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 214 plaintiff-landowners in Sarasota, Florida. See Fourth Amended Compl., ECF No. 34. See also **Exhibit 1** (list of plaintiffs and properties grouped by conveyance instrument, condemnation decree, or easement by prescription). These landowners ask this Court to enter partial summary judgment, under Rule 56 of the 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 Board's 2019 order took these owners' property by encumbering their 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. The government violated the Fifth Amendment by not paying these landowners' "just compensation" when it took their property. Accordingly, 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."

The Fifth Amendment and the Tucker Act, 28 U.S.C. §1491(a), provide 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 plaintiff-landowners provide the accompanying memorandum of law and statement of uncontroverted material facts.

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).

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)). "By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Cheshire Hunt v. United States*, 158 Fed. Cl. 101, 104 (2022) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)) (emphasis in original). "A

'genuine' dispute of material fact exists where a reasonable factfinder 'could return a verdict for the nonmoving party.'" *Id.* (quoting Anderson, 477 U.S. at 248). A dispute regarding an issue of non-material fact does not preclude summary judgment. See *id.* ("'Material' facts are those 'that might affect the outcome of the suit under the governing law,' as opposed to 'disputes that are irrelevant or unnecessary.'") (quoting *Anderson*, 477 U.S. at 248).

Once the movant's 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. Mere denials, conclusory statements, or evidence that is merely colorable or not significantly probative will not defeat summary judgment. See *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).

Wherefore, these plaintiff-landowners ask this Court to enter partial summary judgment in their favor and order the federal government to pay them just compensation for the property the government took under the Trails Act.

Respectfully submitted,

/s/ Mark F. (Thor) Hearne, II
MARK F. (THOR) HEARNE, II
Stephen S. Davis
True North Law, LLC
112 South Hanley, Suite 200
St. Louis, MO 63105
(314) 296-4000
thor@truenorthlawgroup.com

Counsel for the Landowners

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

MARK F. (THOR) HEARNE, II
Stephen S. Davis
True North Law, LLC
112 S. Hanley Road, Suite 200
St. Louis, MO 63105
Tel: (314) 296-4000
Fax: (314) 296-4001
thor@truenorthlawgroup.com

Counsel for the Plaintiff-Landowners

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INTRODUCTION

The federal government took private property from 214 Sarasota County landowners on May 5, 2019. See **Exhibit 1** (index of landowners and properties by category). The government took these owners' property when the Surface Transportation Board (the Board) invoked section 8(d) of the Trails Act[1] encumbering these owners' land with a public rail-trail corridor when it issued an order called a Notice of Interim Trail Use or Abandonment (NITU).[2] The Takings Clause of the Fifth Amendment provides, "No person shall be…deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation." U.S. CONST. AMEND. V. The Tucker Act grants this Court jurisdiction to "render judgment upon any claim against the United States founded upon the Constitution."[3]

The uncontroverted facts and settled law establish three points. *First*, Seaboard Air Line Railroad (and its affiliated railroads) were granted only an easement to build and operate a railway line across a strip of the plaintiffs' land. *Second*, the right-of-way easement for a railway line terminated when the strip of land was no longer used for operation of a railroad, and but for the federal government invoking the Trails Act, the present-day owners would have enjoyed unencumbered title to the fee estate in their land. *Third*, the Board's order encumbering the plaintiffs' land with a new and different easement for public recreation and so-called "rail-banking" is a *per se* taking of these owners' private property for which the federal government has a *categorical* constitutional obligation to pay these owners "just compensation."

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[1] Codified at 16 U.S.C. §1247(d).

[2] See Exhibit 4 to Plaintiffs' Fourth Amended Compl., ECF No. 34-1. For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.

[3] 28 U.S.C. §1491(a).

BACKGROUND

A. The creation and extension of the Legacy Trail.

In the early 1900s, landowners granted the Seaboard Air Line Railway and its affiliated railroad companies a right-of-way across a thirteen-mile-long strip of land between Sarasota and Venice, Florida.[4] The Seaboard Air Line Railway and its affiliated railroads were given, or took by condemnation, an interest in this strip of land in the early 1900s for the purpose of operating a railway line between Sarasota and Venice.[5] By the 1980s a railway line between Sarasota and Venice was no longer needed. Seaboard's successor-railroads (CSX and Seminole Gulf Railway) petitioned the Surface Transportation Board (the Board) to abandon the railway line.[6] Sarasota County wanted to use the otherwise-abandoned railway corridor for a public recreational trail.

On April 2, 2004, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), the Board issued a NITU invoking the Trails Act and establishing a new easement for public recreation and so-called railbanking across the land. The Board issued two subsequent orders, on December 5, 2017, and on May 14, 2019, extending the rail-trail corridor further north. This litigation concerns the land taken by the Board's third order issued May 14, 2019.[7]

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[4] See Statement of Uncontroverted Material Facts (Statement of Facts) ¶¶1-2. A fuller description of the history of Sarasota and the creation of the railway line is provided in *Barron v. United States*, No. 21-2181, ECF No. 31-2, pp. 5-13.

[5] "Air Line" has nothing to do with airplanes. "Air Line" refers to a railway line constructed across land in a way that a train could operate on the shortest, most direct route.

[6] 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 affirmed that "No local or overhead traffic has moved over the Subject Line since prior to 2007, a period of more than ten years."). For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**. See also Statement of Uncontroverted Material Facts ¶¶8-10.

[7] See Exhibit 4 (NITU) to Plfs' Fourth Amended Compl., ECF No. 34-1; Statement of Facts ¶9.

The landowners whose property the government took for the creation of the public recreational trail sued the government seeking compensation because, but for the federal government invoking the Trails Act, these owners would have held unencumbered title to their land. 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."); *Brandt Rev. Trust v. United States*, 572 U.S. 93, 105 (2014) ("if the beneficiary of the easement abandons it, the easement disappears, and the landowner resumes his full and unencumbered interest in the land"). The imposition of a federal rail-trail corridor easement across these owners' land is a taking of private property without compensation in violation of the Fifth Amendment. See *Preseault v. United States*, 100 F.3d 1525, 1552 (Fed. Cir. 1996) (*en banc*) (*Preseault II*) ("When state-defined property rights are destroyed by the Federal Government's preemptive power...the owner of those rights is due just compensation."). See also *Behrens v. United States*, 59 F.4th 1339, 1344-45 (Fed. Cir. 2023) ("[I]t 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.") (quoting *Ladd v. United States*, 630 F.3d 1015, 1019 (Fed. Cir. 2010) (*Ladd I*), and citing *Ellamae Phillips Co. v. United States*, 564 F.3d 1367, 1373 (Fed. Cir. 2009)).

B. The legacy of the Legacy Trail litigation.

The federal government's creation of the Legacy Trail corridor spawned a generation of litigation. Because the federal government took private property without paying the owners, the owners had to sue the United States to vindicate their constitutional right to be justly compensated. The owners whose land was taken for the southern segment sued for compensation in 2007. See

Rogers v. United States, 90 Fed. Cl. 418, 418 (2009) (*Rogers I*).[8] Judge Williams determined the compensation the government owed the owners of the land taken for the southern segment of the Legacy Trail corridor in two separate week-long trials in *McCann Holdings v. United States*, 111 Fed. Cl. 608 (2013), and *Childers v. United States*, 116 Fed. Cl. 486 (2013). The compensation due the owners of the land taken in December 2017 for the middle segment of the Legacy Trail is the subject of *Cheshire Hunt v. United States*, No. 18-111.[9] The Board issued its third NITU extending the rail-trail corridor across these owners' land, on May 14, 2019.[10]

ARGUMENT

I. The federal government violated the Fifth Amendment by taking these landowners' private property without paying the owners "just compensation."

A. The Trails Act is a *per se* taking for which the federal government is "categorically" obligated to pay the landowner.

Congress wanted to preserve otherwise-abandoned railroad corridors to be repurposed for public recreation. Congress initially sought to accomplish this objective by delaying the railroad's

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[8] *Rogers* was subsequently bifurcated into separate cases based upon how the railroad originally acquired an interest in the strip of land used for the right-of-way. See *Bird Bay Executive Golf Course, Inc. v. United States*, No. 07-426, *Bay Plaza v. United States*, No. 08-198, *Breda v. United States*, No. 10-187, *Murphy v. United States*, No. 10-200, *Childers v. United States*, No. 08-1981, and *McCann Holdings, Ltd. v. United States*, No. 07-4261.

[9] Hugh Culverhouse, Jr., and his wife, Eliza, are prominent philanthropists. Palmer Ranch Holdings and other entities owned by Mr. Culverhouse were plaintiffs in *Cheshire Hunt*. The Culverhouse family donated an 82.2-acre tract of the Palmer Ranch land to Sarasota County for a conservation easement for a park and a community garden. See *Palmer Ranch Holdings v. CIR*, 812 F.3d 982 (11th Cir. 2016), 107 T.C.M. 1408 (T.C. Memo. 2014). The property the Culverhouse family donated was worth $25.2 million for which the Culverhouse family took a charitable tax deduction. *Id.* The IRS challenged the value of the donation, and the IRS lost. The Eleventh Circuit affirmed that the full value of the property the Culverhouse family donated.

[10] This northern segment of the Legacy Trail involves the property in this litigation as well as *Barron v. United States*, No. 21-2181, and *Easey v. United States*, No. 19-716. The northern segment also gave rise to the federal Quiet Title Act lawsuit in U.S. District Court against Sarasota County and the United States. See *Grames v. Sarasota County*, 2022 WL 218486, at *1 (M.D. Fla. Jan. 25, 2022). Following this Court's January 2022 decision in *Cheshire Hunt*, 158 Fed. Cl. 101, 110 (2022), the plaintiffs in *Grames* dismissed their quiet title action.

authority to abandon railroad service across unprofitable railway corridors for six-months to allow a non-railroad (such as a local government or a private conservation organization) to acquire the otherwise-abandoned right-of-way for public recreation. See *National Wildlife Federation v. Interstate Commerce Comm'n*, 850 F.2d 694, 697 (DC Cir. 1988). This scheme didn't work because, under state-law, the railroad had nothing to sell or transfer. 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; *Preseault I*, 494 U.S. at 8. Landowners' state-law "reversionary" interest in the land was a "problem," since "many railroads do not own their rights-of-way outright but rather hold them under easements [and]...the property reverts to the abutting landowner upon abandonment of rail operations."[11]

So, in 1983, Congress amended the Trails Act adding section 8(d), providing "interim [public recreational 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 preempting state law and "destroying" and "effectively eliminating" landowners' state-law reversionary property interests and thereby allowing the Board to impose a new easement for railbanking and public recreation.[12] Once the Board invokes section 8(d) of the Trails Act,

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[11] *Preseault I*, 494 U.S. at 7-8. "Reversionary" is a shorthand term for the fee owner's interest in the land unencumbered by an easement. "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.

[12] "It is settled law that a Fifth Amendment taking occurs in Rails-to-Trails cases when government action *destroys* state-defined property rights by converting a railway easement to a recreational trail, if trail use is outside the scope of the original railway easement." *Ladd I*, 630 F.3d at 1019 (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).

> [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 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, Scalia, and Kennedy, JJ., 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 "exclusive and plenary." *Chicago & N.W. Transp. v. Kalo Brick & Tile Co*., 450 U.S. 311, 321 (1981).

The Board's invocation of the Trails Act allows the railroad to sell or give the right-of-way to a non-railroad "trail-sponsor" even though, under state law and the terms of the original railroad easement, the railroad had no property interest in the land and no ability to transfer any interest in the right-of-way to a non-railroad. See *East Alabama Ry. 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").[13]

A grant from a landowner to a railroad describing a strip of land used for a railway line is an *easement*, not a conveyance of title to the *fee simple estate* in the strip of land across which the railway line is built. As the Supreme Court explained, this easement (which is a servitude, not

[13] 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"). See also Mark F. (Thor) Hearne, II, *The Trails Act: Railroading Property Owners and Taxpayers for More Than a Quarter Century*, 45 REAL PROPERTY, TRUST & ESTATE L.J. 115, 131-32 (Spring 2010), attached as **Exhibit 3**.

ownership of the fee estate) terminates when the railroad no longer uses the strip of land for the operation of a railway. See *Brandt*, 572 U.S. at 105.[14] Thus, when the federal government invokes the Trails Act by issuing an order encumbering an owner's land with a new easement for a public recreational rail-trail corridor without paying "just compensation," the federal government has taken private property in violation of the Fifth Amendment. See *Preseault I*, 494 U.S. at 8.

In *Preseault I*, Justice O'Conner wrote a concurring opinion to emphasize that "[a]lthough the [Board]'s actions may pre-empt the operation and effect of certain state laws, those actions do not displace state law as the traditional source of the real property interests." 494 U.S. at 22-23 (O'Connor, Scalia, and Kennedy, JJ., concurring). The Board's actions delaying the landowner's reversionary interest, Justice O'Connor continued, "burdens and defeats the property interest rather than suspends or defers the vesting of those property rights." *Id.* "Any other conclusion," she concluded, "would convert the [Board]'s power to pre-empt conflicting state regulation of interstate commerce into the power to pre-empt the rights guaranteed by state property law, a result incompatible with the Fifth Amendment." *Id.*[15]

The government may not redefine established property interests without paying the property owner. Chief Justice Rehnquist explained in *Leo Sheep v. United States*, 440 U.S. 668, 687-88 (1979), and Chief Justice Roberts explained in *Brandt*, 572 U.S. at 105, that interests in

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[14] "Unlike most possessory estates, easements...may be unilaterally terminated by abandonment, leaving the servient owner with a possessory estate unencumbered by the servitude. In other words, if the beneficiary of the easement abandons it, the easement disappears, and the landowner resumes his full and unencumbered interest in the land." Brandt, 572 U.S. at 105 (internal quotation and citation omitted; quoting RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES §1.2, Comment d, §7.4, Comments a, f).

[15] Citations omitted; citing and quoting, among other authorities, *Ruckelshaus v. Monsanto Co*., 467 U.S. 986, 1003-04, 1010-12 (1984) ("If Congress can 'pre-empt' state property law in the manner advocated by EPA, then the Taking Clause has lost all vitality. [A] sovereign, 'by *ipse dixit*, may not transform private property into public property without compensation.... This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent.'").

land are defined and their dimensions established at the time the property interest was established. This summer the Court reaffirmed the principle that individuals' rights in their property are defined by state law and by "'traditional property law principles,' plus historical practice and this Court's precedents." *Tyler v. Hennepin County*, 143 S.Ct. 1369, 1375 (2023).[16] In other words, the federal government and federal agencies, such as the Board, do not define (and cannot redefine) or determine the nature or dimensions of private property. And when the government acts to redefine established property interests without paying "just compensation," the government has violated the Fifth Amendment.

The Supreme Court has emphasized that there is a "special need for certainty and predictability where land titles are concerned, and we are unwilling to upset settled expectations to accommodate some ill-defined power to construct public thoroughfares without compensation." *Leo Sheep*, 440 U.S. at 687-88. The Court reaffirmed this principle in *Brandt*, stating, "[w]e decline to endorse [the government's] stark change in position, especially given 'the special need for certainty and predictability where land titles are concerned.'" 572 U.S. at 110 (quoting *Leo Sheep*, 440 U.S. at 687). As Bryan Garner and his contributing authors (including then-circuit judges Neil Gorsuch and Brett Kavanaugh) explained, the Rule of Property Doctrine dictates that adherence to precedent and respect for the principle of *stare decisis* is of particular importance in cases that involve established interests in real property:

> The "rule-of-property doctrine"…holds that *stare decisis* applies with 'peculiar force and strictness' to decisions governing real property…. Stability in rules governing property interests is particularly important because those rules create unusually strong reliance interests…. As the Supreme Court explained in a mid-

[16] In *Tyler*, the Supreme Court also reaffirmed its prior holdings in *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 560 U.S. 702, 707 (2010), *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980), and other decisions holding that a court's redefinition of the rules defining property interests would be a taking of private property the Takings Clause forbids without the government paying the owner just compensation. See also *Brandt*, 572 U.S. at 105 (quoting *Leo Sheep*, 440 U.S. at 687-88).

> 19th-century case: 'Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change.'"
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> Bryan Garner, *et al.*, THE LAW OF JUDICIAL PRECEDENT (2016), pp. 421-22.[17]

In *Preseault II*, the Federal Circuit held 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]." 100 F.3d at 1550. In *Toews v. United States*, the Federal Circuit observed, "it appears beyond cavil that use of these easements for a recreational trail – for walking, hiking, biking, picnicking, frisbee playing, with newly-added tarmac pavement, park benches, occasional billboards, and fences to enclose the trailway – is not the same use made by a railroad, involving tracks, depots, and the running of trains." 376 F.3d 1371, 1376 (Fed. Cir. 2004).[18] Most recently, in *Behrens*, the Federal Circuit explained, "a taking effectuated by the NITU occurs at the time that, had there been no NITU, the easement would have terminated under state law." 59 F.4th at 1343 (citing *Preseault II*, 100 F.3d at 1550, and *Caquelin v. United States*, 959 F.3d 1360, 1363, 1370-73 (Fed. Cir. 2020)). *Behrens* held, "[i]t is now well-settled that the issuance of a NITU under the Trails Act may result in a taking of property owned by the original grantor of the easement." 49 F.4th at 1342 (citing *Preseault I*, 494 U.S. at 8).

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 Supreme Court has further explained, "the right to exclude is universally held to be a fundamental

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[17] Quoting *Minnesota Mining Co. v. National Mining Co.*, 70 U.S. 332, 334 (1865).

[18] See also *Trevarton v. South Dakota*, 817 F.3d 1081, 1087 (8th Cir. 2016) ("Though the conveyance here took the form of a quit claim deed from [the railroad] to Defendants, as a matter of federal law it granted 'a new easement for the new use.'") (quoting *Preseault II*, 100 F.3d at 1550).

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 v. Hassid*, 141 S.Ct. 2063, 2072-73 (2021).[19] 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). 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") (emphasis added). The government's obligation to compensate the owner for taking the owner's property is a foundational tenant going back to Magna Carta and later expounded upon by Blackstone.[20]

B. The government's obligation to compensate these owners arose immediately upon the Board issuing its May 2019 order invoking the Trails Act.

The federal government's liability in Trails Act cases turns upon three points set forth in *Preseault II*, 100 F.3d at 1533, and summarized in *Ellamae Phillips*, 564 F.3d at 1373, where the Federal Circuit explained that "the determinative issues for takings liability are

> (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

[19] See also *Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 433 (1982), *United States v. Causby*, 328 U.S. 256, 267 (1946), and *Kaiser Aetna v. United States*, 444 U.S. 164, 179-80 (1979) ("[W]e hold that the 'right to exclude,' so universally held to be a fundamental element of the property right, falls within this category of interests that the Government cannot take without compensation.").

[20] See *Horne*, 576 U.S. at 358 ("The principle reflected in the [Takings] Clause goes back at least 800 years to Magna Carta...."). See also *Cedar Point Nursery*, 141 S.Ct. at 2072 ("According to Blackstone, the very idea of property entails 'that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.'") (quoting William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND (1766), v. 2, p. 2).

> (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).[21]

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. *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.").[22] The government took these owners' private property in May 2019, almost a half-decade ago. The government has still not honored its constitutional obligation to pay these owners that just compensation our Constitution requires the government to pay them.

When the government takes private property without paying the owner, the government has violated the owner's Fifth Amendment right to private property. See *Knick*, 139 S.Ct. at 2170

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[21] Paragraph breaks added. The third point in this analysis ("*if the* grant of the railroad's easement was broad enough to encompass a recreational trail") arises *only* when the original easement granted the railroad included a right for the railroad to sell the right-of-way to a non-railroad to use the strip of land for public recreation. For example, the Federal Circuit, in *Behrens*, 59 F.4th at 1348, held that a taking occurred under the first two points when "easements granted to the railroad were not broad enough to encompass interim trail use or railbanking, and thus Fifth Amendment takings have occurred."

[22] 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); *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) (*Ladd II*) ("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."). The Federal Circuit affirmed this settled rule of law most recently in *Behrens*, 59 F.4th at 1345, and *Memmer v. United States*, 50 F.4th 136, 145 (Fed. Cir. 2022). In 2009, then-Solicitor General Elena Kagan wrote for the United States, "When the NITU is issued, all the events have occurred that entitle the claimant to institute an action based on federal-law interference with reversionary interests, and any takings claim premised on such interference therefore accrues on that date." Brief for the United States in *Illig v. United States*, 2009 WL 1526939, *12-13 (S.Ct. No. 08-852, May 29, 2009).

("a property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it"). The government's violation of the Fifth Amendment is an ongoing violation of the owner's constitutional right that is not remedied until the government pays the owner. See *Cedar Point Nursery*, 141 S.Ct. at 2170-72; James W. Ely, Jr., THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS (3rd ed. 2008), p. 55 ("The takings clause established an additional safeguard for property owners. This provision significantly limits the power of eminent domain under which government can seize private property for a public purpose").[23]

While the government need not pay the owner *on the day* the government takes an owner's property, the government must pay the owner *promptly*. In *Joslin Mfg. Co. v. City of Providence*, the Supreme Court held "the taking of property for public use...need not be accompanied or preceded by payment, but that the requirement of just compensation is satisfied when the public faith and credit are pledged to a *reasonably prompt* ascertainment and payment, and there is adequate provision for enforcing the pledge." 262 U.S. 668, 677 (1923) (emphasis added). As inscribed in this courthouse's lobby, President Lincoln declared, "It is as much the duty of government to render *prompt* justice against itself, in favor of citizens, as it is to administer the same, between private individuals."[24] But, rather than promptly paying these owners, the government forced them to retain counsel, sue the government, and incur the very substantial cost of this litigation necessary to vindicate their constitutional right to be justly compensated.

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[23] The Supreme Court has relied upon Professor Ely's scholarship in *Brandt*, 572 U.S. at 96, *United States Forest Serv. v. Cowpasture River Preservation Ass'n*, 140 S.Ct. 1837, 1844 (2020), and *Sveen v. Melin*, 138 S.Ct. 1815, 1828 (2018) (Gorsuch, J., dissenting). In addition to the U.S. Supreme Court, twenty-one federal courts have relied upon Professor Ely's scholarship, including the United States Courts of Appeals for the Second, Fourth, Sixth, Ninth, Tenth, Eleventh, and Federal Circuits. See, *e.g.*, *Preseault II*, 100 F.3d at 1542.

[24] Emphasis added.

Justice Thomas concurred in *Knick* to emphasize that the government's "sue me" approach to the Takings Clause is untenable." 139 S.Ct. at 2180. Justice Thomas continued,

> The Fifth Amendment does not merely provide a damages remedy to a property owner willing to "shoulder the burden of securing compensation" after the government takes property without paying for it. Instead, it makes just compensation a "prerequisite" to the government's authority to "tak[e] property for public use." A "purported exercise of the eminent-domain power" is therefore "invalid" unless the government "pays just compensation before or at the time of its taking."[25]

In summary, the federal government violated the Constitution by taking private property from the owners of over two hundred properties in Sarasota, Florida, without paying these owners "just compensation." This Court's task, as President Lincoln said when he proposed the creation of this Court, is to "render prompt justice against [the government], in favor of its citizens...."[26] The justice these citizens and landowners are due is to be paid full and fair compensation for that property the government took from them.

II. These plaintiffs own the property the federal government took from them.

A. *Preseault II* provides the paradigm by which this Court should analyze a railroad's interest in strips of land used for railway lines.

This litigation recalls Yogi Berra's famous observation, "this is *déjà vu* all over again." In *Preseault II*, the Federal Circuit answered *precisely* the same question this Court is now presented. To wit: Did the owners whose property was condemned for a railroad right-of-way in the early 1900s, and the owners who signed documents granting the railroad a right-of-way across their land in the 1900s, give the railroad title to the *fee estate* in a strip of land upon which the railroad built and operated a railway line, or did the landowner grant the railroad an *easement* to operate a

[25] 139 S.Ct. at 2180 (quoting dissent from the Court's denial of certiorari in *Arrigoni Enterprises v. Durham*, 136 S.Ct. 1409, 1409 (2016)).

[26] First Annual Message to Congress, Cong. Globe, 37th Cong., 2d Sess., app. 2 (1862).

railway line across the strip of land?[27] *Preseault II* directs this Court how to determine whether the 1926 Condemnation Decree and the other nine documents granted the railroad *an easement* for a railroad right-of-way across the owners' land, or instead, conveyed title to the *fee estate* in the strip of land upon which the railroad operated a railway line. When *Preseault II* is followed, it is clear that the railroad was only granted an easement.

