

Florida-friendly landscaping, artificial turf

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Ms. Pamela K. Akin
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Dear Ms. Akin:

You have asked this office to comment upon whether the Florida-friendly landscaping statute, section 373.185, Florida Statutes, would allow the use of artificial turf as a component of a landscape plan.

In sum, the Florida-friendly landscape statute contemplates the use of non-living materials such as rocks, pebbles, sand, mulch, walls, fences, or decorative paving materials as a component of a Florida-friendly landscape. While there is no express mention of the use of artificial turf in the Florida-friendly landscape statute, it does not appear to preclude the use of artificial turf as a component of a landscape plan. The model ordinance developed by the Department of Environmental Protection to implement the act addresses the ability of a municipality to regulate the use of non-living materials in a landscape plan, but specifically states that a municipal ordinance may not prevent a property owner from implementing Florida-friendly landscaping .

Section 166.048, Florida Statutes, expresses both the Legislature's determination that "Florida-friendly" landscaping contributes to the conservation, protection, and restoration of water and its intent to make such landscaping an essential part of water conservation, water quality protection, and restoration planning. The statute directs municipalities to consider enacting ordinances consistent with section 373.185, Florida Statutes, requiring the use of Florida-friendly landscaping, and specifically prohibits a municipality from enacting an ordinance which would prevent a property owner from implementing Florida-friendly landscaping on his or her land.[1]

Section 373.185(1)(b), Florida Statutes, defines "Florida-friendly landscaping" as:

"quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance."

It would appear that the primary focus of the Florida-friendly landscaping statute is to encourage appropriate plantings to conserve, protect, and restore water sources. Water management

districts are directed to provide a model Florida-friendly landscaping ordinance and other technical assistance to local governments in order to facilitate the requirements of the act.[2] Each district may develop its own model or use a model contained in the "Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions" manual developed by the Florida Department of Environmental Protection. [3]

The "Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions" manual defines "[l]andscape" as "[a]ny combination of living plants (such as grass, ground cover, shrubs, vines, hedges, or trees) and *non-living landscape material* (such as rocks, pebbles, sand, mulch, walls, fences, or decorative paving materials)." (e.s.) "Ground Cover" is defined in the manual as "[l]ow growing plants, other than turfgrass, used to cover the soil and form a continuous, low mass of foliage." [4] Moreover, the guidance models state that "[g]ravel, river rock, shell and similar materials should not be used as a major landscape ground cover or mulch" and allow local governments to restrict the percentage of space such materials occupy in a landscape plan, "as they increase the need for herbicide use, have no habitat value, reflect rather than absorb heat, and do not produce oxygen like plants."

Thus, the Department of Environmental Protection, the state agency charged with the administration of the Florida-friendly landscape legislation, has provided a definition for materials which constitute "landscape" for purposes of the act and recognizes that use of non-living materials, such as gravel, river rock, and shell, is part of a Florida-friendly landscape.[5] The use of non-living materials, however, may be subject to regulation by local governments.

I trust that these informal comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 166.048(2) and (3)(c), Fla. Stat. See also s. 373.185(3)(c), Fla. Stat., stating that a "local government ordinance may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land."

[2] Section 373.185(3), Fla. Stat.

[3] Section 373.185(2), Fla. Stat.

[4] "Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions," Florida Department of Environmental Protection and University of Florida, January 2009, p. 5.

[5] See *AmeriSteel Corporation v. Clark*, 691 So. 2d 473 (Fla. 1997) (interpretation by agency charged with administration of a statute is entitled to great weight); Op. Att'y Gen. Fla. 74-71

(1974) (construction of a statute by the administrative agency charged with its enforcement and interpretation is entitled to great weight and a court generally will not depart therefrom except for the most cogent reasons and unless the construction is clearly erroneous), *citing Daniel v. Florida State Turnpike Authority*, 213 So. 2d 585 (Fla. 1968); *Miller v. Brewer Co. of Florida*, 122 So. 2d 565 (Fla. 1960).