

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
RESOLUTION NO. 2011- _____

A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT APPROVING THE MEMORANDUM OF AGREEMENT AMONG THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, SOUTH FLORIDA WATER MANAGEMENT DISTRICT, ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, SUWANNEE RIVER WATER MANAGEMENT DISTRICT, AND NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT REGARDING THE BINDING DETERMINATION OF AGRICULTURAL EXEMPTIONS UNDER SUBSECTION 373.406(2), FLORIDA STATUTES, AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE MEMORANDUM OF AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 2011–165, Laws of Florida (HB 421), amended provisions of Chapters 373 and 403, Florida Statutes (Fla. Stat.) and requires water management districts and the Department of Agriculture and Consumer Services (DACS) to enter into a Memorandum of Agreement (MOA) which sets forth processes and procedures by which DACS will undertake its review pertaining to agricultural-related activities that may be exempt from resource permitting pursuant to subsection 373.406(2), Fla. Stat.; and

WHEREAS, the water management districts and DACS have negotiated the provisions of a MOA providing the procedural framework for DACS to provide a binding determination regarding qualification for the agricultural exemption under subsection 373.406(2), Fla. Stat.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT:

Section 1. The Governing Board of the South Florida Water Management District hereby approves the MOA and delegates authority to the Executive Director to execute the agreement.

Section 2. A copy of the MOA is attached hereto and made a part hereof.

Section 3. This resolution shall take effect immediately upon execution by the last signatory to the agreement.

PASSED and **ADOPTED** this _____ day of August, 2011.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD

By:

Joe Collins, Governing Board Chair

ATTEST:

Secretary

Approved as to form:

By:

Office of Counsel

MEMORANDUM OF AGREEMENT
REGARDING
BINDING DETERMINATION OF EXEMPTIONS
UNDER SUBSECTION 373.406(2), FLORIDA STATUTES

THIS **MEMORANDUM OF AGREEMENT** IS MADE AND ENTERED INTO BY THE **NORTHWEST FLORIDA, SUWANNEE RIVER, ST. JOHNS RIVER, SOUTHWEST FLORIDA, AND SOUTH FLORIDA WATER MANAGEMENT DISTRICTS** (HEREINAFTER "DISTRICTS") WITH THE **FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES** (HEREINAFTER "DACS").

WITNESSETH:

WHEREAS, subsection 373.406(2), Florida Statutes (F.S.), states: "Notwithstanding s. 403.927, nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the normal and customary practice of such occupation in the area. However, such alteration or activity may not be for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. This exemption applies to lands classified as agricultural pursuant to s. 193.461 and to activities requiring an environmental resource permit pursuant to [part IV of Chapter 373, F.S.] This exemption does not apply to any activities previously authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to [part IV of Chapter 373, F.S.] or a dredge and fill permit issued pursuant to chapter 403. This exemption has retroactive application to July 1, 1984;" and

WHEREAS, the Districts are authorized to regulate activities under Part IV of Chapter 373, F.S.; and

WHEREAS, section 373.407, F.S. directs DACS and each water management district to enter into a Memorandum of Agreement (MOA) under which DACS, in the event of a dispute as to the applicability of an exemption and upon the request of a water management district or landowner, shall conduct a review and make a binding determination as to whether an existing or proposed activity qualifies for an exemption under subsection 373.406(2), F.S.; and

WHEREAS, the MOA is required to set forth processes and procedures by which DACS shall undertake its review, make a determination effectively and efficiently, and provide notice of its determination to the applicable water management district and the landowner; and

WHEREAS, the Districts and DACS want to expedite the resolution of exemption claims;

Now, **THEREFORE**, the Districts and DACS hereby agree as follows:

1. Upon request by a District or a landowner to DACS to conduct a review and make a binding determination as to whether an existing or proposed activity qualifies for an exemption under Section 373.406(2), F.S., DACS will request documentation of the dispute between the applicable District and the landowner if documentation has not yet been provided. For

purposes of this MOA, a dispute is documented when the applicable District has advised the landowner in writing that the activity in question does not appear to qualify for the exemption under s, 373,406(2), F.S.

2. If a dispute is not documented, DACS will refer the landowner to the appropriate District contact, as listed in this MOA.
3. When a District requests a binding determination from DACS, it will be in writing, and the District will send a copy of the request to the landowner at the same time it is sent to DACS. Transmittal of the request may be by regular mail or electronic means.
4. Upon receipt of documentation that a dispute exists, DACS will notify the District and the landowner within 5 business days that it is undertaking the review.
5. The District and the landowner will have 10 business days from DACS' notification in order to respond and provide information relevant to the activity under review. However, the District and landowner may submit supplemental information to DACS at any time until DACS issues a final determination. The District will provide copies of submitted information to the landowner at the same time it is provided to DACS, and DACS will provide to the District copies of landowner-submitted information within 5 business days of its receipt.
6. DACS will submit its determination and a written report of its findings to the District and the landowner within 60 days after the deadline for receiving information from the District and landowner regarding the activity, unless the landowner does not provide access to the property to DACS. In its report, DACS will explain the basis for its conclusions, and will provide copies of or references to any documents or other sources of information or guidance used in making its determination (e.g., manuals, rules, statutes, plans, technical bulletins, technical consultations, etc.).
7. During the DACS review of a request for a binding determination, and to the maximum extent allowed by law or rule, the District will toll, stay, or suspend any civil or administrative enforcement or compliance action concerning the activity under review. If tolled by the landowner in accordance with Chapter 120, F.S., the District also will defer final agency action on permitting decisions.
8. The Districts and DACS hereby designate the staff named below as the primary agency contacts. Designated contacts may be changed upon written notice to all parties. All notices, reports, and correspondence contemplated by this MOA will be sent to the primary agency contacts by regular U.S. Mail, electronic correspondence, or courier at the addresses below:

Northwest Florida Water Management District

Lance Laird, P.E.
Chief, Bureau of Surface Water Regulation
81 Water Management Drive
Havana, FL 32333-4712
(850) 539-5999
Lance.laird@nfwmd.state.fl.us

Suwannee River Water Management District

Tim Sagul
Senior Professional Engineer
9225 CR 49
Live Oak, FL 32060
(386) 362-1001
Sagul_t@srwmd@state.fl.us

St. Johns River Water Management District

Vince Singleton
Technical Program Manager
4049 Reid Street
Palatka, FL 32177
(386) 329-4197
Vsingleton@sjrwmd.com

Southwest Florida Water Management District

Mark Luchte, P.E.
Agricultural Regulation Program Manager
6750 Fruitville Road
Sarasota, FL 34221
(941) 377-3722
Mark.luchte@swfwmd.state.fl.us

South Florida Water Management District

Tony Waterhouse, P.E.
Assistant Director, Regulation Division
3301 Gun Club Rd.
West Palm Beach, FL 33416-4680
(561) 682-6867
twaterho@sfwmd.gov

Florida Department of Agriculture and Consumer Services

Bill Bartnick
BMP Development Coordinator
1203 Governors Square Blvd., Suite 200
Mail Stop GS-50
Tallahassee, FL 32301-2994
(850) 617-1705
Bill.bartnick@freshfromflorida.com

9. This MOA will be reviewed by the parties no later than one year from the date of its execution, and thereafter as determined necessary by the parties. Any modification to the MOA must be made in writing, as agreed to by the parties.
10. This MOA may be executed in counterparts, and will take effect within each District upon execution by DACS and the applicable District.