Preseault II involved three tracts of land, including the "old Barker Estate" tract, over which the railroad had gained its right-of-way by condemnation. 100 F.3d at 1531. The Claims Court had determined that "[t]he portion of the right-of-way consisting of the parcel of land condemned from the Barker Estate and taken by commissioner's award is indisputably an easement under the law of the State of Vermont." *Id.* at 1535. Following an "independent examination" of the Claim Court's finding that the Barker-tract right-of-way was an easement, the Federal Circuit concluded, "there is little real dispute about this. That was the rule in the early Vermont cases, and continues to be the rule today." *Id.* (citing *Dessureau v. Maurice Memorials, Inc.*, 318 A.2d 652, 653 (Vt. 1974), and *Troy & Boston Railroad v. Potter*, 42 Vt. 265, 274 (1869)). Quoting the Vermont Supreme Court in *Dessureau*, 318 A.2d at 653, the Federal Circuit acknowledged and affirmed that a taking by a railroad "pursuant to statutory authority, gave the railroad only an easement, not a fee, and upon abandonment, the property reverts to the former owner." *Id.* at 1535. The Federal Circuit further explained that the "Vermont cases are consistent in holding that, practically without regard to the documentation and manner of acquisition, when a railroad for its purposes acquires an estate in land for laying track and operating railroad

[27] Judge Plager authored the Federal Circuit's *en banc* decision in *Preseault II.* Judge Plager's authorship of *Preseault II* is noteworthy because Judge Plager is distinguished for his expertise in property law. Before taking the bench, Judge Plager graduated from University of Florida Law School and was a professor of property and environmental law at the universities of Florida, Wisconsin, and Illinois before becoming dean of Indiana University Law School. See www.repository.law.indiana.edu./plager.

equipment thereon, the estate acquired is no more than that needed for the purpose," which "typically means an easement, not a fee simple estate. *Id.*

Preseault II's holding that the railroad acquired only an easement across the Barker land, and not title to the fee estate, applies equally to the 1926 Condemnation Decree at issue in this litigation. See, *infra*, pp. 56-59. This principle (that a railroad exercising eminent domain power to acquire a right-of-way obtains only an easement or a servitude) is a principle common to Florida and every other state we have surveyed.

The Federal Circuit then turned to the railroad's interest in the parcel that was conveyed to the railroad by the Manwell deed. This deed, the Federal Circuit explained, first appeared to be an unrestricted warranty deed by which Fredrick and Mary Manwell conveyed the railroad fee simple title to a strip of land. See *Preseault II*, 100 F.3d at 1535. The Federal Circuit noted that the Manwell deed contained "the usual habendum clause found in a warranty deed, and purports to convey the described strip of land to the grantee railroad '[t]o have and to hold the above granted and bargained premises...unto it the said grantee, its successors and assigns forever, to its and their own proper use, benefit and behoof forever'[, and] further warrants that the grantors have 'a good, indefeasible estate, *in fee simple*, and have good right to bargain and sell the same in manner and form as above written....'" *Id.* (emphasis added).

The Federal Circuit continued, "In short, the 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 (emphasis added). The Federal Circuit noted that "the deed was given following survey and location of the right-of-way." *Id.* at 1536. The Federal Circuit held that, "despite the apparent terms of the deed indicating a transfer in fee, the legal effect was to convey only an easement." *Id.* After citing *Hill v. Western Vermont Railroad*, 32 Vt. 68, 73 (1859), and *Troy*, 42 Vt. at 274, the Federal Circuit held,

> Thus it is 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. Here, the evidence is that the Railroad had obtained a survey and location of its right-of-way, after which the Manwell deed was executed confirming and memorializing the Railroad's action.
>
> On balance it would seem that, consistent with the view expressed in *Hill*, the proceeding retained its *eminent domain flavor, and the railroad acquired only that which it needed, an easement for its roadway*. Nothing the Government points to or that we can find in the later cases would seem to undermine that view of the case....
>
> *Preseault II*, at 100 F.3d at 1537 (paragraph break and emphasis added).

In *Barron v. United States* the government argues this Court should overlook the Federal Circuit's *en banc* analysis in *Preseault II* because the Preseaults' property was in Vermont, while these owners' property is in Florida. But, not so fast. To cabin *Preseault II* in this manner, the government must first demonstrate that the relevant principles of property law in Vermont and Florida were different in the early 1900s when the railroad right-of-way easements in this case and in *Preseault II* were established. This the government cannot do.

The relevant law in both Vermont and Florida (and for that matter in every other state) was *identical* in the early 1900s. In fact, the leading decisions of the Vermont Supreme Court upon which the Federal Circuit relied in *Preseault II* – *Hill* and *Troy* – were cited by this Court and the courts of Vermont, Missouri, Kansas, Georgia, Texas, North Carolina, New York, Ohio, Colorado, Illinois, Iowa, and New Hampshire as authority for the proposition that railroads obtain only an easement in strips of land used for a railway line.[28] Not only that, Vermont Supreme Court Chief

[28] See, *e.g.*, *Jackson v. United States*, 135 Fed. Cl. 436, 457 (2017) ("Here, as in *Preseault II*, the governing state statute strongly supports an interpretation that the [railroad] form conveyances granted the railroad an easement, not a fee simple.") (applying Georgia law) (citing and quoting *Preseault II*, 100 F.3d at 1534-35, 1537, and *Hill*, 32 Vt. at 76); *Carpenter v. United States*, 147 Fed. Cl. 643, 653 (2020) (applying Vermont law) ("The [Vermont Supreme C]ourt [in *Hill*] found the [railroad] only had the power to exercise its eminent domain power to acquire easements.") (citing *Hill*, 32 Vt. at 74); *Page v. Heineberg*, 40 Vt. 81, 83 (1868) ("A deed of the fee of land for railway purposes, has been held to convey no attachable interest.") (citing *Hill*, 32 Vt. at 68, and

Justice Redfield, who authored the *Hill* decision, also authored the nation's leading treatise on railroad law. See Isaac F. Redfield, THE LAW OF RAILWAYS (3rd ed. 1867). Florida courts have cited Vermont Chief Justice Redfield's work as a leading authority on railroad law in the late 1800s and early 1900s. See, *e.g.*, *Martin v. Pensacola & G.R. Co.*, 8 Fla. 370, 382 (1859); *Pensacola & A.R. Co. v. Jackson*, 21 Fla. 146, 151 (1884) ("Redfield, C.J., an authority upon railroad law...."); *Holland v. State*, 15 Fla. 455, 543 (1876) ("Mr. Redfield, in his valuable work, 'The Law of Railways,' published in 1867...") (Bryson, J., concurring).

Redfield, LAW OF RAILWAYS, v.1, p. 248); *West Texas Utilities Co. v. Lee*, 26 S.W.2d 457, 459 (Tex. Ct. App. 1930) ("a deed should be so interpreted as to give effect to the intention of the parties, and where the conveyance is made for a particular use it must of necessity carry the implication of such limitation upon the estate conveyed") (citing *Hill*, 32 Vt. at 74); *Abercrombie v. Simmons*, 81 P. 208, 210 (Kan. 1905) ("parties may by their contract create an estate less than a fee, or a right less in extent than that which the law authorizes the grantee to acquire") (citing *Hill*, 32 Vt. at 74); *Beasley v. Aberdeen & Rockfish R. Co.*, 59 S.E. 60, 62 (N.C. 1907) ("We have construed such grants of easements to railroads as conveying no more than may be reasonably within the contemplation of the parties.") (citing and quoting *Hill*, 32 Vt. at 68); *Bradley v. Crane*, 94 N.E. 359, 363 (NY Ct. App. 1911) ("No reason or purpose demanded or permitted that the city should take an estate greater than the opening and extending of the road compelled and superfluous thereto, which did not likewise demand that it take an excessive quantity of land. In fact, excess of both land and interest or estate was by the conveyance forbidden it.") (citing *Hill*, 32 Vt. at 68); *Malone v. City of Toledo*, 28 Ohio St. 643, 651 (1876) ("under no circumstances, would the state take a fee simple absolute under this statute, but that at the best it would be a fee simple conditional or a fee simple determinable on condition") (citing *Hill*, 32 Vt. at 73); *Kansas City S. Ry. Co. v. Sandlin*, 158 S.W. 857, 858 (Mo. Ct. App. 1913) ("all such conveyances must be construed as passing an easement only to the grantee") (citing *Hill*, 32 Vt. at 74, and cases in West Virginia, Kansas, Michigan, Indiana, Iowa, North Carolina, and Ohio holding the same); *Atlanta, B&A Ry. Co. v. Coffee County*, 110 S.E. 214, 216 (Ga. 1921) (grantor "did not intend to vest in that company an absolute fee-simple title to the strip of land in controversy") (citing and quoting *Hill*, 32 Vt. at 74); *St. Onge v. Day*, 18 P. 278, 280 (Co. 1888) ("It should not be inferred from what has been said that the railway company has right to burden the property with any other or different use than that for which it was granted or acquired.") (citing *Troy & Boston RR*, 42 Vt. at 274); *Woodward Governor Co. v. City of Loves Park*, 82 N.E.2d 387, 390 (Ill. App. Ct. 1948) (citing and quoting *Troy & Boston RR*, 42 Vt. at 265); *Vermilya v. Chicago, M & St. P.RR. Co.*, 24 N.W. 234, 237 (Iowa 1885) (decisions of other states, including *Troy & Boston RR*, 42 Vt. at 265, "are in no manner in conflict with our views"); *Weeks v. Edmunds*, 51 N.H. 619, 620 (Sup. Ct. 1872) ("Redfield, in his treatise on railways, cites with approbation this language...as expressing the true title which railroads in this country derive by their compulsory power in taking lands.") (citing *Troy & Boston RR*, 42 Vt. at 265).

In addition to the common law, Florida statute directs that voluntary conveyances grant the railroad only an easement. See Fla. Stat. §2683 (1914); *Behrens*, 59 F.4th at 1348 ("we have held that under Vermont law the preservation of a tract of land for future rail use under the Trails Act does not transform interim trail use into a railroad purpose.") (citing *Preseault II*, 100 F.3d at 1550). See also, *infra*, pp. 39-41; *Castillo v. United States*, 952 F.3d 1311, 1320-21 (Fed. Cir. 2020).[29] Florida's Supreme Court expressly adopted the Missouri Supreme Court's definition of "voluntary conveyances." See *Rogers v. United States*, 184 So.3d 1087, 1094 (Fla. 2015) (*Rogers IV*) (citing *Clay v. Missouri State Hwy. Comm'n*, 239 S.W.2d 505, 508 (Mo. 1951), and *Brown v. Weare*, 152 S.W.2d 649, 653 (Mo. 1941)). The Florida and Missouri voluntary-conveyance statutes were a model law that many states adopted. See *Rogers IV*, 184 So.3d at 1094, 1096, n.5.

Simply put, there is no basis upon which this Court may conclude Vermont law and Florida law were different in any relevant respect in the early 1900s. The principles of Vermont property law in the early 1900s, upon which the Federal Circuit relied in *Preseault II*, are indistinguishable from Florida law in the early 1900s. So too with regard to Missouri law upon which the Federal Circuit reached its recent decision in *Behrens*, 59 F.4th at 1348. The 1926 Condemnation Decree and the text of the voluntary grants at issue here are essentially identical to those the Federal Circuit considered in *Preseault II* and *Behrens*. The principle upon which the Federal Circuit decided *Preseault II* and *Behrens* is neither "Vermont-specific," nor "Missouri-specific," but is a fundamental principle governing conveyances of strips of land to railroads in Florida.

[29] The Federal Circuit, in *Castillo*, applied the centerline presumption to railroad rights-of-way in Florida despite the lack of being "pointed to a decision under Florida law that specifically rules on a contested issue about whether railroad rights-of-way." 952 F.3d at 1320. The Federal Circuit applied the centerline presumption to railroad rights-of-way in Florida because there was an "absence of a contrary indication under Florida law" and "many other jurisdictions – very much the predominant number among those whose law has been cited to us – have applied the centerline presumption to railroad rights-of-way." *Id.* at 1321 (citing, *inter alia*, *Boyles v. Missouri Friends of the Wabash Trace Nature Trail, Inc.*, 981 S.W.2d 644, 650 (Mo. Ct. App. 1998)).

B. The railroad was granted only an easement, not title to the fee estate in the strip of land.

1. The grantor's intent governs the interpretation of the document.

The prime directive guiding the interpretation of instruments conveying an interest in real property is to achieve the intention of the grantor at the time the interest was created. 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) (emphasis added). Florida law directs a court to "consider the language of the entire instrument in order to discover *the intent of the grantor*, both as the character of estate and the property attempted to be conveyed, and to so construe the instrument as, if possible to effectuate such intent." *Rogers I*, 90 Fed. Cl. at 429 (citing *Reid v. Barry*, 112 So. 846, 852 (Fla. 1927), and *Thrasher v. Arida*, 858 So.2d 1173, 1175 (Fla. Ct. App. 2003)) (emphasis added). See also *Castillo*, 952 F.3d at 1322 ("a party may rebut the centerline presumption by 'present[ing] evidence of the *grantor's intent* not to convey to the centerline' of the railway") (emphasis added) (quoting *Bischoff v. Walker*, 107 So.3d 1165, 1171 (Fla. Ct. App. 2013).

This Court's task is to "ascertain[ ] the thought or meaning of the author of a legal document according to the rules of language and subject to the rules of law" when the document was created. Antonin Scalia & Bryan Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012), p. 53. Ascertaining the grantor's intention requires this Court to follow several canons of construction, including: (1) considering the text of the instrument *as a whole* giving the words used their ordinary meaning; (2) the law and customs (both statutory and common law) when the instrument was created; and (3) the context in which the instrument was drafted and the purpose for which the document was created.

2. A "right-of-way" is an easement.

The ordinary-meaning rule applies to the interpretation of those documents granting (or memorializing) the railway line between Sarasota and Venice. Scalia and Garner explain that "Justice Joseph Story's words are as true today as they were when written in the middle of the 19th Century and they are true not just of the constitution but of all other legal instruments," in that

> [E]very word employed in the constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it... They are instruments of a practical nature, founded on the common business of human life, adapted to common wants, designed for common use, and fitted for common understandings.[30]

A document describing a railroad's interest in land as a "right-of-way" is an *easement*. The ordinary meaning of *right-of-way* is "a legal right of passage over another person's ground[;] the area over which a right-of-way exists[;] the strip of land over which is built a public road[;] the land occupied by a railroad especially for its main line."[31] Professors Jon W. Bruce and James W. Ely, Jr., explain, in THE LAW OF EASEMENTS & LICENSES IN LAND (2021-22) §1:22, "[g]enerally, 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." The use of the term "right of way" generally suggests the creation of only an easement.[32] See also THOMPSON ON REAL PROPERTY (2nd ed.) §60.03(a)(7)(ii).

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[30] READING LAW, p. 69 (citing and quoting Joseph Story, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES (1833), pp. 157-58).

[31] MERRIAM-WEBSTER DICTIONARY, available at: https://www.merriam-webster.com/dictionary/right-of-way. BLACK'S LAW DICTIONARY (11th ed.) (Bryan A. Garner, ed.), p. 1587, provides, "right-of-way. (18[th] c[entury]) 1. The right to pass through property owned by another. ... 2. The right to build and operate a railway line or a highway on land belonging to another, or the land so used. ... 4. The strip of land subject to a nonowner's right to pass through." Under "right-of-way deed," BLACK'S simply directs the reader to the definition of "*easement deed*." *Id.* (italics in original).

[32] The Federal Circuit relied upon Professors Bruce and Ely's treatise in *Preseault II*, 100 F.3d at 1542 ("In a leading treatise on the subject, the authors state the general rule to be "[w]hen precise

Florida law is in accord. See *Mills v. United States*, 147 Fed. Cl. 339, 347 (2020) ("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.'") (quoting "Right-of-Way," in BLACK'S LAW DICTIONARY (11th ed. 2019)). In *Rogers I*, 90 Fed. Cl. at 429-30, this Court quoted *Trailer Ranch, Inc. v. City of Pompano Beach*, 500 So.2d 503, 506 (Fla. 1986), for the proposition that Florida courts construe the words "across, over, and under" in a deed as indicative of an easement, not a fee simple estate; and this Court quoted *Nerbonne, N.V. v. Florida Power Corp.*, for the principle that "[t]he conveyance of a right-of-way is generally held to create only an easement." 692 So.2d 928, 928 n.1 (Fla. Ct. App. 1997) (citing Bruce & Ely §1.06[1] (rev. ed. 1995)).

The U.S. Supreme Court likewise holds the words "right-of-way" mean an easement. See *Brandt*, 572 U.S. at 110 ("More than 70 years ago, the Government argued before this Court that a right of way granted under the [General Railroad Right-of-Way Act of 1875] was a simple easement. The Court was persuaded, and so ruled. Now the Government argues that such a right of way is tantamount to a limited fee with an implied reversionary interest. We decline to endorse such a stark change in position, especially given 'the special need for certainty and predictability where land titles are concerned.'") (quoting *Leo Sheep Co*. 440 U.S. at 687). More recently in *Cowpasture*, a case arising under the Trails Act, the Court held, "[t]he Trails Act refers to the granted interests as 'rights-of-way,' both when describing agreements with the Federal Government and with private and state property owners. When applied to a private or state property owner, 'right-of-way' would carry its ordinary meaning of a limited right to enjoy another's land." 140 S.Ct. at 1845. All of these authorities direct us to the unsurprising, but

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language is employed to create an easement, such terminology governs the extent of usage.") (quoting Bruce & Ely, THE LAW OF EASEMENTS & LICENSES IN LAND ¶8.02[1] (rev. ed. 1995)).

important, conclusion that documents describing the interest in property as a *right-of-way* mean an *easement*, not title to the fee estate.

3. A document is interpreted in light of the law and context when the document was drafted to accomplish the purpose for which the document was created.

A document conveying an interest in real property must be interpreted in its totality considering the *context* in which the document was created and the *purpose* for which the document was created with the objective of accomplishing the *intent of the grantor*. The RESTATEMENT directs that if an "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." RESTATEMENT (THIRD): SERVITUDES §2.2 (quoted, *infra*, pp. 29-30). Justice Scalia and Bryan Garner write, in READING LAW, pp. 167-68, that:

> Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and the physical and logical relation of its many parts…. *Context is a primary determinant of meaning*. A legal instrument typically contains may interrelated parts that make up for the whole. The entirety of the documents thus provides the context for each of its parts. When construing the United States Constitution in *McCulloch v. Maryland*, 17 U.S. 316 (1819), Chief Justice John Marshall rightly called for "a fair construction of the whole instrument"…. The Supreme Court of the United States has said that statutory construction is a "holistic endeavor," and the same is true of construing any document.
>
> Many of the other principles of interpretation are derived from the whole-text canon – for example, the rules that an interpretation that furthers the document's purpose should be favored (§4 [presumption against ineffectiveness]), that if possible no word or phrase would be rendered superfluous (§26 [surplusage canon]), that a word or phrase is presumed to bear the same meaning throughout the documents (§25 [presumption of consistent usage]), that provisions should be interpreted in a way that renders them compatible rather than contradictory (§27 [harmonious-reading canon]), that irreconcilably contradictory provisions should be given no effect (§29 [irreconcilability canon]), and that associated words bear on one another's meaning (*noscitur a sociis*) (§31 [associated-words canon]).

When the landowners executed these documents in 1910, they did so in the context and understanding of the law and events of that age. At the turn of the Twentieth Century there was a

very limited transportation infrastructure. Travel, especially in Florida, was by ship (down the Gulf and Atlantic coasts) and overland transportation was still primarily by horse.[33] Railroads were the rapidly emerging national transportation infrastructure. In 1910, railroads and railroad corporations were established and regulated under state law. The Transportation Act of 1920, which returned railroads to private operation following World War I and federalized their regulation under the I.C.C., did not exist.[34]

As discussed above, the obvious intent and purpose for which these landowners granted the railroad an interest in a strip of land described by reference to a railway line that had already been surveyed across the property was to establish a railroad line between Sarasota and Venice. The grantors were not intending to give the railroad the mineral interest under the strip of land or to give the railroad fee simple absolute title to a one-hundred-foot-wide strip of land the railroad could then sell to a non-railroad for some purpose other than operating a railroad across the land.

The legal environment in which the documents were created in the early 1900s was also different than now. Bertha Palmer, a widow and matriarch of the Palmer family, who owned much of the land in what is now Sarasota County, could not vote. The Nineteenth Amendment was not adopted until June 1919. The interest of married women in real estate was subject to dower and curtesy, which Florida did not eliminate until 1975. See Fla. Stat. §732.111.

In 1874, Florida adopted its Special Powers of Railroad Statute and other provisions governing a railroad's authority to condemn property by eminent domain and regulated the interest a railroad obtained in strips of land conveyed to railroads by voluntary conveyance or

[33] The Wright Brothers had only just made their first successful flight at Kitty Hawk in December 1903, and the *RMS Titanic* had not yet been launched, not to mention sunk. There was no interstate highway system, which was not established until 1956 under President Eisenhower. Henry Ford only began production of the Model T in 1908.

[34] See Esch-Cummins Act, Pub.L. 66-152, 41 Stat. 456 (1920).

condemnation.[35] 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 James W. Ely, Jr., RAILROADS & AMERICAN LAW (2001), pp. 197-98 (citing Simeon F. Baldwin, AMERICAN RAILROAD LAW (1904), p. 77).[36]

The practice of recording and documenting real estate conveyances in the early 1900s was also different than today. There were no photocopiers, and the typewriter, such as the Underwood #5, did not come into common use until the 1920s.[37] Documents transferring and interest in real estate were commonly preprinted forms with blanks, which were filled-in by handwriting (or later) by a typewriter. The preprinted real estate conveyance forms came in several varieties with preprinted boilerplate phrases such as "party of the first part," "party of the second part," "grant,

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[35] See Chapter 1987, Laws of Florida, which sections were recodified several times, including in 1892 as §2241, and in 1941 as §360.01. See also *Rogers IV*, 184 So.3d at 1092 ("In substance, this statute remained the same from the time of its adoption in 1874 until it was repealed in 1982...."). 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.*

[36] 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 Isaac F. Redfield, THE LAW OF RAILWAYS (1869)); *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 Bryon K. Elliott & William F. Elliott, A TREATISE ON THE LAW OF RAILROADS (1921)).

[37] See generally Richard Polt, THE TYPEWRITER REVOLUTION: A TYPIST'S COMPANION FOR THE 21ST CENTURY (2015).

bargain, sell and convey," and "TO HAVE AND TO HOLD the same in fee simple forever." In the case of a railroad establishing a right-of-way across land owned by many owners, the railroad company's agent (or "land man") would use a preprinted form, often one the railroad had printed for this purpose. See *Preseault II*, 100 F.3d at 1535 (describing railroad form deed with these elements). The document related to the Pendleys' land is a good example of this practice. See **Exhibit 4** (Tampa Southern Railway and Pendley unexecuted document). When preprinted form deeds are used, the information specific to that particular transaction (the date, the names of the parties, and the description of the property) is completed by hand. The other language is part of the preprinted form – the "boilerplate" language.

The party recording the instrument (typically the grantee) would submit the document to the Recorder of Deeds, and a scrivener would copy the document by hand into a book. After the document was copied by hand into the register of deeds, the document would be referenced in the grantor and grantee index and the original document returned to the grantee. The scrivener would transcribe in handwriting the entire document, both the preprinted form language as well as the information that was filled-in on the blanks. Occasionally errors in the handwritten transcription of the document were made. This is why Florida (and other states) make provision to correct a scrivener's error. See Florida Statute, Title XL, Ch. 689.

Florida, like other states, follows the rule that written language controls over preprinted boilerplate form language and that, if there is a conflict between the printed form and the handwritten or typewritten language there is an ambiguity concerning the parties' intent.

> The supreme court has held that when a release has both written and preprinted provisions concerning the intended releasees, the intent of the parties as to who is to be released is a question of fact. See *Hurt v. Leatherby Ins. Co.*, 380 So.2d 432, 434 (Fla. 1980) (holding that because the preprinted language routinely included in releases was often "boilerplate" language that did not necessarily reflect the intent of the parties, the presence of that "boilerplate" language could not be construed as a matter of law to reflect the parties' intent). Thus, when there are two types of

> release language – some written and some preprinted – within a single form, *a latent ambiguity exists that requires the parties' intent to be determined* as a matter of fact.
>
> *Enterprise Leasing Co. v. Demartino*, 15 So.3d 711, 716 (Fla. Ct. App. 2009) (emphasis added).

