Receipt number AUSFCC-7495679

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DEBORAH E. BARRON and JOHN BUENAVENTURA BAEZ,

THE ALB REVOCABLE TRUST, dated July 21, 2003, ALEXANDRINE L. BOSWELL, TRUSTEE, and the RPB REVOCABLE TRUST, dated August 31, 2004, ROMAN P. BOSWELL, TRUSTEE,

COURTYARD VILLAS, L.L.C.,

JACEK AND HANNA GATKIEWICZ,

JONATHAN and ANAPAULA V. LESTER,

DANIEL J. MALLON and IRENE A. MALLON, as Trustees of the Mallon Family Trust under Agreement Dated October 3, 2007,

WILLIS and ALTA MARTIN,

JAMES R. MUSSELWHITE,

JAMES E. and KATHERINE M. MYERS,

NCM SRQ PROPERTIES, LLC,

RONALD R. NOURSE,

OLD FOREST LAKES OWNERS'ASSOCIATION,

GILDA L. PASCUAL,

JANE SUE SHUMWAY,

STEPHEN STILLER,

ENOS N. WEAVER, JR. and ANNA MARY WEAVER,

and

ROGER D. WEAVER,

Plaintiffs,

No. 21-2181 L

v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)

COMPLAINT

SUMMARY OF THIS LAWSUIT[1]

The federal government violated the United States Constitution and took private property from Sarasota, Florida, landowners without paying the landowners. When the government takes private property, the government has an absolute and "categorical" obligation to pay the owner. These landowners ask this Court to order the federal government to pay them "just compensation" for that private property the federal government took from them.

The federal government took these owners' land for the northern extension of the Legacy Trail between Sarasota and Venice. The Legacy Trail is a public recreational trail and future railroad corridor the federal government created under the National Trails System Act.[2]

In the early 1900s, Adrian Honoré and his sister, Bertha Palmer, and Bertha's sons, Honoré and Potter Palmer II, granted Seaboard Air Line Railway a right-of-way easement allowing the railroad to use a strip of their land to build and operate a railway line between Sarasota and Venice. When the land was no longer used for the operation of a railroad, the right-of-way easement terminated, and the present-day owners (the successors-in-title to the Honoré and Palmer family) held unencumbered title to their land and had the exclusive right to possess and use their land and to exclude others from using their land.[3]

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[1] This summary is not part of the complaint but is provided for the convenience of the Court and parties.

[2] The National Trails System Act of 1968 (as amended in 1983), codified at 16 U.S.C. §1241, *et seq*.

[3] We use the term "reversionary" as a shorthand description of the owner of the fee estate's interest. This is not technically correct, since nothing "reverts," but it is frequently used to describe how landowners regain their full possessory interest in land once burdened by an easement. The owner of the fee estate continually possesses the fee estate. "There is an alternative way…to describe property transactions involving easements. Instead of calling the property owner's retained interest a fee simple burdened by the easement, this alternative labels the property owner's retained interest following the creation of an easement as a 'reversion' in fee. Upon the termination, however achieved, of the easement, the 'reversion' is said to become fully possessory; it is sometimes loosely said that the estate 'reverts' to the owner." *Preseault v. United States*, 100 F.3d 1525, 1533 (Fed. Cir. 1996) (*en banc*) (*Preseault II*). See also *Marvin M. Brandt Rev. Trust v.*

CSX Transportation (CSXT) and Seminole Gulf Railway (Seminole Gulf) were the successor-railroads to Seaboard. By 2002, CSXT and Seminole Gulf no longer operated a railway line over this strip of land. The railroads petitioned the federal Surface Transportation Board (the Board) for authority to abandon the railway line between Venice and Sarasota. The federal government granted permission to abandon this railway line.

Under Florida law and according to the explicit terms of the conveyance Adrian Honoré granted the railroad in 1910, the easement terminated, and the present-day landowners held unencumbered title to the land and enjoyed the exclusive right to use and possess their land.[4] *Correspondingly, because the easement terminated, CSXT and Seminole Gulf had no right or interest they could sell or transfer.*

But the federal government wanted land under otherwise-abandoned railroad rights-of-way (such as this segment of the Venice-to-Sarasota railway line) to be used for public recreation and a possible future public transportation corridor across the land. To achieve this objective Congress amended the National Trails System Act adding section 8(d).[5] *Congress's Trails Act scheme granted the Board authority to take private property and encumber an owner's land with an easement for public recreation and a possible future railway line.*

In April 2004 the Board issued an order invoking the Trails Act and established a federal rail-trail corridor easement across private land between Venice and Hugh Culverhouse Park. The land taken for this Southern Segment of the Legacy Trail was the subject of earlier lawsuits. See Rogers v. United States, *United States*, 572 U.S. 93, 106, n.4 (2014), and *Monroe County Comm'n v. Nettles,* 288 So.3d 452 (Ala. 2019).

[4] Chief Justice Roberts explained that when a railroad no longer uses its right-of-way, the owner of the fee estate regains unencumbered title and possession of their land:

> The essential features of easements—including, most important here, what happens when they cease to be used—are well settled as a matter of property law. An easement is a "nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement." "Unlike most possessory estates, easements...may be unilaterally terminated by abandonment, leaving the servient owner with a possessory estate unencumbered by the servitude." In other words, if the beneficiary of the easement abandons it, the easement disappears, and the landowner resumes his full and unencumbered interest in the land.
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> *Brandt Trust*, 572 U.S. at 104-05 (quoting RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES §1.2).

[5] Codified at 16 U.S.C. §1247(d).

90 Fed. Cl. 418 (2009).[6] *This Court ordered the government to paid the owners whose land was taken for this Southern Segment of the Legacy Trail.*

About fifteen years later, in December 2017, the Board issued another order extending the Legacy Trail more than a mile-and-a-half north from Hugh Culverhouse Park to Ashton Road (the Middle Segment). The amount of compensation the federal government owes the owners of the land taken for this Middle Segment of the Legacy Trail is being determined in Cheshire Hunt v. United States, *No. 18-111 (Meyers, J.).*

A little more than a year later, the Board then issued another order, in May 2019, taking more private property to extend the Legacy Trail further north from Ashton Road to Fruitville Road (the Northern Segment). Two hundred twenty-one owners of the land taken for this extension of the Legacy Trail sued seeking compensation for that property taken for this Northern Segment. That case is 4023 Sawyer Road, LLC v. United States, *No. 19-757 (Meyers, J.).*

When the government takes private property, the government must pay the owner. An owner's right to his or her private property is a fundamental civil right guaranteed by the Takings Clause of the Fifth Amendment to the United States Constitution.[7] *The Supreme Court and lower federal courts have explained that the federal government's invocation of the Trails Act takes an owner's private property, and the federal government must pay the owner.*[8] *The federal government must make the owner whole. This means the federal government must also*

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[6] See also *McCann Holdings, Ltd. v. United States*, 111 Fed. Cl. 608 (2013), and *Childers v. United States*, 116 Fed. Cl. 486 (2014).

[7] The Fifth Amendment provides, "No person shall be…deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Consider also Supreme Court Justice Holmes's decision in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922) ("We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."), and the Supreme Court's decision in *Armstrong v. United States*, 364 U.S. 40, 49 (1960) ("The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."). See also *Knick v. Township of Scott*, 139 S.Ct. 2162, 2177 (2019) ("government violates the Takings Clause when it takes property without compensation").

[8] *Preseault v. Interstate Commerce Comm'n,* 494 U.S. 1 (1990) (*Preseault I*); *Preseault v. United States*, 100 F.3d 1525, 1533 (Fed. Cir. 1996) (*Preseault II)*; *Toews v. United States*, 376 F.3d 1371 (Fed. Cir. 2004); *Caldwell v. United States*, 391 F.3d 1226 (Fed. Cir. 2004); *Barclay v. United States*, 443 F.3d 1368 (2006); *Illig v. United States*, 274 Fed. App'x 883 (2008), *cert. denied*, 557 U.S. 935 (2009); *Ladd v. United States*, 630 F.3d 1015, 1020 (Fed. Cir. 2010) (*Ladd I*), *reh'g denied* 646 F.3d 910 (Fed. Cir. 2011); *Ladd v. United States*, 713 F.3d 648, 652 (Fed. Cir. 2013) (*Ladd II*); *Navajo Nation v. United States*, 631 F.3d 1268, 1275 (Fed. Cir. 2011).

reimburse the owner's legal fees and litigation expenses and pay the owner compensation for the government's delay in paying the owner compensation. See Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 304 (1923) ("The compensation to which the owner is entitled is the full and perfect equivalent of the property taken. It rests on equitable principles and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken. He is entitled to the damages inflicted by the taking.").*[9]

Even though this Court has already held that the federal government took private property for the Legacy Trail, and even though the Department of Justice has agreed the federal government took owners' private property for the Legacy Trail, the federal government has still not paid these landowners.

These seventeen landowners ask this Court to order the federal government to pay them for that property the federal government took from them. And these owners ask this Court to order the government to fairly compensate them for the government's delay in paying them and reimburse their legal fees and litigation expenses as the government is required to do under the Uniform Relocation Act, 42 U.S.C. §4654(c).

JURISDICTION AND VENUE

1. The Tucker Act, 28 U.S.C. §1491(a), provides, "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded upon the Constitution." These owners' claims are founded upon the Fifth Amendment of the United States Constitution.

2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4654(c), provides that the federal government must pay the legal fees and litigation expenses, including expert and appraisal fees, these owners incur in this lawsuit vindicating their right to be paid for that property the federal government took from them.

[9] Citations omitted; citing, *inter alia*, *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 327 (1893).

THE CONSTITUTIONAL AND STATUTORY PROVISIONS GOVERNING THIS LAWSUIT

3. The following provisions of the United States Constitution and the United States Code define the federal government's obligation to these Florida owners.

(a) The Fifth Amendment to the United States Constitution provides, "No person shall…be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

(b) Section 8(d) of the Trails Act, codified as 16 U.S.C. §1247(d), provides, "interim use [of abandoned railroad right-of-way easements for public recreation] shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes."

