



# FLORIDA DEPARTMENT OF Environmental Protection

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Interim Secretary

South District  
Post Office Box 2549  
Fort Myers, Florida 33902-2549  
[SouthDistrict@dep.state.fl.us](mailto:SouthDistrict@dep.state.fl.us)

July 9, 2021

Everglades Airboat Resorts, LLC  
c/o Gordon Duncan  
Duncan & Associates, P.A.  
[Gordon@duncanassociatesfl.com](mailto:Gordon@duncanassociatesfl.com)

Re: Consent Order and Temporary Use Agreement  
OGC Case No. 21-0529  
BOT Lease No. 110344415  
DEP Site No. 302721 / Project No. 379665  
Barron River, Class II Waters  
Parcel No. 83540240004 – 899 Dupont Rd., Everglades City, FL 34139  
Collier County – SLERC

Dear Mr. Duncan:

Enclosed is the signed Consent Order and Temporary Use Agreement (Order) to resolve this case. This copy is for your and your client's records. Please note that all compliance dates for the Order begin on the date of entry, which is July 9, 2021.

All information submittals should 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). Please include the OGC number assigned to this Order (OGC No. 21-0529) for all submittals. Online e-check payment can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/>.

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, appearing to read "J. Iglehart".

Jon M. Iglehart  
Director of District Management  
South District Office

JMI/mrm

Enclosure: Consent Order and Temporary Use Agreement

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND  
BOARD OF TRUSTEES OF THE  
INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

STATE OF FLORIDA DEPARTMENT	)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION	)	SOUTH DISTRICT
and BOARD OF TRUSTEES OF THE	)	
INTERNAL IMPROVEMENT TRUST FUND	)	
OF THE STATE OF FLORIDA,	)	
	)	
Complainants,	)	
	)	OGC FILE NO. 21-0529
vs.	)	
	)	
EVERGLADES AIRBOAT RESORTS, LLC,	)	
	)	
Respondent.	)	
_____	)	

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 Everglades Airboat Resorts LLC (Respondent) to reach settlement of certain matters at issue between the Department, the Board, and the Respondent.

The Department and the 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 state lands and ensuring they are managed in trust for the citizens of the State of Florida pursuant to Chapter 253, Fla. Stat., and 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 373.019(15), Fla. Stat.

4. Since January 23, 2007, Respondent has owned real property located at 899 Dupont Road, Everglades City, FL 34139, Collier County Property Appraiser Parcel ID No. 83540240004 (“Property”).

5. The Property is located adjacent to the Barron River, a Class II waterbody of the state as defined by Florida Law.

6. The lands below the mean high water line of the Barron River waterward of the Property are sovereign submerged lands owned by the Board as defined by Florida Law.

7. Docks, mooring pilings and boat mooring areas associated with the Property are located on approximately 7,589 square feet of sovereign submerged lands in the Barron River adjacent to the Property, as depicted in Exhibit A attached hereto and incorporated herein.

8. Respondent’s docking facility is an accessory facility to the revenue generating operation on the riparian upland Property.

9. On December 17, 2013, the Board and Respondent entered into a five-year sovereignty submerged lands lease renewal (No. 110344415) (Lease), for Respondent’s docking facility. The lease expired on November 10, 2018 and has not been renewed.

10. On June 28, 2018, the Department conducted a Lease renewal compliance inspection and found the Lease to not be in compliance because: (a) vessels were moored perpendicular to the dock and partially outside the Lease; and (b) a concrete floating dock, (8' wide by 152' long and 8' wide by 43' long with two finger piers (8.5 wide by 41 and 8.5 x 12.5) and mooring pilings were installed waterward of the existing wooden dock in between 2015/2016. The Department’s inspection report included the following recommendations for corrective action: (a) apply for and obtain an environmental resource permit and lease modification to authorize the unauthorized structures and increase the lease area to accommodate the perpendicular mooring of vessels; or (b) remove the unauthorized concrete floating dock and mooring pilings and submit photographs. The Department’s Compliance Assistance Offer letter sent to the Respondent with the inspection report notified the Respondent that the unauthorized construction is non-compliant with the requirements of Sections 403.161(1), 373.430(1) and 253.04, Florida Statutes (F.S.), and Rules 62-330.020(2), 62-302.500 and 18-21, Florida Administrative Code (F.A.C.).

