

CHAPTER 5M-15

PROCEDURES FOR BINDING DETERMINATIONS OF AGRICULTURAL EXEMPTIONS

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5M-15.001 Definitions.

(1) Department – The Department of Agriculture and Consumer Services.

(2) District – One of the five Florida water management districts in which the activities in question occurred, are occurring, or are planned.

(3)(4) Landowner – The owner of the land on which the activities in question have been or are proposed to be conducted.

(4)(2) Normal and customary practice in the area – Generally accepted agricultural activities for the type of operation and the region.

(5)(3) Sole or predominant purpose – The primary function or effect of the activity in question.

Rulemaking Authority 373.407 FS. Law Implemented 373.406(2), 373.407 FS. History–New 10-14-12, Amended.

5M-15.002 Dispute Regarding Exemption.

In the event of a dispute as to the applicability of an exemption under Subsection ~~Section~~ 373.406(2), F.S., a District ~~water management district~~ or Landowner may request that the Department make a binding determination as to whether an existing or proposed agricultural activity qualifies for an ~~the~~ exemption from the requirement of an environmental resource permit. All requests for a binding determination and all other document or information submittals by the Landowner or District regarding the request shall be submitted in writing to the Office of Agricultural Water Policy, Florida Department of Agriculture and Consumer Services, Mayo Building, 407 South Calhoun Street at 1203 Governor's Square Boulevard, Suite 200, Tallahassee, FL 3239932304, electronically through the Binding Determination Request Portal (<https://www.fdacs.gov/Agriculture-Industry/Water/Water-Resource-Agricultural-Permit-Exemption-Determinations>), or by email at AgPermitExemption@FDACS.gov AgPermitExemption@FreshFromFlorida.com.

5M-15.003 Eligibility for a Binding Determination.

In order for the Department to conduct a binding determination under Section 373.407, F.S., the party requesting the binding determination must demonstrate that each of the following conditions ~~must~~ exist:

(1) The activities in question must be on lands classified as agricultural by the county property appraiser pursuant to Section 193.461, F.S. The classification must exist at the time the activities commenced or are proposed to commence, and at the time the request for binding determination is made. ~~Proof of classification status may be provided by the requesting party or confirmed by the Department through the county property appraiser.~~

(2) The activities in question must not previously have been authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to Chapter 373, Part IV, F.S., or by a dredge and fill permit issued pursuant to Chapter 403, F.S. ~~The water management district shall provide a statement as to whether the activities in question were previously authorized by any of these types of permits.~~

(3) There must be a dispute between the Landowner and the ~~water management~~ District as to the applicability of the exemption. ~~The dispute must be documented as provided in Rule 5M-15.004, F.A.C.~~

5M-15.004 Request for a Binding Determination ~~Documentation of Dispute.~~

In order to establish that a dispute exists as to the applicability of Section 373.406(2), F.S.

(1) ~~A water management district making a request for a binding determination from the Department must provide a copy of written correspondence informing the landowner that the activity requires or may require a permit, and a copy of written correspondence or other documentation from the landowner indicating that the landowner is claiming that the activity is exempt under Section 373.406(2), F.S.~~

(2) ~~A landowner making a request for a binding determination from the Department must provide a copy of written correspondence from the water management district indicating that the activity requires or may require a permit, and a written statement or other documentation indicating that the landowner is claiming that the activity is exempt under Section 373.406(2), F.S.~~

(1) To request a binding determination under Section 373.407, F.S., the requesting party shall complete a Request for Binding Determination and Required Materials Checklist, (FDACS-XXXX, date) (hereinafter "Request Form"), which is hereby adopted and incorporated by reference, and submit it to the Department using one of the methods in Rule 5M-15.002, F.A.C. with all applicable required materials set forth herein. The Request Form may be accessed at <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXX>, and may also be obtained from the

Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy, Mayo Building, 407 South Calhoun Street, Tallahassee, Florida 32399, or electronically from <https://www.fdacs.gov/Agriculture-Industry/Water/Water-Resource-Agricultural-Permit-Exemption-Determinations>. The party requesting a binding determination shall notify the non-requesting party of its request at the time it is made. Upon receipt of such notice, the non-requesting party shall have 15 days to complete a Request Form, and submit it to the Department with all applicable required materials set forth herein, by using one of the methods in Rule 5M-15.002, F.A.C. The requesting party shall provide the following information to the Department at the time the request is made:

(a) The Landowner's name. The Department will issue the binding determination in the name of the person or entity provided in the request.

(b) Contact information for the Landowner, including:

1. Mailing address;

2. Telephone number; and

3. Email address.

(c) Physical address or location where the activity or alteration has occurred or is proposed to occur.

