



Audit of Land Lease Compliance

Project #23-15

Prepared by
Office of the Inspector General

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SOUTH FLORIDA WATER MANAGEMENT DISTRICT

October 10, 2024

Governing Board Members

Re: Audit of Land Lease Compliance
Project No. 23-15

This audit was performed pursuant to the Inspector General's authority set forth in Chapter 20.055, F.S. Our audit objective primarily focused on assessing the effectiveness of the monitoring process to ensure lessees adhere to lease provisions. Jankie Bhagudas and I prepared this report.

Sincerely,

A handwritten signature in blue ink, which appears to read "J. Timothy Beirnes".

J. Timothy Beirnes, CPA
Inspector General

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BACKGROUND

In accordance with the Office of Inspector General's Audit Plan, we conducted an Audit of Land Lease Compliance.

The District leases natural and project lands that meet specific conditions. Some natural lands are former ranchlands that have a mixture of native range and improved pasture. The District administers cattle grazing leases on natural lands and maintains an active role in managing natural resources, public use, and controlling populations of non-native invasive plant species on these leased lands. Natural lands are also leased for recreations, communication towers, apiary operations, and citrus operations.

Project lands are those lands acquired to construct specific water resource projects such as stormwater treatment areas (STAs), flow equalization basins (FEBs), reservoirs, and water impoundment areas. Prior to project construction, the Land Stewardship Section is responsible for managing these lands. These lands are typically located in remote areas where unauthorized uses such as dumping of debris and the operation of off-road vehicles may occur. Most project lands acquired by the District were used for agricultural, for example, citrus, sugarcane, or row crops prior to acquisition. In instances where project construction is not scheduled to occur for several years and, when practical, the District enters lease, leaseback, or reservation agreements to allow continued historic use of the lands for cattle grazing, agriculture, or other miscellaneous uses, which assist in vegetation and infrastructure management.

Leases of District lands are primarily governed by Florida Statutes 373.093 and District Policy Section 140-85, which are summarized as follows:

➤ **Section 373.093, F.S. – Lease of Lands or Interest in Land and Personal Property:** The District’s Governing Board is authorized to lease lands or interest in land if the lease is consistent with the purposes for which the lands or any interest in land was acquired. This statute requires the following:

- Land must be leased for the best price and terms obtainable.
- Before leasing any land, or interest in land, the District must publicly advertise its intention to lease in a newspaper published in the county in which the land is situated, and other places determined appropriate by the Governing Board, once each week for three successive weeks.
- It is not necessary to publish the notice where the lease is made to a person in connection with land acquisition by the District and the lease results in a reduction of the cost to the District in the acquisition of the land.

➤ **District Policies – Chapter 140 – Land Resources – Article VI. Property Acquisition, Disposition, and Leasing – Section 140-85 – Administration of Leases on District Land:** Incorporates Section 373.093, F.S., and includes District requirements for awarding leases, provisions for cattle grazing and other competitively bid leases. The requirements include the following:

- Advertising the District’s intent to lease lands and state whether bids will be solicited. If bids will be solicited, the notice will include directions to the District's website describing the process for bid submissions. It should be noted that bids will not be solicited in the following circumstances: when the District grants a lease or reservation in connection with an acquisition; lessee is a government entity, and instances where the Governing Board determined request for bids is not warranted.
- In instances where the District estimates rent for competitively bid leases will be over \$2,500, the District must obtain an appraisal of the current rental value of the proposed lease before presentation to the Governing Board for approval. Deposits are required upon lease execution.
- All leases and lease extensions require Governing Board approval.

- Cattle grazing leases have several provisions; for example, initial term cannot be over 10 years, minimum bid must be at least 75% of the District’s appraised rental amount, leases are evaluated prior to extensions, annual rent is calculated based on the District’s Cattle Grazing Formula, rents are adjusted annually, lessee must comply with a land management plan, a termination clause to assure the land is available if project timelines are accelerated. The District can terminate a lease for convenience at any time providing the lessee was given at least 180 days advance notice.
- Leases classified as “other” have the same provisions as cattle grazing leases for initial term, minimum bids, and termination requirements. In addition, annual rents are adjusted based on specific intervals and relevant consumer indices.

The following table is the summary of leasing activities as of September 30, 2023.¹

Summary of Leasing Activities Fiscal Year 2023			
Lease Type	# of Lease Agreements	Leased Acres	Annual Revenue
Cattle Grazing	38	67,748.34	\$ 1,347,951
Mining (<i>Note 1</i>)	1	202.17	\$ 1,080,175
Sugar Cane	1	6,108	\$ 667,421
Communications Tower	1	111.10	\$ 283,788
Equestrian	1	97.01	\$ 185,000
Miscellaneous (<i>Note 2</i>)	12	41.24	\$ 353,930
Non-Revenue (<i>Note 3</i>)	3	24.62	
Total	57	74,332.48	\$ 3,918,265

Note 1 – Our Office audited this agreement in 2018, Project #18-09, to determine whether the District was receiving royalty payments from limerock mining operations that were accurately calculated and in compliance with agreement terms.

Note 2 – Miscellaneous leases include the following: equipment storage and staging, parking, recreation, model airplane, and access road leases.

Note 3 – Includes a goat grazing, marina, and fence installation and maintenance leases.

