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District One

Cecil L. Pendergrass
District Two

Raymond Sandelli
District Three

Brian Hamman
District Four

Frank Mann
District Five

Roger Desjarlais
County Manager

Richard Wesch
County Attorney

Donna Marie Collins
Chief Hearing Examiner

December 4, 2020

S. William Moore
Moore Bowman & Reese, P.A.
551 N. Cattlemen Road, Suite 100
Sarasota, FL 34232

Re: Statement of Allowable Uses and Written Settlement Offer
Corkscrew Grove Limited Partnership, LLC, et al.
Claim under Bert J. Harris Jr. Private Property Rights
Protection Act

Dear Mr. Moore:

On September 14, 2020, the County received your Claim for Damages pursuant to Florida Statutes Section 70.001, the Bert J. Harris Jr. Private Property Rights Protection Act (Act). Pursuant to the Act, the government has 90 days to issue to make a written settlement offer and a written statement of allowable uses identifying allowable uses to which the property may be put.

Please accept this correspondence as the written settlement offer and written statement of allowable uses contemplated by the Act. Neither the substance of this correspondence, nor the existence of this correspondence is intended to waive any defense the government has against any claim or lawsuit you may bring; including, without limitation, ripeness defenses and defenses concerning the validity of the appraisal you submitted.

Your claim identifies properties within the Density Reduction/Groundwater Resource (DR/GR) and Wetlands future land use categories. The subject properties are zoned AG-1 and AG-2 the allowable uses to which the subject property may be put are as follows:

AG-1 and AG-2 Permitted Uses

Accessory uses, buildings, and structures:

- Accessory Apartments and accessory dwelling unit
- Amateur radio antennas and satellite earth stations, see LDC Sec. 34-1175
- Entrance gates, gatehouses
- Residential Accessory uses
- Signs in compliance with chapter 30

Re: Statement of Allowable Uses and Written Settlement Offer
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Administrative offices

Agricultural uses (as defined)

Agricultural accessory uses and buildings

- Agritourism activity (defined)

Animals, reptiles, marine life:

- Animals, excluding exotic species

Bed and Breakfast (defined)

Caretaker's residence

Community residential home

Dwelling unit:

- Mobile home, subject to meeting AG-1 requirements set forth in LDC Sec. 34-654
- Single family residence, conventional
- Second conventional single family residence, on lot, LDC Sec. 34-1180

Essential services

Essential services facilities, Group I

Excavation, water retention, LDC Sec. 10-329

Food and beverage service, limited (defined)

Home care facility

Home occupation, no outside help

Place of Worship

Produce stands:

- Temporary
- Permanent

Recreation facilities: Personal

Research and development laboratories, Group I

Stable, boarding or private

U-pick operations

AG-1 and AG-2 Permitted Uses with Special Exceptions

Animals

- Keeping, raising, or breeding of American alligators, venomous reptiles or Class II animals (defined)
- Keeping, raising, or breeding of marine life which requires the storage of brackish or saline water

Consumption on premises, LDC Sec. 34-1261 et seq.

EMS, fire, or sheriff's station

Essential services facilities, Group II

Farm labor housing, new

Forestry tower

Parks, Group II, new

Religious facilities, new and expansion to ten or more acres

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12/4/2020

S. William Moore

Re: Statement of Allowable Uses and Written Settlement Offer
Corkscrew Grove Limited Partnership, LLC, et al.
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AG-1 and AG-2 Permitted Uses with Administrative Action:

Consumption on Premises, LDC Sec. 34-1261 et seq.
Home occupation, with outside help
Model homes, LDC Sec. 34-1951 et seq.

The County offers the following written settlement offer:

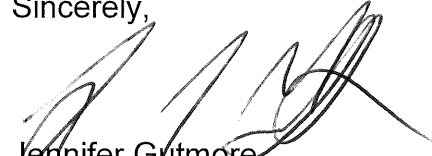
The County will allow you to retain all right, title, and interest in the rights of use which, in the event your claim is successful, you would be required to transfer to the County pursuant to Fla. Stat. § 70.001(7)(b) and for which the County would have to pay you compensation.

The County will further pay you the total sum of \$10,000.00.

Pursuant to Fla. Stat. § 70.001(9), this settlement offer is conditioned upon your execution of a mutually agreeable release, as provided in the attached Exhibit "A".

If you wish to discuss the contents of this correspondence in further detail, do not hesitate to contact me.

