



# FLORIDA DEPARTMENT OF Environmental Protection

South District  
PO Box 2549  
Fort Myers FL 33902-2549  
[SouthDistrict@FloridaDEP.gov](mailto:SouthDistrict@FloridaDEP.gov)

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

January 30, 2023

JLM Tampa, Inc.  
c/o Robert A. Williams  
Lewis, Longman & Walker, P.A.  
315 South Calhoun Street, Suite 830  
Tallahassee, Florida 32301  
[rwilliams@llw-law.com](mailto:rwilliams@llw-law.com)

Re: Consent Order and Temporary Use Agreement  
Docking Facility 100 Gasparilla Way, Placida, FL 33946  
DEP Site No. 408848 / Project No. 398279  
DEP OGC Case No. 21-1171  
BOT File No. 080361515  
Bocilla Pass, Class II Outstanding Florida Waters  
Charlotte County Property Appraiser Parcel No. 412033128007

Dear Mr. Williams:

Enclosed is the signed Consent Order and Temporary Use Agreement, OGC Case No. 21-1171, to resolve this case. This copy is for your records. Please note that all compliance dates for the Order begin on the date of entry, which is January 30, 2023.

Upon satisfactory completion of all conditions of the Order, we will close this case and place it in our inactive file.

If you have any questions, please contact Mark Miller by email at [Mark.Miller@FloridaDEP.gov](mailto:Mark.Miller@FloridaDEP.gov) or by phone at 239-344-5669. Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer L. Carpenter".

Jennifer L. Carpenter  
Director of District Management  
South Florida District  
Florida Department of Environmental Protection

JLC/mm

Enclosure: Consent Order and Temporary Use Agreement

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT	)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION, and	)	SOUTH DISTRICT
THE BOARD OF TRUSTEES OF THE	)	
INTERNAL IMPROVEMENT TRUST FUND,	)	
	)	
Complainants	)	
	)	
vs.	)	
	)	
JLM TAMPA, INC.,	)	OGC FILE NO. 21-1171
	)	
Respondent.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

CONSENT ORDER and TEMPORARY USE AGREEMENT

This Consent Order and Temporary Use Agreement (Order) is entered into between the State of Florida Department of Environmental Protection ("Department"), and The Board of Trustees of the Internal Improvement Trust Fund ("Board"), and JLM Tampa, Inc. ("Respondent") to reach settlement of certain matters at issue between the Department, the Board and Respondent.

The Department and Board find and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce Chapter 373, Part IV, and Chapter 403, Florida Statutes (Fla. Stat.), and the rules promulgated and authorized thereunder, Title 62, Florida Administrative Code (Fla. Admin. Code). The Department has jurisdiction over the matters addressed in this Order.

2. The Board is responsible for overseeing sovereign (state owned) lands and ensuring they are managed in trust for the citizens of the State of Florida pursuant to Chapters 253 and 258, F.S, and the rules promulgated and authorized thereunder, Title 18, Fla. Admin. Code. The Department has the duty to perform all staff duties and functions related to the administration of state lands as provided in Section 253.002, Fla. Stat.

3. Respondent is a person within the meaning of Sections 253.04 and 373.109(15), Fla. Stat.

4. Respondent is the owner of real property located at 100 Gasparilla Way, Placida, FL 33946, Charlotte County Property Appraiser Parcel No. 412033128007, Section 33, Township 41 South, Range 20 East, (Property).

5. Respondent is the owner of a dock in Bocilla Pass (Lemon Bay), Class II Outstanding Florida Waters, Lemon Bay Aquatic Preserve, Charlotte County, Florida. All lands lying below the mean high-water line (MHWL) of Bocilla Pass (Lemon Bay) waterward of the Property are sovereign (state owned) submerged lands.

6. Aerial photography shows that a dock was constructed on sovereign submerged lands ("Lands") waterward of the Property between 1984 and 1999. The Department has no record of authorization from the Department or the Board for that dock.

7. The Respondent obtained title to the Property on April 13, 1998.

8. Aerial photography shows that the dock was expanded between 1999 and 2003. The Department has no record of authorization from the Department or the Board for that dock expansion.

9. The dock currently consists of approximately 1,199 square feet of overwater structure and is associated with an upland private single-family residence.

