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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS Case No. 2019-CP-10-0717
City of Folly Beach, Coastal Conservation League, Save Folly Beach, Inc., John Collins, Matt Napier, Paula Stubblefield, Troy Bode, and Carol Kruer, Plaintiffs, vs. State of South Carolina, Amy Connelly, Jeffrey H. Morris, Michael Vandaele, Stephen Rawe, Juan Enterprises, LLC, Juanita A. Wright, Debbie's Folly, LLC, and Vernon Staubes. Defendants.	**ORDER GRANTING DEFENDANT'S MOTIONS TO DISMISS AND MOTIONS FOR JUDGMENT ON THE PLEADINGS**

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SC Court of Appeals

This matter comes before this Court on the Rule 12 (b) Motions to Dismiss filed by Defendants Stephen Rawe, Jeffrey H. Morris, Juan Enterprises, LLC, Juanita A. Wright, Debbie's Folly, LLC, Amy Connelly and Vernon Staubes, and the Motions for Judgment on the Pleadings under Rule 12 (c) filed by Defendants State of South Carolina and Amy Connelly (collectively, "Defendants' Motions"). Counsel for all parties appeared before this Court on January 28, 2020 for a hearing on the motions. For the reasons set forth below, the Court grants Defendants' Motions, dismissing this case *with prejudice*.

FINDINGS OF FACT

The action arises out of the 2018 beach renourishment project at Folly Beach. Plaintiffs are the City of Folly Beach, the Coastal Conservation League, and various private homeowners who own properties on Folly Beach. Defendants are the State of South Carolina (the "State") and private owners of undeveloped beachfront lots on Folly Beach (collectively, the "Defendant Owners"). Plaintiffs seek an adjudication that title to at

least a portion of the Defendant Owners' lots lies with the State (Complaint, ¶¶36-37), as well as a prohibition of any development of said property (*Id.*,¶42-46). Plaintiffs allege that "Folly Beach is one of the most sand-starved and erosive beaches on South Carolina's coast" as a result of "manmade erosion caused by the Charleston Harbor jetties." *Id.*, ¶ 15. Plaintiffs further allege that "Folly Beach is reliant on a continual, repeating cycle of renourishment" conducted by the U.S. Army Corps of Engineers and that such renourishment is publicly funded. *Id.*, ¶15, 18. In fact, "Folly Beach is reliant on a continual, repeating cycle of renourishment. This has been the established mode of operation on Folly for many years ... " *Id.*, ¶ 16.

The Complaint alleges the Defendant Owners own undeveloped "super-beachfront" lots on Folly Beach (hereinafter, the "Property"). Complaint, ¶ 11. The Complaint also alleges the Defendant Owners have taken "affirmative steps to pursue development" of their lots. *Id.* It is unclear from the Complaint whether all of the Property is platted "seaward of existing oceanfront development," *Id.*, ¶ 12, but the Court infers this fact for purposes of Defendants' Motions. In any event, the Complaint alleges the Property is seaward or beyond the bounds of "typical oceanfront development." *Id.*, ¶ 13.

Juxtaposed against these allegations stands the statutory and regulatory framework of beach renourishment, as overseen by the state and federal governments.[1] In accordance with Title V, Section 501(a), of the Water Resources Development Act, Public Law 99-662, 1986,

> "[t]he following works of improvement for the benefit of shoreline protection are adopted and authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports designated in this subsection, except as otherwise provided in this subsection.... Folly Beach, South Carolina. The project for shoreline protection Folly Beach, South Carolina: Report of the Chief of

[1] Consideration of this legislation in a Rule 12, SCRCP motion to dismiss is proper, as the legislation is a matter of public record.

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> Engineers, dated March 17, 1981, at a total cost of $7,040,000, with an estimated first Federal cost of $3,870,000 and an estimated first non-Federal cost of $3,170,000."

Moreover, Section 108 of Public Law 102-104, states: "The project for shoreline protection for Folly Beach, South Carolina, authorized by section 501(a) of the Water Resources Development Act of 1986 ... is modified to authorize the Secretary to construct hurricane and stormwater protection measures based on the Charleston District Engineer's Post Authorization Change Report dated May 1991[.]"[2]

Shoreline, hurricane and stormwater protection measures are necessary because Folly Beach is "an area in which the erosion of the beaches located in its jurisdiction is attributed to a federally authorized navigation project as documented by the findings of a Section 111 Study conducted under the authority of the federal Rivers and Harbors Act of 1968, as amended by the federal Water Resources Development Act of 1986 ...." S. C. Code Ann.§ 48-39-290(E).

In the Complaint, Plaintiffs focus on the development of the individual beachfront lots. Some lot owners have allegedly taken steps to pursue development. Complaint, ¶ 11. Some lot owners possess valid septic tank permits for their lots. *Id,* ¶ 21. Some lot owners have sought building permits on these lots. *Id.* Some lot owners "have demonstrated the intent to develop their property." *Id,* ¶ 22. According to the Complaint, development is imminent or already occurring. *Id,* ¶ 24. Plaintiffs have alleged the actual boundary line for these subject lots does not allow the development activity the Defendant Owners have allegedly pursued. *Id,* ¶ 39. Finally, Plaintiffs allege the Defendant Owners' development of their lots would cause irreparable injury to the Plaintiffs. *Id,* ¶ 41.

In their memorandum opposing the Motions to Dismiss, Plaintiffs expound on the

[2] This Act, specific to Folly Beach on the SC coast, does not otherwise apply to SC beachfront property.

alleged dangers of development of the Defendant Owners' "super-beachfront" lots. Plaintiffs argue the development of the Defendant Owners' Property diminishes the health and stability of the public beach. Plaintiffs' Response to Motions to Dismiss ("Plaintiffs' Response"), at p. 12. The individual Plaintiffs are worried about the development of seaward lots. *Id.*, at p. 18. In fact, Plaintiffs acknowledge the Defendant Owners are parties to this action only because they allegedly have taken steps to develop their lots. *Id.*, at p. 21. Finally, Plaintiffs note that this action exists solely to prevent private development on the public beachfront. *Id.*, at p. 24.

