2025-1179, 2025-1459

United States Court of Appeals for the Federal Circuit

DEBORAH E. BARRON, JOHN BUENAVENTURA BAEZ, JAMES ACHILLE, JONATHAN ACHILLE, THE ALB REVOCABLE TRUST, THE RPB REVOCABLE TRUST, COURTYARD VILLAS, L.L.C., RONALD NOURSE, OLD FOREST LAKES OWNERS ASSOCIATION, GILDA PASCUAL, STEPHEN STILLER, CHRISTOPHER WORMWOOD, SHARON KRUEGER, JAMES MUSSELWHITE, ENOS WEAVER, JR., ANNA MARY WEAVER, WILLIS MARTIN, ALTA MARTIN, JAMES MYERS, KATHERINE MYERS, JUNE SHUMWAY, DANIEL J. MALLON, IRENE A. MALLON, as Trustees of the Mallon Family Trust under agreement dated October 3, 2007,

Plaintiffs-Appellants,

ALEXANDRINE L. BOSWELL, Trustee of the ALB Revocable Trust, dated July 21, 2003, ROMAN P. BOSWELL, Trustee of the RPB Revocable Trust, dated August 31, 2004, JACEK GATKIEWICZ, HANNA GATKIEWICZ, JONATHAN LESTER, ANAPAULA V. LESTER,

Plaintiffs,

– v. –

UNITED STATES,

Defendant-Appellee.

On Appeal from the United States Court of Federal Claims in No. 1:21-cv-02181-EHM, Honorable Edward H. Meyers, Judge

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(For Continuation of Caption See Inside Cover)

BRIEF FOR PLAINTIFFS-APPELLANTS

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MAY 5, 2025

4023 SAWYER ROAD I, LLC, DOUGLAS ABBOTT, CYNTHIA G. ABBOTT, JULIA R. ADKINS, AUSTIN C. MURPHY, RONALD S. ALBRITTON, JOYCE S. ALBRITTON, LOUIS J. ALDERMAN, JR., as Trustee of Louis L. Alderman 2013 Revocable Trust, NEAL ATCHLEY, JO ATCHLEY, JEFFREY DOYLE,

Plaintiffs,

JOHN M. ALVIS, *et al.*,

Plaintiffs-Appellants,

– v. –

UNITED STATES,

Defendant-Appellee.

_____

On Appeal from the United States Court of Federal Claims in No. 1:19-cv-00757-EHM, Honorable Edward H. Meyers, Judge

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 2025-1179 and 2025-1459

Short Case Caption Barron v. U.S.

Filing Party/Entity Plaintiffs-Appellants

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
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4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: May 5, 2025

Signature: s/ Mark F. (Thor) Hearne, II

Name: Mark F. (Thor) Hearne, II

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☑ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/Not Applicable
Deborah Barron		
John Buenaventure Baez		
James Zachary Neil Achille		
Jonathon Allan Achille		
Courtyard Villas, LLC		
Ronald R. Nourse		
Gilda L. Pascual		
Stephen Stiller		
Christopher T. Wormwood		
Sharon L. Krueger		
James R. Musselwhite		

☑ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☐ Additional pages attached

Larson O'Brien, LLP	Stephen G. Larson	Stephen S. Davis
Arent Fox	James H. Hulme	

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☑ Yes (file separate notice; see below) ☐ No ☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☑ None/Not Applicable ☐ Additional pages attached

1. Represented Entities Fed. Cir. R. 47(a)(1) continued:

The ALB Revocable Trust Dated July 21, 2003, Alexandrine L. Boswell, Trustee

The RPB Revocable Trust Dated August 31, 2004, Ramon P. Boswell, Trustee

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

Old Forest Lakes Owners' Association

Enos Weaver, Jr.

Anna Mary Weaver

Willis Martin

Alta Martin

James E. Myers

Katherine M. Myers

Jane Sue Shumway

Joe R. Hembree (Joe R. Hembree, as Trustee of the Joe R. Hembree Revocable Trust)

William A. Booth

Jill Booth

John L. Allgyer

Mary Allgyer

Levi Lantz, Jr.

Tammy L. Lantz

JB Holdings of Sarasota, LLC

Bob Allen Jefferson

Lori Ann Jefferson

Bonnie A. Klein

Earnest R. Locklear

Carolyn B. Barclay

Steve H. Locklear

Shannon Lugannani

Helen Elena Emegbagha

Callie Parsons

Marc Schlabach

Leann Schlabach

John Avramidis

Jaana Avramidis

David Gaul

Cynthia Gaul

Andrew Heath

Jennifer Heath

Anna Marie Martin

Thomas McCall

Susan Coakley

Susan Schmitt (Susan Schmitt, as Trustee of the Schmitt Revocable Trust)

Raymond Wenck

Linda Wenck

Thomas Dodson

Michelle M. Dodson

Kimberly Dawn Hewitt (Kimberly Dawn Hewitt, as Trustee for the Kimberly Dawn Hewitt Revocable Trust)

The Oaks at Woodland Park Homeowners Assoc.

Anthony Puccio

Karen Puccio

Keith E. Rollins

Lisa J. Paxson-Rollins

Brian T. Sanborn

Denise Doucette Erb

Lorraine E. Colby

Joyce P. Hardie

Julie Gwen Hardie

David Ivanov (David Ivanov, as Trustee of the 2976 Poplar Street Land Trust)

Lakewood Venture Capital, LLC

Faye M. Rood

Sarasota County Agricultural Fair Assoc.

John M. Alvis

Catherine Teresa Gray

Joshua Carroll Hackney

Michael Kravchak

Vivian Kravchak

Lewma Enterprise, Inc.

Cameron W. McGough

Carol T. McGough

Rickey Smull

Irvin J. Spiegel

Cynthia P. Spiegel

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STATEMENT OF RELATED CASES

Under Federal Circuit Rule 47.5, counsel for plaintiffs-appellants states that: (a) no other appeal in or from the same proceeding was previously before any appellate court; (b)(1) the following cases, pending in the U.S. Court of Federal Claims, may be affected by the Court's decision in this case:

4023 Sawyer Road, et al. v. United States, No. 19-757,

Barron v. United States, No. 21-2181,

Cheshire Hunt v. United States, No. 18-111,

Gruters v. United States, No. 23-2072.

(b)(2)(A) the parties in the above-listed cases include:

> 4023 Sawyer Road I, LLC, Dominic D. and Kathleen M. Booth, Sean and Darcy Byrnes, John Ermilio, Steven P. and Linda A. Fineout, Paul W. Hoerning and Courtney Joachim, Gary P. Hurst, Suzanne McDonald, David G. Sadler, David Stebbins, Patricia E., Richard E. and Jonathan L. Varley, Julia R. Adkins and Austin C. Murphy, Randal S. and Joyce S. Albritton, Louis L. Alderman, Jr. as Trustee of the Louis L. Alderman 2013 Revocable Trust, Bradley S. and Susan B. Anderson, Geoffrey L. Bolton, Nicholas J. and Danette Boris, Endia K. and Gary Callahan, Martin Carillo-Plata, John and Joanne Cisler, Steven R. and Virginia M. Courtenay, Elise J. Duranceau, William and Brooke Grames, Vincent and Karen Guglielmini, Noel K. Harris, Angela and Sarah Hoag, Larry E. Hudspeth, Daniel and Kristin Jadush, Judy H. Johnson, Kenneth J. and Margaret A. Kellner, Joseph R. Knight, Patrick J. and Lisa A. Loyet, Kassandra Luebke and Elaine Luebke, Thomas W. Marchese, Reuben and Kathy Martin, Jason and Karen McGuire, Sue Moulton, Timothy and Mary Murphy, James Kirt, Nocholas James and Christopher Andres Nalefski, Perry and Pamela O'Connor, Sueko O'Connor, Michel and Dorothy Paradiso, Thomas Pearson, Todd A and Carmen Perna, Patricial Lynette Pitts-Hamilton, Pro Properties, LLC, Justin M. Reslan, Allen B. and Mary Ann E. Reike, Michael Ritchie, Chad, Grace, and Robert Schaeffer, Faith Simolari as Trustee of the Philip Simolari Revocable

Trust, Russell S. Strayer, James H. and Glenda G. Thornton, Kenneth and Susan Wells, David and Anna Ruiz-Welsher, Zbignew and Wislawa Wrobel, Stephen and Margaret Zwacki, Thomas and Joyce Fay, Lawrence and Veronica Salzman, Michael Bergeron and Robert Nelson, Ray and Ella Bontrager, Ralph and Dale Marie Braun, Zsolt Csesznok and Marianna Bartus, Joseph and Dorothy D'Angelo as Trustees of the D'Angelo Family Revocable Trust, Craig and Cynthia Dickie, Pamela Driggs, Zoila Emanuelli as Trustee of the Zoila Emanuelli Revocable Trust, Cosimo A. Fragomeni, Cheryl Del Pozzo Gallager, Michelle Garcia, Ann Geraghty, GPG Limited, LLC, Martin and Carol Frances Graber, Stephen A. Heard, John Hobbs Jr., and Mark Marino, Deborah Keck, James and Diane Kostan, Gerald A. Lagace, Lake Sawyer Two, LLC, Jactrace, LLC, Keith and Mary Leeseberg, Douglas and Maria Luff, Shirley Manfredo, Cheryl Marchand and Candace Magiera, James and Suzanne Naiman, Javier Nieto and Maylen Negrin, Barbara Nikias, Elmer and Lena Nolt, Donna Perkins, Phyllis Perruc, Mindy Piana, Jose Sierra Testi-Martinez and Clara Myers, Vinton and Dianne Trefz as Trustees of the Trefz Living Trust, James Tutsock and Mary McQueen, Robert and Maureen Wilson, Thersa Wilson, Jennifer Yager, Travis Marc and Elizabeth-Marie Yoder, Betty Lou Yutzy as Trustee of the Betty Lou Yutzy Trust, Orvie and Marie, Zimmerman and Emery and Mary Ellen Yoder, Izmirlian Properties, LLC, Douglas and Cynthia Abbott, Nicole Altergott, Troy Alvis, Neal and Jo Atchley, David and Joy Bailey as Trustees of the Joy S. and Davis R. Bailey Revocable Trust, Kerwin and Judy Baker, Jame and Mary Ellen Bishop, Steven Bishop, Ersila Borchert, Carole Bowns, Karen Bowser, Cynthia Burness, Carol Caldwell, James and Jeneve Cawley, Amy Reoseann Coats and Darrin Lee Johnson, Frank Crotsley, Carol and Tobie Desantis, Wanda Donner as Trustee of the Wanda Donner Living Trust, Lesley Dwyer and Barbara Hair, Bernadette Fergola, Michael and Editha Fettig, Sharon Gallagher as Trustee of the Sharon Gallagher Revocable Trust, Donald Geary as Trustee of the Donald L. Geary Revocable Trust, Renate Harkavy, Alvin and Michelle Harrell, Jr. Paul and Daphne Hutchison, Linda Jones Myrtle Krause, Saul Alberto Lopez and Liz Janette Martinez-Ramos, Linda Lyon, Kim and Sheila Marshall as Trustees of the Kim A. Nd Sheila E. Marshall Trust, Mast Investments, LLC, Michael Morgan, Julie Morris, Gregory Nowak, Robert O'Neill as Trust ee of the Robert N. O'Neill Living Trust and Heather Pennington as Trustee of the Heather H. Pennington Revocable Living Trust, Ryan Parker, Philippi Pines, LLC, Barbara Sue Schrock, Leroy and Ruby Schrock, Ruby Schrock as Trustee of the Ruby Schrock Revocable Trust, Sanda Elaine Schrock, Brian Symour, Wilbur Smith,

Vera Straniere, Suzann Thornburg, Mildred Kandel, Chad Waites, Lance and Helene Warric, Paul Wicha, Brad and Patricia Wilson, Linda Yarbrough, Jonathan and Joy Yutzy as Trustees of the Jonathan R. and C. Joy Yutzy Revocable Living Trust, Timothy and Dana Zizak, Mark and Angela Flaherty, Timothy and Alisa Herring, Robert and Michelle Messick, Amos and Anna Fisher, William and Debra Pruett, Donald and Meredith Jeanne Rugh, John Alvis, Catherine Teresa Gray, Joshua Carroll Hackney, Joe R. Hembree as Trustee of the Joe R. Hembree Revocable Trust, Michael and Vivian Kravchak, Lewma Enterprise, Inc., Cameron and Carol McGough, Rickey Smull, Irvin J. and Cynthia P. Spiegel, William and Jill Booth, John and Mary Allgyer and Levi and Tammy Lantz, Jr., JB Holdings of Sarasota, LLC, Bob Allen and Lori Ann Jefferson, Bonnie A. Klein, Earnest Locklear, Carolyn Barclay, and Steven Locklear, Shannan Lugannani and Helen Elena Emegbagha, Callie Parsons, Marc and Leann Schlabach, John and Janna Avramidis, David and Cynthia Gaul, Andre and Jennifer Heath, Anna Marie Martin, Thomas McCall and Susan Coakley, Susan Schmitt as Trustee of the Schmitt Revocable Trust, Raymond and Linda Wenck, Thomas and Michelle Dodson, Kimberly Dawn Hewitt as Trustee of the Kimberly Dawn Hewitt Revocable Trust, The Oaks as Woodland Park Homeowners Association, Anthony and Karen Puccio, Keith Rollins and Lisa Paxson-Rollins, Brian Sanborn, 3153 Novus Court, LLC, Crabapple Enterprise, LLC, Michael A. and Janel K. Huckelberry, Briand and Cheryl Key, Tammy Lynn, William Martell, III, Michael McLaughlin, Jeffrey Doyle as Trustee of the Wallace David Brunton Testamentary Trust, and Mabel Brunton, Gary Cathey and Victoria Goodrich, Denise Doucette Erb and Lorainne Colby, Joyce and Julie Gwen Hardie, David Ivanov as Trustee of the 2976 Poplar Street Land Trust, Lakewood Venture Capital, LLC, Faye Rood, Sarasota county Agricultural Fair Association, John and Christine Fordham, Bradley Blum Morrison, Shirley Ramsey, and the United States of America, Jacek and Hanna Gatkiewicz, Jonathan and Anapaula Lester, NCM SRQ Properties, LLC, Deborah Barron, John Buenaventura Baez, James Neil Achille, Jonathan Allan Achille, Jane Sue Shumway, Willis and Alta Martin, James and Katherine Myers, The ALB Revocable Trust Dated July 21, 2003, Alexandrine L. Boswell, Trustee, The RPB Revocable Trust dated August 21, 2004, Ramon P. Boswell, Trustee, Courtyard Villas, LLC, Daniel and Irene Mallon as Trustees of the Mallon Family Trust under Agreement dated October 3, 2007, Ronald Nourse, Old Forest Lakes Owners Association, Gilda Pascual, Stephen Stiller, Christopher Wormwood, Sharon Krueger, James Mussellwhite, Enos Weaver, Jr., Anna Mary Weaver.

(b)(2)(B) the following law firms, partners, and associates appeared in the above-listed cases:

True North Law, LLC – Mark F. (Thor) Hearne, II – Plaintiffs

U.S. Department of Justice – ENRD – Christopher M. Chellis – Defendant

JURISDICTIONAL STATEMENT

The Fifth Amendment requires the United States to pay an owner "just compensation" when the government takes an owner's property. U.S. Const. Amend. V ("No person shall…be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."). The Tucker Act, 28 U.S.C. §1491(a)(1), provides, "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded upon the Constitution."

On May 14, 2019, the federal Surface Transportation Board (the Board) issued an order invoking Section 8(d) of the National Trails System Act of 1983, 16 U.S.C. §1247(d). The Board's order took private property from Florida owners for a public rail-trail corridor across these owners' land. See, *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1 (1990) (*Preseault I*), and *Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996 (*en banc*)) (*Preseault II*).

The plaintiffs-appellants filed two lawsuits in the Court of Federal Claims (CFC) seeking "just compensation" for that property the federal government took. See, *Barron, et al., v. United States*, (No. 21-2181) filed on November 18, 2021, and *4023 Sawyer Road, et al., v. United States*, (No. 19-757) filed on May 21, 2019. The CFC entered judgment dismissing the appellants-landowners' claims in *Barron* on

October 31, 2024, and dismissing the appellants-landowners' claims in *4023 Sawyer Road* on February 14, 2025. Appx51-53

Title 28 U.S.C. §1295(a)(3) grants this Court exclusive jurisdiction of an appeal "from a final decision of the [CFC]." On November 8, 2024, the *Barron* landowners filed a timely notice of appeal, Appx1406, and the *4023 Sawyer Road* filed a timely notice of appeal on February 14, 2025. Appx4306-4307. This Court consolidated these appeals on March 21, 2025, and ordered the parties file a consolidated brief. Fed. Cir. ECF No. 25.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the CFC erred when, contrary to the Florida principle of law that a condemning authority acquires only that interest necessary to achieve the limited purpose for which the condemning authority was given the power of eminent domain, the CFC held a 1926 Condemnation Decree granted the railroad ownership of the fee simple absolute estate in the strip of land used for a railway line.

Whether the CFC erred by concluding seven voluntary conveyances and the Condemnation Decree conveyed title to the fee simple absolute estate in the land to the railroad rather than an easement for a railroad right-of-way.

Whether this Court should certify the CFC's novel interpretation of Florida law to the Supreme Court of Florida under Fla. Const. art. V, §3(b) and Fla. Stat. §25.031.

INTRODUCTION

In the early 1900s, Seaboard Air Line Railway and landowners in Sarasota, Florida wanted to establish a railway line from Sarasota to Venice Florida.[1] Seaboard surveyed a route for its railway line across a strip of land from downtown Sarasota to Venice, Florida. The present-day owners' predecessors-in-title executed seven voluntary grants in the early 1900s, and the railroad condemned a right-of-way easement across a strip of land in 1926.

For more than a century the railroad operated a railway line across the strip of land that was not used for any purpose other than a railway line. By the 1990s a railway line between Sarasota and Venice was no longer needed. The railroad petitioned the Board for authority to abandon the railway line. The tracks and ties were removed, and no trains have operated across this strip of land since the 1990s.

Sarasota County wanted to build a public recreational corridor across the abandoned railway. The Board issued three orders invoking Section 8(d) of the 1983 Amendments to the National Trails System Act, 16 U.S.C. 1247(d), granting Sarasota County the right to use this strip of land for a new public recreational trail

[1] We refer to the Seaboard Air Line Railway and its affiliated and successor railroads as "Seaboard" or "the railroad" unless the context requires we identify the specific railroad company.

and future railroad. The Board's order encumbering these owners' land with a public rail-trail corridor easement is a *per se* taking of private property for which the federal government has a "categorical" constitutional obligation to pay the landowner just compensation. See *Preseault I*, *Preseault II*, *Toews v. United States*, 376 F.3d 1371 (Fed. Cir. 2004), and *Behrens v. United States*, 135 Fed.Cl. 66 (2017).

The owners of the land across which the federal government imposed this public rail-trail corridor easement sued for "just compensation." *Barron* was filed November 18, 2021, and *4023 Sawyer Road* was filed May 21, 2019. *Barron* involved eighteen plaintiffs that owned twenty properties, and *4023 Sawyer Road* involved 214 plaintiffs that owned 222 properties.[2]

The government's liability in Trails Act cases turns upon: (1) who owns the 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; and (3) even if the grant of the railroad's easement was broad enough to encompass a recreational trail use, had this easement

[2] The owners and properties included in *Barron* are listed in Appx864-867 and *4023 Sawyer Road*, Appx3711-3722. We count an *owner* as a single *plaintiff* even though the named plaintiff may be more than one person. Similarly, some plaintiffs own more than one property.

terminated prior to the alleged taking. See *Preseault II*, and *Ellamae Phillips Co. v. United States*, 564 F.3d 1367 (Fed. Cir. 2009).

The landowners and the government filed cross-motions for summary judgment. The CFC held the government must pay fifty-six landowners because the railroad only acquired an easement for a railway line across the land. However, the CFC dismissed fifty-four landowners because, the CFC held, the railroad acquired title to the fee simple absolute estate in the strip of land across which the railroad operated a railway line.

The dismissed landowners appealed because the CFC erred by adopting a novel view of Florida law concluding that the 1926 condemnation and the voluntary conveyances from the early 1900s gave the railroad title to the fee simple absolute estate in the strip of land.

This Court should reverse the CFC's dismissal of these owners' claims and remand these owners' claims for determination of the compensation due these owners. Alternatively, this Court should certify to the Supreme Court of Florida the novel questions of whether: (1) a railroad exercising the power of eminent domain obtains title to the fee simple absolute estate in the strip of land used for a railroad right-of-way as opposed to an easement; and (2) whether Florida statute 689.10 means a document granting a servitude must be interpreted as conveying title to the fee simple absolute estate in the land.

STATEMENT OF THE CASE

A. The development of Sarasota and the creation of the railway line between Sarasota and Venice, Florida.

In the early 1900s the land between Sarasota and Venice, Florida, across which the railroad built and operated the 18.2-mile-long railway line, was owned by only a dozen or so families and businesses that held title to largely undeveloped tracts of land. These landowners granted Seaboard and its affiliated railroad companies a right-of-way to construct and operate a railway line across a strip of these owners' land. The railroad also condemned a "right-of-way" across one strip of land.

The documents granting the railroad an interest in the strip of land that are the subject of this appeal are the 1926 Condemnation Decree, Appx1289-1363, and seven voluntary conveyances to the railroad. Specifically, the conveyances from Sarasota Land Company, Appx3829-3834, A.C. Clough, Appx3835-3841, Moses Neihardt, Appx3863-3868, O.A. Burton, Appx3820-3828, two conveyances by the Florida Mortgage Company, Appx3842-3862, and Charles Ringling Company, Appx3869-3877.

Florida law defines the nature and extent of the railroad's interest in this strip of land. Justice O'Connor concurred in *Preseault I* to explain, "[a]s the Court acknowledges, state law creates and defines the scope of the reversionary or other

real property interests affected by the [Board]'s actions pursuant to [the Trails Act]. In determining whether a taking has occurred, we are mindful of the basic axiom that [p]roperty interests...are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." 494 U.S. at 20 (internal quotations and citations omitted).

1. Tampa Southern Railroad Company condemned a "right-of-way" across the Tankersley and Davis land. (Appx1280-1366)

John C. Bishop (J.C. Bishop) was one of the founders of Sarasota and owned very large tracts of land in what is now Sarasota County, Florida. J.C. Bishop had two daughters, Bonnie Bishop born in 1884, and Mattie Bishop born March 25, 1892. See Appx1280-1283. On March 14, 1924, J.C. Bishop, then a widower, gave a life estate in a tract of his Sarasota land to his eldest daughter Bonnie and gave his younger daughter, Mattie, a contingent life estate should Bonnie die without "children." Appx1284-1288.

On April 9, 1925, the railroad's real estate agent prepared a metes and bounds legal description of an 8.98-acre strip across the land owned by Bonnie Tankersley and Mattie Davis. This metes and bounds survey described the property as "FOR

CONDEMNATION OF RIGHT OF WAY FOR TAMPA SOUTHERN RAILROAD THRU LANDS OF J.C. BISHOP."[3] Appx1293-1294.

Bonnie Tankersley and Mattie Davis did not want a railway line across their land. So, Tampa Southern Railroad filed a condemnation lawsuit in federal district court on September 14, 1925, for the purpose of acquiring a "right-of-way" across an 8.98-acre strip of land then owned by "Bonnie K. Tankersley and Mattie Davies." Tampa Southern Railroad told the district court that this strip of land was "for the purpose of its use as *a right-of-way* for the construction of its railroad." Appx1295-1299. (emphasis added.)[4]

In its sworn petition Tampa Southern Railroad stated "it has duly located its line of railroad and intends in good faith to construct *the same over and through* the property hereinafter described. That it desires to condemn [the strip of land] *for use as a right of way the* [described strip of land]." Tampa Southern Railroad further affirmed that, "Petitioner further shows unto the Court that the taking of the said

[3] (capitalization in original).

[4] The pleadings and documents from the federal district court and Sarasota County archives are in chronological order with a separate tab for each document. Appx1289-1363. The condemnation pleadings refer to Mattie V. *"Davies"* when, in fact, her last name was "*Davis*" not "*Davies*." We refer to Mattie Davis by her proper name "Davis" but, when quoting from the condemnation pleadings, we quote the document as written with "Davies" as Mattie's surname.

property by your petitioner *is for the purpose of its use as a right of way for the construction of its railroad, and that the said property is necessary for that purpose*." Appx1296-1297. (emphasis added).

Federal district 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 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...." Tampa Southern Railroad Company's charter, which allowed Tampa Southern to extend its existing railway line from Tampa to Sarasota, did not authorize the railroad to condemn property south of downtown Sarasota. Appx1314-1318.

Tankersley and Davis argued that, because the Tampa Southern Railroad Company 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." Appx1314-1318. Tankersley and Davis argued that a right-of-way across their land (which was south of the railroad terminal in 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*." (emphasis added.)

Judge Jones denied Tankersley's and Davis's motion and granted Tampa Southern Railroad authority to condemn a "right-of-way" "through and across" Tankersley's and Davis's land "for use as a right of way for said Railroad Company." Appx1357-1360. The district court's verdict provided, "It is considered by the Court that the property therein described be appropriated by the Tampa Southern Railroad Company for *use as a right of way* for said Railroad Company...." (emphasis added). The Court ordered Tampa Southern to pay Tankersley and Davis compensation and the jury determined Tampa Southern must pay Tankersley and Davis $61,500 and pay $5,000 in attorney fees. The federal district court issued the condemnation decree on March 18, 1926. Appx1357-1360.

2. The Sarasota Land Company conveyance. (Appx3829-3834)

In July 1910 the Delaware corporation Sarasota Land Company's president, George Brown, and the company's secretary W.W. Stevenson signed a deed that, for five dollars, granted Seaboard a right to "a strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center of the Seaboard Air Line Railway *as located across lands owned by the [Sarasota Land Company]*."

(emphasis added.) The document from Sarasota Land Company to Seaboard describes the railway line as *already located across* Sarasota Land Company's property. The land is described as a "strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Seaboard Air Line Railway as located across the lands owned by" the grantor.

3. The Clough conveyance. (Appx3835-3841)

In July 1910 A.C. and Flora Clough of Washington, D.C. signed a document memorializing an 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 [Cloughs]*." (emphasis added.) The land subject to this conveyance was 1.9 acres and the consideration paid the Cloughs was $50.00.

4. The Neihardt conveyance. (Appx3863-3868)

In 1905 Moses Neihardt, a Missouri widower, signed a document reciting only one dollar of consideration, and describing a fifty-foot-by-sixty-foot strip of land. The Neihardt deed is a generic form deed without any description of the interest conveyed.

