

UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH CAROLINA
 BEAUFORT DIVISION

10 FRONTAGE ROAD, LLC, DAN)	C/A No. 9:13-cv-00169-DCN
CARVER, ANN CARVER, DONALD L.)	
CARVER II, SUE ANNE REEDY)	
REVOCABLE LIVING TRUST, and JANET)	
HORNESH, PAUL C. BREWER, and)	ANSWER OF DEFENDANT THE
DONALD A. EDGERLEY and LINDA)	BEAUFORT-JASPER WATER & SEWER
EDGERLEY, for themselves and a Class of)	AUTHORITY TO PLAINTIFFS’
Similarly Situated Plaintiffs,)	COMPLAINT
)	(Jury Trial Demanded)
)	
Plaintiffs,)	
)	
Versus)	
)	
THE BEAUFORT-JASPER WATER &)	
SEWER AUTHORITY,)	
)	
Defendant.)	

Comes now the Defendant, The Beaufort-Jasper Water & Sewer Authority (hereinafter “Defendant”), answering the allegations of the Plaintiffs’ Complaint as follows. The Defendant denies each and every allegation of the Plaintiffs’ Complaint which is not specifically admitted without qualification in this Answer.

1. The Defendant is a South Carolina public, non-profit special purpose district that provides over 150,000 Lowcountry residents with drinking water – treating and delivering an average of 20 million gallons of drinking water each day to over 48,000 customer accounts and also supplying drinking water to wholesale customers who redistribute the Defendant’s water to their residents. The Defendant collects, treats, and recycles approximately 8 million gallons of treated wastewater safely back into the environment for approximately 31,000 sewer accounts each day. The City of Beaufort Water System – which the Defendant acquired in 1999 – installed its first water lines in the railroad right-of-way (hereinafter “Railroad Corridor”) in 1941. Other

utilities, including SCE&G's predecessor in 1931, were also granted licenses and easements throughout the years to install and operate infrastructure in the Railroad Corridor. Prior to purchasing the Railroad Corridor, the Defendant had over 35,000 feet of buried infrastructure in place in the Railroad Corridor. The Defendant had been granted the right to place that infrastructure by the owners of the Railroad Corridor at their respective times. The Defendant denies any and all allegations that it has improperly or illegally invaded or clouded the Plaintiffs' fee ownership in their subsurface and aerial rights in the Railroad Corridor. Furthermore, the Plaintiffs' and those that they allege are similarly situated were members of a class action lawsuit brought against the United States alleging a Fifth Amendment taking of their property interest to the extent that the National Trails System Act, 16 U.S.C. § 1247, operated to forestall their rights to the use and enjoyment of their property adjacent to the Railroad Corridor; and they have been fully compensated for the same.

AS TO THE NATURE OF ACTION

2. The allegations contained in Paragraph 1 of the Plaintiffs' Complaint are not directed at the Defendant and/or contain conclusions of law to which no response is required. To the extent a response is required, the Defendant admits only that Plaintiffs are seeking certification of a class to bring this action. The Defendant denies all remaining and inconsistent allegations contained in Paragraph 1 of the Plaintiffs' Complaint and denies that this is a proper case for class certification.

3. The allegations contained in Paragraph 2 of the Plaintiffs' Complaint contain conclusions of law to which no response is required. To the extent a response is required, the Defendant craves reference to the real property transactions and easement(s) referenced and denies all allegations inconsistent therewith.

4. The allegations contained in Paragraph 3 of the Plaintiffs' Complaint contain conclusions of law to which no response is required. To the extent a response is required, Defendant craves reference to the real property transactions and easement(s) referenced and denies all allegations inconsistent therewith. The Defendant denies that it has improperly and illegally invaded and clouded Plaintiffs' fee ownership in their subsurface and aerial rights associated with the right-of-way.

