TOWN OF DAVIE
Davie Town Hall: 6591 Orange Drive, Davie, Florida 33314 *Phone*: (954) 797-1000

DAVIE FARM GUIDE

BAR B RANCH

WELCOME TO THE TOWN OF DAVIE

FROM

MAYOR JUDY PAUL

As a long time Davie resident and elected official, one of my top priorities has been to preserve the agricultural roots of our community. To this end, in 1998, I created the Davie Agrarian Committee, which was committed to bringing together all agricultural interests including but not limited to equestrian, cattle, nursery, apiary, and crop. Davie was founded as a farming community and once was home to lucrative citrus and cattle companies. Remnants still persist in a demanding urban atmosphere: New River Grove, Spykes Grove, Pan American Grove, Battens Farm, and a host of horse farms, nurseries and farmers markets throughout the Town.

The idea was to create a coordinated, citizen based, organization that could advocate on behalf of the interests of the agricultural community with deep roots and a strong heritage in the Davie area. Vast areas of cattle land were giving way to mass highways and residential and commercial development and many felt it was necessary to draw a line in the sand to stem the tide and protect agriculture from an untimely demise in central Broward County.

The committee worked diligently with Broward County in devising a PDR program and identified properties to be preserved as well as with the Town of Davie seeking a share of the State and County grant money to preserve open space, once the core of a strong agricultural industry. The committee worked diligently in educating municipalities to the Right to Farm Act and working closely with the Broward County Farm Bureau making sure that government did not encroach on the rights of the farmer, both commercial and hobby.

In March 2001, the people of Davie voted for a charter amendment to adopt legislation to ensure the preservation of the Town's rural character and equestrian lifestyle. This referendum passed with nearly a 90 percent majority. The Agricultural Advisory Board was then created and became an arm of the Town Council.

As a "farm friendly" Town, the elected officials have been farsighted in adopting legislation to encourage, protect, and preserve agriculture in the community, the first branch of local government in the state of Florida to do so. Town ordinances and state statutes pertaining to farms and agricultural use, which are scattered throughout local and state law, have been compiled into this pamphlet by the Davie Agricultural Advisory Board for your assistance. This Board will also assist individuals with farm-related issues.

Many don't realize it, but Florida is an agricultural state with fruits, vegetables, field crops, beef cattle and milk counted as our leading products. Poultry and egg production is also important along with thoroughbred and a variety of show breed and pleasure horses. Oranges are Florida's most important agricultural product. Other citrus fruits grown include grapefruit, limes, tangerines and tangelos. Tomatoes are Florida's second leading crop. Non-citrus fruits grown include bananas, papayas, strawberries and watermelons. Vegetables grown in Florida are cabbage, celery, cucumbers, green peppers, lettuce, potatoes, snap beans, squash and sweet corn. Florida leads the nation in the production of sugar cane. Other field crops are peanuts, soybeans and tobacco.

Florida is second only to California in the production of greenhouse and nursery products and ranks first in the production of indoor plants. In 2012 agriculture in Florida accounted for $133 billion in sales revenue.

Davie is home to many horse farms and nurseries and has a network of over 165 miles (and growing) of trails linking the community to hundreds of acres of equestrian-friendly county and town parks. Davie takes preserving its rural character seriously and has earmarked several major agricultural corridors for special attention. In September, 2005, the voters of Davie approved a $25,000,000 bond to acquire more land for parks and open spaces, to improve existing parks and to complete the recreational trail system.

Whether you are looking for land to start up or to relocate an agricultural operation or already own a farm in Davie, this guide has been prepared to inform you of your rights to various exemptions for farms according to Davie ordinances and state law.

R. COLLECTION'S NURSERY

Please note:

The information contained in this pamphlet reflects law that was current as of May, 2013. However, the law may subsequently be changed or amended by the State Legislature, the Town Council and/or decisions of the courts. Therefore the contents of this document should be considered as general information only and should not be construed as legal advice of any kind.

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TOWN OF DAVIE CODE OF ORDINANCES

DEFINITIONS

Chapter 12, Sec. 12-503

Agricultural use. The use of a parcel of land for the cultivation of crops and livestock including, but not limited to: cropland, pastureland, orchards, vineyards, ornamental horticulture areas, groves, confined feeding operations, specialty farms, silviculture areas, aviaries, beekeeping, farm stands, plant nurseries but specifically excluding landscape maintenance contractors.

Boarding stable. A stable for livestock that provides food and shelter for compensation.

Development. (6) It is expressly recognized that the term 'development' as defined herein and throughout this Code, shall not include nor be interpreted to include any farm, or 'agricultural uses' as that term is defined pursuant to Section 12-32(A).

Equestrian facilities. Any building, structure or land area that may not meet the criteria to be classified as a "farm" under the Florida Statutes or the Davie Town Code and that is used primarily for equestrian competitions, events or displays, whether private or commercial, such as showgrounds, rodeo arenas and racetracks. The term equestrian facilities also include communal stables, paddocks and riding areas that are an amenity or accessory to a residential development. Equestrian facilities may also board horses belonging to owners who reside elsewhere.

Farm. The land, buildings, structures, and machinery which are primarily adapted and used for agricultural purposes when such land is classified agricultural pursuant to Section 193.461, F.S., or has been determined to be a farm pursuant to a joint administrative determination by the code enforcement official and the building official or a final order of a hearing officer in accordance with Section 12-34 (B) Animals, subparagraph (15) of the Town of Davie Land Development Code.

Farm Building or Structure. Any building or structure located on a plot classified as a farm, which is used to house or store farm products or materials and equipment necessary to farm operations. A farm structure shall also include fences, walls, and hedges along the plot line of a farm.

Farm Operation. All conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production or marketing of farm products.

Farm Product. Any plant, as defined in Section 581.011, F.S., any animal, except household pets, useful to humans, including any product derived therefrom, the cultivation of crops, groves, thoroughbred and pleasure horse ranches, including horse boarding, private game preserves, fish-breeding areas, tree and plant nurseries, cattle ranches, and other similar activities involving livestock or poultry.

Farm stand. A temporary structure or vehicle used in the sale of farm products, including but not limited to fruits,

vegetables, juices and ornamental plants located on a farm.

Garden center. A place of business where retail and wholesale products and produce are sold to the retail consumer. Items offered for sale may include-plants, nursery products and stock, predominantly grown elsewhere, and fertilizers, potting soil, hardware, power equipment and machinery, hoes, rakes, shovels, and other garden and farm tools, and utensils. These establishments may sell a limited amount of product they grow themselves.

Hobby farm. A parcel of land located in an existing or designated semi-rural area, with or without a residential dwelling and/or accessory buildings, where limited agricultural activities for primarily recreational purposes are not prohibited at the time of the adoption of this act and which does not meet the criteria to be classified as a "farm" under the Florida Statutes or Section 12-34(B)(16) of this Code.

Landscape maintenance contractor. An establishment primarily engaged in providing landscape and/or lawn care and maintenance services, such as lawn mowing, edging, weeding, pruning, clipping, seasonal planting, irrigation, fertilization, application of pesticides, and the installation of water features or other garden ornamentation.

Limited agricultural activities. Agricultural uses as defined under Chapter 12 of this Code, not qualifying as a "farm" under the Florida Statutes.

Livestock. Grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ruminants, ostriches, emus, and rheas.

Plant nursery. A farm on or in which nursery stock is propagated or grown to a usable size for sale, either retail or wholesale. These establishments may sell a limited amount of ancillary items such as fertilizers, potting soil, pots and garden ornaments and may also undertake limited installation of trees, shrubs and/or plants incidental to the sale of such products.

Poultry. Any chickens, turkeys, ducks, geese, peafowl or guinea fowl, or pigeons, pheasants, quail and other game birds raised for meat or eggs.

Poultry market. A commercial establishment or place where live poultry or fowl are kept and prepared for sale, including killing or cleaning.

Semi-rural area. Existing residential neighborhoods within the town, where limited agricultural activities are not prohibited by the Davie Town Code at the time of the adoption of this Act.

Chapter 12, Sec. 12-32(A)

Agricultural Uses. The term agricultural uses is to be defined to mean “those activities within land areas which are predominantly used as farms, and for the cultivation of crops and livestock, including, but not limited to, cropland, pastureland, orchards, vineyards, nurseries, ornamental horticulture areas, groves, confined feeding operations, specialty farms, and silviculture areas.”

BENDER'S TROPICAL GROVE

DETAILED USE REGULATIONS

Chapter 12, Sec. 12-34 Standards Enumerated

(B) Agricultural Use:

(1) Animal housing/shelter.

(a) That portion of any structure containing not more than three (3) stalls a maximum of twelve (12) feet by twelve (12) feet, a tack room, and feed room, used for housing or feeding livestock shall be at least forty (40) feet from any other property under separate ownership, from any public road right-of-way or any existing structure. For each additional stall not to exceed twelve (12) feet by twelve (12) feet, an additional ten-foot setback shall be required, to a maximum setback of one hundred (100) feet. This requirement shall not apply to non-residential farm buildings or structures on farms used for agricultural purpose on a plot larger than five (5) acres in size. On any farm less than five (5) acres in size, any farm building or structure on a portion of a plot occupied by a farm shall either be located not less than fifty (50) feet from any lot line, or shall have buffer consisting of an opaque fence, hedge or berm to a minimum height of six (6) feet.

(b) Aviaries, roofed hutches, dog houses and dog runs shall be a minimum of forty (40) feet from all property lines in the RR, AG, A-1, R-1, R-2, CC, RO, O, B-1, B-2, and B-3 districts. Roofed hutches, dog houses and dog runs are not permitted within required setbacks in the R-3, R-4 or R-5, RM-5, RM-8, RM-10 districts. Aviaries are not permitted in the R-3, R-4, or R-5 districts.

(2) Number and types of animals.

(a) The number and types of animals shall not be restricted on farms as defined by section 12-503, subject to restrictions on the keeping or raising of pigs or hogs as set in section 12-34(B)(7).

(b) In the RR, AG, A-1, RO, O, CC, B-1, B-2, B-3, M-1, M-2, and M-3 districts, permitted livestock is limited to a total of eight (8) livestock on a minimum thirty-five thousand-square-foot plot, but limited to four (4) cattle and horses. Offspring of livestock kept on plot shall not be counted towards said limited number for one (1) year. Ten (10) rabbits and/or twenty-five (25) poultry are permitted on a minimum thirty-five thousand-square-foot plot, provided however, that the poultry and rabbits are in a completely penned area. Up to three (3) poultry/fowl can be considered pets in all residential zoning designations.

(c) In the R-1 district, permitted livestock is limited to eight (8) livestock on a minimum thirty-five thousand-square-foot plot, but limited to four (4) cattle and horses, ten (10) rabbits and/or five (5) poultry; provided, that two (2) additional livestock may be kept for each thirty-five thousand (35,000) square feet in excess of the minimum required plot size; and, further provided, that the poultry and rabbits are in a completely penned area. Offspring of livestock kept on plot shall not be counted towards said limited number for one (1) year.

(3) *Plant Nursery.* In the RR, AG, and A-1 districts, retail sales shall be limited to agricultural products grown, kept, or raised on site, and shall be limited to a maximum of twenty-five (25) percent of the allowable building space on the site. The limitation on the size of building space shall not apply to farms used for an agricultural purpose in these districts.

(4) *Beekeeping.* In the RR, AG, and A-1 districts, beekeeping is permitted on a minimum plot of five (5) acres, provided the hives are to be located a minimum of one hundred (100) feet from all property lines.

(5) Agricultural uses such as cultivation of crops, groves, thoroughbred and pleasure horses, cattle ranches are permitted in the CC, B-1, B-2, B-3, M-1, M-2, M-3 and RO districts provided the land is free of commercial or industrial structures and such agricultural uses are discontinued upon conversion of the property to another use.

(6) Hobby Farm.

(a) *Intent.* The intent of this section is to safeguard the rights of Davie residents to continue to conduct limited agricultural activities within "semi-rural residential neighborhoods" within the town and provide protections under the Code for those residents conducting limited agricultural activities as defined within this section and section 12-503

(b) *Hobby farm locations.* Hobby farms are permitted in any residential neighborhood within the town, where limited agricultural activities are not prohibited by the Davie Town Code at the time of the adoption of Ordinance No. 2003-044.

