CHAPTER 18-21
SOVEREIGNTY SUBMERGED LANDS MANAGEMENT

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18-21.001 Intent. (Repealed)

Rulemaking Authority 253.03(7) FS., Art. X, Sec. 14, Fla. Const. Law Implemented 253.03, 253.12 FS. History–New 3-27-82, Formerly 16Q-21.01, 16Q-21.001, Amended 9-1-09, Repealed 3-12-12.

18-21.002 Scope and Effective Date.

(1) These rules are to implement the administrative and management responsibilities of the Board, the Department of Environmental Protection and the Department of Agriculture and Consumer Services regarding sovereignty submerged lands. Responsibility for environmental permitting of activities and water quality protection on sovereignty and other lands is vested with the Department of Environmental Protection. The responsibility for managing aquacultural activities on sovereignty lands is vested with the Department of Agriculture and Consumer Services. These rules are considered cumulative. Therefore, a person planning an activity should consult other applicable rules of the Department of Environmental Protection and the Department of Agriculture and Consumer Services regarding aquacultural activities.

(2) These rules shall not affect previous actions of the board concerning private docks or the issuance of any easement, lease or any disclaimer concerning sovereign submerged lands. Fee arrangements in existing leases and easements shall not be subject to the fees of this rule until expiration of the current term unless otherwise specified in the lease or easement.

(3) Unregistered grandfathered structures which would require a lease pursuant to paragraph 18-21.005(1)(d), F.A.C., shall be brought under lease according to the provisions of Rule 18-21.00405, F.A.C.

(4) Any expansion of an existing activity shall be subject to the provisions of this rule.

(5) It is declared to be the intent of the board that if any section, subsection, sentence, clause, phrase, or provision of this rule is held invalid or unconstitutional, such invalidation or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this rule.

Rulemaking Authority 253.03(7), 253.73 FS. Law Implemented 253.002(1), 253.03, 253.12, 253.68, 253.77 FS. History-New 3-27-82, Amended 8-1-83, 9-4-84, Formerly 16Q-2.02, 16Q-21.002, Amended 12-25-86, 3-15-90, 9-1-09.

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 aquatic organisms and associated activities, including, but not limited to grading, sorting, transporting, harvesting, holding, storing, growing and planting.

(11) “Aquaculture Activities” means any activities related to the production of aquacultural products, including, but not limited to, producing, storing, handling, grading, sorting, transporting, harvesting, and aquacultural support docking.

(12) “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.

(13) “Board” means the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

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

(15) “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.

(16) “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.

(17) “DACS” means the Florida Department of Agriculture and Consumer Services for the purposes of aquaculture in Rules 18-21.020, 18-21.021, and 18-21.022, F.A.C.

(18) “Department” means the State of Florida Department of Environmental Protection (DEP), as administrator for the Board.

(19) “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.

(20) “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.

(21) “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.

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

(23) “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.

(24) “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) “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) “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) “High-density lease area” means a contiguous tract of sovereignty submerged lands which allows for an array of multiple aquaculture leases configured to facilitate management and enforcement.

(28) “First come, first served” means any water dependent facility operated on the sovereign lands of the state the services of which are open to the general public 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.

(29) “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.

(30) “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.

(31) “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.

(32) “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.

(33) “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.

(34) “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.

(35) “Marginal dock” means a dock placed immediately adjacent and parallel to the shoreline or seawall, bulkhead or revetment.

(36) “Marina” means a small craft harbor complex used primarily for recreational boat mooring or storage.

(37) “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.

(38) “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.

(39) “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(1)(b), F.S., or in conformance with the private residential single-family dock criteria in subsection 18-20.004(5), F.A.C.

(40) “Multi-slip docking facility” means any marina or dock designed to moor three or more vessels.

(41) “Nomination” means a proposal for an oil and gas lease.

(42) “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.

(43) “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.

(44) “Pier” means a fixed or floating structure used primarily for fishing or swimming and not designed or used for mooring or accessing vessels.

(45) “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.

(46) “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.

(47) “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.

(48) “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.

(49) “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.

(50) “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.

(51) “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.

(52) “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.

(53) “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.

(54) “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.

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

(56) “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.

(57) “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.

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

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

(60) “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.

(61) “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.

(62) “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.

(63) “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.

(64) “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.

(65) “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.

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

(67) “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.

(68) “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.

(69) “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.

(70) "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.

(71) "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.

Rulemaking 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, 9-1-09.

18-21.004 Management Policies, Standards, and Criteria.

The following management policies, standards, and criteria shall be used in determining whether to approve, approve with conditions or modifications, or deny all requests for activities on sovereignty submerged lands, except activities associated with aquaculture. The management policies, standards, criteria, and fees for aquacultural activities conducted on or over sovereignty submerged lands are provided in Rules 18-21.020 through 18-21.022, F.A.C.

(1) General Proprietary.

(a) For approval, all activities on sovereignty lands must be not contrary to the public interest, except for sales which must be in the public interest.

(b) All leases, easements, deeds or other forms of approval for sovereignty land activities shall contain such terms, conditions, or restrictions as deemed necessary to protect and manage sovereignty lands.

(c) When satisfactory evidence of sufficient upland interest is not fee simple title, the term of the sovereignty submerged lands authorization will be determined by Rule 18-21.008, 18-21.009, or 18-21.010, F.A.C., if applicable. However, in no case shall the term exceed the remaining term of the sufficient upland interest unless the fee simple title holder agrees to become a co-holder of the sovereignty submerged lands authorization.

(d) For construction of docks and piers when satisfactory evidence of sufficient upland interest is not fee simple title, the applicant's interest must cover the entire shoreline of the adjacent upland fee simple parcel or 65 feet, whichever is less.

However, this provision shall not apply to existing docks or piers constructed in conformance with previously applicable rules of the Board where the proposed activity is repair that is consistent with the applicable provisions of the rules of the Board; minor modifications that do not change the boundaries of the preempted area previously authorized; or where such activities result in reduced preemption within the confines of the preempted area previously authorized.

(e) Equitable compensation shall be required for leases and easements which generate revenues, monies or profits for the user or that limit or preempt general public use. Public utilities and state or other governmental agencies exempted by law shall be excepted from this requirement.

(f) Appraisal services, when required, shall be obtained through the Division's Bureau of Appraisal in accordance with Chapter 18-1, F.A.C., except as follows:

1. The applicant shall pay the fee for appraisal services. No appraisal services shall proceed until the appraisal services fee has been received by the Division. If the applicant withdraws its application after appraisal services have begun and any appraisal expenses have been incurred, the appraisal fee will be non-refundable. If no services have begun and no expenses have been incurred, the appraisal fee is refundable upon written request of the applicant.

2. All appraisal services must be reviewed through the Division and approved by the Division.

(g) Activities on sovereignty lands shall be limited to water dependent activities only unless the board determines that it is in the public interest to allow an exception as determined by a case by case evaluation. Public projects which are primarily intended to provide access to and use of the waterfront may be permitted to contain minor uses which are not water dependent if:

1. Located in areas along seawalls or other nonnatural shorelines;

2. Located outside of aquatic preserves or class II waters; and

3. The nonwater dependent uses are incidental to the basic purpose of the project, and constitute only minor nearshore encroachments on sovereign lands.

(h) Stilt house, boathouses with living quarters, or other such residential structures shall be prohibited on sovereignty lands.

(i) The State Lands Management Plan shall be considered and utilized in developing recommendations for all activities on sovereignty lands.

(j) The use of sovereignty lands for the purpose of providing road access to islands, where such access did not previously exist, shall be prohibited. The board may grant an exception to this prohibition if the board makes a finding that:

1. Construction and use of road access is the least damaging alternative and more protective of natural resources and sovereignty lands than other access activities; and

2. In the case of coastal barrier islands, such use of sovereignty lands and any upland development facilitated thereby is in the public interest, or in the case of other islands, not contrary to the public interest.

(k) No application to use sovereignty, submerged land adjacent to or surrounding an unbridged, undeveloped coastal island or undeveloped coastal island segment may be approved by the Board of Trustees unless it meets the following criteria:

1. The application is for the purpose of obtaining authorization for a use which was included in a development project that has undergone development of regional impact review and a final development order has been issued pursuant to Chapter 380, F.S., as of the effective date of this rule and is otherwise permitted by and consistent with the provisions of Rule Chapter 18-18, 18-20, or 18-21, F.A.C., as applicable, provided, however, that in the case of a substantial deviation to said development order, no authorization of use may be granted for any use that was not included in the original order; or

2. The proposed facility is limited to a two-slip private residential dock that complies with the standards set forth in paragraph 18-20.004(5)(b), F.A.C., and the upland parcel to which the facility will be attached was not created by platting or subdividing after December 18, 1990. However, as an alternative to multiple private residential docks, the Board may authorize a private docking facility of more than two slips if it determines that such a facility would result in greater environmental protection for sovereignty, submerged land resources than multiple individual docks, and provided the facility is otherwise permitted by and consistent with the provisions of Rule Chapter 18-18, 18-20, or 18-21, F.A.C., as applicable. The number of slips associated with such a facility shall not exceed the number of slips which would have been authorized as individual docks; or

3. With respect to applications to use sovereignty, submerged lands for the provision of public utility services, such services were in place as of December 18, 1990, and the requested use of sovereignty, submerged land will not result in an upgrade in capacity or will not service additional customers on an unbridged, undeveloped coastal island or undeveloped coastal island segment. Applications may be approved under this provision only to allow the maintenance or repair of existing utility lines, or as necessary to maintain public safety as ordered by the Public Service Commission; or

4. The proposed use is for the purpose of allowing access, for public purposes, to publicly owned uplands or submerged lands for recreation, research, conservation, mosquito control, aquaculture or restoration activities only, and is otherwise consistent with the provisions of Rule Chapters 18-18, 18-20, or 18-21, F.A.C.

(l) All existing licenses shall be converted to leases upon the expiration or renewal date of the license.

(m) For purposes of notification of adjacent property owners, requests for revisions to existing leases or easements that are reasonably expected to lead to increased environmental impact, an increase in preempted area of ten percent or more, or a significant change in use (such as one that requires use of a different form of authorization or application of different rule criteria) will be treated as new applications under this chapter.

(n) The Board shall adopt specific standards and criteria for the siting of docking facilities to provide a greater degree of certainty regarding the development potential of sovereignty, submerged lands. These siting standards and criteria shall serve to direct such development efforts to intrinsically suitable sites and shall ensure that the Board continues to fulfill its fiduciary responsibilities regarding these public trust lands.

(2) Resource Management.

(a) All sovereignty lands shall be considered single use lands and shall be managed primarily for the maintenance of essentially natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating, and swimming. Compatible secondary purposes and uses which will not detract from or interfere with the primary purpose may be allowed.

(b) Activities which would result in significant adverse impacts to sovereignty lands and associated resources shall not be approved unless there is no reasonable alternative and adequate mitigation is proposed.

(c) The Department of Environmental Protection biological assessments and reports by other agencies with related statutory, management, or regulatory authority may be considered in evaluating specific requests to use sovereignty lands. Any such reports sent to the department in a timely manner shall be considered.

(d) Activities shall be designed to minimize or eliminate any cutting, removal, or destruction of wetland vegetation (as listed in Chapter 62-340, F.A.C.) on sovereignty lands.

(e) Reclamation activities on sovereignty lands shall be approved only if avulsion or artificial erosion is affirmatively demonstrated. Other activities involving the placement of fill material below the ordinary high water line or mean high water line shall not be approved unless it is necessary to provide shoreline stabilization, access to navigable water, or for public water management projects.

(f) To the maximum extent possible, shoreline stabilization should be accomplished by the establishment of appropriate native wetland vegetation. Rip-rap materials, pervious interlocking brick systems, filter mats, and other similar stabilization methods should be utilized in lieu of vertical seawalls wherever feasible.

(g) Severance of materials from sovereignty lands shall be approved only if the proposed dredging is the minimum amount necessary to accomplish the stated purpose and is designed to minimize the need for maintenance dredging.

(h) Severance of materials for the primary purpose of providing upland fill shall not be approved unless no other reasonable source of materials is available or the activity is determined to be in the public interest.

(i) Activities on sovereignty lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat, and other natural or cultural resources. Special attention and consideration shall be given to endangered and threatened species habitat.

(j) To the maximum extent feasible, all beach compatible dredge materials shall be placed on beaches or within the nearshore sand system.

(k) Oil and gas drilling leases on state-owned submerged lands shall be approved only when the proposed lease area is at least one mile seaward of the outer coastline of Florida as defined in United States v. Florida, 425 U. S. 791, 48 L. Ed. 2d 388, 96 S. Ct. 1840, upon adequate demonstration that the proposed activity is in the public interest, that the impact upon aquatic resources has been thoroughly considered, and that every effort has been made to minimize potential adverse impacts upon sport and commercial fishing, navigation, and national security. Drilling leases may be issued in the prohibited area if said lease stipulates that any drilling shall be conducted from outside said area.

(l) Applications for telecommunication lines received after October 29, 2003 that originate from or extend to locations outside of the state's territorial limits through the territorial sea including the area between mean high and mean low water lines and any associated conduits shall be subject to the following:

1. Installations shall be approved only where the applicant provides satisfactory evidence of a need by providing documentation in the form of:

a. A copy of their Federal Communications Commission cable landing license; and either

b. A contract to install telecommunication lines and associated conduits to an upland distribution network and stating the projected date of installation; or

c. A letter of commitment from a company in the business of installing or using telecommunication lines for a line that will be installed and connected to an upland distribution network, functional for transmitting data, and on-line within a specified time frame once a conduit is made available.

2. Installations at individual landing sites are limited to no more than six telecommunication lines and conduits except where the applicant can affirmatively demonstrate that the landing site will support a larger number of such lines and that the routing to the State's territorial limits within the territorial sea will cause no more than minimal individual and cumulative impacts. However, installations using subconduits within a conduit shall be allowed up to six subconduits and one additional conduit. In no case shall more than two conduits with subconduits be authorized until such time as the capacity of one conduit is fully utilized for telecommunication line installation.

3. Installations shall be prohibited on or under submerged lands within Biscayne Bay Aquatic Preserve, Biscayne Bay National Park, and Monroe County.

4. Conduits for telecommunication lines shall be directionally drilled under nearshore benthic resources, including the first reef and any other more inshore reefs off Southeast Florida, to the maximum extent practicable and shall punch out in a location that avoids or minimizes impacts to benthic resources such as seagrasses and live bottom communities including corals and sponges.

5. While locating in these areas is not required for approval, special consideration areas are designated for telecommunication lines and associated conduits located within the reef-gaps generally described as follows, based on World Geodetic System 84.

a. Lake Worth Gap (northern Palm Beach County), beginning at the easternmost end at N. Lat. 26 37.659/W. Long. 80 01.341 (south side) to N. Lat. 26 38.481/W. Long. 80 01.258 (north side), in a 1,672 yard-wide gap.

b. South Lake Worth Inlet Gap (central Palm Beach County), beginning at the easternmost end at N. Lat. 26 32.492/W. Long. 80 01.610 (south side) to N. Lat. 26 32.444/W. Long. 80 01.626 (north side), in a 100 yard-wide gap.

c. Delray Gap (southern Palm Beach County), beginning at the easternmost end at N. Lat. 26 27.393/W. Long. 80 02.765 (south side) to N. Lat. 26 27.641/W. Long. 80 02.726 (north side), in a 508 yard-wide gap.

d. Sea Turtle Gap (southern Palm Beach County), beginning at the easternmost end at N. Lat. 26 22.672/W. Long. 80 03.224 (south side) to N. Lat. 26 22.748/W. Long. 80 03.224 (north side), in a 154 yard-wide gap.

e. South Broward Gap (southern Broward County), beginning at the easternmost end at N. Lat. 25 58.438/W. Long. 80 05.278 (south side) and N. Lat. 25 58.821/W. Long. 80 05.271 (north side) and extending westerly on its southerly limits through the following points: N. Lat. 25 58.977/W. Long. 80 05.733, N. Lat. 25 59.132/W. Long. 80 05.997, and ending at N. Lat. 25 59.138/ W. Long. 80 06.366, and westerly on its northerly limits through the following points: N. Lat. 25 59.039/W. Long. 80 05.725, N. Lat. 25 59.205/W. Long. 80 06.060, and ending at N. Lat. 25 59.192/W. Long. 80 06.371.

