

Proposed language for July 22, 2008 Public Workshop

18-21.003 Definitions

18-21.008 Applications for Lease

18-21.011 Payments and Fees

18-21.003 Definitions.

When used in these rules, the following definitions shall apply unless the context clearly indicates otherwise:

(1) "Accretion" means the process of gradual and imperceptible additions of sand, sediment, or other material to riparian lands made by the natural action of water which results in dry lands formerly covered by water.

(2) "Activity" means any use of sovereignty lands which requires board approval for consent of use, lease, easement, sale, or transfer of interest in such sovereignty lands or materials. Activity includes, but is not limited to, the construction of docks, piers, boat ramps, board walks, mooring pilings, dredging of channels, filling, removal of logs, sand, silt, clay, gravel or shell, and the removal or planting of vegetation on sovereignty lands.

(3) "Applicant" means any person making application for a lease, sale, or other form of conveyance of an interest in sovereignty lands or any other necessary form of governmental approval for an activity on sovereignty lands.

(4) "Appraisal services" has the same meaning as provided in Rule 18-1.002, F.A.C.

(5) "Approved appraisal" has the same meaning as provided in Rule 18-1.002, F.A.C.

(6) "Approved upland residential units" means the number of residential units given final approval by a local government for one parcel of land riparian to the affected waterbody. For the purpose of this rule, conceptual approval shall not be deemed to constitute final approval.

(7) "Artificial accretion" means the addition of sand, sediment, or other material to riparian lands caused by man-made projects and operations which results in dry lands formerly covered by water.

(8) "Artificial erosion" means the slow and imperceptible loss or washing away of sand, sediment, or other material from property caused by man-made projects and operations.

(9) "Avulsion" means the sudden or perceptible loss of or addition to land by the action of water or the sudden or perceptible change in the bed of a lake or the course of a stream.

(10) "Aquaculture" means the cultivation of animal or plant life in an aquatic environment.

(11) "Benthic communities" means any sovereignty submerged land where any of the following associations of indigenous interdependent plants and animals occur: grass beds, algal beds, sponge beds, octocoral patches or beds, hard coral patches or reefs, and tidal swamps, including mangroves, identified in any reports submitted pursuant to paragraph 18-21.004(2)(c), F.A.C., Communities is intended to reflect identifiable assemblages of organisms as opposed to scattered or single individuals.

(12) "Board" means the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

(13) "Channel" means a trench, the bottom of which is normally covered entirely by water, with the upper edges of its sides normally below water.

(14) "Coastal barrier islands" means a depositional geologic feature consisting of unconsolidated sedimentary materials in an island configuration which is subject to direct attack by wave, tidal, and wind energies originating from the Atlantic Ocean or Gulf of Mexico, and which serves to protect landward aquatic habitats, such as bays and estuaries, and the interior uplands of the mainland from oceanic wave, tidal, and wind forces.

(15) "Coastal island" means a coastline geological feature lying above mean high water that is completely separated from the coastal mainland by marine or estuarine waters, including those parcels of land which become insular due to natural causes, and is composed of any substrate material, including spoil material. This specifically includes, in addition to exposed coastal islands:

(a) All islands within aquatic preserves except for Lake Jackson, Rainbow River, and Wekiva River Aquatic Preserves; and

(b) Other islands within confined or semi-confined marine or estuarine waters with an open connection to the Atlantic Ocean or Gulf of Mexico such as bays, lagoons or inlets. Except for coastal islands within the specified aquatic preserves, it does not include islands or portions of islands within rivers leading into marine and estuarine waters more than one mile upstream of a line drawn at the river mouth from headland to headland.

(16) "Community-based Social Club" means a club designated as a 501(c)(7) by TITLE 26, Subtitle A, CHAPTER 1, Subchapter F, PART 1, Sec. 501 of the United States Internal Revenue Code. For the purposes of this rule, the club must be

organized for pleasure, recreation and other similar non-profitable purposes and substantially all of its activities must be for these purposes; and, the club shall not discriminate based on race, color, religion or handicap. The club shall not convey to any member the exclusive use of a club wet slip and all wet slips must be available first come, first serve to all members regardless of type of membership. Any publications related to membership and wet slip rental contracts shall state that the wet slips are available on a first come, first serve basis to all members regardless of membership type and that the club does not discriminate based on race, color, religion or handicap. Upon the date the club is found to have conveyed, deeded, leased long term, included automatic renewal or conditions or issued in any form an exclusive right to use a wet slip, the submerged land lease fee would revert to the private rate pursuant to 18-21.011, Florida Administrative Code, and be subject to retroactive private lease fees. The club shall provide recreational, educational or charitable activities at least once annually which are open to the general public beginning within 365 days of the lease anniversary date.

~~(17)(46)~~ “Department” means the State of Florida Department of Environmental Protection, as administrator for the board.

~~(18)(47)~~ “Division” means the Division of State Lands which performs all staff duties and functions related to the administration of lands, title to which is or will be vested in the board pursuant to Section 253.002, F.S.

~~(19)(48)~~ “Dock” means a fixed or floating structure, including access walkways, terminal platforms, catwalks, mooring pilings, lifts, davits and other associated water-dependent structures, used for mooring and accessing vessels.

~~(20)(49)~~ “Easement” means a non-possessory interest in sovereignty lands created by a grant or agreement which confers upon the applicant the limited right, liberty, and privilege to use said lands for a specific purpose and for a specific time.

~~(21)(20)~~ “Economic demand” means the Projections of Marina Need by County as determined by the Department of Environmental Protection.

~~(22)(24)~~ “Energy production” means the exploration for, and extraction of, hydrocarbons, including necessary transmission through pipelines, or the water-oriented activities related to the generation of electricity.

(23) “Extreme hardship” means a significant burden, unique to the applicant and not shared by property owners in the area. Self-imposed circumstances caused to any degree by actions of the applicant or any of his/her agents or representatives or successors shall not be construed as an extreme hardship. Extreme hardship shall not be construed to include any hardship which arises in whole or in part from the effect of other federal, state or local laws, ordinances, rules or regulations.

~~(24)(22)~~ “Factual or physical exploration results” means all data and information, excluding interpreted data, gathered as the result of any and all operations conducted under this use agreement by whatever means.

~~(25)(23)~~ “Fastland” means that portion of a coastal island above the upper limit of tidal wetland vegetation, or, if such vegetation is not present, that portion of the island above the mean high water line.

~~(26)(24)~~ “Fill” means materials from any source, deposited by any means onto sovereignty lands, either for the purpose of creating new uplands or for any other purpose, including spoiling of dredged materials.

~~(27)(25)~~ “First come, first served” means any water dependent facility operated on state-owned submerged land ~~the sovereign lands of the state~~ the services of which are open to the general public by at least 90 percent of all slips over the state-owned submerged land with no qualifying requirements such as club membership, stock ownership, or equity interest, with no longer than one-year rental terms, and with no automatic renewal rights or conditions. ~~This is intended to cover services offered to various types, classes or groups of public users and such services need not be comprehensive. The service offered may be a specialty service such as boat repair, seafood purchasing, marine slip rentals or shipping terminals as long as all services offered are open to the general types, classes, or groups of public users with no qualifying requirements such as club membership or stock ownership or equity interest.~~

~~(28)(26)~~ “Geophysical testing” means the use of gravity, seismic, and similar geophysical techniques to obtain information and data on oil, gas or other mineral resources. Seismic techniques include air guns, sparker, sniffer, waterguns, mini-sleeve systems, steam injection, percussion sampling, electronic equipment, jet and dart methods, and other non-explosive energy sources. No explosives shall be used when conducting geophysical testing on or above sovereignty submerged lands.

