

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS
Mikell R. Scarborough, Circuit Court Judge

Appellate Case No. 2020-000937

City of Folly Beach, Coastal Conservation League, Save Folly Beach, Inc., John Collins,
Matt Napier, Paula Stubblefield, Troy Bode, and Carol Kruer. Appellants,

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, ... Respondents.

RECORD ON APPEAL
VOLUME I OF II

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CERTIFICATE OF COUNSEL.....308

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,

) **ORDER GRANTING DEFENDANT'S**
) **MOTIONS TO DISMISS AND**
) **MOTIONS FOR JUDGMENT ON**
) **THE PLEADINGS**
)
)

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.

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, SCRCF motion to dismiss is proper, as the legislation is a matter of public record.

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

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), SCRCPP; *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, SCRCPP," 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, SCRCPP 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, SCRCPP (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 Res. 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 at 907-08.⁴

"[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)).

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 & Env'tl. 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

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 Env'tl. 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 settled 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

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)(1). (Emphasis added.) Plaintiffs' assertion that the Corps of Engineers' efforts to

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)(1) 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

"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 littoral⁸ 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*

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. Ottarav 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).

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) (1) 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

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

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.

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

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.

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 Env'tl. 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

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,

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]n adjudication 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

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. AVX 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.

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), SCRPC, 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!

ELECTRONIC SIGNATURE PAGE TO FOLLOW



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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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
City of Folly Beach, Coastal Conservation	)	C/A No. 2019-CP-10-0717
League, Save Folly Beach, Inc.,	)	
John Collins, Matt Napier, Paula	)	
Stubblefield, Troy Bode, and Carol Kruer,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	AMENDED CONSENT ORDER OF
	)	REFERENCE
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.	)	
	)	

This matter originally came before the Court on motion of Michael G. Corley, attorney for the Plaintiffs, seeking to refer this action to the Master-in-Equity for Charleston County. In this case, Defendants Amy Connelly, Jeffrey H. Morris, Stephen Rawe, Juan Enterprises, Juanita Wright, Debbie's Folly, LLC, and Vernon Staubes have filed motions to dismiss. The Defendant State of South Carolina has filed a Motion for Judgment on the Pleadings. This Court signed a consent order of reference on September 11, 2019, including the pending motions to dismiss but without reference to the pending motion for judgment on the pleadings.

The parties in this action have consented that these matters be referred to the Master-in-Equity for Charleston County, with the exception of Defendants Juan Enterprises, LLC and Juanita A. Wright, who have consented only to the referral of the pending motions to dismiss and motion for judgment on the pleadings.

NOW, THEREFORE, IT IS ORDERED that this action, including all claims asserted therein, shall be referred to the Master-in-Equity for Charleston County under South Carolina

Rules of Civil Procedure 53 for the purposes of hearing and deciding the pending motions to dismiss and the motion for judgment on the pleadings in this case. Any appeal from the final judgment entered by the Master-In-Equity shall be directly to the South Carolina Court of Appeals in accordance with the provisions of S. C. Code Ann. § 14-11-85.

AND IT IS SO ORDERED!

The Honorable Roger M. Young
Chief Administrative Judge, Ninth Judicial Circuit

_____, 2019
Charleston, South Carolina

City of Folly Beach et al. v. State of South Carolina et al.**Case No: 2019-CP-10-00717****Consent Order of Reference**

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I CONSENT:

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Jeff Tibbals

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Attorney for Amy Connelly



Charleston Common Pleas

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

Case Number: 2019CP1000717

Type: Order/Referred to Master or Special Referee

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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000033

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)

City of Folly Beach, Coastal Conservation League,
Save Folly Beach, Inc., John Collins, Matt Napier,
Paula Stubblefield, Troy Bode, and Carol Kruer,

C/A No. 2018-CP-10- 0717

Plaintiffs,

COMPLAINT

(non-jury)

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JULIE J. HANSTRONG
CLERK OF COURT

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.

The Plaintiffs, complaining of the Defendants, would respectfully show unto the Court:

JURISDICTION AND VENUE

1. This is an action involving real property located in Charleston County, South Carolina, in which the Plaintiffs seek declaratory and injunctive relief.
2. This Court has jurisdiction to grant injunctive relief as well as declare rights, status and other legal relations and to grant other relief pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. §15-53-10 et seq., (Supp. 2009).
3. This Court has jurisdiction over these parties, subject matter jurisdiction over this action, and venue for this action is appropriate in this Court.

THE PARTIES

4. Plaintiff City of Folly Beach ("the City") is a municipal corporation and political subdivision within the State of South Carolina. The City holds and exercises authority over the "super-beachfront" lots at issue in this action through its municipal regulatory and permitting

program, and all property at issue falls within the City's boundaries. The City must ascertain the true owner of the property at issue in this action in order to administer its municipal obligations.

5. Plaintiff Coastal Conservation League ("the League") is a non-profit membership organization existing under the laws of the State of South Carolina and devoted to the protection and conservation of the natural resources of the state. The League has over 4,000 members, representing South Carolina citizens who use, enjoy, and depend upon the coastal resources of the state, including on Folly Beach. The League has members who reside adjacent and proximate to the properties at issue.

6. Plaintiff Save Folly Beach, Inc. is a non-profit membership organization existing under the laws of the State of South Carolina and having the mission of preventing further development of "super-beachfront" lots on Folly Beach. Save Folly Beach has members who reside adjacent and proximate to the properties at issue.

7. Plaintiffs Matt Napier and Paula Stubblefield are owners of real property located at 1661 East Ashley Avenue, Folly Beach and are fulltime residents of the home on that property. "Super-beachfront" lots registered to Defendants Juan Enterprises, LLC and Juanita Wright are located between these Plaintiffs' oceanfront home and the ocean.

8. Plaintiffs Troy Bode and Carol Kruer are owners of real property located at 1212 East Artic Avenue, Folly Beach and are fulltime residents of the home on that property. "Super-beachfront" lots registered to Defendants Debbie's Folly, LLC and Amy Connelly are located adjacent to these Plaintiffs' property and within the path of their ocean view.

9. Plaintiff John Collins is owner of real property located at 1409 East Ashley Avenue, Folly Beach and is a resident of the home on that property. "Super-beachfront" lots

registered to Vernon Staubes are immediately adjacent to his property.

10. Defendant State of South Carolina ("the State") is a political organization and government holding presumptive title to all tidelands within its borders, which are held in trust for the benefit of the State's citizens, pursuant to the public trust doctrine.

11. The individual Defendants are owners of undeveloped "super-beachfront" lots who have taken affirmative steps to pursue development on those lots by applying for construction/ environmental permit(s) necessary for development or by holding active permit(s) for development activities.

GENERAL ALLEGATIONS

12. In several locations on Folly Beach, residential lots are platted seaward of existing oceanfront development, or along the erosive edges of existing development. These relic properties were platted in Folly's distant past. Some of the lots were never developable, based on proximity to the ocean, and others have been rendered undevelopable over time by erosion and sea level. The existence of these lots would not be apparent to anyone on the ground, as the lot lines typically encompass only ocean, wet beach, and/or oceanfront sand dunes.

13. Folly Beach has oceanfront development typical of South Carolina, with the first row of oceanfront homes separated from the active beach by a strip of primary sand dunes. All of the "super-beachfront" lots, as they have been dubbed, are seaward or beyond the bounds of this typical oceanfront development.

14. Of approximately fifty super-beachfront lots on Folly Beach, only a handful are presently developed, and all of these super-beachfront structures are frequently imperiled by sea level, wave action, and erosion, to the extent that temporary condemnation has occurred several

times in the past. Under typical conditions, these super-beachfront structures extend well onto the active beach, kept out of the ocean only by seawalls.

15. As a result of both natural erosion and 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. Through these projects, massive amounts of sand are pumped onto the beach from outside sources in order to build up the elevation of the beach.

16. The sand deposited during these renourishment projects inevitably moves south through littoral drift, with this sand loss occurring at various rates depending on storms and other factors. Because of these conditions, Folly Beach is reliant on a continual, repeating cycle of renourishment. This has been the established mode of operation on Folly for many years, especially on its northeastern end, where the super-beachfront lots are located. Renourishment projects in this stretch have not been durable, and severe erosion has been chronic for decades.

17. The renourishment projects temporarily convert portions of the super-beachfront lots from ocean, beach, and dune into sandy dry ground above the mean high water mark. Previous super-beachfront development has occurred in the brief window immediately after a renourishment, before erosion reclaims the sand. Seawalls are then constructed around these super-beachfront homes in order to prevent them from washing into the ocean.

18. In August 2018, the most recent renourishment of Folly Beach commenced ("the 2018 renourishment").¹ Over the next several months, the U.S. Army Corps of Engineers

¹ The renourishment consisted of both a publicly and privately funded component, proceeding simultaneously, with public funds paying for the addition of sand on public property and private funds paying for the addition of sand on individual lots. Public funds are never used to place sand on private property on Folly. But, for ease of reference,

pumped nearly one million cubic feet of sand onto a two-mile stretch of beach encompassing all of the platted super-beachfront lots, with at least \$11,000,000 in public funds spent. As much as ten feet of sand was added to the beach in some locations, and an increase in beach elevation of more than five feet was not unusual. The 2018 renourishment converted large sections of ocean and intertidal beach into sandy dry ground above the mean high water mark.

19. Super-beachfront lots that had been submerged or intertidal were converted into dry ground during the 2018 renourishment. At least a portion of all the super-beachfront lots at issue in this lawsuit were artificially brought above water by the 2018 renourishment. The mean high water line on these lots was pushed seaward by the renourishment.

20. The 2018 renourishment triggered a type of land-grab, with registered owners of some super-beachfront lots moving to build structures on the newly created dry ground. Super-beachfront owners have applied for septic permits with the Department of Health and Environmental Control and for construction permits with the City, claiming private ownership of dry ground artificially created by the renourishment and relying on the new mean high water line. Some of these permits have been granted, and others remain pending.

21. The 2018 renourishment also reopened the development potential of some super-beachfront lots for which permits had previously been granted. Specifically, a number of the Defendants named in this case possess septic permits that were issued for their super-beachfront lots years or even decades in the past. While those septic permits have been dormant and unusable on account of submersion/erosion of the lots, the 2018 renourishment has pushed the mean high water line seaward and temporarily restored these lots and made septic tank

these two components of the renourishment are referenced as a single project in this Complaint.

installation possible. Indeed, some of the Defendants have now sought building permits from the City for the structures that will accompany these old septic permits.

22. Many of the super-beachfront lots on Folly Beach have been donated or simply abandoned, based on their inherent unsuitability for development. The individual Defendants in this case are the super-beachfront owners who, by seeking or holding construction permits, have demonstrated the intent to develop their properties.

23. Each individual Defendant has claimed and exerted ownership control over the area bounded by his or her platted super-beachfront lot lines. Upon information and belief, each individual Defendant claims private ownership of sandy dry ground above the mean high water that was created by the 2018 renourishment or prior renourishments.

24. Development on the dry ground created by the 2018 renourishment is imminent or already occurring.

25. Under the Public Trust Doctrine the State holds presumptive title to land below the mean high water mark and keeps this land in trust for the benefit of all the citizens of this State. 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.”); McQueen v. S. Carolina Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119-20 (2003); State v. Pacific Guano Co., 22 S.C. 50, 84 (1884); State v. Hardee, 259 S.C. 535, 193 S.E.2d 497 (1972). “The State has the exclusive right to control land below the high water mark for the public benefit, Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1889), and cannot permit activity that substantially impairs the public interest in marine life, water quality, or public access.” McQueen v. S. Carolina Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119-20 (2003) (citing Sierra Club v. Kiawah Resort

Assocs., 318 S.C. 119, 456 S.E.2d 397 (1995)).

26. Along the shoreline, the boundary between public trust property (land below the mean high water mark) and private property is not fixed. Rather, beachfront (littoral) property owners possess title to land especially vulnerable to erosion and take title “at risk of loss to the State by natural forces.” Estate of Tenney v. S.C. Dep’t of Health & Envtl. Control, 393 S.C. 100, 108, 712 S.E.2d 395, 399 (2011). Along a shoreline, the boundary between public waters/beach and private uplands is a dynamic boundary, which, by its very nature, frequently changes. Private parcels contiguous with the beach and ocean may contract and expand as the mean high water mark shifts. See, McQueen v. S.C. Coastal Council, 354 S.C. 142, 580 S.E.2d 116 (2003); Hilton Head Plantation Prop. Owners’ Ass’n, Inc. v. Donald, 375 S.C. 220, 651 S.E.2d 614 (Ct. App. 2007).

27. South Carolina follows the common law principles of accretion, erosion, and avulsion. Accretion is the process whereby the action of water causes an *increase* in littoral land through gradual deposit of sediment, so as to create new dry land in an area that was previously covered by water. “South Carolina recognizes the general common law rule that accretions ... become the property of the riparian or littoral owner whose lands are added to.” Horry County v. Woodward, 282 S.C. 366, 318 S.E.2d 584 (Ct. App. 1984). Conversely, erosion is the gradual *loss* of sand/sediment from littoral land caused by the action of water, so as to create beach or ocean in an area that was previously dry land. South Carolina recognizes the general common law rule that dry land eroded into beach and ocean ceases to be the property of the littoral owner. McQueen v. S.C. Coastal Council, 354 S.C. 142, 149–50, 580 S.E.2d 116, 119–20 (2003)

28. Contrary to the gradual processes of accretion and erosion, avulsion is a “sudden

and perceptible” loss of, or addition to, littoral land. 73 AMJUR POF 3d 167. Rather than occurring imperceptibly over time, avulsion happens as part of an observable one-off event, like a major storm or a sudden shift in stream bed. Georgia v. South Carolina, 497 U.S. 376, 404, 110 S. Ct. 2903, 2919 (1990); New Jersey v. New York, 523 U.S. 767, 118 S. Ct. 1726 (1998).

29. The principal significance of the distinction between erosion and accretion on the one hand, and avulsion on the other has to do with legal effect: the owner of littoral land loses title to land that is lost by erosion and gains title to land that is added by accretion, whereas if an avulsion has occurred, the boundary line remains the same regardless of the change in the shoreline. In other words, under the doctrine of avulsion, the boundary between public and private land remains the mean high water line as it existed before the avulsive event. See 73 AMJUR POF 3d 167; Georgia v. South Carolina, 497 U.S. 376, 404, 110 S. Ct. 2903, 2920 (1990); Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot., 560 U.S. 702, 130 S. Ct. 2592 (2010).

30. Defendant State of South Carolina has failed to exert ownership authority or control over the portions of the super-beachfront lots that rightfully belong to it under the public trust and avulsion doctrines.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment, S.C. Code Ann. §§ 15-53-10 et seq.)

31. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 30 above.

32. At the commencement of the 2018 renourishment, a mean high water line existed on the oceanfront of Folly Beach, and this line was reflective of the natural erosional and

accretional processes on the shoreline over time. The super-beachfront lots were entirely or almost entirely submerged below this mean high water line.

33. Pursuant to the public trust doctrine, the mean high water line that existed at the commencement of the 2018 renourishment represented the boundary between public property held by the state and private property held by the super-beachfront owners.

34. At the commencement of the 2018 renourishment, each super-beachfront owner owned only that part of his or her platted lot constituting dry ground above the mean high water line. The remainder of each platted lot—that part constituting lands below the mean high water line—belonged to the public under the public trust doctrine.

35. The 2018 renourishment was a sudden, perceptible, and artificial addition of sand constituting an avulsion under the common law of South Carolina. Such avulsion cannot increase private property or remove corpus from the public trust.

36. Therefore, pursuant to the public trust doctrine and the common law principle of avulsion, the Defendants have no valid claim to land brought above the mean high water line by the avulsive 2018 renourishment event. Rather, all lands that are above the high water line as a result of the 2018 renourishment remain public property, held in trust by the State. These common law principles are superior to any platted property boundaries that exist for the lots.

37. Plaintiffs seek a declaration as to the ownership status of land within the platted boundaries of the super-beachfront lots at issue, consistent with these principles.

FOR A SECOND CAUSE OF ACTION
(Temporary and Permanent Injunction)

38. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 37

above.

39. The individual Defendants cannot claim ownership over all areas within their platted lots, nor over all dry ground within their platted lots. The actual boundary of the individual Defendants' private property ownership does not allow the development activity that these Defendants have pursued.

40. The individual Defendants have no legal right to develop property belonging to the state, whether during or subsequent to this action. The individual Defendants have not obtained permission to undertake private construction activities on public trust property.

41. The Defendants' development of these super-beachfront lots would result in irreparable injury to the Plaintiffs in particular and as representatives of the public by depriving the Plaintiffs and the citizens of the State their rights to access property held in public trust. Development would specifically impair and threaten the property rights of the individual Plaintiffs, and strip the City of its vested authority.

42. Until such time as the Court permanently decides the issues set forth herein, no material harm will result to Defendants if they are temporarily enjoined from proceeding with their desired development activities. Indeed, the super-beachfront lots at issue in this action have been under private ownership for decades without any development.

43. The Plaintiffs are likely to succeed on the merits of this action based on the South Carolina common law of avulsion and the Public Trust Doctrine.

44. In the absence of an injunction, there is no adequate remedy at law available to these Plaintiffs.

45. Enjoining these Defendants from development, until such time as public

ownership can be determined, would best serve the public interest.

46. As a result of the foregoing, Plaintiff is entitled to the award of a temporary and permanent injunction for the relief sought herein.

WHEREFORE, having fully set forth their allegations against Defendants, Plaintiff respectfully requests the following relief:

(1) A declaration of legal rights and status as to the individual Defendants' super-beachfront lots, pursuant to the Uniform Declaratory Judgments Act, including that:

(a) The boundary between public and private property on the Folly Beach oceanfront remains the mean high water line as it existed prior to the commencement of the 2018 renourishment;

(b) The 2018 renourishment did not alter the boundary between public and private property on the Folly Beach oceanfront;

(c) The State owns those portions of the platted super-beachfront lots that were below mean high water line at the commencement of the 2018 renourishment under the Public Trust Doctrine; and

(d) Defendants' have no claim of private ownership over public trust property that was artificially converted to land above the mean high water line by the 2018 renourishment;

(2) A temporary and permanent injunction prohibiting the Defendants from initiating construction or otherwise taking any action in furtherance of the development of these super-beachfront lots; and

(3) Any other relief the court deems just and proper.



Michael Corley
Leslie Lenhardt

**SOUTH CAROLINA ENVIRONMENTAL LAW
PROJECT**

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585

Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone: (843) 527-0078

FAX: (843) 527-0540

Attorneys for the Plaintiffs

Georgetown, South Carolina

February 12, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

City of Folly Beach, Coastal)
Conservation League, Save Folly Beach,)
Inc., John Collins, Matt Napier, Paula)
Stubblefield, Troy Bode, and Carol Kruer,)

C/A No. 2019-CP-10-00717

Plaintiffs,)

v.)

**FIRST AMENDED ANSWER
OF THE STATE**

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.)

FILED
2019 MAY 24 PM 1:32
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendant State of South Carolina, by way of amended answer to the Complaint herein, alleges as follows:

FOR A FIRST DEFENSE

1. The State denies each and every allegation of the Complaint not hereinafter specifically admitted.

2. As to Paragraphs 1, 2 and 3, the State admits only that Plaintiffs are asking for relief, that the Court has jurisdiction and that venue is appropriate, but the State is without knowledge or information sufficient to form a belief as to the truth of any allegation that Plaintiffs are entitled to relief.

3. As to Paragraph 4, the State admits only the first sentence. The State is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 4.

4. The State admits Paragraphs 5 and 6 on information and belief.

5. The State is without knowledge or information sufficient to form a belief as to the truth of Paragraphs 7, 8 & 9.

6. As to Paragraph 10 of the Complaint, the State craves reference to South Carolina law regarding its presumptive title to tidelands and the public trust doctrine, and denies any allegations inconsistent therewith.

7. The State is without knowledge or information sufficient to form a belief as to the truth of Paragraphs 11 through 24, inclusive.

8. As to Paragraph 25 — 29, inclusive, the State craves reference to South Carolina case law, including but not limited to the cited cases, and denies any allegations inconsistent therewith.

9. As to Paragraph 30, the State is without knowledge or information sufficient to form a belief as to the truth of the allegation that it has ownership authority or control over the lots and that the lots belong to it. The State denies that it has failed to fulfill any responsibility that it has under State law.

10. Paragraph 31 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

11. The State is without knowledge or information sufficient to form a belief as to the truth of Paragraphs 32, 33 and 34.

12. The State is without knowledge or information sufficient to form a belief as to the truth of Paragraph 35 except that it craves reference to South Carolina law regarding avulsion and denies any allegations inconsistent therewith.

13. The State is without knowledge or information sufficient to form a belief as to the truth of Paragraph 36.

14. As to Paragraph 37, the State admits only that Plaintiffs are asking for a declaration, but the State is without knowledge or information sufficient to form a belief as to the truth of any allegation that Plaintiffs are entitled to such a declaration.

15. Paragraph 38 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

16. The State is without knowledge or information sufficient to form a belief as to the truth of Paragraph 39.

17. The State admits the first sentence of Paragraph 40 except that the State is without knowledge or information sufficient to form a belief as to the truth of allegations regarding the ownership of the property. The State is without knowledge or information sufficient to admit the second sentence of that Paragraph.

18. The State is without knowledge or information sufficient to form a belief as to the truth of Paragraphs 41 -46, inclusive.

19. The State is without knowledge or information sufficient to form a belief as to the truth of the prayer for relief.

FOR A SECOND DEFENSE

20. Plaintiffs do not seek injunctive relief as to the State and could not do so as to this matter.

FOR A THIRD DEFENSE

21. The Plaintiffs do not have standing to seek a declaration or determination as to the ownership of the land at issue because they do not have or claim an ownership interest in that land.

FOR A FOURTH DEFENSE

22. Regarding any building permit or other permit applications that are pending or have been obtained, Plaintiffs would be required to exhaust any available administrative remedies as to permits. Plaintiffs do not allege that they have exhausted any available administrative remedies as to any permit applications.

FOR A FIFTH DEFENSE

23. This case does not present a justiciable controversy as to the land at issue due to the Plaintiffs' lack of standing. Accordingly, the Court lacks subject matter jurisdiction to determine or declare ownership of the property at issue.

FOR A SIXTH DEFENSE

24. Plaintiffs have failed to state facts sufficient to constitute a cause of action.

WHEREFORE, having fully answered the Complaint herein, the State prays that this Court grant judgment to the State in this matter in accordance with the defenses set forth above and the evidence in this case.

ALAN WILSON
Attorney General

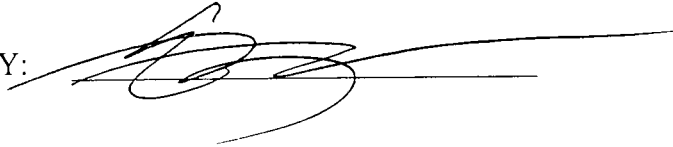
ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

[Signature block continues next page]

J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
Email: ESmith@scag.gov

BY:

A handwritten signature in black ink, appearing to be "J. Emory Smith, Jr.", written over a horizontal line.

May 22, 2019

ATTORNEYS FOR THE STATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

City of Folly Beach, Coastal)
Conservation League, Save Folly Beach,)
Inc., John Collins, Matt Napier, Paula)
Stubblefield, Troy Bode, and Carol Kruer,)
)
Plaintiffs,)

C/A No. 2019-CP-10-00717

v.)

