

# Key West Committee for Safer, Cleaner Ships

September 15, 2022

Commissioners:

The Committee for Safer, Cleaner Ships advocates for responsible governance of cruise ship operations within the Port of Key West. We are writing today in regards to the City's proposal to expand the cruise ship terminal at Mallory Square using State funds from the Department of Transportation (DOT), and to bring certain information into public light:

- The City of Key West has historically had a submerged land lease of 664' in length at Mallory Square. For years now, the city has been operating on a temporary extension of that lease, which expires on October 7.
- More than two years ago, the Florida Department of Environmental Protection (DEP) notified the City that it had lost the property right to 150' of that length and in fact only has 514' of water available for docking vessels.
- Throughout these last two years, the City has continued to push forward on a project to double the size of the T-Pier at Mallory square, for the stated purpose of accommodating cruise ships up to 650 feet long, despite being informed on multiple occasions by DEP that they do not have the legal property right to proceed with their plans as drawn.
- Pursuing capital improvements at Mallory for the stated purpose of accommodating cruise ships appears to conflict with City Resolution 22-073, unanimously adopted by this Commission in March, which expresses the City's policy to direct cruise ship traffic away from Mallory.
- The public, City staff, Commissioners, and various Boards deserve to know this information before spending any additional taxpayer dollars towards this potentially doomed project.

In August of 2019, the City allowed its State Submerged Lands Lease for Mallory to lapse, but was able to acquire a Temporary Use Agreement. Then, in April of 2020, the Florida Department of Environmental Protection (DEP), which administers the lease for the State of Florida, advised the City's former Port Director and the City's Legal Department that the City no longer had "sufficient upland interest" to control the submerged lands parcel which the City used to hold. Instead of the 664-foot-long slip where the City had berthed cruise ships in the past, the City's berthing slip at Mallory would now be limited to a maximum of 514 feet, which is the total length of its upland property holding.

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Last month, DEP advised the current Port Director of the same legal barrier to the City's renewal of its former submerged lands lease. DEP further advised that the surveys and drawings the City has submitted for the T-Pier expansion would need to be corrected and resubmitted, and must reflect only the portions of submerged land to which the City actually has rights. Yet, on August 29th, the City resubmitted its application to double the size of the T-Pier for the stated purpose of docking cruise ships up to 650'.

In the image below, taken from the City's application to the US Army Corps of Engineers (USACE) to expand the T-Pier, we've added red boundary lines to indicate the maximum extent of the submerged lands where the City may berth vessels no longer than 514 feet. We believe the proposed new T-Pier, which is more than twice as large as the existing pier, may significantly exceed what is needed to support 500-foot-long vessels, which are significantly smaller than vessels which have docked there in the past. The monopile which the City has proposed to build is not even located on City property, but on private property.



Two Port Directors and the City Legal Department have known for 2 ½ years that the City has lost the right to control 150 feet of valuable waterfront, and that it may no longer accommodate vessels longer than 514'. During this time, the City has accepted millions of dollars in granted funds and has spent public monies to design a pier and docking structures which may exceed

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the needs of a 500' vessel and which are partly located on private property. These facts raise some serious questions:

- Have elected officials and their appointed representatives on relevant Boards been made aware that the City only controls 514' of waterfront at Mallory, and has lost 150' of riparian interest formerly controlled by the City?
- Is it necessary to double the size of the existing T-Pier when the legal berthing space will be reduced to 75% of its previous size?
- Has the City notified FSTED and FDOT, which have already contributed \$2.3 million to Mallory, that the City doesn't actually control the submerged lands its grant request is based on?
- Has the City advised FSTED and FDOT that the City's formal policy is to direct cruise ships away from Mallory, and that the stated purpose of its grant thus poses a conflict with this policy?
- Has the City notified FKNMS, USACE, FWC, and NOAA NMFS that it does not control all of the property where new construction is proposed and which will require a coordinated multi-agency effort to relocate corals which are protected under the Endangered Species Act?

At a Bight Management Board meeting yesterday, in response to public comments made by Capt. Will Benson, the Port Director attempted to explain that the purpose of the T-Pier expansion was not to support cruise ships, but rather to provide berthing flexibility for hypothetical emergency relief operations which might be conducted if a hurricane were to sever the highway connection between Key West and the mainland. With all due respect to the Port Director, this is not how the City has presented this project to multiple State and Federal agencies, including FDEP, FDOT, FSTED, USACE, FKNMS, FWC, and NOAA NMFS. In fact, the City and its outside engineering firm have repeatedly stated in writing that the project as designed is intended for the mooring and berthing flexibility of cruise ships up to 650 feet long. The potential use of the T-Pier for emergency relief operations is not mentioned in the project paperwork in any way, shape, or form. There is no information to support the idea that the expanded pier would even be suitable for emergency operations. Nor is there any information to support the idea that Key West needs an emergency relief berthing facility at Mallory Square, when numerous other suitable facilities already exist, including Federal facilities maintained and operated by the United States Navy and the United States Coast Guard.

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During the 2021 State Legislative Session, numerous State Legislators cited Key West's acceptance of State funding for Mallory as justification for preempting local control over the Port of Key West. The City's proposal to use State funds to build a new and much larger T-Pier at Mallory for the stated purpose of accommodating cruise ships up to 650' in length is a dangerous invitation to Legislators for a fresh round of State preemption.

Several months ago, we withdrew our opposition to the T-Pier project after a series of commitments made by the former Port Director. However, recent changes in City policy and new information which has come to light about the City's loss of 150' of waterfront rights compels us to reverse course and strongly oppose the continuation of this project.

There are too many unanswered questions surrounding the City's proposal to build a bigger cruise pier at Mallory. The people of Key West deserve answers.

Respectfully,

Evan Haskell

*On behalf of*

**Key West Committee for Safer Cleaner Ships**

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