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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA

BEACH LIFE LAND TRUST; MONTIGO DEVELOPMENT LAND TRUST; SANTA CLARA LAND TRUST; COASTAL RESOURCES LAND TRUST NO. 1; AND COASTAL RESOURCES LAND TRUST NO. 5,

Plaintiffs, **CASE NO.: 2019-CA-217**

v.

WALTON COUNTY, FLORIDA,

Defendant.
______________________________________/

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COMES NOW, the Defendant, Walton County, Florida (the "**County**"), by and through its undersigned attorneys, and pursuant to Fla. R. Civ. P. 1.140(b), respectfully requests the Court dismiss Plaintiffs' Second Amended Complaint (the "**Complaint**"), and in support thereof states as follows:

U.S. Constitutional Counts - Counts I, IV, VII, and X

The claims Plaintiffs set forth in Counts I, IV, VII, and X of the Complaint should be dismissed.

The Fourth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." A "seizure" of property occurs when there is some meaningful interference with an individual's possessory interests in the property. *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, 1656, 80 L.Ed.2d 85 (1984).

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Here, Plaintiffs have alleged generally two bases for their 4th Amendment claims, which I rephrase as follows: (1) the County's denial of lot of record and density status as to unclear portions of the property – the scope, time, date, manner, and method of both the Plaintiffs' alleged request(s) and County's alleged denial(s) are entirely unclear; and (2) the County's possession and use (and related allowance of the public's possession and use) of certain unclear portions of the property. Both alleged bases are entirely without merit on their face.

Plaintiffs' have pled no facts that indicate their possession of the property has in any way been affected by the County's alleged denial of lot of record and density status requests. Additionally, the permitted density, lot status, and possession of the property remained constant both before and after any alleged denial by the County. Further, Plaintiffs' have failed to allege that they in any manner pursued any appropriate administrative remedies following the County's alleged denial and prior to bringing the instant Fourth Amendment claim. In regards to their Fourth Amendment allegations regarding the County's denial of lot of record and density status, Plaintiffs have failed to state a claim upon which relief can be granted.

Plaintiffs' Fourth Amendment claims based upon the County's use and occupation of portions of the property are likewise are facially deficient. The Plaintiffs' Complaint shows they had clear and undeniable knowledge of the County's open and notorious use of portions of the property well before they chose to accept that possession and use and acquire any alleged interest in the same. S*ee*, *Complaint*, ¶ 50, Exhibits B-6 and C-3. To now claim that, despite its knowledge and acceptance of the County's superior use and possession of the property, the County somehow is materially interfering with *their* possessory rights is patently unreasonable. In regards to their Fourth Amendment allegations regarding the County's use and possession of the property, Plaintiffs have failed to state a claim upon which relief can be granted.

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With regard to Plaintiffs' assertions that their Fifth Amendment rights have been violated, Plaintiffs' arguments also fail as a matter of law. There are two types of takings under the Fifth Amendment: physical taking of a person's real property, and regulatory taking of real property. Without delineating them as such, Plaintiffs are bringing two separate takings claims under the Fifth Amendment, one under the theory of physical taking (i.e. the County's alleged use of the property for parking, beach access, vendors, etc.), and the other under the theory of a regulatory taking (i.e. the County's alleged denial of Plaintiffs' lot of record and density requests).

As a threshold matter, in order to bring a claim under the Takings Clause of the Fifth Amendment the Court must first determine that the claimant has established a property interest. *Air Pegasus of D.C., Inc. v. U.S.*, 424 F.3d 1206, 1213 (Fed. Cir. 2005). "That is because '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 (Fed. Cir. 2001))(emphasis added). When a claimant brings a claim pursuant to the Takings Clause of the Fifth Amendment and it does not have a valid property interest at the time of the taking, it "cannot legally assert" a takings claim. *Wyatt v. United States*, 271 F.3d 1090, 1096-97 (Fed. Cir. 2001).