Plaintiffs acknowledge and concede that Folly Beach has ordinances in place to minimize the disturbance of the beach. Plaintiffs' Response, at p. 13. In fact, Folly Beach's Ordinance bans development seaward of the beach renourishment:

> All development shall maintain a minimum setback of 40 feet from the perpetual easement line or, where no perpetual easement line exists, the OCRM baseline. For the purposes of this subsection, ***PERPETUAL EASEMENT LINE*** shall mean the landward edge of the federal beach renourishment project by the Army Corps of Engineers.

Folly Beach Ord. §166.04-04(C)(l) (emphasis in original). Therefore, by the terms of its own ordinance, Plaintiff City of Folly Beach prohibits development of the Defendant Owners' lots within 40 feet of the beach renourishment. In this context of the applicable statutes, regulations, and ordinances, the Court will consider whether Plaintiffs have sufficient standing, whether they have alleged sufficient facts to constitute a cause of action, and whether they have failed to name necessary parties to this action.

STANDARD OF REVIEW

Where a plaintiff lacks standing, the Court must grant a Rule 12(b) (1) motion to dismiss, because the Court is without subject matter jurisdiction over the dispute. *Energy Research Found v. Waddell*, 295 S.C. 100, 367 S.E.2d 419 (1988). The Court should grant a

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Rule 12(b)(6) motion to dismiss if, after accepting all well-pleaded allegations in the complaint as true, a plaintiff has failed to allege any set of facts that would entitle him to relief. *See* Rule 12(b)(6), SCRCP; *see also Williams v. Condon,* 347 S.C. 227, 232-33, 553 S.E.2d 496,499 (Ct. App. 2001). The Court should grant a Rule 12(b)(7) motion to dismiss when the plaintiff fails to name a "necessary party under Rule 19, SCRCP," that is needed "for a just adjudication of the issues." *BancOhio Nat. Bank v. Neville,* 310 S.C. 323,326,426 S.E.2d 773,775 (1993); *see also Ex Parte Gov't Employee's Ins. Co. v. Goethe,* 373 S.C. 132, 137, 644 S.E.2d 699, 701 (2007) ("This Court has interpreted Rule 19, SCRCP to require that a party be a 'necessary party' to be joined in an action pursuant to the rule. 'A necessary party is one whose rights must be ascertained and settled before the rights of the parties to the action can be determined.'" (Internal citation omitted)).

Where reference to matters outside the pleadings are made in a 12(b) motion, the Court can convert the motion to one for judgment on the pleadings per Rule 12(c) and, where affidavits are submitted in pursuit of the motion, the court may consider the motion as one for summary judgment under Rule 56, SCRCP (2019).

CONCLUSIONS OF LAW

I. AS PLAINTIFFS LACK STANDING, NO JUSTICIABLE CONTROVERSY IS PRESENT TO GIVE THIS COURT SUBJECT MATTER JURISDICTION.

Plaintiffs do not allege any basis to have standing to sue in this case. As discussed below, because Plaintiffs lack standing, this suit does not present a justiciable case or controversy, and this Court lacks subject matter jurisdiction to consider it.

In their first cause of action, Plaintiffs seek a declaration that the State owns at least a portion of the Property. Complaint, ¶ 36. Plaintiffs do not have standing to seek that declaration because they do not have or claim an ownership interest in that land. Their second cause of action

for injunctive relief against the Defendant Owners is also based upon alleged State ownership of the Property and similarly fails due to lack of standing. Significantly, in this case, these assertions are **NOT** made by the state.

"South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached. *See Waters v.* S.C. *Land Ress. Conservation Comm'n,* 321 S.C. 219,467 S.E.2d 913 (1996); *Crocker v. Barr,* 303 S.C. 1,397 S.E.2d 665 (Ct. App. 1990) (Goolsby, J., concurring), rev'd on other grounds, 305 S.C. 406, 409 S.E.2d 368 (1991)." *Lennon v.* S.C. *Coastal Council,* 330 S.C. 414, 417-18, 498 S.E.2d 906,908 (Ct. App. 1998).[3] Plaintiffs have alleged no justiciable controversy because they lack standing. "The principle of standing under the United States Constitution is 'an essential and unchanging part of the case-or-controversy requirement of Article III.'" *ATC* S., *Inc. v. Charleston Cty.,* 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008) (quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992)). Because no case or controversy is presented due to the lack of standing, this Court lacks subject matter jurisdiction of this case. *See Lennon,* at 417-18, 498 S.E.2d at907-08.[4]

> "[S]tanding acts as an element of the constitutional requirement that there be a 'case or controversy'; when thus applied, *it acts as a limitation on the subject matter jurisdiction of the federal courts*" 6A Charles A. Wright et al., Federal Practice and Procedure § 1542 (1990) (emphasis added [by the Court of Appeals]) (footnotes omitted). South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can

[3] *See also, Tourism Expenditure Review Comm. v. City of Myrtle Beach,* 403 S.C. 76, 81, 742 S.E.2d 371,373 (2013) ("'[T]he parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy.'" (Quoting *Power v. McNair,* 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970)).

[4] "[S]tanding acts as an element of the constitutional requirement that there be a 'case or controversy'; when thus applied, *it acts as a limitation on the subject matter jurisdiction of the federal courts. . . .* South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached." *Lennon,* 330 S.C. at 417-18, 498 S.E.2d at 907-08 (quoting 6A Charles A. Wright et al., Federal Practice and Procedure § 1542 (1990) (emphasis added [by the Court of Appeals]) (footnotes omitted); citing *Waters v.* S.C. *Land Resources Conservation Comm'n,* 321 S.C. 219,467 S.E.2d 913 (1996); *Crocker v. Barr,* 303 S.C. 1, 397 S.E.2d 665 (Ct. App. 1990) (Goolsby, J., concurring), *rev'd on other grounds,* 305 S.C. 406,409 S.E.2d 368 (1991)).

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be reached.

Bodman v. State, 403 S.C. 60, 66-67, 742 S.E.2d 363, 366 (2013). Plaintiffs do not assert standing under the public importance exception, and they have no "constitutional standing" or standing by statute.