CERTIFICATE OF SERVICE

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.)

FILED
2019 MAY 24 PM 1:32
JULIE J. ARMSTRONG
CLERK OF COURT

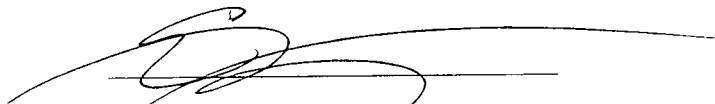
I hereby certify that I have served the First Amended Answer of the State upon the counsel for the other parties who have appeared in this action by mailing copies to them at the addresses below via the United States Mail this May 22, 2019. No proof of service of the Summons and Complaint on the other parties has been filed.

Michael Corley, Esquire
Leslie S. Lenhardt, Esquire
S.C. Environmental Law
Project
Post Office Box 1380
Pawleys Island, SC 29585

Richard D. Bybee, Esquire
Jeffrey S. Tibbals, Esquire
Evan P. Williams, Esquire
Bybee & Tibbals, LLC
P.O. Box 1542
Mt. Pleasant, SC 29465

Certificate of Service
City of Folly Beach v. State of South Carolina
May 22, 2019

Mary D. Shahid, Esquire
R. Bruce Wallace, Esquire
Angelica M. Colwell, Esquire
Nexsen Pruet, LLC
P. O. Box 486
Charleston, SC 29402

A handwritten signature in black ink, appearing to read "J. Emory Smith, Jr.", is written over a horizontal line.

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar. No. 5262



ALAN WILSON
ATTORNEY GENERAL

May 22, 2019

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

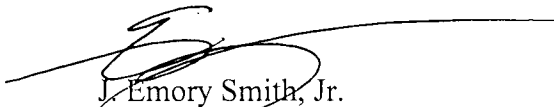
Re: City of Folly Beach v. State of South Carolina 2019-CP-10-0717

Dear Ms. Armstrong:

Enclosed for filing with your Office is the original First Amended Answer of the State with a certificate of service. I would appreciate your confirming filing by stamping the enclosed copy of the Answer and returning it to me in the enclosed envelope.

Thank you for your assistance.

Yours very truly,



J. Emory Smith, Jr.
Deputy Solicitor General

cc: Michael Corley, Esquire
Leslie S. Lenhardt, Esquire
Richard D. Bybee, Esquire
Jeffrey S. Tibbals, Esquire
Evan P. Williams, Esquire
Mary D. Shahid, Esquire
R. Bruce Wallace, Esquire
Angelica M. Colwell, Esquire

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6/12

10:47am

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS

) 2019

City of Folly Beach, Coastal Conservation
League, Save Folly Beach, Inc., John Collins,
Matt Napier, Paula Stubblefield, Troy Bode, and
Carol Kruer,

) C/A No. ~~2018~~-CP-10-0717

**NOTICE OF LIS PENDENS
FOR DEFENDANT STEPHEN
RAWE**

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.

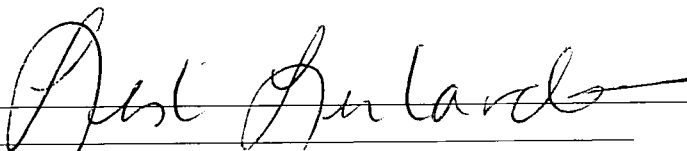
FILED
2019 JUN 12 AM 10:45
JULE J. ARMSTRONG
CLERK OF COURT

TO: THE DEFENDANT STEPHEN RAWE AND SUCH OTHER PERSONS AS MAY BE
CONCERNED:

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in
this Court upon the Complaint of the Plaintiffs above-named against the Defendant Stephen
Rawe for the purpose of disputing ownership of the real estate described in **Exhibit A** hereto.
Plaintiffs seek a declaration that portions of each parcel described in Exhibit A are the property
of the State of South Carolina.

[SIGNATURE BLOCK FOLLOWS]

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A handwritten signature in cursive script, appearing to read "Leslie Lenhardt", is written over a horizontal line.

Michael Corley

Leslie Lenhardt

SC ENVIRONMENTAL LAW PROJECT

Post Office Box 1380

Pawleys Island, SC 29585

Telephone: (843) 527-0078

FAX: (843) 527-0540

Attorneys for the Plaintiffs

Georgetown, South Carolina
June 13, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) Title Not Examined by Krawcheck & Davidson
) TITLE TO REAL ESTATE
)



BP0712515

PGS:

5

KNOW ALL MEN BY THESE PRESENTS that **WE, STEPHEN E. RAWE AND JILL T. RAWE** (hereinafter referred to as "Grantor"), in the State aforesaid, for and in consideration of the sum of FIVE AND NO/100 (\$5.00) DOLLARS, to me in hand paid at and before the sealing of these presents by **JILL T. RAWE TRUSTEE OF THE JILL T. RAWE REVOCABLE TRUST U/T/A SEPTEMBER 6, 2017 AND STEPHEN E. RAWE TRUSTEE OF THE STEPHEN E. RAWE REVOCABLE TRUST U/T/A SEPTEMBER 6, 2017** (hereinafter referred to as "Grantee"), in the State aforesaid, the receipt whereof is hereby acknowledged, and subject to the easement, restrictions, reservations and conditions set forth on the attached Exhibit "A" ("Exceptions"), have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release an undivided fifty percent (50%) interest unto **JILL T. RAWE TRUSTEE OF THE JILL T. RAWE REVOCABLE TRUST U/T/A SEPTEMBER 6, 2017** and an undivided fifty percent (50%) interest unto **STEPHEN E. RAWE TRUSTEE OF THE STEPHEN E. RAWE REVOCABLE TRUST U/T/A SEPTEMBER 6, 2017** in the following real property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF
BY EXPRESS REFERENCE.

**NOTE: THIS CONVEYANCE DOES NOT REPRESENT AN ASSESSABLE
TRANSFER OF INTEREST.**

TOGETHER with, all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned subject to the Exceptions, unto the said **JILL T. RAWE TRUSTEE OF THE JILL T. RAWE REVOCABLE TRUST U/T/A SEPTEMBER 6, 2017 AND STEPHEN E. RAWE TRUSTEE OF THE STEPHEN E. RAWE REVOCABLE TRUST U/T/A SEPTEMBER 6, 2017**, their Successors and Assigns forever.

GRANTEE'S ADDRESS:

1300 Winchester Drive
Charleston, SC 29407

RETURN TO:
Krawcheck & Davidson
9 State Street
Charleston, SC 29401

000056

Exhibit A

SUBJECT to the Exceptions, we do hereby bind ourselves, our Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said **JILL T. RAWE TRUSTEE OF THE JILL T. RAWE REVOCABLE TRUST U/T/A SEPTEMBER 6, 2017 AND STEPHEN E. RAWE TRUSTEE OF THE STEPHEN E. RAWE REVOCABLE TRUST U/T/A SEPTEMBER 6, 2017**, their Successors and Assigns forever, against ourselves and our Heirs and Assigns, and against every person whomsoever lawfully claiming, or to claim the same or any part hereof.

WITNESS my Hand and Seal this 10th day of April, 2018, in the year of our Lord, two thousand eighteen and in the two hundred and forty-second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
Witness # 1

[Signature]
Witness # 2

Jill T. Rawe (SEAL)
JILL T. RAWE

Stephen E. Rawe (SEAL)
STEPHEN E. RAWE

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

I, the undersigned Notary Public, do certify that the within named Grantor personally appeared before me, and having satisfactorily proven to be the person whose name is subscribed above, have acknowledged the due execution of the within Deed.

Witness my official seal this 10th day of April, 2018.

[Signature] (SEAL)
Lydia P. Davidson
(Type or Print Notary's Name)
NOTARY PUBLIC FOR SC
MY COMMISSION EXPIRES: 4/11/23

EXHIBIT "A"

All that certain piece, parcel or lot or tract of land, situate, lying and being on Folly Beach, Charleston County, South Carolina, known and designated as TRACT C, EAST FOLLY BEACH SHORES, as shown on a plat of "THE RESUBDIVISION OF A 1.12 ACRE TRACT, EAST FOLLY BEACH SHORES, FOLLY BEACH, CHARLESTON COUNTY, SOUTH CAROLINA" by George A. Z. Johnson, Jr., Inc., dated April 11, 1978 and recorded in the RMC Office for Charleston Count, South Carolina in Plat Book U, Page 56; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

AND

All that property which lies seaward of the mean high water mark of Tract C (said Tract C being shown on a plat prepared by George A. Z. Johnson, Jr., Inc. dated April, 11, 1978 and recorded in Plat Book U, Page 56, in the RMC Office for Charleston County, S.C.) and which is contained within two imaginary parallel lines, one of which extends seaward from the eastern boundary line of Tract C and extends to the mean high water mark that is shown and designated on that certain plat prepared by J. O'Hear Sanders, dated January 1951 and recorded in Plat Book H, Page 49, in the RMC Office for Charleston County, S.C.; the other being an imaginary parallel line extending seaward from the western boundary line of said Tract C to the mean high water mark as is shown on the plat prepared by J. O'Hear Sanders, dated January 1951, and recorded in Plat Book H, Page 49, in the RMC Office for Charleston County, S.C.; said property being bounded on the North by the mean high water mark as shown on the plat prepared by George A.Z. Johnson, dated April 11, 1978, and recorded in Plat Book U, Page 56, in the RMC Office for Charleston County; and to the South by the mean high water mark as shown on the plat prepared by J. O'Hear Sanders dated January 1951, and recorded in Plat Book H, Page 49, in the RMC Office for Charleston County, S.C.

Except, however, the grantors herein do not warrant the title to any of the above conveyed property lying below the mean high water mark line as it now exists or may hereafter exist, it being the intent of the grantors to quit claim any of their right, title and interest which they may have in any property which lies below the said mean high water mark.

BEING the same property conveyed to Stephen E. Rawe and Jill T. Rawe by deed of John W. Lindsay and Ann T. Lindsay dated December 29, 1978 and recorded in Book Y117, Page 44, Charleston County RMC Office.

TMS No. 439-16-00-091 and 439-16-00-103

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 1737 E. Ashley Avenue, Folly Beach, SC, bearing County Tax Map Number 439-16-00-091 and 439-16-00-103 was transferred by Stephen E. Rawe and Jill T. Rawe to Jill T. Rawe Trustee of the Jill T. Rawe Revocable Trust u/t/a September 6, 2017 and Stephen E. Rawe Trustee of the Stephen E. Rawe Revocable Trust u/t/a September 6, 2017 on April 10, 2018.

3. Check one of the following: The deed is

- (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ☒ exempt from the deed recording fee because (See Information section of affidavit): 8. to Trust
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit).

- (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____
(b) The fee is computed on the fair market value of the realty which is _____
(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is:

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: _____
(b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is:

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney

9. DEED OF DISTRIBUTION-ATTORNEY'S AFFIDAVIT: N/A

10. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Lydia P. Davidson
Responsible Person Connected with the Transaction
Lydia P. Davidson
Print or Type Name Here

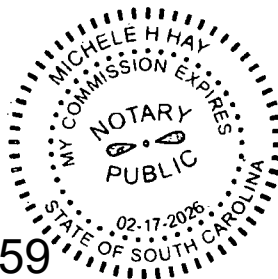
SWORN to and subscribed before me this
10 day of April 2018

Notary Public for SC

My Commission Expires: 2/17/2026

Notary (L.S.): _____

Notary (printed name): Michelle H. Hey



000059

RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



Filed By:

KRAWCHECK & DAVIDSON

9 STATE STREET

CHARLESTON SC 29401 (BOX)

RECORDED

Date: April 18, 2018

Time: 4:12:34 PM

Book

Page

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0712

515

Deed

Elaine H. Bozman, Register
Charleston County, SC

MAKER:

RAWE STEPHEN E AL

Note:

RECIPIENT:

RAWE JILL T TR AL

of Pages: 5

Recording Fee \$ 10.00

State Fee <EXEMPT>

County Fee <EXEMPT>

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 10.00

Original Book:

Original Page:

AUDITOR STAMP HERE

RECEIVED From ROD

Apr 24, 2018

Peter J. Tecklenburg

Charleston County Auditor

PID VERIFIED BY ASSESSOR

REP MKD

DATE 04/24/2018

42

DRAWER Drawer 2
CLERK JBA



0712

Book



515

Page



04/18/2018

Recorded Date



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Original Book



Original Page



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Doc Type



16:12:34

Recorded Time

) IN THE COURT OF COMMON PLEAS
) *2019*

) C/A No. ~~2018~~-CP-10-0717

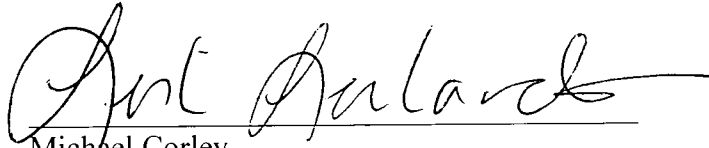
**NOTICE OF LIS PENDENS
FOR DEFENDANT JEFFREY H.
MORRIS**

FILED
2019 JUN 12 AM 10:45
JULIE J. ARMSTRONG
CLERK OF COURT

Defendants.

[SIGNATURE BLOCK FOLLOWS]

000061

A handwritten signature in black ink, appearing to read "Ant Anland", written over a horizontal line.

Michael Corley

Leslie Lenhardt

SC ENVIRONMENTAL LAW PROJECT

Post Office Box 1380

Pawleys Island, SC 29585

Telephone: (843) 527-0078

FAX: (843) 527-0540

Attorneys for the Plaintiffs

Georgetown, South Carolina
June 13, 2019



BP0765521

PGS:

5

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that **David R. Hutto and Ann B. Hutto**, (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of **SEVEN HUNDRED THOUSAND AND 00/100, (\$700,000.00) DOLLARS**, and subject to the Restrictions, Exceptions, and Limitations as set forth hereinafter, if any, to the Grantor herein paid at and before the sealing of these presents by **Jeffrey H. Morris and Billie Kay Morris**, as joint tenants with rights of survivorship, and not as tenants in common, (hereinafter whether singular or plural the "Grantee") the receipt and sufficiency whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents, do grant, bargain, sell and release unto the said Grantee, Grantee's successors, heirs and assigns, the following described property, to-wit:

All those certain pieces, parcels, or lots of land, with improvements thereon, situate, lying, and being in what is commonly known as East Folly Beach Shores, in the County of Charleston, State of South Carolina, being in a rectangle shape, measuring on its northeastern and southwestern sides a distance of two hundred eighty (280) feet and on its northwestern and southeastern sides a distance of sixty (60) feet, be the same dimensions more or less; butting and bounding according to a plat hereinafter referred to as follows, to wit: Northeast on Lot #2204 and #2301 of said plat hereinafter referred to; Southeast by the Atlantic Ocean; Southwest by Lots #2305 and #2200 of said plat; and Northwest by what is commonly known as Ashley Avenue.

The above described lots of land will more fully appear as Lots #2303 and #2202 reference to a plat of East Folly Beach Shores by J. O'Hear Sanders, Jr., Surveyor, dated January 31, 1971, recorded in Plat Book H at page 49 in the RMC office for Charleston County, reference to which is hereby craved and made a part and parcel hereof so far as the same pertains to said Lots #2303 and #2202 of East Folly Beach Shores.

Being the same property conveyed to David R. Hutto and Ann B. Hutto by Deed of James R. Rocco, John N. Rocco, and Rob Ortiz by Deed dated August 29, 1998 and recorded September 9, 1998 in the ROD Office for Charleston County, SC in Deed Book 0310, Page 635.

TMS No.: 439-16-00-056 & 439-16-00-061

Grantee Address: 386 Oxenbridge Way, Chapin, SC 29036

Together with all and singular the rights, members, hereditaments and appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Jeffrey

Exhibit A

000063

H. Morris and Billie Kay Morris, as joint tenants with rights of survivorship, and not as tenants in common, Grantee's successors, heirs and assigns, forever.

AND the Grantor does hereby bind the Grantor and the Grantor's successors, heirs, assigns, personal representatives and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, as hereinabove provided, Grantee's successors, heirs and assigns against the Grantor and the Grantor's successors, heirs and assigns, and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof.

SIGNATURE PAGE TO FOLLOW

WITNESS Grantor's Hand and Seal this 5 day of December, 2018.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
Witness #1
[Signature]
Witness #2 (can be notary)

[Signature]
David R. Hutto
[Signature]
Ann B. Hutto

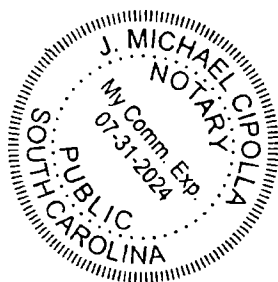
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

The foregoing instrument was acknowledged before me this 5 day of December, 2018 by David R. Hutto and Ann B. Hutto.

[Signature]
Signature of Person Taking Acknowledgment
Title or Rank _____
Serial Number _____

Commission Expires: 7/31/2024

18-1348



000065

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

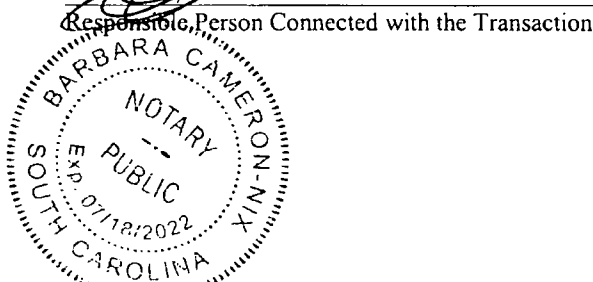
PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred at 1717 E. Ashley Avenue Folly Beach, SC bearing Charleston County Tax Map Number 439-16-00-056 & 00-061 transferred by David R. Hutto and Ann B. Hutto to Jeffrey H. Morris and Billie Kay Morris dated December 5, 2018.
3. Check one of the following: The deed is:
 - (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth \$700,000.00.
 - (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☐ exempt from the deed recording fee because (See Information section of affidavit: _____) (If exempt, please skip items 4-7 and go to item 8 of this affidavit).

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information Section of this Affidavit):
 - (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of: \$700,000.00.
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) ☐ The fee is computed on the fair market value of the realty as established the property tax purposes which is _____
5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the loan, tenement or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.). If "Yes", the amount of the outstanding balance of this lien or encumbrance is _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here \$700,000.00
 - (b) Place the amount listed in item 5 above here \$0
(If no amount is listed place zero here)
 - (c) Subtract 6(b) from 6(a) and place result here \$700,000.00
7. The deed recording fee due is based on the amount listed in Line 6(c) above and the deed recording fee due is \$2,590.00.
8. As required by Code §12-24-70, I state that I am a responsible person who was connected with the transaction as: Settlement Agent.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this
the 5 day of December, 2018.

Notary Public for South Carolina
My Commission Expires: 7/18/22



000066

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document

**Filed By:**

HARRELL MARTIN & PEACE

PO BOX 1000
CHAPIN SC 29036

MAKER:

HUTTO DAVID R AL

RECIPIENT:

MORRIS JEFFREY H AL

Original Book:**Original Page:****AUDITOR STAMP HERE**

RECEIVED From ROD
Dec 18, 2018
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR

REP RJB

DATE 12/19/2018

37

RECORDED

Date: December 11, 2018

Time: 10:30:11 AM

Book

0765

Page

521

DocType

Deed

Elaine H. Bozman, Register
Charleston County, SC

of Pages: 5

Recording Fee	\$ 10.00
State Fee	\$ 1,820.00
County Fee	\$ 770.00
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 2,600.00

DRAWER Drawer 5
CLERK JSW



0765
Book



521
Page



12/11/2018
Recorded Date



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Original Book



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Recorded Time

10:46am

6/12

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)

2019

City of Folly Beach, Coastal Conservation
League, Save Folly Beach, Inc., John Collins,
Matt Napier, Paula Stubblefield, Troy Bode, and
Carol Kruer,

) C/A No. ~~2018~~-CP-10-0717
)

**NOTICE OF LIS PENDENS
FOR DEFENDANT VERNON
STAUBES**

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.

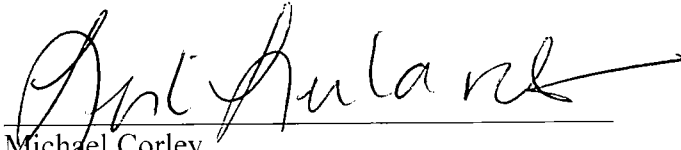
FILED
2019 JUN 12 AM 10:46
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE DEFENDANT VERNON STAUBES AND SUCH OTHER PERSONS AS MAY
BE CONCERNED:

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in
this Court upon the Complaint of the Plaintiffs above-named against the Defendants Juan
Enterprises, LLC for the purpose of disputing ownership of the real estate described in Exhibit
A hereto. Plaintiffs seek a declaration that portions of each parcel described in Exhibit A are the
property of the State of South Carolina.

[SIGNATURE BLOCK FOLLOWS]

000068

A handwritten signature in black ink, appearing to read "Michael Corley", written over a horizontal line.

Michael Corley

Leslie Lenhardt

SC ENVIRONMENTAL LAW PROJECT

Post Office Box 1380

Pawleys Island, SC 29585

Telephone: (843) 527-0078

FAX: (843) 527-0540

Attorneys for the Plaintiffs

Georgetown, South Carolina
June 13, 2019



BP0648168

PGS:

5

STATE OF SOUTH CAROLINA)
) **TITLE TO REAL ESTATE**
COUNTY OF CHARLESTON) *(Title not examined)*

KNOW ALL MEN BY THESE PRESENTS, THAT I, **THOMAS E. BURKART**, in the State aforesaid, for and in consideration of the sum of **THREE THOUSAND AND 00/100 (\$3,000.00) DOLLARS**, to me in hand paid at and before the sealing of these presents by **VERNON STAUBES**, in the State aforesaid and the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said **VERNON STAUBES**, his heirs and assigns forever, the following described real property, to wit:

SEE EXHIBIT "A" HERETO.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the **VERNON STAUBES**, his heirs and assigns forever.

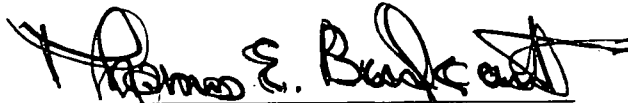
And I do hereby bind my self, my Heirs, Executors and Administrators to warrant and forever defend, all and singular, the said premises unto the said **VERNON STAUBES**, his heirs and assigns against me and my Heirs and all persons whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal, this 12th day of June, 2017.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Madonna B. Hawks

J. Grace Smallidge


THOMAS E. BURKART

STATE OF NORTH CAROLINA)
COUNTY OF Craven)

ACKNOWLEDGMENT

I, S. Ariece Smalldridge do hereby certify that THOMAS E. BURKART
personally appeared before me this day and acknowledged the due execution of the foregoing
instrument.

SWORN to and subscribed before me
this 20th day of June, 2017.