~~(29)(27)~~ “Incidental Crossings” means the laying of geophysical recording cable on state-owned creek, stream, river or lake bottoms for the ~~purpose~~ of conducting geophysical surveys pursuant to geophysical permits issued by the Department.

~~(28) “Income” means the gross revenue derived directly or indirectly from the use of sovereignty submerged lands such as slip rental, lease or sublease fees; dock or pier admission fees; club memberships, stock ownership or equity interest in activities where an increased revenue is attributable to the use of the sovereignty submerged lands or “sales” of slips. However, gross revenue shall not include pass through fees such as fees for utility services, sale of the facility or sales of products not occurring on sovereignty~~

~~submerged lands. Gross revenue shall include all future payments made for the transfer of the interest in a slip originally obtained from the Board's lessee, including transfer of slip rights by slip sublessees, slip "sellers", slip interest transfers, new club memberships, and other similar transactions.~~

~~(30)(29)~~ "Lease" means an interest in sovereignty lands designated by a contract creating a landlord-tenant relationship between the board as landlord and the applicant as tenant whereby the board grants and transfers to the applicant the exclusive use, possession, and control of certain specified sovereignty lands for a determinate number of years, with conditions attached, at a definite fixed rental.

~~(31)(30)~~ "Letter of consent" means a nonpossessory interest in sovereignty submerged lands created by an approval which allows the applicant the right to erect specific structures or conduct specific activities on said lands.

~~(32)(31)~~ "Management agreement" means a contractual agreement between the board and one or more parties which does not create an interest in real property but merely authorizes conduct of certain management activities on lands held by the board.

~~(33)(32)~~ "Marginal dock" means a dock placed immediately adjacent and parallel to the shoreline or seawall, bulkhead or revetment.

~~(34)(33)~~ "Marina" means a small craft harbor complex used primarily for recreational boat mooring or storage.

~~(35)(34)~~ "Mean high water" means the average height of the high tides over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.

~~(36)(35)~~ "Mean high water line" means the intersection of the local elevation of mean high water with the shore. Mean high water line along the shore of land immediately bordering on navigable waters is recognized and declared to be the boundary between the foreshore owned by the State of Florida in its sovereign capacity and the uplands subject to private ownership. However, no provision of this rule shall be deemed to impair the title to privately owned submerged lands validly alienated by the State of Florida or its legal predecessors.

~~(37)(36)~~ "Minimum-size dock or pier" means a dock or pier that is the smallest size necessary to provide reasonable access to the water for navigating, fishing, or swimming based on consideration of the immediate area's physical and natural characteristics, customary recreational and navigational practices, and docks and piers previously authorized under this chapter. The term minimum-size dock or pier shall also include a dock or pier constructed in conformance with the exemption criteria in Section 403.813(2)(b), F.S., or in conformance with the private residential single-family dock criteria in subsection 18-20.004(5), F.A.C.

~~(38)(37)~~ "Multi-slip docking facility" means any marina or dock designed to moor three or more vessels.

~~(39)(38)~~ "Nomination" means a proposal for an oil and gas lease.

~~(40)(39)~~ "Offshore testing" means geophysical testing in the water column above sovereignty submerged lands in bays, estuaries, and Florida Territorial Waters seaward of the mean high water line.

~~(41)(40)~~ "Person" means individuals, minors, partnerships, corporations, joint ventures, estates, trusts, syndicates, fiduciaries, firms, and all other associations and combinations, whether public or private, including the United States of America and other governmental entities.

~~(42)(41)~~ "Pier" means a fixed or floating structure used primarily for fishing or swimming and not designed or used for mooring or accessing vessels.

~~(43)(42)~~ "Preempted area" means the area of sovereignty submerged lands from which any traditional public uses have been or will be excluded by an activity, such as the area occupied by docks, piers, and other structures; the area between a dock and the shoreline where access is not allowed, between docks, or areas where mooring routinely occurs that are no longer reasonably accessible to the general public; permanent mooring areas not associated with docks; and swimming areas enclosed by nets, buoys, or similar marking systems. When the Board requires an activity to be moved waterward to avoid adverse resource impacts, the portion of the nearshore area that is avoided by the proposed activity shall not be included in the preempted area.

~~(44)(43)~~ "Private channel" means a channel that is dredged or maintained by private entities to provide access to or from such locations as private residences, marinas, yacht clubs, vessel repair facilities, or revenue-generating facilities.

~~(45)(44)~~ "Private residential multi-family dock or pier" means a dock or pier on a common riparian parcel or area that is intended to be used for private recreational or leisure purposes by persons or groups of persons with real property interest in a multi-family residential dwelling such as a duplex, a condominium, or attached single-family residences or a residential development such as a residential or mobile home subdivision.

~~(46)(45)~~ "Private residential single-family dock or pier" means a dock or pier used for private recreational or leisure purposes

that is located on a single-family riparian parcel or that is shared by two adjacent single-family riparian owners if located on their common riparian rights line.

~~(47)(46)~~ “Processed records” means data collected under the terms of a use agreement for geophysical testing. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements. Processing shall not include the interpretation of any data collected.

~~(48)(47)~~ “Public channel” means a channel that is constructed or maintained by a public entity such as a federal or state agency, local government, or inland navigation district listed in Chapter 374, F.S., or that is part of a public navigation project, public water management project, or a deepwater port listed in Section 403.021(9)(b), F.S.

~~(49)(48)~~ “Public interest” means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.

~~(50)(49)~~ “Public navigation project” means an activity primarily for the purpose of navigation which is authorized and funded by the United States Congress or by port authorities as defined by Section 315.02(2), F.S.

~~(51)(50)~~ “Public utilities” means those services, provided by persons regulated by the Public Service Commission, or which are provided by rural cooperatives, municipalities, or other governmental agencies, including electricity, public water and wastewater services, and structures necessary for the provision of these services and transmission lines for public communication systems such as telephone, radio and television.

~~(52)(51)~~ “Public water management project” means an activity primarily for the purpose of flood control, conservation, recreation, water storage and supply, and allied purposes, which is authorized and funded by the United States Congress, the State of Florida, or a water management district as defined by Section 373.069, F.S.

~~(53)(52)~~ “Reclamation of lands” means restoring the upland shoreline to a condition that existed prior to avulsion or artificial erosion.

~~(54)(53)~~ “Registered grandfathered structure” means any structure that has been formally registered with the department as a grandfathered structure as evidenced by submittal of an acceptable application prior to September 30, 1984.

~~(55)(54)~~ “Revenue-generating” means any structure or activity on sovereignty submerged lands that generates revenue or income by any means or serves as an accessory activity or facility to any revenue-generating or income producing operation, such as docking for marinas, restaurants, hotels, motels, commercial fishing, shipping, and boat or ship construction, repair and sales. However, the following shall not be construed to be revenue-generating or income producing: the sole act of mooring a commercial vessel at the vessel owner’s private residential single-family dock; incidental aquaculture activities on a private residential dock or pier; rental of a private single-family residence with a dock or pier; or construction by a developer of a private residential single-family or multi-family dock or pier.

