

[MULTIPLE RESPONDENTS, NO CONTRACTOR]

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND,

IN THE OFFICE OF THE
Insert District DISTRICT

Commented [R01]: Department is not a party if there are no regulatory violations.

Commented [R02]: ATTENTION: You may change the text in these control boxes throughout the document that follows. However, you may not alter any of the language in the remainder of the document.

Petitioner,

v.

OGC FILE NO.: OGC #

Insert Respondent's Name, and
Insert Additional Respondent's Name

Respondents.

NOTICE OF VIOLATION, ORDERS FOR CORRECTIVE ACTION, AND
ADMINISTRATIVE FINE ASSESSMENT

TO:

Certified Mail Number

Commented [R03]: For Example:
James J. Potter
1630 Bailey Drive
Bedford Falls, FL

Clarence, Inc.
c/o Gary G. Gower, President
5555 Industrial Lane
Bedford Falls, FL

Pursuant to the authority of Section 253.04, Florida Statutes ("F.S."), the Board of Trustees of the Internal Improvement Trust Fund ("Board") gives notice to Insert Respondent's Name ("Respondent Last Name"), and Insert Respondent's Name ("Respondent Last Name"), collectively referred to as "Respondents", of the following findings of fact and conclusions of law with respect to violations of Chapter 253, F.S.

Commented [R04]: Chapters 373 and 403 should not be referred to in a proprietary-only action.

FINDINGS OF FACT

PARAGRAPHS APPLICABLE TO ALL COUNTS

1. The Board is responsible for overseeing state-owned lands and ensuring that they are managed in trust for the citizens of the State of Florida pursuant to Chapter 253, F.S., and the rules promulgated and authorized thereunder in Title 18, Florida Administrative Code ("F.A.C."). The State of Florida Department of

Environmental Protection (“Department”) performs all staff duties and functions related to the administration of state lands as provided in Section 253.002, F.S.

2. Respondents are persons, as defined in Rule 18-14.001(5), F.A.C., who own property located at Street Address, City, Zip, Property ID # Section/Township/Range, County County, Florida (“Property”). The Property is located adjacent to Insert Name of Water Body.

[ADD NEW PARAGRAPHS THAT DESCRIBE ANY ADDITIONAL RESPONDENTS IF THEY ARE NOT A CO-OWNER OF THE PROPERTY]

3. On Insert Date, the Department inspected the submerged lands adjacent to the Property and discovered:

- a. Insert a brief description of violation;
- b. Insert a brief description of violation;
- c. Insert a brief description of violation;
- d. Insert a brief description of violation;

4. The Dock/Structure is connected to the Property and extends waterward of the mean/ordinary high water line of the Insert Name of Water Body.

5. The Board owns the bottom of the Insert Name of Water Body adjacent to the Property and waterward of the mean/ordinary high water line.

6. On Insert Date, the Department delivered a warning letter to Respondents by certified mail/Federal Express (“Letter”), attached hereto and incorporated herein as Exhibit A. Respondents received the Letter on Insert Date, as shown in the United States Post Office Certified Mail Return Receipt/Federal Express Ground Delivery Confirmation Receipt, attached hereto and incorporated herein as Exhibit B.

7. USE THIS PARAGRAPH TO SUPPLY ALL ADDITIONAL FACTS YOU HAVE GATHERED THAT TEND TO SHOW THE RESPONDENTS ACTED KNOWINGLY OR WILLFULLY

8. On Insert Date, the Department re-inspected the submerged lands adjacent to the Property after Respondents’ receipt of the Letter and discovered:

Commented [R05]: DESCRIBE THE INSPECTION OF PROPERTY THAT LED TO THE DISCOVERY OF THE VIOLATIONS. Only include those facts that are necessary for the cause of action. You must state enough specific facts so that someone would be able to understand who, what, where, how, and when the violations occurred. This fact recitation must be more detailed than that needed for a consent order.

Commented [R06]: For example: Respondent constructed a dock on or over sovereign submerged lands in the Peace River adjacent to the Property without authorization from the Board.

Commented [R07]: For example: The total area of the dock is approximately 2,100 square feet and consists of a walkway and terminal platform.