5. The Burton conveyance. (Appx3820-3828)

In October 1910 Oscar Burton and his wife Alice Burton of Minnesota signed a document conveying an interest in a "strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the centerline of the Seaboard Air Line Railway

as located *across the lands owned by the [Burtons]*." (emphasis added.) This strip of land encumbered 6.2 acres of land. The stated consideration was five dollars and the conveyance was to the Seaboard Air Line Railway and its successor railroads for "*its or their own proper use, [and] benefit*…" (emphasis added.)

Sarasota Land Company was also party to this instrument. The deed recites the premise that a year and a half earlier, in February 1909, the Burtons agreed to sell the land to Frank Colton and Neville Bailey and Colton and Bailey had transferred their interest in the land to Sarasota Land Company. The documents state the railway line was already established across this strip of land before the conveyance was executed.

6. The Florida Mortgage & Investment Company. (Appx3842-3862)

The Florida Mortgage & Investment Company (Florida Mortgage) executed two documents in 1905. The relevant language is identical. The deeds conveyed a "RIGHT-OF-WAY" to the railroad. Appx3843 and Appx3848. The blueprints attached to the deeds further describe the conveyance as a "RIGHT OF WAY." Appx3845 and Appx3851. (capitalization in original.) The deed from Florida Mortgage states: "Description of part of the *right-of-way* to be obtained from Col. J. H. Gillespie." Appx3843 and Appx3848.

7. The Charles Ringling Company conveyance. (Appx3869-3877)

On May 18, 1925, John Ringling and Louis Lancaster (as secretary of the Charles Ringling Company) signed an "Indenture" on behalf of Charles Ringling Company as the grantor. The Tampa Southern Railroad Company paid nominal consideration of "One Dollar." 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…." (emphasis added.) 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." 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."

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.

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

By the 1980s Southwest Florida's Gulf Coast had changed. The land was no longer used for phosphate mining, timber, turpentine, and cattle farms. The Tamiami Trail opened as a highway in 1928, and Interstate Highway 75 was completed in 1969. These highways paralleled the former railway line between Sarasota and Venice. Sarasota also opened an international airport, and tourists no longer traveled to Sarasota by train. The railroad no longer needed or wanted a railway line between Sarasota and Venice. The last train to run from Sarasota to Venice was more than two decades ago when the Seminole Gulf Railway transported a boxcar of plywood from Sarasota to a lumberyard in Venice. Appx4457-4488 (STB abandonment docket.)

The railroad petitioned the Board for authority to abandon the railway line between Sarasota and Venice. The railroad filed the separate abandonment petitions and the Board granted those petitions and issued the orders invoking Section 8(d) of the Trails Act creating a new public rail-trail corridor. The southern segment of the

Legacy Trail was created in 2006.[5] The Board issued another order in December 2017 extending the Legacy Trail north from Hugh Culverhouse Park to Ashton Road (the middle segment). The Board issued a third order in May 2019 extending the Legacy Trail further north from Ashton Road to Fruitville Road in downtown Sarasota (the northern segment). This appeal concerns the strip of land used for the northern extension of the Legacy Trail that is the segment of the abandoned railway line in the Board's May 2019 order. Appx4494-4499.

C. The Trails Act gives rise to a *per se* taking of private property for which the government has a "categorical" duty to pay the owner.

Congress wanted to preserve otherwise-abandoned railroad corridors by delaying the railroad's authority to abandon the corridor for six-months in order to allow a non-railroad (such as a local government or a private organization) to acquire the otherwise-abandoned right-of-way for public recreation. See *National Wildlife Federation v. I.C.C.*, 850 F.2d 694, 697 (DC Cir. 1988). This scheme didn't work because, under state-law, the railroad had nothing to sell. The owner of the fee estate regained unencumbered title to the land when the railroad stopped operating and the original right-of-way easement terminated. See *Marvin M. Brandt Revocable Trust*

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

v. United States, 572 U.S. 93, 105 (2014), and *Preseault I*, 494 U.S. at 8. The landowners' state-law reversionary right to unencumbered use of the land was a "problem."[6] *Preseault I*, 494 U.S. at 7-8 ("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").

So, in 1983, Congress amended the Trails Act adding section 8(d) providing "interim [trail] use [or railbanking] shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." 16 U.S.C. §1247(d). Congress adopted section 8(d) for the express purpose of "destroying" and "effectively eliminating" landowners' state-law reversionary property interests and allowing the Board to impose a new easement for railbanking and public recreation.[7] Once the Board invokes section 8(d), "[t]he

[6] "Reversionary" is a shorthand term for the fee owner's interest. "Instead of calling the property owner's retained interest a fee simple burdened by the easement, this alternative labels the property owner's retained interest...a 'reversion' in fee." *Preseault II*, 100 F.3d at 1533. See also *Brandt*, 572 U.S. at 105 n.4.

[7] "It is settled law that a Fifth Amendment taking occurs in Rails-to-Trails cases when government action *destroys* state-defined property rights by converting a railway easement to a recreational trail, if trail use is outside the scope of the original railway easement." *Ladd v. United States*, 630 F.3d 1015, 1019 (Fed. Cir. 2010) (*Ladd I*) (citing *Ellamae Phillips*, 564 F.3d at 1373) (emphasis added). See also *Caldwell v. United States*, 391 F.3d 1226, 1228 (Fed. Cir. 2004) ("a Fifth Amendment taking occurs when, pursuant to the Trails Act, state law reversionary

[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." National Trails System Act and Railroad Rights-of-Way, 2012 WL 1498609, *5 (STB Decision April 25, 2012).

The Board's invocation of Section 8(d) "pre-empt[s] the operation and effect of certain state laws that 'conflict with or interfere with federal authority over the same activity.'" *Preseault I*, 494 U.S. at 21 (O'Connor, J., concurring). State courts "cannot enforce or give effect to asserted reversionary interests...." The federal government's jurisdiction over the strip of land is plenary and exclusive. *Chicago & N.W. Transp. v. Kalo Brick & Tile, Co*., 450 U.S. 311, 321 (1981) ("The exclusive and plenary nature of the [ICC], authority to rule on carriers' decisions to abandon lines is critical to the congressional scheme, which contemplates comprehensive administrative regulation of interstate commerce.").

The Board's invocation of Section 8(d) of the Trails Act allows the railroad to transfer or sell the right-of-way to a non-railroad trail-sponsor even though, under state law, the railroad had no interest in the land and no ability to transfer any interest in the right-of-way to a non-railroad. See *East Alabama Rwy. v. Doe*, 114 U.S. 340,

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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).

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").

The Trails Act imposes "a new easement for the new use, constituting a physical taking of the right of exclusive possession that belonged to the [landowners]." *Preseault II*, 100 F.3d at 1550. See also *Trevarton v. South Dakota*, 817 F.3d 1081, 1087 (8th Cir. 2016) ("as a matter of federal law it granted 'a new easement for a new use' ... the 'new easement' [the trail-user] acquired under the Trails Act, [is] an interest which authorized [the trail-user] to use the Trail for Trails Act purposes.") (quoting *Preseault II*, 100 F.3d at 1550).

When the government "depriv[es] the owner of the right to possess, use and dispose of the property," and denies the owner's right to exclude others from his or her property the government has a "categorical" duty to compensate the owner. *Horne v. Department of Agriculture*, 576 U.S. 350, 358 (2015). See also *Lucas v. South Carolina Coastal Comm'n*, 505 U.S. 1003, 1014 (1992). Government action confiscating an owner's property or "practically oust[ing]" an owner from possession of his property is "perhaps the most serious form of invasion of an owner's property interest, depriving the owner of the right to possess, use and dispose of the property." *Horne*, 576 U.S. at 360 (internal quotation omitted). The

Supreme Court explained "the right to exclude is universally held to be a fundamental element of the property right and is one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Cedar Point Nursery*, 141 S.Ct. at 2072-73.

The Fifth Amendment is self-executing. *San Diego Gas & Elec. Co.* v. *City of San Diego*, 450 U.S. 621, 654 (1981).[8] In *Knick v. Township of Scott*, 139 S.Ct. 2162, 2172 (2019), the Court held "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."[9]

In *Leo Sheep Co. v. United States*, 440 U.S. 668, 687-688 (1979), the Supreme Court held that "this Court has traditionally recognized the special need for certainty and predictability where land titles are concerned, and we are unwilling to upset settled expectations to accommodate some ill-defined power to construct public

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

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

thoroughfares without compensation." 440 U.S. at 687-88. The Court reaffirmed this principle in *Brandt*, 572 U.S. at 110 ("We decline to endorse [the government's] stark change in position, especially given 'the special need for certainty and predictability where land titles are concerned.'") (quoting *Leo Sheep*, 440 U.S. at 687). Chief Justice Roberts, speaking for the Court, explained that "[u]nlike most possessory estates, easements...may be unilaterally terminated by abandonment, leaving the servient owner with a possessory estate unencumbered by the servitude. In other words, if the beneficiary of the easement abandons it, the easement disappears, and the landowner resumes his full and unencumbered interest in the land."[10]

Paying an owner just compensation for the owner's private property is the predicate upon which the government's power of eminent domain rests. *Cedar Point Nursery*, 141 S.Ct. at 2074 ("[o]ur cases establish that 'compensation is mandated when a leasehold is taken and the government occupies property for its own purposes, even though that use is temporary.'" (citations omitted).

This Court 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

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

Act. See *Caldwell*, 391 F.3d at 1229 ("A Fifth Amendment taking occurs if the original easement granted to the railroad under state property law is not broad enough to encompass a recreational trail.").[11] When the government issues an order taking private property without paying the owner, the government violates the owner's constitutional right to be secure in the owner's private property. This is an ongoing constitutional violation that is not remedied until the government pays the owner for what the government has taken. See *Cedar Point Nursery*, 141 S.Ct. at 2170-72 (citing *First English*, 482 U.S. at 321).

Chief Justice Rehnquist explained in *Leo Sheep* at 687-88, and Chief Justice Roberts explained in *Brandt* at 105, that property interests in land used for railroad rights-of-way are determined by settled principles of property law *at the time the right-of-way is established*. See also Bryan Garner, *et al*., THE LAW OF JUDICIAL PRECEDENT (2016), pp. 421-22 ("The 'rule-of-property doctrine…holds that stare decisis applies with 'peculiar force and strictness' to decisions governing real

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

property…. Stability in rules governing property interests is particularly important because those rules create unusually strong reliance interests....'"). Courts may not redefine established property interests. *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 560 U.S. 702 (2010). Here, the railroad's right to use a strip of these Florida owners' land for a railway line was established under Florida law and the terms of written conveyances these plaintiffs' predecessors-in-title granted the railroad in the early 1900s and the railroad condemned in the 1926 condemnation lawsuit.

SUMMARY OF THE ARGUMENT

This Court should reverse the CFC's judgment dismissing these Florida landowners' Fifth Amendment claim for "just compensation." The CFC erred by concluding the railroad, and not these Florida landowners, held title to the fee simple estate in the strip of land across which the railroad had been granted a "right-of-way" easement to operate a railway line.

The CFC wrongly concluded a 1926 Condemnation Decree granted the railroad ownership of the fee simple absolute estate in a strip of land and not a "right-of-way." The CFC's decision violates a fundamental principle of Florida law that a condemning authority acquires only that interest necessary for the condemning authority to accomplish the public purpose for which the condemning authority was

granted the power of eminent domain. The 1926 Condemnation Decree granted the railroad only an easement to operate a railway line across the strip of land and not ownership of the fee simple absolute estate in the land itself. The railroad required only a right-of-way easement to achieve the railroad's public purpose of operating a railway line. The CFC erred further by holding the condemnation decree granted the railroad title to the fee simple estate in the strip of land when the text of the condemnation decree and pleadings repeatedly and explicitly state that the interest the railroad condemned was only a "right-of-way" for the "purpose of a railway line" not title to the fee simple estate in the land.

The CFC erred further by holding that seven voluntary grants conveyed title to the fee simple estate in land. The CFC erred by failing to interpret the voluntary conveyances consistent with the grantor's intent and failed to consider the entire text of the conveyance, the context in which the grantor executed the document and the purpose for which the conveyance was drafted and executed.

The CFC's opinion that the railroad acquired the fee simple absolute estate in the strip of land is a novel interpretation of Florida law contrary to two centuries of precedent and contrary to Florida public policy. This Court should follow the Supreme Court's admonition in *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997), and certify the CFC's novel interpretation of Florida law to the Supreme Court of Florida.

STANDARD OF REVIEW

This Court reviews the CFC's decision on questions of law *de novo*. "[D]ecisions on 'questions of law' are 'reviewable *de novo*'…" *Highmark Inc. v. Allcare Health Management Sys. Inc.*, 572 U.S. 559 (2014).

ARGUMENT

I. The CFC erred by holding the 1926 Condemnation Decree granted the railroad ownership of the fee simple absolute estate in the strip of land.

As this Court observed in *Preseault II* it is a general principle of law that a condemning authority exercising eminent domain to take a strip of land for a road or railroad acquires only an easement, not title to the fee estate, no matter how the conveyance describes the property being condemned. Florida recognized this principle in *Rawls v. Tallahassee Hotel, Co.*, 31 So. 237 (Fla. 1894).

Florida and other states adopted voluntary conveyance statutes and constitutional provisions limiting a railroad's ability to condemn private property and provided that voluntary conveyances to railroads are construed as the grant of an easement and not the conveyance of title to the fee estate in the strip of land.

Florida's voluntary conveyance statute is almost identical to the Missouri statute this Court recently considered in *Behrens v. United States*, 59 F.4th 1339 (Fed. Cir. 2023). The Florida Supreme Court looked especially to Missouri's interpretation of an almost identical Missouri statute, "construing a similar state

statute on the subject of railroad rights-of-way, the Supreme Court of Missouri has held the term 'voluntary grant' was used by the legislature to mean a conveyance without valuable consideration." *Rogers v. United States,* 184 S0.2d 187, 1094 (Fla. 2015)..

A railroad corporation is a creature of state law and a railroad corporation's power and authority to acquire property, including especially property acquired through the exercise of eminent domain, is defined by the public purpose for which the railroad corporation was chartered. To wit: building and operating a railroad. The Virginia Supreme Court (Seaboard was chartered in Virginia) explained in *Naglee v. Alexandria & F.R. Co.*, 3 S.E. 369, 370 (Va. 1887), 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". In *Thomas v. Railroad Co*., 101 U.S. 71, 83 (1879), the Supreme Court explained "that a [railroad company] cannot...alienate its franchise, or property acquired under the right of eminent domain or essential to the performance of its duty to the public, whether by sale, mortgage, or lease."

Professor Ely explained in RAILROADS & AMERICAN LAW, pp. 197-98, that,

> Prominent experts took the position that, absent statutory provisions expressly authorizing the taking of a fee simple, railroads should receive just an easement in land condemned for their use. "It is certain,

> in this country, upon general principles," Redfield declared, "that a railway company, by virtue of their compulsory powers, in the taking lands, could acquire no absolute fee-simple, but only the right to use the land for their purposes." Judicial decisions tended to adopt this line of analysis…

In the late 1800s and early 1900s, railroads used their eminent domain power and their monopoly control to abuse landowners and farmers that shipped produce to market using the railroad. In response, states (including Florida) adopted laws to protect landowners. In 1887 Florida passed a law to curb abuses by a (then) largely unregulated railroad industry.[12] 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."

The Florida legislature granted railroads the power of eminent domain to enter upon and take private property "necessary to [their] business." Fla. Stat. §2683

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

(1914). See also *State v. Baker*, 20 Fla. 616, 650 (1884), holding that 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." (citation and internal quotation marks omitted).

The railroad's power of eminent domain, however, was subject to limitations – for example a railroad corporation can only take private property "upon making due compensation according to law to private owners." Fla. Stat. §2683 (1914). Section 2241 limited what a railroad acquired, providing that "the real estate received by condemnation or by condemnation or voluntary grant shall be held and used for purposes of such grant only."

Thus, under section 2241, the nature of the railroad's interest in land taken by voluntary grant is determined by the nature of the railroad's public purpose and a railroad corporation did not need to acquire title to the fee estate to operate a railway line across a strip of land, a right-of-way easement was sufficient.

The CFC erred by holding, "although the district court judgment is ambiguous as to the estate being condemned the condemnation judgment affected the taking of fee simple title." Appx25. The CFC's conclusion is flatly contrary to Florida law and the text of the condemnation documents.

II. The CFC erred by interpreting the condemnation decree and voluntary conveyances as granting the railroad ownership of the fee estate instead of a right-of-way.

1. The grantor's intent determines the nature of the property interest conveyed.

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

When these conveyances were drafted and executed in the early 1900s it was understood that, "upon general principles…a railroad company…could acquire no absolute fee-simple, but only the right to use the land for their purpose." 1 ISAAC F. REDFIELD, THE LAW OF RAILWAYS (1869), p. 255. See also LEONARD A. JONES, A TREATISE ON THE LAW OF EASEMENTS §211 (1898), p. 178 ("[a] grant of a right of way to a railroad company is a grant of an easement merely, and the fee remains in the grantor"). See also, Ely, Jr., RAILROADS & AMERICAN LAW, pp. 197-98 (citing SIMEON F. BALDWIN, AMERICAN RAILROAD LAW (1904), p. 77).

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

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

> … 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...

> *The fact that the grantee is a railroad may also tend to indicate that the instrument should be construed to convey an easement only.* The narrowness of the parcel, the consideration paid, and the frequency with which railroad uses have been abandoned often lead to the conclusion that the grantor, as a reasonable person dealing with a railroad, intended to grant no more than an easement for the right of way, retaining ownership of the land. The fact that an amount approaching full value of the fee has been paid, however, does not necessarily lead to the conclusion that a fee was intended because an easement will also deprive the grantor of any ability to use the land for an indefinite period of time.
>
> §2.2, pp. 69-70 (emphasis added).

The CFC's conclusion that the grantors of these seven voluntary conveyances intended to convey the railroad title to the fee simple estate in the strip of land is contrary to this authority.

2. Florida public policy strongly disfavors the creation of fee estates in strips or "gores" of land and presumes that strips of land are easements for a specific purpose.

The strip and gone doctrine is a background principle of law that informs the interpretation of these conveyances. The common law has long disfavored the creation of fee estates in strips or gores of land used as rights of way. For example, in *Paine v. Consumers' Forwarding & Storage*, Co., 71 F. 626, 629-30, 632 (6th Cir. 1895), then Judge Taft (later President and Chief Justice) held that the "existence of 'strips or gores' of land along the margin of non-navigable lakes, to which the title may be held in abeyance for indefinite periods of time, is as great an evil as are

'strips and gores' of land along highways or running streams. The litigation that may arise therefrom after long years…[is] vexatious…[P]ublic policy [seeks] to prevent this by a construction that would carry the title to the center of a highway, running stream, or non-navigable lake that may be made a boundary of the lands." Judge Posner of the Seventh Circuit Court of Appeals explained the doctrine and applied it to a railroad's interest in a strip of land.

> The presumption is that a deed to a railroad or other right of way company…conveys a right of way, that is, an easement, terminable when the acquirer's use terminates, rather than a fee simple… If the railroad holds title in fee simple to a multitude of skinny strips of land now usable only by the owner of the surrounding or adjacent land, then before the strips can be put to their best use there must be expensive and time-consuming negotiation between the railroad and its neighbor…. A further consideration is that railroads and other right of way companies have eminent domain powers, and they should not be encouraged to use those powers to take more than they need of another person's property – more, that is, than a right of way.
>
> *Penn Cent. Corp. v. U.S. R.R. Vest Corp*., 955 F.2d 1158, 1160 (7th Cir. 1992).[13]

Traditional principles of property law favor the interpretation of conveyances of a strip of land to a railroad be interpreted as the grant of an easement for a right-of-way. THOMPSON ON REAL PROPERTY (2nd ed.) §60.03(a)(7)(iii), explains,

> Because rights of way grant a railroad exclusive use of a strip of land, courts have long divided over whether they should be considered fees simple or easements. Most courts have considered them to be

[13] Citations omitted.

> easements, the decision often turning upon the language used in the grant…
>
> First, deeds prepared by the railroads are construed in favor of grantors of the land, and, second, where there is ambiguity in the deed, absence in a railroad-prepared deed or language specifying that conveyance of a strip of land is in fee simple will be evidence of parties' intent that the conveyance not be in fee simple. *The use of the term "right of way" generally suggests the creation of only an easement.*
>
> Courts first attempt to resolve ambiguity from within the four corners of the document and, failing that, look at outside circumstances... There is a presumption in many jurisdictions that the fee lies in the adjoining property, unless a grantor of that adjoining land has explicitly excepted the fee interest upon conveyance. (emphasis added.)

Florida follows the strip-and-gore doctrine. For example, in *Seaboard Air Line Ry. v. Southern Inv. Co.*, 44 So. 351, 353 (Fla. 1907) (citing and quoting *Rawls v. Tallahassee Hotel, Co.*, 31 So. 237 (Fla. 1894)), the Supreme Court of Florida noted its holdings that "the proprietor of lots abutting on a public street is presumed, in the absence of evidence to the contrary, to own soil to the center of the street." Florida Law provides that when a landowner grants a right-of-way across his or her land, the owner retains title to the land under the easement, and that when an owner conveys title to land abutting an easement or right-of-way, the conveyance includes title to the land under the right-of-way absent a clear intention to the contrary. See *Smith v. Horn*, 70 So. 435, 436 (Fla. 1915); *Servando Bldg. Co. v. Zimmerman*, 91 So. 2d 289, 293 (Fla. 1956), and *Florida S. Ry. Co. v. Brown*, 1 So. 512, 513 (Fla. 1887).

In *Servando*, the Supreme Court of Florida found that a ten-foot-wide alley on a subdivision plat would serve no "practical use or service," and that an "isolated piece of land of such proportion could be of no use to anyone except owners of property it touched and persons dealing with them." 91 So. 2d at 293. The Supreme Court of Florida reaffirmed the principle in *United States v. 16.33 Acres of Land in Dade County*, 342 So.2d 476,480 (Fla. 1977), holding that the owner of lots abutting road easements took title to the centerline of the easements. See this Court's decision in *Castillo v. United States*, 952 F.3d 1311 (Fed. Cir. 2020).

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

This limitation on a railroad's property interest in strips and gores of land is consistent with a railroad's lack of the need for any greater interest, "Except to site a station house or similar land use here and there, the railroads had no need or desire

for any interest except a 'right-of-way.'" *Davis v. MCI Telecomms. Corp*., 606 So.2d 734, 738 (Fla. Ct. App. 1992). See also *Dean v. MOD Props., Ltd*., 528 So.2d 432, 434 (Fla. Ct. App. 1988) ("only an easement is needed to lawfully construct and maintain a road right-of-way").

3. The CFC's interpretation of the condemnation decree and voluntary conveyances is contrary to this Court's decision in *Preseault II*.

This Court analyzed the property interests of a railroad established by condemnation decree and voluntary conveyances in *Preseault II*. This Court's *en banc* decision in *Preseault II* provides a thorough analysis of the relevant principles of property law and deed construction that guide this Court in the interpretation of conveyances to railroads in the early 1900s.

In *Preseault II* this Court considered the nature of a railroad's interest in three parcels (parcels A, B, and C) across which a railway line had been built in the early 1900s. Parcels A and B were land that had been owned by the Barker Estate. The railroad's interest in the Barker land was acquired by a Commissioner's Award, which, this Court concluded, "confirms that the [railroad company]…for the purposes has entered upon and occupied lands owned by [the Barkers] described [by a metes and bounds description of the strip of land]." *Preseault II*, 100 F.3d at 1534.

Because the railroad in *Preseault II* acquired its interest in the Barker land by condemnation, this Court easily concluded, "it is clear from the relevant documents and statutes that the actions of the Railroad in this case fall under well-established Vermont laws and procedures for acquisition of rights-of-ways by companies incorporated for railroad purposes." This Court held, "[t]he taking pursuant to statutory authority, gave the railroad only an easement, not a fee, and upon abandonment, the property reverts to the former owner." (citing and quoting *Dessureau v. Maurice Memorials, Inc.*, 132 Vt. 350, 351, 318 A.2d 652 (1974), and *Troy & Boston R.R. v. Potter*, 42 Vt. 265, 274 (1869)).

This Court explained:

> The Vermont cases are consistent in holding that, practically without regard to documentation and manner of acquisition, when a railroad for its purpose acquires an estate in land for laying Track and operating railroad equipment thereon, the estate acquired is no more than that needed for the purpose, and that typically means an easement, not a fee simple estate.

This Court's holding that the railroad acquired only an easement in the Baker land and not title to the fee estate applies equally to the 1926 Condemnation Decree granted the Tampa Southern Railroad.

The third parcel this Court considered in *Preseault II* was the conveyance from the Manwell family. This Court described the Manwell deed as follows:

> The operative instrument is a warranty deed, dated August 2, 1899, from Frederick and Mary Manwell to the Railroad. The deed contains

> 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." The deed 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...."

Preseault II, 100 F.3d at 1535.

This Court 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* at 1535-36 (emphasis added). This Court noted that "the deed was given following survey and location of the right-of-way." *Preseault II* at 1536. This Court held that, "despite the apparent terms of the deed indicating a transfer in fee, the legal effect was to convey only an easement." After citing *Hill v. Western Vermont Railroad*, 32 Vt. at 68, and *Troy & Boston Railroad*, 42 Vt. at 274, this Court 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 1537.[14]

This Court's analysis in *Preseault II* directs this Court to reach the same conclusion here. Namely, that the 1926 Condemnation Decree and the seven voluntary conveyances granted the railroad an easement for a railroad right-of-way across a strip of the owner's land and that the owner and the owner's successors-in-title retained ownership of the fee simple estate in the land.

The CFC, however, declined to follow this Court's *en banc* opinion in *Preseault II* because "Vermont law is not Florida law – Montpelier does not govern Miami (sic, Tallahassee)." Appx12. The CFC erred by dismissing this Court's opinion in *Preseault II* so lightly.

The principles of Vermont law in the early 1900s, upon which this Court relied in *Preseault II* are indistinguishable from Florida law in the early 1900s. Indeed, the relevant law in both Vermont and Florida were identical in the early 1900s. The leading Vermont Supreme Court decisions upon which this Court relied in *Preseault II* – *Hill* and *Troy* – were cited by this Court and the courts of several states as authority for the proposition that railroads obtain only an easement in strips of land

[14] Paragraph break added.

used for a railway line.[15] In other words, the legal principles of Vermont law upon which this Court relied in *Preseault II* were common to Florida and other states.

