

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: December 19, 2007

Division: Public Works

Bulk Item: Yes  No

Department: Facilities Maintenance

Staff Contact Person: John W. King, 292-4431

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**AGENDA ITEM WORDING:** Approval to renew the License Agreement with the United States Department of the Navy for use of Navy shoreline on Boca Chica Beach.

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**ITEM BACKGROUND:** On December 31, 2007, the License Agreement with the Department of the Navy for Boca Chica Beach will expire; however, the Navy has agreed to renew the Agreement.

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**PREVIOUS RELEVANT BOCC ACTION:** On March 28, 1990, the BOCC approved and authorized execution of the License Agreement with the United States Department of the Navy for use of Navy Shoreline on Boca Chica Beach. On January 18, 1996, the BOCC approved renewal of the License Agreement from January 1, 1996, through December 31, 2001. On May 15, 2002, the BOCC renewed the License Agreement from January 1, 2002, through December 31, 2007.

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**CONTRACT/AGREEMENT CHANGES:** Renew License Agreement for a term beginning January 1, 2008, through December 31, 2012.

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**STAFF RECOMMENDATIONS:** Approval.

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**TOTAL COST:** N/A

**BUDGETED:** Yes N/A No

**COST TO COUNTY:** N/A

**SOURCE OF FUNDS:** \_\_\_\_\_

**REVENUE PRODUCING:** Yes  No  **AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty  OMB/Purchasing \_\_\_\_\_ Risk Management \_\_\_\_\_

**DOCUMENTATION:** Included  Not Required \_\_\_\_\_

**DISPOSITION:** \_\_\_\_\_

**AGENDA ITEM #** **C-11**

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# MEMORANDUM

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**DATE:** November 30, 2007

**TO:** Dent Pierce, Division Director  
Public Works

**FROM:** John W. King, Sr. Director  
Lower Keys Operations

**RE:** Agenda Item – December 19, 2007 BOCC Meeting  
Renew the License Agreement with the United States Department of  
the Navy for use of Navy shoreline on Boca Chica Beach.

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Since March 1990, Monroe County has had a License Agreement with the United States Department of the Navy for use of Navy Shoreline on Boca Chica Beach, and on April 18, 2001, the Board authorized to negotiate a licensing property agreement for U. S. Government Property, Dept. of Navy, for the South Shoreline of Boca Chica Key for public recreational space.

On December 31, 2007, the License Agreement with the Department of the Navy to provide the public with a needed recreational area expires and the Department of the Navy is willing to renew the Agreement.

I hereby request approval to renew the License Agreement with the United States Department of the Navy for use of Navy shoreline on Boca Chica Beach from January 1, 2008 through December 31, 2013.

JWK/jbw

Enclosures

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

**CONTRACT SUMMARY**

Contract with: Department of the Navy Contract # \_\_\_\_\_  
 Effective Date: 01-01-08  
 Expiration Date: 12-31-13

**Contract Purpose/Description:**

License Agreement for use of the Navy shoreline on Boca Chica Beach to provide the public with a needed recreational area

Contract Manager: Jo B. Walters 4549 Facilities Maint/Stop #4  
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 12/19/07 Agenda Deadline: 12/04/07

**CONTRACT COSTS/REVENUE**

Total Dollar Value of Contract: \$ N/A Current Year Portion: \$ N/A  
 Budgeted? Yes  No  Account Codes: - - - - -  
 Grant: \$ N/A  
 County Match: \$ N/A

**ADDITIONAL COSTS**

Estimated Ongoing Costs: \$ \_\_\_\_\_/yr For: \_\_\_\_\_  
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

**CONTRACT REVIEW**

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>12/11/07</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u>[Signature]</u>	
Risk Management PSK	<u>12-10-07</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Sluic</u>	<u>12-10-07</u>
O.M.B./Purchasing	<u>12-10-07</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	
County Attorney	<u>11/30/07</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>12/4/07</u>