Commented [R08]: For example: The terminal platform is approximately 500 square feet.

Commented [R09]: For example: Non water-dependent activities are present on sovereign submerged lands.

Commented [R010]: Attach a copy of the green card or FedEx receipt providing Respondents’ receipt of the warning letter.

- a. Insert a brief description of continuing violation;
- b. Insert a brief description of continuing violation;
- c. Insert a brief description of continuing violation;
- d. Insert a brief description of continuing violation;

Commented [RO11]: Mirror the language in Paragraph 3 above.

COUNT I

9. Respondent Insert Respondent's Name failed to obtain authorization to use sovereign submerged land/to comply with their authorization to use sovereign submerged lands/to obtain authorization to remove state products/etc. prior to/by THE VIOLATION, such as: maintaining structures on or over sovereign submerged lands/dredging sovereign submerged lands/conducting activities beyond the authorized area/etc. The Department requested that Respondent Insert Respondent's Name obtain authorization to use sovereign submerged lands, make modifications to the structure(s), remove/move their vessels, cease damaging state products, cease dredging, etc., but Respondent Insert Respondent's Name has refused to comply with this/the request(s).

10. As of the last inspection date, Respondent Insert Respondent's Name has not corrected the violations and has not received authorization to use sovereign submerged lands.

[REPEAT THE CONTENT OF COUNT I IN SUBSEQUENT COUNTS FOR EACH ADDITIONAL VIOLATION, SUCH AS A NON-WATER DEPENDENT ACTIVITY IN ADDITION TO A STRUCTURE WITHOUT AUTHORIZATION]

CONCLUSIONS OF LAW

The Department and Board have evaluated the Findings of Fact with regard to the requirements of Chapter 253, F.S. and Title 18, F.A.C. Based on the foregoing facts the Department and Board have made the following conclusions of law:

11. Respondents are each a "person" within the meaning of Section 253.04, F.S.
12. Respondents are the record owners of the Property.

[ADD NEW PARAGRAPHS THAT DESCRIBE ANY ADDITIONAL RESPONDENTS IF
THEY ARE NOT A CO-OWNER OF THE PROPERTY]

13. The Board deraigns title to the submerged real property in the Insert Name of Water Body from the United States under the Equal Footing Doctrine, and by Florida's admission to the Union, Act of March 3, 1845, (Chapter 48, Subsection 1, 5 Stat. 742, Art. X, s. 11, Florida Constitution). The Board holds title to the submerged real property, not otherwise alienated or conveyed, in trust for all the people of the State of Florida. Sections 253.03, 253.12, F.S.; Art. X, s. 11, Florida Constitution.

14. The Insert Name of Water Body in this location is an Aquatic Preserve as defined in Section 258.39, F.S. and Rule 18-20.002, F.A.C. |

Commented [R012]: Only use if this water body is in an aquatic preserve.

15. Pursuant to Rule 18-14.001, F.A.C., "offense" is defined as each day during any portion of which a violation of Chapter 253, F.S., and this Rule occurs.

16. Pursuant to Rule 18-14.002, F.A.C., Respondent shall incur a proprietary administrative fine of up to \$10,000.00 per day, per offense, in this Notice of Violation, Order for Corrective Actions, and Administrative Fine Assessment ("Notice").

Administrative Fines for Damaging State Lands

17. The facts in Count I constitute a violation under Rule 18-14.003, F.A.C., which provides that it shall be a violation for any person to knowingly refuse to comply with any provision of Chapter 253, F.S./willfully violate any provision of Chapter 253, F.S./willfully damage state land/willfully damage state products/willfully remove products from state land by THE VIOLATION: maintaining structures on or over sovereign submerged land/dredging sovereign submerged land/etc. without consent or authority from the Board or Department. Section 253.77, F.S., prohibits the use of state lands without the required lease, license, easement, or other form of consent authorizing the use, in accordance with Rule 18-21.005, F.A.C. The facts establish that the Respondent Insert Respondent's Name knew the Describe Structure and/or Work required authorization from the Board prior to construction/dredging/etc. [AND/OR]

The facts also establish that Respondent Insert Respondent's Name actions as alleged above were willful.

