

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS  
CONSENT / AGENDA ITEM # 17**

**SUBJECT:** Approval of a Resolution Authorizing the County Administrator to Close Access to Certain Public Lands.

**DATE OF MEETING:** November 4, 2013

**OVERVIEW/SUMMARY:** This request is to authorize the County Administrator to close public access to certain public lands. As the Resolution states, the criteria for closure is when the Administrator deems it necessary to protect the public's health, safety and welfare or to otherwise protect or enhance the natural or historic resources and value of the public lands.

This action will authorize law enforcement to enforce Chapter 810. Florida Statutes regarding unauthorized users of public lands and facilities including trespassers, poachers, and squatters. Additionally, properties may be designated as closed to the public until formally opened, increasing public safety during construction or similar activities and protecting the public investment in publically owned real properties including environmentally sensitive lands and other real estate and facilities.

This request is being presented to avoid the general public accessing and utilizing County properties in a timeframe and/or manner contrary to the County's management operations and ahead of the necessary infrastructure and other normal safety measures the County would put in place to handle the public. The County has had circumstances over the years, particularly with newly acquired parcels, where the we have had citizens accessing parcels and damaging fences, setting up tree stands and game cameras for hunting, camping or squatting, dumping waste material, and trespassing into active construction or sensitive conservation areas. When staff or law enforcement has encountered these individuals often they claimed an understanding all County properties were open to the public at all times.

This resolution will enable staff to close and mark as closed parcels that fall into this unique situation such as Bulow Woods, Pellicer Flats and the hospital parcel, soon to be the Sheriffs Consolidated Operations Center.

**DEPT./CONTACT/PHONE #:** Land Management / Tim Telfer / 386-313-4066

**FUNDING INFORMATION:** N/A

**RECOMMENDATION:** Request the Board approve the attached Resolution authorizing the County Administrator to close access to certain public lands as deemed necessary.

**ATTACHMENTS:**

Attachment 1 - Resolution

Attachment 2 - Portions of Florida Statute 810, dealing with trespassing.

*TTT*

Tim Telfer  
Environmental Planner

*10/30/2013*

Date

*Craig M. Coffey*

Craig M. Coffey  
County Administrator

*30 OCT 2013*

Date

Deputy County Admin.  
Legal

Initials    Date  
\_\_\_\_\_  
\_\_\_\_\_

RESOLUTION 2013- \_\_\_\_

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR HIS DESIGNEE, TO CLOSE ACCESS TO PUBLIC PROPERTY WHEN NECESSARY TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC AND TO POST THE PROPERTY WITH "NO TRESPASS" SIGNAGE IN CONFORMANCE WITH CHAPTER 810, FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**Whereas**, Flagler County Ordinance No. 2010-01 allows for environmentally sensitive lands to be purchased by the County Commission and to be used for passive outdoor recreational purposes, provided such uses will not disturb or degrade the environmental quality of the properties; and

**Whereas**, the County Commission also acquires property through other mechanisms to provide for needed governmental services such as road construction, building construction, or to provide for new parks and recreational opportunities for County citizens and visitors; and

**Whereas**, in order to ensure the safety of the public, access to public properties may need to be closed, from time to time, for reasons which may include, but not be limited to, the performance of routine maintenance activities, the construction of recreational features such as boardwalks or other needed infrastructure such as parking lots or restroom facilities, or the performance of emergency repairs; and

**Whereas**, access to environmentally sensitive lands may need to be closed for a temporary duration in order for the County to take actions necessary to preserve, protect or enhance the quality of the natural and historic resources within the environmentally sensitive lands.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA AS FOLLOWS:**

**SECTION 1. AUTHORIZATION.**

1. Public lands owned by Flagler County may be closed to public use by the County Administrator, or his designee, when deemed necessary to protect the public's health, safety and welfare or to otherwise protect or enhance the natural or historic resources of the public lands.