(c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4654(c) (URA) (Pub. L. 91-646; 84 Stat. 1894), requires the federal government to pay these owners "reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of this proceeding."

(d) Section 4622(a) of the URA provides the federal government must, among other things, also pay the expenses and costs an owner incurs when the government takes private property including all the: "(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property; (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation … (3) actual reasonable expenses in searching for a replacement business or farm."

STATEMENT OF FACTS

A. The Seaboard Air Line Railway did not own the land across which the railroad built its railway but only had a right-of-way easement to operate a railway line across a strip of land these plaintiffs owned.

4. A railroad right-of-way is like a turtle on a fence post. It doesn't get there by itself. The land now owned by the plaintiffs bringing this lawsuit was owned in 1910 by Adrian Honoré.

5. In the early Twentieth Century almost one-third of the land in what is now Sarasota County, Florida, was owned by Bertha Palmer and members of her family, including her brother Adrian C. Honoré, her sons, Honoré Palmer and Potter Palmer, II, and corporate entities owned by the Palmer family, including the Sarasota-Venice Company and the Palmer Florida Company. Collectively the Palmer family owned more than 140,000 acres of land on Florida's Southwest Gulf Coast, including most of the land between Sarasota and Venice.[10]

> On May 12, 1910, the Sarasota Times announced that Bertha [Palmer] had purchased 37,000 acres of land south of the town of Sarasota from J. H. Lord. This was but the beginning. The Manatee County land records reveal numerous purchases of property by Berta and members of her family. Before long, the family owned over 80,000 acres. These acquisitions in 1910 were part of a rational plan of development. The properties stretched along Sarasota Bay at least from the mouth of Philippi Creek all the way to an area that would become the community of Venice. A great swath of Palmer lands stretched east along the modern roads of Bee Ridge, Proctor, and Clark, well past today's Interstate 75 corridor. Yet another vast expanse ran north and east from the current intersection of Honoré Avenue and Bee Ridge Road past Fruitville Road. At its peak the Palmer holdings covered 218 square miles of Manatee County. When Sarasota County was formed in 1921, the Palmer and Honoré interests owned between a fourth and a third of the county's land.
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> The size and sweep of Bertha's purchases startled the Sarasotans, who were not used to thinking in such grand terms. They were further amazed by the news that Bertha had arranged with officials of the Seaboard Air Line Railroad Company to extend its tracks 20 miles from Sarasota through the small village of Fruitville and then straight south to a new terminus that Bertha had named Venice. Why the

[10] What is now Sarasota County, Florida, was once part of Manatee County. Sarasota County was established in 1921.

> railroad agreed to build the extensions is unclear. At the time there were few people living in the area and limited agricultural production.
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> Most of the land the extension [of the Seaboard Railway Line] would serve now belonged to Bertha. It is a measure of her thinking and planning that she insisted on the extension as a condition of her land purchase. She knew that there was no possibility of developing that property without rail connections to move people and products between her proposed empire and Northern cities and towns. In this she was supported by other local landowners such as the Knight family, who quickly realized then they, too, would benefit economically if the spur were built. Bertha and her neighbors all donated land to the railroad as an encouragement to begin the project. There were unspecified complications and continuing negotiations. Some thought the railroad finally came to an agreement when Bertha threatened to build the extension herself. What is known is that top railroad executives went to Chicago and met with Palmer representatives. When they returned it was clear that some kind of deal had been struck and all difficulties had been put to rest. Work began in June 1910, but not until late 1911 did regular service move over the tracks. ….
>
> Even at this early stage, only months after [the Palmer family's first] February visit to Sarasota, Bertha and her family had advanced their development plans significantly. They saw the rail extension as a development corridor, and each station was meant to be a profitable center of [the] Palmer enterprise.[11]

6. The Palmer family wanted Sarasota to prosper and supported the development of Sarasota with infrastructure, including drainage canals and railroads. The Palmer family's support of Sarasota County infrastructure included granting the Seaboard Air Line Railway a right-of-way easement to build an almost-twenty-mile-long railway line from Sarasota south to Venice.

> By June of 1910 Bertha and her family had made important decisions about how to manage her properties. She arranged through her lawyers for the state of Florida to incorporate the Sarasota-Venice Company, with her brother Adrian C. Honoré as president, J.H. Lord as vice-president, Honoré Palmer as secretary, and Potter Palmer Jr. as treasurer. Lord also served as general manager and oversaw land sales. The company was responsible for much but by no means all of the Palmer lands. As the name implied, the company was primarily responsible for the land that it originally bought from Lord south and southeast of Sarasota. It appears that this land differed from other Palmer properties in that it was purchased from trust funds created in Potter Palmer's will for his two sons, with Bertha and Adrian

[11] Frank A. Cassell, *Suncoast Empire, Bertha Honoré Palmer, Her Family and the Rise of Sarasota* (2017), pp. 76-77.

> Honoré as trustees. A second Florida corporation, the Palmer Florida Company, was formed later, with Adrian Honoré as president and Honoré Palmer as vice-president. This entity managed Palmer properties in and around the town of Sarasota and on nearby keys. It was also responsible for land purchases Bertha made in the Tampa area. The funding for this corporation is not entirely clear, but it may have been from profits generated by Potter Palmer Sr.'s properties in Chicago and elsewhere. Bertha managed her personal estate, Osprey Point, and several other properties directly, with no corporate structure. She used the huge inheritance left her by her husband to purchase and manage them. Although important, the corporate structures did not keep Bertha from making decisions about all Palmer properties, regardless of where they stood in the organizational chart. …
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> Sarasota in the fall of 1910 was a changed town. Since Bertha had arrived in February, the all-too-evident lassitude had evaporated, and the little settlement now exuded new energy. Bertha's land purchases alone had plowed hundreds of thousands of dollars into the local economy. People could reasonably anticipate that her estate and improvements on her holdings would create jobs, bring in tourists and investors, and generally create an age of growth and prosperity. The new railroad extension was visible proof that Sarasota had entered a new era. In rapid order Sarasota's government moved to establish better sewage, electric, and telephone service, and to pave local streets. …
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> By December [1910] Bertha was back in Sarasota and buying more land. On December 8 a Jacksonville paper revealed that she had invested in lands rich in phosphate along the Peace River of central Florida. Phosphate was a principal export of the state. But the biggest news came in mid-December when Bertha purchased thousands of acres of ranch lands along the Myakka River, due east of her planned estate at Osprey. She bought the ranch of Garrett "Dink" Murphy, together with several thousand head of cattle. Later she would acquire other ranches in the area, eventually totaling 15,000 acres, and name the whole thing Meadowsweet Pastures. Bertha spent over $70,000 just for Dink Murphy's property, but then she could easily afford it. By now she owned well over 100,000 acres, 25 miles of shoreline property, and about 50 lots in Sarasota.[12]

7. Pursuant to the Palmer family's plan to develop Sarasota, in November 1910 Bertha Palmer's brother, Adrian Honoré, granted Seaboard Air Line Railway a right-of-way easement across a 100-foot-wide strip of his land allowing Seaboard to build and operate a railway line from

[12] *Id.* at 77-78.

Sarasota to Venice. A copy of the right-of-way easement Adrian Honoré granted Seaboard is attached as **Exhibit 1.**

8. Adrian Honoré included an explicit reversionary clause in the 1910 right-of-way conveyance providing, "This conveyance is made upon the express condition, however that if the Seaboard Air Line Railway shall not construct upon said land and commence the operation thereon with one year of the date hereof of a line of railroad, or, if at any time thereafter the said Seaboard Air Line Railway shall abandon said land for railroad purposes then the above described pieces and parcels of land shall *ipso facto* revert to and again become the property of the undersigned, his heirs, administrators and assigns." Exhibit 1.

9. The Palmer family (Adrian Honoré, Bertha Palmer, and her sons, Honoré Palmer and Potter Palmer, II) were sophisticated real estate developers. The Palmer family made it absolutely clear that they granted the railroad a right-of-way easement but they and their successors-in-title retained ownership of the fee estate in the land (*i.e.*, all reversionary interests in the strip of land). For example, in the similar railroad right-of-way easement across other land the Palmer family owned, the conveyance contained a similar reversionary clause. See **Exhibit 2** (a June 15, 1923 conveyance from Betha Palmer's sons, Honoré and Potter Palmer, to the Tampa Southern Railroad Company). The 1923 conveyance included reversionary clauses providing:

> This deed is given for the sole purpose of transferring to [Tampa Southern Railroad Company] a right of way for railroad purposes, and upon the express provision that [Tampa Southern Railroad Company] shall construct its railroad from Bradentown to Sarasota, Florida over said right of way within twenty-four months from the date of this instrument. Should [Tampa Southern Railroad Company] not construct said railroad as herein set out, or should any part of the said land not be used for railroad purposes, or should same at any time be abandoned for railroad purposes, then the land so abandoned for such purposes, or not used for such purposes shall revert to Honore Palmer and Potter Palmer, Trustees under the will of Bertha Honore Palmer, deceased, their heirs, successors or assigns.