5. In response to Paragraph 4 of the Plaintiffs' Complaint, the Defendant admits that Plaintiffs are seeking on behalf of themselves and others who they allege are similarly situated actual and statutory damages, attorneys' fees, and costs, but the Defendant denies this is a proper case for a class action. All remaining and inconsistent allegations contained in Paragraph 4 of Plaintiffs' Complaint are denied.

AS TO THE PARTIES

6. The Defendant is without sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiffs' Complaint; accordingly, those allegations are denied.

7. The Defendant is without sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in Paragraph 6 of Plaintiffs' Complaint; accordingly, those allegations are denied.

8. The Defendant is without sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in Paragraph 7 of Plaintiffs' Complaint; accordingly, those allegations are denied.

9. The Defendant is without sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in Paragraph 8 of Plaintiffs' Complaint; accordingly, those allegations are denied.

10. The Defendant admits the allegations contained in Paragraph 9 of the Plaintiffs' Complaint.

AS TO JURISDICTION AND VENUE

11. Paragraph 10 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 10 of Plaintiffs' Complaint.

12. Paragraph 11 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 11 of Plaintiffs' Complaint.

AS TO FACTS PERTINENT TO ALL CAUSES FOR RELIEF

13. The allegations contained in Paragraph 12 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the cited legislation and denies any allegations inconsistent therewith.

14. The allegations contained in Paragraph 13 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant admits that the Port Royal Railroad was not completed until 1871. By way of further response, the Defendant craves reference to the referenced constitutional provision and denies all allegations inconsistent therewith.

15. The allegations contained in Paragraph 14 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, in response to the allegations contained in the first sentence of Paragraph 14 of the Plaintiff's Complaint, the Defendant craves reference to the cited legislation and denies all allegations inconsistent therewith. The allegations contained in the second sentence of Paragraph 14 of the Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in the second sentence of Paragraph 14 of the Plaintiffs' Complaint.

16. The allegations contained in Paragraph 15 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, in response to the allegations contained in the first and second sentences of Paragraph 15 of the Plaintiff's Complaint, the Defendant craves reference to the cited legislation and denies all allegations inconsistent therewith. The allegations contained in the third sentence of Paragraph 15 of the Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 15.

17. The allegations contained in Paragraph 16 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the applicable corporate and property records and denies all allegations inconsistent therewith.

18. The allegations contained in Paragraph 17 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required.

To the extent a response is required, the Defendant craves reference to the applicable government, corporate, and property records and denies all allegations inconsistent therewith.

19. The allegations contained in Paragraph 18 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the cited legislation and denies any allegations inconsistent therewith.

20. The allegations contained in Paragraph 19 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the cited legislation and denies any allegations inconsistent therewith.

21. The allegations contained in Paragraph 20 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the cited legislation and denies any allegations inconsistent therewith.

22. The allegations contained in Paragraph 21 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the cited legislation and denies any allegations inconsistent therewith.

23. The allegations contained in Paragraph 22 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the relevant legislation and denies any allegations inconsistent therewith.

24. The allegations contained in Paragraph 23 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the relevant legislation and denies any allegations inconsistent therewith.

25. In response to the allegations contained in Paragraph 24 of the Plaintiffs' Complaint, the Defendant admits only that it commissioned a survey of the railroad's right-of-way. By way of further response, the Defendant craves reference to the survey and denies any allegations inconsistent therewith.

26. The Defendant denies the allegations contained in Paragraph 25 of Plaintiffs' Complaint.

27. The allegations contained in Paragraph 26 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the cited Notice of Intent to Terminate Service and Request for Issuance of Notice of Interim Trail Use/Railbanking and denies any allegations inconsistent therewith.

28. In response to the allegations contained in Paragraph 27 of the Plaintiffs' Complaint, including subparagraphs (a) through (g), the Defendant craves reference to the purchase contract along with any attachments, exhibits, riders, additions, or amendments to the same and denies any allegations inconsistent therewith.

29. In response to the allegations contained in Paragraph 28 of the Plaintiffs' Complaint, the Defendant craves reference to the purchase contract along with any attachments, exhibits, riders, additions, or amendments to the same and denies any allegations inconsistent therewith.