(m) Aquaculture policy, standards and criteria. The Board of Trustees hereby declares the following policies with regard to aquaculture authorizations issued pursuant to this rule.

1. It shall be a policy of the State of Florida to foster aquaculture when the aquaculture activity is consistent with state resource management goals, proprietary interest, environmental protection and antidegradation goals. Further such aquaculture shall not displace existing leases, viable commercial or recreational harvesting areas open to the general public but create new areas for the purification or cultivation of marine resources.

2. The Board will not grant consent for activities that would adversely affect existing aquaculture leases by degrading ambient water quality.

3. The Board will oppose the issuance of any permit which would reasonably be expected to degrade water quality at an aquaculture lease site.

(n) The physical modification of a spring shall only be allowed where the board determines that such modification is necessary to restore historic spring contours or flow conditions and where it is determined not to be contrary to the public interest.

(o) The installation or modification of facilities on sovereignty or state-owned submerged land for withdrawal of water from a spring or spring run is prohibited.

(3) Riparian Rights.

(a) None of the provisions of this rule shall be implemented in a manner that would unreasonably infringe upon the traditional, common law riparian rights, as defined in Section 253.141, F.S., of upland property owners adjacent to sovereignty submerged lands.

(b) Satisfactory evidence of sufficient upland interest is required for activities on sovereignty submerged lands riparian to uplands, unless otherwise specified in this chapter. Public utilities and state and other governmental agencies proposing activities such as utility lines, roads or bridges must obtain satisfactory evidence of sufficient upland interest prior to beginning construction, but need not provide such evidence as part of any required application. Satisfactory evidence of sufficient upland interest is not required for activities on sovereignty submerged lands that are not riparian to uplands, or when a governmental entity conducts restoration and enhancement activities, provided that such activities do not unreasonably infringe on riparian rights.

(c) All structures and other activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

(d) Except as provided herein, all structures, including mooring pilings, breakwaters, jetties and groins, and activities must be set back a minimum of 25 feet inside the applicant's riparian rights lines. Marginal docks, however, must be set back a minimum of 10 feet. Exceptions to the setbacks are: private residential single-family docks or piers associated with a parcel that has a shoreline frontage of less than 65 feet, where portions of such structures are located between riparian lines less than 65 feet apart, or where such structure is shared by two adjacent single-family parcels; utility lines; bulkheads, seawalls, riprap or similar shoreline protection structures located along the shoreline; structures and activities previously authorized by the Board; structures and activities built or occurring prior to any requirement for Board authorization; when a letter of concurrence is obtained from the affected adjacent upland riparian owner; or when the Board determines that locating any portion of the structure or activity within the setback area is necessary to avoid or minimize adverse impacts to natural resources.

(e) Notwithstanding the provisions of paragraphs (b) through (d) above, special events may be authorized in accordance with the other criteria in this rule chapter.

(4) Standards and Criteria for Private Residential Multi-family Docks and Piers.

(a) Private residential multi-family docks with one or two wetslips shall conform to the provisions of Rules 18-21.004 and 18-21.005, F.A.C., applicable to private residential single-family docks. Such docks and any piers cumulatively shall be limited to the 40:1 preempted area to shoreline ratio applicable to private residential multi-family docks with three or more wetslips or the preempted area necessary to construct a minimum-size dock, whichever is greater.

(b) Private residential multi-family docks with three or more wetslips and any piers, including any portion of a dock or pier that is used or converted to use as a private residential multi-family dock or pier, that cumulatively preempt an area greater than ten square feet for each linear foot of the applicant's common riparian shoreline along sovereignty submerged land on the affected waterbody shall be limited as follows.

1. No more than one wetslip for each approved upland residential unit.

2. A cumulative preemption of no more than forty square feet of sovereignty submerged land for each linear foot of the applicant's common riparian shoreline along sovereignty submerged land on the affected waterbody within a single plan of development. However, an exception shall be granted for a private residential multi-family dock to exceed the maximum cumulative preemption provided that all of the following conditions are met.

a. The applicant demonstrates compliance with all other applicable rules and statutes of the Board.

b. Sufficient water depth exists to accommodate vessels ingressing and egressing the proposed lease area.

c. The additional preempted area will not require any dredging or will substantially reduce dredging and will not cause or will substantially reduce adverse resource impacts to sovereignty submerged lands within the proposed lease area. This shall not be construed to prohibit dredging that is necessary to enhance the quality of natural resources, as determined by the Board of Trustees.

d. Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.

e. A net positive public benefit, acceptable to the Board of Trustees as beneficial to the public, is provided to offset the increase in preempted area. Net positive public benefits include such activities as improving public access to sovereignty submerged lands by: providing slips that are open to the general public on a first come, first served basis to offset the increased preemption; creating a public boat ramp with adjacent upland parking; improving public access to an existing public boat ramp; donating to the Board privately-owned, formerly sovereignty submerged lands or other lands that are on public acquisition lists; or other similar public benefits that serve to maintain or increase public access to sovereignty submerged lands. Preference shall be given to net positive public benefits in the vicinity of the proposed project.

(c) Private residential multi-family docks or piers constructed in lieu of multiple private residential single-family docks or piers, which otherwise could be authorized under Chapter 18-18 or 18-20, F.A.C., as applicable, and Chapter 18-21, F.A.C., on existing individual, single-family riparian parcels shall not be subject to the provisions of paragraphs 18-21.004(4)(a), (b), (f), and (g), F.A.C., provided that:

1. Each of the affected parcels contains or is zoned or approved for no more than one detached single-family residence;

2. Such facility would result in less preemption and greater environmental protection for sovereignty submerged land resources than the multiple individual docks or piers;

3. When located in an Aquatic Preserve, such facility shall be subject to the standards and criteria for all docks and private residential multi-slip docks in paragraphs 18-20.004(5)(a) and (c), F.A.C., except for the Resource Protection Area provisions of subparagraphs 18-20.004(5)(c)2. and 3., F.A.C., and shall be allowed to terminate in a Resource Protection Area 1 or 2 when a Resource Protection Area 3 is not available,

provided the facility is consistent with the Resource Protection Area provisions of subparagraphs 18-20.004(5)(b)7. and 8., F.A.C.;

4. There are no more than two slips per riparian parcel served by the multi-family dock;

5. Access over uplands is provided from all participating riparian parcels to the private residential multi-family dock or pier; and

6. The applicant provides a conservation easement or other similar recorded restrictive covenant in favor of the Board over the riparian waterfront of each participating riparian parcel to subordinate or waive any further riparian rights of ingress and egress for additional docks and piers. Such conservation easements or restrictive covenants shall be released or modified only if the Board finds such release or modification is not contrary to the public interest, does not defeat the original purpose of such easement or covenant, and is in compliance with current rules at the time of the modification.

(d) To maintain no less than fifty percent of the open-water portion of the waterbody available for public use, docks, piers, mooring pilings, mooring areas or other activities shall extend no more than 25 percent of the width of the waterbody, excluding dense areas of forested shoreline vegetation such as mangroves, as measured from the project location to the opposite shoreline.

(e) Within the standards set forth above, the design and quantity of wetslips may be further modified in recognition of riparian setback constraints, local land use regulations, and natural resource considerations such as potential impacts to endangered species and shellfish resources.

(f) Any additional riparian access beyond that allowable under the standards and criteria of this subsection may be considered in the form of access ramps for upland dry storage facilities.

(g) For docks and piers subject to paragraph 18-21.004(4)(b), F.A.C., the applicant shall provide a conservation easement or other similar recorded restrictive covenant in favor of the Board over the riparian waterfront footage used for the calculation of the preempted area, or over the entire shoreline when constructing the maximum number of slips, to subordinate or waive any further riparian rights of ingress and egress for additional docks and piers. Such conservation easements or restrictive covenants shall be released or modified only if the Board finds such release or modification is not contrary to the public interest, does not defeat the original purpose of such easement or covenant, and is in compliance with current rules at the time of the modification.

(h) Paragraph 18-21.004(4)(b), F.A.C., shall apply to all applications that have not received Board approval by December 25, 1986.

(5) Standards and Criteria for Special Events.

Special events shall conform to the following specific guidelines, design standards, and criteria:

(a) The number, configuration, and dimensions of structures; the use of the facility; and the numbers, sizes, drafts and types of vessels associated with the special

event shall minimize adverse impacts to: navigation; riparian rights of upland owners adjacent to the affected sovereign submerged lands per paragraph 18-21.004(3)(a), F.A.C.; the affected sovereignty lands and associated resources per paragraph 18-21.004(2)(b), F.A.C.; wetland vegetation per paragraph 18-21.004(2)(d), F.A.C.; fish and wildlife habitat, including endangered or threatened species habitat per paragraph 18-21.004(2)(i), F.A.C.; and shoreline erosion per paragraphs 18-21.004(2)(e) and (f), F.A.C.

(b) Temporary non-water dependent facilities that are incidental and accessory to the special events shall be allowed where such facilities do not adversely affect any of the following: navigation; riparian rights of upland property owners adjacent to the affected sovereign submerged lands per paragraph 18-21.004(3)(a), F.A.C.; the affected sovereignty lands and associated resources per paragraph 18-21.004(2)(b), F.A.C.; wetland vegetation per paragraph 18-21.004(2)(d), F.A.C.; fish and wildlife, habitat, including threatened endangered or threatened species habitat per paragraph 18-21.004(2)(i), F.A.C.; and shoreline erosion per paragraphs 18-21.004(2)(e) and (f), F.A.C.

(6) Standards and Criteria for Activities at Sovereignty and State-Owned Springs and Spring Runs. Persons requesting authorization or qualifying for consent by rule under this chapter to conduct activities in sovereignty or state-owned springs and those portions of spring runs adjacent to public or private uplands shall conform to the following guidelines, design standards, and criteria.

(a) The deposition of new sand or other fill in or within 100 feet of the spring or spring run to create, enhance, or maintain a man-made beach area is prohibited.

(b) Planting or maintaining any plant species listed in the Florida Exotic Pest Plant Council's "2001 Invasive Plant List," Category I and II, which may be found on the Internet at www.fleppc.org or by writing to the Bureau of Beaches and Wetland Resources, Department of Environmental Protection, 2600 Blair Stone Road, MS 2500, Tallahassee, FL 32399-2400, shall be prohibited within 300 feet of the spring or spring run.

(c) The removal or trampling of upland vegetation causing artificial erosion, artificial accretion, or sedimentation is prohibited within 300 feet of a spring or spring run.

(d) The removal or control of aquatic plants from the spring and spring run is prohibited except when authorized under this chapter and conducted in accordance with applicable Part I Chapter 369 or Part IV Chapter 373, F.S., authorizations.

(e) The application of fertilizers, pesticides, or other similar products in a manner that degrades water quality or adversely impacts natural resources within the spring or spring run is prohibited.

(f) The installation or expansion of wastewater treatment drainfields, sprayfields, or similar installations is prohibited within 300 feet of the spring or spring run, except that single family residential on-site sewage treatment and disposal systems shall be installed and operated so as to avoid or minimize impacts to the spring or spring run.

(g) The installation of a ditch or culvert for the direct discharge of stormwater from developed uplands into the spring or spring run shall be prohibited.

(7) General Conditions for Authorizations. All authorizations granted by rule or in writing under Rule 18-21.005, F.A.C., except those for geophysical testing, shall be subject to the general conditions as set forth in paragraphs (a) through (i) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under Chapter 253 or 258, Part II, F.S.

(a) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.

(b) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.

(c) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.

(d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

(e) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.

(f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.

(g) Structures or activities shall not create a navigational hazard.

(h) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.

(i) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(g), F.A.C., or any other applicable law.

(8) Pursuant to Section 253.77(4), F.S., federal, state, or local agencies or political subdivisions, including ports and inland navigation districts, proposing to conduct an activity which qualifies for an exemption under Part IV of Chapter 373, F.S., or Section 403.813(1), F.S., shall be granted a letter of consent or public easement upon receipt of a request and a legal description of the affected land. However, such grant does not release the entity from compliance with other applicable provisions of Chapters 18-18, 18-20 or 18-21, F.A.C.

Rulemaking Authority 253.03(7), 253.73 FS. Law Implemented 253.001, 253.03, 253.141, 253.68, 253.72, 253.74, 253.75, 253.77 FS. History–New 3-27-82, Amended 8-1-83, Formerly 16Q-21.04, 16Q-21.004, Amended 12-25-86, 1-25-87, 3-15-90, 8-18-92, 10-15-98, 12-11-01, 10-29-03, 12-16-03, 3-8-04, 10-27-05, 4-14-08, 9-1-09.

18-21.00401 Additional Requirements and Procedures for Concurrent Review of Related Applications.

(1) A single application shall be submitted and reviewed for activities that require both: a proprietary authorization under Chapter 253 or 258, F.S., to use sovereign submerged lands; and an individual or standard general environmental resource permit under Part IV of Chapter 373, F.S., or a short form or standard form wetland resource (dredge and fill) permit under Section 373.414(11), (12), (13), (14), (15), or (16), F.S., or Section 373.4145, F.S. In such cases, the application shall not be deemed complete, and the timeframes for approval or denial shall not commence, until all information required by applicable provisions of Section 161.041, Part IV of Chapter 373 and Chapters 253 and 258, F.S., and rules adopted thereunder for both the proprietary authorization and the environmental resource permit or the wetland resource permit is received.

(2) No application under this section shall be approved until all the requirements of applicable provisions of Section 161.041, Part IV of Chapter 373 and Chapters 253 and 258, F.S., and rules adopted thereunder, for the proprietary authorization and the environmental resource permit or the wetland resource permit are met. The concurrent approval shall be subject to all conditions imposed by such rules.

(3) For an application reviewed under this section for which a request for proprietary authorization to use sovereign submerged lands has been delegated to the Department or a water management district to take final action without action by the Board, the Department or water management district shall issue a consolidated notice of intent to issue or deny the proprietary authorization and the environmental resource permit or the wetland resource permit within 90 days of receiving a complete application. Waiving or tolling the timeframes for final action under this section shall constitute a waiver or tolling of the timeframes for final action on the environmental resource permit or the wetland resource permit.

(4) For an application reviewed under this section for which the request for proprietary authorization to use sovereign submerged lands has not been delegated to the Department or a water management district to take final action without action by the Board, the application shall be reviewed and final agency action taken in accordance with the procedures in Sections 373.427(2)(a)-(c), F.S.

