REPORT NO. 2010-028
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

LEASES, EASEMENTS, AND OTHER USES OF STATE-OWNED LANDS

Operational Audit

For the Period July 2007 Through February 2009
and Selected Actions Through June 2009

STATE OF FLORIDA
AUDITOR GENERAL
DAVID W. MARTIN, CPA

SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Section 20.255(1), Florida Statutes, created the Department of Environmental Protection. The head of the Department is the Secretary, who is appointed by the Governor, with the concurrence of three or more members of the Cabinet and confirmation by the Senate. Michael W. Sole served as Department Secretary during the audit period.

The audit team leader was Jacqueline York and the audit was supervised by Haesun Baek, CPA. Please address inquiries regarding this report to David R. Vick, CPA, Audit Manager, by e-mail at davidvick@aud.state.fl.us or by telephone at (850) 487-4494.

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Leases, Easements, and Other Uses of State-Owned Lands

SUMMARY

This operational audit of the Department of Environmental Protection (Department) focused on the Department's administration of leases, easements, and other uses of State-owned lands, as well as other administrative issues during the period July 2007 through February 2009, and selected actions through June 2009. Our audit also included a follow-up on the findings included in audit report Nos. 2008-047 and 2008-128 and disclosed the following:

SOVEREIGNTY SUBMERGED LAND LEASES

Finding No. 1: The Department did not always enforce the terms and conditions of lease agreements for sovereignty submerged lands.

Finding No. 2: The Department lacked adequate controls to ensure that all sovereignty submerged land leased sites were timely inspected, that adequate follow-up was performed on noted noncompliance, and that information regarding lease inspections was correctly entered in the Integrated Land Management System.

Finding No. 3: The Department did not bring under lease all grandfathered facilities on sovereignty submerged lands.

UPLAND LEASES

Finding No. 4: The Department did not always timely receive and properly review the required annual or operational reports for upland commercial leases to verify lessee compliance with applicable laws and rules.

Finding No. 5: The Department did not receive required land management or use plans or attempt to obtain delinquent plans from land managers.

Finding No. 6: Department procedures for conducting hunting camp site inspections, including steps to be taken to terminate the leases of noncomplying lessees, could be improved.

BILLING AND COLLECTION OF LEASE FEES

Finding No. 7: The Department was unable to provide documentation to support the reasonableness of assessed fees.

Finding No. 8: The Department lacked adequate controls to ensure the assessment of interest charges on overdue invoices, documentation of collection efforts, and proper recording of accounts receivable and related allowances for doubtful accounts.

OTHER ADMINISTRATIVE MATTERS

Finding No. 9: The Department did not ensure that purchasing cards were timely canceled upon a cardholder's separation from the Department.

Finding No. 10: The Department did not ensure timely removal of Florida Accounting Information Resource Subsystem user access for terminated employees.

PRIOR AUDIT FOLLOW-UP

The Department had taken corrective actions for findings included in audit report Nos. 2008-128 and 2008-047. However, the Department had not fully resolved the issues disclosed in report No. 2008-047, finding No. 2, regarding notification of the Department of Management Services concerning any excess motor vehicles.

BACKGROUND

Pursuant to law, the Department of Environmental Protection (Department) is responsible for all duties and functions related to the acquisition, administration, and disposition of State lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund (Board).[1] The Department, on behalf of the Board, enters into leases or similar instruments which are to govern the activities on more than 11 million acres of sovereignty submerged lands, including navigable lakes and rivers, and State-owned uplands.

The Bureau of Public Land Administration (Bureau), within the Department's Division of State Lands (Division), manages leases, easements, and other uses of State-owned lands. The Bureau consists of several sections including the Submerged Lands, Uplands, and the Recurring Revenue Sections.

As shown by EXHIBIT A, as of February 2009, the Department had in effect 2,641 sovereignty submerged land leases and 1,094 upland leases. As shown by EXHIBIT B, during the period July 2007 through December 2008, the revenues received from the submerged land leases and easements totaled approximately $21.1 million, and the revenues received from the upland leases totaled approximately $8 million.

FINDINGS AND RECOMMENDATIONS

Sovereignty Submerged Land Leases

Authorization to use sovereignty submerged lands is addressed at two distinct levels. First, Department District Offices and Water Management District Offices are to process applications for the use of sovereignty submerged lands and issue the applicant a regulatory permit for the proposed use. Then, the Submerged Lands Section is to prepare the proprietary authorization, lease, easement, or other form of consent authorizing the proposed use. Unless the proposed activity on sovereignty submerged lands is exempt from proprietary approval, no activity is to commence on sovereignty submerged lands without both regulatory and proprietary approvals.

Finding No. 1: Annual Lease Fees of Sovereignty Submerged Land Leases

Board rules require a sovereignty submerged land lease for the following activities:[2]

- Private residential single-family or multi-family docks or piers, other docks or piers, boat ramps, or other similar activities that do not qualify for a consent by rule or letter of consent.
- Private residential multi-family docks designed or used to moor three or more vessels within aquatic preserves.
- Any dock designed or used to moor ten or more vessels in Monroe County.
- Commercial and industrial docks in Biscayne Bay Aquatic Preserve as required and defined in Board rules.[3]
- All revenue-generating activities, except as provided for in Board rules.
- Registered or unregistered grandfather structures according to the provisions of Board rules.[4]
- Oil and gas exploration and development.
- Open-water mooring fields.

[1] Section 253.002(1), Florida Statutes.
[2] Board Rule 18-21.005(1)(d), Florida Administrative Code.
[3] Board Rules 18-18.004 and 18-18.006(3)(c), Florida Administrative Code.
[4] Rule 18-21.00405, Florida Administrative Code.

- Mining.
- A Class III single special event for which the applicant requests authorization to conduct a single event involving construction of no more than 50 new slips or a preempted area of no more than 50,000 square feet.
- A Class IV special event for which the applicant requests authorization to conduct a single event that does not qualify as a Class III single special event or to conduct more than one special event during the lease term.

Upon audit inquiry, Department staff indicated that the process for determining whether a lease should be renewed is as follows:

- A lease is to be placed on a site inspection list 6 months prior to expiration. The site inspection is to be conducted before a lease is renewed.
- If the facility is found to be in compliance, a completed Site Inspection Form is to be sent to the Bureau so that a lease renewal may be prepared and executed.
- If the facility is determined to be in noncompliance, the lease is not to be renewed and the facility is to be referred to Compliance and Enforcement staff to assist the lessee in bringing the facility into compliance.

Pursuant to Board rules, the annual lease fee for submerged land leases is to be 6 percent of the annual income, the base fee, or the minimum annual fee, whichever is the greatest.[5] Effective March 1, 2007, the base fee was computed at a rate of $0.1413 per square foot per annum, and the minimum annual fee was $423.89. Both fees are to be revised March 1 of each year based on fluctuations of the Consumer Price Index.

The Department is to send a Gross Income Reporting Form (i.e., Revenue Report) to the lessee each fiscal year. In completing the Revenue Report, the lessee is to report the annual gross revenue generated from the leased area. Then, the Department is to use the reported annual gross revenue to determine the annual lease fee (i.e., the greatest of 6 percent of the annual gross revenue, the base fee, or the minimum annual fee).

Pursuant to standard lease provisions, the lease may be terminated upon 30 days written notice to the lessee if the lessee fails or refuses to comply with the provisions of the lease agreement within 20 days of receipt of the Department's notice to correct. If the lessee does not remove all structures and equipment from the leased area after expiration or cancellation of the lease, such structures and equipment are to be deemed forfeited to the Department, and the Department may authorize removal and sell such forfeited structures and equipment after 10 days written notice.

As shown by EXHIBIT A, 2,641 sovereignty submerged land leases were active during the audit period. We reviewed Department records for 30 leases with annual lease fees totaling $150,698 and noted that the Department did not always enforce the terms and conditions of the lease agreements to ensure that the proper amount of lease fees were paid and that lessees timely remedied noncompliance issues. Specifically, we noted:

- For 5 leases, the Department did not receive Revenue Reports from the lessees for the 2007-08 fiscal year. For these leases, the Department invoiced the base fees totaling $20,435. These leases included submerged land leases for commercial marinas and fishing. Absent receipt of Revenue Reports, the Department may lack the ability to correctly assess the annual lease fees due under Board rules. The Department did not assess penalties upon a lessee's failure to submit an annual Revenue Report.
- For 5 leases, the Department invoiced annual fees totaling $26,095 and received payments from the lessees, whose leases had been expired from one to seven years. In each of these five instances, as of June 16, 2009, the Department continued to invoice and accept lease payments from the former lessees, and had not required the lessee to remove the structures and equipment from the leased area. The Department's practice

[5] Board Rule 18-21.011(1)(a)1, Florida Administrative Code.

of continuing to invoice and accept payments from lessees whose leases had expired created a "tenancy at will" and removed an incentive for those lessees to timely remedy noncompliance issues. Specifically:

- For one lease that expired on September 4, 2002, the Department indicated that the lessee had made an effort to remedy the noncompliance issues; however, the facility was still in noncompliance as of June 16, 2009. The noncompliance issues included a boat ramp ingress and egress area not included in the lease, discrepancies in the total riparian shoreline, docks in disrepair, and mooring violations.
- For one lease that expired on January 1, 2004, the Department indicated that the lessee was questioning certain lease provisions due to changes of the leased area and that there had been changes in the managing member of the limited liability corporation who signed the lease.
- For one lease that expired on April 15, 2006, the Department indicated that a noncompliance letter dated August 8, 2006, had been issued to the lessee. As of June 16, 2009, the Department had not conducted a site inspection to determine if the lessee had remedied the noncompliance issues. The noncompliance issues included several finger piers that were added to the leased area without authorization and required removal.
- For one lease that expired on August 29, 2007, the Department indicated that the lessee was not making an effort to bring the facility into compliance and, as a result, a notice of violation was issued on June 15, 2009.
- For one lease that expired on January 1, 2008, the Department indicated that the facility was scheduled for an inspection on June 16, 2009, to determine whether the lessee had remedied the noncompliance issues, which included the lack of installed rails.

Absent enforcement of lease terms and conditions, the interest of the public in these leased State lands may not be adequately protected.

Recommendation: We recommend that the Department take steps to ensure that lessees materially comply with the terms and conditions of lease agreements. The Department should also consider the assessment of a penalty upon a lessee's failure to submit an annual Revenue Report.

Finding No. 2: Inspection of Sovereignty Submerged Land Leased Sites

Board rules require the Department to inspect sites subject to lease at least once every 5 years to determine compliance with the terms and conditions of the lease.[6] In addition, the standard lease agreements provide that the leased premises shall be subject to inspection at any reasonable time. Board rules also require the Department to impose a fine if a lessee fails to correct a violation noted through an on-site inspection either immediately or within the time period agreed to by the Department and the lessee. Fines collected for failure to address such violations totaled $235,489 during the period July 2007 through December 2008.

The Department used the Integrated Land Management System (ILMS) to maintain information regarding sovereignty submerged land leases. The date of the most recent on-site inspection, the next scheduled inspection, and whether the leased site was last noted to be in compliance were to be recorded for each lease in ILMS. ILMS was also to contain information regarding the lease terms, such as the execution date and the facility address. The Department was to utilize a monthly ILMS report to identify, based on the lease expiration dates, the leased sites that were due for inspection and then was to notify the appropriate District Offices.

We reviewed Department procedures and examined the on-site inspection records and selected ILMS data for 30 sovereignty submerged land leases that were in effect during the audit period. Our audit tests disclosed:

[6] Board Rules 18-21.008(1)(b)4 and 18-14.005(2), Florida Administrative Code.

- The standard lease term was 10 years, but the lease term could be extended up to 25 years with Department approval. The Department had not implemented procedures to ensure that standard and extended term leases received on-site inspections every 5 years as required by Board rules. To schedule an on-site inspection for each lease at least once during the last 5 years of the lease term, Department personnel were to use a monthly ILMS report. For the report, ILMS calculated 5 years from the expiration dates of the leases regardless of the length of the lease terms. As a result, a lease with a term of more than 5 years would not appear on a monthly report more than once. For example, a lease with a 25-year term would not appear on the report until after the lease had been in effect for 20 years. As a consequence, the leased site would be identified for inspection once, rather than five times as required by Board Rule.

- Leased sites for 22 leases had not received an on-site inspection every 5 years as required by Board rules. Activities or structures authorized by the lease for these sites included, for example, docks, walkways, pilings, rental of wet slips, and overwater roofed structures. Specifically:

  - Fourteen sites had not received an inspection within the past 5 years. Three of the 14 sites had not received an inspection since the execution dates of the leases in 1996, 2000, and 2003, respectively. The time periods the leased sites were overdue for inspection ranged from 5 months to 7 years 9 months.

  - Seven sites had received an on-site inspection within the past 5 years, but the inspection was not performed within 5 years of the previous inspection or the effective date of the lease agreement. The time periods that had elapsed between the date of the inspection report we reviewed and the date of the previous inspection report or effective date of the lease agreement ranged from 5 years 4 months to 10 years 7 months.

  - The Department was unable to locate the report for the inspection of one site that was recorded in ILMS as performed on August 4, 2005. Department staff indicated that the report had been possibly lost due to high employee turnover at the District Office or that no inspection had been performed and the ILMS entry was in error.

- In one instance, an inspection was performed on August 17, 2007, and the lessee was still shown as noncompliant on May 7, 2009 (due to the issues identified on the August 17, 2007, inspection report). However, no fines or penalties had been assessed and the last documented correspondence concerning the noncompliance issue was dated February 8, 2008. The issues of noncompliance included "open to public" or "manatee speed zone" signs not being posted, a terminal platform had been built shorter than specified in the permit, mooring occurred outside the leased area, and nonwater dependent storage was observed on a finger pier.

- Information entered in ILMS was not properly reviewed by supervisors for accuracy as required by Department procedures. For 11 of the 30 leases reviewed, the data in ILMS did not match the data from the actual inspection report maintained in the lease file. The differences related to the date of the most recent site inspection and the lessee's compliance status. Inaccurate inspection dates in ILMS may cause errors in ILMS reports used to schedule required on-site inspections.

Without timely on-site inspections and follow-up on identified noncompliance issues, the risk that the leased sites will not be operated in compliance with Board rules and lease requirements is increased. Also, without imposing fines and penalties, there is a reduced incentive for the lessee to make the required changes to bring the leased site into compliance.

Recommendation: The Department should enhance procedures to ensure that each sovereignty submerged land lease, including extended term leases, receives an on-site inspection at least once every 5 years as required by Board rules, that fines and penalties are assessed for leased sites not brought into compliance timely, and that information regarding on-site inspections is correctly recorded in ILMS.

Finding No. 3: Grandfathered Structures

In 1970, the Governor and Cabinet, sitting as the Board, adopted a policy requiring individuals to apply for approval before building commercial docks on State-owned sovereignty submerged lands. The Board also adopted a policy that allowed docks built on State lands before March 10, 1970, to be "grandfathered" or exempted from the lease requirement until January 1, 1998. Pursuant to Board rules, the Department was required to bring all registered grandfathered structures under lease by January 1, 1998.[7]

The ILMS, used to maintain information regarding sovereignty submerged land leases, replaced the previous system, the Instrument Tracking System, in 2007. The Instrument Tracking System used coding to identify registered grandfathered structures, but the ILMS does not include such coding. The Department provided for our review a list from 1989 of 599 registered grandfathered structures. The list included the applicant's name and an identification number for each structure.

In response to our inquiry, the Department identified 78 registered grandfathered structures that had not been brought under lease as of April 10, 2009. The Department identified these 78 structures by manually entering the identification number, available from the 1989 list, into ILMS to determine if the identification number was linked to a lease.

As a result of not entering into lease agreements, these 78 structure sites were not subject to routine Department inspections and the Department continued to lose any related lease revenues.

Recommendation: We recommend that the Department inspect these sites, and where appropriate, ensure that all registered grandfathered structures are brought under lease.

Upland Leases

The Uplands Section was responsible for administering upland leases or similar instruments, including those involving commercial, noncommercial, and other uses of State uplands. A summary of the upland lease activities is shown by EXHIBIT A. Commercial upland leases include agriculture, oil, gas, mineral, and hunting camp leases. Noncommercial upland leases are agreements between the Department and other governmental entities and are to govern the use of both conservation[8] and nonconservation State lands. Under these lease agreements, the governmental entity becomes the land manager of the leased lands and is to develop for conservation lands, a land management plan designed to conserve and protect conservation lands and their associated natural resources, and for nonconservation lands, a land use plan to conform land use or uses to the appropriate policies and guidelines of the State land management plan. The Department's Office of Environmental Services was to review the land management or land use plans during its monitoring of land manager compliance with applicable laws, rules, and lease requirements.

[7] Board Rule 18-21.00405, Florida Administrative Code.

[8] "Conservation lands," as defined by Section 253.034(2)(c), Florida Statutes, are lands that are currently managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands that were acquired solely to facilitate the acquisitions of other conservation lands.

Finding No. 4: Commercial Upland Leases

Pursuant to State law and Board rules, each lessee of State-owned lands is required to submit an annual report to the Department as to the status of operations on the land under lease as follows:[9]

- Oil, Gas, or Mineral Lease: An annual notarized report that shall include:
  - The number of holes drilled;
  - The dates of the drilling;
  - The depth of the drilling;
  - The results of the operation;
  - The number of cubic yards mined for mining operations; and
  - A financial report of moneys paid to the State, if any.
- Agriculture Lease: An annual certified agricultural report, that shall include, at a minimum, the following:
  - The kind and location of the crop or livestock grown;
  - The stewardship practices utilized;
  - The capital improvements completed;
  - A schedule for installing future improvements;
  - Types and amounts of pesticides, herbicides, and fertilizers used; and
  - A detailed description of how the implementation of best management practices was carried out during the lease year including, but not limited to, muck soil measurement and plans for best management practices for the following year.

Board rules also require that all other commercial lessees prepare and submit a site-specific operational report to the Department within one year of the lease execution date or other date as designated in the lease. These reports are to include a variety of information related to the site including, for example, legal description of the property, any applicable programs related to the acquisition of the property, approximate location and description of any known renewable and nonrenewable resources of the property, past and existing uses for the property, management needs and any problems on the property, the extent of public involvement and local government participation in the development of the property, and gross and net income generated by the property.

Our audit tests disclosed that the Department had not developed adequate procedures to ensure the receipt and review of an annual or operational report from each lessee. We reviewed Department records for 9 of the 23 commercial upland leases active during the audit period and noted numerous instances in which lessee noncompliance with the rules governing reporting was apparent; however, there was no evidence of Department review or documentation of any actions taken to resolve the noncompliance. We also determined that the Department did not perform routine on-site inspections to monitor the activities on leased sites. Specifically:

- Neither Florida Statutes nor Board rules require periodic on-site inspections of upland leased sites and related lease records. The standard lease agreements do provide that the Department has the right to inspect the leased premises at all times during the life of the lease. However, Department staff indicated that on-site inspections were performed only when deemed necessary.

[9] Section 253.511(1), Florida Statutes, and Board Rule 18-2.018(3)(a)5.c., Florida Administrative Code.

- Department records indicated that there were 14 active oil, gas, and mineral leases in effect during the audit period. Our review of Department records for 5 of these leases disclosed the following four instances of noncompliance:
  - In two instances, the submitted annual notarized reports did not contain the number of holes drilled, the dates of the drilling, the depth of the drilling, or the result of the operation.
  - In one instance, the submitted annual notarized report did not contain a financial report of moneys paid to the State.
  - In one instance, the lessee did not submit an annual report.
- Department records indicated that there were 8 active agriculture leases in effect during the audit period. We reviewed the Department records for 3 of these leases and noted instances of noncompliance for all three lessees:
  - In one instance, the annual certified agricultural report did not include all of the required information. For example, the stewardship practices utilized; the capital improvements completed; a schedule for installing future improvements; the types and amounts of pesticides, herbicides, and fertilizers used; and a detailed description of how the implementation of best management practices was carried out during the lease year were not included in the report.
  - In two instances, the annual certified agricultural reports did not contain a schedule of future improvements to be made. Department staff indicated that the lessees did not have any planned future improvements, therefore, did not include information in submitted reports. Subsequent to our inquiry, Department staff obtained from both lessees a supplement to the annual certified agricultural report stating that no future improvements were planned.
- Department records indicated that there was one active "other" commercial lease in effect during the audit period. Our review of Department records for this lease disclosed that although the lease became effective January 1, 2004, the only report on file was received by the Department on June 22, 2004. Further Department records, and Department personnel upon inquiry, could not explain why the submitted report was dated September 26, 1994.

In addition to the lack of adequate procedures over the receipt and review of Board-required lessee reports, we also noted that the Department had not amended lease agreements to require each lessee to submit an annual or operational report in accordance with applicable Board rules. Absent periodic on-site inspections and timely receipt and proper review of Board-required lessee reports, the Department's ability to properly monitor the use of leased areas for lessee compliance with applicable laws and Board rules is reduced.

Recommendation: We recommend that the Department amend its commercial upland leases to require each lessee to submit an annual or operational report in accordance with applicable Board rules. We also recommend that the Department update its policies and procedures to ensure that required annual or operational reports are properly received and reviewed for compliance with applicable Board rules. Additionally, we recommend that the Department conduct periodic on-site inspections for each commercial upland lease.

Finding No. 5: Upland Leases with Governmental Entities

State law requires each manager of conservation lands to submit a land management plan and each manager of nonconservation lands to submit a land use plan at least once every 10 years to the Department.[10] The law also requires the Department to review each plan for compliance with the requirements of the applicable laws and rules. Applicable laws and rules address such matters as the protection of significant natural or cultural resources located on

[10] Section 253.034(5), Florida Statutes.

the property, control of invasive nonnative plants and conservation of soil and water resources, and the potential of the property to generate revenues to enhance property management.

We found that the Department had not implemented policies and procedures to reasonably ensure the timely receipt and review of land management and land use plans prepared and submitted in accordance with current provisions of law. We noted that the law was amended in 2003 changing the timeframe for submission of land management plans from every 5 years to every 10 years and requiring all managers of nonconservation lands to submit land use plans at least once every 10 years. However, the Department had not updated its policies and procedures to reflect the 2003 law changes. The policies and procedures continued to reflect the requirements of the old laws, which specified that land management plans be submitted every 5 years, and did not require managers of nonconservation lands to submit land use plans.

Department records indicated that 77 plans (28 land management plans and 49 land use plans) were due from land managers during the audit period. Our audit disclosed that the Department had not received any of these plans as of April 17, 2009. Further, Department personnel had not, of record, sent letters to request any of these 77 delinquent plans. Absent the timely receipt and proper review of the required land management and land use plans, Department management lacks the ability to determine whether the managing governmental entities were in compliance with applicable laws and Board rules governing the management of the leased conservation and nonconservation lands.

In response to our inquiries, Department personnel indicated that the Division identified the backlog of delinquent land management and land use plans in January 2009. The Department then conducted an assessment of the process that resulted in the assignment of additional staff to support the land management and land use plan review functions. Subsequent to the conduct of that assessment, the Department reviewed the need for new notification procedures for delinquent plans and had assigned specific staff to the function. Department personnel indicated that the backlog of delinquent plans should be substantially alleviated by the end of the 2009 calendar year.

Recommendation: We recommend that the Department update its policies and procedures to reflect current law and to ensure that required land management and land use plans are timely received and properly reviewed.

Finding No. 6: Hunting Camp Leases

State law provides that the Department may impose reasonable conditions consistent with existing laws and rules on the owners of habitable structures (such as hunting camps) built on lands owned by the State or a water management district (District).[11] State law also provides that failure to comply with the conditions contained in the lease agreement makes the structure illegal and subject to removal. Department hunting camp lease agreements include provisions relating to exotic plants prohibitions, alterations and improvements, septic systems, damages to the premises, and maintenance of improvements. Hunting camp agreements also include provisions requiring that the Department give the lessee a written 60-day notice to remedy any noncompliance with lease requirements. If the lessee fails to remedy the noncompliance within the 60-day time period, the Department may terminate the lease.

The Department is to conduct on-site inspections of hunting camp lease sites to monitor lessee compliance with lease requirements. Department staff indicated that every attempt is made to accomplish these inspections annually.

During the audit period, 38 active hunting camp leases of State-owned or District-owned lands were in effect with lease revenues totaling $48,833 for the period July 2007 through December 2008. We examined Department records

[11] Sections 253.03(7)(d) and (e), Florida Statutes.

for 5 leases (with revenues totaling $6,407) to determine whether the Department timely conducted an annual on-site inspection, followed up on areas of noncompliance disclosed during the inspection, and took appropriate steps to terminate the lease in the event that noncompliance was not remedied. Our audit tests disclosed:

- For one lease, the Department had not conducted an on-site inspection since May 9, 2007. Department staff indicated that the inspection had not been conducted due to a vacancy in the position responsible for inspections and that, at the time of audit inquiry, the water level was too low to reach the hunting camp to perform an on-site inspection.
- For another lease, continual noncompliance was shown by inspection reports; however, the Department had not terminated the lease. The inspection reports noted that the lessee had not complied with provisions of the lease since February 19, 2004. A consent final judgment (CFJ) was entered into on September 19, 2007, which established specific remedies with timeframes ranging from 30 to 120 days. On December 21, 2007, and February 22, 2008, additional on-site inspections were performed. It was noted in both inspections that the lessee was not in compliance with provisions of the CFJ; however, the Department had taken no additional steps since the February 22, 2008, site inspection.

In response to audit inquiries, Department staff indicated that there was no statutory requirement for the timing of on-site inspections. Additionally, the standard hunting camp leases provided that inspections were to be completed at a mutually convenient time with no stipulation as to the timeframe for such inspections.

Absent established timeframes for the performance of on-site inspections of hunting camp lease sites, or alternatively the development of a risk-based inspection schedule, and effective policies and procedures addressing the follow-up of any noncompliance noted during inspection, Department staff lacked the guidance needed for the efficient and effective conduct of inspections. Moreover, a lessee's incentive to correct violations may be reduced if the Department does not enforce the termination clause when the lessee fails to remedy noncompliance.

Recommendation: We recommend that the Department update its policies and procedures to include the establishment of a risk-based inspection schedule, address the enforcement of the termination provisions of lease agreements should lessees fail to timely remedy noncompliance, and require appropriate documentation of circumstances preventing timely on-site inspections, as well as decisions not to pursue lease termination.

Billing and Collection of Lease Fees

The Recurring Revenue Section is responsible for invoicing and collecting revenues from land leases and easements. The Section is also to support the Department's District Office regulatory staff for issues related to fees and revenues from leases and easements.

Finding No. 7: Basis for Assessed Fees

Pursuant to State law, the Board may adopt rules to provide for the assessment and collection of reasonable fees, commensurate with the actual cost to the Board, for disclaimers, easements, exchanges, gifts, leases, releases, or sales of any interest in lands or any applications therefor and for reproduction of documents.[12] Our audit tests disclosed that while the Board had adopted rules providing for the assessment and collection of fees related to leases and easements, the Department was unable to provide for our review documentation demonstrating that the fee assessment amounts were reasonable and commensurate with the actual cost of administering and managing the leases and easements.

[12] Section 253.03(11), Florida Statutes.

In the absence of current cost analysis data, the Department was unable to demonstrate that the fees assessed for leases and easements were reasonable and commensurate with actual cost of administering and managing leases and easements.

Recommendation: We recommend that the Department conduct periodic cost analyses of the actual cost of administering and managing leases and easements to use as a basis for recommendations to the Board for changes in fee assessments.

Finding No. 8: Accounts Receivable

Generally accepted accounting principles (GAAP) provide that the amounts owed to the Department for land leases and easements should be recorded as accounts receivable. To encourage the timely payment of amounts due, Board rules require a late payment assessment for lease fees or other charges that are not paid within 30 days after the due date.[13] This assessment is to be computed at the rate of 12 percent per annum, calculated on a daily basis for every day the payment is late. Department of Financial Services (DFS) rules require that within 6 months after the date on which an account or other claim is due and payable, the deliquent account receivable must be reported to DFS for further action, such as the possible assignment of the account to a collection agency.[14] If the Department considers that the assignment to a collection agency is inappropriate, the Department may request an exemption in writing.

The Department had established procedures related to the recording of allowances for doubtful accounts for delinquent accounts receivable. An allowance for each account receivable overdue by 60 days or greater was to be recorded in the Allowance for Doubtful Accounts account. For audit purposes, to evaluate the completeness of the amounts added to the Allowance for Doubtful Accounts account, we used the overdue period of 6 months or greater for consistency with the DFS rules, rather than the 60-day or greater period required by Department procedures.

The Department implemented the Submerged and Uplands Public Revenue System (SUPRS) to automate the accounting system for State land management activities effective March 2004. SUPRS is used for both billing and recording the collection of revenue. Our analyses and reconciliations of the Florida Accounting Information Resource Subsystem (FLAIR), SUPRS, and other Department accounts receivable records disclosed that:

- Although the Board rules had been properly communicated to the lessee in lease agreements, which state that "the lessee shall pay a late charge equal to interest at the rate of 12 percent per annum from the due date until paid on any lease fees due that are not paid within 30 days of the due dates," the Department did not assess interest charges on invoices that were overdue by more than 30 days. Potential revenues from interest charges not assessed on sovereignty submerged land leases as of March 18, 2009, totaled $414,791. In response to our audit inquiry, Department staff indicated that interest charges on overdue invoices had not been assessed because SUPRS was unable to calculate the amounts due. Department staff indicated that, effective July 6, 2009, steps were taken to start calculating and assessing the interest due.
- Department personnel indicated that collection efforts for accounts overdue by more than 30 days included calling the lessee three times, faxing an invoice after the first call, and sending a letter addressing the outstanding amount. We reviewed four overdue invoices selected from SUPRS records, but did not find evidence of any collection efforts. Absent adequate collection efforts and proper documentation of such efforts, the Department cannot demonstrate its efforts to collect all amounts due from land leases and easements.
- The Department had recorded $3,665,752 in accounts receivable related to sovereignty submerged land leases and easements as of June 30, 2008, of which $1,105,906 was overdue by 6 months or more. An allowance for

[13] Board Rule 18-21.011(1)(b)(11), Florida Administrative Code.
[14] DFS Rule 69I-21.003, Florida Administrative Code.

these amounts should have been recorded in the Allowance for Doubtful Accounts account and reported to DFS for further action. As a result of not recording an allowance for these accounts, the Department overstated net accounts receivable by $1,105,906 at June 30, 2008. As a result of not timely reporting these accounts to DFS for further action, the Department may have foregone potential opportunities for collection.

- Although the Division properly recorded upland lease fees (i.e., uplands administrative fees) due from other governmental entities as accounts receivable in SUPRS, the Department did not record the fees due as accounts receivable in FLAIR. As a result, the Department's FLAIR accounts understated accounts receivable by $112,150 at June 30, 2008.

Recommendation: We recommend that the Department continue its efforts to properly assess interest charges on overdue invoices in accordance with Board rules and lease agreement provisions. We also recommend that the Department improve its controls to accurately record all accounts receivable and related allowances for doubtful accounts in FLAIR for land leases and easements. Additionally, we recommend that the Department enhance its collection efforts. Such efforts may include termination of the lease, recording of a Notice of Violation in the applicable county's public records, following DFS procedures for the reporting of delinquent accounts receivable, and enhancing SUPRS to document Department collection efforts.

Other Administrative Matters

Finding No. 9: Cancellation of Purchasing Cards

The Department takes part in the State's purchasing card program (Program), which allows authorized personnel the ability to charge expenses on purchasing cards. As a condition of participation in the Program, the Department is responsible for the implementation of key controls, including the timely cancellation of purchasing cards upon a cardholder's separation from the Department.

According to the Department's Purchasing Card Plan, filed with the DFS, the employee is to notify the Purchasing Card Program Administrator (PCPA) when the employee plans to terminate employment; the supervisor is to notify the PCPA when an employee's duties no longer require the use of the purchasing card; and the Department's Bureau of Personnel Services is to provide the PCPA with a list of employees who are terminating their employment. The Bureau of Personnel Services is also to send to the PCPA a list of terminated employees on a monthly basis for full-time employees, and three times a month for Other Personnel Services employees.

We identified 441 cardholders who had separated from the Department during the audit period. We noted that in 56 instances (17.7 percent), the cardholder's purchasing card was not timely canceled. As of April 3, 2009, the 56 purchasing cards had remained active for periods ranging from 8 to 507 calendar days after the cardholder's termination date. Specifically:

- Forty-five of the 56 purchasing cards remained active from 8 to 30 calendar days after the cardholder's termination date.
- Eleven of the 56 purchasing cards remained active from 31 to 507 calendar days after the cardholder's termination date.

Although our audit test did not disclose any usage of these cards subsequent to employee termination, absent timely identification of purchasing cardholders who have separated from the Department, and verification that assigned cards were retrieved and deactivated or canceled, unauthorized purchases may occur and not be timely detected.

Recommendation: We recommend that the Department enhance its procedures for routine identification of terminated employees to ensure the timely cancellation or deactivation of purchasing cards upon a cardholder's separation from the Department.

Finding No. 10: FLAIR Access

FLAIR access should be limited to help prevent and detect any improper or unauthorized access and should be promptly removed when employees separate from the Department or are reassigned to a position not requiring access. The Department maintains a FLAIR Access Control File through which the Department may authorize Department employees to utilize various FLAIR components.

Department procedures (Directive 390) require that the Department's Bureau of Personnel Services notify the Office of Technology and Information Systems (OTIS) within 3 business days of being advised of an employee's termination. OTIS is to remove the employee's access to FLAIR within 3 business days of being notified by Bureau of Personnel Services.

We examined the FLAIR access records for 122 employees who had separated from the Department during the period July 1, 2007, through February 17, 2009. We noted that the Department had not timely removed FLAIR access privileges for 41 of the 122 terminated employees. As of February 17, 2009, the FLAIR access for these 41 former employees had remained active from 10 to 524 calendar days after termination. Specifically:

- The access for 13 of the 41 former employees provided FLAIR update capabilities ranging from the ability to record accounts receivable and payable to the ability to create a vendor within FLAIR.
- The access for 28 of the 41 former employees provided FLAIR update capability for purchasing cards only. Purchasing card update capabilities can range from the ability to approve purchasing card transactions to the ability to create purchasing card reports. Coupled with the issues noted in finding No. 9, unauthorized purchases may occur, be approved, and recorded in FLAIR by terminated employees without timely detection.

Although our audit tests did not disclose any utilization of terminated employees' FLAIR access privileges, proper administration of access to FLAIR is necessary to ensure that the integrity and security of Department accounting records are not compromised and State assets are safeguarded.

Recommendation: We recommend that the Department follow its procedures to ensure the timely removal of FLAIR access privileges upon an employee's termination.

PRIOR AUDIT FOLLOW-UP

As part of our audit, we determined that the Department had taken appropriate actions to correct the findings included in our report No. 2008-128. We also determined that the Department had taken appropriate actions to address the findings included in audit report No. 2008-047, except for the finding related to the disposition of excess motor vehicles.

In report No. 2008-047, we recommended that Department management monitor compliance with established Department procedures relating to the identification and reporting of excess motor vehicles. Excess motor vehicles are those Department vehicles that have been replaced with new vehicles. The excess vehicles are to be reported to the Department of Management Services (DMS) so that they may be transferred to another entity or otherwise

disposed. In response to our current audit inquiry, Department management indicated that they had begun working with DMS to more clearly classify when a Department vehicle is deemed to be excess for disposal purposes.

Recommendation: We recommend that Department management continue efforts to resolve this prior audit finding.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on leases, easements, and other uses of State-owned lands, as well as other administrative matters. The overall objectives of the audit were:

- To evaluate the effectiveness of established internal controls in achieving management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the validity and reliability of records and reports; and the safeguarding of assets.
- To evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the validity and reliability of records and reports; and the safeguarding of assets.
- To determine whether management had corrected, or was in the process of correcting, all deficiencies disclosed in the prior audit report Nos. 2008-047 and 2008-128.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

Our audit included examinations of various records and transactions (as well as events and conditions) occurring during the period July 2007 through February 2009, and selected actions through June 2009. In conducting our audit we:

- Evaluated the effectiveness of Department internal controls over leases, easements, and other uses of State-owned lands.
- Performed analyses of SUPRS and ILMS data to determine whether all State-owned lands could be readily identified, including those lands available for lease.
- Evaluated whether Department procedures reasonably ensured that uses of State-owned lands were limited to those authorized by law.
- Selected 6 areas shown on aerial maps with facilities on the water and determined whether appropriate instruments were entered into for the State-owned land use.
- Reviewed 4 of 11 land use application records to determine whether the Department followed the policies, standards, and criteria required by laws and administrative rules for evaluating, approving, or denying requests to use State-owned lands.

- Tested 30 legal instruments to determine whether the Department properly executed, amended, or renewed the leases, easements, or other instruments and addressed the standards and criteria required by laws and administrative rules.
- Tested billings and collections related to 30 legal instruments to determine whether the payments and fees to use State-owned lands were in accordance with laws, administrative rules, and lease requirements.
- Tested 24 of 138 leases to determine whether the Department properly monitored lessee compliance with applicable laws, administrative rules, lease requirements, and other applicable guidelines.
- Reviewed Department records to evaluate Department compliance with Board rules related to registered grandfathered structures.
- Tested 40 legal instruments to evaluate Department compliance with applicable laws and administrative rules for the approval of sovereignty submerged land leases.
- Evaluated Department procedures related to revenues, accounts receivable, and allowances for doubtful accounts for the leases, easements, and other activities on State-owned lands.
- Tested the adequacy of Department procedures for invoicing, receiving, and recording payments from leases, easements, and other activities on State-owned lands for 30 legal instruments.
- Performed analyses of Department accounts receivable and allowance for doubtful accounts records and tested related controls to determine whether the Department followed generally accepted accounting principles.
- Evaluated Department policies and procedures to determine the adequacy of Department efforts to collect delinquent payments related to leases, easements, and other activities on State-owned lands.
- Tested Department inspection records for 30 legal instruments to determine Department compliance with applicable laws and administrative rules related to site inspections.
- Tested the validity of the balances reported as accounts receivable for State land leases and easements for 30 legal instruments by confirming the balances with lessees.
- Tested the effectiveness of relevant general and application controls for SUPRS, ILMS, Upland and Asset Management Tracking Systems, and the Board of Trustees' Land Database System (BTLDS, an electronic imaging system).
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a biennial basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT'S RESPONSE

In a letter dated October 12, 2009, the Secretary provided a response to our preliminary and tentative audit findings. The letter is included in its entirety as EXHIBIT C.

EXHIBIT A
DEPARTMENT LEASE ACTIVITY
AS OF FEBRUARY 2009

Active Sovereignty Submerged Land Leases

Activity Type	Number of Leases	Percentage of Total Submerged Land Leases	Leased Area in Square Feet	Percentage of Total Leased Area
Condominiums	545	20.7	9,164,103	10.2
Private Single Family Residential Docking Facilities	481	18.2	3,543,038	4.0
Multi-Family Housing Units - Trailer Parks and Apartments	219	8.3	2,668,375	3.0
Commercial Uplands Activity - Temporary Docking	508	19.2	11,028,398	12.3
Commercial Marinas	414	15.7	31,232,224	34.8
Ship Building /Boat Repair Service	101	3.8	3,609,784	4.0
Commercial Fishing Related	85	3.2	1,150,235	1.3
Yacht Clubs/Country Clubs	80	3.0	5,292,214	5.9
Public/Local Governments	54	2.1	16,294,464	18.2
Other	154	5.8	5,682,478	6.3
Totals	**2,641**	**100.0**	**89,665,313**	**100.0**

Source: Department Records.

Active Upland Leases

Lease Type	Activity Type	Number of Leases	Percentage of Total Upland Leases	Leased Area in Acres	Percentage of Total Leased Area
Commercial	**Agriculture**	8	0.73	13,959	0.33
Commercial	**Oil/Gas/Mineral**	14	1.3	3,905	0.09
Commercial	**Other**	1	0.09	17	.0004
Hunting Camp	**Hunting**	38	3.5	[a]	[a]
Noncommercial with Governmental Entities [b]	**Nonconservation**	627	57.3	212,307	5.1
Noncommercial with Governmental Entities [c]	**Conservation**	406	37.1	3,945,572	94.5
	Totals	**1,094**	**100.0**	**4,175,760**	**100.0**

[a] Leased area is not readily available for hunting camps as acreage is only identified in individual lease agreements.

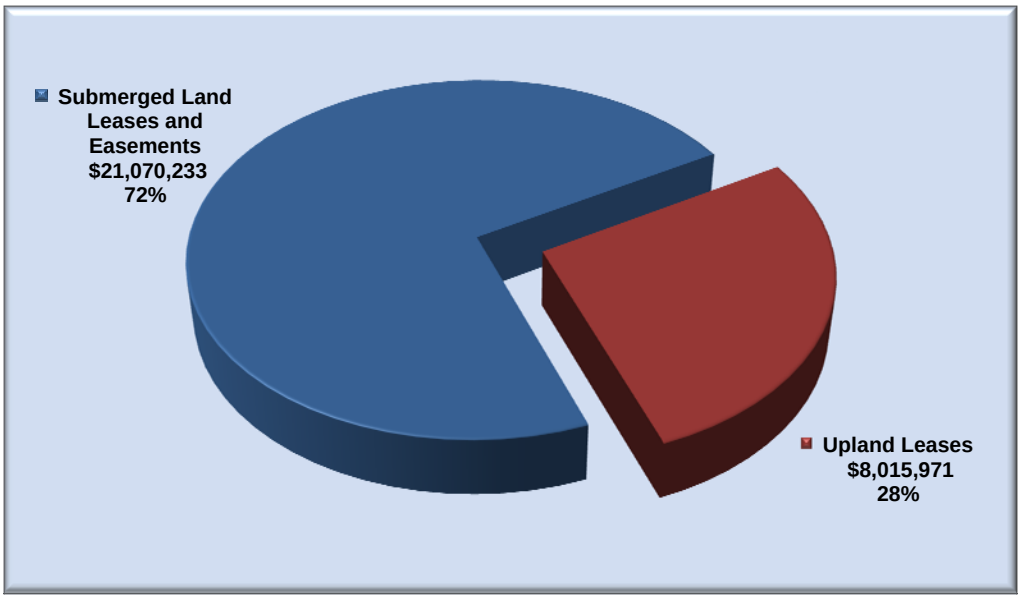
[b] Nonconservation leases with governmental entities included leases with cities, counties, State universities, and State agencies including, the Agency for Persons With Disabilities and the Departments of Children and Family Services, Highway Safety and Motor Vehicles, Juvenile Justice, Health, State, Transportation, and Veterans' Affairs.

[c] Conservation leases with governmental entities included leases with the Department's Coastal and Aquatic Managed Areas, Division of Recreation and Parks, and Office of Greenways and Trails as well as leases with the Department of Agriculture and Consumer Services and the Fish and Wildlife Conservation Commission.

Source: Department Records.

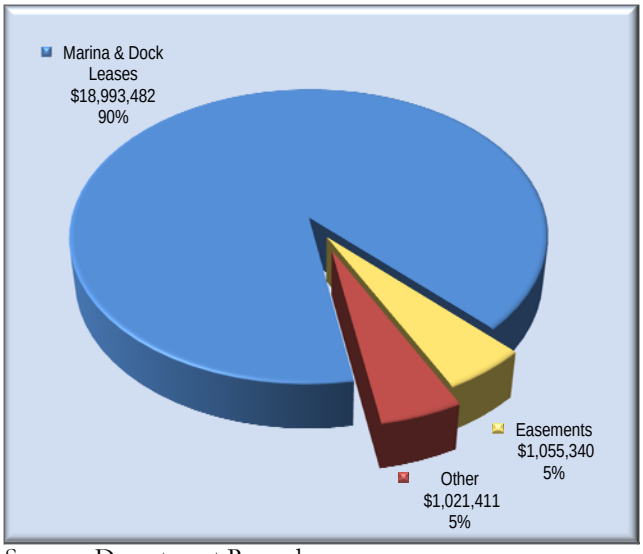
EXHIBIT B
STATE-OWNED LAND LEASE AND EASEMENT REVENUE
JULY 2007 THROUGH DECEMBER 2008

Total Revenues from State-Owned Land Leases and Easements



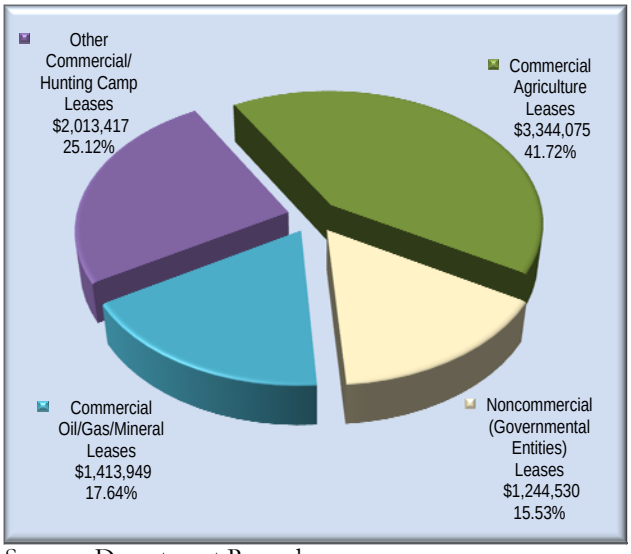
Source: Department Records.

Submerged Land Lease and Easement Revenue



Source: Department Records.

Upland Lease Revenue



Source: Department Records.

EXHIBIT C
MANAGEMENT RESPONSE

Florida Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

October 12, 2009

Mr. David W. Martin, CPA
Office of the Auditor General
G74 Claude Denson Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Mr. Martin:

Enclosed is the Florida Department of Environmental Protection's response to the preliminary and tentative audit findings and recommendations pertaining to the Auditor General's Operational Audit on Leases, Easements, and Other Uses of State-Owned Lands for the period July 2007 through February 2009. If you have questions in this regard, please call Joseph Aita, Director of Auditing, at 850-245-3151. Thank you for the opportunity to respond.

Sincerely,

Michael W. Sole
Secretary

JA/ksr
Enclosure

cc: Bob Ballard, Deputy Secretary, Lands and Recreation
Rick Lober, Inspector General, DEP
Rufus Noble, Division of Administrative Services, DEP
Deborah Poppell, State Lands

EXHIBIT C
MANAGEMENT RESPONSE (CONTINUED)

Department of Environmental Protection Response

Auditor General Preliminary and Tentative Findings

Audit of Leases, Easements and Other Uses of State-Owned Lands

This operational audit of the Department of Environmental Protection (Department) focused on the Department's administration of leases, easements, and other uses of State-owned lands, as well as other administrative issues during the period July 2007 through February 2009, and selected actions through June 2009. Our audit also included a follow-up on the findings included in audit report Nos. 2008-047 and 2008-128 and disclosed the following:

SOVEREIGNTY SUBMERGED LAND LEASES

Finding No. 1: The Department did not always enforce the terms and conditions of lease agreements for sovereignty submerged lands.

Recommendation: We recommend that the Department take steps to ensure that lessees materially comply with the terms and conditions of lease agreements. The Department should also consider the assessment of a penalty upon a lessee's failure to submit an annual Revenue Report.

Agency Response: Concur.

Recently DEP assigned a team to review and refine the business practices related to leases regarding inspections, compliance issues, fines and penalties. That team will provide written guidelines that clearly delineate responsibilities for these business practices within the Department. The team will make recommendations to management by December 1, 2009 for further process improvement.

Concur that the terms and conditions of a lease may not have always been strictly enforced. There are varying degrees of violations, and when there are minor violations and a lessee is willing to correct the violation, staff has worked with the lessee to resolve the matter.

Concur that, without the receipt of the Revenue Report, the ability to accurately assess and collect fees due could be lacking. DSL will take steps to ensure that revenue reports are submitted and verified in a timely manner. Additional staff has been assigned to audit reports verifying revenue data to help ensure correct fees are reported and collected. On-site audits of facilities' revenue records will continue to be conducted when warranted.

To help ensure that fees are collected in a timely manner, an enhancement was added in July 2009 to the Submerged and Upland Public Revenue System (SUPRS) to track invoices, wet slip revenue report calculations and to charge the allowable 12% interest on fees that become 30 days overdue. This system enhancement will become fully operational by November 1, 2009.

Finding No. 2: The Department lacked adequate controls to ensure that all sovereignty submerged land leased sites were timely inspected, that adequate follow-up was performed on

EXHIBIT C
MANAGEMENT RESPONSE (CONTINUED)

Department of Environmental Protection Response

Auditor General Preliminary and Tentative Findings

Audit of Leases, Easements and Other Uses of State-Owned Lands

noted noncompliance, and that information regarding lease inspections was correctly entered in the Integrated Land Management System.

Recommendation: The Department should enhance procedures to ensure that each sovereignty submerged land lease, including extended term leases, receives an on-site inspection at least once every 5 years as required by Board rules, that fines and penalties are assessed for leased sites not brought into compliance timely, and that information regarding on-site inspections is correctly recorded in ILMS.

Agency Response: Concur.

Recently DEP assigned a team to review and refine the business practices related to leases regarding inspections, compliance issues, fines and penalties. That team will provide written guidelines that clearly delineate responsibilities for these business practices within the Department. The team will make recommendations to management by December 1, 2009 for further process improvement.

Concur with the finding that, until recently, there were not adequate controls in place to assure inspections for "extended" term leases within a 5-year period. In July 2009, DSL implemented a new site inspection report in Crystal Reports which captures data for all leases, including extended term leases and provides for inspection due dates within a 5-year period. Management can now populate a list of inspections due for any given time period, including inspection dates for future years, provide that list to the staff inspectors, and monitor progress in completing inspections within the required 5-year deadline per the rule. In addition to the reports, changes were made to the Integrated Land Management System (ILMS) to capture and maintain information on site inspections such as last inspection date, site determinations, recommendations and current status.

Concur with the finding that adequate follow-up should be performed on noted noncompliance issues. The Districts and DSL exchange monthly compliance status information for noted issues, and noncompliance issues are handled by either the District or DSL as appropriate. The approach has been to work with the lessees who have acted in good faith and been willing to correct the violation, rather than fine or revoke leases. As stated in the Response to Audit Finding No. 1, DEP assigned a team to examine business practices and make recommendations for improvements by December 1, 2009.

Concur with the finding that there are some discrepancies in ILMS. When the migration of data from the Instrument Tracking system to ILMS occurred, inspection data was not migrated. DSL staff has corrected many of the data fields pertaining to lease renewals and modifications and will continue to review files to correct data information on all leases. This

EXHIBIT C
MANAGEMENT RESPONSE (CONTINUED)

Department of Environmental Protection Response

Auditor General Preliminary and Tentative Findings

Audit of Leases, Easements and Other Uses of State-Owned Lands

process will provide for the most current inspection information to be placed into ILMS. Applicants who have requested lease modifications and/or renewals are subject to a current site inspection and verification of lease terms for compliance prior to their request being finalized. As site inspections are completed and data received, DSL staff enters information into the ILMS database.

Finding No. 3: The Department did not bring under lease all grandfathered facilities on sovereignty submerged lands.

Recommendation: We recommend that the Department inspect these sites, and where appropriate, ensure that all registered grandfathered structures are brought under lease.

Agency Response: Concur.

Agree that the grandfathered facilities on sovereignty submerged lands should be inspected and action taken to reconcile as appropriate. DSL has brought and continues to bring these structures under lease when the related issues can be resolved.

All registered grandfathered structures were to be brought under lease on or before January 1, 1998. An original list of 599 facilities which met the intent of being grandfathered was identified. DSL worked through the original list of 599 structures and made great efforts to narrow the pending list to 78 structures, which DSL reported in a memorandum to the Auditor General's office on April 10, 2009. Additional actions reduced the list to a total of 58 facilities still pending as of August 2009. Of these 58, staff determined that 13 have title issues, 7 are in litigation and 38 remain in Compliance & Enforcement.

These 58 facilities are now identified as "unauthorized use of sovereignty submerged land needing reconciliation". The process outlined by the team assembled to review and refine the business practices will assist in resolving the issue of the remaining facilities.

UPLAND LEASES

Finding No. 4: The Department did not always timely receive and properly review the required annual or operational reports for upland commercial leases to verify lessee compliance with applicable laws and rules.

Recommendation: We recommend that the Department amend its commercial upland leases to require each lessee to submit an annual or operational report in accordance with applicable Board rules. We also recommend that the Department update its policies and procedures to ensure that required annual or operational reports are properly received and reviewed for compliance with

EXHIBIT C
MANAGEMENT RESPONSE (CONTINUED)

Department of Environmental Protection Response

Auditor General Preliminary and Tentative Findings

Audit of Leases, Easements and Other Uses of State-Owned Lands

applicable Board rules. Additionally, we recommend that the Department conduct periodic on-site inspections for each commercial upland lease.

Agency Response: Concur.

Agree with the finding that in some instances DSL staff had to contact the lessee to obtain all the information required by the rules and the lease. Historically DSL staff has made initial contact with the lessee by telephone. The requested information is usually received by DSL within two weeks after the initial notification. All lessees have been notified of statutory requirements for annual reports. DSL will ensure reports are received and such reports will be reviewed and placed in the lease files. DSL will also ensure that communications including telephone calls requesting required information are appropriately documented. Upon lease renewals and modifications, special conditions will be added to the lease to capture any applicable statutory reporting requirements.

Concur with conducting periodic on-site inspections for each commercial upland lease. We will continue to monitor commercial leases and, when warranted, will also ensure that site inspections are conducted.

Finding No. 5: The Department did not receive required land management or use plans or attempt to obtain delinquent plans from land managers.

Recommendation: We recommend that the Department update its policies and procedures to reflect current law and to ensure that required land management and land use plans are timely received and properly reviewed.

Agency Response: Concur.

Agree with this finding and recommendation. In January 2009, DSL's internal review of management plans for conservation and non-conservation lands revealed that there were delinquent plans, especially for small leased areas. DSL is currently in the process of notifying all lessees with delinquent plans and this backlog will be corrected and completed by the end of 2009.

DSL is further refining the process and updating procedures to ensure that land management and land use plans are timely received and properly reviewed. In an effort to make further improvements and track timely receipt of plans, DSL is working to automate this process.

Finding No. 6: Department procedures for conducting hunting camp site inspections, including steps to be taken to terminate the leases of non-complying lessees, could be improved.