10. The railroad right-of-way easement Adrian Honoré granted Seaboard Railway contained an explicit reversionary clause. But, even if an easement does not contain an explicit reversionary clause, the easement still terminates when the land is no longer used for the purpose for which the easement was granted. Chief Justice Roberts explained this principle of property law in *Brandt Trust*, 572 U.S. at 105, explaining that "[w]hen the [railroad] abandoned the right of way…the easement…terminated. [The owner's] land become[s] unburdened of the easement, conferring on him the same full rights over the [right-of-way land] as he enjoy[s] over the rest of [his land]."[13]

11. The interest the railroad was granted was a right-of-way easement, which is a servitude across land owned by another. See THOMPSON ON REAL PROPERTY (2nd ed.) §60.02(c) ("The right in land held by an easement holder differs from the fee interest or even the leasehold

[13] Quoting RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES §1.2). See also RESTATEMENT (THIRD) PROPERTY: SERVITUDES §2.2, Comment g ("The fact that the grantee is a railroad may also tend to indicate that the instrument should be construed to convey an easement only. The narrowness of the parcel, the consideration paid, and the frequency with which railroad uses have been abandoned often lead to the conclusion that the grantor, as a reasonable person dealing with a railroad, intended to grant no more than an easement for the right of way, retaining ownership of the land. The fact that an amount approaching full value of the fee has been paid, however, does not necessarily lead to the conclusion that a fee was intended because an easement will also deprive the grantor of any ability to use the land for an indefinite period of time. If less than full market value has been paid for conveyance of land for a railroad station or depot, that fact together with the fact that proximity to a functioning railroad was a significant part of the consideration to the grantor, tends to indicate that the instrument was intended to convey an easement rather than an estate. The superior sophistication and drafting opportunity of the railroad vis-à-vis the grantor may buttress this conclusion."); James W. Ely, Jr., RAILROADS & AMERICAN LAW (2001), pp. 197-98 ("Prominent experts took the position that absent statutory provisions expressly authorizing the taking of a fee simple, railroads should receive just an easement in land condemned for their use. 'It is certain, in this country, upon general principles,' Redfield declared, 'that a railway company, by virtue of their compulsory powers, in taking lands, could acquire no absolute fee-simple, but only the right to use the land for their purposes.' Judicial decisions tended to adopt this line of analysis. ... Hence, the judges ruled that the charter language 'seized and possessed of the land' permitted simply acquisition of an easement because such an interest was sufficient for the railroad's purposes. ... The courts readily concluded that the railroad obtained only an easement, and that the original landowner retained the rights to trees and minerals on the land.").

interest in that it is a 'use' interest, but not a 'possessory' interest in the land. Thus the easement holder has neither the permanent possession of even a single molecule of the land itself...the easement holder has the right to make or control a particular use of the land that remains owned by another."). See also Jon Bruce & James W. Ely, Jr., THE LAW OF EASEMENTS AND LICENSES IN LAND §1.1 ("An easement is commonly defined as a nonpossessory interest in the land of another. … [T]he nonpossessory feature of an easement differentiates it from an estate in land. … [T]he holder of an affirmative easement may only use the land burdened by the easement; the holder may not occupy and possess the realty as does an estate owner."). The important point is that an easement is a "servitude" imposed upon land owned by another. An easement or servitude allowing the easement-holder to use the land is not ownership of the land itself. Furthermore, the rights of the easement-holder to use land owned by another are strictly defined by state law and the terms of the grant of the easement. Again, an easement-holder does not *own* the land.

B. The Seaboard's successor railroads abandoned the railway line between Sarasota and Venice.

12. Seaboard went bankrupt. Seaboard's assets (including its interest in the Sarasota-to-Venice right-of-way easement) wound up in the hands of successor railroads. The Sarasota-to-Venice right-of-way was ultimately transferred to CSX Transportation, Inc. (CSXT), which leased the railway line to Seminole Gulf Railway, L.P. (Seminole Gulf). See *Seminole Gulf Railway Exempt Abandonment, Environmental/Historic Report*, STB Docket No. AB 400 (Sub. No. 7X), p. 9.

13. By the 1980s Southwest Florida's Gulf Coast had changed. The land was no longer used for phosphate mining, timber, turpentine, and cattle farms. The Tamiami Trail (so called because it ran between Tampa and Miami) opened as a highway in 1928, and Interstate Highway 75 was completed in 1969. The Tamiami Trail (U.S. Highway 41) and I-75 parallel the former

railway line between Sarasota and Venice. Sarasota also had an international airport, and tourists no longer traveled to Sarasota by train.

14. CSXT and Seminole Gulf no longer needed or wanted a railway line between Sarasota and Venice. The railway line was not profitable. Trains hadn't run across the right-of-way in decades, and no shippers needed rail transportation on this Sarasota-to-Venice corridor. The last train to run across the right-of-way was more than a decade ago when the Seminole Gulf Railway brought a boxcar of plywood from Sarasota to a lumberyard in Venice. The railway line was dilapidated and not maintained. Seminole Gulf and CSXT removed the tracks and ties from the land. Seaboard Railway's successor-railroads abandoned the Sarasota to Venice railway line in three segments, each of which was the subject of a separate petition filed with the Board.

15. In April 2004, CSXT and Seminole Gulf petitioned the Board for permission to abandon a 12.43 mile-long segment of the railway line between Venice and Hugh Culverhouse Park south of Sawyer Loop Road.[14] The Board granted the railroad's request to abandon the rail line. Sarasota County aided by the Trust for Public Land a not-for-profit conservation organization asked the Board to invoke section 8(d) of the Trails Act and establish a new federal easement for public recreation and a future railway line. See **Exhibit 3** (2004 NITU). Sarasota County was the designated "trail-sponsor." The Board granted Sarasota County authority to use the strip of land for a public recreational trail. The Board also retained jurisdiction over the strip of land with authority to authorize a rail carrier to build a railway line across the land in the future.

16. In December 2017, Seminole Gulf and CSXT requested the Board to authorize the abandonment of a 1.7 mile-long segment of the Sarasota-to-Venice railway line between Hugh

[14] Hugh Culverhouse Park is an eighty-two-acre tract of land Hugh and Eliza Culverhouse donated to Sarasota County in 2006. See *Palmer Ranch Holdings Ltd. v. Commissioner of Internal Revenue*, 812 F.3d 982, 985 (11th Cir. 2016).

Culverhouse Park near Sawyer Loop Road and Ashton Road (the Middle Segment). The Board granted the railroads' request to abandon this segment of the rail line. Sarasota County wanted to use this land for an extension of the Legacy Trail. The Board issued a second order invoking section 8(d) of the Trails Act and encumbered the land under this segment of the abandoned railway line with a federal rail-trail corridor easement for public recreation and a future railroad. See **Exhibit 4** (2017 NITU). Sarasota County was the designated trail-sponsor and has since built a public recreational trail across the land.

17. Finally, in May 2019, Seminole Gulf and CSXT requested the Board to authorize them to abandon a 7.68-mile-long segment of the former Sarasota-to-Venice rail line. This strip of land lies between Ashton Road and Fruitville Road. The Board granted the railroads' request to abandon this railway line.[15] See **Exhibit 5** (*Notice Exempt Abandonment*, STB Docket No. AB-400 (Sub-No. 7X)), filed March 8, 2019). Sarasota County then asked the Board to invoke section 8(d) of the Trails Act to establish the Northern Segment of the Legacy Trail. See **Exhibit 6** (letter of April 22, 2019, requesting interim trail use, STB Docket No. AB 400 (Sub No. 7X)).

18. The railroads told the Board in the railroads' application to abandon the railway line that "No local or overhead traffic has moved over the Subject Line since prior to 2007, a period of more than ten years." *Abandonment Petition*, STB Docket No. AB-400 (Sub-No. 7X)), p. 3. The railroads' statements to the Board are made under oath and affirmed. See 49 C.F.R. §1104.4(b) (documents filed with the Surface Transportation Board containing allegations of fact must be "verified...under oath by the person, in whose behalf it is filed").

[15] This Northern Segment was described in the Board's filing as the Venice Branch Line between milepost SW 890.29 on the north side of Ashton Road and milepost SW 884.70, and between milepost AZA 930.30 and milepost AZA 928.21 on the north side of State Highway 780 (Fruitville Road) within the City of Sarasota, Sarasota County, Florida, with the remainder lying within unincorporated Sarasota County.

19. Under Florida state law and the terms of the right-of-way easement Adrian Honoré granted Seaboard Railway in 1910, Seaboard and its successor-railroads did not own the land across which the railway line was constructed. The only interest Seaboard and its successor-railroads had was a right-of-way easement allowing the railroads to operate a railway line across the strip of land. The railroads' interest in the land could not be transferred to a non-railroad and did not include the right to use the land for any purpose other than the operation of a railway line. See *East Alabama Ry. Co. v. Doe,* 114 U.S. 340, 354 (1885) ("The grant to the 'assigns' of the [railroad] corporation cannot be construed as extending to any assigns except one who should be the assignee of its franchise to establish and run a railroad."). The railroads' right-of-way easement terminated when the railroads no longer used the strip of land for a railway line. See *Brandt Trust,* 572 U.S. at 104-05.

20. The Seaboard Air Line Railway and its successor-railroads could not sell or convey an interest in land they did not own. See *Castillo v. United States*, 952 F.3d 1311, 1324 (Fed. Cir. 2020) ("Under Florida law, the 1937 quitclaim deed conveyed only such 'title or interest as possessed by the grantor...at the time of the making of the deed.'") (quoting *Florida East Coast Ry. Co. v. Patterson*, 593 So. 2d 575, 577 (Fla. Ct. App. 1992)). See also *Monroe County Comm'n v. Nettles*, 288 So.3d 452, 459 (Ala. 2019) ("the quitclaim deed conveyed nothing to the Commission because the railroad, at the time of conveyance, had nothing to transfer").

21. On May 14, 2019, the Board invoked the federal Trails Act and issued an order granting the railroad's request to abandon the segment of the Sarasota to Venice railway line between Ashton Road and Fruitville Road. The Board also invoked section 8(d) of the Trails Act and imposed a new easement across these owners' land. See **Exhibit 7** (2019 NITU). The Board's

order provided that "Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service." *Id.* at 2.

22. But for the federal Surface Transportation Board's invocation of the federal Trails Act imposing this new easement across their land, these Sarasota County landowners would have enjoyed unencumbered title to their property and had the exclusive right to use and occupy their land and to exclude others from the land.

23. A landowner's right to exclude others from the owner's land is an essential feature of private property. *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 831 (1987) ("We have repeatedly held that, as to property reserved by its owner for private use, 'the right to exclude [others is] "one of the most essential sticks in the bundle of rights that are commonly characterized as property.'") (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982), and *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)).