¹ It should be noted that the District has non-revenue agreements with public agencies (state agencies, and county and city governments) that were not in our audit scope. The land management partners serve as lead managers on natural lands through no cost land management agreements

The District's lease program provides a source of revenue to support the Land Stewardship Bureau's land management activities throughout the District. In addition to providing revenue, leases provide the following benefits until lands are needed for project construction:

- Minimizing District ad valorem expenses by increasing revenue from non-governmental sources to offset management, maintenance, and resource protection costs.
- Minimizing fiscal impacts to the local government by keeping lands on the tax roll.
- Providing on-site management and security for District-owned lands at no cost.
- Minimizing impacts to the local agricultural economy by keeping viable agricultural lands in active production.

In addition, lessees are required to comply with various requirements stipulated in the lease agreements that are beneficial to the District. The requirements also benefit the District and may vary by lease type. Requirements may include the following:

- Providing security for the property,
- Implementing applicable agricultural best management practices for nutrient management, water quality improvements, natural resource protection, and exotic plant control,
- Maintaining fencing and other infrastructure on the property in an acceptable condition,
- Obtaining all required permits and approvals for leasing activities,
- Maintaining required insurance coverage, and
- Paying applicable taxes and property assessments in addition to any lease fees.

The Real Estate Bureau and the Field Operations Division's Land Stewardship Section are responsible for lease related activities. The Real Estate Bureau's responsibilities for lease administration includes the following:

- Identifying and pursuing new lease opportunities,
- Managing and coordinating leases which include bids, amendments, extensions, and closeouts,
- Monitoring and enforcing lease compliance,
- Invoicing and collecting all lease revenue,
- Overseeing taxes owed and paid by lessees, and
- Annual lease performance reviews that are used when considering renewals.

The Land Stewardship Section responsibilities include but are not limited to the following: completing / updating management plans for management areas; controlling invasive species, restoring and maintaining native plant communities and wildlife populations, providing compatible resource-based recreational opportunities where appropriate, and managing interim agricultural uses as appropriate through reservations or lease agreements. Lease administration responsibilities include the following:

- Evaluating properties for leasing suitability.
- Providing lessees technical and logistical support.
- Providing lessees a point of contact for field activities and operations.
- Monitoring lease compliance by performing semi-annual inspections.



Cattle Grazing

OBJECTIVE, SCOPE, AND METHODOLOGY

Our audit objective primarily focused on assessing the effectiveness of the monitoring process to ensure lessees adhere to lease provisions.

To accomplish our objectives, we performed the following:

- Reviewed relevant Florida Statutes, District's policies and procedures to understand the land lease compliance process.
- Interviewed relevant Real Estate Bureau, Land Stewardship Section staff, and other relevant District staff to obtain an understanding of the land lease compliance process.
- Obtained land lease population, as of the end of Fiscal Year 2023, from the Real Estate Bureau. Analyzed the population then selected a judgmental sample of lease agreements for detailed testing to determine compliance with lease agreements and other relevant policies and procedures. Judgmental sampling was considered the preferred methodology based on consideration of the audit population's size and characteristics, as well as audit efficiency and professional judgment. Although the sample cannot be statistically projected to the population, we believe the sample, along with the results of the audit tests, provide reasonable assurance for us to determine whether there are adequate controls in place.
- For the sampled leases, we reviewed lease data maintained by the Real Estate Bureau on its server and in the Integrated Real Estate Information System (IRIS), and determined the following:
 - Whether Land Stewardship Section's land managers inspected leased sites semi-annually.
 - Whether Land Stewardship Section's land managers followed-up with lessees on the resolution status of issues found during inspections and /or informed the Real Estate Bureau to take appropriate action.
 - Whether lessees' performances were evaluated annually.
- Determined whether the most important lease provisions are included in the semi-annual inspection form.
- Determined whether any lease provisions should be reexamined.

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- Conducted site inspections of a sample of cattle grazing leased properties with Land Stewardship Section land managers to assess lessees' compliance with lease agreement.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT RESULTS

Executive Summary

Overall, the District has an adequate process in place to ensure that lessees are complying with land lease agreements. Specifically, the Land Stewardship Section conducts semi-annual inspections, and the Land Stewardship Section and the Real Estate Bureau evaluate each lessee's performance annually. We also concluded that primary lease agreement provisions are adequately reflected in semi-annual inspection forms and annual performance reviews. Further, we sampled 26 leases (19 cattle grazing and seven miscellaneous) and reviewed the corresponding 103 semi-annual inspections land managers performed for these leases during 2022 and 2023. We concluded that land managers did not identify any issues during 72 inspections (70%); however, they identified 55 non-compliant provisions during 31 inspections (30%). In addition, our analysis disclosed the following:

- Land managers did not identify any issues during inspections of 12 leases (46%). They performed 45 inspections for these 12 leases.
- For the remaining 14 leases (54%), land managers performed 58 inspections and identified issues during 31 inspections. Specifically, they identified a total of 55 non-compliant provisions. Lessees were responsible for resolving 33 issues and the District was responsible for 22 issues. The deficiencies were primarily related to perimeter fences and gates, refuse/garbage/litter, and surface water management systems. Land managers identified a total of 145 deficient items relating to the 55 provisions.

We found that resolutions for only five (5) of the 33 inspection provision deficiencies were adequately documented. There was no documented evidence (for example, verbal or written communications with lessees or status updates by land managers), when or if the remaining 28 deficient provisions were resolved. Further, we concluded there is no process in place to ensure deficiencies identified as the District's responsibilities are tracked for resolution. We performed four site inspections with land managers and did not observe any major issues.

