

# **Review of State Land Lease Oversight**

## **Division of State Lands**

### **Report: A-1920DEP-022**

#### **Office of Inspector General**

#### **Internal Audit Section**

#### **Florida Department of Environmental Protection**

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The Florida Department of Environmental Protection (Department), Office of Inspector General (OIG) conducted a review of current uplands and sovereignty submerged land leases managed by the Division of State Lands (Division). This review was initiated as a result of the Fiscal Year (FY) 2019-2020 Annual Audit Plan.

## **Scope and Objectives**

The scope of this review included current upland and sovereignty submerged land leases managed by the Division. The objectives were to evaluate Division oversight and controls with respect to:

- Sovereignty submerged land lease inspections
- Sovereignty submerged land lease fee assessment
- Upland lease land use plans and required reports
- Upland lease compliance

## **Methodology**

This review was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors, and under the authority of Section 20.055, Florida Statutes (F.S.). Our procedures included review of statutory requirements, sovereignty submerged and uplands leases, inspections, and lease information maintained in Oculus<sup>1</sup> and the Division's Integrated Land Management System (ILMS). We reviewed prior audits issued by the Auditor General and interviewed Division staff.

## **Background**

The Division is Florida's lead agency for environmental management stewardship, serving as staff to the Board of Trustees (BOT) of the Internal Improvement Trust Fund. The

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<sup>1</sup> Oculus is the Department's document management system.

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Division oversees management of activities on over 12 million acres of public lands including lakes, rivers, and islands. Section 253, F.S., outlines the Department’s responsibilities for the acquisition, administration, and disposition of state lands, title to which is vested in the BOT.

According to Chapter 18-21.003(65), Florida Administrative Code (F.A.C), sovereignty submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally influenced waters. Sovereignty submerged lands include all submerged lands, title to which is held by the BOT.

According to Chapter 18-2.017(51), F.A.C., uplands are defined as *those lands above the mean high-water line (or ordinary high-water line), title to which is vested in the Trustees [BOT]*. The BOT owns over 3.3 million acres of upland property. State-owned uplands are managed for uses including parks, forests, wildlife management areas, historic sites, educational facilities and correctional institutions. Per Section 253.034(5)(i)1, F.S., *State nonconservation lands shall be managed to provide the greatest benefit to the state*. As of December 2019, the number of active sovereignty submerged and upland land leases were as follows:

<b>Sovereignty Submerged Land Leases</b>		
<b>Activity Type</b>	<b>Number of Leases</b>	<b>Percentage of Total Submerged Land Leases</b>
Commercial Upland Activity	1003	32.0%
Condominiums	578	18.4%
Commercial Marinas	366	11.7%
Private Single-Family Residential Docking Facilities	307	9.8%
Multi-Family Residential Docking Facilities	286	9.1%
Commercial Fishing Related	54	1.7%
Ship Building/Boat Repair	83	2.7%
Yacht Clubs/Country Clubs	99	3.2%
Public/Local Governments	179	5.7%
Other	179	5.7%
<b>Total</b>	<b>3,134</b>	<b>100%</b>

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Upland Leases			
Lease Type	Activity Type	Number of Leases	Percentage of Total Upland Leases
Commercial	Agriculture	8	0.7%
Commercial	Cell Phone Towers	3	0.3%
Commercial	Oil/Gas/Mineral	11	1.0%
Commercial	Other	4	0.4%
Hunting Camp	Hunting	60	5.3%
Noncommercial	Nonconservation	566	50.0%
Noncommercial	Conservation	480	42.4%
<b>Total</b>		<b>1,132</b>	<b>100%</b>

## Results

### Sovereignty Submerged Land Lease Inspections

#### Timeliness of Inspections

Chapter 18-21.008(1)(b)4, F.A.C., requires that sites subject to lease be inspected at least once every five years. Sovereignty submerged land leases, related actions, and inspections are tracked through the Division's ILMS. All inspection dates in ILMS are based on the lease anniversary date rather than the date of last inspection. We reviewed a sample of 29 sovereignty submerged land leases which required inspections between 2015 through 2019 based on the prior inspection date. Of the 29, six leases had not been inspected within five years due to differences between the lease anniversary date and the last inspection date. While the exceeded timeframes of the inspections were not extensive, the lease anniversary date used through ILMS to schedule inspections does not always result in timely inspections consistent with Chapter 18-21.008(1)(b)4, F.A.C.