(c) *Nuisance provisions.* No maintenance of a "hobby farm" as defined within this section shall be deemed to be a nuisance if said activities were not a nuisance at the time of the adoption of Ordinance No. 2003-044 and the agricultural activities conducted on the property conform to Central Broward Water Management Board Best Management practices for that type of agricultural activity. No limited agricultural activities conducted in the maintenance of a "hobby farm" shall be deemed to be a public or private nuisance due to a change in the type of limited agricultural activity being conducted, a change in conditions in or around the locality of the semi-rural area or a change in

the ownership of the property on which the "hobby farm" is situated.

(d) *Nonconforming status.* In the event of future land use amendments or zoning changes to the contrary, any land use amendments or zoning changes to the contrary, any limited agricultural activity in a semi-rural area previously existing or commenced Ordinance No. 2003-044 shall become a legal nonconforming use, notwithstanding any change in ownership or change in the type of limited agricultural activity being conducted on the property.

(7) The raising, breeding or keeping of swine of any type except for one (1) Vietnamese Potbellied Pig kept as a household pet, shall be presumed to be a nuisance and shall be prohibited in all zoning districts.

(8) Raising of horses, cattle, goats, sheep, poultry and rabbits is not permitted in any residential zoning district, except for RR, AG, A-1, and R-1, and except as provided in Chapter 12, Article III, Division 5, Nonconforming Uses and Structures of this Code for nonconforming uses on farms existing on the date this chapter is adopted by the town council.

(I) *Equestrian Facilities:* An equestrian facility shall provide for stables, paddocks and trails, and may also provide pasture land and exercise areas. Equestrian facilities may be included within a minimum 35-acre development. The maximum number of stalls shall be limited to one (1) stall per two (2) dwelling units within the residential community. The facility shall be designed as an integral component of the residential community and internalized within the overall development plan as depicted on the site plan. Additionally, the site plan shall include an alternate development proposal, in conformance with district regulations.

The use of the facility shall be available to the residents of the community on a priority basis and may be open to the public for boarding only. Activities within the equestrian facility shall be limited to use by residents and boarders only. The owners/operators of the equestrian facility shall be members of the homeowners' association governing the overall development.

(U) *Residential Agriculture:* Residential agriculture in the RR, AG, A-1 and R-1 districts are [is] limited to noncommercial use, and provided no persons are employed on the premises who do not live in the dwelling unit.

[(KK)] *Farms:*

(1) Administrative determinations.

(a) Any person who has not been granted an agricultural classification pursuant to F.S. § 193.461, and is claiming that a parcel of land or a portion of a parcel of land is a farm shall make application for an administrative determination. Requests for such a determination may be made to either the building official or the code compliance official.

(b) Whichever official receives the written request shall forward a copy of the application to the other official. Both officials shall jointly review the application and any supporting documents to determine whether the parcel is a farm and whether the activities taking place on the parcel are farm operations and activities in accordance with the criteria as set forth below in subparagraph (2). Within forty-five (45) calendar days after the receipt of a complete and sufficient application, the officials shall jointly either grant the application or

respond to the applicant in writing the reason or reasons for denial. If the code compliance official and the building official cannot agree as to whether the application should be granted, the decision will be deemed to be a denial. The decision shall be mailed by U.S. Mail to the address indicated on the application, return receipt requested.

(c) If the applicant disagrees with the determination of the officials, the decision may be appealed by notifying either official in writing that the applicant is appealing the administrative decision. The notification shall be received no later than thirty (30) calendar days after the administrative decision is "rendered". If the notification is not received within thirty (30) days after rendition of the decision, the applicant is deemed to have waived the right to challenge the decision. For the purposes of this subparagraph, the term "rendered" means ten (10) calendar days after the date the decision was mailed. The time frame to seek an appeal shall be stayed until the final determination by the Broward County Value Adjustment Board if the applicant has appealed the decision of the classification of the applicant's property pursuant to F.S. § 193.461.

(d) Upon receipt of a timely notice of appeal, the appeal shall be assigned to a hearing officer. The procedures for conducting hearings shall be approved by a Resolution of the town council and incorporated in the Town Code. The hearing shall be set no later than sixty (60) days from the date of the notice of appeal unless an extension of time is requested or agreed to by the applicant.

(e) The town attorney shall represent the town in the administrative hearing. The hearing officer shall determine whether the parcel is a farm and whether the activities taking place on the parcel are farm operations and activities in accordance with the criteria as set forth below in subparagraph (2) and the definitions of "farm" and "agricultural use" as set forth within section 12-503 of the Land Development Code and as provided in applicable statutes, or established case law.

(f) Nothing in this section prohibits the officials from reconsidering and reversing a denial of the administrative decision at any time prior to the start of the hearing before the hearing officer.

(g) The hearing officer shall, within forty-five (45) days of the hearing, issue a proposed order which shall include findings of fact and conclusions of law with respect to the claim of the applicant.

(h) The decision of the hearing officer is final. Appeal of the hearing officer's decision shall be by petition for writ of certiorari to the circuit court pursuant to the Florida Rules of Appellate Procedure, within thirty (30) days of the rendition of the hearing officer's findings.

(2) ***Criteria for farm claims.*** The criteria set forth below shall be considered in both the administrative determination and in the hearing by the hearing officer. The applicant shall not be required to show that the applicant meets all of the criteria. However, the applicant shall be required to show that the applicant meets a sufficient number of the criteria under the particular circumstances for the officials or the hearing officer to determine that the applicant's property is a farm.

(a) The general intent of the "Right to Farm Act" is to preserve productive land for agricultural purposes and to protect established farmers from the demands of sprawling urban development.

(b) The applicant can demonstrate that there are clearly identifiable farm products

as defined in section 12-503 resulting from the farm operation.

(c) The proportion of the gross acreage of the land used for agricultural purposes and the intensity of that agricultural purpose as compared to any residential or other nonagricultural uses which are also present on the land.

(d) Whether the parcel in question is comparable to similar farm operations of the same type in the community which are classified as agricultural pursuant to section F.S.§ 193.461, or which have been determined to be a farm pursuant to the Town of Davie Land Development Code.

(e) Whether a Schedule "F" or other Federal Income Tax return has been filed in connection with any farm income and expenditures.

(f) The length of time the land has been used for agriculture by the current operator and the level of agricultural activity achieved commensurate to this time period.

(g) The amount of time, effort and capitalization invested in the agricultural use of the land.

(h) Membership or involvement with agricultural associations, such as the Farm Bureau, the Nursery and Growers Association, breed societies or other organizations which may be specific to various forms of agriculture.

(3) ***Right to farm.*** The Town's Code shall conform to F.S. § 823.14, the Florida Right to Farm Act, which prohibits a local government from the adoption of any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to F.S. § 193.461, where such activity is regulated through implemented best-management practices or interim measures developed by the department of environmental protection, the department of agricultural and consumer services, or water management districts and adopted under chapter 120 as part of a statewide or regional program.

BUILDINGS AND STRUCTURES

ARTICLE II, Sec. 5-6. Construction of Nonmobile Structures Used for Wholesale or Retail Sales

(a) Every business conducted within the town for the wholesale or retai sale of merchandise, excluding farms and agricultural uses, and products manufactured therefrom, shall be conducted within or from as structure constructed in compliance with the Florida Building Code. Every such business, including farms and agricultural uses, shall have an adequate water supply and sewage disposal facilities.

ARTICLE II, Sec. 8-16. Building Permits Required

(a) In accordance with Section 301 of the South Florida Building Code and this chapter, no construction or development, including placement of prefabricated buildings and manufactured homes, or substantial improvements on any property within the town shall be undertaken until after an applicable permit has been obtained from the building official. However, notwithstanding the foregoing requirements, the town recognizes that non-residential farm buildings and non-residential structures on farms shall be excepted from the requirements of this section.

GENERAL REGULATIONS

Chapter 12-33

(U) Nuisances.

(1) No farm operation which has been in operation for one (1) year or more since its established date of operation and which was not a nuisance at the time of its established date of operation shall be a public or private nuisance if the farm conforms to generally accepted agricultural and management practices, except that the following conditions shall constitute evidence of a nuisance:

a. The presence of untreated or improperly treated human waster, garbage, offal, dead animals, dangerous waste materials, or gases which are harmful to human or animal life.

b. The presence of improperly built or improperly maintained septic tanks, water closets, or privies.

c. The keeping of diseased animals which are dangerous to human health, unless such animals are kept in accordance with a current state or federal disease control program.

d. The presence of unsanitary places where animals are slaughtered, which may give rise to diseases which are harmful to human or animal life.

(2) No farm operation shall become a public or private nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with Best Management Practices adopted by local, state, or federal agencies if such farm has been in operation for one (1) year or

more since its established date of operation and if it was not a nuisance at the time of its established date of operation.

(G) Commercial Vehicle Parking: Trucks, commercial vehicles, agricultural equipment or construction equipment shall not be parked, stored or maintained within a residentially zoned district, whether on private property, public property, swale areas or public or private road rights-of-way except as provided for herein:

(1) For the purposes of this section, the following shall apply:

(a) Commercial vehicle, for the purpose of this section, shall mean any vehicle whatsoever designed, intended or used for profit or hire, included but not limited to, vans, trucks, farm tractors, farm trailers, tow trucks, tractor-trailers, semitrailers, buses and trailers of any kind.

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(c) Agricultural equipment shall include any farm or grove implements principally operated in agricultural or horticultural pursuits and shall include farm tractors and farm trailers not otherwise comprehended within the term commercial vehicle.

(6) Agricultural equipment shall not be permitted to be parked in residential areas other than those zoned RR, A-1 and AG. Additionally, farm trailers, stock trailers, farm tractors and heavy equipment used in an agricultural or horticultural pursuit may be stored or maintained in RR, A-1 and AG districts on property belonging to the owner of the tractor, trailer or heavy equipment without reference to the restrictions of this section.

WEEKLY BROTHERS

LICENSING

Sec. 13-29. - Grower exemptions; dealers in agriculture products.

All farm, horticultural, floricultural and grove products and products manufactured therefrom, except intoxicating liquors, beer and wines, shall be exempt from all forms of license tax when the same are being offered for sale or sold by the farmer or grower producing such products, an exempt licence shall be issued in these circumstances upon application. The management of a wholesale farmers' produce market shall have the right to pay a license of one hundred dollars ($100.00) that will entitle its stall tenants to deal in agricultural and horticultural products without obtaining individual licenses, but individual licenses shall be required of such tenants unless such license is obtained for the market.

SIGNS

Sec. 12-238. - General regulations.

(C) *Building permits required; Exceptions:* No person shall erect, alter, or relocate any sign within the incorporated areas of the Town without first obtaining a building permit, with the following exceptions:

(13) Farm signs, to the extent that such signs are exempt from municipal regulation pursuant to Sec. 604.50, Florida Statutes.

BAR B RANCH

BATTEN'S FARM

SITE LANDSCAPING

Sec. 12-101 (A)

4. Exempted from the provisions of the Florida-friendly landscape requirements (note: not irrigation requirements) are the following, as applicable:

a. Bona fide agricultural activities;

b. Other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing of livestock;

LIVESTOCK RUNNING AT LARGE

Sec 4-41 Definitions

The following words when used in this article shall have the meaning ascribed herein unless the context clearly indicates otherwise:

Animal shall mean any horse, pony, mule, cow, swine, sheep and goat, both domesticated and wild, male and female, singular and plural.

At large shall mean off the premises of the owner or custodian of the animal, and not under the immediate control of the owner or custodian.

Permit shall mean to suffer, allow, consent, let; to give leave or license; to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of an act prohibited.

Shelter shall mean the operation of the person or firm designated by the town to pick up and board any animal found at large.

Sec. 4-42 Certain animals declared a nuisance

No person owning or having in his custody animals as herein defined shall permit them to go at large to the injury or annoyance of others, nor shall such animal be permitted at large upon the streets or public ways of the town. Such action is declared to be a nuisance and dangerous to the public health and safety.

