

From: Hildebrandt, Steve [mailto:hildebs@doacs.state.fl.us]  
Sent: Tuesday, April 27, 2010 6:01 AM  
To: Baber, Bill  
Cc: Emery, Tyson; Benson, Bryan  
Subject: Native Flora Requirements

Mr. Baber,  
Good morning!

This information is a follow up to the voice mail that I left you on Monday April 26, 2010.

Please note (8)(c) of Florida Statutes 581.185 listed and highlighted below. In addition, a complete copy of 581.185 is included in this email at the bottom.

My understanding from this is that Progress Energy would be exempt from the statutes for the Preservation of Native Flora of Florida to include 581.185 F.S. and Florida Administrative Code Rule 5B-40 F.A.C.

Therefore, no specific survey requirements are required.

You may want to check with Florida Fish and Wildlife Commission or Florida Division of Forestry.

If I can be of any further assistance, please contact me.

Regards,

Steve

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8) EXEMPTIONS.--No provision of this section shall apply to:

- (a) The clearing or other disturbance of land for agricultural or silvicultural purposes, fire control measures, or required mining assessment work.
- (b) The clearing or removal of regulated plants from a canal, ditch, survey line, building site, or road or other right-of-way by the landowner or his or her agent.
- (c) The clearing of land by a public agency or a publicly or privately owned public utility when acting in the performance of its obligation to provide service to the public.

### 581.185 Preservation of native flora of Florida.--

(1) LEGISLATIVE DECLARATION.--The Legislature finds and declares that it shall be the public policy

of this state to: provide recognition of those plant species native to the state that are endangered, threatened, or commercially exploited; protect the native flora from unlawful harvesting on both public and privately owned lands; provide an orderly and controlled procedure for restricted harvesting of native flora from the wild, thus preventing wanton exploitation or destruction of native plant populations; encourage the propagation of native species of flora; and provide the people of this state with the information necessary to legally harvest native plants so as to ultimately transplant those plants with the greatest possible chance of survival.

(2) DEFINITIONS.--

(a) "Commercially exploited plants" means species native to the state which are subject to being removed in significant numbers from native habitats in the state and sold or transported for sale.

(b) "Endangered plants" means species of plants native to the state that are in imminent danger of extinction within the state, the survival of which is unlikely if the causes of a decline in the number of plants continue, and includes all species determined to be endangered or threatened pursuant to the federal Endangered Species Act of 1973, as amended, Pub. L. No. 93-205 (87 Stat. 884).

(c) "Harvest" means to dig up, remove, or cut and remove from the place where grown.

(d) "Landowner" includes the public agency administering any public lands.

(e) "Plant" means any member of the plant kingdom, including reproductive and vegetative parts thereof.

(f) "Regulated Plant Index" means the total number of species native to the state that are listed in rules of the department as commercially exploited plants, endangered plants, and threatened plants.

(g) "Species" means a category used in classification of plants by the binomial system of nomenclature which differentiates between plants of a given genus. This includes any subordinate subspecies or variety.

(h) "Threatened plants" means species native to the state that are in rapid decline in the number of plants within the state, but which have not so decreased in such number as to cause them to be endangered.

(3) PROHIBITIONS; PERMITS.--

(a) With regard to any plant listed as an endangered plant on the Regulated Plant Index, as provided in rules of the department, it is unlawful for any person to willfully destroy or harvest any such plant growing on the private land of another or on any public land without first obtaining the written permission of the landowner or legal representative of the landowner and a permit from the department as provided in this section. However, permits issued for species listed on the federal Endangered Species List under the federal Endangered Species Act of 1973, as amended, must be consistent with federal standards.

(b) With regard to any plant listed as a threatened plant on the Regulated Plant Index, as provided in rules of the department, it is unlawful for any person to willfully destroy or harvest any such plant growing on the private land of another or on any public land without first obtaining the written

permission of the landowner or legal representative of the landowner.

(c) With regard to any plant listed as a commercially exploited plant on the Regulated Plant Index, as provided in rules of the department, it is unlawful for any person to willfully destroy or harvest one or two such plants growing on the private land of another or on any public land without first obtaining the written permission of the landowner or legal representative of the landowner or to destroy or harvest three or more of such plants without first obtaining permission from the landowner or the legal representative of the landowner and a permit from the department.

