Pursuant to the existing Memorandum of Agreement Regarding Binding Determinations of Exemptions Under Subsection 373.406(2), Florida Statutes, between the Southwest Florida Water Management District (District) and the Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy (OAWP), the District requested that OAWP evaluate agricultural activities located on property owned by RMD Properties LLC, aka Severt Farms to determine whether these activities qualify for the statutory exemption. Per this request, staff has performed a site inspection, evaluated District and consultant-provided documentation, researched available historical data, and has rendered a conclusion based on the following information.

Background:
The site is a single, contiguous 288.83-acre parcel, located within Section 3, Township 35 South, Range 25 East, in Hardee County south of Zolfo Springs. The land is classified as agriculture pursuant to 2011 Hardee County Property Appraiser information. RMD Properties holds title to the property, and acquired the parcel by warranty deed in September of 2002. On September 24, 2007, the District issued a Formal Determination of Wetlands and Other Surface Waters No. 42032825.000. This determination was requested by RMD Properties.

On April 1, 2011, the District sent Ronald Young, of RMD Properties a Notice of Unauthorized Activities letter alleging construction of two new tailwater recovery ponds; including dredging and filling within wetlands and floodplain areas, and water control features (ditches, control structures). The letter requested that they respond, in writing, within 14 days to indicate how these infractions would be brought into compliance. OAWP received the consultant’s (Hunter Engineering, Inc.) written request for a binding determination and supporting information on August 1, 2011. This request was not validated until August 8, 2011, which was the date the aforementioned Memorandum of Agreement was executed. Additional supporting documentation was subsequently provided by both the District and RMD Properties consultant. The last supporting documentation submittal was received on September 11, 2011 via e-mail.

Site Inspection Findings:
On August 26, 2011, a site inspection was performed by Noel Marton with the OAWP, accompanied by Ron Young (owner/farm operator), and Brian Hunter and Bill Hartmann (Hunter Engineering, Inc.). During this trip, all production area fields were inspected, alleged violations were viewed, and digital photographs were taken.
At the time of the site inspection, the operation consisted of raised-bed rows, covered with plastic mulch, with an overhead irrigation system in place, for the planned cultivation of strawberries. Mr. Young indicated that he planned to plant approximately 166 acres of strawberries this growing season, as he did during the 2010 season.

Since the District's Notice of Unauthorized Activities letter is somewhat vague in terms of which specific activities require permitting, OAWP will address its findings using the listing on page two of the District's Additional Information letter dated August 18, 2011 (Attachment I) and a labeled aerial photograph (Attachment II).

1. Dredging and filling activities of Wetland 1D for construction of the north pond resulting in approximately 0.82 acre of wetland impact;

The north tailwater recovery pond consists of an approximately 0.4 acre open water area, with the balance of impact area attributed to the pump station earthwork and irrigation system infrastructure. The pond is reported to be roughly 10 feet deep and was constructed in 2009. It appears that the two northernmost fields drain to the pond, which equates to approximately 40 acres. Before construction, this area was a herbaceous wetland system, which was not hydrologically connected to the unnamed creek just east of the pond. Based on information provided by the consultant, the average Uniform Mitigation Assessment Method (UMAM) score for wetlands on this property is approximately 0.4.

Based on a review of true color and infrared aerial imagery for years 1999, 2000, 2004, and 2010, OAWP was able to confirm that Wetland 1D was dredged, as Mr. Young stated, in 2009.

2. Dredging and filling activities at the Northern Ditch location within Wetland 1C resulting in approximately 0.25 acre wetland impact;

This area consists of a large forested and herbaceous wetland system with a historic ditch running northward through the system and terminating off the property at its northern boundary. The ditch does show signs of recent maintenance but is stable and well vegetated.

3. Impeding and diverting of flow of surface water activities at the Control Structure 1 location within Wetland 1C resulting in approximately 80 acres of contributing drainage basin area being impeded and diverted to Pond 1;

This area consists of a large forested and herbaceous wetland system with a historic ditch running northward through the system and terminating off the property at its northern boundary. Control Structure 1 appears to be recently installed as a means to cross the historic ditch.

4. Dredging and filling activities within Wetland 1C just south of Control Structure 1 resulting in approximately 0.60 acre of wetland impact;
This area consists of a large forested and herbaceous wetland system with a historic ditch running northward through the system and terminating off the property at its northern boundary. As stated in No. 2 above, the ditch does show signs of recent maintenance but is stable and well vegetated.