Sincerely,



Jennifer Gutmore
Assistant County Attorney

JSG/sch
Attachment

Via email only:

Richard Wesch, County Attorney
Andrea Fraser, Deputy County Attorney
Christine Brady, Assistant County Manager
Dave Loveland, Director, Department of Community Development

EXHIBIT "A"
FULL AND FINAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That we, **Corkscrew Grove Limited Partnership, LLC; Cooperative Three, Inc.; Hunt Brothers, Inc.; DH Ranch, Inc.; Nelson Groves, Inc.; Helene C. Hunt; and EH, SR, Inc.** ("first party"), for and in consideration of the sum of **Ten Thousand Dollars and 00/100** (\$10,000.00), or other valuable considerations, received from or on behalf of **LEE COUNTY, FLORIDA, a political subdivision of the State of Florida**, ("second party"), the receipt whereof is hereby acknowledged,

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives and assigns of individuals, the past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest and assigns of a corporation or partnership, wherever the context so admits or requires.)

HEREBY release, acquit and forever discharge the second party from all present and future claims, causes of action, damages, debts, obligations, judgments, liens, demands, attorney's fees, interest, costs, loss of services, expenses, compensation, third-party actions, suits at law or in equity, including claims or suits for contribution and/or indemnity, of whatever nature, and from all consequential damages, whether known or unknown, liquidated, fixed, or contingent which were asserted, or which could have been asserted, in the Claim for damages per § 70.001, Fla. Stat. presented in writing by the party of the first part on or about September 14, 2020, a copy of which claim is attached hereto as Exhibit 1.

FURTHER, first party agrees to satisfy and be responsible for any and all liens which may attach to, by or through this settlement and will indemnify, defend and save the second party harmless from and against any and all claims, demands, losses, costs and expenses including but not limited to attorney's fees arising from such liens, if any.

IT IS FURTHER understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that this payment is not to be considered as an admission of liability on the part of the second party by whom liability is expressly denied. It is further understood and agreed that the undersigned are of legal age, legally competent to execute this release, and he/she accepts full responsibility therefore. It is further understood and agreed by the undersigned that this release and settlement is intended to cover and does cover not only known injuries, losses and damages, but future injuries, losses and damages not now known or anticipated but which may later develop or be discovered.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2020.

Corkscrew Grove Limited Partnership, LLC
By: _____
Title: _____

STATE OF FLORIDA)
) ss.
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me by means of physical presence or online
notarization, this ____ day of _____, 2020, by _____
_____.

NOTARY PUBLIC
State of Florida at Large

Print Name

My Commission Expires: _____
__ Personally Known
__ Produced Identification
Type of Identification Produced _____

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2020.

Cooperative Three, Inc.
By: _____
Title: _____

STATE OF FLORIDA)
) ss.
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me by means of physical presence or online
notarization, this ____ day of _____, 2020, by _____
_____.

NOTARY PUBLIC
State of Florida at Large

Print Name

My Commission Expires: _____
__ Personally Known
__ Produced Identification
Type of Identification Produced _____

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2020.

Hunt Brothers, Inc.
By: _____
Title: _____

STATE OF FLORIDA)
) ss.
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me by means of physical presence or online
notarization, this ____ day of _____, 2020, by _____
_____.

NOTARY PUBLIC
State of Florida at Large

Print Name

My Commission Expires: _____
__ Personally Known
__ Produced Identification
Type of Identification Produced _____

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2020.

DH Ranch, Inc.
By: _____
Title: _____

STATE OF FLORIDA)
) ss.
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me by means of physical presence or online
notarization, this ____ day of _____, 2020, by _____
_____.

NOTARY PUBLIC
State of Florida at Large

Print Name

My Commission Expires: _____
__ Personally Known
__ Produced Identification
Type of Identification Produced _____

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2020.

Nelson Groves, Inc.
By: _____
Title: _____

STATE OF FLORIDA)
) ss.
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me by means of physical presence or online
notarization, this ____ day of _____, 2020, by _____
_____.

NOTARY PUBLIC
State of Florida at Large

Print Name

My Commission Expires: _____
__ Personally Known
__ Produced Identification
Type of Identification Produced _____

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2020.

Helene C. Hunt

STATE OF FLORIDA)
) ss.
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this ____ day of _____, 2020, by _____
_____.

NOTARY PUBLIC
State of Florida at Large

Print Name

My Commission Expires: _____
__ Personally Known
__ Produced Identification
Type of Identification Produced _____

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2020.

