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
Lightsey Family Ranch, Highlands County, Florida

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.

On behalf of Lightsey Family Ranch, Modica and Associates, Inc. (hereinafter “Consultant”), has requested that FDACS conduct a binding determination, and the conditions described above are in place.

Background:
The site consists of approximately 1,373 acres, located within Sections 2, 3, 10, and 11 of Township 39 South, Range 29 East, in Venus, Highlands County, Florida. The property is classified as agriculture pursuant to 2018 Highlands County Property Appraiser information. Also, the property is currently enrolled in an FDACS Best Management Practices program.

On January 23, 2018, SFWMD (staff member Wayne Blythe) sent Lee Lightsey a Notice of Violation letter that included two items that allegedly violated SFWMD rule and required an ERP. A second letter was sent to Mr. Lightsey on February 21, 2018, modifying the violation acreage. A final letter was sent by SFWMD to Mr. Lightsey on March 23, 2018 offering terms of settlement for a potential resolution. The January letter included a series of pictures and exhibits that included the various areas that were part of the alleged violation (Attachment A).
On May 22, 2018, FDACS received a request for a binding determination from the Consultant, alleging that all of the activities associated with the silviculture operation, the construction of a new section of road, and the maintenance of an existing road qualify for an exemption under Section 373.406(2), F.S. On June 1, 2018, FDACS requested clarification from the Consultant on which areas were in dispute. On May 31, 2018, June 4, 2018, June 15, 2018, and July 16, 2018, the Consultant submitted additional information regarding the exemption determination request including the Florida Department of Environmental Protection Emergency Final Order (OGC NO. 17-0989), additional information on the areas in dispute, and additional historical aerial photographs of the site. On August 1, 2018 and August 6, 2018, FDACS requested additional information from the SFWMD regarding whether or not the two ponds due north and due east of Area 5 were in dispute. On August 3, 2018 and August 6, 2018, the SFWMD notified FDACS that the two ponds were not in dispute.

**Site Inspection Findings:**

On July 19, 2018, a site inspection was performed by FDACS employees, Vanessa Bessey and Audra Colgan from the Office of Agricultural Water Policy, and Robin Holland with the Florida Forest Service. On behalf of the landowner, John Ellerbee, and on behalf of the Consultant, Jim Modica accompanied FDACS staff. During the site visit, all of the areas identified in Attachment A were visited. Permission was granted and photos were taken as appropriate.

At the time of the site inspection, the property consisted of a cattle operation with associated improved pastures, a high fenced deer farm, and silviculture operations. Cattle were present in the improved pastures, and deer were present in fenced pens and throughout the property. The herd size is approximately 200 head of cattle, varying throughout the year. The silviculture operations were performed in hardwood wetland areas interspersed with pine trees.

Prior to conducting the site visit, FDACS performed an extensive in-office review of all available aerial photography. The dates of the aerial photography ranged from 1944 to 2018.

**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 landowner is engaged in the occupation of agriculture.

(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. Please see the attached letter from the Florida Forest Service (Attachment B). FDACS finds that all timber harvesting activities associated with Areas 1 through 7 as depicted in Attachment A are normal and customary for silviculture operations. In addition, the above grade culverted road, stream crossings, and the at grade road associated with Areas 1, 4, and 7 are considered normal and customary for silviculture and cattle operations.

(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. FDACS finds that the alterations done in conjunction with silviculture operations associated with Areas 1 through 7 as depicted in Attachment A, the above grade culverted road, stream crossings, and the at grade road associated with Areas 1, 4, and 7 were not for the sole and predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

Conclusion:
Based upon the aforementioned facts, site-specific characteristics, historical land use, and documented industry practices, FDACS has determined that all timber harvesting activities associated with Areas 1 through 7, the above grade culverted road, stream crossings, and the at grade road associated with Areas 1, 4, and 7 do qualify for an exemption under Section 373.406(2), F.S.

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 this binding determination will be considered the Final Order constituting final agency action.

Any party to these proceedings adversely affected by the Final Order is entitled to seek judicial review of the 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, Mail Stop H-4, 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) Section 373.406, Florida Statutes
(2) Chapter 5M-15, Florida Administrative Code
(3) Aerial Photography, 1944 to 2018
(4) Site Visit Digital Photographs
(5) 2018 Highlands County Property Appraiser Information Card

Filed with the Agency Clerk and rendered this 22nd day of August, 2018.

Donald D. Hockman, Jr., Agency Clerk

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Binding Determination has been furnished by e-mail and U.S. mail on this 22nd day of August, 2018 to: Jim Modica, jimm@modica.cc, Modica and Associates, Inc., 302 Mohawk Road, Clermont, Florida 34711 (on behalf of
Bill Bartnick  
Environmental Administrator  
Florida Department of Agriculture and Consumer Services  
Office of Agricultural Water Policy  
Elliot Building  
401 S. Monroe Street  
Tallahassee, Florida 32399  
(850) 617-1700
Attachment B
July 26, 2018

Ms. Vanessa Bessey
Environmental Administrator
Office of Agricultural Water Policy
Florida Department of Agriculture and Consumer Services
1835 Highway 441 SE, Suite B
Okeechobee, Florida 34974

Re: Lightsey Family Ranch - Binding Determination for Silviculture

Dear Vanessa:

On July 19, 2018, our BMP Forester (Robin Holland) visited the Lightsey Family Ranch LLC in Highlands County. This visit was in reference to Mr. Jim Modica’s (agent for landowner) request for a Binding Determination under F.A.C. SM-15.

Robin visited seven locations on the Lightsey property where the South Florida Water Management District was contending that activities conducted by Mr. Lightsey resulted in non-exempt dredging or filling activities in wetlands. These activities included timber harvesting, road construction and a stream crossing.

According to Robin, “based upon my observations, all timber harvesting activities conducted by Mr. Lightsey were in compliance with Silviculture Best Management Practices (BMPs) and were normal and customary silviculture operations. In addition, the above-grade culverted road and associated stream crossing constructed to provide access for silviculture operations were also in compliance with Silviculture BMPs”.

Hence, all activities observed by Ms. Holland are considered exempt silviculture activities under Chapter 62-330.0511 F.A.C. Please contact Robin at Robin.Holland@FreshFromFlorida.com, phone 352-732-1781 or this office if you have any questions.

Sincerely,

Jim Karels, Director
Florida Forest Service

cc: Jeff Vowell
Robin Holland
Roy Lima
Andy Rackley
Bill Bartnick