24. The Supreme Court has reminded lower courts that adherence to precedent and respect for the principle of stare decisis is of particular importance in cases, such as this one, that involve interests in real property. See *Leo Sheep Co. v. United States*, 440 U.S. 668, 687-88 (1979) ("This Court has traditionally recognized the special need for certainty and predictability where land titles are concerned, and we are unwilling to upset settled expectations to accommodate some ill-defined power to construct public thoroughfares without compensation."). In THE LAW OF JUDICIAL PRECEDENT, Bryan Garner and his renowned co-authors, including (then-)circuit judges Neil Gorsuch, Brett Kavanaugh, William H. Pryor, Jr., and Jeffrey Sutton, instructed,

> The "rule-of-property doctrine…holds that stare decisis applies with 'peculiar force and strictness' to decisions governing real property…. Stability in rules governing property interests is particularly important because those rules create unusually strong reliance interests…. As the Supreme Court explained in a mid-19th-century case: 'Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered

open. Such decisions become rules of property, and many titles may be injuriously affected by their change.'"[16]

C. Because the federal government violated the Constitution and took private property without paying the owners, the federal government's taking of private property for the Legacy Trail has been the subject of decades of litigation.

26. The Southern Segment of the Legacy Trail was the subject of the earlier lawsuits brought by owners whose land was taken for this segment of the Legacy Trail. Judge Mary Ellen Coster Williams presided over these cases. In these earlier Trails Act cases this Court found the federal government unconstitutionally took private property when the Board issued an order invoking the Trails Act. See *Rogers*, 90 Fed. Cl. at 432; *Childers*, 116 Fed. Cl. at 497; *McCann Holdings*, 111 Fed. Cl. at 614. The owners of the land taken for the Southern Segment of the Legacy Trail were ultimately paid for that land the government took from them. This Court also found that the taking of private property for the Legacy Trail took the entire value of that land encumbered by the easement and the market value of the owners' remaining adjoining residential property was devalued by more than thirty percent. See *Childers*, 116 Fed. Cl. at 524, 541, 580, 582, 588 (plaintiffs entitled to recover compensation of 99% of the fee interest value). See also *McCann Holdings*, 111 Fed. Cl. at 626 ("the parties agree that the Government took 99% of the value of the land underlying the corridor").[17] See also *Jackson v. United States*, 2021 WL 3891002, at *11 (Fed. Cl. Aug. 31, 2021) ("In Rails-to-Trails cases, the Court has consistently held that the owners of land subject to a trail easement retain virtually no rights in the encumbered land

[16] *Id.* at 421-22 (quoting *Minnesota Mining Co. v. National Mining Co.*, 70 U.S. 332, 334 (1865)).

[17] The federal government's appraiser in the *McCann* and *Childers* litigation was John Underwood. Underwood's appraisal reports in that litigation stated, "The permanent easement would not have allowed development within the easement area. . . As a result, it's my opinion that the permanent easement takes 99 percent of the value of the area encumbered by the easement." *Jackson v. United States*, 2021 WL 3891002, at *11 (Fed. Cl. Aug. 31, 2021).

and awarded the plaintiffs the fee simple value of the encumbered parcel.") (citing, *inter alia*, *Childers*, 116 Fed. Cl. at 524, and *McCann Holdings*, 111 Fed. Cl. at 626).

27. After the Board issued its order in December 2017 taking property for an extension of the Middle Segment of the Legacy Trail (between Hugh Culverhouse Park and Ashton Road), fifteen owners sued the federal government for compensation. See *Cheshire Hunt v. United States*, No. 1:18CV111. Judge Edward H. Meyers presides over the *Cheshire Hunt* case.

28. After the Board issued its third order in March 2019, extending the Legacy Trail another seven miles north between Ashton Road and Fruitville Road, the owners of more than two hundred properties taken for this Northern Segment of the Legacy Trail sued the federal government seeking compensation for their property taken for this extension of the Legacy Trail. See *4023 Sawyer Road, LLC v. United States*, No. 19-757. Judge Meyers presides over this case.

29. The plaintiff-landowners bringing this lawsuit own seventeen properties the federal government took for the northern extension of the Legacy Trail. These owners are not plaintiffs in the *4023 Sawyer Road* lawsuit.

30. The original Legacy Trail case, *Rogers v. United States*, involved the same railroad right-of-way established by Adrian Honoré's grant of an easement to the Seaboard Air Line Railway in 1910. In *Rogers*, 90 Fed. Cl. at 430-31, this Court held,

> [T]he words of the Honoré conveyance indicate that the parties intended to create an easement. The Honoré conveyance transferred a "right of way for railroad purposes over and across the...described parcels of land." Further, like the deed in *Irv Enterprises*, the Honoré conveyance placed an explicit limitation on the use of the property interest conveyed and contained an unequivocal stipulation that title would revert to the grantor upon discontinuance of the use of the parcel for its intended railroad purpose. See *Irv Enters*. [*v. Atl. Island Civic Ass'n*, 90 So.2d 607, 609 (Fla.1956)]. The Honoré conveyance has no language that suggests that title to described parcel was conveyed outright, *i.e.*, that the transfer was made "in fee simple."
>
> Because Seaboard obtained an easement in the Honoré conveyance, successors to the Honoré grantees retained fee title to the underlying land encumbered by the

> easement. Under Florida law, title to the land bordering an easement extends to the centerline of the easement. *Smith v. Horn*, 70 Fla. 484, 70 So. 435, 436 (1915).

This Court additionally held, at 90 Fed. Cl. at 432,

> Like the easements before the *Preseault II* Court, the Honoré conveyance is an express easement, and the extent of the easement created by that conveyance is fixed. *Id.* (quoting 5 RESTATEMENT OF PROPERTY §482 (1944)). In Florida, the scope of an easement does not increase with time, and accordingly, the "burden of a right of way upon the servient estate must not be increased to any greater extent than reasonably necessary and contemplated at the time of initial acquisition." *Crutchfield v. F.A. Sebring Realty Co*., 69 So.2d 328, 330 (Fla. 1954).
>
> Here, as in *Preseault II*, the use of the right-of-way as a public trail while preserving the right-of-way for future railroad activity was not something contemplated by the original parties to the Honoré conveyance back in 1910. As the Federal Circuit explained, when examining a right-of-way acquired in 1899, the usage of a right-of-way as a recreational trail is "clearly different" from the usage of the same parcel of land as a railroad corridor. *Preseault II*, 100 F.3d at 1542. As such, the terms of the Honoré easement were limited to use for railroad purposes and did not contemplate use for public trails. Thus, the governmental action converting the railroad right-of-way to a public trail right-of-way imposed a new easement on the landowners and effected a Fifth Amendment taking of their property. *Id*. at 1550.

31. In *Preseault I*, 494 U.S. at 8, the Supreme Court held that the language of 16 U.S.C. §1247(d) "gives rise to a takings question in the typical rails-to-trails case because many railroads do not own their rights-of-way outright but rather hold them under easements or similar property interests." Justices O'Connor, Scalia, and Kennedy concurred in *Preseault I* to emphasize that "[p]roperty interests...are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.'" *Id.* at 20 (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001 (1984), and *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980)).

32. In *Preseault II* the Federal Circuit, sitting *en banc*, held the Takings Clause of the Fifth Amendment requires the federal government to pay landowners for the private property the federal government takes when the Board invokes section 8(d) of the Trails Act. 100 F.3d at 1531 ("[W]e conclude that the taking that resulted from the establishment of the recreational trail is

properly laid at the doorstep of the Federal Government." See also *Toews v. United States*, 376 F.3d 1371, 1376-77 (Fed. Cir. 2004) ("it appears beyond cavil that use of these easements for a recreational trail—for walking, hiking, biking, picnicking, frisbee playing, with newly-added tarmac pavement, park benches, occasional billboards, and fences to enclose the trailway—is not the same use made by a railroad, involving tracks, depots, and the running of trains").

33. The Federal Circuit held, the federal government's liability for a Trails Act taking turns upon three points. See *Ellamae Phillips Co. v. United States*, 564 F.3d 1367, 1373 (Fed. Cir. 2009) (citing and summarizing *Preseault II*, 100 F.3d at 1533).

> (1) [W]ho owns the strip of land involved, specifically, whether the railroad acquired only an easement or obtained a fee simple estate;
>
> (2) [I]f the railroad acquired only an easement, were the terms of the easement limited to use for railroad purposes, or did they include future use as a public recreational trail (scope of the easement); and
>
> (3) [E]ven if the grant of the railroad's easement was broad enough to encompass a recreational trail, had this easement terminated prior to the alleged taking so that the property owner at the time held a fee simple unencumbered by the easement (abandonment of the easement).[18]

34. In *Rogers*, this Court determined the interest Adrian Honoré granted Seaboard Air Line Railway in 1910 was an easement to use the strip of land for the operation of a railroad and that, when Seaboard and its successor-railroads no longer ran trains over the strip of land, the easement terminated. 90 Fed. Cl. at 432. See also *Brandt Trust*, 572 U.S. at 105; RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES, *supra*, n. 13; Ely, RAILROADS & AMERICAN LAW, *supra* n. 13, pp. 197-98.

[18] The third point in this inquiry (whether the easement was abandoned) only arises if the right-of-way easement originally granted the railroad included a right for a non-railroad to use the land for a public recreational trail. This third inquiry is not applicable here because Adrian Honoré's 1910 easement did not grant the public the right to use the strip of land for recreation and, even more, explicitly prohibited any use other than the operation of a railway.

35. The government admits that Seaboard and its successor-railroads (CSXT and Seminole Gulf) did not own the land across which the railway line was located. In *Cheshire Hunt v. United States*, No. 18-111, the Justice Department admitted the *Rogers* precedent controls. The government's counsel stated,

> [T]his Court held in the *Rogers* case that the honorary [Honoré] conveyance created an easement. And the United States is moving forth under the Court's precedent. We note that Sarasota County may seek in the *Grames* litigation to separately contest whether the honorary [Honoré] conveyance created a fee or an easement. However, for the purposes of this argument, *the United States is accepting the Rogers Court's decision*.
>
> May 7, 2021, hearing transcript, pp. 7-8 (emphasis added).