With regard to a physical taking claim under the Fifth Amendment, the County has been utilizing the property at issue since long before Plaintiffs allegedly acquired an interest in the property in 2018. This is confirmed both by the Exhibits attached to and allegations contained within the Complaint. Plaintiffs have notably and not coincidentally failed to even allege their possession of the property prior to the claimed takings. Because Plaintiffs did not have possession of the property at the time they claim the County committed a physical taking, they

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cannot establish a claim that the County acted in violation of the Fifth Amendment under the theory of a physical taking.

With regard to regulatory takings, a different analysis is necessary. In such cases, the claim "does not present the classi[c] taking in which the government directly appropriates private property for its own use; instead the interference with property rights arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 324, 122 S. Ct. 1465, 1480, 152 L. Ed. 2d 517 (2002)(internal citations omitted).

In considering regulatory takings cases, the court must focus on "the parcel as a whole". *Id.* at 327, 1481. This requirement "clarifies why restrictions on the use of only limited portions of the parcel, such as setback ordinances, or a requirement that coal pillars be left in place to prevent mine subsidence, were not considered regulatory takings. In each of these cases, [the United State Supreme Court] affirmed that 'where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking.'" *Id.* (internal citations omitted).

Each of the Plaintiffs alleges (albeit in a less than clear manner) that the County has effectuated a regulatory taking by failing to grant Plaintiffs' lot of record and density requests. *Complaint*, ¶¶ 66-67, 100-101, 126, 129. However, none of the Plaintiffs allege to which portion of the property at issue these lot of record and density requests were made. In review of the cited Exhibits attached to the Complaint, the denial of these requests did not affect the entirety of the property at issue.

Furthermore, the United States Supreme Court has established a two-prong test to determine whether a regulatory taking has occurred. "[T]he Fifth Amendment is violated when a

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land-use regulation does not substantially advance legitimate state interests or denies an owner economically viable use of his land…. We think, in short, that there are good reasons for our frequently expressed belief that when the owner of real property has been called upon to sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992)(internal citations omitted)(emphasis original). Plaintiffs did not allege that the County's denials of their requests denied them all economically viable use of their property, nor did they allege that the County's denial did not substantially advance legitimate state interests. Instead, Plaintiffs vaguely allege that the County's denial of these requests "meaningfully interfered with [Plaintiffs'] possessory interest … causing [Plaintiffs] to suffer damages", *Complaint*, ¶¶ 67, 85, 101.

On its face, the Complaint fails to allege a cause of action upon which relief can be granted as the alleged regulatory taking does not apply to the entirety of the property at issue. Even if the County's alleged denial of the lot of record and density requests do affect the entire property, Plaintiffs have not alleged that the County's denial of Plaintiffs' requests does not substantially advance legitimate state interests or denies them all economically viable use of their land. At least one of these two prongs must be alleged to establish a takings claim under the Fifth Amendment.

Florida Constitutional Counts – Counts II, V, VIII, and XI

The claims Plaintiffs set forth in Counts II, V, VIII, and XI of the Complaint, while brought under the umbrella of a violation of the Florida constitution, are in fact two separate claims, both of which fail as a matter of law.

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On one hand, Plaintiffs allege that the County's use of the land for parking, beach access and street vendors is without statutory, legal, or contractual authority and is without just compensation or due process. On the other hand, Plaintiffs allege that the County has not afforded them "due process or just compensation for the denial of the lot of record and density requests". *Complaint*, ¶ 75; *see also* ¶¶ 92 and 109. These are two different actions and will be addressed as such.

The latter claim does not constitute a taking under the Florida constitution. Pursuant to the Art. X, §6(a), Fla. Const., "No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner." Accordingly, in order to bring a claim of action under this section, Plaintiffs must show that they owned the real property, that the County took that property for a public purpose, and that the County failed to pay full compensation for the real property. Plaintiffs have made no such allegations, and a denial of the "lot of record and density requests" is, on its face, not a physical taking of property. Instead, it appears Plaintiffs are alleging that this denial of their requests amounts to a taking since they cannot use their property as they would like. This cause of action arises under Fla. Stat. §70.001.