(d) Name and contact information for the District Representative, including:

1. Mailing address;

2. Telephone number; and

3. Email address.

(e) A copy of any written correspondence from the District informing the Landowner that the activity or alteration requires or may require an environmental resource permit under Chapter 373, Part IV, F.S.

(f) A copy of any written correspondence or other documentation from the Landowner asserting that the activity or alteration is exempt under Subsection 373.406(2), F.S.

(g) A detailed written description specifying the location, nature and extent of each activity or alteration that is in dispute.

(h) The commencement date or proposed commencement date for each activity or alteration that is in dispute.

(2) The Landowner shall provide the following supplemental information to the Department, to the extent that it exists and is applicable, at the time the request is made, or upon receiving notice that the request has been made:

(a) Written documentation that the Landowner has obtained the agricultural classification status, pursuant to Section 193.461, F.S., of each disputed parcel both at the time the disputed activity or alteration commenced, and at the time the request is made.

(b) Documentation and other evidence demonstrating the activity or alteration in dispute meets the criteria in Rule 5M-15.005, F.A.C.

(c) For a proposed activity or alteration, construction drawings (e.g., plan view, cross-sections).

(d) For an activity or alteration that commenced prior to the request, digital photographs depicting the activity or alteration in dispute.

(3) The District shall provide the following supplemental information to the Department, to the extent that it exists and is applicable, at the time the request is made, or upon receiving notice that the request has been made:

(a) A project location map (include section/township/range, property boundary, major roads);

(b) A Natural Resources Conservation Service Soils map;

(c) A map of hydrologic features, including wetlands, lakes, streams, reservoirs, canals, ditches, and other excavated areas;

(d) A United States Geological Survey topographic quadrangle map or a more recent equivalent topographic map;

(e) Light detecting and ranging (LiDAR) digital elevation model data;

(f) Historical and recent aerial imagery;

(g) Notes and information collected during any site visit(s) and inspection(s);

(h) All compliance and enforcement documentation related to the site and activity or alteration in dispute;

(i) If the District has determined that wetland impacts have occurred or will occur, a map showing the extent and boundary of the wetland area(s), including wetland impacts associated with each existing or proposed activity or alteration;

(j) Documentation or other evidence that the activity or alteration does not meet the criteria of Rule 5M-15.005, F.A.C., including any technical evaluation of materials provided to the District by the Landowner; and

(k) Written confirmation as to whether the activity or alteration in question was previously authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to Chapter 373, Part IV, F.S., or by a dredge and fill permit issued pursuant to Chapter 403, F.S.

(4) The Landowner may designate an agent by submitting a signed statement to the Department that is substantially similar to the following: “I hereby designate and authorize [name of agent] to act on my behalf, or on behalf of [name of entity], as the agent in the processing of this request under Section 373.407, F.S., for a binding determination for exemption from permitting under Subsection 373.406(2), F.S., and to furnish, on request, supplemental information in support of the request and to receive all notices.”

(5) The Landowner, agent, or District, as appropriate, shall submit the documents, materials and information specified in this rule to the Department at the time the request for binding determination is submitted. If any of the enumerated items in this rule do not exist, or are otherwise unavailable, the relevant party shall so specify in its submission to the Department. The Department shall provide copies of all materials received to both parties electronically, regardless of which party submitted the materials.

(6) If the non-requesting party does not submit anything to the Department, the Department will proceed in accordance with Rule 5M-15.006(8), F.A.C.

Rulemaking Authority 373.407 FS. Law Implemented 373.406(2), 373.407 FS. History—New 10-14-12, Amended _____.

5M-15.005 Exemption Criteria.

(1) A Landowner must demonstrate that all the following criteria exist in order for alterations or activities to be exempt from permitting under Subsection Section 373.406(2), F.S., all of the following criteria must be met, as determined by the Department:

- (a) The Landowner must be engaged in the occupation of agriculture, silviculture, floriculture, or horticulture;
- (b) through (c) No change.
- (2) No change.

Rulemaking Authority 373.407 FS. Law Implemented 373.406(2), 373.407 FS. History—New 10-14-12, Amended _____.

5M-15.006 Binding Determination Evaluation Process.

(1) In support of a request for a binding determination as to whether an existing or proposed activity qualifies for the exemption in Section 373.406(2), F.S., the Department shall obtain the following documentation, as needed to address questions in dispute. Maps may be combined, as appropriate and feasible.