(5) Upon the issuance of the consolidated notice of intent to issue or deny, or upon issuance of the recommended consolidated notice of intent to issue or deny pursuant to subsection (4), the Department or water management district shall be deemed to be in compliance with the timeframes for approval or denial in Section 120.60(1), F.S. Failure to satisfy these timeframes shall not result in approval by default of the application to use sovereign submerged lands. Also, if an administrative

proceeding under Section 120.57, F.S., is properly requested on both the proprietary authorization and the environmental resource permit or the wetland resource permit under this section, the review shall be conducted as a single consolidated administrative proceeding. If an administrative proceeding under Section 120.57, F.S., is properly requested on either: the proprietary authorization; or the environmental resource permit or the wetland resource permit under this section; final agency action shall not be taken on either authorization until the administrative proceeding is concluded.

(6) Appellate review of any consolidated order under this section is governed by the provisions of Section 373.4275, F.S.

(7) For an activity requiring an individual permit under Section 161.041, F.S., and an individual or standard general environmental resource permit under Part IV of Chapter 373, F.S., or a short form or standard form wetland resource (dredge and fill) permit under Section 373.414(11), (12), (13), (14), (15), or (16), F.S., or Section 373.4145, F.S.; a joint coastal permit shall be required, as provided in Chapter 62B-49, F.A.C., in place of the above-noted permits.

(8) This section shall be applicable to all applications for proprietary authorizations under Chapter 253 or 258, F.S., to use sovereign submerged lands, and: individual or standard general environmental resource permit applications under Part IV of Chapter 373, F.S.; or standard form or short form wetland resource permits under Part IV of Chapter 373, F.S.; that are received by the Department, Suwannee River Water Management District, St. Johns River Water Management District, Southwest Florida Water Management District or South Florida Water Management District after the effective date of this rule section. If an applicant requests that its applications for proprietary authorization under Chapter 253 or 258, F.S., to use sovereign submerged lands, and: individual or standard general environmental resource permit under Part IV of Chapter 373, F.S.; or standard form or short form wetland resource permit under Part IV of Chapter 373, F.S.; that are received prior to the effective date of this rule section, be processed under this rule section, such request shall be granted if the applications for both are incomplete at the time of the request.

(9) Nothing in this section shall be construed to limit an applicant's ability to make separate applications for stages, phases, or portions of a project separate from an activity requiring both: a proprietary authorization under Chapter 253 or 258, F.S.; and an individual or standard general environmental resource permit under Part IV of Chapter 373, F.S., or a short form or standard form wetland resource permit under Sections 373.414(11), (12), (13), (14), (15), or (16), F.S., or Section 373.4145, F.S.

(10) The provisions of this section shall apply to the Department, Suwannee River Water Management District, St. John's River Water Management District, Southwest Florida Water Management District and South Florida Water Management District when the Department or District is processing an individual or standard general environmental resource permit application under Part IV of Chapter 373, F.S., or a standard form or short form wetland resource permit application under Section 373.414(11), (12), (13), (14), (15), or (16), F.S., or Section 373.4145, F.S., which, under this section, also requires a proprietary authorization under Chapter 253 or 258, F.S.

Specific Authority 161.055, 253.03(7), 253.77, 258.43, 373.026, 373.043, 373.044, 373.418, 373.427 FS. Law Implemented 120.60, 161.041, 161.055, 253.03, 253.77, 258.42, 258.43, 373.026, 373.413, 373.414(11)-(16), 373.416, 373.427, 373.4275 FS. History – New 10-12-95.

18-21.00405 Grandfather Provisions. (Repealed)

Rulemaking Authority 253.03, 253.77 FS. Law Implemented 253.77 FS. History - New 3-15-90, Repealed 3-12-12.

18-21.0041 Florida Keys Marina and Dock Siting Policies and Criteria.

(1) These policies and criteria shall be applied to all applications for leases, easements or consent to use sovereignty submerged lands in Monroe County for multi-slip docking facilities. The following General Policies and Specific Criteria shall be used in developing recommendations to approve, approve with conditions or deny the use of state owned sovereignty submerged lands for multi-slip docking facilities.

(a) General Policies – special attention and consideration shall be given to the following:

1. The proximity to and potential adverse impacts on any rare, threatened or endangered species, or species of special concern, or their habitat, or on any portion of the entire Florida Reef Tract and other corals, including but not limited to those in the John Pennekamp Coral Reef State Park, Key Largo National Marine Sanctuary, Looe Key National Marine Sanctuary, and Everglades National Park; and

2. Eliminating any adverse impacts on wetland or submerged vegetation or benthic communities; and

3. Requiring adequate tidal flushing and/or circulation; and

4. Maintaining or enhancing water quality at levels within or above State water quality standards; and

5. Requiring adequate water depths to avoid dredging and other bottom disturbance; and

6. Requiring consistency and conformity with local government land use plans, zoning, and other land use or development regulations; and

7. Requiring consistency and conformity with Chapters 27F-8, 27F-9, 27F-10, 27F-11, 27F-12, 27F-13, and 27F-15, F.A.C., as amended, “Principles for Guiding Development in the Florida Keys Area of Critical State Concern.” Should any of these provisions conflict with the Sovereignty Lands Management Rules, the Board shall advise staff which provision shall take precedence.

(b) Specific Criteria.

1. There shall be a moratorium on the approval of all leases of state owned submerged lands for multi-slip docking facilities from Tea Table Channel north to the Monroe County Line. This moratorium shall be maintained until rules are adopted for the currently proposed Florida Keys-Monroe County Aquatic Preserve or the revised Monroe County Comprehensive Plan with marina siting policies is adopted, whichever occurs first.

2. No docking facilities shall be approved which require either dredging or filling to provide access by canal, channel, road, or any other means. This restriction shall also apply to widening or deepening any existing canal or channel, but not to regular maintenance dredging of existing canals, basins, or channels, providing such maintenance does not exceed currently acceptable water depths.

3. Water depths requirements. Docking facilities shall only be approved in locations having adequate water depths in the boat mooring, turning basin, access channels and other such areas to accommodate the proposed boat use.

a. A minimum water depth of -4 (minus four) feet mean low water shall be required.

b. Greater depths shall be required for those facilities designed for, or capable of, accommodating boats having greater than a 3 (three) foot draft, so that a minimum of one foot of clearance is provided between the deepest draft of a vessel and the bottom.

c. These depth requirements shall also apply to the area between the proposed facility and any natural or other navigation channel, inlet or deep water. Where necessary, marking of navigational channels shall be required. At the Board's discretion, the conditions of the lease may stipulate the number, lengths, drafts and types of vessels to be moored in a facility.

4. Requirements for the size of the dock.

a. No dock shall be approved if its length exceeds 500 feet, unless the Board determines that it is not contrary to the public interest.

b. No dock shall be approved if its length preempts in excess of 20% (percent) of the width of the affected waterbody.

c. No dock for the use of a private residence, which is not subject to obtaining a lease, shall exceed four (4) feet in width. Such a dock may have a terminal platform the total area of which shall not exceed 160 feet, and the width of which shall not exceed eight (8) feet.

5. A specific lease condition for any new or expanded docking facility for 10 or more boats will be that the lessee shall maintain water quality standards as provided by Chapter 403, F.S. To assure compliance, the lessee shall maintain a water quality monitoring program approved by the Department of Environmental Protection. Water quality data will be periodically reviewed by the Department of Environmental Protection. In the event that water quality violations occur and water quality standards provided by Chapter 403, F.S., are not maintained, the lessee will be given written notice to correct the problem. Such notice shall require any problems or violations to be corrected within 120 days, or less in the case of severe violations, or demonstrate to the Board's satisfaction that the violations are caused by other than the docking facility, or associated activities on the adjacent riparian uplands, including stormwater runoff. If the lessee is the cause of the violations, and does not correct the problem within the specified time, then the lease shall be subject to cancellation by the Board with the resultant removal of the docking facility and other structures within the lease area.

6. In reviewing applications for new docking facilities or expansions to existing facilities, attention shall be given to identifying ways to improve, mitigate or restore adverse environmental impacts caused by previous activities. This may include filling in over dredged areas in order to make them a depth acceptable for propagation of benthic biota, restoring wetland or submerged vegetation, improving circulation, installing sewage pump-out facilities, or marking navigational channels. Such mitigation or restoration may be required as a condition of approval for new or expanded facilities. Marina development shall be encouraged to locate in already developed or disturbed areas.

7. In addition to the threshold specified by paragraph 18-21.005(1)(b), F.A.C., all applicants proposing docking facilities designed to moor 10 (ten) or more boats shall be required to obtain a lease.

8. All applicants will be required to provide documentation to show that there is an economic demand for the number of boat slips requested, if the number requested is not consistent with the Department's Projections of Marina Needs for Monroe County.

9. No application to lease state owned sovereignty submerged lands for the purpose of providing multi-slip docking facilities shall be considered for approval unless there are no benthic communities present where the boat mooring area, turning basins, mooring piles or other structures are to be located, excepting any main access docks required to cross benthic communities to reach acceptable areas. This shall not preclude them from applying for consent to use state owned submerged lands for the purpose of using the minimum amount necessary to obtain reasonable ingress and egress.

10. The Board may grant special consideration to the approval of leases or other consent to use state lands for projects which are approved by the Department of Community Affairs which are for the purpose of furthering the commercial fishing village or commercial fishing enterprise zone concept.

Rulemaking Authority 253.03(7) FS. Law Implemented 253.03 FS. History - New 2-25-85, Formerly 16Q-21.041, 16Q-21.0041.

18-21.005 Forms of Authorization.

(1) The appropriate form of authorization, for activities that meet the applicable rules and statutes of the Board, shall be determined based on consideration of all of the provisions of this rule. It is the intent of the Board that the form of authorization shall grant the least amount of interest in the sovereignty submerged land necessary for the activity. The forms of authorization for aquacultural activities, which shall include aquaculture leases, aquaculture letters of consent, and aquaculture management agreements, are provided in subsection 18-21.020(2), F.A.C. For activities not specifically listed, the Board will consider the extent of interest needed and the nature of the proposed activity to determine which form of authorization is appropriate. Co-located activities can be authorized, provided that the activities are compatible and the form of authorization for each activity is determined by the provisions of this rule.

(a) Exceptions. The following activities do not require authorization in accordance with this chapter:

1. Construction or maintenance of a water or sewer system by a county in accordance with Section 153.04, F.S., provided the required location map, plans and drawings are submitted to the Board.

2. Removal of material from the area adjacent to an intake or discharge structure in accordance with Section 403.813(1)(f), F.S., and no severance fees shall be assessed for such removal.

3. Removal of organic detrital material in accordance with Section 403.813(1)(r) or (u), F.S., and no severance fees shall be assessed for such removal.

4. Construction of floating vessel platforms or floating boat lifts in accordance with Section 403.813(1)(s), F.S.

5. Trimming or alteration of mangroves in accordance with Sections 403.9321 through .9334, F.S.

(b) Consent by Rule. Except for activities authorized under Section 253.77(4), F.S., consent is herein granted by the Board and no application or written authorization is required for an activity that is exempt from the requirements of obtaining a permit under the provisions of Section 403.813(1), F.S., paragraphs (a); (b), provided that the structure is the only dock or pier on a parcel and it is not a private residential multi-family dock with three or more slips; paragraphs (c); (d); (e); (f), provided that no severance fee is required under Rule 18-21.011, F.A.C., and the existing activity has a valid Board authorization; paragraphs (g); (h); (i), provided that no private residential multi-family dock or pier is constructed; or paragraph (k), provided that any channel markers delineate existing and authorized or permitted navigation channels. In addition, the activity must:

1. Be located outside of an Aquatic Preserve, Monroe County, a manatee “No Entry Zone” or “Motorboat Prohibited Zone” as specified in Chapter 68C-22, F.A.C., or lands under the jurisdiction or management of the Department’s Division of Recreation and Parks. However, seawall or riprap repair or replacement conducted in accordance with subparagraph 18-20.004(1)(e)7., F.A.C., and repair or replacement of docks and piers in accordance with Section 403.813(1)(d), F.S., and subparagraph 18-20.004(5)(a)6., F.A.C., if applicable, shall be exempt from this subparagraph and eligible for consent by rule;

2. Not be subject to any conservation easement or restrictive covenant of record prohibiting the activity;

3. Not be revenue-generating;

4. Comply with the provisions of paragraphs 18-21.004(1)(d) and (k) and subsections18-21.004(6) and (7), F.A.C.; and

5. Have been constructed in conformance with Board rules applicable at the time of construction, to qualify for repair or replacement.

(c) Letter of Consent. Written authorization is required for each of the following activities. These authorizations shall be subject to the payment of any applicable severance fees.

1. One minimum-size private residential single-family dock or pier per parcel.

2. Private residential single-family or multi-family docks, piers, boat ramps, and similar existing and proposed activities that cumulatively preempt no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's riparian shoreline, along sovereignty submerged land on the affected waterbody within a single plan of development (see "preempted area" definition in Rule 18-21.003, F.A.C.).

3. A private channel that provides access to an upland single-family or multi-family residential parcel and that measures no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's riparian shoreline along sovereignty submerged land on the affected waterbody within a single plan of development.

4. Activities that are exempt from the requirement to obtain a permit under Section 403.813(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l), (n), (p), or (t), F.S., but that are not eligible for consent by rule.

5. Construction, or replacement, of bulkheads, seawalls, or other such shoreline stabilization structures that extend no more than three feet waterward of the line of mean or ordinary high water.

6. Placement, replacement, or repair of riprap, groins, breakwaters, or intake and discharge structures no more than ten feet waterward of the line of mean or ordinary high water.

7. Unless addressed in a currently valid Board authorization, repair or replacement of a functional structure or activity, including maintenance dredging, in the same dimensions and for the same type of use.

8. Restoration and nourishment of naturally occurring sandy beaches, including borrow areas to be used for five years or less.

9. Artificial reefs or fish attractors that are constructed for public use.

10. Public docks or piers that are exempt from permit requirements under Section 403.813(1), F.S., or that qualify as minimum-size docks or piers or are less than or equal to the 10:1 preempted area to shoreline ratio; boat ramps; channels; or swimming areas, provided that all such structures or activities are owned and operated by governmental entities and any revenues collected are used solely for operation and maintenance of the structure or adjacent public recreational facilities.

11. Trimming or alteration of aquatic vegetation in accordance with a permit issued pursuant to Chapter 369 or 373, F.S.

12. Ski course buoys and ski jumps not associated with revenue-generating water skiing activities.

13. Minor activities or temporary structures which require a Part IV, Chapter 373, F.S., permit required for the removal of wrecked, abandoned or derelict vessels or structures, except for vessels or structures of archaeological or historical value relating to the history, government and culture of the state that are defined as historic properties in Section 267.021(3), F.S.

14. Emergency or other critical, time-sensitive activities necessary to enhance, protect or restore: public health, safety or welfare; utility service; the health of

fish, other aquatic life, or other animals; or recreational, commercial, industrial, agricultural, or other reasonable uses. Unless the activity otherwise qualifies for a letter of consent under the provisions of this rule, the activity shall require the applicable form of authorization as specified in this rule within one year.

15. Habitat restoration, enhancement, or permitted mitigation activities without permanent preemption by structures or exclusion of the general public, but excluding all mitigation banks.

16. Management activities associated with protection of threatened, endangered and special concern species, rookeries, artificial or natural reefs, parks, preserves, historical sites, scientific study activities, or habitat restoration or enhancement areas, provided that there is no permanent preemption by structures or exclusion of the general public.

17. Class II special events of not more than 30 days involving the construction of structures that are not revenue-generating and either preempt 1,000 square feet or less of sovereignty submerged lands or preempt no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's contiguous shoreline, along the affected sovereignty submerged land.