#### Lease Compliance via On-Site Inspection

Based on discussions with Division and District staff, inspectors use a sovereignty submerged land lease site inspection form which incorporates an inspection of the standard and

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special conditions of the lease. All forms and any follow up records are uploaded to Oculus and noted in ILMS. For areas of noted noncompliance, a compliance assistance letter is provided to the lease holder with the completed inspection report. The Compliance Assistance Letter provides corrective actions needed to bring the facility back into compliance. District staff follow-up with lease holders as necessary. If the lessee remains noncompliant, a “Warning Letter with a Notice of Unauthorized Structures on State Lands” is sent after 90 days. Of the 28<sup>2</sup> inspection reports reviewed for the sampled leases, 22 were determined to be in compliance. Four of the inspection reports reviewed were determined to be out of compliance and required corrective action. In two of these instances, corrective action was taken by the lessee to bring the lease into compliance within 90 days of original inspection. In one instance of noncompliance, the Division issued a Compliance Assistance Letter within 30 days of the original inspection. The lease was brought into compliance through a series of required permit modifications during the renewal process. In one instance, a lessee was deemed to be in compliance with all general conditions of the lease; however, an administrative special lease condition was not met. The Division followed up with emails and phone calls with no response. A “Warning Letter with a Notice of Unauthorized Structures on State Lands” was never sent to the lessee as District and Division staff made the decision that this administrative issue did not warrant enforcement actions and would be addressed during the renewal process. In the remaining two instances, the lease property was either partially or completely destroyed by Hurricane Michael in 2018 and the lessees were in the process of rebuilding.

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<sup>2</sup> One Lease had not been inspected due to documented administrative circumstances related to “significant uplands interest”.

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## **Sovereignty Submerged Land Lease Fee Assessment**

### Accuracy of Annual Fee Assessment

Chapter 18-21.011(1)(a)(1), F.A.C., outlines the assessment of annual lease fees, which are to be six percent of the annual income, the base fee, or the minimum annual fee, whichever is greater. According to Chapter 18-21.011(1)(b), F.A.C. The base fee is to be computed at a rate of \$0.1413 per square foot per annum, which became effective March 1, 2007. The base fee and minimum annual fee shall be revised March 1 of each year and increased or decreased based on the average change over time in the Consumer Price Index (CPI).

Based on a review and verification of base fee calculations in 2019 lease fee invoices, we noted that in March 2007, the Division computed the base fee at .141260, a rate slightly less than the rate stated in Chapter 18-21.011, F.A.C. Each year, the base fee was adjusted from the rate .141260 using the average change over time from the previous five years' CPI. As a result, the annual calculation of the base fee has been calculated incorrectly each subsequent year. To add to the perpetual base fee rate error, for the 2019 lease fee invoices, Staff in the Division Director's Office miscalculated the base fee rate using an incorrect average. In response to the miscalculation, Director's Office staff applied a credit to leaseholders' accounts in 2020 which was also in error. Director's Office staff indicated that they developed the credit and adjusted rates with no formal approval from Division leadership prior to distribution to leaseholders.

According to Chapter 18-21.011(1)(b)(4), F.A.C., *There shall be a minimum annual fee of \$423.89, effective March 1, 2007. The minimum annual fee shall be adjusted annually based on subparagraph 18-21.011(b)1., F.A.C.* Based on our review, the Division applied the minimum annual fee as applicable to leaseholder invoices in 2007 consistent with the rule.

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However, in subsequent years, the perpetual base fee rate error caused errors in calculating the minimum annual fee. In addition, for annual billing beginning in 2012-2013, Director's Office staff began rounding the minimum annual fee in the rate schedule to the nearest dollar amount, which was not consistent with the required adjustment as stated in Chapter 18-21.011(1)(b)(4), F.A.C. In addition, FY 2019-2020 invoices were calculated using a minimum fee which exceeded the amount included in the rate schedule. To address the error, a subsequent credit was issued for the minimum fee discrepancy. This credit was also incorrectly calculated. The calculated rates and credits were not reviewed and approved by the Division leadership.