11. On October 9, 2019, the Department received an application (file no. 302721-001) for an environmental resource permit for the unauthorized concrete floating dock and mooring pilings. The application was incomplete and the Department sent the Respondent’s permitting

consultant a Request for Additional Information (RAI) on November 7, 2019. The Department extended the deadline to complete the application several times but the requested additional information was not submitted.

12. On April 20, 2021, the Department denied the environmental resource permit application.

13. On May 4, 2021, the Department sent the Respondent, via certified mail, a Warning Letter including the Department's Compliance Assistance Offer letter. The Department's letter requested that the Respondent enter into a Consent Order and Temporary Use Agreement to resolve the non-compliance. The Department's letter also requested a written response from the Respondent within 15 days of the Respondent's receipt of the letter. The return receipt indicates that the Respondent received the Warning Letter on May 6, 2021, making the response deadline May 21, 2021.

14. On June 3, 2021, the Department received an email from the Respondent's attorney requesting a Consent Order and Temporary Use Agreement to resolve the non-compliance described in Paragraph 10 above.

15. Respondent desires to enter into this Order to resolve these violations and to use the Sovereign Lands and water column adjacent to the Respondent's riparian upland Property.

16. Respondent desires to obtain temporary authorization from the Board to preempt approximately 7,589 square feet of sovereign submerged lands as shown on Exhibit A attached hereto and incorporated herein while the Respondent completes the corrective actions attached to this Order, and while the Department prepares and issues a sovereign submerged lands lease renewal and modification.

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

**ORDERED:**

17. **Within 30 days of the effective date of this Order**, Respondent shall pay the Department \$ 5,920.00 in settlement of the regulatory 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 pursuant to Section 403.121(3)(c), F.S.; and

(b) \$1,000.00 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 on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order, which is 21-0529, and the notation "Water Quality Assurance Trust Fund." Online payments by e-check 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.

18. **Within 30 days of the effective date of this Order**, Respondent shall pay the Board **\$ 259.11** for deposit into the Internal Improvement Trust Fund as compensation for the past and current use of the sovereign submerged lands without the approval or authorization of the Board. Such payment can be made online by check, credit card or debit card at <http://www.fldepportal.com/go/pay-invoices> or in the form of 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.

19. The consideration required by paragraph 18 for this Order includes the fees due for the use of the Sovereign Lands for Respondent's docking facility from June 28, 2018 through November 9, 2021, as shown in attached Exhibit B attached hereto and incorporated herein. This consideration is not refundable, notwithstanding the denial of the sovereign submerged lands lease renewal and modification by the Board.

20. The Respondent acknowledges and understands that the grant of this Order and the payment of the amount herein does not guarantee that the Board will grant the Respondent a sovereign submerged lands lease renewal and modification for the use of the Sovereign Lands or that the Department will recommend that the sovereign submerged lands lease renewal and modification be granted. The Board will grant the sovereign submerged lands lease renewal and modification if the Respondent meets the requirements of Rules 18-20 and 18-21, Florida Administrative Code.

21. The Respondent is hereby granted the temporary exclusive use of the preempted area on the sovereign submerged lands at Respondent's docking facility identified above, preempting approximately 7,589 square feet, waterward of Respondent's riparian upland

Property. This temporary exclusive use is for a term not to exceed **180 days** from the effective date of this Order, or until the date of execution of a sovereign submerged lands lease renewal and modification between the Board and the Respondent, whichever occurs first. The Respondent shall make no claim of title to or interest in the sovereign submerged lands identified above solely by reason of occupancy or use thereof under this Order.

22. Respondent's docking facility can only be utilized as it existed on the effective date of this Order. In the event any part of any of Respondent's docking facility 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, Respondent agrees to either obtain written consent for the offending structures and associated preempted area 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.

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

24. **In the event that an application for a sovereign submerged lands lease renewal and modification is not approved by the Board, or the Respondent fails to execute the sovereign submerged lands lease renewal prior to the expiration or termination of the Board authorization herein, whichever occurs first, the Respondent shall immediately remove all structures from sovereign submerged lands at the Respondent's sole expense. In the event that the Respondent asserts title to the sovereign submerged 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 sovereign submerged lands at the Respondent's sole expense. If the Respondent fails to complete the requirements of this Order, the Respondent shall immediately remove all structures from sovereign submerged lands at the Respondent's sole expense.** The complete removal of all structures as required by this paragraph shall be accomplished within 30 days following the expiration or termination of the Board's authorization herein or receipt of written notification from the Department whichever occurs first.