We also concluded that the following lease agreement provisions should be revised: *1)* surface water management system, *2)* fencing and gates, *3)* baseline inspection, and *4)* repairs. For example, land managers specified that the District was solely responsible for resolving all surface water management system deficiencies cited during cattle grazing lease inspection, however, based on the lease agreements, maintenance and repairs are the lessees' responsibility. Land Stewardship Section staff stated surface water management system should be a District responsibility. Thus, lease agreements should reflect that this is a District responsibility instead of a lessee responsibility.

We made 11 recommendations to improve land lease administration operations.

Lease Agreement Provisions Adequately Reflected in Semi-Annual Inspections Reports and Annual Performance Reviews

Overall, we concluded that land lease agreement provisions are adequately reflected in the semi-annual lease inspection form and annual lease performance review to monitor lessees' compliance with lease agreements. Specifically, the semi-annual inspection report requires that land managers document compliance with several lease requirements. In instances where issues are found, land managers are required to include detailed descriptions and photographs. See APPENDIX 1 for a sample of the *Lease Inspection Semi-Annual Report*. The semi-annual lease inspection form requires land managers to document status of the following items:

- Whether there is evidence or the status of the following:
 - unauthorized structures portable or permanent, vehicles or farm equipment
 - broken wells, new wells, improper storage of chemicals, unauthorized livestock and/or game species, hunting, fishing, or trapping,
 - unauthorized upland mowing, vegetation removal, vegetation maintenance methods and land clearing, dredging or filling activities in wetlands, fertilizing or other soil amendments (i.e. liming), or supplemental feeding
 - sound grazing practices, approximate number of animal units, and
 - unauthorized sub-letting/subcontracting, assignments or other revenue generating activities other than leased land purpose without prior District approval, signage or advertisements,
 - existing pumps still present and in operable condition,
 - leased area free of refuse / garbage / litter,
 - lessee's compliance with industry developed agricultural BMPs and land management requirements as identified in lease,
 - perimeter fences and gates are operating, and public access is unaltered,
 - warning signs posted for apiary sites and authorized number of pallet and hives on the property,
 - functionality of surface water management system (no crushed culverts, no collapsed risers, no ditch or canal blowout), and

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- existing fuel tanks, 500 gallons or less, appear in good condition, and whether there are any new fuel tanks.

Land managers are required to discuss inspection results with lessees, and lessees are required to sign the inspection reports. Overall, land managers obtained lessees' signatures for inspection reports; however, there were some instances where we could not determine whether results were discussed since lessees did not sign the reports. Further, in some of these instances, land managers discussed results with lessees but could not obtain signatures. Since lessees' signatures are the primary confirmation that results were discussed, additional efforts should be made to obtain signatures. If not possible, reasons should be indicated on the reports.

In addition, the Real Estate Bureau and the Land Stewardship Section evaluate the lessees' performance annually to assess compliance with lease agreement. Lessees are evaluated for compliance with the following:

- Land management requirements – Includes specific land management practices to assure the leasing activities do not affect the District's intended use of the leased lands.
- Florida Department of Agriculture and Consumer Services (FDACS) Water Quality BMP Checklist.
- Property maintenance requirements of the lease agreement.
- Land management objectives – Lands are classified as either conservative lands or interim lands. Management goals for conservative lands primarily focus on securing and protecting existing resources on the property and maintaining the property in a condition consistent with its intended use. Leased interim lands are usually classified as project lands that the District is not yet ready to begin construction. As a result, the land is leased as an interim land management tool primarily focused on providing site security and maintaining the site in a condition consistent with the project's intended use.
- Environmental requirements – Include lease provisions addressing compliance but not limited to the following: environmental laws, exotic plant management, agricultural chemicals, fertilizer, supplemental feeds, BMPs, surface water management.
- Lease payments, animal, unit certification, insurance, security, and real estate taxes.

Leased Lands are Inspected Semi-Annually and Lessees' Performance are Evaluated Annually

Based on our review of 19 cattle grazing and seven miscellaneous sampled lease agreements, we concluded that in 2022 and 2023 land managers routinely performed semi-inspections, and the Real Estate Bureau and the Land Stewardship Section performed annual evaluations for compliance with lease agreements, as required. The details are shown in the table below.

Sampled Semi-annual Inspections and Performance Evaluations 2022 and 2023			
Semi-annual Inspections Performed and Reviewed			
Categories	Cattle Grazing	Miscellaneous (Note 1)	Total
# of Sampled Leases	19	7	26
# of Inspections Reviewed	78	25	103
Annual Performance Evaluations Performed by Real Estate Bureau and Land Managers			
# of Inspections Reviewed	19	NA	19

Note 1: Miscellaneous lease agreements include the following: parking, sugar cane, fence installation and maintenance, goat grazing, model airplane club, and equestrian leases. According to Real Estate Bureau, annual performance evaluations are only performed for cattle grazing leases.

Land managers are required to perform the first annual inspection between January 1st and March 1st and the second annual inspection between July 1st and September 1st. Overall, land managers conducted inspections in a timely manner. Most of the inspections were ground inspections. Further, in accordance with semi-annual instructions, in most instances inspection results were discussed and signed by lessees.

