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Deed Restrictions, Takings, Termination, and Back Taxes with Interest: What happens to a conservation easement when a county with eminent domain authority purchases real property under a conservation easement, and is a conservation easement binding against a Texas county as a deed restriction?

Honorable General Paxton:

Aransas County has entered a Purchase & Sale Agreement (PSA) for the purchase of 972.952 acres of land funded by a grant from the Texas General Land Office ("GLO").[1] As of the date of this letter, the purchase has not yet concluded. The Seller has given a conservation easement to a non-profit trust covering approximately 927 acres of the land in question, with only 29 acres (or 3% of the total area) designated as "Building Zones." In the PSA and the proposed deed exceptions, the County must take the land subject to the Conservation Easement and pay all taxes for the 2025 year and all subsequent years.

Deed Restrictions & Texas Counties

In general, conveyances of land to counties generally require the title to the property to be unencumbered. *See* Tex. Local Gov't Code Ann. §280.002(a)(3) (*requiring* that, in certain circumstances and in addition to other requirements, the conveyance instrument grants to the local government unencumbered title to the property).[2] The County is also a governmental entity with eminent domain authority, where deed restrictions and restrictive covenants generally do not apply

[1] The total acreage is unclear. The Purchase & Sale Agreement identifies acreage totaling 972.952, which matches the proposed special warranty deeds. The amount of acreage in the proposed quit claim deeds totals 950.235. The waivers of inspection and disclosure to owner forms proposed by the title company total 1,035.853, if the 989.853 acreage amount is used for calculation purposes, or 1,058.564, if the 1,012.564 acreage amount is used instead. As a condition of GLO grant funding, the County had to conduct a land appraisal and an LSLS land survey. The land appraisal only covers approximately 950 acres. Tracts I and II of the land survey total 950.233. At the contract price of $2,415.33 per acre, the price fluctuates between $2,184,028.34 and $2,350,000.00.

[2] This property is *not* unencumbered. In addition to the Conservation Easement, there are 29 other restrictive covenants of record for the proposed property, including utility easements, rights-of-way easements, pipeline easements, surface easements, underground utility easements, oil, gas, and mineral leases, a drainage easement and excavated material placement agreement in favor of Aransas County, Texas, and an area described as a Tidal Marsh Area Subject to Claim by State of Texas.

with respect to property acquired by purchase or condemnation.[3] In Tex. Att'y Gen. Op. No. GA-0249 (2004) at 2, your Office wrote:

> Several judicial decisions conclude that deed restrictions and restrictive covenants do not apply to a governmental entity, particularly one with authority to condemn, with respect to property the governmental entity has acquired by purchase or condemnation. See *Wynne v. City of Houston,* 281 SW. 544, 544 (Tex. 1926) (per curiam) (concluding that no contract could restrict a municipality's authority to construct and maintain fire stations); *Deep E. Tex. Reg'l Mental Health &Mental Retardation Servs. v. Kinnear,* 877 S.W.2d 550,560 (Tex. App. – Beaumont 1994, no writ) (concluding that restrictive covenants "must yield to the exercise of the state's legitimate police power"); *Palafox v. Boyd,* 400 S.W.2d 946, 949-50 (Tex. Civ. App. – El Paso 1966, no writ) (concluding, based upon *Wynne* and other cases, that restrictive covenants cannot be applied against a governmental body with authority to condemn); *City of River Oaks v. Moore, 272* S.W.2d 389,391 (Tex. Civ. App.-Fort Worth 1954, writ ref'd n.r.e.) (concluding that deed restrictions are not binding on the state or a subdivision thereof). Based on the holdings in these cases, we conclude that deed restrictions do not apply to University-owned property in this situation.

Although governmental entities with eminent domain authority are not generally subject to restrictive deed covenants, the GLO has required certain deed restrictions, presumably as a condition of grant funding:

> The Property must be used in perpetuity for the authorized purpose for which it was acquired under the Texas Coastal Management Program (CMP) grant from the Texas General Land Office providing Gulf of Mexico Energy Security Act (GOMESA) funds, pursuant to GLO Contract 24-099-005-E379 (the "CMP Grant"), for the CMP project entitled "Copano Cove Ranch Acquisition." The authorized purpose of the acquisition is habitat and wildlife preservation, stormwater/flood management, and public access. The Property must be used and managed consistent with this authorized purpose, in accordance with GOMESA, the CMP, the terms and conditions of the CMP Grant, and all applicable federal and state laws and regulations. The Property may not be conveyed, encumbered, or disposed of in any manner, or used for any purpose inconsistent with the purpose for which it was acquired, without the prior written approval of the Texas General Land Office. If the Property is ever sold, conveyed, or encumbered in a manner that allows the Property to be used for any purpose inconsistent with the purpose for which it was acquired, or condemned in whole or in part, the Texas General Land Office must be compensated in accordance with the Texas Uniform Grant Management Standards and all applicable federal and state laws and regulations. These restrictions run with the land and may not be changed and will not cease to be applicable unless the Texas General

