



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER ADAM H. PUTNAM

TO: Mike Joyner, Assistant Commissioner and Chief of Staff
THRU: Steven L. Hall, General Counsel (Acting)
FROM: Rachel Stawski, Legal Intern
DATE: April 11, 2018
SUBJECT: Florida Agriculture Center and Horse Park Public Access

ISSUES

1. May the Florida Agriculture Center and Horse Park close some of the access points from the greenway trail into the grounds during certain events and event preparation for biosecurity reasons?
2. May the Florida Agriculture Center and Horse Park limit access to the jumping course to specified dates when they have emergency personnel available?
3. May the Florida Agriculture Center and Horse Park restrict access to riding arenas?

SHORT ANSWER

The Florida Agriculture Center and Horse Park's proposed access restrictions appear to be reasonable with a basis in biosecurity, public safety, and protection of premises facilities. None of the proposed restrictions are prohibited by law or contract.

DISCUSSION

I. Relevant Statutory Provisions.

A review of applicable Florida law did not identify any prohibitions of reasonable restrictions on public access to state lands. Further, there is no case law that interprets Florida law to provide unlimited public access to state lands. The following statutes provide examples of applicable Florida law.

Section 570.681(1), F.S., titled "Florida Agriculture Center and Horse Park; legislative findings" states:

"It is the finding of the legislature that:

- (1) Equine and other agriculture-related industries strengthen and benefit each other with the establishment of a statewide agriculture and horse facility.
- (2) The Florida Agriculture Center and Horse Park provides Florida with a unique tourist experience for visitors and residents, thus generating taxes and additional dollars for the state.

- (3) Promoting the Florida Agriculture Center and Horse Park as a joint effort between the state and the private sector allows this facility to use experts and generate revenue from many areas to ensure the success of this facility.”

This provision speaks to the intent of the legislature that the Florida Agriculture Center and Horse Park be used to generate revenue as opposed to goals of pure public access.

Section 570.685(1), F.S., states “there is created within the Department of Agriculture and Consumer Services the Florida Agriculture Center and Horse Park Authority which shall be governed by this section and s. **570.691**.” Where **Section 570.691(1)(b), F.S.**, states “the department may authorize, without charge, appropriate use of property, facilities, and personnel of the department by the direct-support organization. *The use shall be for the approved purposes of the direct-support organization and may not be made at times or places that would unreasonably interfere with opportunities for the general public to use department facilities* (emphasis added).”

Public access to the Horse Park cannot be unreasonably interfered with, but there is no prohibition of reasonable restrictions on public access. The proposed access restrictions do not appear to fall into the unreasonable interference category because the restrictions on public access would be minimal and for the reasonable purposes of biosecurity, public safety, and protection of the facilities.

Section 259.032(1), F.S., states in relevant part that “it is the Legislature’s intent that lands acquired for conservation and recreation purposes be managed in such a way as to protect or restore their natural resource values, and provide the greatest benefit, *including public access*, to the citizens of this state (emphasis added).” **Section 259.032(7), F.S.**, states in relevant part “all lands managed under this chapter and s. 253.034 shall be: (a) managed in a manner that will provide the greatest combination of benefits to the public and to the resources.”

These statutes again provide no prohibition on limiting public access and emphasize using the lands in a way that will “provide the greatest benefit.” The use of the Florida Agriculture Center and Horse Park in such a way that it brings in the most revenue to the state while keeping the people and the animals using the Florida Agriculture Center and Horse Park safe would likely be viewed as the greatest benefit.

Section 259.032(8)(e), F.S., provides in relevant part that “individual management plans shall conform to the appropriate policies and guidelines of the state land management plan and shall include, but not be limited to: ... 2. Key management activities necessary to achieve the desired outcomes, including but not limited to, *providing public access*, preserving and protecting natural resources, protecting cultural and historical resources, restoring habitat ... 7. *a determination of the public uses and public access that would be compatible with conservation recreation or both* (emphasis added).”