Improvements Needed to Ensure Resolutions of Deficiencies Identified During Semi-Annual Inspections

Based on our analysis of land managers' semi-annual inspections, lessees mostly complied with lease agreement provisions; however, in instances where issues are identified, the land managers did not follow-up to determine whether issues were resolved. Specifically, there is no documentation to substantiate follow-up communications with lessees; Land Stewardship Section staff acknowledged that there is no follow-up and improvements are needed in this area.

We sampled 26 leases (19 cattle grazing and seven miscellaneous) and reviewed the corresponding 103 semi-annual inspections land managers performed for these leases during 2022 and 2023. Land managers record inspection results electronically using a software application (ERSI's Survey 123), discuss the results with lessees, and require the lessees to sign the report to acknowledge the discussion. It should be noted that the Land Stewardship Sections monitors 22 of the 26 sampled leases (19 cattle grazing and three of the miscellaneous leases) and the Right of Way Section monitors four miscellaneous leases.

Among the sampled leases, our analysis disclosed that land managers did not identify any issues during 2022 and 2023 for 45 inspections involving 12 (46%) of the 26 sampled leases. Issues were identified during some inspections of the remaining 14 leases (54%). Specifically, land managers performed a total of 58 inspections for these 14 leases and did not identify any issues of non-compliance for 27 of the 58 inspections; however, they identified 31 inspections with a total of 55 non-compliant provisions/issues. In sum, land managers identified 55 non-compliant provisions during 31 of the 103 inspections (30%). Issues were primarily related to functionality of perimeter fence and gates, refuse/garbage/litter, and surface water management systems. Further, we noted that for a single non-compliant provision, land managers identified anywhere from 1 to 13 deficiencies requiring resolution. Refer to APPENDIX 1 for the *Semi-Annual Inspection Form* land managers use to determine compliance with lease provisions.

Results of our detailed analysis are shown in the following table.

Analysis of Semi-Annual Inspections for 26 Sampled Leases 19 Cattle Grazing and 7 Miscellaneous Leases - 2022 and 2023					
Leases / Inspections	# of Leases	# of Inspections	Inspection Analysis - # of Inspection Reports		# of Lease Provision Identified with Issues
			No Issues Identified	Inspections with Issues	
Sampled Population of 19 Cattle Grazing and 7 Miscellaneous Leases					
No Issues Identified	12	45	45	NA	NA
Issues Identified	14	58	27	31	55
Total	26	103	72	31	55
19 Cattle Grazing Leases					
No Issues Identified	6	24	24	NA	NA
Issues Identified	13	54	25	29	53
Total	19	78	49	29	53
7 Miscellaneous Leases					
No Issues Identified	6	21	21	NA	NA
Issues Identified	1	4	2	2	2
Total	7	25	23	2	2

Further, we analyzed the 55 lease provisions with compliance issues that land managers identified during the 31 inspections to determine whether the issues were resolved. We determined that lessees were responsible for resolving 33 provision issues and the District was responsible for 22 provision issues. Deficiencies primarily were issues related to perimeter fences and gates, refuse/garbage/litter, and surface water management systems. We performed four site inspections with land managers and did not observe any major issues. Specifically, we observed debris at one site that the land manager will address in the next inspection.

A summary of the lease provisions with deficiencies identified and responsibilities for resolutions are summarized in the following table.

Analysis of 53 Issues Identified by Land Managers during Semi-Annual Inspections of Cattle Grazing Leases						
Lease Provision Issue Classifications	# of Leases	# of Inspection with Issues	Responsibility for Issue Resolution			
			Lessees		District	
Functionality of perimeter fences and gates	13	21	16	30%	5	9%
Refuse/garbage/litter	6	12	9	17%	3	6%
Surface water management system <i>(Note 1)</i>	6	12	0	0%	12	23%
Other <i>(Note 2)</i>	4	8	6	11%	2	4%
Total		53	31	58%	22	42%
Analysis of 2 Issues Identified by Land Managers during Semi-Annual Inspections of Miscellaneous Leases						
Surface water management system	1	2	2	100%	0	0%
Total		55	33		22	

Note 1: Based on our review of lease agreements, lessees are responsible for maintenance and repairs of the surface water management system. However, based on semi-annual inspections and discussions with Land Stewardship Section staff, the District is responsible for maintenance and repairs. This issue will be discussed in detail in a separate section of the report.

Note 2: Issues include eight different lease provision questions in six separate inspections; for example, unauthorized vehicles and farm equipment, broken well and pump, and improper chemical storage.

Further, land managers identified a total of 145 deficient items relating to the 55 provisions. Details of non-compliant lease provisions and examples of deficiencies are described in the following table.

Analysis of Deficiencies Identified in Semi-Annual Inspection Reports
Question - Are all Perimeter Fences and Gates in Working Order and Functioning?
<i>Lessee Responsible for 16 Inspections with 62 Deficiencies; District Responsible for 5 Inspections with 8 Deficiencies</i>
<p><u>Examples of Deficiencies</u></p> <ul style="list-style-type: none"> ➤ Perimeter fence wire down ➤ Vegetation on fence, vegetation encroachment ➤ Trees down on perimeter fence ➤ Fence in poor condition and needs replacement ➤ Fence missing, staple gate ➤ Broken and leaning posts
Question - Is the Leased Area Free of Refuse/Garbage/Litter?
<i>Lessee Responsible for 9 Inspections with 23 Deficiencies; District Responsible for 3 Inspections with 6 Deficiencies</i>
<p><u>Examples of Deficiencies</u></p> <ul style="list-style-type: none"> ➤ Remove fencing materials, wood, metal debris, and tires ➤ Various material, grill, wheel and tires near cattle pens requires removal ➤ Clear metal debris in pasture ➤ Old fence and gate material require clean up ➤ Clean up brush / trash pile ➤ Remove fluid containers and plastic bottles
Several Questions re: Other – e.g., Unauthorized Items and Improper Storage
<i>Lessee Responsible for 4 Inspections with 6 Non-Complaint Provisions with a total of 18 Deficiencies; District Responsible for 2 Inspections with 2 Deficiencies</i>
<p><u>Examples of Deficiencies</u></p> <ul style="list-style-type: none"> ➤ Unauthorized storage building, dog pens, covered cattle pens, tractors, ➤ Improper storage of pharmaceuticals in cattle pens; improper herbicide storage ➤ Broken well

