IN THE UNITED STATES COURT OF FEDERAL CLAIMS

4023 SAWYER ROAD I, LLC, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 19-757L
	)	
UNITED STATES OF AMERICA,	)	Judge Edward H. Meyers
	)	
Defendant.	)	

PLAINTIFF-LANDOWNERS' MOTION FOR PARTIAL SUMMARY JUDGMENT UNDER RULE 56

This case involves property owned by 222 Sarasota, Florida, landowners. See Fourth Amended Compl., ECF No. 34. In May 2019 the Surface Transportation Board (the Board) issued an order invoking section 8(d) of the federal Trails Act, 16 U.S.C. §1247(d), and encumbered these owners' property with a new federal rail-trail corridor easement. The Board's order created the northern extension of the Legacy Trail, a public recreational trail, and established a "rail-banked" corridor for a possible future railroad.

This motion is brought by the owners of 192 properties. These owners are listed in **Exhibit 1**.[1] These landowners ask this Court to enter partial summary judgment, under Rule 56 of the

[1] This motion does not involve the claims of 30 plaintiff-landowners to which the government has raised special objections. For 20 of these 30 landowners, the government contends an issue of material fact exists (regarding these properties' adjacency to the rail-trail corridor) that prevents entry of summary judgment. The remaining 10 landowners' properties are those affected – not by a deed from their predecessors-in-title to the railroad – but by a judgment of the U.S. District Court for the Southern District of Florida entered in 1926 in *Tampa Southern Railroad Co. v. Tankersley*. The government has objected to the claims of these 10 landowners because the government argues the district court's judgment vested the railroad with title to the fee estate.

Due to these objections by the government to these 30 landowners' claims, plaintiffs believe it is more efficient to proceed by moving for partial summary judgment as to the 192 landowners' claims listed in **Exhibit 1**. This enables this Court to efficiently resolve the bulk of the liability claims through this briefing, and it provides opportunity for the landowners and the government to continue to resolve the issues concerning the owners of the 30 properties where there is a factual dispute. Accordingly, the landowners plan to file a motion to sever these 30 claims from this case.

Rules of the Court of Federal Claims, holding the United States responsible to pay these owners just compensation for that property the federal government took when the Surface Transportation Board (the Board) issued an order invoking section 8(d) of the National Trails System Act Amendments of 1983 (Trails Act), 16 U.S.C. §1247(d).

The Tucker Act, 28 U.S.C. §1491(a) provides this Court jurisdiction of this matter. Section 1491(a) states that the "United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded...upon the Constitution...in cases not sounding in tort." In support of this motion, these 192 plaintiff-landowners provide the accompanying memorandum of law and statement of uncontroverted material facts.

We ask this Court to find the United States liable for a taking of these landowners' private property in May 2019 when the Board invoked the Trails Act and to hold this is a taking for which the Fifth Amendment requires the government to pay these landowners "just compensation."

Summary judgment "is a 'salutary method of disposition designed "to secure the just, speedy, and inexpensive determination of every action."'" *InterImage, Inc. v. United States*, 146 Fed. Cl. 615, 618 (2020) (quoting *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987)). "A grant of summary judgment is appropriate when the pleadings, affidavits and evidentiary materials filed in a case reveal that 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Biloxi Marsh Lands Corp. v. United States*, 152 Fed. Cl. 254, 268 (2021) (quoting *Lippmann v. United States*, 127 Fed. Cl. 238, 244 (2016) (citing RCFC 56(a))). See also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). A genuine issue is one that "may reasonably be resolved in favor of either party." *Anderson*, 477 U.S. at 250. A fact is material if it "might affect the outcome of the suit." *Id*. at 248. "The evidence of the nonmovant is to be believed, and all *justifiable* inferences are to be

drawn in his favor." *Id.* at 255 (emphasis added). If no rational trier of fact could find for the non-moving party, a genuine issue of material fact does not exist and the motion for summary judgment may be granted. *New York & Presbyterian Hosp. v. United States*, 152 Fed. Cl. 507, 515 (2021) (citing *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986)).

Once this burden is met, the onus shifts to the non-movant to point to sufficient evidence to show a dispute over a material fact that would allow a reasonable finder of fact to rule in its favor. *Anderson*, 477 U.S. at 256. It is not necessary that such evidence be admissible, but mere denials, conclusory statements, or evidence that is merely colorable or not significantly probative will not defeat summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Anderson*, 477 U.S. at 248-50; *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-91 (Fed. Cir. 1987).

Accordingly, the owners of these 192 landowners listed in **Exhibit 1** ask this Court to enter partial summary judgment and order the federal government to pay them just compensation for the property the government took under the Trails Act.

Respectfully submitted,

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PLAINTIFF-LANDOWNERS' CORRECTED MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

The federal government violated the Fifth Amendment when it took these one hundred ninety-two owners'[1] private property without paying the owners for that property the government took from them. The Surface Transportation Board (the Board) issued three orders invoking the section 8(d) of the Trails Act to take a sixteen-mile-long corridor along Florida's Gulf Coast between Sarasota and Venice. In the early 1900s, the landowners' predecessors-in-title granted Seaboard Air Line Railway (Seaboard) and Atlantic Coast Line Railroad, and their affiliated railroad companies, easements to construct and operate a railway line across a strip of the owners' land either through adverse possession or through written conveyance to the railroad. See **Exhibits 3** and **4** (joint title stipulations).[2] The landowners and their successors-in-title retained title to the fee estate in the land used for this railway line.

The railway line between Sarasota and Venice was no longer needed and CSX abandoned the railway line. This terminated the right-of-way easement. Under Florida law and the terms of the original right-of-way easements, the present-day owners of the fee estate held unencumbered title to their land. However, Sarasota County and the Trust for Public Land petitioned the Board to invoke the federal Trails Act. The Board granted their request and issued an order invoking the Trails Act that encumbered the owners' land with a new easement for public recreation and a possible future railroad.

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

[1] The one hundred ninety-two landowners bringing this motion are listed in **Exhibit 1**.

[2] See also **Exhibit 4** (government's list of how each plaintiff-landowner's predecessor-in-title granted an interest to the railroad. **Exhibit 1** lists each plaintiff-landowner moving for partial summary judgment and how the railroad gained its easement over and across their land.

compensation." When the federal government invokes the Trails Act encumbering an owner's land with an easement for a public rail-trail corridor the federal government has taken private property in violation of the Fifth Amendment. See *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1, 8 (1990) (*Preseault I*) (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."). In *Preseault v. United States*, 100 F.2d 1525, 1550 (Fed. Cir. 1996) (*en banc*) (*Preseault II*), the Federal Circuit held that the Trails Act imposes "a new easement for the new use, constituting a physical taking of the right of exclusive possession that belonged to the [landowners]."). See also *Toews v. United States*, 376 F.3d 1371, 1375 (Fed. Cir. 2004). The federal government's constitutional obligation to pay landowners turns upon three points:

> (1) Who owns the strip of land involved, specifically, whether the railroad acquired only an easement or obtained a fee simple estate;
>
> (2) if 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) even 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).[3]
>
> *Ellamae Phillips Co. v. United States*, 564 F.3d 1367, 1373 (Fed. Cir. 2009).[4]

The government agrees that, for forty-nine plaintiffs (the Honore Deed Landowners), the railroad only held a right-of-way easement to use the strip of land for a railway line. See **Exhibit 4** (government's table admitting that the railroad only had an easement over the land of the Honore

[3] The third point in this analysis arises *only* when the original railroad right-of-way easement granted the railroad included a right for a non-railroad to use the land for a public recreational trail.

[4] Citing and summarizing the Federal Circuit's *en banc* decision in *Preseault II*, 100 F.3d at 1533.

Deed Landowners); **Exhibit 1** (table of Honore Deed Landowners). See also *Rogers v. United States*, 90 Fed. Cl. 418, 432 (2009) ("[T]he governmental action converting the railroad right-of-way to [the Legacy Trail] public trail right-of-way imposed a new easement on the landowners and effected a Fifth Amendment taking of their property.") (citing *Preseault II*, 100 F.3d at 1550). For these forty-nine owners, the only issue is the amount of compensation each owner is due.

For the other one hundred forty-three landowners, the government has not yet agreed the railroad only held a right-of-way easement across the land. For this group of landowners this Court must determine whether the railroad was granted a right-of-way easement or title to the fee estate in the land. As we explain below, the railroad only had a right-of-way easement – a servitude to use the property – not title to the fee estate. Thus, the federal government must pay these owners for that private property the government took from them. *Preseault II*, 100 F.3d at 1531 ("the taking that resulted from the establishment of the recreational trail is properly laid at the doorstep of the Federal Government").

The railroad right-of-way between Sarasota and Venice Florida was established in the early 1900s. No one (not the landowners or the railroad) ever contemplated or intended the strip of land to be used for a public hiking and bicycling trail or for railbanking. Under the terms of the conveyances, Florida law and the owners' and railroads' intention, the right-of-way was only created for a railway line and the easement would terminate when the railroad no longer needed or operated a railway line across the strip of land.

We ask this Court to enter summary judgment finding the United States must justly compensate these owners for that private property the federal government took from them when the federal government imposed a new easement for a public rail-trail corridor across these owners' otherwise-unencumbered land.

BACKGROUND

Chief Justice Rehnquist explained in *Leo Sheep v. United States*, 440 U.S. 668, 687-88 (1979), and Chief Justice Roberts explained in *Brandt v. United States*, 572 U.S. 93, 105 (2014), that the property interests in land used for railroad rights-of-way are determined by settled principles of property law at the time the right-of-way is established. The law at the time defines the nature and extent of the property interests. See also Bryan Garner, *et al*., THE LAW OF JUDICIAL PRECEDENT (2016), pp. 421-22 ("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....'").

The Supreme Court of Florida held, "it is well established that conveyances in land must be construed to give effect to the parties' intent, and that this Court has the 'right to look to the subject-matter embraced in the instrument, and to the intention of the parties and the conditions surrounding them…[T]he intent, and not the words, is the principal thing to be regarded.'" *McNair & Wade Land Co. v. Adams*, 45 So. 492, 493 (Fla. 1907). Deeds are not interpretated by "magical words" but by the intent the parties sought to accomplish when they drafted and executed the documents.

The historical and legal context in which this railroad right-of-way between Sarasota and Venice was established, the intention of the landowners and railroads who created this railway line, the purpose for which the railway line was established and the text of the conveyances memorializing the railroad a right-of-way demonstrate that the landowners and railroads only intended to create a right-of-way for the construction and operation of a railway line. The owners did not intend to give the railroad title to the fee estate in the strip of land across which the railroad

build the railway line. And, when the strip of land was no longer used for operation of a railway line, the easement terminated and the owners of the fee estate held unencumbered title to the land.

A. The development of Sarasota, Florida.

1. Sarasota at the turn of the Twentieth Century.

In 1900 Sarasota was an undeveloped wilderness. "The Florida of 1910 was truly a frontier state. Florida's total population was around 753,000, less than that of the city of Chicago. Phosphate mining, fishing citrus growing, and beef ranching were its principal industries." Frank Cassell, SUNCOAST EMPIRE (2017), p.68. According to the 1900 Census Manatee County (which included what is now Sarasota County) had a total population of 4,663. The city of Miami had a population of only 1,959.[5] Only 962 people lived in Sarasota. Frank Cassell, SUNCOAST EMPIRE, BERTHA HONORÉ PALMER, HER FAMILY AND THE RISE OF SARASOTA (2017), p. 69. Today, almost a half-million people live in Sarasota County, and Miami-Dade County has 2.7 million residents.