Sec. 4-43 Impoundment generally; warrant of arrest for owner or custodian

(a) Any person finding any animal upon his property to his injury or annoyance may take it and remove it to any private or other animal shelter that will take possession of it. If no such shelter is available, he may hold the animal in his own possession, and as soon as possible notify the police department of this custody, giving a description of the animal and the name of the owner if known.

(b) The police department as soon as possible after receiving notice will dispatch an officer to appear at the premises and take possession of the animal.

(c) If the officer has or with reasonable dispatch can obtain the name of the owner as custodian of the animal, he will return it to the residence address. If there is no one at the address, he will leave a notice where the owner or custodian may reclaim the

property. He will then contact the shelter and instruct it to pick up the animal and convey it to the shelter. He may then secure or cause to be secured and serve or have served a warrant of arrest on the owner or custodian for permitting the animal to go at large.

(d) Any police officer or other person designated by the town for such purpose is authorized to capture and impound any animal found at large, impounding to be in accordance with the procedure authorized by this article.

(e) Any officer or designated person picking up an animal and after reasonable diligence is unable to find who owns or has custody of it, will take it to the animal shelter and leave it.

Sec. 4-44 Notice of impoundment and sale

a) Upon the impounding of any animal the chief of police shall forthwith serve written notice upon the owner, advising such owner of the location or place where the animal is being held and impounded, the amount due by reason of such impounding, and that unless such animal be redeemed within five (5) days from date thereof that the same shall be offered for sale.

(b) If the owner of such animal is unknown or cannot be found, service upon the owner shall be obtained by publishing a notice five (5) times, consecutively, in a newspaper or general circulation where the animal is impounded (Sundays and holidays excluded) and by posting in two (2) conspicuous places in the town limits.

(c) Unless the impounded animal is redeemed within three (3) days from the date of last publication of notice, the chief of police shall forthwith give notice of sale thereof which shall be held not less than five (5) days nor more than ten (10) days (excluding Sundays and holidays) from the first publication of the notice of sale. The notice of sale shall be published in a newspaper of general circulation in the town (excluding Sundays and holidays) and by posting a copy of such notice at two (2) conspicuous places in the town limits.

Sec. 4-45 Fees and costs

The owner or custodian who redeems an animal from the animal shelter will pay a pick-up fee to the police department in accordance with the following schedule:

Fee

Call out charge $42.00

Pick up charge 30.00

Each additional animal 12.00

Impounding charge (per day, per head) 9.00

Charge if additional help is required (per hour) 18.00

BROWARD COUNTY AGRICULTURAL CLASSIFICATION

Broward County Property Appraiser

Lori Parrish, CFA

As a member of the Broward County Commission and Value Adjustment Board, Lori Parrish championed the agricultural and horse boarding classification for owners of bona fide commercial agricultural businesses. Lori worked to amend the zoning laws to promote agricultural businesses within Broward County. The Broward County Property Appraiser's office is required by law to classify all property within the County as either agricultural or non-agricultural. For land to be granted an agricultural classification, the use of the land must be primarily for bona fide commercial agriculture. Once granted an agricultural classification, Lori has created a simplified renewal process, which honors the spirit and intent of the law and cuts the bureaucratic red tape. Should you need any additional information on this valuable classification, please do not hesitate to contact Jason Curtis, Agricultural Analyst, at 954.357.6866 or e-mail Lori directly at lori@bcpa.net

AGRICULTURAL CLASSIFICATION & THE GREENBELT LAW

LEGISLATIVE INTENT

It is the declared policy of the State of Florida to conserve, protect and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products and as valued natural and ecological resources for clean air sheds, wildlife habitat and other benefits of green space, including aesthetic purposes.

The Legislature has also declared Florida's economic and environmental future is enhanced by a tax policy which encourages sustainable agricultural use of its lands and discourages pressures to otherwise develop the land in indiscriminate manners, which brings conflicting land uses into juxtaposition, urban sprawl and creates higher costs for public services.

The intent of the Greenbelt Law is to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an economic and environmental resource of major importance.

BACKGROUND

Spreading suburban development drives up land values, which in turn drives up the farmer's property taxes, making agriculture economically unviable and forcing the farmer to sell the land to developers, causing the further spread of development and the loss of irreplaceable natural resources and open space.

Recognizing this self-perpetuating cycle, the Florida Legislature enacted the Greenbelt Law to help preserve farmland and slow down the rate of development. This law established agriculture as a separate class of property to be taxed on the agricultural value of the land instead of on its value for development. This benefits society as a whole, since rampant development causes over-crowded schools, more traffic on the roads and strains local government's ability to keep pace with the demands for these and other services such as police, fire, water and sanitation. Since horses, cows and nursery plants don't go to school, drive on the roads or call the police, farms make minimal use of these services and, more importantly, farmland provides scenic, open green space that serves as water catchment areas, clean air sheds and wildlife habitat.

Farmers pay full taxes on their houses and yards and may also be eligible for the homestead exemption, the same as every taxpayer. Only the farmland can receive the agricultural classification and, even with the agricultural classification on the land, farms contribute more in property taxes than they cost the government in services.

BROWARD FARMS

The Broward County Property Appraiser's office is required by law to classify all property within the County as either agricultural or non-agricultural. In the past, Broward County had a landscape of vast cattle ranches and citrus groves interspersed with smaller farms of all types. With the advent of air conditioning came more and

more people to share the benefits of this tropical climate the population continues to grow. This growth has forever changed the face of Broward County and, to be sustainable, agriculture has had to adapt to the change and evolve. Traditional forms of agriculture requiring hundreds of acres of land to be profitable are no longer viable in Broward County. Replacing the old types of conventional agriculture is a new type of farming which can thrive on far smaller parcels of land and in a suburban setting, agriculture which relies on a nearby metropolitan population for its client base. Landscape nurseries and horse farms are the two primary forms of modern agriculture. They provide desired agricultural services directly to the community and continue to conserve our open spaces and environmental resources into the future.

QUALIFYING FOR AGRICULTURAL CLASSIFICATION

For land to be granted agricultural classification, the use of the land must be primarily for bona fide commercial agriculture as of January 1st of the tax year.

First and most important, the "use" of the land must be for "agricultural purposes." The Greenbelt Law defines "agricultural purposes" as including but "not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production." While this list is broad and inclusive in its general terms and does not necessarily exclude categories not specifically listed, the Courts have ruled, for example, horses are livestock, therefore using the land to keep livestock, whether breeding, boarding, training or for other commercial purposes is agriculture, but the term livestock does not include greyhound dogs, therefore use of the land for raising or training dogs for racing is not an agricultural use.

Second, agricultural use must be the "primary" activity which takes place on the land. If the owner's residence is on the land, the area of the house and grounds will be excluded from the agricultural classification, although it is still eligible for homestead exemption. On the remainder of the land, the agricultural use must be the most significant activity and not merely an incidental use.

Third, the agricultural use must be "commercial," which the Courts have defined as meaning done with a profit motive or intent to make a profit. The Courts have also ruled it is not necessary to have the expectation of meeting the investment costs of the land and realizing a profit overall to be "commercial". However, it is not enough to grow fruit or vegetables for your own use or keep a pet cow or only your own horses for pleasure or sport. While the "commercial" requirement is not as strict as the IRS business standards, you should be trying to make money from the agricultural use of your land.

Fourth, the agricultural use must be "bona fide." Again, the Courts have ruled this means good faith - real, actual and genuine and not a sham or deception. For example, if you apply for agricultural classification for a horse boarding farm, you should be actually boarding other people's horses on your land. If you apply as a nursery, then you should be growing and selling plants on your land, not using the land to store equipment for a lawn mowing business.

THE GREENBELT LAW - FLORIDA STATUTE 193.461

The Legislature has provided a list of factors the Property Appraiser may weigh and consider in determining whether the agricultural use is bona fide, i.e. commercial agriculture:

1. The length of time the land has been so utilized;

2. Whether the use has been continuous;

3. The purchase price paid;

4. Size, as it relates to specific agricultural use;

5. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices;

6. Whether such land is under lease and, if so, the effective length, terms, and conditions of the lease; and

7. Such other factors as may from time to time become applicable.

The Department of Revenue has provided a suggested list of "other factors", to which the Property Appraiser is not limited but may also consider:

Florida Administrative Code Rule 12D-5.004:

(1) Other factors:

(a) Opinions of appropriate experts in the fields;
(b) Business or occupation of owner;
(c) The nature of the terrain of the property;
(d) Economic merchantability of the agricultural product;
(e) The reasonably attainable economic salability of the product within a reasonable future time for the particular agricultural product.

(2) Other recommended factors:

(a) Zoning;
(b) General character of the neighborhood;
(c) Use of adjacent properties;
(d) Proximity of subject properties to a metropolitan area and services;
(e) Principal domicile of the owner and family;
(f) Date of acquisition;
(g) Agricultural experience of the person conducting agricultural operations;
(h) Participation in governmental or private agricultural programs or activities;
(i) Amount of harvest for each crop;
(j) Gross sales from the agricultural operation;
(k) Months of hired labor; and
(l) Inventory of buildings and machinery and the condition of the same.

The Property Appraiser is not required to consider each and every one of these factors, but also cannot single out one, particular factor as the sole criterion for determining whether or not the property should be granted the agricultural classification. No one factor, by itself, is determinative. The Courts have ruled, for example, it is not required the owner be a farmer or the agricultural use be a permitted use under the local zoning regulations. Nor can the size of the property, alone, can be the deciding

factor. Although a purchase price of three or more times the agricultural value of the land creates a presumption the land is not to be used primarily for agriculture, once the property owner demonstrates the land is being used for bona fide commercial agriculture, the purchase price is no longer important.

The Courts have stressed the "use" of the land as of January 1st of the year in question is the guidepost in classifying the land and "agricultural use" is now and has always been the test.

However, the Property Appraiser is required to reclassify the following lands as non-agricultural when:

1. Land diverted from an agricultural to a nonagricultural use.

2. Land no longer being utilized for agricultural purposes.

NEW APPLICATIONS FOR AGRICULTURAL CLASSIFICATION

If you believe your property, as of January 1 of the current tax year, meets the criteria for the agricultural classification, you must file an initial application with the Broward County Property Appraiser's office by March 1 of the year (however, state law now allows us to accept late-filed applications until the annual TRIM Notice appeal deadline mid-September). You may write to the office or call 954.357.6866 for the form, or you may obtain the form online at: http://www.bcpa.net/forms-dl.asp

When you submit your application, please attach as much additional information as possible to show the use of your land is primarily for bona fide, commercial agriculture. Utilize the factors listed above for guidance as to what documentation would assist us in making a correct determination. Such additional information, if not already provided, may be requested by the Property Appraiser as is reasonably required in making this determination. Any financial information submitted will be strictly private and confidential.

If you are a new purchaser of property previously granted the agricultural classification, you must submit a new application if you wish the property to continue to receive the agricultural classification.

We will carefully review your application and any additional information provided and will physically inspect your property. We will notify you by mail, postmarked by July 1st, as to the status of your request.

RENEWALS OF AGRICULTURAL CLASSIFICATION

Land previously granted the agricultural classification will be automatically renewed in subsequent years, providing the agricultural use of the land has not been abandoned or discontinued, the land has not been diverted to a nonagricultural use, the ownership has not changed or the land has not been zoned to a non-agricultural use at the request of the owner. The automatic renewal is subject to routine property inspections for verification purposes, but you do not need to file an initial application form or burdensome paperwork again. Property Appraiser Lori Parrish has created a simplified renewal process which honors the spirit and intent of the law and cuts the bureaucratic red tape.

However, if you have changed from one agricultural use to a different agricultural use, you should notify us promptly so the agricultural value of your property may be changed accordingly. You must also notify the Property Appraiser's office if you have sold your property or discontinued the agricultural use.

LATE FILING AND RESOLVING DISAGREEMENTS

If you missed the March 1 filing date deadline, state law now allows us to accept late-filed applications until the annual TRIM Notice appeal deadline mid-September.