25. 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 lease, easement, or other consent of use from the Department.

26. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fail to timely comply with any of the requirements of this Order. A separate stipulated penalty shall be assessed for each violation of this Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the "*The Department of Environmental Protection*" by cashier's check or money order and shall include thereon the OGC number assigned to this Order and the notation "*Water Quality Assurance Trust Fund.*" The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in Paragraph 17 of this Order.

27. 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.

28. Respondent shall allow all authorized representatives of the Department and the Board access to the Respondent's riparian upland property and the Sovereignty 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.

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

30. 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 Sections 253.04 and 373.430, Fla. Stat.

31. 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.

32. 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.

33. 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.

34. 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.



35. 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/>.

36. 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.

37. 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.

38. 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, Florida Statutes. 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, Florida Statutes. Any litigation involving these Proprietary requirements shall be initiated and maintained only in Leon County.**

39. 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.

40. Rules referenced in this Order are available at <https://floridadep.gov/ogc/ogc/content/rules>.

FOR THE RESPONDENT:

EVERGLADES AIRBOAT RESORTS, LLC

Aashish Patel, Authorized Member  
Typed Name, Title

DATE 7/8/21

  
Original Signature Authorized Member

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

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DONE AND ORDERED this 9<sup>th</sup> day of July, 2021, in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Jon M. Iglehart  
Director of District Management  
South Florida District  
P.O. Box 2549  
Fort Myers, FL 33902-2549  
Telephone: (239) 344-5600

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

  
\_\_\_\_\_  
CLERK

July 9, 2021  
\_\_\_\_\_  
DATE

cc: Lea Crandall, Agency Clerk

**ATTACHMENT I**  
**OGC Case No. 21-0529**  
**CORRECTIVE ACTIONS**

1. Within 90 days of this Order, Respondent shall submit a complete application for a Consolidated Environmental Resource Permit and Authorization to Use Sovereignty Submerged Lands (“ERP”) pursuant to Chapter 62-330, F.A.C. for the following unauthorized structures and activities discovered by the Department during a June 28, 2018, Lease renewal compliance inspection: (a) vessels moored perpendicular to the dock and partially outside the Lease; and (b) a concrete floating dock, (8' wide by 152' long and 8' wide by 43' long with two finger piers (8.5 wide by 41 and 8.5 x 12.5) and mooring pilings installed waterward of the existing wooden dock between 2015 and 2016.
2. Within 90 days of the Department’s issuance of the ERP, Respondent shall enter into a lease renewal and modification for the Respondent’s docking facility.

**DOCK REMOVAL IF ERP NOT ISSUED**

3. If the Department does not issue the ERP within 180 days of this Order, Respondent shall within 270 days of this Order remove the unauthorized structures described in Paragraph 1 above and shall reconfigure boat mooring to ensure that all moored boats are within the area authorized by the Lease that expired on November 10, 2018. During removal of the unauthorized structures, Respondent shall comply with all applicable State Water Quality Standards, including but not limited to:
  - a. Rule 62-302.500, F.A.C. – Surface Waters: Minimum Criteria, General Criteria; and
  - b. Rule 62-302.530, F.A.C. – Table: Surface Water Quality Criteria – Class II Waters.
4. 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 surrounding surface waters. The Respondent shall be responsible for inspecting and maintaining turbidity control devices so no degradation of the ambient water quality of surrounding surface waters outside of the turbidity screens occurs.
5. 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.
6. 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.
7. 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.

8. 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.
9. 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 surrounding surface 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.
10. 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.
11. Within seven (7) days of completion of all dock removal activities, Respondent shall submit to the Department sufficient documentation, such as photographs, showing the structures that have been removed. 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@dep.state.fl.us](mailto:ftmerp_compliance@dep.state.fl.us). All submittals shall include thereon the OGC number assigned to this Order which is OGC No. 21-0529.
12. With the exception of the activities described in the above Corrective Actions, 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 lease, easement, or other consent of use from the Department., pursuant to Part IV of Chapter 373, Florida Statutes (F.S.).
13. Within 90 days of the Respondent's completion of the corrective actions described in Paragraph 3 above, Respondent shall enter into a lease renewal and modification for the docking facility authorized by this Order.