The Florida Mortgage & Investment Co., Ltd., a Scottish land syndicate acquired 50,000 acres of Sarasota land in the early 1880s and went on to buy more land before the turn of the century.[6] The Scottish syndicate ran newspaper advertisements in Scotland and England promoting Sarasota, then called Sara Sota. A group of settlers traveled from Edinburgh, Scotland, to Sarasota. THE STORY OF SARASOTA, pp. 93-107. But then came the economic collapse and Panic of 1907. "Out of necessity [the Florida Mortgage and Land Company] sold all of the...lands outside the town of Sarasota, and J.H. Lord was the buyer." SUNCOAST EMPIRE, pp. 72-73.

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[5] See www2.Census.Gov. Florida became a United States territory in 1821 and became the twenty-seventh state in 1845. Florida was originally divided into only two counties. Escambia to the east of the Suwannee River and St. John to the East. In 1900 what is now Sarasota County was part of Manatee County. Sarasota County was created July 1, 1921.

[6] See Karl A. Grismer, THE STORY OF SARASOTA (1946), p. 91, and Jeff LaHurd, SARASOTA: A HISTORY, (2006), pp. 13-23.

Joseph H. Lord moved from Maine to Sarasota in the early 1900s. By 1910 Joseph Lord was the largest landowner in what is now Sarasota County. Lord owned more than 100,000 acres. In January 1910 Lord and his business partner, A.B. Edwards (who was the first mayor of Sarasota), ran an advertisement in the *Chicago Sunday Tribune*.[7] After reading the advertisement Bertha Palmer, a "woman who acted promptly when she made up her mind, turned to her father, H.H. Honoré, and showed him the ad. When she finished reading it, she said: 'Father, I wonder if you would kindly stop in at that man Lord's office tomorrow and find out about this place called Sarasota. I believe I might like to see it." THE STORY OF SARASOTA, pp. 171-158.

2. The Palmer Honoré family.

Bertha Honoré Palmer was Henry H. Honoré's oldest daughter. Henry Honoré was a wealthy Kentucky real estate investor who had also invested in Chicago real estate. Henry and Potter Palmer met and became friends. Potter Palmer also owned substantial Chicago real estate and created the nation's then-preeminent retail store, Marshall Fields. Henry Honoré hosted a dinner party and invited Potter. Bertha, then fifteen years old, was almost twenty-five years younger than Potter Palmer. But "Palmer was so entranced with Bertha's beauty and pose that he swore he would marry her when she was old enough."[8] Bertha was twenty-one and Potter was forty-four when they wed in August 1870. Potter Palmer built the Palmer House Hotel as a wedding gift to Bertha.

The year after Potter and Bertha married, Kate O'Leary's cow kicked over a lantern and started the conflagration that destroyed much of Chicago.[9] "At the beginning of [Bertha and Potter

[7] *Id.* at 63, 68-69.

[8] *Id.* at 29.

[9] See, The O'Leary Legend. http://greatchicagofire.org/olearylegend.

Palmer's] marriage, the entire edifice of Potter Palmer's wealth seemed to disappear within 27 Hours."[10] In the aftermath of the Chicago Fire, Potter Palmer rebuilt Palmer House and much of downtown Chicago. Bertha and Potter Palmer were a feature of Chicago high society. Bertha chaired the Board of Lady Managers designing the Women's Building for the 1893 World's Columbian Exposition in Chicago.[11]

Potter and Bertha had two sons, Potter Palmer II and Honoré Palmer. Both were Harvard educated. Honoré was elected to the Chicago City Council. Bertha's brother Adrian graduated from the University of Chicago School of Law. Bertha's other brother, Nathaniel, was a circuit court judge, and Bertha's sister, Ida, married President Ulysses Grant's son Fredrick.[12] The Honoré and Palmer family was one of the Nation's most prominent families at the beginning of the Twentieth Century. Potter Palmer died in May 1902. Potter Palmer's

> wealth was estimated at between $8 and $12 million dollars. …His will divided his estate into two parts. Half went outright to Bertha, while the other half went into a trust for his two sons. Potter's Will named Bertha and her brother, Adrian C. Honoré, as joint trustees.… Bertha, her father H.H. Honoré, her brother Adrian, and her two sons all took a hand in managing the real estate empire.[13]

After arriving in Sarasota, Bertha Palmer and her family immediately began buying property. "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." *Id.* at 77. The Honoré and Palmer family's total landholdings

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[10] SUNCOAST EMPIRE, p. 30. See also PBS documentary, *Love Under Fire: The Story of Bertha and Potter Palmer*.

[11] See Erik Larson, THE DEVIL IN THE WHITE CITY (2004).

[12] Ida and Fredrick had a daughter, Julia Grant (born in the White House), who Bertha later introduced to Russian Prince Cantacuzene. Julia married Prince Cantacuzene and, after the Bolsheviks deposed the Russian royalty in the Russian Revolution, Julia and Prince Cantacuzene moved to Sarasota.

[13] SUNCOAST EMPIRE, p. 60.

exceeded 140,000 acres. *Id.* at 77 n.13. Bertha Palmer and her two sons created the Sarasota-Venice Company to develop much of the Sarasota property. J.H. Lord "became vice-president and manager of the Sarasota-Venice Co. organized to sell the property which he and Mrs. Palmer owned." THE STORY OF SARASOTA, p. 305. Other Sarasota property was held in Potter Palmer's trust. "As the wife of Potter Palmer and daughter of H.H. Honoré, Bertha certainly had learned from them a great deal about real estate development as co-trustee of Potter's estate, she had been party to a number of real estate transactions in Chicago and across the country." SUNCOAST EMPIRE, p. 63. Bertha Palmer arrived in Sarasota in 1910.

In 1910, there were no airlines (the Wright brothers first flew at Kitty Hawk in 1913), no interstate highway system (President Eisenhower signed the Federal-Aid Highway Act creating the interstate highway system in 1956), and Henry Ford only began building the Model T in 1908. See A.J. Baime, ARSENAL OF DEMOCRACY (2015). In 1910 those travelling to Sarasota took a train to Tampa and a ship south to Sarasota and a horse and buggy after arriving in Sarasota.

Bertha Palmer understood that establishing a railway line connecting Sarasota and Venice to the nation's emerging network of railroads was essential to the development of her property. "The nation grew and prospered around the networks of transportation and sites of commerce. Ships brought trade to and from the East Coast, the Gulf Coast and San Francisco. The railroads supplanted waterborne traffic in the 19th Century forming the eastern megalopolis and creating the wealth of Chicago."

In the 1900s railroads abused their economic monopoly and power of eminent domain to the detriment of landowners whose land was taken for the railway lines and farmers who depended upon the railroads to transport their crops to the market. The railroad's abuse of eminent domain and its monopoly power lead to the Granger Movement, and growing anti-railroad sentiment

prompting national reforms of state laws restricting railroads' power of eminent domain and ability to set rates. See James W. Ely, Jr., RAILROADS & AMERICAN LAW (2001), pp. 86-90; *Chicago, Burlington and Quincy R.R. Co. v. Iowa*, 94 U.S. 155, 161 (1877) (railroad companies are "given extraordinary powers"); *Munn v. People of State of Illinois*, 94 U.S. 113, 132 (1876) ("during the twenty years in which [the railroad] business had been assuming its present immense proportions, something had occurred which led the whole body of the people to suppose that remedies such as are usually employed to prevent abuses by virtual monopolies might not be inappropriate here") (internal quotation omitted). This public sentiment against railroads lead to the creation of the Interstate Commerce Commission under the Interstate Commerce Act of 1887.

But connecting Sarasota to Chicago and the northern seaboard was essential if Sarasota was to prosper. "Sarasota's fortunes improved on March 22, 1905 when the United States and West Indies Railroad and Steamship Company, later known as the Seaboard Airline Railway, laid tracks from Tampa to Sarasota."[14] Jacksonville was (and is) the central railroad hub in Florida. From Jacksonville, railroad lines divided into two primary routes, one to Tampa and Florida's Gulf Coast and the other along Florida's Atlantic Coast. John D. Rockefeller's partner, Henry Flagler, built the railroad along Florida's East Coast.[15] Flagler's friend, Henry Plant, created the railway line from Georgia to Tampa. SUNCOAST EMPIRE, p. 69. Sarasota historian Frank Cassell wrote,

> The size and sweep of Bertha's purchases [of land] 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…

[14] Jeff LaHurd, SARASOTA: A NATIONAL HISTORY (2006), p. 23. See also Gregg Turner, FLORIDA RAILROADS IN THE 1920S (2005), p. 73 ("In 1903 the Seaboard Air Line Railway reached Sarasota. A short branch of the railroad ran from the downtown station to a pier on which several fish processing factories were located.").

[15] Les Standiford, LAST TRAIN TO PARADISE: HENRY FLAGLER AND THE SPECTACULAR RISE AND FALL OF THE RAILROAD THAT CROSSED AN OCEAN (2002).

> Most of the land the extension 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 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. ... Work began in June 1910, but not until late 1911 did regular service move over the tracks.

Id. at 78-79.

The Great Florida Land Boom reached its peak in 1920. However, Bertha died of breast cancer at her home in Sarasota on May 5, 1918, and did not live to see the Boom. She was sixty-nine years old. When she died, Bertha "had accumulated ninety thousand acres and increased the $8 million left to her by her husband to $20 million." SARASOTA: A HISTORY, p. 26. Bertha's sons, Honoré Palmer and Potter Palmer II, administered her estate and continued developing the Sarasota property. Honoré Palmer died in 1964, and Potter Palmer II died in 1943.

The Culverhouse family bought much of the land owned by the Palmer and Honoré family. Hugh Culverhouse Sr. was an attorney and businessman who owned the Tampa Bay Buccaneers franchise and was Commissioner of the NFL. After Hugh Culverhouse Sr.'s death in 1994, his son, Hugh Culverhouse, Jr. (who is also an attorney and worked as an Assistant U.S. Attorney in Miami), assumed control of the Culverhouse family's real estate holdings. Under Hugh Culverhouse Jr.'s management, the value of the Culverhouse family's property holdings increased. Some tracts of the land were sold to national home builders, such as Dell Webb and Pulte, that developed the Palmer Ranch community. Hugh Culverhouse, Jr., donated a large tract of the land to Sarasota County for a park and public garden named after Hugh's wife, Eliza.

The federal government took a strip of the Culverhouse family's property for the Southern Segment of the Legacy Trail. That taking was (along with property taken from other owners) the subject of the *Rogers v. United States*, 90 Fed. Cl. 418 (2009), *Childers v. United States*, 116 Fed.

Cl. 486 (2014), and *McCann Holdings v. United States*, 111 Fed. Cl. 608 (2013), litigation. In those cases, Judge Williams ruled the federal government must pay the Culverhouse family and the other landowners close to $15 million for the property the government took for that segment of the Legacy Trail. The government took more of the Culverhouse family property, which (along with other owners' property) is the subject of *Cheshire Hunt v. United States* (No. 18-111), involving the Middle Segment of the Legacy Trail.