The absolute deadline to late file for an agricultural classification for a year is mid-September of that year (the same date as the annual deadline to file a valuation challenge to the VAB). You can read more about the VAB process at: http://www.bcpa.net/forms-dl.asp. The VAB will notify you directly of your hearing date. Agricultural hearings are usually scheduled in late summer or early fall.

If you believe the Property Appraiser's decision regarding your application or renewal for agricultural classification is incorrect, you may contact our office at **954.357.6866** for further discussion and review. You may also contact the Value Adjustment Board and file a petition for a hearing and independent review. A petition must be filed within 30 days of the notice from the Property Appraiser's office regarding the status of your application or renewal for agricultural classification.

For more info about the Agricultural Classification, please contact:
Agricultural Analyst Jason Curtis: Email Jason or call 954.357.6866

FLORIDA FRESH HERBS

STATE LAW

AGRICULTURAL CLASSIFICATION

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(1) The property appraiser shall, on an annual basis, classify for assessment purposes all lands within the county as either agricultural or nonagricultural.

(2) Any landowner whose land is denied agricultural classification by the property appraiser may appeal to the value adjustment board. The property appraiser shall notify the landowner in writing of the denial of agricultural classification on or before July 1 of the year for which the application was filed. The notification shall advise the landowner of his or her right to appeal to the value adjustment board and of the filing deadline. The property appraiser shall have available at his or her office a list by ownership of all applications received showing the acreage, the full valuation under s.193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

(3)(a) No lands shall be classified as agricultural lands unless a return is filed on or before March 1 of each year. The property appraiser, before so classifying such lands, may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish that such lands were actually used for a bona fide agricultural purpose. Failure to make timely application by March 1 shall constitute a waiver for 1 year of the privilege herein granted for agricultural assessment. However, an applicant who is qualified to receive an agricultural classification who fails to file an application by March 1 may file an application for the classification and may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the classification be granted. The petition may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s.194.011(1). Notwithstanding the provisions of s.194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the classification and demonstrates particular extenuating circumstances judged by the property appraiser or the value adjustment board to warrant granting the classification, the property appraiser or the value adjustment board may grant the classification. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department. The lessee of property may make original application or reapply using the short form if the lease, or an affidavit executed by the owner, provides that the lessee is empowered to make application for the agricultural classification on behalf of the owner and a copy of the lease or affidavit accompanies the application. A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for classification of property within the county after an initial

application is made and the classification granted by the property appraiser. Such waiver may be revoked by a majority vote of the governing body of the county.

(b) Subject to the restrictions specified in this section, only lands that are used primarily for bona fide agricultural purposes shall be classified agricultural. The term "bona fide agricultural purposes" means good faith commercial agricultural use of the land.

1. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

a. The length of time the land has been so used.

b. Whether the use has been continuous.

c. The purchase price paid.

d. Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.

e. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices.

f. Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.

g. Such other factors as may become applicable.

2. Offering property for sale does not constitute a primary use of land and may not be the basis for denying an agricultural classification if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale.

(c) The maintenance of a dwelling on part of the lands used for agricultural purposes shall not in itself preclude an agricultural classification.

(d) When property receiving an agricultural classification contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage must be assessed separately, pursuant to s. 193.011, to qualify for the assessment limitation set forth in s. 193.155. The remaining property may be classified under the provisions of paragraphs (a) and (b).

(e) Notwithstanding the provisions of paragraph (a), land that has received an agricultural classification from the value adjustment board or a court of competent jurisdiction pursuant to this section is entitled to receive such classification in any subsequent year until such agricultural use of the land is abandoned or discontinued, the land is diverted to a nonagricultural use, or the land is reclassified as nonagricultural pursuant to subsection (4). The property appraiser must, no later than January 31 of each year, provide notice to the owner of land that was classified agricultural in the previous year informing the owner of the requirements of this paragraph and requiring the owner to certify that neither the ownership nor the use of the land has changed. The department shall, by administrative rule, prescribe the form of the notice to be used by the property appraiser under this paragraph. If a county has waived the requirement that an annual application or statement be made for classification of property pursuant to paragraph (a), the county may, by a majority vote of its governing body, waive the notice and certification requirements of this paragraph and shall provide the property owner with the same notification provided to owners of land granted an agricultural classification by the property appraiser. Such waiver may be revoked by a majority vote of the county's governing body. This paragraph does not

apply to any property if the agricultural classification of that property is the subject of current litigation.

(4) The property appraiser shall reclassify the following lands as nonagricultural:

(a) Land diverted from an agricultural to a nonagricultural use.

(b) Land no longer being utilized for agricultural purposes.

(5) For the purpose of this section, "agricultural purposes" includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products as defined in s. 823.14(3) and farm production.

(6)(a) In years in which proper application for agricultural assessment has been made and granted pursuant to this section, the assessment of land shall be based solely on its agricultural use. The property appraiser shall consider the following use factors only:

1. The quantity and size of the property;

2. The condition of the property;

3. The present market value of the property as agricultural land;

4. The income produced by the property;

5. The productivity of land in its present use;

6. The economic merchantability of the agricultural product; and

7. Such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production.

(b) Notwithstanding any provision relating to annual assessment found in s. 192.042, the property appraiser shall rely on 5-year moving average data when utilizing the income methodology approach in an assessment of property used for agricultural purposes.

(c)1 For purposes of the income methodology approach to assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection, which structures or improvements are consistent with the Department of Agriculture and Consumer Services' interim measures or best management practices adopted pursuant to s.570.085 or s.403.067(7)(c), shall be assessed by the methodology described in subparagraph 1.

(d) In years in which proper application for agricultural assessment has not been made, the land shall be assessed under the provisions of s. 193.011.

(7) Lands classified for assessment purposes as agricultural lands which are taken out of production by any state or federal eradication or quarantine program shall continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs which are converted to fallow, or otherwise nonincome-producing uses shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of no more than $50 per acre, on a single year assessment methodology; however, lands converted to other income-producing agricultural uses permissible under such programs shall be assessed pursuant to this

section. Land under a mandated eradication or quarantine program which is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

FLORIDA ADMINISTRATIVE CODE DEFINITIONS

FAC Rule 12D-1.002 Definitions.

Unless otherwise stated or unless otherwise clearly indicated by the context in which a particular term is used, all terms used in this chapter shall have the same meanings as are attributed to them in the current Florida Statutes. In this connection, reference is made to the definitions contained in Sections 192.001, 196.012, and 197.102, Florida Statutes.

(3) "Livestock" – Animals kept or raised for use or pleasure, especially farm animals kept for use and profit. Livestock is further defined as those kinds of domestic animals and fowls which are normally susceptible to confinement within boundaries without seriously impairing their utility, and the intrusion of which upon the land of others normally causes harm to land or to crops thereon.

SALES TAX EXEMPTIONS

212.031 Tax on rental or license fee for use of real property.—

(1)(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless such property is:

1. Assessed as agricultural property under s. 193.461.

212.07 Sales, storage, use tax; tax added to purchase price; dealer not to absorb; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions.—

(5)(a) The gross proceeds derived from the sale in this state of livestock, poultry, and other farm products direct from the farm are exempted from the tax levied by this chapter provided such sales are made directly by the producers. The producers shall be entitled to such exemptions although the livestock so sold in this state may have been registered with a breeders' or registry association prior to the sale and although the sale takes place at a livestock show or race meeting, so long as the sale is made by the original producer and within this state. When sales of livestock, poultry, or other farm products are made to consumers by any person, as defined herein, other than a producer, they are not exempt from the tax imposed by this chapter. The foregoing exemption does not apply to ornamental nursery stock offered for retail sale by the producer.

(b) Sales of race horses at claiming races are taxable; however, if sufficient information is provided by race track officials to properly administer the tax, sales tax is due only on the maximum single amount for which a horse is sold at all races at which it is claimed during an entire racing season.

(6) It is specifically provided that the use tax as defined herein does not apply to livestock and livestock products, to poultry and poultry products, or to farm and agricultural products, when produced by the farmer and used by him or her and members of the farmer's family and his or her employees on the farm.

(7) Provided, however, that each and every agricultural commodity sold by any person, other than a producer, to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or for sale in the process of preparing, finishing, or manufacturing such agricultural commodity for the ultimate retail consumer trade shall be and is exempted from any and all provisions of this chapter, including payment of the tax applicable to the sale, storage, use, or transfer, or any other utilization or handling thereof, except when such agricultural commodity is actually sold as a marketable or finished product to the ultimate consumer; in no case shall more than one tax be exacted.

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

3) EXEMPTIONS; CERTAIN FARM EQUIPMENT.—There shall be no tax on the sale, rental, lease, use, consumption, or storage for use in this state of power farm equipment used exclusively on a farm or in a forest in the agricultural production of crops or products as produced by those agricultural industries included in s. 570.02(1), or for fire prevention and suppression work with respect to such crops or products. Harvesting may not be construed to include processing activities. This exemption is not forfeited by moving farm equipment between farms or forests. However, this exemption shall not be allowed unless the purchaser, renter, or lessee signs a certificate stating that the farm equipment is to be used exclusively on a farm or in a forest for agricultural production or for fire prevention and suppression, as required by this subsection. Possession by a seller, lessor, or other dealer of a written certification by the purchaser, renter, or lessee certifying the purchaser's, renter's, or lessee's entitlement to an exemption permitted by this subsection relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption.

(5) EXEMPTIONS; ACCOUNT OF USE.—

a) Items in agricultural use and certain nets.—There are exempt from the tax imposed by this chapter nets designed and used exclusively by commercial fisheries; disinfectants, fertilizers, insecticides, pesticides, herbicides, fungicides, and weed killers used for application on crops or groves, including commercial nurseries and home vegetable gardens, used in dairy barns or on poultry farms for the purpose of protecting poultry or livestock, or used directly on poultry or livestock; portable containers or movable receptacles in which portable containers are placed, used for processing farm products; field and garden seeds, including flower seeds; nursery stock,

seedlings, cuttings, or other propagative material purchased for growing stock; seeds, seedlings, cuttings, and plants used to produce food for human consumption; cloth, plastic, and other similar materials used for shade, mulch, or protection from frost or insects on a farm; generators used on poultry farms; and liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised; however, such exemption shall not be allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated herein. Also exempt are cellophane wrappers, glue for tin and glass (apiarists), mailing cases for honey, shipping cases, window cartons, and baling wire and twine used for baling hay, when used by a farmer to contain, produce, or process an agricultural commodity.

(e) Gas or electricity used for certain agricultural purposes.—

1. Butane gas, propane gas, natural gas, and all other forms of liquefied petroleum gases are exempt from the tax imposed by this chapter if used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which gas is used in any vehicle or equipment driven or operated on the public highways of this state. This restriction does not apply to the movement of farm vehicles or farm equipment between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper is also deemed an exempt use.

2. Electricity used directly or indirectly for production, packing, or processing of agricultural products on the farm, or used directly or indirectly in a packinghouse, is exempt from the tax imposed by this chapter. As used in this subsection, the term "packinghouse" means any building or structure where fruits, vegetables, or meat from cattle or hogs is packed or otherwise prepared for market or shipment in fresh form for wholesale distribution. The exemption does not apply to electricity used in buildings or structures where agricultural products are sold at retail. This exemption applies only if the electricity used for the exempt purposes is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a nonexempt purpose, and all of the electricity used for such purposes is taxable.

(7) MISCELLANEOUS EXEMPTIONS.

(d) Feeds.—Feeds for poultry, ostriches, and livestock, including racehorses and dairy cows, are exempt.

FLORIDA RIGHT TO FARM ACT

823.14 Florida Right to Farm Act.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Right to Farm Act."

(2) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature finds that agricultural production is a major contributor to the economy of the state; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state. The Legislature further finds that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. It is the purpose of this act to protect reasonable agricultural activities conducted on farm land from nuisance suits.

(3) DEFINITIONS.—As used in this section:

(a) "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.

(b) "Farm operation" means all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm, honeybee, or apiculture products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the placement and operation of an apiary; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

(c) "Farm product" means any plant, as defined in s. 581.011, or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom.