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[15] 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 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-

Not only that, Vermont Supreme Court Chief Justice Isaac Redfield, who authored the *Hill* decision relied upon by this Court in *Preseault II*, also authored the nation's leading treatise on railroad law (See Isaac F. Redfield, THE LAW OF RAILWAYS (3rd ed. 1867)) that was referenced by Florida courts as an authority. Furthermore, there is no statute or decision of any Florida court in the early 1900s when these conveyances were drafted that suggests Florida adopted a different rule of law than that ib Vermont (and all of the other states) that was the basis for this Court's decision in *Preseault II*.

This Court's analysis in *Preseault II* directs that the 1926 Condemnation Decree and the four voluntary conveyances at issue here conveyed *an easement* for a railroad right-of-way across the owners' land not title to the *fee estate* in a strip of land.

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 (Colo. 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, Winnebago County*, 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").

4. A "right-of-way" is an easement not title to the fee simple estate in the land itself.

The ordinary-meaning rule applies to the interpretation of the voluntary conveyance documents as well as condemnation documents. The ordinary meaning of the word "*right-of-way"* is

> The right to pass through property owned by another. A right-of-way may be established by contract, by longstanding usage, or by public authority (as with a highway). Cf. Easement. 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. – Also written right of way. Pl. rights-of-way.
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> Bryan Garner, ed., BLACK'S LAW DICTIONARY (10th ed.).

In *United States Forest Service v. Cowpasture River Preservation Ass'n*, 590 U.S. 604 (2020), the Supreme Court considered the meaning of the term "right-of-way" *in a Trails Act case*. ("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."). The Court explained,

> A right-of-way is a type of easement. In 1968, as now, principles of property law defined a right-of-way easement as granting a nonowner a limited privilege to "use the lands of another."…Specifically, a right-of-way grants the limited "right to pass…through the estate of another."…Courts at the time of the Trails Act enactment acknowledged that easements grant only nonpossessory rights of use limited to the purposes specified in the easement agreement…Thus, it was, and is, elementary that the grantor of the easement retains ownership over "*the land itself*." …Stated more plainly, easements are not land, they merely burden land that continues to be owned by another…

590 U.S. at 613 (citations omitted).

In *Brandt*, the Court similarly found that federal grants of a "right-of-way" under the General Railroad Right-of-Way Act of 1875 created easements not estates in fee.

In Florida, as in other states, a conveyance of a "right-of-way" to a railroad means that the railroad gained only an easement for railroad purposes. In *Mills v. United States*, 147 Fed. Cl. 339, 347 (2020), Judge Bruggink explained, under Florida state law and this Court's prior decisions in *Rogers*, "[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.'"[16] Judge Bruggink's conclusion is consistent with Florida law on the subject. *Rogers v. United States*, 90 Fed. Cl. 418, 428-433 (2009), and *Nerbonne, N.V. v. Florida Power Corporation*, 692 So.2d 928, 928 n.1 (Fla. Ct. App. 1997).[17]

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

[17] Florida was not unique in its construction of railroad conveyances as granting only a right-of-way easement. See *Hash v. United States*, 403 F.3d 1308, 1321 (Fed. Cir. 2005) (citing *Neider v. Shaw*, 65 P.3d 525, 530 (Idaho 2003)) (noting that "use of 'right-of-way' in the substantive part of the deed creates an easement"). Based on

BLACK'S LAW DICTIONARY defines an "easement" as follows:

> An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). The land benefiting from an easement is called the *dominant estate*; the land burdened by an easement is called the *servient estate*…an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are (1) a right-of-way....

THOMPSON ON REAL PROPERTY §60.02(a) explains,

> An easement is one of several ways in which one may obtain rights in the land of another...According to the 1944 RESTATEMENT OF PROPERTY, an easement is "an interest in land in the possession of another" that entitles the easement owner to "limited use or enjoyment" of that land … an easement "is the right to use the land of another for a specific purpose …
>
> The right in land held by an easement owner 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... Instead the easement holder has the right to make or control a particular use of the land that remains owned by another. Terminological confusion arises from the non-possessory nature of the easement. That the interest is not possessory leads courts to say that it is not an *estate* in land, but an *interest* in land. A few courts, however, reintroduce the confusion between estates and interests in land by saying that the easement interest itself may be held in fee, even as a defeasible fee. Another court distinguishes ownership of land as an estate from an easement, which the court says, more resembles a claim or an encumbrance against the title to the land.

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statutes similar or even identical to section 2241, other states have reached the same conclusion. See *Behrens v. United States*, 59 F.4th 1339 (Fed. Cir. 2023). A list of other state court decisions at Appx2184.

Bruce and Ely explain in THE LAW OF EASEMENTS AND LICENSES IN LAND §1:1.,

> An easement is commonly defined as a nonpossessory interest in land of another…An easement is an acquired interest, not a natural incident of landownership… Easements are created expressly, implied in certain circumstances, established by prescriptive use, or obtained by estoppel, custom, public trust, or condemnation.

Distinguishing between an easement, a nonpossessory right to use land and fee ownership of the estate in the land has bedeviled some courts. THOMPSON ON REAL PROPERTY explains,

> In determining these disputes [between an easement or title to the fee estate], courts seek the intent of the parties in the language they used, the object of the arrangement, the identity, situation, and relation of the parties, and any other circumstances surrounding the transaction that provide indications of the parties' likely intent. Factors that may be significant in determining what the parties intended include the amount of consideration paid by the grantee, the size, shape and location of the parcel involved, its relation to other land owned by the parties, and the subsequent actions of the parties…
>
> When the language of the instrument, read in the context of the transaction, does not definitely resolve the question of what the parties intended, courts may use a variety of constructional preferences and policy considerations to arrive at an appropriate construction of the instrument. Instruments may be construed against the party who had the greater opportunity to control the drafting, or against the party who had the greater sophistication in the type of transaction involved. Constructions may be favored that will avoid fragmenting land titles or splitting ownership into an odd-sized, uneconomic parcels. Instruments may be construed to avoid forfeitures or to avoid rewarding sharp practices….
>
> The fact that the grantee is a railroad may also tend to indicate that the instrument should be construed to convey an easement only. The narrowness of the parcel, the consideration paid, and the frequency with

> which railroad uses have been abandoned often lead to the conclusion that the grantor, as a reasonable person dealing with a railroad, intended to grant no more than an easement for the right of way, retaining ownership of the land.

Bruce and Ely, *THOMPSON*, and the *RESTATEMENT* are authorities the Supreme Court frequently relies upon when deciding the property interest railroads obtained in land used for railway lines.

5. The CFC wrongly applied Fla. § 689.10 to the interpretation of a right-of-way.

The CFC concluded that §689.10 of Florida's statutes mandates that any conveyance concerning an interest in real property must be presumed to convey title to the fee simple estate. Section 689.10 does not apply to *servitudes* such as easements. Section 689.10 applies to *estates* in land.

> The estate in fee simple absolute is transferred from one owner to another by any words that indicate the grantor's intent to make such a transfer. In times past, the phrase "and his heirs" was mandatory for a conveyance of an estate in fee simple absolute.…
>
> *THOMPSON ON REAL PROPERTY* §71.01

In the late 1800s and early 1900s many jurisdictions enacted statutes to reform archaic conveyance language such as "heirs of the body" to simplify the conveyances of an estate in land. Florida's statute §689.10 is very similar to model statutes adopted by other states at this time. The objective was to eliminate the use of archaic terms describing future interests in real property. The purpose for which

Florida (and other states) adopted model statutes such as Florida's 689.10 was to create a presumption of a fee simple estate as opposed to a future interests such as fee tail, remainder, contingent springing fee title, and other ancient forms of conveyances requiring magic words such as "the heirs of his" body used in the middle-ages as a form of estate planning by deed. The CFC's error was to apply §689.10, applicable to conveyances of *estates* in land to these voluntary conveyances granting *servitudes* to use the land for a railroad right-of-way.

The CFC stated "[Section 689.10] presumes a grantor transfers fee simple (or the greatest interest the grantor may convey) unless contrary language appears in the deed." Appx32. If the CFC's view of §689.10 were a fair reading of §689.10, every utility easement, road and utility right-of-way that did not include an explicit statement that it was not a conveyance of the fee simple estate would be transmogrified into a conveyance of title to the fee estate. This view disregards the foundational principle that the intent of the grantor governs the interpretation of a conveyance.

The CFC noted the landowners argued "the statutory presumption [of Section 689.10] does not apply to an easement." The CFC then rejected this position on what the CFC believed to be the "most analogous decision" the court could identify, *Holland v. State*, 388 So.2d 1080 (Fla. Dist. Ct. App. 1980). *Holland* is a court of

appeals decision considering whether a Florida statutory warranty deed conveyed mineral interests in land. *Holland* did not hold that Section 689.10 applies to grants of a servitude such as a right-of-way easement. The CFC wrote, "Plaintiffs' argument that Section 689.10 does not apply to easements is irreconcilable with *Holland*, which, although not binding, is persuasive on the meaning of Florida law. When …the only conclusion that this court can reach is that Section 689.10 applies to conveyances like those in this case and *Barron*." Appx1-26.

The better case is *Thrasher v. Arida*, 858 So.2d 1173 (Fla. App. 2 Dist. 2003). In *Thrasher*, the trial court held that a deed conveyed fee simple title rather than an easement. The easement was for ranching use of the land. The Court of Appeals reversed the trial court and held Section 689.10 did not operate to compel the conclusion that the conveyance was for the fee simple estate. The Court explained, "We have examined whether the deed's inconsistencies … give rise to a latent ambiguity in the deed that requires the court to consider parol evidence to properly conclude the parties' intent."

> The language in the conveyance … "for ingress and egress" is meaningless if one construes the conveyance to transfer fee simple. … That language is inconsistent with an intent to transfer fee title to Parcel Two. The inconsistencies on the face of the deed, together with the meaninglessness of the deed's language "for ingress and egress," if one construes it to have conveyed fee title, appear to create a contrary intention under section 689.10 …"

Thrasher concluded that reference to ingress and egress in the deed that was superfluous if the grantor intended to convey the fee simple estate. Section 689.10 did not apply and the court remanded the case to consider the context and purpose for the conveyance and determine the grantor's intent.

So too here. If the grantor of these voluntary conveyances intended to convey title to the fee simple absolute estate to the railroad, there would be no need to describe the land as a "right-of-way" (See Florida Mortgage and Investment "description of part of the right of way to be obtained from Col. J.H. Gillespie" or by reference to the parcel of land "shown in red on the attached blue print … made in the office of the [railroad'] assistant Engineer in Savanah Georgia."). Appx3848. Or a "Strip of land located across the lands [owned by the [Grantor]" (Clough and Burton, Appx3820-3828 and Appx3835-3841).

The other features of these conveyances, the nominal consideration paid and the description by reference to an existing railroad line that had already been surveyed and located by the railroad, suggest that the grantor intended an easement. The court's analysis in *Thrasher* directs that Section 689.10 does not compel these voluntary conveyances to be construed as a conveyance of the fee simple absolute estate in the strip of land.

6. The CFC's reliance on *Rogers* was misguided.

The CFC wrongly relied upon the Florida Supreme Court's response to this Court's certified question in *Rogers*. *Rogers* does not address the condemnation of a railroad right-of-way and does not address how to interpret *voluntary conveyances* such as the seven at issue here.

Rogers involved a complicated series of transactions including numerous documents from the 1920s and two foreclosure sales in the 1930s. The circumstances concerned the development of a planned retirement community in Venice, Florida and relocation of the two most southern miles of Seaboard's railway including, importantly, the construction of a new passenger and freight depot. See *Rogers v. United States*, 93 Fed. Cl. 607, 612-16 (2010).

Seaboard extended its railway line from Sarasota to Venice in 1910. The southernmost two miles of the railway line crossed a large almost 1,500-acre tract of land sold to the BLE Realty (BLE). BLE was an investment arm of the Brotherhood of Locomotive Engineers pension fund that wanted to build a planned retirement community in Venice, Florida. This project was conceived during the Roaring Twenties.

As part of BLE's development, the southern two miles of the existing railway line were relocated two miles to the east and a new wye track (used to turn trains around) and a new passenger and freight depot were built so that the land to the west

(where the original railroad line had been located) could be used for the development of homes. The land required for the relocation included land for construction of the depot and a wye tract not just a strip of land for a railway line. But in October 1929, during the Great Depression, BLE went bankrupt and mortgages on the property were foreclosed. The land was sold on the courthouse steps at public auction.

Judge Williams reviewed this complicated series of transactions and the recorded deeds referencing the southern two miles of the Sarasota to Venice railway line. See *Rogers*, 93 Fed. Cl. at 612-16. Judge Williams concluded that four of the instruments were "unambiguously" on their face a conveyance of title to the fee estate in the tracts and strips of land from the original landowners to the railroad. The present-day landowners, including the Birdbay Golf Course, appealed arguing that, under the Florida Special Powers of Railroad Act of 1892, the railroad's interest in land was limited to an easement even if the deeds were an unequivocal conveyance of the fee simple interest.

This Court assumed these four conveyances were, in fact, the unequivocal conveyance of title to the fee estate to the railroad. Given this assumption, this Court asked the Florida Supreme Court whether the Florida Special Powers of Railroad Act of 1892 did or did not limit the railroad's interest to only an easement.

The central question in *Rogers* was whether Florida's Special Powers of Railroad Act of 1892 limited the interest a railroad could acquire in land *even when*

the grantor unequivocally and unambiguously conveyed the railroad title to the fee estate. This Court asked the Florida Supreme Court, 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 v. United States*, Nos. 2013-5098 & 2013-5502, slip op., p. 5 (Fed. Cir. July 21, 2014).

The Florida Supreme Court understood the certified question as asking three questions: "(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?" 184 So.3d at 1090.

These certified questions in *Rogers* assumed the premise that the relevant deeds were intended to be conveyances of the fee simple absolute title to the land. The *Rogers* court was not asked to interpret the conveyances at issue in *Rogers* or determine whether the conveyances were of a right-of-way easement or title to the fee simple estate.

The Florida Supreme Court accepted the premise that the grantors "unequivocally" and "unambiguously" intended to convey title to the fee estate to the railroad. The Florida Supreme Court wrote "Those deeds appear on their face, to unambiguously convey a fee simple title interest to Seaboard…" 184 So.3d at 1089, 1094. Also unlike the voluntary conveyances at issue here and in *Preseault II*, the Florida Supreme Court noted, "the record shows that the four deeds that conveyed property used for the northern part of the route *were executed before the tracks were laid*." 184 So.3d at 1100. (emphasis added.) Recall that in *Preseault II* this Court noted, "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*." *Preseault II*, 100 F.3d at 1537. (emphasis added.) The Florida Supreme Court held, "nothing in any of the deeds [in *Rogers*] indicates that any of them were voluntary grants, or that they were intended to convey easements." The deeds in *Rogers* were an unambiguous deed that was sufficient on its face to convey fee simple title." 184 So.3d at 1100.

Rogers affirmed (not repudiated) the Florida voluntary conveyance statute that is identical to the Missouri voluntary conveyance statute this Court considered in *Behrens*. The Florida Supreme Court noted the deeds at issue in *Rogers* were not

"voluntary grants" (a conveyance without valuable consideration) "because the deeds were grants by bargain and sale for valuable consideration and conveyed fee simple title." Thus, the four deeds that were the subject of the certified question in *Rogers* were not subjected to Florida's voluntary conveyance statute. This distinction is important because the conveyances this Court is asked to construe *are* voluntary grants subject to Florida's voluntary conveyance statute.

Given the assumption that the grantors executing the *Rogers* deeds intended (with no ambiguity) to convey title to the fee estate, the Florida Court answered this Court's question in the negative and the Florida Supreme Court explicitly conditioned their answer by qualifying it "*[u]nder the circumstances found to exist by the Court of Federal Claims.*" 184 So.3d at 1096 (emphasis added). With this qualification the Florida Court told this Court that the Florida Special Powers of Railroad Act of 1892 did not "limit[] the railroad's interest in the property regardless of the language of the deed." On the basis of this predicate and the historical "circumstances" in the "complicated" transactions surrounding the relocation of this southernmost segment of the railway line, the holding in *Rogers* is that the Florida Special Powers of Railroad Act of 1892 does not prevent the railroad from obtaining title to the fee estate when the conveyances "unequivocally", "unambiguously" and "on the face of the instrument" declared the grantor intended to convey the railroad title to the fee estate in the owner's land.

The CFC disclaims that it reads *Rogers* to be a redefinition of Florida property law. But, to the extent the CFC's opinion relies upon *Rogers* as announcing a novel declaration of Florida law, the CFC's interpretation of *Rogers* violates *Stop the Beach Renourishment v. Florida Dept. of Env. Protection*, 560 U.S. 702 (2010), in which the Supreme Court held courts could not redefine established property interests without the owner being paid. If a legislature *or a court* declares that what was 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). See also *Webb's Fabulous Pharmacy v. Beckwith,* 449 U.S. 155, 163 (1980). To read *Rogers* in such a manner would be to have the Florida Supreme Court itself engaged in a taking of private property by redefining property interests established in the early 1900s.

To the extent the CFC's overbroad reading of *Rogers* would redefine the established property interests in these owners' land as a fee simple absolute estate and not an easement, that 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 CFC's decision is contrary to the explicit text of the conveyances.

The seven original voluntary conveyances and a transcription of each are in the appendix and are summarized above. While there is some variation, these voluntary grants have the following common features. The document was executed *after* the railroad had entered the owners' land and surveyed a railroad right-of-way across the grantor's land. The conveyances describe the interest granted the railroad as "across" or "through" a strip of land owned by the grantor. The strip of land is described as a narrow strip one hundred feet wide, being fifty feet on each side of the centerline of the existing railway line the railroad had already located across lands owned by grantor. The railroad paid only nominal consideration and it is undisputed that the railroad never used these strips of land for anything other than a railway line. Additionally, several of the conveyances explicitly describe the interest granted the railroad as a "right-of-way".

CONCLUSION

The CFC erred when it dismissed these Florida landowners' claims for "just compensation". The CFC was wrong to conclude the railroad acquired title to the fee simple estate in the strip of land across which the railway line was built. Under Florida law and the explicit text of these documents, the 1926 condemnation decree and the voluntary conveyances did not give the railroad title to the fee simple estate in the land.

This Court should remand this case to the CFC for a determination of the "just compensation" each of these owners is due. Alternatively, this Court should certify to the Supreme Court of Florida the novel interpretation of Florida law upon which the CFC premised its dismissal of these owners' claims for compensation. Federalism directs federal courts confronting a novel question of state law to refer the question of state law to the state's highest court and not make an *Erie*-guess of how the state's highest court would answer the question. *Arizonans for Official English v. Arizona,* 520 U.S. 43, 78-79 (1997). See also, *Dream Defenders v. Governor of the State of Florida*, 57 4th 879 (11th Cir. 2023).

Respectfully submitted,

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ADDENDUM

In the United States Court of Federal Claims

No. 21-2181 L
Filed: October 31, 2024

DEBORAH E. BARRON and JOHN BUENAVENTURA BAEZ, *et al.*,	)
Plaintiffs,	)
v.	)
THE UNITED STATES,	)
Defendant.	)

Mark Fernlund Hearne, II, True North Law LLC, St. Louis, MO, for Plaintiffs.

Christopher Michael Chellis, Trial Attorney, United States Department of Justice, Environment & Natural Resources Division, Washington, D.C., *with whom were Michael K. Robertson*, Trial Attorney, United States Department of Justice, Environment & Natural Resources Division, Washington, D.C. *and Todd Kim*, Assistant Attorney General, United States Department of Justice, Environment & Natural Resources Division.

OPINION AND ORDER

This rails-to-trails case requires the court to construe the terms of certain deeds and a condemnation decree under Florida law to determine what estate was transferred to the railroads. Under Florida law, the grantor's intent as shown on the face of a deed controls. And although Florida law is not as clear on the interpretation of a condemnation decree, Florida courts instruct that this court should interpret the decree by its plain terms. In this case, these principles lead the court to conclude that the disputed deeds[1] and condemnation decree conveyed fee simple title to the property at issue to the railroads. Therefore, the court grants the Government's motion for partial summary judgment.

I. Background

On March 8, 2019, Seminole Gulf Railway, L.P. ("SGR") filed a verified notice of exemption to abandon an approximately 7.68-mile segment of its rail line known as the Venice Branch. ECF No. 18-1 at 62 (Exhibit 7). The Venice Branch "extends between milepost SW

[1] As explained below, the Government does not contest that the Honore conveyance applicable to a few plaintiffs conveyed only an easement that was not broad enough to include trail use. The court does not consider it a disputed conveyance.

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"—it partly lies "within the City of Sarasota, Sarasota County, Fla., with the remainder lying within unincorporated Sarasota County." *Id.* On May 14, 2019, the Surface Transportation Board ("STB") issued a Notice of Interim Trail Use or Abandonment ("NITU") concerning the Venice Branch, invoking Section 8(d) of the Trails Act. *Id.* at 62-66.

Most of the Plaintiffs have predecessors-in-interest who conveyed an interest in the land underlying the Venice Branch to the Seaboard Air Line Railway or the Florida West Shore Railway by means of the Honore, Sarasota Land Company, Clough, Burton, or Neihardt deeds. ECF No. 19 (Joint Title Stipulations).[2] The parties dispute whether the interests conveyed by these deeds transferred a fee simple interest to the railroad, thereby extinguishing any property interest to the underlying land, or merely an easement, in which case Plaintiffs allege they are entitled to compensation for a taking of their property. One railroad also acquired an interest in the land by means of a U.S. District Court condemnation judgment. ECF No. 18, ¶¶ 105-09; ECF No. 19; ECF No. 31-9 (Exhibit 7) (Condemnation Judgment). The parties dispute whether the judgment granted the railroad fee simple title or merely an easement.

II. Standard of Review

Under Rule 56, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Rules of the Court of Federal Claims ("RCFC") 56(a). The movant has the initial burden to show that there is no genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A "genuine" dispute of material fact exists where a reasonable jury "could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a "material" fact is one "that might affect the outcome of the suit under the governing law," as opposed to "disputes that are irrelevant or unnecessary." *Id.*

If the movant meets its initial burden, the burden shifts to the nonmovant to show a genuine dispute of a material fact. *Id.* at 256-57. The nonmovant can do this by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence . . . of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." RCFC 56(c)(1). "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." *Anderson*, 477 U.S. at 247-48 (emphasis in original). And while "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor[,]" *id.* at 255, the nonmovant's evidence must be "significantly probative" and more than "merely colorable" to defeat summary judgment, *id.* at 249-50.

[2] All the railroads' interest passed to successors and eventually to CSX Transportation, Inc. ECF No. 18 ¶ 13. Because the specific railroad to which the original conveyances were made is generally not material to the outcome of this case, the court refers to "the railroad" unless the specific railroad is important to the resolution of an argument.

III. Discussion

A. Rails-to-Trails Takings Actions

The Trails Act was created "to preserve shrinking rail trackage by converting unused rights-of-way to recreational trails." *Rogers v. United States* (*Rogers I*), 90 Fed. Cl. 418, 427 (2009) (citing *Preseault v. Interstate Com. Comm'n* (*Preseault I*), 494 U.S. 1, 5 (1990)); *see also* 16 U.S.C. § 1241 *et seq*. "[F]or a railroad right-of-way to be converted into a recreational trail, the railroad must either (1) file a standard abandonment application with the STB or (2) seek an exemption from filing the application." *Mills v. United States*, 147 Fed. Cl. 339, 344 (2020) (citing *Caldwell v. United States*, 391 F.3d 1226, 1228 (Fed. Cir. 2004)). If the standard abandonment application is approved or the exemption is granted, "the railroad ceases operation, the STB relinquishes jurisdiction over the abandoned railroad right-of-way and state law reversionary property interests, if any, take effect." *Id.* (citing *Caldwell*, 391 F.3d at 1228-29).

"The Trails Act, through a process known as 'railbanking,' provides an alternative to abandoning a railroad right-of-way . . . ." *Caldwell*, 391 F.3d at 1229. Railbanking "allows a railroad to negotiate with a state, municipality, or private group (the 'trail operator') to assume . . . responsibility for operating the railroad right-of-way as a recreational trail." *Id.* (citing *Preseault I*, 494 U.S. at 6-7). And "[i]f the railroad and trail operator are willing to negotiate a trail use agreement, the STB stays the abandonment and issues a NITU, allowing the railroad right-of-way to be 'railbanked'"—the NITU "operates to prevent abandonment of the corridor and to preclude the vesting of state law reversionary interests in the right-of-way." *Mills*, 147 Fed. Cl. at 344 (internal quotation marks omitted) (quoting *Caldwell*, 391 F.3d at 1229-34). Thus, in a rails-to-trails takings claim, "the issuance of the original NITU triggers the accrual of the cause of action." *Barclay v. United States*, 443 F.3d 1368, 1378 (Fed. Cir. 2006).

"The operation of the Trails Act is subject to the Fifth Amendment" so "when private property interests are taken by the Government pursuant to the Trails Act, the property owners are entitled to just compensation." *Rogers I*, 90 Fed. Cl. at 427 (citing *Preseault I*, 494 U.S. at 13); U.S. Const. amend. V. A takings question arises "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." *Preseault I*, 494 U.S. at 8. Thus, a "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." *Caldwell*, 391 F.3d at 1228. That means there is a taking "if the original easement granted to the railroad under state property law is not broad enough to encompass a recreational trail." *Id.* at 1229. But "[i]f the railroad owns the underlying right-of-way in fee simple at the time of the alleged taking[,]" there is no taking of any property interests because the railroad, not the adjacent landowners, owns the full bundle of property rights. *See Mills v. United States*, 147 at 344. It is therefore necessary to determine who owned which property interests on the date of the taking because "[i]n a takings case, 'only persons with a valid property interest at the time of the taking are entitled to compensation.'" *Id.* (quoting *Wyatt v. United States*, 271 F.3d 1090, 1096 (Fed. Cir. 2001)). Thus, "another party cannot be owed just compensation for the taking of that land." *Id.* (internal quotation marks omitted) (quoting *Whispell Foreign Cars, Inc. v. United States*, 97 Fed. Cl. 324, 330 (2011)).

B. The NITU

The STB issued the NITU in this case on May 14, 2019. Therefore, the court must "determine whether the landowners had property interests in the right-of-way and whether the Government's actions constituted a taking of those interests." *Id*. To do this, the court must resolve three questions:

> (1) who owned the strips of land involved, specifically did the [r]ailroad . . . acquire only easements, or . . . fee simple estates;
>
> (2) if the [r]ailroad acquired only easements, were the terms of the easements limited to use for railroad purposes, or did they include future use as public recreational trails; and
>
> (3) even if the grants of the [r]ailroad's easements were broad enough to encompass recreational trails, had these easements terminated prior to the alleged taking so that the property owners at that time held fee simples unencumbered by the easements.