Receipt and Review of Sovereignty Submerged Land Lease Annual Revenue Reports

Chapter 18-21.011(1)(a)(2), F.A.C. states that *The income used to determine the annual lease fee and any other information required from the previous year will be certified true and correct by the lessee and shall include any ancillary charges, such as club memberships, stock ownership, or equity interest or other miscellaneous fees required for the direct and attributable to the rental of a wet slip over, or use of, sovereign submerged land.* We reviewed a sample of 30 leases for annual revenue report compliance during FY 2018-2019. Of the 30 leases, two lessees had submitted revenue reports with income at a level which exceeded the calculated base fee. A supplemental invoice was issued to the lessees for the difference consistent with Chapter 18-21.011(1)(a)(1), F.A.C. Of the 30, six lessees had not provided annual revenue certifications of prior year income. The requirement for submission of an annual revenue report is a condition of each lease. However, the Division does not have a process in place to monitor and ensure certifications were submitted annually.



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Lease Fee Discounts

According to Chapter 18-21.011(1)(b)(15), F.A.C., *There shall be a discount of 10 percent on the annual lease fee for facilities designated by the Department as a Clean Marina, Clean Boatyard or Clean Marine Retailer in the Clean Marina Program and actively maintaining their designation in the program, provided: that the facilities remain in good standing with all terms of their lease and with the Clean Marina Program; and the facilities do not change their use during the term of the lease. If a facility is in arrears on its lease fees, it shall not be eligible for this discount for the next annual billing period. Failure to comply with the conditions of the Clean Marina Program shall result in the loss of this discount for the next billing period.* Of the 30 leases included in our sample, nine received the clean marina discount in the annual lease invoices for the renewal periods of FY 2017-2018, FY 2018-2019, and FY 2019-2020. Of these nine, three were given the discount for FY 2017-2018 without maintaining the designation during that year. Of the three, one had been given the discount the following year (FY 2018-2019) without having maintained the designation. All nine receiving the discount for the FY 2019-2020 renewal were eligible based on records obtained from the Office of Resilience and Coastal Protection (ORCP) Clean Marina Program. According to ORCP management, Clean Marina Program staff had worked with the Director's Office over the past year to begin providing quarterly updates on Clean Marina Program designations.

Chapter 18-21.011(1)(b)(2), F.A.C. outlines provisions for a 30 percent discount for marinas that are at least 90 percent open to the public. For this discount any dockage rate sheet publications and dockage advertising for the marina must clearly state that slips are open to the public on a first-come, first served basis. Of the 30 leases included in our sample, two had

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received a 30 percent discount during FY 2019-2020 for having 90 percent of the slips available to the public. This provision is a special condition of the lease. We verified that both leases contained the provision and that revenue reports included information confirming that 90 percent of the slips were open to the public on a first come, first served basis. However, only one clearly advertised that slips were available on a first come, first served basis.

## **Nonconservation Uplands Land Use Plans & Required Reports**

### Timeliness of Land Use Plan Submissions

Section 253.034(5), F.S., requires nonconservation land managers to submit a Land Use Plan every ten years. The Division tracks Land Use Plans for nonconservation leases through use of an internal spreadsheet maintained by staff in the Bureau of Public Land Administration (BPLA). However, this spreadsheet does not indicate the date in which Land Use Plans are received. Based on discussions with BPLA staff, information contained in the spreadsheet is not reliable. The Division is currently working to upgrade the Land Management System with the inclusion of a land stewardship module which will be used to track Land Use Plans.

From the list of 566 nonconservation leases, we reviewed a sample of 11 leases executed between March 2017 and February 2019 to determine whether the Land Use Plan was submitted within the ten months of the effective date as indicated in the lease. We also reviewed a sample of five leases executed over ten years ago to verify whether Land Use Plans were submitted to the Division every ten years pursuant to Section 253.034, F.S. Of the 16 leases, we verified that Land Use Plans were received within the required time frame for six through correspondence documents maintained in OCULUS<sup>3</sup>.

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<sup>3</sup> OCULUS is the Department's document management system.

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Nonconservation Uplands Lease Compliance and Required Reports

Section 253.034(5)(i), F.S., and Chapter 18.2(3)(b), F.A.C., outline elements that are required in each Land Use Plan. We reviewed a sample of 11 Land Use Plans and verified that all contained the required elements.

According to Section 253.511(1), F.S., and Chapter 18-2.018(3)(a)(5)(d), F.A.C., the BOT shall require from each lessee of public land under Sections 253.45<sup>4</sup>, 253.47<sup>5</sup>, and 253.51<sup>6</sup>, F.S., *an annual notarized report as to the status of operations on the land under lease*. Based on correspondence with BPLA staff, there is no mechanism for soliciting operational and annual reports from lessees. Submitted reports are reviewed for compliance. BPLA staff work with lessees if additional information is required. BPLA uses a tracking spreadsheet for monitoring lease and reporting requirements. The spreadsheet includes lease requirements and their associated due dates.