This background provides the context and principles necessary to determine the grantor's intent when the documents at issue here were created and executed. Recourse to magic words and boilerplate phrases extracted from the text of the entire document divorced from the context and purpose for which the grantor executed the document is contrary to canons governing the proper construction of an instrument to accomplish the grantor's intent.

4. It is not necessary that a document include "limiting language" to be an easement.

This Court is presented a binary proposition. In 1910 the landowners signing these documents intended to either: (a) grant the railroad an easement across a strip of the owner's land for the purpose of operating a railway line; or (b) give the railroad title to the fee estate in a narrow strip of land the railroad could subsequently sell for purposes other than a railroad.[38]

The government argues that, unless the document contains "liming language," such as was contained in the Honoré deed, the court should construe the document as a conveyance of title to the fee simple estate in the strip of land across which the railroad built a railway line. For example, the government argues that because "the granting clause [in the Burton document] does not contain language limiting the interests conveyed to certain uses or purposes [therefor]," it is not an easement. See *Barron*, No. 21-2181, ECF No. 32, p. 11 (government cross-motion).

But an easement may be created without *any* written instrument, and it is not necessary that a document granting an easement explicitly define the specific purpose for which the easement

[38] We say "*give*" because the consideration paid the owners was one dollar or, at most, fifty dollars for acres of land for which the market value was far greater than the stated consideration.

was granted or that the document contain a reversionary clause. In *Behrens*, 59 F.4th 1345, the Federal Circuit held that nineteen documents granted only an easement, even though, "[i]n the case of eighteen of the nineteen deeds at issue, the deeds themselves contain no language stating a limitation of the grant to specified purposes."

We return to basic definitional principles of property law. An easement is a limited right to land owned by another for a specific purpose. See WEBSTER'S NEW INTERNATIONAL DICTIONARY (2nd ed. 1954), p. 810 ("An acquired privilege or right to use or enjoyment, falling short of ownership, which an owner or possessor of land has, by virtue of his possession in the land of another, or, loosely, any of several rights which one person may have in the land of another."). See also *Mills*, 147 Fed. Cl. at 347 (quoting BLACK'S LAW DICTIONARY (11th ed. 2019)) ("[t]he right to pass through property owned by another"). Additionally, THOMPSON ON REAL PROPERTY (2nd ed. 1998), §60.02(c), explains that the

> right in land held by an easement holder differs from the fee interest or even the leasehold interest in that it is a "use" interest, but not a "possessory" interest in the land. Thus the easement holder has neither the permanent possession of even a single molecule of the land itself...the easement holder has the right to make or control a particular use of the land that remains owned by another.

Bruce and Ely explain that an "easement is commonly defined as a nonpossessory interest in the land of another." EASEMENTS & LICENSES IN LAND §1.1. They continue, "the nonpossessory feature of an easement differentiates it from an estate in land. … the holder of an affirmative easement may only use the land burdened by the easement; the holder may not occupy and possess the realty as does an estate owner." *Id.* Bruce and Ely clarify that an "easement so extensive that it amounts to an estate is not an easement." *Id.* §1:21 (citing Alfred F. Conrad, *Easement Novelties*, 30 CAL. L. REV. 125, 150 (1942)).

In *Barron*, the government relies heavily upon Fla. Stat. §689.10 for the proposition that conveyances of real property must be presumed to convey title to the fee simple estate. The

government's reliance is misplaced. The purpose of Fla. Stat. §689.10 was to abrogate the strict common-law requirement in this respect – to eliminate the need to use certain *magic words* (such as "and his heirs") necessary to convey *inheritable* title. The statute is irrelevant to the issue of determining whether an *estate* in land or a *servitude* was conveyed because the statute only applies to *estates* in land (not servitudes, such as easements).

The word "fee" references the *inheritability* of the *interest* in land, not the *quantum* of the interest in land. The important and relevant distinction is the difference between an *estate* in land and a *servitude* to use the land. "Fee" means a "*heritable* interest in land; esp., a fee simple absolute." BLACK'S LAW DICTIONARY (11th ed.) (emphasis added).[39]

Florida adopted §689.10 (other states adopted nearly-identical statutes) to address *future interests* in land. Future interests are "nonpossessory estates capable of becoming possessory." Dukeminier and Krier, PROPERTY (1981 ed.), p. 409. As Professors Dukeminier and Krier explain, "[f]uture interests are limited in number, but the ones permitted are quite enough. In fact, we are willing to bet that, before we are through, you will have a candidate or two for the discard file." *Id.* Examples of future interests include rights of reversion, possibility of reverter, right of entry, vested remainder, contingent remainder, and an executory interest. See *id.* As Professors Dukeminier and Krier intimate, states wanted to simplify the conveyance of estates in land by adopting statutes like §689.10 to presume that the conveyance was a transfer of an *inheritable* estate unless the document clearly stated otherwise. This is because the common law required certain magic words ("and his heirs") be used in order to convey an inheritable estate in land. The

[39] "Fee" is a feudal term used to describe estates in land and future interests. See THOMPSON ON REAL PROPERTY §17.02 (a fee simple "is capable of inheritance"). "Our modern word *fee*, a direct descendant of *fief*, implies the characteristic of potentially infinite duration...." BLACK'S LAW DICTIONARY (quoting Thomas F. Bergin & Paul G. Haskel, PREFACE TO ESTATES IN LAND AND FUTURE INTERESTS (2nd ed. 1984), p. 11) (italics in original).

important point is that Florida's §689.10 applies to *future interests* in estates in land. Section 689.10 does not apply to *servitudes* such as easements.[40]

The vast majority of authorities hold that conveyances of strips of land to railroads grant the railroad an easement, not title to the fee estate in the strip of land. Traditional principles of property law direct the interpretation of such documents to favor the grant of an easement (a servitude), not a conveyance of title to the fee estate. The RESTATEMENT explains,

> [c]onveyances 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 to be 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 construing the instrument*.[41]

The RESTATEMENT further explains,

> [d]etermining the parties' intent at the time of the conveyance is often difficult.… 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

[40] The statute, enacted in 1903, provides, "Where any real *estate* has heretofore been conveyed or granted…without there being used in the said deed or conveyance or grant any words of limitation, *such as heirs or successors,* or similar words, such conveyance or grant...shall be construed to vest the fee simple title.…" Fla. Stat. § 689.10 (emphasis added). An easement is not an *estate* in land; it is an *interest* in the property owned by another. See Bruce & Ely, LAW OF EASEMENTS & LICENSES IN LAND § 1:1 ("the nonpossessory feature of an easement differentiates it from an estate in land"). See also THOMPSON ON REAL PROPERTY §60.02(a).

[41] RESTATEMENT (THIRD): SERVITUDES §2.2, Comment g (emphasis added).

> 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.[42]

Applied here, these authorities direct that the documents created in the early 1900s, in which the railroad paid only nominal consideration for narrow strips of land across which the railroad operated a railway line, granted the railroad an easement and did not give the railroad title to the fee simple estate in the strip of land.

5. Florida public policy disfavors creation of "strips or gores" of land and follows the centerline presumption.

The strip-and-gore doctrine and its cousin, the centerline presumption, are background principles of law that inform the interpretation of documents describing a railroad's interest in the strip of land across which the railroad operates it railway line. Common law before Blackstone disfavors the creation of fee estates in narrow strips and gores of land. In *Paine v. Consumers' Forwarding & Storage, Co.*, 71 F. 626, 629-30, 632 (6th Cir. 1895), then-Judge Taft (later President and Chief Justice Taft) 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.

More recently, in *Penn Central v. U.S. R.R. Vest Corp.*, Judge Easterbrook explained this strip-and-gore doctrine as it applied to determining what interest a railroad held in a strip of land used for a railway line.

> 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

[42] *Id.* (emphasis added).

> 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.[43]

Florida follows the strip-and-gore doctrine and the related centerline presumption. See *Castillo*, 952 F.3d at 1321 ("We conclude that, under Florida law, the centerline presumption applies to the railroad right-of-way context of the present case."). In *Seaboard Air Line Ry. v. Southern Inv. Co*., the Supreme Court of Florida held "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." 44 So. 351, 353 (Fla. 1907) (citing and quoting *Rawls v. Tallahassee Hotel*, 31 So. 237 (Fla. 1894)). Florida law further provides that when a landowner grants a right-of-way easement across his or her land, the owner retains title to the fee estate in the land encumbered by the easement. See *Castillo*, 952 F.3d at 1320-21 (analyzing *Smith v. Horn*, 70 So. 435, 436 (Fla. 1915), *Servando Bldg. Co. v. Zimmerman*, 91 So.2d 289, 293 (Fla. 1956) (*en banc*), *Bischoff v. Walker*, 107 So.3d 1165, 1171 (Fla. Ct. App. 2013), *Florida Southern Railway Co. v. Brown*, 1 So. 512, 513 (Fla. 1887), and *Seaboard*, 44 So. at 353). In *Servando*, the Florida Supreme Court 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 dealing with them." 91 So.2d at 293. The Florida Supreme Court 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 adjoining easements.

[43] 955 F.2d 1158, 1160 (7th Cir. 1992) (citations omitted).

The strip-and-gore doctrine directs this Court to hold that the plaintiffs held title to the fee estate in the land extending to the centerline of the railway line. 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.*, 528 So.2d 432, 434 (Fla. Ct. App. 1988) ("only an easement is needed to lawfully construct and maintain a road right-of-way").

The "centerline presumption" is analogous to the strip-and-gore doctrine. In *Castillo*, the outcome turned, in part, upon application of the centerline presumption as a doctrine of Florida property law. 952 F.3d at 1323. In 1924 the Florida East Coast Railway acquired a 1.2-mile-long right-of-way easement across several undeveloped tracts of land "by way of four condemnation orders." *Id.* at 1315. The railway line ran north and south. The land on the east side was subdivided in 1947 into individual platted lots. The land on the west side of the railway line was likewise subdivided into individual platted lots in 1949. The individual lots were subsequently sold for homes. The deeds from the developers to the individual homeowners described the property by reference to the recorded plat and "pictorial depiction" of the lots and adjoining roads and railroad right-of-way, not by metes-and-bounds descriptions of the boundaries of each lot. The plats included written text describing the tract of land as "'East of the [FEC Railway] Right-of-Way' and 'less the [FEC Railway] Right-of-Way'" and that "land 'less [the] certain strip of land' that is the right-of-way." *Id.* at 1318-19. The Florida East Coast Railway's successor-railroad abandoned the railway line in 2016. The Board invoked the Trails Act and encumbered the property with a rail-trail corridor easement, and the landowners sued for compensation.

The landowners argued they owned the fee estate in the land to the centerline of the abandoned railroad right-of-way that adjoined their platted lot. The government argued the

owners' title included only the land depicted in the plat, which was bounded by the *edge* of the railroad right-of-way and did not include the land *under* the railroad right-of-way. See *Castillo*, 952 F.3d at 1317. The Federal Circuit explained that Florida had adopted the centerline presumption, which presumes that if a grantor conveys "property identified as bounded by a road, stream, or similar corridor, and the grantor owns the land under that boundary corridor, the grant also conveys title to the land underlying the corridor up to the corridor's centerline, unless there is clear evidence of non-conveyance as to that corridor land." *Id.* at 1318.

The Federal Circuit reversed the decision of Judge Horn, who had granted summary judgment in favor of the government "relying just on the plats," concluding "that the pictorial depictions of the subdivisions in the plats indicate that none of the parcels 'extend onto the railroad corridor but, instead, end at the edge of the railroad corridor,' meaning that the railroad corridor is not included in the subdivision plat." *Castillo*, 952 F.3d at 1318. Judge Horn found that "the plats' pictorial depictions show that 'none of the parcels belonging to the [landowners] extend onto the railroad corridor but, instead, end at the edge of the railroad corridor.'" *Id.* at 1323.

On appeal, the Federal Circuit held that Judge Horn was wrong for two reasons. *First*, the centerline presumption doctrine means the owners of the platted lots acquired title to the fee estate extending to the centerline of the adjoining railway line. *And second*, the language in the plats describing the property as "less the certain strip of land" that is "east of the [railroad right-of-way]" did not overcome the centerline presumption. *Castillo*, 952 F.3d at 1324. The Federal Circuit explained, "[l]ong ago, the Supreme Court of the United States described the centerline presumption as a 'familiar principle of law' to the effect that 'a grant of land bordering on a road or river, carries the title to the centre of the river or road, unless the terms or circumstances of the grant indicate a limitation of its extent by the exterior lines.'" *Castillo*, 952 F.3d at 1320 (quoting *Banks v. Ogden*, 69 U.S. 57, 68 (1864)). The Federal Circuit then held the centerline presumption

was a legal doctrine Florida had recognized since 1887. *Id.* (citing *Florida Southern Railway*, 1 So. at 515, and *Smith*, 70 So. at 436).

The Federal Circuit explained that "the centerline presumption supplies a default rule to perform that important task – with the content of the rule being a presumption that the corridor, commonly a narrow strip, is not to be owned separately from the abutting land." *Castillo*, 952 F.3d at 1321 (citing Dale A. Whitman, THE LAW OF PROPERTY (4th ed. 2019) §11.2, pp. 713, 719. The Federal Circuit noted, "[a]t present, the rule is a fixture of Florida law," and held, "[w]e conclude that, under Florida law, the centerline presumption applies to the railroad right-of-way context...." *Id.* at 1320 n.4, 1321 (citing *Bischoff*, 107 So.3d at 1165). Furthermore, "[i]nterpreting such documents, like interpreting the plats themselves, requires use of the centerline presumption to the extent it applies." *Id.* at 1324.

The Federal Circuit then addressed the "less" or "except" language in the plats and conveyances. See *Castillo*, 952 F.3d at 1322. The Federal Circuit held Judge Horn was wrong to rely upon this language in the plats as overriding the centerline presumption, stating, the "language uses terminology to which the presumption remains applicable, in that the language used refers to...the right-of-way itself (as an easement) in affirmatively stating the boundary of the subdivision land and identifying certain exclusions." *Id.* at 1322. The Court examined *Dean*, 528 So.2d at 432-33, where

> a Florida appellate court held that a deed conveying the entire parcel "less and except the following described [road right-of-way] easement" did not exclude the land of the road from application of the centerline presumption. The court held that the language "served simply to exclude the recorded *easement* in favor of the [easement beneficiary] from the title interest being conveyed and to prevent the recorded easement from constituting a breach of the covenants of warranty in each deed."

Thus, the Federal Circuit found that, under Florida law, this language ("less" and "excepting" an adjoining right-of-way) did not overcome the centerline presumption under which the owner of

the adjoining land held title to the fee estate in the land extending to the center of the adjoining railway right-of-way. *Id.*

C. A railroad's interest in a strip of land acquired for a railway line is an *easement*, not title to the *fee simple estate*.

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

A railroad corporation is a creature of state legislation that charters the railroad corporation 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 explained that 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.[44]

The Supreme Court explained that "[i]t 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." *Washington, A.&G.R. Co. v. Brown*, 84 U.S. 445, 450 (1873). Subsequently, in *Thomas v. Railroad Co.*, 101 U.S. 71, 83 (1879), the Supreme Court further explained,

> 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

[44] *Id.* at 370-71. See also *East Alabama Ry.*, 114 U.S. at 350-51.

> 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.

The Supreme Court later added that 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." *Green Bay & M.R. Co. v. Union Steamboat Co.*, 107 U.S. 98, 100 (1883). And in *New York & Maryland Line R. Co. v. Winans*, the Court further held, "[t]he [railroad] corporation cannot absolve itself from the performance of its obligations, without the consent of the legislature." 58 U.S. 30, 39 (1854) (relied upon by the Virginia Supreme Court in *Naglee*, 3 S.E. at 370-71).

The point is this: a railroad corporation is a creature of statute created for a specific public purpose, and the legal authority (including eminent domain power) granted a railroad corporation is limited to the accomplishment of the specific public purpose for which the railroad corporation was established. As applied to the property a railroad corporation could acquire by eminent domain, the public purpose of operating a railway defined the nature and extent of the property interest a railroad corporation acquired in private property taken by, or granted, to the railroad corporation. As Professor Ely aptly explained,

> [p]rominent 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….[45]

[45] James W. Ely, Jr., RAILROADS & AMERICAN LAW (2001), pp. 197-98. Chief Justice Roberts quoted and relied on Professor Ely's treatise in *Brandt*, 572 U.S. at 96.

Railroad corporations were not granted authority to exercise eminent domain power (or to threaten eminent domain) to acquire any interest in property greater than that needed to accomplish the public purpose of building and operating a railway. And to accomplish the public purpose for which a railroad corporation was chartered, the railroad needed only an easement across a strip of an owner's land. The railroad did not need to acquire title to the fee estate (including mineral rights) in the strip of land across which the railroad built a railway line.

The Florida Supreme Court applies this principle when determining what interest a railroad acquired in the mineral rights in land used for a railway line. In *Silver Springs, O&G R. Co. v. Van Ness*, 34 So. 884, 885-86 (Fla. 1903), and *Van Ness v. Royal Phosphate Co.*, 53 So. 381, 381 (Fla. 1910), a railroad was granted the right to operate trains across a strip of land. The railroad claimed ownership of the mineral rights in the phosphate under the railway line. The Florida Supreme Court held the railroad acquired only an easement across the land, not title to the fee estate, and thus, the railroad did not own the mineral interests in the land under the railway line. See *Silver Springs*, 34 So. at 890; *Van Ness*, 53 So. at 384. The U.S. Supreme Court similarly held rights-of-way the federal government granted railroads were easements, not title to the fee estate in the land, and did not include ownership of the mineral rights under the right-of-way. See *Brandt*, 572 U.S. at 102 (citing *Great Northern Railway Co. v. United States*, 315 U.S. 262, 271 (1942)).

2. Florida statute provides that a railroad only acquires an easement in land acquired by condemnation or voluntary grant.

In the early 1900s railroads abused their economic monopoly and eminent domain power to the detriment of landowners whose land was taken for railway lines and farmers who depended upon the railroads to transport crops and cattle to market. See Ely, RAILROADS & AMERICAN LAW, pp. 86-90. The railroad's abuses gave rise to the Granger Movement and growing anti-railroad sentiment, prompting reforms of state laws restricting railroads' power of eminent domain and

railroads' ability to set rates. See *id.* In *Chicago, Burlington & Quincy R.R. Co. v. Iowa*, 94 U.S. 155, 161 (1877), the Supreme Court noted that railroad companies are "given extraordinary powers," and had also explained in *Munn v. State of Illinois* that "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." 94 U.S. 113, 132 (1876) (internal quotation omitted). This public sentiment against railroad companies' abuses lead to the creation of the Interstate Commerce Commission in 1887 with the famous jurist Thomas Cooley as the first Commissioner.

Railroad corporations' abuse of eminent domain and monopoly power also resulted in states adopting a number of reforms. See Ely, RAILROADS & AMERICAN LAW, p. 80 ("The 1870s witnessed the beginning of a sea change in popular opinion regarding the railroads. Calls for more stringent regulation mounted, eclipsing the earlier policy of encouragement and subsidization."). One of the reforms states adopted were laws limiting the interest a railroad company could obtain in private property through the actual or threatened exercise of eminent domain.

Florida, Missouri, Kansas, and most other states enacted model laws limiting railroad companies' eminent domain authority. In *Behrens*, the Federal Circuit considered Missouri's statute and reviewed the statutes of other states that adopted essentially identical laws to those in Florida and Missouri. See 59 F.4th at 1345. The Federal Circuit wrote, a "Missouri statute that has been in effect since 1855 gives railroads the power: [t]o take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railroads; but the real estate received by voluntary grant shall be held and used for the purpose of such grant only…." *Id.* (citing Mo. Rev. Stat. §1035 (1899) (now codified at §388.210(2)). The Federal Circuit continued and held that,

> Under Missouri law, a conveyance of property to a railroad for nominal consideration is treated as a voluntary grant, and one dollar is nominal consideration. *Brown*[ ], 152 S.W.2d [at] 653-54 [ ]. Each grant in this case was to a railroad and for one dollar. These conveyances were thus voluntary grants. *Voluntary grants to railroads are easements even if they are formally worded as grants of fee simple estates*. *Id.* at 654; *see also Boyles*[ ], 981 S.W.2d [at] 648 [ ] ("Where the acquisition is for right-of-way only, however, whether by condemnation, voluntary grant, or conveyance in fee upon valuable consideration, the railroad takes only an easement over the land and not the fee.

Behrens, 59 F.4th at 1345 (emphasis added).

Twenty years after Missouri adopted §1035, Florida adopted an essentially identical statute. Florida allowed railroads to "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 "the real estate received by voluntary grant shall be held and used for purposes of such grant only." *Id*. Florida's law limiting the interest a railroad obtained by a voluntary grant was the same as the statutes adopted in Missouri, Kansas, and other states in the early 1900s. See *Rogers IV*, 184 So.3d at 1094, 1096, n.5. 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). In *State v. Baker*, the Florida Supreme Court held a railroad's occupation of private land, without the 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." 20 Fla. 616, 650 (1884) (citation and internal quotation 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). And §2241 limited what interest 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 acquired by voluntary grant is determined by the nature of the railroad's public purpose. A railroad did not need to acquire title to the *fee estate* in a strip of land upon which the railroad built and operated a railway line – an *easement* was sufficient.[46]

When the documents at issue in this litigation were created, 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." Isaac F. Redfield, THE LAW OF RAILWAYS (1869), vol. 1, 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

[46] Florida is not unique in its law governing the interpretation of railroad conveyances as granting only an 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). Based on statutes similar or identical to section 2241, courts of 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 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*, 152 S.W.2d at 652 ("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); *Illinois 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").

in the grantor"); Ely, RAILROADS & AMERICAN LAW, pp. 197-98 (citing Simeon F. Baldwin, AMERICAN RAILROAD LAW (1904), p. 77).[47]

As Judge Plager explained in *Preseault II*, "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." 100 F.3d at 1537. In short, almost all authorities on railroad law (courts as well as scholars) direct that a grant of a strip of land to a railroad conveys only an easement for a railway line, not title to, nor ownership of, the fee estate in the land under the railway line.

3. "Railbanking" and public recreation are not a railroad purpose.

A railway line is not a public park. Under Florida law it is illegal to walk on railroad tracks. Fla. Stat. §§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). Public recreation is not a railroad purpose. The notion of "railbanking" (not using property for the operation of a railway line with the prospect the federal government may authorize some railroad at some time in the indefinite future to re-build a railway across the land) is not a railroad purpose under Florida law. As Judge Rader explained in his concurring opinion in *Preseault II*, 100 F.3d at 1554,

> [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

[47] The Supreme Court of Florida held a railroad's interest is only an easement relying upon similar authority. See *Pensacola & Atl. R.R.*, 21 Fla. at 148-49 (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."); *Knickerbocker*, 94 So. at 501 (citing ELLIOTT ON RAILROADS (2nd ed.)).

> that property inconsistent with the easement. That conversion demands compensation.

And the Federal Circuit stated in *Behrens*, "[w]e have similarly and consistently held that trail use is not a railroad purpose under [Missouri and] other states' laws." 59 F.4th at 1346.

D. The Florida Supreme Court's answer to the Federal Circuit's certified question in *Rogers* does not answer the question before this Court.

1. The unique issue considered by the Federal Circuit and Florida Supreme Court in *Rogers*.

As noted above, the federal government's creation of the Legacy Trail corridor has been the subject of prior litigation. Judge Williams issued two published decisions concerning the government's obligation to pay landowners for land taken for the southern segment of the Legacy Trail in *Rogers v. United States*, 90 Fed. Cl. 418 (2009) (*Rogers I*), and *Rogers v. United States*, 93 Fed. Cl. 607 (2010) (*Rogers II*). Judge Williams' first decision considered the government's liability for Trails Act takings generally and considered specifically the nature of the railroad's interest in the strip of land that was the subject of a 1910 deed from Adrian Honoré to Seaboard. Judge Williams held the railroad was only granted an easement by Adrian Honoré, and therefore, the government must pay those landowners across whose property the railroad acquired an interest from Honoré. See *Rogers I*, 90 Fed. Cl. at 422. Judge Williams' second opinion considered the more complex situation and conveyances involved in Seaboard's 1920 relocation of the southernmost two-mile-long railway line, depot, and wye track south of Curry Creek adjacent to land owned by Bird Bay Golf Club. See *Rogers II*, 93 Fed. Cl. at 618-19. See also *Rogers I*, 90 Fed. Cl. at 433 ("The history of the section of the railroad corridor adjacent to Bird Bay's property is more complicated.").