Mills, 147 Fed. Cl. at 344 (quoting *Preseault v. United States* (*Preseault II*), 100 F.3d 1525, 1533 (Fed. Cir. 1996) (en banc)). The parties have stipulated that the Plaintiff landowners were the owners of the parcels at issue on the date of the NITU. ECF No. 19 at 1. "As such, these named landowners have cleared a preliminary hurdle in pursuit of their takings claims; they owned land adjacent to the railway when the taking allegedly occurred." *Rogers I*, 90 Fed. Cl. at 428. Thus, the court only considers the second and third prongs of the *Presault II* analysis.

C. Principles of Deed Construction under Florida Law

In rails-to-trails cases, this court "analyze[s] the property rights of the parties . . . under the relevant state law." *Rogers v. United States* (*Rogers IV*), 814 F.3d 1299, 1305 (Fed. Cir. 2015) (citing *Preseault II*, 100 F.3d at 1543). Given that the property in this case is in Florida, the court applies Florida law when analyzing the property rights. "Under Florida law, 'the intention of the parties . . . governs the interpretation of a document.'" *Rogers v. United States* (*Rogers III*), 107 Fed. Cl. 387, 393 (2012) (quoting *Thrasher v. Arida*, 858 So. 2d 1173, 1175 (Fla. Dist. Ct. App. 2003)). As the Florida Supreme Court explained in response to a certified question from the Federal Circuit: "The 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." *Rogers v. United States* (*Rogers V*), 184 So. 3d 1087, 1095 (Fla. 2015). Courts "should 'consider the language of the entire instrument in order to discover the intent of the grantor, both as to the character of [the] estate and the property attempted to be conveyed, and to so construe the instrument as, if possible, to effectuate such intent.'" *Rogers III*, 107 Fed. Cl. at 393 (quoting *Reid v. Barry*, 112 So. 846, 852 (Fla. 1927)); *see also Ivey v. Peacock*, 47 So. 481, 481 (Fla. 1908) ("The general rule of construction obtaining here as elsewhere that all parts of an instrument will be looked to, and that construction adopted that carries out most clearly the evident intent of the parties" shall be adopted.). And "[i]f there is no ambiguity in the language employed then the intention of the grantor must be ascertained from that language." *Saltzman v. Ahern*, 306 So. 2d 537, 539 (Fla. Dist. Ct. App. 1975).

Florida also presumes that the grantor intended to convey his or her entire estate unless there is clear language to the contrary:

> Where any real estate has heretofore been conveyed or granted or shall hereafter be conveyed or granted without there being used in the said deed or conveyance or grant any words of limitation . . . such conveyance or grant, whether heretofore made or hereafter made, *shall be construed to vest the fee simple title or other whole estate or interest which the grantor had power to dispose of at that time in the real estate conveyed or granted*, unless a contrary intention shall appear in the deed, conveyance or grant.

Fla. Stat. § 689.10 (emphasis added).[3] The result of this statute is that "a deed is presumed to convey fee simple title, or whatever title the grantor had power to convey, unless a contrary intention is shown by the language of the deed." *Rogers V*, 184 So. 3d at 1095 n.5.

"No stock words or phrases are required" to indicate what estate and property the grantor intends to convey; rather, "it is only necessary that such words be employed as will show the grantor's intent." *Seaboard Air Line Ry. Co. v. Dorsey*, 149 So. 759, 761 (Fla. 1932). That said, there are numerous cases that provide guidance on discerning the intent of a grantor under Florida law. For example, an expansive granting clause that lacks any restrictive or limiting clauses indicates the grantor intended to convey a parcel in fee simple. *Rogers v. United States* (*Rogers II*), 93 Fed. Cl. 607, 619 (2010), *aff'd*, 814 F.3d 1299 (Fed. Cir. 2015). In *Rogers II*, the court concluded that "[b]ecause [the original landowner] held the lands in fee simple and transferred 'all of its right, title and interest' to Seaboard [the railroad], it conveyed fee simple title. The granting clause does not contain language limiting the interests conveyed to certain uses or purposes, nor does it reference an easement." *Id.* And the court explained that "[t]his unambiguous language is in stark contrast to the Honore conveyance . . . in which the grantor

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[3] Florida adopted the predecessor of this statute in 1903, at which time it provided:

> Where any real estate shall hereafter be conveyed or granted without there being used in the conveyance or grant any words or limitation, such as heirs or successors, or similar words, such conveyance or grant shall be construed to pass the fee simple or other whole estate or interest which the grantor had power to dispose of in the real estate conveyed or granted, unless a contrary intention shall appear in the conveyance or grant.

Reid, 112 So. at 860-61 (quoting 1903 Fla. Laws ch. 5145, § 1). In 1925, Florida made the statute retroactive—i.e. applicable to conveyances made prior to the enactment of the 1903 statute. *Rogers V*, 184 So.3d at 1095 n.5. Because all the conveyances at issue in this case were made after 1903, the 1925 change to the law does not impact Plaintiffs' rights. *See* ECF No. 31-5 (Sarasota Land Co. deed executed in 1910); ECF No. 31-6 (Burton deed executed in 1910); ECF No. 31-7 (Clough deed executed in 1910); ECF No. 31-8 (Neihardt deed executed in 1905). Therefore, the court applies the current version of Fla. Stat. § 689.10, as the parties do, and the Florida Supreme Court did in *Rogers V*.

transferred to Seaboard an easement, described as 'a right of way for railroad purposes over and across the following described parcels of land.'" *Id.* (citing *Rogers I*, 90 Fed. Cl. at 429); *see also Andrews v. United States*, 147 Fed. Cl. 519, 526 (2020), *aff'd*, 844 F. App'x 351 (Fed. Cir. 2021); *Whispell Foreign Cars, Inc.*, 97 Fed. Cl. at 335 *amended on reconsideration in part*, 100 Fed. Cl. 529 (2011).

Similarly, a granting clause with a reversionary clause or restrictive language limiting the use of the property indicates the grantor intended to convey only an easement. *Rogers I*, 90 Fed. Cl. at 430-31; *Rogers III*, 107 Fed. Cl. at 394-99; *Whispell Foreign Cars, Inc.*, 97 Fed. Cl. at 335-36. A description of the interest conveyed as a 'right of way,' however, "can refer either to 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. Thus, when an interest is conveyed as a "right of way," "[w]hether the railroad obtains a 'right' or 'land' depends on the intent of the parties as reflected by the deed of conveyance." *Id.*; *see also Rogers V*, 184 So. 3d at 1094-95.

Additionally, an instrument describing the interest conveyed as "land" weighs in favor of interpreting the conveyance as granting fee simple. *Rogers II*, 93 Fed. Cl. at 619 ("[T]he descriptions of the three conveyed parcels reference a 'strip of land,' and two 'tract[s] of land.' . . . . This is further indication that the parties intended to convey land, rather than a right to use or control land for a limited purpose.") (citation omitted); *Andrews*, 147 Fed. Cl. at 526 ("The deed refers to a parcel of land, not a right of way."). Covenants warranting title in an instrument also factor in favor of interpreting the instrument as conveying fee simple. *Rogers II*, 93 Fed. Cl. at 619-20. And under Florida law, "the amount of consideration does not inform the interpretation of the deeds . . . ." *Id.* at 624 (cleaned up); *Rogers V*, 184 So. 3d at 1097 ("The law of Florida . . . is that the amount of consideration stated in a deed provides no basis for questioning the validity of the deed. The language of the deed determines the nature of the estate conveyed.") (cleaned up); *Venice E., Inc. v. Manno*, 186 So. 2d 71, 75 (Fla. Dist. Ct. App. 1966) ("[W]e cannot inquire into the adequacy of the consideration given for the disputed conveyances. It is fundamental that the law will not consider the adequacy or the sufficiency of the consideration given for a conveyance or transaction.").

And, of course, the Florida Supreme Court has also addressed Florida law in the context of rails-to-trails litigation in *Rogers V*. Plaintiffs argue, however, that *Rogers V* cannot be read broadly to apply to this case for three reasons. ECF No. 39 at 27. First, Plaintiffs claim the certified question in *Rogers* "assumed the deeds . . . granted a fee simple estate and premised its answer on this assumed predicate. The Court in *Rogers* did not engage in deed construction, rather the Court assumed the grantor intended to convey fee title." *Id.* at 25-26. While the certified question from the Federal Circuit assumed the deeds transferred fee simple title, the Florida Supreme Court did *not* assume that the deeds in *Rogers* granted fee simple at all:

> We need not discuss the language of the deeds in this case in detail . . . 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. The deeds in question in this case included all the formal statements needed to show that the land was purchased and that the deeds granted fee simple title.

Rogers V, 184 So. 3d at 1095. Further, "the deeds were clear in their language and conveyed fee simple title." *Id*. at 1097. The Florida Supreme Court thus *agreed with* Judge Williams that the deeds at issue unambiguously conveyed fee simple title; it did not assume that the deeds conveyed fee simple. In addition to Judge Williams and the Florida Supreme Court, the Federal Circuit also found the deeds in *Rogers* unequivocally conveyed land to the railroad in fee simple: "While the Appellants dispute whether the deeds appear on their face to transfer a fee simple interest in the properties at issue, like the Court of Federal Claims before us, we conclude that they do." *Rogers IV*, 814 F.3d at 1308 (citation omitted). Thus, this court adheres to Judge Williams's application of Florida law in construing deeds, which the Federal Circuit and the Florida Supreme Court agreed with too.

Second, Plaintiffs argue that "[t]he government's overbroad reading of the Florida Supreme Court's decision in *Rogers*" redefines "the property interest in land subject to railroad rights-of-way as a fee estate and not an easement." ECF No. 39 at 27. Under this reading, *Rogers V* is "a new declaration of the law defining established property interests originally established in the early 1900s" and "violates *Stop the Beach Renourishment v. Florida Dept. of Env. Protection*, 560 U.S. 702 (2010), in which the Supreme Court prohibited Florida Courts from redefining property interests." *Id.* at 26.[4] But *Rogers V* did not redefine any existing property interests or change anything about Florida law. *Rogers V* affirmed this court's understanding of Florida precedents over the last century as holding that there is a presumption that a deed conveys fee simple title (or the greatest title the grantor could convey) but that the language of the deed controls. The Florida Supreme Court in no way redefined the meaning of a fee simple or an easement, nor did anything to change the governing principle that the grantor's intent controls. Nor does the Government's reading of it.

Third, Plaintiffs argue that *Rogers V* does not apply because unlike the deeds in *Rogers V*, the deeds here are "voluntary grants subject to Florida's voluntary conveyance statute." ECF No. 39 at 25. Plaintiffs rely upon Section 2241 of the Florida Statutes (1892) for the proposition that the conveyances made voluntary grants to the railroads for them to build their rail lines and, therefore, created only an easement. ECF No. 31-2 at 23-24; ECF No. 39 at 20, 24-25. Section 2241 provided that "the real estate received by voluntary grant shall be held and used for purposes of such grant only." ECF No. 31-2 at 23 (quoting Fla. Stat. § 2241 (1892)). Plaintiffs contend that because these deeds recite what they consider to be nominal consideration, they are voluntary grants. ECF No. 31-2 at 24-25. And, according to Plaintiffs, the parties in *Rogers V* did not allege that the conveyances were voluntary grants, making that case distinguishable from this one.

[4] *See also* Plaintiffs' Notice of Additional Authority, ECF No. 45 at 3 (urging the court and the Government to take heed of "the Supreme Court's decision in [*Tyler v. Hennepin County*, 598 U.S. 631 (2023)] . . . so that the government has opportunity to consider and address" the decision and "its effect upon the government's argument that the Florida Supreme Court's answer to the certified question in 2015 in *Rogers* somehow redefined the rule governing how this Court should interpret the interest a grantor intended to convey in property . . . in the early 1900s.").

Contrary to the Plaintiffs' argument, however, the plaintiffs in *Rogers V* (represented by the same counsel as Plaintiffs here) made this same argument to the Florida Supreme Court relying on the same cases that Plaintiffs rely upon here. *Compare* ECF No. 31-2 at 24-25 *with* Initial Br. Of Appellants at 10-13, *Rogers v. United* States, SC 14-1465 (Fla. 2014).[5] And the Florida Supreme Court expressly rejected this argument under Florida law. According to *Rogers V*, a voluntary grant or conveyance is "[a] conveyance made without valuable consideration." 184 So. 3d at 1094 (quoting *Black's Law Dictionary* 408 (10th ed. 2014)). As an example, '"[v]oluntary grants' of land to railroads might include land grants made by a state or local government or the federal government. Other grantors might donate land to railroads in the hope of benefiting from the location of the railroad tracks or a station." *Id.* at 1094 n.3. But the Florida Supreme Court expressly rejected the argument that nominal consideration indicated a conveyance was a voluntary grant:

> Appellants also cite *Ogg v. Mediacom LLC*, 142 S.W.3d 801 (Mo. Ct. App. 2004), where a Missouri court found nominal consideration to be a factor in discerning the grantor's intent to convey an easement rather than fee simple title. The law of Florida, however, is that the amount of consideration stated in a deed provides no basis for questioning the validity of the deed.

Id. at 1097 (citations omitted).

The deeds at issue here are, like in *Rogers V*, "grants by bargain and sale for valuable consideration." *Id.* at 1094. The amount of that consideration is irrelevant to the question of what the grantor conveyed to the railroad. Thus, because the deeds here recite valuable consideration, even if nominal, they are grants by bargain and sale and are not voluntary grants under Florida law.

D. In Florida, railroad companies may hold fee simple title to land acquired for building railroads.

Plaintiffs put forth a variety of arguments as to why the railroad companies could, as a matter of law, only have acquired an easement by these deeds. Each will be addressed in turn.

First, Plaintiffs assert that railroad corporations could only acquire easements when acquiring property to build a railroad line. ECF No. 31-2 at 21-23. They argue "a railroad corporation is a creature of state law and a railroad corporation's power and authority to acquire property, especially including property acquired through the exercise of eminent domain, is defined by the public purpose for which the railroad corporation was chartered." *Id.* at 23. And because railroad corporations only need an easement to accomplish their public purpose of operating a railroad, that is the only interest the railroads could have acquired in the deeds at issue. *Id.*

But this broad assertion finds no basis in Florida law. "Florida law recognizes that railroads may hold fee simple title to land acquired for the purpose of building railroad tracks."

[5] For the avoidance of doubt, this is the property owners' brief in *Rogers V*.

Rogers V, 184 So. 3d at 1095 (citing *Atl. Coast Line R.R. Co. v. Duval Cnty.*, 154 So. 331 (Fla. 1934); *Clark v. Cox*, 85 So. 173 (Fla. 1920); *Fla. Power Corp. v. McNeely*, 125 So. 2d 311 (Fla. Dist. Ct. App. 1960)). The fact that a railroad is a creature of state law does not prevent it from receiving fee simple title from a willing grantor. And the fact that railroad companies may have been able to accomplish their endeavors via easements is irrelevant to the question of what the grantors intended to convey in an unambiguous conveyance. *Rogers V*, 184 So. 3d at 1094-95.

Second, Plaintiffs argue that "[t]he strip and gore doctrine is a background principle of law that informs the interpretation of these conveyances. The common law has long disfavored the creation of fee estates in strips or gores of land used as rights of way." ECF No. 31-2 at 28. But, again, "under Florida state law, a railroad can acquire either an easement *or* fee simple title to a railroad right-of-way and . . . no statute, state policy, or factual considerations prevails over the language of the deeds when the language is clear." *Rogers IV*, 814 F.3d at 1309 (emphasis in original); *see also Rogers V*, 184 So. 3d at 1098. Thus, when the language is clear, the "'strips and gores' argument [is] inapplicable." *Rogers V*, 184 So. 3d at 1099.

Third, Plaintiffs "describe the development of the Sarasota area in the early 1900s, the Palmer family, and the construction of Seaboard Air Line Railway's railway line from Sarasota to Venice." ECF No. 39 at 3 (citing ECF No. 31-2 at 5-15). Here, they argue that "[t]his historical context demonstrates why (and the purpose for which) these landowners granted the railroad right-of-way easements across the owners' land." *Id*. But if the grantor's intent is unambiguous from language of deed, the court does not consider extrinsic evidence. *Rogers V*, 184 So. 3d at 1100. This is because Florida courts "[do] not endeavor to discover the intent of the parties based on circumstances allegedly surrounding the deed's enactment" but "determine the parties' intent from the express text of the Contract." *Rogers II*, 93 Fed. Cl. at 618 (internal quotation marks omitted) (quoting *Fin. Healthcare Assoc. v. Pub. Health Tr.*, 488 F. Supp. 2d 1231, 1239 (S.D. Fla. 2007)).

Therefore, Plaintiffs' arguments fail in this regard. Under Florida law, railroad companies may obtain fee simple title to land acquired for building railroads.

E. The Deeds

With this understanding of Florida property law, the court turns to the deeds at issue in this case.

1. Honore Conveyance

The court does not take it upon itself to interpret the Honore deed for two simple reasons. First, Judge Williams did a thorough and persuasive job of construing the Honore deed in *Rogers I*. *Rogers I*, 90 Fed. Cl. at 429-33. Second, and more importantly, the parties in this case have stipulated that the Honore deed conveyed only an easement that was not broad enough to include recreational trail use. ECF No. 19 at 1. The court includes the Honore deed for comparison to the disputed conveyances to show what language conveying an easement under Florida law looks like. The Honore deed states:

> KNOW ALL MEN BY THESE PRESENTS, That the undersigned, ADRIAN C. HONORE, a bachelor of Chicago,

> Illinois, for and in consideration of the sum of one dollar ($1.00) and other good and valuable considerations this day to him in hand paid, the receipt whereof is hereby acknowledged, does hereby remise, release, and forever quit claim unto the SEABOARD AIR LINE RAILWAY, a corporation of the State of Virginia and other States, a right of way for railroad purposes over and across the following described parcels of land, lying and being in the County of Manatee, and State of Florida[.]
>
> * * * * *
>
> TO HAVE AND TO HOLD the said premises unto the said Seaboard Air Line Railway, its successors and assigns and to its or their proper use, benefit and behoof forever for railroad purposes.
>
> 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 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.

ECF No. 1-1 at 2-4.[6] Note that the granting clause conveys only "a right of way for railroad purposes over and across" certain land, but it does not convey the land itself. Thus, it is not conveying land, only the right to pass over land. *Rogers I*, 90 Fed. Cl. at 429. Indeed, as another member of this court recognized, the most natural reading of the term "right of way" is that it conveys an easement. *Mills*, 147 Fed. Cl. at 346. And the granting clause contains an explicit limitation on the use the railroad could make of the right of way.

The second paragraph above reinforces the limited use for which the property is conveyed to the railroad. But most importantly for determining Mr. Honore's intent is the explicit reversion to his successors if the railroad ceased using the property *as a railway*. *Rogers I*, 90 Fed. Cl. at 429-31. In plain terms, the Honore deed provides that if the railroad stopped using the property for railroad purposes, the property would "revert to and again become the property of the undersigned, his heirs, administrators and assigns." ECF No. 1-1 at 4. In other words, the conveyance itself makes Mr. Honore's intent to transfer only an easement clear, which is dispositive of the issue.

2. Sarasota Land Company and Clough Conveyances

Because the operative language in the Sarasota Land Company and Clough conveyances is materially identical, as Plaintiffs acknowledge, ECF No. 31-2 at 39, the court examines them

[6] Because the exhibit containing the Honore deed is not consecutively paginated, the court cites to the pagination in the ECF Header.

together and quotes the Sarasota Land Company conveyance unless otherwise indicated.[7] The Plaintiffs argue that these conveyances[8] transferred only an easement to the railroad, while to Government contends they conveyed fee simple title to the railroads.

The court begins with the language of the conveyance:

> [F]or and in consideration of the sum of Five Dollars . . . and other valuable considerations, [the Sarasota Land Company] hereby grants, bargains, sells and conveys unto [the Seaboard Air Line Railway] all their right, title and interest, of any nature whatsoever in and to the following property, to wit:
>
> All those certain pieces or parcels of land lying and being in the County of Manatee . . . and being described as follows:
>
> 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 [Sarasota Land Company] . . . .
>
> * * * * *
>
> TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and every right, title or interest, legal or equitable, of the said portion of the first part in and to the same.

ECF No. 31-5.

The Sarasota Land Company and Clough conveyances unambiguously transferred fee simple title to the property they describe. First, in the granting clause, the grantor "grants, bargains, sells and conveys unto [the Seaboard Air Line Railway] *all their right, title and interest, of any nature whatsoever* in and to the following *property*." *Id*. (emphasis added). This broad conveyance of "all right, title, and interest of any nature whatsoever" clearly reflects an intent to convey fee simple. *Rogers II*, 93 Fed. Cl. at 619. And the grantors were conveying all their interest in land, further supporting that they were conveying the fee estate. Second, the

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[7] The only differences in the two deeds are the grantors and the consideration. In the Sarasota Land Company conveyance, the Sarasota Land Company is the grantor, and the consideration is five dollars. ECF No. 31-5. In the Clough conveyance, the Cloughs are the grantors, and the consideration is fifty dollars. ECF No. 31-7. Because Florida does not consider the amount of consideration in determining the intent of the parties, the different consideration is not a material difference. *See Rogers V*, 184 So. 3d at 1097.

[8] The successors-in-interest to the Sarasota Land Company are Plaintiffs Deborah Barron, John Buenaventura Baez, James Achille, Jonathan Achille, the ALB Revocable Trust, the RPB Revocable Trust, Courtyard Villas, LLC, the Mallon Family Trust, Ronald Nourse, Old Forest Lakes Owners' Association, Gilda Pascual, Stephen Stiller, Christopher Wormwood, and Sharon Krueger. The successor-in-interest to Mr. and Mrs. Clough is Plaintiff James Musselwhite.

conveyances describe the property being conveyed as "[a]ll those certain pieces or parcels of land lying and being in the County of Manatee . . . and being described as follows: A Strip of land." ECF No. 31-5. This too indicates an intent to convey fee simple title because the grantor was transferring *land*—not an easement over the land. *Rogers II*, 93 Fed. Cl. at 619. The conveyance of all title to certain lands grants considerably more than the "right of way" that the Honore conveyance did. Indeed, the term "right of way" does not appear anywhere in these conveyances. Finally, unlike the Honore conveyance, the Sarasota Land Company and Clough conveyances do not include a reversionary clause or any limitation on the railroad's use of the property. Given the clear conveyance of "all right, title and interest," the lack of any reversionary clause is telling. *See Whispell Foreign Cars, Inc.*, 97 Fed. Cl. at 336; *Andrews*, 147 Fed. Cl. at 526. All of this indicates unambiguously that the grantors intended to convey the property in fee simple rather than merely an easement.

Plaintiffs' efforts to construe these deeds as conveying only an easement for railroad use are not persuasive and, in several cases, have been explicitly rejected by the Florida Supreme Court. First, Plaintiffs contend that because the conveyances conveyed a '"strip of land . . . on each side of the center line of the Seaboard Air Line Railway" this indicates the railroad had already entered the land and thus "memorialized the railroad's right-of-way easement in a strip of land across which the railway had already entered the land, surveyed and built a railroad line." ECF No. 31-2 at 38 (quoting ECF No. 31-5). Plaintiffs rely on *Preseault II* for this assertion, arguing that when "the instrument . . . describes the railway line as already and located across [the] property. . . . this means the railroad only acquired an easement, not title to the fee estate in land." ECF No. 39 at 20. While Plaintiffs acknowledge that *Preseault II* applied Vermont law, they argue that "[t]he principles of Vermont law in the early 1900s, upon which *Preseault II* relied are indistinguishable from Florida law in the early 1900s. Thus, the Federal Circuit's analysis in *Preseault II* directs this court to reach the same conclusion here." ECF No. 39 at 8.

Plaintiffs' reliance on *Preseault II* is misplaced. Vermont law is not Florida law—Montpelier does not govern Miami. Plaintiffs have pointed to nothing that supports their assertion that "[t]he principles of Vermont law in the early 1900s . . . are indistinguishable from Florida law in the early 1900s." ECF No. 39 at 8. At oral argument, Plaintiffs claimed that this assertion was supported by the fact that the Vermont Chief Justice, Justice Redfield's "treatise on railroad law . . . was cited a number of times in Florida Courts, the Florida Supreme Court in the early 1900s, for various points." ECF No. 48 at 16:9-13. But Florida courts merely citing to a treatise "for various points" is not enough to establish Florida courts have adopted Vermont law wholesale, or that Florida follows Vermont in limiting railroads to easements if they already occupy a parcel.

In fact, prior plaintiffs made this very same argument in *Rogers*, and this court rejected it. *Rogers II*, 93 Fed. Cl. at 623 (concluding that "*Preseault II* . . . was limited to a situation where a railroad exercised eminent domain under principles of Vermont law[, but when the railroad did not acquire land under eminent domain, Florida law considers] the terms of the deeds a[s] controlling and not the context in which the property was acquired."). And, most importantly, the Florida Supreme Court rejected it too:

> Appellants have not cited any source of statutory or decisional law applicable in Florida that supports their argument that a deed

> meeting all the formal requisites for passing fee simple title is rendered invalid or is limited in its effect by the fact that the grantee is already occupying the property. When a deed is unambiguous and sufficient on its face to show the grantor's intent as to the property described and the estate conveyed, extrinsic evidence is not admissible to vary the terms.

Rogers V, 184 So. 3d at 1100 (citing *Fla. Moss Prods. Co. v. City of Leesburg*, 112 So. 572 (Fla. 1927)) (additional citations omitted).

Second, Plaintiffs contend that both deeds acknowledge "that the land underlying the railway strip was 'owned' and retained by the grantor[s]." ECF No. 31-2 at 39. But Plaintiffs come to this interpretation by cherry-picking language out of context. The deed conveys "All those certain pieces or parcels of land . . . described as follows: 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" Sarasota Land Company. ECF No. 31-5; *see also* ECF No. 31-7 ("A strip of land . . . on each side of the center line of the Seaboard Air Line railway as located across the lands owned by [the Cloughs] . . . ."). But the deeds clearly conveyed the "strip of land," and the reference to the lands owned by the SLC and the Cloughs simply locates the strip of land. This does not indicate in any way that the grantors were retaining ownership of the land under the railroad. Read in context, this language clearly is a description of where the conveyed land is, not the interest being conveyed.

Judge Williams's discussion of this argument in *Rogers II* applies equally here. In *Rogers II*, the plaintiffs argued that despite the unambiguous intent to convey fee simple title, the fact that a deed for a strip of land "through the lands of the grantor" meant that the conveyance was for only an easement. *Rogers II*, 93 Fed. Cl. at 621. But "[t]he language 'through the land of the grantor' in the deed merely describes the location of the strip of land conveyed to [the railroad] and does not define or characterize the nature of the property interest conveyed to [the railroad]." *Id.* Here too, Plaintiffs rely upon the language locating the property, not the property being conveyed.

