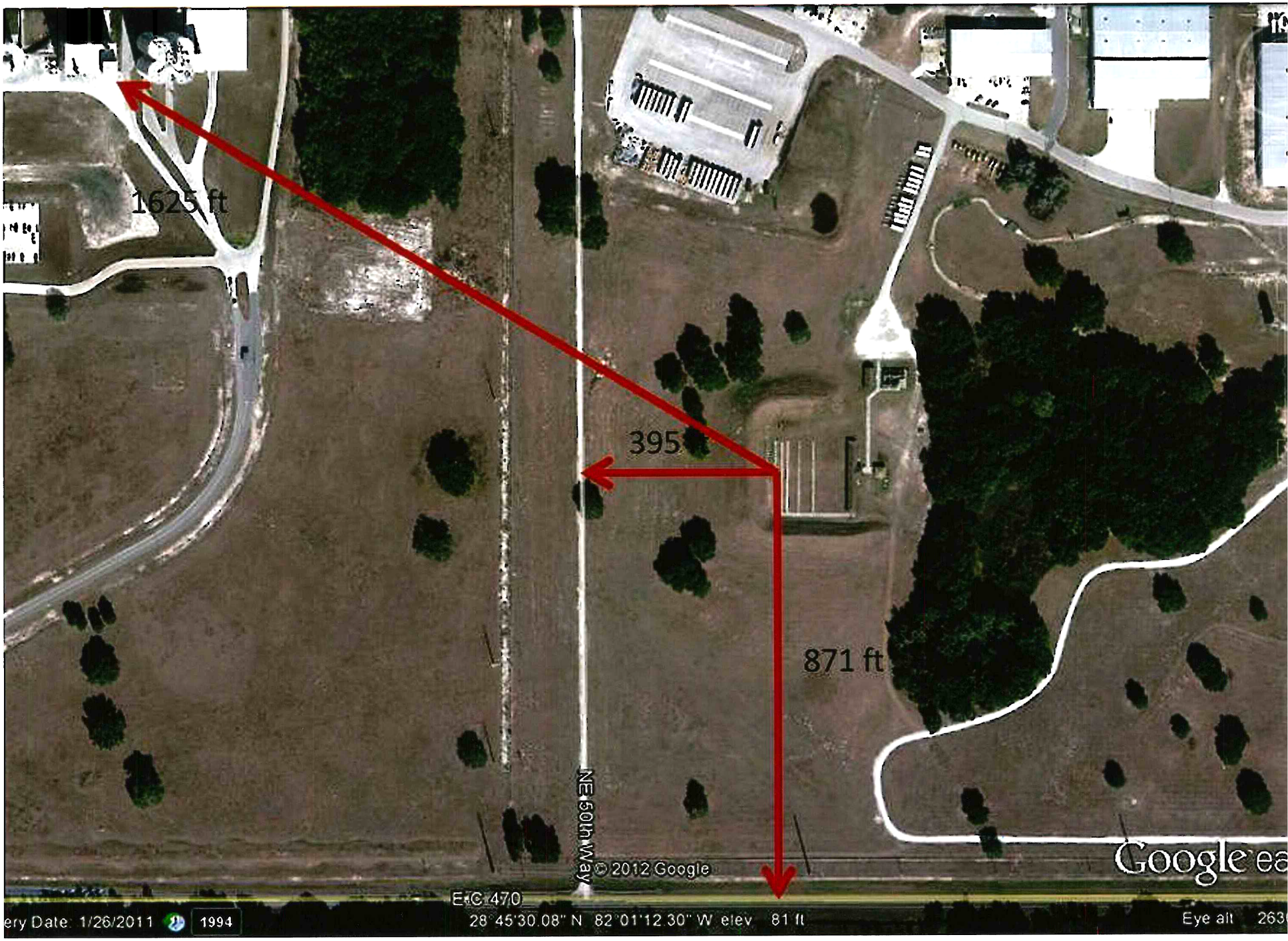

1625 ft
395
871 ft
NE 60th Way
© 2012 Google
E C 470
ery Date: 1/26/2011
1994
28°45'30.08" N 82°01'12.30" W elev 81 ft
Eye alt 263
Google ea

Co Rd 529A
77 ft
684 ft
1757 ft
2642 ft
Co Rd 543B
Co Rd 543A
©2012 Google
Google ea
ery Date: 1/26/2011
1995
28°44'12.79" N 82°05'00.51" W elev 71 ft
Eye alt 479

Traffic Study

1760 NW 102nd BLVD Wildwood FL

This study was performed using standard practices outlined in the Florida Dept. Of Transportation's Manual on Uniform Traffic Studies. The Annual Average Daily Traffic (AADT) was computed utilizing American Association of State Highway and Transportation Officials (AASHTO) Standards.

Vehicle count was conducted utilizing a motion sensing camera set on the edge of the right of way. Photos of vehicles were reviewed and count was recorded for each vehicle and direction of travel.

This study encompasses a 1 week period covering July 1 2012 – July 7 2012. 5 weekdays, 2 weekend days. One weekday was a National Holliday (July 4th).

Traffic Data for the period of July 3, - July 4,2012 were excluded in the calculation of AADT due to the obvious traffic increase. The results would have drastically skewed the validity of the results.

The AADT was calculated with the following results

Total Traffic across 5 days traffic monitored 0000hrs to 2359hrs = 675

Average Annual Daily Traffic = 135

Average Annual Monthly Traffic = 4,106

See attachment for traffic study records.

Utilizing records from match participation Monthly traffic totals were calculated assuming each participant drove a single vehicle. This is most likely not the case, however it is reasonable to work with the higher number.

Match records from January 1, 2012 – Sept 31, 2012 reviewed showed a total participation of 466 over the 9 month period.

Average Monthly participation and additional traffic calculated = 52 Participation 104 total bi directional traffic.

The participation of the monthly events indicates an increase of Average Annual Monthly Traffic of 2.53%

The participation of the monthly events indicates an increase of Average Annual Daily Traffic of 2.54%

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

SUMMARY OF VEHICLE MOVEMENTS

FORM 750-020-02
TRAFFIC ENGINEERING
07/99

LOCATION: 1760 NW 10ND BLVD

COUNTY: SUMTER

CITY: Wildwood FL 34785

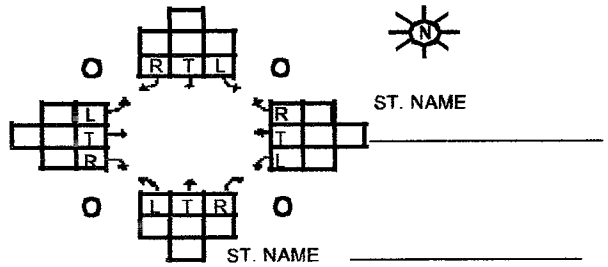
OBSERVER: MARTIN

DATE: JULY 1 2012 - JULY 7 2012

WEATHER:

ROAD CONDITION:

REMARKS:
CAMERA PLACED AT EDGE OF ROADWAY
PICTURE OF EACH VEHICLE EAST + WEST BOUND.



VEHICLE MOVEMENTS

TIME	NORTHBOUND			SOUTHBOUND			EASTBOUND			WESTBOUND		
BEGIN	L	T	R	L	T	R	L	T	R	L	T	R
JULY 1 0000-2359								62			71	
JULY 2 0000-2359								76			74	
JULY 3 0000-2359								264			323	
JULY 4 0000-2359								131			82	
TOTAL												
JULY 5 0000-2359								78			71	
JULY 6 0000-2359								72			67	
JULY 7 0000-2359								48			56	
TOTAL								731			744	
TOTAL												
TOTAL												

RECYCLED PAPER

GUNSTER
ATTORNEYS AT LAW

Writer's Phone Number: (772) 228-1980
Writer's Email Address: rraynes@Gunster.com

September 24, 2012

VIA EMAIL AND OVERNIGHT DELIVERY

Karl E. Holley, AICP
Sumter County Planning Department
7375 Powell Road, Suite 115
Wildwood, Florida 34785

Re: Long Hammock Range

Dear Mr. Holley:

Our firm represents Long Hammock Ranch, LLC and Long Hammock Ranch II, LLC, the owners of Long Hammock Ranch, a working cattle ranch located in the northwestern portion of Sumter County, Florida, and consisting of the following parcels: C19-001; C19-029; C19-015; C18-002; C18-003; C18-007; C17-028; C17-006; C08-010; and C07-002 ("Long Hammock Ranch Property"). Mr. Brad D. Martin owns property directly adjacent to the southeastern portion of Long Hammock Ranch Property identified as parcel C20-061 (the "Martin Property"). Mr. Martin is currently operating a commercial shooting range called the Long Hammock Range on the Martin Property. A map depicting the general location of the Martin Property in relation to the Long Hammock Ranch Property is attached. The operation of this shooting range creates a dangerous situation for the people and livestock on the Long Hammock Ranch Property and causes significant, material harm to our client, including a significant decrease in the value of its property.

Sumter County has issued a Code Enforcement Action (File # CE2012-0104) against Mr. Martin because the shooting range is not an allowed use on the Martin Property under the Sumter County Land Development Code ("LDC") and has not been properly permitted. It is our understanding that the County has informed Mr. Martin that he may possibly cure the Code Enforcement Action by obtaining a Special Use Permit to specifically allow the shooting range on the Martin Property and that Mr. Martin may have filed an application for that purpose.

The Martin Property has a land use designation of Agriculture and a zoning designation of A5. We understand that the A5 zoning designation is an obsolete zoning designation that no longer exists in the current LDC. However, the County staff is apparently taking the position that the obsolete A5 designation is similar in nature to the A10C zoning designation under the

800 S.E. Monterey Commons Blvd., Suite 200 | Stuart, FL 34996-3346 | 772.288.1980 | Fax: 772.288.0610 | www.gunster.com
FORT LAUDERDALE • JACKSONVILLE • MIAMI • PALM BEACH • STUART • TALLAHASSEE • VERO BEACH • WEST PALM BEACH

current LDC and that, therefore, the A10C zoning requirements would apply on the Martin Property. This is directly contrary to the existing zoning and the comprehensive plan. In order for the County to legally enforce the A10C zoning designation on the Martin Property, the Board of Sumter County Commissioners must approve a rezoning of this property to that designation, if such rezoning meets the requirements of the Comprehensive Plan, state statutes, and rule of law. Such rezoning should have been completed prior to any development (e.g. development of the shooting range) or use not previously approved occurring on the Martin Property.

The shooting range is not an allowed use on the Martin Property by right, by Special Use Permit or by any other means at this time. As stated earlier, the Martin Property has a land use designation of Agriculture. Comprehensive Plan Future Land Use Element Policy 7.1.1.2 states that "[l]and development regulations adopted to implement this Comprehensive Plan shall be based on and be consistent with the following land use categories, and standards for densities and intensities." It then goes on to describe the type of uses that are permitted under the Agriculture land use classification, which generally consist of agriculture type uses, aquaculture, forestry, residential, related commercial activities, mining activities and community facilities. See Comprehensive Plan Future Land Use Element Policy 7.1.1.2(a) and LDC Section 13-306(b). There is nothing consistent with the proposed use of a shooting range. Policy 7.1.1.2 clearly states the non-residential uses that are permitted under the Agriculture land use classification and shooting ranges do not fall under the non-residential uses. Furthermore, Policy 7.1.1.2 states that allowable uses include community-serving public facilities and infrastructure as special uses. Based on Policy 7.1.1.2, the use of the Martin Property as a private or commercial shooting range is inconsistent with the Comprehensive Plan.

Even if the proposed (and improperly existing) shooting range was permitted within the Agriculture land use designation, one must then review the zoning designation to determine if it allows such a use. Even assuming an A10C zoning, it does not. If the zoning designation for the Martin Property is interpreted to be A10C, then this zoning designation generally allows the following principal uses (i) agriculture; (ii) aquaculture and forestry; (iii) residential and neighborhood commercial; (iv) mining; and (v) community facilities and services, which uses are consistent with the land use designation. See LDC Sections 13-306(b), 13-332(a) and 13-362. These general zoning uses are further defined as more specific uses in LDC Table 13-362A. Although shooting/firing range is included as a special use in the A10C zoning category, it is very limited. A shooting/firing range is listed under LDC Table 13-362A, Section 5.000, as a "Public, Semi-Public and Institutional Facilities" type of use and further classified under sub-category "Emergency Services/Detention Facilities". This category and subcategory of uses are generally considered to be governmental facilities and not a private or commercial use. See generally LDC Section 13-332(a)(7) (stating that institutional uses are those uses that are provided by public, quasi-public or semi-public entities). Therefore the only reasonable interpretation of the LDC in accordance with the rules of construction limit the allowance of shooting ranges to parcels used for government, public service and in particular police or other

emergency service type uses. A private or commercial shooting range, which is the current use of the Long Hammock Range located on the Martin Property, is not permitted at all.

Although the Development Services Director has the ability to interpret whether a specific use is allowed on a specific parcel, that interpretation cannot be inconsistent with the Comprehensive Plan or the language of the LDC. The Comprehensive Plan, as noted above, and the LDC do not allow for a shooting range on the Martin Property, even if it could be interpreted to have the A10C zoning designation, unless the range is associated with emergency services. See LDC Section 13-362(c)(2) and Table 13-362A. In order to allow a shooting range on the Martin Property, the use must be related to "Public, Semi-Public and Institutional Facilities" and "Emergency Services/Detention Facilities" and, only then, if a Special Use Permit is obtained. Since the Long Hammock Range is not associated with an "Emergency Services/Detention Facility" or other institutional type use, the current shooting range being operated on the Martin Property is inconsistent with the A10C zoning designation as well as the Comprehensive Plan.

The Long Hammock Range activities, including the United States Practical Shooting Association matches held on the Martin Property every third Saturday of the month, must immediately cease and desist pursuant to the Statement of Violation and Request for Hearing (File # CE2012-0104). Whether private or commercial, Long Hammock Range shooting operations on the Martin Property are inconsistent with the Agriculture land use designation and A10C zoning designation (even assuming this is the interpreted designation) and Mr. Martin would need to apply for a land use amendment and rezoning (and potentially a Special Use Permit) to continue operation of the Long Hammock Range shooting activities.

Mr. Martin has demonstrated through the continued operation of the Long Hammock Range a complete disregard to the Comprehensive Plan policies and LDC requirements, which require a shooting range and the development of this use to be consistent with the Comprehensive Plan and LDC, including any and all development and design standards. Mr. Martin has also shown a complete disregard for the code enforcement proceedings which required him to immediately cease and desist operations, which he did not do.

The existing use and proposed development and future continuing use of the Long Hammock Range on the Martin Property is a very important matter for our client as the southeastern portion of the Long Hammock Ranch Property directly abuts the Martin Property and the shooting range has the potential to be a very dangerous use, and one that adversely affects the value of the Long Hammock Ranch Property. Therefore pursuant to Section 162.06, Florida Statutes, and County Ordinance Code Section 2-95(d), we respectfully request the County Code Enforcement Official hold the Code Enforcement Hearing on this matter scheduled for October 25, 2012 as the shooting range is a "violation [that] presents a serious threat to the public health, safety, and welfare" and until such hearing occurs require all shooting range activities on the Martin Property to immediately cease and desist. Further, the County must reevaluate its position that such a use could ever be permitted on the Martin Property without a

change to the Comprehensive Plan, zoning of the Martin Property, and LDC. Any application for a shooting range on the Martin Property at this time must be denied.

We learned this morning that the County may in fact be in agreement with our above analysis and has reevaluated its position as to allowing the Long Hammock Range on the Martin Property under the current Comprehensive Plan and LDC. We understand the Board of Sumter County Commissioners ("BCC") is scheduled to hold a public hearing tomorrow, September 25, 2012, at 5:00 pm to discuss changes to the LDC that would allow a shooting range by special use as a recreational type facility on parcels with an A10C zoning designation. We also understand the BCC will hold a public hearing on proposed amendments to the Comprehensive Plan at the same BCC meeting. Neither our clients nor us have been provided notice of the proposed amendments to the LDC or the Comprehensive Plan, and as evidenced by the April 24, 2012 letter from Mr. Robert Landt to the County Administrator, the Long Hammock Range activities were and continue to be of high importance to our clients such that notice should have been provided to our clients. Given that we have just been made aware of these public hearings and no notice of these hearings was provided to our clients, we respectfully request the BCC postpone the hearings (identified as Items 1(a) and 1(b) on the BCC Sept. 25, 2012 Agenda) scheduled for tomorrow on the proposed amendment to the LDC and the proposed amendments to the Comprehensive Plan until we have had a chance to review said amendments and properly prepare for the BCC hearings. The Long Hammock Ranch Property is directly adjacent to the Martin Property, which contains the Long Hammock Range, and the Long Hammock Range as well as the proposed amendments to the LDC and Comprehensive Plan have the potential to adversely affect the Long Hammock Ranch Property and our clients.

These matters are of such importance that we would like to immediately receive any and all existing applications, data and analysis and any future correspondence or materials regarding the use of the Martin Property for a shooting range and the proposed amendments to the LDC and Comprehensive Plan identified as Items 1(a) and 1(b), respectfully, on the BCC September 25, 2012 Agenda. Given the impacts to our client and its property, and the plain language of the Comprehensive Plan and LDC, the unsafe detrimental use on the Martin Property cannot be allowed to continue. We are hopeful that the County will understand our position and the impacts on the abutting Long Hammock Ranch Property. If not, the only option to protect the Long Hammock Ranch Property will be court intervention. We sincerely hope this is not necessary.

Thank you for your consideration of our client's request, if you have any questions, please feel free to give me a call at any time.

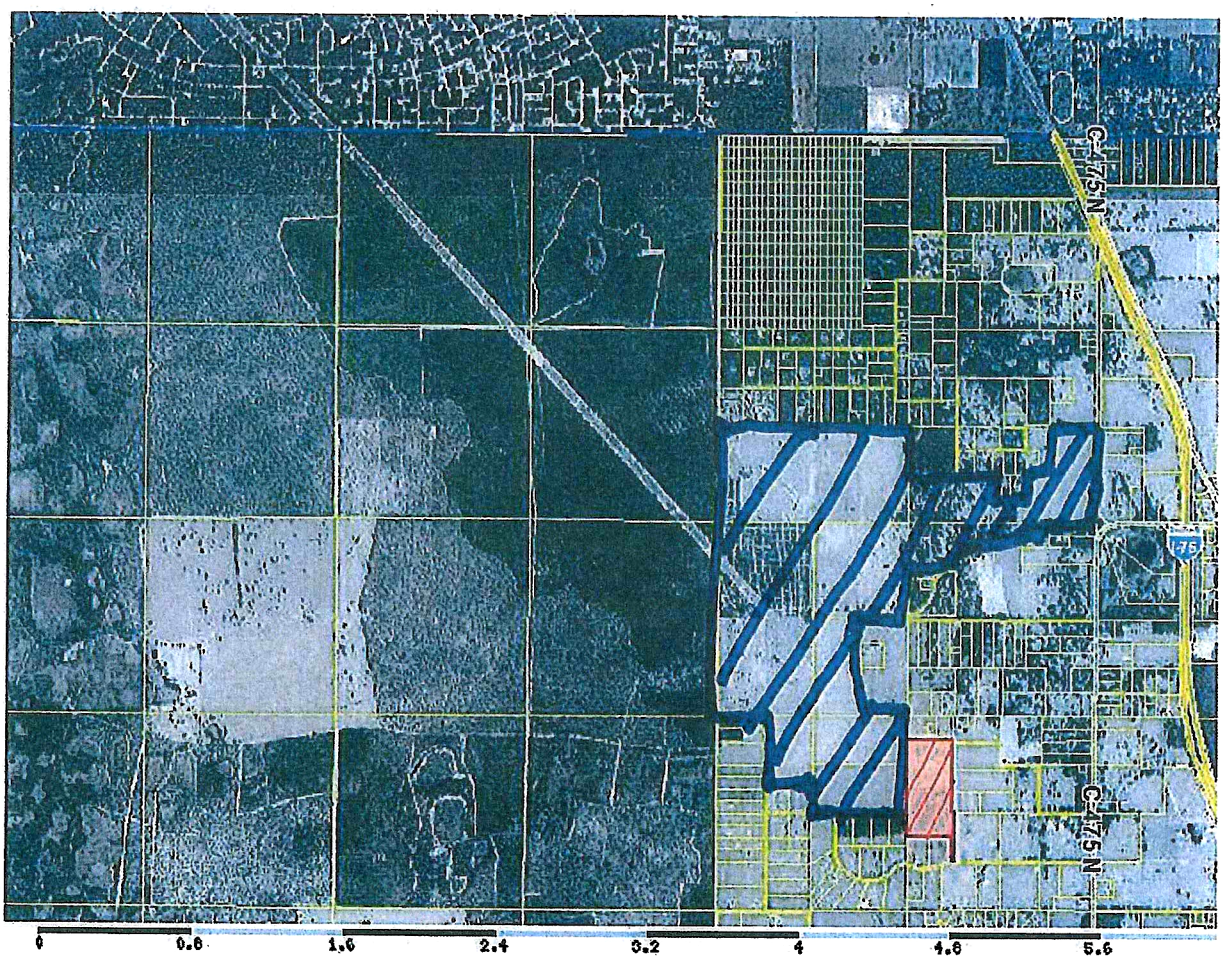
Sincerely,

Robert Raynes, Jr.

Enclosure

cc: George G. Angeliadis, Sumter County Attorney
Richard Jernigan
Brian M. Seymour, Esq.

WPB_ACTIVE 5258164.1



Sumter County BOCC - GIS
BOCC - Bushnell, FL 33513 | 352-793-0200

NOTES:

Parcel ID:C20=061
MARTIN BRAD D
PO BOX 162 OXFORD, FL 34484
Street: NOT ON FILE
S/T/R:20/18/22 S1/2 OF NW1/4 OF NW1/4 & SW1/4 OF NW1/4 & N1/2 OF NW1/4 OF NE 1/4 OF SW 1/4
Sales

8/1/2011	2353/805	Vacant	$0.00
5/1/2011	2319/757	Vacant	$0.00

This information was derived from data which was compiled by the Sumter County BOCC - GIS. This information should not be relied upon by anyone as a determination of the ownership of property, legal boundary representation, survey and shall not be used in any Title Search or any official capacity. No warranties, expressed or implied, are provided for the accuracy of the data herein, it's use, or it's interpretation. This information was last updated: 9/11/20 on file at our office.

the Long Hammock Ranch Property

the Martin Property

Gunster
Opposition

Entered into
record 10/15/12
"B"

Picture 1. Shows range looking south notice how close our fence is to shooting range B-1

Picture 2. Shows range looking north notice our fence in relationship to range
B2

Picture 3. This picture I stood in back of my truck and looked over shooting berm. This berm is no more that the height of my truck roof.
B3

Picture 4. This picture shows how low the berm is in relationship to fence
B4

Picture 5. Shows north end of range
B5

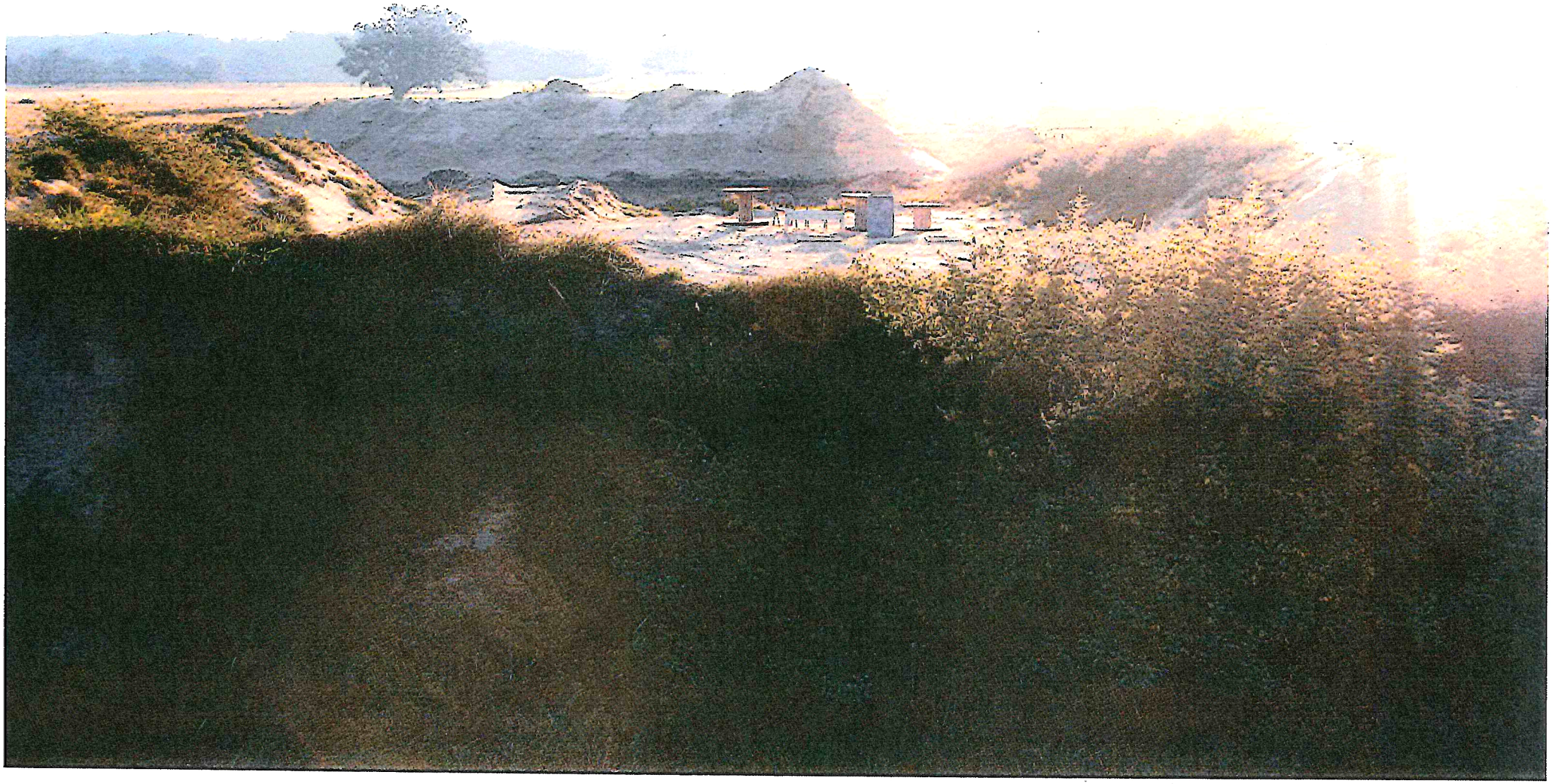
Picture 6. Shows fence in relationship to range
B6

B 1

Picture #1

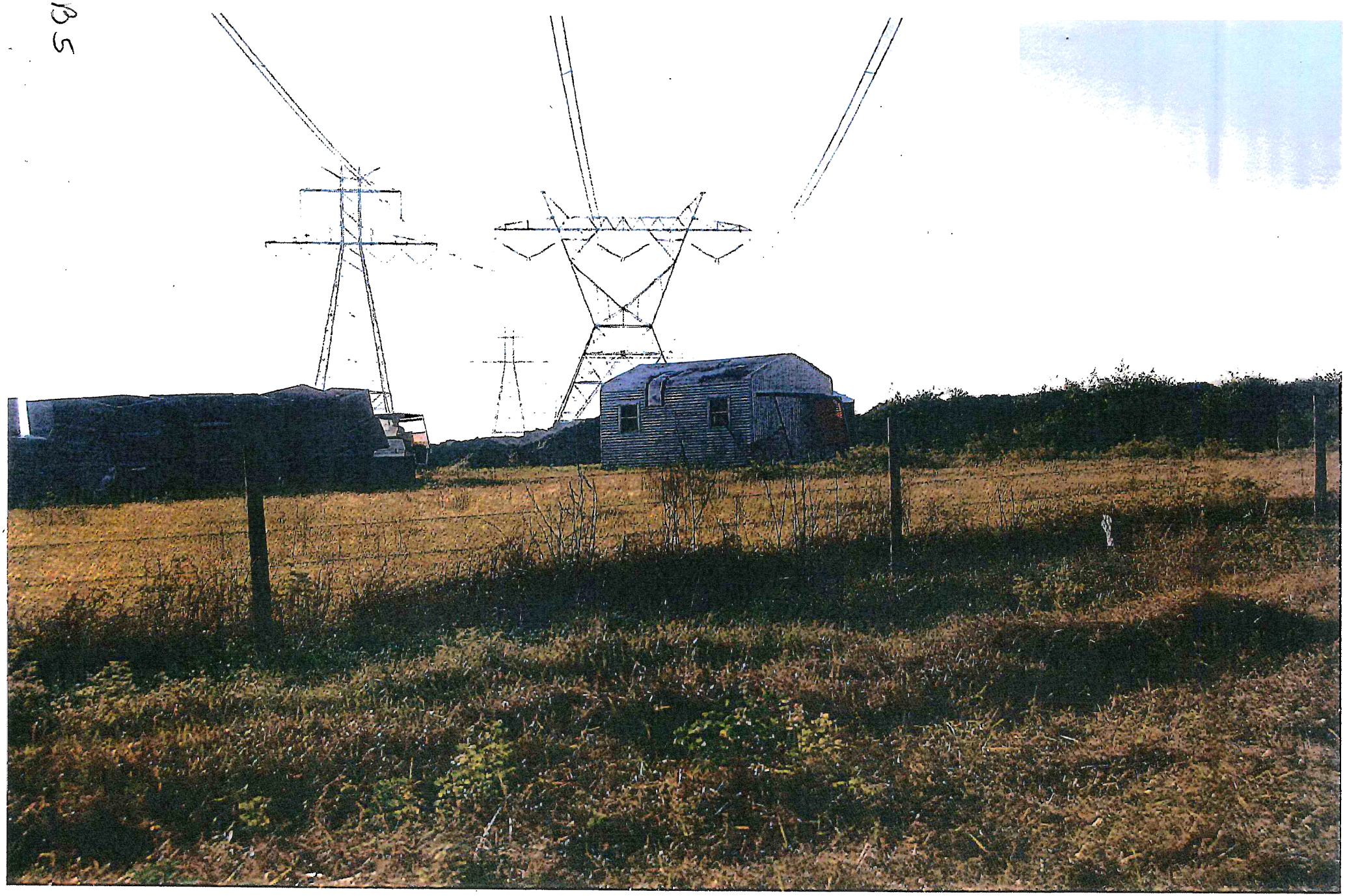
Picture #2

83



Picture #3

Picture #4



Picture #5

B6

Picture #6

Entered into record 10/15/12 "C"

GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

Opposition

September 28, 2012

George G. Angeliadis, Esquire
Sumter County Attorney
The Hogan Law Firm
20 S. Broad Street
Brooksville, Florida 34601

VIA FEDERAL EXPRESS
FIRST OVERNIGHT

Re: Shooting Range Ordinance

Dear Mr. Angeliadis:

As you know, my colleague, Bill Perry, attended the September 25, 2012 Board of Sumter County Commissioners ("BCC") meeting regarding the proposed amendment to Chapter 13 of the Sumter County Code of Ordinances to provide for Sport Shooting Ranges as a Special Use Permit in Specified Land Use Zones ("the Amendment"). Unfortunately, given that we did not have prior notice of the meeting, I could not attend. At that meeting, Mr. Perry made it clear that our clients, Long Hammock Ranch, LLC and Long Hammock Ranch II, LLC, do not oppose shooting ranges, but that they have concerns that the proposed Amendment does not adequately address necessary standards for the siting and development of shooting ranges and that shooting ranges may not be appropriate in the areas being proposed.

Florida law is clear that the statutory prohibition on a local government regulating the recreational discharge of firearms in residential areas does not restrict or preempt local governments from regulating the siting and development standards for shooting ranges. See Florida Statutes Section 790.33(4)(a) (permitting zoning ordinances for firearms businesses and other businesses) and Florida Statutes Section 823.16(7) (stating a local government is not prohibited from adopting standards regarding the location and construction of shooting ranges). Florida Attorney General Advisory Legal Opinion Number AGO 2008-34, dated June 25, 2008, which we have attached as Exhibit "A", addresses the application of land use regulations and zoning to sports shooting ranges. It states that, "a county clearly may impose existing zoning and land use regulations upon the siting of a proposed sports shooting range; however, no newly created or amended zoning or land use regulations may be enforced against **existing** ranges." (emphasis added). The proposed Amendment is not proposed, as we understand it, to regulate existing, approved ranges. Proper siting and development standards are critical to safety. They do not prohibit the use, possession, or discharge of firearms. They merely regulate the safe use and discharging of firearms. The Statute does not require Sumter County to provide an ordinance that permits shooting ranges, by Special Use Permit, in the A10 and A10C zoning districts, in order to demonstrate that it is complying with state statutes. And, it certainly does not require that the uses have no safety considerations in their development.

We agree that it is prudent for Sumter County to adopt an ordinance that specifically identifies those zoning districts in which shooting ranges are permitted, and to include appropriate standards (we note that the National Rifle Association resource book that is considered for standards itself states that it should not be used for this purpose) that provide specific locational, including siting, buffer, safety and other similar design standards, and construction standards for any shooting range located within Sumter County consistent with Florida Statutes Section 823.16. Given the nature and type of activities that occur at shooting ranges, it is extremely important for the health, safety and welfare of Sumter County residents to regulate this type of use through such standards.