36. By reason of the Board's order and the federal Trails Act, Sarasota County now claims exclusive ownership of the land subject to the Board's order invoking the federal Trails Act. In reliance upon the federal government's designation of Sarasota County as the trail-sponsor and the Board's invocation of the Trails Act, Sarasota County has constructed and is now operating a public recreational trail across these owners' land.

37. In reliance upon the federal Trails Act, Sarasota County claims it now has exclusive possession and dominion of these owners' land and can demand owners to remove any existing structures from the land. Sarasota County is also entering these owners' land demolishing structures that have existed for decades, threatening the owners with civil and criminal penalties and demanding the owners agree to pay Sarasota County rent or a "license fee" to use land the owner owns. See **Exhibit 8** (Notice of Supplemental Evidence filed in *Cheshire Hunt v. United States* and corresponding exhibits). The "encroachments" Sarasota County demands owners remove include in-ground swimming pools, fences, sheds, septic drain fields, and other improvements that lawfully existed on these owners' private property for decades.

38. When the Board issued its order invoking the Trails Act the Board knew it was taking these owners' private property. The Board knew this Court had already ruled in *Rogers*, and the Justice Department had already admitted, that the Seaboard Air Line Railway did not own the land. The government admitted the government must pay the owners for property taken for the Legacy Trail. See *supra* ¶35. The federal government knew that, when the Board issued an order invoking the Trails Act, the Board was taking private property in violation of the United States Constitution.

THE PARTIES

A. The Sarasota County Florida Landowners.

39. The individuals, families and small businesses bringing this lawsuit are the present-day owners of seventeen properties in Sarasota County Florida which the federal government took for the northern extension of the Legacy Trail. The owners of these properties are the successors-in-title to Adrian Honoré. Each of these owners holds title to the fee estate in that land which is now subject to the Board's May 14, 2019 order invoking section 8(d) of the Trails Act. The Board's invocation of the Trails Act "destroyed" and "effectively eliminated" these owners' private property. The federal government has not paid any of these owners for that property the federal government took.

(1) Deborah E. Barron and John Buenaventura Baez (The Barron-Baez family)

40. Deborah E. Barron and John Buenaventura Baez (the Barron-Baez family) bought their home in Sarasota the day after Christmas on December 26, 2018. See deed recorded in the Sarasota Recorder of Deed's office as instrument #2018167076 attached as **Exhibit 9**. The Sarasota County Tax Assessor lists the Barron family property as parcel #0060-14-0079. A copy of the tax record for this property is attached as **Exhibit 10.** These tax records demonstrate the

Barron family still owned this property in May 2019 when the federal government issued its order taking the Barron family's property.

41. The Barron-Baez family owned the land the federal government took for public recreation and a future railway line.

42. The Barron-Baez family owned their property on May 14, 2019, which is when the Board issued its order invoking section 8(d) of the federal Trails Act and imposed a federal rail-trail corridor easement across the Barron-Baez family's land.

43. The federal government has not paid (nor offered to pay) the Barron-Baez family for that property the government took from the Barron-Baez family.

(2) The ALB Revocable Trust, dated July 21, 2003, Alexandrine L. Boswell, Trustee and the RPB Revocable Trust dated August 31, 2004, Ramon P. Boswell, Trustee (The Boswell family)

44. Ramon Boswell bought his home in Sarasota on August 31, 2004. Ramon Boswell put the title to this property in a trust for the benefit of his family. See deed recorded in the Sarasota Recorder of Deed's office as instrument #2004228575 on July 21, 2003 and the Memorandum of Trust recorded as instrument #2003149718. **Exhibit 11**.

45. Six years later Roman P. Boswell died on March 16, 2009. See death certificate attached as **Exhibit 12**.

46. The Boswell family's property is parcel #0061-03-0002 and a copy of the tax record for the Boswell family's property is attached as **Exhibit 13**.

47. The Boswell family owns the land that was once subject to the Seaboard Air Line Railroad right-of-way easement.

48. The federal government invoked the Trails Act and the Boswell family's property is now encumbered by an easement for public recreation and a possible future railway line. But

for the Board invoking the federal Trails Act, the Boswell family would own their property unencumbered by any rail-trail easement.

49. The Boswell family owned their property on May 14, 2019, when the Board issued its order invoking the federal Trails Act.

48. The federal government has not paid (nor offered to pay) the Boswell family for that private property the federal government took from the Boswell family.

(3) Courtyard Villas LLC (Courtyard Villas)

49. Courtyard Villas LLC bought property in Sarasota County, Florida on May 25, 2016. The deed is recorded in the Sarasota Recorder of Deed's office as instrument #2016065127. **Exhibit 14**.

50. Courtyard Villas' property is identified by Sarasota County's Assessor as parcel #0061-15-0088. **Exhibit 15**.

51. The Board's May 2019 order invoking the Trails Act encumbered Courtyard Villas' land with an easement for public recreation and railbanking.

52. Courtyard Villas owned the land on May 14, 2019, when the Board issued its order invoking the federal Trails Act.

53. The federal government has not paid (nor offered to pay) Courtyard Villas for that property the federal government took from Courtyard Villas.

(4) Jacek and Hanna Gatkiewicz (The Gatkiewicz family)

54. Jacek and Hanna Gatkiewicz bought property in Sarasota on June 27, 1994. See deed recorded in the Sarasota Recorder of Deed's office in Book 2649 Page 1421. **Exhibit 16**.

55. The Sarasota County Tax Assessor lists the Gatkiewicz family's property is parcel #0070-10-0048. The tax record for the Gatkiewicz family property is attached as **Exhibit 17.**

56. The Gatkiewicz family's property includes land that is now subject to an easement the federal Surface Transportation Board established for public recreation and a future railroad line.

57. The Gatkiewicz family owned their property on May 14, 2019, when the Board invoked the federal Trails Act and encumbered the Gatkiewicz family's land with this rail-trail corridor easement.

58. The federal government has not paid (nor offered to pay) the Gatkiewicz family for that private property the federal government took from the Gatkiewicz family.

(5) Jonathan and Anapaula V. Lester (The Lester family)

59. Jonathan and Anapaula V. Lester bought property in Sarasota on August 5, 2014. See deed recorded in the Sarasota Recorder of Deed's office as instrument #2014094170. A copy of this deed is attached as **Exhibit 18**.

60. The Lester family's property is parcel #0071-08-0030 in the Sarasota County Tax Assessor's records. A copy of the tax record is attached as **Exhibit 19.**

61. The Lester family owns the land under the abandoned Seaboard railroad right-of-way. And under Florida law and the terms of the railroad right-of-way easement enjoyed the exclusive right to use and possess this land and to exclude others from the land.

62. By reason of the Board's invocation of the federal Trails Act, the federal government took the Lester family's land and encumbered the Lester family land with an easement for public recreation and for a future railway line.

63. The Lester family owned their property on May 14, 2019, which is when the Board invoked section 8(d) of the federal Trails Act.

63. The federal government has not paid (nor has the federal government offered to pay) the Lester family for that property the federal government took from the Lester family.

(6) Daniel J. Mallon and Irene A. Mallon, as Trustees of the Mallon Family Trust under Agreement dated October 3, 2007 (The Mallon Family)

64. Daniel J. and Irene A. Mallon Trust bought their property in Sarasota on October 3, 2007. See the deed recorded in the Sarasota Recorder of Deed's office as instrument #2007152782. A copy of this deed is attached as **Exhibit 20**.

65. The Mallon family's property is identified by the Sarasota County Tax Assessor as parcel #0060-03-0046. A copy of the tax record for this property is attached as **Exhibit 21.**

66. The Mallon family owns the land under the abandoned Seaboard railway line.

67. The Board's invocation of section 8(d) of the Trails Act encumbered the Mallon family's land with an easement for public recreation and a future railway line.

68. The Mallon family owned this property on May 14, 2019, when the Board invoked the federal Trails Act and encumbered the Mallon family property with an easement for a public recreational trail and a future railway line.

68. The federal government has not paid (nor offered to pay) the Mallon family for that property the federal government took from the Mallon family.

(7) Willis and Alta Martin (The Martin family)

69. Willis and Alta Martin bought property in Sarasota County, Florida on March 13, 2019. See that deed recorded in the Sarasota Recorder of Deed's office as instrument #2019032665. A copy of this deed is attached as **Exhibit 22**.

70. The Martin family's property is identified by the Sarasota County Tax Assessor as parcel #0053-04-0002. **Exhibit 23.**

71. The Martin family own the land under the abandoned Seaboard railroad right-of-way. The federal government's invocation of section 8(d) of the Trails Act, encumbered the Martin family's land with an easement for public recreation and a future railway line.

72. The Martin family owned their property on May 14, 2019, when the Board invoked section 8(d) of the federal Trails Act and encumbered the Martin family's land with an easement for a public recreational trail and a future railroad line.

73. The federal government has not paid (nor offered to pay) the Martin family for that property the federal government took from the Martin family.

(8) James R. Musselwhite (Musselwhite)

73. James R. Musselwhite bought property in Sarasota County, Florida on March 21, 2012, by that deed recorded in the Sarasota Recorder of Deed's office as instrument #2012037828. See **Exhibit 24**.

74. The Musselwhite property is identified by Sarasota County as parcel #052-12-0017. A copy of the tax record for this property is attached as **Exhibit 25.**

75. James Musselwhite owned the land the federal government took when the Board issued an order invoking section 8(d) of the Trails Act and encumbered James Musselwhite's land with an easement for public recreation and a future railroad line.

76. James Musselwhite owned his property on May 14, 2019, when the Board issued its order invoking the federal Trails Act.

77. The federal government has not paid (nor offered to pay) James Musselwhite for that property the federal government took from James Musselwhite.