A. Plaintiffs Have No Constitutional Standing.

> The principle of standing under the United States Constitution is 'an essential and unchanging part of the case-or-controversy requirement of Article III.' *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992). The Supreme Court has provided a three-part test to establish standing: 'First, the plaintiff must have suffered an "injury in fact"-an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" Second, there must be a causal connection between the injury and the conduct complained of the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

ATS S., *Inc.,* 380 S.C. at 195-96, 669 S.E.2d at 339 (quoting *Lujan,* 504 U.S. at 560-61; citing *DaimlerChrysler Corp. v. Cuna,* 547 U.S. 332, 342, 12 S.Ct. 1854, 164 L.Ed.2d 589 (2006)). "Constitutional standing requires, at a minimum, that the party bringing the action sustain a direct injury or the immediate danger a direct injury will be sustained." *Commander Health Care Facilities, Inc. v.* S. C. *Dep't of Health & Envtl. Control,* 370 S.C. 296, 301, 634 S.E.2d 664, 666 (Ct. App. 2006). Plaintiffs fail to meet these standards.

Plaintiffs in this action have no "injury in fact" that is "concrete and particularized" and "actual or imminent" as to a "legally protected interest" to establish standing. In fact, according to the allegations in the Complaint, Plaintiffs have no interest whatsoever in the Property at issue. They contend that the State owns the Property, but Plaintiffs have no authority to assert claims of ownership for the State just as citizens have no standing to assert

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the property interests of their next door neighbors.[5] Although Plaintiffs argue that citizens may sue to protect the public trust, they concede that "none of the Plaintiffs can assert that property interest [in public trust property] on behalf of the State." Plaintiffs' Response, at p. 23. Plaintiffs seemingly abandon claims against the State with that concession and by stating the following:

> However, the Plaintiffs are, as a practical matter, apathetic about whether or not the state continues as a party in this case, because the involvement of the state and its property in this case is certainly secondary. This case is an effort by a municipality and certain private property owners to limit the individual Defendants' development activities to just the property those Defendants actually own, and the reason for such effort has nothing to do with harm to the public trust, but, rather, is intended to prevent harm to the Plaintiffs' personal and property interests.

Plaintiffs' Response, at p. 24-25.

Apathy does not meet constitutional standards for standing. Having conceded that this case has "nothing to do with harm to the public trust" (Plaintiffs' Response, at p. 25) and having no claim of ownership or possession of the Property at issue, Plaintiffs completely lack standing in this case to seek a declaration of ownership as to the State in the first cause of action. They do not seek injunctive relief as to the State in the second cause of action.[6]

Plaintiffs have no greater standing as to the Defendant Owners:

> For a plaintiff to possess standing three elements must be satisfied. First the plaintiff must have suffered an injury-in-fact which is concrete, particularized, and actual or imminent invasion of a legally protected interest. Second, a causal connection must exist between the injury and the challenged conduct. Third, it

[5] Plaintiffs claim they are suing as beneficiaries of the public trust doctrine, citing *Sierra Club v. Kiawah Resort Assocs.*, 318 S.C. 119, 456 S.E.2d 397 (1995), but the South Carolina Supreme Court's opinion in *Sierra Club* did not address standing. The case was an appeal from the issuance of a permit for dock construction. The instant case, instead, is not an appeal from a regulatory decision. Although the holding in *Nat'l. Audubon Soc'y v. Superior Court,* 33 Cal. 3d 419,431, 658 P.2d 709, 716 (Cal. 1983) allowed suit over a public trust interest, that action was about water rights, not property ownership.

[6] Because the Plaintiffs lack standing, the State has not taken a position in this case as to issues regarding avulsion and ownership of the property at issue, but reserves the right to do so and preserves any interest that the State may have in the property at issue should further proceedings occur in this case. Discussions or findings in this Order related to avulsion and ownership are not binding on the State in any future proceedings in this suit or in any future case

must be likely that a favorable decision will redress the injury.

Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S. C. 67, 75, 754 S. E. 2d 846, 850 (2014).

Plaintiffs' injuries arising from future development of Defendant Owners are speculative at best. As such, the alleged injury is neither actual nor imminent but is, instead, conjectural and hypothetical. Moreover, Plaintiffs' recreational interests "involve property that is privately owned by a party other than the plaintiff and "the presence of an injury in fact cannot be assumed." *Town of Arcadia Lakes v.* S.C. *Dep't of Health and Envtl. Control,* 404 S. C. 515, 531-32, 745 S. E. 2d 385, 394. Finally, Plaintiffs' claims of potential injuries from flooding and loss of beach use are merely injuries of a general nature common to all members of the public and not individualized.

Moreover, Plaintiffs have not alleged that any development has occurred within the area they claim is subject to the public trust doctrine. Without any actual development happening yet, there is no injury that can be claimed in relation to the Property. Nor may the Court infer development is imminent, because the Plaintiffs have not alleged that Plaintiff City of Folly Beach has issued building permits that authorize development on the active beach or even on land allegedly subject to the public trust doctrine.

Plaintiffs' Complaint fails to establish that they have any protectable individual interests at risk of injury and, as such, the private landowner Plaintiffs have no standing to pursue this case. Plaintiffs' Complaint rests in part on claims for potential loss of ocean views, should any development occur. However, in this State, it is well settle law that a private landowner does not acquire "an easement of unobstructed ocean view, breezes, light or air" over adjoining property. *Schroeder v. O'Neill,* 179 S.C. 310,315, 184 S.E. 679,681 (1936); *see also Hill v. The Beach Co.,* 279 S.C. 313,315, 306 S.E.2d 604, 605 (1983). Thus, no

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reasonable expectation can exist at the time of purchase that the then existing view will remain unchanged over time. Instead, especially for a view overlooking public trust property, no inherent right to a continued view exists. Rather, OCRM, the agency charged with overseeing the State's coastal public trust property, must balance all of the legitimate uses of the public trust property.

In short, loss of view is not an actionable injury in South Carolina, particularly when such loss of view has not even happened. Plaintiffs simply cannot establish any injuries sustained as a result of allegedly pending permits. Defendant Owners' lots remain unchanged, since no development of the lots has commenced. Further, Plaintiffs have scant support for the allegation that any development is imminent or to be started immediately on Defendant Owners' properties. The alleged issuance of a septic system permit alone cannot signify this, since other permits, and namely a building permit, are required to begin construction. This conclusion is bolstered by Plaintiffs' Complaint itself, whereby Plaintiffs allege several undeveloped lots have had "permits that were issued ... years or even decades in the past." Complaint, ¶ 21.