~~(56)(55)~~ “Riparian rights” means those rights incident to lands bordering upon navigable waters, as recognized by the courts and common law.

~~(57)(56)~~ “Sale” means a conveyance or transfer of title of sovereignty lands in fee simple by the board, for consideration.

~~(58)(57)~~ “Satisfactory evidence of sufficient upland interest” shall be demonstrated by documentation, such as a warranty deed; a certificate of title issued by a clerk of the court; a lease; an easement; or condominium, homeowners or similar association documents that clearly demonstrate that the holder has control and interest in the riparian uplands adjacent to the project area and the riparian rights necessary to conduct the proposed activity. Other forms of documentation shall be accepted if they clearly demonstrate that the holder has control and interest in the riparian uplands adjacent to the project area and the riparian rights necessary to conduct the proposed activity.

~~(59)(58)~~ “Sovereignty submerged lands” means those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated. For the purposes of this chapter sovereignty submerged lands shall include all submerged lands title to which is held by the Board.

~~(60)(59)~~ “Special Event” means the installation and use of temporary structures, including docks, moorings, pilings, and access

walkways on sovereign submerged lands solely for the purposes of facilitating boat shows or boat displays in, or adjacent to, established marinas or government owned upland property.

~~(61)(60)~~ “Spoil island” means any artificially created island having an elevation above water upon formerly submerged sovereign lands, title to which is vested in the board.

~~(62)(61)~~ “Spring” means a point where ground water emerges onto the earth’s surface, including under any surface water of the state, excluding seeps. The term “spring” shall include karst windows, a depression opening that reveals portions of a subterranean flow or the unroofed portion of a cave.

~~(63)(62)~~ “Spring run” means a body of flowing water that originates from a spring or whose primary source of water is from a spring or springs under average rainfall conditions.

~~(64)(63)~~ “Telecommunication line” means any cable utilized for the purpose of transmitting such things as voice communications, video signals, Internet material, electronic mail, or data.

~~(65)(64)~~ “Undeveloped coastal island” means a coastal island not directly or indirectly connected to the mainland by a bridge suitable for automobile traffic, and which has an overall density of less than one structure per five acres of fastland as of December 18, 1990. For the purpose of this definition, a structure means a walled and roofed habitable structure that is principally above ground and affixed to a permanent foundation with a projected ground area exceeding 200 square feet and constructed in conformance with all applicable legal requirements. For the purpose of determining density, facilities such as docks, groins, utility poles and pipelines are not counted as structures.

~~(66)(65)~~ “Undeveloped coastal island segment” means, for an unbridged coastal island with an overall density of greater than or equal to one structure per five acres of fastland, a segment or portion of the island which either is at least one-quarter mile in linear shoreline length or comprises a minimum of 25 percent of the total fastland of the island and which contains less than one structure per five acres of fastland as of December 18, 1990. A segment boundary shall be contiguous with a line drawn from the shore at the point of the outermost structure within a developed area to intersect each shoreline, then continue laterally along the sinuosity of each shoreline until another developed area is encountered or the end of the island is reached. For the purpose of this definition, a structure means a walled and roofed habitable structure that is principally aboveground and affixed to a permanent foundation with a projected ground area exceeding 200 square feet and constructed in conformance with all applicable legal requirements. For the purpose of determining density, facilities such as docks, groins, utility poles and pipelines are not counted as structures.

~~(67)(66)~~ “Unregistered grandfathered structure” means any unregistered revenue generating structure constructed prior to March 10, 1970, or unregistered multi-family residential or other nonrevenue generating structure constructed prior to March 27, 1982, which preempted at time of construction in excess of ten square feet of sovereignty submerged land per foot of shoreline owned by an applicant. Multi-family residential or other nonrevenue generating structures approved by the board or department between March 10, 1970, and March 27, 1982, but not constructed until after March 27, 1982, shall also be considered as unregistered grandfathered structures only if constructed pursuant to a valid Department of Environmental Protection permit or Department of Environmental Protection exemption.

~~(68)(67)~~ “Use agreement” means a grant or agreement which confers upon the applicant a nonexclusive and limited right, liberty and privilege to use sovereign lands for a specific purpose and for a specific time.

~~(69)(68)~~ “Water dependent activity” means an activity which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to the water body or sovereign submerged lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or sovereign submerged lands is an integral part of the activity.

(70) “Waterfront support facility” means a service facility entirely open to the public which requires a location adjacent to the water for services such as boat repair, seafood purchasing, tour vessels or other speciality services.

Specific Authority 253.03(7), 253.73 FS. Law Implemented 253.001, 253.03, 253.68, 253.77 FS. History–New 9-26-77, Formerly 16C-12.01, 16Q-17.01, Amended 3-27-82, 8-1-83, 2-25-85, Formerly 16Q-21.03, 16Q-21.003, Amended 12-25-86, 1-25-87, 3-15-90, 8-18-92, 3-20-94, 10-15-98, 8-1-01, 12-11-01, 10-29-03, 12-16-03, 3-8-04, 1-1-06, 4-14-08.

18-21.008 Applications for Lease.

Applications for the following categories of leases are found in this section: standard, extended term, aquaculture, and oil and gas. Special event leases are addressed in Rule 18-21.0082, F.A.C.

(1) Standard Lease. The term for standard leases shall be 5 years with one automatic five-year renewal provided the lease is in compliance with all lease conditions; except that marinas where at least 90 percent of the slips are maintained for rent to the public

~~on a first come, first served basis and have a special lease condition requiring the leased area to be open first come, first served, for which the standard lease term shall be 10 years. However, the term for leases for marinas where at least 90 percent of the slips are maintained for rent to the public on a first come, first served basis shall be 10 years.~~

(a) Applications for leases shall include the following:

1. Name, address and telephone number of applicant and applicant's authorized agent, if applicable.
2. Location of the proposed activity including: county; section, township and range; affected waterbody; and a vicinity map, preferably a reproduction of the appropriate portion of United States Geological Survey quadrangle map.
3. Satisfactory evidence of sufficient upland interest to the extent required by paragraph 18-21.004(3)(b), F.A.C.
4. Two prints of a survey prepared, signed, and sealed by a person properly licensed by the Board of Professional Surveyors and Mappers. The survey shall:
 - a. Use a scale necessary to provide sufficient legibility and clarity of detail on 8 1/2" x 11" size paper;
 - b. Show the location of ordinary or mean high water;
 - c. Show the location of the shoreline vegetation, if existing;
 - d. Show the location of the proposed structures and any existing structures;
 - e. Show the applicant's upland parcel property lines;
 - f. Show the primary navigation channels or direction to the center of the affected waterbody;
 - g. Include a legal description of the preempted area to be leased; and
 - h. For those lease applications in the Florida Keys, indicate the water depths referenced to mean low water within the lease area and out to the navigation channel.
5. Noticing information as required by subsection 18-21.005(3), F.A.C.
6. Current local zoning and status of any local government approvals necessary for activities.
7. Information required by Form 18-21.900(1), Billing Information Form, which provides billing information; sales tax information; and other data required in accordance with Section 24.115(4), F.S.
8. Payment of a \$200.00 non-refundable processing fee for a private residential single-family dock or pier, or payment of a \$500 non-refundable processing fee for all other facilities. The processing fee shall be revised annually on March 1 and increased or decreased based on the average change in the Consumer Price Index, calculated by averaging the Consumer Price Index over the previous five-year period, with a 10 percent cap on any annual increase.
9. Computation of the total square footage of preempted sovereignty land to be leased.
10. If dredging is proposed, an estimate of the number of cubic yards of sovereignty materials to be removed, showing how the amount was calculated.

