



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

December 7, 2011

Mr. Tim Sagul
Suwannee River Water Management District
9225 CR 49
Live Oak, Florida 32060


SUBJECT: 373.406(2) Binding Determination -- Douglas Anderson

Dear Mr. Sagul:

Per your request, enclosed please find our written report on the subject referral. In short, it is the Department's opinion that the operation in question is engaged in production agriculture; however, the proposed canal, as conceptually designed, would not qualify for the exemption under subsection 373.406(2), Florida Statutes.

If you or your staff have any questions as you review the document, please feel free to contact me or Bill Bartnick at 850-617-1700.

Sincerely,
ADAM H. PUTNAM
COMMISSIONER


Richard J. Budell
Director

Enclosure

cc: Douglas Anderson
Carol Forthman

**FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
Office of Agricultural Water Policy
1203 Governors Square Blvd., Suite 200
Tallahassee, Florida 32301**

**Binding Recommendation and Opinion
Florida Statute 373.406(2) Exemption Claim
Douglas Anderson, Dixie County
November __, 2011**

FDACS Clerk No. A76170

Pursuant to the existing *Memorandum of Agreement Regarding Binding Determinations of Exemptions Under Subsection 373.406(2), Florida Statutes*, between the Suwannee River Water Management District (District) and the Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy (OAWP), Mr. Scott Cleveland, Environmental Director of Anderson Columbia Co., Inc., requested that OAWP evaluate agricultural activities located on property located in Dixie County, Florida to determine whether these activities qualify for the statutory exemption. Per this request, staff has performed a site inspection and evaluated owner provided documentation and additional information received from the District and has rendered a conclusion based on the following information.

Background:

The Anderson site is a 160-acre parcel located in Section 2, Township 11 South, Range 13 East, in Dixie County, off County Road 349 south of Old Town. The parcel is classified as agriculture (timberland) pursuant to 2011 Dixie County Property Appraiser information. Douglas and Lisa Anderson hold title to the property, and acquired the parcel by warranty deed on December 26, 2007.

On August 22, 2011, the District received an Environmental Resource Permit exemption request signed by applicant Douglas Anderson for a proposed 4.5 acre agricultural irrigation pond to be installed in a wetland. The application package contained a *Construction Plans and Hydrology Report* dated August 2011, submitted by Statewide Engineering, Inc. The applicant was granted a request for extension in order to allow Statewide Engineering, Inc. time to prepare and submit a revised report (October 2011) to the District. On October 20, 2011, the District evaluated all information submitted to date and sent Mr. Anderson a letter informing him that the proposed activity is not consistent with normal and customary agricultural practices in the area. On October 25, 2011, Mr. Scott Cleveland sent the District a rebuttal letter requesting that the OAWP perform a binding determination.

Site Inspection Findings:

On November 1, 2011, a site inspection was performed by Bill Bartnick, Hugh Thomas and James Clements with the OAWP, accompanied by Douglas Anderson, Scott Cleveland, Mike Shaw, and Chuck Farmer all representing Mr. Anderson. During this field visit and investigation, all salient features were observed and digital photos were taken.

The operation currently consists of recently cleared and leveled fallow uplands in preparation for planting. Mr. Anderson stated that he harvested the upland area pine trees nearly three years ago, and more recently removed the remaining pine stumps to prepare the land for near-term row crop production (corn, peanuts). Two center pivot irrigation systems were noted; however, they are not yet operational pending issuance of two Water Use Permits from the District and construction of the water supply wells.

The revised *Construction Plans and Hydrology Report* shows an approximate 30-foot wide by 4-foot deep proposed linear canal to be constructed in the marsh wetland area that is situated on the western property boundary along County Road 349. The proposed canal, as designed, will traverse the wetland in a general north to south orientation. Also proposed are six, 48-inch drainage pipes to be installed at the southernmost end of the wetland. Reportedly, the canal and pipes are for the express purpose of facilitating agricultural drainage for the estimated 66-acre drainage basin.

