THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

John Hamilton Smith, Special Referee

Case No. 2010-CP-40-8943R

Columbia Venture, LLC, Appellant,

v.

Richland County,

Respondent.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant Columbia Venture, LLC ("Columbia Venture") petitions the Court for a rehearing of the opinion filed in this case on August 12, 2015. In its opinion, the Court affirmed various findings of the trial court that Richland County's actions did not effect either a *per se* physical taking or a *Penn Central* regulatory taking of Columbia Venture's property ("Property") without the payment of just compensation. Columbia Venture respectfully submits that the Court overlooked or misapprehended the following points.[1]

[1] Columbia Venture incorporates its earlier briefs by reference.

Argument for Rehearing

I. A regulation that takes away a property owner's right to build on property that is suitable for building under state law should be analyzed as a *per se* physical taking, especially when the prohibitions on building upset the carefully crafted building standards in the National Flood Insurance Program ("NFIP") and are not applied equally to all affected landowners.

Pursuant to authority granted to it under the National Flood Insurance Act and the implementing regulations of the NFIP, FEMA mapped a 70% portion of Columbia Venture's Property as being in the regulatory floodway of the Congaree River in Richland County. The NFIP does not prohibit building in the regulatory floodway, and neither does any other federal regulation. However, in its ordinances, Richland County does prohibit building in the regulatory floodway for Columbia Venture, but not for its immediate neighbors, Heathwood Hall Episcopal School ("Heathwood Hall") and the City of Columbia's wastewater treatment plant. The NFIP does not prohibit constructing or improving a levee located in the regulatory floodway, but Richland County's ordinances do specifically prohibit this type of construction and also contain no possibility of a variance from these onerous burdens. Though Columbia Venture's Property is otherwise suitable for building under South Carolina law, Richland County's passage of the applicable ordinances means that Columbia Venture can no longer build on its Property, can no longer improve its existing system of levees ("Levees") to protect its Property, and has no avenue for relief.

In the abstract, the takings issue here is as follows: when a unit of local government, participating in the NFIP, prohibits building in regulatory floodways and eliminates any provision for a variance but, at the same time, exempts two large landowners that are politically favored, and FEMA subsequently expands a regulatory floodway to include vast areas of property on which building could take place under state law and the NFIP regulations using no-

rise engineering and construction, should the actions taken by the local government be analyzed as a *per se* physical taking or a regulatory *Penn Central* taking? The issue here appears in sharp relief, assuming the related hypothetical where a unit of local government adopts an ordinance to make all regulatory floodways public rights of way. If, at the time the ordinance is adopted, all regulatory floodways are confined to the channel of navigable rivers and streams, no issue under the Takings Clause would arise because navigable rivers and streams are considered public rights of way under background principles of property law. *See Kaiser Aetna v. United States*, 444 U.S. 164, 171-72 (1979); S.C. Const. art. XIV, § 4 ("All navigable waters shall forever remain public highways free to the citizens of the State and the United States ...."); S.C. Code Ann. § 49-1-10 (2008) ("All streams which have been rendered or can be rendered capable of being navigated by rafts of lumber or timber by the removal of accidental obstructions and all navigable watercourses and cuts are hereby declared navigable streams and such streams shall be common highways and forever free ....").

However, where a unit of local government has prohibited building in a regulatory floodway, and where FEMA expands the regulatory floodway to include vast areas of private property, a *per se* physical taking does occur, because the right to exclude others, including protecting one's property from flooding, and the right to build on one's property, both of which are background principles of common law property rights, have been taken from the landowner by governmental action.

"[T]he right to exclude others" is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Kaiser Aetna*, 444 U.S. at 176. A regulation on use that takes away a property owner's right to exclude others is analyzed as a *per se* physical taking. *Nollan*, 483 U.S. at 831; *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419,

433 (1982); *Pressley v. City of Charlottesville*, 464 F.3d 480, 490 (4th Cir. 2006) (Allegations that city posted a map on its official website showing the public Rivanna Trail crossing plaintiff's property stated a claim for a physical takings requiring plaintiff to pursue inverse condemnation claim in state court before bringing a § 1983 claim in federal court.).