(b) All leases shall be subject to the following provisions:

1. The effective date of the lease term shall be the date of approval by the Board. The first annual lease fee shall be assessed beginning on the date of execution of the new lease or modified lease. New construction, new activities, or additional preemption cannot begin until the lease is executed. The first annual lease fee payment for new leases or modified leases shall be made within 30 days of execution of the lease.
2. Leases shall include provisions for lease fee adjustments and payments annually.
3. Leases are renewable, modifiable, and assignable, subject to: approval by the Board under this rule; compliance with the statutes and rules of the Board in effect at the time of lease renewal, modification or assignment that apply to or affect sovereignty submerged lands, including those that require modification of existing legally authorized structures; payment of a \$200.00 non-refundable processing fee for a private residential single-family dock or pier, or payment of a \$500 non-refundable processing fee for all other facilities; and payment of all fees assessed under Rule 18-21.011, F.A.C. The processing fee shall be revised annually on March 1 and increased or decreased based on the average change in the Consumer Price Index, calculated by averaging the Consumer Price Index over the previous five-year period, with a 10 percent cap on any annual increase. Non-compliance with any material term or condition of the lease to be renewed, modified or assigned or of any other current or prior lease between the applicant and the Board; evidence of the applicant's previous trespass, damage, or depredation to sovereign submerged land or the products thereof caused by the facility or use; or failure to pay any fees or fines assessed under Rule 18-21.011 or Chapter 18-1, F.A.C., for such leases; shall result in termination of the lease, corrective action, or enforcement under Section 253.04, F.S., or Chapter 18-14, F.A.C. No application to renew, modify or assign the lease shall be approved unless all such non-compliance is corrected.

4. At least once every five years, sites subject to lease shall be inspected by the Department or water management district staff to determine compliance with the terms and conditions of the lease. Non compliance with any material term or condition of the lease, or evidence of trespass, damage, or depredation to sovereign submerged land or the products thereof caused by the facility or use, shall result in termination of the lease, corrective action, or enforcement under Section 253.04, F.S., or Chapter 18-14, F.A.C.

5. Upon expiration or cancellation of a lease, the former lessee shall remove all structures and equipment from the leased area in accordance with the terms and conditions of the lease or as ordered under Section 253.04(2), F.S. In the event that the former lessee fails to remove all structures and equipment, the Board shall issue an order requiring the former lessee to remove the structures and equipment from the leased area. If the former lessee fails to comply with such an order, the Board shall:

- a. Impose a fine under Section 253.04(2), F.S., and subsection 18-14.002(2), F.A.C.; and
- b. Remove the structures and equipment and recover the cost of removal from the former lessee under Sections 253.04(1) and (5), F.S. and Chapter 18-14, F.A.C.

Failure to pay a fine imposed under sub-subparagraph 6.a., shall result in the imposition of a statutory lien in accordance with Section 253.04(6), F.S., and Chapter 18-14, F.A.C.

(2) Extended Term Leases.

(a) Extended term leases are those leases with terms in excess of those allowable for standard leases. Extended term leases shall be available for terms up to 25 years. Extended term leases shall be available for existing or proposed facilities or activities, including Grandfathered Registered Structures being brought under lease in accordance with Rule 18-21.00405, F.A.C., where the use of the sovereignty submerged lands and the associated existing or proposed structures on sovereignty submerged lands have or will have an expected life, or amortization period, equal to or greater than the requested lease term and where the applicant has demonstrated that:

1. The facility or activity provides access to public waters and sovereignty submerged lands for the general public on a first-come, first-served basis;
2. The facility is constructed, operated or maintained by government, or funded by government secured bonds with a term greater than or equal to the requested lease term; or
3. The applicant demonstrates that an extreme hardship exists at the time the application is filed ~~extended term is necessary to satisfy unique operational constraints.~~

(b) The Board shall grant extended term leases for those facilities or activities that qualify under paragraph 18-21.008(2)(a), F.A.C., where the applicant:

1. Has demonstrated compliance with all other provisions of this chapter applicable to the facility or use;
2. Has minimized the potential adverse impacts to sovereignty submerged lands as a result of the construction and use of the facility for its expected life's duration;
3. Has agreed to comply with all the terms and conditions that would be applicable to the extended term lease;
4. Has demonstrated compliance with the material terms and conditions of any previous lease or authorization issued to the applicant by the Board; and
5. Has agreed to comply with the statutes, and rules of the Board, in effect at the time the lease is executed and whenever they are amended thereafter that apply to or affect sovereignty submerged lands and that are applicable to the facility or use.

(c) Applications for extended term leases shall be made using the criteria of paragraph 18-21.008(1)(a), F.A.C.

(d) All extended term leases shall be subject to the provisions of paragraph 18-21.008(1)(b), F.A.C.

(3) Aquaculture Lease.

(a) Applications for aquaculture leases shall include the following:

1. Name, address and phone number of the applicant.
2. Legal description and acreage of the parcel sought subsequent to final approval of the application but prior to issuance of the lease.

3. Two prints of a survey subsequent to final approval of the application but prior to issuance of the lease of the parcel sought prepared, signed, and sealed by a person properly licensed by the Florida State Board of Land Surveyors when required by Chapter 472, F.S., or an agent of the federal government acceptable to the department. Preliminary site approval can be based upon marking off the general configuration of the parcel sought, including the acreage of the parcel and LORAN or latitude and longitude coordinates for the corners of the parcel identified on a USGS 7.5 minute topographic map or a navigation chart if a topographic map is not printed for the lease area.

4. Description of the aquaculture activities to be conducted, including whether such activities are to be experimental or commercial, and an assessment of the current capability of the applicant to conduct such activities.

5. Statement explaining why the lease is not contrary to the public interest, or within aquatic preserves, why the lease is in the public interest.

6. Names and addresses, as shown on the latest county tax assessment roll, of each owner of property lying within 1,000 feet of the parcel sought, certified by the county property appraiser.

7. Statement of the significant impact of the proposed use of the parcel sought on the ecology of the area.

8. A \$200 nonrefundable processing fee.

9. A statement by all nonriparian applicants wishing to lease areas, not designated by the state, whether they wish to negotiate the fixed lease fee or to bid the lease for the first ten year lease term.

10. Copies of comments received from the review of the application required by subparagraph 18-21.005(1)(c)2., F.A.C.

11. Proof of publication and notification required pursuant to Section 253.70, F.S.

12. Experimental leases shall be limited to research institutions for noncommercial activities.

(b) The Department may hold a public hearing in response to concerns raised in response to the public notice requirement prior to making any staff recommendation concerning the lease.