(d) "Established date of operation" means the date the farm operation commenced. If the farm operation is subsequently expanded within the original boundaries of the farm land, the established date of operation of the expansion shall also be considered as the date the original farm operation commenced. If the land boundaries of the farm are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent established date of operation. The expanded operation shall not divest the farm operation of a previous established date of operation.

(4) FARM OPERATION NOT TO BE OR BECOME A NUISANCE.—

(a) No farm operation which has been in operation for 1 year or more since its established date of operation and which was not a nuisance at the time of its established date of operation shall be a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices, except that the following conditions shall constitute evidence of a nuisance:

1. The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases which are harmful to human or animal life.
2. The presence of improperly built or improperly maintained septic tanks, water closets, or privies.
3. The keeping of diseased animals which are dangerous to human health, unless such animals are kept in accordance with a current state or federal disease control program.
4. The presence of unsanitary places where animals are slaughtered, which may give rise to diseases which are harmful to human or animal life.

(b) No farm operation shall become a public or private nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with Best Management Practices adopted by local, state, or federal agencies if such farm has been in operation for 1 year or more since its established date of operation and if it was not a nuisance at the time of its established date of operation.

(5) WHEN EXPANSION OF OPERATION NOT PERMITTED.—This act shall not be construed to permit an existing farm operation to change to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing farm operation is adjacent to an established homestead or business on March 15, 1982.

(6) LIMITATION ON DUPLICATION OF GOVERNMENT REGULATION.—It is the intent of the Legislature to eliminate duplication of regulatory authority over farm operations as expressed in this subsection. Except as otherwise provided for in this section and s. 487.051(2), and notwithstanding any other provision of law, a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, where such activity is regulated through implemented best management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program. When an activity of a farm operation takes place within a wellfield protection area as defined in any wellfield protection ordinance adopted by a local government, and the adopted best management practice or interim measure does not specifically address wellfield protection, a local government may regulate that activity pursuant to such ordinance. This subsection does not limit the powers and duties provided for in s. 373.4592 or limit the powers and duties of any local government to address an emergency as provided for in chapter 252.

BUILDING CODES AND EXEMPTIONS

553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. 120.536(1) and 120.54, the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

(c) Nonresidential farm buildings on farms.

604.50 Nonresidential farm buildings; farm fences; farm signs.—

(1) Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign that is located on lands used for bona fide agricultural purposes is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5)(a), and (6)-(8).

(2) As used in this section, the term:

(a) "Bona fide agricultural purposes" has the same meaning as provided in s. 193.461 (3)(b).

(b) "Farm" has the same meaning as provided in s. 823.14.

(c) "Farm sign" means a sign erected, used, or maintained on a farm by the owner or lessee of the farm which relates solely to farm produce, merchandise, or services sold, produced, manufactured, or furnished on the farm.

(d) "Nonresidential farm building" means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

604.40 Farm equipment.—
Notwithstanding any other law, ordinance, rule, or policy to the contrary, all power-drawn, power-driven, or self-propelled equipment used on a farm may be stored, maintained, or repaired by the owner within the boundaries of the owner's farm and at least 50 feet away from any public road without limitation.

VEHICLES

FLORIDA STATUTES - EXEMPTIONS FARM VEHICLES

322.04 Persons exempt from obtaining driver's license.--

(1) The following persons are exempt from obtaining a driver's license:
(b) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

322.53 License required; exemptions.--

(1) Except as provided in subsection (2), every person who drives a commercial motor vehicle in this state is required to possess a valid commercial driver's license issued in accordance with the requirements of this chapter.

(2) The following persons are exempt from the requirement to obtain a commercial driver's license:
(a) Drivers of authorized emergency vehicles.
(b) Military personnel driving vehicles operated for military purposes.
(c) Farmers transporting farm supplies or farm machinery within 150 miles of their farm, or transporting agricultural products to or from the first place of storage or processing or directly to or from market, within 150 miles of their farm.
(d) Drivers of recreational vehicles, as defined in s. 320.01.
(e) Drivers who operate straight trucks, as defined in s. 316.003, that are exclusively transporting their own tangible personal property which is not for sale.
(f) An employee of a publicly owned transit system who is limited to moving vehicles for maintenance or parking purposes exclusively within the restricted-access confines of a transit system's property.

(3) Notwithstanding subsection (2), all drivers of for-hire commercial motor vehicles are required to possess a valid commercial driver's license issued in accordance with the requirements of this chapter.

(4) A resident who is exempt from obtaining a commercial driver's license pursuant to paragraph (2)(b), paragraph (2)(d), paragraph (2)(e), or paragraph (2)(f) may drive a commercial motor vehicle pursuant to the exemption granted in paragraph (2)(b), paragraph (2)(d), paragraph (2)(e), or paragraph (2)(f) if he or she possesses a valid Class E driver's license or a military license.

(5) The department shall adopt rules and enter into necessary agreements with other jurisdictions to provide for the operation of commercial vehicles by nonresidents pursuant to the exemption granted in subsection (2).

322.01 Definitions.--As used in this chapter:

(19) "Farmer" means a person who grows agricultural products, including aquacultural, horticultural, and forestry products, and, except as provided herein, employees of such persons. The term does

not include employees whose primary purpose of employment is the operation of motor vehicles.

(20) "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

320.01 Definitions, general.--As used in the Florida Statutes, except as otherwise provided, the term:

22) "Golf cart" means a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

(42) "Low-speed vehicle" means any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122.

(43) "Utility vehicle" means a motor vehicle designed and manufactured for general maintenance, security, and landscaping purposes, but the term does not include any vehicle designed or used primarily for the transportation of persons or property on a street or highway, or a golf cart, or an all-terrain vehicle as defined in s. 316.2074.

(44) For purposes of this chapter, the term "agricultural products" means any food product; any agricultural, horticultural, or livestock product; any raw material used in plant food formulation; and any plant food used to produce food and fiber.

(45) "Mini truck" means any four-wheeled, reduced-dimension truck that does not have a National Highway Traffic Safety Administration truck classification, with a top speed of 55 miles per hour, and which is equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, and seat belts.

320.51 Farm tractors and farm trailers exempt.--

The following are exempt from the provisions of this chapter which require the registration of motor vehicles, the payment of license taxes, and the display of license plates:

(1) A motor vehicle which is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and which is operated on the roads of this state only incidentally in going from the owner's or operator's headquarters to such farm, grove, or orchard and returning therefrom or in going from one farm, grove, or orchard to another; and

(2) A vehicle without motive power which is used principally for the purpose of transporting plows, harrows, fertilizer distributors, spray machines, and other farm or grove equipment and which uses the roads of this state only incidentally. Nothing in this section shall be construed as exempting such farm tractors and farm trailers from laws relating to the tires to be used when operating on the roads of this state.

Chapter 316
STATE UNIFORM TRAFFIC CONTROL

316.003 Definitions.--The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

12) FARM TRACTOR.--Any motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

16) IMPLEMENT OF HUSBANDRY.--Any vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

42) ROADWAY.--That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein refers to any such roadway separately, but not to all such roadways collectively.

(68) GOLF CART.--A motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes.

316.215 Scope and effect of regulations.--

(3) The provisions of this chapter with respect to equipment required on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

316.2295 Lamps, reflectors and emblems on farm tractors, farm equipment and implements of husbandry.--

(1) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall be equipped with vehicular hazard-warning lights visible from a distance of not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

(2) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall at all times, and every other such motor vehicle shall at all times mentioned in s. 316.217, be equipped with lamps and reflectors as follows:
(a) At least two headlamps meeting the requirements of ss. 316.237 and 316.239.
(b) At least one red lamp visible when lighted from a distance of not less than 1,000 feet to the rear mounted as far to the left of the center of the vehicle as practicable.
(c) At least two red reflectors visible from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps.

(3) Every combination of farm tractor and towed farm equipment or towed implement of husbandry shall at all times mentioned in s. 316.217 be equipped with lamps and reflectors as follows:
(a) The farm tractor shall be equipped as required in subsections (1) and (2).
(b) If the towed unit or its load extends more than 4 feet to the rear of the tractor or

obscures any light thereon, the unit shall be equipped on the rear with at least two red reflectors visible from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps.
(c) If the towed unit of such combination extends more than 4 feet to the left of the centerline of the tractor, the unit shall be equipped on the front with an amber reflector visible from all distances within 600 feet to 100 feet to the front when directly in front of lawful lower beams of headlamps. This reflector shall be so positioned to indicate, as nearly as practicable, the extreme left projection of the towed unit.

(4) The two red reflectors required in the foregoing subsections shall be so positioned as to show from the rear, as nearly as practicable, the extreme width of the vehicle or combination carrying them. If all other requirements are met, reflective tape or paint may be used in lieu of the reflectors required by subsection (3).

(5) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry designed for operation at speeds not in excess of 25 miles per hour shall at all times be equipped with a slow moving vehicle emblem mounted on the rear except as provided in subsection (6).

(6) Every combination of farm tractor and towed farm equipment or towed implement of husbandry normally operating at speeds not in excess of 25 miles per hour shall at all times be equipped with a slow moving vehicle emblem as follows:
(a) When the towed unit or any load thereon obscures the slow moving vehicle emblem on the farm tractor, the towed unit shall be equipped with a slow moving vehicle emblem. In such cases, the towing vehicle need not display the emblem.
(b) When the slow moving vehicle emblem on the farm tractor unit is not obscured by the towed unit or its load, then either or both may be equipped with the required emblem, but it shall be sufficient if either has it.
(c) The emblem required by subsections (5) and (6) shall comply with current standards and specifications of the American Society of Agricultural Engineers approved by the department.

(7) Except during the periods of time stated in s. 316.217(1), an agricultural product trailer which is less than 10 feet in length and narrower than the hauling vehicle is not required to have taillamps, stop lamps, and turn signals and may use the hauling vehicle's lighting apparatus to meet the requirements of ss. 316.221 and 316.222. However, the load of the agricultural product trailer must be contained within the trailer and must not in any way obstruct the hauling vehicle's lighting apparatus.
(8) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.217 When lighted lamps are required.C

(1) Every vehicle operated upon a highway within this state shall display lighted lamps and illuminating devices as herein respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, under the following conditions;

(a) At any time from sunset to sunrise including the twilight hours. Twilight hours

shall mean the time between sunset and full night or between full night and sunrise.
(b) During any rain, smoke, or fog.
(c) Stop lights, turn signals, and other signaling devices shall be lighted as prescribed for use of such devices.

316.515 Maximum width, height, length.C

(5) IMPLEMENTS OF HUSBANDRY AND FARM EQUIPMENT; AGRICULTURAL TRAILERS; FORESTRY EQUIPMENT; SAFETY REQUIREMENTS.--

(a) Notwithstanding any other provisions of law, straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized for the purpose of transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section. The Department of Transportation may issue overlength permits for cotton module movers greater than 50 feet but not more than 55 feet in overall length. Such vehicles shall be operated in accordance with all safety requirements prescribed by law and rules of the Department of Transportation.

b) Notwithstanding any other provision of law, equipment not exceeding 136 inches in width and not capable of speeds exceeding 20 miles per hour which is used exclusively for harvesting forestry products is authorized for the purpose of transporting equipment from one point of harvest to another point of harvest, not to exceed 10 miles, by a person engaged in the harvesting of forestry products. Such vehicles must be operated during daylight hours only, in accordance with all safety requirements prescribed by s. 316.2295(5) and (6).

(c) The width and height limitations of this section do not apply to farming or agricultural equipment, whether self-propelled, pulled, or hauled, when temporarily operated during daylight hours upon a public road that is not a limited access facility as defined in s. 334.03(13), and the width and height limitations may be exceeded by such equipment without a permit. To be eligible for this exemption, the equipment shall be operated within a radius of 50 miles of the real property owned, rented, or leased by the equipment owner. However, equipment being delivered by a dealer to a purchaser is not subject to the 50-mile limitation. Farming or agricultural equipment greater than 174 inches in width must have one warning lamp mounted on each side of the equipment to denote the width and must have a slow-moving vehicle sign. Warning lamps required by this paragraph must be visible from the front and rear of the vehicle and must be visible from a distance of at least 1,000 feet.