S. Ariece Smalldridge
Notary Public for North Carolina
My Commission Expires: September 30, 2017

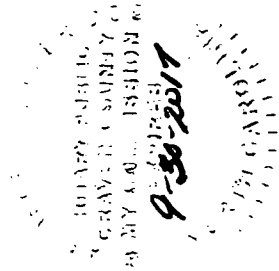


EXHIBIT "A"

All those lots, pieces, parcels or tracts of land situate, lying and being on Folly Island Charleston County, South Carolina, and known and designated as Lots 1405 East Arctic Avenue and 1406 East Arctic Avenue on a plat made by the Jefferson Construction Company and duly recorded in the RMC Office for Charleston County in Plat Book C on Pages 157 and 158, each lot measuring and containing on the Northern and Southern lines 70 feet; lot 1405 measuring and containing on the West line 95 feet, and on the East line 87 feet; Lot 1406 measuring and containing on the West line 78 feet and on the East line 74 feet by these said dimensions a little more or less. Lot 1405 butting and bounding to the South on East Arctic Avenue, to the West on Lot 1404, to the North on East Ashley Avenue Extension as shown on a Plat of East Ashley Extension duly recorded in the RMC Office for Charleston County, and on the East by a 10 foot alley-way, separating the same from Lot 1406.

Lot 1406 being bounded on the South by East Arctic Avenue, on the West by a 10 foot alley-way separating the same from Lot 1405. On the North on East Ashley Avenue Extension as shown on Plat duly recorded in the RMC Office for Charleston County and on the East by Lot 1407 as shown plat.

This being the identical property conveyed to grantor by Deed of Distribution of Michael D. Burkart, Personal Representative of the Estate of Anne D. Burkart, which estate was probated in the Charleston County Probate Court in case number 2009-ES-10-1472, dated March 15, 2010, and recorded in the RMC Office for Charleston County in Book 0112, Page 404.

TMS#: 439-14-00-016

Grantees' Address: PO Box 12121
Charleston, SC 29422

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property was transferred by THOMAS E. BURKART
to VERNON STAUBES on 6/22/2015.

3. Check one of the following: The deed is

- (A) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (B) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
- (C) ☐ exempt from the deed recording fee because (See Information section of affidavit): _____ (Explanation required)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?

Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):

- (A) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$3,000.00.
- (B) ☐ The fee is computed on the fair market value of the realty which is _____.
- (C) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:

- (A) Place the amount listed in item 4 above here: \$3,000.00
- (B) Place the amount listed in item 5 above here: _____
- (If no amount is listed, place zero here.)
- (C) Subtract Line 6(b) from Line 6(a) and place the result here: _____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is:
\$11.10

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
ATTORNEY

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.



Responsible Person Connected with the Transaction

KERRY W. KOON, ESQ.

Print or Type Name Here

Sworn this 27th day of June, 2017

[Signature]
Notary Public for South Carolina

My Commission Expires: 5/22 2019

000073

RECORDER'S PAGE



NOTE: This page **MUST** remain
with the original document

GRANTOR SIGNATURE OK
Filed By: PER KERRY KOON 6/27/17

KERRY KOON
ATTORNEY AT LAW
147 WAPPOO CENTRE - SUITE 204
CHARLESTON SC 29412 (BOX)

RECORDED

Date: June 27, 2017
Time: 12:28:58 PM

Book	Page	DocType
0648	168	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:

BURKART THOMAS E

Note:

RECIPIENT:

STAUBES VERNON

of Pages: 5

Recording Fee	\$ 10.00
State Fee	\$ 7.80
County Fee	\$ 3.30
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 21.10

Original Book:

Original Page:

AUDITOR STAMP HERE

RECEIVED From RMC
Jun 30, 2017
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR

REP MKD

DATE 07/03/2017

4

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CLERK JBA



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Book



168
Page



06/27/2017
Recorded Date



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Original Book



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12:28:58
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) IN THE COURT OF COMMON PLEAS
)
) 2012

) C/A No. 2018-CP-10-0717

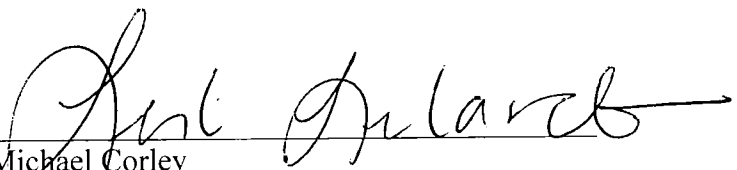
**NOTICE OF LIS PENDENS
FOR DEFENDANT JUANITA A
WRIGHT**

2019 JUN-12
FILED
PENDING
JUANITA A
HT
CLERK OF COURT
ARMSTRONG
AM 10:45

Defendants.

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon the Complaint of the Plaintiffs above-named against the Defendant Juanita Wright for the purpose of disputing ownership of the real estate described in **Exhibit A** hereto. Plaintiffs seek a declaration that portions of each parcel described in Exhibit A are the property of the State of South Carolina.

[SIGNATURE BLOCK FOLLOWS]



Michael Corley

Leslie Lenhardt

SC ENVIRONMENTAL LAW PROJECT

Post Office Box 1380

Pawleys Island, SC 29585

Telephone: (843) 527-0078

FAX: (843) 527-0540

Attorneys for the Plaintiffs

Georgetown, South Carolina
June 13, 2019

Recorded by and to be
returned to:

Harvey & Casterline, L.L.P.
900 Elmwood Ave, Suite 200
Columbia, SC 29201-2058

File No. P-00-0584

STATE OF SOUTH CAROLINA	)	
	)	<u>TITLE TO REAL ESTATE</u>
COUNTY OF CHARLESTON	)	

KNOW ALL MEN BY THESE PRESENTS, THAT I/WE, Allie Jo Logan in the State aforesaid for and in consideration of the sum of THREE HUNDRED FIFTY THOUSAND DOLLARS and 00/100 (\$350,000.00), to me/us in hand paid at and before the sealing of these presents by Juanita A. Wright and John P. Cantwell in the State aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Juanita A. Wright and John P. Cantwell, his/her/their heirs and assigns forever, the following described property, to wit:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of CHARLESTON, State of South Carolina, shown and delineated as Lot 2144 and 2361, Block on a Plat of East Folly Beach Shores prepared by J. O'Hear Sanders, Jr., Surveyor dated January 31, 1951 and recorded in the Office of the Register of Deeds for CHARLESTON County in Plat Book H at Page 49. Said lot of land being further shown and delineated on a Plat prepared for and Juanita A. Wright and John P. Cantwell dated August 18, 2000 to be recorded simultaneously herewith. Reference is hereby made to said latter mentioned plat for a more complete and accurate description of said lot of land.

This being the same property previously conveyed to the Grantor(s) herein by Deed of Distribution of Joseph R. Logan (Richland County Probate file no. 92-ES-40-1039) dated July 16, 1993 and recorded in the Office of the Register of Deeds for CHARLESTON County on July 22, 1993 in Deed/Record Book S-229 at Page 779.

Exhibit A

TMS: 439-15-00-035, 439-15-00-046

Property Address: 1659 East Ashley Avenue, Folly Beach, SC 29439

Grantee's Address: 326 Steeple Crest North, Irmo, SC 29063

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Juanita A. Wright and John P. Cantwell, his/her/their heirs and assigns forever.

AND I/we do hereby bind myself/ourselves and my/our heirs, executors, and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Juanita A. Wright and John P. Cantwell, his/her/their heirs and assigns, against me/us and my/our heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my/our Hand(s) and Seal(s), this 22nd day of August, 2000.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Lisa K. Hudson
witness sign here
[Signature]
notary sign here

Allie Jo Logan
Allie Jo Logan

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named Allie Jo Logan sign, seal and as his/her/their act and deed, deliver the within written Deed, and that he/she with the other witness witnessed the execution thereof.

Lisa K. Hudson
witness sign here

SWORN to before me, this

22nd day of August, 2000.

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: 7/26/10

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

AFFIDAVIT

Date of Transfer of Title
(Closing Date) August 22, 2000

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred BY Allie Jo Logan
TO Juanita A. Wright & Don F. Cantwell ON August 22, 20003. Check one of the following: **The DEED is**

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
- (c) ☐ EXEMPT from the deed recording fee because (Exemption) _____
(Explanation If required) _____

(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$350,000.00.
- (b) ☐ The fee is computed on the fair market value of the realty which is \$ _____.
- (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.

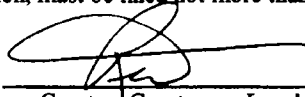
5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____.

6. The DEED Recording Fee is computed as follows:

- (a) \$350,000.00 the amount listed in item 4 above
- (b) _____ the amount listed in item 5 above (no amount place zero)
- (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as: Closing Attorney

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


 Grantor, Grantee, or Legal Representative
connected with this transaction

Rex L. Casterline
 Print or Type Name here

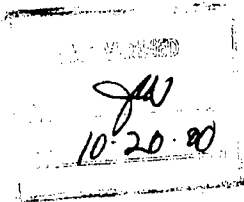
 Sworn to before me this 10th
 day of September 2000
[Signature]
 Notary Public for South Carolina
 My Commission Expires: 7/6/00

Harvey & Costerline
900 Elmwood Ave Ste 200
Columbia SC 29201

BK: X356PG262

②

R
LTV

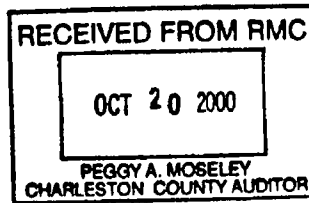


FILED

X 356-258

2000 OCT 17 PM 4:21

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC



Recording Fee	<u>10.00</u>
State Fee	<u>910.00</u>
County Fee	<u>385.00</u>
Postage	<u> </u>
TOTAL	<u>1,305.00</u>

B

6/12

10:48am

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS

) 2019

City of Folly Beach, Coastal Conservation
League, Save Folly Beach, Inc., John Collins,
Matt Napier, Paula Stubblefield, Troy Bode, and
Carol Kruer,

) C/A No. ~~2018~~-CP-10-0717

)

)

)

)

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.

)

**NOTICE OF LIS PENDENS
FOR DEFENDANT JUAN
ENTERPRISES, LLC**

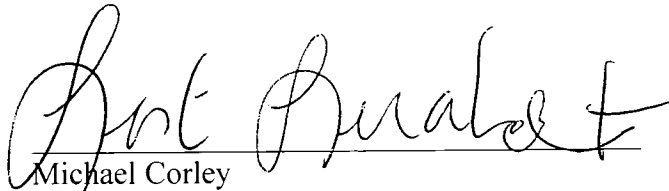
FILED
2019 JUN 12 AM 10:45
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE DEFENDANT JUAN ENTERPRISES, LLC AND SUCH OTHER PERSONS AS
MAY BE CONCERNED:

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in
this Court upon the Complaint of the Plaintiffs above-named against the Defendants Juan
Enterprises, LLC for the purpose of disputing ownership of the real estate described in Exhibit
A hereto. Plaintiffs seek a declaration that portions of each parcel described in Exhibit A are the
property of the State of South Carolina.

[SIGNATURE BLOCK FOLLOWS]

000082

A handwritten signature in black ink, appearing to read "Art Pinalot", written over a horizontal line.

Michael Corley

Leslie Lenhardt

SC ENVIRONMENTAL LAW PROJECT

Post Office Box 1380

Pawleys Island, SC 29585

Telephone: (843) 527-0078

FAX: (843) 527-0540

Attorneys for the Plaintiffs

Georgetown, South Carolina
June 13, 2019

File Number: 06-056
Prepared by and return to:
Law Office of John M. Bleecker, Jr., LLC
121 Church Street
Charleston, South Carolina 29402

BK R 578PG418

Line Above for Recording Information

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) **TITLE TO REAL ESTATE**

KNOW ALL MEN BY THESE PRESENTS, that **DIANA THOMAS CLARK, F/K/A DIANA L. THOMAS**, for and in consideration of the sum of **ONE HUNDRED FIFTY THOUSAND AND NO/100 (\$150,000.00) DOLLARS** to her paid by **JUAN ENTERPRISES, LLC**, in the State aforesaid (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **JUAN ENTERPRISES, LLC, ITS SUCCESSORS AND/OR ASSIGNS**, the following described real property, to-wit:

ALL that certain piece, parcel or lot of land, together with any buildings and improvements thereon, situate, lying and being on Folly Beach, County of Charleston, State of South Carolina, being known and designated as **LOT 2359, EAST FOLLY BEACH SHORES**, as shown and delineated on that certain plat entitled, "**EAST FOLLY BEACH SHORES, STATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON**", prepared by J. O'Hear Sanders, Jr, Surveyor dated January 31, 1951, and recorded in the Office of the RMC for Charleston County in Plat Book H at page 49 on March 2, 1951. For a more complete description of said Lot, reference may be had to the aforementioned Plat, which is incorporated herein and made part and parcel hereof.

TMS# 439-15-00-045

000084

Exhibit A

This being the same premises conveyed unto Diana L. Clark, formerly known as Diana L. Thomas by G and C Properties, LLC dated May 27, 2004, and recorded in the Office of the RMC for Charleston County in Book J-496 at page 160 on May 27, 2004.

Grantee's Address: 6030 St. Andrews Road, Suite J
Columbia, SC 29212

This conveyance is made subject to all covenants, conditions, restrictions, easements and rights of way of record as recorded in the Office of the RMC for Charleston County, including any and all amendments thereto.

TOGETHER, with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto **JUAN ENTERPRISES, LLC, ITS SUCCESSORS AND/OR ASSIGNS.**

AND **DIANA THOMAS CLARK, F/K/A DIANA L. THOMAS**, does hereby bind herself and her heirs and assigns, to warrant and forever defend all and singular the said premises unto **JUAN ENTERPRISES, LLC, ITS SUCCESSORS AND/OR ASSIGNS**, against it and its successors and/or assigns, and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, **Diana Thomas Clark**, formerly known as **Diana**

L.Thomas has caused these presents to be executed this 3rd day of April, 2006.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF**



Kay S Petting

Diana Thomas Clark FKA:

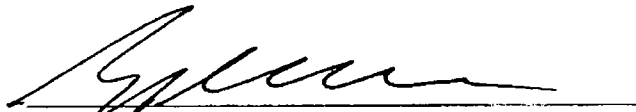


Diana Thomas Clark, formerly known as
Diana L.Thomas

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing document was acknowledged before me this 3rd day of April, 2006, by
Diana Thomas Clark formerly known as Diana L. Thomas.



Notary Public for South Carolina
My Commission Expires: 9/4/08

STATE OF SOUTH CAROLINA)

AFFIDAVIT OF TRUE CONSIDERATION

COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property known as ~~1601-B~~ Berket Drive, Folly Beach, South Carolina 29439, bearing the Charleston County Tax Map Number: 439-15-00-045 was transferred by Diana Thomas Clark to Juan Enterprises, LLC on April 3, 2006.
3. Check one of the following: The deed is:
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) EXEMPT from the deed recording fee because transfer of realty where no gain or loss recognized (family member transfer)(exemptions 1-12)(If exempt, please skip items 4-7, and go to Item of this Affidavit)
4. Check one of the following if either Item 3(a) or 3(b) above has been checked.
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$150,000.00.
 - (b) The fee is computed on the fair market value of the realty which is \$_____.
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.
5. Check YES or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$_____.
6. The Deed Recording Fee is computed as follows:
 - (a) \$150,000.00 The amount listed in Item 4 above.
 - (b) -0- The amount listed in Item 5 above (no amount place zero).
 - (c) \$150,000.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantee.
8. I understand that a person required to furnish this Affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SUBSCRIBED AND SWORN before
me this 3rd day of April, 2006.

Notary Public for South Carolina
My Commission Expires: 9/4/08


Diana Thomas Clark

BK R 578PG422

RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



FILED

April 5, 2006

1:15:26 PM

BK R 578PG418

Charlie Lybrand, Register
Charleston County, SC

Filed By:

John M. Bleecker, Jr.

Attorney at Law

Post Office Box 148

Charleston

SC 29402

AMOUNT

DESCRIPTION

DESCRIPTION	AMOUNT
Recording Fee	\$ 10.00
State Fee	\$ 390.00
County Fee	\$ 165.00
Postage	
TOTAL	\$ 565.00

\$ Amount (in thousands): 150

DRAWER:

B - ecp

AUTHOR OF STAMP HERE

RECEIVED FROM RMC

MAY 3 2006

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR

REP ALS

DATE 5.2.6

DO NOT STAMP BELOW THIS LINE

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

City of Folly Beach, Coastal Conservation
League, Save Folly Beach, Inc., John Collins,
Matt Napier, Paula Stubblefield, Troy Bode,
and Carole Kruer,

Plaintiff,

vs.

State of South Carolina, Amy Connelly,
Jeffrey H. Morris, Michael Vandeale, Stephen
Rawe, Juan Enterprises, LLC, Juanita A.
Wright, Debbie's Folly, LLC, and Vernon
Staubes,

Defendant.

IN THE COURT OF COMMON PLEAS

_____ JUDICIAL CIRCUIT

CASE NO.: 2019-CP-10-00717

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:
Leslie S. Lenhardt, Bar No. _____
Address:
PO Box 1380 Pawleys Island, SC
Phone: _____ Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Rita Bolt Barker, Bar No. 77600
Address:
200 E. Camperdown Way Greenville, SC 29602
Phone: 864-242-8200 Fax _____
E-mail: rbarker@wyche.com Other: _____

- ☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 30

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Rita Bolt Barker
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

5/28/19

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$ _____
☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

000089

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON City of Folly Beach, Coastal Conservation League, Save Folly Beach, Inc., John Collins, Matt Napier, Paula Stubblefield, Troy Bode, and Carole Kruer, Plaintiffs, vs. State of South Carolina, Amy Connelly, Jeffrey H. Morris, Michael Vandeale, Stephen Rawe, Juan Enterprises, LLC, Juanita A. Wright, Debbie's Folly, LLC, and Vernon Staubes, Defendants.	IN THE COURT OF COMMON PLEAS CASE No. 2019-CP-10-0717 DEFENDANTS JUAN ENTERPRISES, LLC AND JUANITA A. WRIGHT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT
--	---

FILED
 2019 MAY 31 PM 1:43
 JULIE J. ARMS, CLERK OF COURT

Defendants Juan Enterprises, LLC, and Juanita A. Wright (collectively, “Defendants”) respectfully move this Court, pursuant to Rules 12(b)(1), (6), and (7) and 19, SCRCP, to dismiss the Complaint filed by Plaintiffs City of Folly Beach, Coastal Conservation League, Save Folly Beach, Inc., John Collins, Matt Napier, Paula Stubblefield, Troy Bode, and Carole Kruer (“Plaintiffs”) in the above-captioned action because Plaintiffs have failed to state facts sufficient to constitute a cause of action, lack standing, and have failed to join necessary parties. The grounds for this motion, which will be discussed in more detail in a memorandum of law to be filed hereafter, are as follows:

1. No law, South Carolina or otherwise, establishes that the State of South Carolina owns portions of Plaintiffs’ property above the mean high water line following the avulsive 2018 renourishment event. Under Rule 12(b)(6), SCRCP, a complaint must state facts sufficient to constitute a cause of action. If there is no law to support a particular claim,

there can be no viable cause of action. *See generally Doe v. Marion*, 361 S.C. 463, 605 S.E.2d 556 (Ct. App. 2004).

2. Because Plaintiffs have failed to name as parties the vast majority of “superbeachfront lot” owners in Folly Beach, all of which have interests in the property at issue in this case, Plaintiffs have failed to name necessary parties as required by the Declaratory Judgment Act and Rule 19, SCRPC. *See* S.C. Code § 15-53-80; Rule 19(a), SCRPC. Rule 12(b)(7) requires dismissal of a complaint that fails to join a necessary party under Rule 19, SCRPC.
3. None of the Plaintiffs has a personal stake in the subject matter of this action and thus Plaintiffs are not real parties in interest and lack standing to pursue this action against Defendants. Accordingly, their Complaint should be dismissed under Rule 12(b)(1), SCRPC.

Therefore, Defendants move the Court for an order dismissing the Complaint with prejudice.

Respectfully submitted,

WYCHE, P.A.



Rita Bolt Barker (S.C. Bar No. 77600)
Gregory J. English (S.C. Bar No. 65470)
200 E. Camperdown Way
Post Office Box 728
Greenville, SC 29602-0728
Telephone: 864-242-8200
Facsimile: 864-235-8900
E-mail: rbarker@wyche.com

**ATTORNEYS FOR DEFENDANTS JUAN
ENTERPRISES, LLC AND JUANITA A.
WRIGHT**

May 28, 2019

000092

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON City of Folly Beach, Coastal Conservation League, Save Folly Beach, Inc., John Collins, Matt Napier, Paula Stubblefield, Troy Bode, and Carole Kruer, Plaintiffs, vs. State of South Carolina, Amy Connelly, Jeffrey H. Morris, Michael Vandeale, Stephen Rawe, Juan Enterprises, LLC, Juanita A. Wright, Debbie's Folly, LLC, and Vernon Staubes, Defendants.	IN THE COURT OF COMMON PLEAS CASE No. 2019-CP-10-0717 CERTIFICATE OF SERVICE FILED 2019 MAY 31 PM 1:43 CLIE J. ARMSTRONG CLERK OF COURT
--	---

I, the undersigned attorney for Defendants, Juan Enterprises, LLC and Juanita A. Wright, do hereby swear and affirm that on the 28th day of May, 2019, I served the foregoing **DEFENDANTS JUAN ENTERPRISES, LLC AND JUANITA A. WRIGHT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT** by Email and U.S. Mail, postage prepaid, to the following:

Michael Corley michael@scelp.org Leslie Lenhardt leslie@scelp.org South Carolina Environmental Law Project P.O. Box 1380 Pawleys Island, SC 29585 <i>Attorneys for Plaintiff</i> Alan Wilson awilson@scag.gov Robert D. Cook bcook@scag.gov J. Emory Smith, Jr., Esq. ESmith@scag.gov Office of Attorney General P.O. Box 11549 Columbia, SC 29211 <i>Attorneys for The State of South Carolina</i>	R. Bruce Wallace bwallace@nexsenpruet.com Mary D. Shahid mshahid@nexsenpruet.com Angelica M. Colwell acolwell@nexsenpruet.com Nexsen Pruet, LLC P.O. Box 486 Charleston, SC 29402 <i>Attorneys for Defendant Stephen E. Rawe</i> Richard D. Bybee rdb@bybeetibbals.com Jeffrey S. Tibbals jst@bybeetibbals.com Evan P. Williams ewilliams@bybeetibbals.com Bybee & Tibbals, LLC P.O. Box 1542 Mt. Pleasant, SC 29465
---	---

WYCHE, P.A.

Rita Bolt Barker

Rita Bolt Barker (S.C. Bar No. 77600)

Gregory J. English (S.C. Bar No. 65470)

200 E. Camperdown Way

Post Office Box 728

Greenville, SC 29602-0728

Telephone: 864-242-8200

Facsimile: 864-235-8900

E-mail: rbarker@wyche.com

**ATTORNEYS FOR DEFENDANTS JUAN
ENTERPRISES, LLC AND JUANITA A.
WRIGHT**

May 28, 2019

W Y C H E

Attorneys at Law

May 28, 2019

The Hon. Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Suite 106
Charleston, SC 29401

Re: *City of Folly Beach, Coastal Conservation League, Save Folly Beach, Inc. John Collins, Matt Napier, Paula Stubblefield, Troy Bode, and Carole Kruer vs. State of South Carolina, Amy Connelly, Jeffrey H. Morris, Michael Vandeale, Stephen Rawe, Juan Enterprises, LLC, Juanita A. Wright, Debbie's Folly, LLC, and Vernon Staubes*
Case No.: 2019-CP-10-0717

Dear Ms. Armstrong:

Enclosed for filing with your office are the original and two copies of Defendants Juan Enterprises, LLC and Juanita Wright's Motion to Dismiss Plaintiff's Complaint. We kindly ask that you return two filed-stamped copies in the envelope provided.

