

Review of Conservation Easement Monitoring

Division of State Lands

Report: A-1415DEP-048

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

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3900 Commonwealth Boulevard, MS 40
Tallahassee, Florida 32399-3000
www.dep.state.fl.us





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The Office of Inspector General (OIG) conducted a review of the Division of State Lands (Division) Office of Environmental Services (OES) process for monitoring Conservation Easements. This review was initiated as a result of the Fiscal Year (FY) 2014-2015 Annual Audit Plan.

Scope and Objectives

The scope included a review of conservation easement monitoring in Task Assignment 108 during FY 2012-2013, Task Assignment 205 during FY 2013-2014, and Task Assignment 305 during FY 2014-2015.

The objectives of this review were to:

- Determine whether conservation easement monitoring is consistent with easement requirements
- Evaluate the level of Division Monitoring

Methodology

This review was conducted under the authority of section 20.055, Florida Statutes (F.S.) and in conformance with *The International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors. Our procedures included review of Division records, section 704.06, F.S., as well as interviews with Division staff.

Background

As part of acquisition goals, the Division has purchased conservation easements as an alternative to full fee simple acquisitions to restrict land development, limit uses, and maintain

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existing areas of conservation. A conservation easement, as defined in section 704.06, F.S., *is a right or interest in real property, which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition.* Section 704.06(1), F.S. further provides for conservation easement document recording in public records, and section 704.06 (4) F.S. states that conservation easements *may be enforced by injunction or proceeding in equity or at law, and shall entitle the holder to enter the land in a reasonable manner and at reasonable times to assure compliance.*

During the acquisition process, a Baseline Documentation Report (BDR) is obtained to determine the condition of the property at the time of the conservation easement purchase. Both the landowner and the Division must agree that the BDR accurately reflects the condition of the property. According to OES internal documentation, 12 to 18 months after purchase of a conservation easement, OES begins a monitoring process to determine whether the landowner is complying with the terms of the agreement. According to Division management, OES monitors conservation easements every 18 months.

According to tracking documentation provided by the Division, there are 117 conservation easement agreements actively managed by the Division.

Contract PL263, with the Florida Natural Area Inventory (FNAI) at Florida State University was executed July 1, 2012 as a five-year agreement for monitoring compliance with conservation easements. Task assignments are fixed price, fee schedule agreements. Under the contract task assignments, FNAI provides a Conservation Easement Monitoring

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Report to OES that summarizes the easement condition and variances between current conditions and previous monitoring reports. OES tracks any major or minor violations.

Conservation easement monitoring reports for Task Assignments 108, 205 and 305 were submitted for a total cost of \$299,120.81.

| Task Assignment | Fiscal Year | Number of Conservation Easements Monitored | Cost |
|------------------------|--------------------|---|---------------------|
| 108 | 2012-2013 | 107 | \$135,150.00 |
| 205 | 2013-2014 | 45 | \$69,629.00 |
| 305 | 2014-2015 | 69 | \$94,341.81 |
| | Total | 221 | \$299,120.81 |

Results and Conclusions

To evaluate consistency between monitoring efforts and the conservation easement agreement requirements, we reviewed twenty monitoring reports. We compared the conservation easement monitoring report elements with easement requirements. Based on this review, all elements outlined in the Conservation Easement Monitoring Reports addressed the requirements as outlined in the conservation easement agreements.

To assure compliance with conservation easement agreements, the Division has established an 18-month compliance monitoring schedule. According to Division management, this timeframe was established based on available funding. However, a required monitoring period is not specified in section 704, F.S or in the agreement. Based on section 704.06(4), F.S, as holder of the conservation easement, the Department is allowed *...to enter the land in a reasonable manner and at reasonable times to assure compliance*. It is at the discretion of the Department and landowner to agree on reasonable manner and reasonable times.