Finally, Plaintiffs argue that the deeds should be construed against the railroad because the railroad drafted them. ECF No. 31-2 at 37-39. According to Plaintiffs, "the fact that the [SLC] conveyance's language is identical to the Clough deed demonstrates that the railroad drafted the deed and should be construed in favor of these landowners . . . . [and] the Clough deed should be construed against the railroad." *Id.* at 39. But under Florida law, "[r]ules of construction will be utilized only where the meaning or effect of the deed is doubtful." *Rogers V*, 184 So. 3d at 1095 (quoting *Saltzman*, 306 So. 2d at 539); *see also Heath v. First Nat'l Bank in Milton*, 213 So. 2d 883, 888 (Fla. Dist. Ct. App. 1968) ("Any . . . *ambiguities* in the language of the instrument must be construed more strongly against the drafter of such instrument." (emphasis added)); *Consol. Dev. & Eng'g Corp. v. Ortega Co.*, 158 So. 94, 96 (Fla. 1933) ("[B]ecause [the mortgage clauses] appear in an instrument which was prepared for the mortgagee's benefit, *any ambiguity in language* . . . must be construed most strongly against the mortgagee.") (emphasis added); *Sec. First Fed. Sav. & Loan Ass'n v. Jarchin*, 479 So. 2d 767, 770 (Fla. Dist. 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, 803 (2011) ("[B]ecause this court concludes that the railroad . . . drew up the deeds, . . . any *ambiguity* in the . . . Deeds must be interpreted in the grantors' favor.") (emphasis added). Because the Sarasota Land Company and Clough conveyances contain no ambiguities, there is no basis to invoke this rule of construction when interpreting these deeds.

Because the Sarasota Land Company and Clough conveyances unambiguously conveyed fee simple title to the railroad, the NITU did not affect a taking of property held through these conveyances. *See Preseault II*, 100 F.3d at 1533.

3. The Burton Conveyance

The Burton conveyance[9] was executed on October 5, 1910, between Oscar and Alice Burton and the Seaboard Air Line Railway. ECF No. 31-6. The deed provides:

> [I]n consideration of the sum of Five Dollars . . . [the Burtons] do hereby grant, bargain, sell and convey unto [Seaboard Air Line Railway] the following property to-wit: 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] . . . .
>
> Said Strip of land contains 6.2 acres, more or less. TOGETHER, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and every right, title or interest, legal or equitable, of [the Burtons] and to the same.
>
> TO HAVE AND TO HOLD the same unto [Seaboard Air Line Railway] its successors and assigns, to its or their own proper use, benefit and behoof, forever. And [Sarasota Land Company], for value received, doth hereby sell, transfer and assign unto [Seaboard Air Line Railway] all its right, title and interest in and to the aforesaid contract of sale[10] of . . . 1909 . . . .

Id.

The language of the Burton conveyance unambiguously conveys fee simple title. First, the deed is expansive and contains no limitations—it provides that the land is being conveyed to Seaboard Air Line Railway and its successor "to its or their own proper use, benefit and behoof, *forever*." *Id.* (emphasis added). The fact that the land is being transferred forever and for

[9] The successors-in-interest to Mr. and Mrs. Burton are Plaintiffs Willis Martin, Alta Martin, James Myers, and Katherine Myers.

[10] The deed provides that the Burtons contracted to sell certain land in Manatee County, Florida, to Frank S. Colton and Neville Bailey in 1909. ECF No. 31-6. Colton and Bailey in turn transferred all their right and interest in and to the contract of sale to the Sarasota Land Company. *Id.*

whatever proper uses shows an intent to transfer fee simple title. Second, the conveyance describes the property being conveyed as "land"—specifically as "[a] *strip of land* one hundred (100) feet wide . . . . 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); *see Rogers II*, 93 Fed. Cl. at 619. Again, grantors transferring "land" indicates an intent to transfer fee simple title. Third and finally, unlike the Honore deed, there is no reference to a right of way, no reversionary clause, nor any indication that the Burtons retained any interest in the property. Thus, everything in the conveyance establishes that the Burton conveyance intended to convey a fee simple interest to Seaboard Air Line Railway.

For the Burton conveyance, Plaintiffs reiterate previous arguments that the deed conveyed an easement because it "conveyed only a strip of land for a railway already existing on the land of the grantor" and that "courts should construe any ambiguity in the deed if [sic]favor of the landowner." ECF No. 31-2 at 36-37. As explained above, these arguments are not viable under Florida law. *See supra* Section III.E.2. Plaintiffs again assert the deed "acknowledged that the land underlying the railway strip was 'owned' and retained by the grantors." ECF No. 31-2 at 36. But nowhere in the deed does it state that the land underlying the railroad strip was retained by the grantors. When the Burton conveyance describes the land "as located across the lands owned by" the Burtons, it is in the context of describing what land is being conveyed—like in the Sarasota Land Company and Clough conveyances; it is not expressing that the Burtons would maintain ownership of the underlying land. *Rogers II*, 93 Fed. Cl. at 621 ("The language 'through the lands of the grantor' in the deed merely describes the location of the strip of land conveyed to [the railroad] and does not define or characterize the nature of the property interest conveyed to [the railroad]."). *Rogers III* clarified that "other language in the Honore conveyance—the phrases 'a right of way' and 'for railroad purposes'—as well as 'over and across . . . the parcels of land,' reflected the grantor's intent to convey an easement." *Rogers III*, 107 Fed. Cl. at 396 (citing *Rogers I*, 90 Fed. Cl. at 429-31). And "[t]he word 'across,' in conjunction with the words 'as located,' merely describes the location of the subject parcel and does not qualify or limit the property interest the grantors conveyed." *Id.* So too in this case.

Plaintiffs next argue that "[u]nless the parties make clear in the deed they intended creation of a fee simple estate . . . the most convincing conclusion is that they intended an easement." ECF No. 31-2 at 36-37. Not so. Under Florida law, there is no presumption that a deed conveys an easement. To the contrary, Florida law presumes exactly the opposite under Section 689.10 of the Florida Statutes. In Florida, absent a contrary intention, "a deed is presumed to convey fee simple title." *Rogers V*, 184 So. 3d at 1095 n.5. In other words, Plaintiffs' argument flips Florida law on its head.

Similarly unavailing is Plaintiffs' contention that the "limitation to railroad purposes is implicit in the deed, evidencing that the parties intended the grant of only an easement." ECF No. 31-2 at 36. According to Plaintiffs, because the deed conveys "a strip of land," this means it "is most likely for the creation of a corridor for the passage of trains," and further, "a conveyance of a strip of land 'across' the property. . . denotes . . . a right of passage over the land." *Id*. at 37 (citing Restatement (Third) of Property: Servitudes § 2.2). Again, Plaintiffs have jumped the tracks. The term "strip of land" in the granting clause of a deed indicates the parties "intended to convey land, rather than a right to use or control land for a limited purpose." *Rogers II*, 93 Fed. Cl. at 619 (citing A.E. Korpela, *Deed to railroad company as conveying fee or easement*, 6

A.L.R.3d 973, § 4); *see also Whispell Foreign Cars, Inc.*, 97 Fed. Cl. at 335-37; *Andrews*, 147 Fed. Cl. at 526. Plaintiffs' argument fails because it is premised on assumptions and presumptions about what the grantors intended to convey despite the language of the deed, which Florida law does not allow the court to do.

Because the Burton conveyance unambiguously conveyed fee simple title to the railroad, the NITU did not affect a taking of property held through these conveyances. *See Preseault I*, 494 U.S. at 16.

4. The Neihardt Conveyance

In January 1905, Moses Neihardt[11] conveyed property to the railroad. The Neihardt conveyance provides that:

> [F]or and in consideration of the sum of One Dollars [sic] . . . paid by [the Florida West Shore Railway] . . . [Mr. Neihardt] has granted, bargained and sold to [the Florida West Shore Railway], its successors and assigns forever, the following-described land, to wit: . . . [description of the metes and bounds of the land conveyed] . . . . And [Mr. Neihardt] does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

ECF No. 31-8.

The text of the Neihardt conveyance demonstrates that Mr. Neihardt unambiguously conveyed fee simple title to the railroad. First, the granting clause is expansive and contains no limiting language—it provides that Mr. Neihardt "has *granted, bargained and sold* to [the Florida West Shore Railway], its successors and assigns *forever*, the following-described *land*." ECF No. 31-8 (emphasis added); *see Whispell Foreign Cars, Inc.*, 97 Fed. Cl. at 335 (holding that a deed conveyed fee simple title in part because it "granted, conveyed, bargained and sold" its interest). Second, the conveyance describes the land conveyed as "the following described *land*." ECF No. 31-8 (emphasis added). Again, this indicates that Mr. Neihardt was selling land, not the right to access land. *Rogers II*, 93 Fed. Cl. at 619; *see also Andrews*, 147 Fed. Cl. at 526. Third, unlike the Honore conveyance, there is no mention of a right of way or a reversionary clause, which further supports the conclusion that Mr. Neihardt was conveying fee simple rather than an easement. Fourth and finally, the conveyance contains a warranty clause—another factor in favor of concluding that Mr. Neihardt sought to convey fee simple title rather than an easement. *Rogers II*, 93 Fed. Cl. at 619-20; *Whispell Foreign Cars, Inc.*, 97 Fed. Cl. at 337-39.

Plaintiffs' arguments to the contrary are not persuasive. They assert "[t]he form deed's generic and non-descriptive language does not demonstrate that any title was conveyed to the railroad beyond an easement" and "[u]nless the parties made clear in the deed that they intended creation of a fee simple estate in an otherwise unusable strip of land, the most convincing

[11] The successors-in-interest of Mr. Neihardt are Plaintiffs Enos Weaver, Jr. and Anna Mary Weaver.

conclusion is that they intended an easement." ECF No. 31-2 at 40. Not so. The deed states clearly that Mr. Neihardt "granted, bargained and sold . . . *land*" to the railroad. ECF No. 31-8 (emphasis added). And it would make little sense for Mr. Neihardt to fully warrant the title to the land if the railroad was not acquiring title to the land. *Id.* (provision stating that Neihardt "fully warrant[ed] the title to said *land*") (emphasis added); *see also Rogers II*, 93 Fed. Cl. at 619-20; *Whispell Foreign Cars, Inc.*, 97 Fed. Cl. at 337-39. This warranty clause clearly indicates a transfer of fee simple. Further, under Florida law "a deed is presumed to convey fee simple title, or whatever title the grantor had power to convey, unless a contrary intention is shown by the language of the deed." *Rogers V*, 184 So. 3d at 1095 n.5 (citing Fla. Stat. § 689.10). Again, Plaintiffs are attempting to turn Florida law on its head.

Plaintiffs also contend that Mr. Neihardt conveyed an easement because "[t]he conveyance recites only one dollar of consideration, and the strip of land is a fifty-foot-by-sixty-foot strip of land." ECF No. 39 at 21. But under Florida law, the amount of consideration is irrelevant to determining whether a deed conveys an estate in fee or an easement. *Rogers V,* 184 So. 3d at 1097. Plaintiffs further question, "[w]hy would Moses Neihardt, a Missouri widower, intend to convey the railroad title to the land? And why would the railroad desire any greater interest in this fifty-by-sixty-foot strip of land than an easement?" ECF No. 39 at 22. But this conjecture is also irrelevant. "When interpreting a deed under Florida law, '[t]he Court's function in interpreting and enforcing a contract is to determine the parties' intent *from the express text of the Contract*.'" *Rogers III*, 107 Fed. Cl. at 394 (quoting *Fin. Healthcare Assocs.*, 488 F. Supp. 2d at 1239) (emphasis added).

Because the Neihardt deed unambiguously conveyed fee simple title to the railroad, the NITU did not affect a taking of property held through these conveyances. *Preseault I*, 494 U.S. at 16.

F. The Condemnation Judgment

In the 1920's the Tampa Southern Railroad Company sought to condemn property held by Bonnie Tankersly and Mattie Davis, which resulted in a district court condemnation judgment. Plaintiffs argue the 1926 condemnation judgment granted "an easement for railroad purposes over and across the land now owned by Jane Shumway." ECF No. 31-2 at 32. The Government contends that the condemnation granted the railroad fee simple title to the covered property. ECF No. 32 at 13. The condemnation judgment provides:

> That the property sought to be condemned is described as follows:-
>
> All that certain piece, parcel or strip of land situate, lying and being in the Southwest Quarter . . . particularly described as follows:
>
> [The judgment describes the metes and bounds of the land.]
>
> That the compensation made therefor shall be the sum of $61,500 Dollars . . . .

> That the amount of said compensation shall be paid to Bonnie K. Tankersley and Mattie V. Davies . . . .
>
> It is considered by the Court that the property therein described be appropriated by the Tampa Southern Railroad Company for use as a right of way for said Railroad Company, upon the petitioner paying . . . the compensation . . . .

ECF No. 31-9 at 7-8.

Plaintiffs are steadfast that the railroad could only acquire an easement through the condemnation proceeding. But Florida precedent is clear that railroad companies can acquire fee simple title by condemnation. In *Atlantic Coast Line*, the Florida Supreme Court explained: "A railroad right of way in this state is not a mere easement or user for railroad purposes. Like other property it is acquired by purchase *or condemnation* and vests a fee in the company acquiring it which cannot be divested except as the law provides." 154 So. at 332 (emphasis added). This 1934 decision, which is almost contemporaneous with the 1926 judgment here, makes clear that railroads *could* acquire fee simple title through condemnation.[12] Likewise, while analyzing instruments from the late 1800s and early 1900s, this court concluded that "under Florida statutes applicable at the time, a railroad *could* acquire and hold fee simple title in property by either purchase *or condemnation*." *Mills*, 147 Fed. Cl. at 347 (emphasis added).

Plaintiffs next argue that because the railroad could operate with only an easement, that is all it could acquire through the condemnation action. Specifically, Plaintiffs argue that "under Florida law, the railroad could only acquire an easement for railroad purposes when it condemned the land." ECF No. 31-2 at 36. As Plaintiffs contend, "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.'" *Id*. at 35 (quoting *Trailer Ranch, Inc. v. City of Pompano Beach*, 500 So. 2d 503, 507 (Fla. 1986)). While this eminent domain limiting presumption exists, it does not mean that railroads could, as a matter of law, only acquire easements when acquiring land by eminent domain. Florida caselaw rejects this. *Atl. Coast Line R.R. Co.*, 154 So. at 332. Again, under Florida law, a railroad may acquire fee simple by condemnation so long as it is necessary to accomplish the public purpose for which the property is acquired. And "when the law says that private property may be taken for public use only when it is necessary for such use, it means a reasonable, not an absolute necessity." *Wilton v. St. Johns Cnty.*, 123 So. 527, 535 (Fla. 1929).

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[12] The court does not understand this statement to be an absolute statement that all rights of way are considered fee simple estates under Florida law. Rather, as Judge Williams explained in *Rogers I*, the statement in *Atlantic Coast Line* was made in a case where the parties agreed that the railroad owned the right of way in fee. 90 Fed. Cl. at 430. Indeed "longstanding precedent" in Florida also makes clear that railroads could hold a right of way as easements. *Id*. (collecting cases). But this language does confirm that railroads could obtain fee simple title through condemnation.

The next question is how to interpret the condemnation judgment. In *Rogers V*, the Florida Supreme Court did not address this issue because there were no condemnation judgments at issue in that case. *Rogers V*, 184 So. 3d at 1096. Other Florida courts, however, have held that "[t]he legal operation and effect of a judgment must be ascertained by a construction and interpretation of its terms, and this presents a question of law for the Court." *Boynton v. Canal Auth.*, 311 So. 2d 412, 415 (Fla. Dist. Ct. App. 1975); *see also Morris v. Winbar LLC*, 273 So. 3d 176, 179 (Fla. Dist. Ct. App. 2019) (same). And "[i]f the language used in a judgment is ambiguous then it may be construed, but if the language employed is plain and unambiguous there is no room for construction nor interpretation, and the effect thereof must be determined in the light of the literal meaning of the language used." *Boynton*, 311 So. 2d at 415.

The language of the condemnation judgment is ambiguous as to the title being taken. On one hand, the condemnation judgment's language is expansive and describes the property condemned as land, specifically as "[a]ll that certain piece, parcel or strip of land." ECF No. 31-9 at 7. This language is almost the same as seen in the conveyances discussed above, indicating a transfer of the fee estate. *See Rogers I*, 90 Fed. Cl. at 429-31; *Rogers II*, 93 Fed. Cl. at 619. And while the judgment states the property was "appropriated by the Tampa Southern Railroad Company for use as a right of way for said railroad company," ECF No. 31-9 at 8, there is no limiting language restricting the use of the right of way to railroad purposes. In *Rogers V*, the Florida Supreme Court stated that when discerning the intent of a deed, the inclusion of a purpose for the transaction, without more, does not indicate an intent to convey only an easement. *Rogers V*, 184 So. 3d at 1095. Finally, there is no reversionary language.

On the other hand, Plaintiffs argue the judgment conveyed an easement because "[i]t is well settled that the grant of a right of way is usually understood to constitute an easement." ECF No. 31-2 at 33. Plaintiffs rely on *Nerbonne, N.V. v. Florida Power Corp.*, 692 So. 2d 928, 928 n.1 (Fla. Dist. Ct. App. 1997), for the proposition that "[t]he conveyance of a right-of-way is generally held to create only an easement. ECF No. 31-2 at 33. Similarly, as Judge Bruggink explained: "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.'" *Mills*, 147 Fed. Cl. at 347 (quoting *Right-of-Way*, Black's Law Dictionary (11th ed. 2019)).

Mills and *Nerbonne* are also distinguishable. In *Mills*, "there was no reference . . . to . . . anything that might look like a fee estate." *Id*. This judgment, however, has language that indicates it conveys fee simple (i.e. the taking of land). And as discussed above, under Florida law "right of way" language alone is not determinative— "the term right-of-way . . . can refer either to . . . an easement—or . . . an estate in fee. Whether the railroad obtains a 'right' or 'land' depends on the [parties'] intent . . . ." *Rogers II*, 93 Fed. Cl. at 623 (internal citation omitted) (quoting 43 Fla. Jur. 2d, Railroads § 32); *see also Rogers V*, 184 So. 3d at 1094-95.

Nerbonne concerned the grant of a permit, not a condemnation action. *Nerbonne*, 692 So. 2d at 928. Moreover, the condemnation judgment here clearly conveyed "[a]ll that certain piece, parcel or strip of land[,]" ECF No. 31-9 at 7, while in *Nerbonne* the conveyance granted "a right-of-way for public road purposes and full authority to enter upon, construct and operate a road over and upon the following described lands situate in Orange County." *Nerbonne*, 692 So. 2d at 928. The judgment here, however, concerns the "property" rather than the right to operate

a railroad over it. *See* ECF No. 31-9 at 7. And the habendum clause in *Nerbonne* read "TO HAVE AND TO HOLD the said easement or right-of-way unto the party of the second part and its successors for the purpose aforesaid." *Nerbonne*, 692 So. 2d at 928. There is no such limitation in the condemnation judgment here.

Again, Florida courts are clear that the "effect of a judgment must be ascertained by a construction and interpretation of its terms" and if unambiguous, the judgment "must be determined in the light of the literal meaning of the language used." *Boynton*, 311 So. 2d at 415. Because the decree's language is ambiguous, however, the court may look to extrinsic evidence to interpret the terms of the decree. *See Rogers II*, 93 Fed. Cl. at 625 ("Florida courts have [ ] admitted separate and contemporaneous deeds or instruments in order to discern the real intent of an otherwise ambiguous instrument."); *Boynton*, 311 So. 2d at 415 ("In cases of ambiguity or doubt the meaning of the judgment must be determined by that which preceded it and that which it was intended to execute. If a judgment cannot be interpreted from the language in the judgment itself, the entire record may be examined and considered . . . ."). But the court must not allow extrinsic evidence to change the terms of the judgment. *E.g.*, *Rogers II*, 93 Fed. Cl. at 625) ("[E]xtrinsic evidence is allowable to the extent it 'removes' or clarifies the ambiguity, but it may not be used to 'vary, alter, or contradict a written instrument.'") (quoting *Whitfield v. Webb*, 131 So. 786, 788 (Fla. 1931)); *Boynton*, 311 So. 2d at 415 (when considering the extrinsic evidence, "the adjudication should not extend beyond that which the language used fairly warrants, since the purpose and function of construction is to give effect to that which is already latent in the judgment").

To address the ambiguity, the court finds it appropriate to consider filings made in the 1926 action[13] that Plaintiffs filed in this case to see what light they shed on the proper interpretation of the judgment. *Boynton*, 311 So. 2d at 415 (allowing the court to review the record of the condemnation proceeding to interpret the judgment). Because neither party sufficiently briefed this issue, the court ordered "supplemental briefing on the issue of what interest in property the railroad acquired by the 1926 condemnation judgment." ECF No. 52. The Government believes this evidence supports its position that the judgment transferred fee simple to the railroad. ECF No. 55 at 2. Plaintiffs believe that the record shows the railroad got only an easement. ECF No. 56 at 12. But both parties agree that it is appropriate for the court to consider the filings in the district court action to construe ambiguities in the terms of the condemnation judgment. ECF No. 55 at 2; ECF No. 58 at 1.

As a starting point, the court looks at each party's proposed jury instructions to understand what the parties were asking the jury to do in the condemnation action. The railroad's proposed instruction reads:

> The jury are instructed that, in considering the compensation to be paid to the defendant for the land about to be taken, they are to fix the actual cash market value of the land taken. And they are further instructed that they are not to consider the price at which

[13] The court recognizes that this judgment is 98 years old and the record available to the court is limited. Plaintiffs have filed all the records they could locate from the 1926 docket. ECF No. 56 at 6 n.7.

> the property would sell for under special or extra-ordinary circumstances, but its fair market value, if sold in the market under ordinary circumstances for cash, and not on time, and assuming that the owners are willing to sell and the purchaser is willing to buy . . . .
>
> * * * * *
>
> Market value is the amount the strip would sell for if put upon the open market, and sold in the manner in which property is ordinarily sold for cash in the community where it is situated, with a reasonable time being given to find a purchaser and make the sale.

ECF No. 31-9 at 25-26. And the property owners' proposed jury instruction reads:

> In fixing the compensation to be paid the owners for the land sought to be taken it is proper for you to determine whether or not the proposed appropriation imposes an injury or impairment of value to the adjoining land of Defendants of the same tract from which this land is taken and in fixing the amount of compensation to be awarded by you[,] you should include the amount of such injury if any there be in your award.

Id. at 29.

At the outset the court acknowledges that it is not clear which of these proposed instructions was given, if it was a combination of the two, or something else entirely. But the court does consider these proposed instructions relevant in discerning what the parties thought the condemnation judgment would do. Both instructions charge the jury with considering what the *land* would sell for if put on the open market. They do not instruct the jury to determine the value of a right of way for railroad use or a sale of an easement in the land. And both refer to the property at issue as the "*land* about to be taken," *id.* at 25 (emphasis added), or the "*land* sought to be taken," *id.* at 29 (emphasis added). As the property owners put it, "it is proper for you to determine whether or not the proposed appropriation imposes an injury or impairment of value to the adjoining land of Defendants of the same tract *from which this land is taken* . . . ." *Id*. (emphasis added). Because the taking of an easement would not remove land from the landowners' tract, this statement indicates that the landowners thought that the property the railroad was condemning would be taken from the land that they would retain. This indicates that the condemnation action would result in the taking of property, not an easement to use that property.

Another document found in the district court records is an agreement by the parties delineating the land to be condemned, which also indicates that they understood that the district court was condemning the fee simple estate:

> It is agreed that the area of the land sought to be taken in this proceeding and shown in and on the map filed . . . as plaintiffs Exhibit No. 2 is as follows:-
>
> From the East extremity . . . to the line marked "B" is (1.74) . . . acres. From the line on the area in red marked "B" to the line marked "A" is (2.01) . . . acres and from the said line marked A to the North end of the area marked in red is (5.23) . . . acres.
>
> And that the triangular tract in the South . . . is approximately 5 acres.

ECF No. 31-9 at 43. This document—signed by both parties—indicates that what was being taken was *land* rather than an easement.

While Plaintiffs spend much of their supplemental briefs discussing historical background and rehashing arguments that a railroad may not acquire fee simple by condemnation, Plaintiffs also assert that the condemnation proceedings indicate the court condemned the property as an easement. ECF No. 58 at 3-4. Plaintiffs emphasize the use of right of way language in the condemnation petition, the show cause order, the property owners' answer, and the condemnation judgment. ECF No. 56 at 9-10. They argue "[i]t is manifest in these condemnation pleadings that everyone concerned, the railroad, the owners and the court, all referred to the railroad's interest as a 'right-of-way' for the specific 'purpose' of constructing and operating a railway line." *Id.* at 28.

It is true that some of the condemnation proceeding documents use right-of-way language. The Petition to Condemn the property states: "Petitioner further says it is authorized, under the laws of the State of Florida, to take and condemn real estate *for purposes necessary for its use as a railroad*." ECF No. 31-9 at 38 (emphasis added). And "Petitioner further shows unto the Court that the taking of the said property by your petitioner is *for the purpose of its use as a right of way for the construction of its railroad*, and that the said property is necessary for that purpose." *Id.* at 40 (emphasis added). The Show Cause Order instructs parties to appear "and 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." *Id.* at 24 (emphasis added). The property owners' answer also uses right of way language, but unlike the other documents this language does not describe the land being condemned as a right of way. *See id.* at 32-34. Regardless, all this right of way language must be viewed in context of the condemnation proceeding.

In *Rogers V*, the Florida Supreme Court explained that in the 1920s, Section 4354 in the Revised General Statutes of Florida (1920) applied. 184 So. 3d at 1092-93. This statute provided:

> Every railroad and canal company shall be empowered
>
> * * * * *

> [t]o lay out its road or canal . . . and to construct the same, and, for the purpose of cuttings and embankments and for obtaining gravel and other material, *to take as much land as may be necessary for the proper construction, operation and security of the road* or canal, or to cut down any trees that may be in danger of falling on the road or into the canal, *making compensation therefor as provided for land taken for the use of the company*.