3. John Ringling and the Greatest Show on Earth.

John Ringling was born in 1866 in Iowa. With his four older brothers he created the Ringling Brothers Circus and bought the Barnum & Bailey Circus. In the early 1900s Ringling dominated the American entertainment business. The circus traveled the nation with trains as long as 100 cars. By 1926 John Ringling's four older brothers died, and John owned the circus enterprise. John Ringling was one of the wealthiest men in the world.[16]

Ringling collected Old Dutch Master oil paintings and other works of art and, in 1924, Ringling built a thirty-two room Italian Renaissance mansion called "*Ca' d' Zan*" (Italian for "House of John") on the Gulf of Mexico in Sarasota. Ringling invested in railroads and Sarasota real estate buying much of the land in Long Boat Key and St. Armand's Circle and built the causeway uniting downtown Sarasota with Longboat Key and Siesta Key. Ringling bought almost twenty-five percent of the land in northern Sarasota County including 2,000 acres on Longboat Key. In 1927 Ringling moved the Circus' winter quarters to Sarasota and in 1960 the Circus moved its winter quarters further south to Venice.[17]

[16] See https://fcit.usf.edu/florida/lessons/ringling/ringling.htm

[17] See David Weeks, RINGLING: THE FLORIDA YEARS, 1911-1936 (1993). See also Amy Elder, SARASOTA COUNTY ISLANDS AND BEACHES (2015), p. 105.

The year 1929 was *annus horribills* for John Ringling. The stock market crash and changes in America's entertainment industry with the growing dominance of Hollywood studios and the movie industry brought about the financial demise of the traveling circus and John Ringling. Mable Ringling, John Ringling's wife, died in 1929. Shortly after Mable's death, John Ringling married Emily Buck, a woman half his age. Not unsurprisingly, the marriage did not endure, and within three years John Ringling and Emily were engaged in a highly publicized divorce the tabloid press called a "three-ring divorce" because of all the scandalous allegations. John Ringling's health failed, and he died in New York City in December 1936. Ringling's decline was dramatic. Ringling went from one of the wealthiest men on earth to one of the poorest.[18] John Ringling had no children, and the Circus (or what was left of it) was taken over by Ringling's nephew, John Ringling North, and sold in 1967.

B. The Seaboard Air Line Railway and the Atlantic Coast Line Railroad.

The Seaboard Air Line Railway was an amalgamation of more than ten southeastern United States railroad companies created in the late 1880s.[19] One of the railroad companies that merged into the Seaboard system was the United States & West Indies Railroad & Steamship Co. Karl Grismer. THE STORY OF SARASOTA, p. 135. One of Seaboard's other subsidiary railway lines was the Florida West Shore Railway. The Seaboard Air Line Railway was chartered and incorporated on April 10, 1900, by the Virginia Legislature Act of January 12, 1900.[20] The Tampa Southern

[18] At his death, his bank credit balance was a paltry $311. Ringling's will directed that *Ca' d' Zan* and the artwork be donated to the State of Florida." John Ringling's body and the body of his wife Mable and sister Ida were exhumed and interred at *Ca'd' Zan*, which is now the John and Mable Ringling Museum of Art.

[19] "Air Line" has nothing to do with airplanes. "Air Line" refers to a railway line constructed with deeper cuts through hills and higher trestles so a train could operate in a faster and more direct route.

[20] In 1946 after a district court receivership the Seaboard was reorganized as the Seaboard Air Line Railroad. In 1967 the Seaboard merged with its rival the Atlantic Coast Line Railroad to become

Railroad was chartered in January 1917 and became a subsidiary of the Atlantic Coast Line Railroad. Seaboard was the first railroad to extend its railway line from Tampa to Sarasota. THE STORY OF SARASOTA, pp. 133-135. The first Seaboard train reached downtown Sarasota in March 1903. *Id*. The Atlantic Coast Line (through its subsidiary the Tampa Southern Railroad) began extending its railway line from Tampa toward Sarasota in 1917 eventually reaching downtown Sarasota in 1923.

C. The creation of the railway right-of-way between Sarasota and Venice.

A railroad right-of-way is like a turtle on a fence post. It didn't get there by itself. The rights-of-way the owners granted Seaboard and Atlantic Coast Line were established for a specific purpose: a railway line between Sarasota and Venice. The Scottish investment companies, Joseph Lord, A.B. Edwards, Bertha Palmer, the Palmer Honoré family, John Ringling, and Hugh Culverhouse's family provide the context in which the property interests were created and established. At the behest of Bertha Palmer, Seaboard extended its railroad line from Sarasota to Venice. Gregg M. Turner, VENICE IN THE 1920S (2000).

This case involves 222 owners of land taken for the Legacy Trail. See Fourth Amended Compl., ECF No. 34. These present-day owners are the successors-in-title to those owners who established the railway line and defined the property interest granted the railroad. The land taken for this segment of the Legacy Trail is north of Ashton Road and south of Fruitville Road. The government and owners have agreed upon the original conveyance relevant to each landowners' property (except for the seven Palmer Deed Landowners). See **Exhibit 3** (joint title stipulations). There are a total of ten original conveyances to the railroad in this case, and eight of those

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the Seaboard Coast Line Railroad. The Chesapeake & Ohio (the Chessie System) acquired the Seaboard and these railway lines became part of what is today the CSX System. See CORPORATE HISTORY OF THE SEABOARD AIR LINE RAILWAY COMPANY (1922), p. 83.

conveyances are at issue in this motion. They include the Honoré (**Exhibit 7**), Palmer (**Exhibit 8**), Sarasota Land Company (**Exhibit 12**), Clough (**Exhibit 13**), Neihardt (**Exhibit 14**), and Burton (**Exhibit 15**) conveyances, and also two conveyances by the Florida Mortgage Company (**Exhibit 10** and **Exhibit 11**). For three owners there is no original conveyance to the railroad and the railroad's interest was obtained by adverse possession. See **Exhibit 3** (joint title stipulations) The federal government's valuation maps are attached as **Exhibit 6**.[21] Sarasota County's survey of the northern segment of the Legacy Trail is available at: https://truenorthlawgroup.com/sarasota-legacy-trail.[22]

D. The demise of the railway line between Sarasota and Venice and creation of the Legacy Trail.

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. 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

[21] The Federal Valuation Maps were created by the federal government under the Valuation Act of 1913 because the federal government nationalized railroads during World War I. This required the federal government to establish the ownership and value of all the property the federal government took when it nationalized the railroads.

[22] See also https://truenorthlawgroup.com/wp-content/uploads/2022/04/09-09-21-4023SAWYER002890-002903-Sarasota-Legacy-Trails-Extension-Phase-2-3-Boundary-Survey-George-F.-Young.pdf

Seminole Gulf Railway brought a boxcar of plywood from Sarasota to a lumberyard in Venice. The railway line was dilapidated and not maintained.

The southern segment of the Legacy Trail was created in 2006.[23] The Board issued another order in December 2017 extending the Legacy Trail north from Hugh Culverhouse Park to Ashton Road (the middle segment).[24] The Board issued a third order in May 2019 extending the Legacy Trail further north from Ashton Road to Fruitville Road in downtown Sarasota (the northern segment). See Statement of Materal Facts ¶¶1-4.

In reliance upon the Board's orders invoking the Trails Act, Sarasota County entered these owners' land and built a public corridor across these owners' land. Sarasota County demolished existing structures on the owners' land and installed fiber-optic cables and other infrastructure including, stormwater, sewer and water lines through these owners' land. Sarasota County posted signs on these owners' land warning these owners against trespassing on the rail-trail corridor.

Sarasota County claims that, by reason of the Board's invocation of the Trails Act, Sarasota County, as the trail-sponsor, obtained exclusive dominion of the land subject to the Board's order. The Justice Department, however, says that Sarasota County's interest in the land subject to the Trails Act is limited to use of the land for a public hiking and bicycling trail. See *Cheshire Hunt v. United States*, 158 Fed. Cl. 101, 105 (2022) ("the Government argues that the Court should construe Section 1247(d) 'to create the least burdensome interest necessary to achieve its stated purpose....'"). See also Blevins v. United States, 158 Fed. Cl. 295, 307 (2022) ("The STB retains

[23] The owners whose property was taken for this Southern Segment of the Legacy Trail were compensated in the *Rogers v. United States*, 90 Fed. Cl. 418 (2009), *Childers v. United States*, 116 Fed. Cl. 486 (2014), and *McCann Holdings v. United States*, 111 Fed. Cl. 608, 614 (2013), litigation.

[24] The owners whose land was taken for this Middle Segment of the Legacy Trail are the plaintiffs in *Cheshire Hunt v. United States*, No. 18-111.

jurisdiction over the rail corridor, the railroad's common carrier obligation continues, and state law is preempted until the railroad obtains authority to abandon its rail lines and exercises that authority, as evidenced by the filing of a notice of consummation."); **Exhibit 18** (Board letter explaining Board's continuing jurisdiction over rail-trail corridors). Whether these owners land was taken for just a hiking and bicycling trail or whether Sarasota County obtained the exclusive use of these owners' land, the practical result is the same, the federal government "destroyed" and "effectively eliminated" all of the value of these owners' property. The federal government took these owners' right to use their land and to exclude others from their land.

ARGUMENT

I. The United States took these owners' private property.

A. The Board's invocation of the Trails Act "destroys" and "effectively eliminates" a landowner's right to his or her private property.

Congress wanted to preserve otherwise-abandoned railroad corridors by delaying the railroad's authority to abandon the corridor for six-months in order to allow a non-railroad (such as a local government or a private organization) to acquire the otherwise-abandoned right-of-way for public recreation. See *National Wildlife Federation v. I.C.C.*, 850 F.2d 694, 697 (DC Cir. 1988). This scheme didn't work because, under state-law, the railroad had nothing to sell. The owner of the fee estate regained unencumbered title to the land when the railroad stopped operating and the original right-of-way easement terminated. See *Brandt*, 572 U.S. at 105, and *Preseault I*, 494 U.S. at 8. The landowners' state-law reversionary right to unencumbered use of the land was a "problem."[25] *Preseault I*, 494 U.S. at 7-8 ("many railroads do not own their rights-of-way

[25] "Reversionary" is a shorthand term for the fee owner's interest. "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...a 'reversion' in fee." *Preseault II*, 100 F.3d at 1533. See also *Brandt*, 572 U.S. at 105 n.4.

outright but rather hold them under easements [and]...the property reverts to the abutting landowner upon abandonment of rail operations").

So, in 1983, Congress amended the Trails Act adding section 8(d) providing "interim [trail] use [or railbanking] 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." 16 U.S.C. §1247(d). Congress adopted section 8(d) for the express purpose of "destroying" and "effectively eliminating" landowners' state-law reversionary property interests and allowing the Board to impose a new easement for railbanking and public recreation.[26] Once the Board invokes section 8(d),

> [t]he [Board] retains jurisdiction over [the land once used for] a rail line throughout the CITU/NITU negotiating period, any period of rail banking/interim trail use, and any period during which rail service is restored. It is only upon a railroad's lawful consummation of abandonment authority that the Board's jurisdiction ends. At that point, the right-of-way may revert to reversionary landowner interest, if any, pursuant to state law.
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> National Trails System Act and Railroad Rights-of-Way, 2012 WL 1498609, *5 (STB Decision April 25, 2012).

The Board's invocation of section 8(d) "pre-empt[s] the operation and effect of certain state laws that 'conflict with or interfere with federal authority over the same activity.'" *Preseault I*, 494 U.S. at 21 (O'Connor, J., concurring). State courts "cannot enforce or give effect to asserted reversionary interests...." *Id*. at 22. The federal government's jurisdiction over the strip of land is plenary and exclusive. *Chicago & N.W. Transp. v. Kalo Brick & Tile, Co*., 450 U.S. 311, 321

[26] "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 v. United States*, 630 F.3d 1015, 1019 (Fed. Cir. 2010) (*Ladd I*) (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).

(1981) ("The exclusive and plenary nature of the [ICC], authority to rule on carriers' decisions to abandon lines is critical to the congressional scheme, which contemplates comprehensive administrative regulation of interstate commerce.").