In addition, building on one's own property is a basic, familiar, and inherent use of property. "[T]he right to build on one's own property–even though its exercise can be subjected to legitimate permitting requirements–cannot remotely be described as a 'governmental benefit.'" *Horne v. Dep't of Agric.*, 135 S. Ct. 2419, 2430 (2014) (quoting *Nollan v. Calif. Coastal Comm'n*, 483 U.S. 825, 834, n.2 (1987)).[2] A regulation that takes away a property owner's right to build on property that is suitable for building under state law should also be analyzed as a *per se* physical taking.[3] *See Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2600 (2013) (stating that government action that transfers an interest in property from the landowner to the government "would amount to a *per se* taking similar to the taking of an easement or a lien"). Like the right to exclude others, the right to build on one's property inheres in the title to property and is of equal dignity in a property owner's inherent rights.

In the present case, FEMA determined that it was necessary to extend the regulatory floodway over land protected by the Levees to include a 1,320 feet-wide relief bridge in the

---

[2] Although *Horne* involved marketing orders for raisin growers and not land use, the United States Supreme Court's opinion contains a discussion of the different rules for *per se* physical takings and regulatory takings. *Horne*, 135 S. Ct. at 2425-2431.

[3] Columbia Venture could build on its Property under the existing zoning ordinance, which zoned 3,120.762 acres as D-1 (allowing, among other structures, agricultural buildings, single family residences, community service structures, churches, and schools all the while "recogniz[ing] that future demand for developable land [in the D-1 zoning classification] will generate requests for amendments in zone designation to remove land from the D-1 classification and place it into other more intensely developed classifications as a natural consequence of urban expansion"). (R. pp. 1392-93, 3644 § 26.62.1, 4848). The remaining acreage was zoned RU-Rural, M-1 light industrial, and RS-3 single family residential, all of which contemplate building structures on such property. (R. pp. 1394-96, 3643, 4848).

embankment of Interstate Highway 77 located over one mile from the Congaree River. The result was that vast areas of land were included within the regulatory floodway that were suitable for building under state property law and the NFIP regulations using no-rise engineering and construction. Indeed, Heathwood Hall, Columbia Venture's immediate neighbor, has used the NFIP standard of no-rise engineering and construction to build a new gymnasium, middle school, cafeteria, and chapel within the newly expanded regulatory floodway. Because Richland County's floodplain management ordinance exempts Heathwood Hall and the City of Columbia's wastewater treatment plant from the prohibition against building, that ordinance may not be considered a background principle of property law. "A regulation or common-law rule cannot be a background principle for some owners but not for others." *Palazzolo v. Rhode Island*, 533 U.S. 606, 630 (2001). Because it is not a background principle of property law, Richland County's ordinance must be viewed as what it is: a targeted deprivation of the fundamental right of property ownership to build on one's property.

The same *per se* physical takings issue is presented when a unit of local government prohibits improving an already built system of levees should FEMA ever include them in a regulatory floodway. Levees may be improved under state law, as a property owner has a common law right in South Carolina to exclude surface waters from his property. *See Lawton v. S. Bound R.R. Co.*, 61 S.C. 548, 552, 39 S.E. 752, 753 (1901). Levees may also be improved under the NFIP regulations, even if located in a regulatory floodway, on a no-rise showing. 44 C.F.R. §§ 65.3(d)(3), 65.10. The County's floodplain management ordinances completely eliminated Columbia Venture's right to improve its Levees and protect its Property from

flooding,[4] as well as prevented Columbia Venture from taking the further step of seeking certification of the Levees under the NFIP regulations. In *United States v. Sponenbarger*, 308 U.S. 256 (1939), cited by this Court, the United States Supreme Court stressed that Mrs. Sponenbarger retained the ability to protect her property through levee construction—a finding that stands in sharp contrast to Richland County's specific and deliberate elimination of that ability for Columbia Venture. *Sponenbarger*, 308 U.S. at 268 (Sponenbarger's '"right of self defense' against floods through locally built levees has not been taken away.").