Titled "Private Property Rights Protection", Fla. Stat. §70.001 was created by the legislature in recognition that "some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution." Fla. Stat. §70.001(1). Under this statute, a property owner may be entitled to relief where the "specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property". *Id.* at Fla. Stat. §70.001(2). The

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property owner must meet certain prerequisites prior to filing suit against the government agency for compensation. Section 4(a) states:

> Not less than 150 days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days. The property owner must submit, along with the claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

Plaintiffs did not comply with the requirements set forth in Fla. Stat. §70.001 as they failed to provide the 150-day notice of claim, and they failed to provide the County with an appraisal demonstrating the property's loss in fair market value caused by the County's denial of Plaintiffs' lot and density requests. Where a plaintiff fails to comply with the prerequisites mandated in Fla. Stat. §70.001, dismissal of the complaint is appropriate. *Sosa v. City of West Palm Beach*, 762 So. 2d 981 (Fla. 4th DCA 2000). Plaintiffs' claims under Counts II, V, VIII and XI related to their alleged lot and density requests should be dismissed.

Plaintiffs' allegations regarding the County's use of the land at issue for beach access, parking and vendors is an inverse condemnation claim. In order to establish inverse condemnation, Plaintiffs must show that they owned the real property at issue at the time of the taking, that the County took that property for a public purpose, and that the County failed to pay them full compensation for the real property.

"Damages to compensate for the taking or for injury to land not taken belong to the one who owns the land *at the time of the taking or injury*." *Canney v. City of St. Petersburg*, 466 So. 2d 1193, 1195 (Fla. 2d 1985)(emphasis original). For inverse condemnation claims, "the relevant

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date for determining the parties with an interest in the property was the date title vested in the City…." *Homestead Land Group, LLC v. City of Homestead*, 165 So. 3d 62, 65 (Fla. 3d DCA 2015). A trial court's denial of relief in an inverse condemnation suit is not error when the claimant "could assert no interest in the property at the date of the taking as a matter of law." *Id.* Plaintiffs admit that the County has utilized the land at issue since at least 2012. *Complaint*, ¶ 49. Plaintiffs did not acquire any alleged interest in this property until 2018. *Complaint*, ¶¶ 38-41. Therefore, Plaintiffs cannot assert an interest in the property at the date of the alleged taking.

Where a complaint fails to state when the taking occurred, the nature and extent of the taking, and whether the taking was with the consent of the other property owners, a dismissal is warranted. *JRD Development of Brevard, Inc. v. City of Cocoa Beach*, 896 So. 3d 823, 824 (Fla. 5th DCA 2005)("On its claim that the City 'usurped' the parking lot, the complaint fails to state when the usurpation took place, the nature and extent of the usurpation, or that the usurpation was not with the consent of the other owners of the property. The allegations in the complaint for this count are so vague, imprecise and conclusory that the dismissal was warranted."). Plaintiffs fail to state when the alleged taking by the County took place (other than that the County erected the parking lot in 2012), the nature and extent of the taking, and whether Plaintiffs' predecessor in title granted the County consent for the alleged taking.

No legal action was taken against the County by Plaintiffs' predecessors in title for the County's use of this property. Where a landowner does not object to a conveyance to the government or take any action to challenge it, the landowner can be said to have "ratified the conveyance". *New Testament Baptist Church Inc. of Miami v. State, Dept. of Transp.*, 993 So. 2d 112, 117 (Fla. 4th DCA 2008). Moreover, Plaintiffs were on notice that the County was using this property as the County's use of the land has been open and obvious. "[A]ctual, open and

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obvious possession is constructive notice to all the world of whatever right the occupant has in the land, and puts upon inquiry those acquiring any title to or lien upon the land so occupied to ascertain the nature of the rights the occupant has in the premises." *Fla. Power & Light Co. v. Rader*, 306 So. 2d 565 (Fla. 4th DCA 1975)(holding that where Florida Power & Light Co. entered into a valid, but unrecorded, easement with the previous property owner and the subsequent property owner, although unaware of the unrecorded easement, had conducted a visual inspection of the property during which he saw the power lines and poles in question, the subsequent property owner was put on inquiry notice as to the existence of the unrecorded easement, and Florida Power & Light Co. could not be held liable for inverse condemnation).