18. Federal projects conducted for the purposes stated in 43 USC 1311(d) or 1314 that enhance or maintain public navigation, national defense, international affairs, or interstate commerce, but not including the use of sovereignty submerged lands for other purposes, such as placement of spoil on state sovereignty submerged lands or non-water dependent activities.

(d) Lease. A sovereignty submerged land lease is required for the following activities.

1. Private residential single-family or multi-family docks or piers, other docks or piers, boat ramps, or other similar activities that do not qualify for a consent by rule or letter of consent.

2. Private residential multi-family docks designed or used to moor three or more vessels within aquatic preserves.

3. Any dock designed or used to moor ten or more vessels in Monroe County.

4. Commercial/industrial docks, as defined in Rule 18-18.004, F.A.C., in Biscayne Bay Aquatic Preserve, as required by paragraph 18-18.006(3)(c), F.A.C.

5. All revenue-generating activities, except as provided for in this chapter.

6. Registered or unregistered grandfather structures according to the provisions of Rule 18-21.00405, F.A.C.;

7. Oil and gas exploration and development.

8. Open-water mooring fields.

9. Mining.

10. A Class III single special event for which the applicant requests authorization to conduct a single event involving construction of no more than 50 new slips or a preempted area of no more than 50,000 square feet.

11. A Class IV special event for which the applicant requests authorization to conduct a single event that does not qualify as a Class III single special event or to conduct more than one special event during the lease term.

(e) Easement. A sovereignty submerged land easement is required for the following public or private activities.

1. Utility crossings and rights of way.

2. Road and bridge crossings and rights of way, including such structures built prior to the need to obtain an easement when proposed for modification or repair.

3. Groins, breakwaters, and shoreline protection structures, except when constructed as part of a docking facility that requires a lease.

4. Public navigation projects other than public channels.

5. Private channels that do not qualify for a letter of consent, including a channel that provides access to revenue-generating facilities or uplands.

6. Oil, gas and other pipelines.

7. Intake and discharge structures more than 10 feet waterward of the mean or ordinary high water line.

8. Spoil disposal sites.

9. Borrow areas that will be used for longer than five years for beach nourishment.

10. Public water management projects other than public channels.

11. Management activities, which include permanent preemption by structures or exclusion of the general public, associated with protection of threatened, endangered and special concern species, rookeries, artificial or natural reefs, parks, preserves, historical sites, scientific study activities, or habitat restoration or enhancement areas.

12. Treasure salvage.

13. Repair, replacement, or modification of a functional structure or activity constructed prior to that structure or activity being required to obtain an easement under this chapter.

(f) Use Agreement – is required for:

1. Geophysical testing on all private, State-owned, or Federal upland areas which involve any incidental crossing of sovereignty submerged lands; and

2. Geophysical testing in bays, estuaries, or Florida Territorial Waters seaward of the mean high water line and referred to herein as offshore testing.

3. A use agreement shall not be required:

a. When conducting seismic activity for well evaluation performed pursuant to paragraph 62C-26.007(3)(h), F.A.C.;

b. For incidental crossings when the geophysical operations are conducted entirely upon Trustees-owned uplands and a use agreement has been granted by the Division pursuant to Rule 18-2.015, F.A.C.; or

c. When geophysical operations are conducted by the current leaseholder upon land subject to a valid oil, gas or mineral lease granted by the State of Florida.

(2) All requests for purchases, disclaimers, and quitclaims of sovereignty submerged lands shall be processed in accordance with Rules 18-21.013 and 18-21.019, F.A.C.

(3) Requests for sales, exchanges, leases, and easements on sovereignty submerged lands shall be processed in accordance with the notice and hearing requirements of Section 253.115, F.S., except easements that qualify for a general permit or a noticed general permit under Chapter 373, F.S., provided that the proposed activity is not of heightened public concern. When noticing is required under Section 253.115, F.S., the applicant shall provide a list of names and addresses from the latest county tax assessment roll, of all property owners within a 500-foot radius of the proposed lease or easement boundary in mailing label format. In lieu of the Board providing notice of application for lease or easement, an applicant may elect to send the notice, provided the notice is sent by certified mail, with the return-receipt card addressed to the Department or to DACS, as applicable.

Rulemaking Authority 253.03(7), 253.73 FS. Law Implemented 253.001, 253.68, 253.77 FS. History - New 9-26-77, Formerly 16C-12.01, 16Q-17.01, Amended 3-27-82, 8-1-83, Formerly 16Q-21.05, 16Q-21.005, Amended 1-25-87, 3-15-90, 10-15-98, 3-8-04, 9-1-09.

18-21.0051 Delegation of Authority.

(1) The purpose of this section is to delegate certain review and decision-making authority of the Board, regarding the use of sovereignty submerged lands, to the Secretary of the Department of Environmental Protection, the Commissioner of Agriculture, and the Governing Boards of the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District, as applicable.

(2) The Secretary of the Department of Environmental Protection and the Governing Boards of the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District are delegated the authority to review and take final agency action on applications to use sovereignty submerged lands when the application involves an activity for which that agency has permitting responsibility, as set forth in the respective operating agreements between the Department and the water management districts identified in subsection 62-113.100(3), F.A.C., unless the final agency action is to approve any of the following proposed activities:

(a) Docking facilities with more than 50 slips, and additions to existing docking facilities where the number of proposed new slips exceeds 10% of the existing slips and the total number of existing and proposed additional slips exceeds 50;

(b) Docking facilities having a preempted area, as defined in Rule 18-21.003, F.A.C., of more than 50,000 square feet, and additions to existing docking facilities where the size of the proposed additional preempted area exceeds 10% of the existing preempted area and the total of existing and proposed additional preempted area exceeds 50,000 square feet;

(c) Private easements of more than 5 acres, except for the installation of telecommunication lines and associated conduits in special consideration areas designated in paragraph 18-21.004(2)(l), F.A.C., in which case, prior to taking final agency action for such installations, staff will provide the Board with notice and an opportunity to request that the application be placed on the Trustees agenda;

(d) The establishment of a mitigation bank; or

(e) Applications involving approval of an exception to the maximum cumulative preemption for a private residential multi-family dock or pier in accordance with subparagraph 18-21.004(4)(b)2., F.A.C.

(3) The Commissioner of Agriculture is delegated the authority to review and take final agency action on behalf of the Board on applications to use sovereignty submerged lands and water columns for any activity for which the Department of Agriculture and Consumer Services has responsibility pursuant to Sections 253.67-.75 and Section 597.010, F.S., except the Board shall retain authority to grant the following:

(a) Establishing any areas for leasing, new leases, expanding existing lease areas, or changing the type of lease activity in existing leases; and

(b) Authorizing aquacultural activities in a managed area, such as state parks, aquatic preserves, marine sanctuaries, or research reserves, when the Department of Environmental Protection has determined that the proposed aquaculture activity is inconsistent with the management goals and objectives of that area.

(4) The Secretary of the Department of Environmental Protection and the Governing Boards of the specified Water Management Districts and the Commissioner of Agriculture may further delegate review and decision making authority for activities authorized under Rule 18-21.002, F.A.C., to staff within their respective agencies.

(5) The delegations set forth in subsections (2) and (3) are not applicable to a specific application for a request to use sovereignty submerged lands under Chapter 253 or 258, F.S., where one (1) or more members of the Board, the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or the appropriate water management district determines that such application is reasonably expected to result in a heightened public concern, because of its potential effect on the environment, natural resources, or controversial nature or location.

Rulemaking Authority 253.002, 253.73 FS. Law Implemented 253.002, 253.67-.75, 597.010 FS. History - New 10-12-95, Amended 10-29-03, 10-27-05, 9-1-09.

18-21.0056 Procedures for the Review of Applications to Conduct Geophysical Testing.

(1) Use agreements for geophysical testing involving incidental crossings.

(a) Prior to recommending the execution of a use agreement, the Division shall:

1. Have received from the Bureau of Geology a permit application to conduct geophysical testing which is being processed by the Department;

2. Have received all required fees;

3. Have received all information pursuant to Rule 18-21.0077, F.A.C.;

4. Solicit comments from agencies whose jurisdiction may be affected, including but not limited to the Department of Agriculture, Division of Forestry, the Department of Environmental Protection, if applicable, the Division of Water Resource Management, Bureau of Geology, the Division of Recreation and Parks, and the Fish and Wildlife Conservation Commission; and

5. Ensure that all activities associated with the proposed operations will not conflict with an established public use and the protection of wildlife, including endangered and threatened species, and that the activity is consistent with adopted management criteria.

(b) Use agreements shall be approved, approved with conditions, or denied by the Board. Standards for approval shall be based on the review criteria of paragraph 18-21.0056(1)(a), F.A.C.

(c) Use agreements shall commence on the date the geophysical permit is issued by the Department, and shall continue for a period not to exceed one year unless terminated pursuant to paragraph (2)(e). A use agreement shall be renewed for up to one additional year if (1) the applicant has complied with all terms and conditions of an approved use agreement, and (2) the geophysical permit is renewed.

(2) Use agreements for offshore testing.

(a) Prior to recommending the approval, modification or denial of a use agreement, the Division shall:

1. Have received from the Bureau of Geology a permit application to conduct geophysical testing which is being processed by the Department;

2. Have received all required application fees;

3. Have received all information pursuant to Rule 18-21.0077, F.A.C.;

4. Solicit comments from agencies whose jurisdiction may be affected, including but not limited to the Division of Water Resource Management, the Office of Coastal and Aquatic Managed Areas, the Fish and Wildlife Conservation Commission;

5. Solicit and receive written comments from the Office of the Governor addressing the proposed activity’s consistency with the State’s Outer Continental Shelf oil and gas leasing policy; and

6. Ensure that all activities associated with the proposed operations will not conflict with a public use, nearshore management policies, the protection of marine resources including endangered and threatened species, and adopted management criteria.

(b) All use agreements for offshore geophysical testing shall be approved, approved with conditions, or denied by the Board. Standards for approval shall be based on review criteria of paragraph 18-21.0056(2)(a), F.A.C.

(c) Use agreements shall commence on the date the geophysical permit is issued by the Department, and shall continue for a period not to exceed one year unless terminated pursuant to paragraph (e) below. A use agreement shall be renewed for up to one additional year if (1) the applicant has complied with all terms and conditions of an approved use agreement, and (2) the geophysical permit is renewed.

(d) Data Submission and Examination.

1. The applicant shall submit a field operations report to the Department of Environmental Protection, Bureau of Geology, within thirty days after the completion of any survey activities conducted under a use agreement. The report shall contain the following:

a. A narrative description of the work performed, including the types of data obtained and the types of logs produced from the operations;

b. Charts, maps or plats indicating the areas in which any exploration was conducted, specifically identifying the lines of geophysical traverses and/or locations where geological exploration was conducted accompanied by a reference sufficient to identify the data produced from each activity;

c. The dates and times during which the actual exploration was performed;

d. The nature and location of any environmental hazards created by the operations under an approved use agreement;

e. A description of any damage to or loss of state property which resulted from the reported activities; and,

f. Such other information as requested by the Division that pertains to the operational components of the geophysical testing.

2. Upon written request, the applicant shall provide to the Bureau of Geology, at no cost, one copy of the information described in subsections a through e below if available. Where possible the information may be furnished in the form of paper copies as opposed to mylar, film, or tape. Duplicates shall be furnished upon request at cost of reproduction. The Bureau of Geology shall also have the right to inspect and/or copy, at cost of reproduction, factual and physical exploration results, logs, records, and any other processed records excluding interpreted data.

a. High resolution profiles including but not limited to bathymetry, side-scan sonar, and sub-bottom profiles.

b. Blackline or blueline paper copies of final stacked sections and migrated sections. Paper copies of sections chosen for State use shall be made at one-half scale, (2-1/2 inches per second).

c. Post-plot maps at a reasonable and appropriate scale for the dimensions of the survey and whenever possible a scale of 1:48,000 (1 inch equals 4,000 feet).

d. Copies of navigation tapes with narrative summary of accuracy of shot points and ship tracks.

e. Gravity data reduced or compiled in profile form; and Magnetometer data corrected for International Geomagnetic Reference Field in profile form whenever available. Data shall include how reductions and corrections were made.

3. In the event that ownership of information or data obtained under a use agreement is transferred from the applicant to a third party, or from a third party to another third party, the transferor shall notify the Bureau of Geology and shall require the receiving third party, in writing, to expressly agree to abide by the obligations of the applicant under subparagraph 18-21.0056(2)(d)2., F.A.C., as a condition precedent to the transfer of the information or data.

(e) The activities provided for in a use agreement may be suspended, in whole or in part, upon a finding by the Board that suspension of the activity is necessary to protect the public interest. Such suspension shall be effective upon receipt by applicant of a written or oral (to be confirmed in writing) notice thereof which shall indicate: (1) the extent of the suspension; (2) the reasons for this action; and, (3) any corrective or preventive measures to be taken by the applicant which are deemed necessary by the Board to abate hazards to the general public interest. The applicant shall take immediate action to comply with the provisions of the issued notice. Failure by the applicant to timely comply with the provisions of the issued notice shall cause the use agreement and the applicant's rights thereunder to immediately terminate. Rulemaking Authority 253.03(7) FS. Law Implemented 253.03, 253.431 FS. History - New 1-25-87.

18-21.007 Applications for Letter of Consent.

Applications for a letter of consent 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) A detailed statement of the proposed activity;

(5) Multiple boat slip facilities may require an affidavit certifying that the facility will not be a revenue generating/income producing facility;

(6) Two copies of a dimensioned site plan drawing(s) with the following requirements:

(a) Utilizing an appropriate scale on 8 1/2" × 11" size paper;

(b) Showing the approximate water's edge;

(c) Showing the location of the shoreline vegetation, if existing;

(d) Showing the location of the proposed structures and any existing structures;

(e) Showing the applicant's upland parcel property lines; and

(f) Showing the primary navigation channels or direction to the center of the affected waterbody.

(7) If dredging is proposed, an estimate of the number of cubic yards of sovereignty materials to be removed showing how the amount was calculated. Rulemaking Authority 253.03(7) FS. Law Implemented 253.03, 253.12, 253.77 FS. History - New 3-27-82, Formerly 16Q-21.07, 16Q-21.007, Amended 12-11-01.

18-21.0077 Applications for Use Agreements.

(1) Applications for use agreements for geophysical testing involving incidental crossings. The Bureau of Geology shall provide the Division a copy of all

geophysical testing permit applications. In addition to information contained in the permit application, the Division shall require the applicant to submit:

(a) The name and the telephone number of a representative of the applicant able to resolve multiple use conflicts;

(b) A $500 nonrefundable application processing fee for geophysical testing on all private and Federal uplands when any incidental crossing of sovereignty submerged lands occurs. If the application is part of a larger project involving state-owned uplands, no application fee for incidental crossing shall be required; and

(c) A certified statement providing authorization to the individual who will execute an approved use agreement on behalf of the applicant.

(2) Applications for use agreements for geophysical testing in offshore waters.