Of the Division's 11 Oil/Gas, and Mineral leases, we reviewed operational reports submitted during the previous three years for four Oil/Gas leases and two Mineral leases. Of the four Oil/Gas leases, three had submitted the past three operational reports as required. However, one of these did not include all the required information. One lessee submitted a complete report in 2017 but failed to submit required reports for 2018 and 2019. Of the two Mineral leases reviewed, one provided complete reports for 2017 through 2019. However, the reports were not notarized as required under Section 253.511, F.S. The other Mineral lessee failed to submit

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<sup>4</sup> Section 253.45, F.S. -*Sale or lease of phosphate, clay, minerals, etc., in or under state lands*

<sup>5</sup> Section 253.47, F.S. -*Board of trustees may lease, sell, etc., bottoms of bays, lagoons, straits, etc., own by the state for petroleum purposes*

<sup>6</sup> Section 253.51, F.S. -*Oil and gas leases on state lands by the board of trustees*

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notarized operational reports for 2017 through 2019. The lessee had also not submitted other required documents.

## **Conclusions**

Based on our review, the Division lacks oversight and sufficient controls in the areas of scheduling sovereignty submerged lease inspections, lease fee assessment, required revenue reports, and application of discounts. Control weaknesses were also noted regarding oversight of Land Use Plans and commercial lease reporting.

## **Findings and Recommendations**

### **Finding 1: Timeliness of On-Site Inspections of Sovereignty Submerged Land Leases**

According to Chapter 18-21.008(1)(b)4, F.A.C., *at least once every five years, sites subject to lease shall be inspected by the Department or water management district staff to determine compliance with the terms and conditions of the lease. Non-compliance with any material term or condition of the lease, or evidence of trespass, damage, or depredation to sovereign submerged land or the products thereof caused by the facility or use, shall result in termination of the lease, corrective action, or enforcement under section 253.04, F.S., or 18-14, F.A.C.* Sovereignty submerged land leases, related actions, and inspections are tracked through the Division's ILMS. According to Division management, all inspection dates in ILMS are based on the lease anniversary date rather than the date of last inspection. Most leases have a five-year term and are inspected prior to renewal. However, if there are delays in executing a lease renewal, the date for the scheduled inspection in ILMS may extend beyond five years.

We reviewed a sample of 29 sovereignty submerged land leases which required inspections between 2015 through 2019 based on the prior inspection date. Of the 29, seven

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leases had not been inspected within five years as required under Chapter 18-21.008(1)(b)4, F.A.C. Of the seven, six leases had not been inspected within five years due to differences between the lease anniversary date and the last inspection date. While the exceeded timeframes of the inspections were not extensive, the lease anniversary date used through ILMS to schedule inspections does not always result in timely inspections consistent with Chapter 18-21.008(1)(b)4, F.A.C.

### **Recommendation**

We recommend the Division ensure that sites subject to lease are inspected once every five years as required under Chapter 18-21.008(1)(b)4, F.A.C. To maintain a consistent inspection schedule, the scheduled inspection date in ILMS should be five years from the last inspection date, rather than the anniversary date for sites subject to lease.

### **Finding 2: Accuracy of Sovereignty Submerged Lands Annual Lease Fees**

Chapter 18-21.011(1)(a)(1), F.A.C., states that, *Except as otherwise provided, the annual lease fee for standard term leases shall be six percent of the annual income, the base fee, or the minimum annual fee, whichever is greater, and shall include discounts, surcharges, and other payments as provided in paragraph 18-21.011(1)(b), F.A.C.* According to Chapter 18-21.011(1)(b), F.A.C., *The base fee shall be computed at a rate of \$0.1413 per square foot per annum, which became effective March 1, 2007. The base fee and minimum annual fee shall be revised March 1 of each year and increased or decreased based on the average change over time in the price paid by all urban consumers for a market basket of consumer goods and services. In determining the change, the Board will annually consult the Consumer Price Index figures established for the previous five years by the Bureau of Labor Statistics, computed as provided in*

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*the BLS Publication "Handbook of Methods," Chapter 17, June 2007, and found on the BLS website at <http://www.bls.gov/opub/hom/pdf/homch17.pdf>.*