Id. (citation omitted) (emphasis added). Section 4354 accordingly applied at the time of the 1926 condemnation. Thus, to exercise eminent domain power and effectuate a taking, the railroad would have had to prove that it was seeking "to take . . . land . . . necessary for the proper construction, operation and security of the road." *Id.* Indeed, under Florida law "where the statute conferring the authority, or the statute on the subject of eminent domain, limit the taking to such property as may be necessary for the purpose in question, whether any necessity exists for taking particular property for a particular purpose is ultimately a judicial question, upon which the owner is entitled to be heard." *Wilton*, 123 So. at 535. The railroad would, therefore, have had to show it was seeking to condemn the land for the purpose of construction and use of a railroad. And if the railroad was not seeking to condemn for such a purpose or did not include such purpose in its petition, the taking could be challenged by the landowner. *See Spafford v. Brevard Cnty.*, 110 So. 451, 455 (Fla. 1926) ("[W]here the sovereign power is delegated with limitations or conditions upon the exercise of the right of eminent domain, the owner of property sought to be taken under such delegated authority has a right to be heard in an appropriate tribunal upon the question of whether delegated authority is being duly exercised in taking his property.").

In this case, there was a challenge to the condemnation because the landowners argued that it was not for railroad purposes. In their answer, the property owners argued the railroad "seeks in and by said petition to condemn certain land in said petition particularly described, *which is not essential for the construction of its line of railroad* . . . but beyond the destiny and termination of its purposes and authority and its power to extend and proceed with its said road." ECF No. 31-9 at 33 (emphasis added). Accordingly, the right of way language in the condemnation documents does not conclusively show an intent to condemn only an easement. Rather, it is likely that the railroad was merely complying with Florida law by asserting that it was seeking to condemn the land for a proper purpose, and to defeat the potential challenge by the landowners. Therefore, the court does not believe the fact that the railroad sought "to take and condemn real estate for purposes necessary for its use as a railroad" necessarily means that the railroad sought only an easement. *See* ECF No. 31-9 at 38. If the court construed the language stating the purpose of the condemnation was to construct a railroad conclusively meant that a railroad sought an easement, it would appear impossible that a railroad could obtain a fee simple estate through condemnation under a statute that requires the condemnation to be necessary to the operation of a railroad. But, as explained above, Florida law recognizes the railroad's ability to obtain a fee simple estate through condemnation.

Plaintiffs also claim that "[n]o Florida court presented with language similar to the condemnation pleadings . . . has concluded a railroad acquired title to the fee estate in a strip of land." ECF No. 56 at 35. And they assert "should this Court believe Florida law is ambiguous or unsettled as to whether the 1926 condemnation verdict actually granted title to the fee simple

estate . . . this Court should certify this question to the Supreme Court of Florida." *Id.* It does not seem like a disputed proposition that a condemnation judgment should be interpreted like a deed insofar as the court must look to the language of the judgment to ascertain the nature of the estate conveyed. *Boynton*, 311 So. 2d at 415. That is what this court has done and that is what the court believes Florida law requires.

Regardless, Plaintiffs' requested certification is not possible. Although they cite the Florida Constitution as a means by which this court may certify a question to the Florida Supreme Court, ECF No. 56 at 2, they fail to address the language of that document. Instead, they rely on a prior decision of this court certifying a question to the Indiana Supreme Court under Indiana law. *Id*. at 38-39. Of course, the question is one of Florida law, not Indiana law. And the Florida Constitution provides that the Florida Supreme Court "[m]ay review a question of law *certified by the Supreme Court of the United States or a United States Court of Appeals* which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida." Fla. Const. art. V, § 3(b)(6) (emphasis added). And the Florida rules specify "[o]n either its own motion or that of a party, the *Supreme Court of the United States or a United States court of appeals* may certify . . . questions of law to the Supreme Court of Florida if the answer is determinative of the cause and there is no controlling precedent of the Supreme Court of Florida." Fla. R. App. P. 9.150(a) (emphasis added). This court is undeniably not the Supreme Court of the United States nor a United States Court of Appeals. Thus, under Florida law, this court may not certify a question of law to the Florida Supreme Court even if this court thought it appropriate. If Plaintiffs want a question certified to the Florida Supreme Court, they must convince the Federal Circuit to do so.

Finally, in their supplemental briefing, Plaintiffs contend that the condemnation judgment only created an easement because Tankersley and Davis continued to hold their property and wound up before the Florida Supreme Court regarding who held title to the land. ECF No. 56 at 35. Before turning to the specific legal arguments, a review of the history of the conveyances to Tankersley and Davis is necessary.

J.C. Bishop owned a parcel of land in fee simple that included the land at issue in the condemnation action. *Tankersley v. Davis*, 175 So. 501, 502 (Fla. 1937). He was the father of Tankersley and Davis. On March 14, 1924, Bishop conveyed a life estate in part of his land to Tankersley with fee going to her children. *Id.* at 502-03. If Tankersley died without a child, however, Davis would inherit the life estate and her children would get fee simple title to the property. *Id.* If Davis had no living children, then fee would pass to Davis's heirs. *Id.* at 503. At the same time, Bishop conveyed a life estate in another part of his land to Davis with fee going to her children. *Id.* In the event Davis died without children, Tankersley would get a life estate with fee going to her children. *Id.* If she died without children, then fee would pass to her heirs. *Id.* At some point between conveying the property interests and the filing of the condemnation action, Bishop died, leaving Tankersley and Davis as the only ones holding a present interest in the land that the railroad sought to condemn. The district court entered its condemnation decree at issue in this case in 1926. Tankersley died in 1927. Sorting out the various property interests in Bishop's property resulted in litigation before the Florida Supreme Court, which concluded that Davis owned fee simple title to the property conveyed by her father. *Id*. at 505.

Plaintiffs assert that the fact that the Florida Supreme Court determined that Davis held fee simple title to the parcels conveyed by her father means that the railroad could only have held an easement burdening that property. ECF No. 56 at 4-6. This argument, however, presumes that the railroad sought to condemn the entirety of both parcels that Bishop conveyed to Tankersley and Davis. But that is clearly not what the condemnation sought to do. Although the court does not have before it the metes and bounds of the various Bishop parcels, Tankersley and Davis clearly understood that the railroad was not seeking to take all their property. Indeed, their proposed jury instruction recognized that they would retain their interests in the "adjoining land of Defendants of the same tract from which this land is taken." ECF No. 31-9 at 29. In other words, the property at issue in *Tankersley* was not the same property at issue in the condemnation action, it was the "adjoining land" that remained after the district court removed the property from the Tankersley and Davis parcels. Indeed, the Florida Supreme Court makes no reference to any encumbrance on either parcel at issue in *Tankersley*. Given the significant length at which the Florida Supreme Court traced all the relevant property interests and various estates that different parties held in the property, the failure to mention any interest of the railroad indicates that there was no such encumbrance (i.e., there was no easement over the property that Davis held in fee simple).

In the end, although the district court judgment is ambiguous as to the estate being condemned, the review of the record before the district court demonstrates that the parties understood that fee simple title was being taken. Therefore, the court concludes that the condemnation judgment affected the taking of fee simple title and there was no reversionary interest that would have reverted to Plaintiffs but for the NITU. Therefore, there was no taking of their property.

G. Motion to Sever Claims

Plaintiffs also requested this court "under Rule 20 and for the effective administration of justice, to sever the [three] claims" arising out of the Honore deed, ECF No. 20 at 1, as well as "order that these owners' claims proceed to a final determination of the specific compensation due each owner," *id.* at 14. The Government opposed the motion "because severing the three claims for which the Government has stipulated to liability (the "Honoré Properties") would be inefficient and costly" and it explained "[i]f and when Plaintiffs' counsel make a settlement offer" concerning these claims "undersigned counsel will review the offer and respond accordingly." ECF No. 22 at 1.

RCFC 21 sets forth that "[o]n motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party." It is within the court's discretion to sever a claim and RCFC 20 provides guidance in determining whether parties or claims are misjoined. *In re Nintendo Co., Ltd.*, 544 F. App'x 934, 938 (Fed. Cir. 2013); *see also* RCFC 20(a)(1) ("Persons may join in one action as plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action."). At this stage, severance of any claims is futile. The Honore claims are the only claims that survive the motion for summary judgment and therefore there are no other claims from which to sever them. Given this, Plaintiffs' motion to sever the Honore claims is denied as moot.

IV. CONCLUSION

For the foregoing reasons, the Plaintiffs' Motion for Partial Summary Judgment, ECF No. 31, is **DENIED**. The Government's Cross-Motion for Partial Summary Judgment, ECF No. 32, is **GRANTED**. Plaintiffs' Motion to sever the Honore claims, ECF No. 20, is **DENIED**.

The Clerk's Office is directed to:

1. Enter judgment for the Government on the claims of the successors-in-interest of the Sarasota Land Company: Deborah Barron; John Buenaventura Baez; James Achille; Jonathan Achille; the ALB Revocable Trust; the RPB Revocable Trust; Courtyard Villas, LLC; the Mallon Family Trust; Ronald Nourse; Old Forest Lakes Owners' Association; Gilda Pascual; Stephen Stiller; Christopher Wormwood; and Sharon Krueger.

2. Enter judgment for the Government on the claim of the successor-in-interest of Mr. Clough: James Musselwhite.

3. Enter judgment for the Government on the claims of the successors-in-interest of Mr. Neihardt: Enos Weaver, Jr. and Anna Mary Weaver.

4. Enter judgment for the Government on the claims of the successors-in-interest of Mr. and Mrs. Burton: Willis Martin, Alta Martin, James Myers, and Katherine Myers.

5. Enter judgment for the Government on the claims of the successor-in-interest of Ms. Tankersley and Ms. Davis: Jane Shumway.

Pursuant to Rule 54(b), the court determines that there is no just reason for delay entering judgment for the Government as to the claims of the Plaintiffs listed above.

It is so ORDERED.

s/ Edward H. Meyers
Edward H. Meyers
Judge

In the United States Court of Federal Claims

No. 21-2181 L
Filed: November 1, 2024

DEBORAH E. BARRON, *et al.*,	*	
Plaintiffs,	*	**Rule 54(b)**
	*	**JUDGMENT**
v.	*	
	*	
THE UNITED STATES,	*	
Defendant.	*	

Pursuant to the court's Opinion and Order, filed October 31, 2024, granting defendant's cross-motion for partial summary judgment and denying plaintiffs' motion for partial summary judgment, and directing the entry of judgment pursuant to Rule 54(b), there being no just reason for delay,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, judgment is entered in favor of the defendant on (1) the claims of the successors-in-interest of the Sarasota Land Company (Deborah Barron; John Buenaventura Baez; James Achille; Jonathan Achille; the ALB Revocable Trust; the RPB Revocable Trust; Courtyard Villas, LLC; the Mallon Family Trust; Ronald Nourse; Old Forest Lakes Owners' Association; Gilda Pascual; Stephen Stiller; Christopher Wormwood; and Sharon Krueger), (2) the claim of the successor-in-interest of Mr. Clough (James Musselwhite), (3) the claims of the successors-in-interest of Mr. Neihardt (Enos Weaver, Jr. and Anna Mary Weaver), (4) the claims of the successors-in-interest of Mr. and Mrs. Burton (Willis Martin, Alta Martin, James Myers, and Katherine Myers), and (5) the claims of the successor-in-interest of Ms. Tankersley and Ms. Davis (Jane Shumway).

Lisa L. Reyes
Clerk of Court

By: s/ Ashley Reams
Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is $505.00.

In the United States Court of Federal Claims

No. 19-757 L
Filed: February 11, 2025

4023 SAWYER ROAD I, LLC, *et al.*,	)
Plaintiffs,	)
v.	)
THE UNITED STATES,	)
Defendant.	)

Mark Fernlund Hearne, II, True North Law, LLC, St. Louis, MO, for Plaintiffs.

Christopher Michael Chellis, Trial Attorney, United States Department of Justice, Environment & Natural Resources Division, Washington, D.C., *with whom was Lisa Lynne Russell*, Deputy Assistant Attorney General, United States Department of Justice, Environment & Natural Resources Division.

OPINION AND ORDER

MEYERS, Judge.

Presently before the court are Plaintiff landowners who claim the Government took their property interests in a railway corridor in Florida that was built to transport the Ringling Brothers Circus. A few months ago, the court addressed the claims of another group of landowners whose claims sprung from the same railway line and involved many of the same deeds as this case. *Barron v. United States*, 174 Fed. Cl. 114 (2024). Because there is no reason to reinvent the wheel for this case, the court applies the principles of law explained in *Barron* to this case as well. Because the railroad held fee simple title to some properties and easements over others, the court grants-in-part both cross-motions for partial summary judgment.

I. Background

This case pertains to 7.68 miles of the Venice Branch rail line in Sarasota County, Florida between milepost SW 890.29 and 884.70 and milepost AZA 930.30 and 928.21. ECF No. 115-1

at 5 (Def.'s Ex. 1).[1] The railroad[2] filed a verified notice of exemption to abandon the Venice Branch with the Surface Transportation Board ("STB") on March 8, 2019. *Id.* at 5-9. On April 22, 2019, the Sarasota County Board of County Commissioners filed a request for public use and a request for interim trail use with the STB. *Id.* at 34-37 (Def.'s Ex. 2). The STB issued a Notice of Interim Trail Use or Abandonment ("NITU") on May 14, 2019. *Id.* at 39-43 (Def.'s Ex. 3). This action followed.

This case involves 214 Plaintiffs who claim the STB's issuance of the NITU effected a taking of their reversionary interests in the land underlying the railroad corridor. ECF No. 111-1 at 1. On December 18, 2024, the court bifurcated the claims of forty-seven Plaintiffs whose claims the Government does not dispute[3] and deferred ruling on the claims of another 124 Plaintiffs whose claims rely on the deeds at issue in *Barron v. United States*, which is currently on appeal to the Federal Circuit. ECF No. 136. Thus, the court addresses the remaining forty-three Plaintiffs' claims that rely on deeds, conveyances, or factual circumstances not previously addressed in *Barron*.

Thirty-eight Plaintiffs' interests in the railroad corridor arise from three documents: the Honore Palmer and Potter Palmer ("Palmer") conveyance, the Florida Mortgage and Investment

[1] Because many of the exhibits in this case include multiple documents without consecutive pagination, the court cites to the pagination in the ECF header for all documents other than the Parties' briefs.

[2] Because the specific railroad to which the original conveyances were made is generally not material to the outcome of this case, the court refers to "the railroad" unless the specific railroad is important to the resolution of an argument.

[3] The Government does not oppose Plaintiffs' motion for partial summary judgment for those forty-seven Plaintiffs who are successors-in-interest to Adrian Honore. Accordingly, the court grants Plaintiffs' motion as to the successors-in-interest to Adrian Honore: 4023 Sawyer Road 1, LLC; Julia R. Adkins and Austin C. Murphy; Randal S. and Joyce S. Albritton; Louis L. Alderman, Jr., as Trustee of the Louis L. Alderman 2013 Revocable Trust; Bradley S. and Susan B. Anderson; Geoffrey L. Bolton; Nicholas J. and Danette L. Boris; Endia K. and Gary Callahan; Martin Carrillo-Plata; John and Joanne Cisler; Steven R. and Virginia M. Courtenay; Elise J. Duranceau; William and Brooke Grames; Vincent and Karen Guglielmini; Noel K. Harris; Angelo and Sarah J. Hoag; Larry E. Hudspeth; Daniel L. and Kristin Jadush; Judy H. Johnson; Kenneth J. and Margaret A. Kellner; Joseph R. Knight; Patrick J. and Lisa A. Loyet; Kassandra Luebke and Elaine Luebke; Thomas W. Marchese; Reuben S. and Kathy J. Martin; Jason J. and Karen McGuire; Sue Moulton; Timothy and Mary Murphy; James Kirt, Nicholas James and Christopher Andrew Nalefski; Perry M. and Pamela S. O'Connor; Sueko O'Connor; Michele and Dorothy Ann Paradiso; Thomas Pearson; Todd A. and Carmen Perna; Patricia Lynne Pitts-Hamilton; Pro Properties, LLC; Justin M. Reslan; Allen B. and Mary Ann E. Rieke; Michael A. Ritchie; Chad, Grace, and Robert Schaeffer; Faith H. Simolari, As Trustee of the Philip Simolari Revocable Trust; Russell S. Strayer; James H. and Glenda G. Thornton; Kenneth D. and Susan K. Wells; David A. and Anna I. Ruiz-Welsher; Zbigniew and Wislawa Wrobel; and Stephen and Margaret Zawacki.

Company ("FMIC") conveyances recorded on pages 532 and 536[4] of Book 10, and the Charles Ringling Company ("Ringling") conveyance.

Three Plaintiffs claim property interests in land that the railroad acquired by possession, and they move for partial summary judgment that the NITU effected a taking of their reversionary interests in that land. ECF No. 111-1 at 73-75. The Government opposes summary judgment for these three Plaintiffs because, it argues, further factual development is necessary on these Plaintiffs' claims, Plaintiffs have not made the requisite showing of property interests in the land, and the railroad obtained fee simple title to the land via adverse possession. ECF No. 115 at 30-31; ECF No. 127 at 9-10.

The Parties do not agree which document governs the claims of the remaining two Plaintiffs. ECF No. 140.

II. Standard of Review

Under Rule 56, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Rules of the Court of Federal Claims ("RCFC") 56(a). The movant has the initial burden to show that there is no genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A "genuine" dispute of material fact exists where "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a "material" fact is one "that might affect the outcome of the suit under the governing law," as opposed to "disputes that are irrelevant or unnecessary." *Id.*

If the movant meets its initial burden, the burden shifts to the nonmovant to show a genuine dispute of a material fact. *Id.* at 256-57. The nonmovant can do this by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence . . . of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." RCFC 56(c)(1). "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." *Anderson*, 477 U.S. at 247-48 (emphasis in original). And while "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor[,]" *id.* at 255, the nonmovant's evidence must be "significantly probative" and more than "merely colorable" to defeat summary judgment, *id.* at 249-50.

III. Discussion

A. Rails-to-Trails Takings Actions

"[T]o preserve shrinking rail trackage," Congress enacted the National Trails System Act Amendments of 1983 to allow "converting unused rights-of-way to recreational trails." *Preseault v. Interstate Com. Comm'n* (*Preseault I*), 494 U.S. 1, 5 (1990) (footnote omitted); *see also* 16 U.S.C. § 1241 *et seq.* The Trails Act does so "through a process known as

[4] Like the Parties, the court refers to these as the FMIC 532 and 536 conveyances.

'railbanking.'" *Caldwell v. United States*, 391 F.3d 1226, 1229 (Fed. Cir. 2004). "Railbanking maintains the STB's jurisdiction over the dormant corridor, but allows a third party to assume the . . . responsibilities of the right-of-way, preserve the right-of-way for future rail use, and, in the interim, convert the corridor into a recreational trail." *Chi. Coating Co. v. United States*, 892 F.3d 1164, 1167 (Fed. Cir. 2018) (citing *Preseault I*, 494 U.S. at 6-7); *see also Ellamae Phillips Co. v. United States*, 564 F.3d 1367, 1370 (Fed. Cir. 2009) (citing 16 U.S.C. § 1247(d)).

Railbanking typically begins with the railroad filing a standard abandonment application or requesting an exemption from filing the application. *Caldwell*, 391 F.3d at 1229; *Chi. Coating*, 892 F.3d at 1167 (citing 49 C.F.R. §§ 1152.29, 1152.50). The railbanking process then diverges from the abandonment process when "the railroad and trail operator indicate willingness to negotiate a trail use agreement, [so] the STB stays the abandonment and issues" a NITU. *Caldwell*, 391 F.3d at 1229-30 (citing 49 C.F.R. § 1121.4). The NITU "operates to prevent abandonment of the corridor and to preclude the vesting of state law reversionary interests in the right-of-way." *Id.* at 1233-34; *Ellamae Phillips Co.*, 564 F.3d at 1370 ("Congress provided in the [Trails] Act that conversions to trail use that were subject to reactivation of rail service on the route did not constitute abandonment." (citing 16 U.S.C. § 1247(d))).

"The operation of the Trails Act is subject to the Fifth Amendment . . . ." *Rogers v. United States* (*Rogers I*), 90 Fed. Cl. 418, 427 (2009) (citing U.S. Const. amend. V). A taking question arises "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." *Preseault I*, 494 U.S. at 8. Thus, a "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." *Caldwell*, 391 F.3d at 1228 (citing *Preseault v. United States* (*Preseault II*), 100 F.3d 1525, 1543 (Fed. Cir. 1996) (en banc)); *see also Rogers I*, 90 Fed. Cl. at 427.

At issue here is "whether the landowners had property interests in the right-of-way and whether the Government's actions constituted a taking of those interests" because "[i]n any takings case, 'only persons with a valid property interest at the time of the taking are entitled to compensation.'" *Rogers I*, 90 Fed. Cl. at 428 (quoting *Wyatt v. United States*, 271 F.3d 1090, 1096 (Fed. Cir. 2001)). To determine whether the Government took Plaintiffs' property interests, the court must resolve three questions: (1) "did the [r]ailroad . . . obtain fee simple [absolute] estates;" (2) if not, were the terms of the railroad's property interests "limited to use for railroad purposes, or did they include future use as public recreational trails"; and (3) even if the railroad's property interests "were broad enough to encompass recreational trails, had these [property interests] terminated prior to the alleged taking so that the property owners at that time held [unencumbered] fee simples." *Preseault II*, 100 F.3d at 1533.

This case turns on the first two questions. Under the first question, "[i]f the railroad company owns the land in fee simple [absolute], then the Government cannot have committed a taking and the analysis ends." *Chi. Coating Co.*, 892 F.3d at 1170 (citing *Preseault II*, 100 F.3d at 1533). And under the second question, there is a taking if the property interest "granted to the railroad under state property law is not broad enough to encompass a recreational trail." *Caldwell*, 391 F.3d at 1229.

To answer these questions, the court analyzes "the property rights of the parties in a rails-to-trails case under the relevant state's law." *Castillo v. United States*, 952 F.3d 1311, 1319 (Fed. Cir. 2020); *Chi. Coating Co.*, 892 F.3d at 1170 ("[W]e must apply the law of the state where the property interest arises."). Here, the court applies Florida law.

B. Principles of Deed Construction under Florida Law

This court recently distilled the principles of deed construction under Florida law in two rails-to-trails takings actions, *Barron v. United States*, 174 Fed. Cl. 114 (2024), *appeal docketed*, No. 25-1179 (Fed. Cir. Nov. 14, 2024) and *Kent v. United States*, Nos. 15-365 L, 18-1591 L, 2025 WL 227490 (Fed. Cl. Jan. 17, 2025). The court applies the same principles of Florida law that it explained at length in *Barron* to this case.

To recap, under Florida law, the intent of the grantor "governs the interpretation" of a conveyance. *Barron*, 174 Fed. Cl. at 122 (internal quotation marks omitted) (quoting *Rogers v. United States* (*Rogers III*), 107 Fed. Cl. 387, 393 (2012)). Courts look to the language of the conveyance to discern that intent, "both as to the character of [the] estate and the property attempted to be conveyed." *Id.* (internal quotation marks omitted) (quoting *Rogers III*, 107 Fed. Cl. at 393). If the language is unambiguous, then the court must discern the grantor's intent from that language. *Id.* (quoting *Saltzman v. Ahern*, 306 So. 2d 537, 539 (Fla. Dist. Ct. App. 1975)).

"'No stock words or phrases are required' to indicate what estate and property the grantor intends to convey; rather, 'it is only necessary that such words be employed as will show the grantor's intent.'" *Id.* (quoting *Seaboard Air Line Ry. Co. v. Dorsey*, 149 So. 759, 761 (Fla. 1932)). While not required, certain language indicates the grantor intended to transfer a fee simple estate: "an expansive granting clause that lacks any restrictive or limiting clauses," a description of "the interest conveyed as 'land,'" and "[c]ovenants warranting title." *Id.* at 122-23. On the other hand, "a granting clause with a reversionary clause or restrictive language limiting the use of the property indicates the grantor intended to convey only an easement." *Id.* at 123 (citing *Rogers I*, 90 Fed. Cl. at 430-31). Language that describes the interest conveyed as a "right-of-way" is not determinative of whether the grantor intended to convey an easement or a fee simple estate; rather, the grantor's intent depends on the other unambiguous language in the conveyance. *See id.* ("Thus, when an interest is conveyed as a right of way, whether the railroad obtains a right or land depends on the intent of the parties as reflected by the deed of conveyance." (cleaned up) (quoting *Rogers v. United States* (*Rogers II*), 93 Fed. Cl. 607, 623 (2010))).

Plaintiffs raise three arguments regarding Florida deed construction here that differ from their briefing in *Barron*.

First, Plaintiffs contend that this court misapplied Section 689.10 of the Florida Statutes when the court relied on it for the proposition that Florida presumes a grantor transfers fee simple (or the greatest interest the grantor may convey) unless contrary language appears in the deed. ECF No. 111-1 at 27-29. According to Plaintiffs (without citation to Florida law), the statutory presumption does not apply to easements. ECF No. 122 at 18-19. In *Rogers v. United States* (*Rogers IV*), 184 So. 3d 1087 (Fla. 2015), the Florida Supreme Court explained that the effect of Section 689.10 "is that a deed is presumed to convey fee simple title, or whatever title

the grantor had power to convey, unless a contrary intention is shown by the language of the deed." *Id.* at 1095 n.5. While *Rogers IV* appeared to deal conclusively with this issue, the court took the opportunity to further research Plaintiffs' argument to confirm that the court's prior reliance on Section 689.10 was appropriate under Florida law.

The most analogous decision the court identified was *Holland v. State*, 388 So. 2d 1080 (Fla. Dist. Ct. App. 1980). In *Holland*, landowners "convey[ed] a strip of Santa Rosa County land to the State . . . for road right of way purposes." *Id*. at 1081. This grant was by warranty deed for compensation—i.e., it was a typical sale of property by a willing seller to a willing buyer. *See id.* Following the discovery of oil and gas, the grantors sought to limit the scope of the interest conveyed in the warranty deed to an easement that did not grant subsurface mineral rights. *Id*. Relying on Section 689.10, the court rejected the grantors' argument, recognizing that there were no words of limitation in the deed. *Id.* at 1081-82. And the fact that the deed stated it was "for right of way purposes" did not create any ambiguity as to the estate conveyed. *Id*. at 1081. The court explained that the grantors' arguments failed because they "propose[d] improperly to impeach 'the language of which the instrument is the repository.' That language expresses the estate conveyed. Section 689.10." *Id*. (internal citation omitted). To be clear, the Plaintiffs' argument that Section 689.10 does not apply to easements is irreconcilable with *Holland*, which, although not binding, is persuasive on the meaning of Florida law. When coupled with the clear statement in *Rogers IV*, the only conclusion that this court can reach is that Section 689.10 applies to conveyances like those in this case and *Barron*.