In its opinion, this Court states: "[W]e find Richland County's adoption of floodway development restrictions and the County's required utilization of FEMA flood data do not constitute a taking of any sort." Shearouse Advance Sheet No. 31, Aug. 12, 2015, at 53.[5] In so stating, this Court failed to recognize that the County's ordinances use a FEMA regulatory floodway line intended for one purpose (prohibiting structures on the river side of that line unless they are engineered to meet the NFIP's non-displacement standards) and transform it into a line that is altogether different (prohibiting all building on the river side of that line regardless of whether such building meets the NFIP standards, further prohibiting the owner from exercising its common law right to avoid the regulatory floodway designation through levee construction and improvement, and further denying any possibility of a variance) all while granting an exemption from all of these prohibitions to two politically favored property owners. Richland County thus created an inconsistent federal/local regulatory regime that will necessarily prohibit a property owner from building on land that is suitable for development under state law and

[4] While Columbia Venture can maintain its Levees under the County's ordinances, such ability is of little practical significance because FEMA concluded that the Levees in their currently maintained condition will fail. (R. pp. 3480-81, 5742, 5874). Without the ability to improve the Levees to make them higher or wider in places, Columbia Venture is condemned to have its Property physically invaded by floodwaters during major floods.

[5] All citations to the Court's August 12, 2015 opinion are to Shearouse Advance Sheet No. 31.

NFIP regulations using no-rise engineering whenever FEMA expands a regulatory floodway to include land that is suitable for such building. Such prohibition results in a *per se* physical taking for which the County must pay just compensation.

II. The Court erred in failing to apply *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001) to analyze the potential takings claim of Burwell Manning in relationship to Columbia Venture's takings claim.

To better focus the Court's attention on the issues raised under *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), Columbia Venture includes an analysis that assumes that Burwell Manning had retained title to the Property. Final Brief at 78-80. In fact, Mr. Manning continued to own an interest in the property as a member of Columbia Venture after he deeded the property to Columbia Venture on February 19, 1999. In its opinion, this Court concludes that Richland County's ordinances on that date prohibited construction in a regulatory floodway (or could be so interpreted). "Thus, FEMA's determination of whether an area of land is within a regulatory floodway (versus the larger floodplain) essentially determines whether development will be permitted." Shearouse Advance Sheet, at 43.

If under this federal/local regulatory regime, FEMA, as it did in this case, expands the regulatory floodway to include vast areas that are suitable for no-rise construction, should the County be expected to compensate the landowner if it wishes to stick by its prohibition against building in a regulatory floodway, or is the landowner essentially without a remedy? And if the landowner has a claim to be compensated by the County under such circumstances, is that claim transferred to a new owner during a regulatory challenge to FEMA's flood mapping?

In its opinion, this Court states that it did not find that Columbia Venture's notice of the impending floodway designation prior to purchase was dispositive but considered the timing and sequence of Columbia Venture's notice of the regulatory imposition probative and material to

the Court's analysis of the investment backed expectations issue under *Penn Central*. The Court cited Justice O'Connor's concurring opinion in *Palazzolo*, noting that "the regulatory regime in place at the time the claimant acquires the property at issue helps to shape the reasonableness of those expectations." Shearouse Advance Sheet, at 61 n. 20 (quoting 533 U.S. at 633) (O'Connor, J. concurring). The majority opinion in *Palazzolo,* however, includes the following language that appears to contemplate the facts Burwell Manning faced at the time he deeded the property to Columbia Venture:

> A challenge to the application of a land-use regulation, by contrast, does not mature until ripeness requirements have been satisfied, under principles we have discussed; until this point an inverse condemnation claim alleging a regulatory taking cannot be maintained. *It would be illogical, and unfair, to bar a regulatory takings claim because of the post-enactment transfer of ownership where the steps necessary to make the claim ripe were not taken, or could not have been taken, by the previous owner.*
>
> There is controlling precedent for our conclusion. *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 97 L. Ed. 677, 107 S. Ct. 3141 (1987), presented the question whether it was consistent with the Takings Clause for a state regulatory agency to require oceanfront landowners to provide lateral beach access to the public as a condition for a development permit. The principal dissenting opinion observed it was the policy of the California Coastal Commission to require the condition, and that the Nollans, who purchased their home after the policy went into effect, were "on notice that new developments would be approved only if provisions were made for lateral beach access." *Id.* at 860 (Brennan, J., dissenting). A majority of the court rejected the proposition. "So long as the Commission could not have deprived the prior owners of the easement without compensating them," the Court reasoned, "the prior owners must be understood to have transferred their full property rights in conveying the lot." *Id.* at 834, n. 2.

Palazzolo, 533 U.S. at 628-29 (emphasis added). In his concurring opinion in *Palazzolo*, Justice Scalia also included the following:

> In my view, the fact that a restriction existed at the time the purchaser took title (other than a restriction forming part of the

> "background principles of the State's law of property and nuisance," *Lucas v. South Carolina Coastal Council*, 505 U. S. 1003, 1029, 120 L.Ed.2d 798, 112 S. Ct. 2886 (1992)) should have no bearing upon the determination of whether the restriction is so substantial as to constitute a taking. The "investment backed expectations" that the law will take into account do not include the assumed validity of a restriction that in fact deprives property of so much of its value as to be unconstitutional. Which is to say that a Penn Central taking, *see Penn Central Transp. Co. v. New York City*, 438 U. S. 104, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978), no less than a total taking, is not absolved by the transfer of title.

Id. at 637 (Scalia, J. concurring).

It its opinion, this Court recounts the reasons why Burwell Manning did not have the resources to mount an administrative and judicial challenge to FEMA's preliminary and final floodway determinations.[6] Beginning in June 1998, FEMA issued a series of revised preliminary flood maps that varied the location of the regulatory floodway on Mr. Manning's property that did not become final until August 20, 2001, and did not become effective in Richland County until six months later on February 20, 2002. During this process, it is undisputed that the County, beginning in May 1999, elected to enforce the 1994/1995 FIRM, which did not include

[6] In its opinion, this Court states that "Columbia Venture appealed FEMA's findings in federal court, but ultimately, was unsuccessful." Shearouse Advance Sheet, at 51. This statement is not accurate. The Fourth Circuit remanded Columbia Venture's appeal under 42 U.S.C. § 4104(g) and 44 C.F.R. § 67.12 to United States District Judge Joseph Anderson. On the eve of trial, FEMA and Columbia Venture reached a settlement whereby FEMA, in exchange for Columbia Venture's agreement to dismiss its judicial appeal and withdraw its petition for a writ of *certiorari* with the United States Supreme Court to review the Fourth Circuit's decision reversing Judge Seymour's order vacating FEMA's flood elevation determinations for failure to follow statutory requirements, agreed to pay Columbia Venture $75,000 and begin remapping the land area subject to Columbia Venture's judicial challenge within one year. (R. pp. 5926-5929). The most relief that Columbia Venture could have obtained from Judge Anderson was an order directing FEMA to remap the Congaree floodplain. Judge Anderson did not have the authority to determine flood elevations or floodway lines. 42 U.S.C. § 4104; 44 C.F.R. § 67.12. FEMA's remapping of Richland County is almost to the point where FEMA is ready to publish its revised preliminary determinations for notice and comment. FEMA's revised preliminary determinations, which are a matter of public record, have moved the regulatory floodway of the Congaree floodplain in Richland County back to the riverside toe of the Levees. Map Panel 367, April 30, 2015 Revised Preliminary FIRM, Richland County and Incorporated Areas.

the Levees in a regulatory floodway, but the County administrator, also beginning in May 1999, decided not to issue any permits to improve the Levees until FEMA had finished its flood mapping. During that period of delay, the County adopted a new ordinance that prohibited making levees located in a regulatory floodway wider or taller. This prohibition became applicable to the Levees also on February 20, 2002. Thus, the County took away a property right to improve the Levees that existed prior to February 20, 2002. Indeed, this Court in its opinion recognized that Mr. Manning had the property right to improve the Levees prior to the sale to Columbia Venture. Shearouse Advance Sheet, at 46. The County's prohibition also precluded Columbia Venture from taking advantage of any of the NFIP regulations governing the certification of levees.

