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Via electronic mail

August 13, 2024

Harris Ranch Community Infrastructure District No. 1
Attn: David Hasegawa, District Manager
150 N. Capitol Blvd.
Boise, Idaho 83701

Re: Effective Date of Deed of Conservation Easement (Instrument No. 108117302) and Associated Review of Value

Dear David:

Thank you for your request for comment on a question related to the valuation date for what has been commonly referred to as the “2007 Conservation Easement,” which was granted by the Harris Family Limited Partnership (“HFLP”) via Instrument No. 108117302, recorded October 23, 2008 (the “Easement Deed”). In particular, the question has been raised as to what date should be used for a valuation of the property underlying the Easement Deed. For reasons set forth below, we believe the date used by the appraiser (November 12, 2007) was accurate and legally justified.

Background

The Easement Deed represents an agreement by HFLP to grant an easement to the Idaho Foundation for Parks and Lands, Inc. (the “Foundation”) (as “Holder”) for purposes of wetlands preservation and mitigation.¹ ACHD is also listed as a party to the Easement Deed with a third-party right of enforcement.

There are several dates that are noted on the Easement Deed. The date noted in the first paragraph is November 28, 2007, which corresponds with the date when the last party signed the Easement Deed (ACHD). This is shown in the notary acknowledgments attached to the Easement Deed. The “Grantor” (HFLP), however, had already signed by that date, with signatures dated November 9, 2007. The “Holder” (The Foundation) – the entity that was actually receiving the easement – signed on November 12, 2007.

¹ By a subsequent Assignment and Assumption Agreement (Inst. 2019-097428), the rights of Holder were assigned to the City of Boise City by and through its Department of Parks and Recreation.

Meanwhile, the Easement Deed indicates, in Section XIII, that it becomes “effective upon recording,” with such recording to be undertaken by the Holder “in a timely fashion.” For reasons unknown the Easement Deed was not recorded until October 23, 2008.

Analysis

The question, then, is which date should be used to identify a value of the HFLP property subject to the Easement Deed. The Appraisal of The Wetlands Conservation Easement Eckert Road at Harris Ranch, Boise, Idaho prepared by Mountain States Appraisal and Consulting, Inc. (the “Appraisal Report”) selected November 12, 2007. We believe this date is legally justified for the following reasons:

Idaho law states that a deed is effective once delivered “with intent that it shall operate.” *Barmore v. Perrone*, 145 Idaho 340, 344-345 (2008) (quoting *Bowers v. Cottrell*, 15 Idaho 221, 228 (1908)). “When a grantee possesses a deed, he enjoys a presumption of valid delivery.” *Garrett v. Garrett*, 154 Idaho 788, 791 (2013) (citing *Hartley v. Stibor*, 96 Idaho 157 (1974)). “[T]he real test of the delivery of a deed is this: Did the grantor by his acts or words, or both, intend to divest himself of title? If so, the deed is delivered.” *Id.* (quoting *Estate of Skvorak*, 140 Idaho 16, 21 (2004)).

In this case, the face of the deed shows that HFLP signed the Easement Deed on November 9, 2007. The Holder (the party accepting the easement conveyance) signed on November 12, 2007. While a signature by the Holder was not technically necessary to establish delivery, the Holder’s signature in this case establishes not only that the delivery occurred but also the date on which it occurred. Thus, we believe that, based on delivery, the appropriate date for valuation is November 12, 2007.

The question is what impact, if any, is created by the subsequent recording of the Easement Deed. Idaho is a race-notice state, meaning that – in a vacuum – recording is not required to effect delivery of a deed; instead, recording of the original instrument protects against subsequent conveyances made in good faith that are later recorded. *See, e.g., Insight LLC v. Gunter*, 154 Idaho 779, 787 (2012).

Here, we have specific language in Section XIII of the Easement Deed indicating that Holder was to record “in a timely fashion”; however, it failed to do so, creating a gap between the date of delivery and the date on which Section XIII of the Easement Deed indicates it would be “effective.” This leaves those reviewing the Easement Deed with the question of which date should control for purposes of the valuation – delivery or recording?

Given these conflicts, we believe the appropriate test is set forth in the *Estate of Skvorak* case. In other words, when did the Grantor (HFLP) intend to divest itself of title? Clearly, the latest date on which that occurred would have been the date on which delivery is evidenced – November 12, 2007. As of that date, the conveyance was irrevocable and the effectiveness of the Holder’s rights was subject only to recording – an action wholly within Holder’s control. Put differently, if HFLP determined after November 12, 2007 that it no longer wished to be subject to the Easement Deed, Holder would have immediately recorded and proceeded to enforce its rights.

Given that November 12, 2007 reflects the date on which the delivery of the Easement Deed to the Foundation occurred (after which, HFLP's rights in the property were subject to the Foundation's rights in the Easement Deed), we believe November 12, 2007 is the appropriate date of valuation.

Please reach out to the undersigned with any additional questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "T. Hethe Clark", followed by a horizontal line extending to the right.

T. Hethe Clark

HC/bdb