Thank you for your assistance.

Sincerely,



Rita Bolt Barker
rbarker@wyche.com

Enclosures

cc: Michael Corley
Leslie Lenhardt
Mary Shahid
R. Bruce Wallace
Angelica M. Colwell
Alan Wilson
Robert D. Cook
J. Emory Smith, Jr.
Richard D. Bybee
Jeffrey S. Tibbals
Evan P. Williams

W Y C H E
PROFESSIONAL ASSOCIATION

PO Box 728, Greenville, SC 29602-0728
p: 864.242.8200 | f: 864.235.8900

www.wyche.com
000095

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CITY OF FOLLY BEACH, COASTAL
CONSERVATION LEAGUE, SAVE FOLLY
BEACH, INC., JOHN COLLINS, MATT
NAPIER, PAULA STUBBLEFIELD, TROY
BODE, AND CAROL KRUER,

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA, ET.AL.)

Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2019-CP-10-00717

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

Lelise Lenhardt, Bar No. 15858

Address:

Post Office Box 1380, Pawleys Island, SC
29585

Phone: 843-527-0078 Fax _____

E-mail: llenhardt@scelp.com Other: _____

Defendant's Attorney:

Mary D. Shahid, Bar No. 1794

Address:

Post Office Box 468, Chas, SC 29402

Phone: 843-577-9440 Fax _____

E-mail: mshahid@nexsenpruet.com Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 30 minutes

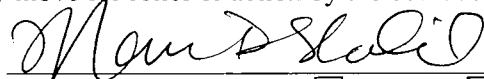
Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☐ Plaintiff / ☒ Defendant

8/7/2019

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

000096

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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.

IN THE CIRCUIT COURT

Case No. 2019-CP-10-00717

JEFFREY H. MORRIS' NOTICE OF
MOTION AND MOTION TO DISMISS
COMPLAINT PURSUANT TO SCRPC
RULE 12(B)(1) AND 12(B)(6)

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEYS:

NOW COMES Defendant Jeffrey H. Morris ("Morris") by and through his undersigned counsel, pursuant to Rules 12(b)(6) and (b)(1) of the South Carolina Rules of Civil Procedure, and hereby moves this Court for an Order dismissing Plaintiffs' Complaint. This Motion is made on the grounds that the claims within Plaintiffs' Complaint fail to state facts sufficient to constitute a cause of action against Mr. Morris and that Plaintiffs lack standing to bring this action. This Motion is supported by the applicable law, the Complaint filed in this action, and a memorandum of law, to be filed in advance of a hearing on this Motion.

FILED
2019 AUG - 7 PM 4: 30
JULIE J. ARNSTRONG
CLERK OF COURT

000098

NPCHAR1:2691797.1

Background

The Complaint alleges Mr. Morris owns an undeveloped “super-beachfront” lot on Folly Beach.¹ Complaint, ¶11. The Complaint also alleges Morris has taken “affirmative steps to pursue development” of his lot. Id. It is unclear from the Complaint whether Mr. Morris’ lot is platted “seaward of existing oceanfront development,” Complaint, ¶12, but the Court can assume so for purposes of this Motion. In any event, the Complaint alleges Morris’ lot is seaward or beyond the bounds of “typical oceanfront development.” Complaint, ¶13.

Because of Folly Beach’s proximity to the Charleston Harbor jetties, “frequent beach renourishment is necessary to maintain the beach and to protect existing development.” Complaint, ¶15. “Frequent beach renourishment” helps maintain the beach and protect existing development. Id. Because of various conditions, “Folly Beach is reliant on a continual, repeating cycle of renourishment. This has been the established mode of operation on Folly for many years ...” Complaint, ¶16.

One repeat of the cycle of renourishment occurred as late as 2018. Complaint, ¶18. The U.S. Army Corps of Engineers placed 1 million cubic feet of sand on Folly Beach, converting “large sections of ocean and intertidal beach into sandy dry ground above the mean high water mark.” Id. While the Complaint is again unclear, the Court can assume, for purposes of this Motion, the mean high water mark at Mr. Morris’ lot “was pushed seaward by the renourishment.” Complaint, ¶19. Some lot owners possess valid septic tank permits for their lots. Complaint, ¶21. Some lot owners have sought building

¹ Defendant Morris is the first record owner of two lots in the City of Folly Beach, TMS Nos. 4391600056 and 4391600061. The latter is a beachfront lot that is located behind, and abuts, the former, which has a street address, 1717 E. Ashley Avenue. The other record owner is Billie Kay Morris, Defendant Morris’ wife.

permits on these lots. Complaint, ¶21. According to the Complaint, Morris has “demonstrated the intent to develop [his property].” Complaint, ¶22. Morris “claims private ownership of sandy dry ground above the mean high water” allegedly created by the 2018 renourishment or prior renourishments. Complaint, ¶23.

GROUNDS FOR MOTION

1) Plaintiffs lack standing to bring the action asserted in their Complaint, which sounds in quieting of title though pleaded as a declaratory judgment action. See, e.g., Lollis v. Dutton, 421 S.C. 467, 807 S.E.2d 723 (Ct. App. 2017) (“the issue underlying Mother's and Sister's declaratory judgment cause of action is in the nature of a quiet title claim”). The inability of Plaintiffs to demonstrate standing is a constitutional defect. At its heart, this action is a request for the Court to determine title of certain lands, including Mr. Morris’ beachfront lot, into the State of South Carolina. Plaintiffs, who are private property owners and a municipality,² lack statutory standing to assert the rights of the State of South Carolina to real property. This defect deprives this Court of jurisdiction and dismissal is warranted under SCRPC Rule 12(b)(1).

2) Plaintiffs’ claims are based on a general assertion that “South Carolina follows the common law principles of accretion, erosion and avulsion.” Complaint, ¶27. However, Plaintiffs have cited no South Carolina case that has addressed the common law rule of avulsion, when it is alleged to occur in the context of non-natural event undertaken for the public purpose of maintaining public beach. More pointedly, no South Carolina court has ever applied such rule of avulsion to deprive a private property owner of land lying within the owners’ platted boundaries, as Plaintiffs pray for here. In short, Plaintiffs’ Complaint

² The State of South Carolina is not a Plaintiff.

lacks sound legal basis and should be dismissed as a matter of law in accordance with SCRPC Rule 12(b)(6).

ARGUMENT

1. Plaintiffs lack standing to pursue a Quiet Title Action.

“An action to quiet title is governed by Section 15-67-10 of the South Carolina Code.” Johnnie Major et al. v. Penn Community Services, Inc., 395 S. C. 175, 717 S. E. 2d 70 (2011). Section 15-67-10 provides that “[a]ny person in possession of real property, by himself or his tenant, or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively.” (Emphasis added.) Morris’ lot is neither vacant nor unoccupied - Mr. Morris’ yard extends into the lot. Moreover, Plaintiffs are not in possession of Morris’ lot.

Because Plaintiffs do not claim an interest in Morris’ lot and it is not abandoned, they have no standing to declare Morris’ lot’s ownership, or any portion thereof, in the State’s name.

The purpose and effect of statutes of this type 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, 445 S. E. 2d 647 (1994). As set forth in Argument “2” below, the Plaintiffs’ claim is both imaginary and speculative as 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 alleged avulsive event – renourishment of Folly Beach in 2018 – is for the purpose of restoring private property. As is noted in S. C. Code Ann. Sec. 48-39-290(E), Folly Beach is exempt from certain restrictions contained in 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)(1). (Emphasis added.) Plaintiffs’ assertion that the Corps of Engineers’ efforts to 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.

2. Plaintiffs fail to state a claim sufficient to constitute a cause of action.

The Folly Beach Shore Protection Project was initially implemented in 1993 and was repeated in 2005, 2014, and 2018. The federal authorization for renourishment was to mitigate damage to both public and private shorelines resulting from navigational projects, which includes the installation of the Charleston Harbor jetties that have contributed to erosion on Folly Beach.

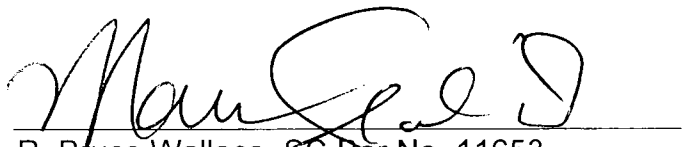
South Carolina recognizes the general common law rule that accretions by natural alluvial action to riparian or littoral lands become the property of the riparian or littoral owner whose lands are added to. ... Conversely, lands gradually encroached upon by water cause to belong to the former riparian or littoral owner. ... 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. The rule is said to rest on the principle of natural justice that one who sustains the burden of losses imposed by the contiguity of waters shall be entitled also to whatever benefits they bring.

Horry County v. Woodward, 282 S. C. 366, 318 S. E. 2d 584 (1984). Mr. Morris' lot has a seaward boundary that is a moving boundary based on erosion and accretion. Complaint, ¶12. In response, the beach renourishment projects historically restore both public and private property. Complaint, ¶18, n. 1 ("the renourishment consisted of ... public funds paying for ... sand on public property and private funds paying for ... sand on individual lots.") The Court should assume that Mr. Morris paid private funds to restore sand to his individual lot. In fact, Folly Beach Ordinance 31-17 requires private owners of beachfront property to maintain their property to standards required by the Corps, including filling the property to maintain elevation identified by the Corps. Id.

The Plaintiffs allege no public funds were used to restore sand to private property such as Morris'. Id. As a result, Plaintiffs essentially allege renourishment of sand to

private property through the expenditure of private funds somehow converts that private property to public property. This theory espoused by Plaintiffs has not been recognized or adopted by this State's courts in determining riparian boundaries. Additionally, Plaintiffs' claims are inconsistent with the legal authorization of the Folly Beach Shore Protection Project and applicable statutes and regulations, and Folly Beach's own Ordinance.

Defendant Morris respectfully requests dismissal of the Complaint in accordance with SCRCP Rule 12(b)(1) and (6). Defendant Morris seeks, upon dismissal, attorneys fees from the City of Folly Beach in accordance with S. C. Code Ann. Sec. 15-77-300.



R. Bruce Wallace, ~~SC~~ Bar No. 11653
Mary D. Shahid, SC Bar No. 1794
Angelica M. Colwell, SC Bar No. 73188
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
Telephone: 843.577.9440
Facsimile: 843.720.1777
BWallace@nexsenpruet.com
MSahid@nexsenpruet.com
AColwell@nexsenpruet.com

Attorneys for Defendant
Jeffrey H. Morris

August 7, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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.

Case No. 2019-CP-10-00717

CERTIFICATE OF SERVICE

FILED
2019 AUG -7 PM 4:30
JULIE J. ARNSTROM
CLERK OF COURT

This is to certify that on this 7th day of August, 2019, a copy of the foregoing Notice of Motion and Motion to Dismiss Complaint was filed with the Clerk of Court, and that a copy has been served upon the following by placing the same in the United States mail, first class postage prepared, and addressed as shown below:

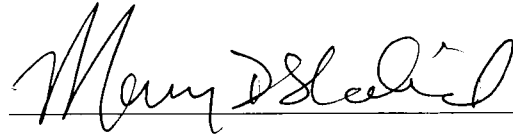
Michael Corley, Esq.
Leslie Lenhardt, Esq.
South Carolina Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585

Jeffrey S. Tibbals, Esq.
Richard D. Bybee, Esq.
Evan P. Williams, Esq.
Bybee & Tibbals, LLC
P.O. Box 1542
Mount Pleasant, SC 29465

Alan Wilson, Attorney General
Robert D. Cook, Solicitor General
J. Emory Smith, Jr., Deputy Solicitor General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Rita Bolt Barker, Esq.
P.O. Box 728
Greenville, SC 29601

Kerry Koon, Esq.
147 Wappoo Creek Drive
Suite 203
Charleston, SC 29412

A handwritten signature in black ink, appearing to read "Mary D. Slade", is written over a horizontal line.

NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

Mary D. Shahid
Member
Admitted in SC

August 7, 2019

VIA COURIER AND U.S. MAIL

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

Re: State of South Carolina, et al. v. City of Folly Beach, et al.
Case No. 2019-CP-10-00717

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of Defendant Jeffrey H. Morris' Notice of Motion and Motion to Dismiss Complaint in regard to the above referenced matter. Also enclosed is a check in the amount of \$25.00 for the filing fee. Please file the original and return the stamped copy. By copy of this letter we are serving opposing counsel.

Please contact me if you have any questions or if I can be of assistance.

Sincerely,



Mary D. Shahid

Enclosures

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

cc: Leslie Lendhart, Esq.
Michael Corley, Esq.
Jeffrey Tibbals, Esq.
Richard Bybee, Esq.
Evan Williams, Esq.
Alan Wilson, Attorney General
Robert Cook, Solicitor General
J. Emory Smith, Jr., Deputy Solicitor General
Kerry Koon, Esq.
Rita Barker, Esq.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

CITY OF FOLLY BEACH, ET AL.)

CASE NO.: 2019-CP-10-0717

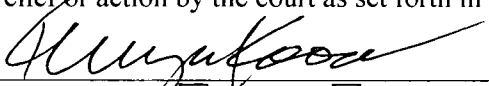
Plaintiff,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

VERNON STAUBES, ET AL.)

Defendant.)

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant Staubes' Attorney: KERRY W. KOON, ESQ., Bar No. 3605 Address: 147 WAPPOO CREEK DRIVE, STE. 203 CHARLESTON, SC 29412 Phone: 843.795.7000 Fax: 843.762.5276 E-mail: kerrykoon@hotmail.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <u>DEFENDANT STAUBES' MOTION TO DISMISS PURSUANT TO S.C.R.C.P. RULE 12(B)(1) and 12(B)(6)</u>	
Estimated Time Needed: <u>15 mins.</u> Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
 _____ Signature of Attorney for ☐ Plaintiff / ☒ Defendant Vernon Staubes <u>7-25-19</u> Date submitted	
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: _____ (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE #: 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,)

v.)
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.)

DEFENDANT VERNON STAUBES
MOTION TO DISMISS PURSUANT TO
S.C.R.C.P. RULE 12(B)(1) and 12(B)(6)

FILED
2019 JUL 25 PM 4:11
CLERK OF COURT
JUL 25 2019

TO THE PLAINTIFFS ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant Vernon Staubes intends to move before the Honorable Court at a date and time to be set by the Court for an order dismissing the Complaint pursuant to Rules 12(B)(1) and 12(B)(6) S.C.R.C.P. on the following grounds:

a) The Plaintiffs lack standing to pursue their claims since they have no current or former claim or possessory interest in the Defendant's property; and

b) The Plaintiffs have no standing to assert any rights of the State of South Carolina, especially in light of the apparent disavowal by the State of the merits of this action in its Motion for Judgment on the Pleadings filed July 5, 2019; and

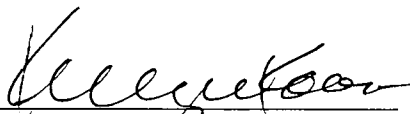
c) In Plaintiffs' own Complaint, recognizes Defendant Staubes' ownership of property within his platted lot under the established doctrines of accretion and erosion (Complaint, Paragraph 27); and

d) The Plaintiffs' claims are contrary to the protections afforded private property owners under both State and Federal for property lying with an area in which erosion of beaches is attributed to a federally authorized navigation project (the jetties) S.C. Code Ann. Section 48-39-290(E) and 33 C.F.R. Section 263.27; and

e) The Plaintiffs have failed to name all necessary parties; and

f) The Plaintiffs have no personal or corporate stake in the subject matter of this action.

PLEASE BE PRESENT TO DEFEND IF SO MINDED!


KERRY W. KOON

147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
(843) 795-7000

ATTORNEY FOR DEFENDANT VERNON STAUBES

Charleston, South Carolina
This 25th day of July, 2019.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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
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MICHAEL VANDAELE, STEPHEN RAWE,
JUAN ENTERPRISES, LLC, JUANITA A.
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VERNON STAUBES,

Defendants.

IN THE CIRCUIT COURT

Case No. 2019-CP-10-00717

JEFFREY H. MORRIS' NOTICE OF
MOTION AND MOTION TO DISMISS
COMPLAINT PURSUANT TO SCRPC
RULE 12(B)(1) AND 12(B)(6)

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEYS:

NOW COMES Defendant Jeffrey H. Morris ("Morris") by and through his undersigned counsel, pursuant to Rules 12(b)(6) and (b)(1) of the South Carolina Rules of Civil Procedure, and hereby moves this Court for an Order dismissing Plaintiffs' Complaint. This Motion is made on the grounds that the claims within Plaintiffs' Complaint fail to state facts sufficient to constitute a cause of action against Mr. Morris and that Plaintiffs lack standing to bring this action. This Motion is supported by the applicable law, the Complaint filed in this action, and a memorandum of law, to be filed in advance of a hearing on this Motion.

FILED
2019 AUG -7 PM 4:30
JULIE J. ARISTARCHUS
CLERK OF COURT

000112

NPCHAR1:2691797.1

Background

The Complaint alleges Mr. Morris owns an undeveloped “super-beachfront” lot on Folly Beach.¹ Complaint, ¶11. The Complaint also alleges Morris has taken “affirmative steps to pursue development” of his lot. *Id.* It is unclear from the Complaint whether Mr. Morris’ lot is platted “seaward of existing oceanfront development,” Complaint, ¶12, but the Court can assume so for purposes of this Motion. In any event, the Complaint alleges Morris’ lot is seaward or beyond the bounds of “typical oceanfront development.” Complaint, ¶13.

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2) Plaintiffs' claims are based on a general assertion that “South Carolina follows the common law principles of accretion, erosion and avulsion.” Complaint, ¶27. However, Plaintiffs have cited no South Carolina case that has addressed the common law rule of avulsion, when it is alleged to occur in the context of non-natural event undertaken for the public purpose of maintaining public beach. More pointedly, no South Carolina court has ever applied such rule of avulsion to deprive a private property owner of land lying within the owners' platted boundaries, as Plaintiffs pray for here. In short, Plaintiffs' Complaint

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Because Plaintiffs do not claim an interest in Morris' lot and it is not abandoned, they have no standing to declare Morris' lot's ownership, or any portion thereof, in the State's name.

The purpose and effect of statutes of this type 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, 445 S. E. 2d 647 (1994). As set forth in Argument “2” below, the Plaintiffs’ claim is both imaginary and speculative as 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 alleged avulsive event – renourishment of Folly Beach in 2018 – is for the purpose of restoring private property. As is noted in S. C. Code Ann. Sec. 48-39-290(E), Folly Beach is exempt from certain restrictions contained in 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)(1). (Emphasis added.) Plaintiffs’ assertion that the Corps of Engineers’ efforts to 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.

2. Plaintiffs fail to state a claim sufficient to constitute a cause of action.

The Folly Beach Shore Protection Project was initially implemented in 1993 and was repeated in 2005, 2014, and 2018. The federal authorization for renourishment was to mitigate damage to both public and private shorelines resulting from navigational projects, which includes the installation of the Charleston Harbor jetties that have contributed to erosion on Folly Beach.

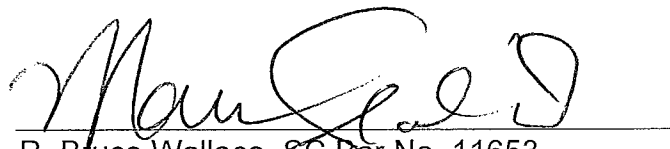
South Carolina recognizes the general common law rule that accretions by natural alluvial action to riparian or littoral lands become the property of the riparian or littoral owner whose lands are added to. ... Conversely, lands gradually encroached upon by water cause to belong to the former riparian or littoral owner. ... 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. The rule is said to rest on the principle of natural justice that one who sustains the burden of losses imposed by the contiguity of waters shall be entitled also to whatever benefits they bring.

Horry County v. Woodward, 282 S. C. 366, 318 S. E. 2d 584 (1984). Mr. Morris' lot has a seaward boundary that is a moving boundary based on erosion and accretion. Complaint, ¶12. In response, the beach renourishment projects historically restore both public and private property. Complaint, ¶18, n. 1 ("the renourishment consisted of ... public funds paying for ... sand on public property and private funds paying for ... sand on individual lots.") The Court should assume that Mr. Morris paid private funds to restore sand to his individual lot. In fact, Folly Beach Ordinance 31-17 requires private owners of beachfront property to maintain their property to standards required by the Corps, including filling the property to maintain elevation identified by the Corps. Id.

The Plaintiffs allege no public funds were used to restore sand to private property such as Morris'. Id. As a result, Plaintiffs essentially allege renourishment of sand to

private property through the expenditure of private funds somehow converts that private property to public property. This theory espoused by Plaintiffs has not been recognized or adopted by this State's courts in determining riparian boundaries. Additionally, Plaintiffs' claims are inconsistent with the legal authorization of the Folly Beach Shore Protection Project and applicable statutes and regulations, and Folly Beach's own Ordinance.

Defendant Morris respectfully requests dismissal of the Complaint in accordance with SCRPC Rule 12(b)(1) and (6). Defendant Morris seeks, upon dismissal, attorneys fees from the City of Folly Beach in accordance with S. C. Code Ann. Sec. 15-77-300.

A handwritten signature in black ink, appearing to read "R. Bruce Wallace", is written over a horizontal line.

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Attorneys for Defendant
Jeffrey H. Morris

August 7, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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.

Case No. 2019-CP-10-00717

CERTIFICATE OF SERVICE

FILED
2019 AUG -7 PM 4:30
JULIE J. ARMSTRONG
CLERK OF COURT

This is to certify that on this 7th day of August, 2019, a copy of the foregoing Notice of Motion and Motion to Dismiss Complaint was filed with the Clerk of Court, and that a copy has been served upon the following by placing the same in the United States mail, first class postage prepared, and addressed as shown below:

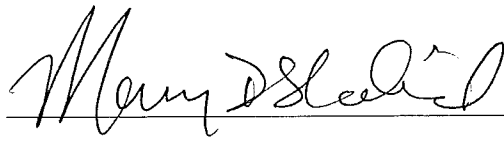
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A handwritten signature in black ink, appearing to read "Mary D. Slade", is written over a horizontal line.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)

City of Folly Beach, Coastal Conservation League, Save Folly Beach, Inc., John Collins, Matt Napier, Paula Stubblefield, Troy Bode, and Carol Kruer,

) C/A No. 2019-CP-10-00717

AFFIDAVIT OF MATT NAPIER

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.

Personally appeared before me Matt Napier, who, after being duly sworn, deposes and states the following:

1. I am older than eighteen years of age and am competent to make this Affidavit. The statements in this Affidavit are based on my own personal knowledge.
2. I am a member of the non-profit organizations Coastal Conservation League and Save Folly Beach, Inc.
3. Along with Paula Stubblefield, I own a lot and home located at 1661 East Ashley Avenue, Folly Beach, TMS# 4391500036.
4. A platted lot with the registered owner Juan Enterprises, LLC (TMS# 4391500045) lies seaward of my property, and another lot, owned by Juanita Wright (TMS# 4391500046), lies

seaward and caddy-corner to my property (collectively, the “seaward parcels”).

