

THE PECULIARITIES OF AGRICULTURAL LAW IN FLORIDA

Environmental & Land Use Law Section

Chairs: Anne Pollack - Mechanik Nuccio Hearne & Wester, P.A.; Nicole Kibert - Carlton Fields, P.A.



Did you know that this year, the Florida Legislature prevented local governments from adopting new laws or policies that regulate or restrict agritourism? See § 570.96(1), Fla. Stat. Or that owners of most cattle-dipping vats are exempt from state pollution-control laws? See § 376.306, Fla. Stat. Did you know local governments in Florida cannot regulate apiculture? (Or that apiculture is the science of beekeeping?) See § 586.10, Fla. Stat.

It doesn't take long for the environmental and land-use practitioner to realize that agriculture is different in Florida. Many people are surprised by these

peculiarities. For good reason: We are less connected to agriculture today than we were in the past. Because of the phenomenal increase in agricultural output over the past 100 years, we have gone from 80 percent of our population working in agriculture to only 2.5 percent. Yet agriculture is still Florida's second-largest industry. Perhaps we should not be surprised by these peculiarities when such a large industry is understood by so few. Practitioners should be aware of these differences precisely because they do not affect other land uses or types of activities. These peculiarities usually take the form of pre-emptions and



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exemptions. In the land-use arena, nonresidential farm buildings, farm signs, and even farm fences are exempt from the Florida Building Code as well as local government codes and fees. § 604.50, Fla. Stat.

Another land-use pre-emption is the Agricultural

Lands and Practices Act, which since 2003 has prevented counties from adopting any law or policy "to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land" if the activity is regulated by any one of a number of state and federal

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The Tampa Bay Catholic Lawyers Guild

Cordially Invites You to Attend

THE RED MASS

For Lawyers, Judges, Legal Staff & Law Enforcement

To be celebrated on **Friday, December 13, 2013, 12:00 Noon – 1 PM**

at Sacred Heart Catholic Church, 509 N. Florida Avenue, Downtown Tampa, Florida

OPEN TO MEMBERS OF ALL FAITHS

CONCELEBRATED BY FR. TIM CORCORAN, FORMER FLORIDA BANKRUPTCY JUDGE

The Red Mass for Lawyers, Judges and Legal Staff is an annual tradition with origins dating back to the 13th Century. It is a celebration that invokes the guidance of the Holy Spirit on the deliberation of the Courts and on the endeavors of all members of the legal profession. This tradition continues to this day as the United States Supreme Court celebrates this Mass annually prior to each new session.

The celebrant, Bishop Robert Lynch is inviting all judges of the Sixth and Thirteenth Judicial Circuits of Florida and the federal Middle District of Florida as guests of honor and to participate in procession with him in judicial robes at the start of the liturgy.

Bishop Lynch and the Tampa Bay Catholic Lawyers Guild warmly extend invitations to all members of the legal profession and government officials, regardless of religious affiliation, to attend.

Questions? Please call: Karl Stevens, President, Tampa Bay Catholic Lawyers Guild, at (863) 904-1637

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regulatory agencies. § 163.3162(3), Fla. Stat. *See also* § 823.14, Fla. Stat. (Florida Right to Farm Act, providing for similar pre-emption along with protections for farms against public and private nuisance suits). Later, the Agricultural Lands and Practices Act was strengthened to prohibit the enforcement of many existing laws and policies related to agriculture. This year, Senate Bill 203 extended the act beyond counties to virtually all local and regional governmental entities.

Beyond land use, agriculture is subject to numerous exemptions to state environmental laws and permitting regimes. *See, e.g.*, § 373.406, Fla. Stat. (certain agricultural activities exempt from state permitting of activities altering surface water flows); § 403.7045, Fla. Stat. (agricultural byproduct material and process waste generally not hazardous waste); and § 403.927 (exempts agricultural activities and agricultural water management systems from typical dredge and fill permit requirements).

Keep in mind that almost all of the pre-emptions and exemptions discussed above require that the agricultural operation be “bona fide” — that is, be used in good faith for commercial agriculture. The standards for making this determination are found in § 193.461, Fla. Stat, the agricultural tax classification (which is not really an “exemption,” even though it is commonly called one).



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Pro Bono Service Awards

Each year, the Florida Supreme Court and The Florida Bar give special recognition to lawyers, groups and a member of the judiciary who have freely given their time and expertise in making legal services available to the poor.

The 2014 Pro Bono Service Awards nominations are due by November 12. The awards ceremony will be held at the Florida Supreme Court at 3:30 p.m. **January 30, 2014.**

Awards include:

The Tobias Simon Pro Bono Service Award: Presented annually by the chief justice to an attorney to recognize extraordinary contributions in assuring the availability of legal services to the poor. All current recipients of The Florida Bar President's Pro Bono Awards are considered for this prestigious award, as are direct nominees who have demonstrated exemplary pro bono service over the course of their careers.

The Florida Bar President's Pro Bono Service Award: This award is given to an outstanding attorney residing in each of the state's 20 judicial circuits and to an outstanding attorney among the out-of-state Florida Bar members.

The Chief Justice's Law Firm Commendation: This statewide award recognizes a law firm that has demonstrated a significant contribution in the provision of pro bono legal services to individuals or groups that cannot otherwise afford the services.

The Chief Justice's Voluntary Bar Association Pro Bono Service Award: Also presented by the chief justice, this award recognizes a voluntary bar association that has demonstrated a significant contribution in the delivery of legal services on a pro bono basis to individuals or groups that cannot otherwise afford the services.

The Florida Bar's Young Lawyers Division Pro Bono Service Award: With nearly 26,000 members, the Young Lawyers Division includes all lawyers in good standing under age 36 and all new Florida Bar members of any age for their first five years in practice. The award will be given to the division member who best exemplifies the highest ideals of public service.

The Distinguished Judicial Service Award: Presented by the chief justice, this award is presented for outstanding and sustained service to the public, especially as it relates to support of pro bono legal services.

For additional information, contact Dorohn A. Frazier at dfrazier@flabar.org or (850) 561-5764.