12/11/07

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**LICENSE FOR NON FEDERAL USE OF REAL PROPERTY**  
**NAVFAC 11011/29 (6-75) (Supercedes NavDocks 2260)**

**LICENSE NUMBER**

**THIS LICENSE TO USE THE U.S. GOVERNMENT PROPERTY HEREIN DESCRIBED IS ISSUED BY THE DEPARTMENT OF THE NAVY TO THE LICENSEE NAMED BELOW FOR THE PURPOSE HEREIN SPECIFIED UPON THE TERMS AND CONDITIONS SET FORTH BELOW AND THE GENERAL PROVISIONS ON THE REVERSE SIDE HEREOF. BY THE EXECUTION HEREOF THE LICENSEE AGREES TO COMPLY WITH ALL SUCH TERMS, CONDITIONS AND GENERAL PROVISIONS.**

**N69450-08-RP-00009**

1. NAVAL ACTIVITY (Property location) Naval Air Station Key West, Florida	2. DATES COVERED (Inclusive)  FROM 1 January 2008 TO 31 December 2013
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3. DESCRIPTION OF PROPERTY: As delineated on Exhibit "A", this property runs along the southern shoreline of Boca Chica Key. The shoreline is comprised of both sandy and rocky areas.

4. PURPOSE OF LICENSE: To provide the public with a needed recreational area.

5. LICENSOR UNITED STATES OF AMERICA DEPARTMENT OF THE NAVY	5a. LOCAL REPRESENTATIVE, DEPT. OF THE NAVY OFFICIAL (Title and address) Commanding Officer, Naval Air Station Key West, FL 33040-5000
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5. LICENSEE (Name and address) Monroe County, 1100 Simonton Street, Key West, FL 33040-5000	6a. LOCAL REPRESENTATIVE (Name and address) Mr. Thomas J. Willi, County Administration, 1100 Simonton Street, Suite 205, Key West, FL 33040-5000
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7. CASH PAYMENT BY LICENSEE (Payable in advance)  
 (If no cash payment is required, enter "None" under item 7a "Amount")

1. AMOUNT (Each payment) \$ None	b. FREQUENCY PAYMENTS DUE	c. FIRST DUE DATE	d. TO (Title and address of local representative of the Government)
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8. DEPOSIT FOR UTILITES AND SERVICES (Payable in advance)  
 (If no cash payment is required, enter "None" under item 8a "Amount")

1. AMOUNT (Each deposit) \$ N/A Vacant Land	b. FREQUENCY PAYMENTS DUE	c. FIRST DUE DATE	d. TO (Mailing address)
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9. INSURANCE REQUIRED AT EXPENSE OF LICENSEE  
 (If any or all insurance requirements have been waived, enter "None" in a,b,c or d as appropriate)

TYPE	MINIMUM AMOUNT	TYPE	MINIMUM AMOUNT
1. FIRE AND EXTENDED COVERAGE	\$ None	c. THIRD PARTY PERSONAL INJURY PER PERSON	\$ 100,000.00
3. THIRD PARTY PROPERTY DAMAGE	\$ 100,000.00	d. THIRD PARTY PERSONAL INJURY PER ACCIDENT	\$ 300,000.00

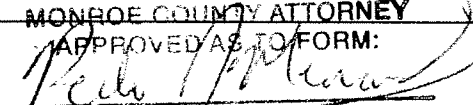
10. GENERAL PROVISIONS (See Reverse Side)

Licensee is self insured through the Florida Municipal Liability Self Insurance Program (see Exhibit "B"). Licensee is also subject to the additional provisions as listed in Exhibit "C".