Second, Plaintiffs argue the Supreme Court, Federal Circuit, and Florida law dictate that a conveyance grants an easement when it describes the railroad's property interest as a "right-of-way." ECF No. 111-1 at 21-22, 50-51; ECF No. 122 at 12-17. Plaintiffs point to the Court's decisions in *Brandt Revocable Trust v. United States*, 572 U.S. 92 (2014), and *U.S. Forest Service v. Cowpasture River Preservation Association*, 590 U.S. 604 (2020). ECF No. 111-1 at 21-22, 50-51; ECF No. 122 at 12-14, 16. While both cases describe a "right-of-way" as an easement, neither case turns on Florida law, so neither case controls the outcome here. *See Brandt Revocable Tr.*, 572 U.S. at 95, 104-06 (concluding the railroad's right-of way under the General Railroad Right-of-Way Act of 1875 was an easement that terminated upon abandonment); *Cowpasture River Pres.*, 590 U.S. at 613-15 (deciding that the Forest Service's "right-of-way" in the Appalachian Trail was only an easement and not "federal lands" under the Leasing Act). Plaintiffs also point to the Federal Circuit's decision in *Barlow v. United States*, 86 F.4th 1347 (Fed. Cir. 2023). ECF No. 122 at 14-15. The *Barlow* decision also did not affect Florida law as the Federal Circuit applied Illinois law to determine that the words "right-of-way" indicated the conveyance of an easement. 86 F.4th at 1354-55.

The only case from this court that applied Florida law, and that Plaintiffs cite to support their point, is this court's decision in *Mills v. United States*, 147 Fed. Cl. 339 (2020). ECF No. 111-1 at 21-22, 51; ECF No. 122 at 14, 16. While the court stated "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,'" *Mills*, 147 Fed. Cl. at 347 (alteration in original) (quoting *Right-of-Way*, *Black's Law Dictionary* (11th ed. 2019)), this statement arose in the analysis of a document with other language indicative of an easement, *see Barron*, 174 Fed. Cl. at 133 (distinguishing

the document analyzed in *Mills* from a document containing indicia of a fee simple estate transfer), and the court acknowledged that a railroad in Florida can acquire an easement or fee simple estate in a right-of-way, *Mills*, 147 Fed. Cl. at 347. Accordingly, *Mills* does not depart from other Florida cases; rather, it is consistent with the cases that hold the phrase "right-of-way" is not determinative of the grantor's intent. The court upholds its analysis of the phrase "right-of-way" from *Barron*. *See* 174 Fed. Cl. at 123.

But the District Court of Appeal of Florida has weighed in as well. As discussed above, *Holland* held that simply stating that a deed is for a right of way did not create an easement when there were no words of limitation in the deed. That court also considered the argument in *Robb v. Atlantic Coast Line Railway Co.*, 117 So. 2d 534 (Fla. Dist. Ct. App. 1960). Like here, the *Robb* court considered:

> Does the general warranty deed conveying fee simple title create less than the fee when it recites that the land is conveyed "for right-of-was [sic] purposes", without more? Except for the words "for right-of-way purposes", in all other respects Exhibit A is a general warranty deed conveying fee simple title.

Id. at 536. The court concluded that "a conveyance is not conditional when [the] purpose for the transfer is stated in the instrument of conveyance; *words of forfeiture must be present*." *Id.* at 536-37 (emphasis added). Thus, "[a] fee will pass by a deed containing a clause or recital which is merely declaratory of the use contemplated of the land." *Id.* at 537. In sum, the Florida courts and this court's prior cases applying Florida law are in accord that the phrase "right-of-way" alone is not sufficient to turn a conveyance of fee simple title into an easement. None of the cases applying other states' laws changes that outcome under Florida law.

Third, Plaintiffs ask the court to look beyond the language of the conveyances to "customs . . . when the instrument was created" and "the context in which the instrument was drafted." ECF No. 111-1 at 19; *see also id.* at 22-26 (describing the history and context of the conveyances); ECF No. 122 at 17, 20. Specifically, they contend "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." ECF No. 111-1 at 25; *see also* ECF No. 122 at 20. The court does not look to the context of the conveyances here because "if the grantor's intent is unambiguous from [the] language of the deed, the court does not consider extrinsic evidence." *Barron*, 174 Fed. Cl. at 125 (citing *Rogers IV*, 184 So. 3d at 1100). The Florida authorities Plaintiffs cite support that the courts look to extrinsic evidence only when a document contains internally inconsistent language. *See McNair & Wade Land Co. v. Adams*, 45 So. 492, 493 (Fla. 1907) (looking to "the intent, and not the words" to reconcile inconsistent clauses within a conveyance); *Enter. Leasing Co. v. Demartino*, 15 So. 3d 711, 716 (Fla. Dist. Ct. App. 2009) (deciding the presence of inconsistent "written and preprinted provisions" raises a question of fact about the intent of parties entering a liability release). Thus, so long as the conveyance language is consistent and unambiguous, the court need not look to extrinsic evidence. Plaintiffs' citation to *Preseault II* for this argument is also of no avail because the Federal Circuit applied Vermont law, not Florida law. *Preseault II*, 100 F.3d at 1535-37 (applying Vermont law to conclude a form deed conveyed an easement instead of fee simple);

Barron, 174 Fed. Cl. at 128 ("Vermont law is not Florida law . . . ."). The court does not need to look beyond the executed conveyances here.

C. In Florida, Railroad Companies May Hold Fee Simple Title in Land Acquired for Building Railroads.

Plaintiffs raise largely the same arguments that the plaintiffs in *Barron* raised that the railroad could not, as a matter of law, acquire fee simple title in the railroad corridor. The court considered and addressed those arguments in *Barron*, and the court adopts its analysis from *Barron* to address Plaintiffs' arguments in the present case:

- "The fact that a railroad is a creature of state law does not prevent it from receiving fee simple title from a willing grantor," *Barron*, 174 Fed. Cl. at 125;
- *Preseault II*'s analysis based on Vermont law does not govern claims under Florida law, *id.* at 128;[5]
- "the strips and gores argument is inapplicable" to the conveyances in this case because "the language is clear," *id.* at 125 (cleaned up) (quoting *Rogers IV*, 184 So. 3d at 1099); and
- the *Rogers* quintet provide the governing legal principles applicable to these cases, *id.* at 123-24.[6]

[5] Plaintiffs also argue Florida law operates similarly to Missouri law and points to the Federal Circuit's analysis of Missouri law in *Behrens v. United States*, 59 F.4th 1339 (Fed. Cir. 2023). ECF No. 111-1 at 18. Like Vermont law, Missouri law does not govern this case, *Barron*, 174 Fed. Cl. at 128, so the Federal Circuit's analysis of Missouri law in *Behrens* does not govern the principles of Florida law in this case. More problematic for Plaintiffs is that the Florida Supreme Court explicitly rejected the argument (based on Missouri law) that "nominal consideration [is] a factor in discerning the grantor's intent to convey an easement rather than the fee simple title," as this court explained in *Barron*; rather, "[t]he law of Florida . . . is that the amount of consideration stated in a deed provides no basis for questioning the validity of the deed." *Barron*, 174 Fed. Cl. at 124-25 (quoting *Rogers IV*, 184 So. 3d at 1097).

[6] Plaintiffs challenge Judge Williams's analysis of the deeds' language "excepting" a right-of-way. ECF No. 111-1 at 51-52. As this court explained in *Barron*, the Florida Supreme Court and Federal Circuit agreed with Judge Williams's analysis of the deeds, so the court will not hold to the contrary here. 174 Fed. Cl. at 123-24 ("[T]his court adheres to Judge Williams's application of Florida law in construing deeds, which the Federal Circuit and the Florida Supreme Court agreed with too."); *see also Rogers IV*, 184 So. 3d at 1095 ("We need not discuss the language of the deeds in this case in detail . . . 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. The deeds in question in this case included all the formal statements needed to show that the land was purchased and that the deeds granted fee simple title."); *Rogers v. United States*, Nos. 2013-5098, 2013-5102, slip op. at 5 n.1 (Fed. Cir. filed July 21, 2014) ("While the

In sum, railroads may acquire fee simple title under Florida law, so the court still must discern "what the grantors intended to convey in an unambiguous conveyance." *Barron*, 174 Fed. Cl. at 125 (citing *Rogers IV*, 184 So. 3d at 1094-95). With this understanding of the applicable Florida property law, the court turns to the property interests at issue in this case.

D. The Deeds

The court turns first to the three conveyances that govern thirty-eight Plaintiffs' claims.

1. The Palmer Conveyance

Plaintiffs Thomas M. Fay and Joyce R. Fay ("Fays") argue the Palmer conveyance transferred only an easement to the railroad.[7] ECF No. 111-1 at 63. The Government does not raise any arguments regarding the construction of the Palmer conveyance, which provides:

> This Indenture[] . . . Between Honore Palmer and Potter Palmer[] . . . and the TAMPA SOUTHERN RAILROAD COMPANY[] . . .
>
> WITNESSETH: that [Honore Palmer and Potter Palmer], for and in consideration of the sum of [blank] of lawful money of the United States of America, to them in hand paid by the [railroad], . . . have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, [alien], remise, release, convey, and confirm unto the [railroad], and its successors and assigns, upon the terms and conditions hereinafter set out, all of these certain tracts or parcels of land . . .
>
> [The document describes the conveyed land.]
>
> Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversions reminders, rents, issues, and profits thereof and else all the estate, right, title, interest, dower, and right of dower, property possession, claim, and demand whatsoever of [Honore Palmer and Potter Palmer], both in law and in equity of in and to

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Appellants dispute whether the deeds appear on their face to transfer a fee simple interest in the properties at issue, like the Court of Federal Claims before us, we conclude that they do.").

[7] The Government claims that the parcels controlled by the Palmer conveyance are controlled by the FMIC 536 conveyance. ECF No. 115 at 15 n.4. The Government states, "Plaintiffs agree," *id.*, but the document that the Government cites for their agreement, ECF No. 111-3 (Pls.' Ex. 1), still maintains that the Palmer conveyance governs the Fays' claims. ECF No. 111-3 at 5 (Pls.' Ex. 1). The Government did not challenge Plaintiffs' arguments at oral argument that the Palmer conveyance controlled the Fays' claims. ECF No. 143 at 7, 33, 36 (Hr'g Tr. 7:7-22, 33:3-6, 36:3-10). Thus, the Palmer conveyance governs the Fays' claims.

> the above granted premises with the hereditaments and appurtenances.
>
> This deed is given for the sole purpose of transferring to said grantee [Tampa Southern Railroad Company] a right of way for railroad purposes and upon the express provision that said grantee shall construct its railroad from Bradenton to Sarasota, Florida, over said right of way within twenty four months from the date of this instrument. Should said grantee not construct said railroad as herein set out, or should any part of the said land not be used for railroad purposes, or should some at any time be abandoned for railroad purposes, than the land is so abandoned for such purposes, or not used for such purposes shall revert to the grantors, their heirs, successors, or assigns.
>
> TO HAVE AND TO HOLD the same in fee simple forever.
>
> And [Honore Palmer and Potter Palmer] do covenant with the [railroad] that they are lawfully seized of the said premises, that they are free from all encumbrances and that they have good right and lawful authority to sell the same and [Honore Palmer and Potter Palmer] do hereby fully warrant the title to the said land, and will defend the same against the lawful claim of all persons whomever.

ECF No. 111-15 at 17-21 (Pls.' Ex. 10).

The Fays argue that the Palmer conveyance granted the railroad an easement primarily based on its similarities to the Honore conveyance. ECF No. 111-1 at 63. The Honore conveyances provides the following:

> ADRIAN C. HONORE, . . . for and in consideration of the sum of one dollar ($1.00) and other good and valuable considerations this day to him in hand paid, the receipt whereof is hereby acknowledged, does hereby remise, release and forever quit claim unto the SEABOARD AIR LINE RAILWAY, . . . a right of way for railroad purposes over and across the following described parcels of land . . .
>
> . . .
>
> 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 places and parcels of land shall

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

ECF No. 111-15 at 2, 4 (Pls.' Ex. 8). This court in *Rogers I* held this same language conveyed only an easement, 90 Fed. Cl. at 430-31, and the Parties stipulated this language conveyed an easement in the present case, ECF No. 115 at n.1.

The Honore and Palmer conveyances have some similarities, but they differ in key respects. Like the Honore conveyance, the Palmer conveyance: (1) uses the phrase "right of way" to describe the property conveyed; (2) conditions the conveyance on the railroad constructing and commencing operations on the property; and (3) includes a reversionary clause that states if the railroad ceases to use the property for "railroad purposes," the property "revert[s] to" the grantor. On the other hand, the Palmer conveyance does not recount the amount of consideration given by the railroad and includes more indicia of a transfer of a fee simple estate. Given these key differences, the court analyzes the Palmer conveyance anew.

a) The Property Interests

The Palmer conveyance grants the railroad at least a voluntary grant, and at most a fee simple determinable. Under either analysis, the Fays retain a reversionary interest in the railroad corridor and the NITU prevented that reversion.

(1) Voluntary Grant

The Fays argue the Palmer conveyance was a voluntary grant. ECF No. 111-1 at 60, 63. The Palmer conveyance is dated 1923, ECF No. 111-15 at 17 (Pls.' Ex. 10), so the operative voluntary grant statute is Section 4354 of the Florida Statutes (1920), *see also* ECF No. 111-1 at 60. This statute states the following:

> Every railroad . . . shall be empowered: . . . [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 road . . . but the real estate received by voluntary grant shall be held and used for purposes of such grant only.

Fla. Stat. § 4354(2) (1920). As the court explained in *Barron*, "a voluntary grant or conveyance is '[a] conveyance made without valuable consideration.'" 174 Fed. Cl. at 124 (quoting *Rogers IV*, 184 So. 3d at 1094).

Here, the Palmer conveyance states it was made "for and in consideration of the sum of [blank space] of lawful money of the United States of America, to them in hand paid by the [railroad], at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged." ECF No. 111-15 at 18 (Pls.' Ex. 10). The space is blank where the Parties would have indicated the amount of consideration. The conveyance does not otherwise state the amount of consideration. Thus, the face of the conveyance does not indicate the railroad gave

any consideration, even nominal consideration.[8] As a conveyance without consideration, the Palmer conveyance falls under the purview of the voluntary grant statute.

(2) Fee Simple Determinable

Even if the voluntary grant statute did not apply, the Palmer conveyance did not transfer fee simple absolute title. As *Preseault I* explains, a taking in a rails-to-trails case may occur when a railroad holds "easements or similar property interests." 494 U.S. at 8. One such similar property interest is a fee simple determinable. *See Nat'l Wildlife Fed'n v. Interstate Comm. Comm'n*, 850 F.2d 694, 703 (D.C. Cir. 1988) ("Other rights-of-way are specifically limited to railroad use and may revert to the original owner (or a successor in interest) if railroad use is discontinued. While these more limited interests, which do implicate the takings clause, take a variety of forms, the two most common types are the fee simple determinable and the easement."); *Nat'l Ass'n of Reversionary Prop. Owners v. STB*, 158 F.3d 135, 137 (D.C. Cir. 1998) ("Some land is obtained in fee simple, but often a railroad company holds a lesser interest in the land such as an easement or a fee simple determinable."). Here, the Palmer conveyance language conveys a fee simple determinable under Florida law.[9]

In *Richardson v. Holman*, 33 So. 2d 641 (Fla. 1948), the Florida Supreme Court reviewed the following reservation in a warranty deed:

> Provided however, and this conveyance is made subject to and upon the express condition that should the [Tampa and Sulphur Springs Traction Company] cease to use the foregoing land for railroad purposes, then and in that event the title to said property shall revert to and vest in the said [grantor] and his heirs and assigns.

Id. at 641-42. The parties contested whether that language created a fee simple determinable or "an estate upon a condition subsequent." *Id.* at 642. The court determined the clause providing "[t]he title to said property shall revert to and vest in the" grantor sufficed as "words of reverter," so the grantor retained a reversionary interest in the property. *Id.* at 643 (internal quotation marks omitted). Further, "the possibility of reverter . . . materialized when the [grantee] ceased to use the lands for street railroad purposes." *Id.* And, under Florida law, the fee simple determinable's reversionary interest—the "possibility of reverter"—may be conveyed or devised. *Id*. at 645.

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[8] The Fays do not specifically argue that the lack of consideration in the Palmer conveyance renders it a voluntary grant, but Plaintiffs' briefing groups the Palmer conveyance with other conveyances as voluntary grants. ECF No. 111-1 at 60, 63.

[9] The Parties also did not specifically argue whether the Palmer conveyance granted a fee simple determinable. According to the Plaintiffs, it created an easement. But the language here conveys more than a mere right of access. In the end, whether the Palmer conveyance granted an easement or fee simple determinable is immaterial because in either case Plaintiffs retained the reversionary interest that was blocked by the NITU.

Here, the Palmer conveyance is not labeled a warranty deed, but it contains a warranty clause: the grantors "do hereby fully warrant the title to the said land, and will defend the same against the lawful claim of all persons whomsoever." ECF No. 111-15 at 21 (Pls.' Ex. 10). Further, the Palmer conveyance includes the phrase "TO HAVE AND TO HOLD in fee simple forever." *Id.* at 20. But it also contains an explicit reverter: "should any part of the said land not be used for railroad purposes, or should some at any time be abandoned for railroad purposes, then the land is so abandoned for such purposes, or not used for such purposes shall revert to the grantors." *Id.* Therefore, the Palmer conveyance's similarities to the conveyance in *Richardson* indicate it grants the railroad a fee simple determinable, and the Fays' possibility of reverter materialized when the railroad stopped railroad operations, just as the successor-in-interest's possibility of reverter materialized in *Richardson*.

b) The Scope of the Railroad's Property Interest

Under either analysis above, the railroad did not receive the fee simple absolute estate. The court must proceed to the second question of the *Preseault II* analysis: whether the railroad's property interest is broad enough to cover recreational trail use. 100 F.3d at 1533. It is not.

Both the voluntary grant statute and the express terms of the Palmer conveyance limit the railroad's interest to use of the property for railroad purposes. Fla. Stat. § 4354(2) (1920); ECF No. 111-15 at 20 (Pls.' Ex. 10). In *Richardson*, the possibility of reverter arose when the railroad ceased to use the land for "railroad purposes." 33 So. 2d at 643. In *Rogers I*, this court decided the express easement for "railroad purposes" in the Honore conveyance did not extend to recreational trail use. 90 Fed. Cl. at 432-33; *see also id.* at 432 ("[T]he 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." (quoting *Preseault II*, 100 F.3d at 1542)). Thus, the railroad's property interest, whether it exists by operation of the voluntary grant statute or as a fee simple determinable, is not broad enough to cover recreational trail use.

Because the railroad's property interest is not broad enough to cover recreational trail use, the court "need not reach the third prong of the *Preseault II* analysis." *Rogers I*, 90 Fed. Cl. at 432. Rather, the first two prongs of the *Preseault II* analysis establish the NITU effected a taking of the Fays' property interests in the land by creating "a new, unauthorized easement." *Id.* at 433. Accordingly, the court grants Plaintiffs' motion for partial summary judgment for the Fays and denies the Government's cross-motion for summary judgment for the Fays.

2. The Florida Mortgage and Investment Company Conveyances

Thirty-one Plaintiffs[10] ("FMIC Plaintiffs") claim the railroad obtained only an easement under the FMIC conveyances. ECF No. 111-1 at 67-69. The Government argues these

[10] These Plaintiffs are: John M. Alvis; Catherine Teresa Gray; Joshua Carroll Hackney; Joe R. Hembree, As Trustee of the Joe R. Hembree Revocable Trust; Michael and Vivian Kravchak; Lewma Enterprise, Inc.; Cameron W. and Carol T. McGough; Rickey Smull; Irvin J. and Cynthia P. Spiegel; William A. and Jill Booth; John L. and Mary Allgyer and Levi and Tammy L. Lantz, Jr.; JB Holdings of Sarasota, LLC; Bob Allen and Lori Ann Jefferson; Bonnie A. Klein; Earnest R. Locklear, Carolyn B. Barclay, and Steven H. Locklear; Shannon Lugannani

conveyances transferred title in fee simple absolute to the railroad. ECF No. 115 at 15-19. The following language comes from the FMIC 536 conveyance:

> THIS INDENTURE[] . . . BETWEEN The Florida Mortgage and Investment Company . . . and the FLORIDA WEST SHORE RAILWAY . . . WITNESSTH:
>
> That the [FMIC], for and in consideration of the sum of One Dollar, to it in hand paid by the [Florida West Shore Railway], the receipt whereof in hereby acknowledged, has granted, bargained and sold to the [Florida West Shore Railway], its successors and assigns forever, the following described land to wit:
>
> Description of part of right-of-way to be obtained from Col. J.H. Gillespie:
>
> . . .
>
> Which plat or parcel of land is more clearly shown in red on the attached blue-print . . . and made in the office of the Assistant Engineer, Savannah, Ga., which blue-print is hereby made a part of this description.
>
> And the [FMIC] does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomever.

ECF No. 111-18 at 6-9 (Pls.' Ex. 16-A); ECF No. 115-3 at 6-8 (Def.'s Ex. 12); *see also* ECF No. 111-18 at 2-3 (Pls.' Ex. 16); ECF No. 115-3 at 11-12 (Def.'s Ex. 13). The language of the FMIC 532 and 536 conveyances is the same other than the property descriptions, and the FMIC Plaintiffs make the same arguments regarding these two conveyances.[11] ECF No. 111-1 at 67-69. Thus, the court addresses these two conveyances together.

At oral argument, the Government compared the FMIC conveyances to the Neihardt deed examined in *Barron*. ECF No. 143 at 33-36 (Hr'g Tr. 33:11-34:11, 35:10-21, 36:11-13). First,

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and Helen Elena Emegbagha; Callie Parsons; Marc and Leann Schlabach; John and Jaana Avramidis; David and Cynthia Gaul; Andrew and Jennifer Heath; Anna Marie Martin; Thomas McCall and Susan Coakley; Susan Schmitt, as Trustee of the Schmitt Revocable Trust; Raymond and Linda Wenck; Thomas and Michelle M. Dodson; Kimberly Dawn Hewitt, As Trustee for the Kimberly Dawn Hewitt Revocable Trust; The Oaks at Woodland Park Homeowners Assoc.; Anthony and Karen Puccio; Keith E. Rollins and Lisa J. Paxson-Rollins; and Brian T. Sanborn. ECF No. 111-3 at 10-11 (Pls.' Ex. 1).

[11] While the Government raises separate arguments for each FMIC conveyance in its briefing, ECF No. 115 at 15-19, the Government addressed these conveyances together at oral argument, ECF No. 143 at 33-34 (Hr'g Tr. 33:18-34:11), and the Government's arguments for each conveyance apply equally to both.

the expansive granting clauses use the same language: the grantor "has granted, bargained and sold to" the grantee "its successors and assigns forever, the following described land, to wit." *Compare* ECF No. 111-18 at 7 (Pls.' Ex. 16-A), ECF No. 115-3 at 6 (Def.'s Ex. 12), ECF No. 111-18 at 2 (Pls.' Ex. 16), *and* ECF No. 115-3 at 11 (Def.'s Ex. 13), *with* ECF No. 111-18 at 23 (Pls.' Ex. 17), *and* ECF No. 115-7 at 1 (Def.'s Ex. 1); *see also Barron*, 174 Fed. Cl. at 131 (describing the Neihardt deed's granting clause as "expansive"). Second, the Neihardt deed and the FMIC conveyances all describe the property conveyed as "land." *Compare* ECF No. 111-18 at 7, 9 (Pls.' Ex. 16-A), ECF No. 115-3 at 6, 8 (Def.'s Ex. 12), ECF No. 111-18 at 2-3 (Pls.' Ex. 16), *and* ECF No. 115-3 at 11-12 (Def.'s Ex. 13), *with* ECF No. 111-18 at 23, *and* ECF No. 115-7 at (Def.'s Ex. 1); *see also Barron*, 174 Fed. Cl. at 131 (explaining that describing property as land "indicates that Mr. Neihardt was selling land, not the right to access land"). Third, the conveyances include the same warranty clauses as the Neihardt deed: the grantor "does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever." *Compare* ECF No. 111-18 at 9 (Pls.' Ex. 16-A), ECF No. 115-3 at 8 (Def.'s Ex. 12), ECF No. 111-18 at 3 (Pls.' Ex. 16), *and* ECF No. 115-3 at 12 (Def.'s Ex. 13), *with* ECF No. 111-18 at 23 (Pls.' Ex. 17), *and* ECF No. 115-7 at 1 (Def.'s Ex. 1); *see also Barron*, 174 Fed. Cl. at 131.

Also at oral argument, Plaintiffs argued that the warranty clauses warrant what the grantor has given, here an easement, and nothing more, relying on *Preseault II*. ECF No. 143 at 27-29 (Hr'g Tr. 27:15-29:3). While *Preseault II* decided a warranty clause does not compel that a conveyance grants fee simple title under Vermont law, 100 F.3d at 1535-37, the Federal Circuit did not provide support for Plaintiffs' argument that a warranty clause in a deed warrants the grant of an easement rather than a fee simple estate, ECF No. 143 at 27-29 (Hr'g Tr. 27:15-29:3). Accordingly, the court maintains its analysis from *Barron* and the cases applying Florida law to consider a warranty clause as "another factor in favor of concluding [a grantor] sought to convey fee simple title." 174 Fed. Cl. at 131.

The FMIC conveyances differ from the Neihardt deed by referring to a "right-of-way to be obtained from Col. J.H. Gillespie." ECF No. 111-18 at 7 (Pls.' Ex. 16-A); ECF No. 115-3 at 6 (Def.'s Ex. 12); ECF No. 111-18 at 2 (Pls.' Ex. 16); ECF No. 115-3 at 11 (Def.'s Ex. 13). Regardless, the court explains *supra* Section III.B that the phrase "right-of-way" is not determinative of the railroad's property interest under Florida law. In light of the other indicia of a fee simple estate, the reference to the right-of-way in the FMIC conveyances does not alter the court's conclusion. The FMIC conveyances granted the railroad fee simple absolute.

The FMIC Plaintiffs make several arguments to the contrary. The FMIC Plaintiffs' arguments based on Section 689.10 of the Florida Statutes and the context of the conveyances do not change the court's conclusion for the same reasons discussed *supra* Section III.B. The court considers the FMIC Plaintiffs' remaining arguments below.

Like the Palmer conveyance, the FMIC Plaintiffs argue the FMIC conveyances are voluntary grants to the railroad. ECF No. 111-1 at 60, 68-69. "[A] voluntary grant or conveyance is '[a] conveyance made without valuable consideration,'" but nominal consideration does not indicate that "a conveyance was a voluntary grant." *Barron*, 174 Fed. Cl. at 124 (quoting *Rogers IV*, 184 So. 3d at 1094). The FMIC conveyances, unlike the Palmer conveyance, recite consideration of one dollar. ECF No. 111-18 at 2 (Pls.' Ex. 16); *id.* at 7 (Pls.'