5. Neither of the seaward parcels has frontage on a road or driveway. Rather, the lots, as platted, border only the ocean and landward lots containing oceanfront homes. (See, Tax Map attached as Exhibit A).
6. Based on my review of Charleston County property records, the seaward parcels were platted at the same time as my lot, in 1951, but the seaward lots have never been developed nor had road access.
7. These seaward parcels are an example of what has come to be called “super-beachfront” lots on Folly Beach, meaning that the lots are platted seaward of what is the established beachfront on Folly Beach and have no road access.
8. While the vast majority of super-beachfront lots are undeveloped and often submerged, residences have been constructed on a handful of super-beachfront lots on the northeastern part of the Island, where my property is located. (See, images attached as Exhibit B.) The beach on this part of the Island erodes and moves, and these residences have frequently been located on the active beach, shielded from the ocean only by seawalls.
9. My attempts to use and enjoy the public beach in proximity to my property have been disrupted by existing super-beachfront residences on the northeast part of the Island. Those residences have made the beach impassible for walking and jogging when the tide is up to the seawalls, and the beach is submerged. I have abandoned attempts to walk or jog along the beach because it has been impossible to navigate past super-beachfront homes without trespassing or walking through deep water. I have also observed that the presence of these super-beachfront residences and their seawalls exacerbates erosion on the public beach, which has diminished my opportunities for recreation, including walking, jogging, and other

recreation.

10. I have utilized the public beach extensively on the northeast part of the Island, in areas that are part of the tidal beach but are bounded by Defendants' platted lot lines. This includes the lots in proximity to my property, which are those owned by Defendants Juan Enterprises, Wright, Rawe, Morris, Vandaele, and Staubes. If these lots are developed, I will be excluded from these portions of the public trust that I previously enjoyed. My overall recreational and aesthetic interests will be diminished by the presence of structures on the beach and my inability to access these areas I formerly used for walking, jogging, and other recreation.
11. Professionally, I am a small-scale real estate developer and principal in a multitude of real estate investments in the Charleston area. I hold a real estate license in South Carolina, and my real estate experience includes project management, predevelopment, rezoning property, new construction, redevelopment, property management and residential real estate investing. I have also been hired to provide broker price opinions to banks for the valuation of real estate properties. Through these ventures, I have gained extensive experience and knowledge in valuating properties and in assessing the factors that lead to increased and decreased property value.
12. The presence of existing super-beachfront development in proximity to my property has undoubtedly lowered my property value. These homes have diminished the quality of the public beach, which is a primary driver of my property value, as both a physical and visual impairment. Further, the existing super-beachfront development, along with the threat of future super-beachfront development, has been a matter of significant controversy and notoriety, generally making this portion of Folly Beach less desirable in the eyes of a potential investor.

13. I have observed that uncertainty over the ownership status of the undeveloped super-beachfront lots and the potential for those lots to be developed depresses the value of all oceanfront homes that border those lots, including my own.
14. If either of the seaward lots were developed, my physical access to the beach, my ability to use the public beach, and the view from my property would be drastically diminished, and my property value would decline substantially as a result.
15. The northeast portion of Folly Beach, where my property is located, suffers from chronic, significant erosion. From the time I purchased my property in April 2017, I observed the normal high tide line move landward as a result of erosion to the point that high tide nearly reached my seaward property line, and the seaward lots were almost entirely submerged at high tide.
16. Then, our section of beach was renourished beginning in the late summer of 2018, through a project organized by the City of Folly Beach. More than five vertical feet of sand was added to the beach in front of my property, and the seaward lots went from submerged or nearly submerged to temporarily dry and covered in renourishment sand. The average high tide line moved seaward approximately 50 yards as a result of the renourishment.
17. Immediately upon the renourishment ending, the renourishment sand began to erode away, and that process has been more or less continuous through the present, with steady erosion back toward the dunes on my property. Just over one year after renourishment ended, well over fifty percent of the renourished sand is gone from the stretch of beach nearest me. If the current trajectory continues, the beach will soon be back to its pre-renourished / eroded state, with all the super-beachfront lots being active, tidal beach.
18. The seaward third of my property encompasses oceanfront dunes and vegetation. As is

typical of most other oceanfront homes in the state, a short sand path extends from my lawn, through the sand dunes and onto the beach. (See Exhibit A). We've used this path as our beach access for the duration of our ownership.

19. Under claim of ownership, agents of Juanita Wright and/or Juan Enterprises have, over the last six months, erected barricades in the dunes in front of my property. These substantial barricades are built into the ground and block the path from my property to the beach. (Photos attached as Exhibit C). The barricades are emblazoned with "No Trespassing" signs and apparently reflect the Defendants' belief that they own the narrow strip of dry sand between my property and the ocean.
20. Without question, the inability to walk onto the beach from my property diminishes my property value and the return on the investment I've made in this property. Moreover, my options at this point are to either violate Juan Enterprises' assertion of property ownership and scamper around the barricades or walk down East Ashley Avenue to a public beach access.
21. Determination of the ownership status of the land between my property and the current mean high tide line is essential to the continued use and enjoyment of my property and to my ability to recognize my investment in this property and sell it for full value when the time comes to do so.
22. Because Folly Beach depends on a regular cycle of renourishment, property owners on the oceanfront, including myself, must know the rules for how such renourishment impacts our property lines, or else orderly management of our properties will be impossible.

FURTHER AFFIANT SAYETH NOT.


Matt Napier

Sworn and subscribed before me
this 22nd day of January, 2020


Notary Public for North Carolina.

My commission expires 5-28-2022.



Exhibit A



Exhibit B



000130







STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)

City of Folly Beach, Coastal Conservation
League, Save Folly Beach, Inc., John Collins,
Matt Napier, Paula Stubblefield, Troy Bode, and
Carol Kruer,

) C/A No. 2018-CP-10-0717
)

AFFIDAVIT OF 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.

Personally appeared before me Carol Kruer, who, after being duly sworn, deposes and states the following:

1. I am older than eighteen years of age and am competent to make this Affidavit. The statements in this Affidavit are based on my own personal knowledge.
2. I own a lot and home located at 1212 East Arctic Avenue, Folly Beach, TMS# 4391500036, having purchased this property in January 2017.
3. A platted lot with the registered owner Debbie's Folly, LLC (TMS# 4391300020) lies seaward and approximately forty yards up the beach from my property. This property is typically referred to by the address 1217 East Arctic Avenue. I own one of the last homes on East Arctic Avenue, and the road dead ends into the Debbie's Folly lot. (Property map attached as Exhibit A).
4. Based on the alignment of East Arctic Avenue, the Debbie's Folly lot is the furthest seaward property on our section of Folly Beach. Presumably as a consequence of this fact, the lot has

not been developed.

5. During my relatively brief ownership of 1212 East Arctic Avenue, I have observed many times when the majority of the Debbie's Folly lot was submerged. Indeed, up until the major beach renourishment during the summer and fall of 2018, it was typical for more than half of the Debbie's Folly lot to be submerged at high tide.
6. I regularly walk along the beach in proximity to my property in order to exercise, relax, and observe nature and wildlife. Because the Debbie's Folly lot has been part of the active beach, I have regularly utilized parts of that lot in order to access the beach and complete my walks. Indeed, because the tide has often been well onto the Debbie's Folly lot, it has been impossible for me to walk up the beach without crossing into the area I know to be within the platted boundaries of that lot.
7. If the Debbie's Folly lot were developed, it would constitute a significant impairment to my recreational use of the beach. Specifically, if a home and seawall were constructed on the Debbie's Folly lot, the tide would be blocked from moving up onto the lot as it has in the past, and the public beach where I walk would be submerged.
8. My attempts to use and enjoy the public beach in proximity to my property have already been disrupted by existing residences at the end of East Arctic Avenue. These residences are located too close to the ocean and require significant protection from seawalls. Those residences have made the beach impassible for walking when the tide is up to the seawalls, and the beach is submerged. I have abandoned attempts to walk along the beach because it has been impossible to navigate past these homes without trespassing or walking through deep water. Any development on the Debbie's Folly lot would be even closer to the sea and even more of an impediment.

9. I have also observed that the presence of these residences and their seawalls too close to the ocean exacerbates erosion on the public beach, which has diminished my opportunities for recreation, including walking.
10. Further, the primary view of the ocean from my second row home is across the Debbie's Folly lot. I have watched from my property as the tide covered that lot. If the lot were developed, which I believe would be contrary to the public trust doctrine, it would cut off my ocean view, diminishing the aesthetic value of my property.
11. I have invested significantly in maintaining and improving my property, and I have done so with the expectation that I will be able to recoup such investment when it comes time to sell my home. Development of the Debbie's Folly lot would diminish that investment and my likelihood of an adequate return.
12. In addition to cutting off my view, development of the Debbie's Folly lot would most certainly decrease the quality of the beach at the end of East Arctic Avenue, which is the driver of property values in our area. Once again, I have already observed this trend in relation to the existing residences on the end of East Arctic, and the Debbie's Folly lot is even less compatible with maintenance of a healthy beach.
13. If the Debbie's Folly lot were developed, my physical access to the beach, my ability to use the public beach, and the view from my property would be drastically diminished, and my property value would decline as a result.
14. Determination of the true ownership status of the chronically submerged portions of the Debbie's Folly lot is essential to the continued use and enjoyment of my property and to my ability to recognize my investment in this property and sell it for full value when the time comes to do so.

FURTHER AFFIANT SAYETH NOT.

Carol Kruer

Carol Kruer

Sworn and subscribed before me
this 23 day of January, 2020

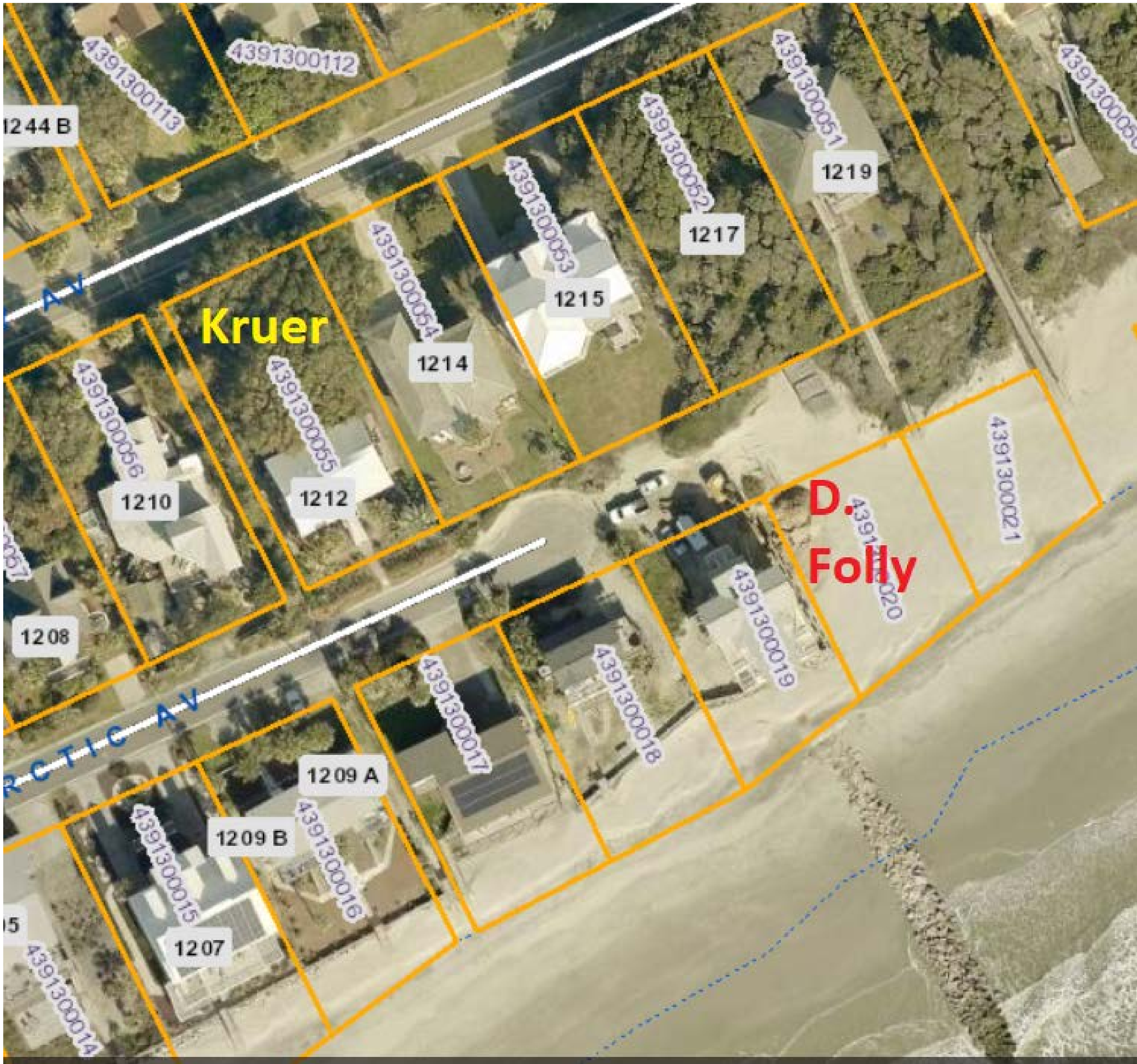
David H. Ginn

Notary Public for South Carolina.

My commission expires 7-10-2027.



Exhibit A



) IN THE COURT OF COMMON PLEAS
)

) C/A No. 2019-CP-10-0717

**AFFIDAVIT OF
SPENCER WETMORE**

)

5

5

1. I am older than eighteen years of age and am competent to make this Affidavit. The statements in this Affidavit are based on my own personal knowledge.
2. I am the City Administrator for the City of Folly Beach, having served in that role for more than five years.
3. As City Administrator, issues related to beachfront management make up a significant part of my job. As is relevant to this affidavit, I am involved in planning and managing beach renourishment projects on the Island, in assisting City Council in formulating beachfront policy, and in administering the City's Code of Ordinances, which has a variety of provisions related to the beachfront.
4. The beachfront on Folly Island is particularly difficult to manage for a variety of reasons, including the presence of relic platted lots that have come to be known as "superbeachfront"

lots. These lots were platted many decades ago, in the 1950s, and most of the lots exist in a state of chronic erosion, without direct road access.

5. The City's interest in this lawsuit stems first from the difficulty and expense the City has borne as a result of the few superbeachfront lots that have been developed.
6. On the northeast part of the island, fourteen superbeachfront lots have been developed with residential houses, starting in the late 1990s. In order to stay as far away from the ocean as possible and to comply with local ordinances, the houses are typically crammed on the back edge of these superbeachfront lots, and the house design often has to be non-conventional. The presence and appearance of these beachhouses detracts from the aesthetic standard the City has worked to develop on the beachfront.
7. Most significantly, in terms of the City's interest, development of superbeachfront lots is antithetical to maintenance and growth of healthy oceanfront dunes, which the City desires to promote for the sake of protecting homes and infrastructure on the Island. Past development on superbeachfront lots has resulted in destruction of oceanfront sand dunes, and the properties that are the subject of this lawsuit could not be developed without similar loss.
8. Moreover, the existing superbeachfront houses have regularly ended up on the active beach as a result of the strong erosive forces we experience on the northern half of the Island. The City relies heavily on tourism and a tax base that is driven by healthy, open, and visually appealing beaches. When these superbeachfront houses end up on the beach, constituting an impediment to public use and enjoyment, the City suffers.
9. Especially in the gaps between beach renourishment, it is not at all unusual that a superbeachfront house will end up imperiled by regular ocean tides, even with the seawalls that have been constructed around these developed lots. The City has regularly committed

significant staff time to monitoring these imperiled houses, undertaking work to alleviate the threat where possible, and carrying out the condemnation process when necessary. Generally, the question of what do with these houses when they inevitably become imperiled has occupied significant staff and Council time during my tenure as City Administrator.

10. As the tides have come up, over, and around existing developed superbeachfront lots, septic tanks have been exposed and foundations have been eroded, to the point of making homes uninhabitable. (Pictures attached as Exhibit A). Both of these conditions impose a significant management and administration burden on the City, and a beach littered with exposed septic tanks and the uninhabitable beach houses is obviously antithetical to the City's interests.
11. The City considers the existing superbeachfront homes to constitute an enhanced risk to safety and infrastructure during storms, and any new development on superbeachfront lots would be the same.
12. Based on these considerations, the City is strongly interested in preventing the inherently problematic development of additional superbeachfront lots, which the City does not believe is in consistent with the public trust doctrine.
13. The City's interest in this lawsuit is secondly driven by the need for certainty in property ownership in order to effectively administer our beachfront ordinances and conduct our maintenance projects.
14. Based on Folly Beach's unique treatment under state coastal law, the City is involved in permitting seawalls and revetments on the beachfront, which property owners seek in order to separate and protect their private property from the public beach. An applicant of course must establish ownership of the property where he intends to build the erosion control structure. The City therefore must be able to accurately assess the location of the property

line on avulsive tracts, in order to avoid violating the public trust doctrine and essentially giving away public property. Likewise, the City administers ordinances related to beachfront construction and sand moving, both of which require precise determination of the variable oceanfront property line. Sand is at a premium on the beach at Folly, and private property owners are not allowed to remove sand from public beach without permission. The City desires to protect the beach by preventing disturbance of undeveloped oceanfront area where possible.

15. The City also regularly undertakes beach maintenance projects, like the erecting of sand fences, the planting of dune vegetation, and minor sand moving. This sort of work is significant to the City's overall effort to protect the beach, infrastructure, and residents. Once again, the presence of avulsive superbeachfront lots complicates this work, as the City is excluded from areas that are held under claim of private ownership. The City would be more free to undertake publicly valuable beachfront work without the concern of private ownership over these avulsive areas.
16. In short, it is simply impossible for the City to effectively execute its authority and obligations as a municipality when the City can't determine with certainty the ownership status of areas on the beachfront.
17. Finally, the City's interest in this lawsuit is driven by the need for clarity in planning and executing beach renourishment projects. Because of chronic erosion on the island, Folly Beach depends on a regular cycle of beach renourishment, flexibly planned to occur every seven years. Renourishment most recently occurred in 2018, at a price tag in public dollars of \$18 million dollars.
18. Each of the lots implicated in this case were eroded at the time this renourishment began and

gained additional high ground as a result of the renourishment.

19. From the City's end, the planning of renourishment projects involves an interaction with each oceanfront property owner related to the boundary between public and private property. Folly Beach receives federal funds for renourishment, but those funds are contingent on two requirements: (1) that the funds only be used to place sand on public property and (2) that adjacent private properties be built up in order to match the height of the public renourishment, so that the structural integrity of the project is protected. Practically, what this means is that, during a renourishment project, the project contractor renourishes the entire oceanfront to the same height, but the cost then has to be split between the federal government, the City, and private property owners, based on the location of property lines. Needless to say, clarity in terms of the ownership of avulsive property would aid tremendously in our efforts to efficiently and accurately administer this process. Indeed, as it stands now, the City can't be certain that it is accurately allocating the costs of renourishment.

20. All things considered, the Court's favorable resolution of this lawsuit will: aid the City in pursuit of its beachfront policies, promote the City's economic and safety interests; advance the City's interest and stake in a healthier and more stable public beach; allow the City to operate more freely without fear of liability or conflict; and will alleviate inefficient or misallocated expenses and staff time.

FURTHER AFFIANT SAYETH NOT.



Spencer Wetmore

Sworn and subscribed before me
this 23rd day of January, 2020



Notary Public for South Carolina.

My commission expires 1/27/2020.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
City of Folly Beach, Coastal Conservation League,	)	C/A No. 2019-CP-10-0717
Save Folly Beach, Inc., John Collins, Matt Napier,	)	
Paula Stubblefield, Troy Bode, and Carol Kruer,	)	PLAINTIFFS' RESPONSE TO
	)	MOTIONS TO DISMISS
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.	)	

In response to several motions to dismiss this action, filed individually by the Defendants, the Plaintiffs submit the following:

I. Introduction to the Problem.

Based on a combination of property irregularities, legal exceptions, natural forces, and unintended engineering consequences, management of the beachfront on Folly Island is a challenge unlike anywhere else on South Carolina's coast. This unique set of circumstances has spawned one problem, in particular, that has plagued the City of Folly Beach and many of its oceanfront homeowners for at least twenty years. While residents and the municipality of Folly Beach have been attempting to work through and around this beachfront management problem, beach houses have been constructed in dangerous and unsightly locations, the public beach and public recreation have suffered, and untold dollars and hours have been spent dealing with these and other resulting difficulties. At last, the municipality and its residents seek legal clarity that will bring to the Folly beachfront certainty, workability, and a reasonable path forward.

It is already well established under South Carolina law that a platted property, while perhaps continuing to exist on the books with the register of deeds, ceases to be private property when it is claimed by erosion and submerged. In a state with as much beachfront and riverfront as South Carolina, this principle, which is part of the public trust doctrine, is indelible and necessary for orderly management of public resources. Some of our state beaches and waterfronts have migrated a mile or more over the centuries, and the land on which entire settlements existed has in some cases been overtaken by the sea. And this isn't just a phenomenon of the past. Properties like these are of course forever lost to time, as the sea and the tidal beach belong to the state as part of the public trust. Indeed, under the circumstances, a system where private ownership of submerged property is retained would be disastrous. What happens, though, when platted lots that have been submerged and part of the public trust are brought back above water through a massive artificial beach renourishment project? And, as is the situation facing Folly Beach, what is to be done when the purported owners of these reemerged plats seek development, and a legal exemption negates the state laws that would normally prohibit construction on such precarious property regardless of ownership? South Carolina jurisprudence presently lacks a precise and direct answer to either of these questions, to the great detriment of the City of Folly Beach and many of its oceanfront property owners. Thus the commencement of this action.

Especially in environmental cases, it has become standard operating procedure to never answer a complaint outright, but rather to move for dismissal of the action, most often asserting the absence of standing, no matter what facts related to standing are at play. Seemingly the intent of such strategy is to invite a court to reach for dismissal, understanding the discomfort some

courts may hold for the complexity of environmental law issues, generally, and standing, specifically. As a consequence of this strategy, the record of lower court decisions on environmental standing in this state over the last decade is nearly incomprehensible and not indicative of any consistently applied principle of standing. Yet, as is reflected by this case, some of the most important issues facing our state right now fall beneath the umbrella of “environmental law.” If our judicial system is to fulfill its role in addressing these important issues, the defendant default toward claiming that every single environmental plaintiff lacks standing must be soundly and consistently turned back.

This case is indeed complex, it involves many parties, and it seeks to delineate a sub-principle with which South Carolina state courts have had little experience thus far. All that combined means that it is very easy to fling objections at this case, in the hopes that something will stick and prevent this Court from answering the question with which it is presented. However, it is abundantly clear that this appeal calls upon an important point of law that has been delineated in other states and that must be delineated here, and that the particular circumstances of Folly Beach give these Plaintiffs more at stake in relation to that point of law than any other group of potential plaintiffs in the state could possibly possess. The Plaintiffs therefore call upon this Court to put end to the disorder and uncertainty that continues to plague the beachfront on Folly Beach, hampering use and enjoyment of private property and the administration of local government, by deciding this case on the merits.

II. The Basis for Plaintiffs’ Claims is Well-Established in this State and Elsewhere.

The Defendants have argued generally that the Plaintiffs’ Complaint fails to state a valid legal claim. However, Plaintiffs’ claims fit squarely within the long history of South Carolina

cases concerned with the movement of sand on the beachfront and the corresponding shifts in private property. Indeed, given South Carolina's history of these cases, it is actually quite surprising that no South Carolina appellate court has ever been called upon to determine the effect of an artificial renourishment on beachfront property lines, as have the courts of many other coastal states. However, certainly the fact that this case presents a new question under a well-established genre of South Carolina law is no basis for dismissal.

