

The Property Line—Florida’s Rural and Family Land Protection Program

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Introduction

For the past several years, the State of Florida has experienced tremendous population growth.² As a consequence of this growth, portions of Florida’s landscape that have historically been used for agriculture are being sold, subdivided, and developed to meet the residential, commercial, and recreational needs of these new residents.³ Recognizing the vital economic and environmental benefits that agricultural lands provide, the State of Florida has created programs designed to slow the rate at which agricultural land is lost to real estate development. One such program is called the Rural and Family Lands Protection Program (“RFLPP”). This article provides a brief overview of the RFLPP and discusses how the landowners can “cash in” by committing to agriculture for good.

Program Overview

The RFLPP was created in 2001 when the Florida State Legislature passed the Rural and Family Lands Protection Act (the “Act”).⁴ The administration of the program is overseen by the Florida Department of Agriculture and Consumer Services (“FDACS”) with the goals of “enhancing the ability of rural landowners to obtain economic value from their property, protecting rural character, controlling urban sprawl, and providing necessary open space for agriculture and the natural environment[.]”⁵ The stated purpose of RFLPP is to limit the “conversion of agricultural and natural areas that provide economic, open space, water, and wildlife benefits by acquiring land or related interests in land such as perpetual, less-than-fee acquisitions[.]”⁶ In sum, the Act authorizes FDACS (on behalf of the Board of Trustees of the Internal Improvement Trust Fund), to allocate money for the acquisition of easements and to otherwise enter into agreements with private landowners that prevent the conversion of agricultural lands to more intensive land uses (i.e. residential, commercial, industrial, etc.).⁷

There are four (4) basic contract products that are available to agricultural landowners under the RFLPP: (i) conservation easements, (ii) rural land protection

easements, (iii) resource conservation agreements, and (iv) agricultural protection agreements.⁸ While each product is ultimately designed to achieve the state’s conservation goals, each of these products differs slightly in its applicability and approach. One element that is common among them, however, is that a landowner (and the landowner’s successors and assigns) in most cases is able to continue engaging in agricultural activities on the land even after the conservation easement or agreement is put into place. Since the needs and demands of each agricultural operation differ from one farm to the next, understanding and selecting the right product under the RFLPP is important.

Conservation Easements

One of the products available to landowners under the RFLPP is a conservation easement. Conservation easements are perpetual in nature, which means that they do not expire overtime. They also run with the land, meaning that any subsequent purchaser of the land will also be subject to the limitations, restrictions, and requirements of the conservation easement. Conservation easements are governed by Florida Statutes § 704.06, and are generally considered to be more restrictive in nature.⁹ For example, agricultural activities are allowed on land that is subject to a conservation easement only “if such activity is a current or historic use of the land placed under the easement.”¹⁰ Thus, if a property has not been used for agricultural production in the past, a landowner may be precluded from ever doing so once a conservation easement is put into place. A landowner that grants a conservation easement receives a one-time, lump sum payment, which is paid at the time the landowner enters into the conservation easement.¹¹

Rural Land Protection Easements

Similar to conservation easements, rural land protection easements (“RLPE”) are also perpetual in nature and run with the land. RLPEs are intended to preserve the land in “predominately its current state and prevent the subdivision and conversion of such land into other uses.”¹² Similar to conservation easements, a landowner that

grants a rural land protection easement receives a one-time, lump sum payment at the time the landowner enters into the RLPE. Although very similar in applicability, the RLPE is generally considered to be slightly more flexible than conservation easements with respect to the types of agricultural activities that may be allowed on the property once the RLPE is in place. For example, a landowner may be able to engage in new or different agricultural activities on land where an RLPE is already in place (regardless of whether the land has been used for that purpose in the past), so long as the new agricultural activity is consistent with the established scope of the RLPE and does not otherwise violate the specific prohibitions described in Florida Statutes Section 570.71(3).

Resource Conservation Agreements

A resource conservation agreement (“RCA”) is considered, a “contract for services” under which a landowner agrees to provide services that actively improve habitat and water restoration or conservation on his land beyond that which is already required by law.¹³ An RCA is designed to last for a relatively short period of time (cannot exceed a term greater than ten years), and is only available to landowners that have already entered into either a conservation easement or an RLPE.¹⁴ Unlike conservation easements and RLPEs, however, payments due to a landowner under an RCA are made in equal, annual installments over the course of the term.¹⁵

Agricultural Protection Agreements

An agricultural protection agreement (“APA”) is an agreement that prohibits, among other things, the conversion of agricultural land to a more intensive land use and the construction of certain improvements for a period of thirty (30) years. At the end of the thirty-year period, the state has the right to purchase a conservation easement or RLPE.¹⁶ A landowner that has entered into an APA may sell his property, but the terms of the APA will be binding upon the subsequent landowner (i.e. purchaser), meaning that the purchaser will be subject to the duties, responsibilities, and obligations agreed upon by the original