(a) The Bureau of Geology shall provide the Division a copy of all geophysical testing permit applications. In addition to information contained in the permit application, the Division shall require the applicant to submit:

1. The name of the vessel, the name of the ship's captain/designee, the ship's call signs and the specific radio channel which will be monitored by the vessel at all times during operations;

2. A letter certifying total mileage requested to be surveyed, delineating number of miles in water depth less than 35 feet and number of miles in 35-foot water depth and greater;

3. A certified statement providing authorization to the individual who will execute an approved use agreement on behalf of the applicant; and,

4. An $800 nonrefundable application processing fee payable to the Division.

(b) In addition to the other requirements of subsection 18-21.0077(2), F.A.C., the Division shall solicit and receive:

1. Written comments from the Office of the Governor addressing consistency of the proposed testing with the State's oil and gas leasing policy;

2. Written comments from the Bureau of Beaches and Wetland Resources if any of the proposed testing is within an aquatic preserve; and,

3. A biological assessment from the Department of Environmental Protection, if applicable.

Rulemaking Authority 253.03(7) FS. Law Implemented 253.03, 253.12, 253.77 FS. History - New 1-25-87.

18-21.008 Applications for Lease.

Applications for the following categories of leases are found in this section: standard, extended term, 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. 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"× 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 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) 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.

Rulemaking Authority 253.03(7) 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, 9-1-09.

18-21.0081 Grandfather Structure Applications. (Repealed)

Rulemaking Authority 253.03(7) FS. Law Implemented 253.03, 253.077 FS. History - New 8-1-83, Formerly 16Q-21.081, 16Q-21.0081, Amended 3-15-90, 8-10-05.

18-21.0082 Applications for Special Event Authorizations.

(1) Class II Consent of Use. Applications for Class II consent of use for special events shall include the following:

(a) Name, address and telephone number of applicant and applicant's authorized agent, if applicable;

(b) 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;

(c) A detailed statement of the proposed activity;

(d) An affidavit certifying that the special event will not be a revenue generating/income producing activity;

(e) Two copies of a dimensioned site plan drawing(s), with the following requirements:

1. Utilizing an appropriate scale on 8 1/2" × 11" size paper;

2. Showing the approximate water's edge;

3. Showing the location of the shoreline vegetation, if existing;

4. Showing the location of any existing or proposed structures and the boundary of the proposed preempted area;

5. Showing the upland parcel property lines and associated riparian rights lines of any riparian owners of adjacent uplands; and

6. Showing the primary navigation channels or direction to the center of the affected waterbody.

(f) A list of names and addresses of all riparian owners of adjacent uplands, verified by the County Property Appraiser's Office that these names came from the latest tax assessment rolls. Such owners shall be notified by certified mail of any application for a consent of use prior to approval by the Board. In lieu of the Board providing notice of the application, an applicant may elect to send the notice, provided the notice is sent by certified mail, with the return-receipt card addressed to the Department. "Riparian owners of adjacent uplands" are owners of upland property landward of the special event, where any point on the boundary of the preempted area of the special event, as identified in the application, is located within the upland owner's riparian rights area.

(g) Name, address, and telephone number of the owner of any marina to be utilized for the special event, and a copy of any existing sovereign submerged land lease for such marina, or the name of the governmental entity that is the riparian owner of the adjacent uplands, along with the address and telephone number of a contact person for the governmental entity.

(2) Class III Single Event Lease and Class IV Special Events Lease.

(a) Applications for Class III and IV leases for special events 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. A detailed statement of the proposed activity, including the sizes and types of vessels proposed to use the facility or associated with a special event, when applicable;

4. Name, address, and telephone number of the owner of any marina to be utilized for the special event, and a copy of any existing sovereign submerged land lease for such marina, or the name of the governmental entity that is the riparian owner of the adjacent uplands, along with the address and telephone number of a contact person for the governmental entity.

5. Two copies of a sketch, on 8 1/2" × 11" size paper, prepared, signed, and sealed by a registered professional engineer or registered surveyor and mapper. The sketch shall include the following information:

a. The location and dimensions of all proposed and existing structures, including mooring pilings, total number of existing and proposed slips, and the location of any fueling and sewage pumpout facilities within the proposed lease area;

b. The location of the approximate mean or ordinary high water line;

c. The proposed boundary of the preempted area, showing scaled 1927 or 1983 North American Datum (NAD) coordinates of the preempted area (or scaled from a USGS Quad Sheet or other comparable map), which includes: a description of the proposed preempted area; the section, township, range, county, and waterbody of the proposed location; the legal description of the riparian upland property adjacent to the area of sovereignty submerged lands proposed to be preempted by the event; and the square footage calculations of the proposed preempted area;

d. The linear footage of the riparian upland shoreline adjacent to the area of sovereignty submerged lands preempted by the event;

e. The upland parcel property lines and associated riparian rights lines of any riparian owners of adjacent uplands;

f. The primary navigation channels or direction to the center of the affected waterbody;

g. Distance from the riparian lines to any proposed structures;

h. If located in an aquatic preserve, show the condition (natural or seawall) of the shoreline along the lease area plus 1,000 feet on both sides;

i. North arrow and graphic scale; and

j. The boundaries, locations, and types of sensitive resources within the preempted area, such as denning, feeding, or breeding areas of threatened or endangered species; submerged vegetation beds and emergent shoreline vegetation; shellfish beds; and hardbottom communities such as coral.

6. A list of names and addresses of all riparian owners of adjacent uplands and all property owners within a 500-foot radius of the proposed preempted area, verified by the County Property Appraiser's Office, that these names came from the latest tax assessment rolls. Such owners shall be notified by certified mail of any application for a special event authorization prior to approval by the Board. In lieu of the Board providing notice of the application, an applicant may elect to send the notice, provided the notice is sent by certified mail, with the return-receipt card addressed to the Department. "Riparian owners of adjacent uplands" are owners of upland property landward of the special event, where any point on the boundary of the preempted area of the special event, as identified in the application, is located within the upland owner's riparian rights area. The Board also shall require the applicant to publish a notice of receipt of the application, at the applicant's expense, in a newspaper of general circulation within the affected area; proof of such publication shall be provided to the Board within 20 days of the date of publication.

7. Current local zoning and status of any local government approvals necessary for activities.

8. 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.

9. If the event will extend beyond the boundary of an existing lease, a copy of the existing lease.

10. Basis for computation of the special event fee including: the total square footage of preempted sovereign submerged land to be leased, and estimated gross rental income in accordance with Rule 18-21.011, F.A.C.

11. A schedule of the dates of requested preemption of sovereignty submerged lands.

(b) Whenever the estimated costs of removal of the structures and the fees due exceed $10,000, non-riparian applicants for Class III and IV leases shall provide evidence of financial resources to cover the costs of removal of temporary structures and payment of all fees due under Rule 18-21.011, F.A.C. Such evidence shall be updated prior to each special event for recurring special events. Proof of sufficient financial resources may be demonstrated by any one of, or a combination of, the following:

1. Posting of a surety or property bond with the Board equal to or exceeding the estimated cost of removal of the structures and all fees due;

2. Irrevocable letter of credit in the name of the Board in an amount equal to or exceeding the estimated cost of removal of the structures and all fees due;

3. Insurance or financial tests and corporate guarantees showing the applicant has sufficient financial resources to cover the estimated costs of removal of the structures and all fees due;

4. Submittal of a contract with a third party covering all phases of removal of structures and final site clean-up; or

5. An agreement allowing the Board to impose a lien against the real and personal property of the applicant for the unpaid costs and fees. The agreement shall include proof of ownership of such real and personal property, and the appraised unencumbered value of which shall equal or exceed the estimated cost of removal of the structures and all fees due under Rule 18-21.011, F.A.C.

However, such evidence of financial resources shall not be required when an applicant is a governmental entity or has previously demonstrated substantial compliance with the terms of any prior leases or authorizations from the Board for the five preceding consecutive special events or during the preceding five-year period.

(c) Class III and IV leases shall be subject to the following provisions:

1. A Class III single event lease is limited to a maximum of thirty days. A Class IV special events lease shall be available for a term of up to 5 years.

2. Class III and Class IV leases shall specify a period of 30 or fewer days within which any preemption for an event will occur.

3. No construction, activities, or preemption shall occur until a Class III single event lease is issued, or a Class IV special events lease or modified lease is executed.

4. Payment of the base fee or minimum fee, as applicable, plus any other fees required by Rule 18-21.011, F.A.C. For special events where the gross rental income fee exceeds the base fee or the minimum fee, as applicable, payment of any fee payment due in accordance with Rule 18-21.011, F.A.C. Provisions for making such payments shall be specified in the Class III or Class IV lease.

5. A Class III or IV lease shall not alter the terms and conditions of existing leases.

6. Reconfigurations of structures within the boundaries of the preempted area shall be allowed without a formal modification to the Class III or IV lease, provided the reconfiguration avoids areas of sensitive resources identified in the lease. A sketch of the reconfiguration shall be provided to the Board within 30 days of the end of special event period.

7. Where more than one event is authorized over the term of the Class IV special events lease, the lessee shall provide, not less than 120 days prior to each event after the initial event, a Special Event Certification (Form 18-21.900(2)) containing the following:

a. An updated schedule of dates for subsequent special events;

b. The names and addresses of any new property owners within 500 feet of the lease boundary for purposes of noticing in accordance with the procedures in subparagraph 18-21.0082(2)(a)6., F.A.C.;

c. An identification of any new riparian owners of adjacent uplands;

d. A statement of compliance with all the terms and conditions of the lease;

e. An identification of any proposed changes in the design of physical structures that will extend outside the lease boundary authorized by the existing lease or into areas of sensitive resources identified in the lease; and

f. An identification of any changes in the numbers, sizes, drafts, and types of vessels associated with the special event that exceed any limitations in the terms and conditions of the lease.

Rulemaking Authority 253.03(7), 253.0345, 253.73, 379.2341 FS. Law Implemented 253.03, 253.0345, 253.04, 253.115, 253.141, 253.77 FS. History - New 10-15-98.

18-21.009 Applications for Public Easement.

(1) Applications for easements across sovereignty submerged land for public purposes such as public utilities, bridges, and roads, shall include the following:

(a) Name, address, and telephone number of applicant and applicant's authorized agent;

(b) 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 a United States Geological Survey Quadrangle Map;

(c) Satisfactory evidence of sufficient upland interest to the extent required by paragraph 18-21.004(3)(b), F.A.C.

(d) A detailed statement of proposed use and satisfactory evidence of need for installation of telecommunication lines and associated conduits that are subject to the provisions of paragraph 18-21.004(2)(l), F.A.C. If the applicant is a local governing body, the request shall be by official resolution or minutes;

(e) Two prints of a survey prepared by a Licensed Florida Surveyor and Mapper in accordance with Chapter 61G17, F.A.C., and meeting the following requirements:

1. Utilizing an appropriate scale on 8 1/2" × 11" size paper;
2. Showing boundaries of the parcel sought;
3. Showing ownership lines of the riparian uplands;
4. Showing the line of ordinary or mean high water;
5. Showing the location of the shoreline vegetation, if existing;
6. Showing the location of any proposed or existing structures; and
7. Including a legal description and acreage of the parcel sought. However, for applications received after October 29, 2003 for telecommunication lines and associated conduits in special consideration areas designated in paragraph 18-21.004(2)(l), F.A.C., a sketch of the location of the installation shall be submitted provided that an as-built survey and legal description are submitted upon completion of construction. Such sketch shall be on NOAA nautical charts using the smallest scale available for the portion of the route shown;

(f) Noticing information as required by subsection 18-21.005(3), F.A.C.;

(g) Payment of a $500.00 non-refundable processing fee. This 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. However, a $15,000 non-refundable processing fee is required for each application to install telecommunication lines and associated conduits received after October 29, 2003 that are subject to the provisions of paragraph 18-21.004(2)(l), F.A.C., at a landing site, including applications to install telecommunication lines in previously authorized empty conduits. The processing fee for telecommunication lines and associated conduits 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. The processing fee may be waived for state agencies established pursuant to Chapter 20, F.S., and local governments;

(h) If dredging is proposed, an estimate of the number of cubic yards of sovereignty material to be removed showing how the amount was calculated; and

(i) Current local zoning and status of any local government approvals necessary for activities.

(2) Easements are renewable, modifiable, and assignable subject to approval by the Board under this rule; compliance with applicable statutes and rules of the Board in effect at the time of easement renewal; payment of a $500.00 non-refundable processing fee; and payment of all fees assessed under Rule 18-21.011, F.A.C. The processing fee for renewal, modification or assignment, 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.

(3) All easements across sovereignty lands shall be subject to reverter upon failure of the applicants to use the parcels sought as proposed in the applications.

(4) The terms of the easements shall be limited to the life of the proposed project or amortization of the improvements.
Rulemaking Authority 253.03(7) FS. Law Implemented 253.03(11), 253.115, 253.12 FS. History - New 9-26-77, Formerly 16C-12.09, 16Q-17.09, Revised 3-27-82, Formerly 16Q-21.09, 16Q-21.009, Amended 12-11-01, 10-29-03, 3-8-04, 8-10-05.

18-21.010 Applications for Private Easement.

(1) Applications for easements across sovereignty submerged lands for private purposes shall include the following:

(a) Name, address and telephone number of applicant and applicant's authorized agent;

(b) 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 a United States Geological Survey Quadrangle map;

(c) Satisfactory evidence of sufficient upland interest of the extent required by paragraph 18-21.004(3)(b), F.A.C.;

(d) A detailed statement of proposed use and satisfactory evidence of need for installation of telecommunication lines and associated conduits that are subject to the provisions of paragraph 18-21.004(2)(l), F.A.C.;

(e) A statement evidencing that the easement sought is in the public interest;

(f) Two prints of a survey prepared by a Licensed Florida Surveyor and Mapper in accordance with Chapter 61G17, F.A.C., and meeting the following requirements:

1. Utilizing an appropriate scale on 8 1/2" × 11" size paper (unless a larger size is necessary to provide sufficient clarity and detail);
2. Showing boundaries of the parcel sought;
3. Showing ownership lines of the riparian uplands;
4. Showing the line of ordinary or mean high water;
5. Showing the location of the shoreline vegetation, if existing;
6. Showing the location of any proposed or existing structures; and
7. Including a legal description and acreage of the parcel sought. However, for applications received after October 29, 2003 for telecommunication lines and associated conduits in special consideration areas designated in paragraph 18-21.004(2)(l), F.A.C., a sketch of the location of the installation shall be submitted provided that an as-built survey and legal description are submitted upon completion of construction. Such sketch shall be on NOAA nautical charts using the smallest scale available for the portion of the route shown;

(g) Noticing information as required by subsection 18-21.005(3), F.A.C.;

(h) Current local zoning and status of any local government approvals necessary for activities;

(i) Payment of a $500.00 non-refundable processing fee. This 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. However, a $15,000 non-refundable processing fee is required for each application to install telecommunication lines and associated conduits received after October 29, 2003 that are subject to the provisions of paragraph 18-21.004(2)(l), F.A.C., at a landing site, including applications to install telecommunication lines in previously authorized empty conduits. The processing fee for telecommunication lines and associated conduits 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;

(j) If dredging is proposed, an estimate of the number of cubic yards of sovereignty material to be removed showing how the amount was calculated; and

(k) If the application is for an easement of right-of-way for private access from a public road to lands of the applicant, proof of approval from the agency having jurisdiction over the public road.

(2) Easements are renewable, modifiable and assignable, subject to approval by the Board under this rule; compliance with applicable statutes and rules of the Board in effect at the time of easement renewal; payment of a $500.00 non-refundable processing fee; and payment of all fees assessed under Rule 18-21.011, F.A.C. The processing fee for renewal, modification or assignment 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.

(3) Applications shall be granted upon such terms and conditions, including payment of the value of the easement, if any, that the board sees fit. If required by the board, full payment shall be made within 90 days after receipt of notification that the easement has been granted by the board or the granting of the easement shall be invalid.