**11. EXECUTION OF LICENSE**

FOR	BY		DATE
	NAME AND TITLE (Typed)	SIGNATURE	
DEPARTMENT OF THE NAVY	ROBERT W. MCDOWELL, RA, AICP Real Estate Contracting Officer		
LICENSEE	Monroe County Key West, Florida		

If License is a Corporation, Certification of signature is attached

**MONROE COUNTY ATTORNEY**  
 APPROVED AS TO FORM:  
  
**PEDRO MERCADO**

## 10. GENERAL PROVISIONS

a. The Licensor hereby grants to the Licensee the right to use the premises or facilities described in item 3, together with the necessary rights of ingress and egress.

b. This License shall be effective for the period stated in item 2 and is revocable at any time without notice at the option and discretion of the Licensor or its duly authorized representative.

c. The use shall be limited to the purposes specified herein.

d. This License shall be neither assignable nor transferable by the Licensee.

e. If utilities and services are furnished the Licensee for its use of the premises the Licensee shall reimburse the Licensor for the cost thereof as determined by the Licensor in accordance with applicable statutes and regulations.

f. The Licensee, at its own cost and expense, shall protect, maintain, and keep in good order, the premises or facilities licensed hereby. At the discretion of the Licensor this obligation shall include, but not be limited to, contribution toward the expense of long-term maintenance to the premises or facilities, the necessity for which accrued during the period of Licensee's use. The amount of expense to be borne by the Licensee shall be determined by prorating the total expense of the item of long-term maintenance on the basis of fractional use by the Licensee. This fractional part of the total expense shall be prorated further if the item of long-term maintenance did not accrue in its entirety during the Licensee's use. Upon a determination by the Licensor that the necessity exists for an expenditure of funds for maintenance, protection, preservation or repair, the Licensee shall pay to the Licensor its proportionate share, on demand.

g. No additions to, or alterations of, the premises or facilities shall be made without the prior consent of the Licensor. Upon revocation or surrender of this Licensee, to the extent directed by the Licensor, the Licensee shall remove all alterations, additions, betterments and improvements made, or installed, and restore the premises or facilities to the same, or as good condition as existed on the date of entry under this License, reasonable wear and tear excepted.

h. The licensee shall be liable for any loss of, or damage to, the premises or facilities incurred as a result of its use and shall make such restoration or repair, or monetary compensation as may be directed by the Licensor. The Licensee's liability for loss or damage to the premises resulting from risks expressly required to be insured hereunder shall not exceed the amount of insurance so required. The Licensee shall not be liable for loss of, or damage to, the premises arising from causes beyond the control of the Licensee and occasioned by a risk not in fact covered by insurance and not customarily covered by insurance in the locality in which the premises are situated. Nothing contained herein, however, shall relieve the Licensee of liability with respect to any loss or damage to the premises, not fully compensated for by insurance, which results from willful misconduct, lack of good faith, or failure to exercise due diligence, on the part of the Licensee. All insurance required of the Licensee on the premises shall be for the protection of the Licensor and the Licensee against their respective risks and liabilities in connection with the premises. Each policy of insurance against loss or damage to Government property shall name the Licensee and the United States of America, Department of the Navy, as the insured and shall contain a loss payable clause reading substantially as follows:

"Loss, if any, under this policy shall be adjusted with (Name of Licensee) and the proceeds, at the direction of the Government, shall be payable to (Name of Licensee), and proceeds not paid to (Name of Licensee) shall be payable to the Treasurer of the United States of America." In the event that any item or part of the premises or facilities shall require repair, rebuilding or replacement resulting from loss or damage, the risk of which is assumed under this paragraph h, the Licensee shall promptly give notice thereof to the Licensor and, to the extent of its liability as provided in this paragraph, shall, upon demand, either compensate the Government for such loss or damage, or rebuild, replace or repair the items or items of the premises or facilities so lost or damaged, as the Licensor may elect. If the cost of such repair, rebuilding, or replacement exceeds the liability of the Licensee for such loss or damage, the Licensee shall effect such repair, rebuilding or replacement if required so to do by the Licensor, and such excess of cost shall be reimbursed to the Licensee by the Licensor. In the event the Licensee shall have effected any repair, rebuilding or replacement which the Licensee is required to effect pursuant to this paragraph, the Licensor shall direct payment to the Licensee of so much of the proceeds of any insurance carried by the Licensee and made available to the Government on account of loss of or damage to any item or part of the premises or facilities as may be necessary to enable the Licensee to effect such repair, rebuilding or replacement. In the event the Licensee shall not have been required to effect such repair, rebuilding, or replacement, and the insurance proceeds allocable to the loss or damage which has created the need for such repair, rebuilding or replacement have been paid to the Licensee, the Licensee shall promptly refund to the Licensor the amount of such proceeds.