The Board's invocation of the Trails Act allows the railroad to transfer or sell the right-of-way to a non-railroad trail-sponsor even though, under state law, the railroad had no interest in the land and no ability to transfer any interest in the right-of-way to a non-railroad. See *East Alabama Rwy. v. Doe*, 114 U.S. 340, 350-51 (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"). See also *Monroe County Comm'n v. Nettles*, 288 So.3d 452, 459 (Ala. 2019) ("the quitclaim deed [from the railroad] conveyed nothing to the [trail-sponsor] because the railroad, at the time of conveyance, had nothing to transfer").

B. The Trails Act is a *per se* taking for which the government has a "categorical" obligation to pay the landowner.

The Board's invocation of the Trails Act is a "direct appropriation of [the owner's reversionary] property, or the functional equivalent of a practical ouster of the owner's possession." *Lucas v. South Carolina Coastal Comm'n*, 505 U.S. 1003, 1014 (1992). The Trails Act imposes "a new easement for the new use, constituting a physical taking of the right of exclusive possession that belonged to the [landowners]." *Preseault II*, 100 F.3d at 1550. See also *Trevarton v. South Dakota*, 817 F.3d 1081, 1087 (8th Cir. 2016) ("as a matter of federal law it granted 'a new easement for a new use'" ... the 'new easement' [the trail-user] acquired under the Trails Act, [is] an interest which authorized [the trail-user] to use the Trail for Trails Act purposes.") (quoting *Preseault II*, 100 F.3d at 1550).

When the government "depriv[es] the owner of the right to possess, use and dispose of the property," and denies the owner's right to exclude others from his or her property the government

has a "categorical" duty to compensate the owner. *Horne v. Department of Agriculture*, 576 U.S. 350, 358 (2015). Government action confiscating an owner's property or "practically oust[ing]" an owner from possession of his property is "perhaps the most serious form of invasion of an owner's property interest, depriving the owner of the right to possess, use and dispose of the property." *Horne*, 576 U.S. at 360 (internal quotation omitted). The Court explained the "the right to exclude is universally held to be a fundamental element of the property right and is one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Cedar Point Nursery*, 141 S.Ct. at 2072-73.

The Fifth Amendment requires the government to compensate the owner for what the owner lost, not what the government gained. *Boston Chamber of Commerce v. City of Boston*, 217 U.S. 189, 195 (1910) ("the question is, What has the owner lost? Not, what has the taker gained?") (Holmes, J.). The Fifth Amendment is self-executing. *San Diego Gas & Elec. Co.* v. *City of San Diego*, 450 U.S. 621, 654 (1981).[27] See also *Knick v. Township of Scott*, 139 S.Ct. 2162, 2172 (2019) ("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").[28]

In *Leo Sheep* the Supreme Court held that "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

[27] Dissenting opinion of Justice Brennan, which was later adopted by the Court in *First English Evangelical Lutheran Church of Glendale v. County of Lost Angeles*, 482 U.S. 304, 318 (1987).

[28] See also *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 322 (2002) ("When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner, regardless of whether the interest that is taken constitutes an entire parcel or merely a part thereof.") (citation omitted; citing *United States v. Pewee Coal Co.*, 341 U.S. 114, 115 (1951)); *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012).

thoroughfares without compensation." 440 U.S. at 687-88. The Court reaffirmed this principle in *Brandt*, 572 U.S. at 110 ("We decline to endorse [the government's] stark change in position, especially given 'the special need for certainty and predictability where land titles are concerned.'") (quoting *Leo Sheep*, 440 U.S. at 687). Chief Justice Roberts, speaking for the Court, explained that "[u]nlike 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."[29]

Paying an owner just compensation for the owner's private property is the predicate upon which the government's power of eminent domain rests.[30] *Cedar Point Nursery*, 141 S.Ct. at 2074 ("we have held that a physical appropriation is a taking whether it is permanent or temporary"). Chief Justice Roberts continued, "[o]ur cases establish that 'compensation is mandated when a leasehold is taken and the government occupies property for its own purposes, even though that

[29] Citation omitted; quoting RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES §1.2, Comment d, §7.4, Comments a, f.

[30] See, *e.g.*, *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893) ("The 'just compensation' is to be a full equivalent for the property taken. … [N]o private property shall be appropriated to public uses unless a full and exact equivalent for it be returned to the owner."); *United States v. Miller*, 317 U.S. 369, 373 (1943) ("The Fifth Amendment of the Constitution provides that private property shall not be taken for public use without just compensation. Such compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken."); *Seaboard Air Line Rwy. 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."); *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.").

use is temporary.'" *Id*. (quoting *Tahoe-Sierra*, 535 U.S. at 322, and citing *United States v. General Motors Corp.*, 323 U.S. 373 (1945), and *United States v. Petty Motor Co*., 327 U.S. 372 (1946)).

C. The government's obligation to compensate an owner arises immediately upon the Board issuing an order invoking the Trails Act.

The Federal Circuit announced a "bright-line rule" that a Trails Act taking occurs, and an owner's claim for compensation accrues, when the Board first invokes the Trails Act. See *Caldwell*, 391 F.3d at 1229 ("A Fifth Amendment taking occurs if the original easement granted to the railroad under state property law is not broad enough to encompass a recreational trail.").[31] When the government issues an order taking private property without compensating the owner, the government violates the owner's constitutional right to be secure in the owner's private property. This is an ongoing constitutional violation that is not remedied until the government pays the owner for what the government has taken. See *Cedar Point Nursery*, 141 S.Ct. at 2170-72 (citing *First English*, 482 U.S. at 321). See generally, James W. Ely, Jr., THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS (3rd ed. 2008).

II. These Plaintiffs own the fee estate in the land that the federal government took for the Legacy Trail corridor.

A. The railroad acquired only a right-of-way easement to use the owners' land.

1. A railroad company is established for the limited purpose of operating a railway line.

[31] See also *Barclay v. United States*, 443 F.3d 1368, 1378 (Fed. Cir. 2006) ("the issuance of the original NITU triggers the accrual of the cause of action" for a taking); *Illig*, 274 Fed. Appx. at 883; *Ladd I*, 630 F.3d at 1023-24, *reh'g and reh'g en banc denied*, 646 F.3d at 910 ("[I]t is settled law. A taking occurs when state law reversionary property interests are blocked. …The issuance of the NITU is the *only* event that must occur to entitle the plaintiff to institute an action.") (emphasis added; internal quotations omitted); *Ladd v. United States*, 713 F.3d 648, 652 (Fed. Cir. 2013) ("In the context of Trails Act cases, the cause of action accrues when the government issues the first NITU that concerns the landowner's property.").

A railroad corporation is the creature of state legislation. A railroad is established for the specific public purpose of constructing and operating a railway line. The Virginia Supreme Court (Seaboard was chartered in Virginia) explained, "[a] railroad company in Virginia is a quasi public corporation, which, whatever it may do, cannot, by its own voluntary contract or collusion, surrender its functions and responsibilities to agents or trustees...outside the limits of the state...." *Naglee v. Alexandria & F.R. Co.*, 3 S.E. 369, 370 (Va. 1887). The court continued, "[railroad] corporations are created...to answer the public good...and cannot, therefore, by mere common-law authority, divest themselves by direct act of their capacity to discharge the duties to the public which devolve upon them; and, as a sequence thereto, cannot do that which may indirectly lead to the same thing, as, for instance, make a mortgage, which, by foreclosure and sale, may end in bringing about the inhibited result." *Id.* at 370-71.

In *Thomas v. Railroad Co*., 101 U.S. 71, 83 (1879), the Supreme Court explained that "where a corporation, like a railroad company, has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions which undertakes, without the consent of the State, to transfer to others the rights and powers conferred by the charter, and to relieve the grantees of the burden which it imposes, is a violation of the contract with the State, and is void as against public policy." Similarly, the Court held "that a [railroad company] cannot...alienate its franchise, or property acquired under the right of eminent domain or essential to the performance of its duty to the public, whether by sale, mortgage, or lease." See also *Washington, A. & G.R. Co. v. Brown*, 84 U.S. 445, 450 (1873) ("It is the accepted doctrine in this country, that a railroad corporation cannot escape the performance

of any duty or obligation imposed by its charter or the general laws of the State by a voluntary surrender of its road into the hands of lessees."). The Court explained,

> The general doctrine upon this subject is now well settled. The charter of a corporation, read in connection with the general laws applicable to it, is the measure of its powers, and a contract manifestly beyond those powers will not sustain an action against the corporation. But whatever, under the charter and other general laws, reasonably construed, may fairly be regarded as incidental to [ ] the objects for which the corporation is created, is not to be taken as prohibited.
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> *Green Bay & M.R. Co. v. Union Steamboat Co.*, 107 U.S. 98, 100 (1883).

In *New York & Maryland Line R. Co v. Winans*, 58 U.S. 30, 39 (1854), the Supreme Court held, "[t]he [railroad] corporation cannot absolve itself from the performance of its obligations, without the consent of the legislature."[32] Professor Ely explained in RAILROADS & AMERICAN LAW, pp. 197-98, that,

> 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 the 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….
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> Whether railroads in the nineteenth century took fee simple title or easements in land is a matter of continuing importance and dispute. The railroad network reached a peak of mileage in 1917, and then began a steady decline. Although carriers occasionally utilized eminent-domain procedures in the early twentieth century, the heyday of such acquisitions was over and railroads started to abandon unprofitable lines. Yet the land on which abandoned tracks ran was often still valuable. Consequently, the question of what interest in the land was originally acquired by the railroad remains a lively topic of litigation.

The essential rule of law is that a railroad corporation is a creature of state law and a railroad corporation's power and authority to acquire property, including especially property acquired

[32] Quoted by the Virginia Supreme Court in *Naglee v. Alexandria & F.R. Co.*, 3 S.E. 369, 370-71 (1887).

through the exercise of eminent domain, is defined by the public purpose for which the railroad corporation was chartered. To wit: building and operating a railroad. A railroad was not granted authority to exercise eminent domain to acquire any property interest greater than that needed to accomplish its public purpose of building and operating a railroad. To accomplish its purpose of operating a railway line, all the railroad needed was an easement across a strip of the owners' land. The railroad did not need to acquire title to the fee estate in the strip of land.

2. By the exercise (or threatened exercise) of eminent domain the only interest a railroad could acquire in private property was that interest necessary to achieve the railroad's public purpose of operating a railway line which is an easement, not title to the fee estate.

Railroads used their eminent domain power and their monopoly control to abuse landowners. In response, state legislatures (including Florida's legislature) adopted laws to protect landowners. In 1887 Florida passed a law to curb abuses by a largely unregulated railroad industry.[33] Florida provided that railroads may "cause such examinations and surveys for the proposed railroad…and for such purposes…to enter upon the lands…of any person for that purpose [and] to take and hold such voluntary grants of real estate…as shall be made to it to aid in the construction, maintenance and accommodation of its road." Fla. Stat. §2241 (1892). But, the statute also provided that "the real estate received by voluntary grant shall be held and used for purposes of such grant only." *Id*.

The Florida legislature granted railroads the power of eminent domain to enter upon and take private property "necessary to [their] business." Fla. Stat. §2683 (1914). See also *State v. Baker*, 20 Fla. 616, 650 (1884) (holding that a railroad's occupation of private land, without the

[33] Chapter 1987, s. 10, Laws of Florida and recodified several times, including in 1892 as section 2241, Florida Statutes, and in 1941 as section 360.01, Florida Statutes. Although the statute was repealed in 1982, the text of the provision at issue here did not change between 1887 and 1982.

owner's consent, to survey and locate its railway line "is not the case of a mere trespass by one having no authority to enter, but of one representing the State herself, clothed with the power of eminent domain") (citation and internal quotation marks omitted).