(c) If staff determines that the application is complete and complies with the standards and criteria of the rule then they will agenda the application for approval to lease the parcel sought. The lease fee amount shall be determined by competitive bid or negotiation. The Department shall require the applicant to cause notice of such lease proposal to be published in a newspaper in the county in which the parcel is situated once a week for three consecutive weeks. If bidding is required, the bid amount, representing the first years lease fee shall be submitted prior to the advertised closing date and time. A copy of the notice shall also be sent to the county commission and the municipal government if applicable by certified mail prior to the appearance of the first newspaper notice. Such notice shall contain the following:

1. Preliminary location description and acreage of parcel sought.

2. Terms of the lease acceptable to the Board and a description of the aquaculture activity being proposed.

3. Deadline, time, and date for the receipt of all bids.

4. Address to which all bids shall be sent.

5. The date, time, and place of the opening of bids.

(d) A lease shall not be approved by the Board when a resolution of objection, adopted by a majority of the county commissioners of the county in which the parcel sought is situated, has been filed with the Department within 30 days of the date of first publication of the notice of lease.

(e) Determination of the annual fixed rate lease fee for aquaculture leases shall be determined by negotiation or bidding.

1. The use of negotiation or bidding shall be determined:

a. By negotiation between the Department and the riparian upland owner when said owner is the applicant, pursuant to subparagraph 18-21.004(2)(1)8., F.A.C., up to the ten acre maximum.

b. By negotiation between the Department and nonriparian applicants for the first lease term when the applicant nominates the site.

c. By competitive bid:

(I) When the Department designates sites for lease,

(II) After the first lease term for all nonriparian leases, or,

(III) At the option of the nonriparian applicant when the applicant nominates a site.

2. Any financial data determined to be necessary by the Department for the purposes of negotiations shall be supplied by the applicant upon the Department's request.

3. Competitive bids for aquaculture leases shall be written offers which shall include the advertised fee for the first lease year, the amount offered above such fee for said first year being a competitive bid. The consideration offered shall accompany the written offer and shall be returned to the unsuccessful bidders upon award of the lease, rejection of all bids, or the matching of the high bid by the existing leaseholder.

4. The successful bidder shall reimburse the original applicant for his documented application and advertising fees.

5. The successful bidder shall reimburse the prior leaseholder for the nondepreciated costs of physical improvement not including the aquatic resource value.

(f) Each lease document shall as a minimum contain the following:

1. The term of the lease which shall not exceed ten years.
2. The amount of fee per acre leased to be paid on or before January 1 each year which shall take the form of a fixed fee to be paid throughout the term of the lease.
3. The disposition to be made of all improvements and animal and plant life upon the termination or cancellation of the lease.
4. A statement that the lease may be assigned, transferred in any manner, in whole or in part, only after written approval by the Board. Failure of the lessee to obtain written approval may be grounds for revocation and cancellation of the lease.
5. A list of approved harvesting techniques that can be used on the lease.

(g) Failure to perform the aquaculture activities for which the lease was granted shall be grounds for cancellation of the lease and forfeiture to the State of Florida of all the work improvements, animal and plant life in and upon the parcel leased. In addition, a performance bond is required to ensure compliance with the standards of this rule and the specifications and conditions of the lease. The bond requirement shall be met by execution of a bond, an escrow account, or an acceptable letter of credit in favor of the Trustees. The amount of the bond should be based on the cost of removing the structures and restoring the site to predevelopment conditions for leases including the water column. A bond equal to the first years annual rental per acre shall be sufficient for bottom shellfish culture techniques.

(h) The parcel leased shall be identified, well marked, and shall have, except when it will interfere with the development of the animal and plant life being cultivated by the lessee, reasonable public access for boating, swimming, and fishing. All limitations on the public use of the parcel leased as set forth in the lease shall be clearly posted in conspicuous places by the lessee. Each parcel leased shall be marked in compliance with the rules and regulations of the Department, U.S. Coast Guard, and the U.S. Army Corps of Engineers.

(4) Oil and Gas Lease.

(a) Applications for nominations for the lease of sovereignty lands in which the State of Florida holds an interest in the petroleum or petroleum products shall include the following:

1. Name and address of the applicant or nominee;
2. Legal description of the parcel sought including the surface acreage; this description may utilize the submerged land blocks approved by the board on March 17, 1981;
3. Identification of the state agency vested with the ownership of the petroleum products;
4. Percentage of the petroleum interests held by the State;
5. Identification of any municipal corporation in which all or part of the parcel sought is located or within 10 miles thereof;
6. Identification of any improved beach outside a municipal corporation or lands in the tidal waters of the State of Florida abutting on or immediately adjacent to any improved beach in which or part of the parcel sought is located or within 3 miles thereof; and
7. A \$200 non-refundable processing fee.

(b) Competitive bids for oil and gas leases shall be written offers of a cash consideration including the advertised fee for the first lease year, the amount offered above said fee being the competitive bid. The cash consideration offered shall accompany the written offer by certified or cashier's check made payable to the department and shall be returned to the unsuccessful bidder upon award of the lease or upon rejection of any and all bids. All bids must contain a certified statement as to the bidder's state lease holdings pursuant to Section 253.512, F.S.

Specific Authority 253.03(7), 253.73 FS. Law Implemented 253.03, 253.04, 253.115, 253.12, 253.47, 253.512, 253.52-.54, 253.61, 253.67-.75 FS. History—New 12-20-78, Formerly 16C-12.14, 16Q-17.14, Amended 3-27-82, 8-1-83, 2-25-85, 3-19-85, Formerly 16Q-21.08, 16Q-21.008, Amended 1-25-87, 10-11-98, 12-11-01, 3-8-04, 8-10-05.

18-21.011 Payments and Fees.

(1) Standard and Extended Term Leases.

(a) Fee Formula.

1. Except as otherwise provided, the annual lease fee for standard term leases shall be ~~six percent of the annual income, the annual base fee,~~ or the minimum annual fee ~~for facilities that qualify, whichever is greater,~~ and shall be adjusted by ~~include~~ discounts, surcharges, and other payments as provided in paragraph 18-21.011(1)(b), F.A.C. The annual fees for standard term

leases are as follows:

The annual lease fee for extended term leases shall be calculated using the following equation: annual lease fee for extended term leases = annual lease fee for standard term leases multiplied by (1 + .01X), where: X = the term of the lease in years. ~~For the purposes of this section, income shall be the gross receipts derived from the rental, lease, sublease, license or other transaction involving tenancy of wet slips over sovereign submerged land whether the holder of the lease is primarily involved in every subsequent transaction or not. The base fee and minimum annual fee will be calculated according to paragraph (b) of this subsection.~~

<u>ANNUAL LEASE FEE SCHEDULE</u>					
<u>Rate Category</u>		<u>RATES OUTSIDE AQUATIC PRESERVES</u>		<u>RATES WITHIN AQUATIC PRESERVES</u>	
		<u>Lease Area 3,000 square feet or less</u>	<u>Lease Area > 3,000 square feet</u>	<u>Lease Area 3,000 square feet or less</u>	<u>Lease Area > 3,000 square feet</u>
<u>1</u>	<u>Public – At least 90% open to the public on a first come, first served basis</u>	<u>\$300</u>	<u>\$0.10 per square foot</u>	<u>\$600</u>	<u>\$0.20 per square foot</u>
<u>2</u>	<u>Waterfront Support Facility</u>	<u>\$450</u>	<u>\$0.15 per square foot</u>	<u>\$900</u>	<u>\$0.30 per square foot</u>
<u>3</u>	<u>Community-based Social Club</u>	<u>\$450</u>	<u>\$0.15 per square foot</u>	<u>\$900</u>	<u>\$0.30 per square foot</u>
<u>4</u>	<u>Private – All other facility-types</u>	<u>\$1,200</u>	<u>\$0.40 per square foot</u>	<u>\$1,500</u>	<u>\$0.50 per square foot</u>