(d) The operator of equipment operated under this subsection is responsible for verifying that the route used has adequate clearance for the equipment.

316.520 Loads on vehicles.C

(1) A vehicle may not be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping therefrom, except that sand may be dropped only for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

(2) It is the duty of every owner and driver, severally, of any vehicle hauling, upon any public road or highway open to the public, dirt, sand, lime rock, gravel, silica, or other similar aggregate or trash, garbage, any inanimate object or objects, or any similar material that could fall or blow from such vehicle, to prevent such materials from falling, blowing, or in any way escaping from such vehicle. Covering and securing the load with a close-fitting tarpaulin or other appropriate cover or a load securing device meeting the requirements of 49 C.F.R. s. 393.100 or a device designed to reasonably ensure that cargo will not shift upon or fall from the vehicle is required and shall constitute compliance with this section.

(4) The provision of subsection (2) requiring covering and securing the load with a close-fitting tarpaulin or other appropriate cover does not apply to vehicles carrying agricultural products locally from a harvest site or to or from a farm on roads where the posted speed limit is 65 miles per hour or less and the distance driven on public roads is less than 20 miles.

316.525 Requirements for vehicles hauling loads.--

(1) It is the duty of every owner, licensee, and driver, severally, of any truck, trailer, semitrailer, or pole trailer to use such stanchions, standards, stays, supports, or other equipment, appliances, or contrivances, together with one or more lock chains, when lock chains are the most suitable means of fastening the load, or together with nylon strapping, when nylon strapping is the most suitable means of securing the load, so as to fasten the load securely to the vehicle.

316.530 Towing requirements.C

2) When a vehicle is towing a trailer or semitrailer on a public road or highway by means of a trailer hitch to the rear of the vehicle, there shall be attached in addition thereto safety chains, cables, or other safety devices that comply with 49 C.F.R. subpart F, ss. 393.71(g)(2)(1) and 393.71(h)(10) from the trailer or semitrailer to the vehicle. These safety chains, cables, or other safety devices shall be of sufficient strength to maintain connection of the trailer or semitrailer to the pulling vehicle under all conditions while the trailer or semitrailer is being towed by the vehicle. The provisions of this subsection shall not apply to trailers or semitrailers using a hitch known as a fifth wheel nor to farm equipment traveling less than 20 miles per hour.

LOCAL BUSINESS TAXES

205.064 Farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, and tropical fish farm products; certain exemptions.—

(1) A local business tax receipt is not required of any person for the privilege of engaging in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom, except intoxicating liquors, wine, or beer, when such products were grown or produced by such person in the state.

(2) A wholesale farmers' produce market may pay a tax of not more than $200 for a receipt that will entitle the market's stall tenants to engage in the selling of agricultural and horticultural products therein, in lieu of such tenants being required to obtain individual local business tax receipts to so engage.

SIGNS

479.16 Signs for which permits are not required.—

The following signs are exempt from the requirement that a permit for a sign be obtained under the provisions of this chapter but are required to comply with the provisions of s. 479.11(4)-(8):

(2) Signs erected, used, or maintained on a farm by the owner or lessee of such farm and relating solely to farm produce, merchandise, service, or entertainment sold, produced, manufactured, or furnished on such farm.

WELLS, LAKES, EARTH MOVING ETC. EXEMPTIONS

373.313 Prior permission and notification.—

(1) Taking into consideration other applicable state laws, in any geographical area where the department determines such permission to be reasonably necessary to protect the groundwater resources, prior permission shall be obtained from the department for each of the following:

(a) The construction of any water well;

(b) The repair of any water well; or

(c) The abandonment of any water well.

373.326 Exemptions.—

(2) Nothing in this part shall prevent a person who has not obtained a license pursuant to s. 373.323 from constructing a well that is 2 inches or under in diameter, on the person's own or leased property, intended for use only in a single-family house which is his or her residence, or intended for use only for farming purposes on the person's farm, and when the waters to

be produced are not intended for use by the public or any residence other than his or her own, provided that such person complies with all local and state rules and regulations relating to the construction of water wells.

373.406 Exemptions.—The following exemptions shall apply:

(1) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any natural person to capture, discharge, and use water for purposes permitted by law.

(2) 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 this part. 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 this part or a dredge and fill permit issued pursuant to chapter 403. This exemption has retroactive application to July 1, 1984.

(3) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to be applicable to construction, operation, or maintenance of any agricultural closed system. However, part II of this chapter shall be applicable as to the taking and discharging of water for filling, replenishing, and maintaining the water level in any such agricultural closed system. This subsection shall not be construed to eliminate the necessity to meet generally accepted engineering practices for construction, operation, and maintenance of dams, dikes, or levees.

DEFINITIONS STATE LAW

163.3164 Community Planning Act; definitions.—As used in this act:

(14) "Development" has the same meaning as in s. 380.04.

(16) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

(26) "Land development regulations" means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the

development of land, except that this definition does not apply in s. 163.3213.

163.3213 Administrative review of land development regulations.—

(1) It is the intent of the Legislature that substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the local comprehensive plan.

(2) As used in this section:

(b) "Land development regulation" means an ordinance enacted by a local governing body for the regulation of any aspect of development, including a subdivision, building construction, landscaping, tree protection, or sign regulation or any other regulation concerning the development of land. This term shall include a general zoning code, but shall not include a zoning map, an action which results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of chapter 553.

163.3194 Legal status of comprehensive plan.—

(5) The tax-exempt status of lands classified as agricultural under s. 193.461 shall not be affected by any comprehensive plan adopted under this act as long as the land meets the criteria set forth in s. 193.461.

380.04 Definition of development.—

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

FLORIDA ATTORNEY GENERAL OPINIONS

Number: AGO 2013-01

Date: January 29, 2013
Subject: Nonresidential farm buildings, regulation

Mr. Michael D. Cirullo, Jr.
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308

RE: MUNICIPALITIES–FARM BUILDINGS–SIGNS–FENCES–LAND DEVELOPMENT REGULATIONS–regulation of nonresidential farm building by municipalities. s. 604.50, Fla. Stat.

Dear Mr. Cirullo:

As Town Attorney for the Town of Loxahatchee Groves, you have requested my opinion on substantially the following question:

Does section 604.50, Florida Statutes, exempt nonresidential farm buildings, farm fences, and farm signs from land development regulations adopted pursuant to Chapter 163, Florida Statutes?

In sum:

Section 604.50, Florida Statutes, exempts nonresidential farm buildings, farm fences, and farm signs from land development regulations adopted by the Town of Loxahatchee Groves pursuant to Chapter 163, Florida Statutes.

Section 604.50, Florida Statutes, makes provision for nonresidential farm buildings, farm fences, and farm signs:

"(1) Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5)(a), and (6)-(8)."

The statute defines the terms used in the section for purposes of statutory construction.[1]

Prior to the adoption of Chapter 2011-7, Laws of Florida, this statute provided that "[n]otwithstanding any other law to the contrary, any nonresidential farm building is

exempt from the Florida Building Code and any county or municipal *building* code."[2] (e.s.) The Legislature's removal of the term "building" from the language of the statute relating to county or municipal codes has resulted in your request for an opinion from this office.

The Town of Loxahatchee Groves has adopted land development regulations pursuant to Chapter 163, Florida Statutes, entitled the "Unified Land Development Code." The town's land development regulations contain typical setback requirements for properties in the town. Subject to consistency with the Right to Farm Act, the town has sought to enforce setback requirements upon nonresidential farm buildings, such as shade houses, corrals, and barns.[3] However, the change to section 604.50(1), Florida Statutes, which exempts nonresidential farm buildings, farm fences, and farm signs from "any county or municipal code" would prevent the town from enforcing its zoning regulations, such as setbacks for nonresidential farm buildings, farm fences, and farm signs if it is determined that section 604.50, Florida Statutes, provides an exemption for nonresidential farm buildings and farm fences and signs from the town's land development regulations.

It is a general rule of statutory construction, frequently expressed by Florida courts that:

"When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent."[4]

Section 604.50(1), Florida Statutes, clearly states that "[n]otwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign is exempt from . . . any county or municipal code or fee[.]" The Legislature has maintained an exception for code provisions implementing local, state, or federal floodplain management regulations. Applying the rule of construction set forth above compels the conclusion that the Town of Loxahatchee Groves has no authority to enforce "any county or municipal code or fee" provision on any nonresidential farm building, farm fence, or farm sign.

Further, a review of the legislative history surrounding the enactment of CS/HB 7103 during the 2010 and 2011 legislative sessions, suggests that this was the legislative intent. Staff analysis of the bill by both the House and the Senate states that the amendment to section 604.50, Florida Statutes, will

"exempt farm fences from the Florida Building Code and farm fences and nonresidential farm buildings and fences from county or municipal codes and fees, except floodplain management regulations. It provides that a nonresidential farm building may include, but not be limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house."[5]

The intent of the Legislature is the primary guide in statutory interpretation.[6] Where the language used by the Legislature makes clear its intent, that intent must be given

effect.[7] Thus, absent a violation of a constitutional right, a specific, clear and precise statement of legislative intent will control in the interpretation of a statute.[8]

Your memorandum of law suggests that the word "code" as used in section 604.50(1), Florida Statutes, may not include the Town of Loxahatchee Groves' "Unified Land Development Code." While the Florida Statutes contain a number of definitions for the word "code,"[9] the fact that the Legislature provided no definition for purposes of section 604.50(1), or Chapter 604, Florida Statutes, requires that the word be understood in its common and ordinary sense.[10] "Code" is generally defined as:

"3. any set of standards set forth and enforced by a local government agency for the protection of public safety, health, etc., as in the structural safety of buildings (building code), health requirements for plumbing, ventilation, etc. (sanitary or health code), and the specifications for fire escapes or exits (fire code). 4. a systematically arranged collection or compendium of laws, rules, or regulations."[11]

Black's Law Dictionary defines "code" as "[a] complete system of positive law, carefully arranged and officially promulgated; a systematic collection or revision of laws, rules, or regulations[.]"[12]

The term "land development regulations" is defined in section 163.3164, Florida Statutes, as:

"'Land development regulations' means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. 163.3213."[13]

You have advised that the Town of Loxahatchee Groves developed its land development code pursuant to Chapter 163, Florida Statutes. You state that while a collection of land development regulations would appear to fall within the general definition of "code," section 604.50, Florida Statutes, applies solely to "nonresidential farm buildings" and "farm fences." You contrast this with land development regulations which apply to "the development of land," but which include, as set forth in the definition above, such matters as zoning, building construction, and sign regulations.

I cannot draw such a distinction. The Town of Loxahatchee Groves "Unified Land Development Code" appears to be a "code" within the scope of that term as used in section 604.50(1), Florida Statutes. The Legislature clearly intended to exempt nonresidential farm buildings, farm fences, and farm signs from "any county or municipal code." Thus, recognizing the Legislature's intent, it is my opinion that nonresidential farm buildings, farm fences, and farm signs are exempted from regulation under the land development regulations of the town.[14]

In sum, it is my opinion that section 604.50, Florida Statutes, exempts nonresidential

farm buildings, farm fences, and farm signs from land development regulations adopted by the Town of Loxahatchee Groves pursuant to Chapter 163, Florida Statutes.[15]

Sincerely,

Pam Bondi
Attorney General

PB/tgh

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[1] Section 604.50(2), Fla. Stat., defines these terms as follows:

"(a) 'Farm' has the same meaning as provided in s. 823.14.
(b) 'Farm sign' means a sign erected, used, or maintained on a farm by the owner or lessee of the farm which relates solely to farm produce, merchandise, or services sold, produced, manufactured, or furnished on the farm.
(c) 'Nonresidential farm building' means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house."

[2] *See* s. 604.50, Fla. Stat. (2002).

[3] *See* Ops. Att'y Gen. Fla. 09-26 (2009) and 01-71 (2001) in which this office concluded that a county could enforce land development regulations pursuant to s. 823.14, Fla. Stat., Florida's Right to Farm Act, so long as those regulations did not limit the operational activities of a bona fide farm operation inconsistent with the Right to Farm Act. Both of these opinions addressed s. 823.14, Fla. Stat., and were issued prior to the amendment to s. 604.50, Fla. Stat., in 2011 by CS/HB 7103.