We interviewed Land Stewardship Section staff to determine how land managers ensured the 55 deficient provisions were monitored to ensure resolution and to request documentation to substantiate monitoring / completion. Lessees were responsible for 33 and the District was responsible for 22 issues.

We concluded the following for the 33 of the 55 issues where resolution was identified as the lessees' responsibilities for resolving:

- **Adequate Resolution with Supporting Documentation:** We found that resolutions for only five of the 33 inspection provision deficiencies were adequately documented. Details are as follows:
- **Lessee Resolved Two Deficiencies:** During two consecutive inspections (January 4, 2023, and September 7, 2023) of a parking lease, the Right of Way Section identified minor erosion and depressions in sand adjacent to parking area. Based on a reinspection performed on October 23, 2023, nine months after the issue was identified, the inspector concluded that the lessee resolved the issue by grading and sodding the area to the District's satisfaction.
 - **USDA Natural Resources Conservation Service (NRCS) Violations:** A NRCS inspected disclosed that a cattle pen was on a NRCS conservation easement which resulted in violations affecting three lease provisions: unauthorized vehicles and farm equipment, unauthorized structures, and garbage/litter. Land Stewardship Section staff coordinated with the lessee to ensure compliance with NRCS guidelines.
- **No Documentation to Substantiate Lessees' Resolutions of 28 Inspection Deficiencies:** There was no evidence when or if the remaining 28 deficient provisions identified by Land Stewardship Section land managers were resolved in a timely manner. We requested documentation to substantiate whether land managers followed up with lessees of these cattle grazing leases to ensure resolution, for example, verbal or written communications with lessees, or status updates by land managers. Land Stewardship Section staff stated that there is no documented follow-up process in place and land managers do not follow-up with lessees to determine whether issues were resolved and that improvements are required in this area. Further, our review of the Real Estate Bureau's files relating to the sampled leases did not disclose any documented follow-up. In addition, there are inspection instructions for following up on issue resolutions, however, we identified issues with the allowable timeframes, which will be addressed in a subsequent section. Based on the semi-annual field inspection instructions, dated April 2019 (which includes instructions for semi-annual inspection timeframes), inspection forms, and incident reporting, land

managers are required to follow-up and there are specific timeframes to resolve identified issue items. Timeframes for resolution range from 30 days to 180 days. Further, if a lessee does not correct deficiencies within the allotted timeframe, an incident report is required to be completed by the land manager with input by his / her supervisor and the Real Estate Bureau, if required. This is followed by written notification, additional time to complete required action, and a Cure Notice, if necessary.

We concluded the following for the 22 deficiencies identified as the District's responsibilities for resolving:

- For one sampled cattle grazing lease, the lessee is responsible for operating and maintaining two pump stations. During an inspection, the land manager determined that one of the pumps needed replacement, which the land manager determined was the District's responsibility. The land manager took appropriate action and resolved this issue
- There is no process in place to ensure that the remaining 21 deficient provisions were addressed or tracked. These are primarily water surface management system deficiencies. Staff acknowledged that no action was taken to resolve deficiencies and inspection issues are not forwarded to responsible staff/ areas for resolution. Deficiencies may be left mostly unresolved. However, some deficiencies may be addressed as part of planned District maintenance. According to Land Stewardship Section staff, they are working on compiling an inventory of assets on District lands, which would include location, description, and condition. However, any maintenance and repairs will depend on funding availability which is limited due to other District priorities.

To ensure that all land managers are applying consistent criteria when identifying lease deficiencies, the Land Stewardship Section should consider implementing the following process enhancements:

- Require land managers to be knowledgeable about lease provisions. Provide training, if necessary.
- Require supervisors to periodically accompany land managers during inspections to assess inspection consistency among the various land managers.

Surface Water Management System Lease Provision Requires Revision

During semi-annual lease inspections, land managers are responsible for determining the following:

Does the surface water management system appear to be working (no crushed culverts, no collapsed risers, no ditch, or canal blowout)?

As previously discussed, six of the 19 sampled cattle grazing leases disclosed that land managers identified 12 inspection reports with surface water management issues. Our review of the surface water management issues disclosed that land managers specified that the District was solely responsible for resolving all surface water management deficiencies. The 12 reports included 24 items. Examples of surface water management items identified primarily included the following:

- Culverts and risers – crushed, damaged, collapsed, rotted, and washed out
- Ditches infested with floating plants

However, based on our review of cattle grazing leases lessees are required to maintain the surface water management systems. Lease agreements have different versions of this provision, but the primary responsibilities require lessees (not the District) to maintain the surface water management systems. Examples of surface water management systems lease agreement provisions are as follows:

- Lessee is required to maintain the surface management system in accordance with the Baseline Inspection, which establishes the lease condition at the beginning of the lease and upon termination or expirations the lessee will return the property in the same condition. It should be noted that the District is responsible for resolving deficiencies found during these inspections, or
- Lessee is required to maintain the surface management system in accordance with Land Management Requirements (Exhibit K) – Requires lessees to implement specific interim or conservation land practices that do not affect the intended use of the lands. This exhibit also includes a map of the leased area with certain land features, for example, District maintained canals, discharge structures, and discharge points. In addition, any proposed changes must be approved by the District.