(9) James E. and Katherine M. Myers (The Myers family)

78. James E. and Katherine M. Myers bought property in Sarasota County, Florida on September 13, 2004. See deed recorded in the Sarasota Recorder of Deed's office as instrument #2004179423. A copy of this deed is attached as **Exhibit 26**.

79. The Myers family property is identified by the Sarasota County Tax Assessor as parcel #0053-14-0036. A copy of the tax record for this property is attached as **Exhibit 27.**

80. The Myers family owned the land the federal government took when the Board invoked the Trails Act and encumbered the Myers family's land with an easement for public recreation and a future railroad line.

81. The Myers family owned their property on May 14, 2019, when the Board invoked section 8(d) of the federal Trails Act.

82. The federal government has not paid (nor offered to pay) the Myers family for that property the federal government took from the Myers family.

(10) NCM SRQ Properties, LLC (NCM SRQ)

83. NCM SRQ Properties, LLC bought property in Sarasota County, Florida on July 27, 2012. See deed recorded in the Sarasota Recorder of Deed's office as instrument #2012101665. A copy of this deed is attached as **Exhibit 28**.

84. NCM SRQ's property is identified by Sarasota County Tax Assessor as parcel #0070-07-0017. The tax record for this property is attached as **Exhibit 29.**

85. NCM SRQ owns the land under the abandoned Seaboard railroad right-of-way. The Board's invocation of the Trails Act encumbered NCM SRQ's land with an easement for public recreation and a future railroad.

86. NCM SRQ owned its property on May 14, 2019, which is when the Board invoked section 8(d) of the federal Trails Act and encumbered NCM SRQ's land with an easement for a public recreational trail and future railway line.

(11) Ronald R. Nourse

87. Ronald R. Nourse bought property in Sarasota County, Florida on August 13, 2008. See deed recorded in the Sarasota Recorder of Deed's office as instrument #2008113509. A copy of this deed is attached as **Exhibit 30**.

88. Ronald Nourse's property is identified by Sarasota County as parcel #0061-15-0086. A copy of the tax record for this property is attached as **Exhibit 31.**

89. Ronald Nourse owns the land under the abandoned Seaboard railroad right-of-way. The federal government took Ronald Nourse's property when the Board's invoked section 8(d) of the Trails Act, and encumbered Ronald Nourse's land with an easement for public recreation and a future railroad line.

90. Ronald Nourse owned his property on May 14, 2019, which is when the Board invoked section 8(d) of the federal Trails Act.

91. The federal government has not paid (nor offered to pay) Ronald Nourse for that property the federal government took from Ronald Nourse.

(12) Old Forest Lakes Owners' Association (Old Forest Lakes)

92. Old Forest Lake Owners' Association acquired property in Sarasota County, Florida. Old Forest Lakes' property is identified by Sarasota County as parcel #0061-06-0020 and parcel #0061-03-0013. A copy of the property records for this property is attached as **Exhibit 32.**

93. Old Forest Lakes owns the land under the abandoned Seaboard railroad right-of-way. The federal government took Old Forest Lakes' property when the Board invoked section 8(d) of the Trails Act and encumbered Old Forest Lakes' land with an easement for public recreation and a future railway line.

94. Old Forest Lakes owned its property on May 14, 2019, which is when the Board invoked section 8(d) of the federal Trails Act.

95. The federal government has not paid (nor has offered to pay) Old Forest Lakes for that property the federal government took.

(13) Gilda L. Pascual (Gilda Pascual)

96. Gilda L. Pascual bought property in Sarasota County, Florida on May 25, 2018. See deed recorded in the Sarasota Recorder of Deed's office as instrument #2018073543. A copy of this deed is attached as **Exhibit 33**.

97. Gilda Pascual's property is identified by Sarasota County as parcel #0060-06-0080. A copy of the tax record for this property is attached as **Exhibit 34.**

98. Gilda Pascaul's property abuts and underlies the former Seaboard railroad right-of-way, and, by reason of the Board's invocation of section 8(d) of the Trails Act, now subject to an easement for public recreation and railbanking.

99. Gilda Pascaul owned her property on May 14, 2019, which is when the Board invoked section 8(d) of the federal Trails Act.

100. The federal government has not paid (nor offered to pay) Gilda Pascaul for that property the federal government took from her.

(14) Jane Sue Shumway (Jane Shumway)

101. Jane Sue Shumway bought property in Sarasota County, Florida on September 26, 1997. See deed recorded in the Sarasota Recorder of Deed's office in book 3017, page 1760. A copy of this deed is attached as **Exhibit 35**.

102. Jane Shumway's property is identified by the Sarasota County Tax Assessor as parcel #2029-15-0037. A copy of the tax record for this property is attached as **Exhibit 36.**

103. Jane Shumway owns the land the federal government took when the Board invoked section 8(d) of the Trails Act and imposed an easement for public recreation and a future railroad line across Jane Sue Shumway's land.

104. Jane Shumway owned her property on May 14, 2019, which is when the Board issued its order invoking section 8(d) of the federal Trails Act.

105. The federal government has not paid (nor offered to pay) Jane Shumway for that property the federal government took from her.

(15) Stephen Stiller

106. Howard Stiller bought property in Sarasota County, Florida on May 5, 2003. See deed recorded in the Sarasota Recorder of Deed's office as instrument #2003098916. A copy of this deed is attached as **Exhibit 37**.

107. Howard M. Stiller died on February 11, 2005, and left his property to his son Stephen Stiller. The death certificate of Howard M. Stiller is attached as **Exhibit 38**.

108. The Stiller family's property is identified by Sarasota County's Tax Assessor as parcel #0060-11-0057. A copy of the tax record for this property is attached as **Exhibit 39.**

109. Stephen Stiller owns the land the federal government took when the Board invoked section 8(d) of the Trails Act and encumbered the Stiller family property with an easement for public recreation and a future railway line.

110. Stephen Stiller owned this property on May 14, 2019, when the Board issued an order invoking section 8(d) of the federal Trails Act.

111. The federal government has not paid (nor has offered to pay) the Stiller family for that property the federal government took.

(16) Enos N. Weaver, Jr. and Anna Mary Weaver (the Weaver family)

112. Enos N. Weaver, Jr. and Anna Mary Weaver bought property in Sarasota County, Florida on October 20, 2009. See deed recorded in the Sarasota Recorder of Deed's office as instrument #2009135589. A copy of this deed is attached as **Exhibit 40**.

113. The Sarasota County Tax Assessor identifies the Weaver family's property as parcel #0054-02-0012. A copy of the tax record for this property is attached as **Exhibit 41.**

114. The Weaver family owns the land the federal government took when the Board invoked section 8(d) of the Trails Act encumbering the Weaver family's land with an easement for public recreation and a future railroad.

115. The Weaver family owned their property on May 14, 2019 which is when the Board issued an order invoking section 8(d) of the federal Trails Act.

116. The federal government has not paid (nor offered to pay) the Weaver family for that property the federal government took from the Weaver family.

(17) Roger D. Weaver (Roger Weaver)

117. Roger D. Weaver bought property in Sarasota County, Florida on February 12, 2013, by that deed recorded in the Sarasota Recorder of Deed's office as instrument #2013022601. A copy of this deed is attached as **Exhibit 42**.

118. Roger Weaver's property is identified by Sarasota County's Tax Assessor as parcel #2029-16-0080. A copy of the tax record for this property is attached as **Exhibit 43**.

119. Roger Weaver owned the land the federal government took when the Board issued and order invoking section 8(d) of the Trails Act, and encumbering Roger Weaver's land with an easement for public recreation and a future railway line.

120. Roger Weaver owned his property on May 14, 2019, when the Board invoked section 8(d) of the federal Trails Act.

121. The federal government has not paid (nor offered to pay) Roger Weaver for that property the federal government took from Roger Weaver.

B. The Defendant.

122. The United States of America is the defendant. The federal Surface Transportation Board (the Board) is an agency of the federal government and is the successor to the Interstate Commerce Commission (ICC).[19] The federal government took these Florida owners' private property and did not pay these owners just compensation as the Takings Clause of the Fifth Amendment requires the government to do. The federal Surface Transportation Board also failed to comply with the federal Uniform Relocation Assistance Act of 1970, 42 U.S.C. §4654(c) (URA) (Pub. L. 91-646; 84 Stat. 1894).

[19] See I.C.C. Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803.

123. The Supreme Court held that the federal government's invocation of the Trails Act is a taking of private property for which the Constitution requires the federal government to pay the landowner "just compensation." See *Preseault I*, 494 U.S. at 8 (*supra* ¶31).

124. The Federal Circuit, sitting *en banc*, explained that Trails Act takings were the responsibility of the federal government, stating, "we conclude that the taking that resulted from the establishment of the recreational trail is properly laid at the doorstep of the Federal Government. … The Federal Government authorized and controlled the behavior of the State [here Sarasota County] in this matter, and the consequences properly fall there." *Preseault II*, 100 F.3d at 1531.

125. Congress adopted the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601, *et seq*., that requires the federal Surface Transportation Board as a "displacing agency" to make owners whose property is taken under the federal programs whole and comply with the laws governing federal acquisition of private property. The Board failed to comply with these laws.

CAUSES OF ACTION

COUNT I

An action for "Just Compensation" under the Takings Clause of the Fifth Amendment to the United States Constitution.

The federal government took these Florida owners' private property. The Takings Clause of the Fifth Amendment of our Constitution requires the federal government to pay these owners just compensation when the government takes private property. See U.S. CONST., AMEND. V ("No person shall be…deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.").