In short, Plaintiffs did not own the land when the alleged taking took place, so they are not entitled to bring an inverse condemnation claim. Additionally, Plaintiffs' counts II, V, VIII and XI are too vague to state a cause of action upon which relief can be granted. Finally, Plaintiffs purchased the property with the knowledge that the County was using it. Plaintiffs' counts II, V, VIII, and XI fail as a matter of law.

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Even if Plaintiffs had met their burden for establishing the elements for an inverse condemnation claim, counts II, V, VIII, and XI are barred by the statute of limitations. The statute of limitations for inverse condemnation claims is four years. *Suarez v. City of Tampa*, 987 So. 2d 681, 684 (Fla. 2d 2008). The time for the statute of limitations begins to run when a landowner becomes aware of the harm caused to their property by the government. *Id.* Plaintiffs state in the Complaint that the County constructed the parking lot in 2012. The County's use of the land for beach access and vendors has been open and notorious since well before that time. Plaintiffs' predecessors in title did not object to the County's use of the property, notwithstanding the existence of administrative and judicial remedies. Now, more than four years

has elapsed since the County's use of the property began, and Plaintiffs cannot bring a cause of action against the County. "Patently, there must be an outside limit on when a landowner can seek compensation for a taking where the owner does not pursue administrative or judicial remedies readily available at the time of approval and continues to accept the benefits of the development." *New Testament Baptist Church Inc.*, 993 So. 2d at 117. Counts II, V, VIII and XI of the Complaint should be dismissed.

Quiet Title Counts - Counts III, VI, IX and XII

Plaintiffs have failed to name indispensable parties as defendants, and the claims set forth in Counts III, VI, IX, and XII of the Complaint should be dismissed.

All persons materially interested in the subject matter of a suit and who would be directly affected by an adjudication of the controversy are necessary parties. *W.F.S. Co. v. Anniston Nat. Bank of Anniston, Ala.*, 140 Fla. 213, 216 (Fla. 1939); *Gibson v. Tuttle*, 53 Fla. 979 (Fla. 1907); *Robinson v. Howe*, 35 Fla. 73 (Fla. 1895). It is an elemental principle that a court cannot adjudicate directly upon the rights of parties without having them actually or constructively before it. *Robinson* at 82. Parties with ownership, use or possessory interests in real estate constitute indispensable parties to an action to quiet title. *See Santiago v. Sunset Cove Investments, Inc.*, 988 So. 2d 10 (Fla. 2d DCA 2008); *Burt v. Richards*, 541 So. 2d 707 (Fla. 4th DCA 1989); and *Robinson*.

By Counts III, VI, IX, and XII of their Complaint (the "**Quiet Title Counts**"), Plaintiffs have requested this Court enter judgment quieting title to the property at issue in their favor and declaring them to be the exclusive fee-simple owners of the same. Notably, only the County is named as a defendant.

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Review of Plaintiffs' Complaint immediately reveals myriad additional parties with interests in the property – none of which have been named as defendants.

1. <u>Count III – Plaintiff Beach Life Land Trust's claim for quiet title</u>. Beach Life Land Trust has requested a quiet title judgment declaring it the exclusive fee-simple owner of the all of the property at issue. Elsewhere in the Complaint, the remaining Plaintiffs have alleged ownership of various portions of that same property. Due to their competing allegations of ownership, the remaining Plaintiffs are necessary defendants to Beach Life Land Trust's Count III as currently pled. As a result, Count III should be dismissed.