Based on a review and verification of base fee calculations in 2019 lease fee invoices, we noted that in March 2007, the Division computed the base fee at a rate of .141260, rather than .1413, as stated in Chapter 18-21.011, F.A.C. Each year, the base fee was adjusted from the rate .141260 using the average change over time from the previous five years' CPI. Because the beginning base rate in 2007 was slightly inconsistent with the rate stated in Chapter 18-21.011(1)(b), F.A.C., the annual calculation of the base fee had been calculated incorrectly each subsequent year. To add to the perpetual base fee rate error, for the 2019 lease fee invoices, Director's Office staff miscalculated the base fee rate using an incorrect average. This miscalculation was identified by Director's Office staff as an overcharge upon the initiation of our review. To correct the miscalculation, Director's Office staff applied a credit to leaseholders' accounts in 2020. This credit was calculated using the difference between the incorrectly averaged rate and the rate consistent with the perpetual base fee error for 2019. Director's Office staff indicated that the multiplier rate used for the credit was rounded up to avoid a lengthy calculation. While the perpetual base fee rate error was brought to Division leadership's attention during the course of our review, the credit and subsequent base fee rates used in the 2020 invoices continued to be miscalculated. Upon our inquiry, Director's Office staff indicated that they developed the credit and adjusted rates with no formal approval from Division leadership prior to distribution to leaseholders.

According to Chapter 18-21.011(1)(b)(4), F.A.C., *There shall be a minimum annual fee of \$423.89, effective March 1, 2007. The minimum annual fee shall be adjusted annually based*

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*on subparagraph 18-21.011(b)1., F.A.C.* Based on our review, the Division applied the minimum annual fee as applicable to leaseholder invoices in 2007 consistent with the rule. However, in subsequent years, the perpetual base fee rate error caused errors in calculating the minimum annual fee. In addition, for annual billing beginning in FY 2012-2013, Director's Office staff began rounding the minimum annual fee to the nearest dollar amount, which was inconsistent with the required adjustment as stated in Chapter 18-21.011(1)(b)(4), F.A.C. For FY 2020-2021 invoices submitted to leaseholders for which the minimum annual fee applied, invoiced amounts were based on the rounded fee amount included in the Division's rate schedule. However, the prior FY 2019-2020 invoices were calculated using a minimum fee which exceeded the amount included in the rate schedule<sup>7</sup>. Once the error was identified, the subsequent credit issued for the minimum fee discrepancy was incorrectly calculated using the incorrect multiplier rate applied to all other invoices. Based on our review of these circumstances, the Division lacks sufficient supervisory oversight and control over the process of calculating the annual base fee rates and the accuracy of the amounts billed to leaseholders.

### **Recommendation**

Going forward, we recommend the Division take steps to ensure the base fee and minimum annual fee are calculated and applied consistent with Chapter 18-21.011(1), F.A.C. This should include documented supervisory review, verification, and approval of the rates calculated and applied by Director's Office staff. In addition, we recommend the Division address prior account billing errors to determine necessary steps for account adjustments.

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<sup>7</sup> FY 2019-2020 Minimum Annual Fees were invoiced at a rate of \$541.00. Per the Division's rate schedule, the FY 2019-2020 Minimum Annual Fee was listed as \$539.00. Once the error was identified, a subsequent credit of \$1.62 was applied to lessee accounts to correct the discrepancy.

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### **Finding 3: Receipt of Annual Revenue Reports for Sovereignty Submerged Land Leases**

According to Chapter 18-21.011(1)(a)(1), F.A.C., *the annual lease fee for standard term leases shall be six percent of the annual income, the base fee, or the minimum annual fee, whichever is greater, and shall include discounts, surcharges, and other payments as provided in paragraph 18-21.011(1)(b), F.A.C.* Income is defined in Chapter 18-21.003(31), F.A.C. as *gross revenue derived directly or indirectly from the use of sovereignty submerged lands such as slip rental, lease or sublease fees; dock or pier admission fees; club memberships, stock ownership or equity interest in activities where an increased revenue is attributable to the use of sovereignty submerged lands or “sales” of slips.* Chapter 18-21.011(1)(a)(2), F.A.C. states that *The income used to determine the annual lease fee and any other information required from the previous year will be certified true and correct by the lessee and shall include any ancillary charges, such as club memberships, stock ownership, or equity interest or other miscellaneous fees required for the direct and attributable to the rental of a wet slip over, or use of, sovereign submerged land.* We reviewed a sample of 30 leases for annual revenue report compliance during FY 2018-2019. Of the 30 leases, two lessees had submitted revenue reports with income at a level which exceeded the calculated base fee. A supplemental invoice was issued to the lessees for the difference consistent with Chapter 18-21.011(1)(a)(1), F.A.C. Of the 30, six lessees had not provided annual revenue certifications of prior year income. The requirement for submission of an annual revenue report is a condition of each lease. However, based on correspondence with Director’s Office staff, there was no process in place to monitor and ensure certifications were submitted annually. In addition, annual lease fee invoices do not include information or a due date for the required annual certifications.