Further, most lease provisions for repairs responsibilities state the following:

“Lessee has a general duty to maintain and repair the Property and all associated facilities and improvements including but not limited to: roadways; surface water management systems including swales, ditches, canals, pumps and other structures....”.

According to Land Stewardship Section staff, maintenance of the surface water management systems is the District’s responsibility, not the lessees’ responsibility. As a result, land managers reported these issues as the District’s responsibility on the inspection reports. Staff stated that surface water management system should not be included as a lease provision requiring maintenance by lessees. Since there appears to be conflicting responsibilities, the Land Stewardship Section and the Real Estate Bureau should consider revising the lease provision to accurately reflect the lessees’ responsibilities.



Damaged culvert near cattle pens

Fencing/Gates Lease Provision Responsibilities Require Clarification

During semi-annual lease inspections, land managers are responsible for determining whether:

All perimeter fences and gates in working order and functioning properly?

Our review of sampled leases disclosed different provisions governing fencing and gates. Some older lease agreements require that lessees maintain all fencing and gates while more recent agreements require that lessees maintain, repair or replace all perimeter fencing and gates. The different provisions are summarized as follows:

- Lessee must maintain all fencing and gates needed to contain the cattle or in place to protect water resources in compliance with District standards. If Lessee wishes to install any improvements including fences, gates, pastures or cow pens, Lessee must obtain prior approval from the District's Land Manager. If approved, Lessee may install such improvements at its own expense. (This provision is in older agreements.)
- Lessee must maintain, repair or replace all perimeter fencing and gates needed to contain the cattle and fencing for the protection of water resources at the Lessee's expense in compliance with District standards. If Lessee wishes to install any other improvements including fences, gates, pastures or cow pens, Lessee must obtain prior approval from the District's Land Manager. If approved, Lessee must install and maintain such improvements at its own expense. (This provision is contained in recent new and renewed agreements.)

As previously discussed, our review of 13 cattle grazing leases disclosed that land managers identified fencing/gates issues in 21 inspections; lessees were required to resolve issues identified during 16 inspections and the District was responsible for the remaining five inspections. Based on our review of the lease agreements, it was not evident why the District is responsible for certain repairs. Real Estate Bureau staff acknowledged that land managers have difficulties determining the District's and lessees' fencing/gates responsibilities. Thus, the Land Stewardship Section and the Real Estate Bureau should review this provision to determine whether this provision requires further clarification.

Baseline Inspection Lease Provision Requires Reevaluation

Land managers conduct a baseline inspection of the leased property for new and renewed (restated / amended) lease agreements. The baseline inspection lease language is the same for both new and revised agreements and is as follows:

The District will conduct a Baseline Inspection within 90 days of the Effective Date of the Lease to establish the condition of the Property at the start of the Lease. Upon expiration or termination of this Lease, Lessee will return the property to the District in the same or better condition as described in the Baseline Inspection Report.

Most inspection items in the baseline inspection report are also in the semi-annual inspection report. Specifically, the baseline inspection for all leases requires a walkthrough of the property to document the following:

- Whether the entire property perimeter is fenced and the fence condition
- Whether there are any existing buildings, surface water pumps, and personal property
- Whether the surface water management system appear to be working (no crushed culverts, no collapsed risers, no ditch or canal blowout)
- Whether gates are in working order and functioning properly
- Whether a Phase 1 Environmental Assessment is needed
- Whether there any fuel tanks (above or below ground) on the property
- Refuse/garbage/litter
- Evidence of unauthorized mowing, vegetation removal, vegetation maintenance methods and land clearing, dredging or filling activities in wetlands from the previous lessee.
- Evidence of spills involving contaminants, hazardous/toxic substance that require clean-up or remediation
- Evidence of unauthorized activities such as trespass, vandalism, squatting, unauthorized livestock and/or game species

Land Stewardship Section staff explained that the District is responsible for resolving issues found during baseline inspections. The District should only be fully responsible for documenting and resolving baseline issues for new leases. Baseline inspections issues identified for renewed leases should not be the District's responsibility since the lessee should have resolved

inspection issues. Instead, responsibilities for resolving issues should be assigned either to the lessee or District based on lease provisions. Further, baseline inspections for renewed leases appear unnecessary and an inefficient use of resources since the inspections for renewed leases are comparable to semi-annual inspections. Both inspections include assessing the leased sites for the following:

- fencing conditions and gate functionality,
- refuse/garbage/litter,
- personal property on the premises
- unauthorized mowing, vegetation removal, vegetation maintenance methods and land clearing, dredging or filling activities,
- spills involving contaminants, hazardous/toxic substance that require clean-up or remediation, and
- unauthorized activities such as trespass, vandalism, squatting, unauthorized livestock and/or game species

The Land Stewardship Section and the Real Estate Bureau should reevaluate the baseline inspection provision requirement for renewed lease agreements to determine whether baseline inspections for renewed agreements should be required.