(4) All easements across sovereignty lands shall be subject to reverter upon failure of the applicant to use the parcels sought as proposed in the applications.

(5) The terms of all the easements shall be limited to a reasonable period of time related to the life of the proposed project or amortization of the improvements. Rulemaking Authority 253.03(7) FS. Law Implemented 253.03(11), 253.115, 253.12 FS. History - New 12-20-78, Formerly 16C-12.10, 16Q-17.10, Revised 3-27-82, Formerly 16Q-21.10, 16Q-21.010, Amended 12-11-01, 10-29-03, 3-8-04, 8-10-05, 4-14-08.

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 base fee, or the minimum annual fee, whichever is greater, and shall include discounts, surcharges, and other payments as provided in paragraph 18-21.011(1)(b), F.A.C. 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. 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.

3. For new leases, the first annual lease fee shall be the base fee or the minimum 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/hom/pdf/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 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, except for registered or unregistered grandfathered structures being converted to a lease. For all lease expansions, a surcharge also shall be charged on the portion of the lease fee that applies to the expansion area. This surcharge is a 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.

13. 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 wetslips shall be assessed a one-time premium surcharge payment. 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 leases with the one-time premium lease condition and to new leases approved by the Board after September 6, 1987, 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 50 percent open to the public on a first come, first served basis;

g. Docking facilities built before September 6, 1987, 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, 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)(l), 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.

(c) The fee for private easements for telecommunication lines and associated conduits that are subject to the provisions of paragraph 18-21.004(2)(l), 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) 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. Rulemaking Authority 253.03(7), (11) 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, 9-1-09.

18-21.012 Spoil Islands.

(1) No spoil islands shall be developed except upon a clear showing that the development is in the public interest and hardship would result if the development was not authorized.

(2) Proposals for public development of spoil islands may be authorized after comments have been solicited and received from the appropriate public agencies determining that the public interest would be served by the development.

(3) Unauthorized structures that have been constructed on spoil islands shall be removed. The procedure for removal shall be as follows:

(a) The individual claiming a possessory interest in any structure shall be served notice by certified mail that he is trespassing and that he must remove the structure within 120 days of receipt of the notice.

(b) If the individual fails or refuses to remove the structure within 120 days of receipt of the notice, the board shall have the structure removed at the individual’s expense.

(c) If the individual cannot be located, notice of trespass and intent to remove the structure shall be posted on the structure for 120 days prior to removal.

(4) Continuing human habitation of any spoil islands is prohibited.

Rulemaking Authority 253.03(7) FS. Law Implemented 253.03, 253.115 FS. History - New 9-26-77, Formerly 16C-12.05 and 16Q-17.05, Revised 3-27-82, Formerly 16Q-21.12, 16Q-21.012.

18-21.013 Applications to Purchase Filled Lands Adjacent to Riparian Uplands.

(1) Applications to purchase state-owned submerged lands that have been filled and which are adjacent to riparian uplands may be made by the riparian owners only. The Division shall reject applications that do not comply with this rule. If an application satisfies all the criteria of this rule, the Division shall send the application to the Board for final determination regarding the sale of the filled lands. The following shall be included in each application:

(a) Name and address of the applicant;

(b) Two prints of a survey prepared, signed, and sealed by a person properly licensed by the State of Florida Board of Land Surveyors or an agent of the federal government approved by the department clearly showing:

1. The boundaries of the parcel sought;

2. Land tie referenced, by ground survey, to an established accessible section corner, subsection corner, other U.S. Government Land Office survey corner, or other controlling corner(s);

3. Boundary lines of the applicant’s adjacent uplands;

4. Existing mean high water line, surveyed and approved in accordance with Chapter 177, Part II, F.S., between the applicant’s uplands and the parcel sought extending 1,000 feet from both sides of the parcel;

5. U.S. Government Land Office meander line;

(c) Five maps, no larger than 8 1/2" × 14" in size, showing the location of the parcel sought for purchase. These maps need not be certified;

(d) Legal description and acreage of the filled parcel;

(e) Aerial photograph showing the date of flight, if available, with the parcel sought identified thereon;

(f) One copy of the recorded subdivision plat with any dedication data, if the applicant’s uplands are part of the subdivision;

(g) Satisfactory evidence of title in the applicant to the riparian uplands;

(h) Statement of the applicant’s proposed use of the parcel sought;

(i) Statement evidencing that the sale of the parcel is in the public interest;

(j) Names and addresses, as shown on the latest county tax assessment roll, of all owners of land lying within 1,000 feet of the parcel sought, certified by the county appraiser; and

(k) A non-refundable processing fee of $200 shall accompany each application, except for applications from state agencies.

(2) If the parcel sought is located in Pinellas or Sarasota County, the applicant shall simultaneously file an application with the respective water and navigation control authority having jurisdiction over the parcel.

(3) When state-owned submerged lands have been filled without authority after June 10, 1957 (state-owned submerged lands filled prior to June 11, 1957 are addressed in Rule 18-21.019, F.A.C.), except for lands filled before July 1, 1975 that satisfy all of the requirements of Section 253.12(9), F.S., the Board will consider the following options and choose the one that is most in the public interest.

(a) Direct the fill be removed by or at the expense of the applicant;

(b) Direct the fill remain as state-owned and have it surveyed at the expense of the applicant; or

(c) Sell the filled lands. The following sale prices shall be recommended by the Department to the Board:

1. Two times the present value of the lands determined by an approved appraisal excluding building improvements if the unauthorized filling was done by the applicant's predecessor in title after June 10, 1957.

2. Three times the present value of the lands determined by an approved appraisal excluding building improvements if the unauthorized filling was done by the applicant after June 10, 1957.

(4) Full payment for the deed shall be made within 90 days after notification of confirmation of the sale by the board or the sale shall be invalid.

Rulemaking Authority 253.03, 253.12, 379.2341 FS. Law Implemented 253.115, 253.12 FS. History - New 9-26-77, Formerly 16C-12.04, 16Q-17.04, Revised 3-27-82, Formerly 16Q-21.13, 16Q-21.013, Amended 4-14-08.

18-21.019 Applications for Disclaimers, Quitclaim Deeds or Certificates to Clear Title to Filled Formerly Sovereignty Lands and for Disclaimers for Lands Lost Due to Avulsion or to Reclaim Lands Lost Due to Artificial Erosion or Artificial Erosion and Avulsion.

Applications for Disclaimers, Quitclaim Deeds or Certificates to Clear Title to Filled Formerly Sovereignty Lands and for Disclaimers for Lands Lost Due to Avulsion or to Reclaim Lands Lost Due to Artificial Erosion or Artificial Erosion and Avulsion.

(1) Disclaimers to Confirm Title of Formerly Sovereignty Lands Filled Prior to May 29, 1951:

(a) Pursuant to the provisions of Section 253.129, F.S., applicants for disclaimers to confirm title of formerly sovereignty lands filled prior to May 29, 1951 (prior to June 11, 1957, in Dade and Palm Beach Counties), or subsequent to these dates under authority of a U.S. Army Corps of Engineers permit issued prior to these dates, may apply to the Board of Trustees of the Internal Improvement Trust Fund.

(b) Applications for a disclaimer must be made on DEP Form #63-031(16), effective date August 22, 1996, titled "Application for Disclaimers to Confirm Title of Formerly Sovereignty Lands" which is hereby incorporated by reference. Applications can be obtained from the address as stated in subsection 18-21.019(6), F.A.C.

(2) Quitclaim Deeds to Clear Title of Formerly Sovereignty Lands Filled after May 29, 1951, but prior to June 11, 1957:

(a) Pursuant to the provisions of Section 253.12(6), F.S., applicants for quitclaim deeds to clear title of formerly sovereignty lands filled after May 29, 1951, but prior to June 11, 1957 (except in Dade and Palm Beach Counties), or subsequent to these dates under authority of a U.S. Army Corps of Engineers permit issued prior to these dates, may apply to the Board of Trustees of the Internal Improvement Trust Fund.

(b) Applications for quitclaim deeds must be made on DEP Form #63-032(16), effective date August 22, 1996, titled "Application for Quitclaim Deed to Clear Title of Formerly Sovereignty Lands" which is hereby incorporated by reference. Applications can be obtained from the address stated in subsection 18-21.019(6), F.A.C.

(3) Certificate Documenting Waterward Boundary Line as of July 1, 1975, of Filled Tidelands:

(a) Pursuant to the provisions of Sections 253.12(9) and (10), F.S., applications for a certificate describing the waterward boundary of that parcel as of July 1, 1975, may be requested from the Board of Trustees of the Internal Improvement Trust Fund by the owner of a parcel of land that borders on a tidally influenced, natural waterbody.

(b) Applications for a certificate must be made on DEP Form #63-030(16), effective date August 22, 1996, titled "Application for Recordable Document for Lands Filled Prior to July 1, 1975" which is hereby incorporated by reference. Applications can be obtained from the address stated in subsection 18-21.019(6), F.A.C.

(4) Disclaimer Due to an Avulsive Event:

(a) The Board of Trustees shall issue a disclaimer to the upland riparian or littoral owner of record for privately-owned lands which are submerged as a result of an avulsive event only if:

1. The land for which the disclaimer is sought was located above the line of mean or ordinary high water on a date not more than five years prior to the date the application is filed with the Board;

2. The land for which a disclaimer is sought was lost due to an avulsive event; and

3. The lands to be reclaimed do not exceed one acre in size.

(b) Applications for a disclaimer must be made on DEP Form #62-069(16), effective date August 22, 1996, titled "Application for Disclaimer for Lands Lost Due to Avulsion" which is hereby incorporated by reference. Applications can be obtained from the address stated in subsection 18-21.019(6), F.A.C.

(5) Quitclaim Deeds as a Result of Artificial Erosion or Artificial Erosion and Avulsion:

(a) The Board of Trustees shall permit sovereign, submerged lands that were formerly privately-owned uplands but which are submerged as a result of artificial erosion or artificial erosion and avulsion to be reclaimed by the upland riparian or littoral owner of record only if:

1. The area adjacent to the eroded lands is already substantially bulkheaded or armored;

2. The toe of the reclaimed land or associated armoring extends no further waterward than adjacent properties;

3. The reclamation will not, on the average, relocate the line of mean or ordinary high water more than 30 feet waterward of the current line;

4. The land to be reclaimed does not exceed one-half acre in size;

5. The land to be reclaimed is not located within an aquatic preserve; and

6. The sale is in the public interest.

(b) Applications for a quitclaim deed must be made on DEP Form #62-068(16), effective date August 22, 1996, titled “Application to Purchase Lands Lost Due to Artificial Erosion or Artificial Erosion and Avulsion” which is hereby incorporated by reference. Applications can be obtained from the address stated in subsection 18-21.019(6), F.A.C.

(c) Where the Board of Trustees permits the upland property owner to reclaim lands lost due to artificial erosion or artificial erosion and avulsion, it shall do so by issuing a quitclaim deed to the property owner conditioned upon receipt of payment as determined pursuant to paragraph (f) below.

(d) The quitclaim deed shall contain a reverter which requires the deeded property to be reclaimed within one year of the date of issuance of the quitclaim deed. Failure to reclaim the land within the specified time period shall cause title to the property to automatically revert to the Board of Trustees.

(e) The Board of Trustees shall also reserve lateral public access across the land to be deeded when the area has historically been used by the public for access.

(f) The consideration for the sale of such lands shall be derived from the following formula: the number of square feet to be conveyed times the current year’s per square foot assessed value of the owner’s adjacent upland property in its unimproved state. The Board of Trustees shall reduce the consideration for sale if such reduction is in the public interest as defined in subsection 18-21.003, F.A.C.

(6) Applications can be obtained from the following address:

Department of Environmental Protection
Division of State Lands
Bureau of Survey and Mapping
Title and Land Records Section
Mail Station #108
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

(7) A non-refundable processing fee of $500.00 shall be required for each application submitted.

Rulemaking Authority 253.03(7) FS. Law Implemented 253.03, 253.12, 253.43, 253.129 FS. History - New 11-1-95, Amended 4-17-96, 4-13-98.

18-21.020 Aquacultural Activities.

(1) Intent – It is in the state's economic, resource enhancement, and food production interest to promote aquacultural production of food and non-food aquatic species by facilitating the review and approval processes for authorizing the use of sovereignty submerged lands and water columns for aquacultural purposes. Aquaculture development should be fostered when the aquaculture activity is consistent with state resource management goals, proprietary interest, environmental protection, the state aquaculture plan, and the public interest, as expressed in Section 258.42, F.S.

(2) Forms of authorization – For the purpose of Rules 18-21.020, 18-21.021 and 18-21.022, F.A.C., conducting aquacultural activities on sovereignty submerged lands and in the water column shall be authorized by an aquaculture lease, an aquaculture letter of consent, or an aquaculture management agreement.

(a) An aquaculture lease is required for all revenue-generating aquacultural activities conducted on or over sovereignty submerged lands, except those aquacultural activities associated with an aquaculture facility that qualifies for an aquaculture letter of consent pursuant to subsection 18-21.020(5), F.A.C., or an aquaculture management agreement pursuant to subsection 18-21.020(6), F.A.C.

(b) A letter of consent shall be issued for aquaculture activities that meet the requirements of subsection 18-21.020(5) and Chapter 5L-3, F. A. C.

(c) An aquaculture management agreement shall be issued for public and private entities to conduct certain aquacultural activities for educational, scientific, demonstration and experimental purposes when such activities meet the requirements of subsection 18-21.020(6), F.A.C., and education is the primary objective.

(3) Aquaculture general standards and criteria – The following standards and criteria shall be used in determining whether to authorize, authorize with conditions or modifications, or deny all requests to conduct aquacultural activities on sovereignty submerged lands.

(a) Aquacultural activities on sovereignty submerged lands or water columns shall be authorized only when the proposed activity has been determined to be a water dependent aquaculture activity and upon such conditions that protect the public interest.

(b) DACS shall consider location of the site, water body, water depth, navigation and safety hazards, channels, distance from shore, presence of fish and wildlife habitat, presence of submerged resources, threatened and endangered species, presence of threatened and endangered species habitat, user conflicts, and resource management when reviewing a request for an aquaculture lease, an aquaculture letter of consent, or an aquaculture management agreement.

(c) Aquacultural activities shall not prevent ingress and egress of vessels in marked or unmarked channels.

(d) All aquaculture leases, aquaculture letters of consent, or aquaculture management agreements for aquacultural activities on sovereignty submerged lands shall contain such terms, conditions and restrictions as deemed necessary by the Board to protect and manage sovereignty lands.

(e) The management policies provided in paragraphs 18-21.004(1)(e), (g), (h), and (k), F.A.C., shall be applied when considering whether to authorize aquacultural activities on sovereignty submerged lands. However, paragraph 18-21.004(1)(k), F.A.C., shall not apply to applications for aquaculture activities which request the exclusive use of the water bottom for cultivation adjacent to unbridged, undeveloped coastal islands.

(f) The management policies provided in paragraphs 18-21.004(2)(e), (f), (g), and (h), F.A.C., involving filling, shoreline stabilization, or severance of material shall be applied when considering whether to authorize aquacultural activities on sovereignty submerged lands.

(g) Aquacultural activities on sovereignty submerged lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat, including: sea grasses, endangered and threatened species, wetland vegetation, and water quality.

(h) Authorizations under this rule shall prohibit the cultivation of non-indigenous, or hybrids of non-indigenous, plants and animals.