The inspection began at CR 349; specifically at the three existing concrete drainage pipes that form the inflow to the wetland. No standing or flowing water was noted at this point on this day. There was an approximate 12-inch stain (rust) line noted on the metal T-post that defined the western property boundary line. The inspection then moved to the marsh wetland area. There were approximately 6-inches of standing water in the wetland core, and adventitious roots noted on shrubs at 6-inches above the existing water level. The wetland was dominated by saw-grass and water lilies. During the time period from 10/4/11 to 11/3/11, the amount of rain that was recorded at the District's Dixie County (Governor Hill Lake) rainfall gauge station was 3.26", which is very near the historical October monthly rainfall average.

Statutory Analysis:

(a) *"Is the person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture on lands classified as agricultural pursuant to s. 193.461, F.S.?"*

YES. The OAWP finds that Douglas Anderson is engaged in the practice of agriculture pursuant to s. 193.461 F.S., on this parcel.

(b) *"Has the individual altered (or proposed to alter) the topography of the tract of land for the purposes consistent with the normal and customary practice of such occupation in the area?"*

NO. The OAWP finds that the proposed construction of the canal in the marsh wetland would not be normal and customary for the following reasons:

- 1) The proposed canal will not be used for irrigation purposes.
- 2) The proposed canal and associated excavation activities will further complicate having the center pivot towers (tires) cross through the marsh wetland. As such, the Anderson representatives stated onsite that the pivot would need to cross through the wetland to irrigate the field directly south of the marsh wetland. This is not a normal and customary crossing practice.

- 3) The marsh wetland does not appear to be inundated beyond existing normal pool and seasonal high wetland water levels, and in need of relief drainage.
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c) *"Are the alteration(s) (or proposed alteration(s)) for the sole and predominant purpose of impeding or diverting surface waters or adversely impacting wetlands?"*

YES. OAWP finds that the proposed alteration is for the sole and predominant purpose of impeding or diverting surface waters or adversely impacting wetlands.

Conclusion:

OAWP has determined that the proposed installation of a canal which would serve no other purpose than to accelerate drainage of the marsh wetland would not qualify for an exemption under subsection 373.406(2), F.S.

Nothing herein relieves the landowner from applying for and obtaining any applicable federal, state, or local authorization.

Right to Administrative Hearing:

If you wish to contest OAWP's action, you have the right to request an administrative hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, and to be represented by counsel or other qualified representative. Mediation is not available. Your request for hearing must contain:

1. Your name, address, and telephone number, and facsimile number (if any).
2. The name, address, telephone number, and facsimile number of your attorney or qualified representative (if any) upon whom service of pleadings and other papers shall be made.
3. A statement that you are requesting an administrative hearing and dispute the material facts alleged by OAWP, in which case you must identify the material facts that are in dispute (formal hearing), or that you request an administrative hearing and that you do not dispute the facts alleged by the OAWP (informal hearing).
4. A statement of when (date) you received this Notice and the file number of this Notice.


Your request for a hearing must be received at the address shown on this Notice within twenty-one (21) days of receipt of this Notice. If you fail to obtain a Release from this Notice or fail to request an administrative hearing within the twenty-one (21) day deadline you waive your right to a hearing and the binding determination will become final agency action upon filing with the agency clerk.

You may appeal the final agency action by filing: (1) a Notice of Appeal with the OAWP at the address shown in this Notice, and (2) a copy of the Notice of Appeal with the applicable district court along with the filing fee within 30 days of the action becoming final.

Supporting Documents:

- 1) 2011 Dixie County Property Appraiser Information Cards
- 2) Site Visit Digital Photographs
- 3) FDACS 2005 Florida Vegetable and Agronomic Crops Best Management Practices Manual
- 4) Aerial, Soil, Wetland and Topographic maps prepared by SRWMD
- 5) SRWMD Water Data Portal Rainfall Record Information

Filed with the Agency Clerk and rendered this 7th day of December, 2011.



Paul Palmiotto, Agency Clerk