The determination required under 7. gives the impression that not all public uses nor types of public access would be compatible in any given situation. Therefore, Section 259.032(8)(e), F.S., does not prevent the Florida Agriculture Center and Horse Park from reasonably limiting public access.

Section 259.032(9)(a), F.S., provides in part: “the legislature intends for these lands to be managed and maintained in a manner that is compatible with conservation, recreation, or both, consistent with the land management plan and *for the public to have access to and use of these lands if public access would not harm the resources the state is seeking to protect on the public’s behalf* (emphasis supplied).”

This statute demonstrates that the legislature intends for public access to be limited if public access would “harm the resources that the state is seeking to protect on the public’s behalf.”

Section 259.032(9)(f), F.S., states “to ensure that the public has knowledge of an access to conservation lands, as defined in s. 253.034(2)(c), the department shall publish, update, and maintain a database of such lands where public access is compatible with conservation and recreation purposes.”

The need for such a database suggests that not all public lands will be compatible with public access and not all lands can be accessed by the public, only the lands on the list.

II. Relevant Contractual Provisions.

FDACS contracts numbers 3504, 3820, 4101, and 3504 contain no language mandating unfettered public access to the Florida Agriculture Center and Horse Park premises. To the contrary there are provisions within these contracts that mandate protection of the premises and allow for public recreation that is compatible with the conservation and protection of the Florida Agriculture Center and Horse Park property.

FDACS contract No. 3504, entitled “Agreement,” which was made and entered into **September 16, 1996**, between the Florida Department of Agriculture and Consumer Services (the Department) and Florida Agriculture Center and Horse Park Authority, Inc. (the Authority) states in part:

“Use of Department Property and Personnel”

“4. The Department hereby permits, without charge, the Authority to use property, facilities, and personnel of the Department, subject to the provisions of Sections 570.902 and 570.903, Florida Statutes. The use shall be directly in keeping with the approved purposes of the Authority *and shall not be made at times or places that would unreasonably interfere with opportunities for the general public to use Department facilities for established purpose* (emphasis added).”

FDACS Contract No. 3820 FL Department of Environmental Protection Sublease to FDACS **October 7, 1997**, states in relevant part:

“3. Purpose: Sublessee Shall manage the Subleased Premises only for the conservation and protection of natural and historical resources and for resource based public outdoor recreation which is compatible with the conservation and protection of the Subleased Premises or associated with the horse park-agricultural center referred to in Section 253.7825(4)(a), Florida Statutes.”

“6. Sublessee’s Responsibilities: ... Sublessee shall... take all reasonable measures to provide security against property damage, property degradation and unauthorized uses or any other uses thereof not in conformance with this sublease.”

“27. Damage to Subleased Premises: (A) Sublessee shall not do, or suffer to be done, in, on or upon the Subleased Premises or as affecting said Subleased Premises or adjacent properties, any act which may result in damage or depreciation of value to the Subleased Premises or adjacent properties, or any part thereof.”

These contract provisions suggest that public recreation must be compatible with the protection of the subleased premises and that the premises must be protected from damage and depreciation which is exactly what the goal would be in restricting public access in certain circumstances.

FDACS contract No. 3504, dated **May 31, 2013**, entitled “AMENDED AND RESTATED FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES FLORIDA AGRICULTURE CENTER AND HORSE PARK AUTHORITY SUBLEASE AGREEMENT”, which supersedes and replaces the terms and provisions of the Existing Lease (FDACS Contract **No. 4101 dated January 22, 1998**) states in relevant part:

“4. Purpose: The Authority shall manage the premises only for the conservation and protection of natural and historical resources and for the resource based public outdoor recreation which is *compatible with the conservation and protection of the Premises* or associated with the Florida Agriculture Center and Horse Park referred to in Section 253.7825(4)(a), Florida Statutes.”

“5. Conformity: This Sublease Agreement shall conform to all terms and conditions of DEP Sublease and the Master Lease. The Authority shall prevent the unauthorized use of the Premises or any use thereof not in conformance with this Sublease Agreement.”