30. The allegations contained in Paragraph 29 of the Plaintiff's Complaint are not directed at the Defendant and contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant craves reference to the cited NITU and denies any allegations inconsistent therewith.

31. In response to the allegations contained in Paragraph 30 of the Plaintiffs' Complaint, including subparagraphs (a) through (h), the Defendant craves reference to the Memorandum of Understanding along with any attachments, exhibits, riders, additions, or amendments to the same and denies any allegations inconsistent therewith.

32. In response to the allegations contained in Paragraph 31 of the Plaintiffs' Complaint, the Defendant craves reference to the purchase contract and Memorandum of Understanding along with any attachments, exhibits, riders, additions, or amendments to the same and denies any allegations inconsistent therewith. By way of further response, the Defendant denies that it engaged in any "illegal" activity as alleged in Paragraph 31 of the Plaintiffs' Complaint.

33. In response to the allegations contained in Paragraph 32 of the Plaintiffs' Complaint, including subparagraphs (a) through (f), the Defendant craves reference to the Easement Agreement and Memorandum of Understanding along with any attachments, exhibits, riders, additions, or amendments to the same and denies any allegations inconsistent therewith.

34. The allegations contained in Paragraph 33 of the Plaintiff's Complaint contain conclusions of law and, therefore, no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 33 of Plaintiffs' Complaint.

AS TO COUNT I – CLASS ACTION

35. In response to the allegations contained in Paragraph 34 of Plaintiffs' Complaint, the Defendant repeats, realleges, and incorporates by reference all the responses in this Answer as if fully set forth in their entirety in this Paragraph.

36. Paragraph 35 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 35 of Plaintiffs' Complaint.

37. Paragraph 36 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 36 of Plaintiffs' Complaint.

38. Paragraph 37 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant craves reference to the relevant property records and denies the allegations inconsistent therewith.

39. Paragraph 38 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 38 of Plaintiffs' Complaint.

40. Paragraph 39 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 39 of Plaintiffs' Complaint.

41. Paragraph 40 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 40 of Plaintiffs' Complaint.

42. Paragraph 41 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 41 of Plaintiffs' Complaint.

43. Paragraph 42 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 42 of Plaintiffs' Complaint.

AS TO COUNT II – INVERSE CONDEMNATION

44. In response to the allegations contained in Paragraph 43 of Plaintiffs' Complaint, the Defendant repeats, realleges, and incorporates by reference all the responses in this Answer as if fully set forth in their entirety in this Paragraph.

45. In response to the allegations contained in Paragraph 44 of Plaintiffs' Complaint, the Defendant admits that it is a public, non-profit organization created by the South Carolina legislature pursuant to the Code of Laws of South Carolina 1976 Annotated § 6-37-10 et seq. All remaining and inconsistent allegations contained in Paragraph 44 of Plaintiffs' Complaint are denied.

46. In response to the allegations contained in Paragraph 45 of Plaintiffs' Complaint, the Defendant craves reference to the legislation, property records, and other records referenced and denies all allegations inconsistent therewith.

47. In response to the allegations contained in Paragraph 46 of Plaintiffs' Complaint, the Defendant craves reference to the documents referenced and denies all allegations inconsistent therewith.

48. The Defendant denies the allegations contained in Paragraph 47 of Plaintiffs' Complaint as written.

49. Paragraph 48 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 48 of Plaintiffs' Complaint.

50. Paragraph 49 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 49 of Plaintiffs' Complaint.

51. Paragraph 50 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 50 of Plaintiffs' Complaint.

AS TO COUNT III - TRESPASS

52. In response to the allegations contained in Paragraph 51 of Plaintiffs' Complaint, the Defendant repeats, realleges, and incorporates by reference all the responses in this Answer as if fully set forth in their entirety in this Paragraph.

53. Paragraph 52 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant craves reference to the cited legislation and property records and denies any allegations inconsistent therewith.