[3] What if those deed restrictions are oil, gas, and mineral leases, including easements and rights of access, and royalty interests and reservations? Section 270.001 of the Texas Local Government Code states that "[a] deed, grant, or conveyance that is made, is acknowledged or proven, and is recorded as other deeds of conveyance to a county, to the courts or commissioners of a county, or to another person for the use and benefit of a county vests in the county the right, title, interest, and estate that the grantor had in the property at the time the instrument was executed and that the grantor intended to convey." If a county is vested only with the right, title, interest, and estate that *the grantor* had in the property at the time of conveyance, then presumably the County would not own any oil, gas, or mineral rights in this property. But, as the County has eminent domain authority, would it also acquire any access to the oil, gas, and mineral rights when it acquires the property?

Land Office provides written authorization, which the Grantee must record with reference to the title to the Property.

May a State agency require a Texas county with eminent domain authority to be bound by a perpetual deed restriction as a condition of receiving grant funding? For the sake of clarity, this is a purely academic question, as the County does not object to adhering to the authorized purposes of the grant funding, being habitat and wildlife preservation, stormwater and flood management, and granting public access to the property in question. However, the County ***would***, in theory, be limited to using the property for only those three activities in perpetuity.

May a seller require a Texas county with eminent domain authority to be bound by the terms of a conservation easement as a deed restriction when the county acquires the real property by purchase?

Presuming that both proposed deed restrictions ***would*** apply to the County, must the County defer to the GLO Deed Restrictions when the two deed restrictions conflict?[4] Here, the GLO's Deed Restriction and the Conservation Easement align only on terms for habitat and wildlife preservation; on all other grounds, however, the two documents patently conflict. *See* Tex. Att'y Gen. Op. No. DM-0420 (1996) at 9 (stating "this office refrains from attempting to construe contractual instruments such as those granting easement in attorney general opinions); *see also* Tex. Att'y Gen. Op. No. GA-0156 (2004) at 10 (stating that fact questions cannot be answered in the opinion process).

The other authorized purposes of the acquisition under the GLO grant are for ***future*** stormwater and flood management activities, as well as to provide public access to the property.

Conversely, the Conservation Easement restricts stormwater and flood management activities to those existing prior to the grant of the Conservation Easement, and it restricts entry to and use of the property by agreement and under federal law. §7.13 ("No Public Dedication. Nothing in this Conservation Easement shall be construed to grant or dedicate fee title or an easement or right of way for access to the general public."); *id.* at §7.2 ("The parties intend that this Conservation Easement, which is by nature and character primarily prohibitive (in that Owner has restricted and limited rights inherent in ownership of the Conservation Area), shall be construed at all times and by all parties to promote, protect and fulfill the Conservation Purposes.") (emphasis added); *id.* at 1.4.10 ("The Conservation Easement will ensure the protection of the scenic character of the local grasslands, prairies and marshlands. . . that can be enjoyed by the general public from the public road and waterway"); *id.* at §1.3 (citing 26 U.S.C. § 170(h)(4)(a) and 26 CFR §1.170A-14(d)(i) as preservation of the Conservation Area as "open space"); *see also* 26 CFR §1.170A-14(d)(4)(v) (disallowing a tax deduction "for the preservation of open space under section 170(h)(4)(A)(iii) if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmental conservation policy"); *but cf.* 26 CFR §1.170A-14(d)(2) (requiring that conservation purposes for ***recreation or education*** "include, for example, the

[4] The Supremacy Clause and the doctrine of preemption generally hold that state law must yield to federal law when a conflict arises. Although the Conservation Easement cites federal law as its authorization for its creation, it also requires interpretation under Chapter 183 of the Texas Natural Resources Code. *See* §1.8 (Owner and Holder intend that this document be a 'conservation easement' as defined in Chapter 183, Texas Natural Resources Code (the 'State Conservation Easement Law')) (emphasis original). If all entities are subject to the interpretation of Texas law, would the GLO Deed Restrictions prevail?

preservation of a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public" and do not meet the test of conservation purposes "unless the recreation or education is for *the substantial and regular use of the general public*") (emphasis added).