(a) From the landowner:

- 1. A written description of the existing or proposed activities and the reasons the landowner considers the activities to be exempt from permitting.
- 2. For newly proposed activities, construction drawings (e.g., plan view, cross sectionals).
- 3. Onsite digital photographs. These may be obtained by the Department during a site visit.

~~(b) From the water management district or other appropriate source:~~

~~1. A project location map (include section/township/range, property boundary, major roads).~~

~~2. Soils map.~~

~~3. A map of hydrologic features, including wetlands, lakes, streams, and reservoirs; and canals, ditches, and other excavated areas.~~

~~4. United States Geological Survey topographic quadrangle map or a more recent topographic map.~~

~~5. Historical and recent aerial photographs.~~

~~(2) To the extent of the available information, the water management district shall provide a detailed written description and the location of each activity that is in dispute, the dates that any existing activities occurred, the impacts the district is associating with each existing or proposed activity, and the specific regulation(s) under which the water management district is asserting permitting authority.~~

~~(1) (3) The steps the Department will take the following steps to evaluate a request for arrive at a binding determination include, but are not limited to:~~

~~(a) Confirm that the eligibility criteria requirements in Rule 5M-15.003, F.A.C., are met. If the eligibility criteria are not met, the Department will stop its evaluation, and the requesting party will be notified that the Department has no authority to make a binding determination regarding the request. The Department will provide the notice, including the basis of the ineligibility, by regular mail or electronic means to the District and Landowner or agent.~~

~~(b) Review the information submitted in accordance with Rule 5M-15.004, F.A.C. listed in subsections (1) and (2) of this section.~~

~~(c) Schedule and conduct a site visit. Information collected during a site visit may include:~~

~~1. Field notes that characterize the type of farming operation.~~

~~2. In situ measurements, including soil borings.~~

~~3. Identification of gravity drainage, pumped outfall areas, and flow notations.~~

~~4. Digital photographs.~~

~~5. Interviews with individuals knowledgeable about the operation.~~

~~(d) Consult best management practices applicable to the operation and adopted by rule of the Department in Title 5M, F.A.C.~~

(e) Request additional information from the District or the Landowner, as needed and feasible. If the Department issues a Request for Additional Information (RAI), the Department will provide a copy of the RAI, and any response(s), to both parties.

(2) Timeframes in this rule apply to both the Landowner, or their agent, and to the District. The Department will notify both parties of any extended deadlines.

(3) Upon receipt of the request for binding determination, the Department will have 30 days to review the request and, if the materials are insufficient to complete the evaluation, issue an RAI for information that the Department is authorized by law to request.

(4) The party receiving an RAI shall have 30 days to provide any responsive materials to the Department. This deadline may be extended for good cause, if timely requested in writing to the Department.

(5) The Department shall review additional information received in response to an RAI within 30 days of receipt and may request information needed to clarify the response or to answer new questions raised by, or directly related to, the response.

(6) A party receiving an RAI can request, in writing, that the Department proceed with its evaluation without the additional information requested. The Department will proceed with its evaluation using the materials and information available.

(7) If the party requesting the binding determination does not timely respond to an RAI, does not request or is not granted additional time to respond to an RAI, or does not provide a written request to proceed in accordance with subsection (6), the request for binding determination will be deemed withdrawn. The Department will notify the parties, and no further action will be taken by the Department.

(8) If the non-requesting party does not timely respond to an RAI, does not timely request additional time to respond to an RAI, or is not granted additional time to respond to an RAI, the Department will proceed with the evaluation using the materials and information available.

(9) The District and Landowner may submit supplemental information to the Department at any time until the Department issues a final determination. The submission of new information will restart the Department's 30-day review period.

(10) The requesting party can withdraw their request at any time prior to the final determination being issued.

(11)(4) Based on the information obtained pursuant to this section, the Department will evaluate whether the landowner meets the criteria listed in Rule 5M-15.005, F.A.C., have been met and will formulate a report containing

a binding determination. ~~In the report,~~ The Department will explain the basis for its conclusions and provide references to any documents or other materials sources of information or guidance used in making its determination. The Department will send the binding determination written report, by regular mail, or electronic meansmail, to the District affected water management district and Llandowner or agent.

Rulemaking Authority 373.407 FS. Law Implemented 373.406(2), 373.407 FS. History—New 10-14-12, Amended.

5M-15.007 Final Agency Action.

~~Binding determinations under this rule are final agency action subject to administrative proceedings pursuant to Sections 120.569 and 120.57, F.S. Each binding determination will include a notice of rights to an administrative hearing and appeal.~~

Rulemaking Authority 373.407 FS. Law Implemented 373.406(2), 373.407 FS. History—New 10-14-12, Repealed.