note: The <i>description</i> must use actual M/OHWL, not "approximate" line, as shown on the <i>sketch</i> . If SUL is used, the description begins with, "That part of the sovereign lands of the State of Florida that lie within the following described area:. . ."]

CHECKLIST FOR REVIEW OF “SKETCH” AND LEASE AREA DESCRIPTION

This checklist is to be used for review of sketches for **lease areas that preempt $\leq 3,000$ square feet.**

Applicant: _____ File No.: _____

Reviewed by: _____ Date: _____

☐ ACCEPTABLE ☐ UNACCEPTABLE

<u>Sketch</u>	<u>Remarks</u>
Two prints of sketch provided on 8½ x 11 sheets	
Surveyor's original signature and seal	
Surveyor's certification number	
Sketch is clearly labeled “NOT A FIELD SURVEY”	
Sketch is dated	
Sketch is drawn to scale	
North arrow shown on the sketch	
Riparian lines are shown on sketch	
Preempted area calculations of entire lease area with total square footage are shown on sketch	
Location, size and dimensions of existing and proposed overwater structure(s) are shown on sketch	
Distance from structures to riparian lines shown on sketch	
Linear footage of shoreline shown on sketch	
Approximate MHWL shown on sketch -OR-	
Approximate OHWL shown on sketch -OR-	
Approximate SUL/Apparent shoreline shown on sketch	
Lease boundary abuts MHWL/OHWL/SUL	
Condition of shoreline shown for lease area and 1,000 feet on each side of the lease area, if in an AP: _____ % Natural _____ % Seawalled/bulkheaded	
Upland property lines shown on the sketch	
Description matches drawing (must call for an “actual” MHWL/OHWL vs. “approx.” line as shown on sketch) [see note below for SUL]	
All structures and preempted area are included within the lease boundary	
Separate location sketch (vicinity map)--8½ x 11	
<u>Description</u> _____ Total square footage of lease area is included in the lease boundary	
_____ Description of lease area includes: Section, Township, Range _____ County _____ Waterbody _____	
_____ Legal description of the upland riparian property is shown (check against copy of recorded deed)	
<u>COMMENTS:</u>	[Note: The <i>description</i> must use actual M/OHWL, not “approximate” line, as shown on the <i>sketch</i> . If SUL is used, the description begins with, “That part of the sovereign lands of the State of Florida that lie within the following described area:. . .”]