**GENERAL CONDITIONS:**

14. 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.
15. 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.
16. 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.
17. 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 this Order and Chapter 62-330, F.A.C.
18. 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.
19. 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.
20. The Respondent shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate.

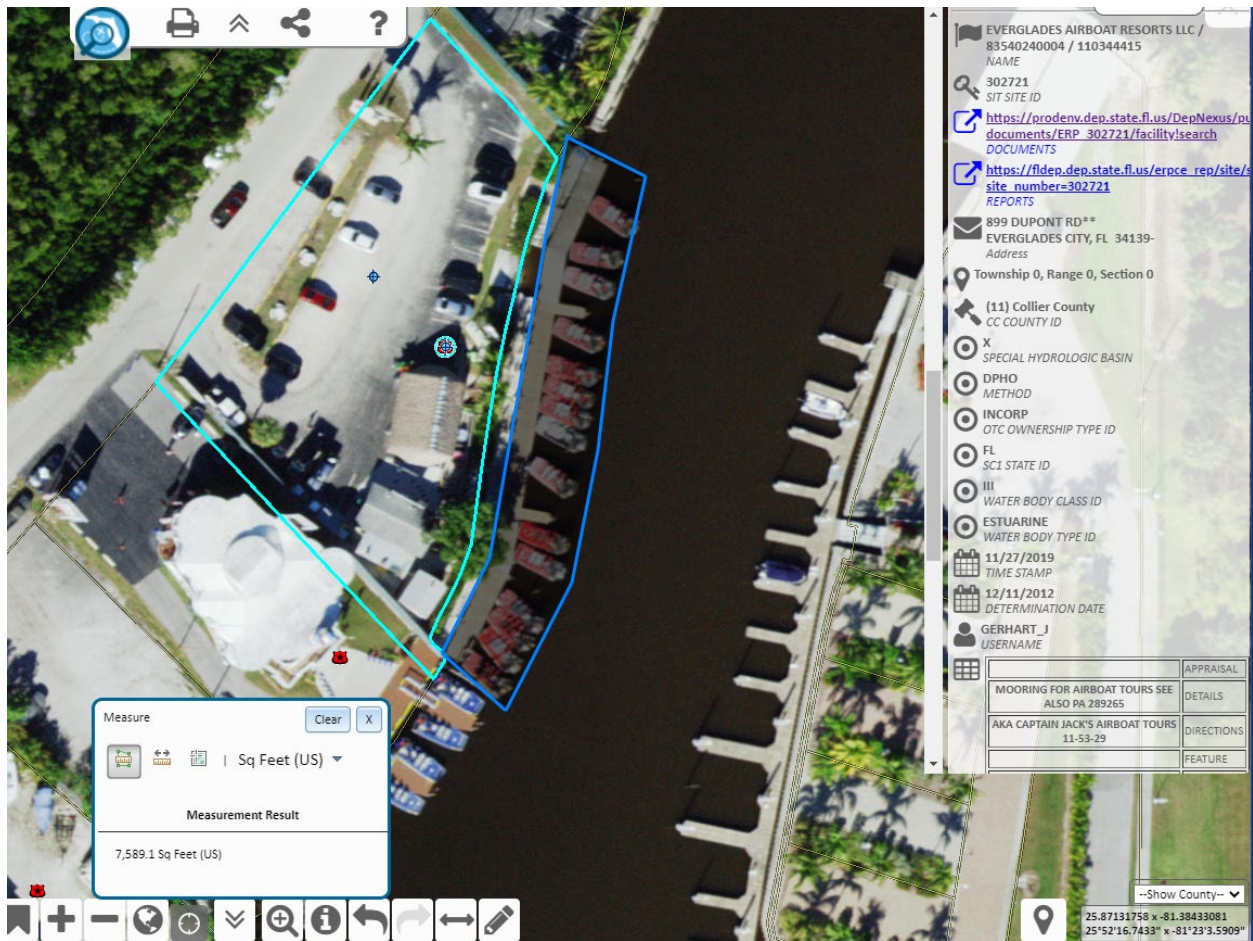


21. The Respondent is hereby advised that Department authorization is required for all dredging and filling activities in wetlands or surface waters and for mangrove trimming, alteration and/or removal, pursuant to Chapters 403 and 373, Florida Statutes (F.S.). In addition, water quality standards, as 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.
22. The project shall comply with applicable State Water Quality Standards, namely:
  - a. Rule 62-302.500, F.A.C. - Surface Waters: Minimum Criteria, General Criteria; and
  - b. Rule 62-302.530, F.A.C. – Table: Surface Water Quality Criteria – Class II Waters.