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According to Chapter 18-21.008, F.A.C., *Non-compliance with any material term or condition of the lease to be renewed, modified or assigned or of any other current or prior lease between the applicant and the Board; evidence of the applicant's previous trespass, damage, or depredation to sovereign submerged land or the products thereof caused by the facility or use; or failure to pay any fees or fines assessed under rule 18-21.011 or chapter 18-1, F.A.C., for such leases; shall result in termination of the lease, corrective action, or enforcement under section 253.04, F.S., or chapter 18-14, F.A.C. No application to renew, modify or assign the lease shall be approved unless all such non-compliance is corrected.* Of the 30 leases in our sample, we noted three that had been renewed despite having outstanding revenue certifications at the time of renewal.

According to Director's Office staff, the Division is working on revisions to the Submerged and Uplands Public Revenue System (SUPRS) currently used for lease fee invoices and collections. These revisions are expected to provide added functionality for monitoring revenue certifications.

### **Recommendation**

Going forward, we recommend the Division take steps to ensure that lessees certify income used to determine the annual lease fee from the previous year consistent with Chapter 18-21.011(1), F.A.C. This should include processes to monitor submission of required certifications. Requirements for submission of annual certifications should be communicated to the lessees with each annual billing cycle. We also recommend added controls be put in place to ensure leases with outstanding certifications are not approved for renewal consistent with requirements outlined in Chapter 18-21.008, F.A.C.

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**Finding 4: Sovereignty Submerged Lease Fee Discounts**

According to Chapter 18-21.011(1)(b)(2), F.A.C., *There shall be a discount of 30 percent of the annual lease fee for all marinas where at least 90 percent of the slips are available for rent to the public on a first-come, first served basis. To receive this discount, any dockage rate sheet publications and dockage advertising for the marina shall clearly state that slips are open to the public on a first-come, first served basis.* Of the 30 leases included in our sample, two had received a 30% discount during FY 2019-2020 for having 90% of the slips available to the public. This provision is a special condition of the lease. We verified that both leases contained the provision and that revenue reports included information confirming that 90% of the slips were open to the public on a first come, first served basis. However, based on a review of both lessees' websites, only one clearly advertised that slips were available on a first come, first served basis. Staff from the Director's Office indicated that they rely on District inspections and information provided in annual revenue reports for on-going application of the discount.

**Recommendation**

We recommend the Division put processes in place to verify the applicability of the discount for public access on an annual basis. This should include verification of advertisements or rate publications available online or required submission of rate sheet publications.

**Finding 5: Submission of Land Use Plan for Non-Conservation Uplands Leases**

According to Section 253.034(5), F.S., *Each manager of nonconservation lands shall submit to the Division of State Lands a land use plan at least every 10 years in a form and manner adopted by rule of the board of trustees. The division shall review each plan for*

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*compliance with the requirements of this subsection and the requirements of the rules adopted by the board of trustees pursuant to this section.* Compliance with Land Use Plan submission outlined in Section 253.034, F.S., is a condition of standard nonconservation lease agreements. Nonconservation lease agreements also outline required actions in response to breach of any conditions of the lease. The Division tracks Land Use Plans for nonconservation leases through use of an internal spreadsheet maintained by staff in the Bureau of Public Land Administration (BPLA). Information in this spreadsheet is continuously updated and includes the lease number, name, anniversary date, the most recent Land Use Plan approval date, and future due dates. However, BPLA staff do not track the date in which Land Use Plans are received. According to this list, as of July 2020, the Division managed 566 nonconservation leases. Of these 75 (13%) were determined to be out of compliance<sup>8</sup>. However, the July 2020 tracking spreadsheet listed an additional 28 leases for which the last Land Use Plan approval date and associated 10-year due dates were prior to July 2020 but were identified as compliant. Based on discussions with BPLA staff, the spreadsheet is not reliable. The Division is currently working with a vendor to upgrade the Land Management System with the inclusion of a land stewardship module which will be used to track Land Use Plans.