10. Private docks in Outstanding Florida Waters with more than 500 square feet of overwater structure require an Environmental Resource Permit from the Department pursuant to Rule 62-330.020, Fla. Admin. Code

11. The dock currently preempts approximately 3,830 square feet of sovereign submerged lands.

12. On April 8, 2022, the Department issued a Notice of Violation to the Respondent for Respondent's non-compliant dock.

13. On various dates between April 29, and August 2, 2022, the Respondent requested, and the Department granted four requests for extensions of time to file a petition for administrative hearing for the Notice of Violation. The Department's fourth extension of time to file a petition for administrative hearing for the Notice of Violation expired on August 29, 2022. Since that time, the Department and Respondent have continued good faith negotiations to resolve the non-compliance.

14. On September 28, 2022, Hurricane Ian impacted several Florida counties including Charlotte County. The hurricane delayed further good faith negotiations between the Department and the Respondent.

15. Respondent alleges that a portion of Respondent's dock has historically been used, and continues to be used, by first responders including the Charlotte County Sheriff's Department and Public Safety Department. As such, Respondent requests that Respondent's dock be authorized as a multi-slip docking facility. Respondent proposes to enter into a riparian upland lease/license agreement with the Charlotte County Board of County Commissioners to formally address use of the dock by the Charlotte County Sheriff's Department and Public Safety Department and to meet the Department's satisfactory evidence of sufficient upland interest requirements in Rules 18-21.003(65) and 18-21.008(1)(a)3, F.A.C.

16. The Department finds that the Respondent violated Rule 62-330.020, Fla. Admin. Code, and Section 373.430, Fla. Stat., which requires a permit for any work conducted in, on, or over surface waters. The Department and the Board find that the Respondent violated Section 253.77, Fla. Stat., and Rule 18-21.005, Fla. Admin. Code, which require that all activities conducted on sovereign submerged lands obtain authorization from the Board.

17. The recorded subdivision plat for Palm Island Estates, Unit No. 4, and the Charlotte County Property Appraiser's Geographic Information System do not clearly show whether Respondent's Property abuts the mean high water line. However, the Department has determined that the Respondent has satisfactory evidence of sufficient upland interest as defined by Rule 18-21.003(63), Fla. Admin. Code to obtain Board authorization for Respondent's dock on the Lands as required by Rules 18-21.004(3)(b) and 18-21.007(3), Fla. Admin. Code

18. The Respondent desires to enter into this Order to resolve these violations and to use the Lands and water column adjacent to the Respondent's riparian upland real property described in paragraph 4 of this Order.

19. Respondent desires to obtain a sovereignty submerged lands lease from the Board for the Respondent's docking facility located on the Lands as depicted in the attached Exhibit A, modified as necessary for compliance with Rules 18-20.004(5)(a) and (b), Fla. Admin. Code, and Rules 18-21.004(3)(b) and (d), Fla. Admin. Code

20. The Respondent desires to have the temporary use of the Respondent's docking facility on the Lands during the Department's continued processing and review of the Respondent's application for a sovereignty submerged lands lease.

Having reached a resolution of the matter Respondent and the Department and the Board mutually agree and it is,

**ORDERED:**

21. **Within 30 days of the effective date of this Order**, Respondent shall pay the Department **\$5,420.00** in settlement of the matters addressed in this Order. This amount includes:

- (a) \$4,500.00 consisting of \$1,500.00 for unpermitted or unauthorized construction, plus \$3,000 because the unauthorized construction occurred in a Class II surface water and aquatic preserve (Lemon Bay) pursuant to Section 403.121(3)(c), Fla. Stat.;
  - (b) \$420.00 as a permit recovery fee pursuant to Rule 62-4.050(4)(h)4.a.(I), Fla. Admin. Code; and
  - (c) \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.
- Respondent shall make all payments required by this Order by cashier's check, money order or online payment. Cashier's check or money order shall be made payable to the Department of Environmental Protection, mailed to ***Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549***, and shall include both the OGC number assigned to this Order, which is OGC No. 21-1171, and the notation "*Water Quality Assurance Trust Fund*." Online e-check payment can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/>. It will take a number of days after this Order becomes final and effective filed with the Clerk of the Department before ability to make online payment is available.

