



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

April 20, 2016

Mike Kondracki
1405 S. Glencoe Road
New Smyrna Beach, Florida 32168

SUBJECT: Section 373.407 Florida Statutes, Binding Determination – Kondracki

Dear Mr. Kondracki:

Per your request, enclosed please find our written report on the subject referral. Based on a re-classification by the Volusia County Property Appraiser's Office, and a second site visit to re-review the activities in question, we are amending our original Order that was issued on October 8, 2015.

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

Sincerely,

Steven Dwinell
Director
Office of Agricultural Water Policy

Enclosure

cc: Suzanne Archer (SJRWMD)
Lauren Brothers

**FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
Office of Agricultural Water Policy
Mayo Building
407 South Calhoun Street
Tallahassee, Florida 32399**

**Binding Determination
Florida Statute 373.406(2); 373.407
Kondracki Property– Volusia County, Florida**

FDACS Clerk No. A93590

AMENDED ORDER – This order updates and corrects certain factual matters contained in the original binding determination so that it is now technically correct.

Introduction:

Pursuant to Section 373.407, F.S., a water management district or landowner may request that the Florida Department of Agriculture and Consumer Services (FDACS) make a binding determination as to whether an existing or proposed agricultural activity qualifies for a permitting exemption under Section 373.406(2), F.S. However, in order for FDACS to conduct a binding determination, all of the following conditions must exist:

- a. There must be a dispute between the landowner and the water management district as to the applicability of the exemption.
- b. The activities in question must be on lands classified as agricultural by the county property appraiser pursuant to Section 193.461, F.S.
- c. The activities in question have not been previously authorized by an environmental resource permit (ERP) or a management and storage of surface water (MSSW) permit issued pursuant to Part IV, Chapter 373, F.S., or by a dredge and fill permit issued pursuant to Chapter 403, F.S.

Landowner, Mike Kondracki, has requested that FDACS conduct a binding determination on his property, and the conditions described above are in place.

Background:

The site consists of approximately 132 acres, located within Sections 2 and 11, Township 17 South, Range 31 East, north of State Road 44 in Volusia County, Florida. The property is comprised of three separate parcels. At the time of the first site inspection, two of the parcels were classified as timberland according to Volusia County Property Appraiser information, and the third parcel (Parcel ID 02-17-31-00-00-0021) was not classified as agriculture. At the time of the second site inspection, all three parcels had been reclassified to livestock land. This change was confirmed via a conversation with Keith Stewart, Volusia County Property Appraiser's Office Ag Division representative, on February 1, 2016. The property is not currently enrolled in a FDACS BMP program.

Mike Kondracki and Shannon Luznar (hereinafter referred to as "Owners") are joint owners and have been constructing ditches, roads, and other miscellaneous works within wetlands since 2012. The property is currently being managed as a pine plantation and

horse farm for the Owner's horse breeding business, known as "Equine Reproduction Center of Central Florida."

The St. Johns River Water Management District (District) sent the Owners an enforcement letter on November 26, 2014, met with them onsite to discuss the violations on December 2, 2014, and subsequently sent a second (follow-up) enforcement letter on January 16, 2015. Both letters alleged that these works had resulted in unauthorized impacts to wetlands (estimated between 10 and 15 acres) and require an Environmental Resource Permit.

Subsequently, on May 1, 2015, the District received a letter from Mr. Kondracki asking them to work with his consultant, Mr. Chris Schlageter (Old Florida Conservation), to prepare a wetland restoration plan. Apparently, the intent was to have Mr. Schlageter submit a proposed restoration plan to the District within 21 days of receipt of the aforementioned letter. From this point forward, negotiations between the Owners and District seemingly stalled, as no further tangible documentation between the two parties was noted. However, recently the District and the Owner's consultant have renewed efforts to resolve this issue, and the District is waiting on a restoration plan from the Owner's consultant.

On August 27, 2015, FDACS received a request for a binding determination from Mr. Kondracki. The District provided additional information on September 10, 2015.

Site Inspection Findings:

On September 2, 2015, a site inspection was performed by Bill Bartnick with the FDACS, accompanied by Mr. Mike Kondracki. During the site visit, all of the alleged impact areas were observed and discussed with Mr. Kondracki. Mr. Kondracki allowed FDACS staff permission to take photos. On February 17, 2016, a second site inspection was performed and the same two individuals were present.