(i) Riparian rights shall be protected pursuant to subsection 18-21.004(3), F.A.C.

(j) Authorization of aquacultural activities on sovereignty submerged lands, including aquatic preserves, shall be consistent with Chapters 18-18 and 18-20, F.A.C., and Section 258.42, F.S., when applicable.

(k) Upon issuance of an aquaculture lease or an aquaculture management agreement, DACS shall send a copy of the document and accompanying survey to the Title and Land Records Section, Division of State Lands in the Department of Environmental Protection for filing in the permanent title records of the Board.

(l) No authorization, other than a management agreement, shall be issued for a parcel within a state park boundary.

(m) Aquacultural activities that are conducted in accordance with best management practices adopted under Chapter 5L-3, F.A.C., are exempt from the provisions of Rule 18-21.00401, F.A.C. Activities for which best management practices have not been adopted pursuant to Chapter 5L-3, F.A.C., and require a permit under Part IV of Chapter 373, F.S. shall be subject to concurrent review in accordance with Rule 18-21.00401, F.A.C., and provided that DACS and the Department of Environmental Protection shall issue a joint recommended consolidated intent. Application for an aquaculture authorization will be submitted to DACS and the joint application for an environmental resource permit shall be submitted to the Department of Environmental Protection as required.

(n) Applications for aquaculture docks in the Florida Keys shall comply with the provisions in Rule 18-21.0041, F.A.C.

(o) Applications for aquaculture docks shall include a description of proposed aquacultural activities and activity-specific structures to be placed on the dock. Structures must be directly related to specific aquaculture activities and shall be limited to roofs and shade cloth to protect culture systems from sunlight and other adverse climatic conditions and depredation; chain link and similar fences to prevent

depredation, prevent public access, and provide security and safety; raceways and culture systems that contain animals during hatchery and nursery operations. Solid enclosures of any kind are prohibited.

(4) Specific standards and criteria for aquaculture leases. Leased areas shall comply with the following:

(a) An aquaculture lease is only to be used to conduct aquacultural activities on sovereignty submerged lands and the overlying water column, or for activities associated with an on-shore aquaculture facility. Allowable aquaculture activities on an on-shore aquaculture facility or aquaculture dock include hatchery and nursery cultivation systems, intake and discharge pipes, pumps, loading and off-loading aquaculture products, and the mooring of vessels used by aquaculture producers in planting, growing, harvesting, and transporting aquacultural products.

(b) Aquaculture lease applications shall require coordinated review pursuant to Rule 18-21.021, F.A.C., to ensure that the proposed sites are suitable for aquacultural activities.

(c) When the leased area is within an aquatic preserve, research reserve, marine sanctuary, or state park, the activity shall be compatible with the managed area's management plan, or prevailing management policies when a management plan has not been developed, and consistent with Sections 258.42 and 373.406, F.S., as determined by the coordinated review required in subparagraph 18-21.021(1)(f)2., F.A.C.

(d) DACS shall recommend that the Board create a high-density lease area when it receives ten or more individual lease applications in the same water body within a six month period to encourage regional aquacultural and economic development, facilitate resource management, reduce potential adverse environmental impacts, and reduce user conflicts.

(e) Riparian rights shall not be infringed upon. An aquaculture lease area for a nonriparian applicant shall not be approved when the distance is less than or equal to 100 feet waterward of mean or ordinary high water or less than or equal to 100 feet waterward of existing structures and permitted activities on sovereignty lands, unless the applicant obtains a letter of concurrence from the upland riparian owner. The Board shall establish greater setbacks to protect riparian rights when upland uses, ingress and egress, or activities on or over sovereignty submerged lands would be limited by the proposed aquaculture activity.

(f) Aquaculture leases shall contain provisions to ensure that the lease area is marked and that markers are maintained for the term of the lease. Such marking shall be adequate to inform the public of the activity and assist the leaseholder in identifying potential navigation and safety hazards.

(g) The leased area in aquaculture leases shall comply with the following:

1. A setback of 25 feet from the riparian lines of adjacent properties shall be required unless a letter of concurrence from the adjacent property owners waives the setback requirement.

2. Setbacks from other activities, channels or structures shall also be required, as needed, to ensure safety, facilitate enforcement abilities and ensure resource management.

3. The leased area shall not be approved for a parcel larger than ten acres for oysters or five acres for clams, unless the lease is a voluntary conversion of a shellfish lease issued under Section 597.010, F.S. The Board shall approve a larger lease size if it determines, based on the applicant's business plan and ability to develop a larger parcel, that additional area can be supported by the applicant.

(h) An aquaculture lease, an aquaculture management agreement, or a shellfish lease is required for the relay of shellfish from polluted waters for purification, unless a site is specifically designated by DACS for such purposes. Relaying activities on leased areas shall be conducted pursuant to Section 597.010(19), F.S.

(i) An aquaculture lease for culturing hard clams or oysters shall not be granted in areas where, at the time of inspection, DACS determines that the lease would preempt public access to harvestable resources of hard clams or oysters; harvestable resources shall be established as:

1. More than five legal-size clams per square meter over more than fifty percent of the proposed lease area; or

2. A natural oyster reef covering more than 100 square feet within the proposed lease area.

(j) The Board shall impose additional standards and criteria for aquaculture leases when necessary to enhance resource management, as provided in subsection 18-21.004(2), F.A.C., and to protect riparian rights and public safety.

(k) Aquaculture leases for docks shall be placed on sovereignty submerged lands designated as Resource Protection Area 3 when such areas are available and will not result in substantial reductions in proposed operations. Construction of docks and associated aquacultural operations on sovereignty submerged lands designated as Resource Protection Area 2 shall be authorized according to special conditions which minimize adverse environmental impacts. Construction of docks and associated aquacultural operations on sovereignty submerged lands designated as Resource Protection Area 1 shall be avoided, except under special circumstances as stated in this chapter. Docks shall not terminate in a Resource Protection Area 1 or 2, however main access docks will be allowed to pass through Resource Protection Areas 1 and 2 to reach an acceptable Resource Protection Area 3 when reasonable assurances are provided that such crossing will not generate significant adverse environmental impacts. Resource Protection Areas are defined in Rule 18-20.003, F.A.C. Special lease conditions shall be approved by the Board before a dock is authorized on an aquaculture lease located in a Resource Protection Area 1 or 2; the Board shall consider special circumstances such as: lack of practicable alternatives, compatibility with the aquatic preserve management plans, and compliance with special lease conditions.

(5) Specific standards and criteria for an aquaculture letter of consent.

(a) Use of sovereignty submerged lands for aquacultural activities associated with on-shore aquaculture facilities that are not included in an aquaculture lease, aquaculture dock lease, or state lands lease, and which are used by aquaculture producers in planting, growing, harvesting, and transporting aquacultural products, on or over sovereignty submerged lands, shall be authorized by a letter of consent. Such activities include hatchery and nursery cultivation, intake and discharge pipes and pumps, areas in which loading and off-loading of aquacultural products occur, and mooring of not more than four vessels. To qualify for a letter of consent, such facilities must conform to the following criteria:

1. Be constructed and operated, as appropriate, in compliance with Chapters 18-18, 18-20, 18-21, and 5L-3, F.A.C., and the applicable permits issued by the Department of Environmental Protection under Chapter 373, F.S.; and the applicant has obtained and maintains a valid aquaculture certification pursuant to Chapter 597, F.S.

2. Occupy no more than 2,000 square feet of sovereignty submerged lands.

3. Be constructed so as to result in minimal adverse impacts on fish and wildlife habitat.

4. Follow the setback required in this section to protect riparian rights, unless the applicant obtains a letter of concurrence from the neighboring upland property owner.

(b) No more than one letter of consent shall be authorized for a single individual, company or corporation for contiguous parcels, structures, or activities, if such action is determined to circumvent the requirements in this section.

(c) Any use of sovereignty submerged lands for aquacultural activities that do not conform to these criteria shall obtain an aquaculture lease, a standard sovereignty submerged lands lease, or an easement, as appropriate under this chapter.

(d) If an area subject to a consent of use is within an aquatic preserve, research reserve, marine sanctuary, or state park, the activity shall be compatible with the managed area's management plan, or prevailing management policies when a management plan has not been developed, and consistent with Sections 258.42 and 373.406, F.S.

(e) The Board shall approve changes to the specific standards and criteria for a letter of consent only if the Board determines that such changes are necessary to enhance resource management, as provided in subsection 18-21.004(2), F.A.C., and protect riparian rights and public safety.

(6) Specific standards and criteria for an aquaculture management agreement – The use of sovereignty submerged lands authorized by an aquaculture management agreement shall comply with the following:

(a) Be for educational, scientific, demonstration, and experimental activities related to aquaculture when commercial production is not the primary purpose.

(b) Be limited to state agencies, local governments, educational institutions, or research institutions when the proposed aquacultural 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. Public-private partnerships for

demonstration and pilot scale aquaculture programs that provide general public benefit are also eligible to obtain aquaculture management agreements.

(c) If within an aquatic preserve, research reserve, marine sanctuary, or state park, the activity shall be compatible with the managed area's management plan, or with applicable management policies when a management plan has not been developed, and consistent with Sections 258.42 and 373.406, F.S. Applications for aquaculture management agreements in managed areas shall be reviewed by the Department of Environmental Protection, as determined by the coordinated review required in paragraph 18-21.021(1)(f), F.A.C.

(d) Riparian rights shall not be infringed upon.

(e) The area subject to an aquaculture management agreement shall be marked, and the markers maintained for the term of the agreement. Such marking shall be adequate to inform the public of the activity and alert the public of potential navigation or safety hazards.

(f) Establish setbacks from other activities or structures as required to ensure safety, facilitate enforcement abilities and ensure resource management.

(g) Ensure that the cultivation of indigenous, or hybrids of indigenous, plants or animals is consistent with Chapter 597, F.S. Relaying activities shall be conducted pursuant to Section 597.010(19), F.S.

(h) Aquaculture management agreements must be approved by the Board and shall be approved when the application conforms to the standards and criteria provided in subsections 18-21.020(3), and paragraphs 18-21.020(6)(a)-(g), F.A.C.

(7) Leaseholders possessing oyster and clam leases granted under provisions of former Chapter 370, F.S., prior to 1985, shall convert to an aquaculture lease if they wish to include the water column in the leased area. Lease conversions shall be subject to the applicable provisions of Rules 18-21.020, 18-21.021, and 18-21.022, F.A.C., when the requested modification requires changing the proposed use or expanding the lateral extent of the existing lease area.

(8) When the water quality designation, including the shellfish harvesting area designation, that is necessary for the particular activity is lost due to degradation of water quality, and water quality degradation is not due to the aquacultural activity, the leaseholder shall have the option of:

(a) Cancelling the lease;

(b) Conducting an aquaculture activity that is consistent with the change in water quality with prior written approval of the Board; or

(c) Retaining the lease.

Rulemaking Authority 253.03(7), 253.73 FS. Law Implemented 253.002, 253.67-.75, 253.77 FS. History - New 9-1-09.

18-21.021 Applications for Aquacultural Activities.

(1) Aquaculture lease application and review process.

(a) An aquaculture lease to conduct aquacultural activities on sovereignty submerged lands or the overlying water column shall meet the criteria for an aquaculture lease in Rule 18-21.020, F.A.C.

(b) Applications for aquaculture leases shall be obtained from and submitted to the Division of Aquaculture at the address listed in subsection 18-21.021(7), F.A.C. The Application for a State Owned Sovereignty Submerged Land Aquaculture Lease (DACS 15102, Rev. 02/09) is hereby adopted and incorporated by reference and may be obtained on the Internet at http://www.floridaaquaculture.com or by writing to the Division of Aquaculture at 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301.

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

1. Name, address and phone number of the applicant.

2. Description of the aquaculture activities to be conducted, including whether such activities are to be experimental or commercial.

3. A statement describing the applicant's capabilities to conduct the proposed activities.

4. Location of the proposed activity including: county; section, township and range; water body; and a vicinity map.

5. Satisfactory evidence of sufficient upland interest to the extent required by paragraph 18-21.004(3)(b), F.A.C.

6. Names and addresses, as shown on the latest county tax assessment roll, of each owner of property lying within 500 feet of the parcel sought, prepared from current records of the county property appraiser.

7. A statement describing the potential impacts of the proposed use on the ecology of the area, including sea grasses, fish habitat, threatened and endangered species, and other natural resources present on the parcel sought.

8. A statement explaining why the lease is not contrary to the public interest, or within aquatic preserves, why the lease is in the public interest.

9. An application fee as specified in Rule 18-21.022, F.A.C.

10. A statement by 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.

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

(d) In addition to these requirements, applications for docks or other aquaculture-related structures connected to upland which require use of the water column shall include the following, as applicable:

1. Satisfactory evidence of sufficient upland interest in the riparian upland property to the extent required by paragraph 18-21.004(3)(b), F.A.C.

2. A detailed statement describing the proposed activities, including the project design and description of all operations.

3. A detailed and dimensioned site plan drawing showing:

a. The approximate mean or ordinary high water line;

b. The location of wetland, shoreline and aquatic vegetation and other submerged resources, if existing;

c. The location of any manatee protection zones;

d. The location of the proposed structures and any existing structures;

e. The location of intake and discharge pipelines, pumps, culture units, and tanks;

f. The applicant's upland parcel property lines and zoning restrictions;

g. The names and addresses, as shown on the latest county tax assessment roll in mailing label form, of each owner of property lying within 500 feet of the parcel sought, prepared from current records of the county property appraiser; and

h. The location of the nearest natural or artificial navigation channel.

(e) When DACS identifies tracts of sovereignty submerged lands or water columns designated as high-density lease areas involving multiple lease parcels for aquacultural development, and there is no established priority for selecting qualified applicants, then DACS shall make recommendations to the Board and request consideration concerning the method to be used to select qualified applicants and to determine the amount of lease fees, in accordance with this section.

(f) In the event that the lessee wishes to conduct activities on the aquaculture dock or other structures that are not directly related to the aquacultural activities identified in the lease agreement, the lessee shall request authorization from the Board of Trustees through the Department of Environmental Protection pursuant to Rules 18-21.004, 18-21.005 and 18-21.008, F.A.C. Such authorizations shall require the structures to be modified or removed if necessary to comply with the requirements of those rule sections. If the activities are determined to be commercial and unrelated to aquaculture, the lessee shall seek authorization pursuant to subsection 18-21.005(1)(d), F.A.C., for a commercial dock lease.

(g) In the event that an environmental resource permit or a wetland resource permit under Part IV of Chapter 373, F.S., is required, DACS will require a copy of the permit or notice of intent to issue an environmental resource permit from the Department of Environmental Protection, in accordance with Rule 18-21.00401, F.A.C.

(h) Applicants must obtain applicable federal permits for aquaculture activities in areas that are subject to federal jurisdiction.

(i) Legal description and acreage of the parcel shall be submitted subsequent to final approval of the application but prior to issuance of the lease.

(j) Two prints of a survey, which shall constitute the field survey, shall be submitted 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 Board of Professional Surveyors and Mappers when required by Chapter 472, F.S., or an agent of the federal government authorized to do such surveys under federal law. Preliminary site approval can be based upon marking off the general configuration of the parcel sought, including the acreage of the parcel, latitude and longitude coordinates for the corners of the parcel identified using a Global Position System on a topographic map or a navigation chart.

(k) DACS shall coordinate the application review process for applications to lease sovereignty submerged lands for aquaculture, including those for use of the water column, in order to determine that proposed sites are suitable for aquaculture activities.