~~All leases shall require that the lessee include a clause in agreements for the use of a slip providing that 6% of gross income derived from any sub agreement for the use of a slip shall be paid to the Board's lessee, who shall report and transmit such payments to the Board upon receipt, and a clause providing that no interest in a slip may be further transferred unless a substantially similar clause is placed in any succeeding document effecting the transfer to each new slip holder.~~

~~2. The income used to determine the annual lease fee and any other information required from the previous year will be certified true and correct by the lessee and shall include any ancillary charges, such as club membership, stock ownership, or equity interest or other miscellaneous fees required for and directly attributable to the rental of a wet slip over, or use of, sovereign submerged land. Ancillary charges shall not include pass through fees such as fees for utility services. Facilities that do not rent wet slips or that rent slips significantly below prevailing market rate shall determine their income by a current market rent appraisal. Such facilities shall obtain a new market rent appraisal 6 months prior to the lease expiration, or ensure that a new market rent appraisal is received by the Department every five years, whichever is earlier. The Bureau of Appraisal shall obtain fee quotes and select qualified appraisers. The applicant will be notified of the fee and shall submit payment for the appraisal to the Department prior to the appraisal being initiated. The initial income, as appraised, shall be revised annually on March 1 and increased or decreased based on the average change in the Consumer Price Index, calculated by averaging the Consumer Price Index over the previous five year period, with a 10 percent cap on any annual increase, but shall be recalculated every five years in accordance with each new market rent appraisal, regardless of the CPI figure. Procedures for the annual review and adjustment of the rental rate shall be included as a condition of the lease.~~

~~23. For new leases, the first annual lease fee shall be the annual base fee or the minimum annual fee (as determined in subparagraph 18-21.011(1)(a)1., F.A.C.), whichever is greater, or the extended term fee (for facilities that qualify under subsection 18-21.008(2), F.A.C.), in effect when the lease is executed. ~~The lease fee will be adjusted to incorporate income consistent with the formulas in subparagraph 18-21.011(1)(a)1., F.A.C., when the lessee offers any slips for rent.~~~~

~~4. Docking facilities in aquatic preserves shall be subject to the base rate adjustment outlined in subparagraph 18-21.011(1)(b)5., F.A.C., where applicable.~~

(b) ~~Base~~ Fees, Discounts, Surcharges and Other Payments.

~~1. The base fee shall be computed at a rate of \$0.1413 per square foot per annum, which became effective March 1, 2007. The base fee and the minimum annual fee shall be revised March 1 of each year and increased or decreased based on the average change over time in the price paid by all urban consumers for a market basket of consumer goods and services. In determining the change, the Board will annually consult the Consumer Price Index figures established for the previous five years by the Bureau of Labor Statistics, computed as provided in the BLS Publication "Handbook of Methods," Chapter 17, June 2007, and found on the BLS website at <http://www.bls.gov/opub/homch17.pdf>. There shall be a 10 percent cap on any annual increase.~~

~~2. There shall be a discount of 30 percent on the annual lease fee for all marinas where at least 90 percent of the slips are available for rent to the public on a first come, first served basis. To receive this discount, any dockage rate sheet publications and dockage advertising for the marina shall clearly state that slips are open to the public on a first come, first served basis.~~

~~3. A surcharge equivalent to 25 percent of the annual base fee, ~~or~~ minimum annual fee for standard term leases, or of the extended term fee shall be charged in addition to the first annual lease fee on all new leases for all rate categories other than private, except for registered or unregistered grandfathered structures being converted to a lease. For all lease expansions for all rate categories other than private, a surcharge also shall be charged on the portion of the lease fee that applies to the expansion area. This surcharge is an additional fee one-time payment which is not credited toward any of the rental ~~value~~ payment.~~

~~4. There shall be a minimum annual fee of \$423.89, effective March 1, 2007. The minimum annual fee shall be adjusted annually based on subparagraph 18-21.011(1)(b)1., F.A.C.~~

~~5. The following additional charge shall apply in aquatic preserves: A base rate of two times the base rate determined in subparagraph 18-21.011(1)(b)1., F.A.C., shall be applied to leases in aquatic preserves when 75 percent or more of the sum total of linear footage of the subject lease area shoreline together with the adjacent 1,000 feet of shoreline on each side of the lease area is in a natural, unbulkheaded, nonseawalled or nonriprapped condition. When requested by the applicant and documentation has been provided that the area has lost its natural, unbulkheaded, nonseawalled or nonriprapped condition, this rate will no longer be applicable.~~

~~6. The annual lease fees for restaurants and other nonwater dependent uses shall be negotiated by the Department or water management district staff. In negotiating the annual lease fee, the Department or water management district staff will consider the appraised market rental value of the riparian upland property and the enhanced property value, benefits, or profit gained by the applicant if the proposed lease is approved. Grandfathered nonwater dependent uses shall be assessed fees as water dependent uses when grandfathered status is lost for any reason.~~

~~7. A waiver from payment of annual lease fees for government, research, education or charitable entities that are either not-for-profit or non-profit shall be granted if the following conditions are met:~~

~~a. Any revenues collected from the activity or use of sovereign submerged lands are used solely for the purposes of operation and maintenance of the structure; and~~

~~b. The activity or use of sovereignty submerged lands is consistent with the public purposes of the applicant organization and is not an adjunct to a commercial endeavor.~~

~~8. A waiver from payment of annual lease fees shall be granted for a private residential multi-family dock or pier constructed in lieu of multiple private residential single-family docks or piers in accordance with paragraph 18-21.004(4)(c), F.A.C.~~

~~9. If a facility occupies sovereignty, submerged lands, portions of which are exempted from payment by virtue of grandfathered status and portions of which are leased, and grandfathered status is lost, the lease fee and rate schedule for the entire preempted area shall be the annual lease fee determined in subparagraph (1)(a)1. at the time the exemption is lost.~~

~~10. There shall be an assessment for the prior unauthorized use of sovereignty land for after-the-fact lease applications. The minimum assessment for such applications shall include:~~

~~a. Payment of retroactive lease fees; and~~

~~b. Payment of an additional annual percentage on the retroactive lease fees computed at a rate equal to two percentage points above the Federal Reserve Bank discount rate to member banks. Such rate shall be adjusted annually, on October 1 of each year.~~

~~11. There shall be a late payment assessment for lease fees or other charges due under this rule which are not paid within 30 days after the due date. This assessment shall be computed at the rate of 12 percent per annum, calculated on a daily basis for every day the payment is late.~~

~~12. If requested by the applicant, the Board shall determine, based on the following factors, whether a reduction of the assessment and an extension of the time period for payment of the assessment under the provisions set forth in subparagraph 10.~~

above shall be granted:

- a. The applicant's prior compliance with the provisions of Chapters 253 and 258, F.S., or any rules adopted thereunder;
- b. Any failure of the applicant to comply with an order of the Board;
- c. Whether any failure to comply under paragraphs (a) or (b) above was willful;
- d. The need to deter future violations by removing any economic benefits to the applicant from failure to comply with the law;
- e. Aggravating and mitigating circumstances specific to the lease application, including the nature and extent of the violation, and the applicant's degree of cooperation in correcting the violation;
- f. Whether payment of the amount of the assessment or payment by the time due would create a substantial hardship that affects the applicant significantly different than other similarly situated applicants; and
- g. The inability of the applicant to pay the fees assessed.

