

## FOR IMMEDIATE RELEASE

### Phase 2 BERT Pollution Audit: \$0 Railroad clean up claim vs. \$24 M+ taxpayer exposure

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**BONITA SPRINGS, Fla.** — Official transaction documents and environmental protocols for the proposed \$28.56 million Bonita Estero Rail Trail (BERT) acquisition reveal that the seller, Seminole Gulf Railway, is transferring the 5.5-mile corridor under an "AS-IS" clause that claims \$0 in railroad cleanup liability, while standard FDEP/EPA remediation guidelines project \$12.5M to \$24M+ in site cleanup costs.

A forensic audit conducted by the Lee County Taxpayers Association ([usataxfighters.org](http://usataxfighters.org)) highlights severe contractual restrictions governing the Phase 2 environmental testing protocol (Exhibit "B"). The testing scope—controlled directly by the seller and Trust for Public Land—prohibits testing for common dangerous railroad contaminants, limits soil borings to a 6-inch surface cap, and enforces a 30-day review window that forces local taxpayers to accept full financial exposure.

*"Taxpayers are being set up for an immense financial liability trap," said Dave Jaye, Lead Researcher and Chairman of the Lee County Taxpayers Association. "The Railroad claims \$0 in pollution cleanup costs under an 'AS-IS' clause, while standard FDEP and EPA cleanup rules estimate soil excavation and site remediation alone will cost between \$12.5 million and \$24 million. Our position is non-negotiable: Polluter pays, not taxpayers."*

### KEY AUDIT FINDINGS: RESTRICTED TESTING & FINANCIAL EXPOSURE

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- **Prohibited Railroad Chemicals:** Contractual rules prohibit laboratory testing for common rail toxins, including Diesel Fuel/BTEX (Total Petroleum Hydrocarbons), Volatile Organic Compounds (VOCs) and chlorinated solvents, carcinogenic creosote leachates, heavy metals (copper, chromium, cadmium, nickel, mercury), and organochlorine herbicides.
- **Mathematical Hotspot Dilution:** Exhibit "B" mandates composite sampling, blending five discrete soil borings into a single container. Mixing a toxic hotspot (e.g., 10.0 mg/kg arsenic) with four clean samples (0.5 mg/kg) artificially reduces reported levels to 2.4 mg/kg, masking localized soil contamination from regulators.
- **Omitted Sidetracks & City Directory Search:** The Phase 1 assessment omitted a standard historical City Directory search, ignoring adjacent commercial polluters along West Terry Street, including the Tisch Laundry chlorinated solvent plume. Furthermore, prime industrial sidetracks—including Old 41, Terry Street, Causeway Lumber, Builder Marts, and Depot Park (AX 987.4)—were skipped in targeted deep-core testing.
- **City Environmentalist Excluded:** Official municipal correspondence dated September 11, 2026, from Planning & Zoning Manager Jacqueline Toemmes Genson confirms that City Environmentalist Laura Gibson was completely excluded from reviewing environmental assessments or participating in discussions regarding BERT.
- **Active Deed Restrictions:** Recorded land records (Lee County Instrument #2019000150246) reveal that CSX Transportation encumbered the rail bed with binding covenants in gross strictly prohibiting

public parks, hiking or biking trails, and groundwater extraction. Overturning these restrictions in court will cost an estimated \$250,000 to \$750,000 in legal fees across an 18-to-36-month litigation timeline.

## COMPARATIVE COST AUDIT SUMMARY

| COST & COMPLIANCE CATEGORY                     | SELLER / EXHIBIT "B" CLAIM                | FULL FDEP / EPA CLEANUP (62-780)        |
|------------------------------------------------|-------------------------------------------|-----------------------------------------|
| Land Purchase Price / Property Appraiser Value | \$28,565,723                              | Assessed Value: < \$380,000             |
| Railroad Stated Cleanup Liability              | \$0 ("AS-IS" Transfer to City)            | \$0 (Polluter Pays Mandate)             |
| Soil Testing Depth & Sample Handling           | Capped at 0–6 Inches; 5-into-1 Composite  | 0–5 ft Depth Cores; Discrete Hotspots   |
| Prohibited Chemical Testing                    | TPH, VOCs, Creosote, Heavy Metals         | Full TCL/TAL (VOCs, SVOCs, Metals)      |
| Skipped Sidetracks & Adjacent Directory Search | SKIPPED (Old 41, Terry St, Tisch Laundry) | \$15,000 – \$35,000 (Directory Search)  |
| Legal Fees & Litigation to Challenge CSX Deed  | \$0 (Ignored by Council)                  | \$250,000 – \$750,000 (18–36 Mo. Trial) |
| Actual Soil Remediation & Excavation           | \$0 (Hidden via Surface Cap)              | \$12,500,000 – \$24,000,000 (Deep Dig)  |
| <b>TOTAL ESTIMATED TAXPAYER EXPOSURE</b>       | <b>\$103,340,723 – \$114,715,723</b>      | <b>\$120,880,723 – \$145,900,723+</b>   |

## MANDATORY ACTION REQUIRED FOR CITY COUNCIL

The Lee County Taxpayers Association demands that City Council suspend all acquisition votes at the upcoming November 04, 2026 meeting (5:30 PM, City Council Chambers, 9101 Bonita Beach Rd) until:

- 1. Reject "AS-IS" Terms:** Enforce the "Polluter Pays" principle and require a seller-funded Phase 3 remediation cap prior to closing.
- 2. Fund City Directory Search:** Allocate \$15,000–\$35,000 for a historical directory search covering adjacent commercial polluters, including the Tisch Laundry solvent plume.
- 3. Demand CSX Title Release:** Require a recorded, executed release from CSX Transportation extinguishing the deed prohibition on biking and hiking trails.
- 4. Lift Testing Restrictions:** Replace Exhibit "B" composite rules with discrete deep borings (0–5 ft) analyzing for TPH, VOCs, Heavy Metals, Creosote, and Herbicides across all mainlines and sidetracks.
- 5. Re-Engage Municipal Environmental Staff:** Formally re-assign City Environmentalist Laura Gibson to perform an independent municipal review of all due diligence documents.

For complete source documents, deed records, and watchdog reports, visit [usataxfighters.org/issues](https://usataxfighters.org/issues).

## MEDIA & RESEARCH CONTACT

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### Dave Jaye, Chairman & Lead Researcher

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## REFERENCE INDEX & SOURCE DOCUMENTS

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- **LCTA Audit Memo:** EXECUTIVE SUMMARY major new title discovery.docx, Dave Jaye (usataxfighters.org).
- **CSX Quitclaim Deeds:** Lee County Inst. #2019000150246 & #2018000262032 (CSX to SGLR).
- **City Attorney Correspondence:** Stephen Richard and Rooney chain.docx (F.S. 810.09 & Photo Scrub).
- **Municipal Staff Exclusion Record:** Email from Jacqueline Genson, AICP (Sept 11, 2026) regarding Laura Gibson.
- **Track Trespassing Evidence:** Bonita Springs Depot Park Photos 3, 5, 10.
- **Title & Legal Analysis:** Tim Deaton Property & Covenants Legal Review.
- **Meeting Notice:** Bonita Springs City Council Public Notice (Nov 04, 2026).