22. The Respondent agrees to pay to the Board a total of **\$7,493.55** for deposit into the Internal Improvement Trust Fund as compensation for the past and current use of these lands

with the Board's authorization granted herein. (See Exhibit B for a breakdown of the lease fee for the Agreement area and sales tax.) Such payment, which shall be paid online by check, credit card or debit card at <http://www.fldeportal.com/go/pay-invoices> or paid by a cashier's check, certified check, or money order payable to the Department of Environmental Protection and delivered to the Board's Accounting Office, Post Office Box 3070, Tallahassee, Florida 32315-3070 within 30 days of the effective date of this Agreement.

23. The consideration paid for this Agreement includes the lease fees due for these lands from December 19, 2018, through December 19, 2023, and sales tax. This consideration is not refundable, notwithstanding the denial of a sovereignty submerged lands lease by the Board.

24. The Applicant acknowledges that the lease fees assessed in this agreement after March 1, 2023, are an estimate created using the lease fee rate from the 2022-2023 billing cycle. A supplemental invoice will be generated and issued to the Applicant at the time of lease execution that accounts for any difference in lease fees owed for the new per square foot fee established on March 1, 2023 which is based on changes in the consumer price index, pursuant to Rule 18-21.011(1)(b), Florida Administrative Code, and changes in the square footage of the preempted area based on a survey supplied by the Applicant pursuant to Applicant's sovereign lands lease application, and the Applicant hereby agrees to pay the full amount any additional lease fees owed to the Board due to these changes within 30 days of the receipt of the supplemental invoice.

25. Respondent shall implement the Corrective Actions attached hereto and incorporated herein as Attachment I in the manner and within the timeframes specified therein.

26. The Respondent agrees to pay the Department stipulated penalties in the of \$100.00, per day, for each and every day the Respondent fails to timely comply with any of the requirements of this Order. In the event unforeseeable delays occur, Respondent will notify the Department as soon as possible explaining the circumstances of the delay and requesting the reasonable amount of time needed to comply with the requirements of this Order. Unforeseeable delays include but are not limited to the availability of construction materials, contractor unavailability, weather, and other circumstances which are beyond the control of the Respondent. Any stipulated penalties assessed under this Paragraph shall be in addition to the

fees/costs agreed to in Paragraph 21 of this Order. Within 30 days of a written demand from the Department, the Respondents shall submit payment of the appropriate stipulated penalties in accordance with Paragraph 2 above. The Department may demand stipulated penalties at any time after violations occur. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Should the Department be required to initiate a lawsuit to recover stipulated penalties under this Paragraph, the Department shall not be foreclosed from seeking civil penalties for violations of this Order in an amount greater than the stipulated penalties set out in this Paragraph.

27. If Respondent's sovereignty submerged lands lease application is not approved by the Board prior to the expiration or termination of the Temporary Use Agreement portion of this Order, whichever occurs first, the Respondent shall remove all structures from and cease all activities on the Lands at the Respondent's sole expense. If the Respondent asserts title to the Lands identified above, and either the Respondent fails to timely submit the information concerning title as required herein, or the Board denies the Respondent's claim of title and the Respondent has not commenced an action to quiet title as specified herein, the Respondent shall remove all structures from and cease all activities on the Lands at the Respondent's sole expense. In the event that the Respondent fails to complete the requirements of paragraphs 21, 22 and 25 of this Order, the Respondent shall remove all structures from and cease all activities on the Lands at the Respondent's sole expense. The complete removal of structures and cessation of all activities as required by this paragraph shall be accomplished within 180 days following the expiration or termination of this Order, whichever occurs first.

28. The Respondent acknowledges and understands that the grant of this Order does not guarantee that the Board will grant the Respondent a sovereignty submerged lands lease to use the Lands or that the Department will recommend that the sovereignty submerged lands lease be granted. The Board will grant the sovereignty submerged lands lease if the Respondent meets the requirements of Rules 18-20 and 18-21, Fla. Admin. Code.

29. The Respondent is hereby granted the temporary exclusive use of the docking facility on the Lands identified above, consisting of approximately **3,830** square feet, waterward of Respondent's riparian upland real property described above in paragraph 4. This temporary

exclusive use is for a term not to exceed one year from the effective date of this Order, or until the date the Board issues a sovereignty submerged lands lease for Respondent's docking facility, whichever occurs first. The Respondent shall make no claim of title to or interest in the Lands identified above solely by reason of occupancy or use thereof under this Order.