As an initial matter, the need for court intervention related to the location of moving property lines on the beachfront is not at all unusual in South Carolina. "As a coastal state, South Carolina has a long line of cases regarding the public trust doctrine in the context of land bordering navigable waters." See, McQueen v. S.C. Coastal Council, 354 S.C. 142, 149, (2003). The reason for such an involved history is reflected very clearly in the following excerpt from the South Carolina Supreme Court:

Coastal lands are notoriously subject to the volatility of changing tides, erosion, and accretion. Landowners and potential landowners are well aware of the long-standing principle that the State is presumptive owner of lands below the high water mark. Accordingly, **a person who possesses title to land especially vulnerable to this volatility takes title with the knowledge their land is at risk of loss to the State by natural forces.**

Estate of Tenney v. S.C. Dep't of Health & Envtl. Control, 393 S.C. 100, 108 (2011) (emphasis added).

A. Erosion, accretion, and avulsion in South Carolina:

For purposes of this case, the key distinction is between the related terms of erosion, accretion and avulsion. Legally, erosion is the gradual and natural process through which water encroaches over time and dry land is lost. Horry Cty. v. Woodward, 282 S.C. 366, 370 (Ct. App.

1984) (“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.”). Correspondingly, accretion is the gradual and natural process through which sand or sediment is deposited over time and land is created. Id. (“South Carolina recognizes the general common law rule that accretions by natural alluvial action to riparian or littoral lands become the property of the riparian or littoral owner whose lands are added to.”); State v. Beach Co., 271 S.C. 425, 428 (1978) (describing the “process of natural accretion (deposits of shifting sands).”). The basics of property ownership on the oceanfront are that owners of those parcels lose property by erosion and gain property by avulsion. See McQueen, 393 S.C. at 150 ([U]nder South Carolina law, wetlands created by the encroachment of navigable tidal water belong to the State. Proof that land was highland at the time of grant and tidelands were subsequently created by the rising of tidal water cannot defeat the State’s presumptive title to tidelands.”); Hilton Head Plantation Prop. Owners' Ass'n, Inc. v. Donald, 375 S.C. 220, 224 (discussing addition to property by accretion).

What, though, of the relatively sudden, en masse, creation or destruction of land generated by a one-off event like a hurricane? These are avulsive events, and changes to property occasioned by such events are treated differently under the law. 73 Am. Jur. Proof of Facts 3d 167 (“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 land.”). “Unlike accretion or erosion, avulsion has no effect on property boundaries.” 65 C.J.S. Navigable Waters § 111. See also, 78 Am. Jur. 2d Waters § 332 (“An avulsion does not divest a riparian or littoral property owner of title to his or her property or change the underlying ownership of the

property.”). This traditional distinction between the doctrines of erosion/accretion and that of avulsion has been “**adopted by statute or judicial decision in nearly all states, as well as by the federal courts as federal common law.**” 73 Am. Jur. Proof of Facts 3d 167 (emphasis added). See also, 65 C.J.S. Navigable Waters § 105 (“In determining riparian boundaries, the rules of accretion, reliction, erosion, and avulsion apply to public as well as to private property rights.”);

Oddly, South Carolina appellate courts have never been presented with the opportunity to specifically delineate and apply the avulsion doctrine, at least in name. This oddity apparently provides the basis for the bulk of Defendants’ argument that the Plaintiffs’ have not stated a valid claim. However, it is effectively a logical and legal impossibility that a state could possess a lengthy jurisprudence on the doctrines of erosion and accretion, while rejecting avulsion. The principles are legs on the same stool. Certainly, just because no South Carolina appellate court has been asked to resolve an avulsion case does not mean that the common law principle doesn’t exist in our state. Instead, it is self-evident that the lack of avulsion cases in South Carolina is merely reflective of the fact that avulsive events, by nature, are much rarer occurrences than the ubiquitous processes of erosion and accretion.

It is so readily apparent that South Carolina must recognize the principle of avulsion as part of its common law property doctrine that circuit courts have applied the principle without comment or discussion. For example, **your honor noted in a 2010 decision based heavily on avulsion, the following:** “[I]f the additions or subtractions from riparian land are sudden and perceptible the different rule of avulsion, with an opposite legal effect, applies... [I]f an avulsion has occurred, the boundary line remains the same regardless of the change in the river channel or

shoreline.” Yelsen Land Company, Inc. v. S.C. Ports Authority, C/A No. 7-CP-10-2053, 16-17 (April 16, 2010) (Attached as Exhibit A). Your honor’s prior opinion brings into sharp focus the baselessness of any argument for dismissal based on Plaintiffs’ inability to advance an avulsion claim.

B. Renourishment as avulsion:

Defendants also seemingly challenge the Plaintiffs’ ability to pursue a theory of beach renourishment as an avulsion. On the most basic level, the Plaintiffs can derive no logical basis for the argument that South Carolina would recognize these principles related to addition or subtraction of sand from the oceanfront, but that applying those principles in the context sand added by renourishment is somehow off limits.

Moreover, the irony in this line of argument is that a South Carolina appellate court has essentially recognized Plaintiffs’ renourishment theory already. On the strength of the Donald case, the City may have been justified in simply beginning to treat all beachfront areas brought above water by renourishment as public property, without even filing this case. In Donald, a developer created additional high ground on the end of a lot by adding fill to salt marsh. Hilton Head Plantation Prop. Owners' Ass'n, Inc. v. Donald, 375 S.C. at 222. The marsh area had of course been public trust property prior to its conversion to high ground, but the plaintiff claimed that the developer had property rights over the new high ground, as an accretion from the lot. Id. at 224. While using the terminology “artificial accretion,” rather than the more accurate “avulsion,” the Court of Appeals rejected this claim essentially on the same theory Plaintiffs advance in this case:

Generally, a riparian owner enjoys the right to any lands formed by accretion...

However, **“artificial accretions which are caused solely by the act of 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.”** Horry County v. Tilghman, 283 S.C. 475, 481, 322 S.E.2d 831, 834 (Ct.App.1984) (quoting Borough of Wildwood Crest v. Masciarella, 92 N.J.Super. 53, 222 A.2d 138, 143 (Ch.1966)); see also 65 C.J.S. Navigable Waters § 96 (2000) (**“Under the common law, a littoral owner cannot extend its own property into water by landfilling or purposely causing accretion.”**).

Id. (emphasis added). The fundamental principle in Donald—that public trust property can’t be taken away through artificial addition of sand—translates to this case directly. If the Court of Appeals had used the proper term under the common law, “avulsion,” and engaged in a little more discussion, the case at hand would indeed be truly unnecessary. As it stands, though, the Donald case is a rock solid foundation from which the validity and viability of Plaintiffs’ claims are most obvious.

Finally, other coastal state courts have already been called upon to contend with the question of how beach renourishment affects the property lines on renourished lots. In other words, this case has direct parallels in other coastal states, and it was only a matter of time before someone brought this case in South Carolina. For example, the case at hand is basically identical to City of Long Branch v. Jui Yung Liu, 203 N.J. 464 (2010). In that case, just like this, a coastal municipality brought an action against certain oceanfront property owners who claimed that their ownership extended to newly-created beach formed as a result of a beach replenishment program. Id. at 469-70. More specifically, the property owners claimed that their ownership included “approximately 225 feet of dry land added to the shoreline of their property as the result of a government-funded beach replenishment program.” Id. at 469. The Supreme Court of New Jersey recited the same basic common law of the public trust as is recited above, including the

following: “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. That boundary line is not fixed, but fluctuates over time through the processes of accretion, erosion, and avulsion.” *Id.* at 476. The Court’s ultimate holding says much of the viability, as well as the likelihood of success, of Plaintiffs’ claims: **“The practical result of an avulsion is that when land is added to the beach, the prior mean high water mark will be located on dry land and the State will have title to the beach seaward of that point... We agree with the Law Division in this case that the rapid expansion of the [property owners’] shoreline by more than two acres over an approximately two-week period through a government-funded beach replenishment project constitutes an avulsion.”** *Id.* at 478, 484 (emphasis added). See also, Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection, 560 U.S. 702 (2010). The Plaintiffs could belabor the point with other states’ examination of this renourishment/avulsion issue but believe that this identical case is more than sufficient to make the point in this preliminary dismissal inquiry.

In sum, it is plain that this case represents but the next incremental step in South Carolina courts’ long exploration and examination of the common law principles governing property lines on the oceanfront. As beach renourishment projects become more common and more widespread on South Carolina’s beaches, it is imperative to resolve how these activities impact the balance of ownership and control at the shoreline. Indeed, the more compelling question is not whether this claim is viable, which it obviously is, but rather, what took so long for this type of claim to land in a South Carolina court?

III. The Plaintiffs are the Appropriate Parties to Advance these Claims.

Harkening back to the introduction of this brief, the Plaintiffs will attempt to put at bay their resentment for having to address the stale argument that a coastal municipality, tasked with regulating and managing its beachfront, doesn't have standing to determine the ownership status of newly created land on that beachfront. Environmental standing in South Carolina, after all, should be a fairly straightforward inquiry. The South Carolina Supreme Court has adopted the "constitutional standing" test announced in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). See Sloan v. Greenville County, 356 S.C. 531 (2003); Beaufort Realty Co. v. Beaufort Cnty., 346 S.C. 298, 301 (Ct. App. 2001). The three-pronged test arising from Lujan is as follows:

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. Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'

Lujan, 112 S. Ct. at 2136 (internal citations omitted). In short, the three required elements of standing are: (1) injury-in-fact, (2) causation and (3) redressability.

The lodestar for this and every other standing inquiry must be to fulfill the underlying purpose of the standing doctrine, which is to determine whether a plaintiff is "a real party in interest. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." Sloan, 356 S.C. at 547 (Ct. App. 2003). In the context of a standing analysis, it is easy for lawyers and judges alike to slip into a hyper-technical and overwrought analysis of the myriad of standing law precedent and convoluted terms of art. At base, though, an accurate and effective

analysis of standing always hearkens back to the same basic question: do these plaintiffs have a close enough relation to the subject matter of the dispute to effectively litigate this case? Clearly these Plaintiffs meet that standard.

A. The City's Standing:

As explained in the affidavit of Spencer Wetmore, City Manager for the City of Folly Beach, the City's interest and stake in this lawsuit originate from two main sources: (1) the harm that has been done and that will be done to the City's interests as a result of development on renourished properties under claim of ownership and (2) the City's inability to effectively administer its various required functions and obligations on the beachfront without accurate knowledge of property lines and ownership.

Ms. Wetmore's affidavit introduces terminology that will be at the forefront of this litigation: the "superbeachfront lot." This is the term that has come to be used for relic lots, created mostly in the 1950s, which are platted seaward of what is the established beachfront on Folly Beach and which have no direct road access. (Exhibit B, Wetmore Affidavit, ¶ 4). While most superbeachfront lots are undeveloped and often submerged, residences have been constructed on fourteen superbeachfront lots on the northeastern part of the Island. (*Id.* at ¶ 6). The Defendants in this case, other than the State of South Carolina, purport to own undeveloped superbeachfront lots that have been rebuilt by renourishment, and the Defendants have pursued residential development on these lots. (Complaint, ¶ 11).

As Ms. Wetmore describes, residential development on lots like those that the Defendants own and seek to develop causes the City great difficulty and expense (Wetmore, ¶ 5):

- Significantly, development of these lots is **antithetical to maintenance and growth of**

healthy oceanfront dunes, which the City desires to promote for the sake of protecting homes and infrastructure on the Island. Past development on lots like those implicated in this case has resulted in destruction of oceanfront sand dunes, and Ms. Wetmore affirms that the properties that are the subject of this lawsuit could not be developed without similar losses. (Id. at ¶ 7)

- Development of these lots has also proven to **diminish the health, aesthetics, and stability of the public beach, upon which the City relies heavily for tourism and tax base.** Existing houses on this type of property have regularly ended up on the active beach as a result of the strong erosive forces present on the northern half of Folly Beach. As the tides have come up, over, and around these beached houses, septic tanks have been exposed and foundations have been eroded, to the point of making homes uninhabitable. (Id. at ¶ 10). The City suffers direct harm to its budget and revenue as a result of this degradation of the beach. (Id. at ¶ 8).
- Moreover, at the very heart of the City’s most important municipal obligations, the City has determined that development on these lots constitutes “an **enhanced risk to safety and infrastructure** during storms, and any new development on superbeachfront lots would be the same.” (Id. at ¶ 11).
- Finally, when these lots are developed, the City inevitably bears an **additional oversight, engineering, and administrative burden** when such development comes under threat from the sea. Ms. Wetmore reports that, “[e]specially in the gaps between beach renourishment, it is not at all unusual that a superbeachfront house will end up imperiled by regular ocean tides, even with the seawalls that have been constructed around these developed lots. **The City has regularly committed significant staff time to monitoring these imperiled houses, undertaking work to alleviate the threat where possible, and carrying out the condemnation process when necessary.** Generally, the question of what do with these houses when they inevitably become imperiled has occupied significant staff and Council time during my tenure as City Administrator.” (Id. at ¶ 9).

The City obviously has a significant stake in ensuring that development of land created by renourishment on its beachfront is minimized to the extent that is appropriate under the law, and this is the outcome the claims presented in this action are tailored to accomplish.

The unique circumstances on Folly’s beachfront, especially including the presence of superbeachfront lots, also make it a matter of practical necessity that the City clearly establish the rules governing ownership of these forward lots, in order to effectively administer its municipal

authority. While other coastal municipalities typically can operate on the beach without concern for bumping into asserted private property rights, that is not the case on Folly. As Ms. Wetmore explains, Folly has a variety of beachfront ordinances designed to minimize disturbance to the publicly owned beach and to protect the supply of sand thereon. These ordinances are impossible to effectively apply without clearly defined property boundaries, and it is contrary to the interests of the City to continue applying these ordinances as if land created by renourishment is privately held. (*Id.*). The City also operates a permitting program for seawalls and revetments on the beachfront, and such structures are typically placed by private property owners at the seaward edge of their ownership. In reviewing such proposed structures, the City “must be able to accurately assess the location of the property line on avulsive tracts, in order to avoid violating the public trust doctrine and essentially giving away public property.” (*Id.* at ¶ 14).

“The City also regularly undertakes beach maintenance projects, like the erecting of sand fences, the planting of dune vegetation, and minor sand moving. This sort of work is significant to the City’s overall effort to protect the beach, infrastructure, and residents. Once again, the presence of avulsive superbeachfront lots complicates this work, as the City is excluded from areas that are held under claim of private ownership.” (*Id.* at ¶ 15). The City’s significant interest in an open, stable, and healthy beach is diminished when it is prevented from undertaking publicly valuable beachfront work because of concern for private ownership of avulsive areas. The claims in this case are formulated to resolve that concern and provide for certainty and maximum effectiveness in the City’s undertaking of beachfront maintenance.

Finally, regular beach renourishment has become a necessity for the viability of Folly Beach in its present configuration, and the claims in this case absolutely must be resolved in

order for the City to administer such projects in the future. Renourishment on Folly Beach, funded by millions of dollars in federal money, is scheduled to occur every seven years. (Id. at ¶ 17). Folly's federal funds are contingent on two requirements: (1) that the funds only be used to place sand on public property and (2) that adjacent private properties be built up in order to match the height of the public property renourishment. (Id. at ¶ 19). Practically, what this means is that, during a renourishment project, the project contractor renourishes the entire oceanfront to the same height, but the cost then has to be split between the federal government, the City, and private property owners, based on the location of property lines. (Id.) For the City to administer renourishment, then, requires an individual interaction with every private property owner on the beachfront in order to establish the public-private property line and allocate costs accordingly. (Id.) Ms. Wetmore acknowledges that, as it stands now, with the claims raised in this action unresolved, "the City can't be certain that it is accurately allocating the costs of renourishment." (Id.) It is a matter of public necessity and urgency that the Court put an end to this uncertainty.

The City's asserted interests in relation to this lawsuit—which include tax revenue, staff allocation, budgetary economy, qualification for federal funds, community safety, legal compliance, execution of police power, environmental quality, and protection of public infrastructure—are so fundamental and inherently adequate for purposes of standing that it is difficult to find a case where a court found it necessary to examine such interests. Further, to the extent the standard for municipal standing differs from that for individuals, South Carolina jurisprudence is woefully short on precedent. But, whatever question there may be as to the adequacy of Folly Beach's multifaceted stake in the outcome of this case should be alleviated by the following recitation, from another jurisdiction, of the interests that are sufficient to sustain

municipal standing:

[A] municipality has an interest in, inter alia, its ability to **enforce land-use and health regulations**, *Scotts Valley Band of Pomo Indians of Sugar Bowl Rancheria v. United States*, 921 F.2d 924, 928 (9th Cir. 1990), and its **powers of revenue collection and taxation**, *Colorado River*, 776 F.2d at 848-49. A municipality also has a proprietary interest in **protecting its natural resources from harm**. *Fireman's Fund Ins. Co. v. City of Lodi*, 302 F.3d 928, 944 (9th Cir. 2002), amending 271 F.3d 911(9th Cir. 2001). We have also found constitutionally sufficient injury to proprietary interests where “**land management practices of federal land could affect adjacent [city]-owned land.**” *Douglas County v. Babbitt*, 48 F.3d 1495, 1501 (9th Cir. 1995).

City of Sausalito v. O'Neill, 386 F.3d 1186, 1197-98 (9th Cir. 2004) (emphasis added).

In sum, to deny the City standing under the circumstances laid out herein would require a total detachment of the standing analysis from the purpose of the doctrine. The efficient operation of local government on Folly Beach has been hampered for many years by the presence of these seaward platted lots and the unresolved and recurring question of their ownership and development potential. The City’s need for some resolution on the merits in this case is dire. “All things considered, the Court’s favorable resolution of this lawsuit will: aid the City in pursuit of its beachfront policies, promote the City’s economic and safety interests; advance the City’s interest and stake in a healthier and more stable public beach; allow the City to operate more freely without fear of liability or conflict; and will alleviate inefficient or misallocated expenses and staff time.” (Wetmore, ¶ 20).

B. Individual Standing:

To the extent the Court finds it necessary to undertake an inquiry of standing beyond that of the City, Matt Napier is exemplary. Along with Plaintiff Paula Stubblefield, Mr. Napier owns property and resides at 1661 East Ashley Avenue, Folly Beach, behind and abutting

superbeachfront lots owned by Defendants Juan Enterprises, LLC and Juanita Wright. (Exhibit C, Napier Affidavit, ¶¶ 3-4). While these lots are platted seaward of Mr. Napier's lot, his property is for all intents and purposes on the beachfront. The Defendants' platted lots have never been developed, do not have road access, and have been submerged during Mr. Napier's ownership. (*Id.* at 6, 15). In short, anyone lacking prior knowledge of the property peculiarities on Folly Beach would assume without question that Mr. Napier owns an oceanfront lot.

Yet, Mr. Napier is confronted with the following view from his deck:



Under claim of ownership, Juanita Wright and/or Juan Enterprises has erected large barricades emblazoned with "Private Property – No Trespassing," built into the dunes, and

blocking access between Mr. Napier's lot and the public beach. (Id. at 19). As petty as this maneuver obviously is, it serves as the perfect illustration of the significant interest that Napier, Stubblefield, and the other Plaintiffs have in the outcome of this case. Professionally, Mr. Napier is a property investor with a real estate license and "extensive experience and knowledge in valuating properties and in assessing the factors that lead to increased and decreased property value." (Id. at 11). He explains in his affidavit that the barricade erected by his neighbors, and their purporting to have authority to exclude residents of his property from accessing the beach, significantly diminishes his property value and the return on the investment he's made in the property, and that is not to mention the difficulty and inconvenience caused to him personally. (Id. at ¶ 20). This barrier is the embodiment of the uncertainty that dozens of oceanfront property owners on Folly Beach deal with, as they try to plan and invest for the future use of their property while never knowing when the owner of an old, previously submerged lot might come out of the woodwork and assert property interests. Clearly such dynamic is unworkable and in need of correction through this legal action.

Even without the barrier, Mr. Napier, drawing upon his experience in the real estate business, explains how he has "observed that uncertainty over the ownership status of the undeveloped superbeachfront lots and the potential for those lots to be developed depresses the value of all oceanfront homes that border those lots, including [his] own." (Id. at ¶ 13). Specifically, "the existing superbeachfront development, along with the threat of future superbeachfront development, has been a matter of significant controversy and notoriety, generally making this portion of Folly Beach less desirable in the eyes of a potential investor." (Id. at ¶ 12). Of course, if the platted lots in front of his property were actually developed, as the

Defendants intend, the harm to Mr. Napier is obvious: “If either of the seaward lots were developed, my physical access to the beach, my ability to use the public beach, and the view from my property would be drastically diminished, and my property value would decline substantially as a result.” (Id. at ¶ 14).

In sum, the Defendants’ assertion of ownership over property they do not actually own under the law has already impacted Mr. Napier and the other Plaintiffs financially, and the likelihood exists for a major financial loss going forward, barring resolution by this Court. A plainer basis for standing in an environmental case could not be found.

Mr. Napier also has interests in this litigation that are more typical of an environmental plaintiff. He explains in his affidavit that his recreational and aesthetic interests have been negatively impacted by existing superbeachfront development and that this impact will expand if the Defendants are allowed to proceed with development on their lots. Napier specifically explains the impact of superbeachfront development as follows:

My attempts to use and enjoy the public beach in proximity to my property have been disrupted by existing superbeachfront residences on the northeast part of the Island. Those residences **have made the beach impassible for walking and jogging** when the tide is up to the seawalls, and the beach is submerged. I have **abandoned attempts to walk or jog along the beach** because it has been impossible to navigate past superbeachfront homes without trespassing or walking through deep water. I have also observed that the presence of these superbeachfront residences and their seawalls **exacerbates erosion on the public beach**, which has **diminished my opportunities for recreation**, including walking, jogging, and other recreation.

(Id. at ¶ 9). If the Defendants are allowed to develop their properties, not only will Mr. Napier suffer more of this type of harm, but he will be excluded from areas he has previously utilized for recreation that are rightfully part of the public trust:

I have utilized the public beach extensively on the northeast part of the Island, in areas that are part of the tidal beach but are bounded by Defendants' platted lot lines. This includes the lots in proximity to my property, which are those owned by Defendants Juan Enterprises, Wright, Rawe, Morris, Vandaele, and Staubes. If these lots are developed, **I will be excluded from these portions of the public trust that I previously enjoyed. My overall recreational and aesthetic interests will be diminished** by the presence of structures on the beach and my inability to access these areas I formerly used for walking, jogging, and other recreation.

(Id. at ¶ 10).

Our courts have held that precisely the type of recreational and aesthetic interests at stake here are sufficient to confer standing. In Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc., the United States Supreme Court reaffirmed the long-standing principle that aesthetic and recreational interests can provide the basis for standing: "We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." 528 U.S. 167, 183 (2000), citing Lujan v. Defenders of Wildlife ("Of course, the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for the purposes of standing.").

The United States Supreme Court has also stated that the injury required for standing purposes need not be a substantial injury:

The Government urges us to limit standing to those who have been 'significantly' affected by agency action. But, even if we could begin to define what such a test would mean, we think it fundamentally misconceived. 'Injury in fact' reflects the statutory requirement that a person be 'adversely affected' or 'aggrieved,' and it serves to distinguish a person with a direct stake in the outcome of a litigation – even though small – from a person with a mere interest in the problem. ... As Professor Davis has put it: "**The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing** to fight out a question of principle; the trifle is the basis for standing and the principle supplies the

motivation.”