(l) The review procedures to be followed for new applications and renewals include:

1. Review by DACS to determine:

a. That the proposed aquaculture activity is water dependent;

b. That the proposed project and operation is directly related to aquaculture;

c. The desirability of the proposed aquaculture from a resource management perspective;

d. The presence of substantial harvestable wild clams or oysters on the proposed area;

e. That the size of area requested for lease is appropriate to the use;

f. The suitability of the site for leasing;

g. The effect on public health, safety, welfare, or property of others; that the proposed construction or operations do not constitute a hazard to navigation or interfere with a riparian property owner's access to navigable water;

h. That the proposed project will not adversely affect historical or archaeological resources;

i. The need for special lease conditions that will ensure compliance with Chapters 253 and 258, F.S., and,

j. The ability of the applicant to perform the work.

2. Review by the Department of Environmental Protection to assess the effect of the proposed aquacultural activity on water quality and submerged resources and to comment on the consistency of the application with management goals and objectives for managed areas, including state parks, aquatic preserves, marine sanctuaries, or research reserves, as expressed in the management plan applicable to the managed area, or prevailing management practice. The review process for aquaculture leases located in aquatic preserves which include docks and aquaculture-related structures in the water column shall also include the following:

a. An assessment of design and operational specifications that will be established to avoid or minimize adverse environmental impacts to marine habitat, threatened and endangered species habitat, adjacent wetlands, and water quality, including, but not limited to, designs and operations that minimize shading by increasing light transmittance, and that incorporate the installation and maintenance of appropriate manatee protection and resource information signs.

b. A determination of the type of resource protection area, as defined in Rule 18-20.003, F.A.C., affected by the proposed project.

3. Review by the Fish and Wildlife Conservation Commission to comment on the application relative to such factors as an assessment of the probable effect of the proposed lease on the conservation of fish or wildlife, threatened and endangered species, compliance with manatee protection plans, or other programs under the constitutional or statutory authority of the Commission.

4. Review by the Department of State when there is evidence of or the likelihood of the existence of historical or archaeological resources on the proposed site.

5. Review by the county commission of the county in which the lease is situated, pursuant to Section 253.68, F.S.

6. Review by the Army Corps of Engineers to assess the effect of the proposed lease on navigation and boating safety.

(m) After the coordinated review of the application, DACS shall compile the findings of the review and develop recommendations concerning the use of sovereignty submerged lands and water columns for consideration by the Board. Documents containing the comments received from the review required in this subsection shall become part of the application.

(n) All requests for aquaculture leases on sovereignty submerged lands shall be processed in accordance with the notice and hearing requirements of Section 253.115, F.S. For purposes of notification of adjacent property owners, requests for revisions to existing leases that increase the preempted area or change the use (such as one that requires a different form of authorization or application of different rule criteria) will be treated as new applications under this chapter.

(o) The Board shall require the applicant to cause notice of receipt of the lease application to be published in a newspaper of general circulation in the county in which the parcel is situated once a week for three consecutive weeks. Such notice shall be made on the Notice of Aquaculture Lease Application (DACS 15118, Rev. 02/09) which is hereby adopted and incorporated by reference and may be obtained on the Internet at http://www.floridaaquaculture.com or by writing to the Division of Aquaculture at 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301. The application shall contain the following:

1. Preliminary location description and acreage of parcel sought; and

2. A description of the aquaculture activity being proposed.

(p) DACS will hold a public hearing in response to heightened public concern prior to seeking consideration by the Board, if such concern is raised in response to the public notice.

(q) If DACS determines that the application is complete and complies with the standards and criteria in Chapter 253, F.S., and this rule chapter, DACS shall initiate the agenda process to bring the application and recommendations before the Board for consideration at its next regularly scheduled public meeting. The application may be approved, approved with modifications, or denied. The lease fee shall be determined by the Board in accordance with the provisions in Section 253.71(2), F.S.

(r) DACS shall also coordinate the review process and agenda preparation for applications for voluntary conversions of shellfish leases to aquaculture leases.

(s) All leases are renewable, modifiable, and assignable, subject to Board approval and compliance with the terms of subparagraph 18-21.008(1)(b)3., F.A.C. Requests to renew leases shall be made on the Application to Renew an Aquaculture Lease (DACS 15127, Rev. 06/09). Applications to sublease shall be made on the Application for Sublease of Sovereignty Submerged Land Aquaculture Lease (DACS

15114, Rev. 02/09). Applications for transferring leases shall be made on Assignment and Assumption of Lease (DACS 15113, Rev. 02/09). The applications listed in this paragraph are hereby adopted and incorporated by reference and may be obtained on the Internet at http://www.floridaaquaculture.com or by writing to the Division of Aquaculture at 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301.

(2) Aquaculture lease authorization.

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

1. The term of the lease, which shall not exceed ten years.

2. A provision stating that the lease shall be renewable for one automatic successive term upon agreement of both parties.

3. The amount of fee per acre, or fraction thereof, leased, which shall take the form of a fixed annual fee to be paid throughout the term of the lease.

4. A requirement that the leaseholder obtain and maintain a valid aquaculture certification issued by DACS. As a condition of the aquaculture certification the lessee shall comply with any special lease conditions, applicable best management practices for the specific aquacultural activity, and any permit issued pursuant to Chapter 373, F.S.

5. A provision requiring the disposition of all improvements and aquaculture products upon the termination or cancellation of the lease.

6. A statement that the lease may not be assigned, sublet or transferred in any manner, in whole or in part, without the prior written approval of the Board. Failure of the lessee to obtain prior written approval shall be grounds for revocation by the Board.

7. A provision stating that failure of the lessee to comply with the terms and conditions of the lease shall be grounds for revocation of the lease.

8. A description of approved culture and harvesting techniques that can be used on the lease.

(b) 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, such as docking, mooring, anchoring, and other activities that would interfere with the approved aquacultural activity shall be set forth in the lease agreement and such restrictions shall be clearly posted in conspicuous places on site by the lessee. Each parcel leased shall be marked in compliance with the provisions of the lease agreement.

(c) Violation of the lease agreement shall be grounds for enforcement by DACS or the Board, in accordance with Chapter 18-14, paragraph 18-21.008(1)(b) and Chapter 5L-3, F.A.C., and the terms of the lease agreement. DACS shall notify the Department of Environmental Protection and the applicable water management district of any revocation, corrective action or enforcement related to a change in use which is not authorized in the lease agreement. Failure of the lessee to pay rental fees pursuant to Section 253.71(2)(b), F.S., or perform effective cultivation pursuant to Section

253.71(4) F.S., shall constitute grounds for cancellation of the lease and forfeiture to the state of all works, improvements, and animal and plant life in and upon the leased land and water column.

(3) Aquaculture letter of consent application and review process.

(a) Aquaculture activities meeting the criteria specified in subsection 18-21.020(5), F.A.C., on or over sovereignty submerged lands shall be authorized by a letter of consent.

(b) The applicant shall provide the items required in this subsection demonstrating that the proposed site meets the criteria established in subsection 18-21.020(5), F.A.C., and is suitable for the proposed aquacultural activities. Applications for a letter of consent shall include the following.

1. Name, address and telephone number of applicant and applicant's authorized agent, if applicable.

2. Location and address of the proposed activity, using the most comprehensive information available, including: street, route, city, county; section, township and range; coordinates established with Global Positioning System, affected water body; 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 in the riparian upland property to the extent required by paragraph 18-21.004(3)(b), F.A.C..

4. A detailed statement describing the proposed activity.

5. A detailed and dimensioned site plan drawing showing:

a. The approximate mean or ordinary high water line;

b. The location of the shoreline and aquatic vegetation and/or other submerged resources, if any;

c. The location of the proposed structures and any existing structures;

d. The location of intake and discharge pipelines, pumps, culture units, and tanks;

e. The applicant's upland parcel property lines and zoning restrictions; and

f. The location of the nearest natural or artificial navigation channel.

(c) Application for Sovereignty Submerged Land Aquaculture Letter of Consent (DACS 15138, Rev. 06/09), which is hereby adopted and incorporated by reference, shall be submitted to the Division of Aquaculture at the address listed in subsection 18-21.021(7), F.A.C. The application may be obtained on the Internet at http://www.floridaaquaculture.com or by writing to the Division of Aquaculture at 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301.

(d) Applications for letters of consent shall be reviewed by DACS to ensure that the proposed sites are suitable for the proposed aquacultural activity and meet the criteria in subsection 18-21.020(5), F.A.C.

(4) Aquaculture letter of consent authorization.

(a) If DACS determines that the proposed activity complies with subsection (3) above, has an Aquaculture Certificate, is in compliance with the best management

practices adopted by rule for that activity, and meets the requirements of subsection 18-21.020(5), F.A.C. DACS shall issue a letter of consent.

(b) Failure to perform the aquaculture activities for which the letter of consent was issued, failure to comply with the terms and conditions of the letter of consent, or conducting activities other than those approved in the letter of consent shall be grounds for action on the letter of consent, including revocation, a requirement for corrective action or enforcement by DACS or the Board in accordance with Section 253.04, F.S., Chapter 18-14, F.A.C., and the terms of the letter of consent.

(5) Aquaculture management agreement applications and review process.

(a) An aquaculture management agreement is required for the use of sovereignty submerged lands or the water column for educational, scientific, demonstration or experimental activities related to aquaculture.

(b) Applicants for aquaculture management agreements shall provide the items required in this subsection and information demonstrating that the proposed activity complies with the criteria in subsection 18-21.020(6), F.A.C., and is suitable for aquacultural activities. Applications for an aquaculture management agreement 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; water body; and a vicinity map.

3. A detailed statement describing the proposed activity, including educational and scientific objectives.

4. A detailed site plan drawing showing:

a. Location of aquatic vegetation and fisheries habitat, if existing;

b. Location of proposed structures and any existing structures; and

c. Location of intake and discharge pipelines, pumps, culture units, and tanks.

d. The appropriate application fee.

(c) Satisfactory evidence of sufficient upland interest in the riparian upland property when the riparian property owner is the applicant.

(d) Applications for aquaculture management agreements shall be submitted, using the Application for Sovereignty Submerged Lands Aquaculture Lease (DACS 15102, Rev. 02/09) listed in paragraph 18-21.021(1)(b), F.A.C., to the Division of Aquaculture at the address listed in subsection 18-21.21(7), F.A.C.

(e) Applications for management agreements shall be reviewed by DACS to ensure that the proposed sites are suitable for the proposed aquacultural activity and that the activity complies with the criteria in subsection 18-21.020(6), F.A.C.

(f) If DACS determines that the application is complete and complies with the standards and criteria of Rules 18-21.020, 18-21.021, and 18-21.022, F.A.C., copies of the application will be sent to the Department of Environmental Protection and the Fish and Wildlife Conservation Commission for their review and recommendations.

(6) Aquaculture management agreement authorization.

(a) The Board shall authorize management agreements that meet the requirements of paragraphs 18-21.021(5)(a) through (c), F.A.C.

(b) The management agreement authorizes specific aquaculture activities on sovereignty submerged lands and water columns without conveying any interest in real property.

(c) Authorization of an aquaculture management agreement shall require that qualified applicants comply with the standards and criteria in subsection 18-21.020(6), F.A.C.

(d) The management agreement shall require the grantee obtain and maintain a valid aquaculture certification issued by DACS prior to the initiation of any activities authorized by the agreement. As a condition of the aquaculture certification, the grantee shall comply with special conditions, applicable best management practices, or with the condition of a permit issued pursuant to Chapter 373, F.S.

(e) The management agreement shall include a provision requiring the disposition of all improvements and aquaculture products upon the termination or cancellation of the management agreement.

(f) Failure to perform the aquaculture activities for which the management agreement was granted, failure to comply with the terms and conditions of the management agreement, or conducting activities other than those approved in the management agreement shall be grounds for action on the management agreement, including revocation, a requirement for corrective action, or enforcement by DACS or the Board, in accordance with Section 253.04, F.S., Chapter 18-14, F.A.C., and the terms of the aquaculture management agreement.

(7) Applications for authorizations to use sovereignty submerged lands for aquacultural purposes shall be submitted to the Florida Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governor’s Square Boulevard, Fifth Floor, Tallahassee, Florida 32301, Telephone: (850)488-5471.
Rulemaking Authority 253.03(7) FS. Law Implemented 253.002, 253.04, 253.67-.75, 253.77, 373.427(2)(a), 597.010 FS. History - New 9-1-09.

18-21.022 Payments and Fees for Aquacultural Activities.

(1) The application fee for an aquaculture lease is $200.00.

(2) The fee for assignment, sublease or transfer of an aquaculture lease is $50.00.

(3) The annual rental fees for aquaculture authorizations shall be the dollar amount of the fixed rate consideration as determined by the Board in accordance with Section 253.71(2), F.S., but not less than $15.00 per acre, or fraction thereof, for a bottom lease and $30 per acre, or fraction thereof, when the lease includes the water column: bottom leases are considered to include six inches of the water column above the bottom.

(4) The 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.

(5) An annual surcharge of $10.00 per acre, or any fraction of an acre, shall be levied on each aquaculture lease pursuant to Sections 253.71(2)(a) and 597.010(7), F.S.

(6) Invoices will be sent to each leaseholder 60 days before the payment is due, stating the amount of the annual lease fee and surcharge. If the lease fee and surcharge are not received within sixty days of the payment date specified in the lease agreement, DACS shall revoke the lease.

(7) Any financial or production data related to the proposed aquacultural activity necessary for purposes of negotiation shall be supplied by the applicant upon DACS' request.

(8) Fees for experimental aquacultural activities on aquaculture leases or aquaculture management agreement areas for state agencies, public, and nonprofit research institutions shall be waived by the Board upon proof of public or nonprofit status.

Rulemaking Authority 253.03(7),(11), 253.73 FS. Law Implemented 253.002, 253.04, 253.67-.75, 253.77, 597.010 FS. History - New 9-1-09.

18-21.900 Forms.

Applications for activities, other than for aquaculture, on sovereignty submerged lands shall be made on the Joint Application for Environmental Resource Permit/Authorization to Use Sovereignty Submerged Lands/Federal Dredge and Fill Permit [Form 62-343.900(1), F.A.C.], except in the area under the jurisdiction of the DEP Northwest Florida District Office, where application shall be made using the forms provided in subsection 62-312.900(1), F.A.C. In both cases, the required forms shall be submitted together with the additional information required in Rules 18-21.007-.010, F.A.C., as applicable. Other forms used by the Board are adopted and incorporated by reference in this section. The forms are listed by rule number, which also is the form number, and with the subject title and effective date. Copies of forms may be obtained on the Internet at http://www.dep.state.fl.us or by writing to the Department of Environmental Protection, Division of Water Resource Management, Bureau of Beaches and Wetland Resources, 2600 Blair Stone Road, MS 2500, Tallahassee, Florida 32399-2400, or any local district or branch office of the Department or water management district.

(1) Billing Information Form, 10-15-98.

(2) Special Event Certification, 10-15-98.

(3) The required forms used by the Board for aquacultural activities are adopted and incorporated by reference in this chapter and may be obtained on the Internet at http://www.floridaaquaculture.com or from the DACS by writing to the

Division of Aquaculture, 1203 Governor's Square Boulevard, Fifth Floor, Tallahassee, Florida 32301.
Rulemaking Authority 253.03(7), 253.73 FS. Law Implemented 253.03, 253.03(11), 253.77, 597.010 FS. History - New 10-15-98, Amended 12-11-01, 9-1-09.