III. The Court's suggestion that Columbia Venture's remedy lies with FEMA and not with Richland County conflicts with federal court decisions.

Richland County adopted ordinances prohibiting construction in a regulatory floodway and failed to compensate Columbia Venture when FEMA expanded the regulatory floodway to include vast areas of Columbia Venture's Property that were otherwise suitable for no-rise construction. In its opinion, this Court states that "the Special Referee found that the designation of Columbia Venture's property as a regulatory floodway (by FEMA, not Richland County) caused a significant decrease in the property's value." Shearouse Advance Sheet, at 52. This Court also states: "Thus, it was FEMA's floodway determination that Columbia Venture claims constitutes the alleged taking–not any action by Richland County." *Id.*[7] This Court also lists

[7] Columbia Venture does not so claim. Columbia Venture instead claims that the County's official adoption of FEMA's regulatory floodway effective February 20, 2002, combined with the ordinances the County enacted in April 2001 prohibiting levee construction on levees located in a floodway and codifying the interpretation of "no impede" as "no build" in that same ordinance effected the taking of Columbia Venture's Property without the payment of just compensation.

various reasons why, as a practical matter, a local government has no alternative but to participate in the NFIP, all of which suggest that Columbia Venture's exclusive remedy lies with FEMA, not Richland County. Other courts, however, have rejected these arguments and held that a landowner does not have a takings claim against FEMA because the NFIP is a voluntary program. *E.g. Adolph v. FEMA*, 854 F.2d 732 (5th Cir. 1988). Also, FEMA did not require Richland County to prohibit building in a regulatory floodway in order to participate in the NFIP. *See Stueve Bros. Farms, LLC v. United States*, 737 F.3d 750, 758 & n.3 (Fed. Cir. 2013) ("In this case, however, neither the Corps of Engineers nor any other federal entity prohibited the plaintiffs from using their property as they chose. The only restraints on their right to use their property were imposed by local governmental entities .... [T]he plaintiffs have brought a parallel action in California Superior Court, alleging a taking of the same property that is at issue in this case by the Orange County Flood Control District and other local governmental entities.").

Moreover, even in the face of the FEMA regulatory floodway designations but without Richland County's ordinance, Columbia Venture would have been able to exercise its common law rights to build in accordance with the NFIP standards and/or to remove its Property from the regulatory floodway in accordance with NFIP standards. It was the County, and the County alone, that took away those fundamental property rights.

IV. The Court erred in its analysis of the magnitude or character of the burden placed on Columbia Venture as compared to other floodway acreage subject to Richland County's ordinances and compared to Columbia Venture's two immediate neighbors, Heathwood Hall and the City of Columbia, both of whom are exempted from the ordinances burdening Columbia Venture's regulatory floodway property.

In considering the character of the governmental action under the *Penn Central* analysis, the United States Supreme Court has instructed lower courts to consider the magnitude or

character of the burden a particular regulation imposes on property rights and how any regulatory burden is distributed among property owners. To this point, this Court in its opinion stated that the County's "ordinance is applicable to all property located within a floodplain,[8] which encompasses over 16,500 acres throughout the county." Shearouse Advance Sheet, at 62. This statement is demonstrably not accurate. The County's ordinances do not apply to the 120 acres belonging to the City of Columbia or the entire campus of Heathwood Hall, both immediate neighbors of Columbia Venture and both located entirely within the regulatory floodway. The combined acreage of these three landowners approximates 20% of the total 16,516 acres mentioned by the Court. In addition, some portion of the total floodway acreage lies within municipalities[9] not subject to the County's ordinances. (R. p. 3175). The percentage of floodway acreage subject to the County's ordinances owned by Columbia Venture, Heathwood Hall, and the City of Columbia is thus much greater than 20%.