The conveyances in *Rogers II* involved a "complicated" series of transactions including numerous deeds from the 1920s and two foreclosure sales in the 1930s involving the Brotherhood of Locomotive Engineers (BLE) pension fund's plan to develop a planned community in Venice.

Rogers II considered what interest Seaboard acquired in land upon which Seaboard built the new depot, wye track, and railway line. The Federal Circuit subsequently posed a certified question arising from *Rogers II* to the Florida Supreme Court. The Florida Supreme Court referenced the "complicated" history of the conveyances at issue. *Rogers IV*, 184 So.3d at 1100 ("The opinion of the Court of Federal Claims explains the complicated history of the parcels of land conveyed to Seaboard by the 1927 B.L.E. Realty deed."). See also *Rogers I*, 90 Fed. Cl. at 422, 433 ("The portion of the railway corridor that abuts Bird Bay's property has a nebulous history" and the "history of the section of the railroad corridor adjacent to Bird Bay's property is more complicated."); *Rogers v. United States*, 814 F.3d 1299, 1304 (Fed. Cir. 2015) (*Rogers III*) ("The southern corridor, which presently abuts property owned by [Bird Bay], has a more convoluted history involving numerous transactions.").[48] Judge Williams granted summary judgment for all the plaintiffs across whose land the railroad's interest was established by the easement Adrian Honoré granted Seaboard. *Rogers I*, 90 Fed. Cl. at 434. Judge Williams then ordered supplemental briefing concerning the unique situation involving the land the railroad acquired for the depot, wye track, and railway line that adjoined the Bird Bay property. *Id.*[49]

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[48] The railway line between Sarasota and Venice was built in 1910; but, in the early 1920s, the southern two miles of the railway south of Curry Creek needed to be relocated. In a complicated series of transactions, the southern two miles of Seaboard's existing railway line – including the wye track (used to turn locomotives around to return north) and the depot – were relocated two miles to the east. Relocating the existing railway line required recording a number of documents describing the property used for the new relocated railway line and the depot. The development of the Venice community and ownership of the land became even more complicated when BLE went bankrupt and the property – including the land across which the railroad was built – was foreclosed upon and sold at an auction. The conveyances executed as part of relocating the existing railway line were the subject of *Bird Bay v. United States*, No. 07-426, and *Bay Plaza v. United States*, No. 08-198, which were subsets of the *Rogers* litigation but were bifurcated and decided separately because the conveyances at issue were unique.

[49] Judge Williams reviewed this history and the transactions concerning the ownership of this property used for the relocated southern two miles of the Seaboard railway line and depot. See *Rogers II*, 93 Fed. Cl. at 612-16. Judge Williams noted that, "[c]onspicuously absent from the chain of title, however, is the instrument that first conveyed the right-of-way, and the attendant

Judge Williams concluded that "Seaboard obtained fee simple title in the railroad corridor abutting Bird Bay's property." *Rogers II*, 93 Fed. Cl. at 612. To reach this conclusion Judge Williams had to consider dozens of recorded documents and the complicated context concerning the relocation of this segment of Seaboard's existing railway line and depot including BLE's bankruptcy and the mortgage holder's foreclosure. Judge Williams devoted eleven pages of her two decisions to an analysis of the circumstances by which the railroad obtained an interest in the land adjoining the Bird Bay property. See *id.* at 612-16; *Rogers I*, 90 Fed. Cl. at 422-27.

Bird Bay Golf Club appealed Judge Williams' decision. The principle argument Bird Bay raised was that, under Florida's Special Powers of Railroad Statute, the interest the railroad acquitted in the land adjoining Bird Bay's property was limited to only an easement, even if BLE intended to sell the railroad fee simple title to the land for valuable consideration. Judge Williams concluded that the instruments describing the relocated railway line and depot "unambiguously" on their face conveyed title to the fee estate in the tracts and strips of land from the original landowners to the railroad. *Rogers II*, 93 Fed. Cl. at 622. Judge Williams determined the grantors intended to convey title to the fee estate *in the land* to Seaboard as part of the relocation of the existing railway line and depot. See *id.* at 625.

The Federal Circuit assumed the BLE and Venice deeds were an unambiguous conveyance of the fee simple estate and that these conveyances were *not* voluntary grants for nominal

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interests or rights, to Seaboard." *Rogers I*, 90 Fed. Cl. at 433. "In the absence of an original instrument, the Court relies upon subsequent instruments in the chain of title, extrinsic evidence demonstrating the parties' intent, and Florida law in effect at the time of the instruments' executions." *Id.* Judge Williams also noted that the land used for the railway line and depot had always been described as a separate and distinct tract of land. See *Rogers II*, 93 Fed. Cl. at 618 ("the instruments conveying the lands abutting the corridor have treated the corridor as a separate parcel of land, separate and distinct from the larger parcels bordering the corridor").

consideration subject to Florida's statute directing that a voluntary conveyance grants railroads only an easement. Given this premise (that the grantors of the BLE and Venice deeds unambiguously intended to sell the railroad, for valuable consideration, the fee simple estate in the tracts of land for the depot, wye track, and relocated railway line), the Federal Circuit asked the Florida Supreme Court whether the Florida Special Powers of Railroad Act of 1892 nonetheless limited the railroad's interest to only an easement even when the grantor "unambiguously" intended to sell the railroad title to the fee simple estate and the railroad paid the grantor valuable consideration. The Federal Circuit asked whether, "[a]ssuming that a deed on, on its face, conveys a strip of land in fee simple from a private party to a railroad corporation in exchange for stated consideration, does [the Florida Special Powers of Railroad Act]...limit the railroad's interest in the property, regardless of the language in the deed?" *Rogers III*, 814 F.3d at 1308.

In *Rogers IV*, 184 So.3d at 1090, the Florida Supreme Court understood the Federal Circuit's certified question as asking the court to address three points:

> (1) Does Section 2241 [of the Florida Special Powers of Railroad Act], limit railroads' interest in property, regardless of the language of the deeds? (2) Does state policy limit the railroad's interest in the property, regardless of the language of the deeds? And, (3) Do factual considerations, such as whether the railroad surveys land or lays track and begins running trains before the conveyance of a deed, limit the railroad's interest in the property, regardless of the language of the deeds?

As to the third question, the Florida Supreme Court noted that, for this relocated section of railroad, it was "*after* receiving these deeds, [that] Seaboard laid track." *Id*. In other words, Seaboard had not entered the land acting under Seaboard's eminent domain authority under the voluntary conveyance and consideration of provisions of Fla. Stat. §2241. The Florida Supreme Court further noted these deeds were not "voluntary conveyances" for nominal consideration "because the deeds were grants by bargain and sale *for valuable consideration* and conveyed fee simple title." *Rogers IV*, 184 So.3d at 1094 (emphasis added).

The Florida Supreme Court's opinion in *Rogers IV* did not direct how a court is to determine whether a grantor intended to convey title to the fee estate or grant an easement. Rather, the Florida Supreme Court assumed the premise that BLE, as the grantor, "unambiguously" intended to sell the railroad title to the fee simple estate for valuable (not nominal) consideration. The Florida Supreme Court recited and premised its decision upon the "Statement of All Facts Relevant to the Questions Certified" provided by the Federal Circuit, which stated,

> Those deeds appear, on their face, to unambiguously convey a fee simple interest to Seaboard. After receiving these deeds, Seaboard laid track and began to operate trains along the entire corridor as of November 1911. [And the BLE deed] appears, on its face, to unambiguously convey a fee simple interest in the property corresponding to the relocated southern portion of the rail corridor.[50]

Rogers IV affirmed Florida's voluntary grant provisions (which is identical to the Missouri statute the Federal Circuit considered in *Behrens*) but said this provision did not apply to the BLE and other deed at issue in *Rogers*. To define a "voluntary conveyance," the Florida Supreme Court adopted the same definition of a "voluntary grant" as did the Missouri Supreme Court, and the Florida Supreme Court looked to and quoted the Missouri Supreme Court. "A 'voluntary conveyance' is '[a] conveyance made without valuable consideration.'" *Rogers IV*, 184 So.3d at 1094 (quoting BLACK'S LAW DICTIONARY (10th ed. 2014), p. 408). The Florida Supreme Court continued, "[c]onstruing a similar state statute on the subject of railroad rights of way, the Supreme Court of Missouri has held that the term 'voluntary grant' was used by the legislature to mean a conveyance without valuable consideration." *Id.* (citing *Clay*, 239 S.W.2d at 508, and *Brown*, 152 S.W.2d at 653).

The BLE and Venice deeds that were the subject of the certified question in *Rogers III* were not subject to Florida's voluntary conveyance statute. Florida's Supreme Court explained

[50] *Rogers IV*, 184 So.3d at 1089-90.

that the "provision in subsection (2) of the Florida statute, to the effect that 'real estate received by voluntary grant shall be held and used for purposes of such grant only,' *does not apply in this case because the deeds were grants by bargain and sale for valuable consideration* and conveyed fee simple title." *Id.* at 1094, n.3 (quoting and citing *Seaboard Air Line Ry. Co. v. Bd. of Bond Trustees of Special Road & Bridge Dist.*, 108 So. 689, 698 (Fla. 1926), and *Armstrong v. Seaboard Air Line Ry. Co.*, 95 So. 506, 506-07 (Fla. 1922)). The Florida Supreme Court stated, "[w]e need not discuss the language of the deeds in this case in detail or the circumstances of their execution because the Court of Federal Claims did a thorough job of it in reaching the conclusion that the deeds by their language appeared to convey fee simple title." *Rogers IV*, 184 So.3d at 1095. The Florida Supreme Court then reaffirmed the fundamental tenet of deed construction that, "[t]he effect of a deed, both as to the property conveyed and the character of the estate conveyed, is determined by the intent of the grantor." *Id.* (citing *Reid*, 112 So. at 852, and *Saltzman v. Ahern*, 306 So.2d 537, 539 (Fla. Ct. App. 1975).

Given the assumption that the grantors executing the BLE and Venice deeds in *Rogers* "unambiguously" intended to sell fee simple title to the railroad for valuable consideration and that the BLE and Venice deeds were not voluntary grants for nominal consideration, the Florida Supreme Court told the Federal Circuit that, when a grantor unambiguously intends to sell the fee estate in a tract of land to a railroad for valuable consideration, the Florida's Special Powers of Railroads Act does not limit the interest the railroad acquires to an easement. *Rogers IV*, 184 So.3d at 1096. The Florida Supreme Court then explicitly conditioned its answer by qualifying it "[*u*]*nder the circumstances found to exist by the Court of Federal Claims.*" *Id.* (emphasis added). With this qualification the Florida Supreme Court told the Federal Circuit that the Florida Special Powers of Railroad Act did not "limit[ ] the railroad's interest in the property regardless of the language of the deed." *Id.*

In short, *Rogers IV* does not answer the question this Court must decide. In *Rogers III*, the certified question the Federal Circuit asked the Florida Supreme Court to answer assumed the grantor (BLE and Venice) intended to convey title to the fee estate for valuable consideration and assumed the deeds granted a fee simple estate and were not voluntary conveyances.

2. When she wrote *Rogers II*, Judge Williams did not have the benefit of subsequent authority.

Judge Williams also wrote *Rogers II* more than thirteen years ago. As such, she did not have the benefit of the Florida Supreme Court's decision in *Rogers IV*, nor the United States Supreme Court's decisions in *Brandt* and *Cowpasture*, nor the Federal Circuit's decisions in *Castillo* and *Behrens*. Thus, Judge Williams' decision in *Rogers II* must be read through the lens of this subsequent authority.

(i) Judge Williams misunderstood *Preseault II* as applying only when the railroad acquired its interest by condemnation.

Judge Williams misread the Federal Circuit's decision in *Preseault II* as applying only to conveyances made in the context of condemnation. In *Preseault II* the Federal Circuit determined what interest a railroad acquired by condemnation in a strip of land across the Barker Estate. See discussion, *supra*, pp. 13-17. Across a third parcel, the railroad acquired its interest by a deed that "appear[ed] to be the standard form used to convey a fee simple title from a grantor to [the railroad]." *Preseault II*, 100 F.3d at 1535-36. Thus, in *Preseault II* the Federal Circuit determined the interest a railroad acquired by *both* condemnation and by a deed that appeared to "convey a fee simple title" was an easement. See *id.*

Judge Williams wrongly cabined the Federal Circuit's interpretation of the Manwell deed by saying "it was the actual *exercise* of the railroad's eminent domain power that resulted in a limitation of the interests conveyed in the [Manwell] warranty deed.… According to the court, the 'act of survey and location [was] the operative determination, and not the particular form of

transfer.'" 93 Fed. Cl. at 623 (quoting *Preseault II*, 100 F.3d at 1587) (emphasis in original). But on this point Judge Williams was wrong. The Manwell deed was *not* the result of the railroad's *actual exercise* of eminent domain.

Judge Williams wrote, "In contrast, there is no evidence in this record that Seaboard acquired the corridor [land for the relocated depot, wye track and two miles of railway line south of Curry Creek] by exercising eminent domain derived under Florida law." *Rogers II*, 93 Fed. Cl. at 623. This cannot be said of the northern segment of the Legacy Trail corridor that is at issue here. The 1926 Condemnation Decree demonstrates that the conveyances these owners signed were under threat of condemnation. Furthermore, unlike the conveyances Judge Williams considered in *Rogers*, where the railroad entered the land and built the railway line *after* the grantor executed the deed, here the railroad had *already* entered the owner's land and surveyed the railway line *before* the grantors executed the deed. If the owner would not execute a voluntary conveyance granting the railroad a right-of-way across the owner's land, the railroad would condemn the owner's land. The conveyances granted the railroad were made in the shadow of, and under threat of, Seaboard's ability to take the owner's land by eminent domain if the owner did not agree to grant Seaboard a right-of-way across the owner's land. Indeed, Seaboard had already entered the owner's land and surveyed the location of a railway line across the owner's land. See *Preseault II*, 100 F.3d at 1537 ("the proceeding retained its eminent domain flavor, and the railroad acquired only that which it needed, an easement for its roadway").

The Florida Supreme Court, in *Dade County v. Brigham*, 47 So.2d 602, 604-05 (Fla. 1950), reiterated the words of the New York Court of Appeals, in *In re Water Supply in City of New York*, to explain a property owner's predicament when faced with threatened condemnation:

> [The owner] does not want to sell. The property is taken from him through the exertion of the high powers of the state, and the spirit of the Constitution clearly required that he shall not be thus compelled to part with what belongs to him

> without the payment, not alone of the abstract value of the property, but of all the necessary expenses incurred in fixing that value. This would seem to be dictated by sound morals, as well as by the spirit of the Constitution....
>
> 109 N.Y.S. 652, 654-55 (N.Y. Ct. App. 1908).

Seaboard and its affiliated railroads not only *could* acquire an easement across the strip of land by eminent domain, but the railroad *did in fact* exercise its power of eminent domain to acquire a right-of-way easement across the owner's land. See, *infra*, pp. 56-59.

(ii) A right-of-way is an easement.

Judge Williams wrote, "[i]n Florida, the term right-of-way, as it relates to railroads, can refer to either a "right of crossing' – an easement – or to a 'strip of land which a railroad takes, upon which to construct its railroad.' An estate in fee." *Rogers II*, 93 Fed. Cl. at 623. The only authority Judge Williams cites for this proposition is an annotation in a legal encyclopedia, 43 Fla. Jur. 2d Railroads §32.

On this point Judge Williams is incorrect, and her conclusion is contrary to both the law as declared by Florida's Supreme Court and the United States Supreme Court reference to a "right-of-way" is reference to an *easement*. *Occasionally Atlas shrugs and Homer nods*. Judge Williams did not have the benefit of the Florida Supreme Court's decision in *Rogers IV*, nor the Supreme Court's decisions in *Brandt* and *Cowpasture*, nor the Federal Circuit's decisions in *Behrens* and *Castillo*. Should Judge Williams have had the benefit of this subsequent authority, it is doubtful she would have concluded the term "right-of-way" refers to an interest other than an easement.

Cowpasture is a Trails Act case the Supreme Court decided in 2020. In *Cowpasture* the Supreme Court held that the "Trails Act refers to the granted interests as 'rights-of-way,' both when describing agreements with the Federal Government and with private and state property owners. When applied to a private or state property owner, 'right-of-way' would carry its ordinary

meaning of a limited right to enjoy another's land." 140 S.Ct. at 1845.[51] After *Rogers IV*, in *Mills*, Judge Bruggink examined Florida law and concluded that, under Florida law, the conveyance of a "right-of-way" is best interpreted as granting an easement. 147 Fed. Cl. at 347 (citing, *inter alia*, *Rogers IV*, 184 So.3d at 1095).

(iii) In a conveyance, "excepting" the land used for a railway means the fee estate in the land is *subject to* the right-of-way easement.

A point that frequently arises in the interpretation of documents conveying interests in land bordered by or encumbered with easements and rights-of-way is the phrase "excepting the right-of-way." The government argues that a conveyance containing such "excepting" or "less" language does not convey title to the land under the adjoining right-of-way was withheld from the conveyance. This is an incorrect interpretation of the phrases "excepting" or "less" the referenced adjoining right-of-way. In *Castillo*, the Federal Circuit explained that, under Florida law, this "excepting" or "less" language "served simply to exclude the recorded easement in favor of the [easement beneficiary] from the title interest being conveyed and to prevent the recorded easement from constituting a breach of the covenants of warranty in each deed." 952 F.3d at 1322 (quoting *Dean*, 528 So.2d at 434), *supra*, pp. 34-35. This is true regardless of whether the conveyances refers to the right-of-way as an "easement" or as a "strip of land." *Id.*

In her analysis of the deeds in the Bird Bay chain of title, Judge Williams did not properly apply this principle. Judge Williams concluded the land used for the railway line adjoining the Bird Bay property was not included in the conveyances describing the relocated railway line and depot because "the right-of-way was not excepted as an easement, but as land withheld from the conveyance." *Rogers II*, 93 Fed. Cl. 618. Judge Williams stated, "the instruments conveying the

[51] See also *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").

lands abutting the [railroad] corridor have treated the corridor as a separate parcel of land, separate and distinct from the larger parcels bordering the corridor." *Id.* Judge Horn made this same error in *Castillo* and the Federal Circuit overturned Judge Horn's decision.

(iv) The amount of consideration determines the *nature* of the property interest conveyed even if it does not determine the *validity* of the deed.

The Florida Supreme Court wrote, "[t]he law of Florida, however, is that the amount of consideration stated in a deed provides no basis for questioning the *validity* of the deed." *Rogers IV*, 184 So.3d at 1097. The Florida Supreme Court cited two lower appellate court decisions as authority for this proposition, *Kingsland v. Godbold*, 456 So.2d 501 (Fla. Ct. App. 1984), and *Venice East, Inc. v. Manno*, 186 So.2d 71 (Fla. Ct. App. 1966). These cases confirm this distinction between the amount of compensation as informing the *nature* of the interest versus the *validity* of the conveyance in that they held, simply, that a deed is *valid* regardless of the amount of consideration provided.[52] The Florida Supreme Court in *Rogers IV* continued, "[t]he language of the deed determines the *nature* of the estate conveyed." 184 So.3d at 1097 (emphasis added). Thus, the amount of consideration is relevant to determine the *nature* of the interest conveyed, not the *validity* of the conveyance.

3. The Florida Supreme Court's opinion in *Rogers IV* cannot be read as a new rule by which to define established property interests.

The Florida Supreme Court's 2015 opinion in *Rogers IV* cannot be read as announcing a new rule by which to determine these owners' interest in a strip of land used for a railway line for a hundred years. Redefining Florida law governing the interpretation of established property interests. To read *Rogers IV* as announcing a new rule by which to determine the property interests

[52] In *Kingsland*, the court held, "[e]ven nominal consideration [of $10] will support a deed." 456 So.2d at 502. In *Venice East*, the court held that "the law will not consider the adequacy or the sufficiency of the consideration given for a conveyance or transaction." 186 So.2d at 75.

established in these early 1900s documents violates the Supreme Court's injunction against courts redefining the rules governing established understandings of property. See *Preseault I*, 494 U.S. at 23 ("[A] sovereign, 'by *ipse dixit*, may not transform private property into public property without compensation.... This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent'") (O'Connor, J., concurring).[53] See also *Leo Sheep*, 440 U.S. at 687-88 ("this Court has traditionally recognized the special need for certainty and predictability where land titles are concerned, and we are unwilling to upset settled expectations to accommodate some ill-defined power to construct public thoroughfares without compensation").

This term, in *Tyler v. Hennepin County*, 143 S.Ct. at 1375, the Supreme Court explained, the "Takings Clause does not itself define property. For that, the Court draws on 'existing rules or understandings' about property rights." 143 S.Ct. at 1375 (internal quotation and citation omitted). The Court further explained that "[s]tate law is one important source [of property rights, b]ut state law cannot be the only source." *Id.* If this were so, "a State could sidestep the Takings Clause by disavowing traditional property interests in assets it wishes to appropriate." *Id.* (internal quotation and citation omitted). Thus, the Court continued, "we also look to traditional property law principles, plus historical practice and this Court's precedents."[54] Similarly, in *Stop the Beach Renourishment*, the Supreme Court wrote,

> In sum, the Takings Clause bars *the State* from taking private property without paying for it, no matter which branch is the instrument of the taking. To be sure, the manner of state action may matter: Condemnation by eminent domain, for example, is always a taking, while a legislative, executive, or judicial restriction of property use may or may not be, depending in its nature and extent. But the particular state *actor* is irrelevant. If a legislature *or a court* declares that what was

[53] See, *supra*, note 15.

[54] *Id.* (internal quotations and citations omitted) (citing and quoting, *inter alia*, *Hall v. Meisner*, 51 F.4th 185, 190 (6th Cir. 2022) (Kethledge, J., for the Court) ("[T]he Takings Clause would be a dead letter if a state could simply exclude from its definition of property any interest that the state wished to take.").

> once an established right of private property no longer exists, it has taken that property, no less than if the State had physically appropriated it or destroyed its value by regulation. "[A] State, by *ipse dixit*, may not transform private property into public property without compensation."

560 U.S. at 715 (emphasis in original).

The interest in the property the landowners granted the railroad memorialized by the documents recorded in the early 1900s with the intent and understanding defined by the established law of the day define the nature and extent of the railroad's interest. Furthermore, Florida's statutory law that voluntary grants convey only an easement and Florida's common law defining property interests were the juridical furniture that defined the grantors' understanding and intention. In other words, what interest the railroad acquired in these present-day landowners' property is defined by that interest these present-day owners' predecessors-in-title intended to grant the railroad. Nothing more. Nothing less. The railroad's interest in the strip of land and the original landowner's (and his or her successor-in-title's) interest were sealed in amber when those respective property interests were established. The federal government may not redefine these established property interests without paying the owner "just compensation."

To read the Florida Supreme Court's 2015 *Rogers IV* opinion as announcing a new rule redefining the rules governing established property interests in land subject to railroad rights-of-way would, itself, be a violation of the Fifth Amendment. "States effect a taking if they recharacterize as public property what was previously private property." *Stop the Beach*, 560 U.S. at 714.

III. The text of each document, the context and purpose for which the documents were created, and the "traditional property law principles" and "historical practice" at the time the documents were created demonstrate the railroad was only granted an *easement* to use the strip of land for a railway line.

The recorded documents (or in some cases the lack of any recorded document) defining the railroad's interest in the strip of land across these present-day owners' land fall into four

groups. The **first group** of properties are those in which Seaboard acquired its interest by reason of a 1926 condemnation decree. (the *Condemnation Properties*). See **Exhibit 1** for a table of the ten *Condemnation Properties*.

A **second group** of plaintiffs own land in which the present-day owners' predecessor-in-title signed a voluntary grant in the early 1900s granting or memorializing the railroad's right to operate a railway line across a strip of land. This second group of properties (the *Voluntary Grant Properties*) are divided into nine subgroups based upon the original document. For all these properties, the owners and the government agree upon the original "source deed" applicable to the owner's property. See **Exhibit 1**; **Exhibit 6** (ICC valuation maps of railway corridor).[55] A total of 199 properties are in this second group (not including the two Pendley document properties).