The railroad's power of eminent domain, however, was subject to limitations – for example a railroad corporation can only take private property "upon making due compensation according to law to private owners." Fla. Stat. §2683 (1914). Section 2241 limited what a railroad acquired, providing that "the real estate received by voluntary grant shall be held and used for purposes of such grant only." *Id*. (emphasis added). Thus, under section 2241, the nature of the railroad's interest in land taken by voluntary grant is determined by the nature of the railroad's public purpose and a railroad corporation did not need to acquire title to the fee estate to operate a railway line across a strip of land, a right-of-way easement was sufficient.

It is also well established that conveyances in land must be construed to give effect to the parties' intent, Florida's Supreme Court holds the "right to look to the subject-matter embraced in the instrument, and to the intention of the parties and the conditions surrounding them…[T]he intent, and not the words, is the principal thing to be regarded." *McNair & Wade Land Co. v. Adams*, 45 So. 492, 493 (Fla. 1907).[34]

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[34] Florida was not unique in its construction of railroad conveyances as granting only a right-of-way easement. See *Ogg v. Mediacom, LLC*, 142 S.W.3d 801, 812 (Mo. Ct. App. 2004) (considering a deed as a whole and construing it to convey only an easement, because "there are no clear, overriding indicia of an intent to convey full fee ownership of the land…the recited consideration was nominal ($1.00), which is 'not a sum that would suggest purchase of a fee simple interest' in the strip") (citation omitted); *Hash v. United States*, 403 F.3d 1308, 1321 (Fed. Cir. 2005) (citing *Neider v. Shaw*, 65 P.3d 525, 530 (Idaho 2003)) (noting that "use of 'right-of-way' in the substantive part of the deed creates an easement").

Based on statutes similar or even identical to section 2241, courts of several other states have reached the same conclusion. For example, the Kansas Supreme Court, applying a statute identical to section 2241, stated "[t]his Court has uniformly held that railroads do no own fee titles to narrow strips taken as right-of-way, regardless of whether they are taken by condemnation or right-of-way deed. The rule…gives full effect to the intent of the parties who execute right-of-way deeds rather

After entering the owners' land and surveying a railroad right-of-way, Seaboard obtained conveyances allowing it to (for example) travel "across" and "through" a strip of land one hundred feet wide, being fifty feet on each side of the centerline of the Seaboard Air Line Railway as located across lands owned by grantor. See, *e.g.*, **Exhibit 13** (Clough deed) and **Exhibit 15** (Burton deed). Seaboard surveyed, laid track and even ran trains before obtaining any conveyance from the owner.

Seaboard paid only nominal consideration for any of these conveyances. Seaboard and its successor railways never used the strips of land for any purpose other than running trains. And subsequent conveyances in the chain of title that describe the railroad's interest as a "right-of-way" or "ROW." See, for example, **Exhibit 17** (Dickie property title abstract).

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than going through lengthy and expensive condemnation proceedings." *Harvest Queen Mill & Elevator Co. v. Sanders*, 370 P.2d 419, 423 (Kan. 1962) (citations omitted); *see also Brown v. Weare*, 152 S.W.2d 649, 652 (Mo. 1941) (the "law is settled in this state that where a railroad acquires a right of way whether by condemnation, by voluntary grant or by a conveyance in fee upon a valuable consideration the railroad takes but a mere easement over the land and not the fee") (citations omitted); *Ill. Cent. R.R. Co. v. Roberts*, 928 S.W.2d 822, 825 (Ky. Ct. App. 1996) (where "land is purportedly conveyed to a railroad company for the laying of a rail line, the presence of language referring in some manner to a 'right of way' operates to convey a mere easement notwithstanding additional language evidencing the conveyance of a fee"); *Ross, Inc. v. Legler*, 199 N.E.2d 346, 348 (Ind. 1964) ("[p]ublic policy does not favor the conveyance of strips of land by simple titles to railroad companies for right-of-way purposes, either by deed or condemnation"); *Mich. Dep't of Natural Res. v. Carmody-Lahti Real Estate, Inc*., 699 N.W.2d 272, 280 (Mich. 2005) ("a deed granting a right-of-way typically conveys an easement"); *Pollnow v. State Dep't of Naural Res.,* 276 N.W.2d 738, 744 (Wis. 1979) ("normally a right of way condemned by a railway would only constitute an easement"); *Neider*, 65 P.3d at 530 ("use of the term right-of-way in the substantive portions of a conveyance instrument creates an easement")…

Only two courts have reached a different outcome. In *Old Railroad Bed, LLC v. Marcus*, 95 A.3d 400, 406 (Vt. 2014), however, the Vermont Supreme Court expressly did *not* decide whether the statute limited a railroad's property interest because the landowner had no standing to challenge the railroad's interest. And in *Corning v. Lehigh Valley Railroad Co.*, 14 A.D.2d 156, 161 (N.Y. Ct. App. 1961), an intermediate appellate court rejected the plaintiff's reliance on a similar statute passed in 1850 where a subsequent 1869 special act directed to the specific railroad at issue provided "no provision…that the lands so received should be 'held and used for the purposes of such grant only.'"

When these right-of-way conveyances were drafted and executed it was understood that, "upon general principles…a railroad company…could acquire no absolute fee-simple, but only the right to use the land for their purpose." 1 ISAAC F. REDFIELD, THE LAW OF RAILWAYS (1869), p. 255. See also LEONARD A. JONES, A TREATISE ON THE LAW OF EASEMENTS §211 (1898), p. 178 ("[a] grant of a right of way to a railroad company is a grant of an easement merely, and the fee remains in the grantor"). See also, Ely, Jr., RAILROADS & AMERICAN LAW, pp. 197-98 (citing SIMEON F. BALDWIN, AMERICAN RAILROAD LAW (1904), p. 77).[35]

The presumption is that conveyances of strips of land for a railroad right-of-way are easements, not a conveyance of title to the land itself. The RESTATEMENT OF THE LAW (THIRD): SERVITUDES provides at §2.2 that, "Conveyances of land described as a road or right of way, or stated to be for a depot, station, or other purpose related to transportation, often give rise to disputes. If the instrument fails to specify, exactly, the nature and extent of the rights conveyed to the grantee, and the rights retained by the grantor it may be ambiguous. The fact that the consideration paid was less than the value of a fee-simple estate in the land weighs strongly in favor of finding that an easement was intended. ... If the ambiguity cannot be resolved by reading the instrument as a whole, courts must resort to the circumstances surrounding the transaction and public-policy preferences in constructing the instrument." The RESTATEMENT continues:

> These disputes tend to arise after the use has been abandoned, when the original parties ae no longer involved or available, and successors on both sides claim ownership of the disputed parcel. The value and character of the land involved has often changed substantially since the time of the conveyance, so that what was once a relatively valueless strip of rural land has become a valuable piece of urban real

[35] The Supreme Court of Florida held a railroad's interest is only an easement relying upon similar authority. See *Pensacola & Atl. R.R. Co. v. Jackson*, 21 Fla. 146, 148-49 (1884) (citing Edward L. Pierce, PIERCE ON RAILROADS (1881), and REDFIELD); *Jacksonville R. & K.W. Ry. Co. v. Lockwood*, 15 So. 327, 330 (Fla. 1894) ("The opinion in *Railroad Co. v. Jackson*...relies on PIERCE ON RAILROADS."); *Seaboard Air Line Ry. Co. v. Knickerbocker*, 94 So. 501, 501 (Fla. 1922) (citing ELLIOTT ON RAILROADS (2nd ed.)).

estate. If the court finds that an easement was conveyed the successor to the grantor's land (which often includes and adjacent parcel) retains ownership of the abandoned right of way, road or station. If the court finds that a fee was conveyed, the grantee's successor owns the land, although it may still be subject to a servitude restricting use to the purpose stated under the principles discussed in Comment *d*.

Determining the parties' intent at the time of the conveyance is often difficult. The grantee's contemplated uses will normally exclude any use by the grantor, which suggests that the parties intended that the instrument convey an estate to the grantee. However, the consideration paid, the narrowness of the parcel, and its location in relation to the remaining land of the grantor, may suggest that the parties intended conveyance of an easement. Viewed from the standpoint of the parties at the time of the transaction, it may appear likely that the parties regarded ownership of the now-disputed land, after abandonment of the contemplated use, as more valuable to the grantor than to the grantee because of its shape and location in relation to the land of the grantor….

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 and easement rather than an estate. [36]

[36] In *Rogers v. United States*, the Federal Circuit asked the Supreme Court of Florida to answer a certified question. To wit: "assuming that a deed on its face conveys a strip of land in fee simple from a private party to a railroad in exchange for stated compensation." The deed in question concerned land at the southern end of the Legacy Trail granted by the Brotherhood of Locomotive Engineers (BLE) to the railroad. The Supreme Court of Florida's *Rogers* advisory decision does not apply here. The advisory opinion in *Rogers* concerned deeds that were unequivocally assumed to be a conveyance of title to the fee estate from BLE to the railroad. We don't confront that situation in this case. To the contrary, here, the question is not whether deeds that "on their face" unequivocally convey title to the fee estate. Rather, here, this Court is asked to determine whether conveyances that *do not* unequivocally convey title to the fee estate. Indeed according to the explicit terms of the conveyances the owners only granted the railroad a right-of-way easement not title to the fee estate in the land. Thus, the Florida Supreme Court's decision in *Rogers* is not relevant to the question this Court is asked to determine. In fact, the Florida Supreme Court's decision in *Rogers* supports the conclusion that the conveyances this Court is asked to construe

Id. §2.2, pp. 69-70 (emphasis added).

Before he was appointed to the Federal Circuit, Judge Plager was dean of Indiana Law School and a professor of property law. Judge Plager authored the majority decision in *Preseault II*. *Preseault II* involved a general warranty deed and Vermont law. The *en banc* Federal Circuit held, that the warranty "deed appears to be the standard form used to convey a fee simple title from a grantor to a grantee. But did it?" *Preseault II*, 100 F.3d at 1535-36. The answer is no. Judge Plager explained that "a railroad that proceeds to acquire a right-of-way for its road acquires only that estate, typically an easement, necessary for its limited purposes, and that the act of survey and location is the operative determinant, and not the particular form of transfer, if any." *Id.* at 1537.

B. Florida public policy strongly disfavors the creation of fee estates in strips or "gores" of land.

The strip and gone doctrine is a background principle of law that informs the interpretation of these conveyances. The common law has long disfavored the creation of fee estates in strips or gores of land used as rights of way. For example, in *Paine v. Consumers' Forwarding & Storage*, Co., 71 F. 626, 629-30, 632 (6th Cir. 1895), then Judge Taft (later President and Chief Justice) held that the "existence of 'strips or gores' of land along the margin of non-navigable lakes, to which the title may be held in abeyance for indefinite periods of time, is as great an evil as are 'strips and gores' of land along highways or running streams. The litigation that may arise therefrom after long years…[is] vexatious…[P]ublic policy [seeks] to prevent this by a construction that would carry the title to the center of a highway, running stream, or non-navigable lake that may be made a boundary of the lands."

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should be interpreted as granting an easement for a right-of-way not title to the fee estate because the conveyances at issue here do not "on their face" grant title to the fee estate in the land.

