

Florida Fish and Wildlife Conservation Commission v. Daws, No. 1D16-4839, 2018 WL 1720973
(Fla. 1st DCA Apr. 10, 2018)

**FWC Owes No Duty to Stop Hunters from Trespassing on Property When Otherwise Permitted
by a Hunting License**

In *Florida Fish and Wildlife Conservation Commission v. Daws*, the Daws sued the Florida Fish and Wildlife Conservation Commission (FWC) after they suffered a series of trespasses onto their private property by deer dog hunters (“hunters”). The Daws reported the trespasses to the FWC, along with a number of criminal acts allegedly committed by the hunters. In response, FWC limited deer dog hunting to just 44 days per year, restricted the geographic area where hunting was authorized, and installed fencing to separate public lands from the Daws’ private property.

The trespasses continued, which prompted the Daws to sue under an inverse condemnation claim under Article X of the Florida Constitution because the FWC deprived them of their right to exclude people from their property and because the trespasses constituted a nuisance that deprived them of their right to quiet enjoyment. The Daws contended that it was FWC’s responsibility to prevent the trespasses since they regulate hunting licenses and permits in the area. The trial court agreed and issued an injunction requiring the FWC to abate the nuisance of deer hunting dogs from trespassing onto the property and of the hunters interfering with the Daws’ right to quiet enjoyment. The FWC appealed and the injunction was automatically stayed. The trial court later vacated the stay.

Upon review, the First DCA considered whether sovereign immunity bars an inverse condemnation claim. The takings claim failed because the Daws failed to allege either a permanent occupation or deprivation of all economic use of land. Forty-four days was insufficient for a permanent occupation, and the court found no deprivation of all economic use of the land.

Additionally, the FWC owed no duty to stop third parties from trespassing or committing criminal acts. Even if it did, sovereign immunity would bar the claim because their functions were discretionary and inherent actions of the government. Section 768.28(1), Florida Statutes, provides a broad waiver of immunity to the government, which is supported by the separation of powers doctrine in certain discretionary or inherent actions of the government. The trial court violated the separation of powers doctrine because, through the injunction, it would be directing an administrative agency (FWC) to perform its duties in a certain manner. Preventing the issuance of hunting licenses is directing an agency to perform (or not perform) its duties in a certain way. Therefore, the DCA directed the trial court to enter summary judgment in FWC’s favor.