30. The Respondent's existing docking facility can only be utilized as it was on the effective date of this Order. In the event any part of any of these structures are 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, Respondent agrees to either obtain written consent for the offending structure(s) 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 Order and be grounds for immediate termination of this Order at the sole option of the Board.

31. With the exception of the activities described in this Order, effective immediately and henceforth, Respondent shall not conduct any dredging, filling, or construction activities on or within the landward extent of waters of the state without first obtaining a valid Department permit or written notification from the Department that the activities appear to be exempt as proposed from Department permitting requirements; nor shall Respondent conduct any activities on state owned lands below the ordinary or mean high water lines without first obtaining a sovereignty submerged lands lease, easement, or other consent of use from the Department.

32. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing



delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Order.

33. Respondent shall allow all authorized representatives of the Department and the Board access to the Respondent's riparian upland property and the Lands at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes of the Department and the Board.

34. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

35. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69, 253.04, and 373.129, Fla. Stat. Failure to comply with the terms of this Order shall constitute a violation of Section 253.04 and 373.430, Fla. Stat.

36. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$10,000 per day per violation, and administrative fines of up to \$10,000 per day per violation, and criminal penalties.

37. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Order.

38. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations addressed in this Order.

39. Respondent acknowledges and waives their right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this Order. Respondent acknowledges its right to appeal the terms of this Order pursuant to Section 120.68, Fla. Stat., and waive that right upon signing this Order.

40. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order shall be effective until reduced to writing and executed by both Respondent and the Department.

41. All submittals and payments required by this Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549. Online e-check payment can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/>.

42. In the event of a sale or conveyance of the property, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property, (1) notify the Department of such sale or conveyance and (2) provide a copy of this Order with all attachments to the new owner. The sale or conveyance of the property shall not relieve the Respondent of the obligations imposed in this Order.

43. This Order is a settlement of the Department's and the Board's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

44. This Order is a final order of the Department pursuant to Section 120.52(7), Fla. Stat., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Fla. Stat. Upon the timely filing of a petition this Order will not be effective until further order of the Department.

**NOTE: The Board's actions relating to Proprietary requirements contained in this Order are not subject to challenge under Chapter 120, Fla. Stat. Any litigation involving these Proprietary requirements shall be initiated and maintained only in Leon County.**

45. Persons who are not parties to this Order but whose substantial interests are affected by this Order have a right, pursuant to Sections 120.569 and 120.57, Fla. Stat., to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat.

The petition shall contain the following information:

- (a) The Department's Order identification number and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each 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;
- (c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- (d) A statement of when and how the petitioner received notice of the Order;
- (e) A statement of all material facts disputed by petitioner, if any;
- (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Order; and
- (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Fla. Stat., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Fla. Admin. Code

A person whose substantial interests are affected by the Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Fla. Stat., or may choose to pursue mediation as an alternative remedy under Section 120.573, Fla. Stat., before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;

- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Fla. Stat., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

46. The undersigned certifies that as a corporate officer/member of JLM Tampa, Inc., he is authorized and empowered to negotiate, enter into and execute, in the name and on behalf

of the Respondent, any agreements, documents, instruments, certificates, including and without limitation, this Order entered into between Respondent and the State of Florida Department of Environmental Protection

47. Rules referenced in this Order are available at

<https://floridadep.gov/ogc/ogc/content/rules>.

FOR THE RESPONDENT:

JLM Tampa, Inc.

SAW 23, 2023  
DATE

  
Signature

PRES  
Title

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**Please do not write below this line. For DEP use only.**

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DONE AND ORDERED this 30th day of January, 2023, in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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Jennifer L. Carpenter  
Director of District Management  
South Florida District  
P.O. Box 2549  
Fort Myers, Florida 33902-2549  
Telephone: (239) 344-5600

Filed, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



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CLERK

January 30, 2023  
DATE

cc: Lea Crandall, Agency Clerk (Mail Station 35)

Attachments: Attachment I  
Exhibit A

**ATTACHMENT I  
OGC Case No. 21-1171  
CORRECTIVE ACTIONS**

**AUTHORIZED ACTIVITIES:**

1. This Consent Order gives regulatory authorization and a Temporary Use Agreement to use state-owned submerged lands for the existing multi-slip docking as shown on Exhibit A. The regulatory authorization is contingent upon the Respondent complying with item 2 below. This Consent Order also constitutes a water quality certification under Section 401 of the Clean Water Act, 33 U.S.C. 1341.