V. The Court erred in failing to recognize and consider the adjudicative decisions made to include a specific piece of property in a regulatory floodway as compared to the legislative decisions made with regard to other land-use regulations. The Court further erred in failing to consider Columbia Venture's conservation easement argument.

A regulatory floodway differs from other land-use regulations in that it requires a landowner to reserve a portion of his or her land to serve a public purpose– to discharge the base flood without obstructions which would raise the base flood elevation at any point in the floodplain. The width and area of the regulatory floodway will necessarily vary from one landowner to another and impact different landowners differently. For this reason, a regulatory

---

[8] This appears to be a typographical error, as the record evidence is that the flood*way* acreage, not the flood*plain* acreage, in Richland County has been measured at 16,516 acres. (R. p. 3175).

[9] As of August 20, 2001, the following municipalities (or at least portions of these municipalities) were located within the total acreage of Richland County: the Town of Arcadia Lakes, the City of Columbia, the Town of Eastover, the City of Forest Acres, and the Town of Irmo. (R. p. 4295).

floodway differs in kind from other land-use regulations that are "essentially legislative determinations classifying entire areas of [a unit of local government]." *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994). By contrast, a regulatory floodway is an adjudicative decision that relates to a specific piece of property. *See id.* Accordingly, the magnitude and burden of a regulatory floodway will not be distributed equally and in the same manner among affected landowners. But to the extent that the regulatory floodway is confined by FEMA to the channel of the river and the land area immediately adjacent to the river that is not suitable for building, the state's background principles of the law of property and nuisance should ordinarily be expected to avoid any issue of takings liability, even with a no-build regulatory floodway. But because, and again depending on the topography of the floodplain, the regulatory floodway may include land that is suitable for building, because the NFIP allows building in the regulatory floodway using no-rise construction. Even so, the regulatory floodway resembles an easement in that the landowner is required to reserve a land area unique to his or her property that can be readily identified by reference to a flood map available in the public records of the local government. The taking issues raised by a no-build regulatory floodway are more appropriately analyzed under the United States Supreme Court's *per se* physical takings cases. Also, a no-build floodway is indistinguishable from, and the functional equivalent of, a conservation easement, the direct appropriation of which by a local ordinance would require just compensation.

VI. The Court erred in failing to apply the appropriate standard of review in reviewing the Special Referee's grant of summary judgment to Richland County on Columbia Venture's *per se* physical takings claims.

The Special Referee granted summary judgment to the County on Columbia Venture's *per se* physical takings claims. In its opinion, this Court discusses Columbia Venture's physical

takings claims under the heading "Flowage Easement" and does not acknowledge that it is reviewing the grant of a motion for summary judgment to the County. Columbia Venture did not claim that the County had acquired a flowage easement across its Property by actual flooding. Rather, Columbia Venture claimed that its Property has been burdened by a servitude directly appropriated by County ordinance. *Koontz*, 133 S. Ct. at 2600; *Nollan*, 483 U.S. at 832; *Dolan*, 512 U.S. at 384.

Nevertheless, in its summary judgment materials submitted to the Special Referee, Columbia Venture included scientific and technical information that its Levees in their present state will fail in the event of a major flood and convey floodwaters across Columbia Venture's Property and that, accordingly, FEMA found it necessary to create a hydraulic flow path through the Levee breaches that FEMA was convinced would occur all the way to the large I-77 relief bridge, which is located over one mile from the river and that the County, by taking away Columbia Venture's right to improve its Levees (which right existed prior to February 20, 2002), ensured that Columbia Venture's Property will flood during the event of a major flood. In FEMA's September 26, 2000 technical report, included in the summary judgment materials (R. pp. 5739, 5742, 3464-3498), FEMA describes in detail the extensive two-dimensional hydraulic studies it commissioned to assess flooding on the Congaree floodplain. Nowhere else in Richland County did FEMA use sophisticated two-dimensional hydraulic models to determine floodway encroachment lines. FEMA also describes in detail the geotechnical engineering it used to assess the strength of the Levees. Again, this type of sophisticated geotechnical engineering was not used in any other area in Richland County.