More recently, Judge Easterbrook of the Seventh Circuit Court of Appeals explained the doctrine and applied it to a railroad's interest in a strip of land used for a railway;

> The presumption is that a deed to a railroad or other right of way company…conveys a right of way, that is, an easement, terminable when the acquirer's use terminates, rather than a fee simple… If the railroad holds title in fee simple to a multitude of skinny strips of land now usable only by the owner of the surrounding or adjacent land, then before the strips can be put to their best use there must be expensive and time-consuming negotiation between the railroad and its neighbor…. A further consideration is that railroads and other right of way companies have eminent domain powers, and they should not be encouraged to use those powers to take more than they need of another person's property – more, that is, than a right of way.
>
> *Penn Cent. Corp. v. U.S. R.R. Vest Corp*., 955 F.2d 1158, 1160 (7th Cir. 1992).[37]

Florida follows the strip-and-gore doctrine. For example, in *Seaboard Air Line Ry. v. Southern Inv. Co*., 44 So. 351, 353 (Fla. 1907) (citing and quoting *Rawls v. Tallahassee Hotel, Co.*, 31 So. 237 (Fla. 1894)), the Supreme Court of Florida noted its holdings that "the proprietor of lots abutting on a public street is presumed, in the absence of evidence to the contrary, to own soil to the center of the street." Florida Law provides that when a landowner grants a right-of-way across his or her land, the owner retains title to the land under the easement, and that when an owner conveys title to land abutting an easement or right-of-way, the conveyance includes title to the land under the right-of-way absent a clear intention to the contrary. See *Smith v. Horn*, 70 So. 435, 436 (Fla. 1915); *Servando Bldg. Co. v. Zimmerman*, 91 So. 2d 289, 293 (Fla. 1956). See also *Fla. S. Ry. Co. v. Zimmerman*, 91 So. 2d 289, 293 (Fla. 1956); *Florida S. Ry. Co. v. Brown*, 1 So. 512, 513 (Fla. 1887). In *Servando*, the Supreme Court of Florida found that a ten-foot-wide alley on a subdivision plat would serve no "practical use or service," and that an "isolated piece of land of such proportion could be of no use to anyone except owners of property it touched and persons

[37] Citations omitted.

dealing with them." 91 So. 2d at 293. The Supreme Court of Florida reaffirmed the principle in *United States v. 16.33 Acres of Land in Dade County*, 342 So.2d 476,480 (Fla. 1977), holding that the owner of lots abutting road easements took title to the centerline of the easements.

The Supreme Court of Florida also has applied the doctrine in the context of railroads, holding, in *Silver Springs, O&G R. Co. v. Van Ness*, 34 So. 884 (Fla. 1903), and *Van Ness v. Royal Phosphate Co*., 53 So. 381 (Fla. 1910), that a railroad running trains on a strip of land acquired an easement across that land, not title to the land itself. Indeed, if a railroad were to obtain title to the entire fee estate in the land, the mineral interests, as well as any and all other "sticks in the bundle" of rights that compose property, would be held by the railroad.

This limitation on a railroad's property interest in strips and gores of land is consistent with a railroad's lack of need for any greater interest: "Except to site a station house or similar land use here and there, the railroads had no need or desire for any interest except a 'right-of-way.'" *Davis v. MCI Telecomms. Corp*., 606 So.2d 734, 738 (Fla. Ct. App. 1992). See also *Dean v. MOD Props., Ltd*., 528 So.2d 432, 434 (Fla. Ct. App. 1988) ("only an easement is needed to lawfully construct and maintain a road right-of-way").

A railroad line is not a public park. Under Florida law it is illegal to walk on railroad tracks. Fla. Stat. Ann. §§810.09, 810.12. See also *Battiste v. Lamberti*, 571 F. Supp.2d 1286, 1293 (S.D. Fla. 2008) (plaintiffs arrested for trespassing on railroad tracks). The notion of "railbanking" (not using property for the operation of a railroad in the prospect the federal government may authorize some railroad at some time in the indefinite future to build a railway across the land is not a recognized railroad purpose under Florida Law. As Judge Rader explained in *Preseault II*,

> [w]hile there is some dispute over the comparative burden of scheduled rumbling freight trains versus obnoxious in-line rollerskaters, the issue can be resolved on simpler terms. Realistically, nature trails are for recreation, not transportation.

> Thus, when the State sought to convert the easement into a recreational trail, it exceeded the scope of the original easement and caused a reversion. ...
>
> The vague notion that the State may at some time in the future return the property to the use for which it was originally granted, does not override its present use of that property inconsistent with the easement. That conversion demands compensation.

100 F.3d at 1554 (Rader and Lourie, JJ., concurring).

III. The text of the conveyances and the context in which they were granted demonstrate the landowner only intended to grant the railroad a right-of-way easement.

The text of each conveyance, and the context in which the document was drafted, demonstrates that the owners and railroad only intended to grant the railroad a right-of-way easement for a railway line. Except for the Palmer Deed Landowners listed in **Exhibit 1**, the parties have stipulated as to which of the deeds apply to each landowner's property. **See Exhibit 1**. See also **Exhibit 2** (title stipulations).

A. The railroad only acquired a prescriptive easement when the railroad built its railway without any recorded conveyance.

The railroad only gained an easement for a railway across the land owned by the three owners for whom there is no recorded conveyance to the railroad. See **Exhibit 1**. The parties have stipulated that there is no recorded conveyance for the adverse possession landowners the valuation map the Interstate Commerce Commission prepared states the railroad's interest was acquired "By Possession." **Exhibit 2** (joint title stipulations). See also **Exhibit 4** (government's answers to interrogatories stating, "No recorded conveyance").[38]

Where a railroad acquires its right-of-way by adverse possession (building a railway line across land without any recorded conveyance from the owner) in Florida, as in other states, the

[38] The government incorrectly asserts in its discovery responses that the railroad acquired "Fee simple by adverse possession." *Id.* It is not possible to acquire fee simple title to land used for a right-of-way.

railroad only obtains an easement for railroad purposes. *Rogers*, 90 Fed. Cl. at 429 ("Under Florida Law, an easement by prescription is created by methods substantially similar to those by which title is obtained through adverse possession.") (citing *Downing v. Bird*, 100 So.2d 57, 64 (Fla. 1958)). As this Court held with regard to this same rail-trail corridor, "the rights obtained from a prescriptive easement are akin to an ordinary easement, in which title to the land remains with the owner of the servient estate." *Id.* (citing *Downing*, 100 So.2d at 64). This Court, in *Mills v. United States*, 147 Fed. Cl. 339, 349-50 (2020), held,

> the best distillation of the law in Florida is that, when a railroad company takes land under color of its statutory charter but without an agreement and without a condemnation proceeding, it does not divest the landowners of title and that the railroad merely obtains perpetual use of the land for the purposes of its incorporation, *i.e.* an easement for railroad purposes.[39]

Thus, the railroad's only interest in these owners' land was an easement by prescription for railroad purposes over and across the land.

B. The text of each deed demonstrates the owners only intended to grant the railroad an easement for a railroad right-of-way.

1. The government agrees that the Honore deed granted only an easement for railroad purposes.

The Honore deed (attached as **Exhibit 8**) granted the railroad only an easement for railroad purposes. *Rogers*, 90 Fed. Cl. at 430-31. The Honore deed also included a reversionary clause also included a reversionary clause 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

[39] Citing *Florida Southern R. Co. v. Hill*, 23 So. 566 (Fla. 1898), and *Pensacola & A.R. Co. v. Jackson*, 21 Fla. 146, 152 (Fla. 1884). Judge Bruggink in *Mills* further stated that it is not necessary to consider "the issue of whether plaintiffs have established the elements of adverse possession or right of use by prescription." *Id.* at 350.

> to and again become the property of the undersigned, his heirs, administrators and assigns.

Exhibit 7 (Honoré deed) (emphasis in original).

In *Rogers*, this Court held,

> [T]he words of the Honore conveyance indicate that the parties intended to create an easement. The Honore 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 Honore 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)].[40]

This Court additionally held,

> Like the easements before the *Preseault II* Court, the Honore 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 Honore 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 Honore 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.[41]

In addition to the holding of this Court in *Rogers*, the government has stipulated that the Honore deed conveyed only an easement for railroad purposes to the railroad. See **Exhibit 2** (joint title stipulations); **Exhibit 3** (joint title stipulations relating to Honore deed); **Exhibit 4**

[40] *Id.*

[41] 90 Fed. Cl. at 432.

(government's answers to plaintiffs interrogatories acknowledging Honore deed granted only an easement to the railroad).

2. The Palmer conveyance granted an easement for a railway line.

The conveyance from Honore Palmer and Potter Palmer as trustees of the estate of Bertha Palmer (**Exhibit 8**) applies to the Palmer Deed Landowners listed in **Exhibit 1**.[42] See Statement of Facts ¶9. See also **Exhibit 9** (Sarasota County Property Appraiser's aerial photograph of Palmer Deed Landowners' parcels, plat of owners' properties, and plat superimposed on aerial photograph and valuation map denoting that the Palmer deed applies to this portion of the Legacy Trail rail-trail corridor).[43]

The Palmer conveyance granted the railroad only an easement for railroad purposes. The Palmer conveyance, like the Honoré conveyance, included an explicit reversionary clause. See **Exhibit 8**. The Palmer and Honoré family made it absolutely clear that they granted the railroad a right-of-way easement and they, and their successors-in-title, retained ownership of the fee estate in the land. 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.[44]

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[42] In discovery, the government has asserted that the Florida Mortgage Company deeds, and not the Palmer deed, apply to these landowners' claims. The government is incorrect.

[43] The Sarasota County land records for this portion of the rail-trail corridor are available at: https://ags3.scgov.net/scpa/?esearch=0052040007&slayer=0.

[44] *Id.*

This reversionary clause, like the reversionary clause in the Honore conveyance, manifests the explicit intent limit the railroad's interest to that of an easement for railroad purposes. See *Rogers*, 90 Fed. Cl. at 430-32.

3. The Florida Mortgage Company conveyances granted a right-of-way easement for railroad purposes.

The two deeds from the Florida Mortgage Company granted only an easement to the railroad for railroad purposes. The relevant language of these two deeds is identical. See **Exhibit 10** and **Exhibit 11**. The deeds conveyed a "RIGHT-OF-WAY" to the railroad. **Exhibit 10**, p. 1; **Exhibit 11**, p. 2. The blueprints attached to the deeds further describe the conveyance as a "RIGHT OF WAY." **Exhibit 10**, p. 3; **Exhibit 11**, p. 5. In Florida, as in other states, a conveyance of a "right-of-way" to a railroad means that the railroad gained only an easement for railroad purposes. *Mills*, 147 Fed. Cl. at 347. In *Mills*, Judge Bruggink explained, under Florida state law and this Court's prior decisions in *Rogers*, that "[i]t is incorrect...to assume that a grant to a railroad of a right-of-way in Florida is necessarily a fee. We think the better view is that a 'right-of-way' for railroad purposes should be construed according to its natural meaning, *i.e.* '[t]he right to pass through property owned by another.'"[45]

Professor James W. Ely, Jr. reviewed the deeds from Florida Mortgage Company and concluded that under established principles of property law and deed construction they granted the railroads only a right-of-way easement. See **Exhibit 10** (deed recorded at Book 10, page 532); **Exhibit 11** (deed recorded at Book 10, page 536); **Exhibit 16** (Expert Report of Professor James W. Ely, Jr.). "The Florida Mortgage and Investment Company executed two deeds in 1905

[45] Quoting "Right-of-Way," BLACK'S LAW DICTIONARY (11th ed. 2019).

conveying strips of land in the County of Manatee, Florida, to the Florida West Shore Railway, a subsidiary of the Seaboard Air Line Railway." **Exhibit 16**.