5. Dredging and filling activities within Wetlands 5 and 6 resulting in approximately 0.69 and 0.92 acre of wetland impacts;

This area consists of large scale plasticulture for row crop cultivation consistent with strawberry production. Prior to construction, based on aerial photographic interpretation, Wetlands 5 and 6 were believed to be herbaceous systems.

Based on a review of true color and infrared aerial imagery for years 1999, 2000, 2004, and 2010, OAWP was able to confirm that Wetlands 5 and 6 were filled for agricultural production around 2003, per Mr. Young’s statement.

6. Dredging and filling activities at the South Pond location within Wetland 1A resulting in approximately 0.49 acre of wetland impact;

This area consists of an approximately 1.0 acre tailwater recovery pond with associated pump station and irrigation system infrastructure. The pond is reported to be roughly 10 feet deep and was constructed in 2010. It appears that the southwestern fields drain to the pond, which equates to approximately 96 acres. This pond is constructed adjacent to the unnamed creek and parts of it (0.49 acres) appear to be constructed within the wetland area. Based on information provided by the consultant, the average UMAM score for wetlands on this property is approximately 0.4.

7. Dredging and filling activities at the South Pond location within Wetland 1A resulting in approximately 0.49 acre of floodplain impact;

As discussed in No. 6 above, this area consists of an approximately 1.0 acre tailwater recovery pond. Spoil deposits were noted in the floodplain between the pond and the unnamed creek.

8. Impeding and diverting of surface water flow at the East-West Ditch location resulting in approximately 69 acres of contributing drainage basin area being impeded and diverted from Wetland 1A to South Pond;

This area consists of an upland cut ditch, used for capturing surface water runoff from farm fields to the north and south. The ditch flows to the east and discharges either into Pond 2 or Wetland 1A.

Based on a review of true color and infrared aerial imagery for years 1999, 2000, 2004, and 2010, OAWP was able to confirm that the East-West Ditch was constructed around 2003, per Mr. Young’s statement.
9. Impeding and diverting of surface water flow at Control Structure 2 location within the floodplain and South Pond resulting in approximately 15 acres of contributing drainage basin area being impeded and diverted to the South Pond;

As discussed in No. 6 above, this area consists of an approximately 1.0 acre tailwater recovery pond with pump station and irrigation system infrastructure. Control Structure 2 is located at the north end of the South Pond, and is used to capture and hold farm field runoff from approximately 96 acres of strawberry production area. This structure discharges to Wetland 1A.

10. Impeding and diverting of surface water flow at Control Structure 3 location on the south side of entrance farm road resulting in approximately 6 acres of contributing drainage basin area being impeded and diverted to the South Pond;

Control Structure 3 is comprised of a culvert with a flashboard riser. The structure is used to manage runoff water from fields immediately south of the farm entrance road, and also serves as a crossing.

Statutory Analysis and Conclusion:

(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 RMD Properties is engaged in the practice of agriculture on the 288.83 acres of strawberries and blueberries in Hardee County, as evidenced by their current land use classification and the ongoing agricultural production activities.

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

YES. With regard to Item Nos. 2, 3, 4, 6, 7, 8, 9, and 10, and the onsite facts, OAWP finds that the alterations were consistent with normal and customary practices for row crop farming operations.

NO. With regard to Item Nos. 1 and 5, OAWP finds that these activities are not a normal and customary practice for the area because:

1. The size of the wetland impact area associated with the North Pond exceeds what OAWP considers to be normal and customary. For the row crop industry, OAWP believes that wholly-owned wetlands can be used as a tailwater recovery pond as long as: (a) the impact area footprint to wetlands does not exceed ½ acre; (b) the wetland is not utilized for nesting/denning by listed species; and (c) it captures production area runoff and serves a water supply purpose, consistent with BMPs;

2. It is OAWP's opinion that isolated wetlands, 0.5 acres or greater, which have been wholly converted to produce an agricultural crop are not exempt. Wetlands
5 and 6, each larger than 0.5 acres, were wholly converted to produce an agricultural crop in 2003.

(c) "Are the alteration(s) for the sole or predominant purpose of impeding or diverting surface waters?"