(d) Any person transporting for the purpose of sale, selling, or offering for sale any plant listed on the Regulated Plant Index, except for those plants listed as threatened, which is harvested from the person's own property must have a permit from the department in his or her immediate possession when engaged in any of the described activities.

(e) With regard to any plant listed on the Regulated Plant Index, as provided in rules of the department, it is unlawful for any person to falsify any paper or document that permits any person to destroy or harvest such plants, or to fail to comply with all conditions or stipulations of any permit issued, or to transport, carry, or convey on any public road or highway or sell or offer for sale in any place any such plant collected in violation of this section.

(f) Any person willfully destroying or harvesting; transporting, carrying, or conveying on any public road or highway; or selling or offering for sale any plant listed in the Regulated Plant Index must have a permit, if applicable, and the written permission required by this section in his or her immediate possession at all times when engaged in any of such activities.

(4) RULES.--The department is authorized to adopt rules relating to the listing, delisting, and changing from one category to another category any plant on the Regulated Plant Index. Any such changes shall consider the recommendation, if any, of the Endangered Plant Advisory Council and shall consider the best environmental and commercial data available. The department is authorized to adopt rules relating to the issuing of permits required by this section. The department may also define by rule specific cutting, harvesting, and plant care criteria which shall include the most favorable and practical horticultural methods and seasons to assure the survival of the plants, minimize environmental damage, and provide for natural regeneration. Such rules shall be consistent with the legislative intent cited in this section and with the provisions and requirements of the federal Endangered Species Act of 1973, as amended.

(5) REVIEW.--

(a) Beginning in 1984, a comprehensive review of this section and of the Regulated Plant Index, as provided in rules of the department, shall be made by the department and the Endangered Plant Advisory Council at 4-year intervals.

(b) The department shall consider any species of plant that should be placed on the Regulated Plant Index which is in danger of disappearing from its native habitat within the foreseeable future throughout all or a significant portion of the range of the species because of:

1. Present or threatened destruction, modification, or curtailment of the range of the species.
2. Overutilization of the species for commercial, scientific, or educational purposes.
3. Disease or predation.
4. Any other natural or manmade factor affecting the continued existence of the species.

(c) In carrying out reviews and arriving at recommendations under paragraphs (a) and (b), the department and the advisory council shall use the best scientific and commercial data available and

shall consult with interested persons and organizations.

(6) DEFENSES.--

(a) In any prosecution under this section, it shall be a defense that plants or the flowers, roots, bulbs, or other plant parts transported, carried, or conveyed, or sold or offered for sale, by the party were legally imported from another country.

(b) In any prosecution under this section involving the destruction or harvesting of any plant on the Threatened Plant List, or one or two plants on the Commercially Exploited Plant List, without written permission, it shall be an affirmative defense that actual permission was given prior to the destruction or harvesting.

(c) In any prosecution under this section involving the destruction or harvesting of any plant on the Endangered Plant List, or three or more plants on the Commercially Exploited Plant List, without written permission and a permit, it shall be an affirmative defense that written permission and a permit had been granted prior to the destruction or harvesting.

(7) SALES BY NURSERYMEN.--Licensed, certified nurserymen who grow from seeds or by vegetative

propagation any of the native plants on the Regulated Plant Index, as provided in rules of the department, are specifically permitted to sell these commercially grown plants and shall not be in violation of this section if they do so, as it is the intent of this section to preserve and encourage the propagation of these native plants which are rapidly disappearing from the state.

(8) EXEMPTIONS.--No provision of this section shall apply to:

(a) The clearing or other disturbance of land for agricultural or silvicultural purposes, fire control measures, or required mining assessment work.

(b) The clearing or removal of regulated plants from a canal, ditch, survey line, building site, or road or other right-of-way by the landowner or his or her agent.

(c) The clearing of land by a public agency or a publicly or privately owned public utility when acting in the performance of its obligation to provide service to the public.

(9) DUTIES AND AUTHORITY OF DEPARTMENT.--The department shall:

(a) As part of the regular inspection of nurseries and stock dealer establishments, be on the alert for any of the native plants on the Regulated Plant Index, as provided in rules of the department, which appear suddenly at a given nursery or stock dealer establishment in a mature stage or a stage showing several years of growth, and the department is empowered to request proof of where and how the plants were obtained.

(b) Have the authority to enter upon properties where harvesting or storage of regulated plants is suspected, to inspect vehicles or other means of transporting such plants, and to preserve and take custody of plants harvested or moved in violation of this section, in order to assure compliance with the provisions of this section.