**SUBMERGED LANDS LEASE APPLICATION**

2. Within 180 days of the effective date of this order, Respondent shall submit a complete application to the Board for a sovereignty submerged lands lease pursuant to Rule 18-21.008, F.A.C. for the existing multi-slip docking on the Lands identified in Exhibit A.
3. Effective immediately and henceforth, Respondent shall not conduct any dredging, filling, or construction activities on or within the landward extent of waters of the state without first obtaining a valid Department permit or written notification from the Department that the activities appear to be exempt as proposed from Department permitting requirements; nor shall Respondent conduct any activities on state owned lands below the ordinary or mean high water lines without first obtaining a sovereignty submerged lands lease, easement, or other consent of use from the Department, pursuant to Part IV of Chapter 373, Florida Statutes (F.S.).

**CONDITIONS IF DOCK MODIFICATION(S) REQUIRED PURSUANT TO RULES 18-20 AND 18-21, F.A.C:**

4. If the information submitted by the Respondent as required by Paragraph 2 above demonstrates to the Department that the Respondent's existing multi-slip docking facility does not qualify for a sovereignty submerged lands lease pursuant to Rules 18-20 and 18-21, F.A.C., Respondent shall, within 120 days of the Department's determination, modify the docking facility (including removal or relocation of structures) to comply with the requirements to obtain Board authorization pursuant to Rules 18-20 and 18-21, F.A.C.
5. Removal or relocation of structures required by Paragraph 4 above shall comply with the following construction conditions.
  - A. Respondent shall comply with all applicable State Water Quality Standards, including but not limited to:
    1. Rule 62-302.500, F.A.C. – Surface Waters: Minimum Criteria, General Criteria;
    2. Rule 62-302.530, F.A.C. – Table: Surface Water Quality Criteria – Class II Waters;
    3. Rule 62-302.700, F.A.C. – Special Protection, Outstanding Florida Waters; and
    4. Rule 62-4.242(2), F.A.C. – Antidegradation Permitting Requirements; Outstanding Florida Waters; Outstanding National Resource Waters; Equitable Abatement
  - B. Floating turbidity curtains with weighted skirts that extend to within 1 ft. of the bottom shall be placed to surround the work area prior to the initiation of work authorized by



this Order. The screens shall be maintained and remain in place for the duration of the construction to ensure turbidity levels outside the construction area do not degrade the ambient water quality of Outstanding Florida Waters. The Respondent shall be responsible for inspecting and maintaining turbidity control devices so no degradation of the ambient water quality of Outstanding Florida Waters outside of the turbidity screens occurs.

- C. Best management practices for turbidity control, including but not limited to the use of turbidity curtains around the immediate project site shall be used and maintained as necessary at all times during project construction.
- D. Respondent shall be responsible for ensuring that erosion control devices and procedures are inspected and maintained daily during all phases of structural removal authorized by this Order until all areas that were disturbed during construction are sufficiently stabilized to prevent siltation and turbid discharges.
- E. If a barge or other watercraft is used to facilitate removal of structures, the barge or other watercraft shall be of an appropriate draft and operated in a manner that prevents prop scouring or other disturbance to submerged lands and associated benthic resources surrounding the project site.
- F. All removed dock and piling materials shall be deposited on a self-contained upland disposal site that prevents discharge of turbid material into surface waters.
- G. The following measures shall be taken immediately by the Respondent or Respondent's contractor when turbidity levels within waters of the State surrounding the project site, exceed the ambient water quality levels of the Outstanding Florida Waters:
  - a. Immediately cease work contributing to the water quality violation;
  - b. Stabilize exposed soils contributing to the violation. Modify the work procedures responsible for the violation, install additional turbidity containment devices and repair non-functioning turbidity containment devices; and
  - c. Notify the Department within 24 hours of the time the violation is first detected.
- H. Respondent shall protect all wetland areas or water bodies which are outside the specific limits of construction from erosion, siltation, scouring, excess turbidity, or dewatering. Turbidity curtains and other such erosion/turbidity control devices shall be installed pursuant to State of Florida Erosion and Sedimentation Control Inspectors Manual, FDEP (2008), available on the Department's website at <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf>, prior to the commencement of dredging, filling, or construction activity. The devices shall remain functional at all times and shall be maintained on a regular basis. Turbidity and/or sedimentation resulting from any activities associated with the project shall not be allowed to enter waters of the State. Floating turbidity curtains (FDOT Type II or equivalent) shall be used to surround all open water work areas and shall remain in place until such time as turbidity levels within these work areas have reduced sufficiently so as not to exceed the State water quality standards.
- I. Within 14 days of completion of all dock removal/reconfiguration activities, Respondent shall submit to the Department sufficient documentation, such as