1013. Clean Marina Program Participation.

a. There shall be a discount of 10 percent on the annual lease fee for facilities designated by the Department as a Clean Marina, Clean Boatyard or Clean Marine Retailer in the Clean Marina Program and actively maintaining their designation in the program, provided: that the facilities remain in good standing with all terms of their lease and with the Clean Marina Program; and the facilities do not change their use during the term of the lease. If a facility is in arrears on its lease fees, it shall not be eligible for this discount for the next annual billing period. Failure to comply with the conditions of the Clean Marina Program shall result in the loss of this discount for the next billing period.

b. The extended term lease surcharge shall be waived for facilities designated by the Department as a Clean Marina, Clean Boatyard or Clean Marine Retailer in the Clean Marina Program and actively maintaining their designation in the program, provided: that the facilities are available to the public on a "first come, first served" basis; that the facilities remain in good standing with all terms of their lease and with the Clean Marina Program; and the facilities do not change their use during the term of the lease. Failure to comply with these conditions shall result in the loss of the waiver of surcharge for the next billing period.

(c) One-time premium.

1. Private ~~residential multi family~~ docks ~~that include ten or more wet slips~~ shall be assessed a one-time premium surcharge payment on all new private leases, private lease expansions, conversions from first come, first served to private and private change of use conversion. This surcharge shall be 10 percent of the applicant's projected gross retail pricing for the rights to an end user for the use of wet slips that are proposed to be built within the leased area, assuming the wet slips are completed. The total gross retail pricing provided by the applicant must be itemized and shall be reviewed and accepted by the Department.

a. An appraisal consultation report will be required if the Department cannot verify with market data and accept the applicant's pricing documentation. The appraisal report conditions will assume that the income to the lease area is at market rates and not encumbered by the Board's lease. If an appraisal consulting report is required, it will be obtained by the Department and paid for by the applicant.

b. For all private lease expansions the surcharge shall be charged only on the expansion area. This surcharge is an additional fee which is not credited toward any rental payments. This surcharge shall be computed by multiplying the standard annual lease fee or base fee required in Rule 18-21.011, F.A.C., by a value of three.

2. Paragraph 18-21.011(1)(c), F.A.C., shall apply to existing private leases ~~with the one-time premium lease condition~~ and to new private leases approved by the Board after September 6, 1987, excluding grandfathered structures, unless one or more of the subparagraph 18-21.011(1)(c)3., F.A.C., conditions are complied with.

~~3. Paragraph 18-21.011(1)(c), F.A.C., shall not apply to:~~

- ~~a. Grandfathered structures;~~
- ~~b. Previously licensed facilities required to come under leases;~~
- ~~c. The renewal of leases;~~
- ~~d. Previously leased facilities without a one-time premium lease condition;~~
- ~~e. Those portions of structures that are grandfathered;~~
- ~~f. Facilities that are at least 90-50 percent open to the public on a first come, first served basis;~~
- ~~g. Docking facilities built before the effective date of paragraph 18-21.011(1)(c), F.A.C., in which the developers of the facility no longer have any interest in the facility and where the facility has been assigned to a homeowners association or other association made up exclusively of the residents of the development; or~~
- ~~h. To new lease applicants that are homeowners associations or other associations, made up exclusively of the residents of the development.~~

(d) Class III and IV Special Event Authorizations.

1. A Class III single event lease and a Class IV special events lease shall be assessed a special event fee. The special event fee shall be five percent of the gross rental income generated over sovereignty submerged lands from the special event, the base fee in

subparagraph 18-21.011(1)(b)1., F.A.C., prorated for the time period of the preemption, or the minimum annual fee in subparagraph 18-21.011(1)(b)4., F.A.C., whichever is greater. Gross rental income is defined as the actual income collected from the rental or use of sovereignty submerged lands, and shall include any ancillary user charges, such as exhibitor or registration fees required for and directly attributable to the use of structures or conduct of activities on sovereignty submerged lands. However, the gross rental income shall not include pass-through fees such as fees for utility services or revenues generated from sales at concessions on sovereignty submerged lands. The lessee shall provide a certification to the Board showing the total amount of the gross rental income derived from the rental of wetslips on sovereignty submerged lands, including copies of all contracts and other documentation used to determine the gross rental income amount provided in the certification. Failure to account for all gross rental income shall be referred to the state attorney for appropriate action under Section 837.06, F.S. A conviction under Section 837.06, F.S., shall result in cancellation of the lease.

2. Class III and IV Special Event leases are also subject to the 25 percent first annual fee surcharge, aquatic preserve surcharge, the annual fee adjustment based on the average change as provided in subparagraph 18-21.011(1)(b)1., F.A.C., and other payments required by paragraph 18-21.011(1)(b), F.A.C. ~~Special events are not eligible for the 30% discount provided by subparagraph 18-21.011(1)(b)2., F.A.C.~~

3. Where special events are conducted under the terms and conditions of an existing lease and are located within an existing lease area, the gross rental income per subparagraph 18-21.011(1)(d)1., F.A.C., collected by the lessee from the special event shall be reported as part of the annual certification required for the existing lease under subparagraph 18-21.011(1)(a)2., F.A.C. The "gross rental income" will be added to the "rental value of the wetslip rental area" for calculation of the annual lease fee required by subparagraph 18-21.011(1)(a)1., F.A.C. Calculation of the rental value of the wetslip rental area shall exclude the time-period during which the event is conducted.

4. A waiver of payment of lease fees for special events shall be available in accordance with subparagraph 18-21.011(1)(b)7., F.A.C.

(2) Private Easements.

(a) The fee for granting, modifying, or renewing a private easement containing 3,000 square feet or less, for a single-family riparian parcel, or for two adjacent single-family riparian parcels sharing a common easement, shall be calculated as 1/2 the minimum annual lease fee determined under paragraph 18-21.011(1)(b), F.A.C., multiplied by the term of the easement.

(b) The fee for granting, ~~or modifying, or renewing~~ all other private easements, except for telecommunication lines and associated conduits that are subject to the provisions of paragraph 18-21.004(2)(1), F.A.C., shall be determined by an approved appraisal. In addition to standard appraisal services requirements and procedures, the following factors shall be considered in determining the easement fee:

1. The extent to which the easement is exclusionary; i.e., the degree to which the proposed easement precludes, in whole or in part, traditional or future public uses of the easement area or other submerged land; and

2. The enhanced property value or profit gained by the applicant if the proposed easement is approved. Enhancement will not be considered in the appraisal services for easement renewals that do not modify the size or use of the expired easement.