We have reviewed several other county regulations to determine what best practices your sister counties have used in crafting regulations that are statutorily permissible and provide for the safe and effective regulation of shooting ranges. For your reference, we have attached as Exhibit "B" to this letter examples of locational and construction standards from other Florida local governments that have adopted shooting ranges along with a summary of the standards.

It is appropriate to consider the entire community when adopting standards that would be applicable Countywide. It is also appropriate to make sure that any proposed uses that are added to any zoning category are implemented in a fair, safe, and clear manner for all the residents of the County. To that end, we request that the proposed Amendment be modified to include locational and construction standards similar to those adopted by other local governments in Florida. We will be asking the Sumter County Zoning and Adjustment Board and the BCC to make such modifications and hope that you will be willing to work with us on crafting these changes to the benefit of all Sumter County residents.

Sincerely,

Robert S. Raynes, Jr.

RSR/SMR:jl
Enclosures

cc: Richard Jernigan

Exhibit "A"

Florida Attorney General
Advisory Legal Opinion

Number: AGO 2008-34
Date: June 25, 2008
Subject: Shooting Ranges -- Land Use Regulation

Mr. Michael S. Craig
County Attorney
Polk County
Post Office Box 9005
Bartow, Florida 33831-9005

RE: FIREARMS - SHOOTING RANGES - LAND USE REGULATION - ZONING - application of land use regulations and zoning to sports shooting ranges. ss. 790.33, 790.333, and 823.16, Fla. Stat.

Dear Mr. Craig:

You ask substantially the following question:

May a county enforce its land development code to prohibit a shooting range in a residential land use district in light of section 790.333(8), Florida Statutes?

You state that currently there are shooting ranges located within residential land use districts in Polk County. Due to concerns about public safety, the county wishes to restrict such shooting ranges to commercial areas. You state that under the Polk County Land Development Code, shooting ranges are classified as either a commercial business or high intensity recreation and would be prohibited in residential land use districts.

Section 790.333(8), Florida Statutes, provides:

"Preemption.—Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of *regulation of firearms and ammunition use at sport shooting and training ranges*, including the environmental effects of projectile deposition at sport shooting and training ranges." (e.s.)

While the plain language of the statute pertains to the regulation of firearm and ammunition use at shooting ranges, there is apparent confusion in determining whether local land use regulations may be enforced to restrict the location of a shooting range. A review of

the legislative history of section 790.333, Florida Statutes, reveals that the committee recognized the shift in population from urban to suburban and rural areas, and "the impact of certain zoning decisions."[1] The staff analysis, however, focuses primarily on giving immunity to shooting ranges that may be subject to suit for environmental contamination and incidentally provides for the preemption of the field of regulation of firearms and ammunition use at sport shooting and training ranges.

In 1999, the Legislature provided limited immunity to sport shooting ranges from criminal prosecution or civil suits based on an underlying claim of noise or noise pollution in section 823.16, Florida Statutes.[2] The statute was clear, however, that such immunity was to be extended as long as the shooting range was in compliance with the local noise-control ordinances in effect at the time of construction or initial operation of the range.[3]

The statute also provides:

"A sport shooting range that is not in violation of existing law at the time of the enactment of an ordinance applicable to the sport shooting range shall be permitted to continue in operation even if the operation of the sport shooting range does not conform to the new ordinance or an amendment to an existing ordinance, provided the range was not in violation of any law when the range was constructed and provided that the range continues to conform to current National Rifle Association gun safety and shooting range standards."[4]

Section 823.16(7), Florida Statutes, recognizes that "[e]xcept as otherwise provided in this act, this act shall not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this act."

Section 790.33(1), Florida Statutes, preempts the regulation of firearms and ammunition to the state:

"Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacturer, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void. *This subsection shall not affect zoning ordinances which encompass firearms businesses along with other businesses.* Zoning ordinances which are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited." (e.s.)

Clearly, a municipality's attempt to regulate firearms is null and void.[5] However, the general provisions in section 790.33, Florida Statutes, recognize that local zoning ordinances which affect other businesses in the same way are allowed. The statute is equally clear in prohibiting zoning ordinances designed to restrict or prohibit the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition. Thus, a zoning ordinance prohibiting any commercial business activities within an area zoned for residential use would not appear to be inconsistent with the intent of section 790.33, Florida Statutes. Such an ordinance, however, could not be applied retroactively to an existing sport shooting range.

The provisions of section 790.333, Florida Statutes, are specific to the regulation of the use of firearms and ammunition at sport shooting and training ranges, but do not address the actual siting of such facilities. The primary purpose of the legislation was to grant immunity from legal action by the state and local governments for the use, release, placement, deposition, or accumulation of any projectile in the environment. The recognition that no action can be taken against shooting range facilities existing at the time of the enactment of all of the above-cited statutes relating to firearms and shooting ranges should be read together in a manner to give effect to each.[6] To read the preemption provision in section 790.333, Florida Statutes, as a total ban on the application of any zoning or land use regulation upon an existing or proposed sports shooting range would render section 823.16 (7), Florida Statutes, noted above, of no use or consequence.

Accordingly, it is my opinion that a county clearly may impose existing zoning and land use regulations upon the siting of a proposed sports shooting range; however, no newly created or amended zoning or land use regulations may be enforced against existing ranges.

Sincerely,

Bill McCollum
Attorney General

BM/tls

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[1] Senate Staff Analysis and Economic Impact Statement, CS/CS/CS/SB 1156, Appropriations Committee, Criminal Justice Committee, Judiciary Committee, March 18, 2003.

[2] Section 823.16(2), Fla. Stat.

[3] Section 823.16(3), Fla. Stat.

[4] Section 823.16(6), Fla. Stat.

[5] *See National Rifle Association of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3rd DCA, 2002) (municipal ordinance establishing certain safety standards for firearms null and void as regulation preempted to the state) and *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972) (municipal ordinance must not conflict with controlling provisions of state statute; any doubt as to municipality's power is resolved against the ordinance).

[6] *See, e.g., Mann v. Goodyear Tire and Rubber Company*, 300 So. 2d 666 (Fla. 1974) (A law should be construed together and in harmony with any other statute relating to same subject matter and having same purpose even though not enacted at same time).

Exhibit "B"

SHOOTING RANGE COMPARISON
PALM BEACH, OKEECHOBEE, MARTIN AND CLAY COUNTIES

Palm Beach County

1. Allows Public Gun Clubs in Commercial Recreation (CRE) and Agriculture Residential/ Special Agriculture FLU (AR/SRA) with approval by County Board of Commissioners and Public Ownership (PO) with approval from the Zoning Commission.

2. Open Gun Clubs and its accessory shooting areas must have a 300 foot setback to a 100 foot buffer from residentially occupied or zoned property. These setbacks are in addition to the regular setbacks for the district.

3. Gun clubs must be located on a minimum of five acres or meet the minimum lot and setback requirements of the district, whichever is greater.

4. Gun clubs must provide one parking space per target area.

5. Gun Clubs are defined as "an open or enclosed facility used for the discharge of firearms or projectiles at targets."

Okeechobee County

1. Allows Outdoor Gun Clubs in Agriculture (A) with the approval of a Special Exception.

2. There are no additional standards for Gun Clubs the applicant must meet the basic Special Exception application standards:

    A. Ingress and egress to the property and the proposed structures thereof, if any, including such considerations as automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

    B. Off-street parking and loading areas where required, including consideration of relevant factors in subsection A. preceding, and the economic, noise, glare, or other effects of the locations of such off-street parking and loading areas on adjacent and nearby properties and loading areas on adjacent and nearby properties and properties generally in the district;

    C. Refuse and service areas, including consideration of relevant factors in subsections A. and B. preceding;

D. Utilities, including such considerations as hook-in locations and availability and compatibility of utilities for the proposed use;

E. Screening and buffering, including considerations of such relevant factors as type, dimensions, and character to preserve and improve compatibility and harmony of use and structure between the proposed special exception and the uses and structures of adjacent and nearby properties and properties generally in the district;

F. Signs, if any, and proposed exterior lighting, if any, with reference to glare, traffic safety, and economic effects of same on properties in the district and compatibility and harmony with other properties in the district;

G. Required yards and open spaces;

H. Height of structure where related to uses and structures on adjacent and nearby properties and properties generally in the district;

I. Economic effect on adjacent and nearby properties and properties generally in the district of the grant of the special exception.

Martin County

1. Allows outdoor shooting ranges in Agriculture (AG-20A), Public Service (PS2) and Rural Business District (B-3) with approval from the Board of County Commissioners if the application can comply with the following additional standards:

   A. The discharge of firearms shall be conducted only within areas specifically designated for such use on an approved site plan.

   B. Firing positions shall be separated a minimum of 2,500 feet from the boundary of the subject property with any adjacent parcel in separate ownership. However, for an outdoor shooting range designed and used specifically and solely for shooting clay targets with a shotgun the following shall apply: Firing positions shall be separated a minimum of 900 feet from the boundary of the subject property with any adjacent parcel in separate ownership and in

addition, firing positions shall be separated a minimum of 2,500 feet from any permitted residence existing at the time of site plan approval for the proposed shooting range.

C. An impenetrable berm or barrier, 20 feet or more in height, shall be constructed along the three sides lying in the direction of fire of any authorized firearm discharge area. An outdoor shooting range designed specifically and solely for shooting clay targets with a shotgun is exempt from Section 3.99.1.C.

D. The perimeter of the shooting range activity, including the firearm discharge area and surrounding berms, shall be enclosed by a fence or wall, a minimum of six feet in height. Warning signs of at least one square foot each shall be attached to the perimeter fence at the rate of at least one for every 100 lineal feet plus one at each entry gate.

E. The applicant shall submit a hazardous waste management plan, prepared by an independent environmental consultant, to assure the protection of groundwater from lead and other contaminants associated with the discharge of firearms.

F. The applicant shall demonstrate compliance with all applicable state regulations and how safety and noise factors have been addressed through the site plan and other special features of the proposed development.

2. Shooting ranges must provide one parking space per firing point.

3. Shooting ranges are defined as "An open-air facility designed for the safe discharge of firearms at targets (including rifle, skeet and trap ranges)

Clay County

1. Allows Shooting ranges in Agricultural (AG) with a Conditional Use approval. Shooting ranges for 'shotguns only' are allowed in Private Service (PS-2) with a Conditional Use approval.

2. Shooting ranges must meet specific standards established in the Code for each type of shooting use.

   (1) Ranges for shotguns only permitted in PS-2 district subject to NRA design and construction guidelines.

   (2) *Skeet Shooting.*

   (i) the minimum area for a skeet shooting range shall be a minimum cleared area of 100 yards with a 300 yard safety zone.

   (ii) There shall be a 26 feet 8-3/8 inch chord between stations.

   (iii) There shall be a minimum of 40 yards between high and low houses.

   (3) *Trapshooting.*

   (i) The space required for trapshooting shall be a minimum cleared area of 100 yards with a 300 yard safety zone.

   (ii) The minimum permissible target angle shall be 94 degrees.

   (iii) There shall be a minimum of nine (9) feet between firing points spaced three (3) feet apart.

   (4) *Rifle Ranges and Muzzle Loaders.*

   (i) Each range shall be adjoined on its left and right by a safety zone extending downrange at least 1,200 yards and outward at an angle of 20 degrees from either end of the firing line.

   (ii) Firing lines may be covered or opened.

   (iii) There shall be a six (6) foot minimum spacing for firing points.

(iv) Backstops are required, and must be capable of stopping and containing projectiles used on the range, with a height of thirty (30) feet.

(5) *Handguns.*

(i) There shall be a six (6) foot minimum spacing for firing points.

(ii) Firing lines may be covered or uncovered.

(iii) Backstops shall be required which contain no material that would increase the possibility of ricochet, and have the capability of containing projectiles used on range. The backstop height span shall be thirty (30) feet and shall extend twenty-five (25) feet to each side of the target line.

PALM BEACH COUNTY CODE

Table 4.A.3.A - Use Matrix Continued

Use Type	Zoning District/Overlay: Agriculture/Conservation			Residential						Commercial						Industry/Public				NOTE
	PC	AGR	AP	AR RSA	AR USA	RE	RT	RS	RM	CN	CLO	CC	CHO	CG	CRE	IL	IG	PO	IPF	
Public and Civic Uses																				
Airport															A		A	A	A	10
Assembly, Nonprofit Institutional		A		A				A	A	A		A		A				P	A	14
Assembly, Nonprofit Membership					A						A	A	A	A					A	15
Cemetery				A	A	A	A	A	A			B		B				B	A	27
Place of Worship		A		A	A	A	A	A	A	A	A	A	A	A	A				A	29
College or University												A	A	A				P	A	30
Day Camp												A		A	D			P	D	39
Day Care, General		B		A	A	A	A	A	A	A	A	A	B	B	D	B	B	D	B	40
Day Care, Limited		D		A	A	A	A	A	B	B	B	D	D	D	D	D	D	D	D	40
Government Services		D	A	A	A	A	A	A	A	D	D	D	D	D	D	P	P	P	D	63
Kennel, Type IV (Animal Shelter)												A		A		A	D	A	A	74-3
Helipad		B	B	A	A	A			A				B	B	D	D	D	P	D	10
Homeless Resource Center												B	B	B		D			B	70-1
Hospital or Medical Center												A	A	A				P	A	71
Landing Strip		B	B	B											B		B		B	10
School, Elementary or Secondary		A		A	A	A	A	A	A	A	A	A	A	A		A		P	A	118
Recreation Uses																				
Arena, Auditorium or Stadium														A	A			D	A	12
Campground	D		D												D			P	D	24
Entertainment, Indoor										A		A		B	D	D		P	D	45
Entertainment, Outdoor												A		A	D	D		P		46
Fitness Center									A	B		A	A	A	P	P		P		56
Golf Course						A	A	A	A			A		B	D	D		B	B	62
Gun Club, Enclosed														B	P	D	P	D		67
Gun Club, Open															A			B		67
Gun Range, Private			D	A														P		68
Marine Facility													B	B	B	P	P	D		82
Park, Passive	P	P	P	D	D	D	D	D	D	D	P	P	P	P	P	P	P	P	P	93
Park, Public	D			B	B	A	A	A	B	B		D		D	D	D	D	P	D	94
Park, Neighborhood	P			P	P	P	P	P	P	P		P		P	P	P	P	P	P	92
Special Event			S	S	S					S	S	S	S	S	S	S		S	S	124
Zoo				A										B	D			P	B	143

[Ord. 2005-002] [Ord. 2006-013] [Ord. 2008-037] [Ord. 2009-040]

Key:

P Permitted by right

D Permitted subject to approval by the DRO

S Permitted in the district only if approved by Special Permit

B Permitted in the district only if approved by the Zoning Commission (ZC)

A Permitted in the district only if approved by the Board of County Commissioners (BCC)

Table 4.B.1.A - Groom's Quarters

Process	Number of groom's quarters permitted
Permitted	Max four
DRO	Five through 20
Class B	21 through 100
Class A	101 or more
[Ord. 2007-001]	

e. **AGR PUD or TMD**
For more than 20 groom's quarters, or more than 20 groom's quarters on the Preservation Area of an AGR-PUD or TMD, the allowable density shall be decreased by one unit for each groom's quarter to a maximum reduction of one-half of the number of dwelling units associated with the Preservation Area. **[Ord. 2006-004]**

f. **Kitchen Facilities**
Groom's quarters may contain individual cooking facilities and/or one common dining facility. An agreement to remove all kitchen equipment shall be executed prior to approval of the groom's quarter. The agreement shall require the kitchen to be removed if the unit ceases to operate as a groom's quarters.

66. Guest Cottage
Accessory sleeping quarters provided for non-paying guests by the occupant of a single-family or ZLL dwelling unit.

a. **Units**
A maximum of one guest cottage may be permitted as an accessory use to a principal single-family or ZLL dwelling unit. The guest cottage may be attached to the principal dwelling or freestanding.

b. **Floor Area**
A guest cottage shall not exceed 800 square feet GFA, except when located on a lot that is at least one acre in size, in which case the cottage shall not exceed 1,000 square feet GFA or 30 percent of the principal dwelling, whichever is greater.

c. **Additional Floor Area**
Floor area under a solid roof that is utilized as a porch, patio, porte cochere, or carport shall not exceed 500 square feet.

d. **Kitchen or Cooking Facilities**
There shall be no kitchen or cooking facilities in a guest cottage.

e. **Compatibility**
A guest cottage shall be compatible in character and subordinate in size to the principal dwelling unit.

f. **Setbacks**
A guest cottage shall comply with the minimum setbacks applicable to the principal single-family dwelling unit.

g. **No Separate Ownership**
A guest cottage shall remain accessory to and under the same ownership as the principal dwelling unit and shall not be subdivided or sold as a condominium.

67. Gun Club
An open or enclosed facility used for the discharge of firearms or projectiles at targets.

a. **Setbacks and Buffers**

1) **Enclosed**
An enclosed gun club shall have a 100-foot setback and a 50 foot buffer from a residentially occupied or zoned property. These setbacks are in addition to the minimum required setbacks of the district.

2) **Open**
An open gun club and its accessory shooting areas shall have a 300 foot setback to a 100 foot buffer from residentially occupied or zoned property. These setbacks are in addition to the minimum required setbacks of the district.

b. **Lot Size**
Except in the IL district, a gun club shall be located on a minimum of five acres or meet the minimum lot and setback requirements of the district in which it is located, whichever is greater.

c. **AR/RSA**
An open gun club may be permitted in the SA FLU subject to a Class A conditional use approval. **[Ord. 2005 – 002]**

68. **Gun Range, Private**
A private facility, open or enclosed, used for the discharge of firearms or projectiles at targets and not to be used for commercial purposes or by the general public.

a. **Required Lot Size, Buffer and Approval Process**

1) **Enclosed**
An enclosed private gun range shall be located on a lot of five acres or greater, and shall be subject to Special Permit issued by the Zoning Director. An enclosed shooting gun range shall have a 100 foot setback and an additional 50 foot buffer from residentially occupied property in addition to the required minimum setbacks.

2) **Open**
Requirements for open private gun ranges vary based on location of proposed range and type of weapons to be fired. An outdoor gun range use for small caliber and rim fire shall have a 100 foot setback and an additional 50 foot buffer from residentially occupied property. An outdoor gun range for large caliber or center-fire shall have a 300 foot setback and an additional 100 foot buffer from residentially occupied property. These setbacks are in addition to the required minimum setbacks. The discharge of firearms shall not occur within 300 yards of a structure. The shooter must have the written permission of the property owner. A bullet trap is required in all locations.

b. **Small Caliber and Rim Fire**
The open firing of handguns of 22 calibers and less which are rim-fire or the firing of any type of shotgun shall be allowed on lots of two and one-half acres or greater. A private gun range use, which lies east of the L-40 canal, as defined below, shall be subject to DRO approval. A private gun range use, which lies west of the L-40 canal, as defined below, shall require a Special Permit approved by the Zoning Director.

c. **Larger Caliber or Center-Fire**
The open firing of any center-fire gun or of handguns of more than 22 calibers shall require a minimum lot size of ten acres. A private gun range located east of the L-40 canal, as defined below, shall be subject to Class A Conditional use approval. A private gun range located west of the L-40 canal, as defined below, shall be subject to DRO review and approval.

d. **L-40 Canal**
For the purpose of this Subsection, the boundaries of the L-40 Canal are: From the Broward County Line north along Canal L-36 to the Loxahatchee National Wildlife Refuge. Thence north to Southern Boulevard along Canal L-40. Thence west along Southern Boulevard to a north-south line 1.5 miles west of Canal L-8, which coincides with a private agricultural road heading north from Southern Boulevard at that point where SR 880 intersects Southern Boulevard from the south. Thence north along the line of this north-south road to the boundary of the J. W. Corbett Wildlife Management Area. Thence east and north along the boundary at the J. W. Corbett Wildlife Management Area to the Martin County Line.

69. **Heavy Industry**
An establishment engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes utilizing flammable, hazardous, or explosive materials, or processes which potentially involve hazardous or commonly recognized offensive conditions. Typical uses include manufacturing and warehousing of chemicals, dry ice, fertilizers, fireworks and explosives, pulp and paper products, and radioactive materials; fat rendering plants; slaughterhouses and tanneries; steel works; and petroleum refineries.

a. **Fireworks**
The retail sale of fireworks from a permanent fireworks storage facility or establishment shall be limited to an accessory use.

70. **Home Occupation**
A business, profession, occupation, trade, artisan, or handcraft conducted in a dwelling unit for commercial gain by a resident of the unit. A home occupation shall not include those businesses which are required by State of Florida agencies to be open to the public. **[Ord. 2009-040]**

a. **Incidental Nature**
Shall be clearly incidental and subordinate to the residential use of the dwelling property and shall be confined to no more than ten percent of the total floor area of the dwelling.

30. **Ground Water –**
    a. Water beneath the surface of the ground within a zone of saturation where such water is at or above atmospheric pressure, whether within the voids between soil particles or within solution channels or fractures in rock.
    b. For the purposes of Art. 14.B, water that fills all the unblocked voids of underliying material below the ground surface, which is the upper limit of saturation, or water which is held in the unsaturated zone by capillarity.
    c. For the purposes of Art. 15, a source of water existing below the surface of the ground and not exposed to the atmosphere.
31. **Groundwater and Natural Resources Protection Board (GNRPB)** - for the purposes of Art. 14, ENVIRONMENTAL STANDARDS, that board designated by the BCC, to hear alleged violations of this Chapter and other state and local laws protecting the groundwater and natural resources of PBC. **[Ord. 2011-001]**
32. **Groves/Row Crops** - the cultivation of fruits and vegetables for bona-fide agricultural purposes.
33. **Grubbing** - removal of vegetation from land by digging, raking, dragging or otherwise disturbing the roots of the vegetation and the soil in which roots are located.
34. **Guarantee** - sufficient funds over which PBC has control irrevocably committed by written instrument to secure complete performance of a contract for required improvements, condition of a Development Order or Road Agreement.
35. **Guest Cottage** - accessory sleeping quarters provided for non-paying guests by the occupant of a single-family or ZLL dwelling unit.
36. **Gun Club** - an open or enclosed facility used for the discharge of firearms or projectiles at targets.
37. **Gun Range, Private** - for the purposes of Art. 4, a private facility, open or enclosed, used for the discharge of firearms or projectiles at targets and not to be used for commercial purposes or by the general public.
38. **Guyed Tower** - a structure that is supported either partially or completely by guy wires and ground anchors.

H. **Terms defined herein or referenced Article shall have the following meanings:**
1. **Habitable Room** - a room occupied by one or more persons for living, eating, sleeping, or working purposes. It does not include toilets, laundries, serving and storage pantries, corridors, cellars, and spaces that are not used frequently or during extended periods.
2. **Handicap Space** - for the purposes of Art. 6, a parking space designed, marked and reserved for exclusive use by persons registered as handicapped.
3. **Handicapped Person** - has the meaning given in F.S. §760.22(7).
4. **Hardship** – for the purposes of Art. 18, see Exceptional Hardship. **[Ord. 2004-013]**
5. **Hatchling** - for the purposes of Art. 14, any specimen of sea turtle, within or outside of a nest, which has recently hatched from an egg.
6. **Hatracking** - see Pruning, Hatracking.
7. **Hazard** - for the purposes of Art. 16, an advisory determination rendered by the FAA at the conclusion of an Aeronautical Study made under FAR Part 77 indicating the proposed structure is not a safe and/or efficient use of airspace.
8. **Health Hazard** - any condition, device, or practice in a water supply system or its operation, which creates or may create an imminent or substantial danger to the health and well-being of the water consumer.
9. **Health Threat** - for the purposes of Art. 15, any condition, device or practice in a water supply system or its operation which creates or may create an imminent or substantial danger to the health and well being of the water consumer.
10. **Heavy Industry** - an establishment engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes utilizing flammable, hazardous, or explosive materials, or processes which potentially involve hazardous or commonly recognized offensive conditions. Typical uses include manufacturing and warehousing of chemicals, dry ice, fertilizers, fireworks and explosives, pulp and paper products, and radioactive materials; fat rendering plants; slaughterhouses and tanneries; steel works; and petroleum refineries.
11. **Hedge** - for the purposes of Art. 7, a landscape barrier consisting of a continuous, dense planting of shrubs. A series of shrubs planted in a manner so as to form a continuous visual screen.
12. **Heliport or Vertiport -**

Table 6.A.1.B - Minimum Off-Street Parking and Loading Requirements – Cont'd

Use Type: Recreational	Parking (1)	Loading (2)
Arena, auditorium or stadium	1 space per 3 seats	B
Bowling alley	3 spaces per lane	N/A
Campground	1 space per campsite	N/A
Clubhouse (Recreational Pod) [7]	1 space per 300 sq.ft. of air conditioned area (includes all interior uses): and 1 bicycle parking rack shall be provided	N/A
Entertainment, indoor (except bowling alley)	1 space per 200 sq. ft. or 1/3 seats, whichever is greater	N/A
Entertainment, outdoor	1 space per 3 seats; or 10 spaces per acre occupied by amusements, whichever is greater	N/A
Fitness center	1 space per 200 sq. ft.	N/A
Golf course	4 spaces per hole; plus 1 space per 250 sq. ft. of clubhouse	N/A
Gun club, enclosed and open, or gun range, private	1 space per target area	N/A
Marine facility	1 space per 250 sq. ft.; plus 1 space per wet slip; plus one space per 3 dry slips	A
Park, passive	2 spaces for the first acre; plus 1 space for each additional 2 acres; additional parking shall be provided for each additional facility or land use constructed in the park as herein provided	N/A
Special event	1 space per 3 seats; or 10 spaces per acre occupied by amusements, whichever is greater	N/A
Swimming pool	1 space per 200 sq. ft. of pool area; and 1 bicycle parking rack shall be provided	N/A
Tennis Courts [6] And Basketball Courts [7]	1.5 spaces per court; and 1 bicycle parking rack shall be provided	N/A
Zoo	1 space per 2,000 sq. ft. of land area	N/A

[Ord. 2005-002] [Ord. 2007-001]

Loading Key:	
Standard "A"	One space for the first 5,000 square feet of GFA, plus one for each additional 30,000 square feet of GFA.
Standard "B"	One space for the first 10,000 square feet of GFA, plus one for each additional 15,000 square feet of GFA.
Standard "C"	One space for the first 10,000 square feet of GFA, plus one for each additional 100,000 square feet of GFA.
Standard "D"	One space for each 50 beds for all facilities containing 20 or more beds.
Standard "E"	One space for the first 10,000 square feet of GFA, plus one for each additional 20,000 square feet of GFA The space shall be a minimum of 12 feet in width and 18.5 feet in length for uses that require limited loading.

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OKEECHOBEE COUNTY CODE

11.04.00. - SPECIAL EXCEPTIONS

11.04.01. - Generally.
11.04.02. - Special exceptions by zoning classifications.
11.04.03. - Standards for granting special exceptions.
11.04.04. - Submissions.
11.04.05. - Conditions and safeguards.
11.04.06. - Residential medical assistance.
11.04.07. - Security trailers.
11.04.08. - Accessory recreational vehicles.

11.04.01. - Generally.

A special exception is a *use* that would not be appropriate generally or without restriction throughout a zoning division, district or county at large, but which, if controlled as to number, area, location, or relation to neighborhoods, would promote the health, safety, welfare, order, comfort, convenience, appearance, prosperity, or the general welfare of the county and its residents. Such uses may be permissible in a zoning classification or district as a special exception if specific provision for such a special exception is made in this Code. Special exceptions are permissible by the board of adjustments and appeals after public notice and hearing as described in sections 12.03.01, 12.03.02, part 13.04.00 and subject to appropriate conditions and safeguards as provided in this part.

(Ord. No. 2003-04, § 1(Exh. A), 4-10-03; Ord. No. 2005-12, § 4(Exh. A), 7-28-05)

11.04.02. - Special exceptions by zoning classifications.

The following specific special exceptions are allowable for each zoning classification:

A. *Agriculture-A.*

1. Commercial fishery. All buildings or parking for such facilities must be at least 50 feet from any property line in separate ownership or right-of-way line.
2. Housing for agricultural labor when such labor is not employed on the same premises upon which the housing is located, when housing has a greater capacity than one dwelling unit for each 20 (but less than one dwelling unit for each ten) acres of land contained in the premises, or when proposed structures are to be located closer than 200 feet to any other property in separate ownership.
3. Animal hospital, veterinary clinic, animal boarding place, fur-farm, breeding or raising of non-farm or of exotic animals, provided no building for the housing of animals shall be located within 75 feet of any property line in separate ownership.
4. Commercial packing house for fruits or vegetables; citrus concentrate plant.

5. Milk processing plant or milk receiving station; poultry slaughtering and dressing, livestock slaughtering; saw mills. No structure to be located within 200 feet of any residential zoned property.
6. Livestock auction.
7. Mines, and borrow pits, subject to meeting all other applicable governmental regulations.
8. Residential medical assistance. See section 11.04.06
9. Outdoor gun club; Outdoor shooting, rifle or target range.
10. Commercial uses directly related to or in support of bona fide agricultural operations.
11. Private or public camps or retreats and the like, schools and campuses other than public or private elementary and high schools with conventional academic curriculums.
12. Public or private sports or recreation complex, stadium, arena, race course, drive-in theater, or other like facilities where the size or impacts of a such a facility would be incompatible with the commercial activity center or commercial corridor mixed use future land use classifications; uses accessory to the facilities referenced in this paragraph, including public eating establishments, sale of beer, wine or alcoholic beverages for on-premises consumption, retail sales of affiliated merchandise to the general public, and the like.
13. Crematory for non-human remains; crematory for human remains when not accessory to or on the same premises as a cemetery, columbarium or mausoleum.
14. Radio, television or other commercial transmitting or receiving towers, antennas, antenna support structures subject to the criteria established in section 7.10, wireless communications facilities pursuant to section 7.10.
15. Nursing home, assisted living facility.
16. Bed and breakfast establishment; cabins, lodges in association with on-site or nearby recreational activities.
17. Community residential home.

B. *Residential single-family RSF.*

1. Golf course and country club (not including miniature golf course or separate practice driving range) provided lot comprises at least 110 acres of land and that any required parking area is located at least 100 feet and any building is located at least 300 feet from any other residentially zoned property.
2. Public utility building and facilities necessary to serve surrounding neighborhoods (not including service or storage yards or wireless communications facilities). Such facilities shall be designed, sited, and landscaped to preserve compatibility with a single-family neighborhood.
3. Expansion of boundaries of existing cemetery, columbarium, or mausoleum.
4. Private neighborhood or community (nonpublic) recreation facility, including tennis or racquet club. No automotive parking shall be located within 50 feet of any other property in separate ownership. No building shall be located within 100 feet of any other property in separate ownership. Lighted recreation facilities shall not be used after 10:00 p.m.
5. Day care not requiring a department of health and rehabilitative services (HRS) license or permit.

11.04.03. - Standards for granting special exceptions.

In reaching its conclusion and in making the findings required in this part, the board of adjustments and appeals shall consider and weigh, among others, the following factors and standards, where applicable and shall show in its record such factors were considered. Further, the board shall find in the case of any of these factors and standards, where they may be relevant and applicable, that the purposes and requirements for granting the special exception have been met by the applicant:

A. Ingress and egress to the property and the proposed structures thereof, if any, including such considerations as automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

B. Off-street parking and loading areas where required, including consideration of relevant factors in subsection A. preceding, and the economic, noise, glare, or other effects of the locations of such off-street parking and loading areas on adjacent and nearby properties and loading areas on adjacent and nearby properties and properties generally in the district;

C. Refuse and service areas, including consideration of relevant factors in subsections A. and B. preceding;

D. Utilities, including such considerations as hook-in locations and availability and compatibility of utilities for the proposed use;

E. Screening and buffering, including considerations of such relevant factors as type, dimensions, and character to preserve and improve compatibility and harmony of use and structure between the proposed special exception and the uses and structures of adjacent and nearby properties and properties generally in the district;

F. Signs, if any, and proposed exterior lighting, if any, with reference to glare, traffic safety, and economic effects of same on properties in the district and compatibility and harmony with other properties in the district;

G. Required yards and open spaces;

H. Height of structure where related to uses and structures on adjacent and nearby properties and properties generally in the district;

I. Economic effect on adjacent and nearby properties and properties generally in the district of the grant of the special exception.

MARTIN COUNTY CODE

Sec. 3.11. - Permitted uses.

Lands zoned in accordance with this Division shall be limited to the uses indicated as permitted in Tables 3.11.1, 3.11.2 and 3.11.3. A "P" indicates that the use is permitted within that zoning district provided that the use can be developed in accordance with the requirements set forth in Divisions 3 and 4 and all other applicable requirements of this Article and the LDR.