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

23. 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.



OGC No. 21-0529

Exhibit A

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Receipts Section  
Post Office Box 3070  
Tallahassee, FL, 32315-3070

**INVOICE****Bill To :**

Everglades Airboat Resorts LLC  
17595 S. Tamiami Trail #120  
Ft Myers, FL 33908

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

Invoice #:	117586	Instrument #:	110344415
Invoice Date:	06/10/2021	Expiration Date:	11/10/2018
Due Date:	07/10/2021	Extended Term Fee:	N
Lessee Name:	Everglades Airboat Resorts LLC		
Rate:	Base Rate		
Location:	Commercial Airboat Tour Docking Facility		

**\*\* 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.fdeportal.com/go/pay-invoices/>.

Late payments are subject to a 12% Interest fee pursuant to FAC 18-21.011(1)(b)11.

INFORMATION			LEASE FEE DATA				
Description	Memo	Object	Net Square Feet	Rate	Discount	Extended Term Fee	*Amount
Arrears 2017/2018	From 6/28/18 to 11/9/18 on 375 sf	21017	7214.0	0.0	0	N	\$24.17
Arrears 2018/2019	From 11/10/18 to 11/9/19 on 375 sf	21017	7214.0	0.0	0	N	\$66.28
Arrears 2019/2020	From 11/10/19 to 11/9/20 on 375 sf	21017	7214.0	0.0	0	N	\$67.29
Arrears 2020/2021	From 11/10/20 to 11/9/21 on 375 sf	21017	7214.0	0.0	0	N	\$68.51
25% Initial Surcharge 2018/2019 NT	First Full Year on 375 sf	21017	7214.0	0.0	0	N	\$16.57
Note: Agent: M. Miller - Fees for a Pending TUA. ssr       OGC No. 21-0529 Exhibit B Page 1 of 3						SubTotal	\$242.82
						Sales Tax	\$13.86
						County Tax	\$2.43
						Credit Applied	(\$0.00)
						Total	\$259.11
						Invoice Balance Due	\$259.11
						Instrument/Lease Balance Due	\$1,662.78

ANNUAL LEASE FEE FORMULA = BASE FEE - DISCOUNT + EXTENDED TERM FEE

\*BASE FEE =Base Rate x Net Square Feet OR

\*BASE FEE =Minimum Rate

DISCOUNT =Base Fee x Discount Percentage

EXTENDED TERM FEE =Base Fee x Extended Term Fee Percentage

For any questions concerning this invoice, please call the Division of State Lands at (850) 245-2555.

OGC No. 21-0529

Exhibit B

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## Arrears Calculation

Instrument Number:	110344415	Grantee/Lessee:	Everglades Airboat Resorts LLC	Multi Family Reduction:	N
Begin Date:	06/28/2018	End Date:	11/09/2021	Single Family Reduction:	N
Interest:	N	Surcharge:	Y	Sales Tax:	Y
Linear Footage:		Wet Slips:	0	Rate:	1
Discount:	0	Sq Feet:	375.0	County:	Collier

Start Date	End Date	Discount	Row Amount	Balance With No Interest	Row Interest	Previous Balance Interest	Interest Balance	Balance With Interest
06/28/2018	11/09/2018	\$0.00	\$24.17	\$24.17	\$0.00	\$0.00	\$0.00	\$24.17
11/10/2018	11/09/2019	\$0.00	\$66.28	\$90.45	\$0.00	\$0.00	\$0.00	\$90.45
11/10/2019	11/09/2020	\$0.00	\$67.29	\$157.74	\$0.00	\$0.00	\$0.00	\$157.74
11/10/2020	11/09/2021	\$0.00	\$68.51	\$226.25	\$0.00	\$0.00	\$0.00	\$226.25
							Surcharge	\$16.57
							Sales Tax	\$13.86
							County Tax	\$2.43
							Balance Due	\$259.11

OGC No. 21-0529

Exhibit B

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