2. The County Administrator, or his designee, is further authorized to post "No Trespass" signage in compliance with Section 810.11(5)(a), Florida Statutes. In such an event, written notification of the postings shall be sent to the Flagler County Sheriff's Office and the Florida Fish and Wildlife Conservation Commission's Division of Law Enforcement, providing for the authorization to issue trespass warnings pursuant to Section 810.09, Florida Statutes.

**SECTION 2. EFFECTIVE DATE.**

This Resolution shall take effect immediately upon adoption by the Flagler County Board of County Commissioners.

**PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA THIS \_\_\_\_ DAY OF NOVEMBER 2013.**

**FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS**

\_\_\_\_\_  
Nate McLaughlin, Chair

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gail Wadsworth, Clerk of the  
Circuit Court and Comptroller

\_\_\_\_\_  
Albert Hadeed, County Attorney

810.011 Definitions.—As used in this chapter:

(1) "Structure" means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08 only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

(2) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08 only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

(3) "Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08 only, the term "conveyance" means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

(4) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(5)(a) "Posted land" is that land upon which:

1. Signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than 2 inches in height, the words "no trespassing" and in addition thereto the name of the owner, lessee, or occupant of said land. Said signs shall be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside the boundary line; or

2.a. Conspicuous no trespassing notice is painted on trees or posts on the property, provided that the notice is:

(I) Painted in an international orange color and displaying the stenciled words "No Trespassing" in letters no less than 2 inches high and 1 inch wide either vertically or horizontally;

(II) Placed so that the bottom of the painted notice is not less than 3 feet from the ground or more than 5 feet from the ground; and

(III) Placed at locations that are readily visible to any person approaching the property and no more than 500 feet apart on agricultural land.

b. Beginning October 1, 2007, when a landowner uses the painted no trespassing posting to identify a "no trespassing" area, those painted notices shall be accompanied by signs complying with subparagraph 1. and placed conspicuously at all places where entry to the property is normally expected or known to occur.

(b) It shall not be necessary to give notice by posting on any enclosed land or place not exceeding 5 acres in area on which there is a dwelling house in order to obtain the benefits of ss. 810.09 and 810.12 pertaining to trespass on enclosed lands.

(6) "Cultivated land" is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation.

(7) "Fenced land" is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire, or other material, which stands at least 3 feet in height. For the purpose of this chapter, it

shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water.

(8) Where lands are posted, cultivated, or fenced as described herein, then said lands, for the purpose of this chapter, shall be considered as enclosed and posted.

(9) "Litter" means any garbage, rubbish, trash, refuse, debris, can, bottle, box, container, paper, tobacco product, tire, domestic or commercial appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, or farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

(10) "Dump" means to dump, throw, discard, place, deposit, or dispose of any litter.

(11) "Commercial horticulture property" means any property that is cleared of its natural vegetation and is planted in commercially cultivated horticulture products that are planted, grown, or harvested. The term also includes property that is used for the commercial sale, use, or distribution of horticulture products.

(12) "Agricultural chemicals manufacturing facility" means any facility, and any properties or structures associated with the facility, used for the manufacture, processing, or storage of agricultural chemicals classified in Industry Group 287 contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

(13) "Construction site" means any property upon which there is construction that is subject to building permit posting requirements.

History.—s. 30, ch. 74-383; s. 1, ch. 76-46; s. 1, ch. 82-87; s. 1, ch. 92-351; s. 1, ch. 94-263; s. 1, ch. 94-307; s. 47, ch. 96-388; s. 13, ch. 99-188; s. 3, ch. 2001-182; s. 49, ch. 2001-279; s. 15, ch. 2006-289; s. 1, ch. 2007-123; s. 4, ch. 2007-244.

#### 810.09 Trespass on property other than structure or conveyance.—

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass, commits the offense of trespass on property other than a structure or conveyance.

(b) As used in this section, the term "unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

(2)(a) Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and that the person to be taken into custody and detained has committed or is committing the violation. If a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention in compliance with the requirements of this paragraph does not result in criminal or civil liability for false arrest, false imprisonment, or unlawful detention.

...

(3) As used in this section, the term "authorized person" or "person authorized" means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.