126. Congress amended the Trails Act in 1983 for the explicit purpose of authorizing the Interstate Commerce Commission (now the Surface Transportation Board) to take an owner's land to establish rail-trail corridor easements under the federal government's perpetual jurisdiction and authority. Congress intended section 8(d), when invoked, to encumber the owner's private property with a rail-trail corridor easement allowing the public to use the owners' land for recreation and a railroad to build a railway line across the owner's land in the future. The Board's order invoking the Trails Act also subjected the owner's land to the Board's perpetual jurisdiction.[20]

127. In *Preseault I*, the Supreme Court found that by exercising the federal government's eminent domain power, the Interstate Commerce Commission (now the Board) could extinguish and destroy and owner's state-law property interests and take private property for public recreation and so-called "railbanking." 494 U.S. at 8. The Board's invocation of the Trails Act "destroys" and "essentially eliminates" the owner's state law rights to the land subject to the Board's order.[21]

128. This Court has consistently held that the taking of private property for the Legacy Trail took the entire value of that land encumbered by the easement and the market value of the owners' remaining adjoining residential property was devalued by more than thirty percent. See

[20] See *Preseault I* and *Trevarton v. South Dakota*, 817 F.3d 1081, 1087 (8th Cir. 2016) (holding the invocation of section 8(d) imposes a new and different easement upon the owner's land). See also *Citizens Against Rails-to-Trails v. Surface Transp. Bd.*, 267 F.3d 1144, 1149 (D.C. Cir. 2001). and *Nat'l Wildlife Found. v. Interstate Commerce Comm'n*, 850 F.2d 694, 697-98 (D.C. Cir. 1988) (explaining that Congress intended to extinguish owners' state-law property rights).

[21] "It is settled law that a Fifth Amendment taking occurs in Rails-to-Trails cases when government action *destroys* state-defined property rights by converting a railway easement to a recreational trail, if trail use is outside the scope of the original railway easement." *Ladd I*, 630 F.3d at 1019 (citing *Ellamae Phillips*, 564 F.3d at 1373) (emphasis added). See also *Caldwell v. United States*, 391 F.3d 1226, 1228 (Fed. Cir. 2004) ("a Fifth Amendment taking occurs when, pursuant to the Trails Act, state law reversionary interests are *effectively eliminated* in connection with a conversion of a railroad right-of-way to trail use") (citing *Preseault II*, 100 F.3d at 1543) (emphasis added).

Childers, 116 Fed. Cl. at 524, 541, 580, 582, 588 (plaintiffs entitled to recover compensation of 99% of the fee interest value). See also *McCann Holdings*, 111 Fed. Cl. at 626 ("the parties agree that the Government took 99% of the value of the land underlying the corridor"). See also *Jackson*, 2021 WL 3891002, at *11 ("In Rails-to-Trails cases, the Court has consistently held that the owners of land subject to a trail easement retain virtually no rights in the encumbered land and awarded the plaintiffs the fee simple value of the encumbered parcel.") (citing, *inter alia*, *Childers*, 116 Fed. Cl. at 524, and *McCann Holdings*, 111 Fed. Cl. at 626).

129. The Supreme Court held the Trails Act "gives rise to a takings question in the typical rails-to-trails case because many railroads do not own their rights-of-way outright but rather hold them under easements or similar property interests. While the terms of these easements and applicable state law vary, frequently the easements provide that the property reverts to the abutting landowner upon abandonment of rail operations. State law generally governs the disposition of reversionary interests …." *Preseault I*, 494 U.S. at 7. But importantly, the Supreme Court held the federal government's exercise of this power to take owners' private property was only constitutional because the federal government must also justly compensate the owner for that property the government took. In other words, the constitutionality of the Trails Act was predicated upon the absolute obligation of the federal government to fully compensate the owner whose property was taken for the federal rail-trail corridor. See *Preseault I*, 494 U.S. at 7.

130. The Federal Circuit followed *Preseault I*, and sitting *en banc*, ruled that, "if [an owner has] interests under state property law that have traditionally been recognized and protected from governmental expropriation, and if, over their objection, the Government chooses to occupy or otherwise acquire those interests, the Fifth Amendment compels compensation. … The taking of possession of the lands owned by the [owner] for use as a public trail was in effect a taking of a

new easement for that new use, for which the landowners are entitled to compensation. … [This is] a new easement for the new use, constituting a physical taking of the right of exclusive possession that belonged to the [landowner]." 100 F.3d at 1550. Judge Rader further explained,

> while federal legislation may alter the terms of the [a landowner's] property rights defined and created by state law, it cannot do so without giving just compensation. The Federal Government has the power to enact legislation that affects the [owner's] right to freely use or possess land. But the Government cannot use this power for uncompensated, piecemeal usurpation of the rights of property owners, such that with each transfer of the property the purchaser loses sticks within the original bundle of rights yet remains without Constitutional recourse. Simply, when the Federal Government intrudes upon a property owner's right of use or possession of property, the Federal Government must pay just compensation.

Id. at 1553.

131. The Federal Circuit further held:

> [W]e conclude that the taking that resulted from the establishment of the recreational trail is properly laid at the doorstep of the Federal Government. … In the case before us there was a similar physical entry upon the private lands of the [property owners], acting under the Federal Government's authority pursuant to the ICC's [now STB's] Order. That it was for a valued public use is not the issue. We have here a straightforward taking of private property for a public use for which just compensation must be paid.

Preseault II, 100 F.3d at 1531.

132. In *Ellamae Phillips*, 564 F.3d at 1373, a panel of the Federal Circuit summarized the Federal Circuit's en banc holding in *Preseault II* and noted the federal government's liability in Trails Act taking cases turns upon three questions:

> (1) [W]ho owns the strip of land involved, specifically, whether the railroad acquired only an easement or obtained a fee simple estate;
>
> (2) [I]f the railroad acquired only an easement, were the terms of the easement limited to use for railroad purposes, or did they include future use as a public recreational trail (scope of the easement); and
>
> (3) [E]ven if the grant of the railroad's easement was broad enough to encompass a recreational trail, had this easement terminated prior to the alleged taking so that

the property owner at the time held a fee simple unencumbered by the easement (abandonment of the easement).[22]

133. The Seaboard Air Line Railway and its successor-railroads did not own the land across which Seaboard built the railway line. The railroad only held a limited easement to use the strip of land for the operation of a railway.

134. Adrian Honoré did not grant Seaboard Air Line Railway any right to use the strip of his land for public recreation and, even though not necessary, Adrian Honoré included an explicit reversionary clause in the conveyance. Adrian Honoré explicitly stated, "This conveyance is made upon the express condition, however that if the Seaboard Air Line Railway shall not construct upon said land and commence the operation thereon with one year of the date hereof of a line of railroad, or, if at any time thereafter the said Seaboard Air Line Railway shall abandon said land for railroad purposes then the above described pieces and parcels of land shall *ipso facto* revert to and again become the property of the undersigned, his heirs, administrators and assigns." See Exhibit 1. See also, *supra*, ¶8.

135. The present-day Florida landowners bringing this lawsuit: 1) own the land and the railroad held only an easement; 2) the railroad's interest was limited to a right to operate a railway across the strip of land and the railroad did not have any right to sell or transfer the land to a non-railroad for public recreation or railbanking; and 3) the railroads interest in the right-of-way easement unequivocally terminated when the railroad no longer operated a railway across the strip land and the railway line was abandoned.

136. An easement for the operation of a railroad is entirely different than an easement for public recreation. The Federal Circuit explained this fundamental point when it held:

[22] See *supra* ¶33. This third inquiry only arises if the original easement granted the right to use the land for public recreation.

> It is elementary law that if the Government uses (or authorizes the use of—a point to be considered later) an existing railroad easement for purposes and in a manner not allowed by the terms of the grant of the easement, the Government has taken the landowner's property for the new use. The consent of the railroad to the new use does not change the equation—the railroad cannot give what it does not have.
>
> And it appears beyond cavil that use of these easements for a recreational trail—for walking, hiking, biking, picnicking, frisbee playing, with newly-added tarmac pavement, park benches, occasional billboards, and fences to enclose the trailway—is not the same use made by a railroad, involving tracks, depots, and the running of trains. The different uses create different burdens. In the one case there was an occasional train passing through (no depots or turntables or other appurtenances are involved on these rights of way). In the other, individuals or groups use the property, some passing along the trail, others pausing to engage in activities for short or long periods of time. In the one case, the landowner could make such uses of the property as were not inconsistent with the railroad's use, crossing over the tracks, putting a fruit stand on one edge of the property, or whatever. In the other, the government fenced the trail in such a way as to deny that access.
>
> Some might think it better to have people strolling on one's property than to have a freight train rumbling through. But that is not the point. The landowner's grant authorized one set of uses, not the other. Under the law, it is the landowner's intention as expressed in the grant that defines the burden to which the land will be subject. The Government does not dispute this proposition—the Government agrees that, consistent with the state's law, the landowner's grant defines the burden with which the land is burdened.
>
> *Toews*, 376 F.3d at 1376-77.

137. Had the Board not invoked section 8(d) of the Trails Act, these Florida landowners would have held and enjoyed unencumbered title to their land, would have had the exclusive right to use and possess their land free of any easements for public recreation or a railroad and these owners could exclude others from the land.

138. The federal government took these owners' private property when the Board issued its order invoking section 8(d) of the Trails Act on May 14, 2019. *Caldwell v. United States*, 391 F.3d 1226 (Fed. Cir. 2004), *Barclay v. United States*, 443 F.3d 1368 (2006), and *Illig v. United States*, 274 Fed. Appx. 883 (2008), *cert. denied* 557 U.S. 935 (2009). See also Solicitor General

Kagan's Brief for the United States in Opposition to Petition of Writ of Certiorari, *Illig v. United States*, 2009 WL 1526939.

139. In *Barclay* the Federal Circuit held that an owner's right to compensation in a Trails Act taking arises when the Board first issues its order invoking section 8(d). Judge Dyk of the Federal Circuit wrote:

> The taking, if any, when a railroad right-of-way is converted to interim trail use under the Trails Act occurs when state law reversionary property interests that would otherwise vest in the adjacent landowners are blocked from so vesting. Abandonment is suspended and the reversionary interest is blocked "when the railroad and trail operator communicate to the STB their intention to negotiate a trail use agreement and the agency issues an NITU that operates to preclude abandonment under section 8(d)" of the Trails Act. We concluded that "[t]he issuance of the NITU is the only government action in the railbanking process that operates to prevent abandonment of the corridor and to preclude the vesting of state law reversionary interests in the right of way. Thus, a Trails Act taking begins and a takings claim accrues, if at all, on issuance of the NITU.