From the list of 566 nonconservation leases, we reviewed a sample of 11 leases executed between March 2017 and February 2019 to determine whether the Land Use Plan was submitted within the ten months of the effective date as indicated in the lease. We also reviewed a sample of five leases executed over ten years ago to verify whether Land Use Plans were submitted to

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<sup>8</sup> Compliance is measured as a percentage of the number of leases for which a plan has been submitted within the required timeframe.

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the Division every ten years pursuant to Section 253.034, F.S. Of the 16 leases, we verified that Land Use Plans were received within the required time frame for six through correspondence documents maintained in OCULUS. Of the 16, the tracking spreadsheet maintained by BPLA reflected that all but two were compliant. One of those two were among the leases in which we verified through correspondence documents that the Land Use Plan was submitted within the required timeframe outlined in the lease.

### **Recommendation**

We recommend the Division work with BPLA to better track, monitor, and document submission of Land Use Plans consistent with Section 253.034(5), F.S. The tracking mechanism should include required support and process controls regarding the accuracy and reliability of data to ensure Land Use Plans are submitted and reviewed as required.

### **Finding 6: Submission of Annual/Operational Reports for Commercial Uplands Leases**

According to Section 253.511(1), F.S., and Chapter 18-2.018(3)(a)(5)(d), F.A.C., the BOT shall require from each lessee of public land under Sections 253.45, 253.47, and 253.51, F.S., *an annual notarized report as to the status of operations on the land under lease. Such reports shall include the number of holes drilled, the dates of drilling, the depth of drilling, and the results of the operation. Reports of mining operations shall also include the number of cubic yards mined. The notarized report of both mining or drilling operations shall include a financial report of moneys paid over to the state, if any. The board may require reasonable additional information, as may be necessary, for a better understanding of the operation under lease; provided, that this shall not be construed as authorizing the board to require any lessee to divulge information relating to its work product, trade secrets, or methods of operation not*

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*commonly shared with a leasing agency. Failure to submit the report required by this section within 90 days following the anniversary date of the respective lease may be grounds for revoking and setting aside any lease as to which such report should be been made.* Based on correspondence with BPLA staff, there is no mechanism for soliciting operational and annual reports from lessees. Submitted reports are reviewed by BPLA staff for compliance. Additional information is requested if needed. BPLA uses a tracking spreadsheet for monitoring lease and reporting requirements. The spreadsheet includes lease requirements and associated due dates.

Of the Division's 11 Oil/Gas, and Mineral leases, we reviewed operational reports submitted during the previous three years for four Oil/Gas leases and two Mineral leases. Of the four Oil/Gas leases, three had submitted the past three operational reports as required. One lessee submitted a complete report in 2017 but failed to submit required reports for 2018 and 2019. Of the three that submitted required reports, one submitted reports without the required drilling information for all reports. Of the two Mineral leases reviewed, one provided complete reports for 2017 through 2019. However, the reports were not notarized as required under Section 253.511, F.S. The other Mineral lessee failed to submit notarized operational reports for 2017 through 2019. The lessee had also not submitted required pit surveys and proof of insurance certificates in 2017 and 2018, nor the required financial report in 2019. During the course of our review, BPLA staff followed up with the lessee to request the missing reports. However, the information had not been received at the time of our review.

### **Recommendation**

We recommend the Division work with BPLA to better track, monitor, and document submission of operational reports and required documentation consistent with requirements

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under Section 253.511(1), F.S., Chapter 18-2.018(3)(a)5d, F.A.C., and the lease. BPLA should establish a consistent process to follow up as necessary and ensure the reports and associated documents are submitted as required. This process should also include addressing lessee failure to submit the required reports within 90 days of the lease anniversary date as outlined under Section 253.511, F.S.