[REPEAT ABOVE PARAGRAPH FOR EACH ADDITIONAL COUNT]

18. The violation(s) in Count(s) I, II, III require(s) the assessment of an administrative fine individually against Respondent Insert Respondent's Name and Respondent Insert Respondent's Name pursuant to Rules 18-14.002 and 18-14.005, F.A.C., of \$ for unauthorized use of sovereign submerged land. If the dock is removed/unauthorized activity is ceased/etc. in the manner and time frame as provided in the Orders for Corrective Action below, these state lands administrative fines will not be assessed.

Commented [R013]: This needs to be the amount that you came to using the new 18-14 Fines Matrix. This shall be capped at \$2,500.00 if this is a first offense and the matrix yields an amount above \$2,500.00. If the matrix yields an amount below \$2,500.00, that is the amount that shall be used here.

19. If the dock is not removed/unauthorized activity is not ceased/etc. in the manner and time frame as provided in the Orders for Corrective Action below, each day the dock has been and is maintained/unauthorized activity continues/etc. on sovereign submerged lands will be considered subsequent offenses pursuant to Chapter 18-14, F.A.C. The state lands administrative fine will be assessed at \$ for the first offense, and \$ per day for second and subsequent offenses.

Commented [R014]: Amount from paragraph 17 above. If the respondent fails to correct the violation within the 20-day period provided, this is assessed for day 1 after failing to correct within that period.

Total Administrative Fines

Commented [R015]: This needs to be the amount that you came to using the new 18-14 Fines Matrix. If the respondent fails to correct the violation within the 20-day period provided, this is assessed for day 2 onwards after that period until the respondent corrects.

20. The current total state lands administrative fine assessed against Respondent Insert Respondent's Name is \$ for the first offense. This administrative fine will not be imposed if Respondent Insert Respondent's Name fully complies with the corrective actions described in paragraph # within 20 days of the receipt of this Notice. The state lands administrative fine will be assessed at \$ per day for second and subsequent offenses.

Commented [R016]: Amount for first offense from paragraph 18 above.

[REPEAT ABOVE PARAGRAPH FOR ANY ADDITIONAL RESPONDENTS]

ORDERS FOR CORRECTIVE ACTION

Commented [R017]: Amount for second and subsequent offenses from paragraph 18 above.

The Board has alleged that the activities related in the Findings of Fact constitute violations of Florida law. The Orders for Corrective Action state what you,

Respondents, must do in order to correct and redress the violations alleged in this Notice.

The Board will adopt the Orders for Corrective Action as part of the Department's Final Order ("Order") in this case unless Respondents either file a timely petition for a formal hearing or informal proceeding, pursuant to Rule 18-14.005, F.A.C. (See Notice of Rights). If Respondents fail to comply with the corrective actions ordered by the Final Order, the Board is authorized to file suit seeking judicial enforcement of the Board's Order pursuant to Sections 120.69 and 253.04, F.S.

Pursuant to the authority of Section 253.04(2), F.S., and Rule 18-14.005, F.A.C., the Board proposes to adopt in its Order in this case the following specific corrective actions that will redress the alleged violations:

21. Respondents shall forthwith comply with all Department and Board rules and statutes regarding environmental resource permitting and the use of state lands. Respondents shall correct and redress all violations in the time periods required below and shall comply with all applicable Rules in Chapter 18-21, F.A.C., and Chapter 253, F.S.

22. Within 20 days from the effective date of this Order, Respondents shall Describe structures to be removed, other corrective actions to be taken in accordance with the Corrective Actions attached hereto and incorporated herein as Attachment 1 ("Corrective Actions").

Commented [R018]: IN THIS SECTION YOU MUST INCLUDE SPECIFIC CORRECTIVE ACTIONS THAT RELATE TO EACH OF THE COUNTS.