[4] *See e.g., State v. Burris*, 875 So. 2d 408 (Fla. 2004); *State v. Egan*, 287 So. 2d 1 (Fla. 1973); *Van Pelt v. Hilliard*, 78 So. 693 (Fla. 1918); *Legal Environmental Assistance Foundation, Inc. v. Board of County Commissioners of Brevard County*, 642 So. 2d 1081 (Fla. 1994); *Goddard v. State*, 438 So. 2d 110 (Fla. 1st DCA 1983); Ops. Att'y Gen. Fla. 93-47 (1993) (in construing statute which is clear and unambiguous, the plain meaning of statute must first be considered); 93-2 (1993) (since it is presumed that the Legislature knows the meaning of the words it uses and to convey its intent by the use of specific terms, courts must apply the plain meaning of those words if they are unambiguous); and 92-93 (1992).

[5] *See* The Florida Senate Veto Message Bill Analysis for CS/HB 7103, dated July 12, 2010, and House of Representatives Staff Analysis, CS/HB 7103, dated April 14, 2010,

and stating that section 6 of the bill "exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations."

[6] *See, e.g., State v. J.M.*, 824 So. 2d 105, 109 (Fla. 2002); *St. Petersburg Bank & Trust Co. v. Hamm*, 414 So. 2d 1071 (Fla. 1982); *Barruzza v. Suddath Van Lines, Inc.*, 474 So. 2d 861 (Fla. 1st DCA 1985); *Philip Crosby Associates, Inc. v. State Board of Independent Colleges*, 506 So. 2d 490 (Fla. 5th DCA 1987).

[7] *Barruzza* and *Philip Crosby Associates, Inc., supra*.

[8] *Carawan v. State*, 515 So. 2d 161 (Fla. 1987).

[9] *See* s. 320.822, Fla. Stat. (uniform standard code for recreational vehicles and park trailers), and s. 553.955, Fla. Stat. (providing that the word "code" is defined for purposes of those statutes as the Florida Energy Efficiency Code for Building Construction).

[10] *See Southeast Fisheries Association, Inc. v. Department of Natural Resources*, 453 So. 2d 1351 (Fla. 1984); *Millazzo v. State*, 377 So. 2d 1161 (Fla. 1979) (when a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense).

[11] Webster's New Universal Unabridged Dictionary (2003), p. 397.

[12] Black's Law Dictionary (8th ed. 2004), p. 273.

[13] Section 163.3164(26), Fla. Stat.

[14] Your letter states that "if Section 604.50 is intended to expand the exemption for nonresidential farm buildings, fences and signs to all municipal regulations, then Section 823.14, Florida Statutes, would be superfluous as to nonresidential farm buildings, fences and signs, since an exemption from a code means there cannot be duplication of codes." However, s. 604.50 and s. 823.14, Fla. Stat., the Florida Right to Farm Act, can be read in such a manner as to give effect to both. *See Ideal Farms Drainage District et al. v. Certain Lands, 19 So. 2d 234 (Fla. 1944); Mann v. Goodyear Tire and Rubber Company*, 300 So. 2d 666 (Fla. 1974), for the proposition that when two statutes relate to common things or have a common or related purpose, they are said to be *pari materia*, and where possible, that construction should be adopted which harmonizes and reconciles the statutory provisions so as to preserve the force and effect of each. Section 604.50, Fla. Stat., is the more specific statute and completely exempts nonresidential farm buildings, farm fences, and farm signs from regulation under the town's codes. Section 823.14, Fla. Stat., is intended by the Legislature to "protect reasonable agricultural activities conducted on farm land from nuisance suits." The Right to Farm Act would accommodate other types of land development regulation undertaken in compliance with the terms of the act, but the more specific subjects of s. 604.50, Fla. Stat., would be

excluded from the terms of the act. Thus, these two statutes, both related to farming, can be read to give a scope of operation to each.

[15] I would note that the Office of General Counsel, Florida Department of Agriculture and Consumer Services, has submitted a letter on this issue concluding that "it is the opinion of the Department of Agriculture and Consumer Services that this legislation applies to all local codes including land development regulations." (emphasis in original) *See* letter from Carol A. Forthman, Office of the General Counsel, Florida Department of Agriculture and Consumer Services, to Mr. Michael D. Cirullo, Jr., dated November 20, 2012.

Number: AGO 2001-71

Date: October 10, 2001
Subject: Nonresidential farm building, zoning/building permits

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Mr. Nicholas S. Camuccio
Gilchrist Assistant County Attorney
2114 Northwest 40th Terrace
Suite A-1
Gainesville, Florida 32605

RE: BUILDING CONSTRUCTION -- PERMITS -- ZONING -- COUNTIES -- FARMS -- AGRICULTURE -- nonresidential farm buildings not subject to building permits, but are subject to zoning regulations. ss. 553.73 and 823.14, Fla. Stat.

Dear Mr. Camuccio:

You ask on behalf of Gilchrist County substantially the following questions:

1. Are building permits required for nonresidential farm buildings in light of section 604.50, Florida Statutes?

2. May the county require a zoning compliance permit under its land development regulations for nonresidential farm buildings?

In sum:

1. Sections 553.73(7)(c)[1] and 604.50, Florida Statutes, exempt nonresidential farm buildings located on a farm from the Florida Building Code and any county or municipal building code, making building permits unnecessary for such buildings.

2. There is no statutory provision exempting non-residential farm buildings from compliance with county land development regulations; however, local governments are prohibited from adopting any ordinance, regulation, rule, or policy to prohibit, restrict,

regulate, or otherwise limit the continuing agricultural use of any land currently engaged in bona fide production of a farm product.

Question One

Prior to the 1970's, promulgation and enforcement of building codes and standards were the responsibility of local governments.[2] In 1974, the Legislature established statewide standards known as the State Minimum Building Codes.[3] In 1998, as a result of a building codes study commission report suggesting the development of a single statewide building code, the Legislature created a statewide unified building code.[4]

Part of the newly unified building code specifically addressed the exemption of certain buildings and structures from the code. Section 553.73(8), Florida Statutes (1998), stated:

"The following buildings, structures, and facilities may be exempted from the Florida Building Code as provided by law . . .

* * *

(c) Nonresidential farm buildings on farms."[5]

During the same legislative session, section 604.50, Florida Statutes, was created to provide:

"Notwithstanding any other law to the contrary, any nonresidential farm building located on a farm is exempt from the Florida Building Code and any county or municipal building code. For purposes of this section "nonresidential farm building" means any building or structure located on a farm that is not used as a residential dwelling. Farm is as defined in s. 823.14."[6]

Changes to section 553.73, Florida Statutes, during the 2000 legislative session, effective July 1, 2001, substituted "are exempt" for "may be exempt" for the enumerated buildings, structures and facilities exempted from the Florida Building Code.[7] The exemption for nonresidential farm buildings on farms remained intact. The Department of Agriculture and Consumer Services, however, was granted exclusive authority to adopt rules, pursuant to Chapter 120, Florida Statutes, providing "exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare."[8] This office has been advised that no such rules have been adopted to date.

The exemption for nonresidential farm buildings from the Florida Building Code and any county or municipal building code in section 604.50, Florida Statutes, has been in existence since 1998. The amendments to section 553.73, Florida Statutes, during the 2000 legislative session, reiterated that such buildings are not subject to the Florida Building Code.

Legislative intent controls the construction of statutes. That intent, however, is determined primarily from the language of the statute; thus, the plain meaning of the language used in the statute is the first consideration in the interpretation of a statute.[9]

The plain language of sections 553.73(7)(c) and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm.[10]

Question Two

Section 823.14, Florida Statutes, the "Florida Right to Farm Act (act),"[11] recognizes the importance of agricultural production to this state's economy and that the "encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state[.]"[12] The Legislature also recognizes that agricultural activities conducted on farmland in areas that are becoming urbanized are potentially subject to nuisance lawsuits and that such suits may encourage or force the premature removal of farm land from agricultural use. The purpose of the act, therefore, is "to protect reasonable agricultural activities conducted on farm land from nuisance suits."[13]

The act generally provides that a farm operation which has been in operation for at least one year and which was not a nuisance at the time of its established date of operation shall not be a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices.[14] However, an existing farm operation may not expand to a more excessive operation with regard to noise, odor, dust, or fumes, if it is adjacent to an established homestead or business.[15]

Pertinent to your inquiry, section 823.14(6), Florida Statutes, provides:

"It is the intent of the Legislature to eliminate duplication of regulatory authority over farm operations as expressed in this subsection. Except as otherwise provided for in this section and s. 487.051(2), and notwithstanding any other provision of law, a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, where such activity is regulated through implemented best-management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program. . . ."

The legislative history of this subsection states that the amendment to section 823.14, Florida Statutes, was to preclude a local government from adopting laws, ordinances, regulations, rules or policies to prohibit, restrict, regulate, or otherwise limit any continuing farm operation on any land currently engaged in bona fide production of a

farm product.[16] Thus, a farming operation that falls within the coverage of section 823.14, Florida Statutes, would necessarily comply with the agricultural zoning classification of the land and would not be subject to county regulations or restrictions that attempt to limit such an operation.

Zoning is intended to control development and land use, going beyond mere standards for the construction of buildings otherwise permitted under an existing zoning classification.[17] Encompassed in zoning are restrictions on the density of development and such simple restrictions as set-back lines for construction. Such ordinances, however, must be reasonable, uniform, certain and must supply sufficient standards.[18] Moreover, an ordinance establishing setback lines without regard to public health, safety, and general welfare would be an unreasonable exercise of police power.[19]

You have advised this office that one of the primary concerns in determining whether a zoning compliance permit is required for nonresidential farm buildings is to assure that such construction complies with setback lines under the county's zoning plan. It would appear that a setback requirement would not necessarily limit a farm's operation and would, therefore, apply to such construction.

In Attorney General Opinion 99-18, this office was asked whether a county could enact zoning regulations affecting the placement of migrant farm worker facilities in residential areas, given section 381.00896, Florida Statutes, prohibiting discrimination in the development and use of such facilities. While this office recognized that the prohibition must be interpreted in a manner to carry out the Legislature's intent, it was found that the plain language of the statute would not preclude a county from lawfully exercising its zoning authority and enforcing its zoning regulations to limit migrant farm worker housing facilities to areas in which such use is permitted. The Legislature had not chosen to grant a blanket exemption for migrant farm worker housing when it could have easily done so.[20]

Likewise, the prohibition against local ordinances that limit or restrict an activity of a bona fide farm operation on land that is classified as agricultural would not preclude application of zoning regulations that do not have such an intent or effect. Accordingly, it is my opinion that a nonresidential farm building would be subject to a zoning compliance permit to the extent such a permitting requirement does not prohibit, restrict, regulate or otherwise limit an activity of the farm.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

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[1] *See, s. 25,* Ch. 2001-186, Laws of Florida, which renumbers s. 553.73(7), Fla. Stat. (2000), back to s. 553.73(8), Fla. Stat., effective January 1, 2001.

[2] *See,* Florida House of Representatives Committee on Community Affairs Staff Analysis, HB 219, May 10, 2000.

[3] *See,* Ch. 74-167, Laws of Florida.

[4] *See,* Ch. 98-287, Laws of Florida.

[5] *See,* s. 40, Ch. 98-287, Laws of Florida.

[6] *See,* s. 13, Ch. 98-396, Laws of Florida. Section 823.14(3) (a), Fla. Stat., defines "Farm" as "the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products."

[7] *See,* s. 75, Ch. 2000-141, Laws of Florida, also renumbering s. 553.73(8), Fla. Stat. (1999), to s. 553.73(7), Fla. Stat.

[8] *See,* s. 553.73(7), Fla. Stat., also stating that the exceptions must be based upon specific criteria, such as underroof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements.