Timeframes for Resolving Inspection Deficiencies not Aligned with Repairs Provision in Lease Agreement

Lease agreement provision for completing required repairs or maintenance identified during inspections was revised in 2018. Prior to 2018, the repair provision did not include any timeframe for lessees to complete required repairs and maintenance. However, in 2018 the repair provision was revised to require deficiencies to be completed within 30 days unless additional time is granted. The repair provision is required to be included in any subsequent new leases and lease amendments. As a result, some lease agreements may not contain the revised provision. The revised provision requires the following:

The District, in its sole discretion, will determine if and when any repairs are necessary. Lessee is responsible for all repairs and maintenance whether caused by acts of Lessee, its agents, employees, customers, guests, licensees, or by reason of governmental regulations, acts of God, casualties, or any other reason, and unless additional time is granted Lessee by the District, Lessee will have any required repairs or maintenance completed within thirty (30) days of Lessee's receipt of the District's notice to Lessee requiring that the repairs or maintenance be made by Lessee.

It should be noted that we found instances where the revised provisions were not included in amended agreements. Further, as previously stated, Land Stewardship Section staff did not always follow-up on the status of deficiencies. Semi-annual field inspection instructions, dated April 2019, includes timeframes for completing semi-annual inspections, and instructions for completing inspection forms and incident reporting. Based on the instructions, it is up to the land manager's discretion to determine the urgency for correcting deficiencies using the following timeframe:

- Priority Level 1 – 30 days
- Priority Level 2 – 90 days
- Priority Level 3 – 180 days (next inspection)

Further, if a lessee does not correct deficiencies in the allotted timeframe, land stewardship and leasing staff are required to coordinate and notify the lessee. Notification and response timeframes are based on the severity of the deficiencies or non-compliance, which are as follows:

- Provide the lessee with written notification of deficiencies within 1-15 days from date given to complete required action items. The lessee is given 1-30 days after notification to resolve the deficiencies depending on the severity.
- If the lessee fails to respond to the written warning and does not resolve the issues within the allowed timeframe, the Real Estate Bureau issues a Cure Notice.
- If the Lessee fails to respond to the Cure Notice or resolve the deficiencies, the land manager and Real Estate Bureau recommends terminating the lease.
- It should be noted that in instances of serious non-compliance issues, the Land Stewardship Section and the Real Estate Bureau work together to ensure lessees rectify issues, which may include cure notices to lessees. Based on our review, no cure notices were sent to lessees for the issues identified.

Our analysis of timeframes allocated by the land managers for lessees to resolve the 33 deficiencies we identified are as follows:

Land Managers' Timeframes for Resolving Deficiencies		
# of Days for Resolving Deficiencies	# of Instances	Percentage
30 Days	23	70%
90 Days	8	24%
180 Days	2	6%
Total	33	100%

As illustrated in the table above, land managers generally gave lessees 30 days for addressing deficiencies. Further, the 90-day and 180-day timeframes were for items similar to the items allotted a 30-day resolution timeframe. As a result, it may be beneficial to consider re-evaluating and revising the repairs lease provision and/or the guidelines. Based on discussions with Real Estate Bureau staff, the inspection resolution guidelines are being discussed and will be revised. Revisions should be clearly communicated to all land managers.

RECOMMENDATIONS

1. **Implement a process to ensure land managers follow-up with lessees to determine whether inspections deficiencies are resolved. Consider requiring land managers to document communications and resolutions.**

Management Response: Management concurs with recommendation.

- Request IT amend inspection report to include date violations are to be rectified.
- Staff will request IT provide a violation report from the Survey 123 software.

Responsible Division: Real Estate Bureau and Land Stewardship Section

Estimated Completion: July 31, 2025

2. **Consider tracking and monitoring the status of inspection deficiencies the District is responsible for resolving.**

Management Response: Management concurs with recommendation.

- The Land Stewardship Section is developing a process to identify, track, and monitor assets and management needs outside of the lease inspection process.
- The Lease Inspection survey will be limited to those items specifically identified as a lessee responsibility.

Responsible Division: Real Estate Bureau and Land Stewardship Section

Estimated Completion: July 31, 2025

3. **Ensure that all Land Stewardship Section land managers are aware of lease inspection guidelines.**

Management Response: Management concurs with recommendation. Land Stewardship management will review lease inspection guidelines with land managers.

Responsible Division: Land Stewardship Section

Estimated Completion: December 31, 2024

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4. **Consider implementing the following process enhancements to ensure that all land managers are applying consistent criteria when identifying lease deficiencies: 1) provide training, if necessary, 2) require supervisors to periodically accompany land managers during inspections to assess inspection consistency among land managers.**

Management Response: Management concurs with recommendation.

- Management will provide necessary training to land managers.
- Supervisors will periodically accompany land managers on inspections.

Responsible Division: Land Stewardship Section

Estimated Completion: December 31, 2024

5. **Determine whether lessees or the District is responsible for maintaining the water surface management system and revise the surface water management system lease provision accordingly, if necessary.**

Management Response: Management concurs with recommendation.

- The surface water management system is the District's responsibility and the lease agreement language templates and exhibits will be revised.
- All features requiring maintenance by the lessee will be specifically identified.