Moreover, a Folly Beach Ordinance prohibits development within 40 feet of the Perpetual Easement Line and the renourishment project. Plaintiffs have not alleged any Defendant Owner has developed its property within or past this line. Plaintiffs also have not alleged how, other than seeking or obtaining various permits, Defendant Owners have developed their Property in a way that creates an actual or imminent threat of injury to Plaintiffs. For these reasons, Plaintiffs have no constitutional standing to file this action.

B. No Statute Gives Plaintiffs Standing.

Plaintiffs do not claim a vested interest in any of the Defendant Owners' lots, and do not

allege that any of the lots are abandoned. As such, Plaintiffs have no statutory standing to bring this action or to declare any portion of the Defendant Owners' lots in the State's name.

> The purpose and effect of quiet title statutes are to enlarge the power of the court to determine adverse claims to land so as to authorize the quieting of title in cases where an action would not lie under the strict rules of equity practice. *Tolbert v. Greenwood Cotton Mill,* 213 S. C. 43, 48 S. E. 2d 599 (1948). They are designed to afford an easy and expeditious mode of quieting title to real estate. *Id.* The statutory remedy is broader and more comprehensive than that formerly afforded to a court of equity. *Id.*. Such a statute, being of a remedial nature, should be liberally construed and be held to embrace all cases coming fairly within its scope. *Id.* It is not essential to the cause of action that there has been a trespass on the property or any showing of damage. *Id.* Where, from the allegation in the complaint, the adverse claim sought to be determined cannot be classified as imaginary or speculative, the complaint states a cause of action under the statute. *Id.* (Emphasis added.)

Benson v. United Guar. Residential Ins. of Iowa, 315 S. C. 504,509,445 S. E. 2d 647,651 (1994).

Plaintiffs' claim is both imaginary and speculative because it is based on a legal theory that has never been applied in South Carolina for purposes of depriving a citizen of an interest in real property. Moreover, Plaintiffs ignore that the event they allege to be avulsive - the 2018 Folly Beach renourishment - is for the purpose of restoring private property. As is noted in the statute, Folly Beach is exempt from certain restrictions of the S.C. Beachfront Management Act because it is "an area in which the erosion of the beaches located in its jurisdiction is attributed to a federally authorized navigation project as documented by the findings of a Section 111 Study conducted under the authority of the federal Rivers and Harbors Act ...." S.C. Code Ann. § 48-39-290(E).

> Section 111 of the Rivers and Harbors Act is set forth in 33 C.F.R. §263.27, entitled "Authority for mitigation of shore damage attributable to navigation works." The general policies include "[t]his Act authorizes the study, construction and maintenance of work for prevention or mitigation of damages to both public and privately owned shores to the extent of the damages that can be directly attributed to federal navigation work located along the coastal and Great Lakes shorelines of the United States." 33 C.F.R. §263.27(c)(l). (Emphasis added.) Plaintiffs' assertion that the Corps of Engineers' efforts to

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> restore and maintain the beach only inure to the benefit of the State and not to the property owners is in conflict with the federal authorization of the renourishment project. Defendant Stephen Rawe's Motion to Dismiss, at p. 5. If, as Plaintiffs allege, no beach renourishment project can restore privately owned property, or confer any benefit to privately owned land, one of the primary stated purposes of the legislation would be rendered futile. Therefore, Plaintiffs have not pointed to any statute that confers standing to bring this action. In fact, Defendants have paid the City of Folly Beach for the costs of beach renourishment of their lots incurred by the city.

The S. C. Supreme Court recently opined on statutory standing in *Preservation Society of Charleston v.* S.C. *Dep't of Health and Envtl. Control,* 2020 WL 811729, (S.C. Sup. Ct. Feb. 19, 2020) *("Preservation Society").* At issue was the standing of parties who challenged the South Carolina State Ports Authority's ("SPA") construction of a new cruise terminal in the S.C. Administrative Law Court. The challenge was initiated under S. C. Code Ann. § 44-1-60, which establishes procedures for challenging permits issued by the S.C. Department of Health and Environmental Control ("DHEC"). Sec. 44-1-60(E)(l) provides that "Notice of a department decision must be sent by certified mail, returned receipt requested to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified." Sec. 44-1-60(E)(2) provides that "[t]he staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or **affected person."** (Emphasis added). The lower courts (Court of Appeals and Administrative Law Court) concluded that an "affected person" under Sec. 44-1-60 was a person with constitutional standing in accordance with *Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1992).

The Supreme Court in *Preservation Society* distinguished between civil actions and actions seeking administrative review of DHEC permits. The Court determined that downtown residents in proximity to cruise ships and the proposed new terminal were

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"affected persons" as defined by the statute with standing despite the fact that the alleged injuries were unproven and considered speculative by the lower courts.

Here, Plaintiffs are not seeking administrative relief in accordance with S. C. Code Ann. Sec. 44-1-60(E), or with any other statute. Rather, Plaintiffs' claims are initiated in the Court of Common Pleas as a civil action based in common law and referred by consent to this Court. Plaintiffs have failed to allege a particularized injury either to themselves or their members, and instead "assert only generalized grievances suffered by the public as a whole which are insufficient to establish standing." *Carnival Corp.,* 407 S. C. at 76, 753 S. E. 2d at 850. In the absence of a "particularized harm,"[7] Plaintiffs fail to assert an injury.