[9] *See, M.W. v. Davis,* 756 So. 2d 90 (Fla. 2000) (when language of statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation and construction as statute must be given its plain and obvious meaning); *McLaughlin v. State,* 721 So. 2d 1170 (Fla. 1998); *Osborne v. Simpson,* 114 So. 543 (Fla. 1927) (where statute's language is plain, definite in meaning without ambiguity, it fixes legislative intention and interpretation and construction are not needed)*; Holly v. Auld,* 450 So. 2d 217 (Fla. 1984). *See also,* Ops. Att'y Gen. Fla. 00-46 (2000) (where language of statute is plain and definite in meaning without ambiguity, it fixes the legislative intention such that interpretation and construction are not needed); 99-44 (1999); and 97-81 (1997).

[10] Section 553.73(1), Fla. Stat.

[11] Section 823.14(1), Fla. Stat.

[12] Section 823.14(2), Fla. Stat.

[13] *Id.*

[14] Section 823.14(4)(a), Fla. Stat.

[15] Section 823.14(5), Fla. Stat.

[16] Florida Senate Staff Analysis and Economic Impact Statement, CS/CS/SB 1904, April 11, 2000.

[17] *See, Fountain v. City of Jacksonville,* 447 So. 2d 353, 355 (Fla. 1st DCA 1984) (ordinance was intended to control development and land use in the vicinity of airports and not merely to impose standards for the construction of buildings otherwise permitted under the existing zoning classifications is a zoning ordinance).

[18] *See, City of Miami v. Romer*, 73 So. 2d 285 (Fla. 1954) *and Town of Palm Beach Shores v. Doty*, 100 So. 2d 205 (Fla. 2d DCA 1958), *aff'd* 104 So. 2d 508 (Fla. 1958).

[19] *See, Romer, supra.*

[20] *See also,* Op. Att'y Gen. Fla. 93-55 (1993) (city may regulate the nature and use of time-share property by zoning, but is precluded from enforcing a local ordinance that discriminates against such property).

Number: AGO 2009-26

Date: June 15, 2009
Subject: Right to Farm Act, residential dwelling

Mr. Robert B. Battista
Citrus County Attorney
Citrus County Courthouse
110 North Apopka Avenue
Inverness, Florida 34450

Attention: Mr. Gregg R. Brennan
Assistant County Attorney

RE: COUNTY–FARMS–RIGHT TO FARM ACT–BUILDINGS–ZONING– meaning of residential dwelling; applicability of zoning ordinances. ss. 604.50, 823.14, Fla. Stat.

Dear Mr. Battista:

On behalf of the Citrus County Board of County Commissioners, your office has asked the following questions:

1. Does the term "residential" in section 604.50, Florida Statutes, require that persons reside in the dwelling on a full-time basis in order to remove the building from the exemption for nonresidential farm building under this section?

2. Regardless of whether a building is determined to be "residential," does the county

have the authority to enforce its zoning regulations regarding the construction of the building on land classified as agriculture under section 193.461, Florida Statutes, if those regulations do not limit the operational activity of the bona fide farm operation?

In sum:

1. The term "residential" in section 604.50, Florida Statutes, does not require that persons reside in the dwelling on a full-time basis in order to remove the building from the exemption for nonresidential farm building under this section.

2. The county has the authority to enforce its zoning regulations regarding the construction of a building on land classified as agriculture under section 193.461, Florida Statutes, if those regulations do not limit the operational activity of the bona fide farm operation.

You state that a resident of Citrus County has constructed a structure on his land for which he currently has an agricultural exemption from the property appraiser's office pursuant to section 193.461, Florida Statutes. According to your letter, the structure although superficially looking like a barn and having a large storage area with two large garage-type doors on it, contains two bedrooms, a bathroom and a kitchen which are offered as accommodations for the resident's children and for business associates when they visit. A question has been raised as to whether the structure is exempt from the permitting process pursuant to sections 604.50 and section 823.14, Florida Statutes.

Question One

Section 553.73(9), Florida Statutes, providing for the Florida Building Code, states in pertinent part:

"The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

* * *

(c) Nonresidential farm buildings on farms."

In addition, section 604.50, Florida Statutes, provides:

"Notwithstanding any other law to the contrary, any nonresidential farm building is exempt from the Florida Building Code and any county or municipal building code. For purposes of this section, the term 'nonresidential farm building' means any building or support structure that is used for agricultural purposes, is located on a farm *that is not used as a residential dwelling*, and is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461. The term 'farm' is as defined in s. 823.14."[1] (e.s.)

In light of the language used in section 604.50, Florida Statutes, you ask what is meant by a "residential dwelling." The term is not defined in the statute or in Chapter 604, Florida Statutes. In the absence of a statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary.[2] The term "dwelling" is generally defined as "a building or construction used for residence: abode, habitation."[3] As you note, the 2007 Florida Building Code respectively defines "dwelling" and "dwelling unit" as:

"DWELLING. Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation."[4]

A facility with two bedrooms, a bathroom, and a kitchen would appear to fall within the definitions of a dwelling. While the term "residential" does not appear to be defined by the Florida Building Code, the term has been defined generally to mean "used, serving, or designed as a residence or for occupation by residents (a residential hotel)."[5] Black's Law Dictionary defines "Residence" to mean:

"The act or fact of living in a given place for some time . . . The place where one actually lives, as distinguished from a domicile . . . *Residence* usu. just means bodily presence as an inhabitant in a given place; *domicile* usu. requires bodily presence plus an intention to make the place one's home. . . . A house or other fixed abode; a dwelling . . . ."[6]

In addition, I note that section 776.013(5)(b), Florida Statutes, defines "Residence" for purposes of the use of justifiable force for protection of the home to mean a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest. Section 856.015(1)(g), Florida Statutes, relating to open house parties defines "Residence" to mean a home, apartment, condominium, or other dwelling unit.

In light of the above, it appears that the term "residential dwelling" may include facilities that are occupied for living purposes, even though such occupancy is on a temporary basis. To conclude otherwise would mean that a structure, or part thereof, clearly designed for residential use could avoid compliance with the state's building codes simply by claiming that the structure would not be used full-time. Such a conclusion would appear to be inconsistent with the underlying polices for adoption of a uniform building code to protect public health, safety, and welfare.

Thus, I am of the opinion that the term "residential" in section 604.50, Florida Statutes, does not require that persons reside in the dwelling on a full-time basis in order to remove the building from the exemption for nonresidential farm building under this section when

the structure is clearly designed for residential use. The application of the Florida Building Code to a structure in any given instance, however, is one that the county must make.

Question Two

Section 823.14, Florida Statutes, the "Florida Right to Farm Act,"[7] recognizes the importance of agricultural production to this state's economy, stating that the "encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state."[8] The purpose of the act is to protect reasonable agricultural activities conducted on farm land from nuisance suits.[9]

Section 823.14(6), Florida Statutes, provides in part that:

"It is the intent of the Legislature to eliminate duplication of regulatory authority over farm operations as expressed in this subsection. Except as otherwise provided for in this section and s. 487.051(2), and notwithstanding any other provision of law, a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, where such activity is regulated through implemented best-management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program. . . ."[10]

In Attorney General Opinion 2001-71, this office was asked whether a zoning compliance permit was required for nonresidential farm buildings in order to assure that such construction complied with setback lines under the county's zoning plan. As the opinion points out, the legislative history of subsection (6) quoted above states that the amendment was to preclude a local government from adopting laws, ordinances, regulations, rules or policies to prohibit, restrict, regulate, or otherwise limit any continuing farm operation on any land currently engaged in bona fide production of a farm product.[11] Thus, a farming operation that falls within the coverage of section 823.14, Florida Statutes, would by definition, comply with the agricultural zoning classification of the land and would not be subject to county regulations or restrictions that attempt to limit such an operation.

As this office stated in Attorney General Opinion 2001-71, the prohibition against local ordinances that limit or restrict an activity of a bona fide farm operation on land that is classified as agricultural would not preclude application of zoning regulations that do not have such an intent or effect. Thus, this office concluded that a nonresidential farm building would be subject to a zoning compliance permit to the extent such a permitting requirement does not prohibit, restrict, regulate, or otherwise limit an activity of the farm. Since a setback requirement for building construction would not necessarily limit a farm's operation, this office stated that such a restriction would apply to such construction.

Section 823.14, Florida Statutes, has not been amended since Attorney General Opinion 2001-71 was issued. I am not aware of, nor have you brought to the attention of this office, any appellate court decision which would alter the conclusions reached in that opinion. Accordingly, this office continues to be of the opinion that a nonresidential farm building would be subject to a zoning compliance permit to the extent such a permitting requirement does not prohibit, restrict, regulate, or otherwise limit an activity of the farm.

I am therefore of the opinion that the county has the authority to enforce its zoning regulations regarding the construction of a building on land classified as agriculture under section 193.461, Florida Statutes, if those regulations do not limit the operational activity of the bona fide farm operation.

Sincerely,

Bill McCollum
Attorney General

BM/tjw

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[1] *See* Op. Att'y Gen. Fla. 01-71 (2001), stating that building permits are not required for nonresidential farm buildings since such buildings are exempt from county and municipal building codes.

[2] *See Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000); *Rollins v. Pizzarelli*, 761 So. 2d 294 (Fla. 2000); *In re McCollam*, 612 So. 2d 572 (Fla. 1993) (when language of statute is clear and unambiguous and conveys a clear meaning, statute must be given its plain and ordinary meaning); *Frankenmuth Mutual Insurance Company v. Magaha*, 769 So. 2d 1012 (Fla. 2000) (in ascertaining the plain and ordinary meaning of a term, a court may refer to a dictionary).

[3] Webster's Third New International Dictionary p. 706 (unabridged ed. 1981). *And see* Black's Law Dictionary p. 546 (8th ed. 2004), defining "dwelling house" as

"1. The house or other structure in which a person lives; a residence or abode. 2. *Real estate.* The house and all buildings attached to or connected with the house. 3. *Criminal law.* A building, a part of a building, a tent, a mobile home, or another enclosed space that is used or intended for use as a human habitation. The term has referred to connected buildings in the same curtilage but now typically includes only the structures connected either directly with the house or by an enclosed passageway. — Often shortened to *dwelling*. . . ."

[4] Florida Building Code 2007, s. 202 Definitions, available online at:http://www2.iccsafe.org/states/florida_codes/.

[5] Webster's Third New International Dictionary p. 1931 (unabridged ed. 1981). *And see* Webster's Third New International Dictionary *Resident* p. 1931 (unabridged ed. 1981) (one who resides in a place); Webster's Third New International Dictionary *Residence* p. 1931 (unabridged ed. 1981) (the act or fact of abiding or dwelling in a place for some time).

[6] Black's Law Dictionary p. 1335 (8th ed. 2004).

[7] *See* s. 823.14(1), Fla. Stat., providing the title to the act.

[8] Section 823.14(2), Fla. Stat.

[9] *Id. See Pasco County v. Tampa Farm Service, Inc.*, 573 So. 2d 909 (Fla. 2d DCA 1990) ("legislature certainly has valid reasons to protect established farmers from the expense and harassment of lawsuits aimed at declaring this vital industry to be a nuisance"). Section 823.14(4)(a), Fla. Stat., generally provides that a farming operation which has been in existence for at least one year and which was not a nuisance at the time of its established date of operation shall not be a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices.

[10] *Cf.* s. 163.3162(4), Fla. Stat., stating:

"Except as otherwise provided in this section and s. 487.051(2), and notwithstanding any other law, including any provision of chapter 125 or this chapter, a county may not exercise any of its powers to adopt any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if such activity is regulated through implemented best management practices, interim measures, or regulations developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under chapter 120 as part of a statewide or regional program; or if such activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency."

And see J-II Investments, Inc. v. Leon County, 908 So. 2d 1140 (Fla. 1st DCA 2005) (plain, unambiguous terms of s. 163.3162(4), Fla. Stat., prevent counties from adopting ordinances relating to agriculture, but does not address enforcement of provisions already in place; if the Legislature intended to include the term "enforce" in the statute, it clearly could have done so).

[11] Florida Senate Staff Analysis and Economic Impact Statement, CS/CS/SB 1904, April 11, 2000.