EH, SR, INC.
By: _____
Title: _____

STATE OF FLORIDA)
) ss.
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me by means of physical presence or online
notarization, this ____ day of _____, 2020, by _____
_____.

NOTARY PUBLIC
State of Florida at Large

Print Name

My Commission Expires: _____
__ Personally Known
__ Produced Identification
Type of Identification Produced _____

MOORE BOWMAN & REESE, P.A.

EMINENT DOMAIN & PROPERTY RIGHTS/LAWYERS

www.mbrfirm.com

William Moore, Esquire
(941) 365-3800
bmoores@mbrfirm.com

September 11, 2020

Commissioner Brian Hamman
Chairman of the Board, Lee County
Board of County Commissioners
Old Lee County Courthouse
2120 Main Street
Fort Myers, FL 33901

VIA UPS DELIVERY

**Re: Corkscrew Grove Limited Partnership, LLC, et al.
Claim Pursuant to Section 70.001, Florida Statutes (2019)**

Chairman Hamman:

This letter establishes claims by Corkscrew Grove Limited Partnership, LLC; Cooperative Three, Inc.; Hunt Brothers, Inc.; DH Ranch, Inc.; Nelson Groves, Inc.; Helene C. Hunt; and EH, SR, Inc., as property owners (collectively as "Claimant") against Lee County for compensation pursuant to Florida's "Bert J. Harris, Jr., Private Property Rights Protection Act," codified as Section 70.001, Florida Statutes (2019). The Claimant exists in the singular by virtue of an agreement executed on October 4, 2019, memorializing the cooperative relationship and obligations of the property owners with regard to the rezoning of the property and any litigation related thereto.

Lee County has inordinately burdened an existing use of real property or a vested right to a specific use of real property by its action in restricting or limiting the use of said real property such that the Claimant is permanently unable to obtain its reasonable, investment-backed expectation for said property as defined below.

The real property owned by Claimant, and at issue herein ("subject property"), is located within Section 35, Township 45 South, Range 27 East, and Sections 2, 3, 10, 11, 14 and 15, Township 46 South, Range 27 East, all within Southeast Lee County Planning Community in Lee County, Florida. The property consists of 4,202.3 acres, more or less, and is presently zoned "AG-1" and "AG-2."

The specific action of Lee County giving rise to this claim for compensation is the Resolution of the Lee County Board of County Commissioners, Resolution Number, Z-18-008, enacted on November 6, 2019, and rendered (upon filing with the Clerk of Court) on November 8, 2019. That Resolution denied a request by Claimant to re-zone the 4,202.3-acre parcel, described above, from AG-1 and AG-2 to the zoning category of Industrial Planned Development ("IPD"), and approve a General Mining Permit for the property. Resolution Z-18-008 is attached hereto as Exhibit "A."

SARASOTA OFFICE

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Fax: 941.952.1414

ST. PETERSBURG OFFICE

735 Arlington Ave. N., Suite 105
St. Petersburg, Florida 33701
727.579.9000
800.380.3337
Fax: 877.203.5748

TAMPA OFFICE

4100 W. Kennedy Blvd., Suite 221
Tampa, Florida 33609
813.318.9000
800.380.3337
Fax: 877.203.5748

Exhibit 1

Chairman Brian Hamman
September 11, 2020
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The Resolution denying the Claimant's application for re-zoning to permit a mining use on its property was contrary to Lee County Staff's recommendation, which was for approval with conditions. In spite of the approval recommendation from Staff, the Commission chose to follow the Lee County Hearing Examiner's recommendation of denial.

The inordinate burden placed by Lee County on Claimant's property not only restricts or limits the landowner's use of its property, but actually eliminates an otherwise reasonably foreseeable, non-speculative land use; that was a permitted use when the application was filed—i.e. mining. As detailed in the attached appraisal report, a mining use on the Claimant's subject property would increase the fair market value of that property to an amount well in excess of its existing fair market value.

Specifically, Lee County's denial of Claimant's application has resulted in a current loss in fair market value of the subject property of sixty-three million dollars (\$63,000,000.00). These damages are set out in the *bona fide*, valid appraisal supporting and demonstrating the claim, attached hereto and incorporated herein as Exhibit "B."

Pursuant to the provisions of Section 70.001, Florida Statutes (2019), please govern yourself, and Lee County, accordingly.

Sincerely,



S. William Moore
Jackson H. Bowman

SWM/kpt

Attachments

cc: Richard Wm. Wesch, Esquire
Mr. Mitch Hutchcraft