(Ord. No. 608, pt. 1, 3-19-2002; Ord. No. 623, pt. 1, 11-5-2002)

TABLE 3.11.1
PERMITTED USES - CATEGORY "A" AGRICULTURAL AND RESIDENTIAL DISTRICTS

USE CATEGORY	AG20A	AR5A	AR10A	RE2A	RE1A	RE½A	RS3	RS4	RS5	RS6	RS8	RS10	RM3	RM4	RM5	RM6	RM8	RM10	MHP	MHS
Residential Uses																				
Accessory dwelling units																				
Apartment hotels																				
Mobile homes	P																		P	P
Modular homes	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Multifamily dwellings													P	P	P	P	P	P		
Single-family detached dwellings	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P
Single-family detached dwellings, if established prior to the effective date of this ordinance																			P	P
Townhouse dwellings													P	P	P	P	P	P		
Duplex dwellings													P	P	P	P	P	P		
Zero lot line single-family dwellings												P	P	P	P	P	P	P		
Agricultural Uses																				
Agricultural processing, indoor	P																			
Agricultural processing, outdoor	P																			
Agricultural veterinary	P	P	P	P																

medical services																				
Aquaculture	P	P	P																	
Crop farms	P	P	P	P																
Dairies	P																			
Exotic wildlife sanctuaries	P	P	P	P																
Farmer's markets	P	P	P																	
Feed lots	P																			
Fishing and hunting camps	P	P																		
Orchards and groves	P	P	P	P																
Plant nurseries and landscape services	P	P	P	P																
Ranches	P	P	P																	
Silviculture	P	P	P	P																
Stables, commercial	P	P	P	P																
Storage of agricultural equipment, supplies and produce	P																			
Wildlife rehabilitation facilities	P	P	P																	
Public and Institutional Uses																				
Administrative services, not-for-profit	P	P	P																	
Cemeteries, crematory operations and columbaria	P	P	P																	
Community centers	P	P	P			P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Correctional facilities																				
Cultural or civic uses																				
Dredge spoil facilities																				
Educational institutions					P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Electrical generating plants																				
Fairgrounds																				
Halfway houses																				
Halfway houses, on lots where such use was lawfully	P																			

established prior to the effective date of this ordinance																				
Hospitals																				
Neighborhood assisted residences with six (6) or fewer residents	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Neighborhood boat launches					P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Nonsecure residential drug and alcohol rehabilitation and treatment facilities																				
Nonsecure residential drug and alcohol rehabilitation and treatment facilities, on lots where such use was lawfully established prior to the effective date of this ordinance	P	P	P																	
Places of worship	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Post offices																				
Protective and emergency services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public libraries						P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public parks and recreation areas, active	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public parks and recreation areas, passive	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public vehicle storage and maintenance																				
Recycling drop-off centers	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Residential care facilities													P	P	P	P	P	P		
Residential care facilities, where such use was lawfully established prior to the	P	P	P																	

effective date of this ordinance																				
Solid waste disposal areas																				
Utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Commercial and Business Uses																				
Adult business																				
Bed and breakfast inns	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Business and professional offices																				
Campgrounds																				
Commercial amusements, indoor																				
Commercial amusements, outdoor																				
Commercial day care	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Construction industry trades																				
Construction sales and services																				
Family day care	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Financial institutions																				
Flea markets																				
Funeral homes																				
General retail sales and services																				
Golf courses	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Golf driving ranges																				
Hotels and motels																				
Kennels, commercial	P	P	P																	
Limited retail sales and services																				
Marinas, commercial																				
Marine education and research																				
Medical services																				
Parking lots and garages																				
Recreational vehicle parks																				

Recreational vehicle parks, limited to the number and configuration of units lawfully established prior to the effective date of this ordinance																			P	P
Residential storage facilities																				
Restaurants, convenience, with drive through facilities																				
Restaurants, convenience without drive through facilities																				
Restaurants, general																				
Shooting ranges, indoor																				
Shooting ranges, outdoor	P																			
Trades and skilled services																				
Vehicular sales and service																				
Vehicular service and maintenance																				
Veterinary medical services																				
Wholesale trades and services																				
Transportation, Communication and Utilities Uses																				
Airstrips	P	P	P	P																
Airports, general aviation																				
Industrial Uses																				
Composting, where such use was approved or lawfully established prior to March																				

1, 2003																				
Extensive impact industries																				
Limited impact industries																				
Mining	P	P	P																	
Salvage yards																				
Yard trash processing	P																			
Yard trash processing on lots where such use was lawfully established prior to March 29, 2002																				

(Ord. No. 608, pt. 1, 3-19-2002; Ord. No. 633, pt. 1, 9-2-2003; Ord. No. 669, pt. 1, 6-28-2005; Ord. No. 809, pt. 1, 9-9-2008)

TABLE 3.11.2

PERMITTED USES - CATEGORY "A" NONRESIDENTIAL DISTRICTS

USE CATEGORY	CO	COR1	COR2	LC	CC	GC	WRC	WGC	LI	GI	HI	PR	PC	PS1	PS2
Residential Uses															
Accessory dwelling units		P	P				P	P	P	P	P				
Apartment hotels			P	P	P	P	P	P							
Mobile homes															
Modular homes		P	P				P								
Multifamily dwellings		P	P				P								
Single-family detached dwellings		P	P				P								
Single-family detached dwellings, if established prior to the effective date of this ordinance															
Townhouse dwellings		P	P				P								
Duplex dwellings		P	P				P								
Zero lot line single-family dwellings		P	P				P								
Agricultural Uses															
Agricultural processing, indoor										P	P				
Agricultural processing, outdoor											P				
Agricultural veterinary medical services									P	P					
Aquaculture								P	P	P	P				
Crop farms															
Dairies															
Exotic wildlife sanctuaries															
Farmer's markets															
Feed lots															
Fishing and hunting camps															
Orchards and groves															
Plant nurseries and landscape services				P	P	P			P	P					
Ranches															
Silviculture															
Stables, commercial															

Storage of agricultural equipment, supplies and produce															
Wildlife rehabilitation facilities															
Public and Institutional Uses															
Administrative services, not-for-profit	P	P	P	P	P	P	P	P	P	P	P			P	P
Cemeteries, crematory operations and columbaria									P	P	P				P
Community centers	P	P	P	P	P	P	P	P						P	P
Correctional facilities										P	P				P
Cultural or civic uses	P	P	P	P	P	P	P	P						P	P
Dredge spoil facilities												P			P
Educational institutions	P	P	P	P	P	P	P	P	P	P	P	P		P	P
Electrical generating plants											P				
Fairgrounds												P		P	P
Halfway houses															P
Halfway houses, on lots where such use was lawfully established prior to the effective date of this ordinance															
Hospitals						P								P	P
Neighborhood assisted residences with six (6) or fewer residents		P	P				P							P	P
Neighborhood boat launches															
Nonsecure residential drug and alcohol rehabilitation and treatment facilities															P
Nonsecure residential drug and alcohol rehabilitation and treatment facilities, on lots where such use was lawfully established prior to the effective date of this ordinance															
Places of worship	P	P	P	P	P	P			P	P				P	P
Post offices	P	P	P	P	P	P			P					P	P
Protective and emergency services	P	P	P	P	P	P	P	P	P	P	P			P	P
Public libraries	P	P	P	P	P	P			P					P	P
Public parks and recreation areas, active	P	P	P	P	P	P	P	P	P	P	P	P		P	P
Public parks and recreation areas, passive	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public vehicle storage and maintenance	P													P	P
Recycling drop-off centers	P	P	P	P	P	P	P	P	P	P	P			P	P
Residential care facilities		P	P	P	P									P	P
Solid waste disposal areas											P				P
Utilities	P	P	P	P	P	P	P	P	P	P	P			P	P
Commercial and Business Uses															
Adult business									P	P	P				
Ancillary retail use	P	P	P												
Bed and breakfast inns	P	P	P	P	P		P	P							
Business and professional offices	P	P	P	P	P	P	P	P	P	P					
Campgrounds												P			
Commercial amusements, indoor				P	P	P	P	P	P						
Commercial amusements, outdoor						P	P	P	P						
Commercial day care				P	P	P	P	P	P	P				P	P
Construction industry trades				P	P	P			P	P	P				
Construction sales and services				P	P	P			P	P	P				
Family day care		P	P												
Financial institutions	P	P	P	P	P	P			P	P					
Flea markets						P			P	P					
Funeral homes				P	P	P								P	P
General retail sales and services					P	P			P						
Golf courses														P	P
Golf driving ranges						P			P					P	P
Hotels, motels, resorts and spas				P	P	P	P	P	P	P					
Kennels, commercial						P			P	P	P				P
Limited retail sales and services				P	P	P	P	P	P						
Marinas, commercial					P	P	P	P				P			

Marine education and research							P	P						P	P
Medical services	P	P	P	P	P	P			P						
Pain management clinics				P		P			P						
Parking lots and garages				P	P	P								P	P
Recreational vehicle parks				P	P	P	P	P				P			
Recreational vehicle parks, limited to the number and configuration of units lawfully established prior to the effective date of this ordinance		P	P												
Residential storage facilities	P	P	P	P	P	P			P	P					
Restaurants, convenience, with drive-through facilities						P			P						
Restaurants, convenience, without drive-through facilities				P	P	P	P	P							
Restaurants, general				P	P	P	P	P	P	P					
Shooting ranges															
Shooting ranges, indoor				P	P	P			P	P	P			P	P
Shooting ranges, outdoor															P
Trades and skilled services						P	P	P	P	P	P				
Vehicular sales and service						P			P	P					
Vehicular service and maintenance						P			P	P	P				
Veterinary medical services				P	P	P			P	P	P				
Wholesale trades and services						P		P	P	P	P				
Transportation, Communication and Utilities Uses															
Airstrips															
Airports, general aviation										P	P				
Industrial Uses															
Composting, where such use was approved or lawfully established prior to March 1, 2003															
Extensive impact industries								P		P	P				
Limited impact industries								P	P	P	P				
Mining											P				
Salvage yards										P	P				P
Yard trash processing											P				P
Yard trash processing on lots where such use was lawfully established prior to March 29, 2002									P	P					
Life Science, Technology and Research (LSTAR) Uses															
Biomedical research	P	P	P	P	P	P			P	P	P			P	P
Bioscience research	P	P	P	P	P	P			P	P	P			P	P
Computer and electronic components research and assembly	P	P	P	P	P	P			P	P	P			P	P
Computer and electronic products research and assembly	P	P	P	P	P	P			P	P	P			P	P
Computer programming/software research	P	P	P	P	P	P			P	P	P			P	P
Computer system design	P	P	P	P	P	P			P	P	P			P	P
Electromedical apparatus research and assembly	P	P	P	P	P	P			P	P	P			P	P
Electronic equipment research and assembly	P	P	P	P	P	P			P	P	P			P	P
Laser research and assembly	P	P	P	P	P	P			P	P	P			P	P
Lens research	P	P	P	P	P	P			P	P	P			P	P
Management, scientific and technical services	P	P	P	P	P	P			P	P	P			P	P
Marine Research	P	P	P	P	P	P		P	P	P	P			P	P
Medical and dental labs	P	P	P	P	P	P			P	P	P			P	P
Medical equipment assembly	P	P	P	P	P	P			P	P	P			P	P
Optical equipment assembly	P	P	P	P	P	P			P	P	P			P	P
Optical instruments assembly	P	P	P	P	P	P			P	P	P			P	P
Optoelectronics assembly	P	P	P	P	P	P			P	P	P			P	P
Pharmaceutical products research	P	P	P	P	P	P			P	P	P			P	P
Precision instrument assembly	P	P	P	P	P	P			P	P	P			P	P
Professional, scientific and technical services	P	P	P	P	P	P			P	P	P			P	P
Reproducing magnetic and optical media	P	P	P	P	P	P			P	P	P			P	P
Research and development laboratories and facilities, including	P	P	P	P	P	P			P	P	P			P	P

alternative energy															
Scientific and technical consulting services	P	P	P	P	P	P			P	P	P			P	P
Simulation training	P	P	P	P	P	P			P	P	P			P	P
Technology centers	P	P	P	P	P	P			P	P	P			P	P
Telecommunications research	P	P	P	P	P	P			P	P	P			P	P
Testing laboratories	P	P	P	P	P	P			P	P	P			P	P
Targeted Industries Business (TIB) Uses															
Aviation and aerospace manufacturing									P	P	P				
Business-to-business sales and marketing	P	P	P	P	P	P			P	P	P				
Chemical manufacturing									P	P	P				
Convention centers					P	P			P	P	P			P	P
Credit bureaus	P	P	P	P	P	P			P	P	P			P	P
Credit intermediation and related activities	P	P	P	P	P	P			P	P	P			P	P
Customer care centers	P	P	P	P	P	P			P	P	P			P	P
Customer support	P	P	P	P	P	P			P	P	P			P	P
Data processing services	P	P	P	P	P	P			P	P	P			P	P
Electrical equipment and appliance component manufacturing									P	P	P				
Electronic flight simulator manufacturing									P	P	P				
Fiber optic cable manufacturing									P	P	P				
Film, video, audio and electronic media production and postproduction	P	P	P	P	P	P			P	P	P			P	P
Food and beverage products manufacturing									P	P	P				
Funds, trusts and other financial vehicles	P	P	P	P	P	P			P	P	P			P	P
Furniture and related products manufacturing									P	P	P				
Health and beauty products manufacturing									P	P	P				
Information services and data processing	P	P	P	P	P	P			P	P	P			P	P
Insurance carriers	P	P	P	P	P	P			P	P	P			P	P
Internet service providers, web search portals	P	P	P	P	P	P			P	P	P			P	P
Irradiation apparatus manufacturing									P	P	P				
Lens manufacturing									P	P	P				
Machinery manufacturing									P	P	P				
Management services	P	P	P	P	P	P			P	P	P			P	P
Marine and marine related manufacturing								P	P	P	P				
Metal manufacturing									P	P	P				
National, international and regional headquarters	P	P	P	P	P	P			P	P	P			P	P
Nondepository credit institutions	P	P	P	P	P	P			P	P	P			P	P
Offices of bank holding companies	P	P	P	P	P	P			P	P	P			P	P
On-line information services	P	P	P	P	P	P			P	P	P			P	P
Performing arts centers				P	P	P			P	P	P			P	P
Plastics and rubber products manufacturing									P	P	P				
Printing and related support activities									P	P	P				
Railroad transportation									P	P	P				
Reproducing magnetic and optical media manufacturing									P	P	P				
Securities, commodity contracts	P	P	P	P	P	P			P	P	P			P	P
Semiconductor manufacturing									P	P	P				
Simulation training	P	P	P	P	P	P			P	P	P			P	P
Spectator sports					P	P			P	P	P			P	P
Surgical and medical instrument manufacturing									P	P	P				
Technical support	P	P	P	P	P	P			P	P	P			P	P
Telephonic and on-line business services	P	P	P	P	P	P			P	P	P			P	P
Textile mills and apparel manufacturing									P	P	P				
Transportation air									P	P	P				
Transportation equipment manufacturing									P	P	P				
Transportation services						P			P	P	P				
Transaction processing	P	P	P	P	P	P			P	P	P			P	P
Trucking and warehousing									P	P	P				

Wood and paper product manufacturing									P	P	P				

(Ord. No. 608, pt. 1, 3-19-2002; Ord. No. 623, pt. 1, 11-5-2002; Ord. No. 633, pt. 1, 9-2-2003; Ord. No. 669, pt. 1, 6-28-2005; Ord. No. 866, pt. 2, 6-22-2010; Ord. No. 891, pt. 1, 2-22-2011)

TABLE 3.11.3
PERMITTED USES - CATEGORY "B" DISTRICTS

USE CATEGORY	HR1	HR1A	R1	R1A	R1B	R1C	R2	R2B	R2C	R2T	RT	TP	E	E1	WE1
Residential Uses															
Accessory dwelling units															
Apartment hotels															
Mobile homes											P	P			
Modular homes	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Multifamily dwellings															
Single-family detached dwellings	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Single-family detached dwellings, if established prior to the effective date of this ordinance															
Townhouse dwellings															
Duplex dwellings															
Zero lot line single-family dwellings															
Agricultural Uses															
Agricultural processing, indoor															
Agricultural processing, outdoor															
Agricultural veterinary medical services															
Aquaculture															
Crop farms															
Dairies															
Exotic wildlife sanctuaries															

Farmer's markets															
Feed lots															
Fishing and hunting camps															
Orchards and groves															
Plant nurseries and landscape services															
Ranches															
Silviculture															
Stables, commercial															
Storage of agricultural equipment, supplies and produce															
Wildlife rehabilitation facilities															
Public and Institutional Uses															
Administrative services, not-for-profit															
Cemeteries, crematory operations and columbaria															
Community centers	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Correctional facilities															
Cultural or civic uses															
Dredge spoil facilities															
Educational institutions	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Electrical generating plants															
Fairgrounds															
Halfway houses															
Halfway houses, on lots where such use was lawfully established prior to the effective date of this ordinance															
Hospitals															
Neighborhood	P	P	P	P	P	P	P	P	P		P	P	P	P	P

assisted residences with six or fewer residents															
Neighborhood boat launches															
Nonsecure residential drug and alcohol rehabilitation and treatment facilities															
Nonsecure residential drug and alcohol rehabilitation and treatment facilities, on lots where such use was lawfully established prior to the effective date of this ordinance															
Places of worship	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Post offices															
Protective and emergency services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public libraries	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public parks and recreation areas, active	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public parks and recreation areas, passive	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public vehicle storage and maintenance															
Recycling drop-off centers															
Residential care facilities															
Solid waste disposal areas															
Utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Commercial and Business Uses															
Adult business															
Bed and breakfast inns	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Business and professional offices															

Campgrounds															
Commercial amusements, indoor															
Commercial amusements, outdoor															
Commercial day care	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Construction industry trades															
Construction sales and services															
Family day care	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Financial institutions															
Flea markets															
Funeral homes															
General retail sales and services															
Golf courses	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Golf driving ranges															
Hotels and motels															
Kennels, commercial															
Limited retail sales and services															
Marinas, commercial															
Marine education and research															
Medical services															
Parking lots and garages															
Recreational vehicle parks															
Recreational vehicle parks, limited to the number and configuration of units lawfully established prior to the effective date of this ordinance												P			
Residential storage facilities															

Restaurants, convenience, with drive through facilities															
Restaurants, convenience without drive through facilities															
Restaurants, general															
Shooting ranges, indoor															
Shooting ranges, outdoor															
Trades and skilled services															
Vehicular sales and service															
Vehicular service and maintenance															
Veterinary medical services															
Wholesale trades and services															
Transportation, Communication and Utilities Uses															
Airstrips															
Airports, general aviation															
Industrial Uses															
Composting, where such use was approved or lawfully established prior to March 1, 2003															
Extensive impact industries															
Limited impact industries															
Mining															
Salvage yards															
Yard trash processing															
Yard trash processing on lots where such use was															

lawfully established prior to March 29, 2002															

(Ord No. 608, pt. 1, 3-19-2002; Ord. No. 633, pt. 1, 9-2-2003; Ord. No. 669, pt. 1, 6-28-2005; Ord. No. 809, pt. 1, 9-9-2008)

Sec. 3.3. - Glossary of terms.

For purposes of this Article, the following words, terms and phrases shall have the meanings as set forth below:

Accessory dwelling unit. (See: Dwelling unit, accessory.)

Administrative services, not-for-profit. Offices for the provision of government services to the public, including social services and utilities, either by a governmental entity or by a private not-for-profit service provider.

Agriculture, bona fide. Good faith commercial agricultural use of the land classified by the property appraiser for assessment purposes as agricultural, pursuant to the provisions of F.S. § 193.461.

Agriculture processing. The initial compressing, milling, shelling, threshing, sorting, grading, sawing, or packaging of farm products, which processing is reasonably required to take place in proximity to the site where such products are produced.

Agricultural veterinary medical services. Establishments providing professional medical care of nonhousehold pets (those other than dogs, cats, caged birds, etc.).

Airport. A facility designed to facilitate the take-off and landing of aircraft, including all accessory uses customarily incidental to aircraft operations, such as but not limited to, administrative offices, runways, taxiways, communication and visual guidance systems and areas, whether indoor or outdoor, for the storage and maintenance of aircraft.

Airport, general aviation. An airport encompassing all facets of civil aviation except air carriers holding a certificate of public convenience and necessity from the Federal Aviation Administration and large aircraft commercial operators or regularly scheduled commercial operators.

Airstrip. An airport that is restricted to the use of the owner of the parcel on which it is located and the invited guests of the parcel owner, and which is further restricted to agricultural support uses, such as, but not limited to, crop dusting.

Alley. A public right-of-way dedicated to public use which affords only a secondary means of access to abutting property and which is not intended for general traffic circulation.

Apartment hotel. An establishment offering transient lodging accommodations to the general public and where rooms or suites may include kitchen facilities and sitting rooms in addition to sleeping areas.

Aquaculture. The commercial cultivation of aquatic life, such as, but not limited to, fish, shellfish, and seaweed.

Assisted living facility. (See: Residential care facility.)

Bed and breakfast inn. An establishment operated by an owner or manager living on the premises which offers transient lodging accommodations to the general public. This definition specifically excludes halfway houses and nonsecure residential drug and alcohol treatment and rehabilitation facilities.

Bona fide agriculture. (See: Agriculture, bona fide.)

Building. Any structure having a roof supported by columns or walls, including domes.

Building coverage. The horizontal area measured from the exterior surface of the exterior walls of the ground floor of the principal and accessory structures on a lot.

Building permit. A permit issued pursuant to Chapter 21, Article 1, General Ordinances, Martin County Code.

Business and professional offices. Office uses which extend services by providing advice, information or consultation of a professional nature, such as, but not limited to, insurance, real estate, and executive management, but specifically excluding the storage or display of goods or chattels for the purpose of sale, lease, or rent and specifically excluding financial institutions. Business and professional office use shall also include the creation and processing of information, such as, but not limited to, life sciences, technology, research, computer software development, information storage and retrieval and publishing, excluding pain management clinics.

Campground. An establishment which offers transient lodging accommodations to the general public by providing designated spaces for tents or recreational vehicles, with or without utilities (see recreational vehicle park).

Cemeteries, crematory operations and columbaria. Uses typically associated with the interment of the dead.

Commercial amusements. Active or passive commercial recreation services including, but not limited to, theaters, bowling, tennis and other racket sports, miniature golf, swimming and other water-related sports and spectator sports.

Commercial day care. (See: Day care, commercial.)

Commercial kennel. (See: Kennel, commercial.)

Commercial marina. (See: Marina, commercial.)

Commercial stable. (See: Stable, commercial.)

Community center. A facility operated by a public or not-for-profit entity which is used for recreational, social, educational, or cultural activities.

Composting. A facility designed to convert organic solid waste into compost by means of biological decomposition carried out under controlled, primarily aerobic conditions.

Construction industry trades. Skilled occupations typically involved in construction, such as carpenters, painters, plumbers, masons, electricians, tile contractors, etc.

Construction sales and service. An establishment primarily engaged in construction activities which may include incidental storage on lots other than construction sites, as well as the retailing and wholesale of construction materials with outdoor storage.

Convenience restaurant. (See: Restaurant, convenience.)

Convenience store. (See: Retail sales and services, limited).

Corner lot. (See: Lot, corner.)

Crop farms. Growing and harvesting of agricultural products including, but not limited to, row crops and field crops (vegetables, fruits, grains, nuts, fibers, etc.).

Cultural or civic uses. Uses typically associated with public or not-for-profit private entities for the

promotion of a common cultural or civic objective such as literature, science, music, drama, art, sport or similar objectives.

Dairies. Production of dairy products.

Day care, commercial. An establishment providing supervised care of people, either children or adults, but not overnight accommodations.

Day care, family. A residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit as licensed by the State of Florida, pursuant to F.S. § 402.302.(7).

Dredge spoil facility. An area of land which is designed for the safe storage and processing of sand, silt, muck and other natural materials dredged from waterways under the supervision of the Florida Inland Navigation District. Spoil materials are generally allowed to dry naturally and may later be removed to be used for other purposes.

Duplex dwelling. (See: Dwelling, duplex.)

Dwelling, duplex. Two dwelling units, whether side-by-side or stacked, within one building located on a single lot but specifically excluding mobile homes as defined in this section (3.3).

Dwelling, multifamily. Three or more dwelling units within one building located on a single lot.

Dwelling, single-family detached. A dwelling unit that is not physically attached to any other dwelling by any means, which is surrounded by open space on all sides and which is the only dwelling unit on a lot. This definition specifically excludes mobile homes as defined in this section (3.3). Two or more single-family detached dwelling units placed on a single lot shall be considered a duplex or multifamily dwelling use, depending on the number of dwelling units involved.

Dwelling, townhouse. A single-family dwelling unit which is physically connected to another dwelling unit on at least one side, in which each individual dwelling unit extends from ground to roof and has a separate entrance from the outside.

Dwelling unit. A building comprised of one or more rooms providing cooking, sleeping, and sanitary facilities, designed for the exclusive use of a single family.

Dwelling unit, accessory. A dwelling unit of any physical type (e.g., a single-family detached dwelling, a duplex dwelling, or a townhouse dwelling) except a mobile home, located on a lot developed for nonresidential purposes, and which is designed and used exclusively by the landowner as either a personal residence (for the landowner and his family) or for the use of any employee (along with the family of the employee) of any nonresidential establishment on the lot.

Dwelling, zero lot line single-family dwelling. A single family dwelling unit which has one or more walls located on or close to one interior side lot line or shares a party wall with another such unit on an adjacent lot.

Educational institution. Public or private organizations authorized by the Florida Statutes to provide instructional services. Organizations providing instructional services which are not authorized by Florida Statutes shall be considered business and professional offices.

Exotic wildlife sanctuary. A public or private, nonprofit facility established for the protection, permanent care and/or rehabilitation of exotic Class I, Class II or Class III wild animals as defined by the Florida Fish and Wildlife Conservation Commission. Accessory uses to such facilities may include veterinary labs and services, directly related to the sanctuary, administration offices, conference rooms,

maintenance facilities, a caretaker residence, indoor and outdoor wildlife enclosures, other related support facilities and infrastructure improvements as determined appropriate by the Board of County Commissioners.

Extensive impact industry. (See: Industry, extensive impact.)

Family:

1. One or more persons related by blood, marriage, adoption, or guardianship occupying a single residential dwelling unit as a single housekeeping unit and sharing common facilities; or
2. Any group of up to five persons occupying a single dwelling unit as a single housekeeping unit and sharing common facilities.

Family day care. (See: Day care, family.)

Farmer's market. An establishment providing for the retail sale of agricultural products, primarily involving the sale of fresh produce, such as fruits and vegetables, but also including such products and services that are customarily provided in rural or agricultural areas.

Feed lot. A plot of land on which livestock is confined and fattened.

Financial institution. A use which provides banking, or other financial services, including information, advice or consultation of a professional nature.

Fishing and hunting camps. Recreational facilities established for the purpose of hunting and/or fishing which may provide overnight accommodations, food, transportation, guides and other customary accessory uses and facilities as set forth in section 3.76.1.

Flea market. Any premises where the principal use is the sale of new and used household goods, personal effects, tools, art work, small household appliances, and similar merchandise, objects, or equipment, in small quantities, in broken lots, not in bulk, for use or consumption by the immediate purchaser, in open air or partly enclosed booths or stalls which may or may not be within a wholly enclosed building.

Funeral homes. Undertaking and funeral services involving the care and preparation of deceased humans prior to burial but specifically excluding cemeteries, crematory operations and columbaria.

General restaurant. (See: Restaurant, general.)

General retail sales and services. (See: Retail sales and services, general.)

Golf course. A public or private establishment which allows use of golf facilities for a fee.

Gross floor area. The sum of the horizontal areas of each story of a building, measured from the outside of exterior walls or from the center line of party walls, excluding enclosed parking or loading areas and any space where the floor-to-ceiling height is less than six feet.

Guest house. A set of living quarters on the same lot as a single-family detached dwelling, having sanitary and/or cooking facilities separate from the principal dwelling, which is intended for temporary occupancy by guests of family members of the principal household.

Halfway house. A licensed home for inmates on release from more restrictive custodial confinement or where inmates are initially placed in lieu of more restrictive custodial confinement, and where supervision, rehabilitation, and counseling are provided to prepare residents for a return to society, enabling them to live independently. Such placement is pursuant to the authority of the Florida Department

of Corrections, or the state judicial system.

Home occupation. Any for-profit activity carried out within, or on the same lot as a residential dwelling unit, by a resident of such dwelling unit.

Hospital. An institution requiring a certificate of need that:

1. Offers services more intensive than those required for room, board, personal services and general nursing care;
2. Offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
3. Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery, obstetrical care, or other definitive medical treatment of similar extent.

A hospital may include offices for medical and dental personnel, central service facilities such as pharmacies, medical laboratories, day care centers for employees, and other related uses.

Hotels and motels. A building or other structure used, maintained or advertised as a place where sleeping accommodations are supplied for short term rent to tenants. Hotels and motels typically include accessory uses such as meeting or convention facilities and recreational facilities but individual rooms do not include kitchen facilities.

Independent living facility. (See: Residential care facility.)

Indoor shooting range. (See: Shooting range, indoor.)

Industrial use. The manufacture, warehousing, assembly, packaging, processing, fabrication, storage or distribution of goods and materials, including the creation and processing of information, such as, but not limited to, computer software development, information storage and retrieval, publishing, and the research and development of pharmaceutical products.

Industry, extensive impact. An industrial use having a high potential for negative impacts on the environment or on surrounding uses in terms of noise, glare, vibration, smoke, vapors, odors, fire or explosive hazards. Any industrial use where more than 20 percent of the use is conducted outside of an enclosed building, or involves the outdoor storage of materials or manufactured products exceeding 20 percent of the gross floor area of all the buildings on the lot, shall be deemed an extensive impact industry. This definition specifically excludes other separately defined uses referenced in these regulations, such as, but not limited to, mining, salvage yards, and solid waste disposal facilities.

Industry, limited impact. Any industrial use that is not an extensive impact industry.

Interior lot. (See: Lot, interior.)

Kennels, commercial. Facilities used for the commercial boarding of domestic animals such as dogs and cats.

Library, public. A government-owned or operated facility providing reading and other materials on loan to the general public and which may also provide general community services, such as meeting facilities.

Limited impact industry. (See: Industry, limited impact.)

Limited retail sales and services. (See: Retail sales and services, limited.)

Living area. The gross floor area of a dwelling unit, excluding any floor area of accessory structures.

Lot. A parcel of land, distinguished from surrounding parcels by ownership boundaries and excluding public rights-of-way.

Lot, corner. A lot abutting upon two streets at their intersections.

Lot, interior. Any lot which is not a corner lot.

Lot line means those lines defining ownership of an individual parcel of land, separating such parcel from separately owned parcels. Lots lines are further distinguished as follows:

1. *Front lot line:* The line dividing a lot from the street which provides primary vehicular access to the lot. On a corner lot only one lot line shall be considered the front line.
2. *Rear lot line:* The lot line opposite the front lot line.
3. *Side lot line:* Any lot line which is not a front lot line or a rear lot line.

Manufacturing. The mechanical or chemical transformation of materials or substances into new products, including the assembly or manipulation of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors.

Marina, commercial. A facility with three or more wet and/or dry slips for the commercial docking, launching, mooring or storage of vessels and which may include accessory retail and service uses, such as, but not limited to, the sale, lease, or rental of boats, bait and tackle shops, off-loading and processing of commercial seafood products, and marine equipment sales.

Medical services. The provision of therapeutic, preventive or other corrective personal treatment services by physicians, dentists, and other licensed medical practitioners, as well as the provision of medical testing and analysis services. These services are provided to patients who are admitted for examination and treatment by a physician involving no overnight lodging, excluding pain management clinics.

Mining. The excavation of more than 10,000 cubic yards of rock, gravel, soil, shellrock or minerals from any project site in any calendar year, where the excavated material is hauled from that project site to another location across any street.

Mobile home. A structure transportable in one or more sections which is built on a permanent chassis and is designed for use as a residential dwelling unit when connected to the required utilities. If fabricated after June 15, 1976, each section should bear a U. S. Department of Housing and Urban Development (HUD) label certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards, 42 USC 5401 and 24 CFR 3282 and 3283. This use does not include manufactured units meeting the criteria contained in the definition of a modular home.

Modular home. A structure transportable in one or more sections, without a permanent chassis, which is designed for and used as a residential dwelling unit when connected to a permanent foundation and the required utilities. Fabrication of such units shall comply with Florida Statutes. This use does not include manufactured units meeting the criteria contained in the definition of a mobile home.

Multifamily dwelling. (See: Dwelling, multifamily.)

Neighborhood assisted residence. A residential arrangement in which a state-licensed person or agency provides assistance to the residents, such as housekeeping, centralized cooking or dining, personal care, nursing care, and counseling. This land use category is limited to facilities involved in the housing and care of frail elders, as defined in F.S. § 400.618; physically disabled or handicapped persons, as defined in F.S. § 760.22(7)(a); developmentally disabled persons, as defined in F.S. § 393.063(11); nondangerous mentally ill persons, as defined in F.S. § 394.455(18); and children, as defined in F.S. §§ 39.01(11), 984.03 (9), 984.03(12), and 985.03(8).

Nonsecure residential drug and alcohol treatment and rehabilitation facilities. Inpatient facilities, not involving confinement as in a prison or jail facility, which provides care for persons with drug and/or alcohol dependency problems and which may include outpatient follow-up care to the facility's patients. The residents of these facilities shall not include correctional inmates, violent offenders, or habitual criminal offenders.

Nursing home. (See: Residential care facility.)

Open space. That portion of a development that is permeable and remains open and unobstructed from the ground to the sky, specifically excluding parking areas, whether permeable or impermeable.

Orchards and groves. Growing and harvesting of tropical and deciduous fruits including citrus fruits such as oranges and grapefruits.

Outdoor shooting range. (See: Shooting range, outdoor.)