photographs, showing the removed/reconfigured docking facility so that the Respondent's docking facility qualifies for Board authorization pursuant to Rules 18-20 and 18-21, F.A.C. All submittals shall be sent to the Department's South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549, or by email at [ftmerp\\_compliance@FloridaDEP.gov](mailto:ftmerp_compliance@FloridaDEP.gov). All submittals shall include thereon the OGC number assigned to this Order which is OGC No. 21-1171.

- J. Within 30 days of receipt of Respondent's notice of completion, the Department may perform an inspection of Respondent's docking facility to determine if the docking facility complies with the terms of this Order and Board and Department statutes and rules. Within 10 days of performing its inspection, the Department shall notify Respondent in writing, of its inspection findings and whether the dock complies with Board and Department statutes and rules

#### **GENERAL CONDITIONS:**

6. This Order or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the ordered activity. The complete Order shall be available for review at the work site upon request by the Department staff. The Respondent shall require the contractor to review the complete Order prior to commencement of the activity authorized by this Order.
7. Activities approved by this Order shall be conducted in a manner, which does not cause violations of state water quality standards. The Respondent shall implement best management practices for erosion and pollution control to prevent violations of state water quality standards. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the ordered work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in the State of Florida Erosion and Sedimentation Control Inspectors Manual, FDEP (2008), available on the Department's website at <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf> unless a project-specific erosion and sediment control plan is approved as part of this Order. Thereafter the Respondent shall be responsible for the removal of the barriers. The Respondent shall correct any erosion or shoaling that causes adverse impacts to the water resources.
8. Should any other regulatory agency require changes to the herein authorized act, the Respondent shall notify the Department in writing of the changes prior to implementation so that a determination can be made whether a modification or amendment to this Order is required.
9. This Order does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this Order. This Order does not convey to the Respondent or create in the Respondent any property right or any interest in real property, nor does it authorize any entrance upon or activities on property,

which is not owned or controlled by the Respondent, or convey any rights or privileges other than those specified in the Order and Chapter 62-330, F.A.C.

10. The Respondent shall hold and save the Department harmless from any and all damages, claims, or liabilities, which may arise by reason of the ordered activities, authorized by this Order.
11. If historical or archaeological artifacts are discovered at any time on the project site, the Respondents shall immediately notify the Department's South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549.
12. The Respondent shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate.
13. The Respondent is hereby advised that Department authorization is required for all dredging and filling activities in wetlands or surface waters and for mangrove trimming, alteration and/or removal, pursuant to Chapters 403 and 373, Florida Statutes (F.S.). In addition, water quality standards, as stipulated in Chapter 62-302, F.A.C., shall be upheld. Respondent shall not commence any excavation, construction, or other activity within any wetland areas until Respondent has received from the Department (or the appropriate Water Management District) the required permit authorizing the activity. Pursuant to Chapter 373.129 and 403.141, if such work is done without authorization, the Department may levy civil penalties of up to \$10,000 per offense. Each date during which such violation occurs may constitute a separate offense.
14. Operation of the docking facility shall comply with applicable State Water Quality Standards, namely:
  - a. Rule 62-302.500, F.A.C. - Surface Waters: Minimum Criteria, General Criteria;
  - b. Rule 62-302.530, F.A.C. – Table: Surface Water Quality Criteria – Class II Waters;
  - c. Rule 62-302.700, F.A.C. – Special Protection, Outstanding Florida Waters, Outstanding National Resource Waters; and
  - d. Rule 62-4.242, F.A.C. – Antidegradation Permitting Requirements; Outstanding Florida Waters; Outstanding National Resource Waters.