Barclay, 443 F.3d at 1373.[23]

140. The government's liability for a Fifth Amendment taking is defined by what the owner lost, not what the taker gained. Justice Holmes explained in *Boston Chamber of Commerce v. City of Boston*, 217 U.S. 189, 195 (1910) ("And the question is, What has the owner lost? Not, What has the taker gained?") See also *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 321-22 (1987) ("a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change") (quoting *Pennsylvania Coal*, 260 U.S. at 416).

141. The federal government took these owners' right to unencumbered title to their land and these owners lost their state law right to exclude others from their land. The federal

[23] See also *Ladd I*, 630 F.3d at 1020; *Ladd II*, 713 F.3d at 652.

government took these owners' state law property rights when the Board issued and order invoking the Trails Act on May 14, 2019.

142. The Federal Circuit and the Supreme Court hold the Board's invocation of the Trails Act is the federal government action that takes an owner's state-law right to the owner's land. In *Ladd I*, 630 F.3d at 1024-25, the Federal Circuit held:

> Hence it is irrelevant that no trail use agreement has been reached and that no recreational trail has been established. …"a taking occurs when the owner is deprived of use of the property...by blocking the easement reversion. While the taking may be abandoned...by the termination of the NITU[,] the accrual date of a single taking remains fixed." *Caldwell*, 391 F.3d at 1235. We further explained: "The NITU marks the 'finite start' to either temporary or permanent takings claims by halting abandonment and the vesting of state law reversionary interests when issued." *Id.* Thus, the NITU forestalls or forecloses the landowners' right to unencumbered possession of the property. *Cf. Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 831, (1987) ("To say that the appropriation of a public easement across a landowner's premises does not constitute the taking of a property interest but rather...'a mere restriction on its use,' is to use words in a manner that deprives them of all their ordinary meaning.").[24]

143. By virtue of the Board invoking section 8(d) of the Trails Act, Seaboard Air Line Railway's successor railroads (Seminole Gulf and CSXT) entered into an agreement with the Trust for Public Land and Sarasota County to transfer the land under the abandoned railroad right-of-way to Sarasota County for a northern extension to the Legacy Trial. See **Exhibit 44**.

144. That this land was taken from these owners for a public amenity such as a public recreational trail does not mitigate the federal government's constitutional obligation to justly

[24] Internal citations omitted. See also *Navajo Nation v. United States*, 631 F.3d 1268, 1275 (Fed. Cir. 2011), in which the Federal Circuit affirmed its holding in *Ladd I* as "explaining that a takings claim accrues when the government takes action which deprives landowners of 'possession of their property unencumbered by [an] easement,' regardless of whether third parties ever take physical possession of that easement" and its holding in *Caldwell* as "concluding that any taking occurred when the government took action preventing landowners' state law reversionary interests in a railroad right-of-way from vesting, not when subsequent actions by third parties caused the right-of-way to be converted to an interim trail for recreational use."

compensate these owners. Justice Holmes cautioned, "[w]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving that desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). Similarly, Justice Black wrote, "The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States,* 364 U.S. 40, 49 (1960). See also *Monongahela*, 148 U.S. at 324 ("the right to compensation is an incident to the exercise of that power [of eminent domain]; that the one is so inseparably connected with the other that they may be said to exist, not as separate and distinct principles, but as parts of one and the same principle").[25]

145. The Fifth Amendment requirement of justly compensating an owner from whom the government takes private property requires the government to make the owner whole including: (a) paying the full fair market value of the property taken as of the date it was appropriated by the federal government – fair market value includes not only the value of the land physically confiscated but also any "severance damages" or loss in value to the property owner's remaining property caused by the government's taking; and, (b) compensation necessary to make the owner whole for the government's delay in paying for the property the government took.

146. The Supreme Court held in *Seaboard*, 261 U.S. at 304,

> The compensation to which the owner is entitled is the full and perfect equivalent of the property taken. It rests on equitable principles and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken. He is entitled to the damages inflicted by the taking."[26]

[25] Citing, *inter alia*, *Pumpelly v. Green Bay Co.*, 80 U.S. 166 (1871).

[26] Citing *Monongahela*, 148, U.S. at 327.

147. The federal government's obligation to justly compensate the owner arises when the Board first invokes the Trails Act and takes the owner's private property. In *Knick v. Scott Township*, 139 S.Ct. 2162, 2170 (2019), the Supreme Court declared, "because a taking without compensation violates the self-executing Fifth Amendment at the time of the taking, the property owner can bring a federal suit at that time." The Supreme Court continued and held that it has "long recognized that property owners may bring Fifth Amendment claims…as soon as their property has been taken." *Id.* at 2172.

148. The government must compensate each of these owners for the government's delay in paying the owner for the property on the date the government took each of these owners' property. This compensation is determined by the owner's loss of use of the money the government should have paid each owner in May 2019 when the government took these owners' property. That was more than two-and-one-half years ago, and the money the federal government should have paid theses owners in May 2019 has been devalued due to significant inflation. Thus, the compensation the government must pay should be adjusted for inflation and the owners' loss of use of the funds between May 2019 when the government took the owners property and when the government finally pays each owner.

COUNT II

An action under the Uniform Relocation Act.

149. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601, *et seq.* (URA) (Pub. L. 91-646; 84 Stat. 1894), requires the federal government to reimburse these owners all of the "reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of [the] proceeding." *Id.* §4654(c).

150. Congress adopted the Uniform Relocation Assistance and Real Property Acquisition Policies Act in 1970 to "ensure that [displaced] persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons." 42 U.S.C. §4621(b). "It is the intent of Congress that…uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this chapter." *Id.* §4621(c)(2). Senator Edmund Muskie, Chairman of the Senate Committee on Government Operations, opened hearings on the URA, stating:

> In my opinion, this is as high priority a measure as stands before the Senate today. There are more than 50 Federal programs which result in the condemning of land and, literally, the bulldozing of hundreds of thousands of people from their homes and businesses each year. A large number of these people are low-income families. They are the elderly. They are small farmers and small businessmen. Most of their entire lives and economic wellbeing have centered around the property or neighborhoods which are being uprooted. We know what we are doing to these people, but what are we doing for them? ….
>
> The supreme irony of this is the fact that these were problems caused by Federal programs where Federal taxpayer money was involved. ….
>
> The uprooting of an individual, his family, his business or farm, and the taking of his land is a very personal matter. We cannot make the process painless, but we can insure fair and even-handed administration, consistent with protection of individual rights and community needs, no matter what agency is involved.[27]

[27] S. Rep. 91-488, 91st Cong., 1st Sess. 1969, pp. 6-8.

151. Section 4601 of the URA provides,

> (1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks, and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.
>
> ***
>
> (5) The term "person" means any individual, partnership, corporation, or association.
>
> (6)(A) The term "displaced person" means, except as provided in subparagraph (B) —
>
> (i) any person who moves from real property, or moves his personal property from real property —
>
> (I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or
>
> (II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in paragraph (7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent.

152. The Surface Transportation Board is a "Federal agency" subject to the URA. The owners bringing this action are "displaced persons" subject to the URA. The Board's 2019 order invoking section 8(d) of the Trails Act is an order that took these owners' state law property interest and displaced these owners from their property used for their homes and businesses.

153. Section 4651 of the URA provides,

> In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:
>
> (1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 3114(a) to (d) of title 40, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by subchapter II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal

> condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.
>
> (9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner.

154. The Trails Act is a federal program intended to acquire property for public recreational trails and encumber land with easements for future railway lines. See *Preseault I*, 494 U.S. at 17-18 ("First, Congress intended to 'encourage the development of additional trails' and to 'assist recreation[al] users by providing opportunities for trail use on an interim basis.' Second, Congress intended 'to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use.'") (internal citations omitted).

155. The Surface Transportation Board did not comply with these provisions of the URA when it acquired these owners' property for the extension of the Legacy Trail and a future railway line. Specifically, among other violations of the URA, the Board did not: (a) attempt to acquire these owners' property by negotiation; (b) appraise these owners' property before the Board issued its order imposing the rail-trail corridor easement upon these owners' land; or (c) allow the owners to retain possession of their property until the owners had been paid. The Board's failure to comply with the URA meant that contrary to the URA these owners were forced to initiate this litigation to obtain compensation for that property the federal government took from them.

156. Section 4622(a) of the URA provides the federal government must also pay other expenses and costs an owner incurs including: "(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property; (2) actual direct losses of tangible

personal property as a result of moving or discontinuing a business or farm operation … [and] (3) actual reasonable expenses in searching or a replacement business or farm."

157. Section 4622(d) of the URA provides the federal government must also pay the costs of relocating "utility facilities" including: "(i) any electric, gas, water, steam power, or materials transmission or distribution system; (ii) any transportation system; (iii) any communication system (including cable television); and (iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system."

158. These owners have incurred those costs and expenses which the URA requires the federal government to pay and reimburse these owners.

RELIEF REQUESTED

These owners of the eighteen properties subject of this lawsuit ask this Court should enter an order granting these Florida landowners the following relief:

A. Declare the federal government took each of these owners' private property in violation of the Fifth Amendment when the Board issued its May 19, 2019, order invoking section 8(d) of the Trails Act.

B. Enter judgment against the United States directing the United States Treasury to pay each of these owners the full fair-market value of that property the federal government took from each of these Florida landowners.

C. Order the United States to pay these owners compensation for the delay between when the government took the owners' property on May 14, 2019, and when the government honors its constitutional obligation and finally pays these owners compensation for the land it took.

D. Reimburse these owners' litigation costs and attorney fees as provided in the URA, 42 U.S.C. §4654(c), which includes, "reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of [the]

proceeding."

E. Award such further relief as this Court may deem just and proper.

Date: November 18, 2021

Respectfully submitted,

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