3. The appraisal will also consider the term of the easement.

(c) Fees for easement renewals with no modifications, providing boat access or breakwater (groin) structures protecting boating access channels will convert to annual fee payments at the start of each year, based on the renewal date. The fee will be calculated as 1/2 the annual lease fee based on the square footage of the easement at the rate and category defined in paragraph 18-21.011(1). The renewal fee for all other easements, except for telecommunication lines and associated conduits that are subject to the provisions of paragraph 18-21.004(2)(1), F.A.C., will be determined by an approved appraisal in accord with paragraph 18-21.011(2)(b), but with no measure of enhanced property value as described in 18-21.011(2)(b)2.

~~(d)~~ The fee for private easements for telecommunication lines and associated conduits that are subject to the provisions of paragraph 18-21.004(2)(1), F.A.C., shall be a one-time easement ~~value and enhanced value~~ fee of \$5.5913 for installations outside of special consideration areas or a one-time easement ~~value~~ fee of \$0.0663 for installations inside such areas, effective March 1, 2007. The applicable fee shall be assessed per linear foot of telecommunication line or conduit as measured along sovereignty submerged lands from the State's territorial limits within the territorial sea to first landfall on the mainland for easements up to 10 feet wide, and shall be increased proportionally for easements of greater widths. This fee shall also be applicable to easement modifications to the extent that such modifications increase the easement area and to easement renewals. The fee shall be revised annually on March 1 and increased or decreased based on the average change, as provided in subparagraph 18-21.011(1)(b)1., F.A.C., calculated as

provided in subparagraph 18-21.011(1)(b)1., F.A.C., with a 10 percent cap on any annual increase. This fee shall not be applicable to applications to transfer or assign an easement.

(3) Severed Dredge Materials.

(a) When an activity involves the removal of sovereignty materials to upland property by dredging or any other means, payment per cubic yard of material shall be as follows, except as provided in Section 253.03, F.S.

- | | |
|--|---------|
| 1. Monroe County | \$3.25 |
| 2. Bay, Brevard, Broward, Charlotte, Collier, Dade, Duval, Escambia, Lee, Manatee, Palm Beach, Pasco, Pinellas and Sarasota counties | \$2.25 |
| 3. All other counties | \$1.25 |
| 4. Minimum payment | \$50.00 |

(b) These payments shall not be used for dead shell and mining leases which will be subject to individual royalty or other compensation payments.

(c) A waiver of the severed dredge material payment shall be approved when:

1. The materials are being placed on public property and used for public purposes;
2. It is affirmatively demonstrated that the severed dredge material has no economic value; or
3. A governmental entity conducts a project with the sole objective of environmental restoration or enhancement and the Board determines that waiving the severance fee is in the public interest, as defined in Rule 18-21.003, F.A.C.

(4) Aquaculture Leases.

(a) The dollar amount of the fixed rate consideration for aquaculture leases shall be determined as follows:

1. By negotiation between the Department and the riparian upland owner when said owner is the applicant.
2. By negotiation between the Department and the nonriparian applicant for the first lease term when the applicant nominates the site.

3. By competitive bid:

- a. When the Department designates sites for lease,
 - b. After the first lease term for all nonriparian leases, or
 - c. At the option of the nonriparian applicant when the applicant nominates a site.
4. An appraisal may be required when deemed appropriate by the Department. The cost of such appraisal shall be borne by the applicant.

5. Any production data determined to be necessary by the Department for the purposes of negotiation shall be supplied by the applicant upon the Department's request.

6. Fees for experimental aquaculture leases for public and nonprofit research institutions may be waived by the Board.

(b) Bids for aquaculture leases shall be written offers with a cash consideration which shall be based on a lease fee per acre per year. The competitive bid submitted to the Department shall include the bid per acre times the number of acres in the lease area offered. The total cash consideration offered shall accompany the written offer and shall be returned to the unsuccessful bidders upon award of the lease, or upon the matching of the high bid by the existing leaseholder upon rejection of all bids. The successful bidder will be required to pay all costs of legal advertisement in connection with this lease sale. All bids must be in a sealed envelope marked SEALED BID – STATE AQUACULTURE LEASE – showing lease number and date of sale, and accompanied by certified or cashier's check made payable to the Department of Environmental Protection, Bureau of State Lands Management, the full amount of the cash consideration offered as the bid.

1. All applicants including the existing leaseholder must submit a bid to be eligible for a lease when bidding is required.
 - a. The bid shall be received by the Department prior to the advertised closing date and time.
 - b. The existing leaseholder shall have five days to match the high bid and renew the lease if outbid.
 - c. When the existing leaseholder does not bid or does not exercise the right of first refusal the new lessee shall allow the prior leaseholder unencumbered access to the lease in order to harvest the aquaculture crop during the first year of the new lease.
2. Each bidder shall include as part of the bid a certified statement as to any submerged land lease holdings which have been granted by the State. Such statement shall also include the lease number and legal description for all such leases issued.
3. After the first year, the amount bid per acre shall be paid by the successful bidder on or before the first day of the month in which the lease was granted as a fee to be paid throughout the term of the lease.
4. The annual lease fee shall not be less than a fixed rate of \$15 per acre for a bottom lease and \$30 per acre when the lease is to

include the water column. The annual fee shall be fixed by bidding or negotiation and adjusted annually pursuant to subparagraph 18-21.011(1)(b)6., F.A.C., to ensure the fixed rate is not reduced by inflation.

5. Existing shellfish leaseholders may convert to an aquaculture lease if they wish to include the water column in the leased area. Converted leaseholders that are not riparian owners shall have the first right of refusal if they are outbid.

6. When the water quality designation that is necessary for the particular activity is lost due to degradation of water quality the leaseholder shall have the option of:

- a. Returning the lease to the state,
- b. Conducting an aquaculture activity that is consistent with the change in water quality upon written approval by the Board or,
- c. Continuing to retain the lease.

(5) Use Agreements for Geophysical Testing.

(a) For geophysical testing on private or Federal uplands involving any incidental crossing of sovereignty submerged lands, a \$40 per mile fee shall be required. If geophysical testing lines are located on State-owned uplands and a geophysical testing fee has been assessed, no mileage fee shall be assessed for incidental crossings of sovereignty submerged lands. However, if testing lines are located on both private and State-owned uplands, a mileage fee shall be assessed on that portion of the survey not on State-owned uplands. The mileage fee shall be paid to the Division within 180 days of receipt by the applicant of the executed use agreement, receipt to be verified by certified mail. In any case, payment shall be received by the Division prior to commencement of operations.

(b) For geophysical testing occurring in the water column above sovereignty submerged lands in bays, estuaries, and offshore Florida Territorial Waters, the following fees shall be required:

1. Two hundred dollars (\$200) per mile for testing conducted from the mean high water line seaward to 35-foot water depth contour;
2. Fifty dollars (\$50) per mile for activities conducted in State waters of 35-foot depth and greater.

(c) All fees shall be paid to the Division within 180 days of receipt by the applicant of the executed use agreement, receipt to be verified by certified mail. In any case payment shall be received by the Division prior to commencement of operations.

Specific Authority 253.03(7), (11), 253.73 FS. Law Implemented 253.03, 253.71 FS. History—New 3-27-82, Amended 5-18-82, 8-1-83, 9-5-84, 10-20-85, Formerly 16Q-21.11, 16Q-21.011, Amended 1-25-87, 9-6-87, 3-15-90, 10-11-98, 10-15-98, 10-29-03, 3-8-04, 1-1-06, 4-14-08.