2. <u>Count VI – Plaintiff Santa Clara Land Trust's claim for quiet title</u>. Santa Clara Land Trust has requested a quiet title judgment declaring it the exclusive fee-simple owner of the Santa Clara Property shown in the survey attached as Exhibit B-3 of the Complaint. Review of the survey of reveals the following encroachments onto the Santa Clara Property:

    a. A one-story accessory dwelling encroaching from the southeast corner of "Lot 13, Block 14."

    b. A structure and drive encroaching from Santa Clara Street and apparently servicing "Lot 12, Block 14."

    c. A drive encroaching from Santa Clara Street and apparently servicing "Lot 1, Block 19."

    d. A drive encroaching from San Juan Avenue and apparently servicing "Lot 9, Block 19."

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The owners of each of the lots listed in 2(a)-2(d) above have immediately apparent interests in the Santa Clara Property, which interests will be directly and materially impacted by an adjudication of Count VI. Plaintiffs have failed to name such owners as defendants, and Count VI should be dismissed.

3. Count IX – Plaintiff Coastal Resources Land Trust No. 1's claim for quiet title. Coastal Resources Land Trust No. 1 has requested a quiet title judgment declaring it the exclusive fee-simple owner of the Coastal Resources #1 Property shown in the survey attached as Exhibit B-4 of the Complaint. Review of the survey reveals a roadway bisecting the length of the Coastal Resources #1 Property from Pelayo Avenue on the east to Montigo Avenue on the west. Plaintiffs have not alleged that that roadway is a County constructed or maintained right of way, and the survey does not identify it as a right of way of any kind. The interests of the owners, users and possessors of that roadway will be directly and materially impacted by an adjudication of Count IX. Plaintiffs have failed to name such owners as defendants and Count IX should be dismissed.

4. Count XII – Plaintiff Coastal Resources Land Trust No. 5's claim for quiet title. Coastal Resources Land Trust No. 5 has requested a quiet title judgment declaring it the exclusive fee-simple owner of the Coastal Resources #5 Property shown in the surveys attached as Exhibits B-5, B-6, B-7 (that portion surveyed and lying outside the limits of the existing street), and B-8, C-1, C-2a, C-2b, C-3 and C-4 of the Complaint. Review of those exhibits reveals the following:

   a. Exhibit B-5.

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i. A pool from “Lot 2” located east of and encroaching onto the Coastal Resources #5 Property.

ii. A beach walkover from “Lot 1, Block L” located west of and encroaching onto the Coastal Resources #5 Property.

iii. An approximately 30-foot overlap between the Coastal Resources #5 Property and the following parcels to its east: “Lot 1”, “Lot 2”, “Lot 3”, “Lot 4” and Parcel ID#14-35-19-25040-020-0060. The survey reveals that the western boundary of the Coastal Resources #5 Property is the eastern line of the adjacent right of way. The plat for Paradise Too subdivision and deed for Parcel ID#14-35-19-25040-020-0060 (both referenced on the survey) likewise indicate their western boundary line is that same right of way, creating an over 30-foot overlap along the entire eastern boundary of the Coastal Resources #5 Property.

b. Exhibit B-7. Each owner of the adjacent 13 lots gain access to their lots via Montigo Avenue. To grant Plaintiffs' requested relief quieting title to all the depicted property outside of the existing street would immediately deny each of those 13 lot owners access to its respective lot from Montigo Avenue.

The owners of each of the lots listed in 4(a) and 4(b) above have immediately apparent interests in the Coastal Resources #5 Property, which interests will be directly and materially impacted by an adjudication of Count XII. Plaintiffs have failed to name such owners as defendants, and Count XII must be dismissed.

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Plaintiffs have failed to name a host of adjacent property owners as defendants, each of whom stand to suffer significant loss and are indispensable parties to the full and fair adjudication of the Quiet Title Counts. The Quiet Title Counts should be dismissed.

WHEREFORE, Walton County, Florida respectfully requests the Court dismiss Plaintiffs' Second Amended Complaint and grant all further relief just and proper in the premises.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed through the Florida E-Portal, which will provide electronic copies to counsel of record, on this 5th day of December, 2019.

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