**GENERAL CONDITIONS FOR SOVEREIGNTY SUBMERGED LAND  
AUTHORIZATION:**

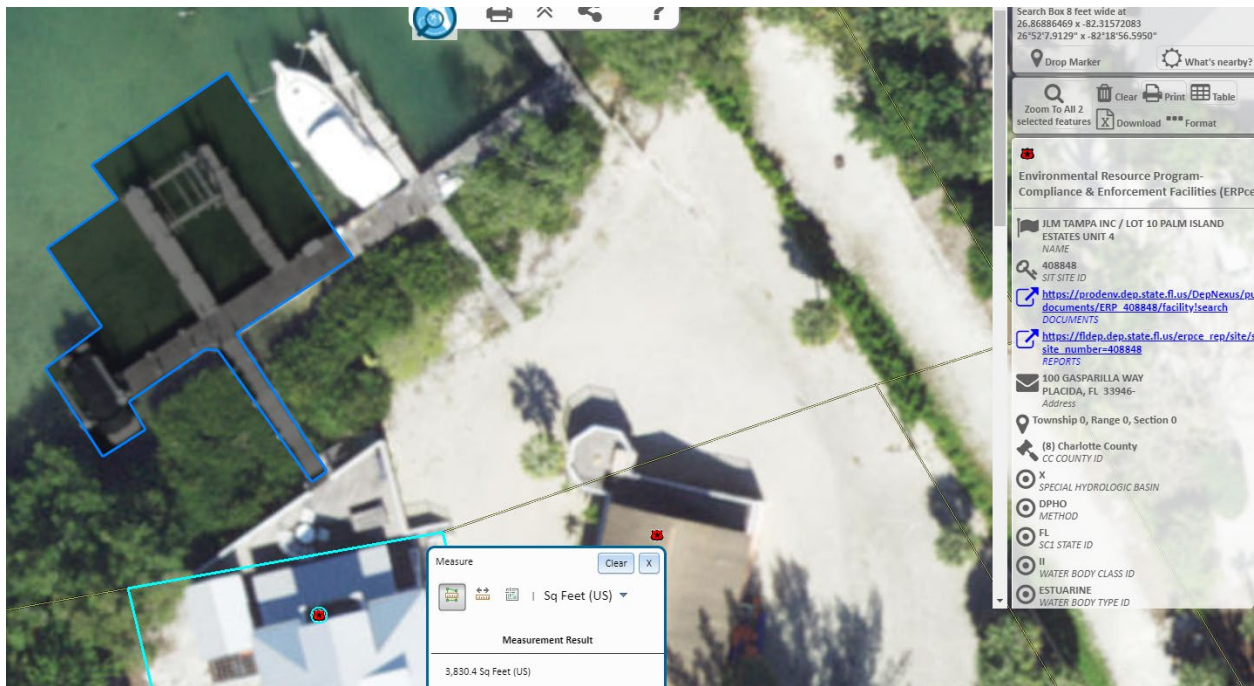
15. Any use of sovereignty submerged lands is subject to the following general conditions are binding upon the applicant and are enforceable under Chapter 253, F.S.:
  - a. Sovereignty submerged lands may be used only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use will constitute a violation. Violation of the authorization will result in suspension or revocation of the applicant's use of the sovereignty submerged lands unless cured to the satisfaction of the Board of Trustees.

