

# **Guidelines for Handling State Lands Violations**

Revision date: 2/3/15

## **INTRODUCTION**

The Department's Division of State Lands (DSL), as agents for the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (BOT), is tasked with compliance and enforcement issues relating to rule criteria as described in Chapters 18-20 and 18-21, Florida Administrative Code ("F.A.C.") and statutorily authorized pursuant to Chapters 253 and 258, Florida Statutes, ("F.S."). The DSL is tasked with reviewing activities to determine whether state lands are affected as well as compliance and enforcement relating to state ownership. The state owns the lands lying below the mean high water line for tidal waters and the ordinary high water for non-tidal waters. These lands are referred to as sovereignty lands and BOT holds these lands in trust for the people of the State of Florida pursuant to Article X, Section 11 of the Florida Constitution. The severity of a violation is linked to whether the unauthorized structure or activity results in preempting the public from using sovereignty lands. The district offices are our "eyes in the field" and can help us in our mission of being good stewards of our public lands. Refusal to comply with Chapters 18-20 and 18-21 F.A.C., and Chapters 253 and 258, F.S. may result in penalties as authorized by Chapter 18-14, F.A.C.

These guidelines are intended to provide a rational, fair and consistent method to determine the appropriate response for state lands violations. It is to be noted that before any "Notice of Violations" or other enforcement actions are sent to Office of General Counsel that it first be addressed by the Division of State Lands and the Bureau Chief of Public Land Administration for PEER review.

## **GUIDELINES**

Below we have listed categories of DSL's non-compliance issues and steps to take for compliance or enforcement.

### **Unauthorized Fill**

If upon a title determination it is verified that there is illegal fill of sovereignty lands (i.e. verified by surveys, aerials, or witnesses to the activity, etc.), the riparian land owner may apply to purchase the filled land. The riparian owner must submit those documents outlined in Rule 18-21.013, F.A.C. to the district office who in turn will submit the documents to the Title and Land Records Section (Title) in Tallahassee for review. DSL in conjunction with the district office will then recommend to the BOT via an agenda item which will be presented at a regularly scheduled Cabinet Meeting. The recommendation, pursuant to Rule

18-21.013, F.A.C., will be to either (a) direct the fill to be removed by or at the expense of the applicant; (b) direct the fill to remain as state-owned and have it surveyed at the expense of the applicant; or (c) sell the filled land to the riparian owner for either two times the present value of the lands if the unauthorized filling was done by the applicant's predecessor in title after June 10, 1957, or for three times the present value of the lands if the unauthorized filling was done by the applicant after June 10, 1957. The present value, excluding building improvements, must be determined by an approved appraisal contracted through the DSL's Bureau of Appraisal.

It is important for the district office to provide DSL with a recommendation of whether it is in the public interest to leave the fill as is or to require the fill to be removed. (Sample write-up would be: *"The first option is not recommended because removing the fill could entail water quality impacts resulting in environmental damage to the area"*).

### **Unauthorized Dredging**

If there is evidence of unauthorized dredging on state land, contact DSL if you need documentation to aid in your case file but DSL considers unauthorized dredging to be a minor violation because the activity does not preempt public access to state lands. However, there may be proprietary fees associated with the violation pursuant to Chapter 18-14, F.A.C. Therefore, DSL would need to know the volume of the dredged material and if a private or public easement is required in order to determine those fines.

### **Unauthorized Structures**

For those unauthorized structures that should be under lease or easement and the riparian owner does not agree, the issue should be brought to the attention of DSL's Office of Public Land Administration. A peer review can be organized to formulate the appropriate recommendation.

For those structures that are within an existing lease or easement area, the district staff should review the survey as part of the inspection process to determine if there are any encroachments or violations. These could include additional slips, additional vessels, added non-water dependent structures and/or vessels extending outside of the slip (for example, a slip owner has an agreement to place his 40-foot boat in a slip that has a 30-foot lease line). Upon documentation of the encroachment or violation, the lessee should be notified that their lease will need to be amended accordingly or the structure will have to be removed.

Also, it is important to note during the inspection process whether any construction or berthing encroaches over the riparian line or is within the 25-foot buffer zone of the adjoining landowner's riparian line. The inspector should know when the construction took place as it may be pre-rule and therefore not a violation, or a grandfathered structure. As

directed by Chapter 18-21, F.A.C., an affidavit should be obtained from the adjoining landowner acknowledging any construction within the 25-foot buffer zone. If any structure is situated over the riparian line, the structure may need to be removed or an agreement from the adjoining landowner may be needed. If there is an issue relating to non-compliance of the 25-foot buffer zone, it should be brought to the attention of the DSL's Office of Public Land Administration. A peer review can be organized to formulate the appropriate recommendation.

### **Non-water dependent structures**

Those permanent structures should be documented that preempt sovereignty lands for activities that can be conducted on the uplands and are not dependent on the use of the water. These structures do not include tables, chairs, umbrellas, gear boxes, and other appurtenances that are on the docking facility. As stated previously, one should understand when the construction took place as it may be pre-rule or a grandfathered structure.


### **Deed or Dedication Restrictions/Reverters**

In the past, the Governor and Cabinet have approved the conveyance of sovereignty lands or issued Dedications (Public Easements) over sovereignty lands for a certain purpose (i.e. for "public" or "municipal"). Primarily, an inspector would need to gather facts to see if there is a violation of the "public" or "municipal" purpose, such as whether an activity is income-producing and how the revenues are received. DSL will review the facts on a case-by-case basis to determine whether the Grantee is out of compliance with the intended restrictions.

**MATRIX FACTORS—Violations of State Lands without Authorization (Examples)**

Matrix Factor	Harm to the Public	Examples
<p><b>MAJOR</b> Contact DSL immediately.</p>	<p>1. <b>Major</b> would be construction or fill without authorization that preempts the public from access in violation of Chapters 18-20 or 18-21, F.A.C. <i>(Activities that are not authorized and would not be authorized or could be authorized but riparian owner opposes such authorization. Contact DSL immediately to discuss resolution. Might need peer review).</i></p>	<p>1. Illegal fill. 2. A riparian owner that is defiant in that he/she will not come under lease when we have stated the activity that they constructed or proposed is on state lands. 3. An enclosed restaurant over state-owned submerged lands</p>
<p><b>MODERATE</b> Please handle and work with DSL for resolution.</p>	<p>1. <b>Moderate</b> would be construction or fill without authorization that preempts the public from access. <i>(Activities that are not currently authorized but could be authorized)</i></p>	<p>1. Constructing additional slips or altering structures within an existing lease. 2. Unauthorized docks/structures outside lease or easement area 3. Deed restriction issue</p>
<p><b>MINOR</b> Please handle as time allows.</p>	<p>1. <b>Minor</b> would be an activity that does not comply with Chapters 18-20 or 18-21, F.A.C., but in no way preempts the public.</p>	<p>1. Lack of proper signage as set forth as conditions of the lease. 2. Unauthorized dredging</p>

CONCURRENCE WITH DIVISION  
RECOMMENDATION AND GRANT  
OF AUTHORIZATION TO PLACE ON WEBSITE

  
\_\_\_\_\_  
Kelley Boree  
Director, Division of State Lands

2.11.15  
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DATE