23. Within 20 days of the effective date of this Order, Respondent Insert Respondent's Name shall pay \$ to the Department for the state lands administrative fines imposed above. Payments shall be made by cashier's check or money order payable to the "Internal Improvement Trust Fund" and shall include thereon the OGC Case number and the notation "Internal Improvement Trust Fund." If Respondent Insert Respondent's Name completes Describe structures to be removed, other corrective actions to be taken in accordance with the Corrective Actions within 20 days of the receipt of this Notice, then Respondent Insert Respondent's Name does not have

Commented [R019]: Amount for first offense from the Total Fines section above.

to pay these state lands administrative fines. If Respondent [Insert Respondent's Name](#) does not complete [Describe structures to be removed, other corrective actions to be taken](#) in accordance with the Corrective Actions, or remit payment of the administrative fine pursuant to this paragraph within 20 days of the receipt of the Notice, the state lands administrative fine will begin accruing at a rate of \$ per day.

[REPEAT ABOVE PARAGRAPH FOR ANY ADDITIONAL RESPONDENTS]

24. All payments required by this Notice shall be sent to [Insert District Address](#).

NOTICE OF RIGHTS

PLEASE READ THIS CAREFULLY

Respondents' rights to negotiate, litigate or transfer this action are set forth below.

Right to Negotiate

25. This matter may be resolved if the Board and Respondents enter into a Consent Order, in accordance with Section 120.57(4), F.S., upon such terms and conditions as may be mutually agreeable.

Right to Request a Hearing

26. Respondents have the right to a formal administrative hearing pursuant to Sections 120.569 and 120.57(1), F.S., if Respondents dispute issues of material fact raised by this Notice. At a formal hearing, Respondents will have the opportunity to be represented by counsel or other qualified representative, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence.

27. Respondents have the right to an informal administrative proceeding pursuant to Sections 120.569 and 120.57(2), F.S., if Respondents do not dispute issues of material fact raised by this Notice. If an informal proceeding is held, Respondents will have the opportunity to be represented by counsel or other qualified representative, to present to the agency written or oral evidence in opposition to the Department's

Commented [RO20]: Amount for second and subsequent offenses from the Total Fines section above.

proposed action, or to present a written statement challenging the grounds upon which the Department is justifying its proposed action.

28. **If Respondents desire a formal hearing or an informal proceeding, Respondents must file a written responsive pleading entitled "Petition for Administrative Proceeding" within 20 days of receipt of this Notice.** The petition must be in the form required by Rule 28-106.2015, F.A.C., and include the following:

- a. The name, address, and telephone number, and facsimile number (if any) of each petitioner if the respondent is not represented by an attorney or qualified representative;
- b. The name, address, telephone number, and facsimile number of the attorney or qualified representative of respondent, if any, upon whom service of pleadings and other papers shall be made;
- c. A statement of when the petitioner received the Notice; and
- d. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.
- e. The notation "OGC Case No. _____" shall be included in the request.

A petition is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000.

Waivers

29. Respondents will waive the right to a formal hearing or an informal proceeding if a petition for a formal hearing or informal proceeding is not filed with the Department within 20 days of receipt of this Notice.

30. These time limits may be varied only by written consent of the Board and Department.

General Provisions

31. The findings of fact and conclusions of law of this Notice together with the Orders for Corrective Action will be adopted by the Board in a Final Order if Respondents fail to timely file a petition for a formal hearing or informal proceeding, pursuant to Rule 18-14.005, F.A.C. A Final Order will constitute a full and final adjudication of the matters alleged in this Notice.

32. If Respondents fail to comply with the Final Order, the Board is authorized to file suit in circuit court seeking a mandatory injunction to compel compliance with the Order, pursuant to Sections 120.69 and 253.04, F.S. The Board may also seek to recover damages, all costs of litigation including reasonable attorney's fees and expert witness fees, and civil penalties of not more than \$10,000 per day for each day that Respondents have failed to comply with the Final Order.

33. Copies of Board rules referenced in this Notice may be examined at any Department Office or may be obtained by written request to the District Office.

34. Rules referenced in this Notice are also available at <http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm#bot>.

DATED this _____ day of _____, 20__.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Director of District Management

Copies furnished to:
[Public Lands Attorney Assigned to Case](#), Senior Attorney, email@dep.state.fl.us