i. The Licensee shall indemnify and save harmless the Government, its officers, agents, servants and employees from all liability under the Federal Tort Claims Act (62 Stat. 869, 982; 28 U.S.C. Sec 2671, 2680) or otherwise, for death or injury to all persons, or loss or damage to the property of all persons resulting from the use of the premises by the Licensee, and shall furnish the insurance specified in Item 9. Each policy of insurance required in Item 9 covering bodily injuries and third party property damage shall contain an endorsement reading substantially as follows:

"The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy."

j. All insurance required by this License shall be in such form, for such periods of time, and with such insurers as the Licensor may require or approve. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited with the Licensor's local representative prior to use of the premises and facilities. The Licensee agrees that not less than thirty (30) days prior to the expiration of any insurance required by this License, it will deliver to the Licensor's local representative a certificate of insurance or a certified copy of each renewal policy to cover the same risks.

k. No member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this License or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this License if made with a corporation for its general benefits.

l. The Licensee warrants that it has not employed any person to solicit or secure this License upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul this License or in its discretion to recover from the Licensee the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the Licensee upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Licensee for the purpose of securing business.

m. In connection with the performance of work under this License, the Licensee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Licensee agrees to post hereafter in conspicuous places available for employees and applicants for employment, notices to be provided by the Licensor setting forth the provisions of the nondiscrimination clause. The Licensee further agrees to insert the foregoing provisions of the nondiscrimination clause. The Licensee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

n. All activities authorized hereunder shall be subject to such rules and regulations as regards supervision or otherwise, as may, from time to time, be prescribed by the local representative of the Licensor as designated in Item 5a.

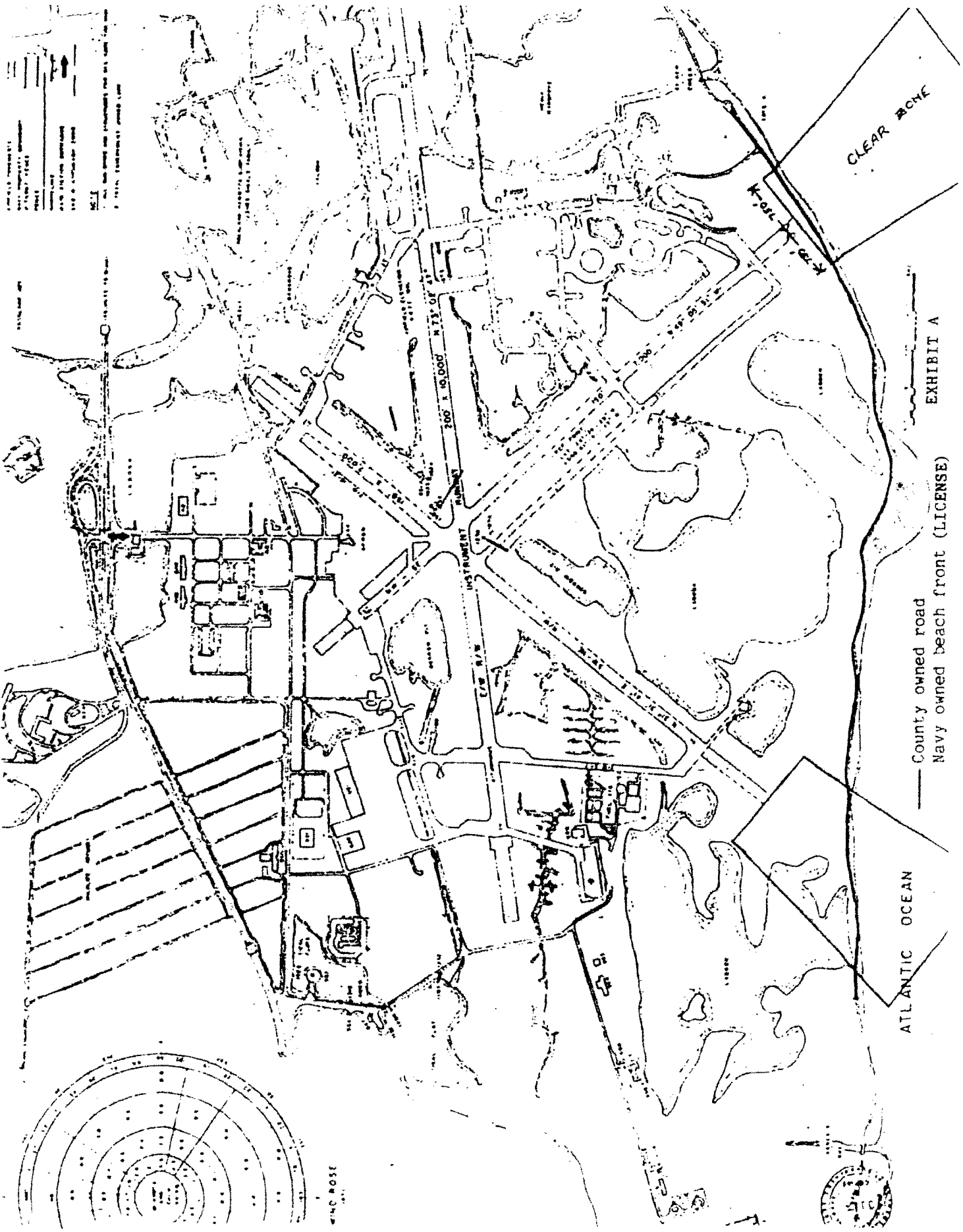
The Licensee is further subject to the following provisions:

1. The County shall provide maintenance of licensed shoreline as follows:
  - A. Trash
    1. Place and maintain appropriately marked receptacles along the licensed area.
    2. Weekly trash pick-up for trash receptacles, or more often if conditions warrant.
    3. Weekly loose trash pick-up.
    4. Weekly removal of illicitly dumped material.
  - B. Grass Cutting Monthly along licensed area.
  - C. A coordinated effort shall be made between the Navy's Environmental Resources Division to reestablish and expand sea oat plantings for shoreline stabilization.
  - D. Navy Fences –
    1. Implement procedures to protect Navy fences and repair or replace them if damaged by the public.
    2. Notify Navy prior to start on any work on Navy fences.
2. The County shall enforce the following prohibitions on the licensed shoreline:
  - A. NO vehicle parking (in the clear zones).
  - B. No camping.
  - C. No placement of utility poles or any other obstructions.
  - D. No lights, fires, or smoke transmission.
  - E. No facilities including concession stands and parking lots.
  - F. No cutting, harvesting, removing, or eradicating any of the grass commonly known as sea oats, *Uniola Paniculata*, in accordance with FS 370.041.
3. The County must provide for enforcement of provisions as follows:
  - A. County will enforce aforementioned prohibitions.
  - B. County will conduct periodic patrol of beach to curtail other illegal activities e.g. drug use/altercations.

4. Miscellaneous – The County shall provide and maintain signage which explains the aforementioned prohibitions.

5. This license will be terminated if an increase in persons using the area results in a detrimental increase in bird activity and an obvious increase in the chance of bird strikes by Naval Aircraft.

6. NAS Key West may suspend this license in the event of an elevated security level.



1. ALL PROPERTY	...
2. COUNTY OWNED	...
3. NAVY OWNED	...
4. PUBLIC PROPERTY	...
5. UNDEVELOPED LAND	...
6. WATER	...
7. CLEAR BONE	...

CLEAR BONE

EXHIBIT A

— County owned road  
 — Navy owned beach front (LICENSE)

ATLANTIC OCEAN

