



STATE OF FLORIDA

# DEPARTMENT OF COMMUNITY AFFAIRS

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CHARLIE CRIST  
Governor

THOMAS G. PELHAM  
Secretary

March 19, 2010

## **BY FACSIMILE AND U.S. MAIL**

The Honorable Fred R. Ward, Mayor  
City of Dunnellon  
20750 River Drive  
Dunnellon, FL 34431  
Fax: (352) 465-8505

Re: Proposed Settlement Agreement between Conservation Land Group, LLC,  
Rainbow River Ranch, LLC, and the City of Dunnellon

Dear Mayor Ward:

Two citizens from your area, Bert Eno and Louise Kenney, have brought to my attention a proposed settlement agreement that will be considered by the Dunnellon City Council at a special meeting this evening. My staff and I have examined the agenda materials available on your website. It is clear that the proposed settlement agreement violates several provisions of Florida law, and I urge the City Council to reject it.

First, the settlement agreement contemplates approval of development orders that are not consistent with the Dunnellon Comprehensive Plan. The present designation of the Property is Agriculture, which allows one dwelling unit per ten acres (or one per five with clustering). The settlement agreement, which would authorize 349 dwelling units and 100,000 square feet of commercial, with an additional 101 units and 25,000 square feet of commercial that might be constructed at some unspecified site, is clearly not consistent with the City's Comprehensive Plan.

Second, the settlement agreement appears to be based on a mistake of fact. Paragraph 4.b. of the settlement agreement states that the Property is vested for the Mixed Use land use

designation. The Property has never been designated for Mixed Use under the Dunnellon Comprehensive Plan. The City adopted Mixed Use for the Property in 1996, but the Department found that plan amendment not in compliance and the Mixed Use designation never became effective. The not-in-compliance determination was resolved by a remedial plan amendment in 2001 which designated a portion of the Property adjacent to County Road 484 Commercial and Residential Medium Density, but designated approximately half of the Property near the Rainbow River as Agriculture and Conservation. The remedial amendment was accompanied by an Agreement Limiting Development executed by the owner of the Property that specified that the total number of units on the portion designated as Agriculture would be no more than 30. The important point, of course, was that development was directed away from the Rainbow River. The proposed plat attached to the pending settlement agreement shows many more than 30 dwelling units in the area designated as Agriculture and shows additional dwelling units in the area designated as Conservation under the 2001 remedial amendment.

Furthermore, the Agreement Limiting Development specifies that any change in the limitations provided in that Agreement “shall be effective only if adopted by further amendments to the City of Dunnellon Comprehensive Plan in accordance with the formalities then required for amendments to the Comprehensive Plan.” The settlement agreement proposes to approve increased units near the Rainbow River without a plan amendment, in violation of the Agreement Limiting Development, and in violation of the overall 2001 settlement agreement with the Department.

Thirdly, paragraph 4.b. of the settlement agreement purports to amend Objective 1, Policy 1.6 of the Future Land Use Element. It is not possible for the City to amend its Comprehensive Plan in an agreement. The only way that the Comprehensive Plan can be amended is by adoption of a plan amendment under the procedure in section 163.3184, Florida Statutes. This attempt to amend the Comprehensive Plan by agreement will be invalid, and any development order that relies upon the attempted amendment will be subject to challenge by aggrieved and adversely affected persons.

Paragraph 19 of the settlement agreement mentions changing the land use designations of the Property for ad valorem tax purposes. It is not clear whether this means changes to the land use designations on the future land use map of the Comprehensive Plan; but if that is intended, then such changes also cannot be accomplished in an agreement.

Fourthly, paragraph 20 of the settlement agreement states that, “In the event of a conflict between this Agreement, the City’s Comprehensive Plan or Land Development Regulations or other rules or ordinances, this Agreement shall prevail.” This is clearly incorrect as a matter of law. All development and all development orders must be consistent with the Comprehensive Plan. Section 163.3194, Florida Statutes.

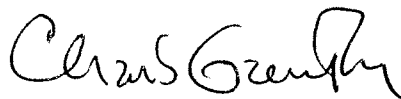
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The proposed settlement agreement is based on the Bert Harris Act. The Bert Harris Act does not override the provisions of the Growth Management Act. Section 163.3211 of the Growth Management Act provides:

163.3211 Conflict with other statutes.--Where this act may be in conflict with any other provision or provisions of law relating to local governments having authority to regulate the development of land, the provisions of this act shall govern unless the provisions of this act are met or exceeded by such other provision or provisions of law relating to local government, including land development regulations adopted pursuant to chapter 125 or chapter 166.

I urge you to reject the settlement agreement as inconsistent with the present Comprehensive Plan, and as inconsistent with the 2001 Settlement Agreement between the city and the Department. If you have any questions concerning these issues, please contact me or Assistant General Counsel David Jordan.

Sincerely yours,



Charles Gauthier  
Director, Division of Community Planning

TP/dj

cc:

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