In sum, there is no way to fully reconcile the two proposed deed restrictions, even if both could be validly binding on the County, and the County may not serve two masters. To whom must the County answer?

Deed Restrictions Against Texas Counties as a Condition of a Contract

The PSA includes Paragraph 32:

> Conservation Easement. Seller expressly discloses, and Buyer acknowledges, the existence of that certain Conservation Easement and Declaration of Restrictions and Covenants dated November 15, 2018. . . which may contain, without limitation, restrictions concerning the development and use of the Property. Buyer (i) has read and understands the terms of the Conservation Easement and its effect on the Property, (ii) agrees that it will acquire the Property subject to the Conservation Easement, and (iii) *agrees to comply with the terms of the Conservation Easement after its acquisition of the Property*. Furthermore, Buyer agrees to execute and deliver at the Closing any document reasonably required by Seller or the North American Land Trust ("Holder") *to document Buyer's assumption of the obligations, responsibilities, and liabilities of "Owner" under the Conservation Easement*.[5]

(Emphasis added).

May a seller require a Texas county to bind itself to the terms of a conservation easement by contract if the conservation easement contains terms to which a Texas county may not agree?[6] *See* Tex. Att'y Gen. Op. No. GA-0078 (2003) at 2 ("While this office does not construe particular contracts in an attorney general opinion, we will address a public entity's authority to accept certain contractual terms when the question can be answered as a matter of law.").

In general, a Texas county is bound by the laws and statutes that govern its contracting and procurement abilities. Namely, Articles III, section 52(a) and XI, section 7 of the Texas Constitution, Chapters 262-273 of the Texas Local Government Code, and Chapters 2254 and 2269 of the Texas Government Code. However, if the County is required by the PSA to assume the obligations,

[5] The PSA also contains a severability clause, a No Third Party Beneficiaries term, and expressly identifies as a condition precedent the County's receipt of grant funding through the Texas General Land Office (the "GLO") Coastal Management Program ("CMP") for grant funding available under the Gulf of Mexico Energy Security Act ("GOMESA") for CMP Cycle 29 Projects of Special Merit ("PSM") (such grant being the "GOMESA Grant"). Arguably, the condition precedent of GOMESA Grant funding for the purchase of the property may also resolve the issue of which deed restriction would prevail when the GLO Deed Restriction and the Conservation Easement's terms conflict.

[6] There may be separate grounds to challenge the validity of the PSA, in that the official minutes for the October 9, 2023, Regular Meeting do not reflect that the contract was ever presented to the Aransas County Commissioners Court. The proposed PSA is noticed as Item No. 20 on the Agenda, but there is no Agenda Item or a copy of the PSA in the official records. The official minutes state "Discussion followed. Kat Comeaux – The County's application for the Coastal Management program in cycle 29 of the special merit did get selected to move forward for further consideration for funding. Out of 37 applicants only 8 were selected. So, we are very excited. The area that is hopefully subject to this grant is historically known as the Bailey Ranch. The approximately 972 acres would be for open space and conservation."

responsibilities, and liabilities of the Owner under the Conservation Easement, it would likely break the law in doing so. Thus, the assumption requirement and any other contract term regarding the Conservation Easement would likely be unenforceable against the County and severable under the Severability clause.

By way of example, the indemnification clause (§7.3) and attorney's fees requirements (§§ 4.26.10, 6.5, 6.11, 6.13, 7.3, 7.10.9) would create an unconstitutional debt, unless at the time of contracting, the County levies a tax and creates a sinking fund. *See* Tex. Const. Art. XI, section 7; *see also* Tex. Atty Gen. Op. No. GA-0176 (2004) at 3 (summarizing that a county's agreement to indemnify a third party for damages arising from the third party's acts creates a debt within Article XI, Section 7 of the Texas Constitution). The same can be said of the requirement for the Owner to be responsible in perpetuity for the payment of Holder's reasonable costs and expenses, including legal and consultant fees associated with Holder's approval before the Owner may exercise its Reserved Rights. §4.26.10. Here, the County did not levy a tax and create a sinking fund on October 9, 2023, and does not currently have plans to levy a tax and create a sinking fund after the purchase of the property on or before July 31, 2025.[7]

Regarding all requirements for the Owner to secure the Holder's approval prior to acting or exercising any Reserved Rights, a Texas county has no need of obtaining permission prior to the exercise of ***any*** of its lawful rights, and "[a] commissioners court can act illegally, unreasonably, or arbitrarily by acting contrary to a legal delegation of power."[8] *Hobbs v. Gattis*, No. 01-19-00025-CV, 2020 WL 6065439, at *5 (Tex. App. – Houston [1st Dist.] Oct. 15, 2020, no pet.) (mem. op.).