A **third group** of five plaintiffs own land for which there is no recorded instrument granting the railroad any interest in the land. These are the *Prescriptive Easement Properties*. For three of these owners (where the val maps indicate the railroad gained its right-of-way "By Possession") the owners and the government agree that Seaboard (or Seaboard's affiliated-railroad companies) built and operated a railway line across a strip of these owners' land without the benefit of any recorded document. For the other two owners (the Pendley document properties), the railroad also gained its easement by prescription because the Pendley document is a nullity.[56]

[55] Under the Valuation Act of 1913, Congress required the ICC to create a Valuation Bureau to assess, survey, and catalog the country's railroad property in order to regulate fair shipping rates. The Bureau mapped all railroad rights-of-way and determined the source conveyances, if they existed, by which each railroad gained its interest in its right-of-way. These valuation maps are maintained by the National Archives. See **Exhibit 6** (ICC valuation maps of railway corridor).

[56] The property described in the unexecuted, unrecorded Pendley document (**Exhibit 3**) is included in the *Prescriptive Easement* group because, as explained below, the Pendley document is not a valid conveyance lawfully executed by Oscar Pendley or his wife.

For a **fourth group** of thirteen properties (the *Platted Properties*), the government admits the plaintiffs own their land on the date of taking, but the government contends that the plaintiffs' properties are separated from and do not underlie the railroad corridor. The government argues these plaintiffs' deeds to their properties describe that property by reference to a recorded plat the government contends did not extend to the centerline of the adjoining railroad right-of-way, and accordingly, an "intervening parcel" owned by a third party (either the county or the neighborhood association) cuts-off their claims. See **Exhibit 19** (government's interrogatory answers).

A. Group One: The 1926 Condemnation Decree granted only a right-of-way easement for a railway line across ten owners' properties.

Bonnie Tankersley and Mattie Davis owned the fee estate in land across which the Tampa Southern Railroad wanted to build a railway line. Tankersley and Davis did not want to sell their land to the Tampa Southern Railroad and did not want a railway line across their land. So, in September 1925, Tampa Southern Railroad Company sued Bonnie Tankersley and Mattie Davis in federal district court. See **Exhibit 7** (condemnation decree and pleadings). The federal district court's jurisdiction was invoked under diversity of citizenship. See *id.* The railroad filed a condemnation lawsuit for the purpose of acquiring a "right-of-way" to extend the railroad's railway line from Tampa to Sarasota. In its petition, the railroad stated, under oath, that it was condemning the property "*for use as a right of way*" and further that "the taking of the said property by your petitioner [Tampa Southern Railroad] *is for the purpose of its use as a right of way for the construction of its railroad....*" *Id.* at US_0000046-47 (emphasis added). The pleadings further characterize the property as "DESCRIPTION FOR CONDEMNATION OF *RIGHT OF WAY* FOR TAMPA SOUTHERN RAILROAD *THRU LANDS* OF J.C. BISHOP."[57]

[57] *Id.* at US_0000037 (capitalization in original; emphasis added). J.C. Bishop was Tankersley and Davis' predecessor-in-title. See **Exhibit 7**, p. US_0000046 (petition's property description refers to J.C. Bishop as conveying an interest to the railroad by deed dated June 2, 1923).

Federal District Court Judge Lake Jones ordered Tankersley and Davis to "show cause why said property should not be taken for the uses and purposes set forth in the petition filed by the Tampa Southern Railroad Company…and more particularly, why the said lands should not be taken *for use as a right-of-way* by the Tampa Southern Railroad Company...." **Exhibit 7**, p. US_0000031 (emphasis added). Tankersley and Davis opposed the railroad's condemnation, arguing the Tampa Southern Railroad's charter, which allowed Tampa Southern to extend its railway line from Tampa to Sarasota, did not authorize the railroad to condemn property south of downtown Sarasota. See *id.* at US_0000039. The railroad had not paid the compensation for the taking of its right-of-way, and accordingly, the landowners pointed out that the railroad "should not have or maintain its said [condemnation action against these defendants for the reason and because of the fact that the Tampa Southern Railroad Company," as a "private corporation[, is] entitled only to maintain an action of condemnation upon and when it has filed a petition praying the compensation of the property sought to be taken...." *Id.* Tankersley and Davis further stated that because the railroad is a "corporation duly incorporated under the laws of the State of Florida as a public carrier for the operation of a commercial railroad and is authorized to construct, maintain and operate a railroad," the railroad is not authorized to condemn property for the "construction or for its *right-of-way*...beyon[d] its terminus in the City of Sarasota." **Exhibit 7**, pp. US_0000039-40 (emphasis added). The owners argued that a right-of-way across their land (which was south of Sarasota) was "not essential for the construction of its line of railroad from the City of Tampa to the City of Sarasota but [is] beyond the destiny and termination of its purposes and authority and its power to extend and proceed with its said road and with condemnation for its construction or for its *right-of-way*." *Id.* at US_0000040 (emphasis added).

Judge Jones ruled in favor of the railroad, granting the railroad's petition and condemning what the railroad asked the court to condemn – a "right-of-way." See **Exhibit 7**, pp. US_0000013-

15. The court's Judgment provided, "It is considered by the Court that the property therein described by appropriated by the Tampa Southern Railroad Company for *use as a right of way* for said Railroad Company...." *Id.* at US_0000015 (emphasis added). The compensation Tampa Southern Railway must pay Tankersley and Davis was tried to a jury. See *id.* at US_0000015. The jury determined Tampa Southern Railway must pay Tankersley and Davis $61,500 for the 8.98-acre "piece, parcel or strip of land" taken for the right-of-way and pay $5,000 in attorney fees. *Id.* at US_000014-15.[58]

By condemning a "right of way," the district court's 1926 Condemnation Decree granted the railroad only an easement. In *Rogers II*, 93 Fed. Cl. at 623, this Court recognized that "Florida adheres to the unremarkable principle of eminent domain law that the condemnor only acquires interests sufficient to satisfy the purpose of the taking."[59] See also Ely, RAILROADS & AMERICAN LAW, pp. 197-98 ("Prominent experts took the position that, absent statutory provisions expressly authorizing the taking of a fee simple, railroads should receive just an easement in land condemned for their use.") (citing, *inter alia*, Simon F. Baldwin, AMERICAN RAILROAD LAW (1904), p. 77; Isaac F. Redfield, 1 THE LAW OF RAILROADS 270 (6th ed. 1888)).

[58] The jury's verdict in this condemnation lawsuit provides a measure of what comparable property in Sarasota County taken for a railway line was worth in the 1920s. The jury determined the fair market value of the 8.98-acre right-of-way was $61,500 in March 1926, which is $6,849 per acre. By contrast, seven of the other instruments at issue in this case provide consideration of less than $1 per acre, and another deed provides $26.32 per acre (Clough deed).

Instrument	Area	Consideration	Price per acre
Honoré	Over 47.6 acres	$1	Less than $0.02
Florida Mortgage Co. (Book 10, Page 536)	15.96 acres	$1	$0.06
Florida Mortgage Co. (Book 10, Page 532)	14.55 acres	$1	$0.07
Ringling	4.5 acres	$1	$0.22
Sarasota Land Co.	14.32 acres	$5	$0.35
Burton	6.2 acres	$5	$0.81
Neihardt	unspecified	$1	less than $1
Clough	1.9 acres	$50	$26.32
Palmer	68.68	unspecified	unknown
Pendley	unspecified	unspecified	unknown

[59] Citing *Robertson v. Brooksville & Inverness Ry.*, 129 So. 582, 584 (Fla. 1930), and *Trailer Ranch*, 500 So.2d at 507.

In *Seaboard All-Florida Ry. v. Leavitt*, 141 So. 886, 890 (Fla. 1932), the Supreme Court of Florida explained that "the tremendous power of eminent domain, while frequently necessary to be resorted to for the promotion of needful public purposes, is a power which can be abused unless properly safeguarded." As one of the "safeguards," Florida adopted the principle that, "[a] condemning authority exercising the power of eminent domain is not permitted to acquire a greater quantity of property or interest therein than is necessary to serve the public purpose for which the property is acquired." *Trailer Ranch*, 500 So.2d at 507. See also *Canal Authority v. Miller*, 243 So.2d 131, 133 (Fla. 1970) ("It is equally well recognized, however, that an acquiring authority will not be permitted to take a greater quantity of property, or greater interest or estate therein, than is necessary to serve the particular public use for which the property is being acquired.") (citing *Wilton v. St. John's County*, 123 So. 527 (Fla. 1929), and *Staplin v. Canal Authority*, 208 So.2d 853 (Fla. Ct. App. 1968)). In *Robertson v. Brookville & Inverness Ry*., the Florida Supreme Court further explained, "[o]f course, a railroad corporation may not exercise the power of eminent domain to take any land or material it may desire for the economical conduct of its business…. It can only condemn land in its public capacity *for purposes essential to the proper exercise of its franchise*." 129 So. 582, 584-85 (Fla. 1930) (emphasis added).

Thus, under the explicit terms of the condemnation decree, under Florida statute and under common law, the Tampa Southern Railroad Company obtained only an easement allowing the railroad to operate a railway line across the strip of land. Tankersley and Davis and their present-day successors-in-title retained ownership of the fee estate. And, when the strip of land was no longer used for the operation of a railway line, the easement terminated, and the present-day owners held unencumbered title to the land. See *Brandt*, 572 U.S. at 105.

B. Group Two – The *Voluntary Conveyance* Properties.

Florida and other states adopted statutes providing that interest a railroad obtained in land taken by condemnation or by a voluntary grant was only an easement for a railway line not title to the fee estate in the strip of land.

> Every railroad…shall be empowered to 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…*but the real estate received by voluntary grant shall be held and used for purposes of such grant only*.
>
> Fla. Stat. §4354 (1920) (emphasis added).

All of the conveyances between the original landowners and the railroad in Group Two state the railroad paid the landowner only nominal consideration of, in most cases, "One Dollar." The most the railroad paid any owner was the "Fifty Dollars" paid to the Cloughs. This is nominal when considered in light of the $61,500 the jury determined the property condemned for a right-of-way across the Tankersley and Davis land was worth in 1926.

In *Behrens* the Federal Circuit explained,

> a conveyance of property to a railroad for nominal consideration is treated as a voluntary grant, and *one dollar is nominal consideration*. Each grant in this case was to a railroad and *for one dollar*. These conveyances were thus *voluntary grants*. Voluntary grants to railroads are easements *even if they are formally worded as grants of fee simple estates*.[60]

In addition to the nominal consideration the railroad paid the owner, these voluntary grants also share the common fact that they describe the property as a "strip of land" conveyed to a railroad corporation for a railway line that already existed or was already surveyed across the land.

[60] 59 F.4th at 1345 (emphasis added; citations omitted) (citing *Brown*, 152 S.W.2d at 653-54, and *Boyles*, 981 S.W.2d at 648).

1. Adrian Honoré granted Seaboard only an easement for the limited purpose of operating a railway line.

Adrian Honoré was Bertha Palmer's brother. He, along with Bertha and her sons, bought much of the land in (what is now) Sarasota County in the early 1900s.[61] To establish a railway line from Sarasota to Venice, Adrian Honoré gave Seaboard Air Line Railway a right-of-way across a strip of his land. See **Exhibit 8** (Honoré conveyance). Forty-seven plaintiffs in this litigation are Adrian Honoré's successors-in-title. See **Exhibit 9** (joint title stipulations, filed as ECF No. 44); **Exhibit 1**. See also Statement of Facts ¶15. The Honoré deed included an explicit 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 to and again become the property of the undersigned, his heirs, administrators and assigns.[62]

In *Rogers I*, 90 Fed. Cl. at 430-31, Judge Williams held,

> [T]he words of the Honoré conveyance indicate that the parties intended to create an easement. The Honoré conveyance transferred a "right of way for railroad purposes over and across the...described parcels of land." Further, like the deed in *Irv Enterprises*, the Honoré conveyance placed an explicit limitation on the use of the property interest conveyed and contained an unequivocal stipulation that title would revert to the grantor upon discontinuance of the use of the parcel for its intended railroad purpose. See *Irv Enters.* [*v. Atl. Island Civic Ass'n*, 90 So.2d 607, 609 (Fla. 1956)].

Judge Williams continued and held,

> Like the easements before the *Preseault II* Court, the Honoré conveyance is an express easement, and the extent of the easement created by that conveyance is fixed. [*Preseault II*, 100 F.3d at 1542-43] (quoting 5 RESTATEMENT OF PROPERTY

[61] Sarasota County was created in 1921. Prior to 1921 the property that is now in Sarasota County was in Manatee County.

[62] **Exhibit 8** (Honoré conveyance) (emphasis in original). An essentially identical clause is included in the deed from Bertha Palmer's Estate discussed. See, *infra*, p. 63; **Exhibit 10** (Palmer conveyance).

> §482 (1944)). In Florida, the scope of an easement does not increase with time, and accordingly, the "burden of a right of way upon the servient estate must not be increased to any greater extent than reasonably necessary and contemplated at the time of initial acquisition." *Crutchfield v. F.A. Sebring Realty Co.*, 69 So.2d 328, 330 (Fla. 1954).
>
> Here, as in *Preseault II*, the use of the right-of-way as a public trail while preserving the right-of-way for future railroad activity *was not something contemplated by the original parties to the Honoré conveyance back in 1910*. As the Federal Circuit explained, when examining a right-of-way acquired in 1899, the usage of a right-of-way as a recreational trail is "clearly different" from the usage of the same parcel of land as a railroad corridor. *Preseault II*, 100 F.3d at 1542. As such, the terms of the Honoré easement were limited to use for railroad purposes and did not contemplate use for public trails. Thus, the governmental action converting the railroad right-of-way to a public trail right-of-way imposed a new easement on the landowners and effected a Fifth Amendment taking of their property. *Id.* at 1550.[63]

The government now stipulates the Honoré deed conveyed only an easement for railroad purposes to Seaboard. See **Exhibit 9** (joint title stipulations). See also *Barron v. United States*, No. 21-2181, Gov. Cross-Motion for Summary Judgment, ECF No. 32, p. 10 ("the parties agree

[63] 90 Fed. Cl. at 432 (emphasis and paragraph break added). In *Rogers* the government argued Adrian Honoré gave the railroad title to the fee estate in the strip of land despite the "explicit limitation" and "unequivocal stipulation" in the deed's reversionary clause. *Id.* at 430. Given the plain text of the Honoré conveyance, the government's argument was absurd, and Judge Williams held the deed granted an easement. See *id.* at 432. But after the government lost its liability argument, the government then irresponsibly argued that because the Honoré deed's reversionary clause used the word "abandon," the landowners must prove "as a matter of Florida law that the railroad 'abandoned' the corridor prior to the NITU" – and failing to do so, the property must be valued as being burdened with a railroad easement in the before-condition. *Rogers v. United States*, 101 Fed. Cl. 287, 293 (2011). Thus, after losing its "fee-simple" argument, the government attempted to greatly reduce, if not eliminate, the landowners' compensation by twisting the Honoré deed's reversionary clause against itself. Judge Williams exposed the government's new argument as "misunderstand[ing] the operation of the Trails Act and misconstrue[ing] the conveyance...." *Id.* at 293. Judge Williams further explained that "[i]mposing a requirement that Plaintiffs prove a common law abandonment would also *thwart a proper construction* of the Honoré deed...." *Id.* at 294 (emphasis added). Furthermore, the government's reading of the deed would "imbu[e] the term 'abandon'" in the deed "with a technical legalistic meaning instead of looking at the deed as a whole to discover the intent of the grantor, [which reading] would contravene fundamental principles of interpreting conveyances." *Id.* at 295. Judge Williams concluded by stating the government's argument was a "misguided attempt to inject the issue of common law abandonment into this litigation," which issue was nothing more than "a red herring." *Id.* at 296.

[the Honoré conveyance] granted only an easement"). Therefore, the Court should grant the landowners' motion for summary judgment regarding the Honoré deed.

2. Bertha Palmer's estate granted Seaboard only an easement to operate a railway line across a strip of the estate's land.

One landowner's predecessor-in-title was Bertha Palmer's estate. See Statement of Facts ¶16; **Exhibit 1**. Bertha Palmer died May 5, 1918. Her two sons, Potter Palmer, II, and Honoré Palmer were trustees of her estate. On June 15, 1923, Bertha Palmer's sons executed a document with Tampa Southern Railroad Company "for the sole purpose of transferring to [the railroad] a right of way for railroad purposes...." **Exhibit 10** (Palmer conveyance), p. 4. Like the document from Bertha Palmer's brother, Adrian Honoré, the 1923 deed from Bertha's estate included an explicit reversionary clause 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 Honoré Palmer and Potter Palmer, Trustees under the will of Bertha Honoré Palmer, deceased, their heirs, successors or assigns.[64]

Judge Williams found the almost identical language in the document from Adrian Honoré to be an "explicit limitation on the use of the property interest conveyed and contained an unequivocal stipulation" upon which the right-of-way easement was conditioned. *Rogers I*, 90 Fed. Cl. at 430. Accordingly, the railroad also gained only an easement by means of the Palmer conveyance.

[64] *Id.* (emphasis added).

3. Oscar and Alice Burton memorialized the easement Seaboard was granted for a railway line across the strip of land upon which Seaboard had already built its railway line.

The railroad gained its right-of-way over and across forty-three landowners' properties by the Burton instrument. See Statement of Facts ¶17; **Exhibit 1**. According to the 1910 census, Dr. Oscar Burton was then forty years old, and his wife Alice Burton (née Alice H. Hibbs) was thirty-two years old. See **Exhibit 11** (copy of 1910 census record). Dr. Burton was born in Vermont and his wife Alice was born in Minnesota. Dr. Burton and Alice Burton had four children. In addition to his medical practice, Dr. Burton invested in Sarasota real estate. In 1914, in partnership with Arthur B. Edwards (the first Mayor of Sarasota), the Burtons platted and developed the land in what is now the Avondale Heights community of Sarasota. See **Exhibit 12** (photographs and text of Avondale Heights historic marker).[65]

On February 20, 1909, Oscar and Alice Burton "contracted in writing to sell to Frank S. Colton and Neville Bailey" certain tracts of land in what was then Manatee County, later Sarasota County. Colton and Bailey "transferred to [Sarasota Land Company] all their right and interest in said contract." **Exhibit 13** (Burton conveyance), p. 1. "[The Burtons], with the consent of [Sarasota Land Company]…have agreed to convey unto [Seaboard Air Line Railway]" 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 [Burtons]." *Id.* (emphasis added).

The land described in the document is a 100-feet wide, 2,700-feet long strip of land. Seaboard paid the Burtons "Five Dollars ($5.00)" for a right-of-way across this land. The Burton's granted the right-of-way to Seaboard and "its successors and assigns, to its or their own proper use

[65] Photographs of this marker are available on the "Sarasota County Centennial" website at: https://www.sarasotacountycentennial.com/category/history. The marker is located at 1100 S. Tamiami Trail in Sarasota.

[and] benefit." **Exhibit 13**, p. 1. The Burtons signed the document in Freeborn County, Minnesota, on October 5, 1910, and George Brown and W.W. Stevenson signed the document on October 18, 1910 in New York City on behalf of Sarasota Land Company. See *id.* at 2. The dower provision states that Alice Burton "executed such deed of conveyance *for such purposes*…." *Id.* (emphasis added). The corporate attestation by Brown and Stevenson states they signed on behalf of Sarasota Land Company "for the *uses and purposes* therein expressed." *Id.* (emphasis added).

Like the Clough and Sarasota Land Company conveyances, the Burton document describes the railroad's interest in the strip of land by reference to the already existing railway line.[66] The interest in the strip of land is described "as located *across the lands owned by the Burtons*." **Exhibit 13**, p. 1 (emphasis added). And the land is described as fifty feet on either side "of said center line." *Id.*

Thus, considering the entirety of the document Oscar and Alice Burton signed, the governing principles of Florida law, and the context in which (and the purpose for which) this document was created, the interest Seaboard obtained in the strip of land was an easement to operate a railway line across the strip of land, not the fee simple estate in the strip of land. When Seaboard's successor-railroads no longer operated a railway across the strip of land, the easement

[66] Lawyers for the railroad corporation almost certainly prepared the form deed Dr. Burton and his wife signed. See RESTATEMENT OF THE LAW (THIRD): SERVITUDES §2.2, pp. 69-70 ("The fact that the grantee is a railroad may also tend to indicate that the instrument should be construed to convey an easement only."). See also *Heath v. First Nat. Bank in Milton*, 213 So.2d 883, 888 (Fla. Ct. App. 1968) ("Any errors or ambiguities in the language of the instrument must be construed more strongly against the drafter of such instrument."); *Consolidated Development & Engineering Corp. v. Ortega Co.*, 158 So. 94, 96 (Fla. 1933) ("any ambiguity in language, or doubt as to the meaning of such release clauses, must be construed *most strongly against* the [party who drafted the document]") (emphasis added); *Security First Fed. Sav. & Loan Ass'n v. Jarchin*, 479 So.2d 767, 770 (Fla. Ct. App. 1985) ("Insofar as the language may be deemed ambiguous, Florida law is clear that any ambiguity in contractual language will be interpreted against the party who selected that language.…"); *Beres v. United States*, 97 Fed. Cl. 757, 801 (2011) (under Washington law, where the railroad drafted the deeds, "any ambiguity in the language of the deeds should be construed against the railroad").

terminated, and the present-day successors-in-title to Oscar and Alice Burton held unencumbered title to the land. See *Brandt*, 572 U.S. at 105; *Preseault I*, 494 U.S. at 8.

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

Sixty-one landowners' predecessor-in-title was the Sarasota Land Company. See Statement of Facts ¶18; **Exhibit 1**. In July 1910 the Delaware corporation, Sarasota Land Company's president, George C. Brown, and the company's secretary W.W. Stevenson, signed an instrument that, for "Five Dollars," memorialized Seaboard's interest in "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 lands owned by* the [Sarasota Land Company]...." **Exhibit 14** (Sarasota Land Co. conveyance) (emphasis added). The 100-foot-wide strip of land was 6,239 feet-long and contained 14.32 acres. See *id.* Five dollars for 14.32 acres of land is a voluntary conveyance under Florida's statute §2241. See, *supra*, p. 39. See also *Behrens*, 59 F.4th at 1345. This is 35 cents per-acre, which, even in 1910 dollars, is essentially nothing. See, *supra*, note 58. This document memorialized the location of the railroad's *already existing* right-of-way easement across a strip of land the railway had already entered, surveyed and across which the railroad would build a railway line. The document further acknowledges that the strip of land underlying the railway line was "across land owned" by Sarasota Land Company.

Like the Burton conveyance, the language of the Sarasota Land Company document demonstrates the parties understood and intended the interest granted Seaboard to be an easement to operate a railway line "across" a strip of land "owned by" Sarasota Land Co. **Exhibit 14**. Furthermore, the fact that the conveyance's language is identical to the Clough deed indicates Seaboard or its agents likely drafted the deed or used a pre-printed form. Thus, any ambiguity is construed in favor of these landowners. See, *supra*, note 66.

5. Allen and Flora Clough signed an instrument acknowledging Seaboard had an easement across their land for operation of a railway line.

The railroad gained its right-of-way over and across three landowners' properties by means of the Clough instrument. See Statement of Facts ¶19; **Exhibit 1**. On July 27, 1910, Allen and Flora signed a document describing "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 lands owned by* the [Cloughs]." See **Exhibit 15**, p. 1 (Clough conveyance) (emphasis added). The strip of land described in this document was 1.9 acres, and the document states Seaboard paid the Cloughs nominal consideration of $50.00. See *id.* Like the documents Sarasota Land Company and the Burtons signed, the Clough document described the strip of land as encumbered by Seaboard's existing railway line. See *id*. The Clough document is a voluntary grant that recognizes the railroad's existing right-of-way to operate a railway line over and "across the lands" that Allen and Flora Clough "owned" in 1910. *Id.* This document did not give Seaboard title to the fee estate in the Cloughs' land.

6. The Florida Mortgage & Investment Company documents recognize Seaboard had only a "right-of-way" easement for railroad purposes.

The Florida Mortgage & Investment Company executed two form documents in 1905 describing strips of land in what was then Manatee County, Florida. See **Exhibit 16** (conveyance recorded at Book 10, Page 532) and **Exhibit 16-A** (conveyance recorded at Book 10, Page 536).[67] The other party to these instruments was the Florida West Shore Railway, a subsidiary of Seaboard. These two documents contain identical wording with regard to everything except the specific dimensions of the strips of land. The Florida Mortgage & Investment Company was the predecessor-in-title to thirty-one landowners. See Statement of Facts ¶20; **Exhibit 1**.