“7. The Authority’s Responsibilities: ... Authority shall... take all reasonable measures to provide security against property damage, property degradation and unauthorized uses or any other uses hereof not in conformance with this Sublease Agreement.”

These provisions restated the position regarding allowing public access to the extent that it is compatible with the conservation and protection of the premises and that the Florida Agriculture Center and Horse Park is charged with protecting the premises against property damage and degradation.

III. Access to other State Lands.

Rule Chapter 62D-2, F.A.C., regulates state parks which includes “all real property in the State of Florida under the Jurisdiction of the Florida Department of Environmental Protection, Division of Recreation and Parks, or which may come under its jurisdiction regardless of the property’s designation.” Rule 62D-2.013(1). B

The Florida Agriculture Center and Horse Park was leased by the Board of Trustees (BOT) through the Department of Environmental Protection (DEP) to the Florida Department of Agriculture and Consumer Services (FDACS) and was then subleased to the Florida Agriculture Center and Horse Park Authority and is distinguishable from a state park. However, the Florida Agriculture Center and Horse Park remains analogous similar to a state park because of its purpose and ownership.

Rule 62D-2.014, F.A.C., allows the DEP Division of Recreation and Parks to “prohibit or regulate any activity that lessens the safety or recreational experience of the visiting public or lessens the natural or cultural value of the park.” Rule 62D-2.014(2), F.A.C., allows for “standard admission and other park fees” to be imposed and states that “entering or leaving any state park property except through the designated entrance points is prohibited.” The rule also states that “no person may enter a state park property for using the resources or facilities therein without paying the appropriate fee, if any, in effect at the time for that park property.” Rule 62D-2.014(2)(a), F.A.C.

Rule 62D-2.014(16)(a), F.A.C., provides that “the opening and closing hours for each park shall be posted” and “no person shall remain in any park after closing unless properly registered as an overnight visitor or in possession of a valid after hours permit from the Division or park manager.” Subjection (b) states that “the division, in furtherance of the park management practices... may close any park or section thereof to the public at any time and for any interval or time, either temporarily or at regular stated intervals and either entirely or for certain uses.” Rule 62D-2.014(16)(b), F.A.C. These park closures “will be used to provide visitor and employee safety, resource protection, operational efficiency, and facility maintenance.” Rule 62D-2.014(16)(b), F.A.C.

Chapter 5I-4, F.A.C., is similar to Rule Chapter 62D-2, F.A.C., but it provides “information regarding the utilization of lands and facilities managed or controlled by the Department of Agriculture and Consumer Services, Florida Forest service.” Rule 5I-4.002, F.A.C. Rule 5I-4.005(1), F.A.C., provides that “no person shall” “enter or exit any managed lands except through designated entrance/exit points” or “enter any managed lands for the purpose of using the resources or facilities therein without paying the appropriate fee, where applicable.” Rule 5I-4.006(4)(c), F.A.C., prohibits any person from remaining “in any day-use area during times it is designated as closed” without a State Forest Use Permit. Rule 5I-4.006(4)(d), F.A.C., reserves the right of the Florida Forest Service to “set carrying capacities on managed lands to protect the natural resources.” Rule 5I-4.006(4)(m), F.A.C., creates a “quiet time” for campers from “10:00 p.m. until 6:00 a.m.” during which “noise should not carry beyond the visitor’s campsite.”

The similarities between the Florida Agriculture Center and Horse Park, state parks, and state forests illustrate the ability of the Florida Agriculture Center and Horse Park Authority to create similar use restrictions.

CONCLUSION

Closing some of the access points from the greenway trail into the Florida Agriculture Center and Horse Park for biosecurity reasons, restricting access to the jumping course to specified dates when emergency personnel are onsite, and restricting access to the show arenas to events while allowing the public to use practice arenas full time are all appear to be allowable and reasonable restrictions on public access. These restrictions would be made for the defensible purposes of biosecurity, public safety, and protection of the premises.