In Tex. Atty Gen. Op. No. JC-0582 (2002), your Office concluded that a lease agreement between a county and a museum violated Art. XI, section 7 of the Texas Constitution to the extent that it obligated the county to pay for the museum's utilities and other expenses and to insure and maintain the buildings and grounds over a multi-year period, as the commissioners court that entered the lease could not have contemplated at the time of contracting, that the county could satisfy its unspecified, multi-year obligations out of county revenues on hand. Similarly, the County likely could not assume the Owner's responsibilities to bear all costs and liabilities of any kind related to ownership, operations, upkeep, and maintenance of the Conservation Area, including general liability insurance coverage, in favor of the Holder, as required by §7.4.

The County would likely run afoul of Texas Constitution Article III, section 52(a) if it permanently relinquished its property rights, otherwise permitting the Owner to have a fuller use and enjoyment of the Conservation Area, as required by §7.18.4. The same constitutional prohibition would also likely apply if the County agreed to pay the required Transfer Payment fee of 1% of the purchase price to Holder upon sale of the property. §7.10.1; *but see* §7.10.10 ("the Transfer Payment shall not apply to any Qualifying Transfer that occurs after the lifetime plus twenty-one (21) years of any biological child of Stephen Thor Johnson, President of the North American Land Trust.").

[7] Encumbering the property in favor of the Conservation Easement's terms would also run afoul of the GLO Deed Restrictions.

[8] The Conservation Easement's net acreage is described as 926.952 acres more or less, which expressly saves and excepts a 46-acre tract of land that the County is also acquiring in the transaction. Presumably, because the 46-acre tract of land is expressly excluded from the Conservation Easement, the County may use this acquired land subject only to the GLO Deed Restrictions, if they apply.

The County likely could not agree to §4.26.12, which requires the waiver of any and all rights by the Owner to seek or recover damages from Holder in any litigation or other legal action arising from a dispute over Holder's exercise of its rights, obligations or interpretations under Article 4, or agree to the sole remedy or legal right to seek redress via seeking a declaratory judgment. Agreeing to such a term would likely be equivalent to waiving the County's sovereign and governmental immunity. And while a governmental entity that enters into a contract waives immunity from liability by voluntarily binding itself to the contract terms, *Texas Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999), that entity's immunity to suit remains intact unless expressly waived by the Legislature. *City of Houston v. Williams*, 353 S.W.3d 128, 134 (Tex. 2011). Then again, this may be a moot issue, because the Holder likely couldn't sue the County or invoke the district court's constitutional supervisory control over the Commissioners Court's judgment unless the Commissioners Court acts beyond its jurisdiction or clearly abuses the discretion conferred upon it by law. *Commissioners Ct. of Titus Cnty. v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997).

Under Texas law, it is the county commissioners court that is "the general business and contracting agency of the county, and it alone has authority to make contracts binding on the county, unless otherwise specifically provided by statute." *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941). Accordingly, unless the Holder is an agent appointed under §262.001 of the Texas Local Government Code, the Commissioners Court could not allow the Holder to select and/or approve its selection of vendor or contractor for maintenance on the property (§4.15) or allow the Holder to approve the sharing or the use of public facilities for other non-County parties (§4.21).

Where conservation easements may be binding on private parties, the County, as a political subdivision of the state, has authority, duties, and obligations upon which a conservation easement may not impermissibly infringe. However, the conservation easement limits, restricts, or flatly prohibits the Owner's ability to build buildings (§§3.2, 3.3), offices (§3.2), structures (§3.3), roads (§3.6), piers and docks for public use (§4.5), create trails and raised walkways (§§4.9, 4.10), use lighting (§3.4), sell or store goods (§3.2), clear trees or detritus (§§3.7, 3.14.2), and convey or subdivide the property (§§3.8, 4.14). If the County is the successor in interest to the current Owner, the County may do any and all of these things under the law. The County may also be ***required***, under federal and state law, to make this property accessible to individuals with disabilities, if public access is provided. May the Conservation Easement restrict the County's police power, when, "[g]enerally speaking, municipal corporations have the right, under the police power, to safeguard the health, comfort, and general welfare of their citizens by such reasonable regulations as are necessary for that purpose"? *Lombardo v. City of Dallas*, 73 S.W.2d 475, 478 (1934).