C. Plaintiffs lack a real, material, or substantial interest in the individual Defendants' private properties.

Plaintiffs claim a substantial interest in this action, to support standing, because the individual Plaintiffs will become littoral[8] property owners if they prevail in this action. Plaintiffs are presently neither ocean-front nor littoral owners as their properties are located **behind** the individual Defendants' properties which are beachfront properties. Plaintiffs desire to have oceanfront property does not constitute a substantial interest for purposes of sustaining a challenge to standing. There is existing precedent for determining if a party has standing to challenge a grant of marshlands. In *Town of Sullivan's Island v. State of South*

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[7] *Carnival Corp.,* 407 S. C. at 76-77, 753 S. E. 2d at 850-51

[8] Under the common law, owners of land along rivers, streams, lakes and other bodies of water possess a property right incident to their ownership of the bank and bed of a watercourse that is distinct from those rights that may be enjoyed by the public at large. In general, these special rights allow abutting landowners to make "reasonable use" of the body of water for any lawful purpose, whether for commerce or recreation. Lowe v. Ottaray Mills, 93 S. C. 420, 421-22, 77 SE. 135, 136 (1913) These rights are subject to the limitation that the use may not interfere with the like rights of those above, below, or on the opposite shore. *See* Mason v. Apalache Mills, 81 R. C. 554, 559, 62 S. E. 399, 401 (1908). With regard to these rights, there is a distinction in classification that our courts have indicated a desire to strictly observe: owners of land along rivers and streams are said to hold "riparian rights" rights, while owners of land abutting oceans, seas, or lakes, are said to hold "littoral" rights. White's Mill Colony, Inc. v. Williams, et al. 363 S. C. 117, 129,609 S. E. 2d 817, 818 (Ct. App. 2005).

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Carolina and Felger, 318 S. C. 340, 457 S. E. 2d 626 (Ct. App. 1995), the Town had both a statutory right and an authorization in the original grant of marshlands to exercise its authority over marsh grants. Consequently, the Court of Appeals concluded that the Town had a real, material, or substantial interest in the case.

Here Plaintiffs can make no demonstration of interest sufficient to satisfy the criteria to determine standing. Plaintiffs have no legal interest in Defendants' oceanfront properties. Plaintiffs' only interest is prospective - prevailing in this law suit in order to claim littoral rights that are currently vested in the individual Defendants' property. Such interest is simply a contrivance, a wish - it is not real, material nor substantial.[9]

II. PLAINTIFFS HAVE NOT STATED ANY VIABLE CAUSE OF ACTION.

A. Plaintiffs Have Failed to Allege Facts to Invoke the Avulsion Doctrine.

Plaintiffs seek to have this Court create a cause of action, not previously recognized in South Carolina that the federally sponsored beach renourishment program instituted on Folly Beach constituted an "avulsion" adding land to the Defendant Owners' lots. The renourishment was made possible by the exemption of Folly Beach from certain portions of the South Carolina Beachfront Management Act. This court declines to find this cause of action as it is the prerogative of the legislature to create such a creature by statute.

In their Complaint, Plaintiffs cite the common law definition of "avulsion" from 73 Am. Jur. P.O.F. 3d 167. The complete text of the definition from American Jurisprudence reads as follows: "'Accretion' and 'erosion' are direct opposites of 'avulsion', the process whereby the action of water causes a sudden and perceptible loss of, or addition to, riparian

[9] The court recognizes the great difference, both in value and view, between property located on the front beach and property located on the first row. The individual Defendants' desire to own beachfront property is not the same as owning beach front property.

land." Plaintiffs fail to allege a sudden addition to riparian land by action of water, or by any other natural event, and therefore fail to allege a true avulsion as defined in their own Complaint.

The Plaintiffs contend that beach renourishment under the federally sponsored program was in and of itself, an avulsive event. While under common law, an avulsion event may not increase riparian or littoral property owners' land, here the renourishment program sought only to restore the Defendant Owners' lots within their original bounds.

The intent to benefit private property owners whose property has been damaged by federal navigation projects (such as the Charleston Harbor 'jetties") is established by 33 C.F.R. Section 263.27(c) (l) stating:

> This act authorizes the study, construction and maintenance of work for prevention or mitigation of damages to **both public and privately owned shores** to the extent of the damages that can be directly identified and attributed to federal navigation work located along the coastal and Great Lakes' shorelines of the United States...

Id. (emphasis added). Furthermore, the City of Folly Beach acknowledged in open court, at the January 28, 2020 hearing, that it invoiced the property owners for the sand that was deposited on their Property for the renourishment costs undertaken pursuant to the project on their lots.

Plaintiffs argue that their allegations of avulsion in the Complaint are akin to the facts in *Hilton Head Plantation Prop. Owner's Assoc., Inc. v. Donald,* 375 S.C. 220,651 S.E.2d 614 (Ct. App. 2007). Plaintiffs' Response, at pp. 7-8. In *Donald,* the facts of which are described in more detail in Section II.B. of this Order below, the dispute involved a strip of land outside the bounds of platted lots that was created by dredging activities of a private developer which deposited spoil below the high water mark over a period of two years. The South Carolina Court of Appeals referred to creation of land by deposits of spoil as "artificial

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accretion." Quoting certain sections of American Jurisprudence and Corpus Juris Secundum, the Court stated:

> ("Any increase of soil to land adjacent or continuous to a navigable stream or water, formed by accretion or alluvion, belongs to the riparian or literal owner.") However, 'artificial accretions' which are caused solely by the act of an upland owner should not inure to his benefit, for the upland owner **should not be permitted to enlarge his own estate** at the expense of the State." ("Under the common law, a littoral owner cannot extend its own property into water by landfilling or purposely causing accretion.").

Id. at 224,651. S.E.2d at 617 (internal citations omitted) (emphasis added). Here, the deposits of sand from renourishment project have not "enlarged" the Defendant Owners' properties, but only served to restore their lots to what has been previously platted.

Viewing the facts alleged in the Complaint, and all reasonably deducible inferences most favorably to the Plaintiffs, they are not entitled to relief under any theory of their case. *See Bergstrom v. Palmetto Health Alliance,* 358 S.C. 388, 395, 596 S.E.2d 42, 45 (2004); *Brown v. Leverette,* 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). To allow this lawsuit to go forward, the Court would have to disavow the stated intent of the renourishment project, the mitigation of damage to both public and private lands along the coast caused by federal navigation projects. This Court declines to do so.