[67] See also **Exhibit 16-B** (transcript of conveyance recorded at Book 10, Page 532) and **Exhibit 16-C** (transcript of conveyance recorded at Book 10, Page 536).

The Florida Mortgage & Investment Company instrument describes itself as an "indenture" and states Florida West Shore Railway paid "One Dollar" for the purpose of obtaining a "right-of-way." **Exhibit 16**, p. 1. The indenture describes the interest obtained by the railroad as "part of the *right-of-way* to be obtained from Col. J. H. Gillespie." *Id.* (emphasis added). The right-of-way across Florida Mortgage & Investment Company's land is described as a strip of land "more clearly shown in red on the attached blue-print dated February 13th, 1905, and made in the office of the Assistant Engineer, Savannah, Ga., which blue-print is hereby made a part of this description." **Exhibit 16-A**, p. 2. See also **Exhibit 16-A**, p. 5 (blueprint of railroad titled, "RIGHT OF WAY ON PART OF FRUITVILLE EXTENSION"). This reference to the blueprints in the "office of the Assistant Engineer in Savannah, Georgia" tells us two additional important points. *First*, the railroad had already surveyed and located the railroad right-of-way. *Second*, the railroad drafted the instruments because the Florida Mortgage Co. did not have an "Assistant Engineer" with an "office in Savannah," but the railroad did. The only rational conclusion from the text of these documents is that these documents were prepared by the railroad in order that the Florida Mortgage & Investment Co. could acknowledge a railroad "right of way" easement the Florida West Shore Railway had already established across the land owned by Florida Mortgage and Investment.

The conveyance of a "right-of-way" to a railroad means that the railroad was granted only an *easement* for railroad purposes. As we explain above at pp. 20-22, the grant of a "right-of-way" is an easement for railroad purposes. See *Mills*, 147 Fed. Cl. at 347. In *Mills*, Judge Bruggink explained that under Florida law, "[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.'"[68]

7. Moses Neihardt signed a document acknowledging the railroad's existing easement for a railway line across his land.

In January 1905, Moses Neihardt, then a widower living in rural Missouri, signed a document describing a fifty-foot by fifty-foot tract of land across which he granted an interest in to the Florida West Shore Railways Company. See **Exhibit 17** (Neihardt conveyance), p. 1. Moses Neihardt was the predecessor-in-title to seven landowners. See Statement of Facts ¶21; **Exhibit 1**. The railroad paid Moses Neihardt "One Dollar" for the fifty-foot strip of land. As such, this is a voluntary conveyance under Florida's §2241. See, *supra*, p. 39. See also *Behrens*, 59 F.4th at 1345. According to the government's valuation maps, Moses Neihardt's tract of land was used by the railroad for a railway line. Why would Moses Neihardt, a Missouri widower, intend to convey the railroad title to the fee estate in a fifty-foot-by-fifty-foot strip of land, and why would the railroad desire any greater interest than an easement across this strip of Moses Neihardt's land? Once abandoned as part of a railroad corridor, the fifty-by-fifty-foot strip of land would have no commercial value unless it could be developed with the adjoining land. The Neihardt instrument must be interpreted according to the intent of the parties, which was to convey an easement for operation of a railway. See RESTATEMENT (THIRD): SERVITUDES §2.2, Comment g; *Rogers IV*, 184 So.3d at 1095 (citing *Reid*, 112 So. at 852, and *Saltzman*, 306 So.2d at 539.

[68] Quoting "Right-of-Way" in BLACK'S LAW DICTIONARY (11th ed. 2019). See also Bruce & Ely, THE LAW OF EASEMENTS & LICENSES IN LAND §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."); *Rogers I*, 90 Fed. Cl. at 428-433; *Nerbonne*, 692 So.2d at 928 n.1; *Brandt*, 572 U.S. at 93; *Cowpasture*, 140 S.Ct. at 1845.

8. The document with Oscar Pendley's name gave the railroad no interest in the strip of land described in the document.

The government alleges that the source of the railroad's interest in the land upon which the railroad built its railway line across two plaintiffs' properties was the unexecuted "Pendley document." See **Exhibit 4**; **Exhibit 1**; Statement of Facts ¶26. The Pendley document is a preprinted form with blanks. "Tampa Southern Railroad Company" is typed into the blank for the "party of the second part" and the name "Oscar H. Pendley" is handwritten into the blank for "party of the first part" but without completing the blanks for Oscar Pendley's state and county of residence. See **Exhibit 4**, p. 1. The signature blocks are blank, as are the notary blocks. See *id.* at 1-2. A typewritten description of a strip of land is included on the preprinted form. See *id.* at 1. Three blueprints of the railway line are attached to the form. See *id.* at 3, 5-6. A typewritten "declaration" by W.G. Forlong, a "Real Estate Agent of the Tampa Southern Railroad Company" made August 28, 1923, in New Hanover County, North Carolina, is attached. See *id.* at 4. Mr. Forlong states on "August 26, 1923, I received a deed executed by O.H. Pendley, dated July 17th, 1923, conveying to Tampa Southern Railroad Company," a strip of land...." *Id.* Mr. Forlong also states, "[t]his deed was not signed by the wife of O.H. Pendley, and was sent out for her signature but has never been returned." *Id.*

The preprinted form has a handwritten name "Oscar H. Pendley," but there is no signature by any party to the document – not even Oscar H. Pendley's – and the document has no executed notarization attesting to the authenticity of the document. See **Exhibit 4**, pp. 1-2, 4. The typewritten description of the property to be conveyed states "a strip of land fifty (50) feet wide, being twenty-five (25) feet on each side of the center line of the Tampa Southern Railroad, as located and to be constructed thru…and adjoining the right of way of the S.A.L. Railway." *Id.* at 1. Three partial copies of blueprints prepared by railroad are attached to the document. *Id.* at 3,

5-6. The blueprints note the right-of-way across and adjoining a tract of land owned by "Oscar H. Pendley & Wife." *Id*. at 5-6.

The Pendley document provides a perfect illustration of how railroad rights-of-way were established or memorialized in the early 1900s. Railroad companies' surveyors would locate a route for the railway line. See, *supra*, pp. 15-16. See also *Preseault II*, 100 F.3d at 1536-37.[69] The railroad's agent would then identify the landowner and then obtain the landowner's signature on a preprinted document providing nominal consideration to acknowledge the railroad's right-of-way.

Here, the unsigned Pendley document granted the railroad nothing. The document is a nullity as a conveyance of any interest in real property. The Pendley document does not satisfy or conform to any of Florida's requirement for conveyance of an interest in real property. See Fla. Stat. §689.01 ("No estate or interest...shall be created, made, granted, transferred, or released in any manner other than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring, or releasing such estate, interest, or term...."). Thus, the greatest interest Florida Southern Railroad could have acquired in the property Oscar Pendley and his wife owned was a prescriptive easement to operate a railway line across the strip of land, and that is only if the government or railroad could first satisfy the elements required to obtain a prescriptive easement. See discussion, *infra*, pp. 73-75.

[69] The Federal Circuit in *Preseault II* explained, "Here, the evidence is that the Railroad had obtained a survey and location of its right-of-way, after which the Manwell deed was executed confirming and memorializing the Railroad's action. On balance it would seem that, consistent with the view expressed in *Hill*, [where there was some dispute over whether a conveying document had been properly executed and recorded,] the proceeding retained its eminent domain flavor, and the railroad acquired only that which it needed, an easement for its roadway." 100 F.3d at 1536-37.

9. The Charles Ringling Company granted Tampa Southern Railroad Company an easement across a strip of land for a railway line.

The railroad obtained its right-of-way over and across the properties of six landowners by means of the Ringling indenture. See Statement of Facts ¶22; **Exhibit 1**. On May 18, 1925 John Ringling and Louis Lancaster (as secretary of the Charles Ringling Company) signed an "Indenture" dated April 30, 1925 on behalf of Charles Ringling Company as the grantor. **Exhibit 18** (Ringling conveyance). The Tampa Southern Railroad Company paid nominal consideration of "One Dollar." *Id.* at 1. The property is described as "a strip of land fifty (50) feet wide through Lots Numbered" 14, 16, 10, 12 of "Lord's Second Addition to Sarasota Florida" and "also a Strip of land fifty (50) feet wide, being twenty-five feet on each side of the centerline of the Tampa Southern Railroad, as located and to be constructed…." *Id.* at 1-2. The land "through" the lots of Lord's Second addition also describe the interest granted the railroad as "a strip of land fifty (50) feet wide, being twenty-five (25) feet on each side of the centerline of the Tampa Southern Railroad, as located and to be constructed."[70] *Id.* The description of the strip of land through the platted lots in Lord's Second Addition describe the interest as "said strip of land being bounded on the south by north line of the right of way of the Seaboard Air Line Railway." *Id.*

The Ringling conveyance contains the following features: (a) it is for consideration of "One Dollar;" (b) it was for a "strip of land;" (c) the interest was described as "*through*" platted lots; (d) the strip of land was described by reference to the existing…*right of way* of the Seaboard Air Line Railway; and (e) the interest conveyed to Tampa Southern Railroad Company was described as twenty-five feet "or each side of the centerline of the Tampa Southern Railroad, *as located and to be constructed through*" the land described. **Exhibit 18**, pp. 1-2 (emphasis added). These features

[70] The reference to "Lord's Second Addition" is to a plat J.H. Lord caused to be recorded in the development of Sarasota.

mean this is a voluntary grant of a railroad right-of-way for nominal consideration. The boilerplate language "fee simple forever" does not change this conclusion. See *Preseault II*, 100 F.3d at 1535-36. The word "fee" means the interest is inheritable and must be read in light of the entire document. A servitude, such as an easement, can be inheritable. See, *supra*, pp. 28-29. Thus, even though the Ringling instrument "appears to be the standard form used to convey a fee simple title," as the Federal Circuit held in *Preseault II*, "despite the apparent terms of the deed indicating a transfer in fee, the legal effect was to convey only an easement." 100 F.3d at 1535-36

The valuation maps demonstrate that, when the Ringling Company granted this right-of-way in 1925, Seaboard had already built its railway line between Sarasota and Venice. Tampa Southern Railroad was extending a railway line from Tampa into downtown Sarasota, and Tampa Southern's new railway line paralleled a segment of the existing Seaboard Air Line Railway's line. See **Exhibit 6** (valuation maps). The Charles Ringling Company did not intend to give Tampa Southern title to the fee estate in the strip of land "through" the Charles Ringling Company's land.

C. Group Three – The *Prescriptive Easement* Properties.

For a group of properties, the government agrees there is no recorded document granting the railroad *any interest* in the land across which the railway line was built. See **Exhibit 5** (joint title stipulations regarding source conveyances); **Exhibit 1**; Statement of Facts ¶¶24-25. The government's valuation maps describe the railroad's interest in these segments of the railway line as acquired "By Possession." See **Exhibit 6** (valuation maps). See also **Exhibit 5** (joint title stipulations) (stating "By Possession"); **Exhibit 21** (Appendix A to government interrogatory answers) (stating "No recorded conveyance").[71]

[71] For the reasons explained above, the railroad only gained an easement by prescription over and across the properties relevant to the Pendley document. See, *supra*, pp. 70-71.

When a railroad enters an owner's land, builds a railway line across a strip of the owner's land and runs trains across this strip of land for one hundred years without ever obtaining any recorded deed from the owner, the railroad has only an easement to use the owner's land for railroad purposes. See *Rogers I*, 90 Fed. Cl. at 429 ("Under Florida Law, and 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). In *Mills*, Judge Bruggink 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.[72]

These prescriptive easement properties do not present a close question. The government admits there is no recorded document granting the railroad any interest in the strip of land. See **Exhibit 5** (joint title stipulations regarding source conveyances). The government's own valuation maps state the railroad's interest was only acquired "by possession." As such, the railroad's interest in the strip of land across which the railroad operated a railway line was an easement limited to the use of the strip of land for operation of a railway line. As Professors Bruce and Ely explain in THE LAW OF EASEMENTS & LICENSES IN LAND §5.1,

> [e]asements may arise by adverse use of another's land. Prescriptive easements are based on the notion that if one uses the property of another for a certain period without permission and the owner fails to prevent such use, the prolonged usage should be treated as conclusive evidence that the use is by right. The process of

[72] 147 Fed. Cl. at 349-50 (citing *Florida Southern R. Co. v. Hill*, 23 So. 566 (Fla. 1898), and *Pensacola & Atl. R.R.*, 21 Fla. at 152). 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.

> obtaining an easement by prescription is closely analogous to that of securing title to land by adverse possession.

Furthermore, the government (as the party in the position of the railroad claiming an interest in property by longstanding use of the land) has the burden of establishing the existence of a prescriptive easement. See *id.* §5.3 ("courts carefully scrutinize claims of easement by prescription because the recognition of such a servitude is inconsistent with the right of the servient owner to fully utilize the servient land"). Bruce and Ely continue, "it follows that the burden of providing the existence of a prescriptive easement rests on the claimant, and doubt will be resolved in favor of the landowner." *Id*. See also *Downing*, 100 So.2d at 65. To establish its claim to this property the government must establish the railroad's use of the property was (a) adverse to the interest of the owner of the land, (b) open and notorious, (c) continuous and uninterrupted. See generally Bruce & Ely §5:3.

The government has not established these elements. And, even if the government can establish these elements, the greatest interest the government could claim is a prescriptive easement not title to the fee estate in the strip of land.

D. Group Four – the *Platted* Properties.

Thirteen plaintiffs acquired title to their property by deeds describing the property they acquired by reference to a platted lot adjoining the railway line. These lots are in four platted subdivisions, including Oakwood Manor, Hagar Park, the Oaks at Woodland Park, and Old Forest Lakes. According to the Valuation Maps and stipulations, the railroad's interest in the strip of land across these owners' properties was established by the Pendley document (which, as discussed above, is a prescriptive easement), the Palmer conveyance (executed in 1923), the Florida Mortgage Co. conveyance (executed in 1905), and the Sarasota Land Company conveyance (executed in 1910). See **Exhibit 1**; Statement of Facts ¶¶28-30. The government contends these thirteen landowners' properties are not adjacent to the abandoned railroad corridor because a third

party owns an intervening strip of land. See **Exhibit 19** (Appendix B to government interrogatory answers).

The land was platted as platted subdivisions with individual lots identified by lot numbers referencing the recorded plat rather than individual metes and bounds descriptions of the boundaries of each lot. See discussion of centerline presumption and the Federal Circuit's decision in *Castillo*, *supra*, pp. 31-35. Robert Cunningham and other experts of the Stantec civil engineering firm mapped these owners properties and overlaid the government's valuation maps onto aerial photographs and Global Information System (GIS) property boundaries obtained from the Sarasota County records. **Exhibit 20** (Stantec decl.) ¶¶2-5 and exhibits A-1, A-2, and A-3.

Some of these owner's property parallels the former railroad right-of-way easement and a drainage easement. Under Florida's centerline presumption, the owners of these platted lots own the land extending to the centerline of the former railroad right-of-way. See *Castillo*, 952 F.3d at 1321-22. The subsequent creation of a right-of-way easement for a drainage canal did not overcome the centerline presumption.

These thirteen plaintiffs whose title references recorded plats owned the fee estate in the land extending to the centerline of the former railroad right-of-way. When the federal government encumbered these owners' land with a new easement for a rail-trail corridor the government took these owners' private property for which the government must pay the owners just compensation.

1. Oakwood Manor, Hagar Park, and the Drainage Easement.

The railroad's interest in the land platted and developed as Oakwood Manor was, at most, a prescriptive easement. See, *supra*, pp. 24-25, 70-71 (discussion of the Pendley document). A portion of this land is also encumbered for a drainage canal. The drainage canal easement was established after and paralleled the railway line. Sarasota County and its predecessor drainage district never held title to the fee estate in the land encumbered with the drainage easement.

The development of land in Florida required canals to drain swamp land for cultivation and development and to provide stormwater drainage to ameliorate flooding from hurricanes.[73] Section 1099 of Florida's statutes created drainage districts to establish drainage canals.

The Sarasota-Fruitville Drainage District was formed in 1921. See **Exhibit 20** ¶6 and attached **Exhibit B**. In July 1961, the Sarasota Fruitville Drainage District was dissolved with all of the drainage district's assets including, "*all right-of-ways* described in [the] Chancery order … *All right-of-ways* and easements of said district gained by prescription, [and] all other *right-of-ways and easements*…and all interests in land" to Sarasota County by a quit-claim indenture recorded at Book 315, Page 378. **Exhibit 20 (Exhibit B**), p. 1 (emphasis added).

As successor to the Sarasota-Fruitville Drainage District, Sarasota County holds a fifty-two-foot-wide stormwater drainage easement running across the Oakwood Manor owners' land. See **Exhibit 20** (Stantec decl.) ¶6 and accompanying **Exhibit B**.[74] These records are attached as an exhibit to the Stantec declaration. These records describe the drainage easement as "a strip of land 75 feet wide" with "metes and bounds descriptions...taken and condemned for *rights of way* for [the Fruitville] drainage district...." **Exhibit B**, p. 9 ¶470, p. 8 (emphasis added). As depicted in **Exhibit C** to the Stantec declaration, the Sarasota County drainage easement runs adjacent to and across the plaintiffs' properties and the Legacy Trail right-of-way. See also Statement of Facts ¶29(a). The fifty-two-foot-wide drainage easement also encumbers the Booth property, which was part of the Hager Park subdivision. See **Exhibit 20** (Stantec decl.) ¶7 and accompanying **Exhibit**

[73] See Erin Preston, *History of St. John's River Water Management District*, available at: https://www.youtube.com/watch?v=Xl6Re90qamQ.

[74] The documents relating to Sarasota County's drainage easement are recorded at Book 315, Pages 378 and 379 (including a court condemnation order in *In the Matter of Petition for Formation of Sarasota Fruitville Drainage District*, dated October 2, 1923), and Chancery Book 3, Pages 206 and 240 (Paragraph 470), and the original Oakwood Manor Estates deed in Official Records Book 2076, Page 655. See Statement of Facts ¶29(a).

D and **Exhibit E**; Statement of Facts ¶29(b).[75] The Oakwood Park and Hagar Park predecessor-in-title was O.H. Pendley. See **Exhibit 20** ¶5. The railroad obtained its railway right-of-way easement across the Hagar Park subdivision land by means of the Florida Mortgage Company conveyance recorded in Book 10, Page 532. *Id.*

Thus, Sarasota County does not own the fee estate in the strip of land used for the drainage canal easement. The existence of a parallel easement for a drainage canal now held by Sarasota County does not change the boundaries of the land to which the owners of the platted lots hold title. The plaintiffs own the fee estate in the land extending to the center of the former railroad right-of-way.

2. The Oaks at Woodland Park.

Six plaintiffs own land described in the Oaks at Woodland Park plat adjoining the former railroad right-of-way. See **Exhibit 20** ¶5. These plaintiffs' predecessor-in-title was the Florida Mortgage Company. See *id*.; Statement of Facts ¶29(c). Under Florida's centerline presumption, these plaintiffs hold title to the fee estate in the land extending to the centerline of the former railroad right-of-way. See *Castillo*, 952 F.3d at 1321-22. The government disputes these owners' title to the land under the railway line, contending a maintenance easement "intervenes" between the Oaks at Woodland Park owners' property and the rail-trail corridor. See **Exhibit 19**. But, as the Cunningham declaration and Stantec mapping demonstrate, the owners hold title to the center

[75] The recorded documents relating to this parcel are the Hager Park 2 plat, recorded at Plat Book 10, Page 68, the Sarasota-Fruitville Drainage District indenture, recorded at Book 315, Pages 378 and 379, and the court order recorded at Chancery Order Book 3, Page 206 and Pages 241 (Paragraph 491) and 242 (Paragraphs 492-494). *Id.* These documents are attached to the Stantec declaration as **Exhibit D**. The plat describes the drainage canal right-of-way as an easement running along the northern boundary of the subdivision as the "SARASOTA – FRUITVILLE DRAINAGE DISTRICT CANAL" and describes an additional triangle-shaped drainage easement adjacent to the Booths' property (lying between the drainage canal easement and the railroad right-of-way) as "DRAINAGE EASE'T." *Id.*

of the former railroad line. See **Exhibit 20** (Stantec decl.) ¶8 and accompanying **Exhibit F** and **Exhibit G**.[76] Accordingly, the plaintiffs own the fee estate in the land extending to the center of the former railroad right-of-way.

3. The Old Forest Lakes subdivision.

Sarasota Land Company was the predecessor in title to the present-day owners of property in the Old Forest Lakes subdivision. **Exhibit 20** ¶5. In 1910 Sarasota Land Company memorialized the easement the railroad was granted for a railway line across a strip of land Sarasota Land Company owned. See **Exhibit 14** and discussion, *supra*, p. 66. The Old Forest Lakes subdivision was platted in 1912. See **Exhibit 20** ¶9 and accompanying **Exhibit H** (plat). At the time, the land was owned by Bertha Palmer and Adrian Honoré, who platted and developed the tract of land and sold the lots to individual owners describing the property by reference to the recorded plat. The Forest Lakes Association deed described a five-foot-wide drainage easement dedicated to the Old Forest Lakes Association. See **Exhibit 20** ¶9 and accompanying **Exhibit H**,

[76] On March 26, 1996, Woodlands Park Development, Ltd., and Atlantic Assets, Inc., granted an easement to Florida Power & Light Company recorded at Book 2865, Pages 2458-66, for construction, operation, maintenance of electric equipment, adjacent to the railroad right-of-way. **Exhibit 20** ¶8(a). Then, on July 29, 1996, Atlantic Assets, Inc., quitclaimed its interest in the property described in a quit claim deed recorded at Book 2894, Pages 2041-43, to Woodlands Park Development, Ltd. *Id.* On September 28, 1998, Woodlands Park Development, Ltd., quitclaimed its interest in the property described in Official Record Instrument No. 1998130381 to Oaks at Woodland Park Homeowners Association, Inc. *Id.* Woodland Park Homeowners Association is the plaintiff and present-day owner of this land. *Id.* The property described in the Quit Claim Deed between Woodlands Park Development, Ltd., and the Oaks at Woodland Park Homeowners Association, Inc., includes "Tract A" of the property described in the Oaks at Woodland Park Phase I plat, executed on June 8, 1996, recorded in Plat Book 38, Page 11D. *Id.* The Oaks at Woodland Park Phase I plat depicts Tract A as abutting the Seminole Gulf Railway right-of-way (now the Legacy Trail right-of-way). *Id.* ¶8(b). The plat also depicts Plaintiff Kimberly Dawn Hewitt's property as lot 39 (the Hewitt property is also depicted as lot 39 on Page 11C of Plat Book 38, with the Dodson property depicted as lot 41 and the Puccio property depicted as lot 42 on Page 11C of Plat Book 38). *Id.* The Oaks at Woodland Park Phase I plat also depicts the "utility and access easement" corresponding to the easement granted to Florida Power & Light Company as abutting the Seminole Gulf railroad right-of-way and running over and across Tract A (Oaks at Woodland Park Homeowner's Assoc. property) and lot 39 (Hewitt property). *Id.*

pp. 2, 4 and **Exhibit I**. Three plaintiffs own the land under the drainage easement and the rail-trail. See *id.* ¶9 ("As depicted on **Exhibit I**, the five-foot-wide drainage easement runs adjacent to and abuts the plaintiffs' properties and the right-of-way."); Statement of Facts ¶¶29(d), 30.

CONCLUSION

This Court should grant these 214 landowners' motion for summary judgment. For the condemnation and prescriptive easement claims, the government can advance no credible argument that the interest the railroad obtained was anything more than an easement. And for the voluntary conveyances, the interest these owners' predecessors-in-title granted or gave the railroad in the strip of land across which the railroad operated a railway line for a century was an *easement*, not title to the fee simple estate. All agree that the grantors' intent governs the interpretation of these documents, and the documents manifest the grantors' intent to grant the railroad an easement for railroad purposes across their land. And the grantors' intent to convey an easement is clear when the Court, as it must, considers the circumstances and context in which these documents were created in the early 1900s, the nominal consideration the railroad paid, and the undisputed understanding that the purpose for which these documents were created was to establish a railway.