(c) Have the authority to conduct investigations of plants native, or thought to be native, to the state for the purpose of compiling information relative to plant populations, distributions, habitats, climatic factors, and other biological ecological data, and to determine conservation measures and requirements necessary for their survival.

(d) Have the authority to issue grants to support the preservation and propagation of native plant species of the state that are endangered or threatened as defined in this section.

(10) NOTICE OF HIGHWAY CONSTRUCTION.--The Department of Transportation shall notify the

Department of Agriculture and Consumer Services and the Endangered Plant Advisory Council created by s. 581.186 of advertised bids for highway construction at the time those bids are first advertised, describing the project, the location of the project, and the representative of the Department of Transportation who can answer questions regarding the project and the plant life immediately affected by the construction. The Department of Agriculture and Consumer Services shall seek and utilize the services of the Endangered Plant Advisory Council and of any other state agencies, clubs, associations, organizations, or individuals that may offer support and services for the preservation of the plants on the Regulated Plant Index that may be affected by the construction project and shall provide by rule for the appropriate disposal of such plants.

(11) GRANTS PROGRAM.--

(a) There is created within the department an Endangered or Threatened Native Flora Conservation Grants Program to contract with qualified corporations in the private sector for the purpose of providing recognition of those flora native to the state that are endangered or threatened; and, to encourage, within a controlled program, the protection, curation, propagation, reintroduction, and monitoring of native flora that are identified as endangered or threatened.

(b) The Division of Plant Industry in the Department of Agriculture and Consumer Services may accept and administer moneys appropriated to it for providing grants to qualifying nonprofit corporations for the protection, curation, propagation, reintroduction, and monitoring of endangered or threatened native flora.

(c) A qualified corporation may apply for a grant of state funds to support programs designed to protect, conserve, propagate, reintroduce, and monitor endangered or threatened native flora. For the purposes of this section, a "qualified corporation" is a corporation that is designated a not-for-profit corporation under s. 501(c)(3) of the Internal Revenue Code of 1954, and which is described in, and allowed to receive contributions under, s. 170 of the Internal Revenue Code of 1954, and which is a corporation not for profit incorporated under chapter 617, and which can demonstrate through experience with existing conservation programs the ability to protect, conserve, propagate, reintroduce, and monitor endangered and threatened native flora.

(d) The department shall establish, by rule, criteria for the award of grants, including criteria evaluating:

1. Existing conservation experience with endangered or threatened native flora;
2. Existing facilities appropriate for program needs;
3. Existing programs administered by the corporation that successfully protect, conserve, propagate, reintroduce, and monitor native flora;
4. Existing recordkeeping and documentation that is accessible to national databases of endangered and threatened plants;
5. Qualified staff with demonstrated experience in native plant conservation;
6. Documentation of collaboration with related state, national, or international conservation programs;
7. Successful experience propagating and reintroducing endangered or threatened native flora;
8. Public exhibit programs publicizing the conservation of native species and the importance of the conservation effort; and
9. Fiscal stability and ability to match grant funding.

(e)1. Upon appropriation by the Legislature of funds for the Endangered or Threatened Native Flora Grants Program, the department shall execute a contract with each organization, which must contain

information relative to the program and other provisions considered necessary by the department for the administration of the program.

2. Each recipient corporation must submit an annual report to the Division of Plant Industry detailing the expenditure of funds.

3. The department may grant moneys in advance for programs for which grants are issued, under a grant agreement or a contract.

(f) Each grant recipient shall cause an annual postaudit to be conducted by an independent certified public accountant. The annual audit report must be submitted to the department for review. The department may require from the grant recipient any detail or supplemental data relative to the operation of the corporation.

(g) The department shall adopt rules necessary to administer this subsection.

(12) REGULATED PLANT INDEX.--The Regulated Plant Index is to be used solely to restrict unlawful

harvesting of native flora without the authorization of the landowner. The Regulated Plant Index is not to be used to regulate construction or other land alteration activities on any property.

History.--s. 1, ch. 78-72; s. 160, ch. 79-164; s. 1, ch. 80-23; s. 1, ch. 85-153; s. 4, ch. 87-32; s. 3, ch. 87-226; s. 3, ch. 89-199; s. 2, ch. 91-294; s. 55, ch. 93-169; s. 922, ch. 97-103; s. 3, ch. 97-220.

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