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To evaluate the Division's level of monitoring efforts, we reviewed twenty monitoring reports. Of the 20 conservation easement reports reviewed, 3 were monitored more frequently than the 18-month established timeframe, and 16 were monitored less frequently. The table below shows the 20 sampled easements reviewed and the frequency of monitoring since acquisition.

| Project Name | Acquisition Date | Last Monitored | Times Monitored | Average monitoring Schedule (Total Months /Times Monitored) |
|---------------------|-------------------------|-----------------------|------------------------|---|
| Bailey's Mill | 12/30/2009 | 11/6/2014 | 7 | 8 months |
| Whaley | 3/17/2005 | 5/13/2014 | 6 | 18 months |
| LaBelle | 10/22/2002 | 5/13/2014 | 6 | 23 months |
| Cypress Gardens | 2/24/2004 | 10/29/2014 | 6 | 21 months |
| Combee, AD | 1/8/2003 | 9/10/2014 | 7 | 19 months |
| Evans | 12/4/2003 | 11/26/2014 | 7 | 19 months |
| Grimes | 11/30/2001 | 12/10/2013 | 6 | 24 months |
| Hollister | 7/30/2003 | 10/1/2014 | 6 | 22 months |
| Smith, C. | 9/18/2003 | 9/16/2014 | 7 | 19 months |
| Tomkow | 7/31/2003 | 11/11/2014 | 7 | 19 months |
| Nokuse | 4/8/2005 | 12/11/2013 | 6 | 17 months |
| Broussard | 10/25/2007 | 5/14/2014 | 4 | 20 months |
| Seven Runs | 8/29/2011 | 12/1/2014 | 4 | 15.5 months |
| LPA 1127 | 3/5/1998 | 2/26/2014 | 7 | 27 months |
| LPA 1130 | 7/7/1998 | 2/27/2014 | 7 | 27 months |
| LPA 1182 | 11/16/1999 | 9/16/2014 | 7 | 25 months |
| LPA 1196 | 11/17/1999 | 9/6/2012 | 6 | 26 months |
| LPA 1202 | 11/8/1999 | 12/3/2013 | 7 | 24 months |
| LPA 1206 | 11/30/1999 | 9/18/2014 | 7 | 25 months |
| LPA 3994 | 3/16/1998 | 11/23/2012 | 6 | 29 months |

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Of the 117 conservation easements being actively monitored, OES documented two violations of the conservation easement agreements during the review period FY 2012–2015. These violations were resolved through correspondence with the landowners.

For comparison with other governmental bodies that hold conservation easements, we researched monitoring requirements of the Florida Water Management Districts (WMD), other states, and the National Fish and Wildlife Service (FWS). The states interviewed, including Rhode Island, Indiana, and Pennsylvania, did not have a process in place to formally monitor conservation easements. FWS has mandatory monitoring processes and procedures in place. The FWS policy 601 suggested a conservation easement monitoring/inspection schedule for at least every three years. According to interviews with the WMDs, internal staff monitor compliance annually.

Management Comment

Conservation Easement Monitoring Frequency

According to section 704.06(4), F.S, as holder of the conservation easement, the Department is allowed *...to enter the land in a reasonable manner and at reasonable times to assure compliance*. OES developed a Conservation Easement Program document dated September 2012, which establishes an 18-month monitoring requirement.

Of the 221 conservation easement monitoring reports submitted during the review period, two included agreement violations. These violations were resolved through correspondence. The historically low number of reported violations suggest that the conservation easements under active monitoring are at low risk for non-compliance.

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In addition, based on the number of times the conservation easements have been monitored since acquisition, OES has not documented a strict adherence to its policy of 18-month monitoring cycle.

Recommendation:

We recommend the Division consider a risk-based approach to monitoring conservation easements. Based on historical data and the level of risk, the Division should review its current monitoring schedule to determine whether frequency of monitoring could be extended to reduce the amount of monitoring funded.

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

Please address inquiries regarding this report to the OIG's Audit Director by telephone at (850) 245-3151. Copies of final reports may be viewed and downloaded via the internet at <http://www.dep.state.fl.us/ig/reports.htm>. Copies may also be obtained by telephone (850) 245-3151, by fax (850)245-2994, in person or by mail at Department of Environmental Protection, Office of Inspector General, 3900 Commonwealth Boulevard, Mail Station #41, Tallahassee, FL 32399.

*Valerie J. Peacock,
Director of Auditing*

*Candie M. Fuller,
Inspector General*