From: William Clague
Sent: Thursday, February 15, 2018 2:57 PM
To: Joy LeggettMurphy
Cc: Mitchell Palmer; Alex Nicodemi; Ed Hunzeker; Dan Schlandt; Cheri Coryea; Charlie Bishop; Charlie Hunsicker; Charles Meador; Michael Elswick; Mark Simpson; Eric Shroyer; Sia Mollanazar; Juliet Shepard
Subject: Federal Eagle Conservation Easement; RLS-2018-0044

Joy:

Pursuant to the above Request for Legal Services you have asked whether "granting a conservation easement to Manatee County over land that is currently owned by Manatee County is appropriate and legally acceptable." I provide the following advice in response:

1. The RLS indicates that the proposed conservation easement is a condition of a U.S. Fish and Wildlife Service (Service) permit for the disturbance of federally protected bald eagles. The permit condition does not specify to whom the conservation easement should be granted, but does require that the conservation easement designate the Service as a 3rd party enforcer of the easement. (Presumably the Service does not want to accept conveyance of the conservation easement.)

2. You have questioned whether a conservation easement granted by the County to the County is a legally valid conveyance of an easement under Florida law. I do understand why you have raised this concern. Well-settled Florida case law holds that one "essential element" of an easement is a dominant and servient estate. J. C. Vereen & Sons v Houser, 167 So. 45 (Fla. 1936). The "dominant estate" of an easement is the parcel that receives the benefit of the easement established over the servient parcel. Esbin v Erickson, 987 So.2d 198 (Fla. 3d DCA 2008). Under this legal principle, a valid easement requires the establishment of some right—access, view, etc.—over one parcel (servient) exercisable by the owners of another parcel (dominant). Though there is no prohibition on the two parcels being owned by the same owner at the time of establishment of the easement, it does typically require two separate parcels or "estates".

3. By contrast, conservation easements are creatures of statute authorized pursuant to Florida Statute 704.06, which provides in part:

> (2) Conservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the owner of the property, or in any order of taking. Such easements may be acquired in the same manner as other interests in property are acquired, except by condemnation or by other exercise of the power of eminent domain, and shall not be unassignable to other governmental bodies or agencies, charitable organizations, or trusts authorized to acquire such easements, for lack of benefit to a dominant estate. (emphasis added)

Under this language, a conservation easement does not require a dominant estate for its valid establishment in the same manner as easements governed solely by common law. Rather, the owner of a parcel may record one over the parcel, establishing a valid conservation easement that runs with the land to subsequent owners, regardless of whether the conservation easement conveys an interest to a dominant estate. Florida Statute 704.06 is expressly referenced in the County's proposed conservation easement.

For the reasons stated above, I have no objection from a legal standpoint to the conveyance of the conservation easement as submitted under the RLS.

This concludes my response to the RLS. Please contact me if you have any questions or concerns.

Bill Clague
Assistant County Attorney
Manatee County, Florida
ph. 941-745-3750
fx. 941-749-3089
william.clague@mymanatee.org