B. Existing Common Law is Distinguishable From, and Does Not Support, Plaintiffs' Claims.

In asserting its claim that title to a portion of the Property lies with the State, Plaintiffs rely upon the doctrine of avulsion, as distinguished from the doctrines of erosion and accretion, for support. Complaint ¶ 29-30, 35-36; Plaintiffs' Response, at p. 5-9. "The law gives the riparian proprietor the benefit of additions to his land caused by accretion or reliction. However, it also requires him to bear the corresponding risk that land will be lost by gradual erosion or submergence." *Horry Cty. v. Woodward,* 282 S.C. 366, 370, 318 S.E.2d

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584, 586 (Ct. App. 1984). The avulsion doctrine, on the other hand, "has no effect on property boundaries" and "does not divest a riparian or littoral property owner of title to his or her property or change the underlying ownership of the property." 65 C.J.S. Navigable Waters§ 111; 78 Am. Jur. 2d Waters§ 332; *see also* 73 Am. Jur. Proof of Facts 3d 167. The case law cited in Plaintiffs' Response in support of court intervention in the instant matter is addressed more fully below.

Initially, Plaintiffs allege that the "reason for such an involved history" of "court intervention related to the location of moving property lines on the beachfront" is clearly expressed in the South Carolina Supreme Court's opinion in *Estate of Tenney v.* S.C. *Dep't of Health & Envtl. Control,* 393 S.C. 100, 712 S.E.2d 395. However, the *Tenney* opinion has very little, if anything, to do with the effect of shifting littoral or riparian property lines on land already acknowledged to be owned by private citizens. Rather, the opinion involved a disputed claim to private ownership of a marsh island, and whether the State held presumptive title to islands situated within marshland. *See Id.* Additionally, the *Tenney* opinion warned against unprecedented and unwarranted expansion of the public trust doctrine – which this court finds accurately describes Plaintiffs' requested relief.

> [O]ur jurisprudence has continued to reflect the longstanding principle that the public trust doctrine extends only up to the land below the high water mark ... [T]he proposition that the State is the presumed owner of land that remains above the high water mark is at odds with coastal property jurisprudence that predated *Coburg,* and expands the public trust doctrine beyond its historic bounds. . . we do not believe the protection and preservation of these islands should be effected through the unprecedented expansion of the public trust doctrine.

Tenney, at 107, 110-11, 712 S.E.2d at 398-400.

Turning to the relevant doctrines of shifting waterfront boundaries, "[a]ccretion by natural alluvial action to lands on a navigable stream, such as ocean waters, become the

property of the owner of the land accreted or increased." *State v. Beach Co.,* 271 S.C. 425,429,248 S.E.2d 115, 117 (1978). As distinguished from the case at hand, the *Beach Co.* opinion centered on whether private beachfront property, the boundary of which had been increased by accretion, was subject to any dedication for public use. *Id* at 428, 431, 248 S.E.2d at 117-18. Similarly, the South Carolina Supreme Court's opinion in *Hill v. Beach Co.,* 279 S.C. 313, 306 S.E.2d 604 (1983), which involved the same accreted beachfront property, is not applicable to the case at hand as it dealt with private citizens' prescriptive rights over the property to access and view the ocean. *See Id.*

Erosion, on the other hand, is the doctrine that "lands encroached upon by water cease to belong to the former riparian or littoral owner." *Woodward,* 282 S.C. at 370, 318 S.E.2d at 586 (internal citation omitted). The *Woodward* opinion has no bearing here, as the issue was a dispute between private citizens as to who was entitled to the just compensation payment from Horry County for its taking of a portion of an island located at the mouth of the Little River. *Id* at 368, 318 S.E.2d at 585. No party in *Woodward* sought to confirm title to land created by manmade forms to the State. Thus, the opinion's holding does not provide authority or precedent for a claim that the State holds title to avulsive property. To the extent that Plaintiffs cite *Woodward* to support a claim that past erosion has resulted in a loss of property, that claim ignores the present condition of the Property and has been mooted as a result of the renourishment.

As to the doctrine of avulsion, Plaintiffs plainly admit that the doctrine has never been formally applied by a South Carolina appellate court. Plaintiffs' Response, at p. 6. Without binding precedent, Plaintiffs cite to a number of cases to cobble together a position that the beachfront property restored by the 2018 Folly Beach renourishment belongs to the State.

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Each of these opinions can be distinguished from the case at hand, and as such do not provide a basis for Plaintiffs' claims.

First, as stated above, Plaintiffs urge the Court to apply the South Carolina Court of Appeals' decision in *Hilton Head Plantation Prop. Owners' Assoc., Inc. v. Donald,* 375 S.C. 220, 651 S.E.2d 614 (Ct. App. 2007), to the instant matter. Plaintiffs' Response, at p. 7-8. In *Donald,* the developer of a residential neighborhood dredged a nearby creek, causing spoil to build up which created a berm between the neighborhood and the marsh area. *Donald,* at 223, 651 S.E.2d at 616. Prior to the dredging activities, the area that became the high ground berm was tidal. *Id.* The Court of Appeals held that the resulting high ground was not the result of accretion, but rather an "artificial accretion ... caused solely by the act of the upland owner [.]" *Id* at 224, 651 S.E.2d at 617 (internal citations omitted). It went on to hold that such an act performed solely by the upland owner "should not inure to his benefit, for the upland owner should not be permitted to enlarge his own estate at the expense of the State." *Id* (internal citations omitted).

Plaintiffs urge the Court to make the term "artificial accretion" synonymous with the doctrine of avulsion, and argue that the developer's acts in *Donald* translate directly to the renourishment of Folly Beach. Plaintiffs' Response, at p. 7-8. The Court disagrees with this assertion. In addition to the fact that the renourishment did not enlarge the Defendant Owners' Property, the developers dredging in *Donald* was performed unilaterally, without permission from any public agency, and certainly not taken pursuant to any federal or state project. In contrast, the private beach renourishment at issue here was part of the larger 2018 renourishment of Folly Beach, performed pursuant to the U.S. Army Corps of Engineers' (the "Corps") Folly Beach Shore Protection Project, which was implemented due to Folly Beach's