Pain management clinic. The same as the definition found in Sec. 458.3265(1)(a), Florida Statutes (2010), as may be amended from time to time. Notwithstanding this definition, the use of the words "wellness center" and "detox center" shall not exempt clinics, facilities or offices which advertise in any medium for any type of pain management services, or employ a medical or osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications from this definition. Such definition shall not include any of the following:

1. A clinic that is licensed as a facility pursuant to chapter 395; or
2. A majority of the physicians who provide services in the clinic primarily provide surgical services; or
3. The clinic is owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded $50 million; or
4. The clinic is owned by, leased by or contractually affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows; or
5. The clinic does not prescribe or dispense controlled substances for the treatment of pain; or
6. The clinic is owned by a corporate entity exempt from federal taxation under 26 U.S.C. § 501 (c)(3); or
7. A facility that is owned or operated by a chiropractic physician licensed under Chapter 460, Florida Statutes, and does not contract or employ a physician licensed under Chapter 458 or Chapter 459, Florida Statutes, who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications for the treatment of chronic nonmalignant pain: or
8. A clinic that is associated with a not-for-profit hospice care provider.

Pain specialist (approved). A physician, or group of physicians licensed under either Chap. 458 or Chap. 459, Florida Statutes, and who comply with Rule 64B8-9.0131 (medical doctors), or Rule 64B15-14.005 and Rule 64B15-14.009 (osteopathic physicians), Florida Administrative Code, as each is amended from time to time.

Parking lots and garages. A public or private parking lot or parking structure operated as a principal use for the purpose of providing off-street parking or storage of operable motor vehicles, including trailers, but specifically excluding the parking or storage of construction equipment.

Pharmacy. The same as the definition in F.S. (2010) § 465.003, as may be amended from time to time, and includes community pharmacy, internet pharmacy, and special pharmacy, but does not include institutional pharmacy or nuclear pharmacy, as each of those terms are used in that section.

Place of worship. Any structure, used on a regular basis by a group of persons who assemble for religious worship, including, but not limited to, a church, synagogue, mosque, or temple.

Plant nurseries and landscape services. Establishments providing for the retail or wholesale sale of flowers, plants, shrubs and trees, products related to landscaping such as, but not limited to, soil, fertilizer, and potting materials, and landscape consultative services.

Porch. A roofed structure projecting from the wall of a building which is not enclosed with solid or opaque materials more than 30 inches above the floor thereof, except the necessary columns to support the roof.

Private stable. (See: Stable, private.)

Protective and emergency services. Fire, law enforcement, emergency medical and related uses planned and operated for the general welfare of the public.

Public library. (See: Library, public.)

Public parks and recreation areas, active. Public parks and recreation areas operated by a public or private not-for-profit entity where the primary goal is the provision of facilities for active public recreation, such as, but not limited to, tennis courts, ball fields, and picnic areas.

Public parks and recreation areas, passive. Public parks and recreation areas operated by a public or private not-for-profit entity where the primary goal is the preservation of land in its natural state for public enjoyment. Accessory uses and structures, such as parking, restrooms, and public viewing areas may be provided to facilitate public use of the preserved land but this use specifically excludes recreational facilities such as ball parks and tennis court that require large cleared areas, boat ramps for motorized vessels, or other uses which are incompatible with the preservation of native lands.

Public vehicle storage and maintenance. Use of land for the storage and maintenance of public vehicles.

Ranches. Raising, training and/or storage of livestock on improved or unimproved pasture land including, but not limited to, cattle, horses, sheep and goats.

Recreational vehicle. A vehicle or portable structure built on a chassis and designed as a dwelling for travel, recreation, or vacation for brief tenancies and which does not qualify as a mobile home.

Recreational vehicle park. The use of land to provide individual spaces for two or more recreational vehicles on a daily fee or short-term rental basis for tenancies of less than six consecutive months (see also: Campground).

Recycling drop-off center. A small collection facility where recyclable materials are purchased or accepted from the public. Typical uses include neighborhood recycling stations and thrift store collection trucks.

Recycling plant or transfer station. A facility for the receiving, sorting, storing, and initial processing of nonhazardous materials. This use does not involve the conversion of materials into new products (see: Industrial uses).

Residential care facility. A residential arrangement designed to house the aged or other persons with chronic or debilitating conditions where the residents require assistance with daily activities. The assistance provided may include housekeeping, centralized cooking or dining, personal care, nursing care, and counseling.

Residential storage facility. A building or series of buildings designed and used for the rental of

space for the storage of household items but specifically excluding the rental of space for commercial or industrial warehousing.

Restaurant, general. An establishment where the principal business is the sale of food and beverages to the public in a ready-to-consume state.

Restaurant, convenience. An establishment where the principal business is the sale of food and beverages to the customer in a ready-to-consume state, generally in disposable wrapping or containers. Establishments that specialize in take-out food and offer seating for ten or fewer patrons, such as delicatessens and sandwich shops, shall be classified as limited retail sales and services.

Retail sales and services, general. Retail sale or rental from the premises of goods and/or services and highway-oriented sales and services that generally cater to a market area in excess of three miles, excluding establishments with significant wholesaling, warehousing, or outside storage and distribution functions and excluding pain management clinics.

Retail sales and services, limited. Shops and stores limited to retail sales of convenience items or services typically needed on a frequently reoccurring basis, excluding pain management clinics. This definition includes shops with:

1. Limited inventory;
2. A household market area in the immediate vicinity;
3. A specialized market with customized service demand; or
4. A tourist-oriented market area in the immediate vicinity.

Right-of-way. A strip of land dedicated, deeded, used or intended to be used, for a street, alley, walkway, boulevard, railroad, drainage facility, access for ingress or egress, electric transmission line, oil and gas pipeline, sanitary and stormwater sewer line, or other purpose by the public, certain designated persons, or governing bodies. It is an appropriation of the land to some public use made by the owner and accepted for such use by the public.

Salvage yard. The use of a lot for the dismantling, reduction or other processing of used or discarded durable goods which are not intended to be sold in than their original forms. Typical salvage yard operations include automobile wrecking yards and recycling transfer stations.

Shooting range, indoor. A facility, entirely enclosed in a building, designed for the safe discharge of firearms at targets.

Shooting range, outdoor. An open-air facility designed for the safe discharge of firearms at targets (including rifle, skeet and trap ranges).

Single-family dwelling. (See: Dwelling, single-family detached.)

Silviculture. That process which follows accepted forest management principles whereby the forests are tended, harvested, and reforested.

Solid waste disposal facilities. The use of a lot for the long term placement of waste materials, such as, but not limited to, construction debris, vegetative waste, domestic waste and hazardous waste, for the primary purpose of abandoning such materials. Solid waste disposal facilities may sometimes be conducted in conjunction with salvage yards.

Stable, commercial. Facilities devoted to the feeding, housing and care of horses for which the operator of the premises receives compensation. Such use may involve related equestrian activities such as riding lessons and recreational horse riding.

Stable, private. An accessory structure on a lot where horses owned by the owners of the premises

are kept for private use.

Story. That part of a building contained between any floor and the floor or roof next above.

Street. A public or private right-of-way which is designed to serve as the principal means of vehicular access to two or more lots.

Structure. Any material or combination of materials erected or otherwise installed on a lot, whether installed on, above, or below the surface of land or water.

Trades and skilled services. Shops providing services involving skilled labor or craftsmanship, such as, but not limited to, printing and binding, electronics repair, carpet cleaning, craft-making, decorating services and locksmithing. This shall not be construed to include shops primarily engaged in retail sales and services where the provision of skilled labor or craftsmanship is merely incidental to the retail activity.

Townhouse dwelling. (See: Dwelling, townhouse.)

Utilities. The use of land which is customary and necessary to the maintenance and operation of essential public services, such as electricity and gas transmission systems; water and waste water systems; communication; and similar services and facilities.

Utility. Any organization, either private or governmental, which owns and/or operates facilities for the rendering of services to the general public, such as electric, gas, communications, transportation, water supply, sewage disposal, water conservation and drainage and garbage or refuse disposal.

Vehicular sales and service. The retail or wholesale sale, storage or rental of motor vehicles, including boats, travel trailers and mobile homes, and related equipment, with incidental services and maintenance.

Vehicular service and maintenance. Establishments providing retail sale of motor fuels and other products and services related to the operation of motor vehicles, including cleaning, washing and waxing services and including repair services, such as, but not limited to, tire and oil changes, engine repair and mechanical inspections, provided that such repair services are limited to no more than three service bays. Vehicular maintenance activities involving more than three service bays or involving tire recapping or vulcanizing, rustproofing, painting or body repair shall be considered an industrial use (see definition of "industrial use").

Veterinary medical services. Establishments providing professional medical care for animals.

Wildlife rehabilitation facility. A public or private, nonprofit facility established for the primary purpose of providing care and shelter for wild animals and for providing public educational services related to the care and protection of wildlife. Accessory uses to such facilities may include veterinary medical services related to the care of animals within the facility, administrative offices, conference rooms, maintenance facilities and a caretaker's residence.

Wholesale trades and services. Establishments offering bulk goods to other firms for eventual resale.

Yard trash processing. The processing of vegetative matter resulting from landscaping maintenance or land clearing operations, such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps, into mulch, compost or other products suitable for use off-site and specifically excluding the on-site disposal of such material.

Zero lot line dwelling. (See: Dwelling, zero lot line.)

(Ord. No. 608, pt. 1, 3-19-2002; Ord. No. 623, pt. 1, 11-5-2002; Ord. No. 633, pt. 1, 9-2-2003; Ord. No. 669, pt. 1, 6-28-2005;

Ord. No. 833, pt. 1, 11-17-2009; Ord. No. 866, pt. 1, 6-22-2010; Ord. No. 891, pt. 1, 2-22-2011)

Sec. 3.419. - B-3 Rural Business District.

3.419.A *Uses permitted.*

1. In this district, a building or structure or land shall be used for only the following purposes, subject to any additional limitations pursuant to section 3.402
   a. Agriculture implements, automobiles, mobile homes or trailer sales.
   b. Building material sales yards.
   c. Farm and contractors' equipment, storage yards or plants or rental equipment yards.
   d. Creameries or ice cream manufacturing.
   e. Restaurants, food stores, drive-in businesses, where persons are served in automobiles from refreshment stands.
   f. Drive-in theatres.
   g. Golf driving ranges or tees.
   h. Skeet, trap or pistol ranges may be permitted in this district only upon application to the planning and zoning commission and after public hearing before the planning and zoning commission. Subsequent to such public hearing, the planning and zoning commission shall make its report and recommendation to the Board of County Commissioners for its action thereon. If the application is approved by the Board of County Commissioners, a permit shall be obtained from the zoning director prior to the establishment of either a skeet, trap or pistol range.
   i. Funeral homes, when not located on a designated through-traffic highway.
   j. Motels.
   k. Assembly halls or stadiums, when not located on a designated through-traffic highway.
   l. Outdoor advertising displays which advertise only commodities or service or activities available or for sale on the property occupied.
   m. Commercial horse riding stables.
   n. Public utility service yards or electrical receiving, distributing or transforming stations.
   o. Amusement enterprises, including billiard or pool halls, bowling alleys, boxing arenas, dance halls, skating rinks and the like.
   p. Bottling works.
   q. Circus quarters, when not located on a designated through-traffic highway.
   r. Transient enterprises, when not located on a designated through-traffic highway, may be operated in this district, for not to exceed 30 consecutive days, only after compliance with the following requirements has been demonstrated to the zoning director. Written waivers of objection for the specific use and length of time that the transient enterprise will remain in the location are obtained from all property owners within 500 feet of the area to be occupied; or written waivers of objection are obtained from 80 percent of the owners or tenants of residential structures within 1,000 feet of the extremities of the area to be occupied.
2. Where adjacent to residential areas, all businesses shall provide for an evergreen hedge, uniformly colored masonry wall or board fence six feet high. Such screen shall be located on the sides and rear of the property.

3.419.B *Required lot area, width, front, side and rear yards and building height limits.*

1. Building sites in this district shall have a minimum of 15,000 square feet in areas not served by a sanitary sewerage system and 10,000 square feet in areas served by sewers.
2. Minimum width along front property lines shall be 100 feet.

3. There shall be no limit on the maximum height, except where adjacent to a residential district, in which case the maximum height is limited to three stories.
4. The height of any structure shall not be such so as to intrude into a gliding angle where adjacent to air fields.
5. When located upon streets or highways carrying a large volume of traffic, tracts located in this district shall provide for a marginal access road with a minimum of access and egress points. There shall be a ten-foot planter strip between such access road, the right-of-way of the street or highway, and parking areas within the tract shall be accessible only from the marginal access road.

3.419.C *Minimum yards required.*

1. *Front:* 30 feet.
2. *Rear and side:*
   1 story: 10 feet.
   2 stories: 12 feet.
   3 stories and over: 15 feet.
3. No structure shall be built within 50 feet of the center line of any public platted right-of-way not a designated through-traffic highway.
4. No structure shall be built within 65 feet of the center line of a designated through-traffic highway.

(Ord. No. 608, pt. 1, 3-19-2002)

Sec. 3.99. - Shooting range, indoor.

3.99.A All firing shall take place within a completely enclosed building.

3.99.B No shooting range shall be located within 50 feet of a residential district.

3.99.C Applications for the development of an indoor shooting range shall include a plan by a Florida registered engineer demonstrating that the building is soundproof and appropriately designed for such use.

(Ord. No. 608, pt. 1, 3-19-2002; Ord. No. 809, pt. 1, 9-9-2008)

Sec. 3.99.1. - Shooting range, outdoor.

3.99.1.A The discharge of firearms shall be conducted only within areas specifically designated for such use on an approved site plan.

3.99.1.B Firing positions shall be separated a minimum of 2,500 feet from the boundary of the subject property with any adjacent parcel in separate ownership. However, for an outdoor shooting range designed and used specifically and solely for shooting clay targets with a shotgun the following shall apply: Firing positions shall be separated a minimum of 900 feet from the boundary of the subject property with any adjacent parcel in separate ownership and in addition, firing positions shall be separated a minimum of 2,500 feet from any permitted residence existing at the time of site plan approval for the proposed shooting range.

3.99.1.C An impenetrable berm or barrier, 20 feet or more in height, shall be constructed along the three sides lying in the direction of fire of any authorized firearm discharge area. An outdoor shooting range designed specifically and solely for shooting clay targets with a shotgun is exempt from Section 3.99.1.C.

3.99.1.D The perimeter of the shooting range activity, including the firearm discharge area and surrounding berms, shall be enclosed by a fence or wall, a minimum of six feet in height. Warning signs of at least one square foot each shall be attached to the perimeter fence at the rate of at least one for every 100 lineal feet plus one at each entry gate.

3.99.1.E The applicant shall submit a hazardous waste management plan, prepared by an independent environmental consultant, to assure the protection of groundwater from lead and other contaminants associated with the discharge of firearms.

3.99.1.F The applicant shall demonstrate compliance with all applicable state regulations and how safety and noise factors have been addressed through the site plan and other special features of the proposed development.

(Ord. No. 608, pt. 1, 3-19-2002; Ord. No. 810, pt. 1(3.99), 9-16-2008)

Editor's note—

Ord. No. 809, adopted Sept. 9, 2008, renumbered § 3.98 as § 3.99 to allow for inclusion of a new § 3.98. Inasmuch as there already exists a § 3.99, to avoid duplication of numbers, said section has also been renumbered to read as herein set out.

Sec. 4.624. - Parking rates.

Off-street parking spaces shall be provided in accordance with the standards contained in the following Table 4.14.1. Land uses shall be as defined in section 3.3 of Article 3, Zoning Districts of the Martin County Land Development Regulations (LDR).

Table 4.14.1
Parking Rates

Land Use	Rate
Public and Institutional Uses	
Administrative services, not-for-profit	1 space/150 sf gross floor area
Cemetery/crematory operations and columbaria	1 space/3 seats in chapel plus 1 space/300 sf all other areas
Club or lodge	1 space/100 sf gross floor area
Correctional facility	1 space/employee plus 1 space/25 inmates
Day care, commercial	1 space/employee (largest shift) plus 1 space/10 people plus adequate drop off/pickup areas
Protective and emergency services	1 space/500 sf of gross floor area
Hospital	1 space/4 beds plus 1 space/doctor plus 1 space/2 employees
Library, public	1 space/300 sf gross building area
Nursing home	1 space/4 beds plus 1 space/2 employees
Post office	1 space/100 sf gross building area
Educational Institution	
Public assembly	1 space/4 seats
Schools, colleges, universities, and technical/vocational	1 space/2 seats of classroom seating capacity
School, elementary/junior high	2.5 spaces/classroom plus 1 space/each teaching, administrative or staff
School, high	12 spaces/classroom plus 1 space/each teaching, administrative or staff
Place of worship	1 space/3 seats in main sanctuary
Residential	
Residential care facility	0.5 space/bed
Bed and breakfast inn	1 space/guest room plus 2 spaces for primary residential unit
Dwelling, multifamily	1.5 spaces/efficiency unit, 1.75 spaces/1 bedroom unit, 2 spaces/2 or more bedroom unit
Dwelling, single-family and duplex	1.5 spaces/efficiency unit, 1.75 spaces/1 bedroom unit, 2 spaces/2 or more bedroom unit
Neighborhood assisted residence	1 space/4 beds plus 1 space/employee
Hotel or motel	1 space/unit plus 1 space/3 seats for accessory restaurant or lounge plus 1 space/3 employees
	2 spaces/unit

Mobile home	
Amusement, Commercial and General	
Bar or cocktail lounge	1 space/100 sf gross floor area
Bowling alley	5 spaces/lane plus required parking for any other on-site use
Financial institutions	1 space/200 sf gross building area
Flea market	1 space/200 sf of sales area or outdoor display area
Golf course	3 spaces/green
Golf course driving range	1.3 spaces/tee
Golf course, miniature	2 spaces/hole plus required parking for additional uses
Health and fitness center	1 space/200 sf building area without outdoor facilities 1 space/300 sf building area with outdoor facilities
Marina, commercial	1 space/5 wet or dry slips plus 1 space/employee
Racquetball and tennis courts	3 spaces/court (public) 2 spaces/court (private)
Skating rinks	1 space/200 sf of gross floor area
Shuffleboard courts	4 spaces/5 courts
Stadiums	1 space/3 seats of the seating capacity
Swimming pools	1 space/175 sf of pool area
Theater, indoor	1 space/4 seats
Cultural or Civic Uses	
Art gallery/museum	1 space/250 sf of gross floor area
Public parks and recreation areas, passive under 50 acres	3 spaces/first 10 acres plus 1 for each additional 10 acres
Public parks and recreation areas, passive over 50 acres	7 spaces plus 1 for each additional 15 acres
Public parks and recreation areas, active	1 space/2 acres up to 10 acres, plus 1 space/5 acres in excess of 10 acres, plus 75% of the required parking for each court, rink, or field
Shooting range	1 space/firing point
Retail Sales and Services	
Convenience store	1 space/ 200 sf gross floor area
Plant nurseries and landscape services	1 space/150 sf gross floor area, accessory structures excluded
Resale shop	1 space/200 sf gross floor area
Restaurant (convenience)	1 space/70 sf for public use plus 1 space/200 sf for nonpublic use
Restaurant (general)	1.5 spaces/100 sf gross floor area
Retail	4 spaces/1,000 sf of gross leasable area, where combined cinema, restaurant. 4 spaces/1,000 sf of gross leasable area, where combined cinema, restaurant and entertainment uses are 10% or less. For each additional percent between 10% and 20%, add 0.03 spaces/1,000 sf above 20%, use "shared parking".
Vehicular Service and Maintenance	
Vehicular sales and service	2 spaces/3 employees plus 1 space/150 sf repair/service area
Vehicular service station	1 space/200 sf of sales area plus 2 spaces/service bay plus

	1 space/employee
Car wash	2 spaces/bay plus 2 car lengths paved queuing area
Dry boat storage	1 space/20 storage slips
Business and Professional Uses	
Funeral home	1 space/3 seats within chapel plus 1 space/300 sf gross floor area for all
Kennel, commercial	1 space/300 sf office, administration and examination area
Medical services	1 space/175 sf gross floor area
Office, business or professional	1 space/300 sf gross floor area
Trades and skill services	1 space/300 sf gross floor area plus 1 space/company vehicle
Veterinary medical services	1 space/300 sf gross building area excluding animal runs
Warehouse	1 space/2 employees or 1 space/1,000 sf of floor area, whichever is greater
Warehouse, mini, residential storage facility	1 space/1,500 sf gross floor area
Wholesale trades and services	1 space/1,000 sf gross floor area plus 1 space/company vehicle

(Ord. No. 835, pt. 1, 11-17-2009)

CLAY COUNTY CODE

(i) Petroleum used for heating and/or cooking not to exceed 500 gallons.

(ii) Gasoline not to exceed two thousand five hundred (2,500) gallons, and fuel oil and tanks are designed for the storing of these products. Storage tanks and equipment must meet or exceed all requirements of the State Fire Marshall and National Board of Fire Under writers Code. Wholesale or retail sale of any petroleum products is prohibited.

(5) Storage on the premises of the owner's or tenant's heavy equipment including, but not limited to, the following: bulldozers, road graders, front end loaders, backhoes, well drilling equipment, trucks (unlimited tonnage).

(6) Garage sales will be allowed up to a maximum of two garage sales within any calendar year. The duration of each garage sale shall be a maximum of 72 hours and may be conducted only within daylight hours. No sign advertising a garage sale may be placed on any public right-of-way.

(7) Satellite dish receivers for individual use.

(8) The parking of commercial vehicles with a limit of one (1) per acre.

(9) Plant nurseries when the products for sale are limited to plant fertilizers and other associated items, except any motorized equipment.

(10) Private boat pier or slip for the use of occupants of principal residential structures of the lot; provided said pier or slip does not interfere with navigation.

(c) *Conditional Uses*. The following uses are permitted in the AG zoning district subject to the conditions provided in Sec 20.3-5.

(1) Broilerhouses, raising of fowl, and mass production egg laying.

(2) Commercial feed lots for livestock.

(3) Landing strips.

(4) Home occupations.

(5) Bird sanctuaries and rehabilitation centers.

(6) Commercial kennels.

(7) Heliports and helipads.

(8) Radio, television, microwave relay stations or towers and accessory equipment buildings. (Ord. 95-53 - 11/28/95) (Amended 11/26/96 - Ord. 96- 58).

(9) Outdoor shooting ranges.

(10) Bicycle motocross.

(11) Swimming pools.

(12) Trench sanitary landfills (Class III).

(13) Mobile home for medical hardship.

(14) Aviculture (Commercial or Hobbyist).

(15) Temporary structures or buildings.

(16) Sales from vehicles.

(17) Riding academies, riding stables, and dude ranches.

(18) Public and/or private sewer facilities.

(19) Communication Antennas and Communication Towers, including accessory buildings, tower support and peripheral anchors as governed by the provisions of Section 20.3-46 of the Clay County Land Development Code. (Amended 11/26/96 - Ord. 96-58)

(20) Private drainage ponds or agricultural livestock ponds.

(21) Borrow Pits (amended 2/95 - Ord 95-2)

(22) Land Application of Domestic Septage (amended 10/95 - Ord. 95-41)

(23) Apiculture (Hobbyist) (Amended 2/35/97 Ord. 97- 11)

(24) Land Clearing Debris Disposal Facility (Amended 6/98 - Ord. 98-27)

(25) BMX Track (Bicycle Motocross; Non-motorized) Ord. 00-50 – 9/26/00

(26) Bed and Breakfast Inns (Amended 4/01 - Ord. 01-12)

(27) Dwelling unit with kitchen addition for parent, grandparent or child (Amended 5/03 – Ord. 03-40)

(28) Recreational Vehicle parking for temporary use (amended 11/07 – Ord.2007-66)

Sec. 3-39. PRIVATE SERVICES (Zone PS-2)

(a) *Area.* All land described as Zone PS-2 is subject to the regulations of this Section. Such areas are established to provide adequate land for the private sector providing social services and non-profit retreat facilities in open space areas with an emphasis on the enjoyment and preservation of the natural environmental amenities of the land. A site plan conforming to the requirements of Section 27, Ordinance 82-45, as amended, is required and shall be submitted to the Planning and Zoning Department for administrative review and approval prior to obtaining a building permit.

(b) *Uses Permitted.*

(1) Clubs and lodges, including accessory buildings. On-premise consumption of alcoholic beverage within clubs and lodges by members and approved guests only is permitted, subject to the provisions of this chapter.

(2) Golf Courses with or without Driving Ranges.

(3) Private Passive Parks.

(4) Public and private water, sewer, or electric facilities.

(5) Community association buildings and neighborhood activity centers, provided no alcoholic beverages are sold or served on premises. *(Rev. 02/08/11)*

(c) *Conditional Uses.* The following uses are permitted in the PS-2 zoning district, subject to the conditions provided in Section 20.3-5.

(1) Outdoor Shooting Range - Shotguns only.

(2) Retreat Centers.

(3) Commercial radio, television, microwave relay stations or towers, and accessory equipment buildings.

(4) Communication Antennas and Communication Towers, including accessory buildings, tower support and peripheral anchors as governed by the provisions of Section 20.3-46 of the Clay County Land Development Code. (Amended 11/26/96 - Ord. 96-58).

(5) Recreational facilities. (amended 7/94 - Ord. 94-30)

(6) Land Clearing Debris Disposal Facility permitted only in Agricultural, Commercial, Mining, and Agricultural/Residential land use categories.

(7) Dog Park (Ord. 03-16)

(8) Public Educational Facilities (Amended 10/99 - Ord. 99-55)

(9) Youth Camps (Amended 8/04 – Ord. 04-55)

(10) Campground/Recreational Park (Amended 8/04 – Ord. 04-55)

(11) Animal Clinics with or without caretaker's quarters. *(Rev. 2/22/11)*

(d) *Uses Not Permitted.*

(1) Any use not allowed in (b) and (c) above.

(2) With respect to Retreat Centers, any activity not permitted under Section 501 (C) (3) of the Internal Revenue Code, private ownership of homes, or sale or service of alcoholic beverages.

(e) *Site Development Plan.* All uses listed in this Section require a site development plan that shall contain the information required in this Article.

(f) Density Requirements - The maximum density of development for land in this zoning district shall not exceed an F.A.R. of forty (40) percent.

(g) *Lot and Building Requirements.* The principal building(s), accessory structures and other uses shall be located so as to comply with the following minimum requirements. *Rev. 04/22/08*

(1) Side lot line setback on property which abuts residential or agricultural districts shall not be less than twenty (20) feet. Where the adjoining lot is also zoned for business, the building may be placed up to the side lot line, providing the building is constructed with four (4) hour party walls as defined by the applicable Building Code; in all other construction, the minimum side setback shall be fifteen (15) feet.

(2) Rear lot line setbacks shall be twenty (20) feet. Access shall be not less than twenty (20) feet in width and shall be unobstructed at all times.

(3) Front lot line setbacks shall comply with Section 6, Ordinance 82-45, as amended, and shall be twenty-five (25) feet.

(4) All structures shall be set back a minimum of 50 feet landward from the ordinary high water line or mean high water line, whichever is applicable; for waters designated as Aquatic Preserves or Outstanding Florida Waters, the setback will be 100 feet. (amended 5/05 – Ord. 05-18)

(5) Corner lots. No structure erected on a corner lot shall be closer than thirty (30) feet to any road.

(xiv) Off duty deputies are required, including traffic control at start and finish of hours of operation.
(xv) Bands are prohibited.
(xvi) A driveway permit is required.
(xvii) Provision of temporary sanitation facilities are required in accordance with Health Department regulations.
(xviii) Procurement of waste pickup services is required.

*Minimum distance may be increased should the Board of County Commissioners determine that the increase is necessary due to the general health, safety and welfare of the County. *(Rev. 11/24/09)*

(am) *Outdoor Drive-in Theaters, Private Arenas, and Auditoriums.*

(1) *Location.* In no case shall such use be permitted within 500 feet from any single or multiple family zoning district, measured from all property lines.

(2) *Minimum Lot Area.* The minimum lot area required for such use shall be no less than five (5) acres.

(3) *Frontage.* The minimum required frontage on a public street to be used for the primary point of access shall be 400 feet.

(4) *Access.* All points of vehicular access shall be from an arterial or collector street. Said access points shall be located so as to minimize vehicular traffic to and through local streets in nearby residential neighborhoods as determined by the County Engineering Department and the access requirements of this Article.

(5) *Lighting.* Artificial lighting used to illuminate the premises shall be directed away from adjacent properties and streets, shining only on the subject site.

(6) *Performance Standards.* The operation of these facilities shall conform to all rules and regulations of all governmental agencies having appropriate jurisdiction.

(7) *Fencing and Screening.* Where deemed necessary by the Development Review Committee (DRC) to protect the general public, safety fences of up to a height of six (6) feet may be required. The DRC may also require landscape screens of at least 75 percent opaqueness to protect neighboring property from potential loss of or diminishment of land value or use.

(an) *Outdoor Shooting Range.*

(1) Ranges for shotguns only permitted in PS-2 district subject to NRA design and construction guidelines.

(2) *Skeet Shooting.*

(i) The minimum area for a skeet shooting range shall be a minimum cleared area of 100 yards with a 300 yard safety zone.

(ii) There shall be a 26 feet 8-3/8 inch chord between stations.

(iii) There shall be a minimum of 40 yards between high and low houses.

(3) *Trapshooting.*

(i) The space required for trapshooting shall be a minimum cleared area of 100 yards with a 300 yard safety zone.

(ii) The minimum permissible target angle shall be 94 degrees.

(iii) There shall be a minimum of nine (9) feet between firing points spaced three (3) feet apart.

(4) *Rifle Ranges and Muzzle Loaders.*

(i) Each range shall be adjoined on its left and right by a safety zone extending downrange at least 1,200 yards and outward at an angle of 20 degrees from either end of the firing line.

(ii) Firing lines may be covered or opened.

(iii) There shall be a six (6) foot minimum spacing for firing points.

(iv) Backstops are required, and must be capable of stopping and containing projectiles used on the range, with a height of thirty (30) feet.

(5) *Handguns.*

(i) There shall be a six (6) foot minimum spacing for firing points.

(ii) Firing lines may be covered or uncovered.

(iii) Backstops shall be required which contain no material that would increase the possibility of ricochet, and have the capability of containing projectiles used on range. The backstop height span shall be thirty (30) feet and shall extend twenty-five (25) feet to each side of the target line.

(6) *Archery.*

(i) The minimum length of the range shall be 196 feet from firing points to targets. Bunkers behind the targets shall be installed.

(ii) The minimum width of the range shall be sixty (60) feet, and each target must be separated from adjoining targets by at least six (6) feet.

(iii) Space 45 feet behind and to either side of the range is to be clear and free from hard objects.

(iv) Targets shall have a minimum space of thirty (30) feet on each side of the range.

(ao) *Plant Nurseries*. The products for sale are limited to plant fertilizers and other associated items, except any motorized equipment.

(ap) *Portable Storage Structure (Rev. 02/08/11)*

(1) There can be no more than one portable storage structure per property.
(2) The portable storage structure must be no larger than 8 feet wide, 8 feet high, and 20 feet long.
(3) The portable storage structure must not remain on a property in excess of 30 consecutive days (per owner) and must not be placed at any one property in excess of 30 days in a calendar year.
(4) The portable storage structure must be set back a minimum of five feet from all property lines.
(5) The portable storage structure must be set back a minimum of five feet from the nearest wall of a building.
(6) The portable storage structure must be placed outside of any County right-of-way.
(7) Commercial dumpsters associated with construction at a site where a building permit has been issued are permitted for the duration of construction and shall be removed from the site within 14 days of the end of construction. These containers are exempt from the above conditions.
(8) Portable storage structures associated with construction at a site where a building permit has been issued are permitted for the duration of construction, but in no case may remain on the property for a period longer than 365 days. These containers are exempt from the above conditions.

(aq) *Private ponds or agricultural livestock ponds. (Rev. 02/24/09)*

(1) Pond shall not encroach into or be located in a jurisdictional wetland area as defined by the Army Corps of Engineers, Florida Department of Environmental Regulation and the St. Johns River Water Management District, hereafter called Agencies. The applicant shall be responsible for contacting the applicable agency in order to determine if the site is within jurisdictional lands. Ponds that are less than one acre in size and are developed and approved through the Clay County

Opposition

Entered into record 10/15/12 "D"

Select Year: 2012 Go

The 2012 Florida Statutes

Title XLVI
CRIMES

Chapter 790
WEAPONS AND FIREARMS

View Entire Chapter

790.33 Field of regulation of firearms and ammunition preempted.—

(1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

(2) POLICY AND INTENT.—

(a) It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.

(b) It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority.

(3) PROHIBITIONS; PENALTIES.—

(a) Any person, county, agency, municipality, district, or other entity that violates the Legislature's occupation of the whole field of regulation of firearms and ammunition, as declared in subsection (1), by enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon such exclusive occupation of the field shall be liable as set forth herein.

(b) If any county, city, town, or other local government violates this section, the court shall declare the improper ordinance, regulation, or rule invalid and issue a permanent injunction against the local government prohibiting it from enforcing such ordinance, regulation, or rule. It is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.

(c) If the court determines that a violation was knowing and willful, the court shall assess a civil fine of up to $5,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred.

(d) Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated this section.

(e) A knowing and willful violation of any provision of this section by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a) or otherwise under color of law shall be cause for termination of employment or contract or removal from office by the Governor.

(f) A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages, as limited herein, caused by the violation. A court shall award the prevailing plaintiff in any such suit:

1. Reasonable attorney's fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and
2. The actual damages incurred, but not more than $100,000.

Interest on the sums awarded pursuant to this subsection shall accrue at the legal rate from the date on which suit was filed.

(4) EXCEPTIONS.—This section does not prohibit:

(a) Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited;

(b) A duly organized law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties;

(c) Except as provided in s. 790.251, any entity subject to the prohibitions of this section from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties;

(d) A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge; or

(e) The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

(5) SHORT TITLE.—As created by chapter 87-23, Laws of Florida, this section may be cited as the "Joe Carlucci Uniform Firearms Act."