54. The Defendant denies the allegations contained in Paragraphs 53 of Plaintiffs' Complaint.

55. Paragraph 54 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 54 of Plaintiffs' Complaint.

56. Paragraph 55 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 55 of Plaintiffs' Complaint.

57. Paragraph 56 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 56 of Plaintiffs' Complaint.

58. Paragraph 57 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 57 of Plaintiffs' Complaint.

AS TO COUNT IV – UNJUST ENRICHMENT

59. In response to the allegations contained in Paragraph 58 of Plaintiffs' Complaint, the Defendant repeats, realleges, and incorporates by reference all the responses in this Answer as if fully set forth in their entirety in this Paragraph.

60. Paragraph 59 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 59 of Plaintiffs' Complaint.

61. Paragraph 60 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 60 of Plaintiffs' Complaint.

62. Paragraph 61 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 61 of Plaintiffs' Complaint.

63. Paragraph 62 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 62 of Plaintiffs' Complaint.

64. Paragraph 63 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 63 of Plaintiffs' Complaint. Further responding, the Defendant denies that it has wrongfully and illegally sold an aerial easement for electrical lines.

65. Paragraph 64 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 64 of Plaintiffs' Complaint.

66. Paragraph 65 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 65 of Plaintiffs' Complaint.

67. Paragraph 66 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 66 of Plaintiffs' Complaint.

68. Paragraph 67 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 67 of Plaintiffs' Complaint.

69. Paragraph 68 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 68 of Plaintiffs' Complaint.

70. Paragraph 69 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 69 of Plaintiffs' Complaint.

AS TO COUNT V – NEGLIGENT MISREPRESENTATION

71. In response to the allegations contained in Paragraph 70 of Plaintiffs' Complaint, the Defendant repeats, realleges, and incorporates by reference all the responses in this Answer as if fully set forth in their entirety in this Paragraph.

72. The Defendant denies the allegations contained in Paragraphs 71 of Plaintiffs' Complaint.

73. The Defendant denies the allegations contained in Paragraphs 72 of Plaintiffs' Complaint.

74. Paragraph 73 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 73 of Plaintiffs' Complaint.

75. Paragraph 74 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 74 of Plaintiffs' Complaint.

76. Paragraph 75 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 75 of Plaintiffs' Complaint.

77. Paragraph 76 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant is without information

sufficient to admit or deny the allegations contained in Paragraph 76 of the Plaintiffs' Complaint and, therefore, denies the same.

78. Paragraph 77 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, the Defendant denies the allegations contained in Paragraph 77 of Plaintiffs' Complaint.

79. The Defendant denies the WHEREFORE Paragraph of Plaintiffs' Complaint, being the remaining allegations in Plaintiffs' Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANT ALLEGES:
(Statute of Limitations)**

80. That Plaintiffs' causes of action against the Defendant are barred by the applicable statute of limitations.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANT ALLEGES:
(Lack of Personal Jurisdiction)**

81. This Court lacks personal jurisdiction over the Defendant, and, therefore, pursuant to Rule 12(b)(2) of the *Federal Rules of Civil Procedure*, the Plaintiffs are barred from recovery against the Defendant.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANT ALLEGES:
(Lack of Standing)**

82. That Plaintiffs do not have standing to bring the causes of action that they have asserted against the Defendant under Article III of the United States Constitution and Article V of the South Carolina Constitution.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANT ALLEGES:
(Failure to State a Claim)**

83. The allegations in Plaintiffs' Complaint fail to state a claim on which relief may be granted against the Defendant. Therefore, this Complaint should be dismissed for all applicable reasons in accordance with Rule 12(b)(6) of the *Federal Rules of Civil Procedure*.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANT ALLEGES:
(Lawful Acquisition)**

84. That the Defendant has lawfully acquired the right to use the property in question such that Plaintiffs are not entitled to recovery in this matter.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANT ALLEGES:
(Consent)**