Other Questions

The current Holder is the North American Land Trust ("NALT"). According to the terms of the Conservation Easement, NALT has a recognizable property interest that runs with the land, which may also potentially categorize any real property interest in the conservation easement as "trust property." Must the County require NALT to provide a copy of the trust agreement identifying the true owner of the property, because a conveyance of property "is void if a governmental entity fails to comply with Section 2252.092"? Tex. Gov't Code Ann. §2252.093.

If the Conservation Easement *is* trust property, one must question why §7.10.10 ties the requirement of a Transfer Payment to the "lifetime plus twenty-one (21) years of any biological child of Stephen Thor Johnson, President of the North American Land Trust." Do the requirements §7.10.10 violate the Rule Against Perpetuities? If so, the Conservation Easement may fail under federal law if it fails to meet the perpetuity requirements, and federal back taxes for the Owner and the Holder may be assessed. 26 U.S.C. § 170(h)(5)(A) ("Conservation purpose must be protected. A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity."). If the County may assume all the obligations, responsibilities, and liabilities of "Owner" under the Conservation Easement, could the County be liable for *federal* back taxes if the Conservation Easement fails for the lack of perpetuity under federal law after the lifetime plus twenty-one (21) years of any biological child of Stephen Thor Johnson, President of the North American Land Trust?

Once the property is purchased by the County, it would, by operation of law, become public land. Although a county may put reasonable restrictions on public access to public land, may a county permanently restrict public access to more than 95% of the land except as approved by the Holder? Arguably, such a restriction would not meet the spirit of the GLO Deed Restrictions that require public access to the property, meaning the County may be required to repay the grant in full to the GLO.

Although stormwater and flood management are identified as a GLO authorized purpose of acquisition, the Conservation Easement prohibits the removal and diversion of ground or surface water (§3.5), disallows land disturbance by filling, excavating, dredging, mining, or removal of topsoil "however small" (§3.10), forbids any change in the topography (§3.12), and prohibits dredging, channelizing, or other manipulation of the natural water course (§3.13), both at the time of signing and "in the future" (§3.20). To put it simply, the County cannot carry out stormwater and flood management on the property without disturbing the land. The County may also be required to manipulate, dredge, or install stormwater or flood management improvements that were not in existence at the time the conservation easement was signed. Would the County's performance under the GLO Deed Restrictions and conditions of grant funding result in an inverse condemnation of the Conservation Easement?

In the same vein of disturbing the land, could the County be held liable to the Holder under the Texas Tort Claims Act for damage to the Conservation Easement property caused by boats, vehicles, or heavy machinery necessary to perform stormwater and flood management or provide public access to the area? In Tex. Att'y Gen. Op. No. DM-0436 (1997) at 7, your Office held that "[l]iability in tort for property damage exists only in extremely limited circumstances pursuant to the Texas Tort Claims Act, that is, if 'the property damage. . . arises from the operation or use of motor-driven vehicle or motor-driven equipment' and the employee would be personally liable to the claimant under Texas Law." *See also* Civ. Prac. & Rem. Code §101.012(1)(A).

As mentioned in footnote 2 above, the Land Survey reveals 30 restrictive covenants of record for the proposed property. Would the County violate the terms of the Conservation Easement if it is exercising its lawful rights under its 2013 Drainage Easement and Excavated Material Placement Agreement? Would the City of Rockport violate the terms of the Conservation Easement if it is exercising its lawful rights under its 2008 Underground Utility Easement or its 2016 Easement Agreement for Utilities? Would Valero Energy Corporation, Cabot Oil & Gas Corporation (now Coterra Energy, Inc.), or Crescent Pipeline Partnership, LP, violate the terms of the Conservation Easement in performing any

lawful activities allowed under their respective pipeline and oil, gas, and mineral leases? None of the easements and restrictive covenants mentioned are "minor interests," and the exercise of lawful rights would interfere with the conservation purposes, which likely disqualifies the Conservation Easement under federal law as a "qualified conservation contribution" and a "qualified real property interest." *See* 26 CFR §1.170A-14(a)(b). Further, under section 1.170A-14(e)(3), inconsistent use or a use that is destructive of conservation interests is permitted only if such use is necessary for the protection of the conservation interests, which, here, are for open space conservation. Therefore, it is difficult to reconcile how the County can honor the existing rights of the restrictive covenant holders and the Conservation Easement requirements. If the competing interests cannot exist harmoniously, does the Conservation Easement terminate?