History.—ss. 1, 2, 3, 4, ch. 87-23; s. 5, ch. 88-183; s. 1, ch. 2011-109.

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Committee on Criminal Justice

CS/CS/CS/HB 45 — Regulation of Firearms and Ammunition

by Judiciary Committee; Community and Military Affairs Subcommittee; Criminal Justice Subcommittee and Rep. Gaetz (Rules Committee; Community Affairs Committee; Criminal Justice Committee; and Senator Negron)

This bill expands and clarifies state preemption of the regulation of firearms and ammunition. Section 790.33, F.S., is also reorganized.

The bill expands "the whole field of regulation of firearms and ammunition" (including administrative regulations or rules adopted by local or state governments) to include the storage of those items.

Subsection (2) of s. 790.33, F.S., is stricken by the bill. This is the subsection of the Joe Carlucci Act that allows a county the option to adopt a waiting period, not exceeding three days, for the purchase of a handgun. It pre-dates the constitutional amendment and constitutionally required statutory enactment. Eliminating this subsection of the Act merely clarifies the current state of the law regarding the three-day waiting period, which is found in the Florida Constitution and s. 790.0655, F.S.

The bill retains the policy and intent language from the original Act, currently found in subsection (3) of s. 790.33, F.S. It also adds language setting forth the 2011 Legislature's intent to deter and prevent the violation of the preemption law.

Any person, county, agency, municipality, district, or other entity that enacts or causes to be enforced any local ordinance or administrative rule or regulation faces a civil fine of up to $5,000 if the violation is knowing and willful. Any such violation is cause for termination of employment or contract or for removal from office by the Governor.

Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have committed a knowing and willful violation of this section.

Civil actions are also provided for in the bill. A person or organization whose membership is adversely affected by an alleged violation of the preemption law may seek declaratory and injunctive relief. The bill also provides for the assessment of actual damages up to $100,000. The court is required to award a prevailing plaintiff's attorney fees, including a contingency fee multiplier, as well as related costs. Additionally, the bill provides that interest shall accrue on the fees, costs, and damages awarded the plaintiff, retroactive to the date the suit is filed.

In subsection (4) of s. 790.33, F.S., as created by the bill, a provision excepting certain zoning ordinances in the original Carlucci Act has been relocated and other exceptions to the prohibitions are set forth in the bill. Specifically, the bill does not prohibit:

This summary is provided for information only and does not represent the opinion of any Senator, Senate Officer, or Senate Office.

- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities listed in paragraphs (2)(a)-(i) from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S.;
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction; or
- The Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

If approved by the Governor, these provisions take effect October 1, 2011.
Vote: Senate 30-8; House 85-33

This summary is provided for information only and does not represent the opinion of any Senator, Senate Officer, or Senate Office.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 45 Regulation of Firearms and Ammunition
SPONSOR(S): Judiciary Committee; Community & Military Affairs Subcommittee; Criminal Justice Subcommittee, Gaetz and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 4 N, As CS	Cunningham	Cunningham
2) Community & Military Affairs Subcommittee	11 Y, 4 N, As CS	Shuler	Hoagland
3) Judiciary Committee	12 Y, 6 N, As CS	Cunningham	Havlicak

SUMMARY ANALYSIS

Section 790.33, F.S., currently preempts local governments from regulating firearms and ammunition unless expressly authorized to do so by general law. Subsection (2) of the statute provides such express authorization by giving counties the authority to adopt an ordinance requiring a waiting period of up to three working days between the purchase and delivery of a handgun.

The bill removes the statutory language that authorizes counties to adopt an ordinance requiring a waiting period of up to three working days between the purchase and delivery of a handgun. The bill replaces this provision with language prohibiting specified local governmental entities from regulating or attempting to regulate firearms or ammunition in any manner (except as specifically authorized by s. 790.33, F.S., by general law, or by the Florida Constitution) and provides exceptions to this prohibition.

Counties still have the authority, pursuant to Art. VIII, Section 5(b) of the Florida Constitution, to require a criminal history records check and a 3 to 5-day waiting period in connection with the sale of any firearm occurring within such county.

The bill also sets forth various penalties for violating s. 790.33, F.S., including provisions that:

- Make it a noncriminal violation for any person or entity to knowingly and willfully violate s. 790.33, F.S.;
- Specify that an official under whose jurisdiction a provision of the statute is violated shall be assessed a fine of not less than $5,000 and not more than $100,000 if the court determines that the violation was knowing and willful;
- Specify that a knowing and willful violation of the statute by a person acting in an official capacity is cause for immediate termination of employment; and
- Authorize a person or organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or enforced in violation of the statute to file suit for declaratory and injunctive relief and for all actual and consequential damages attributable to the violation.

The damages and attorney's fees which may be awarded to prevailing plaintiffs could have a negative fiscal impact on state and local governmental entities who willfully violate the statute.

This bill is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Preemption

Section 790.33, F.S., known as the Joe Carlucci Uniform Firearms Act, became law in 1987[1] and expressly preempted the field of regulation of firearms and ammunition to the state, except as expressly provided by general law.[2] The intent of the act states:

> It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.[3]

Local governments may use their home rule powers to enact ordinances not inconsistent with general law.[4] Local governments may legislate concurrently with the Legislature on any subject that has not been expressly preempted to the state.[5] Florida law recognizes both express and implied preemption, and express preemption must be made through a specific legislative statement, using clear language.[6] A municipality may not forbid what the Legislature has expressly authorized, nor may it authorize what the Legislature has expressly forbidden.[7] The Legislature has preempted regulation of numerous areas of law to the state, including operation of the state lottery,[8] use of electronic communication devices in motor vehicles,[9] and interdistrict transfers of groundwater.[10] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[11]

In 2000, the City of South Miami passed City Ordinance Number 14-00-1716, which required locking devices on firearms stored within the city. In 2002, Florida's Third District Court of Appeal held the ordinance null and void, stating that local governments were preempted from regulating firearms by section 790.33, F.S.[12] Despite the express preemption stated in section 790.33, F.S., and the court's decision in the City of South Miami case, local governments have regulated or considered regulating firearms in a variety of ways, including measures that would prohibit concealed carry permit holders from lawfully carrying their firearms on municipal or county property[13] or ban high-capacity ammunition clips.[14]

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[1] Ch. 87-23, L.O.F.
[2] S. 790.33, F.S.
[3] S. 790.33(3), F.S.
[4] Art. VIII, s. 1(f, g), Fla. Const.; *see also Sarasota v. Browning*, 28 So.3d 880, 885-86 (Fla. 2010).
[5] *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006).
[6] *Sarasota*, 28 So.3d at 886.
[7] *Rinzler v. Carson*, 262 So.2d 661, 668 (Fla. 1972).
[8] S. 24.122, F.S.
[9] S. 316.0075, F.S.
[10] S. 373.2295(10), F.S.
[11] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).
[12] *Id.*
[13] Lee County Ordinance 06-26 banned firearms from county parks. On October 26, 2010, the county passed ordinance 10-41 which repealed the 2006 ban.
[14] Palm Beach County considered an ordinance banning high capacity ammunition clips, but rescinded from consideration because of the preemption. Andy Reid, *PBC Gun Control Advocates Suffer More Setbacks*, SUNSENTINEL.COM, Feb. 15, 2011, http://www.palmbeachpost.com/news/palm-beach-county-commissioner-presses-for-ban-on-1216890.html.

Section 790.33(1), F.S., preempts local governments from regulating firearms and ammunition unless expressly authorized to do so by general law. The statute specifies that regulation includes the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation of firearms and ammunition. The statute does not currently specify that the storage of firearms is included within the term "regulation."

Exceptions to Preemption

Florida law and the Florida Constitution contain exceptions to the general rule that firearm regulation is preempted to the state. Currently, Section 790.33, F.S., contains a limited exception allowing local governments to enact ordinances governing a three-day handgun purchase waiting period.[15] The following are exempt from waiting period ordinances under the Joe Carlucci Act:

- Individuals who are licensed to carry concealed firearms under the provisions of s. 790.06, F.S., or who are licensed to carry concealed firearms under any other provision of state law and who show a valid license;
- Individuals who already lawfully own another firearm and who show a sales receipt for another firearm, who are known to own another firearm through a prior purchase from the retail establishment, or who have another firearm for trade-in;
- Law enforcement or correctional officers as defined in s. 943.10, F.S.;
- Law enforcement agencies as defined in s. 934.02, F.S.;
- Sales or transactions between dealers or between distributors or between dealers and distributors who have current federal firearms licenses; or
- Any individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such threat has been duly reported to local law enforcement.

Adopted in 1998, Article VIII, s. 5(b) of the Florida Constitution authorizes counties to require a criminal records check and a 3 to 5-day waiting period in connection with the sale[16] of any firearm occurring within such county.[17] Section 790.0655, F.S. adopted the exceptions from the waiting period for concealed weapons permit holders and handgun trade-ins as required by the 1998 amendment to the Constitution. The Constitution prevails over all local ordinances. Because the Joe Carlucci Act predates the Constitutional provision, and the exemptions listed in the Act were not specified in the Constitution, the exemptions are null and void.

Immunity for Legislative Acts

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts.[18] Absolute immunity for legislators has historically been recognized as a "venerable tradition" which has withstood the development of the law since pre-colonial days.[19] Courts have upheld absolute immunity for legislators at all levels of law-making, including federal, state, and local government levels.[20] The courts' reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers.[21] Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by

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[15] Section 790.33(2), F.S. (1988). Note: At the time of enactment in 1987 the Act provided the exception for a 48-hour waiting period.

[16] The term "sale" is defined as "the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access." Art. VIII, s. 5(b), Fla. Const.

[17] Concealed weapons permit holders do not have to comply with the waiting periods when purchasing a firearm. Art. VIII, s. 5(b), Fla. Const.

[18] *See Tenney v. Brandhove*, 341 U.S. 367 (1951).

[19] *Bogan v. Scott-Harris*, 523 U.S. 44 (1998). For additional examples of where absolute immunity of legislative acts has been recognized, see *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Hough v. Amato*, 269 So. 2d 537 (Fla. 1st DCA 1972); *Jones v. Loving*, 55 Miss. 109 (1877); *Ross v. Gonzales*, 29 S.W.2d 437 (Tex. Ct. App. 1930)

[20] *Bogan*, 523 U.S. 44.

[21] *Id.* at 50-51 (citing *Jones v. Loving*, 55 Miss. 109).

interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen-legislators, and deter service in local government.[22]

When unlawful ordinances have been enacted, the freedom from personal liability does not make the legislative product itself valid.[23] In such instances, affected citizens have been able to challenge the validity of such ordinances by suing to have them declared invalid or have a court enjoin enforcement.[24]

Courts have found that legislators may be subject to personal liability when they lack discretion.[25] Such situations typically exist when legislators are subject to an affirmative duty, such as when a law or court order has directed them to levy a tax. Such acts are labeled "ministerial," as opposed to "legislative," acts.[26] Arguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field.

Liens on Municipal Property in Satisfaction of Judgments
Section 55.11, F.S. states that "[n]o money judgment or decree against a municipal corporation is a lien on its property nor shall any execution or any writ in the nature of an execution based on the judgment or decree be issued or levied." In other words, while a party may be awarded money damages in a suit against a municipality, municipal property may not be subject to a lien to satisfy such an award in the absence of express statutory authorization.[27] In the absence of such authorization, a writ of mandamus is "the only vehicle for enforcing judgment against the government."[28] Thus, the Legislature may authorize the satisfaction of an award of damages by seizure of municipal property.

Effect of the Bill
Intent
The bill clarifies the intent as currently expressed, and strengthens and clarifies the intent with additional language. The bill preserves current language that the intent of the Legislature is to occupy the whole field of regulation of firearms and ammunition except as expressly provided by general law, or as provided by the Florida Constitution. The bill also adds the following legislative intent language to s. 790.33(3), F.S.:

> It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are knowingly passed in violation of state law or under color of local or state authority.

Clarification of Preemption
In order to clarify the preemption, the bill adds additional details about the methods by which local governments or agencies may violate the preemption. The bill amends s. 790.33(1), F.S., to expand the preemption of regulation to also include the storage of firearms and ammunition. Thus, unless expressly authorized by the Constitution or general law, local governments will be preempted from regulating how firearms and ammunition are stored.

In subsection (4) of s. 790.33, F.S., as created by the bill, a provision excepting certain zoning ordinances in the original Carlucci Act has been relocated and other exceptions to the prohibitions are set forth in the bill. Specifically, the bill does not prohibit:

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[22] *Id.* at 52.
[23] *Tenney v. Brandhove*, 341 U.S. at 379.
[24] *See, e.g., Bogan*, 523 U.S. 44; *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Tenney*, 341 U.S. 367.
[25] *Bogan,* 523 U.S. at 51-52.
[26] *See id.*
[27] *See Berek v. Metro. Dade County*, 396 So.2d 756, 759 n.4 (Fla. 3d DCA 1981).
[28] *N. Coats v. Metro. Dade County*, 588 So.2d 1016, 1017 (Fla. 3d DCA 1991).

- Zoning ordinances that encompass firearms businesses along with other businesses (zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are prohibited);
- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities subject to the bill's prohibitions from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S. ;
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction; or
- The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the Commission.

The bill strikes subsection (2) of 790.33, which is the section regarding waiting periods and waiting period exemptions. Because these sections of the Joe Carlucci Act predate the Constitution and 790.0655, F.S., striking this language clarifies current state law.

Penalties
The bill prohibits a person from enacting or causing to be enforced local ordinances or administrative rules or regulations in violation of the stated preemption and provides penalties.

The bill creates a noncriminal violation for any person who knowingly and willfully violates s. 790.33, F.S., by enacting or causing to be enforced any local ordinance or administrative rule or regulation. A noncriminal violation is generally punishable by a fine of up to $500. The bill provides that a fine of not less than $5,000 and not more than $100,000 may be assessed against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred. The elected or appointed local government official or officials or administrative agency head shall be personally liable for the payment of all fines, costs and fees assessed by the court for the noncriminal violation.

The bill requires the state attorney to investigate complaints of noncriminal violations of the preemption law, and authorizes state attorneys to prosecute violations where probable cause exists. The bill also prohibits the use of public funds, other than for the services of the public defender or conflict counsel, in defense of a criminal prosecution.

The bill provides that a knowing and willful violation by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative regulation shall be grounds for immediate termination of employment or removal from office by the Governor.

The bill also allows for civil actions. An affected person or organization may sue any county, agency, municipality, district or other entity, and against any person in their individual or official capacity, for declaratory and injunctive relief and for all actual and consequential damages. In such suits, courts shall award the prevailing plaintiff:

- Reasonable attorneys fees and costs, including a contingency fee multiplier, if applicable, of between 1.5 and 3; and
- The greater of actual damages or an amount as determined by the court of not less than $25,000 or more than $100,000.

The bill states that damages are not subject to the requirements or damages limitations of s. 768.28, F.S. Additionally, interest on awarded sums will accrue at 15 percent per annum from the date on which suit was filed. Payment may be secured by the seizure of vehicles used by elected officeholders or officials in the appropriate jurisdiction if the fees, costs, and damages are not paid within 72 hours of the court's ruling having been filed.

The usual remedy in a successful challenge to the validity of a law or ordinance within a preempted field is a declaration by a court that such law or ordinance is invalid. A court also may enjoin enforcement of the preempted provision. Because of the reasoning that the doctrine of absolute immunity is integral to a democratic system of government, courts have been reluctant to impose personal liability upon legislators who pass unlawful laws or ordinances. The personal liability imposed upon individuals involved in legislative acts in violation of this bill would appear to go against this body of law. However, because this is a common law doctrine, the Legislature maintains the power to establish law that overrides the doctrine. Additionally, as mentioned above, courts have found that legislators are subject to personal liability when they lack discretion and are performing ministerial acts. The strengthened preemption expressed by this bill, as well as the "knowing and willful" standard for violations, would appear to remove any discretion in the regulation of firearms.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.33, F.S., relating to field of regulation of firearms and ammunition preempted.

Section 2. This bill is effective October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could subject governmental entities to the payment of attorneys' fees, costs, and damages in successful challenges to rules, regulations, or ordinances passed in violation of this ordinance. This could have a negative fiscal impact on state and local governmental entities who willfully violate the statute.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2011, the Criminal Justice Subcommittee adopted three amendments to the bill and reported the bill favorably as a Committee Substitute. The amendments:

- Provide that firearm regulation is preempted to the state except as expressly provided by *the Florida Constitution* and general law;
- Remove language specifying that the $5 million fine should be deposited into the administrative account of the state attorney and the court in the jurisdiction in which the offense occurred;
- Clarify language relating to how interest accrues on sums awarded in any lawsuit filed relating to a violation of the section; and
- Clarify language relating to the seizure of vehicles used by persons who violate the section.

On March 21, 2011, the Community & Military Affairs Subcommittee adopted one amendment to the bill and reported the bill favorably as a Committee Substitute to the Committee Substitute. The amendment:

- Removes language providing for a 3rd degree felony for violations and substitutes a noncriminal penalty;
- Removes language providing for a $5 million fine against the governmental entity in whose service or employ a violation occurs and substitutes a fine of not less than $5,000 and not more than $100,000 against the official under whose jurisdiction the violation occurs;
- Removes language specifying the entities prohibited from regulating firearms;
- Provides an exception for the Florida Fish and Wildlife Conservation Commission to regulate firearms and ammunition as a method of taking wildlife and to regulate shooting ranges

On April 7, 2011, the Judiciary Committee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute to the Committee Substitute to the Committee Substitute. The strike-all amendment:

- Prohibits a person from enacting or *causing to be enforced* local ordinances or administrative rules or regulations in violation of the firearm and ammunition preemption statute.
- Authorizes, rather than requires, state attorneys to prosecute violations and removes a provision specifying that state attorneys could be held accountable under appropriate rules of professional conduct if they failed to perform certain duties.
- Revises damages provisions relating to civil suits.

This analysis is drafted to the committee substitute to the committee substitute to the committee substitute.

FOR IMMEDIATE RELEASE
June 2, 2011

CONTACT: Mike Bascom, (850) 487-5000

LEGISLATION TO PROTECT SECOND AMENDMENT RIGHTS SIGNED INTO LAW

House Bill 155 and House Bill 45 Signed by Governor Rick Scott

Tallahassee — Legislation championed by Senator Greg Evers (R-Baker) to protect the Second Amendment and privacy rights of law-abiding gun owners was signed into law yesterday by Governor Rick Scott.

House Bill 155, the House companion to Senate Bill 432 sponsored by Senator Evers, protects the privacy rights of gun owners from political intrusions into the private ownership of firearms.

"Anti-gun politics do not belong in medical examining rooms," said Senator Evers. "We take our children to doctors seeking medical care, not politics or questioning about what personal property we own."

Also signed was House Bill 45. The Senate companion, Senate Bill 402, was cosponsored by Senator Evers. This bill provides penalties for agencies and local governments who willfully and knowingly violate the state uniform firearms law.

"I am grateful for Governor Scott's support and pleased to see these good bills become law," said Senator Evers. "Protecting the right of our citizens to be private about gun ownership and to guard them against local governments who discriminate against gun owners or violate the state uniform firearms law is critical to constitutional freedoms."

Senator Evers currently represents Florida Senate District 2, which includes parts of Escambia, Okaloosa, Santa Rosa, Washington, Bay, and Holmes counties. Previously, Senator Evers served in the House of Representatives, representing Florida House District 1, which includes parts of Escambia, Santa Rosa and Okaloosa Counties. He is a farmer and small businessman who was elected to the Florida House of Representatives in 2001, was subsequently re-elected, and elected to the Florida Senate in 2010. Evers has put his experience in agriculture and business to good use in the Florida Legislature and is proud of his legislative accomplishments on behalf of Florida's critical agriculture industry, economic development and job creation, and Second Amendment issues.

# # #

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Rules Committee

BILL: CS/CS/CS/SB 402

INTRODUCER: Rules Committee; Community Affairs Committee; Criminal Justice Committee and Senators Negron and Evers

SUBJECT: Regulation of Firearms and Ammunition

DATE: April 15, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Fav/CS**
3.	O'Connor	Maclure	JU	**Favorable**
4.	Cellon	Phelps	RC	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill does the following:

- Clarifies that the field of firearms and ammunition is preempted by the State Constitution as well as general law.
- Deletes a provision allowing a county the option to adopt a waiting period, not exceeding three days, for the purchase of a handgun.
- Adds storage of firearms/ammunition to the list of categories preempted.
- Clarifies that rules and administrative regulations are preempted.
- Penalizes knowing and willful violation of the state's preemption of this field ($5,000).
- Prohibits public funds from being used to defend a violation of this section.
- Penalizes a knowing violation of this section (termination of employment).
- Provides persons adversely affected by violation of the preemption can seek declaratory and injunctive relief as well as actual damages up to $100,000, attorney's fees, and costs.
- Provides exceptions.

This bill substantially amends and reorganizes section 790.33, Florida Statutes.

II. Present Situation:

The Joe Carlucci Uniform Firearms Act

The Joe Carlucci Uniform Firearms Act (Act), as s. 790.33, F.S., is known, became law in 1987.[1] The policy and intent of the Act is stated as follows:

> It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.[2]

The Act accomplished its stated purpose by "occupying the whole field of regulation of firearms and ammunition," as stated in subsection (1) of the Act:

> PREEMPTION.—Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void.[3]

Section 790.33, F.S., contains a limited exception for local ordinances governing a three-day handgun purchase waiting period.[4] Since 1990 there has been a statewide three-day waiting period as set forth in the Constitution of the State of Florida.[5] The constitutional provision prevails over any local ordinances that may have been enacted. There are statutory exemptions from the waiting period in the Act. Of these exemptions, two were adopted in s. 790.0655, F.S., as required by the Florida Constitution.[6] The other exemptions are:

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[1] Chapter 87-23, Laws of Fla.
[2] Section 790.33(3)(a), F.S.
[3] Section 790.33(1), F.S.
[4] Section 790.33(2), F.S. (1988). Note: At the time of enactment in 1987, the Act provided the exception for a 48-hour waiting period.
[5] There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph. ... This restriction shall not apply to a trade in of another gun. FLA. CONST. art. I, s. 8(b), 8(d).
[6] The exemptions apply to persons who hold a valid concealed weapons permit at the time of the purchase or who are trading in another handgun. s. 790.0655(2)(a)-(b), F.S.; FLA. CONST. art. I, s. 8(b), 8(d).

- Individuals who already lawfully own another firearm and who show a sales receipt for another firearm or who are known to own another firearm through a prior purchase from the retail establishment;
- A law enforcement or correctional officer as defined in s. 943.10, F.S.;
- A law enforcement agency as defined in s. 934.02, F.S.;
- Sales or transactions between dealers or between distributors or between dealers and distributors who have current federal firearms licenses; or
- Any individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such threat has been duly reported to local law enforcement.[7]

Since these specific exemptions were not included in the constitutional amendment, and because the Carlucci Act's exemptions pre-date the amendment to the Florida Constitution, they are essentially null and void.

Despite the provisions of the 1987 Joe Carlucci Act and a Florida appellate court opinion upholding the Act,[8] local governments have enacted or considered enacting ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits for certain sporting goods stores, and banned recreational shooting.

Immunity for Official Conduct

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts.[9] Absolute immunity for legislators has historically been recognized as a "venerable tradition" that has withstood the development of the law since pre-colonial days.[10] Courts have upheld absolute immunity for legislators at all levels of lawmaking, including federal, state, and local government levels.[11] The courts' reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers.[12] Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen legislators, and deter service in local government.[13]

When unlawful ordinances have been enacted, the freedom from personal liability does not make the legislative product itself valid.[14] In such instances, affected citizens have been able to

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[7] Section 790.33(2)(d)2.-6., F.S.
[8] *National Rifle Association v. City of South Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).
[9] *See Tenney v. Brandhove*, 341 U.S. 367 (1951).
[10] *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998). For additional examples of where absolute immunity of legislative acts has been recognized, see *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Hough v. Amato*, 269 So. 2d 537 (Fla. 1st DCA 1972); *Jones v. Loving*, 55 Miss. 109 (1877); *Ross v. Gonzales*, 29 S.W.2d 437 (Tex. Ct. App. 1930).
[11] *Bogan*, 523 U.S. 44.
[12] *Id.* at 50-51 (citing *Jones*, 55 Miss. 109).
[13] *Id.* at 52.
[14] *Tenney*, 341 U.S. at 379.

challenge the validity of such ordinances by suing to have them declared invalid or have a court enjoin enforcement.[15]

Courts have found that legislators may be subject to personal liability when they lack discretion.[16] Such situations typically exist when legislators are subject to an affirmative duty, such as when a law or court order has directed them to levy a tax. Such acts are labeled "ministerial," as opposed to "legislative," acts.[17] Arguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field.

III. Effect of Proposed Changes:

Senate Bill 402 expands and clarifies state preemption of the regulation of firearms and ammunition. In the process, s. 790.33, F.S., is also reorganized.

The bill expands "the whole field of regulation of firearms and ammunition" (including administrative regulations or rules adopted by local or state governments) to include the storage of those items.

Subsection (2) of s. 790.33, F.S., is stricken by the bill. This is the subsection of the Joe Carlucci Act that allows a county the option to adopt a waiting period, not exceeding three days, for the purchase of a handgun. It pre-dates the constitutional amendment and constitutionally required statutory enactment.[18] Eliminating this subsection of the Act merely clarifies the current state of the law regarding the three-day waiting period, which is found in the Florida Constitution and s. 790.0655, F.S.

The bill retains the policy and intent language from the original Act, currently found in subsection (3) of s. 790.33, F.S. It also adds language setting forth the 2011 Legislature's intent to deter and prevent the violation of the preemption law.

Any person, county, agency, municipality, district, or other entity that enacts or causes to be enforced any local ordinance or administrative rule or regulation faces a civil fine of up to $5,000 if the violation is knowing and willful.

Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have committed a knowing and willful violation of this section.

Additionally, the bill provides that a knowing and willful violation of the preemption law shall be grounds for the termination of employment or contract or removal from office by the Governor.

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[15] *See, e.g., Bogan*, 523 U.S. 44; *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Tenney*, 341 U.S. 367.
[16] *Bogan*, 523 U.S. at 51-52.
[17] *See id.*
[18] FLA. CONST. art. I, s. 8; s. 790.0655, F.S.

Civil actions are also provided for in the bill. A person or organization whose membership is adversely affected by an alleged violation of the preemption law may seek declaratory and injunctive relief. The bill also provides for the assessment of actual damages up to $100,000. The court is required to award a prevailing plaintiff's attorney fees, including a contingency fee multiplier, as well as related costs. Additionally, the bill provides interest shall accrue on the fees, costs, and damages awarded the plaintiff, retroactive to the date the suit is filed.

In subsection (4) of s. 790.33, F.S., as created by the bill, a provision excepting certain zoning ordinances in the original Carlucci Act has been relocated and other exceptions to the prohibitions are set forth in the bill. Specifically, the bill does not prohibit:

- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities listed in paragraphs (2)(a)-(i) from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S.;[19]
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction;
- The Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

The bill provides that it takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[19] Section 790.251, F.S., is entitled "Protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes; prohibited acts; duty of public and private employers; immunity from liability; enforcement.— (1) SHORT TITLE.—This section may be cited as the 'Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008.'" *See specifically* s. 790.251(4), F.S., for the acts of public or private employers that are prohibited.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Government officials who violate the prohibitions in the bill face fines and removal from office. Creating significant penalties on government officials for making policy decisions or carrying out invalid regulations or ordinances may deter public service.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Rules on April 15, 2011:

- Eliminates the noncriminal violation and requirement that the state attorney investigate and prosecute violations of the preemption law.
- Specifically provides that a court may declare an ordinance, rule, or regulation invalid and issue an injunction against its enforcement.
- Limits the possible civil fine for violations of the preemption law to $5,000 and actual damages to no more than $100,000.
- Eliminates the provision that allowed for seizure of certain property for payment of damages, costs, and fees.

CS/CS by Community Affairs on March 21, 2011:

- Clarifies that the field of firearms and ammunition is preempted by the State Constitution as well as general law.
- Adds storage of firearms/ammunition to the list of categories preempted.
- Clarifies that rules and administrative regulations are preempted.
- Penalizes knowing and willful violation of the state's preemption of this field ($5,000-$100,000).

- Requires the state attorney to prosecute these violations and provides that if the state attorney fails to prosecute these violations they can be held accountable under the rules of professional conduct.
- Prohibits public funds from being used to defend a violation of this section.
- Penalizes a knowing violation of this section (immediate termination of employment).
- Provides persons adversely affected by violation of the preemption can sue and receive costs and damages
- Provides exceptions.

CS by Criminal Justice on February 8, 2011:

- Inserts acknowledgement of the Florida Constitution's explicit authority in the regulation of firearms. This is a technical amendment that brings s. 790.33, F.S., which became law in 1987, into conformity with current law.
- Deletes a provision in the bill that specified accounts into which fines assessed in a criminal case would be deposited.
- Clarifies and specifies both the interest rate on money damages, fees and costs, as well as what property may be seized to secure payment of same.

B. Amendments:

None.

opposition

Entered into record 10/15/12 "E"

Select Year: 2012 Go

The 2012 Florida Statutes

Title XLVI
CRIMES

Chapter 790
WEAPONS AND FIREARMS

View Entire Chapter

790.333 Sport shooting and training range protection; liability; claims, expenses, and fees; penalties; preemption; construction.—

(1) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that in excess of 400 sport shooting and training ranges exist on public and private lands throughout this state.

(b) These sport shooting and training ranges are widely used and enjoyed by the residents of this state and are a necessary component of the guarantees of the Second Amendment to the United States Constitution and of s. 8, Art. I of the State Constitution.

(c) Many of these ranges are used by state and local law enforcement agencies for training, practice, and regular mandatory qualification by law enforcement officers; by Fish and Wildlife Conservation Commission hunter safety instructors who teach adults and youngsters in the safe use and handling of firearms in preparation for obtaining hunting licenses; by school boards, colleges, and universities for reserve officer training corps training and activities; by school shooting teams; by Olympic competitors; and by certified instructors who teach the safe use and handling of firearms in preparation for applying for licenses to carry concealed firearms for lawful self-protection.

(d) The public policy of the State of Florida is to encourage the safe handling and operation of firearms and mandates appropriate training in the safe use and handling of firearms for persons licensed to carry concealed firearms and for persons licensed to hunt in the state. Sport shooting and training ranges throughout this state provide the location at which this important public purpose is served and at which the firearms training mandates are fulfilled.

(e) Projectiles are integral to sport shooting and training range activity and to the ownership and use of firearms.

(f) Over years of operation, projectiles have accumulated in the environment at many ranges. Whether this projectile accumulation has caused or will cause degradation of the environment or harm to human health depends on factors that are site-specific. Therefore, sport shooting and training ranges must be allowed flexibility to apply appropriate environmental management practices at ranges. The use of environmental management practices can be implemented to avoid or reduce any potential for adverse environmental impact.

(g) The Department of Environmental Protection, in collaboration with shooting range owners and operators, sport shooting organizations, law enforcement representatives, and university researchers, has developed shooting range best management practices in order to minimize any potential for any adverse environmental impact resulting from the operation of shooting ranges.

(h) Appropriate environmental management practices, when implemented where applicable, can minimize or eliminate environmental impacts associated with projectiles. Environmental management practices to maintain or to improve the condition of ranges is evolving and will continue to evolve.

(i) Unnecessary litigation and unnecessary regulation by governmental agencies of sport shooting and training ranges impairs the ability of residents of this state to ensure safe handling of firearms and to enjoy the recreational opportunities ranges provide. The cost of defending these actions is prohibitive and threatens to bankrupt and destroy the sport shooting and training range industry.

(j) The Department of Environmental Protection does not have nor has it ever had authority to force permitting requirements of part IV of chapter 403 on owners and operators of sport shooting and training ranges.

(k) The elimination of sport shooting ranges will unnecessarily impair the ability of residents of this state to exercise and practice their constitutional guarantees under the Second Amendment to the United States Constitution and under s. 8, Art. I of the State Constitution.

(2) LEGISLATIVE INTENT.—The Legislature intends to protect public and private sport shooting or training range owners, operators, users, employees, agents, contractors, customers, lenders, and insurers from lawsuits and other legal actions by the state, special purpose districts, or political subdivisions and to promote maximum flexibility for implementation of environmental management practices and of the principles of risk-based corrective action pursuant to s. 376.30701. It is also the intent of the Legislature that legal action against sport shooting and training ranges will only be a last-resort option and be available only to the department and only after all reasonable efforts to resolve disputes at shooting ranges, including compliance assistance, negotiations, and alternative dispute resolution, have been attempted.

(3) DEFINITIONS.—As used in this act:

(a) "Department" means the Department of Environmental Protection.

(b) "Operator" means any person who operates or has operated a sport shooting or training range.

(c) "Owner" means any person who owns or has owned a sport shooting or training range or any interest therein.

(d) "Projectile" means any object expelled, propelled, discharged, shot, or otherwise released from a firearm, BB gun, airgun, or similar device, including, but not limited to, gunpowder, ammunition, lead, shot, skeet, and trap targets and associated chemicals, derivatives, and constituents thereof.

(e) "Environmental management practices" includes but is not limited to Best Management Practices for Environmental Stewardship of Florida Shooting Ranges as developed by the Department of Environmental Protection. Such practices include, but are not limited to, control and containment of projectiles, prevention of the migration of projectiles and their constituents to ground and surface water, periodic removal and recycling of projectiles, and documentation of actions taken.