As Professor Ely explains, "[t]he deed explicitly states: 'Description of part of the right-of-way to be obtained from Col. J. H. Gillespie.' This clearly establishes that the interest conveyed to the railroad was a right of way and that therefore the grantor retained an interest in the land referenced in the conveyance. It is well settled that the grant of a right of way is usually understood to constitute an easement." **Exhibit 16** (expert report) (citing Jon W. Bruce and James W. Ely Jr., THE LAW OF EASEMENTS AND LICENSES IN LAND (2021-22) §1:22) ("Generally, courts conclude that a conveyance of a "right-of-way" creates only an easement whether the grantee is an individual, a railroad, or another entity."). Professor Ely continues, "[t]his conclusion is consistent with Florida law on the subject." *Id.* (citing *Rogers v. United States*, 90 Fed. Cl. 418, 428-433 (2009), and *Nerbonne, N.V. v. Florida Power Corporation*, 692 So.2d 928, 928 n.1 (Fla. Ct. App. 1997)). "Further support for this construction of the deed is provided by the decision of the United States Supreme Court in *Marvin M. Brandt Revocable Trust v. United States*, 572 U.S. 93 (2014)." As Professor Ely explains, in *Brandt*, "the Court found that federal grants of a 'right of way' under the General Railroad Right-of-Way Act of 1875 created easements not estates in fee simple." *Id.* (citing *Brandt*, 572 U.S. at 95-110).

Professor Ely concludes that the "deed description of the land conveyed also buttresses the finding of an easement." **Exhibit 16**. "It bears emphasis that the shape of the land transferred to the railroad makes other uses of the land highly unlikely. Indeed, the deed strongly indicates that the parties intended the conveyed land to serve as a corridor for railroad operations. Unless the parties made clear in the deed that they intended creation of a fee simple estate in an otherwise unusable strip of land, the most convincing conclusion is that they intended an easement." *Id.*

Thus, the Florida Mortgage Company deed conveyed only an easement for railroad purposes to the railroad.

4. The Sarasota Land Company conveyance granted an easement for a railway line.

The Sarasota Land Company conveyance executed by George Brown in 1910 conveyed a "strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Seaboard Air Line Railway as located across the lands owned by" the grantor. **Exhibit 12**. Thus, the deed memorialized the railroad's right-of-way easement in a strip of land across which the railway had already entered the land, surveyed and built a railroad line. The deed further acknowledges that the land underlying the railway strip was "owned" and retained by the grantor. Furthermore, the fact that the conveyance's language is identical to the Clough deed demonstrates that the railroad drafted the deed.

5. The Clough conveyance granted an easement for a railway line.

The Clough deed, like the Sarasota Land Company deed, conveyed a "strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Seaboard Air Line Railway as located across the lands owned by" the grantor. **Exhibit 13**. Just as the Sarasota Land Company deed, the Clough deed conveyed only a strip of land for a railway already existing on the land of the grantor and acknowledged that the land underlying the railway strip was "owned" and retained by the grantor.

6. The Neihardt conveyance granted an easement for a railway line.

The Neihardt deed is a generic form deed without any description of the interest conveyed with the description of the property simply written-in by hand. See **Exhibit 14**. The deed merely "granted, bargained and sold" the described property without any describing the title conveyed. *Id.* The form deed's generic and non-descriptive language does not demonstrate that any title was

conveyed to the railroad beyond an easement. See, *supra*, p. 37 (Professor Ely explaining that "Unless the parties made clear in the deed that they intended creation of a fee simple estate in an otherwise unusable strip of land, the most convincing conclusion is that they intended an easement."). Therefore, the deed conveyed only an easement.

7. The Burton conveyance granted an easement for a railway line.

The Burton deed conveyed a "strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Seaboard Air Line Railway as located across the lands owned by" the grantors. Like the Sarasota Land Company deed and the Clough deed, the Burton deed conveyed only a strip of land for a railway already existing on the land of the grantor and acknowledged that the land underlying the railway strip was "owned" and retained by the grantors.

Professor Ely also analyzed the Burton deed. See **Exhibit 16** (expert report). As Professor Ely points out, "Oscar A. Burton and Alice H. Burton executed a deed in 1910 conveying 'A strip of land' 'across the lands' owned by the Burtons in Manatee County, Florida, to the Seaboard Air Line Railway." *Id.* Professor Ely explains,

> [t]his wording is evidence that the parties intended the grant of an easement. Indeed, the limitation to railroad purposes is implicit in the deed. First, a conveyance of a strip of land to a railroad, absent a contrary expression, is most likely for the creation of a corridor for the passage of trains. It is difficult to conceive of any other purpose. In particular, a conveyance of a strip of land "across" the property of another denotes not the creation of a fee estate but simply a right of passage over the land. The grantor retains all other rights in the parcel subject to the easement of passage.
>
> *Id.*

Professor Ely continues,

> this point is reinforced by the fact that the grant to the Seaboard Air Line is defined as 50 feet on each side of the center line already located "across the lands." The railroad had entered and constructed its line before acquiring any title to the strip, Such activity was a common practice in the late nineteenth and early twentieth centuries. It was authorized by an 1874 Florida statute allowing railroads to enter

> and survey the lands of any person to select routes. An Act to Provide a General Law for the Incorporation of Railroads and Canals, Ch. 1987, Section 10 (1). This provision remained in subsequent statutory revisions until repealed in 1982. It therefore bears emphasis that the Burtons, as landowners, were disadvantaged in negotiating with the railroad. Realistically, they were confronted with a *fait accompli* that could not be altered. Accordingly, in view of one-sided bargaining power, courts should construe any ambiguity in the deed if favor of the landowner. Consider also that the attorneys for the railroad almost certainly prepared the deed and the carrier should not be allowed to gain from doubtful language.

Id.

As demonstrated above, all of the deeds granted only an easement to the railroad for railroad purposes. See, *supra*, p. 37 (Professor Ely explaining that "Unless the parties made clear in the deed that they intended creation of a fee simple estate in an otherwise unusable strip of land, the most convincing conclusion is that they intended an easement.").

CONCLUSION

The right-of-way granted the Seaboard Air Line Railway, the Atlantic Coast Line Railroad, and the affiliated entities in the early 1900s was only used for the construction and operation of a railway line. The railroad never used the strip of land in a manner suggesting the railroad owned title to the fee estate. There is no indication in the text of the conveyances, the context in which the conveyances were granted, or the law at the time the conveyances were granted to suggest the landowners intended to give the railroad title to the fee estate as opposed to a right-of-way. The railroad only obtained an easement for railroad purposes over and across the land of these one hundred ninety-two landowners. Accordingly, these landowners are entitled to partial summary judgment and ask this Court to order the government to pay them just compensation for the land the government took from them.

Respectfully submitted,

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

4023 SAWYER ROAD I, LLC, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 19-757
	)	
UNITED STATES OF AMERICA,	)	Hon. Edward H. Meyers
	)	
Defendant.	)	

STATEMENT OF UNCONTROVERTED MATERIAL FACTS

The plaintiff-landowners submit the following statement of uncontroverted material facts under Rule 56(c) in support of their motion for partial summary judgment.

1. At the turn of the last century much of the land in what is now Sarasota County, Florida, was owned by Bertha Palmer and members of her family, including her son Adrian Honoré. The Palmer family wanted Sarasota and Venice to prosper and sought to promote the community. To facilitate development of the Sarasota and Venice communities, the Palmer family wanted the Seaboard Air Line Railway to build a railway line between Sarasota and Venice about fifteen miles south. In November 1910 Adrian Honoré, these present-day landowners' predecessors-in-interest, granted Seaboard a right-of-way easement across his land allowing Seaboard to build and operate a railway line from Sarasota to Venice. See Exhibit 7 (Honoré conveyance). Not long after Adrian Honoré granted Seaboard an easement across his land, the newly-created, federal Interstate Commerce Commission inventoried railroad companies' assets and mapped railway lines. These federally-created maps are called "Valuation Maps." The valuation maps and accompanying schedules are now kept by the National Archives and Records Administration.

2. In 1910, the Seaboard Air Line Railway acquired a railroad right-of-way across land owned by these plaintiff-landowners' predecessors-in-title. The Seaboard Air Line Railway went through a series of bankruptcies, and Seaboard's assets (including its interest in the Sarasota-to-Venice right-of-way easement) wound up in the hands of successor-railroads. The right-of-way at issue in this case was ultimately transferred to CSX Transportation, Inc. (CSX), which, in turn, leased the railway line to Seminole Gulf Railway, L.P. (Seminole Gulf). In March 2019, Seminole Gulf requested the Surface Transportation Board (the Board) to authorize the railroad to abandon a 7.68-mile segment of rail line known 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. See Exhibit 2 to Plaintiffs' Fourth Amended Complaint, ECF No. 34-1 (Abandonment Petition, (STB Docket No. AB-400 (Sub-No. 7X)) March 8, 2019). Seminole Gulf told the Board and other state and federal agencies that "No local or overhead traffic has moved over the Subject Line since prior to 2007, a period of more than ten years." *Id.* at 3.

3. After Seminole Gulf told the Board that it (Seminole Gulf and CSX) wanted to abandon the railway line, Sarasota County wrote the Board asking the Board to invoke section 8(d) of the Trails Act and authorize Seminole Gulf and CSX to sell and transfer the otherwise abandoned right-of-way to Sarasota County for the northern extension of the Legacy Trail. See Exhibit 3 to Plaintiffs' Fourth Amended Complaint, ECF No. 34-1 (letter of April 22, 2019, requesting interim trail use (STB Docket No. AB 400 (Sub No. 7X)).

4. On May 14, 2019, the Board issued an order (called a Notice of Interim Trail Use or Abandonment (NITU)) invoking section 8(d) of the Trails Act. See Exhibit 4 to Plaintiffs'

Fourth Amended Complaint, ECF No. 34-1. The Board's order invoked section 8(d) and 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.* (NITU, p. 2). Apart from the Board's invocation of section 8(d) of the federal Trails Act, Seminole Gulf and CSX had no interest in the land under the former railway line and CSX and Seminole Gulf had nothing they could sell or transfer to Sarasota County, the Public Trust for Land or anyone else.

5. This same Seaboard railroad right-of-way was also the subject of the prior Trails Act litigation in the Rogers series of cases. See *Rogers v. United States*, 90 Fed. Cl. 418 (2009); *Childers v. United States*, 116 Fed. Cl. 486, 497 (2014); *McCann Holdings v. United States*, 111 Fed. Cl. 608, 614 (2013). The *Rogers* litigation involved an earlier April 2004 order of the Board invoking section 8(d) for a twelve-and-one-half-mile-long segment of the Sarasota-to-Venice Legacy Trail corridor. The portion of the Sarasota-to-Venice right-of-way that was the subject of the *Rogers* litigation is south of the segment of abandoned railway right-of-way that is the subject of this litigation.

6. The federal Surface Transportation Board will retain jurisdiction over the new federal trail-trail corridor but has authorized Sarasota County to construct and operate a public recreational trail across these owners' land. Over a half-million people used the Legacy Trail from March 2021 to March 2022 with nearly 100,000 people using the trail in March 2022 alone.[1]

7. The Seaboard Air Line Railway gained a prescriptive easement over and across the property of the plaintiffs listed in Exhibit 1 as the **Adverse Possession Landowners**.[2] See Exhibit 2 (Joint Title Stipulations), ECF No. 70.

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[1] See https://www.friendsofthelegacytrail.org/trail-usage-statistics/.

[2] The Adverse Possession Landowners include John W. and Christine L. Fordham, Bradley Blum Morrison, and Shirley P. Ramsey.