Ex. 16-A); ECF No. 115-3 at 6 (Def.'s Ex. 12); *id.* at 11 (Def.'s Ex. 13). Thus, "the deeds . . . recite valuable consideration, even if nominal, [so] they are grants by bargain and sale and are not voluntary grants under Florida law." *Barron*, 174 Fed. Cl. at 125. Further, the "amount of . . . consideration is irrelevant to the question of what the grantor conveyed to the railroad," *id.*, so nominal consideration does not affect the "*nature* of the interest" or the "*validity* of the conveyance," ECF No. 111-1 at 52 (emphasis in original). In sum, the FMIC conveyances are not voluntary grants.

The FMIC Plaintiffs also argue the conveyances' references to blueprints support that the FMIC conveyances granted easements. ECF No. 111-1 at 68; ECF No. 122 at 18. The referenced blueprints indicate the railroad "had already surveyed and located the railroad right-of-way" over the land. ECF No. 111-1 at 68. Thus, "only after entering the owner's land," the railroad "obtain[ed] a written conveyance from the owner," so the FMIC Plaintiffs argue the conveyance operates as "a grant of an easement for the operation of a railway line, not title to the fee estate in the land." ECF No. 122 at 18. The court in *Barron* specifically addressed the argument that if a conveyance references land that the railroad previously entered, surveyed, and built upon, then the conveyance transfers only an easement. 174 Fed. Cl. at 127-28. According to the Florida Supreme Court, the railroad occupying the property before the formal grant does not invalidate "a deed meeting all the formal requisites for passing fee simple title." *Id.* at 128 (quoting *Rogers IV*, 184 So. 3d at 1100). Rather, the railroad's property interest remains dependent on the intent of the grantor reflected in the unambiguous language of the conveyance. *Id.* ("When a deed is unambiguous and sufficient on its face to show the grantor's intent as to the property described and the estate conveyed, extrinsic evidence is not admissible to vary the terms." (quoting *Rogers IV*, 184 So. 3d at 1100)). The language of the FMIC conveyances transfers the fee simple estate, so the blueprints referenced in these conveyances do not change that conclusion.

Because the railroad obtained title in fee simple absolute under the FMIC conveyances, the FMIC Plaintiffs do not have property interests in the railroad corridor. Accordingly, the NITU did not effect a taking, and the court grants summary judgment to the Government with respect to these thirty-one FMIC Plaintiffs.

3. The Ringling Conveyance

Six Plaintiffs[12] ("Ringling Plaintiffs") claim the railroad obtained only an easement under the Ringling conveyance. ECF No. 111-1 at 72-73. The Government claims the railroad obtained title in fee simple absolute. ECF No. 115 at 23-24. The language of the conveyance is as follows:

> This indenture . . . between CHARLES RINGLING COMPANY, a Corporation of the State of Florida, . . . and TAMPA SOUTHERN

[12] These Plaintiffs are: Denise Doucette Erb and Lorraine E. Colby; Joyce P. and Julie Gwen Hardie; David Ivanov, as Trustee of the 2976 Poplar Street Land Trust; Lakewood Venture Capital LLC; Faye M. Rood; and Sarasota County Agricultural Fair Association. ECF No. 111-3 at 12 (Pls.' Ex. 1).

> RAILROAD COMPANY, a Corporation created and organized under the laws of the State of Florida[] . . .
>
> Witnesseth, That the [Charles Ringling Company] for and in consideration of the sum of One Dollar and other valuable considerations, to it in hand paid, the receipt, whereof is hereby acknowledged, has granted, bargained, sold and conveyed to the [Tampa Southern Railroad Company], its successors and assigns, forever, the following described land in the County of Sarasota, State of Florida, to-wit:
>
> . . .
>
> 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 through the South half . . .
>
> . . .
>
> TO HAVE AND TO HOLD the same in fee simple forever.

ECF No. 111-19 at 2-3 (Pls.' Ex. 18); ECF No. 115-10 at 2-3 (Def.'s Ex. 22).

The phrase "TO HAVE AND TO HOLD the same in fee simple forever" explicitly indicates the grantor intended to convey the fee simple estate to the railroad. *See Fla. Moss Prods. Co. v. City of Leesburg*, 112 So. 572, 573-74 (Fla. 1927) (rejecting arguments based on parol evidence that would limit the fee simple estate conveyed in a deed that included the phrase "to have and to hold the same in fee simple forever"). The Ringling Plaintiffs argue the court should read the fee simple language merely to indicate that a "servitude, such as an easement, can be inheritable," and they point to the Federal Circuit's analysis of similar language under Vermont law in *Preseault II*. ECF No. 111-1 at 73. This argument runs contrary to the plain language of the Ringling conveyance, which grants a fee simple estate under Florida law. *See Fla. Moss Prods.*, 112 So. at 573-74. Further, like the FMIC conveyances, the Ringling conveyance's granting clause uses expansive language, and the conveyance describes the property conveyed as "land." While it is true that the Ringling conveyance does not include a warranty clause, that is only a factor to consider when determining the grantor's intent, not a necessary element of a deed conveying fee simple absolute. Here, the language clearly shows that the railroad obtained title in fee simple to the land transferred by the Ringling conveyance.

The Ringling Plaintiffs parade many of the same arguments discussed above to support that the railroad received only an easement under the Ringling conveyance. The Ringling Plaintiffs' arguments based on Section 689.10 of the Florida Statutes and the context of the conveyances fail for the same reasons discussed *supra* Section III.B. Further, the Ringling conveyance, like the FMIC conveyances, recounts consideration in the form of one dollar and, therefore, is not a voluntary grant. Similarly, the conveyance's reference to an existing right of way that the railroad had already located does not limit the railroad to an easement because, as discussed *supra* Section III.D.2, the railroad's entry, survey, and construction upon land does not muddle the unambiguous terms of a conveyance.

The Ringling Plaintiffs also argue the conveyance transferred only an easement because it describes the property as a "strip of land . . . through" the platted lots. ECF No. 111-1 at 72. The court in *Barron* rejected a similar argument because this language "merely describes the location of the strip of land conveyed . . . and does not define or characterize the nature of the property interest conveyed." 174 Fed. Cl. at 128 (internal quotation marks omitted) (quoting *Rogers II*, 93 Fed. Cl. at 621). Thus, the language describing the land as a "strip of land . . . through" the platted lots does not affect the estate conveyed to the railroad.

The Ringling conveyance granted the fee simple estate to the railroad, so the Ringling Plaintiffs' taking claims fall flat. The court grants the Government's cross-motion for summary judgment for these six Ringling Plaintiffs.

E. The Railroad Interests That Lack Documentation

The Parties stipulated that no document governs the claims of three Plaintiffs—John W. and Christine L. Fordham ("Fordhams"), Bradley Blum Morrison, and Shirley P. Ramsey; rather, the railroad obtained its property interest in the corridor "By Possession." ECF No. 111-12 at 16 (Pls.' Ex. 5). The Fordhams, Morrison, and Ramsey argue the railroad obtained, at most, a prescriptive easement in the corridor. ECF No. 111-1 at 74-75. They further argue the burden is on the Government to prove the railroad obtained a prescriptive easement, and the Government cannot even meet that burden to establish the railroad holds any property interests in the corridor. *Id.* at 75. The Government argues the Fordhams, Morrison, and Ramsey improperly shifted their burden to prove their ownership interests in the corridor to the Government, and the railroad obtained a fee simple interest in the corridor by adverse possession. ECF No. 115 at 31.

The Government argues that the railroad obtained fee simple title in the corridor by adverse possession. *Id.* at 30-31. A railroad's possession of land may result in the railroad acquiring the fee simple estate via adverse possession, or it may create an easement. *See Rogers III*, 107 Fed. Cl. at 399 (citing *Downing v. Bird*, 100 So. 2d 57, 64-65 (Fla. 1958), to explain the differences between adverse possession and prescriptive easements). Under Florida law, adverse possession requires possession that is "(i) actual and exclusive, (ii) continuous for seven years, (iii) open and notorious, and (iv) adverse under a claim of title." *Whispell Foreign Cars, Inc. v. United States*, 106 Fed. Cl. 777, 784 (2012); *see also Rogers III*, 107 Fed. Cl. at 400 (citing Fla. Stat. § 1722 (1906)). The burden is on the party claiming adverse possession "to prove that the . . .possession is adverse," and all elements of adverse possession "must be proved by clear and positive proof." *Downing*, 100 So. 2d at 64.

Thus, the Government, as the party claiming adverse possession, bears the burden of proof on the adverse possession elements. The Government did not come forward with its own evidence in support of adverse possession. Rather, the Government opposed partial summary judgment for the Fordhams, Morrison, and Ramsey to seek further factual development on their claims. ECF No. 115 at 30-31. As the court explained in *Whispell Foreign Cars*, "the laying of tracks and the running of rail cars [] could be the result of either an adverse action by the railroad or a permissive one," so the government did not prove the railroad held the land adversely to the landowners and thus could not prove the railroad obtained title via adverse possession. 106 Fed. Cl. at 787. Likewise, the Government here has not offered any evidence that the railroad's possession of the corridor was adverse to, rather than permitted by, the landowners.

Accordingly, the Government did not establish the railroad obtained fee simple title via adverse possession in the railroad corridor.

Because the Government does not prove the railroad acquired fee simple title via adverse possession, the greatest property interest that the railroad could have obtained is an easement. Two nineteenth-century Florida Supreme Court cases are particularly instructive here.[13] In *Pensacola and Atlantic R.R. Co. v. Jackson*, 21 Fla. 146 (1884), the Florida Supreme Court considered a landowner's rights and the railroad's rights in land where the landowner had acquiesced to the railroad building on his land but later brought suit against the railroad. *Id.* at 149-50. The court decided the landowner retained "his title to the land," but he could not get injunctive relief to stop the railroad from operating on his land. *Id.* at 152. Rather, the landowner could seek damages from the railroad. *Id.* at 153. Likewise, in *Florida Southern R. Co. v. Hill*, 23 So. 566 (Fla. 1898), the Florida Supreme Court decided that a railroad's entrance upon land without the landowners' consent or initiating condemnation proceedings operates as "an implied sale of an easement in the land, induced, it may be true, by the compulsory features of the power of eminent domain." *Id.* at 570. This court in *Mills* decided *Pensacola* and *Florida Southern* illustrate the following principle of Florida law:

> [W]hen 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 . . . the railroad merely obtains perpetual use of the land for the purposes of its incorporation, i.e. an easement for railroad purposes.

Mills, 147 Fed. Cl. at 349-50. Here, the Parties agree that no agreement governs the railroad's property interest in the property owned by the Fordhams, Morrison, and Ramsey, nor do they argue that the railroad initiated condemnation proceedings. ECF No. 111-12 at 16 (Pls.' Ex. 5). Thus, the railroad's possession of the corridor did not divest the Fordhams, Morrison, and Ramsey—or their predecessors-in-interest—of their title to the land, but created an easement for railroad purposes.

Because the railroad did not obtain fee simple title, the court considers whether its easement covers recreational trail use. This court in *Mills* determined that an easement obtained by the railroad's possession of land under the railroad's charter was limited to "railroad purposes." 147 Fed. Cl. at 351. Accordingly, "the conversion of the easement to a public recreational trail constitutes a new and unauthorized use." *Id.* Likewise, the railroad's easement in the present case does not extend to the use of the railroad corridor as a recreational trail. As a result, the NITU effected a taking of the property interests held by the Fordhams, Morrison, and Ramsey, so the court grants partial summary judgment in their favor.

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[13] The Fordhams, Morrison, and Ramsey cite to the Federal Circuit's decision in *Barlow v. United States*, 86 F.4th 1347 (Fed. Cir. 2023), to support their prescriptive easement argument. ECF No. 122 at 8. The Federal Circuit applied Illinois law in *Barlow*. 86 F.4th at 1359-60. The court here rests its conclusions on Florida law, so it does not review the arguments founded on *Barlow*.

F. The Pendley Document

The remaining two Plaintiffs, Mabel Brunton (subject to life estate of Wallace David Brunton) and Jeffrey Doyle, as Trustee of the Wallace David Brunton Testamentary Trust in place of Jeffrey C. Doyle ("Brunton"); and Gary L. Cathey and Victoria L. Goodrich ("Cathey-Goodrich") contend that the railroad held only an easement for railroad purposes that encumbered their property. Throughout their briefing, the Parties argued about the legal significance of an unexecuted deed from Mr. O.H. Pendley to the railroad and whether the result was a conveyance of title in fee simple absolute or an easement. ECF No. 111-1 at 70-71; ECF No. 115 at 26-28; ECF No. 122 at 9-11; ECF No. 127 at 8-9. On the eve of argument, however, the Government informed the court and Plaintiffs that it now believed that these Plaintiffs were not Mr. Pendley's successors-in-interest; rather, the Government explained that it now believed that these Plaintiffs are successors-in-interest to the FMIC and their property covered in the FMIC 536 conveyance. ECF No. 140.

The first thing the court must consider is whether the Pendley document conveyed fee simple title to the rail corridor to the railroad. If the Pendley document conveyed title to the railroad, it would not matter if these Plaintiffs were successors to Pendley or FMIC because the railroad would have gotten fee simple title either way. But if the Pendley document conveyed only an easement, then the existence of these Plaintiffs' claims turns on whether they are successors to Pendley or FMIC. For several reasons, the Pendley document could not convey the fee simple estate to the railroad.

First, the Pendley document could not transfer the fee simple estate to the railroad under the Florida statute of frauds. ECF No. 111-1 at 71. The Pendley document itself is undated, but based on a declaration from the railroad's agent that is in the record, the Pendley document arose around 1923. ECF No. 111-12 at 5 (Pls.' Ex. 4); ECF No. 115-10 at 11 (Def.'s Ex. 24). The operative statute of frauds in Florida in 1923 was Section 3787 of the Florida Statutes (1920), which provided that:

> No estate or interest of freehold . . . in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by deed in writing, signed, sealed and delivered in the presence of at least two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of years, or by his agent thereunto lawfully authorized, . . . ; and no estate or interest . . . in, to or out of any lands, tenements, messuages or hereditaments, shall be assigned or surrendered unless it be by deed, signed, sealed and delivered in the presence of at least two subscribing witnesses, by the party so assigning or surrendering, or by his agent thereto lawfully authorized, or by the act and operation of law.

Fla. Stat. § 3787 (1920); *see also* ECF No. 111-1 at 71 (citing Fla. Stat. § 689.01, Florida's current statute of frauds that is similar to the 1920 statute). The Pendley document is unsigned and not under seal. ECF No. 111-12 at 2 (Pls.' Ex. 4); ECF No. 115-10 at 8 (Def.'s Ex. 24).

Under the operative statute of frauds, the Pendley document could not transfer fee simple title to the railroad. *See Barclay v. Bank of Osceola Cnty.*, 89 So. 357, 358-59 (Fla. 1921) (applying Section 3787 to decide a deed "not under seal is ineffectual to convey the title of the grantor attempte[d] to be conveyed"). The declaration from the railroad that the Pendley document in the property records is materially the same as what Mr. Pendley signed does not satisfy the statute of frauds.

Second, the Government's argument is not helped by the railroad agent's declaration. That declaration 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." ECF No. 111-12 at 5 (Pls.' Ex. 4); ECF No. 115-10 at 11 (Def.'s Ex. 24). Thus, the declarant—the railroad's agent, ECF No. 111-12 at 5 (Pls.' Ex. 4); ECF No. 115-10 at 11 (Def.'s Ex. 24)—states that Mrs. Pendley, who also had ownership rights to the property, did not convey her interest to the railroad. Thus, even if the railroad declaration could overcome the statute of frauds, it makes clear that Mrs. Pendley never signed any deed to the railroad, rendering the document ineffective.

Third, even if the court accepts the Government's argument that the Pendley document and accompanying declaration are the "best evidence" of the grantor's intent, ECF No. 115 at 27-28; ECF No. 127 at 8-9, credits the railroad agent's declaration that O.H. Pendley signed the Pendley document, ECF No. 111-12 at 5 (Pls.' Ex. 4); ECF No. 115-10 at 11 (Def.'s Ex. 24), and overlooks the fact that Mrs. Pendley did not sign it, the Pendley document recounts no consideration was given for the conveyance. The Pendley document states the following:

> WITNESSETH: That [Pendley], for and in consideration of the sum of [blank] Dollars of lawful money of the United States of America, to [blank] in hand paid by the [railroad], at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha[s] granted, bargained, sold, aliened, remised, released, conveyed and confirm, unto the [railroad], and its successors and assigns forever, all of a certain tract or parcel of land situated, lying and being in the County of Sarasota, State of Florida, to-wit . . . .

ECF No. 111-12 at 2 (Pls.' Ex. 4); ECF No. 115-10 at 8 (Def.'s Ex. 24). If this document is the best evidence of the grantor's intent, the grantor intended a voluntary grant to the railroad—the space is blank where this document should include the consideration paid by the railroad to the Pendleys. ECF No. 111-12 at 2 (Pls.' Ex. 4); ECF No. 115-10 at 8 (Def.'s Ex. 24). As the court explains *supra* Section III.D.1, a conveyance without consideration is a voluntary grant, and a voluntary grant to a railroad does not extend to recreational trail use. Accordingly, the lack of consideration also prevents the Pendley document from conveying fee simple title to the railroad.

The Pendley document did not convey title to the railroad, but the railroad constructed a railway line across the Brunton and Cathey-Goodrich Plaintiffs' land. As the court discusses *supra* Section III.E, a railroad that takes land without a valid conveyance or condemnation proceedings takes at most an easement for railroad purposes. Because the Pendley document does not convey any interest in the property underlying the corridor, the Brunton and Cathey-Goodrich claims rise or fall on who their predecessor-in-interest was, which is disputed at this

point. Therefore, the court can grant summary judgment on the legal effect of the Pendley document (none), but not on the Brunton or Cathey-Goodrich claims.

The court held a conference with the Parties and explained that a chain of title from Brunton and Cathey-Goodrich back to either the Pendleys or FMIC will be necessary to determine whether these claims can survive. The court, therefore, grants-in-part Plaintiffs' motion for partial summary judgment insofar as the Pendley document did not convey title to the railroad. The court defers ruling on whether these Plaintiffs are successors-in-interest to the Pendleys or the FMIC until that issue is developed through the chain of title that the court directed the Parties to file.

IV. Conclusion

For the foregoing reasons, the court **GRANTS-IN-PART** and **DENIES-IN-PART** Plaintiffs' Motion for Partial Summary Judgment, ECF No. 111; and **GRANTS-IN-PART** and **DENIES-IN-PART** the Government's Cross-Motion for Partial Summary Judgment, ECF No. 115.

The court **GRANTS-IN-PART** and **DEFERS-IN-PART** Plaintiffs' motion as to the "Pendley Plaintiffs"—Mabel Brunton (subject to life estate of Wallace David Brunton) and Jeffrey Doyle, as Trustee of the Wallace David Brunton Testamentary Trust in place of Jeffrey C. Doyle; and Gary L. Cathey and Victoria L. Goodrich. The court **ORDERS** the Parties to file a notice that traces the Brunton and Cathey-Goodrich Plaintiffs' chain of title, with deeds in the chain attached as exhibits, to either the Pendleys or the FMIC.

The court **GRANTS** Plaintiffs' motion and **DENIES** the Government's cross-motion as to the successors-in-interest of Honore and Potter Palmer—Thomas M. and Joyce R. Fay. The Parties will proceed to the damages phase for these Plaintiffs.

The court **GRANTS** Plaintiffs' motion as to the successors-in-interest to Adrian Honore and the Plaintiffs whose properties are encumbered by prescriptive easements: John W. and Christine L. Fordham; Bradley Blum Morrison; Shirley P. Ramsey; 4023 Sawyer Road 1, LLC; Julia R. Adkins and Austin C. Murphy; Randal S. and Joyce S. Albritton; Louis L. Alderman, Jr., as Trustee of the Louis L. Alderman 2013 Revocable Trust; Bradley S. and Susan B. Anderson; Geoffrey L. Bolton; Nicholas J. and Danette L. Boris; Endia K. and Gary Callahan; Martin Carrillo-Plata; John and Joanne Cisler; Steven R. and Virginia M. Courtenay; Elise J. Duranceau; William and Brooke Grames; Vincent and Karen Guglielmini; Noel K. Harris; Angelo and Sarah J. Hoag; Larry E. Hudspeth; Daniel L. and Kristin Jadush; Judy H. Johnson; Kenneth J. and Margaret A. Kellner; Joseph R. Knight; Patrick J. and Lisa A. Loyet; Kassandra Luebke and Elaine Luebke; Thomas W. Marchese; Reuben S. and Kathy J. Martin; Jason J. and Karen McGuire; Sue Moulton; Timothy and Mary Murphy; James Kirt, Nicholas James and Christopher Andrew Nalefski; Perry M. and Pamela S. O'Connor; Sueko O'Connor; Michele and Dorothy Ann Paradiso; Thomas Pearson; Todd A. and Carmen Perna; Patricia Lynne Pitts-Hamilton; Pro Properties, LLC; Justin M. Reslan; Allen B. and Mary Ann E. Rieke; Michael A. Ritchie; Chad, Grace, and Robert Schaeffer; Faith H. Simolari, As Trustee of the Philip Simolari Revocable Trust; Russell S. Strayer; James H. and Glenda G. Thornton; Kenneth D. and Susan

K. Wells; David A. and Anna I. Ruiz-Welsher; Zbigniew and Wislawa Wrobel; and Stephen and Margaret Zawacki. The Parties will proceed to the damages phase for these Plaintiffs.

The court **DENIES** Plaintiffs' motion, **GRANTS** the Government's cross-motion, and **DIRECTS** the Clerk's Office to enter judgment for the Government on the claims of the following Plaintiffs:

1. The successors-in-interest of the Florida Mortgage and Investment Company: John M. Alvis; Catherine Teresa Gray; Joshua Carroll Hackney; Joe R. Hembree, As Trustee of the Joe R. Hembree Revocable Trust; Michael and Vivian Kravchak; Lewma Enterprise, Inc.; Cameron W. and Carol T. McGough; Rickey Smull; Irvin J. and Cynthia P. Spiegel; William A. and Jill Booth; John L. and Mary Allgyer and Levi and Tammy L. Lantz, Jr.; JB Holdings of Sarasota, LLC; Bob Allen and Lori Ann Jefferson; Bonnie A. Klein; Earnest R. Locklear, Carolyn B. Barclay, and Steven H. Locklear; Shannon Lugannani and Helen Elena Emegbagha; Callie Parsons; Marc and Leann Schlabach; John and Jaana Avramidis; David and Cynthia Gaul; Andrew and Jennifer Heath; Anna Marie Martin; Thomas McCall and Susan Coakley; Susan Schmitt, as Trustee of the Schmitt Revocable Trust; Raymond and Linda Wenck; Thomas and Michelle M. Dodson; Kimberly Dawn Hewitt, As Trustee for the Kimberly Dawn Hewitt Revocable Trust; The Oaks at Woodland Park Homeowners Assoc.; Anthony and Karen Puccio; Keith E. Rollins and Lisa J. Paxson-Rollins; and Brian T. Sanborn; and

2. The successors-in-interest of the Charles Ringling Company: Denise Doucette Erb and Lorraine E. Colby; Joyce P. and Julie Gwen Hardie; David Ivanov, as Trustee of the 2976 Poplar Street Land Trust; Lakewood Venture Capital LLC; Faye M. Rood; and Sarasota County Agricultural Fair Association.

Pursuant to Rule 54(b), the court determines that there is no just reason for delay entering judgment for the Government as to the claims of successors-in-interest to the Florida Mortgage and Insurance Company and the Charles Ringling Company identified in Paragraphs 1 and 2 above.

It is so ORDERED.

s/ Edward H. Meyers
Edward H. Meyers
Judge

In the United States Court of Federal Claims

No. 19-757 L
Filed: February 14, 2025

4023 SAWYER ROAD I, LLC, *et al.*,	*	
Plaintiffs,	*	**Rule 54(b)**
	*	**JUDGMENT**
v.	*	
	*	
THE UNITED STATES,	*	
Defendant.	*	

Pursuant to the court's Opinion and Order, filed February 11, 2025, granting-in-part and denying-in-par plaintiffs' motion for partial, summary judgment, granting-in-part and denying-in-part defendant's cross-motion for partial summary judgment, and directing the entry of judgment pursuant to Rule 54(b), there being no just reason for delay,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that judgment is entered in favor of the defendant as to the claims of successors-in-interest to the Florida Mortgage and Insurance Company and the Charles Ringling Company as follows:

1. The successors-in-interest of the Florida Mortgage and Investment Company: John M. Alvis; Catherine Teresa Gray; Joshua Carroll Hackney; Joe R. Hembree, As Trustee of the Joe R. Hembree Revocable Trust; Michael and Vivian Kravchak; Lewma Enterprise, Inc.; Cameron W. and Carol T. McGough; Rickey Smull; Irvin J. and Cynthia P. Spiegel; William A. and Jill Booth; John L. and Mary Allgyer and Levi and Tammy L. Lantz, Jr.; JB Holdings of Sarasota, LLC; Bob Allen and Lori Ann Jefferson; Bonnie A. Klein; Earnest R. Locklear, Carolyn B. Barclay, and Steven H. Locklear; Shannon Lugannani and Helen Elena Emegbagha; Callie Parsons; Marc and Leann Schlabach; John and Jaana Avramidis; David and Cynthia Gaul; Andrew and Jennifer Heath; Anna Marie Martin; Thomas McCall and Susan Coakley; Susan Schmitt, as Trustee of the Schmitt Revocable Trust; Raymond and Linda Wenck; Thomas and Michelle M. Dodson; Kimberly Dawn Hewitt, As Trustee for the Kimberly Dawn Hewitt Revocable Trust; The Oaks at Woodland Park Homeowners Assoc.; Anthony and Karen Puccio; Keith E. Rollins and Lisa J. Paxson-Rollins; and Brian T. Sanborn; and

2. The successors-in-interest of the Charles Ringling Company: Denise Doucette Erb and Lorraine E. Colby; Joyce P. and Julie Gwen Hardie; David Ivanov, as Trustee of the 2976 Poplar Street Land Trust; Lakewood Venture Capital LLC; Faye M. Rood; and Sarasota County Agricultural Fair Association.

Lisa L. Reyes,
Clerk of Court

By: s/ Ashley Reams
Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Effective December 1, 2023, the appeals fee is $605.00.

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Effective December 1, 2023, the appeals fee is $605.00.

FORM 19. Certificate of Compliance with Type-Volume Limitations **Form 19**
July 2020

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 25-1179, 25-1459

Short Case Caption: Barron v. US

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

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Date: 05/05/2025

Signature: /s/ Mark F. (Thor) Hearne, II

Name: Mark F. (Thor) Hearne, II