(f) "Environment" means the air, water, surface water, sediment, soil, and groundwater and other natural and manmade resources of this state.

(g) "User" means any person, partner, joint venture, business or social entity, or corporation, or any group of the foregoing, organized or united for a business, sport, or social purpose.

(h) "Sport shooting and training range" or "range" means any area that has been designed, or operated for the use of, firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, BB guns, airguns, or similar devices, or any other type of sport or training shooting.

(4) DUTIES.—

(a) No later than January 1, 2005, the department shall make a good faith effort to provide copies of the Best Management Practices for Environmental Stewardship of Florida Shooting Ranges to all owners

or operators of sport shooting or training ranges. The department shall also provide technical assistance with implementing environmental management practices, which may include workshops, demonstrations, or other guidance, if any owner or operator of sport shooting or training ranges requests such assistance.

(b) No later than January 1, 2006, sport shooting or training range owners, operators, tenants, or occupants shall implement situation appropriate environmental management practices.

(c) If contamination is suspected or identified by any owner, operator, tenant, or occupant of sport shooting or training ranges, any owner, operator, tenant, or occupant of sport shooting or training ranges may request that the department assist with or perform contamination assessment, including, but not limited to, assistance preparing and presenting a plan to confirm the presence and extent of contamination.

(d) If contamination is suspected or identified by a third-party complaint or adjacent property sampling events, the department shall give 60 days' notice to the sport shooting or training range owner, operator, tenant, or occupant of the department's intent to enter the site for the purpose of investigating potential sources of contamination. The department may assist with or perform contamination assessment, including, but not limited to, assistance preparing and presenting a plan to confirm the presence and extent of contamination.

(e) If the department confirms contamination under paragraph (c) or paragraph (d), principles of risk -based corrective action pursuant to s. 376.30701 shall be applied to sport shooting or training ranges. Application of the minimum risk-based corrective action principles shall be the primary responsibility of the sport shooting range or training range owner or operator for implementation, however, the department may assist in these efforts. Risk-based corrective action plans used for these cleanups shall be based upon the presumption that the sport shooting or training range is an industrial use and not a residential use and will continue to be operated as a sport shooting or training range.

(5) SPORT SHOOTING AND TRAINING RANGE PROTECTION.—

(a) Notwithstanding any other provision of law, any public or private owner, operator, employee, agent, contractor, customer, lender, insurer, or user of any sport shooting or training range located in this state shall have immunity from lawsuits and other legal actions from the state and any of its agencies, special purpose districts, or political subdivisions for any claims of any kind associated with the use, release, placement, deposition, or accumulation of any projectile in the environment, on or under that sport shooting or training range, or any other property over which the range has an easement, leasehold, or other legal right of use, if the sport shooting or training range owner or operator has made a good faith effort to comply with subsection (4).

(b) Nothing in this act is intended to impair or diminish the private property rights of owners of property adjoining a sport shooting or training range.

(c) The sport shooting and training range protections provided by this act are supplemental to any other protections provided by general law.

(6) WITHDRAWALS OF CLAIMS AND RECOVERY OF EXPENSES AND ATTORNEY'S FEES.—

(a) Within 90 days after the effective date of this act becoming law, all claims by the state and any of its agencies, special purpose districts, or political subdivisions against sport shooting or training ranges pending in any court of this state or before any administrative agency on January 1, 2004, shall be withdrawn. The termination of such cases shall have no effect on the defendant's cause of action for damages, reasonable attorney's fees, and costs.

(b) In any action filed in violation of this act after the effective date of this act, the defendant shall recover all expenses resulting from such action from the governmental body, person, or entity bringing such unlawful action.

(7) PENALTIES.—Any official, agent, or employee of a county, municipality, town, special purpose district, or other political subdivision or agent of the state, while he or she was acting in his or her official capacity and within the scope of his or her employment or office, who intentionally and maliciously violates the provisions of this section or is party to bringing an action in violation of this section commits a misdemeanor of the first degree, punishable as provided in ss. 775.082 and 775.083.

(8) PREEMPTION.—Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition at sport shooting and training ranges.

(9) The provisions of this act shall supersede any conflicting provisions of chapter 376 or chapter 403.

(10) CONSTRUCTION.—This act shall be liberally construed to effectuate its remedial and deterrent purposes.

History.—s. 1, ch. 2004-56.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/CS/SB 1156

SPONSOR: Appropriations Committee, Criminal Justice Committee, Judiciary Committee, Senators Peaden and Posey

SUBJECT: Sport Shooting & Training Range Environment Liability Protection

DATE: March 18, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Lang	JU	Fav/CS
2.	Herrin	Yeatman	CP	Fav/1 amendment
3.	Cellon	Cannon	CJ	Fav/CS
4.	Kiger	Kiger	NR	Fav/5 amendments
5.	Herring	Coburn	AP	Fav/CS
6.				

I. Summary:

CS/CS/CS/SB 1156 amends the law governing weapons and firearms to:

- Provide immunity from lawsuits by state and local governments for all shooting and training ranges ("ranges") that have made a good faith effort to implement appropriate environmental management practices and to implement minimum risk-based corrective action principles when necessary.
- List legislative findings in support of the immunity from state claims for sport shooting and training ranges.
- Require all pending administrative or judicial claims subject to this bill to be withdrawn from the tribunal within 90 days after the bill becomes law; provides for potential damages against governmental entities.
- Create a first degree misdemeanor offense if any official, employee, or other agent of a public entity willfully and knowingly brings a claim for the placement or accumulation of projectiles against any owner, operator, or user of a sport shooting and training range in violation of the provisions of the bill.
- Create duties of the Department of Environmental Protection with regard to notifying ranges of best management practices, providing technical assistance and responding to complaints of contamination.
- Preempt the regulation of firearm and ammunition use at sport shooting and training ranges.

This bill creates the following section of the Florida Statutes: 790.333.

II. Present Situation:

Chapter 790, F.S., governs the use, possession, and sale of weapons and firearms. The law includes the public policy that it is necessary "to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home and property . . . including the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places."[1] Since 1987, state law has pre-empted local regulation of firearms, ammunition, and components.[2] In 2001, the Legislature specifically prohibited state or local governmental and private suits premised solely on the lawful manufacture, distribution, or sale of firearms.[3]

Shooting ranges provide a wide array of recreational and training services and products for private, commercial, law enforcement, and military persons. The actual number of sport shooting ranges in the state is unknown. In 2002, the Florida Department of Environmental Protection (DEP) catalogued the addresses of 239 private and public sport shooting ranges[4] based on a project with limited funding to promote best management practices.[5]

No statewide regulation of shooting ranges exists although they are subject to local government and federal environmental regulatory standards.[6] No formal accreditation association exists in Florida for shooting ranges although efforts are underway to establish an association. The National Rifle Association often provides assistance to shooting ranges regarding gun safety and appropriate shooting range standards which are updated periodically to reflect changes in technology and law. However, shooting ranges are not obligated to comply with them.

Due to the growth in shooting range activities, expansion in facility capacity, the shift in population from urban to suburban and rural areas, and the impact of certain zoning decisions, issues such as noise, operational hours, public safety, environmental impact, and health concerns have become the subject of local government ordinances, civil complaints by surrounding property owners, administrative actions, and lawsuits. In 2001, the Florida Legislature provided limited immunity to sport shooting ranges from criminal prosecution or civil suits based on an underlying charge or claim of noise or noise pollution as long as the sport shooting range was in compliance with local noise-control ordinances in effect at the time of construction or initial operation of the range.[7] Otherwise, owners and operators of sport shooting and training ranges are subject to enforcement and lawsuits as other business owners and operators.

The DEP is the environmental regulatory agency for the state of Florida and is charged with enforcing provisions in chapters 376 and 403, F.S. Additionally, the DEP is delegated authority by the federal government to enforce a variety of environmental laws, including the state hazardous waste management program in lieu of the federal program under the Resource

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[1] *See* s.790.25, F.S.
[2] *See* s. 790.33, F.S.; chapters 88-183 and 87-23, L.O.F.
[3] *See* s. 790.331, F.S.; ch. 2001-38, L.O.F.
[4] The proposed CS includes a statement of legislative finding that there are over 400 shooting ranges in the state.
[5] Ranges typically fall into a number of categories including those owned or operated directly or for the purpose of law enforcement, military training, colleges, and vocational schools.
[6] *See e.g.*, the National Firearms Act (1934), Gun Control Act (1968), Firearms Owner's Protection Act (1986), Brady Handgun Violence Prevention Act (1993), and the 1994 Omnibus Crime Control Act.
[7] *See* s. 823.16, F.S.

Conservation and Recovery Act of 1976 (RCRA).[8] Florida has adopted a federally approved state plan for waste management. The RCRA gave the Environmental Protection Agency the authority to control hazardous waste including the generation, transportation, treatment, storage, and disposal of hazardous waste. In turn, states could seek approval from the EPA to administer and enforce a state hazardous waste regulatory program in lieu of the federal program so long as the state program is equivalent to the federal program. Commensurate federal assistance is provided. The state or political subdivision can impose requirements more stringent but not less stringent than the federal requirements.

According to DEP, "ranges can, if not properly managed, pose a threat to public health and the environment due to contamination of soil, ground water and surface water bodies from the discharge of lead and arsenic contained in the ammunition."[9] Mitigation efforts or efforts to eliminate build-up from contaminants such as lead or arsenic from projectiles exist but ranges are not required under law to implement these efforts. Research literature and studies by the Centers for Disease Control and Prevention, the U.S. Department of Health and Human Services, and others document the history of the toxic effects for human and animal life and the environmental threats posed by significant concentrations of or exposure to lead and arsenic.[10] DEP provided examples of the deposit amounts that can accumulate over time[11]: 1) The Geneva Center Range associated with the Seminole Community College contracted for annual lead reclamation beginning in December 2000. A lead reclamation contractor removed 15,480 pounds in 2000, 12,800 pounds in 2001, and 8,580 pounds in 2002; 2) In a recent range upgrade, approximately 60 tons of lead had accumulated over a ten-year period and were removed from the Pat Thomas Law Enforcement Academy; and 3) Approximately 6,060 pounds of bullets were recovered between August 2002 and May 2003, at the Escambia River Muzzle Loaders, Inc.

In 2001, the department initiated a project to address environmental issues surrounding shooting ranges. Through a series of project workshops, DEP staff and industry stakeholders focused on pollution prevention, range best management practices, control (remediation) measures, and university research regarding lead stabilization. Some of the initiatives instituted or completed during the two-year project included the publication of a best management practices manual, the development of a database of public and private sector ranges, funding for lead stabilization studies, the establishment of environmental stewardship plans, and facilitation of improvements at law enforcement shooting ranges in coordination with the Pat Thomas Law Enforcement Academy.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 790.33, F.S., to grant all sport shooting ranges and persons associated with those ranges immunity from legal actions by the state, its agencies, special

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[8] *See* 42 U.S.C. ss. 6901 et seq. as amended.

[9] *See* Letter to Rep. Kottkamp, dated December 8, 2003, containing cite references to environmental data from ranges regarding lead and arsenic contamination of soils and consequential off-site surface and ground water contamination including two reports entitled '*Environmental Impacts of Lead Pellets at Shooting Ranges and Arsenical Herbicides at Golf Courses in Florida*', Lena Q. Ma, et al. Report 00-03, June 2000 and May 2002 at<<http://www.floridacenter.org/publications/ma_00-03.pdf >> and <<http://www.floridacenter.org/publications/ma_0201_shooting_ranges.pdf>>, respectively.

[10] For example, lead is banned or reduced in a number of products due to concerns with its environmental safety.

[11] Information excerpted from documents provided by DEP.

purpose districts, or political subdivisions. Sport shooting and training ranges are defined broadly to mean any area that has been designed or operated primarily for the use of firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, BB guns, airguns, or similar devices, or for any other type of sport or training shooting.[12]

The bill states that the Legislature intends:

- To protect range owners and various affiliated persons from legal actions by state and local governments.
- To promote "maximum flexibility to implement environmental management practices and risk-based corrective action."
- To limit legal action by the Department of Environmental Protection against ranges as a last resort after all other reasonable resolution efforts have failed.

Specifically, the bill provides immunity from legal action for any sport shooting and training range, including an owner, operator, employee, agent, contractor, customer, lender, insurer, or user, by the state, its agencies, special districts, or political subdivisions which is "associated with the use, release, placement, deposition, or accumulation of any projectile in the environment on or under that sport shooting or training range or any other property over which the range has an easement, leasehold, or legal right of use, if the sport shooting or training range owner or operator has made a good faith effort" to implement appropriate environmental management practices.

The term "environment" is defined so that the immunity would apply to any projectile that would affect the "air, water, surface water, sediment, soil, groundwater, and other natural and manmade resources of the state" of the sport shooting range or property over which the range has a legal right of use.

The term "environmental management practices" is defined to include controlling and containing of projectiles, preventing projectile components from migrating into soil and surface water, removing and recycling projectiles, and documenting the practices used.

The bill states that nothing in it is intended to "impair or diminish" the private property rights of persons who own property adjacent to shooting ranges.

Any claim that was brought by the state, its agencies, special districts, or political subdivisions, pending before a judicial or administrative tribunal as of January 1, 2004, against a sport shooting or training range, must be withdrawn within 90 days after the bill becomes law. The bill gives defendant in such cases a civil cause of action for damages, reasonable attorney's fees and costs.

The bill provides that for any action filed in violation of the act after it is effective the defendant shall recover expenses from the governmental entity bringing the action. Additionally, any

[12] Section 823.16, F.S., (relating to immunity from nuisance or noise pollution suits) defines sport shooting range or range "as an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting."

official, employee, or other agent of a public entity who, while acting within the scope of his or her employment, willfully and knowingly brings, or is a party to bringing an action under this created section, commits a first degree misdemeanor felony. The term "action" is not defined but presumably encompasses administrative, criminal, or civil action.

The bill requires that the Department of Environmental Protection must use its best effort to provide copies of the Best Management Practices for Environmental Stewardship of Florida Shooting Ranges to every owner and operator of a sport shooting or training range in Florida by January 1, 2005. The department is further obligated, at the request of sport shooting or training ranges, to provide technical assistance in the form of workshops, demonstrations, or other guidance.

By January 1, 2006, sport shooting and training ranges must implement environmental management practices that are appropriate to their situation.

If contamination at a range is suspected or identified by a third party or through sampling on adjacent property, the department may enter the range to investigate potential contamination. The department must give 60 days prior notice to the range. If contamination is identified by the department, principles of risk-based corrective action pursuant to existing law must be applied. The range will be primarily responsible for such principles. The department may assist in the range's efforts.

Corrective action plans must assume the range is an industrial, not a residential use, and that it will continue to be used as it presently is.

With regard to the identification of ranges within the state, the Legislative Findings in the bill state that there are "more than 400." As previously noted in the Present Situation section of this analysis, the department documented the addresses of only 239 private and public ranges in 2002.

The bill states that the protections provided for shooting ranges are "supplemental" to any other protections provided in law.

The following legislative findings are listed as a basis for granting the limited immunity:

- Over 400 public and private ranges exist in the state.
- Citizens use and enjoy ranges.
- Ranges are a necessary component of the guarantee of the right to bear arms under the Florida Constitution and U.S. Constitution.
- Ranges are used in training, practice, and qualification by law enforcement; in teaching safe use and handling of firearms to those seeking hunting licenses or licenses to carry concealed firearms; by collegiate and Olympic shooting teams; and by ROTC programs.
- Projectiles are integral to range operations.
- Whether projectiles degrade the environment is site specific.
- A set of best management practices for shooting ranges has been developed by the department, the shooting ranges, and others.

- Management practices, which are continually evolving, can minimize or eliminate the environmental impact of projectiles.
- Unnecessary litigation and regulation by government impairs the ability of citizens to use sport shooting and training ranges.
- The cost of defending unnecessary government litigation threatens the future of sport shooting and training ranges.
- Elimination of ranges would unnecessarily impair citizens' constitutional right to keep and bear arms.

The Legislature also finds that the Department of Environmental Protection does not have, and has never had, authority to apply the permitting requirements of Part IV of Chapter 403, Florida Statutes, related to resource recovery and management, to the owners and operators of sport shooting and training ranges.

The bill states that the Legislature preempts the entire field of regulating firearm and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition.

The bill specifically provides that it supercedes any provisions contained in Chapter 376, Florida Statutes, related to pollutant discharge prevention and removal, and in Chapter 403, Florida Statutes, related to environmental control, including pollution control, electrical power plant and transmission line siting, interstate environmental control compact, resource recovery and management, environmental regulation, water supply, water treatment plants, natural gas transmission pipeline siting, and expedited permitting.

The bill also provides that the law must be liberally construed to give effect to its remedial and deterrent purposes.

Section 2 of the bill provides that the act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Right to Bear Arms: The bill includes statements of legislative findings that say that *ranges are a necessary component to the exercise of the right to bear arms* under the

Florida Constitution and U.S. Constitution. *There is no case law construing these statements*. Although the right to bear arms is protected under the U.S. Constitution and the Florida Constitution[13], it is not an absolute right for which the Florida Supreme Court has held that the right may be legislatively constrained to promote the health, morals, safety and general welfare of the people. *See Rinzler v. Carson*, 262 So.2d 661 (Fla. 1972). Moreover, despite the U.S. Supreme Court's ruling in *U.S. v. Miller*, 307 U.S. 174, 178 (1939) which held that the purpose of the Second Amendment was to assure the continuation and render possible the effectiveness of a state militia, the right to bear arms is still the subject of continuing debate and conflicting lower court rulings as to whether the constitutional provisions were intended to recognize a broad, individual right to keep and bear arms or a collective right to bear arms as it relates to the maintenance of a militia.

Natural resources and scenic beauty: In 1998, voters enacted s. 7 of Article II of the *Florida Constitution* to include the stated public policy to "conserve and protect the natural resources and scenic beauty" and to provide adequately in state law "for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources." Although the constitutional provisions are not self-executing, a number of state laws and agency regulations implement this provision and may be enforced by the Department of Environmental Protection, Department of Health, and other state agencies depending on the underlying state law or administrative regulation. An attempt by a local, special district or state official, employee, or agent to enforce any such law may subject him or her to a first degree misdemeanor charge if the civil, criminal, or administrative claim were to be filed against a shooting range and the claim were construed as being in violation of the Act. Moreover, the official, agent or employee is also subject to damages, attorney's fees, and costs if the person is injured due to the claim.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All owners, operators and other associates of sport shooting and training ranges immune to legal actions by the state, its agencies, special purpose districts, and political subdivisions may reduce the costs of doing business. Those ranges for which compliance with environmental laws, including reclamation measures to clean up contamination and pollution, is cost-prohibitive may otherwise avert bankruptcy or closure, if they comply

[13] The Second Amendment of the *U.S. Constitution* (1791) provides that "[a] well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Florida has a similar constitutional provision which states that "[t]he right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." *See* s. 8, Art. I, *Fla. Const.*

with the environmental management practices and minimum risk-based corrective action principles required in the bill.

The immunity from lawsuits by the state, its agencies, special purpose districts, and political subdivisions, for range owners and operators may negatively impact individuals and property owners, including agricultural landowners who have environmental, health or economic injuries resulting from lead or arsenic from projectiles placed or accumulating in the air, water, or soil of their property. Although this bill does not prohibit an action by a private party, it may make such a suit more difficult due to the absence of an underlying state action.

C. Government Sector Impact:

Other than administrative or civil actions taken by DEP, it is unknown how many civil suits or criminal charges are currently pending against private sport shooting ranges arising from claims of contaminants from the projectiles or the projectiles themselves from these facilities. The DEP reports it has one environmental regulatory case pending in circuit court against the Skyway Trap & Skeet Club located in St. Petersburg, Florida. To date, DEP has identified 26 other ranges with contaminant levels in excess of state standards which have either completed clean-up or are in various stages of clean-up. These ranges were prompted to initiate clean-up either through the voluntary action of the site owner, through administrative complaints or regulatory inspections, or through permit processes and coordination with the federal Department of Defense.[14] DEP does not know if or how many local governments or special districts may be seeking environmental regulatory enforcement or litigation against a range.

Under the bill, any viable claim associated with the placement or accumulation of lead or arsenic from shooting range projectiles would have to be pursued under federal law. It is unknown how this bill may affect state and local entities who are authorized or delegated authority by federal law to enforce federal environmental laws through the establishment of similar state programs in conjunction with federal programs or through collaborative efforts with federal agencies such as the Environmental Protection Agency, the Forest Service or Fish & Wildlife Service of the Department of the Interior, or the Department of Defense. It is also unknown how this bill may affect any federal funding or state matching dollars contingent upon state or local enforcement of environmental laws or the establishment and enforcement of state environmental regulatory programs.

The preemption of the entire field of regulating firearm and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition, by the state could affect the approval of Florida's hazardous waste program under the federal Resource Conservation and Recovery Act of 1976 (relating to hazard and solid waste management).

Sovereign Immunity and Course and Scope of Employment: Article X, s. 13 of the State Constitution, provides that sovereign immunity may be waived through an enactment of

[14] *See* 12/22/03 DEP draft chart entitled: "Summary of Shooting Range Cleanups in Florida."

general law. The Legislature, in s. 768.28, F.S., has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability. Section 768.28(5), F.S., provides that a claim or judgment by any one person may not exceed $100,000, and may not exceed $200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence.

Under the provisions of this bill, local, special district, or state public officials, agents, and employees are at risk for civil damages. Additionally, if a local, special district, or state official or employee fails to withdraw within the prescribed 30 days a pending civil, criminal, or administrative claim that falls within the parameters of this bill, such person risks damages, attorney's fees, and costs. These persons also risk criminal prosecution for a first degree misdemeanor if, while acting in their official capacity and within their scope of employment, they file a suit or are named as a party to a suit against a range otherwise immune under this bill.

Pursuant to s. 768.28(9)(a), F.S., an officer, employee, or agent of the state may not be held personally liable in tort or named as a party defendant for any injury that results from an act, event, or omission of action in the scope of her or his employment function unless the officer, employee, or agent acted in bad faith or with malicious purpose or exhibits wanton and willful disregard of human rights, safety, or property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Health's County Health Departments are responsible for identifying the source of lead resulting in a lead-poisoned child. The department reports that "[i]ndoor shooting ranges are known to be a source of lead poisoning for children of employees, and possibly customers, of shooting ranges. Employees and customers of shooting ranges have also been poisoned with lead from shooting ranges. There are also data that show lead contamination in soil greater than 400 parts per million can result in lead poisoning of some children. Contamination of the soil at an outdoor range that was later used for residential uses would represent a risk of lead poisoning to children living on that land."

The DEP reports that "[e]nvironmental data from many ranges indicates significant lead and arsenic contamination of soils (so much so that many of these soils fail the federal hazardous waste leaching test for a hazardous waste), ground water contamination, and, in some cases, off-site surface water contamination."

The National Rifle Association and Unified Sportsmen of Florida report that in DEP's lawsuit against the skyway Trap and Skeet Club, which has been in existence for almost 60 years, DEP "[a]ttempts to classify projectiles shot from firearms as 'solid waste' under Florida's environmental laws . . . [t]wists and misapplies the law in an attempt to classify the shooting

range 'a solid waste facility,' a 'solid waste disposal facility,' and a 'landfill' . . . [a]ttempts to classify a shooting range owner as the "operator of a landfill" who is therefore liable for the improper operation [of] a landfill . . . [alleges] that the shooting range is a landfill and is being operated unlawfully without a landfill permit issued by DEP."

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1156

SPONSOR: Criminal Justice Committee, Judiciary Committee, Senators Peaden and Posey

SUBJECT: Sport Shooting & Training Range Environment Liability Protection

DATE: March 1, 2004 REVISED: 3/2/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Lang	JU	Fav/CS
2.	Herrin	Yeatman	CP	Fav/1 amendment
3.	Cellon	Cannon	CJ	Fav/CS
4.	Kiger	Kiger	NR	Fav/5 amendments
5.				
6.				

I. Summary:

This Committee Substitute for CS/SB 1156 (CS) amends the law governing weapons and firearms as follows:

- Provides limited immunity for all shooting and training ranges ("ranges") identified to the Department of Environmental Protection by September 30, 2005, from any administrative, criminal, and civil claims brought by the state, a special district, or political subdivision and arising from the placement or accumulation of projectiles on the range or other property over which the range has the legal right to use.
- Enumerates legislative findings in support of the immunity from state claims for sport shooting and training ranges.
- Requires all pending administrative or judicial claims subject to this CS to be withdrawn from the tribunal within 30 days after the CS becomes law; prohibits any governmental entity from benefiting financially from such action; provides for the governmental entity to pay attorney's fees and costs of litigation and resulting damages.
- Creates a civil cause of action for damages, attorney's fees, and costs for any person injured as a result of a claim filed in violation of this law.
- Creates a first degree misdemeanor offense if any official, employee, or other agent of a public entity willfully and knowingly brings a claim for the placement or accumulation of projectiles against any owner, operator, or user of a sport shooting and training range in violation of the provisions of the CS.
- Creates certain duties within the Department of Environmental Protection with regard to contamination assessment and cleanup of ranges.
- Creates a duty to use risk-based corrective action, using the most fiscally responsible approach in the cleanup process.

- Creates a method by which the department may seek judicial intervention for the purpose of fulfilling its duties under limited circumstances.
- Requires the department to notify ranges when the Act passes and to establish a range identification process.
- Ranges identified to the department by September 30, 2005, may not be required to pay for the cost of the initial cleanup.
- The CS restricts governmental entities other than the state from initiating any activity related to environmental issues, except under certain restricted circumstances.
- The CS provides that funds from the Water Quality Assurance Trust Fund may be used for expenses associated with this Act.
- Provides that the *Legislature* will pre-empt the regulation of the environmental effects of projectile deposition and accumulation at sport shooting and training ranges.

This CS creates the following section of the Florida Statutes: 790.333.

II. Present Situation:

Chapter 790, F.S., governs the use, possession, and sale of weapons and firearms. The law includes the public policy that it is necessary "to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home and property . . . including the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places."[1] Since 1987, state law has pre-empted local regulation of firearms, ammunition, and components.[2] In 2001, the Legislature specifically prohibited state or local governmental and private suits premised solely on the lawful manufacture, distribution, or sale of firearms.[3]

Shooting ranges provide a wide array of recreational and training services and products for private, commercial, law enforcement, and military persons. The actual number of sport shooting ranges in the state is unknown. In 2002, the Florida Department of Environmental Protection (DEP) catalogued the addresses of 239 private and public sport shooting ranges[4] based on a limited funded project to promote best management practices.[5]

No statewide regulation of shooting ranges exists although they are subject to local government and federal environmental regulatory standards.[6] No formal accreditation association exists in Florida for shooting ranges although efforts are underway to establish an association. The National Rifle Association often provides assistance to shooting ranges regarding gun safety and appropriate shooting range standards which are updated periodically to reflect changes in technology and law. However, shooting ranges are not obligated to comply with them.

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[1] *See* s.790.25, F.S.
[2] *See* s. 790.33, F.S.; chapters 88-183 and 87-23, L.O.F.
[3] *See* s. 790.331, F.S.; ch. 2001-38, L.O.F.
[4] The proposed CS includes a statement of legislative finding that there are over 400 shooting ranges in the state.
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[6] *See e.g.*, the National Firearms Act (1934), Gun Control Act (1968), Firearms Owner's Protection Act (1986), Brady Handgun Violence Prevention Act (1993), and the 1994 Omnibus Crime Control Act.

Due to the growth in shooting range activities, expansion in facility capacity, the shift in population from urban to suburban and rural areas, and the impact of certain zoning decisions, issues such as noise, operational hours, public safety, environmental impact, and health concerns have become the subject of local government ordinances, civil complaints by surrounding property owners, administrative actions, and lawsuits. In 2001, the Florida Legislature provided limited immunity to sport shooting ranges from criminal prosecution or civil suits based on an underlying charge or claim of noise or noise pollution as long as the sport shooting range was in compliance with local noise-control ordinances in effect at the time of construction or initial operation of the range.[7] Otherwise, owners and operators of sport shooting and training ranges are subject to enforcement and lawsuits as other business owners and operators.

The DEP is the environmental regulatory agency for the state of Florida and is charged with enforcing provisions in chapters 376 and 403, F.S. Additionally, the DEP is delegated authority by the federal government to enforce a variety of environmental laws, including the state hazardous waste management program in lieu of the federal program under the Resource Conservation and Recovery Act of 1976 (RCRA).[8] Florida has adopted a federally approved state plan for waste management. The RCRA gave the Environmental Protection Agency the authority to control hazardous waste including the generation, transportation, treatment, storage, and disposal of hazardous waste. In turn, states could seek approval from the EPA to administer and enforce a state hazardous waste regulatory program in lieu of the federal program so long as the state program is equivalent to the federal program. Commensurate federal assistance is provided. The state or political subdivision can impose requirements more stringent but not less stringent than the federal requirements.

According to DEP, "ranges can, if not properly managed, pose a threat to public health and the environment due to contamination of soil, ground water and surface water bodies from the discharge of lead and arsenic contained in the ammunition."[9] Mitigation efforts or efforts to eliminate build-up from contaminants such as lead or arsenic from projectiles exist but ranges are not required under law to implement these efforts. Research literature and studies by the Centers for Disease Control and Prevention, the U.S. Department of Health and Human Services, and others document the history of the toxic effects for human and animal life and the environmental threats posed by significant concentrations of or exposure to lead and arsenic.[10] DEP provided examples of the deposit amounts that can accumulate over time[11]: 1) The Geneva Center Range associated with the Seminole Community College contracts for annual lead reclamation beginning in December 2000. A lead reclamation contractor removed 15,480 pounds in 2000, 12,800 pounds in 2001, and 8,580 pounds in 2002; 2) In a recent range upgrade, approximately 60 tons of lead had accumulated over a ten-year period and were removed from the Pat Thomas

[7] *See* s. 823.16, F.S.
[8] *See* 42 U.S.C. ss. 6901 et seq. as amended.
[9] *See* Letter to Rep. Kottkamp, dated December 8, 2003, containing cite references to environmental data from ranges regarding lead and arsenic contamination of soils and consequential off-site surface and ground water contamination including two reports entitled '*Environmental Impacts of Lead Pellets at Shooting Ranges and Arsenical Herbicides at Golf Courses in Florida*', Lena Q. Ma, et al. Report 00-03, June 2000 and May 2002 at<<http://www.floridacenter.org/publications/ma_00-03.pdf >> and <<http://www.floridacenter.org/publications/ma_0201_shooting_ranges.pdf>>, respectively.
[10] For example, lead is banned or reduced in a number of products over concerns with its environmental safety.
[11] Information excerpted from documents provided by DEP.

Law Enforcement Academy; and 3) Approximately 6,060 pounds of bullets were recovered between August 2002, and May 2003, at the Escambia River Muzzle Loaders, Inc.

In 2001, the department initiated a project to address environmental issues surrounding shooting ranges. Through a series of project workshops, DEP staff and industry stakeholders focused on pollution prevention, range best management practices, control (remediation) measures, and university research regarding lead stabilization. Some of the initiatives instituted or completed during the two-year project included the publication of a best management practices manual, the development of a database of public and private sector ranges, funding for lead stabilization studies, the establishment of environmental stewardship plans, and facilitation of improvements at law enforcement shooting ranges in coordination with the Pat Thomas Law Enforcement Academy.

III. Effect of Proposed Changes:

Section 1 of the CS creates s. 790.33, F.S., to protect *all* sport shooting ranges and persons associated with those ranges from certain environmental liability to the state, a special district, or political subdivision. Sport shooting and training ranges are defined broadly to mean any area that has been designed or operated primarily for the use of firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, BB guns, airguns, or similar devices, or for any other type of sport or training shooting.[12]

Specifically, the CS provides limited liability for any sport shooting and training range identified to the Department of Environmental Regulation by September 30, 2005, including an owner, operator, or user, from any administrative regulation or criminal or civil liability to the state, a special district, or political subdivision which is "associated with the intentional or unintentional placement or accumulation of projectiles in the environment on or under the range and any other property over which the range has a leasehold, easement, or legal right to use." The term "environment" is defined such that the immunity would apply to any projectile that would affect the "air, water, surface water, sediment, soil, groundwater, and other natural and manmade resources of the state" of the sport shooting range or property over which the range has a legal right to use.

Any claim that was brought by the state, a special district, or a political subdivision, pending before a judicial or administrative tribunal as of January 1, 2004, against a sport shooting range, owner, or user, must be withdrawn within 30 days after the CS becomes law. Failure to withdraw the claim may be penalized under the provisions of the CS, resulting in a criminal misdemeanor charge, as set forth in subsection (6) of the newly–created statute. Additionally, any official, employee, or other agent of a public entity who, while acting within the scope of his or her employment, willfully and knowingly brings, or is a party to bringing an action under this created section, commits a first degree misdemeanor felony. The term "action" is not defined but presumably encompasses administrative, criminal, or civil action.

[12] Section 823.16, F.S., (relating to immunity from nuisance or noise pollution suits) defines sport shooting range or range "as an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting."

The CS provides that no state agency, or other political subdivision may benefit financially or otherwise from a pending action in which a judgment, legal action, or other recourse has been entered in its favor. The state agency or other political subdivision is required by the CS to pay all costs of litigation, reasonable attorney fees, paralegal fees, and damages in any action that is prohibited by this CS.