Under the Federal Circuit's guidance in *Preseault II*, which has recently been further expounded upon by the Federal Circuit in *Behrens* and *Castillo*, and with relevant Florida law recently determined by this Court in *Mills* (analyzing this Court's decisions and the Florida Supreme Court's decision in *Rogers*), this Court must conclude that all of the instruments at issue conveyed only an easement to the railroad for operation of a railway. Accordingly, this Court should grant summary judgment in favor of these plaintiffs and find the government obligated to pay these owners "just compensation" and proceed to determine the specific compensation the government must pay each plaintiff.

Respectfully submitted,

/s/ Mark F. (Thor) Hearne, II
MARK F. (THOR) HEARNE, II
Stephen S. Davis
True North Law, LLC
112 South Hanley Road, Suite 200
St. Louis, MO 63105
(314) 296-4000
thor@truenorthlawgroup.com

Counsel for the Landowners

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

PLAINTIFF-LANDOWNERS' STATEMENT OF UNCONTROVERTED MATERIAL FACTS

This statement of uncontroverted material facts is submitted in support of the plaintiff-landowners' motion for partial summary judgment under Rule 56(c).

1. The rights-of-way Sarasota landowners granted the Seaboard Air Line Railway and its affiliated railroad companies in the early 1900s were for the purpose of building and operating a railway line between Sarasota and Venice. The Seaboard Air Line Railway was an amalgamation of more than ten southeastern railroad companies created in the late 1880s.[1]

2. The Seaboard Air Line Railway was chartered and incorporated on April 10, 1900, by the Virginia Legislature Act of January 12, 1900.[2] At the turn of the last century much of the

[1] The development of Sarasota County, Florida, and the creation of the Seaboard Air Line Railroad (Seaboard) railway line from Sarasota to Venice informs the context and purpose for which the these plaintiff-landowners' predecessors-in-title granted Seaboard the right-of-way that is at issue in this litigation. For a fuller discussion of the relevant history of Sarasota and the details of the establishment and demise of the Sarasota-to-Venice railway line and creation of the Legacy Trail, see the Fourth Amended Complaint, ECF No. 34 ¶¶4-9. See also the plaintiffs' memorandum in support of their motion for summary judgment in the related Legacy Trail cases, *Barron v. United States*, No. 21-2181L, ECF No. 31-2, pp. 5-13. See also this Court's decisions in *Rogers v. United States*, 90 Fed. Cl. 418 (2009), *McCann Holdings, Ltd. v. United States*, 111 Fed. Cl. 608 (2013), and *Childers v. United States*, 116 Fed. Cl. 486 (2013).

[2] A 1946 district court receivership reorganized the railroad as the Seaboard Air Line Railroad. In 1967 Seaboard merged with its rival, Atlantic Coast Line Railroad, to become the Seaboard Coast Line Railroad. The Chesapeake & Ohio acquired Seaboard, and these railway lines became part

land in what is now Sarasota County, Florida, was owned by Bertha Palmer and members of her family, including her son Adrian Honoré.

3. Under the Valuation Act of 1913, Congress required the Interstate Commerce Commission to create a Valuation Bureau to assess, survey, and catalog the country's railroad property in order to regulate fair shipping rates. The Valuation Bureau inventoried railroad company property and mapped all railroads' interest in their rights-of-way. These valuation maps are maintained by the National Archives. Using the federal government's valuation maps and recorded land title documents in Manatee and Sarasota counties, the landowners have determined the original conveyances by which Seaboard and its related railroad companies acquired an interest in the land used for the railway line between Sarasota and Venice. Stantec, plaintiffs' mapping expert, overlayed the valuation maps on Sarasota County's GIS aerial photos and property information for each plaintiff that is publicly available. See **Exhibit 20** (Stantec decl.) ¶5 (parcels were digitally overlayed "on top of the valuation maps of the railroad corridor in order to determine the specific instrument" that "applied to each portion of the railroad corridor by which the railroad obtained its interest in the property then-owned by each of the plaintiffs' predecessors-in-title").

4. By forcing these plaintiff-landowners to file this inverse condemnation action – instead of affirmatively condemning their land – the government forced upon these landowners the burden and expense of retrieving these government-created maps, researching more than a

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of what is today the CSX System. See CORPORATE HISTORY OF THE SEABOARD AIR LINE RAILWAY COMPANY (1922), p. 83. 1. Seaboard was the first railroad to extend a railway line from Tampa to Sarasota. Karl Grismer, THE STORY OF SARASOTA (1946), 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. The Tampa Southern Railroad was chartered in January 1917 and became a subsidiary of the Atlantic Coast Line Railroad. The Atlantic Coast Line Railroad and Seaboard merged in 1957.

century of title documents, and mapping their properties to bring their claims for compensation. Using the valuation maps and publicly-recorded conveyances and other documents in the Sarasota and Manatee County court records and land title records, the government and plaintiffs agreed upon the original conveyance that relates to each present-day landowner's property. See **Exhibit 1** (listing of plaintiff-landowners by conveyance instrument or lack thereof); **Exhibit 5** (joint title stipulations); **Exhibit 9** (joint title stipulations regarding most Honoré properties); **Exhibit 21** (government discovery responses).

5. 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.[3]

I. The invocation of the Trails Act[4] and the taking of these plaintiff-landowners' properties for the extension of the Sarasota Legacy Trail federal recreational rail-trail.

6. After acquiring its railroad right-of-way, Seaboard Air Line Railway went through a series of bankruptcies, and Seaboard's assets (including its interest in the Sarasota-to-Venice railroad right-of-way) wound up in the hands of successor-railroads. The right-of-way at issue in this case was transferred to CSX Transportation, Inc. (CSX), which leased the railway line to Seminole Gulf Railway, L.P. (Seminole Gulf).

7. In March 2019, Seminole Gulf requested that the Surface Transportation Board (the Board) authorize the railroad to abandon a 7.68-mile-long 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. See Exhibit

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

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

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 affirmed 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.

8. Seminole Gulf told the Board the railroad wanted to abandon the railway line between Sarasota and Venice. Sarasota County asked the Board to invoke section 8(d) of the Trails Act and authorize Seminole Gulf and CSX to transfer the otherwise-abandoned right-of-way to Sarasota County to create 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)).[5]

9. 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 the Trails Act providing that "[u]se of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service." *Id.* at 2. This same Seaboard railroad right-of-way was also the subject of the 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 April 2004 NITU 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

[5] For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.

that is the subject of this litigation.

10. Seaboard gained its railroad right-of-way across the landowners' property by prescription, by condemnation, and through several written conveyance instruments. These instruments included the right-of-way easement conveyed by Adrian Honoré.

II. The 214 plaintiff-landowners' in this case (organized for convenience into four groups) owned their property adjacent to the abandoned railway corridor on the date of taking, May 14, 2019.

A. *Group 1 Condemnation Decree Properties* – for ten landowners, the railroad gained its right-of-way by condemnation.

11. For a group of ten plaintiff-landowners listed in Exhibit 1 (*Group 1 Condemnation Decree Properties*), the railroad condemned its railroad right-of-way over and across their land as set forth in the Judgment of the U.S. District Court for the Southern District of Florida in *Tampa Southern Railroad v. Tankersley, et al*. See **Exhibit 5** (Joint Title Stipulations, filed as ECF No. 70, stipulating that the U.S. District Court Condemnation Judgment is the relevant source conveyance for these ten plaintiffs). See also **Exhibit 7** (U.S. District Court Condemnation Judgment).

12. Dominic and Kathleen Booth acquired their property adjacent to the abandoned railway corridor in 2007. See Fourth Amended Compl., ECF No. 34 ¶¶45-48 and accompanying exhibits 29-30.[6] Sean and Darcy Byrnes acquired their property adjacent to the abandoned railway corridor in 2004. *Id.* ¶¶65-68 and accompanying exhibits 41-42. John Ermilio acquired his property adjacent to the abandoned railway corridor in 2005. See Fourth Amended Compl., ECF No. 34 ¶¶141-144 and accompanying exhibits 79-80. Steven and Linda Fineout acquired their property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶153-156 and accompanying

[6] For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.

exhibits 85-86. Paul Hoerning and Courtney Joachim acquired their property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶517-520 and accompanying exhibits 268-269. Gary P. Hurst acquired his property adjacent to the abandoned railway corridor in 1988. *Id.* ¶¶245-248 and accompanying exhibits 131-132. Suzanne McDonald acquired her property adjacent to the abandoned railway corridor in 2003. *Id.* ¶¶357-360 and accompanying exhibits 189-190. David G. Sadler acquired his property adjacent to the abandoned railway corridor in 1992. *Id.* ¶¶469-472 and accompanying exhibits 245-246. David Stebbins acquired his property adjacent to the abandoned railway corridor in 1997. *Id.* ¶¶505-508 and accompanying exhibits 262-263. Patricia, Richard, and Jonathan Varley acquired their property adjacent to the abandoned railway corridor in 2014. *Id.* ¶¶537-540 and accompanying exhibits 278-279.

13. All of the Group 1 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, ECF No. 34. See also **Exhibit 6** (valuation maps); **Exhibit 5** (joint title stipulations).

B. *Group 2 Voluntary Conveyance Properties* – for 199 landowners, the railroad gained its right-of-way by means of a written conveyance instrument, including the Honoré, Burton, Clough, Florida Mortgage, Neihardt, Palmer, Ringling, and Sarasota Land Company instruments.

14. For a group of 199 plaintiff-landowners listed in Exhibit 1 (*Group 2 Voluntary Conveyance Properties*), the railroad gained its right-of-way over and across their land by means of a written conveyance. See **Exhibit 1**; **Exhibit 5** (Joint Title Stipulations); **Exhibit 9** (Joint Title Stipulations regarding Honoré properties).[7]

[7] **Exhibit 9** lists all but three of the Honoré properties. **Exhibit 5** lists, *inter alia*, the remaining three Honoré properties (the claims of John and Joanne Cisler, Kassandra Luebke and Elaine Luebke, and Thomas Pearson).

15. For forty-seven landowners, listed on **Exhibit 1**, the railroad gained its right-of-way over and across their land by means of the written instrument between Adrian Honoré and the Seaboard Air Line Railway, executed in 1910, recorded in Book 23, Page 127, of the county records (Honoré conveyance). See **Exhibit 8** (Honoré conveyance); **Exhibit 8-A** (transcript of Honoré conveyance); **Exhibit 5** (joint title stipulations); **Exhibit 9** (joint title stipulations regarding Honoré landowners). 4023 Sawyer Road 1, LLC, acquired its property adjacent to the abandoned railway corridor in 2013. See Fourth Amended Compl., ECF No. 34 ¶¶1-4 and accompanying exhibits 5-6.[8] Julia Adkins and Austin Murphy acquired their property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶9-12 and accompanying exhibits 9-10. Randal and Joyce Albritton acquired their property adjacent to the abandoned railway corridor in 1997. *Id.* ¶¶13-16 and accompanying exhibits 11-12. Louis L. Alderman, Jr., as Trustee of the Louis L. Alderman 2013 Revocable Trust acquired his property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶17-20 and accompanying exhibits 13-14. Bradley and Susan Anderson acquired their property adjacent to the abandoned railway corridor in 1999. *Id.* ¶¶701-704 and accompanying exhibits 359-360. Geoffrey L. Bolton acquired his property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶37-40 and accompanying exhibits 25-26. Nicholas and Danette Boris acquired their property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶813-816 and accompanying exhibits 416-417. Endia and Gary Callahan acquired their property adjacent to the abandoned railway corridor in 2015. *Id.* ¶¶73-76 and accompanying exhibits 45-46. Martin Carrillo-Plata acquired his property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶77-80 and accompanying exhibits 47-48. John and Joanne Cisler acquired their property

[8] For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.

adjacent to the abandoned railway corridor in 1977. *Id.* ¶¶89-92 and accompanying exhibits 53-54. Steven and Virginia Courtenay acquired their property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶97-100 and accompanying exhibits 57-58. Elise J. Duranceau acquired her property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶129-132 and accompanying exhibits 73-74. William and Brooke Grames acquired their property adjacent to the abandoned railway corridor in 1999. *Id.* ¶¶193-196 and accompanying exhibits 105-106. Vincent and Karen Guglielmini acquired their property adjacent to the abandoned railway corridor in 200. *Id.* ¶¶201-204 and accompanying exhibits 109-110. Noel K. Harris acquired his property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶217-220 and accompanying exhibits 117-118. Angelo and Sarah Hoag acquired their property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶233-236 and accompanying exhibits 125-126. Larry E. Hudspeth acquired his property adjacent to the abandoned railway corridor in 2005. *Id.* ¶¶241-244 and accompanying exhibits 129-130. Daniel and Kristin Jadush acquired their property adjacent to the abandoned railway corridor in 1999. *Id.* ¶¶265-268 and accompanying exhibits 141-142. Judy H. Johnson acquired her property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶609-612 and accompanying exhibits 316-317. Kenneth and Margaret Kellner acquired their property adjacent to the abandoned railway corridor in 1997. *Id.* ¶¶281-284 and accompanying exhibits 149-150. Joseph R. Knight acquired his property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶653-656 and accompanying exhibits 336-337. Patrick and Lisa Loyet acquired their property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶317-320 and accompanying exhibits 167-168. Kassandra Luebke and Elaine Luebke acquired their property adjacent to the abandoned railway corridor in 2019. *Id.* ¶¶617-620 and accompanying exhibit 320. Thomas W. Marchese acquired his property adjacent to the abandoned railway corridor in 1996. *Id.* ¶¶341-344 and accompanying exhibits 179-180.

Reuben and Kathy Martin acquired their property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶353-356 and accompanying exhibits 185-186. Jason and Karen McGuire acquired their property adjacent to the abandoned railway corridor in 2002 and 2016. *Id.* ¶¶361-364 and accompanying exhibits 191-192. Sue Moulton acquired her property adjacent to the abandoned railway corridor in 1977 and 1997. *Id.* ¶¶373-376 and accompanying exhibits 197-198. Timothy and Mary Murphy acquired their property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶377-380 and accompanying exhibits 199-200. James Kirt, Nicholas James, and Christopher Andrew Nalefski acquired their property adjacent to the abandoned railway corridor in 2007. *Id.* ¶¶381-384 and accompanying exhibits 201-202. Perry and Pamela O'Connor acquired their property adjacent to the abandoned railway corridor in 1977. *Id.* ¶¶401-404 and accompanying exhibits 211-212. Sueko O'Connor acquired her property adjacent to the abandoned railway corridor in 1981. *Id.* ¶¶405-408 and accompanying exhibits 213-214. Michele and Dorothy Ann Paradiso acquired their property adjacent to the abandoned railway corridor in 1993. *Id.* ¶¶409-4 and accompanying exhibits 215-216. Thomas Pearson acquired his property adjacent to the abandoned railway corridor in 1999. *Id.* ¶¶417-420 and accompanying exhibits 219-220. Todd and Carmen Perna acquired their property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶421-424 and accompanying exhibits 221-222. Patricia Lynne Pitts-Hamilton acquired her property adjacent to the abandoned railway corridor in 2003. *Id.* ¶¶425-428 and accompanying exhibits 223-224. Pro Properties, LLC, acquired its property adjacent to the abandoned railway corridor in 2003. *Id.* ¶¶429-432 and accompanying exhibits 225-226. Justin M. Reslan acquired his property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶445-448 and accompanying exhibits 233-234. Allen and Mary Ann Rieke acquired their property adjacent to the abandoned railway corridor in 1986. *Id.* ¶¶449-452 and accompanying exhibits 235-236. Michael A. Ritchie

acquired his property adjacent to the abandoned railway corridor in 2005. *Id.* ¶¶453-456 and accompanying exhibits 237-238. Chad, Grace, and Robert Schaeffer acquired their property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶485-488 and accompanying exhibits 252-253. Faith H. Simolari, as Trustee of the Philip Simolari Revocable Trust acquired her property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶493-496 and accompanying exhibits 256-257. Russell S. Strayer acquired his property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶741-744 and accompanying exhibits 379-380. James and Glenda Thornton acquired their property adjacent to the abandoned railway corridor in 1977. *Id.* ¶¶525-528 and accompanying exhibits 272-273. Kenneth and Susan Wells acquired their property adjacent to the abandoned railway corridor in 1995. *Id.* ¶¶541-544 and accompanying exhibits 282-283. David and Anna Ruiz-Welsher acquired their property adjacent to the abandoned railway corridor in 1990. *Id.* ¶¶545-548 and accompanying exhibits 284-285. Zbigniew and Wislawa Wrobel acquired their property adjacent to the abandoned railway corridor in 1995. *Id.* ¶¶565-568 and accompanying exhibits 294-295. Stephen and Margaret Zawacki acquired their property adjacent to the abandoned railway corridor in 1999. *Id.* ¶¶577-580 and accompanying exhibits 300-301.

16. For one landowner listed on **Exhibit 1**, the railroad gained its right-of-way over and across the owner's land by means of the written instrument between Honore and Potter Palmer and the Tampa Southern Railroad Co., executed in 1923, recorded in Book 11, Page 524, of the county records. See **Exhibit 10** (Palmer conveyance); **Exhibit 5** (joint title stipulations). See also **Exhibit 10-A** (transcription of Palmer conveyance). Thomas and Joyce Fay acquired their property adjacent to the abandoned railway corridor in 2015. See Fourth Amended Compl., ECF No. 34 ¶¶145-148 and accompanying exhibits 81-82.[9]

[9] For the Court's convenience and for clarity of organization of the record, the exhibits attached to

17. For forty-three landowners listed on **Exhibit 1**, the railroad gained its right-of-way over and across their land by means of the written instrument between Oscar and Alice Burton and the Seaboard Air Line Railway, executed in 1910, recorded in Book 23, Page 58, of the county records. See **Exhibit 13** (Burton conveyance); **Exhibit 5** (joint title stipulations). See also **Exhibit 13-A** (transcription of Burton conveyance). Lawrence and Veronica Salzman acquired their property adjacent to the abandoned railway corridor in 2004. See Fourth Amended Compl., ECF No. 34 ¶¶473-476 and accompanying exhibits 247-248. Michael Bergeron and Richard Nelson acquired their property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶805-808 and accompanying exhibits 411-412. Ray and Ella Bontrager acquired their property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶41-44 and accompanying exhibits 27-28. Ralph and Dale Marie Braun acquired their property adjacent to the abandoned railway corridor in 2014. *Id.* ¶¶57-60 and accompanying exhibits 37-38. Zsolt Csesznok and Marianna Bartus acquired their property adjacent to the abandoned railway corridor in 2013. *Id.* ¶¶777-780and accompanying exhibits 397-398. Joseph and Dorothy D'Angelo, as Trustees of the D'Angelo Family Revocable Trust acquired their property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶109-112 and accompanying exhibits 63-64. Craig and Cynthia Dicki acquired their property adjacent to the abandoned railway corridor in 1978. *Id.* ¶¶113-116 and accompanying exhibits 65-66. Pamela Driggs acquired her property adjacent to the abandoned railway corridor in 2006. *Id.* ¶¶125-128 and accompanying exhibits 71-72. Zoila Emanuelli, as Trustee of the Zoila Emanuelli Revocable Trust acquired his property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶133-136 and accompanying exhibits 75-76. Cosimo Fragomeni acquired his property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶165-168 and accompanying exhibits 91-92. Cheryl Del Pozzo

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and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.

Gallagher acquired her property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶629-632 and accompanying exhibits 325-326. Michelle Garcia acquired her property adjacent to the abandoned railway corridor in 2006. *Id.* ¶¶173-176 and accompanying exhibits 95-96. Ann Geraghty acquired her property adjacent to the abandoned railway corridor in 1989. *Id.* ¶¶181-184 and accompanying exhibits 99-100. GPG Limited, LLC acquired its property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶189-192 and accompanying exhibits 103-104. Martin Graber, Trustee, acquired his property adjacent to the abandoned railway corridor in 2007. *Id.* ¶¶625-628 and accompanying exhibits 323-324. Martin and Carol Frances Graber acquired their property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶621-624 and accompanying exhibits 321-322. Stephen A. Heard acquired his property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶225-228 and accompanying exhibits 121-122. John A. Hobbs, Jr. and Mark F. Marino acquired their property adjacent to the abandoned railway corridor in 2013. *Id.* ¶¶865-868 and accompanying exhibits 442-443. Deborah Keck acquired her property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶277-280 and accompanying exhibits 147-148. James and Diane Kostan acquired their property adjacent to the abandoned railway corridor in 2011. *Id.* ¶¶289-292 and accompanying exhibits 153-154. Gerald A. Lagace acquired his property adjacent to the abandoned railway corridor in 1983. *Id.* ¶¶869-872 and accompanying exhibits 444-445. Lake Sawyer Two, LLC acquired its property adjacent to the abandoned railway corridor in 2009. *Id.* ¶¶301-304 and accompanying exhibits 159-160. Jactrace, LLC acquired its property adjacent to the abandoned railway corridor in 2013. *Id.* ¶¶257-260 and accompanying exhibits 137-138. Keith R. and Mary M. Leeseberg acquired their property adjacent to the abandoned railway corridor in 1978. *Id.* ¶¶305-308 and accompanying exhibits 161-162. Douglas P. and Maria A. Luff acquired their property adjacent to the abandoned railway corridor in 2017. *Id.*

¶¶325-328 and accompanying exhibits 171-172. Shirley Manfredo acquired her property adjacent to the abandoned railway corridor in 1984. *Id.* ¶¶333-336 and accompanying exhibits 175-176. Cheryl A. Marchand and Candace A. Magiera acquired their property adjacent to the abandoned railway corridor in 2014. *Id.* ¶¶337-340 and accompanying exhibits 177-178. James and Suzanne Naiman acquired their property adjacent to the abandoned railway corridor in 1989. *Id.* ¶¶673-676 and accompanying exhibits 346-347. Javier Nieto and Maylen Negrin acquired their property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶385-388 and accompanying exhibits 203-204. Barbara A. Nikias acquired her property adjacent to the abandoned railway corridor in 2008. *Id.* ¶¶389-392 and accompanying exhibits 205-206. Elmer H. and Lena M. Nolt acquired their property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶393-396 and accompanying exhibits 207-208. Donna Perkins acquired her property adjacent to the abandoned railway corridor in 2014. *Id.* ¶¶705-708 and accompanying exhibits 361-362. Phyllis Perruc acquired her property adjacent to the abandoned railway corridor in 1996. *Id.* ¶¶873-876 and accompanying exhibits 446-447. Mindy Piana acquired her property adjacent to the abandoned railway corridor in 2003. *Id.* ¶¶753-756 and accompanying exhibits 385-386. Jose Sierra Testi-Martinez and Clara A. Myers acquired their property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶597-600 and accompanying exhibits 310-311. Vinton and Dianne Trefz, as Trustees of the Trefz Living Trust acquired their property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶689-692 and accompanying exhibits 354-355. James J. Tutsock and Mary J. McQueen acquired their property adjacent to the abandoned railway corridor in 1988. *Id.* ¶¶529-532 and accompanying exhibits 274-275. Robert J. and Maureen C. Wilson acquired their property adjacent to the abandoned railway corridor in 1978. *Id.* ¶¶557-560 and accompanying exhibits 290-291. Theresa Wilson acquired her property adjacent to the abandoned railway

corridor in 2010. *Id.* ¶¶561-564 and accompanying exhibits 292-293. Jennifer Yager acquired her property adjacent to the abandoned railway corridor in 2009. *Id.* ¶¶569-572 and accompanying exhibits 269-297. Travis Marc and Elizabeth Marie Yoder acquired their property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶573-756 and accompanying exhibits 298-299. Betty Lou Yutzy, as Trustee of the Betty Lou Yutzy Trust acquired her property adjacent to the abandoned railway corridor in 2008. *Id.* ¶¶841-844 and accompanying exhibits 430-431. Orvie W. and Marie M. Zimmerman and Emery and Mary Ellen Yoder acquired their property adjacent to the abandoned railway corridor in 2015. *Id.* ¶¶581-584 and accompanying exhibits 302-303.