U.S. v. SCRAP, 412 U.S. 669, 702 (Internal citations omitted) (emphasis added). The “identifiable trifle” standard has been re-affirmed by the Fourth Circuit. Friends of the Earth, Inc. v. Gaston Copper, 204 F.3d 149 (4th Cir. 2000) (“the claimed injury ‘need not be large, an identifiable trifle will suffice.’”).

These principles from the U.S. Supreme Court were applied in circumstances akin to this case in Smiley v. SCDHEC, where the plaintiff was determined to have standing based on an alleged adverse effect on his use and enjoyment of the beach at Isle of Palms from a permit that authorized the scraping of sand on that beach. 374 S.C. 326, 333 (2007). The particular basis for Dr. Smiley’s standing was his allegation that he used the part of the beach at issue in the case for “walking, jogging, nature-watching and similar pursuits.” Id. at 330. As the South Carolina Supreme Court held: “The averments in Smiley's affidavit that he recreates and views nature on the beach on an almost daily basis is a sufficient allegation of a ‘concrete and particularized invasion.’” Id. at 331-32. It is impossible to reconcile Smiley, one of our state’s seminal cases on environmental standing, with any notion that Mr. Napier lacks standing to maintain this action on the basis of his use of the beach.

As with the City of Folly Beach, Mr. Napier’s affidavit lays out multiple unequivocal bases for standing in relation to each of the Defendants.

IV. The Proper Defendants Are Named in this Action.

The Defendants argue that Plaintiffs have failed to name necessary parties to the action, as all superbeachfront lot owners have an interest in this case. Indeed, it is certainly true that, if Plaintiffs prevail and the Court determines that dry land created by renourishment constitutes an

avulsion, that holding has relevance to property owners on Folly Beach who are not named here. But, the same can be said not just of these Folly Beach property owners, but of property owners on any South Carolina beach that is renourished. The core of this case is the Plaintiffs' claim that renourishment constitutes an avulsive event and does not change shoreline property boundaries. While this issue is particularly prominent on Folly Beach, the Court's holding (which would be the first on this issue in South Carolina) would be of equal relevance to a property owner on Edisto Beach whose high ground grows as a result of renourishment. Or, to take it even further, because the law of avulsion is generally undeveloped in South Carolina, it is reasonable to expect that this Court's recognition of the avulsion doctrine would be a holding potentially impacting property boundaries on any shoreline in the state. But, obviously, all the folks implicated by this don't have to be named in this lawsuit, and the line for "necessary party" has to be drawn somewhere.

Here, the line for inclusion of defendants was drawn based on which properties present a justiciable controversy. The reason why these particular superbeachfront owners were named, while the rest were not, is because these are the only superbeachfront owners who have taken affirmative steps to develop their lots by pursuing permits related to residential construction (See Complaint, ¶ 11). In the context of a declaratory judgment action like this one, our courts require the presentation of a justiciable claim, meaning "a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." Graham v. State Farm Mutual Automobile Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995).

For the many superbeachfront owners on Folly Beach who are not pursuing development

of their properties, the subject matter of this case is hypothetical and abstract. That is, any impact from the holding in this case is contingent on those property owners one day deciding to pursue development of avulsive land. “The Declaratory Judgments Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy.” Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423 (2004).

There is no “ripening seed” as to these other Folly property owners. Indeed, it is unknown whether such property owners even purport to own land within their lot boundaries that has been created by renourishment. Practically, the inclusion of such a large group of disinterested defendants would be antithetical to judicial economy. The other property owners on Folly Beach have no more direct interest in this action than owners of renourished property at Myrtle Beach, Isle of Palms, or Fripp, and it would be just as sensible to name the hundreds of property owners along the coastline whose properties are affected by renourishment as to name the other superbeachfront owners on Folly.

V. The Plaintiffs are not Asserting the Rights of the State.

The Defendants argue that the Plaintiffs can’t use this action to assert the property rights or public trust rights of the state. The gist of this argument is seemingly that Plaintiffs are attempting to usurp the state’s role and authority as keeper of public trust property. On the contrary, this case merely seeks to establish the boundary between public trust property and private property, as the location of that boundary has significant implications for the Plaintiffs’ own interests. Moreover, this case is based around establishing the nature of the common law principle of avulsion, and the incidental implication of the public trust doctrine is quite far from a usurpation.

Certainly, it is beyond dispute that the state holds title to all public trust property, including property created by avulsion, and none of the Plaintiffs can assert that property interest on behalf of the state. Likewise, none of the Plaintiffs could “enforce” the public trust doctrine, at least as that term includes things like ejecting trespassers on public trust property. Indeed, this is the reason why lots with existing superbeachfront houses are not implicated in this case. While those houses, under the theory of this case, very well may be sitting on public trust property, it’s the role of the state to assert that property interest and do something about it.

However, it is perfectly appropriate, and indeed customary and advisable, for members of the public to sue as beneficiaries of the public trust doctrine in order to establish its precise dimensions. The public trust doctrine is a common law principle that, like all other common law principles, has been defined and refined through a long history of litigation. Specific to the public trust doctrine, this litigation has been driven primarily by members of the public, who have sued to establish exactly what resources are covered by the doctrine and exactly what that coverage entails. See, e.g., Sierra Club v. Kiawah Resort Assocs., 318 S.C. 119, 128 (1995) (Sierra Club challenges permit for 36 docs on basis that it violates the public trust doctrine as a substantial impairment to the public interest in the public trust lands and waters); Kelly v. 1250 Oceanside Partners, 111 Haw. 205, 140 P.3d 985 (2006) (private organization sues to establish that state agency had an affirmative duty under the public trust doctrine to ensure that any measures it prescribed to protect state water resources were actually being implemented); San Francisco Baykeeper, Inc. v. State Lands Com., 242 Cal. App. 4th 202, 194 Cal. Rptr. 3d 880 (2015) (non-profit organization sues to establish that public trust doctrine is implicated by state’s approval of sand mining leases); Nat’l Audubon Soc’y v. Superior Court, 33 Cal. 3d 419, 426, 658 P.2d 709,

712 (1983) (organization sues to establish that water diversions implicate the public trust doctrine); Kramer v. City of Lake Oswego, 365 Or. 422, 446 P.3d 1 (citizens sued to establish that public trust doctrine also implies a right of access so that members of the public can reach public trust property). If it were up to the states alone to establish the dimensions of the public trust doctrine, this fundamental common law principle would be woefully undeveloped. To the extent this action seeks to define the nature and extent of the public trust doctrine, that is a completely legitimate objective supported by hundreds of other similar cases.

The Defendants are seemingly attempting to implicate a line of cases exemplified by Town of Nags Head v. Cherry, Inc., 219 N.C. App. 66 (2012). In that case, a municipality sued an individual defendant in order to “to have defendant’s Dwelling destroyed based on the fact that it is located in a public trust area.” Id. at 73. The court rightfully recognized that, because the sole basis for the municipality’s requested relief was essentially a trespass on public trust property, the Town was improperly asserting the rights of the state. Id. at 73-74. The case at hand, in which Plaintiffs merely seek to establish what is public trust property and what is not, is obviously a very different animal than what the court had to consider in Town of Nags Head. The Plaintiffs’ objective here is to identify the bounds of private property, so that private development does not occur on the public beachfront. To implicate Town of Nags Head, the Plaintiffs would need to do something akin to taking the Court’s holding in this case and then bringing trespass actions against anyone occupying land that was created by renourishment. Obviously nothing like that is being undertaken here.

The Plaintiffs named the state as a defendant in this action based on the belief that the incidental implication of the state’s property made it necessary party. 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. As it relates to this argument for dismissal by the Defendants, the key distinction is between a party attempting to enforce the state's public trust rights, versus that party merely filing an action that relies upon the existence of state ownership. Obviously this is the latter.

VI. This is not a Quite Title Action.

The Plaintiffs agree with Defendants' assertion that the Plaintiffs cannot maintain a quiet title action in relation to the property implicated by this lawsuit. One must claim an ownership interest in property in order to pursue an action to quiet title in that property, and the Plaintiffs do not claim an ownership interest in the avulsive property at issue here. It's for that reason that this action seeks a declaration of rights under the Uniform Declaratory Judgments Act.

The Plaintiffs are certainly allowed to contest the boundary between Defendants' properties and public property, based on Plaintiffs' significant stake in that boundary, without claiming ownership of the disputed property. This conclusion is apparent from cases like Arizona Ctr. For Law In Pub. Interest v. Hassell, 172 Ariz. 356 (Ct. App. 1991). In that case, the State of Arizona had given away dry riverbed land to the owners of property abutting that land. Id. at 359. Individuals and a non-profit organization, claiming no ownership interest in the riverbed land, successfully challenged and reestablished public ownership, utilizing the public trust doctrine. Id.

at 364-65. The abutting property owners who claimed an actual ownership interest in the riverbed land were intervenors. Id. at 361. In another case bearing striking similarities to the one at hand, and individual plaintiff in Glass v. Goeckel brought an action to determine ownership of a strip of land along the shoreline of Lake Huron. Glass v. Goeckel, 473 Mich. 667 (2005). Plaintiff desired to use this strip of land for walking along the lake, but the abutting property owner asserted private ownership. The plaintiff successfully claimed that the disputed property was actually part of the public trust. Id. at 686-87. See also, Chelan Basin Conservancy v. GBI Holding Co., 194 Wash. App. 478, 378 P.3d 222 (2016) (plaintiff environmental group challenged landfill company's ownership of property on the basis that said property was actually part of the public trust); Kootenai Env'tl. All., Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622 (an environmental group challenged a private club's ability to construct a docking facility on public trust property, despite claiming no ownership interest in that property). The Defendants insistence on a real property ownership interest is a callback to a much earlier period before the role of public interest litigation was so well entrenched.

Plaintiffs could certainly belabor the point here with a longer string cite of cases in this same posture or with more discussion of those cases, but this would do little to further address the basic inquiry here, which is: whether it is reasonable to conclude that the Plaintiffs have to just stand by while public trust property that they use, depend upon, and/or govern is improperly developed under claim of private ownership, to Plaintiffs' direct and significant detriment? If that is indeed the case, then our judicial system will be of little help in resolving the many complex issues emerging on our beachfront. If this group of Plaintiffs, with their close connection and significant stake in the matter, have not met the minimum standard to just get in the courtroom

door, then what is the public's recourse for confronting significant and novel threats like the ones embodied in this case?

VII. Conclusion.

Resolution of the critically important and urgent issues embodied in this lawsuit has already been delayed significantly as a result of Defendants' motion to dismiss. The Plaintiffs respectfully request that the Court now deny those motions, for all of the reasons stated herein, and thereby begin the progress toward resolving an issue that has bred chaos and difficult on Folly Beach for years.

s/Michael Corley
Michael Corley
Leslie Lenhardt
SOUTH CAROLINA ENVIRONMENTAL LAW
PROJECT
Mailing address: Post Office Box 1380
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FAX: (843) 527-0540

Attorneys for the Plaintiffs

Greenville, South Carolina

January 23, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE #: 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,	)	
	)	DEFENDANT VERNON STAUBES'
Plaintiffs,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO DISMISS
v.	)	
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.	)	

The within action should be dismissed as to Defendant Vernon Staubes because Plaintiffs have no standing to sue Mr. Staubes nor does the Complaint allege an active, justiciable case or controversy.

No Plaintiff claims an interest in Mr. Staubes' property. No Plaintiff claims that Mr. Staubes has done anything, or is attempting to do anything upon his property, that would violate a Plaintiff's rights.

In *Sloan Friends of the Hunley*, 369 S.C. 20, 28, 630 S.E. 2nd 474 (2006), the Supreme Court stated:

"Generally, a party must be a real party in interest to the litigation to have standing. (Citation omitted) A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation." *Id.* at 369 S.C. 28.

In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E. 2nd 478, the Court of Appeals, quoting from S.C. Jur. Action Section 23 (1991) stated:

“Rule 17(a) of the South Carolina Rules of Civil Procedure requires that every action be prosecuted ‘in the name of the real party in interest’...the South Carolina Rule with respect to the real party in interest requirement is patterned after the comparable Federal Rule, which has been regarded as embodying the concept that an action shall be prosecuted ‘in the name of the party who, by the substantive law, has the right sought to be enforced.’ ” *Id.* at 405 S.C. 214, 220.

and;

“It is the ownership of the right sought to be enforced which qualifies one as a real party in interest, rather than absolute ownership of specific property.”

Here, none of the plaintiffs have alleged ownership of a right which they seek to enforce against Mr. Staubes.

The lack of a justiciable case or controversy is jurisdictional. In *Lennon v. South Carolina Coastal Council*, 330 S.C. 414, 498 S.E. 2nd 906 (Ct. App. 1998), the Court stated:

“Another point of departure is that standing 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. In this context, objections to standing, unlike 17(a) objections, cannot be waived and may be raised by a federal court. *sua sponte*” *Id.* at 330 S.C. 417 (Citation omitted)

and

“South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached.” *Id.* at 330 S.C. 417-418

The existence of an actual case or controversy is essential to the Court's jurisdiction to render a declaratory judgment. *Power v. McNair*, 255 S.C. 150, 177 S.E. 2nd 551 (1970). A declaratory judgment must not be merely advisory *Id.* as requested by Folly Beach in this case.

The Plaintiffs attempt to create a case or controversy by citing the doctrine of avulsion, however, their own memorandum as well as federal case law indicates that the doctrine is inapplicable. Their memorandum, citing Am.Jur. states:

“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 land.” Plaintiff’s Memorandum, page 5. (emphasis added).

Thus, avulsion, as Plaintiffs define it, is caused by the “action of water”, however they do not allege in the Complaint that the avulsive event here was by “action of water”, or by any other event of natural occurrence. Rather, they creatively argue that the federally sponsored re-nourishment is an avulsive act.

Defendant Staubes invites the Court's attention to *United States v. California*, 381 U.S. 139 (1965), wherein it was stated:

“The United States points by analogy to the rule of property law that artificial fill belongs to the owner of the submerged land onto which it is deposited.” *Id.* at 177

This principal is more applicable to the allegations of this case.

While the doctrine of avulsion, if applicable, may indicate that an owner's property may not be increased by an avulsive act, that is not what is alleged here. Rather, it is alleged that the submerged lands owned by Mr. Staubes were simply restored by the federally sponsored replenishment. Moreover, the restoration of Mr. Staubes' (and others') property was the intent of the federal replenishment project as shown by 33 C.F.R. Section 263.27 (c)(1) which states:

“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...” (Emphasis added).

The doctrine of avulsion, even if adopted in this state does not support any cause of action against Mr. Staubes.

This Defendant further joins in the arguments of other Defendants, similarly situated.

For the above reasons, the Defendant Staubes’ Motion to Dismiss should be granted.

Respectfully submitted,

S/Kerry W. Koon

KERRY W. KOON

147 Wappoo Creek Drive, Ste. 203

Charleston, SC 29412

(843) 795-7000

ATTORNEY FOR DEFENDANT VERNON STAUBES

Charleston, South Carolina

January 27, 2020

COUNTY OF CHARLESTON

Plaintiff,

VS.

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2019_CP-10_00717

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney: See attached list , Bar No. _____ Address: Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: J. Emory Smith, Jr., Bar No. 5262 Address: P.O. Box 11549 Columbia, SC 29211 Phone: 803-734-3680 Fax803-734-3677 E-mail: esmith@scag.govOther: Counsel for the State - see also attached list
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Judgment on the Pleadings Estimated Time Needed: 20 min. Court Reporter Needed: ☒ YES/ ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted	
SECTION III: Motion Fee ☒ PAID – AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____	

000176

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

City of Folly Beach, Coastal)
Conservation League, Save Folly Beach,)
Inc., John Collins, Matt Napier, Paula)
Stubblefield, Troy Bode, and Carol Kruer,)
)
Plaintiffs,)

C/A No. 2019-CP-10-00717

v.)

ATTACHMENT TO MOTION SLIP -
LIST OF COUNSEL

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.)

Michael Corley, Esquire
Leslie S. Lenhardt, Esquire
S.C. Environmental Law
Project
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ATTACHMENT TO MOTION SLIP

July 3, 2019

Page 2

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Counsel for Defendants Juan Enterprises and Juanita Wright

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

City of Folly Beach, Coastal)
Conservation League, Save Folly Beach,)
Inc., John Collins, Matt Napier, Paula)
Stubblefield, Troy Bode, and Carol Kruer,)

C/A No. 2019-CP-10-00717

Plaintiffs,)

v.)

**MOTION FOR JUDGMENT ON
THE PLEADINGS**

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.)
_____)

2019 JUL -5 PM 4:39
JUL 5 4 39 PM
CLERK OF COURT
BY AB

The Defendant State of South Carolina moves pursuant to Rule 12(c), SCRPC, for judgment on the pleadings on the following grounds.

1. The Plaintiffs do not have standing to seek a declaration or determination as to the ownership of the land at issue because they do not have or claim an ownership interest in that land.
2. Plaintiffs do not seek injunctive relief as to the State and could not do so as to this matter.
3. This case does not present a justiciable controversy as to the land at issue due to the Plaintiffs' lack of standing. Accordingly, the Court lacks subject matter jurisdiction to determine or declare ownership of the property at issue.

4. Plaintiffs have failed to state facts sufficient to constitute a cause of action.

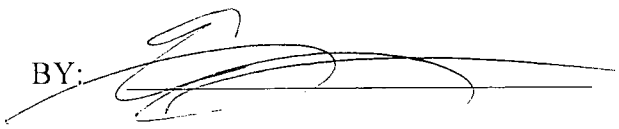
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
Email: ESmith@scag.gov

BY: 

July 3, 2019

ATTORNEYS FOR THE STATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

City of Folly Beach, Coastal)
Conservation League, Save Folly Beach,)
Inc., John Collins, Matt Napier, Paula)
Stubblefield, Troy Bode, and Carol Kruer,)

C/A No. 2019-CP-10-00717

Plaintiffs,)

v.)

CERTIFICATE OF SERVICE

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.)

I hereby certify that I have served the Motion for Judgment on the Pleadings of the State upon the counsel for the other parties who have appeared in this action by mailing copies to them at the addresses below via the United States Mail this July 3, 2019.

Michael Corley, Esquire
Leslie S. Lenhardt, Esquire
S.C. Environmental Law
Project
Post Office Box 1380
Pawleys Island, SC 29585

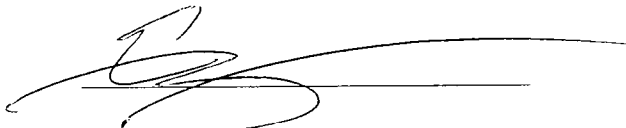
Richard D. Bybee, Esquire
Jeffrey S. Tibbals, Esquire
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Bybee & Tibbals, LLC
P.O. Box 1542
Mt. Pleasant, SC 29465

2019 JUL -5 PM 4:39
JULIE A. ABRAHAMSON
CLERK OF COURT
BY _____

Certificate of Service
City of Folly Beach v. State of South Carolina
July 3, 2019

Mary D. Shahid, Esquire
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Nexsen Pruet, LLC
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A handwritten signature in black ink, appearing to read 'J. Emory Smith, Jr.', with a long horizontal line extending to the right.

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar. No. 5262



ALAN WILSON
ATTORNEY GENERAL

July 3, 2019

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

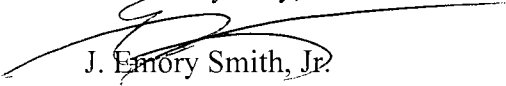
Re: City of Folly Beach v. State of South Carolina 2019-CP-10-0717

Dear Ms. Armstrong:

Enclosed for filing with your Office is the original Motion for Judgment on the Pleadings of the State together with a cover sheet, a certificate of service and a check for the filing fee. I would appreciate your confirming filing by stamping the enclosed copy of the Motion and returning it to me in the enclosed envelope.

Thank you for your assistance.

Yours very truly,


J. Emory Smith, Jr.
Deputy Solicitor General

cc: Michael Corley, Esquire
Leslie S. Lenhardt, Esquire
Richard D. Bybee, Esquire
Jeffrey S. Tibbals, Esquire
Evan P. Williams, Esquire
Mary D. Shahid, Esquire
R. Bruce Wallace, Esquire
Angelica M. Colwell, Esquire

Rita Bolt Barker, Esquire
Gregory J. English, Esquire

000184

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
City of Folly Beach, Coastal	)	C/A No. 2019CP1000717
Conservation League, Save Folly Beach,	)	
Inc., John Collins, Matt Napier, Paula	)	
Stubblefield, Troy Bode, and Carol Kruer,	)	
	)	
Plaintiffs,	)	MEMORANDUM IN SUPPORT OF
	)	STATE'S MOTION FOR JUDGMENT
v.	)	ON THE PLEADINGS
	)	
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.	)	
_____	)	

The Defendant State of South Carolina submits this memorandum in support of its motion for judgment on the pleadings on the following grounds.

BACKGROUND

Plaintiffs bring this action seeking a declaration as to “super-beachfront” property that they do not claim to own. They allege that these lots are “seaward or beyond the bounds of . . . typical oceanfront development” and result from beach renourishment of areas that were “submerged or intertidal.” Complaint, ¶¶13, and 17-19. They allege that some owners of these lots seek to build on them and when not previously issued, have applied for septic or construction permits. ¶¶20 and 21. The individual defendants own some of these lots. ¶11.

Plaintiffs seek a declaration of the ownership of these lots and contend that the “State owns those portions of the platted super-beachfront lots that were below mean high water line at the commencement of the 2018 renourishment” Complaint, ¶13 and ¶1(c) in request for

relief. They ask that the individual Defendants be enjoined from developing those lots but do not seek an injunction as to the State.

**NO JUSTICIABLE CONTROVERSY IS PRESENT
TO GIVE THIS COURT JURISDICTION BECAUSE PLAINTIFFS LACK STANDING**

In their first cause of action, Plaintiffs instead seek a declaration that the Defendant State owns the property. ¶36. Plaintiffs do not have standing to seek that declaration because they do not have or claim an ownership interest in that land. They fail to allege any basis whatsoever to have standing to sue, and for that reason and related grounds, as discussed below, this action must be dismissed as to 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. South Carolina 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).” *Lennon v. South Carolina Coastal Council*, 498 S.E.2d 906, 908, 330 S.C. 414, 417-18 (S.C.App., 1998). *See also, Tourism Expenditure Review Committee v. City of Myrtle Beach*, 742 S.E.2d 371, 373, 403 S.C. 76, 81 (S.C.,2013)(“the parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy.”) *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970).”). Plaintiffs have alleged no justiciable controversy that this Court has subject matter jurisdiction to address 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.” *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.” *Lujan*, 504 U.S. at 560–61 (internal citations omitted).

ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008).

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. They contend that the State owns the property at issue, but Plaintiffs have no authority to assert claims of ownership for the State. S.C. Code Ann. §15-67-10 also makes clear that Plaintiffs have no standing to assert claims as to property that they do not own. According to that law, “[a]ny person in possession of real property, by himself or his tenant, or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein . . . for the purpose of determining such adverse claim and the rights of the parties, respectively.” Plaintiffs assert no claim of possession or title as to any property at issue in this proceeding.