Any private or public owner, operator, employee, agent, contractor, customer, or user of a range injured by a claim filed in violation of the section gives the injured person a civil cause of action for damages, reasonable attorney fees, and costs. The CS does not state the nature of the injury that is necessary to trigger recovery.

The CS requires certain duties be fulfilled by the Department of Environmental Protection and provides a method by which those duties may be accomplished. These duties and methods are as follows:

- Develop a plan and procedures for review, contamination assessment, and cleanup of ranges *if there is credible reason to believe the projectile accumulation poses an immediate threat to the environment or human health.*
- Provide 60 days notice of the intent to enter the range to conduct an assessment to the range owner or other associated party as listed in the CS.
- Apply principles of risk-based corrective action pursuant to existing law.
- Site cleanup may be conducted by the department *if:*
    - the department has proven by competent substantial evidence that the effect of accumulated projectiles is violative of laws or rules and is causing an unreasonable risk of injury or death to humans or the environment,
    - the evidence has been presented to the range owner or other listed party,
    - permission has been sought for entrance to the range, with 120 days' notice,
    - permission has been granted, and
    - funding is available to clean up the range, without delay, using the most fiscally responsible approach.
- If the department has complied with certain conditions listed above and been denied access to the range for cleanup, it may seek judicial intervention:
    - the range owner or other listed party may rebut the department's claims,
    - the prevailing party may recover related costs and fees from the other party.

The CS requires the Department of Environmental Protection to notify ranges known to it of the passage of this act, and any rights and obligations of the owners and operators resulting from its passage.

With regard to the identification of ranges within the state, the Legislative Findings in the CS state that there are "more than 400." As previously noted in the Present Situation section of this analysis, the department documented the addresses of only 239 private and public ranges in 2002.

The CS requires the department to develop the necessary guidelines and establish a range identification process no later than October 1, 2004. The department must make a reasonable effort to notify the public of the identification requirements, including providing legal notice

pursuant to ch. 50, F.S. The department shall bear the associated costs. Further, the department shall develop an education program to assist identified ranges and promote the use of best management practices to limit environmental impact.

The owner of a range must identify themselves to the department, providing a minimum the name and legal address of the owner and address and legal description of the range. For ranges in existence on or before October 1, 2004, this must occur by September 30, 2005. Ranges established after October 1, 2004, must identify themselves within one year of establishment.

By requiring the range owners to identify their ranges, the department can effectively determine which ranges in the state will be provided a state-funded initial cleanup. The CS requires the state to bear the cost of the contamination assessment and initial cleanup of ranges identified to the department by September 30, 2005. The limited liability granted by the CS to ranges identified to the department by September 30, 2004, ends after the initial cleanup of those ranges. Subsequent cleanups at those ranges will be borne by the owner or other listed party. New ranges, or those that do not comply with the identification requirements, will bear the costs of any cleanups.

The effect of the provisions explained above should be that the department is made aware of the number of ranges that may require a state-funded cleanup, the process for assessment and cleanup is provided, and the ranges that come into existence after the September 30, 2005, date will not be cleaned up at state expense, because they should be educated as to how to avoid environmental contamination, and are on notice that the range must bear the cost of any cleanup that is shown to be necessary.

The CS clarifies that no governmental entity other than the department may initiate or conduct investigations, cleanups, or other activities related to environmental issues unless under the supervision of the department.

The CS provides that funds from the Water Quality Assurance Trust Fund may be used for expenses associated with the CS.

A subsection of the CS states: "This section *does not relieve the state* of its duty to absorb the costs of environmental cleanups of sport shooting or training ranges *under other circumstances*." It appears that the effect of this provision is to clarify that if a range is in violation of environmental rules or laws where contaminants other than accumulated lead projectiles are the source, existing duties apply.

The following legislative findings are listed as a basis for granting the limited immunity:

- Over 400 public and private ranges exist in the state.
- Citizens use and enjoy ranges.
- Ranges are a necessary component of the guarantee of the right to bear arms under the Florida Constitution and U.S. Constitution.
- Ranges are used in training, practice, and qualification by law enforcement; in teaching safe use and handling of firearms to those seeking hunting licenses or licenses to carry concealed firearms; by collegiate and Olympic shooting teams; and by ROTC programs.

- Projectiles are integral to range operations.
- Environmental litigation by state and local agencies is cost-prohibitive to defend and threatens the viability of the shooting range industry which would affect a citizen's constitutional right to keep and bear arms.

There is Legislative Intent language in the CS that states that the Legislature intends to protect and immunize range owners and other listed parties from environmental liability and to prevent actions by governmental entities which "threaten to destroy or bankrupt" them.

The CS states that the *Legislature* pre-empts the entire field of regulating the environmental effects of projectile deposition at sport shooting and training ranges. This pre-emption could affect the approval of Florida's hazardous waste program under the federal Resource Conservation and Recovery Act of 1976 (relating to hazard and solid waste management). The pre-emption as stated may also implicitly designate the Legislature as the enforcement entity for the regulation of environmental laws.

The CS also provides that the law must be liberally construed to give effect to its remedial and deterrent purposes.

Section 2 of the CS provides that the act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Right to Bear Arms: The CS includes statements of legislative findings that say that *ranges are a necessary component to the exercise of the right to bear arms* under the Florida Constitution and U.S. Constitution. *There is no case law construing these statements*. Although the right to bear arms is protected under the U.S. Constitution and the Florida Constitution[13], it is not an absolute right for which the Florida Supreme Court has held that the right may be legislatively constrained to promote the health, morals,

[13] The Second Amendment of the *U.S. Constitution* (1791) provides that "[a] well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Florida has a similar constitutional provision which states that "[t]he right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." *See* s. 8, Art. I, *Fla. Const.*

safety and general welfare of the people. *See Rinzler v. Carson*, 262 So.2d 661 (Fla. 1972). Moreover, despite the U.S. Supreme Court's ruling in *U.S. v. Miller*, 307 U.S. 174, 178 (1939) which held that the purpose of the Second Amendment was to assure the continuation and render possible the effectiveness of a state militia, the right to bear arms is still the subject of continuing debate and conflicting lower court rulings as to whether the constitutional provisions were intended to recognize a broad, individual right to keep and bear arms or a collective right to bear arms as it relates to the maintenance of a militia.

Natural resources and scenic beauty: In 1998, voters enacted s. 7 of Article II of the *Florida Constitution* to include the stated public policy to "conserve and protect the natural resources and scenic beauty" and to provide adequately in state law "for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources." Although the constitutional provisions are not self-executing, a number of state laws and agency regulations implement this provision and may be enforced by the Department of Environmental Protection, Department of Health, and other state agencies depending on the underlying state law or administrative regulation. An attempt by a local, special district or state official, employee, or agent to enforce any such law may subject him or her to a first degree misdemeanor charge if the civil, criminal, or administrative claim were to be filed against a shooting range and the claim were construed as being in violation of the Act. Moreover, the official, agent or employee is also subject to damages, attorney's fees, and costs if the person is injured due to the claim.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All owners, operators and other associates of sport shooting and training ranges immunized from liability may significantly reduce the costs of doing business. Those ranges for which compliance with environmental laws, including reclamation measures to clean up contamination and pollution, is cost-prohibitive may otherwise avert bankruptcy or closure, if they comply with the identification process set forth in the CS, as they will be entitled to a state-funded cleanup.

The limitation on environmental liability for range owners may negatively impact individuals and property owners, including agricultural landowners who have environmental, health or economic injuries resulting from lead or arsenic from projectiles placed or accumulating in the air, water, or soil of their property. Although this CS does not prohibit an action by a private party, it may make such a suit more difficult due to the absence of an underlying state action.

C. Government Sector Impact:

Other than administrative or civil actions taken by DEP, it is unknown how many civil suits or criminal charges are currently pending against private sport shooting ranges arising from claims of contaminants from the projectiles or the projectiles themselves from these facilities. The DEP reports it has one environmental regulatory case pending in circuit court against the Skyway Trap & Skeet Club located in St. Petersburg, Florida. To date, DEP has identified 26 other ranges with contaminant levels in excess of state standards which have either completed clean-up or are in various stages of clean-up. These ranges were prompted to initiate clean-up either through the voluntary action of the site owner, through administrative complaints or regulatory inspections, or through permit processes and coordination with the federal Department of Defense.[14] DEP does not know if or how many local governments or special districts may be seeking environmental regulatory enforcement or litigation against a range.

Under the CS, any viable claim associated with the placement or accumulation of lead or arsenic from shooting range projectiles would have to be pursued under federal law. It is unknown how this CS may affect state and local entities who are authorized or delegated authority by federal law to enforce federal environmental laws through the establishment of similar state programs in conjunction with federal programs or through collaborative efforts with federal agencies such as the Environmental Protection Agency, the Forest Service or Fish & Wildlife Service of the Department of the Interior, or the Department of Defense. It is also unknown how this CS may affect any federal funding or state matching dollars contingent upon state or local enforcement of environmental laws or the establishment and enforcement of state environmental regulatory programs.

No fiscal impact figures are available yet from the Criminal Justice Estimating Conference.

No information is available yet from the law enforcement community regarding any difficulties resulting from the closures of shooting and training ranges or the nonavailability of shooting ranges for practice and training resulting from environmental civil or criminal litigation.

Sovereign Immunity and Course and Scope of Employment: Article X, s. 13 of the State Constitution, provides that sovereign immunity may be waived through an enactment of general law. The Legislature, in s. 768.28, F.S., has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability. Section 768.28(5), F.S., provides that a claim or judgment by any one person may not exceed $100,000, and may not exceed $200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence.

[14] *See* 12/22/03 DEP draft chart entitled: "Summary of Shooting Range Cleanups in Florida."

Under the provisions of this CS, local, special district, or state public officials, agents, and employees are at risk for civil damages. Additionally, if a local, special district, or state official or employee fails to withdraw within the prescribed 30 days a pending civil, criminal, or administrative claim that falls within the parameters of this CS, such person risks damages, attorney's fees, and costs. These persons also risk criminal prosecution for a first degree misdemeanor if, while acting in their official capacity and within their scope of employment, they file a suit or are named as a party to a suit against a range otherwise immune under this CS.

Pursuant to s. 768.28(9)(a), F.S., an officer, employee, or agent of the state may not be held personally liable in tort or named as a party defendant for any injury that results from an act, event, or omission of action in the scope of her or his employment function unless the officer, employee, or agent acted in bad faith or with malicious purpose or exhibits wanton and willful disregard of human rights, safety, or property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

On March 2, 2004, the Committee on Natural Resources adopted five amendments. These amendments were as follows:

Amendment 1: Directs the department to establish risk-based cleanup standards on the presumption that the site would remain a gun range.

Amendment 2: Creates rule making authority for the department to adopt a cleanup schedule that is based on risk to human and health and the environment.

Amendment 3: Directs the department to deposit any funds received as a result of cleanup activities into the Shooting Range Cleanup Trust Fund.

Amendment 4: Creates a $20 fee for the renewal or issuance of Class G firearms licenses and a $50 fee for the renewal and issuance of Class K firearms licenses. The fees are to be deposited into the Shooting Range Cleanup Trust Fund.

Amendment 5: Creates a $5 annual fee for concealed weapons permits.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1156

SPONSOR: Committee on Judiciary, Senators Peaden and Posey

SUBJECT: Sport Shooting & Training Range Environmental Liability Protection

DATE: January 28, 2004 REVISED: 02/16/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Lang	JU	Fav/CS
2.	Herrin	Yeatman	CP	Fav/1 amendment
3.			CJ	
4.			NR	
5.				
6.				

I. Summary:

This Committee Substitute (CS) amends the law governing weapons and firearms as follows:

- Provides immunity for all shooting and training ranges ("ranges") from any administrative, criminal, and civil claims brought by the state, a special district, or political subdivision and arising from the placement or accumulation of projectiles on the range or other property over which the range has the legal right to use.
- Enumerates legislative findings in support of the immunity from state claims for sport shooting and training ranges.
- Requires all pending administrative or judicial claims subject to this CS to be withdrawn from the tribunal within 30 days after the CS becomes law.
- Creates a civil cause of action for treble damages, attorney's fees and costs for any person injured as a result of a claim filed in violation of this law.
- Creates a third-degree felony offense if any official, employee or other agent of a public entity willfully and knowingly participates directly or indirectly in bringing a claim for the placement or accumulation of projectiles against any owner, operator or user of a sport shooting and training range.
- Provides that the Legislature will pre-empt the regulation of the environmental effects of projectile deposition and accumulation at sport shooting and training ranges.

This CS creates the following section of the Florida Statutes: 790.333.

II. Present Situation:

Chapter 790, F.S., governs the use, possession, and sale of weapons and firearms. The law includes the public policy that it is necessary "to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting

the lawful use in defense of life, home and property . . .including the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places."[1] Since 1987, state law has pre-empted local regulation of firearms, ammunition and components.[2] In 2001, the Legislature specifically prohibited state or local governmental and private suits premised solely on the lawful manufacture, distribution or sale of firearms.[3]

Shooting ranges provide a wide array of recreational and training services and products for private, commercial, law enforcement and military persons. The actual number of sport shooting ranges in the state is unknown. In 2002, the Florida Department of Environmental Protection (DEP) catalogued the addresses of 239 private and public sport shooting ranges[4] based on a limited funded project to promote best management practices.[5]

No statewide regulation of shooting ranges exists although they are subject to local government and federal environmental regulatory standards.[6] No formal accreditation association exists in Florida for shooting ranges although efforts are underway to establish an association. The National Rifle Association often provides assistance to shooting ranges regarding gun safety and appropriate shooting range standards which are updated periodically to reflect changes in technology and law. However, shooting ranges are not obligated to comply with them.

Due to the growth in shooting range activities, expansion in facility capacity, the shift in population from urban to suburban and rural areas, and the impact of certain zoning decisions, issues such as noise, operational hours, public safety, environmental impact, and health concerns have become the subject of local government ordinances, civil complaints by surrounding property owners, administrative actions, and lawsuits. In 2001, the Florida Legislature provided limited immunity to sport shooting ranges from criminal prosecution or civil suits based on an underlying charge or claim of noise or noise pollution as long as the sport shooting range was in compliance with local noise-control ordinances in effect at the time of construction or initial operation of the range.[7] Otherwise, owners and operators of sport shooting and training ranges are subject to enforcement and lawsuits as other business owners and operators.

The DEP is the environmental regulatory agency for the state of Florida and is charged with enforcing provisions in chapters 376 and 403, F.S. Additionally, the DEP is delegated authority by the federal government to enforce a variety of environmental laws, including the state hazardous waste management program in lieu of the federal program under the Resource Conservation and Recovery Act of 1976 (RCRA).[8] Florida has adopted a federally approved state plan for waste management. The RCRA gave the Environmental Protection Agency the authority to control hazardous waste including the generation, transportation, treatment, storage, and disposal of hazardous waste. In turn, states could seek approval from EPA to administer and

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[2] *See* s. 790.33, F.S.; chapters 88-183 and 87-23, L.O.F.
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[7] *See* s. 823.16, F.S.
[8] *See* 42 U.S.C. ss. 6901 et seq. as amended.

enforce a state hazardous waste regulatory program in lieu of the federal program so long as the state program is equivalent to the federal program. Commensurate federal assistance is provided. The state or political subdivision can impose requirements more stringent but not less stringent than the federal requirements.

According to DEP, "ranges can, if not properly managed, pose a threat to public health and the environment due to contamination of soil, ground water and surface water bodies from the discharge of lead and arsenic contained in the ammunition."[9] Mitigation efforts or efforts to eliminate build-up from contaminants such as lead or arsenic from projectiles exist but ranges are not required under law to implement these efforts. Research literature and studies by the Centers for Disease Control and Prevention, the U.S. Department of Health and Human Services and others document the history of the toxic effects for human and animal life and the environmental threats posed by significant concentrations of or exposure to lead and arsenic.[10] DEP provided examples of the deposit amounts that can accumulate over time[11]: 1) The Geneva Center Range associated with the Seminole Community College contracts for annual lead reclamation beginning in December 2000. A lead reclamation contractor removed 15,480 pounds in 2000, 12,800 pounds in 2001, and 8,580 pounds in 2002; 2) In a recent range upgrade, approximately 60 tons of lead had accumulated over a ten-year period and were removed from the Pat Thomas Law Enforcement Academy; and 3) Approximately 6,060 pounds of bullets were recovered between August 2002 and May 2003 at the Escambia River Muzzle Loaders, Inc.

In 2001, the Department initiated a project to address environmental issues surrounding shooting ranges. Through a series of project workshops, DEP staff and industry stakeholders focused on pollution prevention, range best management practices, control (remediation) measures and university research regarding lead stabilization. Some of the initiatives instituted or completed during the two-year project included the publication of a best management practices manual, the development of a database of public and private sector ranges, funding for lead stabilization studies, the establishment of environmental stewardship plans, and facilitation of improvements at law enforcement shooting ranges in coordination with the Pat Thomas Law Enforcement Academy.

III. Effect of Proposed Changes:

Section 1 of the CS creates s. 790.33, F.S., to protect *all* sport shooting ranges and persons associated with those ranges from environmental liability to the state, a special district, or political subdivision. Sport shooting and training ranges are defined broadly to mean any area that has been designed or operated primarily for the use of firearms, rifles, shotguns, pistols,

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[9] *See* Letter to Rep. Kottkamp, dated December 8, 2003, containing cite references to environmental data from ranges regarding lead and arsenic contamination of soils and consequential off-site surface and ground water contamination including two reports entitled '*Environmental Impacts of Lead Pellets at Shooting Ranges and Arsenical Herbicides at Golf Courses in Florida*', Lena Q. Ma, et al. Report 00-03, June 2000 and May 2002 at<<http://www.floridacenter.org/publications/ma_00-03.pdf >> and <<http://www.floridacenter.org/publications/ma_0201_shooting_ranges.pdf>>, respectively.

[10] For example, lead is banned or reduced in a number of products over concerns with its environmental safety.

[11] Information excerpted from documents provided by DEP.

silhouettes, skeet, trap, black powder, BB guns, airguns, or similar devices or for any other type of sport or training shooting.[12]

Specifically, the CS relieves any sport shooting and training range, including an owner, operator, or user, from any administrative regulation or criminal or civil liability to the state, a special district, or political subdivision which is "associated with the intentional or unintentional placement or accumulation of projectiles in the environment on or under the range and any other property over which the range has a leasehold, easement, or legal right to use." The term "environment" is defined such that the immunity would apply to any projectile that would affect the "air, water, surface water, sediment, soil, groundwater, and other natural and manmade resources of the state" of the sport shooting range or property over which the range has a legal right to use.

Therefore, any existing state law, agency rule, local ordinance and special district regulation which could be the basis for a claim against a range for the effects of projectile deposits or accumulation are rendered unenforceable. Additionally any claim arising from projectile deposits or accumulation that could be the basis for a criminal or civil action is not allowed. Any existing claim that was brought by the state, a special district, or a political subdivision against a sport shooting range, owner, or user, that is pending before a judicial or administrative tribunal must be withdrawn within 30 days after the CS becomes law. Any person injured by a claim filed in violation of the section gives the injured person a civil cause of action for treble damages, reasonable attorney fees, and costs. The CS does not state the nature of the injury that is necessary to trigger recovery. Additionally, any official, employee or other agent of a public entity who, while acting within the scope of his or her employment, willfully and knowingly brings, or is a party to bringing an action under this created section, commits a third-degree felony. The term "action" is not defined but presumably encompasses administrative, criminal or civil action.

The CS also provides this immunity to any person or entity, whether commercially or socially organized, who uses the shooting and training range. The immunity also applies to any person who previously owned or operated a private range or an interest in the range, and to an employee, agent, contractor, or customer of the range.

Public owner or operator is further defined to mean a state, county, a municipal corporation, a state university, or college, or a school district. Other terms defined include "owner," "operator," "projectile," and "user."

The following legislative findings are listed as a basis for granting the immunity:

- Over 400 public and private ranges exist in the state.
- Citizens use and enjoy ranges.
- Ranges are a necessary component of the guarantee of the right to bear arms under the Florida Constitution and U.S. Constitution.

[12] Section 823.16, F.S., (relating to immunity from nuisance or noise pollution suits) defines sport shooting range or range "as an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting."

- Ranges are used in training, practice and qualification by law enforcement; in teaching safe use and handling of firearms to those seeking hunting licenses or licenses to carry concealed firearms; by collegiate and Olympic shooting teams; and by ROTC programs.
- Projectiles are integral to range operations.
- Environmental litigation by state and local agencies is cost-prohibitive to defend and threatens the viability of the shooting range industry which would affect a citizen's constitutional right to keep and bear arms.

The CS states that the *Legislature* pre-empts the entire field of regulating the environmental effects of projectile deposition at sport shooting and training ranges. This pre-emption could affect the approval of Florida's hazardous waste program under the federal Resource Conservation and Recovery Act of 1976 (relating to hazard and solid waste management). The pre-emption as stated may also implicitly designate the Legislature as the enforcement entity for the regulation of environmental laws.

The CS also provides that the law must be liberally construed to give effect to its remedial and deterrent purposes.

Section 2 of the CS provides that the act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Right to Bear Arms: The CS includes statements of legislative findings that say that ranges are a necessary component to the exercise of the right to bear arms under the Florida Constitution and U.S. Constitution. There is no case law construing these statements. Although the right to bear arms is protected under the U.S. Constitution and the Florida Constitution[13], it is not an absolute right for which the Florida Supreme Court has held that the right may be legislatively constrained to promote the health, morals, safety and general welfare of the people. *See Rinzler v. Carson*, 262 So.2d 661 (Fla.

[13] The Second Amendment of the *U.S. Constitution* (1791) provides that "[a] well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Florida has a similar constitutional provision which states that "[t]he right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." *See* s. 8, Art. I, *Fla. Const.*

1972). Moreover, despite the U.S. Supreme Court's ruling in *U.S. v. Miller*, 307 U.S. 174, 178 (1939) which held that the purpose of the Second Amendment was to assure the continuation and render possible the effectiveness of a state militia, the right to bear arms is still the subject of continuing debate and conflicting lower court rulings as to whether the constitutional provisions were intended to recognize a broad, individual right to keep and bear arms or a collective right to bear arms as relates to the maintenance of a militia.

Natural resources and scenic beauty: In 1998, voters enacted s. 7 of Article II of the *Florida Constitution* to include the stated public policy to "conserve and protect the natural resources and scenic beauty" and to provide adequately in state law "for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources." Although the constitutional provisions are not self-executing, a number of state laws and agency regulations implement this provision and may be enforced by the Department of Environmental Protection, Department of Health and other state agencies depending on the underlying state law or administrative regulation. An attempt by a local, special district or state official, employee, or agent to enforce any such law may subject him or her to a third-degree felony charge if the civil, criminal, or administrative claim were to be filed against a shooting range and the claim were construed as being in violation of the act. Moreover, the official, agent or employee is also subject to treble damages, attorney's fees, and costs if the person is injured due to the claim.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All owners, operators and other associates of sport shooting and training ranges immunized from liability may significantly reduce the costs of doing business. Those ranges for which compliance with environmental laws, including reclamation measures to clean up contamination and pollution, is cost-prohibitive may otherwise avert bankruptcy or closure.

The limitation on environmental liability for range owners may negatively impact individuals and property owners, including agricultural landowners who have environmental, health or economic injuries resulting from lead or arsenic from projectiles placed or accumulating in the air, water or soil of their property. Although this CS does not prohibit an action by a private party, it may make such a suit more difficult due to the absence of an underlying state action.

C. Government Sector Impact:

Other than administrative or civil actions taken by DEP, it is unknown how many civil suits or criminal charges are currently pending against private sport shooting ranges arising from claims of contaminants from the projectiles or the projectiles themselves

from these facilities. The DEP reports it has one environmental regulatory case pending in circuit court against the Skyway Trap & Skeet Club located in St. Petersburg, Florida. To date, DEP has identified 26 other ranges with contaminant levels in excess of state standards which have either completed clean-up or are in various stages of clean-up. These ranges were prompted to initiate clean-up either through the voluntary action of the site owner, through administrative complaints or regulatory inspections, or through permit processes and coordination with the federal Department of Defense.[14] DEP does not know if or how many local governments or special districts may be seeking environmental regulatory enforcement or litigation against a range.

Under the CS, any viable claim associated with the placement or accumulation of lead or arsenic from shooting range projectiles would have to be pursued under federal law. It is unknown how this CS may affect state and local entities who are authorized or delegated authority by federal law to enforce federal environmental laws through the establishment of similar state programs in conjunction with federal programs or through collaborative efforts with federal agencies such as the Environmental Protection Agency, the Forest Service or Fish & Wildlife Service of the Department of the Interior, or the Department of Defense. It is also unknown how this CS may affect any federal funding or state matching dollars contingent upon state or local enforcement of environmental laws or the establishment and enforcement of state environmental regulatory programs.

No fiscal impact figures are available yet from the Criminal Justice Estimating Conference.

No information is available yet from the law enforcement community regarding any difficulties resulting from the closures of shooting and training ranges or the nonavailability of shooting ranges for practice and training resulting from environmental civil or criminal litigation.

Sovereign Immunity and Course and Scope of Employment: Article X, s. 13 of the State Constitution, provides that sovereign immunity may be waived through an enactment of general law. The Legislature, in s. 768.28, F.S., has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability. Section 768.28(5), F.S., provides that a claim or judgment by any one person may not exceed $100,000, and may not exceed $200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence.

Under the provisions of this CS, local, special district or state public officials, agents and employees are at risk for civil damages. Additionally, if a local, special district, or state official or employee fails to withdraw within the prescribed 30 days a pending civil, criminal or administrative claim that falls within the parameters of this CS, such person risks treble damages, attorney's fees, and costs. These persons also risk criminal prosecution for a third-degree felony if, while acting in their official capacity and within

[14] *See* 12/22/03 DEP draft chart entitled: "Summary of Shooting Range Cleanups in Florida."

their scope of employment, they file a suit or are named as a party to a suit against a range otherwise immune under this CS.

Pursuant to s. 768.28(9)(a), F.S., an officer, employee, or agent of the state may not be held personally liable in tort or named as a party defendant for any injury that results from an act, event, or omission of action in the scope of her or his employment function unless the officer, employee, or agent acted in bad faith or with malicious purpose or exhibits wanton and willful disregard of human rights, safety, or property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

1 by Comprehensive Planning:
Amendment No. 1 provides that a public or private owner or operator, or other specified party, associated with a sport shooting or training range that is identified to DEP by September 30, 2005, shall have limited liability to the state or a political subdivision of the state for any claim associated with the intentional or unintentional placement, deposition, or accumulation of projectiles. It also requires all claims immunized under this section that are pending before any tribunal on January 1, 2004 to be withdrawn within 30 days after the effective date of the act.

The amendment prohibits the state or political subdivision of the state from benefiting financially or otherwise from such action, notwithstanding any legal judgment entered in favor of the state. It requires the state or other political subdivision to pay litigation costs and damages resulting from the initiation of such claim. The owner or operator of a range, or other specified party, injured by a claim filed in violation of the section shall have a civil cause of action for damages, attorney's fees, and costs. Further, it creates a first-degree misdemeanor offense if any state or local government official or employee knowingly participates in bringing an action in violation of the section against the owner or operator of a range.

This amendment requires DEP to develop a plan for the review, assessment, and cleanup of ranges. It specifies that the principles of risk-based corrective action under s. 376.30701, F.S., shall be applied to ranges. The DEP may undertake a contamination assessment and cleanup of ranges under certain circumstances. Also, DEP is authorized to establish guidelines for identifying the ownership and location of all ranges in the state.

With this amendment, the owner of a range in existence on or before October 1, 2004 must identify the range to DEP by September 30, 2005 and does not have to pay for an initial cleanup, but the limited liability protection terminates after the initial cleanup and the owner, operator, tenant, or occupant is responsible for subsequent cleanups. The owner of a range that comes into existence after October 1, 2004 must identify the range to DEP within 1 year of establishment and such owner will bear the cost of any cleanup. A local government, special district, or any

other state governmental entity may not initiate a site investigation or activity related to environmental issues or the cleanup of a range unless permitted by DEP and under its direct supervision.

The amendment provides that DEP may use funds from the Water Quality Assurance Trust Fund for expenses associated with the act. This does not relieve the state of its duty to absorb the costs of an environmental cleanup of a range under other circumstances. The amendment provides that DEP may not initiate a cleanup at the range unless funding is available to complete the cleanup. Finally, DEP is required to work with ranges to develop time frames for a cleanup that is consistent with the principles of risk-based corrective action and which is performed without delay, using the most fiscally responsible approach.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 149 w/CS Sport Shooting and Training Range Liability Protection
SPONSOR(S): Baxley
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	8 Y, 4 N w/CS	Jaroslav	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill first makes the following legislative findings about sport shooting and training ranges ("ranges"):

- that over 400 ranges exist in the state;
- that they are widely used and enjoyed by the citizens of the state;
- that they "are a necessary component of the guarantees of the Second Amendment to the United States Constitution and of s. 8, Art. I of the State Constitution";
- that projectiles are integral to their operation;
- that there is no incontrovertible evidence that accumulation of spent projectiles at ranges poses a threat to the environment or to human health; and
- that defending environmental litigation by certain state agencies against ranges imposes prohibitive costs on those ranges which threaten the viability of the state's shooting and training range industry, which would unnecessarily impair the rights of the state's citizens to keep and bear arms.

This bill provides immunity to any "private or public owner, operator, employee, agent, contractor, customer, or user of any sport shooting or training range located in this state" from liability "to this state or any agency of the state, special purpose district, or political subdivision of this state for any claim associated with the intentional or unintentional placement or accumulation of projectiles in the environment on or under that sport shooting or training range."

This bill requires that all claims from which ranges are immunized that are pending in any court or before any administrative agency on this bill's effective date be withdrawn within 30 days. Further, this bill provides for treble damages if an action is later filed in violation of its terms.

This bill provides that for an official, employee or other agent of a public entity to willfully and knowingly bring, or be a party to bringing, a suit in violation of this bill's provisions constitutes a third-degree felony.

Finally, this bill also provides that:

- the Legislature preempts the entire field of regulating the environmental effects of projectile deposition at sport shooting and training ranges;
- it is to be liberally construed.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[x]	No[]	N/A[]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[x]	No[]	N/A[]
4. Increase personal responsibility?	Yes[]	No[x]	N/A[]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

This bill may decrease personal responsibility because it provides immunity from liability.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The use, possession and sale of firearms are regulated in ch. 790, F.S. Since 1987, the Legislature has sought to give effect to a policy of making firearms laws uniform statewide: first by expressly preempting local ordinances on the subject;[1] and then, in 2001, by prohibiting lawsuits by the state, its agencies or its subdivisions ("public entities") premised on the lawful manufacture, distribution or sale of firearms.[2]

Current law does not restrict the ability of private parties to bring such suits, nor does it prevent public entities from bringing suit against the owners or operators of sport shooting and training ranges ("ranges"). Current law does, however, provide immunity to ranges from claims based on noise or noise pollution, so long as the range is in compliance with local noise-control ordinances in effect at the time of construction or initial operation of the range.[3]

The Department of Environmental Protection ("DEP") believes that "ranges can, if not properly managed, pose a threat to public health and the environment due to contamination of soil, ground water and surface water bodies from the discharge of lead and arsenic contained in the ammunition."[4] DEP currently has three pending cases against ranges. They believe that 25 more are currently contaminated in excess of state standards; of these, they state that all but five are currently remediating this contamination on a voluntary basis.[5] DEP does not know if or how many other ranges may be facing environmental litigation brought by local governments or special districts.

The National Rifle Association ("NRA") believes that environmental litigation against ranges is a nationwide trend and, while large numbers of such suits may not yet have been filed in Florida, legislation such as this bill is necessary to prevent them from doing so and thereby imposing prohibitive defense costs on ranges.[6]

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[1] *See* s. 790.33, F.S.; chs. 88-183 and 87-23, L.O.F.
[2] *See* s. 790.331, F.S.; ch. 2001-38, L.O.F.
[3] *See* s. 823.16, F.S.
[4] Department of Environmental Protection Draft Bill Analysis (HB 149), Nov. 17, 2003, p. 3.
[5] Telephone conversation with Michael Sole, DEP Waste Management Division, Nov. 17, 2003.
[6] Telephone conversation with Marion Hammer, NRA/United Sportsmen of Florida, Nov. 17, 2003.

Proposed Changes

Findings

This bill states legislative findings that over 400 ranges exist in the state, that they are widely used and enjoyed by the citizens of the state, and that they "are a necessary component of the guarantees of the Second Amendment to the United States Constitution and of s. 8, Art. I of the State Constitution." The findings further state that many ranges are used in training, practice and qualification by law enforcement; in teaching safe use and handling of firearms to those seeking hunting licenses or licenses to carry concealed firearms; by collegiate and Olympic shooting teams; and by ROTC. Additionally, the bill provides a finding that projectiles are integral to the operation of ranges. Finally, the bill also states a finding that defending environmental litigation by certain state and local agencies against ranges imposes prohibitive costs on those ranges which threaten the viability of the state's shooting and training range industry, which would unnecessarily impair the rights of the state's citizens to keep and bear arms.

Legislative Intent

This bill declares legislative intent to protect and immunize ranges and those associated with them from liability, and to prohibit actions by public entities that threaten to destroy or bankrupt ranges.

Immunity

This bill provides immunity to any "private or public owner, operator, employee, agent, contractor, customer, or user of any sport shooting or training range located in this state" from "liability to this state or any agency of the state, special purpose district, or political subdivision of this state for any claim associated with the intentional or unintentional placement or accumulation of projectiles in the environment on or under that sport shooting or training range."