These scientific and technical materials raise issues of material fact that go well beyond the mere apprehension of flooding and led FEMA to conclude, and remained convinced, that the

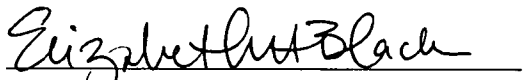
Levees would fail in two, possibly three, discrete weak areas, each 120 feet wide, and convey substantial amounts of water landward of the Levees during a base flood and that it was necessary to extend the regulatory floodway to include the large 1,320 feet-wide relief bridge in the embankment of I-77. (R. pp. 3481, 5872-5874). At a minimum, the summary judgment materials submitted to the Special Referee raised genuine issues of material fact on whether the actions of the County combined with the final determination of FEMA, which was adopted by the County, resulted in a hydraulic flow corridor being reserved across Columbia Venture's Property for the purpose of conveying floodwaters in the event of major floods. Whether the hydraulic flow corridor will ever actually convey floodwater is beside the point. The point is that Columbia Venture's Property has been burdened by a servitude just in case it is needed to serve that public purpose at some future date. This distinguishes Columbia Venture's case from the facts in *Stueve Bros.*, 737 F.3d at 758, where "neither the Corps of Engineers nor any other federal entity prohibited the plaintiffs from using their property as they chose."

Conclusion

For these reasons and those contained in its Appellant's Brief, Reply Brief, Reply Brief to Amicus Curiae Association of State Floodplain Managers, and Reply Brief to Amicus Curiae Brief of the South Carolina Association of Counties, Appellant Columbia Venture, LLC urges the Court to grant rehearing in this matter.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Manton M. Grier, SC Bar No. 2265
James Y. Becker, SC Bar No. 64661
Elizabeth H. Black, SC Bar No. 76067

1201 Main Street, 22nd floor (29201)
Post Office Box 11889
Columbia, South Carolina 29211-1889
803.779.3080

Attorneys for Appellant Columbia Venture, LLC

September 11, 2015

DM: 4181449 v.6

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

John Hamilton Smith, Special Referee

Case No. 2010-CP-40-8943R
Appellate Case No. 2013-001067

Richland County, Respondent,

v.

Columbia Venture, LLC, Appellant.

CERTIFICATE OF SERVICE

This is to certify that I caused a copy of the foregoing **Petition for Rehearing** to be served on the following individuals in the manner expressed below and addressed as follows:

Via U.S. Mail & Email:
M. McMullen Taylor, Esq.
Mullen Taylor LLC
1230 Richland Street
Columbia, SC 29201
mmt@MullenTaylorLLC.com

Via U.S. Mail & Email:
Prof. John D. Echeverria
Vermont School of Law
164 Chelsea Street
PO Box 96
South Royalton, VT 05068
jecheverria@vermontlaw.edu

Via U.S. Mail and Email:
Pope D. Johnson, III, Esq.
Attorney at Law
1230 Richland Street
Columbia, SC 29201
pope@popejohnsonlaw.com

Via U.S. Mail & Email:
John S. Nichols, Esq.
Bluestein Nichols Thompson
Delgado, LLC
PO Box 7965
Columbia, SC 29202
jnichols@bntdlaw.com

Via U.S. Mail and Email:
Robert E. Lyon, Jr., Esq.
John K. DeLoache, Esq.
Alexander W. Smith, Esq.
James F. Knox, Esq.
SC Association of Counties
PO Box 8207
Columbia, SC 29202
blyon@scac.sc
jdeloache@scac.sc
asmith@scac.sc
jknow@scac.sc

September 11, 2015

Louisa H. Gantt

Louisa H. Gantt