18. For sixty-one landowners listed on **Exhibit 1**, the railroad gained its right-of-way over and across their land by means of the written instrument between Sarasota Land Company and Seaboard Air Line Railway, executed in 1910, recorded in Book 19, Page 415, of the county records. See **Exhibit 14** (Sarasota Land Co. conveyance); **Exhibit 5** (joint title stipulations). See also **Exhibit 14-A** (transcription of Sarasota Land Co. conveyance). Izmirlian Properties, LLC acquired their property adjacent to the abandoned railway corridor in 2003. See Fourth Amended Compl., ECF No. 34 ¶¶253-256 and accompanying exhibits 135-136.[10] Douglas and Cynthia Abbott acquired their property adjacent to the abandoned railway corridor in 1973. *Id.* ¶¶5-8 and accompanying exhibits 7-8. Nicole J. Altergott acquired her property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶849-852 and accompanying exhibits 434-435. Troy Alvis acquired his property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶605-608 and accompanying exhibits 314-315. Neal and Jo Atchley acquired their property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶21-24 and accompanying exhibits 15-16. David R. and Joy S. Bailey, as

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Trustee of the Joy S. Bailey and David R. Bailey Revocable Trust acquired their property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶685-688 and accompanying exhibits 352-353. Kerwin and Judy Baker acquired their property adjacent to the abandoned railway corridor in 1977. *Id.* ¶¶25-28 and accompanying exhibits 17-18. James R. and Mary Ellen Bishop acquired their property adjacent to the abandoned railway corridor in 2004. *Id.* ¶¶633-636 and accompanying exhibits 327-328. Steve E. Bishop acquired his property adjacent to the abandoned railway corridor in 2016.[11] *Id.* ¶¶29-32 and accompanying exhibits 21-22. Ersila Borchert acquired her property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶49-52 and accompanying exhibits 31-32. Carole M. Bowns acquired her property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶697-700 and accompanying exhibits 357-358. Karen E. Bowser acquired her property adjacent to the abandoned railway corridor in 1997. *Id.* ¶¶53-56 and accompanying exhibits 35-36. Cynthia J. Burnell acquired her property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶769-772 and accompanying exhibits 393-394. Carol Caldwell acquired her property adjacent to the abandoned railway corridor in 2006. *Id.* ¶¶69-72 and accompanying exhibits 43-44. James M. and Jeneve S. Cawley acquired their property adjacent to the abandoned railway corridor in 1980. *Id.* ¶¶85-88 and accompanying exhibits 51-52. Amy Roseann Coats and Darrin Lee Johnson acquired their property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶93-96 and accompanying exhibits 55-56. Frank T. Crotsley acquired his property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶105-108 and accompanying exhibits 61-62. Carl G. and Tobie L. DeSantis acquired their property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶613-616 and accompanying exhibits 318-319. Wanda Donner, as Trustee

[11] The government did not stipulate that Steve E. Bishop's predecessor-in-title was the Sarasota Land Company. The government incorrectly asserts that Steve E. Bishop's predecessor-in-title was the Charles Ringling Company. See **Exhibit 21**, p. 27.

of the Wanda Donner Living Trust acquired her property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶121-124 and accompanying exhibits 69-70. Leslie Dwyer and Barbara S. Hair acquired their property adjacent to the abandoned railway corridor in 2004. *Id.* ¶¶817-820 and accompanying exhibits 418-419. Bernadette Feragola acquired her property adjacent to the abandoned railway corridor in 1994. *Id.* ¶¶149-152 and accompanying exhibits 83-84. Michael R. and Editha D. Fettig acquired their property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶729-732 and accompanying exhibits 373-374. Sharon L. Gallagher, as Trustee of the Sharon L. Gallagher Revocable Trust acquired her property adjacent to the abandoned railway corridor in 2005. *Id.* ¶¶169-172 and accompanying exhibits 93-94. Donald L. Geary, as Trustee of the Donald L. Geary Revocable Trust acquired his property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶177-180 and accompanying exhibits 97-98. Roman T. and Carolyn F. Graber, as Trustees of the Roman and Carolyn Graber Revocable Trust acquired their property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶185-188 and accompanying exhibits 101-102. Renate B. Harkavy acquired her property adjacent to the abandoned railway corridor in 1996. *Id.* ¶¶209-212 and accompanying exhibits 113-114. Alvin and Michelle L. Harrell, Jr. acquired their property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶213-216 and accompanying exhibits 115-116. Garnett D. and Stephanie S. Hayes acquired their property adjacent to the abandoned railway corridor in 1979. *Id.* ¶¶221-224 and accompanying exhibits 119-120. Wayne A. and Joyce O. Hibbs, Jr. acquired their property adjacent to the abandoned railway corridor in 1994. *Id.* ¶¶229-232 and accompanying exhibits 123-124. Paul K. and Daphne J. Hutchison acquired their property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶249-252 and accompanying exhibits 133-134. Linda L. Jones acquired her property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶273-276 and accompanying exhibits 145-146. Myrtle Krause

acquired her property adjacent to the abandoned railway corridor in 1967. *Id.* ¶¶293-296 and accompanying exhibits 155-156. Saul Alberto Lopez and Liz Janette Martinez-Ramos acquired their property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶837-840 and accompanying exhibits 428-429. Linda Lyon acquired her property adjacent to the abandoned railway corridor in 2010. *Id.* ¶¶329-332 and accompanying exhibits 173-174. Kim A. and Sheila E. Marshall, as Trustees of the Kim A. and Sheila E. Marshall Trust acquired their property adjacent to the abandoned railway corridor in 2014. *Id.* ¶¶345-348 and accompanying exhibits 181-182. Mast Investments, LLC acquired its property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶845-848 and accompanying exhibits 432-433. Michael L. Morgan acquired his property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶369-372 and accompanying exhibits 195-196. Julie Morris acquired her property adjacent to the abandoned railway corridor in 2008. *Id.* ¶¶669-772 and accompanying exhibits 344-345. Gregory B. Nowak acquired his property adjacent to the abandoned railway corridor in 2006. *Id.* ¶¶397-400 and accompanying exhibits 209-210. 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 acquired their property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶877-880 and accompanying exhibits 448-449. Ryan R. Parker acquired his property adjacent to the abandoned railway corridor in 2014. *Id.* ¶¶413-416 and accompanying exhibits 217-218. Phillippi Pines, LLC acquired its property adjacent to the abandoned railway corridor in 2004. *Id.* ¶¶885-888 and accompanying exhibit 452. Barbara Sue Schrock acquired her property adjacent to the abandoned railway corridor in 2010. *Id.* ¶¶853-856 and accompanying exhibits 436-437. Leroy and Ruby Schrock acquired their property adjacent to the abandoned railway corridor in 1997 and 1999. *Id.* ¶¶793-796 and accompanying exhibits 405-406. Ruby Schrock, as Trustee of the Ruby Schrock

Revocable Trust acquired her property adjacent to the abandoned railway corridor in 1995. *Id.* ¶¶797-800 and accompanying exhibits 407-408. Sandra Elaine Schrock acquired her property adjacent to the abandoned railway corridor in 2004. *Id.* ¶¶789-792 and accompanying exhibits 403-404. Brian N. Seymour acquired his property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶489-492 and accompanying exhibits 254-255. Wilbur O. Smith acquired his property adjacent to the abandoned railway corridor in 1983. *Id.* ¶¶497-500 and accompanying exhibits 258-259. Vera Straniere acquired her property adjacent to the abandoned railway corridor in 1989. *Id.* ¶¶513-516 and accompanying exhibits 266-267. Suzanne M. Thornburg acquired her property adjacent to the abandoned railway corridor in 2005. *Id.* ¶¶521-524 and accompanying exhibits 270-271. Mildred L. Tufford (Kandel) acquired her property adjacent to the abandoned railway corridor in 1983. *Id.* ¶¶825-828 and accompanying exhibits 427 and 422. Chad Waites acquired his property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶721-724 and accompanying exhibits 369-370. Lance and Helene Warrick acquired their property adjacent to the abandoned railway corridor in 2011. *Id.* ¶¶857-860 and accompanying exhibits 438-439. Paul Wicha acquired his property adjacent to the abandoned railway corridor in 2015. *Id.* ¶¶549-552 and accompanying exhibits 286-287. Brad D. and Patricia T. Wilson acquired their property adjacent to the abandoned railway corridor in 1994. *Id.* ¶¶553-556 and accompanying exhibits 288-289. Linda A. Yarbrough acquired her property adjacent to the abandoned railway corridor in 1979. *Id.* ¶¶681-684 and accompanying exhibits 350-351. Jonathan R. and C. Joy Yutzy, as Trustees of the Jonathan R. Yutzy and C. Joy Yutzy Revocable Living Trust, acquired their property adjacent to the abandoned railway corridor in 2013. *Id.* ¶¶801-804 and accompanying exhibits 409-410. Timothy J. and Dana Zizak acquired their property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶585-588 and accompanying exhibits 304-305. Mark T. and Angela

D. Flaherty acquired their property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶157-160 and accompanying exhibits 87-88. Timothy G. And Alisa J. Herring acquired their property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶749-752 and accompanying exhibits 383-384. Robert E. and Michelle S. Messick acquired their property adjacent to the abandoned railway corridor in 1985. *Id.* ¶¶665-668 and accompanying exhibits 342-343.

19. For three landowners listed on **Exhibit 1**, the railroad gained its right-of-way over and across their land by means of the written instrument between A.C. and Flora Clough and the Seaboard Air Line Railway, executed in 1910, recorded in Book 19, Page 481, of the county records. See **Exhibit 15** (Clough conveyance); **Exhibit 5** (joint title stipulations). See also **Exhibit 15-A** (transcription of Clough conveyance). Amos and Anna S. Fisher acquired their property adjacent to the abandoned railway corridor in 2014. See Fourth Amended Compl., ECF No. 34 ¶¶637-640 and accompanying exhibits 328-329.[12] William B. and Debra I. Pruett acquired their property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶709-712 and accompanying exhibits 363-364. Donald and Meredith Jeanne Ruth acquired their property adjacent to the abandoned railway corridor in 1993. *Id.* ¶¶465-468 and accompanying exhibits 243-244.

20. For thirty-one landowners listed on **Exhibit 1**, the railroad gained its right-of-way over and across their land by means of two identically-worded written instruments between Florida Mortgage and Investment Company and the Florida West Shore Railway, executed in 1905. The first instrument was recorded in Book 10, Page 532, and the second instrument was recorded in Book 10, Page 536, of the county records. See **Exhibit 16** and **Exhibit 16-A** (Florida Mortgage

[12] For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.

conveyances); **Exhibit 5** (joint title stipulations). See also **Exhibit 16-B** and **Exhibit 16-C** (transcriptions). John M. Alvis acquired his property adjacent to the abandoned railway corridor in 2005. See Fourth Amended Compl., ECF No. 34 ¶¶757-760 and accompanying exhibits 387-388. Catherine Teresa Gray acquired her property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶197-200 and accompanying exhibits 107-108. Joshua Carroll Hackney acquired his property adjacent to the abandoned railway corridor in 2015. *Id.* ¶¶205-208 and accompanying exhibits 111-112. Joe R. Hembree, as Trustee of the Joe R. Hembree Revocable Trust acquired his property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶733-736 and accompanying exhibits 375-376. Michael and Vivian Kravchak acquired their property adjacent to the abandoned railway corridor in 2008. *Id.* ¶¶297-300 and accompanying exhibits 157-158. Lewma Enterprise, Inc. acquired its property adjacent to the abandoned railway corridor in 1986. *Id.* ¶¶309-312 and accompanying exhibits 163-164. Cameron W. and Carol T. McGough acquired their property adjacent to the abandoned railway corridor in 2011. *Id.* ¶¶601-604 and accompanying exhibits 312-313. Rickey Smull acquired his property adjacent to the abandoned railway corridor in 2010. *Id.* ¶¶501-504 and accompanying exhibits 260-261. Irvin J. and Cynthia P. Spiegel acquired their property adjacent to the abandoned railway corridor in 2011. *Id.* ¶¶713-716 and accompanying exhibits 365-366. William A. and Jill Booth acquired their property adjacent to the abandoned railway corridor in 2018. See *id.* ¶¶765-768 and accompanying exhibits 391-392. John and Mary Allgyer and Levi and Tammy Lantz, Jr. acquired their property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶725-728 and accompanying exhibits 371-372. JB Holdings of Sarastoa, LLC acquired its property adjacent to the abandoned railway corridor in 2004. *Id.* ¶¶261-264 and accompanying exhibits 139-140. Bob Allen and Lori Ann Jefferson acquired their property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶269-272 and accompanying exhibits

143-144. Bonnie A. Klein acquired her property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶649-652 and accompanying exhibits 334-335. Ernest R. Locklear, Carolyn B. Barclay and Steven H. Locklear acquired their property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶313-316 and accompanying exhibits 165-166. Shannon Lugannani and Helen Elena Emegbagha acquired their property adjacent to the abandoned railway corridor in 2016. *Id.* ¶¶737-740 and accompanying exhibits 377-378. Callie Parsons acquired her property adjacent to the abandoned railway corridor in 2007. *Id.* ¶¶861-864 and accompanying exhibits 440-441. Marc and Leann Schlabach acquired their property adjacent to the abandoned railway corridor in 1997. *Id.* ¶¶829-832 and accompanying exhibits 423-424. John and Jaana Avramidis acquired their property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶761-764 and accompanying exhibits 389-390. David and Cynthia Gaul acquired their property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶781-784 and accompanying exhibits 399-400. Andrew and Jennifer Heath acquired their property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶641-644 and accompanying exhibits 330-331. Anna Marie Martin acquired her property adjacent to the abandoned railway corridor in 2008. *Id.* ¶¶593-596 and accompanying exhibits 308-309. Thomas McCall and Susan Coakley acquired their property adjacent to the abandoned railway corridor in 2012. *Id.* ¶¶773-776 and accompanying exhibits 395-396. Susan Schmitt, as Trustee of the Schmitt Revocable Trust, acquired her property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶785-788 and accompanying exhibits 401-402. Raymond and Linda Wenck acquired their property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶881-884 and accompanying exhibits 450-451. Thomas and Michelle M. Dodson acquired their property adjacent to the abandoned railway corridor in 2002. See *id.* ¶¶117-120 and accompanying exhibits 67-68. Kimberly Dawn Hewitt, as Trustee for the Kimberly Dawn Hewitt Revocable Trust

acquired her property adjacent to the abandoned railway corridor in 2009. *Id.* ¶¶717-720 and accompanying exhibits 367-368. The Oaks at Woodland Park Homeowners Assoc., Inc. acquired its property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶693-696 and accompanying exhibit 356. Anthony and Karen Puccio acquired their property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶437-440 and accompanying exhibits 229-230. Keith E. Rollins and Lisa J. Paxson-Rollins acquired their property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶457-460 and accompanying exhibits 239-240. Brian T. Sanborn acquired his property adjacent to the abandoned railway corridor in 2008. *Id.* ¶¶477-480 and accompanying exhibits 249-250.

21. For seven landowners listed on **Exhibit 1**, the railroad gained its right-of-way over and across their land by means of the written instrument between Moses Neihardt and the Florida West Shore Railway, executed in 1905, recorded in Book 10, Page 529, of the county records. See **Exhibit 17** (Neihardt conveyance); **Exhibit 5** (joint title stipulations). See also **Exhibit 17-A** (transcription of Neihardt conveyance). 3153 Novus Court, LLC acquired its property adjacent to the abandoned railway corridor in 2019. See Fourth Amended Compl., ECF No. 34 ¶¶589-592 and accompanying exhibits 306-307.[13] Crabapple Enterprise, LLC acquired its property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶101-104 and accompanying exhibits 59-60. Michael and Janel Huckleberry acquired their property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶237-240 and accompanying exhibits 127-128. Brian and Cheryl Key acquired their property adjacent to the abandoned railway corridor in 1993. *Id.* ¶¶285-288 and accompanying exhibits 151-152. Tammy Lynn acquired her property adjacent to the abandoned railway corridor in 2000. *Id.* ¶¶321-324 and accompanying exhibits 169-170. William Martell, III acquired his

[13] For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.

property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶349-352 and accompanying exhibits 183-184. Michael McLaughlin acquired his property adjacent to the abandoned railway corridor in 2014. *Id.* ¶¶365-368 and accompanying exhibits 193-194.

22. For six landowners listed on **Exhibit 1**, the railroad gained its right-of-way over and across their land by means of the written instrument between the Charles Ringling Company and the Tampa Southern Railroad Company, executed in 1925, recorded in Book 42, Page 569, of the county records. See **Exhibit 18** (Ringling conveyance); **Exhibit 5** (joint title stipulations). See also **Exhibit 18-A** (transcription of Ringling conveyance). Denise Doucette Erb and Lorraine E. Colby acquired their property adjacent to the abandoned railway corridor in 2010. Fourth Amended Compl., ECF No. 34 ¶¶137-140 and accompanying exhibits 77-78. Joyce P. and Julie Gwen Hardie acquired their property adjacent to the abandoned railway corridor in 2011. *Id.* ¶¶821-824 and accompanying exhibits 420-421. David Ivanov, as Trustee of the 2976 Poplar Street Land Trust acquired his property adjacent to the abandoned railway corridor in 2018. *Id.* ¶¶809-812 and accompanying exhibits 414-415. Lakewood Venture Capital, LLC acquired its property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶657-660 and accompanying exhibits 338-339. Faye M. Rood acquired her property adjacent to the abandoned railway corridor in 2009. *Id.* ¶¶461-464 and accompanying exhibits 241-242. Sarasota County Agricultural Fair Association acquired its property adjacent to the abandoned railway corridor prior to 2019. *Id.* ¶¶481-484 and accompanying exhibit 251.

23. All of the Group 2 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, ECF No. 34. See also **Exhibit 6** (valuation maps); **Exhibit 5** (joint title stipulations); **Exhibit 9** (joint title stipulations).

C. *Group 3 Prescriptive Easement Properties* – for five landowners, the railroad gained its right-of-way by prescription.

24. The railroad acquired a prescriptive easement for railroad purposes over and across the property of the five plaintiffs' land, listed in **Exhibit 1** as the *Group 3 Prescriptive Easement Properties*.

25. For three landowners listed in **Exhibit 1**, the I.C.C. valuation maps and schedules state that the railroad gained its right-of-way "By Possession." See **Exhibit 6** (valuation maps and schedules), pp. US-ICC 000004, US-ICC 000005, and US-ICC 000006; **Exhibit 5** (joint title stipulations), p. 1 ("For three claims (the claims of John W. and Christine L. Fordham, Bradley Blum Morrison, and Shirley P. Ramsey), the parties stipulate that I.C.C. Valuation Schedules state the railroad obtained the relevant parcel "By Possession" from these plaintiffs' predecessors-in-interest."). These include the claims of John and Christine Fordham, Bradley Blum Morrison, and Shirley P. Ramsey. See **Exhibit 5** (joint title stipulations). John and Christine Fordham acquired their property adjacent to the abandoned railway corridor in 2004. See Fourth Amended Compl., ECF No. 34 ¶¶161-64 and accompanying exhibits 89 and 90.[14] Bradley Blum Morrison acquired his property adjacent to the abandoned railway corridor in 2017. *Id.* ¶¶33-36 and accompanying exhibits 23 and 24. Shirley P. Ramsey acquired her property adjacent to the abandoned railway corridor in 1992. *Id.* ¶¶441-44 and accompanying exhibits 231 and 232.

26. For two landowners listed in **Exhibit 1**, an unexecuted document naming Oscar H. Pendley purports to convey a right-of-way to the railroad over and across their land. The document is unsigned, unexecuted, and does not appear to have been recorded. See **Exhibit 4** (Pendley document); **Exhibit 5** (joint title stipulations). See also **Exhibit 4-A** (transcription of Pendley

[14] For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.

document). Because the Pendley document is a nullity, the railroad gained its right-of-way over these two owners' properties by prescription. Jeffrey Doyle, as Trustee of the Wallace David Brunton Testamentary Trust, and Mabel Brunton acquired their property adjacent to the abandoned railway corridor in 2013. See Fourth Amended Compl., ECF No. 34 ¶¶61-64 and accompanying exhibits 39-40. Gary L. Cathey and Victoria L. Goodrich acquired their property adjacent to the abandoned railway corridor in 2013. *Id.* ¶¶81-84 and accompanying exhibits 49-50.

27. All of the Group 3 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, ECF No. 34. See also **Exhibit 6** (valuation maps); **Exhibit 5** (joint title stipulations).

D. *Group 4 Platted Properties* – for thirteen landowners, the government wrongly disputes their land is adjacent to the Legacy Trail rail-trail corridor.

28. For thirteen landowners listed in **Exhibit 1** as the *Platted Properties*, the government wrongly disputes that their properties are located adjacent to and underlying the abandoned railway corridor. These thirteen landowners are included in Groups 2 and 3 above and are set forth separately in Group 4 because the government disputes title issues for these owners. See **Exhibit 19** (Appendix B to government interrogatory answers). Thomas and Michelle M. Dodson acquired their property adjacent to the abandoned railway corridor in 2002. See Fourth Amended Compl., ECF No. 34 ¶¶117-120 and accompanying exhibits 67-68.[15] Mark T. and Angela D. Flaherty acquired their property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶157-160 and accompanying exhibits 87-88. Timothy G. And Alisa J. Herring acquired their property adjacent to the abandoned railway corridor in 2001. *Id.* ¶¶749-752 and accompanying

[15] For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.

exhibits 383-384. Robert E. and Michelle S. Messick acquired their property adjacent to the abandoned railway corridor in 1985. *Id.* ¶¶665-668 and accompanying exhibits 342-343. Kimberly Dawn Hewitt, as Trustee for the Kimberly Dawn Hewitt Revocable Trust acquired her property adjacent to the abandoned railway corridor in 2009. *Id.* ¶¶717-720 and accompanying exhibits 367-368. The Oaks at Woodland Park Homeowners Assoc., Inc. acquired its property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶693-696 and accompanying exhibit 356. Anthony and Karen Puccio acquired their property adjacent to the abandoned railway corridor in 1998. *Id.* ¶¶437-440 and accompanying exhibits 229-230. Keith E. Rollins and Lisa J. Paxson-Rollins acquired their property adjacent to the abandoned railway corridor in 2002. *Id.* ¶¶457-460 and accompanying exhibits 239-240. Brian T. Sanborn acquired his property adjacent to the abandoned railway corridor in 2008. *Id.* ¶¶477-480 and accompanying exhibits 249-250.

29. These thirteen plaintiffs owned their properties in the Oakwood Manor, Hagar Park, Oaks at Woodland Park, and Old Forest Lakes subdivisions on the date of taking, May 14, 2019, and their properties are adjacent to and underlie the Legacy Trail rail-trail corridor.

a. Three plaintiffs own land in the Oakwood Manor subdivision, including: 1) Jeffrey Doyle, as Trustee of the Wallace David Brunton Trust, and Mabel Brunton; 2) Gary Cathey and Victoria Goodrich; and 3) Thomas and Joyce Fay. These plaintiffs' properties are adjacent to and underlie the Legacy Trail rail-trail corridor. **Exhibit 20** (Stantec decl.) ¶¶5-6.

b. One landowner, William and Jill Booth, owns land in the Hagar Park subdivision. The Booths' property is adjacent to and underlies the Legacy Trail rail-trail corridor. See **Exhibit 20** (Stantec decl.) ¶¶5, 7.

c. Six plaintiffs own land in the Oaks at Woodland Park subdivision, including: 1) Thomas and Michelle Dodson; 2) Anthony and Karen Puccio; 3) Keith Rollins and Lisa Paxson-Rollins; 4) Brian Sanborn; 5) Kimberly Dawn Hewitt, as Trustee for the Kimberly Dawn Hewitt Revocable Trust; and 6) The Oaks at Woodland Park Homeowners Association. See **Exhibit 20** (Stantec decl.) ¶¶5, 8. These six plaintiffs' properties are adjacent to and underlie the Legacy Trail rail-trail corridor. See *id.* ¶8.

d. Three plaintiffs own land in the Old Forest Lakes subdivision, including: 1) Mark and Angela Flaherty; 2) Robert and Michelle Messick; and 3) Timothy and Alisa Herring. These three plaintiffs' properties are adjacent to and underlie the Legacy Trail rail-trail corridor. **Exhibit 19** (Stantec decl.) ¶¶5, 9.

30. All of the Group 4 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.[16] See also **Exhibit 6** (valuation maps); **Exhibit 5** (joint title stipulations); **Exhibit 20** (Stantec decl.) ¶¶5-9.

Respectfully submitted,

/s/ Mark F. (Thor) Hearne, II
MARK F. (THOR) HEARNE, II
Stephen S. Davis
True North Law, LLC
112 South Hanley, Suite 200
St. Louis, MO 63105
(314) 296-4000
(314) 296-4001 (fax)
thor@truenorthlawgroup.com

Counsel for the Landowners

[16] For the Court's convenience and for clarity of organization of the record, the exhibits attached to and filed with Plaintiffs' Fourth Amended Complaint are attached hereto as **Exhibit 2**.