Responsible Division: Real Estate Bureau and Land Stewardship Section

Estimated Completion: September 30, 2024

6. **Revise the repairs lease provision to exclude lessees' responsibility for repair and maintenance for water surface management systems, if necessary.**

Management Response: Management concurs with recommendation. The repairs language in the lease template has been revised to remove the surface water management system responsibility from the lessee.

Responsible Division: Real Estate Bureau and Land Stewardship Section

Estimated Completion: July 31, 2024

7. Determine whether the fencing/gates lease provision requires clarification.

Management Response: Management concurs with recommendation.

- The fencing/gate language has been revised in the lease template.
- For new leases, all lessee responsibilities will be clearly identified.

Responsible Division: Real Estate Bureau and Land Stewardship Section

Estimated Completion: July 31, 2024

8. Assess whether baseline inspections are required for renewed lease agreements. If not, revise the baseline inspection lease requirement.

Management Response: Management concurs with recommendation. Baseline inspections will be required for new leases.

Responsible Division: Real Estate Bureau and Land Stewardship Section

Estimated Completion: July 31, 2024

9. Ensure that all new and renewed lease agreements include the timeframe specified in the revised repairs provision.

Management Response: Management concurs with recommendation.

- The timeframe to rectify issues will be specified in the District's notice that will be sent to the lessee.
- This provision has been revised in the lease template for all new and renewed lease agreements.

Responsible Division: Real Estate Bureau and Land Stewardship Section

Estimated Completion: July 31, 2024

10. Consider reviewing boilerplate land lease agreements to determine whether additional revisions are warranted.

Management Response: Management concurs with recommendation. A review of the lease agreement template will be made to revise or delete boilerplate language as appropriate.

Responsible Division: Real Estate Bureau and Land Stewardship Section

Estimated Completion: December 31, 2024

11. Ensure land managers make extra efforts to obtain lessees' signatures on semi-annual inspection results.

Management Response: Management concurs with recommendation. Lessee will be sent a copy of the inspection with any violations or deficiencies noted to their email address on file with a response requirement.

Responsible Division: Real Estate Bureau

Estimated Completion: December 31, 2024

APPENDIX A



South Florida Water Management District Lease Inspection Semi-Annual Report



ESRI's Survey123

Submitted Time:

Lease Information	
Lease Status:	County:
Property Name:	Property Acres:
Lessee Name:	
Contract Number:	Encumbrance ID:
Lease Purpose:	
Lease Start:	Lease End:

Inspection Location:

Inspection Date: _____

Inspector: _____

Are all perimeter fences and gates in working order and functioning properly?

Perimeter Fence Photo Documentation

Is there evidence of unauthorized structures portable or permanent?

Unauthorized Structures Photo Documentation

Is there evidence of unauthorized vehicles or farm equipment use on the property?

Vehicle Photo Documentation

Are the existing pumps still present and in operable condition?

Water Pump Photo Documentation

Is there evidence of broken wells on the property?

Broken Wells Photo Documentation

Are there NEW wells on the property?

Well Property Asset

Asset Manufacturer:

Asset Model Number:

Asset Serial Number:

Asset Tag Number:

Additional Comments:

Does the surface water management system appear to be working (no crushed culverts, no collapsed risers, no ditch or canal blowout)?

Surface Water Management System Photo Documentation

Is there evidence of unauthorized fertilizing or other soil amendments (i.e. liming)?

Soil Amendments Photo Documentation

Is there evidence of unauthorized supplemental feeding?

Unauthorized Feeding Photo Documentation

Is there evidence of unauthorized pesticide application?

Unauthorized Pesticide Photo Documentation

Is there any evidence of unauthorized upland mowing, vegetation removal, vegetation maintenance methods and land clearing, dredging or filling activities in wetlands?

Unauthorized Vegetation Clearing Photo Documentation

Is the leased area free of refuse/garbage/litter?

Garbage Photo Documentation

Is there evidence of sound grazing practices?

Grazing Photo Documentation

Approximate Number of Animal Units:

Is there any evidence of spills involving contaminants, hazardous/toxic substance that require clean-up or remediation?

Toxic Spills Photo Documentation

Do existing fuel tanks, 500 gallons or less, appear in good condition?

Existing Fuel Tank Property Asset

Asset Manufacturer:

Asset Model Number:

Asset Serial Number:

Asset Tag Number:

Additional Comments:

Are there any new fuel tanks (above or below ground) on the property?

New Fuel Tank Property Asset

Asset Manufacturer:

Asset Model Number:

Asset Serial Number:

Asset Tag Number:

Additional Comments:

Is there any evidence of improper storage of chemicals?

Chemical Storage Photo Documentation

Is the lessee compliant with industry-developed agricultural BMPs and land management requirements as identified in lease?

Land Management Photo Documentation

Did you observe unauthorized hunting, fishing, or trapping?

Unauthorized Hunting/Fishing/Trapping Photo Documentation

Is there evidence of unauthorized livestock and/or game species?

Unauthorized Livestock/Game Photo Documentation

Is there evidence of unauthorized sub-letting/subcontracting, assignments or other revenue generating activities other than leased land purpose without prior District approval? No

Unauthorized Sub-letting/Subcontracting Photo Documentation

Is there evidence of unauthorized signage or advertisements?

Unauthorized Signage Photo Documentation

Is the public access unaltered?

Public Access Photo Documentation

Are warning signs posted for apiary sites and authorized number of pallet and hives on the property?

Apiary Photo Documentation

General Comments:

Land Manager's Acknowledgment and Signature:

Lessee's Acknowledgment and Signature: