April 12, 2010

Ms. Kathryn DuBose, Staff Director
Joint Legislative Auditing Committee
Claude Pepper Building, Room 876
111 West Madison Street
Tallahassee, Florida 32399-1400

Dear Ms. DuBose:

Pursuant to Section 20.055(5)(h), Florida Statutes enclosed is the Department’s written explanation of the status of recommendations contained in the Auditor General Report No. 2010-028, Operational Audit of the Department of Environmental Protection (Department). This report 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.

If you have any questions or need additional information, please contact Director of Auditing Joseph Aita, at (850) 245-3170.

Sincerely,

Richard E. Lober
Department of Environmental Protection

cc: Michael W. Sole, Secretary
Deborah Poppell, Director, Division of State Lands
Cynthia Kelly, Director, Division of Administrative Services

"More Protection, Less Process"
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DEPARTMENT OF ENVIRONMENTAL PROTECTION
Auditor General AG 2010-028, October 2009
Audit of Leases, Easements and Other Uses of State-Owned Lands

Status April 2010

FINDING NUMBER 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.

DIVISION:
State Lands

STATUS:
The Department is working to ensure that the terms and conditions of the lease are being met and enforced. In its collection efforts, the Department has enhanced its data system, Submerged and Upland Public Revenue System (SUPRS), on November 1, 2009. The Department created a report of interest invoice recipients and mailed 12% interest invoices on past due accounts on January 4, 2010. Also, a “Notice to Correct” has been developed, pursuant to the lease terms, and was sent on January 4, 2010, to any lessee with lease fees 90 days in arrears. This notice provides a list of reasons the lease is out of compliance, including failure to submit an annual Revenue Report if applicable.

FINDING NUMBER 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 (ILMS).

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.

DIVISION:
State Lands

STATUS:
The Department has updated its ILMS database report queries to capture all leases, including extended term leases that originally were not being accounted for, in order to conduct timely inspections pursuant to rule. A three-day planning meeting was held between the district offices, the environmental resource permitting staff and DSL staff to develop improvements to the site inspection process as well as the compliance and enforcement process. The improvements include holding a quarterly teleconference to discuss issues that affect lease compliance and designating a single person to be responsible for the data entry of the site inspection information.

There are 546 leases due for inspection over the time period of July 1, 2009 to June 30, 2010. Of these, 369 have already been performed and the others are expected to be completed on time.
FINDING NUMBER 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.

DIVISION:
State Lands

STATUS:
The Department has provided a list of grandfathered facilities to each of the district offices for them to review and determine if there is still a need for a lease. (Note, however, that these are now referenced as “unauthorized use of sovereignty submerged land”.) The number of outstanding grandfathered facilities is now down to 57 from the original list of 599. District staff is working with these facilities and DSL is monitoring their progress through regular updates.

FINDING NUMBER 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 of Trustees’ 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 of Trustees’ rules. Additionally, we recommend that the Department conduct periodic on-site inspections for each commercial upland lease.

DIVISION:
State Lands

STATUS:
Since commercial leases are legally binding contracts, both the lessee and lessor must agree to any amendments. Future leases or lease renewals will contain a provision requiring the lessee to submit an annual or operational report in accordance with applicable Board of Trustees’ rules. To ensure compliance for current leases, the Department sent a letter to all affected lessees informing them that they must comply with applicable Board of Trustees’ rules.

The Department has updated its procedures manual to ensure that annual and operational reports are reviewed in compliance with applicable Board of Trustees rules. Additionally, the tracking database has been revised to ensure that the annual report requirement for each lease is specified and provides a check
and balance system as well as an automatic alert that cues the user to look at all aspects of the lease to ensure compliance.

DSL will continue to monitor commercial leases and, when warranted, ensure that site inspections are conducted.

**FINDING NUMBER 5:**
The Department did not receive required land management and land 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.

**DIVISION:**
State Lands

**STATUS:**
A review of policies and procedures was initiated in January 2009, and new policy drafts will be completed in January 2010. A new form for entities leasing non-conservation lands was developed and is now in use. Additionally, the Division initiated an electronic mail-out to all holders of non-conservation land leases in order to obtain data verification and notify lessees if their land use plans were overdue. A total of 616 were mailed out in November 2009 as follows: state agencies – 478; universities – 104; water management districts – 2; other entities - 4; and researching for address correction – 28.

A tracking system for overdue plans has been developed. Each plan is reviewed for compliance and filed. As of December 2009, results of the November mail-out are as follows:
- returns for wrong addresses – 8 with 6 being corrected;
- overdue land use plans received, all in compliance - 9;
- telephone or email inquiries or requests for information - 63 additional leases discovered that failed to transfer electronically from the Bureau of Public Land Administration to the Office of Environmental Services - 135 (this has been corrected and mail-outs to these leaseholders were made in January 2010)

There is a 45-day deadline for return of delinquent land use plans. After that deadline, a second letter will be issued. Failure to meet the requirement after the second mailing will result in steps that could culminate in revocation of lease. A document for conservation lands less than 160 acres is in development, and a mail-out to those overdue is to be completed. All conservation lands larger than 160 acres are currently in compliance or in process.
FINDING NUMBER 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.

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.

DIVISION:
State Lands

STATUS:
Staff will continue to make every attempt to accomplish the inspections annually to assure no significant violations have occurred and to assure leases are significantly in compliance. Extreme weather or other unforeseen natural conditions can delay access to these areas, which makes scheduling specific dates and times for inspections very difficult. Therefore, this and other circumstances will be factors considered on scheduling inspections. In the future, any circumstances preventing timely on-site inspections, as well as information regarding lease terminations, will be documented in the database and spreadsheet. DSL will continue to work with the Office of General Counsel on enforcement of those that are significantly out of compliance. DSL updated the procedures manual due to recent changes.

FINDING NUMBER 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 of Trustees for changes in fee assessments.

DIVISION:
State Lands

STATUS:
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. There have not been salary increases provided by the Legislature, no major employee rate changes, or rule changes that have made a significant difference since 2005.
FINDING NUMBER 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.

DIVISION:
State Lands

STATUS:
The Department has enhanced its data system, SUPRS, in its collection efforts and began sending 12 percent interest invoices on past due accounts in November 2009. A “Notice to Correct” has been instituted and is sent if no payment is received 30 days after receipt of the interest invoice. Twenty days after the “Notice to Correct” is sent to the overdue lessee, the account is turned over to the Department’s Bureau of Finance and Accounting for submittal to the contracted collection agency. When this occurs, the Department will have no further contact with the lessee and will not receive payments from the lessee. The eviction process should start at this time.

The Department has improved its controls to accurately record all accounts receivable with the use of Crystal Reporting.

FINDING NUMBER 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.

DIVISION:
Administrative Services
STATUS:
The Department has implemented additional procedures and automated programs to ensure the timely cancellation of purchasing cards and removal of FLAIR access upon employee’s separation from the Department.

The Division of Administrative Services developed an automated comparison of the People First Active employee file to the FLAIR Access Control file. This comparison is run daily; exceptions are identified and resolved. The Bureau of Finance and Accounting also developed an automated comparison of the People First active employee file to the FLAIR Purchasing Card Module Person file. This comparison is run weekly; exceptions are provided to the Purchasing Card Program Administrator for follow-up and resolution.

The Department has also issued reminders to Department managers and administrative liaisons 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. In this regard, the Department has added information to the Checklist of Employee Separation Information form and set up email addresses for supervisors to use in notifying the appropriate office of actions needed.

FINDING NUMBER 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.

DIVISION:
Administrative Services

STATUS:
The Department has issued reminders to Department managers and administrative liaisons 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. In this regard, the Department has added information to the Checklist of Employee Separation Information form and set up email addresses for supervisors to use in notifying the appropriate office of actions needed.

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