Termination of the Conservation Easement

What happens to the conservation easement once the County purchases the property? Is a conservation easement extinguished as a matter of law if a subsequent purchaser is a governmental entity with eminent domain authority? According to 26 CFR §1.170A-14(g)(6)(i), the termination of a conservation easement requires a judicial proceeding. Would the vote of a commissioners court at a properly noticed meeting qualify as a "judicial proceeding" sufficient to extinguish a conservation easement, or must the County sue the Owner and the Holder to terminate the Conservation Easement in district court? After the purchase of the property, would the County qualify as "an owner of an interest in the real property burdened by the easement" under Tex. Nat. Res. Code Ann. §183.003(a)(1), giving it standing to bring an action affecting the Conservation Easement?

If the County must sue to terminate the Conservation Easement, is that a taking, and must the County follow all eminent domain condemnation proceedings under Chapter 21 of the Texas Property Code, including those for notice and hearings? If condemnation proceedings are required, is the County subject to the terms of extinguishment as the subsequent Owner, including those for proceeds distribution to the donee/holder and property valuation, under 26 CFR §1.170A-14(g)(6)? Would the required proceeds distribution under federal law violate Article III, section 52(a) of the Texas Constitution?

Is the extinguishment of a conservation easement a taking if the County acquires the real property ***by purchase***, and, subject to the terms of the existing agreement, the Holder receives a payment from the Seller/Owner equal to 1% of the purchase price, resulting in compensation to the Holder on a percentage of the fair market value of the property?[9] *See* §§7.10.1, 7.10.10.

If the Conservation Easement is terminated, who is responsible for paying the rollback taxes: the Seller or the County? *See* Tex. Nat. Res. Code Ann. §183.002(a) (providing that "a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements"); *id.* at §183.002(f) ("If land that has been subject to a conservation easement is no longer subject to such easement, an additional tax is imposed on the land

[9] 26 CFR §1.170A-14(g)(6)(i) provides that if conditions surrounding the property unexpectedly change, and if those changes make continued use of the property for conservation purposes impossible or impractical, then the conservation purpose can nonetheless be treated as protected in perpetuity if the easement is extinguished by judicial proceeding and the donee organization uses all of its proceeds from the sale or exchange of the property in a manner that is consistent with the original contribution's conservation purposes.

equal to the difference, if any, between the taxes imposed on the land for each of the five years preceding the year in which the easement terminates and the taxes that would have been imposed had the land not been subject to a conservation easement in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due."); Tex. Const. Art. VIII, §1(b) ("All real property and tangible personal property in this State, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.").[10] The County, nor any of the other taxing jurisdictions, likely could not waive the requirement of the rollback taxes without violating the prohibitions of Tex. Const. Art. III, §52(a).

Recall also that the Seller has proposed that the County pay all taxes for the 2025 year and all subsequent years. Would the County be responsible for the rollback tax payment as the subsequent Owner, as property owned by counties is generally exempt from taxation? Tex. Const. Art. VIII, §2(a) ("the legislature may, by general laws, exempt from taxation public property used for public purposes"); Tex. Att'y Gen. Op. No. DM-0448 (1997) (interpreting section 23.55 of the Tax Code and concluding that state-owned land used for public purposes is not subject to the rollback tax typically assessed for the change of use of agricultural land); Tex. Att'y Gen. Op. No. O-1861 (1940) at 5 ("The purpose of taxation being only for the raising of money with which to carry on the governmental functions, to tax the property of the state would only amount to taking money out of one pocket and putting it in another.").

Conclusion

The Aransas County Attorney's Office is of the opinion that the County may proceed with the purchase of the property, but that the restrictions of the Conservation Easement will not be binding on the County, whether as a deed restriction or as a contract requirement under the PSA. Nevertheless, litigation may be required, which may be lengthy and expensive, straining taxpayer resources. Thus, the Aransas County Attorney's Office respectfully requests an Attorney General Opinion on the matter.

Thank you,

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[10] The federal requirements, which must be strictly construed, also provide for proceeds division, valuation, and possibly back taxes for the owner and easement holder. *See generally* 26 CFR §1.170A-14(g)(6).

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