

Protecting Your Agricultural Rights

A Guide for Farmers in Las Palmas Community

Overview

Miami-Dade County's **Division of Environmental Resources Management (DERM)** is responsible for enforcing local environmental laws under **Chapter 24 of the Miami-Dade County Code**.

However, when it comes to regulating **wetlands**, DERM **cannot act on its own**. Under Florida state law, local governments must first be **officially delegated authority** by either of the following state agencies:

- The **Florida Department of Environmental Protection (FDEP)**, or
- The **South Florida Water Management District (SFWMD)**

This requirement is made clear in two important laws:

- **§373.441, Florida Statutes (F.S.)**
- **Rule 62-344, Florida Administrative Code (F.A.C.)**

Despite this, DERM continues to:

- Issue **cease-and-desist orders**
- Assign **Class IV violations**
- Label farmland as **wetlands**

... often without meeting basic legal requirements like conducting **site-specific wetland delineations** or proving they even have the **legal authority** to act.

Why This Matters to Farmers

The **Las Palmas Community** is an agricultural area. Many farmers here rely on their land for crops, cattle, or nursery operations. Florida's **Environmental Resource Permit (ERP)** program, which regulates impacts to wetlands, includes specific **exemptions** for bona fide agricultural lands.

These protections are spelled out in:

- **Part IV of Chapter 373, Florida Statutes**

- **ERP Applicant’s Handbook Volume I** (effective June 28, 2024 and incorporated into **Rule 62-330, F.A.C.**)

The “10-Acre Rule” (ERP Agricultural Exemption)

Under Florida law, certain farming activities may be exempt from the Environmental Resource Permitting (ERP) process if they meet specific criteria outlined in the **ERP Applicant’s Handbook Volume I**, incorporated by reference into **Rule 62-330, Florida Administrative Code (F.A.C.)**.

This includes what is commonly referred to as the **“10-acre exemption.”** However, this exemption is **not automatic** — it only applies if all of the following conditions are met:

- The activity is part of a **legitimate, ongoing bona fide agricultural operation** on lands classified as agricultural.
- The total impact is **10 acres or less** of wetlands (or other surface waters).
- The activity **does not cause violations of water quality standards**.
- The activity **does not alter the hydroperiod or flow regime** in a way that adversely affects other wetlands or surface waters.
- The activity does **not take place in specially protected wetlands**, such as:
 - Wetlands within Outstanding Florida Waters (OFWs),
 - Forested wetlands,
 - Wetlands within 550 feet of Class I waters,
 - Wetlands within 100 feet of other Class II waters designated for shellfish harvesting.

These criteria are detailed in **Section 4.4.2** of the ERP Applicant’s Handbook Volume I (effective June 28, 2024).

Translation: If your agricultural activity is minor (under 10 acres), avoids protected areas, and does not cause harm to water quality or natural hydrology, it is **likely exempt** from ERP permitting.

However, the burden of proof lies with the agency. If **DERM or any local agency** seeks to enforce ERP restrictions, they must first demonstrate:

1. That **formal ERP enforcement authority** has been delegated to them by FDEP or SFWMD under **§373.441, Florida Statutes**, and
2. That the activity **does not qualify** for this exemption under **Rule 62-330 and the ERP Handbook**.

If they cannot prove both, **you retain your right to farm without ERP interference.**

DERM's Legal Violations

DERM has acted outside its authority in multiple ways:

1. No Wetland Delineation

They often skip the required wetland identification process, known as a **delineation**, which must be done according to **Rule 62-340, F.A.C.**

2. No State Delegation

They have **not received official ERP enforcement authority** from FDEP or SFWMD as required by:

- **§373.441, F.S.**
- **Rule 62-344, F.A.C.**

3. Ignoring Agricultural Protections

DERM has failed to honor well-established state laws that **protect farmers from local interference**, including:

- **§163.3162, F.S.** – Agricultural Lands and Practices Act
- **§823.14, F.S.** – Florida Right to Farm Act
- **House Bill 909 (2022)** – Confirms that counties like Miami-Dade **cannot override** state agricultural laws

4. Public Records Violations

DERM has also ignored **Chapter 119, F.S.**, which guarantees **your right to access government records**.

What This Means for You

If you are a farmer in Las Palmas and DERM has issued you a violation, classification, or warning — their actions may be:

- **Legally invalid**
- **Procedurally flawed**
- **Unconstitutional**

You are not powerless. The law is **on your side** — if you document your case and act strategically.

What You Should Do Now

1. Apply for Agricultural Classification

- File **Form DR-482** with the **Miami-Dade County Property Appraiser**
- Must be filed **each year by March 1st**
- Visit: www.miamidade.gov/pa

2. Keep Strong Evidence of Farming Use

- Keep **leases, fertilizer receipts, seed invoices, and irrigation plans**
- Take and save **dated photos** showing crops, livestock, or planting
- Evidence helps prove 'bona fide agricultural use' as defined in Florida's Greenbelt Law and protects you from speculative reclassification.

3. Use This Legal Statement in Every Dispute

"This property is classified as bona fide agricultural under §193.461, F.S. and is protected from local wetland enforcement unless (a) formal delegation of ERP authority under §373.441, F.S. has been granted, and (b) the agency has conducted a site-specific delineation per Rule 62-340, F.A.C., showing that an unexempt wetland is impacted."

4. Demand Proof and File Records Requests

- Ask DERM for written **proof of its authority and jurisdiction**
- If they don't respond, file a **public records request** under **Chapter 119, F.S.**
- Keep a copy of all correspondence
- You may request: (1) DERM's authority under §373.441, F.S.; (2) any wetland delineation performed; (3) field notes, GIS shapefiles, and photos used in their decision-making.

5. Save Everything

- Emails, violation notices, inspection reports, letters — **don't throw anything away**
- Keep **copies of all forms, photos, and submissions**

Final Reminder

DERM **cannot enforce ERP rules** on your farm unless they can prove they:

- Were **formally delegated authority**
- Conducted a **valid, site-specific delineation**

- Followed **state procedures and exemptions**

If DERM fails to satisfy these legal requirements, you may challenge the enforcement action, file a jurisdictional objection, or request dismissal under Florida administrative or code enforcement procedures.

Disclaimer: This is not legal advice. Consult an attorney for guidance.

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