Impact Areas 1 through 14 were inspected using the map entitled, "Kondracki Wetlands Impacts" produced by Old Florida Conservation, entered into the record as **Exhibit 1**. At the time of the second site inspection, the operation consisted of approximately 70 acres of managed slash pine plantation and at least 10 horses corralled in the southernmost area near the pole barn. Mr. Kondracki stated that a 5-wire high tensile electric fence was installed around the perimeter of the entire property in December, and that preparations were being made to bring more horses on site. On September 7, 2015, Mike Kondracki emailed FDACS timber receipts dating back to 2012 from Atlantic Land and Timber, Inc.; and, on September 8, 2015, emailed FDACS their Forest Management Plan.

Based on a review of aerial photographs provided by the Owners, aerial imagery obtained by FDACS, and review of National Wetlands Inventory (NWI) data, staff confirmed during both site inspections that many of the impact area works were constructed in jurisdictional wetlands.

Application of Statutory Criteria:

Pursuant to Section 373.406(2) F.S., all of the following criteria must be met in order for the permitting exemption to apply.

- (a) *"Is the landowner engaged in the occupation of agriculture, silviculture, floriculture, or horticulture?"*

YES. FDACS finds that the Owners are engaged in the occupation of silviculture and animal agriculture at this site.

- (b) *"Are the alterations (or proposed alterations) to the topography of the land for purposes consistent with the normal and customary practice of such occupation in the area?"*

YES. For Impact Areas 1 (road only), 6, 7 (0.65 acre of watering pond surface area only), 7A, 9, 11, 13B, 13C, and 14 on **Exhibit 1**, FDACS finds that these features are normal and customary for this type of agricultural operation. Based on the site inspection findings, routine maintenance on the roads occurred and the roads were not widened beyond their historical footprint. The Owners did add up to 1 ½ feet of fill on top of the existing grade to stabilize these roads. Moreover, the maintenance of these roads facilitated removal of harvested timber at the north end of the property. This is evidenced by the staging area, otherwise known as Impact Area 13C. The decision on Impact Area 7 is supported by the fact that no wells currently exist onsite, the area is not within the NWI map, and Volusia County Environmental Permitting passed the inspection on November 13, 2013.

NO. For the remainder of the Impact Areas, FDACS finds that these works are not a normal and customary practice for either silviculture or animal agriculture. Normal and customary practices would typically not include widening existing ditches, piling vegetative debris in wetlands, excavating additional open water areas in wetlands, and relocating existing ditches.

- (c) *"Are the alterations (or proposed alterations) for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands?"*

NO. For Impact Areas 1 (road only), 6, 7 (0.65 acre of watering pond surface area only), 7A, 9, 11, 13B, 13C, and 14 on **Exhibit 1**.

Conclusion:

Based upon the aforementioned facts, site-specific characteristics, historical land use, and documented industry practices, FDACS has determined that Impact Areas 1 (road

only), 6, 7 (0.65 acre of watering pond surface area only), 7A, 9, 11, 13B, 13C, and 14 do qualify for an exemption under Section 373.406(2), F.S. The balance of the Impact Areas on **Exhibit 1** do not qualify for an exemption.

Nothing herein relieves the landowner from applying for and obtaining any applicable federal, state, or local authorization. This determination does not constitute a finding as to compliance with applicable Best Management Practices.

A determination by FDACS that an activity is not exempt from permitting does not preclude the landowner and the water management district from agreeing to modifications to the activity that would render it exempt.

Notice of Rights:

If you wish to contest this 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, and 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 FDACS, 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 FDACS (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 Office of Agricultural Water Policy, Mayo Building, 407 South Calhoun St. MS-E1, Tallahassee, Florida 32399, within twenty-one (21) days of receipt of this Notice. If you 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.

Any party to these proceedings adversely affected by this Final Order is entitled to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedures. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, Suite 509, Tallahassee, Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.

Supporting Documents:

- (1) FDACS 2011 Water Quality/Quantity Best Management Practices for Florida Equine Operations; Florida Forest Service 2008 Silviculture Best Management Practices
- (2) Google and SJRWMD Aerial Photography
- (3) USDA Soil Survey, Volusia County, Florida
- (4) Volusia County Property Appraiser Information Cards
- (5) Timber Receipts
- (6) National Wetland Inventory Map
- (7) Forest Management Plan

Filed with the Agency Clerk and rendered this 19th day of April, 2016.



Stephen Donelan, Agency Clerk

Exhibit 1