- b. Authorization under Rule 18-21.005, F.A.C., conveys no title to sovereignty submerged lands or water column, nor does it constitute recognition or acknowledgment of any other person's title to such land or water.
- c. Authorizations under Rule 18-21.005, F.A.C., may be modified, suspended or revoked in accordance with its terms or the remedies provided in Sections 253.04, F.S. and Chapter 18-14, F.A.C.
- d. Structures or activities will be constructed and used to avoid or minimize adverse impacts to resources.
- e. Construction, use, or operation of the structure or activity will not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.
- f. Structures or activities will not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity will be modified in accordance with the court's decision.
- g. Structures or activities will not create a navigational hazard.
- h. Structures will be maintained in a functional condition and will be repaired or removed if they become dilapidated to such an extent that they are no longer functional.
- i. Structures or activities will be constructed, operated, and maintained solely for water dependent purposes.
- j. The applicant agrees to indemnify, defend and hold harmless the Board of Trustees and the State of Florida from all claims, actions, lawsuits and demands in any form arising out of the authorization to use sovereignty submerged lands or the applicant's use and construction of structures on sovereignty submerged lands. This duty to indemnify and hold harmless will include any and all liabilities that are associated with the structure or activity including special assessments or taxes that are now or in the future assessed against the structure or activity during the period of the authorization.
- k. Failure by the Board of Trustees to enforce any violation of a provision of the authorization or waiver by the Board of Trustees of any provision of the authorization will not invalidate the provision not enforced or waived, nor will the failure to enforce or a waiver prevent the Board of Trustees from enforcing the unenforced or waived provision in the event of a violation of that provision.
- l. Applicant binds itself and its successors and assigns to abide by the provisions and conditions set forth in the authorization. If the applicant or its successors or assigns fails or refuses to comply with the provisions and conditions of the authorization, the authorization may be terminated by the Board of Trustees after written notice to the applicant or its successors or assigns. Upon receipt of such notice, the applicant or its successors or assigns will have thirty (30) days in which to correct the violations. Failure to correct the violations within this period will result in the automatic revocation of this authorization.
- m. All costs incurred by the Board of Trustees in enforcing the terms and conditions of the authorization will be paid by the applicant. Any notice required by law will be made by certified mail at the address shown on page one of the authorization. The applicant will notify the Board of Trustees in writing of any change of address at least ten days before the change becomes effective.

- n. This authorization does not allow any activity prohibited in a conservation easement or restrictive covenant that prohibits the activity.



Dock in Blue Polygon



Preempted Area in Blue Polygon

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
 Receipts Section  
 Post Office Box 3070  
 Tallahassee, FL, 32315-3070



**INVOICE**

Bill To :  
 JLM Tampa, Inc.  
 JLM Tampa Inc  
 5017 N. Coolidge Ave  
 Tampa, FL 33614

**\*\* INVOICE / INSTRUMENT INFORMATION \*\***

Invoice #:	128044	Instrument #:	080361515
Invoice Date:	12/19/2022	Expiration Date:	11/10/2022
Due Date:	01/18/2023	Extended Term Fee:	N
Lessee Name:	JLM Tampa, Inc.		
Rate:	Pending Instrument		
Location:	PENDING		

**\*\* IMPORTANT REMINDER \*\***

If paying by mail, please return invoice with your payment to the above address.  
 Online payment by check, credit card or debit card is available at  
<http://www.fdepportal.com/go/pay-invoices/>  
 Late payments are subject to a 12% Interest fee pursuant to FAC 18-21.011(1)(b)13.

INFORMATION			LEASE FEE DATA				
Description	Memo	Object	Net Square Feet	Rate	Discount	Extended Term Fee	*Amount
Aquatic Preserve Rate 2021/2022 Commercial	Arrears on 3,830 sq. ft. for 12/19/21 - 12/18/22	21017	0.0	0.3728	0	N	\$1,427.82
Aquatic Preserve Rate 2022/2023 Commercial	Arrears on 3,830 sq. ft. for 12/19/22 - 12/18/23	21017	0.0	0.3838	0	N	\$1,469.95
Arrears 2022/2023 Commercial	Arrears on 3,830 sq. ft. for 12/18/23 - 12/19/23	21017	0.0	0.0	0	N	\$4.03
Aquatic Preserve Rate 2018/2019 Commercial	Arrears on 3,830 sq. ft. for 12/19/18 - 12/18/19	21017	0.0	0.353506	0	N	\$1,353.93
Aquatic Preserve Rate 2019/2020 Commercial	Arrears on 3,830 sq. ft. for 12/19/19 - 12/18/20	21017	0.0	0.35994	0	N	\$1,374.59
Aquatic Preserve Rate 2020/2021 Commercial	Arrears on 3,830 sq. ft. for 12/19/20 - 12/18/21	21017	0.0	0.3654	0	N	\$1,399.48
Note: Consent order/TUA Agent M. Millers (AL)       <b>OGC No. 21-1171            Exhibit B</b>					SubTotal		\$7,029.80
					Sales Tax		\$393.45
					County Tax		\$70.30
					Credit Applied		(\$0.00)
					Payment Applied		\$0.00
					Total		\$7,493.55
					Invoice Balance Due		\$7,493.55
					Instrument/Lease Balance Due		\$7,493.55