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proximity to the Charleston Harbor jetties. Complaint, ¶15-16, 18, n.1; Defendant Debbie's Folly, LLC's Memo. In Support of Motion to Dismiss, at p. 2, 6-7. Thus, the renourishment of the Property was not a standalone, unsanctioned act of the Defendant Owners, but was authorized, planned, and performed pursuant to a federally sanctioned project. Combined with the fact that the actual renourishment of the Property was performed by the Corps, not the Defendant Owners themselves, the underlying "avulsive event" here is clearly distinguishable from the facts and circumstances in *Donald.*

Moreover, a key point to be addressed as to the avulsion doctrine is that the *causal event or action* which creates land above the high water mark, not the response thereto, is the avulsive event. As such, the Court notes that the construction of the Charleston Harbor jetties, rather than the responsive renourishment, can be considered as the genesis for the avulsive event. The fact that the 2018 cycle was the fourth stage of the project implemented in response to the construction of the Charleston Harbor jetties demonstrates it is an effort to address the effects, including loss of private property, of the original avulsive event caused by the jetties' construction. Plaintiffs acknowledge this fact in their Complaint, alleging that due to "manmade erosion caused by the Charleston Harbor jetties, Folly Beach is one of the most sand-starved and erosive beaches on South Carolina's coast. Consequently, **frequent beach renourishment is necessary to maintain the beach and to protect existing development**." Complaint, ¶ 15. (Emphasis Added)

Next, Plaintiffs also cite a 2010 Order of this Court which previously addressed the doctrine of avulsion. "Avulsion is a process whereby the action of water causes a sudden perceptible loss of, or addition to riparian land ... This authority shows that the construction of the huge spoils disposal structure is well outside accretion law and is more comparable

to a very, very large avulsive event." *Yelsen Land Co., Inc. v. the State of S.C.*, 2010 WL 8721640 (Docket No. 07-CP-10-2053) (Charleston Co. Court of Common Pleas Apr. 13, 2010). Recognizing that the jetties' construction is similar to construction of a spoil dike, the jetties' construction again seems to constitute the avulsive event, leading to a conclusion that the boundaries of the Defendant Owners' Property did not change, unlike the legal impact of natural erosion. The renourishment, a federal project implemented to provide shoreline, hurricane and storm water protection, merely restores these properties to platted boundary lines, after a manmade disturbance.

While the avulsion doctrine has yet to be applied by a South Carolina appellate court (Plaintiffs' Response, at p. 6), Plaintiffs contend that the Supreme Court of New Jersey's opinion in *City of Long Beach v. Liu*, 203 N.J. 464, 4 A.3d 542 (N.J. 2010) is "basically identical" to the instant matter. Plaintiffs' Response, at p. 8. However, the *Liu* opinion is in no way identical, and is in fact inapplicable, to the case at hand. No part of the opinion in *Liu* makes reference to utilization of any private funds to perform the subject beach renourishment, or references any event or act that necessitated the one-time renourishment. In that case, the municipality sought to acquire the Liu's and other similarly situated property as part of a public beachfront redevelopment project, but the Liu's rejected the municipality's offer to purchase the property. *Liu*, 203 N.J. at 471, 4 A.3d at 546. By the time the municipality filed its condemnation action in 2001, which described the property based upon the Liu's 1977 deed, a beach replenishment program, funded by federal, state, and municipal governments, had been implemented, and the Liu's alleged that their land had increased (as opposed to merely restored) as a result of the replenishment. *Id.* at 471-72, 4 A.3d at 546-47.

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In deciding that the Liu's property boundary did not increase, the Court held that the beach replenishment constituted an avulsive event because, in part, the "expansion of the Lius' shoreline" was due to a "a government-funded beach replenishment project." *Id* at 484-85, 4 A.3d at 554-55. In contrast, the renourishment in the present matter, as discussed hereinabove, was undertaken to maintain and restore both public and private beach, and was funded with public and private monies. Complaint, ¶ 18, n.1. "The mean high water mark, generally, is the boundary line that divides private ownership of the dry beach and public ownership of tidally flowed lands." *Liu*, at 476, 4.A3d at 549. The Defendant Owners expended their own funds to restore their own Property, which Plaintiffs now try to hoist upon a public grantee, the State, without any offer of compensation. Furthermore, the Liu opinion gives no indication that the renourishment in that case was a recurring event or undertaken in response to a causal incident, such as the impact of the Charleston Harbor jetties here.

Lastly, Plaintiffs' general reference to the United States Supreme Court's opinion in *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prat.* 560 U.S. 702, 130 S.Ct. 2592 (2010) is similarly not on point. In that case, the question was posed to the United States Supreme Court whether the Florida Supreme Court's decision in upholding a Florida statute was unconstitutional in depriving citizens of claimed littoral rights without just compensation. *Id.* at 707, 130 S.Ct. at 2597. The Florida statute provided that the state entity that holds title to the submerged seabed had the power to replace the fluctuating mean high water line after setting a fixed erosion control line. *Id* at 710, 130 S.Ct. at 2599. Once the control line was recorded, "the common law ceases to increase upland property by accretion (or decrease it by erosion)." *Id.* In the underlying action, a project planned under the

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authority vested by the statute was challenged by a nonprofit group of citizens that asserted rights to the affected beachfront property. *Id* at 711-12, 130 S.Ct. at 2600. The group alleged that their constitutional rights to receive accretions to their property, and to have the contact of their property with the water remain intact, were being taken without compensation. *Id.* The Supreme Court reaffirmed that the doctrine of avulsion does not serve to alter property boundaries as do accretion and reliction.

Unlike the instant case, the parties in *Stop the Beach Renourishment* acknowledged the State owned the submerged land, prior to the challenged project. The question posed was whether constitutional rights exist to border the ocean and to receive accreted property, and if so, whether those rights were infringed upon. The Supreme Court answered in the negative, holding, in part, that "the State as owner of the submerged land adjacent to littoral property has the right to fill that land, so long as it does not interfere with the rights of the public and the rights of the littoral landowners." *Id* at 730, 130 S.Ct. at 2611. Thus, the *Stop the Beach Renourishment* opinion provides guidance as Plaintiffs cannot demonstrate that the State previously owned the Defendant Owners' Property which was renourished with private funds.[10]

Accordingly, the cited authorities proffered by Plaintiffs provide no support for their claims alleged in the Complaint.