NO. OAWP finds that the agricultural activities on the whole were not for the sole or predominant purpose of impeding or diverting surface waters or adversely impacting wetlands. During the August 26, 2011 site visit, the engineering consultant verified that the edge-of-farm post-development drainage patterns are consistent with the pre-development drainage patterns. Secondly, the entire farm's drainage system is gravity driven, and is devoid of discharge pumps.

In addition, due to the size of the two below-grade (excavated) tailwater recovery ponds, their overall effect is minimal with regard to impeding or diverting surface waters. Further, OAWP finds that the irrigation system and drainage appurtenances on this farm are not for the sole or predominant purpose of impeding or diverting surface waters or adversely impacting wetlands.

Conclusion:
Based upon the aforementioned facts, site-specific characteristics, historical land use, and documented industry practices, OAWP has determined that Item Nos. 2, 3, 4, 6, 7, 8, 9, and 10 would qualify for an exemption under subsection 373.406(2), F.S. Item Nos. 1 and 5 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.

NOTICE OF RIGHTS

If you wish to contest the Department'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 names, address, and telephone numbers 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 Department (informal hearing).
4. A statement of when (date) you received this Notice and the file number of
Your request for a hearing must be received at: The Office of Agricultural Water Policy, 1203 Governors Square Blvd. Suite 200, Tallahassee, Florida 32301, 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.

Support Documents:

(1) NRCS Field Office Technical Guide, Section IV
(4) Aerial Photography, Dated 1999-2008
(5) USDA Soil Survey Hardee County, Florida
(6) Site Visit Digital Photographs
(7) 2011 Hardee County Property Appraiser Information Card
(8) E-mail Correspondence from SWFWMD Staff
(9) E-mail Correspondence from Hunter Engineering Staff

Filed with the Agency Clerk and rendered this 1st day of February, 2012.

Paul Palmiotto, Agency Clerk
ATTACHMENT I

District staff determined that dredging and filling activities had occurred in five wetland areas, resulting in wetland and floodplain impacts. On April 1, 2011, the District issued Ronald Young a Notice of Unauthorized Activities, advising him of District staff’s confirmation of a complaint regarding the activities on the Property. Following a subsequent site inspection of the Property, staff determined that additional dredging and filling activities had occurred after the original complaint was received. Photographs of the site inspection are enclosed (See Figure 1 and Exhibit 2). Wetland boundaries identified as 1A, 1C, 1D, 5 and 6 were established and authorized under the District’s Petition No. 42032825.000. The District has estimated that the following activities have occurred without the required ERP (See Figure 2):

1. Dredging and filling activities of Wetland 1D for construction of the North Pond resulting in approximately 0.82 acre of wetland impacts;

2. Dredging and filling activities at the Northern Ditch location within Wetland 1C resulting in approximately 0.25 acre of wetland impact;

3. Impeding and diverting of flow of surface water activities at the Control Structure 1 location within Wetland 1C resulting in approximately 80 acres of contributing drainage basin area being impeded and diverted to Pond 1;

4. Dredging and filling activities within Wetland 1C just south of Control Structure 1 resulting in approximately 0.60 acre of wetland impact;

5. Dredging and filling activities within Wetland 5 and 6 resulting in approximately 0.69 acre and 0.92 acre of wetland impacts;

6. Dredging and filling activities at the South Pond location within Wetland 1A resulting in approximately 0.49 acre of wetland impact;

7. Dredging and filling activities at the South Pond location within Wetland 1A resulting in approximately 0.49 acre of floodplain impact;

8. Impeding and diverting of surface water flow at the East-West Ditch location resulting in approximately 69 acres of contributing drainage basin area being impeded and diverted from Wetland 1A to South Pond;

9. Impeding and diverting of surface water flow at Control Structure 2 location within the floodplain and South Pond resulting in approximately 15 acres of contributing drainage basin area being impeded and diverted to the South Pond;

10. Impeding and diverting of surface water flow at Control Structure 3 location on the south side of the entrance farm road resulting in approximately 6 acres of contributing drainage basin area being impeded and diverted to the South Pond;
Ronald Young
Hardee County
CT No. 340864
- Figure 2 -

[Map showing parcel boundaries, wetland 1C impacts, control structures, and floodplain boundaries labeled.]