EXHIBIT C
MANAGEMENT RESPONSE (CONTINUED)

Department of Environmental Protection Response

Auditor General Preliminary and Tentative Findings

Audit of Leases, Easements and Other Uses of State-Owned Lands

Recommendation: We recommend that the Department update its policies and procedures to include the establishment of a risk-based inspection schedule, address the enforcement of the termination provisions of lease agreements should lessees fail to timely remedy noncompliance, and require appropriate documentation of circumstances preventing timely on-site inspections, as well as decisions not to pursue lease termination.

Agency Response: Concur.

Agree with the finding that there is no statutory requirement for annual hunt camp inspections. However, staff is making every attempt to accomplish the inspections annually to assure no significant violations have occurred. These hunt camps are scattered across the Everglades and located in remote areas with limited or poor access. To reach the inspection site requires air boat or helicopter travel. Extreme weather conditions or other unforeseen natural conditions can delay access to these areas, which makes scheduling specific dates and times for inspections very difficult. Staff will continue their inspection efforts to assure leases are significantly in compliance. In the future, any circumstances preventing timely on-site inspections, as well as information regarding lease terminations, will be documented.

Inspection letters are sent to the lessee after each hunt camp inspection. This letter notifies the lessee of any violations that must be corrected within 60 days in order to regain compliance. We allow owners an opportunity to correct minor violations before taking enforcement action against them. A follow-up inspection is conducted and, if violations have not been corrected, the file is sent to our Office of General Counsel for legal action.

BILLING AND COLLECTION OF LEASE FEES

Finding No. 7: The Department was unable to provide documentation to support the reasonableness of assessed fees.

Recommendation: We recommend that the Department conduct periodic cost analyses of the actual cost of administering and managing leases and easements to use as a basis for recommendations to the Board for changes in fee assessments.

Agency Response: Concur in part.

DSL monitors, and is able to document, its costs for handling leases. In May 2005, staff recommended, and the Board of Trustees adopted, changes to Rule 18-21, F.A.C., which includes increasing application fees from $200 to $500 for all facilities other than private, single-family docks. The recommendation was based in part on estimated DEP staff costs at that time of nearly $900 per lease.

EXHIBIT C
MANAGEMENT RESPONSE (CONTINUED)

Department of Environmental Protection Response

Auditor General Preliminary and Tentative Findings

Audit of Leases, Easements and Other Uses of State-Owned Lands

Finding No. 8: The Department lacked adequate controls to ensure the assessment of interest charges on overdue invoices, documentation of collection efforts, and proper recording of accounts receivable and related allowances for doubtful accounts.

Recommendation: We recommend that the Department continue its efforts to properly assess interest charges on overdue invoices in accordance with Board rules and lease agreement provisions. We also recommend that the Department improve its controls to accurately record all accounts receivable and related allowances for doubtful accounts in FLAIR for land leases and easements. Additionally, we recommend that the Department enhance its collection efforts. Such efforts may include termination of the lease, recording of a Notice of Violation in the applicable county's public records, following DFS procedures for the reporting of delinquent accounts receivable, and enhancing SUPRS to document Department collection efforts.

Agency Response: Concur.

Recently DEP assigned a team to review and refine the business practices related to leases regarding inspections, compliance issues, fines and penalties. That team will provide written guidelines that clearly delineate responsibilities for these business practices within the Department. The team will make recommendations to management by December 1, 2009 for further process improvement.

Concur with this recommendation and DSL will continue to improve collection efforts, including the assessment of interest charges on overdue invoices. SUPRS was enhanced to maintain the charges and tracks interest on past due accounts. This enhancement provides for a 12% interest charge on fees 30 days overdue. The automation of this process will be operational by November 1, 2009.

DSL reassigned staff to enhance its efforts with collections, inspections and audits of submerged land leases. Lessees have been notified to clarify revenue reports submitted to DSL to help ensure accuracy of revenues due to the state. Clarifications include a breakout of revenues reported for uplands versus submerged land fees.

We have an Access database that tracks collection efforts, although it is currently not integrated into SUPRS. As recommended by the auditors this function could be built into SUPRS at a cost; DSL will consider adding this tracking component when the next SUPRS modification occurs and funding is available.

DSL is monitoring leases to ensure that any prior out-of-compliance leases, which may still owe fees, are addressed prior to any further authorizations for renewals or modification of state lands. To assist lessees DSL developed educational materials regarding tracking and

EXHIBIT C
MANAGEMENT RESPONSE (CONTINUED)

Department of Environmental Protection Response

Auditor General Preliminary and Tentative Findings

Audit of Leases, Easements and Other Uses of State-Owned Lands

reporting of "sales" of slips within multi-family residences so that revenues are accurately reported by the Home Owners Association (lessee).

The Division of Administrative Services has also implemented procedures to ensure that all amounts due for sovereignty submerged land leases and easements are recorded as accounts receivable in FLAIR, and that appropriate amounts are recorded as Allowance for Doubtful Accounts. The Bureau of Finance Accounting (BFA) obtains an aged accounts receivable report generated from Submerged and Uplands Public Revenue System (SUPRS) from the Division of State Lands at the end of each quarter. The SUPRS report includes a due and payable date for all amounts due for:

- Leases, easements, and other uses of State-owned lands for sovereign submerged lands, including navigable lakes and rivers; and
- Leases, easements, and other uses of State-owned lands for State-owned uplands,
- Uplands Administrative Fees due from other governmental entities.

At June 30, 2009, based on the SUPRS report, BFA recorded Accounts Receivable and an appropriate Allowance for Doubtful Accounts for State-owned lands leases, easements, uplands administrative fees.

OTHER ADMINISTRATIVE MATTERS

Finding No. 9: The Department did not ensure that purchasing cards were timely canceled upon a cardholder's separation from the Department.

Recommendation: We recommend that the Department enhance its procedures for routine identification of terminated employees to ensure the timely cancellation or deactivation of purchasing cards upon a cardholder's separation from the Department.

Agency Response: Concur.

The Department has implemented additional procedures to ensure the timely cancellation of purchasing cards and/or removal of FLAIR access upon an employee's separation from the Department. The Bureau of Finance and Accounting has developed an automated reconciliation which produces an exception report of employees with active status on the FLAIR/Purchasing Card Access Control file who do not appear on the People First active employee file. This exception report is run weekly and provided to the FLAIR Access Control Administrator and the Purchasing Card Program Administrator (PCPA). The PCPA follows up all employees with a user name beginning with "PC" (indicating purchasing card access) and the FLAIR Access Control Administrator follows up on all other employees to ensure that listed employees are still

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authorized for FLAIR or purchasing card access, or to remove access if the employee is separated from the Department or is otherwise no longer authorized.

We have also issued reminders to Department managers and administrative liaison personnel regarding their responsibilities to notify the Bureau of Personnel Services and the Bureau of Finance and Accounting of terminations and other personnel changes, as well as to timely enter personnel changes to the People First system.

Finding No. 10: The Department did not ensure timely removal of Florida Accounting Information Resource Subsystem user access for terminated employees.

Recommendation: We recommend that the Department follow its procedures to ensure the timely removal of FLAIR access privileges upon an employee's termination.

Agency Response: Concur.

See response to finding 9.

PRIOR AUDIT FOLLOW-UP

The Department had taken corrective actions for findings included in audit report Nos. 2008-128 and 2008-047. However, the Department had not fully resolved the issues disclosed in report No. 2008-047, finding No. 2, regarding notification of the Department of Management Services concerning any excess motor vehicles.

Recommendation: We recommend that Department management continue efforts to resolve this prior audit finding.

Response: Concur.

Following several telephone discussions with the Department of Management Services (DMS) on the Excess Determination issue, the Department provided background information and recommendations to DMS for consideration by letter dated June 25, 2009. On September 15, 2009 the Equipment Management Information System (EMIS) was modified to add a new status code "N" to identify equipment received by agencies that is "undergoing equipment installation/outfitting" before being placed in service. In addition, DMS has responded by email dated September 23, 2009, that they have met internally and are still researching the excess determination issue and hope to have an answer soon.

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