8. The plaintiffs' whose predecessors-in-title conveyed an easement to the railroad for railroad purposes by means of the Honore deed, recorded at Book 23, page 127, are listed in Exhibit 1 as the **Honore Deed Landowners**.[3] See Exhibit 2 (Joint Title Stipulations), ECF No. 70; Exhibit 3 (Joint Title Stipulations), ECF No. 44; Exhibit 4 (Appendix A to government's answers to plaintiffs' interrogatories).

9. The plaintiffs whose predecessors-in-interest conveyed an easement to the railroad for railroad purposes by means of the Palmer deed, recorded at Book 11, page 524, are listed in Exhibit 1 as the **Palmer Deed Landowners**.[4] See Exhibit 9. Exhibit 9 includes Sarasota County's Property Appraiser's aerial photograph taken from the County's land records depicting the Palmer Deed Landowners' parcels abutting Legacy Trail parcel.[5] Exhibit 9 also includes the Oaks at Woodland Park plat and a copy of the plat superimposed on an aerial photograph showing the

[3] The Honore Deed Landowners include 4023 Sawyer Road 1, LLC, Julia R. Adkins and Austin C. Murphy, Randal S. and Joyce S. Albritton, Louis L. Alderman, Jr., as Trustee of the Louis L. Alderman 2013 Revocable Trust, Bradley S. and Susan B. Anderson, Geoffrey L. Bolton, Nicholas J. and Danette L. Boris, Endia K. and Gary Callahan, Martin Carrillo-Plata, John and Joanne Cisler, Steven R. and Virginia M. Courtenay, Elise J. Duranceau, William and Brooke Grames, Vincent and Karen Guglielmini, Noel K. Harris, Angelo and Sarah J. Hoag, Larry E. Hudspeth, Daniel L. and Kristin Jadush, Judy H. Johnson, Kenneth J. and Margaret A. Kellner, Joseph R. Knight, Patrick J. and Lisa A. Loyet, Kassandra Luebke and Elaine Luebke, Thomas W. Marchese, Reuben S. and Kathy J. Martin, Jason J. and Karen McGuire, Sue Moulton, Timothy and Mary Murphy, James Kirt, Nicholas James, and Christopher Andrew Nalefski, Perry M. and Pamela S. O'Connor Sueko O'Connor, Michele and Dorothy Ann Paradiso, Thomas Pearson, Todd A. and Carmen Perna, Patricia Lynne Pitts-Hamilton, Pro Properties, LLC, Justin M. Reslan, Allen B. and Mary Ann E. Rieke, Michael A. Ritchie, Chad, Grace, and Robert Schaeffer, Faith H. Simolari, as Trustee of the Philip Simolari Revocable Trust, Russell S. Strayer, James H. and Glenda G. Thornton, Kenneth D. and Susan K. Wells, David A. and Anna I. Ruiz-Welsher, Zbigniew and Wislawa Wrobel, and Stephen and Margaret Zawacki.

[4] The Palmer Deed Landowners include John and Jaana Avramidis, David and Cynthia Gaul, Andrew and Jennifer Heath, Anna Marie Martin, Thomas McCall and Susan Coakley, Susan Schmitt, and Raymond and Linda Wenck.

[5] Sarasota County's property records aerial photograph is available at: https://ags3.scgov.net/scpa/?esearch=0052040007&slayer=0.

location of these owners' parcels abutting the rail-trail corridor, and a copy of the plat superimposed upon the valuation map, which shows that the Palmer conveyance is the applicable conveyance for this portion of the Legacy Trail rail-trail corridor. Thus, the Palmer conveyance is the applicable conveyance to the Palmer Deed Landowners listed in Exhibit 1.

10. The plaintiffs whose predecessors-in-interest conveyed an easement to the railroad for railroad purposes by means of the Florida Mortgage Company deed, recorded at Book 10, page 532, are listed in Exhibit 1 as the **Florida Mortgage Company Deed Group A Landowners**.[6] See Exhibit 2 (Joint Title Stipulations), ECF No. 70.

11. The plaintiffs whose predecessors-in-interest conveyed an easement to the railroad for railroad purposes by means of the Florida Mortgage Company deed, recorded at Book 10, page 536, are listed in Exhibit 1 as the **Florida Mortgage Company Deed Group B Landowners**.[7] See Exhibit 2 (Joint Title Stipulations), ECF No. 70. See also Exhibit 4 (Appendix A to the government's responses to plaintiffs' interrogatories).

12. The plaintiffs whose predecessors-in-interest conveyed an easement to the railroad for railroad purposes by means of the Sarasota Land Company deed, recorded at Book 19, page 415, are listed in Exhibit 1 as the **Sarasota Land Company Deed Landowners**.[8] See Exhibit 2

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[6] The Florida Mortgage Deed Group A Landowners include John M. Alvis, Catherine Teresa Gray, Joshua Carroll Hackney, Joe R. Hembree, as Trustee of the Joe R. Hembree Revocable Trust, Michael and Vivian Kravchak, Lewma Enterprise, Inc., Cameron W. and Carol T. McGough, Rickey Smull, and Irvin J. and Cynthia P. Spiegel.

[7] The Florida Mortgage Deed Group B Landowners include John L. and Mary Allgyer and Levi and Tammy L. Lantz, Jr., JB Holdings of Sarasota, LLC, Bob Allen and Lori Ann Jefferson, Bonnie A. Klein, Muriel R. Locklear, Shannon Lugannani and Helen Elena Emegbagha, Callie Parsons, and Marc and Leann Schlabach.

[8] The Sarasota Land Company Landowners include Izmirlian Properties LLC, Douglas and Cynthia Abbott, Nicole J. Altergott, Troy Alvis, Neal and Jo Atchley, David R. and Joy S. Bailey, as Trustees of the Joy S. Bailey and David R. Bailey Revocable Trust, Kerwin and Judy Baker, James R. and Mary Ellen Bishop, Ersila Borchert, Carole M. Bowns, Karen E. Bowser, Cynthia J. Burnell, Carol Caldwell, James M. and Jeneve S. Cawley, Amy Roseann Coats and Darrin Lee

(Joint Title Stipulations), ECF No. 70.

13. The plaintiffs whose predecessors-in-interest conveyed an easement to the railroad for railroad purposes by means of the Clough deed, recorded at Book 19, page 481, are listed in Exhibit 1 as the **Clough Deed Landowners**.[9] See Exhibit 2 (Joint Title Stipulations), ECF No. 70.

14. The plaintiffs whose predecessors-in-interest conveyed an easement to the railroad for railroad purposes by means of the Neihardt deed, recorded at Book 10, page 529, are listed in Exhibit 1 as the **Neihardt Deed Landowners**.[10] See Exhibit 2 (Joint Title Stipulations), ECF No. 70.

15. The following plaintiffs' predecessors-in-interest conveyed an easement to the railroad for railroad purposes by means of the Burton deed, recorded at Book 23, page 58, are

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Johnson, Frank T. Crotsley, Carl G. and Tobie L. Desantis, Wanda Donner, as Trustee of the Wanda Donner Living Trust, Lesley Dwyer and Barbara S. Hair, Bernadette Feragola, Michael R. and Editha D. Fettig, Sharon L. Gallagher, As Trustee of the Sharon L. Gallagher Revocable Trust, Donald L. Geary, as Trustee of the Donald L. Geary Revocable Trust, Roman T. and Carolyn F. Graber, as Trustees of the Roman and Carolyn Graber Revocable Trust, Renate B. Harkavy, Alvin L. and Michelle L. Harrell, Jr., Garnett D. and Stephanie S. Hayes, Wayne A. and Joyce O. Hibbs, Jr., Paul K. and Daphne J. Hutchison, Linda L. Jones, Myrtle Krause, Saul Alberto Lopez and Liz Janette Martinez-Ramos, Linda Lyon, Kim A. and Sheila E. Marshall, as Trustees of the Kim A. and Sheila E. Marshall Trust, Mast Investments, LLC, Michael L. Morgan, Julie Morris, Gregory B. Nowak, Robert N. O'Neill, as Trustee of the Robert N. O'Neill Living Trust and Heather H. Pennington, as Trustee of the Heather H. Pennington Revocable Living Trust, Ryan R. Parker, Phillippi Pines, LLC, Barbara Sue Schrock, Leroy and Ruby Schrock, Ruby Schrock, as Trustee of the Ruby Schrock Revocable Trust, Sandra Elaine Schrock, Brian N. Seymour, Wilbur O. Smith, Vera Straniere, Suzanne M. Thornburg, Mildred L. Tufford (Kandel), Chad Waites, Lance and Helene Warrick, Paul Wicha, Brad D. and Patricia T. Wilson, Linda A. Yarbrough, Jonathan R. and C. Joy Yutzy, as Trustees of the Jonathan R. Yutzy and C. Joy Yutzy Revocable Living Trust, and Timothy J. and Dana Zizak.

[9] The Clough Deed Landowners include Amos and Anna S. Fisher, William B. and Debra I. Pruett, and Donald and Meredith Jeanne Ruth.

[10] The Neihardt Deed Landowners include 3153 Novus Court, LLC, Crabapple Enterprise LLC, Michael A. and Janel K. Huckleberry, Brian J. and Cheryl A. Key, Tammy Lynn, William Martell, III, and Michael McLaughlin.

listed in Exhibit 1 as the **Burton Deed Landowners**.[11] See Exhibit 2 (Joint Title Stipulations), ECF No. 70.

16. All of the above-listed plaintiffs owned their property abutting and underlying the railroad right-of-way on May 14, 2019, the date the Board issued the NITU. See Exhibits 5 through 452 to Plaintiffs' Fourth Amended Complaint. See also Exhibit 6 (valuation maps of this rail-trail corridor).

Respectfully submitted,

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Counsel for the Landowners

[11] The Burton Deed landowners include Lawrence D. and Veronica D. Salzman, Michael J. Bergeron and Richard K. Nelson, Ray and Ella Bontrager, Ralph R. and Dale Marie Braun, Zsolt Csesznok and Marianna Bartus, Joseph and Dorothy D'Angelo, as Trustees of the D'Angelo Family Revocable Trust, Craig B. and Cynthia D. Dickie, Pamela Driggs, Zoila Emanuelli, as Trustee of the Zoila Emanuelli Revocable Trust, Cosimo A. Fragomeni, Cheryl A. Del Pozzo Gallagher, Michelle Garcia, Ann T. Geraghty, GPG Limited LLC, Martin Graber, Trustee in place of Martin Graber, Martin and Carol Frances Graber, Stephen A. Heard, John A. Hobbs, Jr. and Mark F. Marino, Deborah Keck, James and Diane Kostan, Gerald A. Lagace, Lake Sawyer Two LLC, Jactrace, LLC, Keith R. and Mary M. Leeseberg, Douglas P. and Maria A. Luff, Shirley I. Manfredo, Cheryl A. Marchand and Candace A. Magiera, James J. and Suzanne M. Naiman, Javier Nieto and Maylen Negrin, Barbara A. Nikias, Elmer H. and Lena M. Nolt, Donna M. Perkins, Phyllis H. Perruc, Mindy Piana, Jose Sierra Testi-Martinez and Clara A. Myers, Vinton and Dianne Trefz, as Trustees of the Trefz Living Trust, James J. Tutsock and Mary J. McQueen, Robert J. and Maureen C. Wilson, Theresa A. Wilson, Jennifer Yager, Travis Marc and Elizabeth Marie Yoder, Betty Lou Yutzy, as Trustee of the Betty Lou Yutzy Trust, and Orvie W. and Marie M. Zimmerman and Emery and Mary Ellen Yoder.