III. PLAINTIFFS HAVE FAILED TO NAME NECESSARY PARTIES.

Plaintiffs have failed to name necessary parties as required by the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, et seq. (the "Act"), and Rule 19,

[10] Justice Scalia discussed the Takings Clause at length in his majority opinion in *Stop the Beach*, an issue which, as here, is not ripe for consideration. Ultimately the court found that the right to future accretions of land to littoral property owners was not abolished but, instead, was not implicated due to the avulsion doctrine through the beach restoration project. 560 U.S. at 731, 130 S.Ct. at 2612.

SCRCP. The Act provides: "When declaratory relief is sought **all persons shall be made parties who have or claim any interest which would be affected by the declaration**, and no declaration shall prejudice the rights of persons not parties to the proceeding." S.C. Code Ann. § 15-53-80 (emphasis added). Likewise, Rule 12(b)(7), SCRCP, requires dismissal of a complaint that fails to join a necessary party under Rule 19, SCRCP. South Carolina Rule of Civil Procedure 19 provides that:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Rule 19(a), SCRCP.

Plaintiffs acknowledge that there are approximately fifty (50) "super-beachfront lots" on Folly Beach (Complaint, ¶ 14), yet name only eight (8) such lot owners as Defendants. Because Plaintiffs have no South Carolina law supporting their position, it is inevitable that, if this case goes forward, the South Carolina appellate courts will issue binding precedent that will affect the property rights of all 50 owners of such lots. It is axiomatic that persons with property interests at issue are necessary parties to a case that would determine those property interests. *Slatton v. Slatton*, 289 S.C. 128, 130, 345 S.E.2d 248, 249 (1986) (requiring that a party with an interest in the property at issue in the litigation be joined as a necessary party).

Courts have widely applied this line of reasoning to situations similar to the case at hand, finding property owners akin to the fifty "super-beachfront" lot owners here to be necessary parties. In *Bretton Ridge Homeowners Club v. DeAngelis*, 51 Ohio App. 3d 183,

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555 N.E.2d 663 (Ohio Ct. App. 1988), the court dismissed a case where only two dozen of 508 total property owners within a subdivision were named as parties to a lawsuit. The suit concerned restrictive covenants that applied to all homeowners within the subdivision. In finding that all 508 property owners in the subdivision were necessary parties to the action, the court noted specifically that each of them had "a legal interest in the litigation that would determine their rights and liabilities." *DeAngelis*, 51 Ohio App. 3d at 185. See also *Branham v. Holiday Lake Prop. Owners Ass'n*, 6th Dist. No. H-02-019, 2002-Ohio-5193, 2002 WL 31162730 (2002); *Hitchcock v. Boyack*, 277 A.D.2d 557, 715 N.Y.S.2d 108 (N.Y. App. Div. 2000) (plaintiff landowner's failure to join as necessary parties all landowners who would be affected by the outcome of a nuisance action regarding interference with Plaintiffs use of a roadway and access to a beach warranted dismissal of action).

The Court in *Karner v. Roy White Flowers*, Inc., 351 N.C. 433,527 S.E.2d 40 (N.C. 2000) issued a similar ruling. In *Karner*, the North Carolina Supreme Court held that all property owners affected by a residential use restrictive covenant were necessary parties to an action to invalidate that covenant. *Karner*, 351 N.C. at 438-40, 527 S.E.2d 42-44. The Court noted, "[a]nadjudication that extinguishes property rights without giving the property owner an opportunity to be heard cannot yield a valid judgment" and subsequently ruled that all non-party property owners should be joined. *Id.* See also *Page v. Bald Head Ass'n,* 170 N.C. App. 151, 154, 611 S.E.2d 463, 465 (N.C. Ct. App. 2005) (holding that all property owners affected by a residential use permit were necessary parties); *Durham Cty. v. Graham*, 191 N.C. App. 600, 603-604, 663 S.E.2d 467, 470 (N.C. Ct. App. 2008) (ruling that a property owner whose land "could be substantially altered" should a mandatory injunction to be enforced, had an interest in the property that "would be directly affected by

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the adjudication of the controversy").

Because Plaintiffs have failed to name as parties all of the "super-beachfront lot" owners who have an interest in and would be affected by the requested declaration, they have not satisfied the requirements of the Act or South Carolina Rule of Civil Procedure 19, and the Complaint should be dismissed.

PROPRIETY OF DISMISSAL UNDER RULE 12(b)(6), SCRCP

"Novel questions of law should not ordinarily be resolved on a Rule 12(b) (6) motion." *Chestnut v. AV'X Corp.*, 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015). "Where, however, the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss." *Unisys Corp. v. S.C. Budget & Control Bd Div. of Gen. Servs. Info. Tech. Mgmt. Office*, 346 S.C. 158, 165, 551 S.E.2d 263,267 (2001). See also *Palmer v. State,* 427 S.C. 36, 43, 829 S.E.2d 255, 259 (Ct. App. 2019), reh'g denied (July 12, 2019).

Here, there is no dispute as to underlying facts. The properties that are the subject of this case have platted boundaries and there is no dispute that the seaward boundaries may migrate due to the effects of erosion. Moreover, there is no dispute that the renourishment is for the benefit of the Property and that the Defendant Owners paid for the renourishment of the beachfront at the Property with their private funds. No party disputes the impact that the Charleston Harbor jetties have had on Folly Beach. It is reasonable to assume, and not disputed, that an oceanfront property owner may desire to develop and build an oceanfront house and would pursue necessary permits including septic tank permits.

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Consequently, should Plaintiffs' assert the position that they have advanced a novel question of law, such question may be decided in accordance with Rule 12(b)(6), SCRCP, as there is no dispute as to the material factual allegations. The issues before this Court are questions of law, not fact.

CONCLUSION

Due to the grounds and reasons set forth hereinabove, Plaintiffs lack standing to bring this action, have not stated a viable cause of action in the Complaint, and have failed to name necessary parties to this action.

Therefore, the Court hereby GRANTS Defendants' Motions, and Plaintiffs' Complaint is HEREBY dismissed *with prejudice*.

AND IT IS SO ORDERED!

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Charleston Common Pleas

Case Caption: Folly Beach City Of VS South Carolina State Of

Case Number: 2019CP1000717

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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