Pending Claims

This bill requires that all claims from which ranges are immunized under its terms that are now pending in any court or before any administrative agency on its effective date be withdrawn within 30 days.

Future Claims

Further, this bill specifies that "[a]ny person injured as a result of a claim filed in violation of this section shall have a civil cause of action for treble damages, reasonable attorney fees, and costs."

This bill provides that for an official, employee or other agent of a public entity to willfully and knowingly bring, or be a party to bringing, a suit in violation of this bill's provisions constitutes a third-degree felony.

Additional Provisions

Finally, this bill also provides that:

- the Legislature preempts the entire field of regulating the environmental effects of projectile deposition at sport shooting and training ranges;
- it shall be liberally construed to give effect to its remedial and deterrent purposes.

C. SECTION DIRECTORY:

Section 1. Creates s. 790.333, F.S., immunizing sport shooting and training ranges from some types of civil liability.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By immunizing owners, operators and other associates of sport shooting and training ranges from liability, this bill may significantly reduce their costs of doing business, and possibly allow some ranges that would otherwise be bankrupted to remain in operation.

D. FISCAL COMMENTS:

Because this bill prevents public entities (both state and local) from bringing some types of suits against ranges, it would reduce public revenues from such suits; however, it would also eliminate litigation expenditures on such suits. The net fiscal impact is uncertain.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Access to Courts

Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Because this bill immunizes ranges from liability, it is possible in some cases that it may violate this access to courts provision.

In *Kluger v. White*,[7] the Florida Supreme Court considered the Legislature's power to abolish causes of action. At issue in *Kluger* was a statute which abolished causes of action to recover for property damage caused by an automobile accident unless the damage exceeded $550.[8] The court determined that the statute violated the access to courts provision of the state constitution, holding that where a right to access the courts for redress for a particular injury predates the adoption of the access to courts provision in the 1968 state constitution, the Legislature cannot abolish the right without providing a reasonable alternative unless the Legislature can show (1) an overpowering public necessity to abolish the right and (2) no alternative method of meeting such public necessity.[9] Because the right to recover for property damage caused by auto accidents predated the 1968 adoption of the declaration of rights, the court held that the restriction on that cause of action violated the access to courts provision of the state constitution.

The court applied the *Kluger* test in *Smith v. Department of Insurance*.[10] In 1986, the Legislature passed comprehensive tort reform legislation that included a cap of $450,000 on noneconomic damages.[11] The cap on damages was challenged on the basis that it violated the access to courts provision of the state constitution. The Florida Supreme Court found that a right to sue for unlimited noneconomic damages existed at the time the constitution was adopted.[12] The *Smith* court held that the Legislature had not provided an alternative remedy or commensurate benefit in exchange for limited the right to recover damages and noted that the parties did not assert that an overwhelming public necessity existed.[13] Accordingly, the court held that the $450,000 cap on noneconomic damages violated the access to courts provision of the Florida Constitution.

By immunizing ranges against a potentially broad category of claims, this bill may abolish causes of action which predate the adoption of the access to courts provision in the 1968 state constitution. Thus, at least in cases asserting a legal right established before that time, such as, for example, the common-law causes of action for negligence or nuisance, a public-entity litigant might argue that this bill violates the state constitution's guarantee of access to the courts. Applying the *Kluger* test, it does not appear that this bill provides any alternative remedy to bringing such suits, but simply extinguishes the causes of action they are premised on. Thus, whether a court would find that this bill, as applied in some cases, violates the access to courts provision appears to hinge on whether the Legislature demonstrated both an overwhelming public necessity and an absence of any alternative means to address that necessity.

Due Process

Both the Fourteenth Amendment to the Constitution of the United States and Article I, section 9 of the Florida Constitution forbid the state from depriving a person of life, liberty or property without due process of law. Procedurally, this requires that a party be granted notice and an opportunity to be

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[7] 281 So. 2d 1 (Fla. 1973).
[8] *See* ch. 71-252, s. 9, L.O.F.
[9] *See Kluger* at 4.
[10] 507 So. 2d 1080 (Fla. 1987).
[11] *See* ch. 86-160, s. 59, L.O.F.
[12] *See Smith* at 1087.
[13] *See id.* at 1089.

heard before any such deprivation.[14] A litigant might argue that this bill's requirement for the withdrawal of suits already pending deprives him, her or it of due process because doing so extinguishes a previously valid cause of action retrospectively.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill may encourage the pursuit of federal rather than state-law claims against ranges. Although most federal environmental laws can only be enforced by federal agencies (usually either the Environmental Protection Agency or a component of the Department of the Interior such as the Forest Service or Fish & Wildlife Service), such enforcement is often initiated based on complaints from others, including both private parties and state and local agencies.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 9, 2003, the House Committee on Judiciary adopted one strike-all amendment to this bill, with one amendment to the strike-all amendment. The strike-all amendment:

- narrows the bill's previous grant of immunity to only suits by public entities based on placement of projectiles in the environment on or under a range;
- grants the same immunity to public ranges as to private ranges;
- narrows the required withdrawal of pending claims to only those claims actually immunized under the bill;
- eliminates a requirement that plaintiffs in cases that must be withdrawn pay defendants' attorney fees and costs;
- provides a civil cause of action for damages caused by bringing suit in violation of this bill's terms, rather than defining such suits as "frivolous per se"; and
- eliminates language about severability, since courts presume statutes are severable.[15]

[14] *See Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Department of Administration*, 411 So.2d 184 (Fla. 1982).
[15] *See State v. Williams*, 343 So. 2d 35 (Fla. 1977). *See generally* 48A FLA. JUR. 2D STATUTES §§ 97 and 98.

Opposition

entered into record 10/15/12 "F"

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 776

SPONSOR: Senators Bronson and Kirkpatrick

SUBJECT: Sport Shooting Ranges

DATE: March 15, 1999 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Fav/1 amendment
2.	Matthews	Johnson	JU	Fav/1 amendment
3.				
4.				
5.				

I. Summary:

The bill relieves all indoor and outdoor sports shooting ranges from certain civil and criminal liability and nuisance actions as follows:

- provides immunity from civil and criminal liability for any person who operates or uses a sport shooting range from certain actions based on noise or noise pollution under certain circumstances;
- eliminates the common law cause of action for nuisance based on claims of noise or noise pollution against sports shooting ranges if the range is in compliance with ordinances at the time of construction or initial operation;
- prohibits courts from issuing injunctions based on noise or noise pollution against sports shooting ranges under certain circumstances;
- exempts certain sports shooting ranges from state or agency regulation governing noise decibel levels;
- eliminates the common law cause of action for nuisance on any claim by a property owner adversely affected by a sport shooting range if there has been no substantial change in the use of the range;
- precludes enforcement against certain sports shooting ranges for violation of subsequently adopted or amended ordinances; and
- provides that local governments are not prohibited, to the extent not limited by the act, from regulating the location and construction of sport shooting ranges.

This bill creates a new, unspecified section of law.

II. Present Situation:

Shooting ranges are typically associated with a club and provide a wide range of recreational and training services and products for private, commercial, law enforcement and military persons. There is no statewide regulation of shooting ranges although they are subject to local government

regulation and federal regulatory standards. There is no formal accreditation association in Florida for shooting ranges although efforts are underway to establish an association. The National Rifle Association often provide assistance to shooting ranges regarding gun safety and appropriate shooting range standards which are updated periodically to reflect changes in technology and law. However, shooting ranges are not obligated to comply with them.

In recent years, the growth in shooting range activities, expansion in facility capacity, the shift in population from urban to suburban and rural areas, and the impact of certain zoning decisions have made issues such as noise, operational hours, and safety the focus of local government ordinances, complaints by surrounding property owners, and lawsuits against sport shooting ranges. Those ranges most affected have been those subject to subsequent population encroachment and development of surrounding property. A number of states have responded by enacting anti-nuisance exceptions for sport shooting ranges. In 1998, Colorado, Kentucky, Utah and Wisconsin enacted similar types of legislation.

The state of Florida has no such anti-nuisance statute. However, it is not known how many of the aforementioned states have constitutional provision for the abatement of excessive and unnecessary noise. *See* § 7, art. II, Fla. Const. The Florida Legislature has also enacted a variety of laws to regulate noise.[1] There is also a criminal offense for nuisances that "tend to annoy the community or injure the health of the citizens in general, or to corrupt the public morals" which is punishable as a second degree misdemeanor. *See* § 823.01, F.S. However, this statute has been superseded in part by chapter 403, F.S., to the extent that it applies to air pollution. *See State v. SCM Glidco Organics Corp.*, 592 So.2d 710 (Fla. 1st DCA 1992). Additionally certain counties and municipalities, as a result of constitutionally and legislatively recognized "home rule" powers, have passed ordinances regulating the protection of their air quality, to include noise pollution. *See* § 125.01, F.S. (Supp. 1998) & § 166.021, F.S.

Current Florida law recognizes a common law right to enjoy one's property without interference from others based on nuisance actions. *See Reaver v. Martin Theaters of Florida, Inc.*, 52 So.2d 682 (Fla. 1951); *see also, Rae v. Flynn*, 690 So.2d 1341 FN1 (Fla. 3d DCA 1997)(common law right to a cause of action for nuisance for excessive noise pollution caused by activities of adjacent property owner).

III. Effect of Proposed Changes:

This bill relieves any person operating or using a sport shooting range from civil and criminal liability for any action relating to noise or noise pollution, provided the range is in compliance with any noise

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[1]*See* § 20.55, F.S. (state departments and agencies may promulgate rules affecting the environment); § 316.65, F.S. (misdemeanor conviction for loud vehicles or marine mufflers); § 327.65, F.S. (auto muffling devices); § 332.007, F.S. (reimbursement to cities, counties or airport authorities for land acquisition needed for airport safety, expansion, tall structure control, clear zone protection, or noise impact reduction); § 333.02. (exercise of police power to prevent incompatible land use involving airport hazards); § 333.03, F.S. (requiring noise study conducted in accordance with federal regulation prior to residential construction or educational facilities in vicinity of airports);.§ 335.17, F.S.(noise abatement in state highway construction); § 403.031, F.S.(definition of pollution includes "noise"); § 403.061, F.S. (legislative duty of the Department of Environmental Protection to " . . . [e]stablish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise."; and § 403.415, F.S. (motor vehicle noise).

control laws or ordinances applicable to the range at the time of its construction or initial operation. It also precludes certain property owners from initiating a nuisance action unless there has been a substantial change in the use of the range.

Specifically, **section 1** provides the following:

Subsection (1) provides definitions for "unit of local government", "person", and "sport shooting range or ranges." "Sport shooting range" is defined as an area designed and operated for the use of rifles, shotguns and pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting.

Subsection (2) provides immunity from civil or criminal liability for a person in any matter relating to noise or noise pollution resulting from the operation or use of a sport shooting range. However, in order to be immune, the range is in compliance with noise control laws or local ordinances that were in effect and applicable at the time the range was constructed or initially operating.

Subsection (3) specifies that a person who operates or uses a sport shooting range is not subject to an action for nuisance. In addition, a state court is prohibited from enjoining the use or operation of the range on the basis of noise or noise pollution if it is in compliance with the provisions of subsection (2).

Subsection (4) provides that shooting ranges exempt from liability under this act are similarly exempt from the regulations by any state department or agency that limits outdoor noise decibel levels if the new regulations were passed after the time of construction and initial operation.

Subsection (5) prohibits certain persons from proceeding with a nuisance action against a shooting range owner to restrain, enjoin or impede the use of the range when there has not been a substantial change in the nature of the use of the range. Those persons precluded from a legal cause of action are persons who acquire title to or own real property adversely affected by the use of property with a permanently located and improved sport shooting range. This subsection expressly exempts actions for negligence or recklessness from the provisions of this bill. "Substantial change" is undefined,

Subsection (6) permits a sport shooting range to continue operating even if it does not conform to *any* adopted or amended ordinance after the effective date of this bill provided the range is not in violation of existing law at the time of the enactment of an ordinance applicable to the sport shooting range. There is no restriction that the new or amended ordinance pertain to noise or noise pollution.

Subsection (7) states that, except as otherwise provided in the act, local governments are not prohibited from regulating the location and construction of a sport shooting range after the effective date of this act.

Section 2 provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill implicates rights under the constitution and common law. The Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." *See* article I, § 21, Fla. Const. The Legislature, however, may restrict access to courts under certain circumstances:

> Where a right of access to courts for redress for a particular injury has been provided by statutory law predating the adoption of Declaration of Rights of Constitution of Florida, or where such right has become a part of common law of state, legislature is without power to abolish such a right without providing a reasonable alternative to protect rights of people of state to redress for injuries, unless legislature can show an overpowering public necessity for abolishment of such rights, and no alternative method of meeting such public necessity can be shown. *See Kluger v. White*, 281 So.2d 1 (1973); *see also Owens-Corning Fiberglass Corp. v. Corcoran*, 679 So.2d 291 (Fla. 3d DCA 1996), *rehearing denied, review denied*, 690 So.2d 1300; *Johnson v. R. H. Donnelly Co.*, 402 So.2d 518, (Fla. 1st DCA 1981), *rev. den.*, 415 So.2d 1360.

The bill abrogates certain common law causes of action for nuisance under certain circumstances.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is indeterminate how many sport shooting ranges there are in the state or how many ranges would benefit from immunity for civil or criminal liability for violations of ordinances subsequently adopted or amended which are applicable to sport shooting ranges. Sport shooting ranges may benefit from the relief of liability and legal action arising from subsequently adopted

or amended ordinances which would otherwise require the range to comply or cease operation. Presumably a sport shooting range must maintain compliance with the state law or local ordinances applicable at the time the range was constructed or initially operated in order to be exempt from civil or criminal action and liability under this section.

Certain property owners whose property are adversely affected by the use of sport shooting ranges may no longer seek injunctive relief based on a nuisance claim against the range unless there has been substantial change in the use of the range.

C. Government Sector Impact:

The bill precludes local governments from enforcing subsequently adopted or ordinances applicable to sport shooting ranges who are in compliance with certain ordinances at the time of their initial construction or operation. Additionally, other governmental entities, including state agencies, are precluded from holding a sport shooting range liable in any civil or criminal matter relating to noise or noise pollution if the range is in compliance with the laws or local ordinances applicable to range at the time of its construction or initial operation. Specifically, the Department of Environmental Protection and certain other agencies will no longer be able to enforce regulations relating to outdoor noise decibel levels against sport shooting ranges.

The bill does not limit a local government's ability to regulate the initial location or construction of new ranges but would impact a governmental entity's future regulation of these ranges if the governing law or local ordinance at the time of construction or initial operation of the range were to be subsequently amended.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- Subsection (3) is not altogether clear whether a range is protected from an action for nuisance, or solely protected against an action for nuisance on the basis of noise of noise pollution.
- Subsection (5) does not provide a definition for "substantial change" nor is a time frame provided in which the substantial change might occur. This subsection also appears to conflict with subsection (3). Read together, a court would not be able to provide injunctive relief to someone proceeding under subsection (3) even if there had been substantial change in the use of the range. In addition, it is not altogether clear in subsection (5) whether it is the property owner or the owner's property that must be adversely affected by the use of the property with the range.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs Committee:
This amendment to subsection (6) explicitly exempts shooting ranges from any newly adopted or amended local ordinance if the range was not in violation of any law when it was constructed, and the range currently conforms to National Rifle Association gun safety and shooting range standards.

#2 by Judiciary Committee:
This amendment to subsection (5) removes the term "substantial" to require a "change" rather than a "substantial change" in the nature of the use of the range before a person who owns property adversely affected by the range may file a nuisance action.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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The 2012 Florida Statutes

Title XLVI
CRIMES

Chapter 823
PUBLIC NUISANCES

View Entire Chapter

823.16 Sport shooting ranges; definitions; exemption from liability; exemption from specified rules; exemption from nuisance actions; continued operation.—

(1) Definitions.—As used in this act, the following terms shall have the following meanings:

(a) "Unit of local government" means a unit of local government created or established by law, including, but not limited to, a city, consolidated government, county, metropolitan government, municipality, town, or village.

(b) "Person" means an individual, corporation, proprietorship, partnership, association, club, two or more persons having a joint or common interest, or any other legal entity.

(c) "Sport shooting range" or "range" means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting.

(2) Notwithstanding any other provision of law, a person who operates or uses a sport shooting range in this state shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution which results from the operation or use of a sport shooting range, if the range is in compliance with any noise control laws or ordinances adopted by a unit of local government applicable to the range and its operation at the time of construction or initial operation of the range.

(3) A person who operates or uses a sport shooting range is not subject to an action for nuisance, and a court of this state shall not enjoin the use or operation of a sport shooting range on the basis of noise or noise pollution, if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

(4) Rules adopted by any state department or agency for limiting levels of noise in terms of decibel levels which may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this act.

(5) A person who acquires title to or owns real property adversely affected by the use of property with a permanently located and improved sport shooting range shall not maintain a nuisance action against the person who owns the range to restrain, enjoin, or impede the use of the range where there has not been a substantial change in the nature of the use of the range. This section does not prohibit actions for negligence or recklessness in the operation of a sport shooting range or by a person using the range.

(6) A sport shooting range that is not in violation of existing law at the time of the enactment of an ordinance applicable to the sport shooting range shall be permitted to continue in operation even if the operation of the sport shooting range does not conform to the new ordinance or an amendment to an existing ordinance, provided the range was not in violation of any law when the range was constructed and provided that the range continues to conform to current National Rifle Association gun safety and shooting range standards.

(7) Except as otherwise provided in this act, this act shall not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this act.

History.—s. 1, ch. 99-134.

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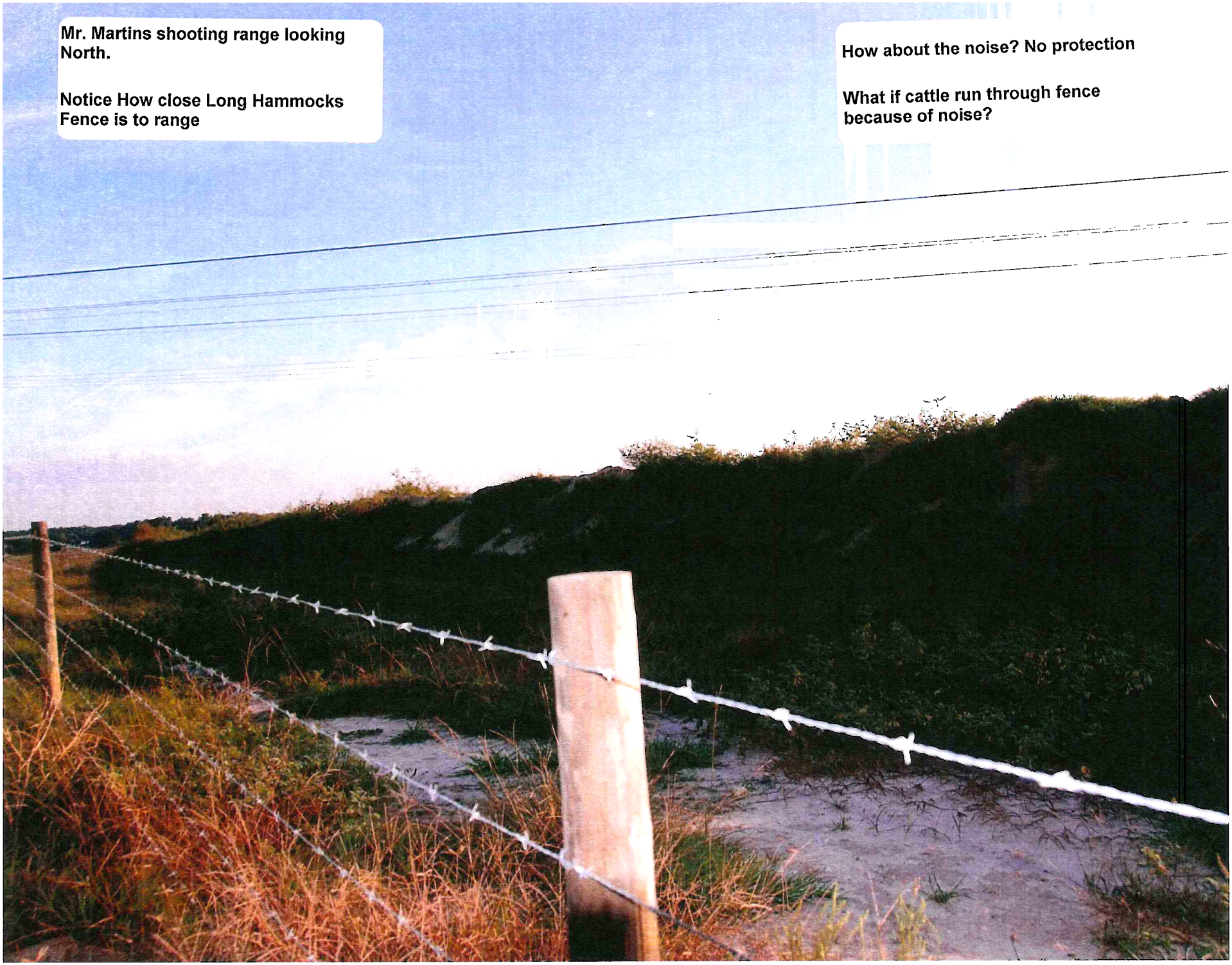
Entered into record 10/15/13 Natalie Carole "G"

Mr. Martins shooting range looking South

How can I work on my property with bullets and noise coming in my direction?

Will Sumter County Protect My property Rights?


Mr. Martins shooting range looking North.
Notice How close Long Hammocks Fence is to range
How about the noise? No protection
What if cattle run through fence because of noise?

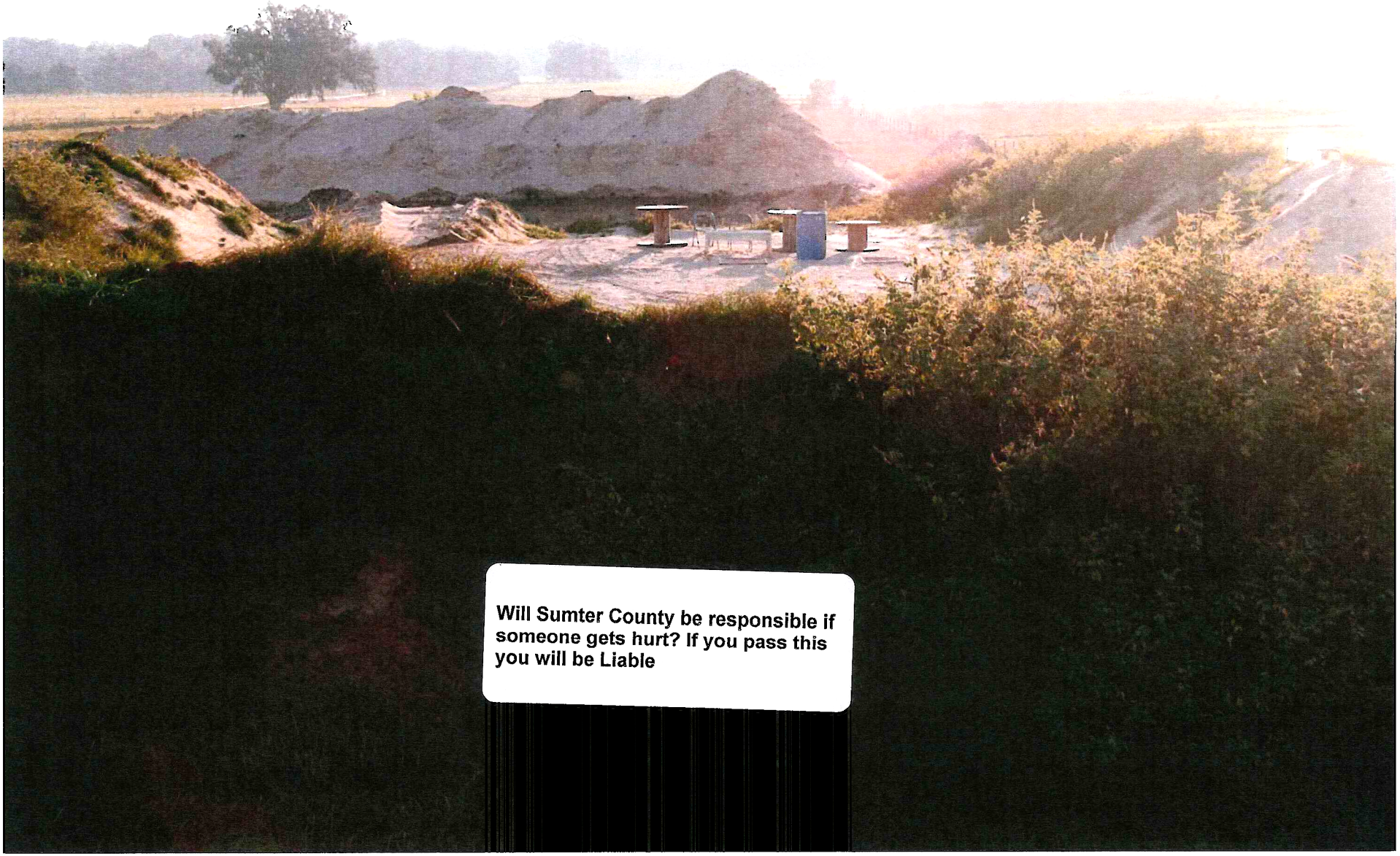
Mr. Martin shooting range looking south.

Notice How close Long Hammocks Fence is to range

Will you protect My rights as property owner and the safety of all the neighbors

This picture was taken out of back of Long Hammocks truck it show inside of pits

If I can see in, bullet can come out



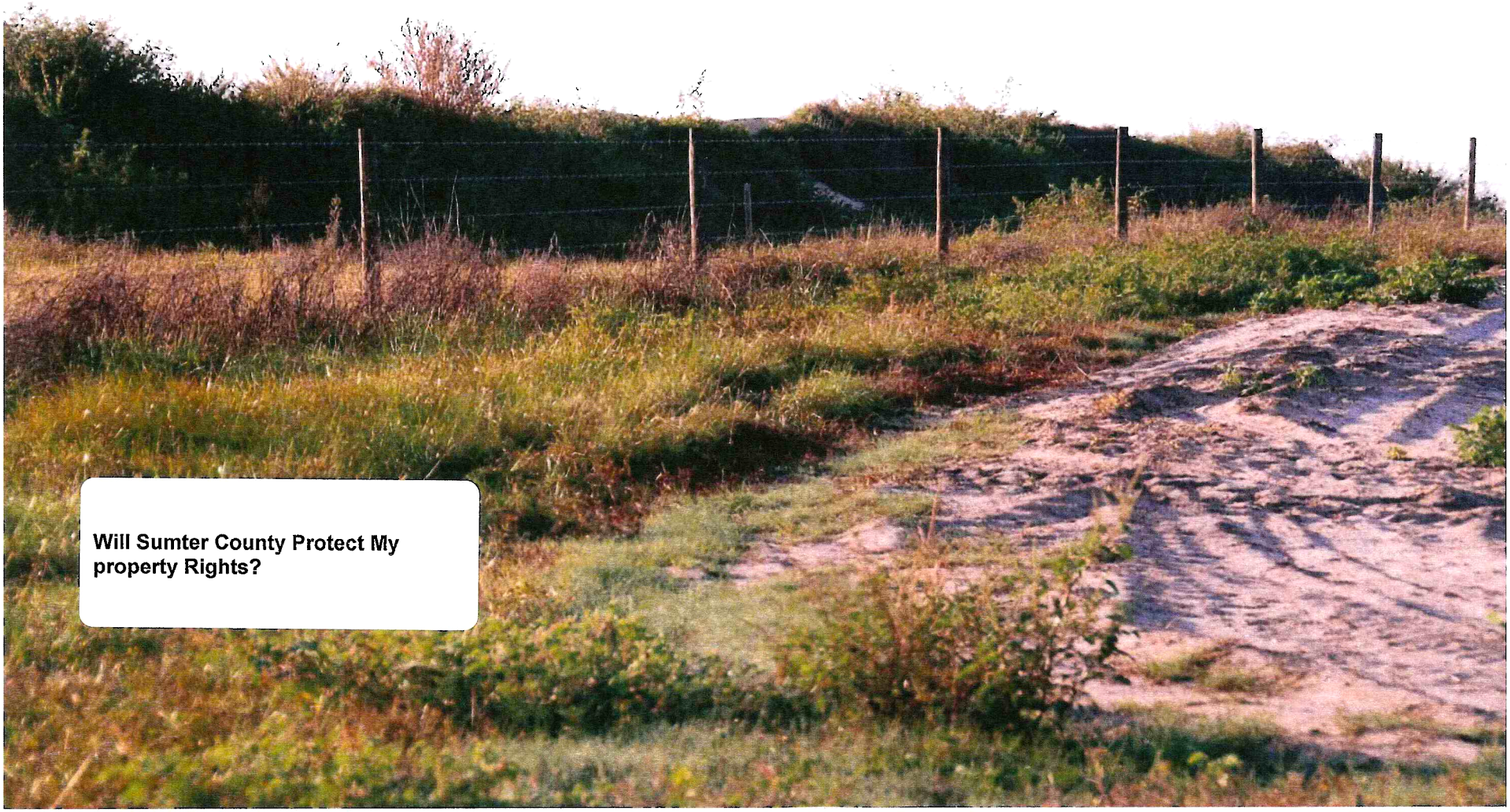
Will Sumter County be responsible if someone gets hurt? If you pass this you will be Liable

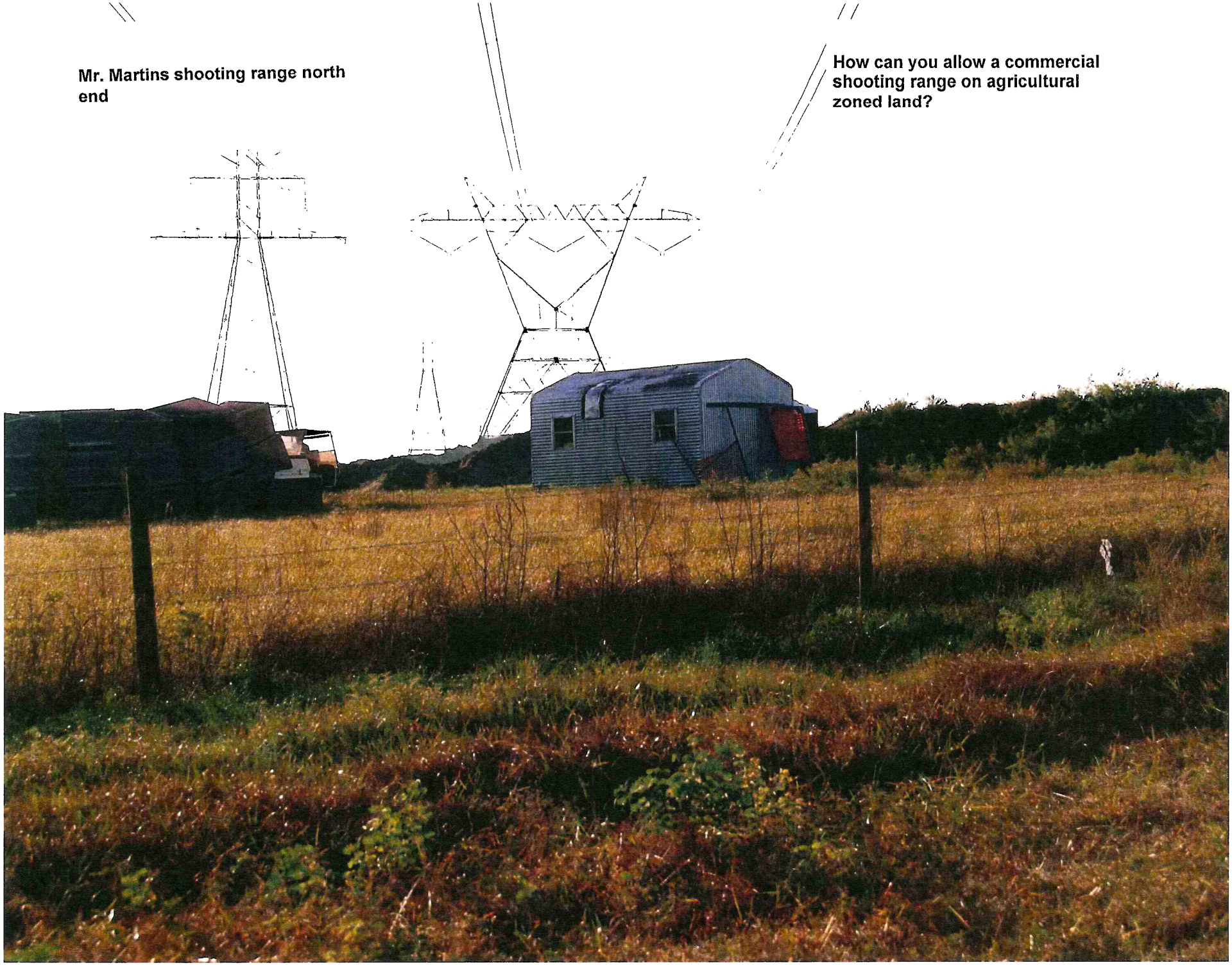
Mr. Martin shooting range looking South.

Notice how close Long Hammocks fence is to shooting range.

What happens if bullet goes over berm?

No trees to stop bullet or noise?



Mr. Martins shooting range north end

How can you allow a commercial shooting range on agricultural zoned land?