



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
COMMISSIONER ADAM H. PUTNAM

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TO: Commissioner Adam Putnam

THROUGH: Mike Joyner, Assistant Commissioner  
Lorena Holley, General Counsel  
John Costigan, Assistant General Counsel

FROM: Steven L. Hall, Senior Attorney; Joseph Stuart, Legal Intern

DATE: 2/09/17

SUBJECT: Columbia County Special Use Permit for intensive agriculture activities

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**BACKGROUND**

In January 2016, the Columbia County Board of County Commissioners (BOCC) passed Ordinance 2016-32, which requires a special use permit for intensive agricultural uses of property. Specifically, Sec. 14.12 of the Columbia County Land Development Regulations (LDR) states that "No new intensive agriculture activities as defined in section 2.1 of these land development regulations shall be conducted in any agricultural or environmentally sensitive zoning district without first obtaining a special use permit for such activities from the board of county commissioners." The Planning and Zoning Board is required to submit its report and recommendation to the BOCC. The recommendation is advisory and the BOCC either approves or denies the permit based on standards<sup>1</sup> adopted in Section 14.12 of the County's LDR.

The BOCC is considering a proposal that will amend the definition of "intensive agriculture" to include Concentrated Animal Feeding Operations (CAFOs) and to define the term. It appears that current or planned poultry CAFO operations in the county may be the intended target of the proposal.

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<sup>1</sup> Columbia County LDR Sec. 14.12(8)

- a. That no part of the activity is to be conducted in areas of high recharge to the Floridan aquifer;
- b. That if a waste water management system is required by any appropriate regulatory agency, the waste water management system will be designed by the soil conservation service or will be the equivalent of a system designed by the soil conservation services of a licensed professional engineer;
- c. That the facility will use available best management practices to reduce flies and other insects;
- d. That the activity will not be located within any environmentally sensitive areas as defined by the county's comprehensive plan;
- e. That the activity will not substantially impact the existing groundwater quality or quality of aquifer recharge areas; and
- f. Other factors which the board may consider relevant and appropriate to the public health and safety of the citizens of the county.

The pertinent portions of the existing ordinance with the proposed amendments is as follows:

#### Land Development Regulations - Section 2.1

**Intensive agricultural development.** Intensive agricultural development means those agricultural land uses requiring an industrial waste permit from the Florida Department of Environmental Protection or any proposed or actual land use as a “Concentrated Animal Feeding Operation” as defined in these Land Development Regulations.

**Intensive agriculture.** Intensive agriculture means those farming and agricultural operations or uses requiring an industrial waste or wastewater permit from the Florida Department of Environmental Regulation [Protection] or any proposed or actual land use as a “Concentrated Animal Feeding Operation” as defined in these Land Development Regulations. Existing agricultural activities as of the date of adoption or subsequent amendment of these land development regulations will not be required to obtain a special use permit from the county for those existing agricultural activities, except as provided herein. Expansion or change of existing agricultural activities after the date of adoption or subsequent amendment of these land development regulations for which an industrial waste or wastewater permit is required from the state for that expansion or change will also require a special use permit from the county, unless the expansion or change is required by the state to maintain the same livestock population of the activity as existed on the date of adoption or subsequent amendment of the land development regulations.

**Concentrated Animal Feeding Operation.** Concentrated Animal Feeding Operation shall have the same meaning as provided by promulgated rule of the United States Environmental Protection Agency, 40 CFR 122.23, as amended, and shall include Medium and Large Concentrated Animal Feeding Operations as therein defined.

#### ISSUE

Does county Ordinance 2016-32 and the proposed amendment to the definition of “intensive agriculture” violate the duplication of regulation prohibition in Section 163.3162(3)(a), Florida Statutes?

#### ANALYSIS

The existing county regulation requires an agricultural operation to obtain a special use permit from the County if state law requires the operation to obtain an industrial waste or wastewater permit from the Florida Department of Environmental Protection (DEP). If the proposed amendment is adopted, an agricultural operation that meets the definition of a CAFO would also be required to apply for a special use permit. The current and proposed requirements violate the prohibition against duplicative regulations in Section 163.3162(3)(a), Florida Statutes.

Section 163.3162(3)(a), Florida Statutes, states:

“A governmental entity may not exercise any of its powers to adopt or enforce 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 adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services...” Fla. Stat. § 163.3162 (2016). (Emphasis added).

Section 163.3162(3)(a), Florida Statutes, is clear and unambiguous that a local governmental may not adopt or enforce any regulation that limits an activity of a bona fide farm operation on land classified as agricultural land if such activity is regulated through implemented best management practices adopted by the Department or DEP regulations. Wilson v. Palm Beach Cty., 62 So. 3d 1247, 1250 (Fla. Dist. Ct. App. 2011); J-II Investments, Inc. v. Leon Cty., 908 So. 2d 1140, 1141 (Fla. Dist. Ct. App. 2005) (interpreting “adopt” only).

The adoption and any attempted enforcement of Ordinance 2016-32 violates Section 163.3162(3)(a), Florida Statutes, because it imposes a duplication of regulation by requiring agricultural operations who are required by state law to obtain a permit from DEP to also obtain a special use permit from Columbia County.

Further, the adoption of the proposed amendments to Ordinance 2016-32 would also be a violation of Section 163.3162(3)(a), Florida Statutes. The Department has adopted BMPs in Title 5M, Florida Administrative Code, regulating the activities of poultry, cattle, and dairy operations that fall within the proposed definition of a CAFO. The proposed amendments would require those agricultural operations implementing BMPs to also obtain a special use permit from the Columbia County creating the duplicative regulation.