85. That Plaintiffs and alleged members of their proposed class consented to the use of the property at issue by the Defendant without payment of compensation.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANT ALLEGES:
(Adverse Possession/Prescription)**

86. That the Defendant has acquired the property at issue by adverse possession or has acquired a prescriptive easement such that Plaintiffs and alleged members of their proposed class are not entitled to recovery against the Defendant.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANT ALLEGES:
(No Liability for Negligent Misrepresentation)**

87. That any of the allegedly false statements or misrepresentations alleged to have been made by or caused by the Defendant, which are specifically denied, were either casual statements, representations as to matters of law, or as to matters which Plaintiffs could have

ascertained on their own in the exercise of due diligence; and therefore, are not actionable against the Defendant.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:
(Double Recovery)**

88. That Plaintiffs and alleged members of their proposed class elected to pursue compensation for the alleged taking of their property against the United States and have been compensated for the same; thus barring them from recovery for the same alleged harm against the Defendant.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:
(Waiver)**

89. That Plaintiffs and alleged members of their proposed class are barred from obtaining relief by their waiver.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:
(No Taking)**

90. That Plaintiffs have failed to establish that they were wrongfully deprived of their right and title to the private property allegedly taken by the Defendant without just compensation.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:
(No Economic Deprivation)**

91. That the Defendant, under the just compensation clause of the Fifth Amendment, did not deny Plaintiffs economically viable use of the land.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:**
(Good Faith)

92. That at all times, the Defendant acted in good faith and did not directly or indirectly induce or otherwise willfully, intentionally or recklessly engage in the alleged actionable acts or conduct alleged in Plaintiffs' Complaint.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:**
(Estoppel)

93. Plaintiffs and alleged members of their proposed class are barred from seeking the relief requested by the doctrine of estoppel.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:**
(Laches)

94. That Plaintiffs and alleged members of their proposed class's undue delay in seeking relief against the Defendant bars them from recovery against the Defendant under the doctrine of laches.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:**
(Failure to Join)

95. That Plaintiffs have failed to name or join an indispensable party or parties to the present action pursuant to Rule 19 of the *Federal Rules of Civil Procedure*, including but not limited to certain persons or entities who may appear in the chain of title on the right-of-way grants, licenses, easements, or other instrumentation conveying a property interest in the subject right-of-way.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:**
(Release)

96. That Plaintiffs' claims and those of Plaintiffs' proposed class members are barred by their release of such claims.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:**
(Recovery Limited)

97. Plaintiffs' claims and those of Plaintiffs' proposed class members are limited by any recovery received directly or indirectly from any person or entity for the alleged taking of their alleged property interest, including the United States.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:**
(Governmental Immunity/Tort Claims Act)

98. The Defendant, The Beaufort-Jasper Water & Sewer Authority, is a governmental entity as defined by South Carolina Code Ann. § 15-78-30 and as such is immune from liability for any tort except as specifically waived by the South Carolina Tort Claims Act pursuant to § 15-78-60. No award for damages under Chapter 78 shall include punitive or exemplary damages or prejudgment interest or exceed the statutory limits contained therein. South Carolina Code Ann. Sec. 15-78-120.

**FURTHER ANSERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANTALLEGES:**
(Set Off)

99. To the extent the Plaintiffs may have settled their claims for alleged damages with certain parties, the Defendant is entitled to credit in the amount of any such settlement heretofore or hereafter made between the Plaintiffs and any such party.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THE
DEFENDANT ALLEGES:**
(Reservation and Non-Waiver)

100. The Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as are consistent with the *Federal Rules of Civil Procedure*.

WHEREFORE, having fully answered Plaintiffs' Complaint subject to any motions or other pleadings, and having asserted the above affirmative defenses, the Defendant, The Beaufort-Jasper Water & Sewer Authority prays that Plaintiffs' Complaint be dismissed in its entirety with prejudice and that the Court award reasonable attorney's fees to the Defendant for defending this matter together with such other relief as the Court deems proper.

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Charleston, South Carolina