*To promote accountability, integrity, and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our review was conducted under the authority of Section 20.055, F.S., and in conformance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The review was conducted by Jay Cumbie and was supervised by Valerie J. Peacock.*

*Please address inquiries regarding this report to the OIG's Audit Director by telephone at (850) 245-3151. Copies of final reports may be viewed and downloaded via the internet at <https://floridadep.gov/oig/internal-audit/content/final-audit-reports>. Copies may also be obtained by telephone (850) 245-3151, by fax (850)245-2994, in person or by mail at Department of Environmental Protection, Office of Inspector General, 3900 Commonwealth Boulevard, Mail Station #41, Tallahassee, FL 32399.*

*Valerie J. Peacock,  
Director of Auditing*

*Candie M. Fuller,  
Inspector General*



# FLORIDA DEPARTMENT OF Environmental Protection

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## Memorandum

**TO:** Candie Fuller, Inspector General  
**FROM:** Callie DeHaven, Director, Division of State Lands  
**SUBJECT:** Response to Preliminary Report A-1920DEP-022  
Review of State Land Lease Oversight  
**DATE:** October 22, 2020

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The Division of State Lands (DSL) has reviewed the Preliminary Report: A-1920DEP-022 Review of State Land Lease Oversight. The following is in response to the referenced audit.

### **Finding 1: Timeliness of On-Site inspections of Sovereignty Submerged Land Lease**

Current practice by the Regulatory District Offices are to inspect a site up to year in advance of the lease expiration date. This ensures adequate time to correct any non-compliance issues and execute a Lease Renewal prior to expiration. We will continue to work with Regulatory District Offices to modify our joint approach to improve, modify and align timing to meet the rule requirements.

### **Finding No. 2: Accuracy of Sovereignty Submerged Lands Annual Lease Fees**

The Division of State Lands Revenue staff has revised the 2020-21 Rate Sheet of Fees Based on Consumer Price Index minimum annual fee and base rate columns from March 1, 2007 through March 1, 2020. The base rate has been revised to 0.1413 to comply with Chapter 18-21.011(1)(b), F.A.C. Given this adjustment, the base rates, minimum annual fee for subsequent years have been corrected. Adjustments to the accounts have not yet been made.

Staff also corrected the miscalculated base fee rate using an incorrect average for the 2019 lease fee invoices. The previous six-year average used was corrected to reflect the previous five-year average as noted in the Chapter 18-21.011, F.A.C. Moving forward, the Division of State Lands Revenue staff will use the accurate base rate and minimum annual fee calculations for the assessment of annual lease fees.

Prior to the annual billing each year, the minimum annual fee and base rate will be reviewed and approved by a senior level supervisor

### **Finding No. 3: Receipt of Annual Revenue Reports for Sovereignty Submerged Land Leases**

The new Revenue Processing Module (RPM) is now being used by Revenue staff as of August 18th. The next iteration of the system, which will include a process to monitor and ensure reports are submitted annually, will be implemented through the new RPM on February 21, 2021. When signing on, RPM will have a dashboard to tell staff how many Annual Revenue Reports are missing, and the system will send reminders at set intervals to request the missing reporting from lessees. When reporting is current for the account, the e-mails will cease, and the dashboard will update.

A new workflow is currently being implemented. Leases are assigned to staff to manage all aspects of revenue collection to better monitor and ensure required documentation is up to date. In addition, controls will be put in place to ensure certifications are submitted during lease renewal inspections and prior to lease renewal.

### **Finding No. 4: Sovereignty Submerged Lease Fee Discounts**

On an annual basis, the Division of State Lands staff will confirm that documentation is on file that clearly states slips are open to the public on a first come, first served basis. The Revenue staff will run a report to obtain a list of the lessees that are eligible for the 30% discount prior to the beginning of each CPI year. Staff will research each lessee prior to the anniversary billing to ensure they possess documentation on file that supports the 30% discount. The Revenue staff will obtain documentation from the lessee's website to ensure they are open to the public and Revenue staff will contact the lessee for a copy of their contracts and advertising. If the lessee does not provide proof for the discount, Revenue staff will contact BPLA to remove the discount.

### **Finding No. 5: Submission of Land Use Plan for Non-Conservation Uplands Leases**

As the Land Stewardship Module within the Land Management System becomes more and more viable, the mechanisms to track, monitor, and document Land Use Plan submission will be captured. The Module is designed to capture data consistently and accurately and includes process controls with approval hierarchy. This includes capturing data such as plan received dates, processor approval dates, manager approval dates, and final approval dates. Expected completion date is the end of FY 2020-21.

### **Finding No. 6: Submission of Annual/Operational Reports for Commercial Uplands Leases**

The Uplands Module within the Land Management System was recently upgraded to capture all payments or reports due for a given lease. The Division of State Lands Bureau of Public Land Administration will develop reporting tools on said data that will allow for better tracking, monitoring and documentation of required submittals, including proactive outreach correspondence for any requirement due for a given period. Estimated development timeframe will be 4 – 6 months and is underway.