



Legislation Details (With Text)

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**Title:** SETTLEMENT AGREEMENT AND CONSENT ORDER CONCERNING THE LAND APPLICATION OF BIOSOLIDS AT WHISTLING PINES RANCH (B)

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**Attachments:** 1. 100677\_settlement agreement & consent order - unsigned\_20110217.pdf, 2. 100677\_biosolidsagreement\_20110217.pdf

Date	Ver.	Action By	Action	Result
2/17/2011	0	City Commission	Approved as Recommended	Pass

SETTLEMENT AGREEMENT AND CONSENT ORDER CONCERNING THE LAND APPLICATION OF BIOSOLIDS AT WHISTLING PINES RANCH (B)

The City Commission 1) hear a presentation from staff; 2) approve the withdrawal of the application for Special Exception; 3) approve the Settlement Agreement and Consent Order; and 4) authorize the Mayor to execute and the Clerk of the Commission to attest the Settlement Agreement and Consent Order.

STAFF REPORT

Brief Explanation

At the City Commission Meeting on December 16, 2010, GRU staff updated the Commission on the status of its application to the County for a Special Exception to continue the land application of biosolids at Whistling Pines Ranch near Archer. As briefly presented (and as described in the background section below), the County and City staff are in disagreement as to the applicability of the County Code to the biosolids application, with City staff being of the opinion that the biosolids application is a vested, legal non-conforming use and County staff being of the opinion that the use now requires a special exception with conditions that are, in GRU's analysis, onerously restrictive to operations. The conditions would make the continued use of the site for biosolids application cost prohibitive. As presented at the December 16, 2010 City Commission Meeting, in order to allow City and County staff to consider alternative solutions, the County Commission, at its meeting on December 14, 2010, deferred the hearing on the Special Exception until February 22, 2011.

After much analysis and discussion, City and County staff recommend that their respective Commissions approve a Settlement Agreement and Consent Order in order to avoid the expense, delay and uncertainty of imminent code enforcement proceedings and litigation between the two governments.

The Settlement Agreement and Consent Order will allow for voluntary amortization of the City's use. Under the terms and conditions of the Agreement, the City may continue its Class A or B biosolids application at the site for five years, subject to reasonable requirements concerning application setbacks, groundwater monitoring, and best

management practices, after which the City's land application of Class A or B biosolids on the site will cease. GRU staff is of the opinion that this amortization period will allow time for the development of a new biosolids reuse strategy and transitioning to that new operational strategy.

### Background Information

As part of its wastewater utility operations, GRU's water reclamation facilities create two products that are beneficially re-used (or recycled) in the community: reclaimed water used primarily for irrigation and industrial cooling processes; and biosolids which are land applied as an organic fertilizer for the growing of agricultural crops and grasses. Since 1981, the City has been applying biosolids on the Whistling Pines Ranch, an approximately 1300 acre farm in the westernmost portion of Alachua County.

In 2007, the City entered into a contract to purchase Whistling Pines Ranch to ensure its continued availability for the land application of biosolids. In conducting its due diligence as a purchaser, the City reviewed the County's Uniform Land Development Code ("ULDC") and found that Section 406.70(f) provides in part "All proposed sites for land application of biosolids shall require a special exception ....". The City did not believe that the amendment applied to its use of Whistling Pines, as it was not a "proposed site" but an existing site that has been in continuous use and legally permitted, monitored and inspected in accordance with all required federal, state and local regulations for over 25 years.

The County Planning staff opined that a special exception was required for Whistling Pines as a result of Section 408.14, which reads as follows:

"[T]he following nonconforming uses of land, not contained within principal buildings, including but not limited to open storage; building supplies; vehicle, implement and machinery storage, either on the same lot or on another lot with a plant, factory or sales facility; junkyards; kennels; commercial dairies that did not exist prior to October 2, 1991; commercial animal raising and similar uses shall comply with this ULDC or be discontinued within 18 months following notice by the county unless determined to be vested under the provisions of chapter 402, article XXVII, Vested Rights, of this ULDC."

The City believes this section does not apply because the City's use is not one of the uses listed, nor is it similar to the listed uses. Alternatively, even if the City's use is one of the listed uses or a similar use, the ULDC exempts those uses if they are "vested", which the City believes its use to be, having been in legally permitted and in continuous operation with the knowledge of the County for over 25 years.

Despite their disagreement in interpretation, the City and County staff continued dialog concerning the special exception requirement. County staff initially determined that a 75 foot setback would be required from the property lines with no vegetated buffer. From the City's perspective, a 75 foot setback was operationally feasible and consistent with rules adopted by the FDEP which go into effect in January 2013. Based on this, the City filed for a special exception, even though it continued to be of the opinion that it was not required to do so.

The Special Exception application was heard by the Alachua County Planning Commission in October 2007. County staff recommended approval of the Special Exception with a 75 foot setback and the other conditions outlined in the Staff Report dated October 10, 2007. The Planning Commission voted 4-1 to approve the special exception with the staff recommended conditions.

After the Planning Commission meeting, in response to concerns raised by a few citizens, County staff asked the City to conduct studies to determine possible environmental/health effects (both airborne and in the ground) resulting from the application of biosolids on the site. Again, this testing was not required by the ULDC or any of the City's biosolids permits; however, in the spirit of good citizenship and improving the public knowledge of the science of biosolids, the City complied with the requests. After considerable time and expense, the City completed the studies and the results indicated that the biosolids use is safe.

While the City was in the process of doing the studies, County Staff discovered they erroneously had recommended the 75 foot setback instead of the 300 foot setback stated in the ULDC. County Staff also determined that a 40 foot vegetated and screened buffer would be required, along with more extensive groundwater monitoring. Such conditions unreasonably and significantly affect the existing use of the site such that, if the City been informed of same prior to the filing the application, the City would not have proceeded with the special exception process. As a result, City staff recommends withdrawal of the application for Special Exception.

The Special Exception was scheduled for hearing before the County Commission on December 14, 2010. At that request of City and County staff, the County Commission deferred the matter until its February 22 meeting to allow staff from both governments to consider potential solutions. After much analysis and discussion, City and County staff drafted a Settlement Agreement and Consent Order for consideration by their respective Commissions.