Therefore, Plaintiffs lack standing and no case or controversy is present to give this Court subject matter jurisdiction as to the State. For this reason, Plaintiffs have also failed to state a cause of action as to the State.

PLAINTIFFS DO NOT SEEK INJUNCTIVE RELIEF AS TO THE STATE

Plaintiffs’ second cause of action seeks injunctive relief only as to the individual Defendants to prevent their development of the property. No claim is made against the State.

CONCLUSION

This case does not present a justiciable controversy as to the land at issue due to the Plaintiffs' lack of standing. Accordingly, the Court lacks subject matter jurisdiction to determine or declare ownership of the property at issue. Judgment should be entered for the State.

Respectfully submitted,

/s J. EMORY SMITH, JR.

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January 23, 2020

ATTORNEYS FOR THE STATE

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON City of Folly Beach, Coastal Conservation League, Save Folly Beach, Inc., John Collins, Matt Napier, Paula Stubblefield, Troy Bode, and Carole Kruer, Plaintiffs, vs. State of South Carolina, Amy Connelly, Jeffrey H. Morris, Michael Vandeale, Stephen Rawe, Juan Enterprises, LLC, Juanita A. Wright, Debbie's Folly, LLC, and Vernon Staubes, Defendants.	IN THE COURT OF COMMON PLEAS CASE No. 2019-CP-10-0717 DEFENDANTS JUAN ENTERPRISES, LLC AND JUANITA A. WRIGHT'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' COMPLAINT
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Defendants Juan Enterprises, LLC, and Juanita A. Wright (collectively, "Defendants") submit this Memorandum in Support of their Motion to Dismiss Plaintiffs' Complaint. The Complaint must be dismissed because Plaintiffs have failed to state facts sufficient to constitute a cause of action, lack standing, and have failed to join necessary parties under Rules 12(b)(1), (6), and (7) and 19, SCRCP.

BACKGROUND

The Complaint alleges that Defendants are the owners of certain lots described by Plaintiffs as "super-beachfront lots" ("Defendants' Lots"). Complaint, ¶ 7. Defendants' Lots are located on East Ashley Avenue in Folly Beach. *Id.* Defendant lot owners hold or have applied for certain permits required for development. *Id.*, ¶ 11.

Folly Beach suffers manmade erosion caused by the Charleston Harbor jetties, and, as a result, the beach receives sand renourishment from time to time. *Id.*, ¶ 15. The most recent

renourishment project occurred in August 2018. *Id.*, ¶ 18. Renourishment that occurs on private property is funded through private contributions. *Id.*, n.1.

There are approximately fifty lots at Folly Beach that Plaintiffs describe as “super-beachfront lots,” *id.*, ¶ 14, yet the Complaint names only eight of such lot owners as defendants. *Id.*, ¶¶ 7-9, 11. The Complaint seeks declaratory and injunctive relief on the basis that at least portions of these eight Defendants’ Lots and other “super-beachfront lots” belong to the State of South Carolina and cannot be developed. *Id.*, ¶¶ 29-30, 36-37, 39-40. Specifically, Plaintiffs claim that “pursuant to the public trust doctrine and the common law principle of avulsion, the Defendants have no valid claim to land brought above the mean high water line by the avulsive 2018 renourishment event. Rather, all lands that are above the high water line as a result of the 2018 renourishment remain public property, held in trust by the State.” *Id.*, ¶ 36. Plaintiffs cite no South Carolina law to support their assertion of these property rights principles. *See* Complaint.

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 Foundation v. Waddell*, 295 S.C. 100, 367 S.E.2d 419 (1988). The Court should grant a 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,” a party 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).

ARGUMENT

I. Plaintiffs have not stated a viable cause of action.

Plaintiffs ask this Court to determine that the State of South Carolina owns portions of Defendants' property above the mean high water line following the avulsive 2018 renourishment event, yet they cite no South Carolina law that establishes such property rights, nor could they because none exists. Under Rule 12(b)(6), SCRCP, a complaint must state facts sufficient to constitute a cause of action. It follows that, if there is no law to support a particular claim, there can be no viable cause of action. *See generally Doe v. Marion*, 361 S.C. 463, 605 S.E.2d 556 (Ct. App. 2004).

II. Plaintiffs have failed to name necessary parties as required by the Declaratory Judgment Act and Rule 19.

The Declaratory Judgment 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 § 15-53-80 (emphasis added). Likewise, Rule 12(b)(7) 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.

The Complaint acknowledges that there are 50 “super-beachfront lots” at Folly Beach, yet names only eight 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). Because Plaintiffs have failed to name as parties all of the “super-beachfront lot” owners who have an interest in and will be affected by the requested declaration, they have not satisfied the requirements of the Declaratory Judgment Act or South Carolina Rule of Civil Procedure 19, and the Complaint should be dismissed.

III. Plaintiffs lack standing.

The Complaint seeks to determine title to the “super-beachfront lots” owned by Defendants. As set forth in Defendants State of South Carolina’s and Stephen Rawe’s Motions to Dismiss, Plaintiffs lack standing to pursue such claims, and therefore this Court lacks subject matter jurisdiction. Accordingly, Plaintiffs’ complaint should be dismissed under Rule 12(b)(1), SCRCP.

CONCLUSION

Because Plaintiffs have not stated a viable cause of action, have failed to name necessary parties, and lack standing, Defendants respectfully request that the Court dismiss Plaintiff’s Complaint in its entirety *with prejudice*.

[Signature on following page]

Respectfully submitted,

WYCHE, P.A.

s/ Rita Bolt Barker

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January 23, 2020

**ATTORNEYS FOR DEFENDANTS
JUAN ENTERPRISES, LLC AND
JUANITA A. WRIGHT**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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.

IN THE CIRCUIT COURT

Case No. 2019-CP-10-00717

MEMORANDUM IN SUPPORT OF
STEPHEN RAWE'S AND JEFFREY H.
MORRIS' MOTION TO DISMISS
COMPLAINT PURSUANT TO SCRPC
RULE 12(B)(1) AND 12(B)(6)

Defendants Stephen Rawe and Jeffrey H. Morris submit this Supplemental Memorandum¹ in support of their Motions to Dismiss scheduled for hearing by the Court on January 28, 2020.

ADDITIONAL ARGUMENT IN SUPPORT OF MOTION TO DISMISS

The Folly Beach Renourishment Project Restores Property Lost by Avulsion.

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." Complaint, Para 15. Plaintiffs further allege "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 publically funded. Para 15, 18. In accordance with Title V, Section 501, of the Water Resources Development Act, Public

¹ Defendants' Motions to Dismiss included incorporated Memoranda.

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 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.” (Ex. A.) Public Law 102-104, 1991, included Section 108: “The project for shoreline protection for Folly Beach, South Carolina, authorized 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” (Ex. B.)

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. Sec. 48-39 290(E).

Consequently, the avulsive action is not the federal government’s efforts to provide shoreline, hurricane and stormwater protection measures. Rather, the efforts are to address the effects of the initial avulsive action. Here, the avulsive action was the

construction of the Charleston Harbor jetties. The avulsive event caused a loss of property.

“Avulsion is a process whereby the action of water causes a sudden and perceptible loss of, or addition to riparian land.”² “The principal significance of the distinction between erosion and accretion on the one hand, and avulsion on the other has to do with legal effect: the owner of the riparian land loses title to land that is lost by erosion and ordinarily becomes the owner of land that is added to his by accretion, whereas if an avulsion has occurred, the boundary line remains the same regardless of the change the river channel or shoreline.”³ “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.”⁴

Upon recognition that the construction of the Harbor jetties is similar to construction of a spoil dike for collection of spoil material and therefore constitutes an avulsive event, the Defendants’ seaward boundaries did not change as a result of the erosion and the federal project described as shoreline, hurricane and stormwater protection merely restores Defendants’ properties to platted boundary lines.

Consequently, Plaintiffs have failed to state facts sufficient to constitute a cause of action warranting a declaration that Defendants have no claim to property within their platted boundaries.

² Yelsen Land Company, Inc. v. the State of South Carolina and the State Ports Authority, 2010 WL 8721640 (Docket No. 07-CP-10-2053.)

³ Yelsen Land Company, Inc. v. the State of South Carolina and the State Ports Authority, 2010 WL 8721640 (Docket No. 07-CP-10-2053.)

⁴ Yelsen Land Company, Inc. v. the State of South Carolina and the State Ports Authority, 2010 WL 8721640 (Docket No. 07-CP-10-2053.)

/s/ Mary D. Shahid

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Attorneys for Defendants Stephen Rawe and
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January 23, 2020

Federal cost of \$1,750,000. The non-Federal share of the cost of the project authorized by this section shall be 25 percent.

(5) TARRANT COUNTY, TEXAS.—The Secretary is authorized and directed to develop detailed plans and specifications and to construct measures in Tarrant County, Texas, to eliminate flood damage in the historical stockyards along Tony's Creek and Marine Creek, at a total cost of \$20,000,000, with an estimated first Federal cost of \$15,000,000 and an estimated first non-Federal cost of \$5,000,000. The non-Federal share of the cost of the project authorized by this section shall be 25 percent.

SEC. 402. COMPLIANCE WITH FLOOD PLAIN MANAGEMENT AND INSURANCE PROGRAMS. 33 USC 701b-12.

Before construction of any project for local flood protection, the non-Federal interests shall agree to participate in and comply with applicable Federal flood plain management and flood insurance programs.

SEC. 403. GROUNDWATER INDUCED DAMAGES.

Section 2 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 22, 1944 (58 Stat. 889; 33 U.S.C. 701a-1), is amended by inserting after "drainage improvements" the following: "and flood prevention improvements for protection from groundwater-induced damages".

TITLE V—SHORELINE PROTECTION

SEC. 501. AUTHORIZATION OF PROJECTS.

Reports.

(a) AUTHORIZATION OF CONSTRUCTION.—The 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. Construction of the projects authorized in this title shall be subject to determinations of the Secretary, after consultation with the Secretary of the Interior, that the construction will be in compliance with the Coastal Barrier Resources Act (Public Law 97-348).

16 USC 3501
note.

PANAMA CITY BEACHES, FLORIDA

The project for shoreline protection, Panama City Beaches, Florida: Report of the Chief of Engineers, dated July 8, 1977, House Document Numbered 96-65, at a total cost of \$48,500,000, with an estimated first Federal cost of \$22,800,000 and an estimated first non-Federal cost of \$25,700,000.

ST. JOHNS COUNTY, FLORIDA

The project for shoreline protection, St. Johns County, Florida: Report of the Chief of Engineers, dated February 26, 1980, at a total cost of \$18,200,000, with an estimated first Federal cost of \$11,100,000 and an estimated first non-Federal cost of \$7,100,000. To the maximum extent feasible, the Secretary shall construct such project so as to avoid adverse effects on sea turtle nesting. Wildlife.

100 STAT. 4136

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first Federal cost of \$7,950,000 and an estimated first non-Federal cost of \$7,950,000.

PRESQUE ISLE PENINSULA, ERIE, PENNSYLVANIA

The project for shoreline protection, Presque Isle Peninsula, Erie, Pennsylvania: Report of the Chief of Engineers, dated October 2, 1981, at a total cost of \$34,800,000, with an estimated first Federal cost of \$18,900,000 and an estimated first non-Federal cost of \$15,900,000.

FOLLY BEACH, SOUTH CAROLINA

The project for shoreline protection, Folly Beach, South Carolina: Report of the Chief of 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.

WILLOUGHBY SPIT, VIRGINIA

The project for shoreline protection, Willoughby Spit and Vicinity, Norfolk, Virginia: Report of the Chief of Engineers, dated April 17, 1984, at a total cost of \$5,690,000, with an estimated first Federal cost of \$4,250,000 and an estimated first non-Federal cost of \$1,440,000.

VIRGINIA BEACH, VIRGINIA

The project for beach erosion control and hurricane protection, Virginia Beach, Virginia: Report of the Chief of Engineers, dated May 22, 1985, at a total cost of \$42,400,000, with an estimated first Federal cost of \$27,600,000 and an estimated first non-Federal cost of \$14,800,000.

(b) AUTHORIZATION OF CONSTRUCTION SUBJECT TO FAVORABLE REPORT.—The following projects are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports cited, with such modifications as are recommended by the Chief of Engineers and approved by the Secretary, and with such other modifications as are recommended by the Secretary. If no report is cited for a project, the project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

PINELLAS COUNTY, FLORIDA

The project for beach erosion control for Pinellas County, Florida: Report of the Board of Engineers for Rivers and Harbors, dated April 23, 1985, at a total cost of \$52,600,000, with an estimated first Federal cost of \$32,700,000 and an estimated first non-Federal cost of \$19,900,000.

ILLINOIS BEACH STATE PARK, ILLINOIS

The project for shoreline protection, Illinois Beach State Park, Illinois described as alternative 3A in Interim Report 1, Illinois-Wisconsin Stateline to Waukegan of the District Engineer, Chicago District, dated June 1982, at a total cost of \$13,400,000, with an

shall be borne by the Port of Camas-Washougal. The Secretary shall bear the costs of environmental review and appraisal.

"(4) The Secretary of the Army may require such additional terms and conditions in connection with the conveyance under this section as the Secretary determines appropriate to protect the interests of the United States.

"(5) The Secretary is also authorized to transfer, without monetary consideration, approximately 37 acres of predominantly wetlands comprising the remainder of the above mentioned 82 acre tract to the Department of the Interior, United States Fish and Wildlife Service, for inclusion in the Steigerwald Lake National Wildlife Refuge."

SEC. 105. The project for flood control, Guadalupe River, California, authorized by section 401(b) of the Water Resources Development Act of 1986 (Public Law 99-662), and the Energy and Water Development Appropriations Act of 1990 (Public Law 101-101), is modified to direct the Secretary of the Army to construct the project in accordance with the General Design Memorandum, dated January 1991 of the Sacramento District Engineer, and in accordance with the percentages specified in section 103 of the Water Resources Development Act of 1986, at a total cost of \$134,300,000, with a first Federal cost of \$67,300,000 and a first non-Federal cost of \$67,000,000, further, if, after enactment of this Act and prior to award of the first construction contract by the Corps of Engineers, non-Federal interests initiate construction of the plan recommended herein, the Secretary shall credit such work toward the non-Federal share of the cost of the project.

SEC. 106. The present value of the capital costs to be prepaid by the city of Aberdeen, Washington, under the Wynoochee Lake project contract shall be \$4,952,158.

SEC. 107. The experimental water delivery program established under section 1302 of Public Law 98-181 is authorized to continue until the modifications to the Central and Southern Florida project authorized under section 104 of Public Law 101-229 are completed and implemented.

SEC. 108. The project for shoreline protection for Folly Beach, South Carolina, authorized by section 501(a) of the Water Resources Development Act of 1986 (Public Law 99-662; 100 Stat. 4136), is modified to authorize the Secretary to construct hurricane and storm protection measures based on the Charleston District Engineer's Post Authorization Change Report dated May 1991, at an estimated total initial cost of \$15,283,000, with an estimated Federal cost of \$12,990,000 and an estimated non-Federal cost of \$2,293,000, and an annual cost of \$647,000 for periodic beach nourishment over the life of the project, with an estimated annual Federal cost of \$550,000 and an estimated non-Federal annual cost of \$97,000.

Wisconsin.

SEC. 109. The Secretary of the Army, acting through the Chief of Engineers, is directed to maintain in caretaker status the navigational portion of the Fox River System in Wisconsin for a period of time extending one year from the date of enactment of this legislation. During this one-year period, the Corps of Engineers shall engage in good faith negotiations with the State of Wisconsin for the orderly transfer of ownership and operational duties of the Fox River System to the State of Wisconsin or other appropriate entity. No later than one year from the date of enactment of this legislation, the Corps of Engineers shall present to Congress the terms of a negotiated settlement reached between the Corps of Engineers and

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2019-CP-10-00717

**DEFENDANTS' REPLY TO
PLAINTIFFS' RETURN TO MOTION
TO DISMISS**

Procedural Background

On January 28, 2020, all parties appeared before this Court for hearing on Defendants' Motions to Dismiss. The Court requested Proposed Orders, which were submitted on March 9, 2020. Upon review of Plaintiffs' "Proposed Order Denying Motion to Dismiss," Counsel for the State of South Carolina, Emory Smith, contacted the Court by way of electronic mail on March 13, 2020, to ask for the opportunity to present a revised proposed order based on lack of notice of certain arguments set forth by Plaintiffs in their submission to the Court. Upon review, this Court concluded that Defendants are entitled to respond to certain information in Plaintiffs' submission to the Court. On March 20, 2020, this Court notified the parties by electronic mail that "the State (& other Defendants if they like) [may] submit a responsive Memo to Plaintiffs Memo on the issue of littoral rights."

Plaintiffs' Assertions

Plaintiffs Napier and Stubblefield claim that they are denied “the right of access that is part of the bundle of rights possessed by littoral property owners.” The “super beachfront lots” obstruct their access. Plaintiffs acknowledge that these are platted lots, having existed since the 1950’s. (Affidavit, Spencer Wetmore, ¶ 4.) Moreover, the City has allowed development of these lots, and houses exist on 14 super beachfront lots. (Affidavit, Spencer Wetmore, ¶¶ 5-6.) Plaintiff Napier states that he, along with Stubblefield, own a home located 1661 East Ashley Avenue, Folly Beach, and that two lots, owned by Defendants Juan Enterprises, LLC and Juanita Wright, are “seaward and caddy-corner to my property.” (Affidavit, Napier, ¶¶ 3-4.) Napier claims that his right to use the beachfront is disrupted by “existing super-beachfront residences on the northeast part of the Island.” (Affidavit, Napier, ¶ 9.) This is a result of beach erosion on the northeast part of the Island. (Affidavit, Napier, ¶ 8.) Napier describes the erosion as “chronic, significant erosion” (Affidavit, Napier, ¶ 15) but acknowledges that the beach is restored with renourishment, albeit for a finite period. (Affidavit, Napier, paragraph ¶¶ 16-17.)

Napier claims injury by the actions of Juanita Wright and/or Juan Enterprises in preventing his access through their property. However, Napier acknowledges that he can utilize a public access way located on East Ashley Avenue to obtain access to the beach. (Affidavit, Napier, ¶¶ 19 and 20.)

Affiant Carol Kruer also acknowledges that she is a “second row” homeowner (Affidavit, Kruer, ¶ 10.) Kruer “regularly utilizes parts of [Debbie’s Folly] lot to access the beach. (Affidavit, Kruer, ¶ 6.) Kruer, like Napier, acknowledges that the beach is erosional but the renourishment project is effective for some period of time. (Affidavit, Kruer, ¶ 5.)

Defendants' Response

Plaintiffs, by their own admission, are not littoral property owners.

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. Otteray 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 S. 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 (Ct. App. 2005).

Here, the littoral property owners are the individual Defendants, not Plaintiffs Napier and Kruer, or any of the second-row beachfront owners. Defendants' boundary line is Mean High Water. “The State of South Carolina holds presumptive title to all land below the high water mark in trust for the benefit of its citizens.” Grant v. State, 395 S. C. 225, 228, 717 S. E. 2d 96, 98, (Ct. App. 2011).

Plaintiffs claim injury from alleged loss of a right that Plaintiffs do not possess. Plaintiffs clearly covet that right, the right to an unimpeded view of the ocean by elimination of the existence of front-beach lots, but Plaintiffs purchased second row properties, not beachfront properties. The Defendants' properties have not been abandoned as all Defendants have undertaken whatever commitment the City of Folly Beach and the United States Army Corps of Engineers required in order to facilitate ongoing renourishment of Folly Beach. The photo utilized by Plaintiffs in its Proposed Order does not depict an abandoned or eroded and damaged

beachfront lot but instead depicts high ground, rows of sand dunes, and dune vegetation. Plaintiffs' littoral rights exist only if this Court disregards Defendants' property interests. Plaintiffs conflate littoral rights with the Defendants' right to prevent trespass. Moreover, Plaintiffs ignore the existence of multiple public beach accesses designed to provide second row owners, and all members of the public, access to Folly Beach. Plaintiffs, who purchased with presumptive knowledge of the existence of a platted lot between Plaintiffs' properties and the Atlantic Ocean, did not have littoral rights in their bundle of rights upon purchase and cannot attain littoral rights at the expense of Defendants' property rights.

Plaintiffs have failed to demonstrate an injury in fact.

Plaintiffs' desire to possess littoral rights by elimination of Defendants' private property interests constitutes their "significant stake in the outcome" of the case and their demonstration of standing.

To have standing, one must have a personal stake in the subject matter of the lawsuit. In other words, one must be a real party in interest. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. A private person does not have standing unless he has sustained, or is in immediate danger of sustaining, prejudice from an executive or legislative action. Such imminent prejudice must be of a personal nature of the party laying claim to standing and not merely of general interest common to all members of the public. When an organization is involved, it has standing on behalf of its members if one or more of its members will suffer an individual injury by virtue of the contested act.

Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S. C. Dept. of Natural Resources, 345 S. C. 594, 600-601, 550 S. E. 2d 287, 291 (S. Ct. 2001). (Internal citations omitted.)

Plaintiffs lack a real, material, or substantial interest in the individual Defendants' private properties that are the subject matter of this action. In Town of Sullivan's Island v. State of South Carolina and Felger, 318 S. C. 340, 457 S. E. 2d 626 (Ct. App. 1995), the Court

determined that the Town had standing to intervene in an action to quiet title to public tidelands initiated by Felger. Felger argued the Town lacked standing because the Town had no claim to the tidelands that were the subject of the case. The Court concluded that the “Town has a real, material, or substantial interest in this case” based on the Town’s statutory authority, as agent of the State, “to execute fee simple deeds to lots on Sullivan’s Island” and because the State Grant that conveyed the marsh specifically referenced the Town’s authority to determine whether the marsh could be granted. Town of Sullivan’s Island v. State of South Carolina and Felger, 318 S. C. 340, 343, 457 S. E. 2d 626, 629 (Ct. App. 1995).

In contrast, Plaintiffs can make no demonstration of interest sufficient to satisfy the criteria for determining standing. Plaintiffs’ only interest is prospective – prevailing in this lawsuit – in order to claim littoral rights that are currently vested in the individual Defendants’ property. Such interest cannot be described as real, material, or substantial.

Similarly, because Plaintiffs have no standing to challenge the ownership of the individual Defendants’ lots based on alleged littoral rights, the City also has no standing. The City, of course, has no littoral rights to claim for itself. When the individual Plaintiffs have no standing to claim ownership for the State or littoral rights for themselves, the City has no basis to claim that a legal uncertainty exists as to ownership as a basis for its own standing or public importance standing.

The City has invented a problem – uncertainty of ownership – where no problem exists. “The City’s interest in this lawsuit is secondly driven by the need for certainty in property ownership in order to effectively administer our beachfront ordinances and conduct our maintenance projects.” (Affidavit, Wetmore, ¶ 13.) The owners of the super beachfront lots have knowledge of their platted boundary lines. These owners understand the movement of

mean high water and the impact it has on their properties. These things are certain – not uncertain. Moreover, the City possesses the authority to address its identified interests in development (Wetmore affidavit at ¶¶ 5, 7 & 12) by limiting or prohibiting development of certain lots. Clearly, the ultimate cost of such ordinances may be imposed upon the City by way of takings claims from property owners. So, to avoid exercise of its legislative authority, the City has joined forces with the Plaintiffs to endorse an action that the City believes will make its job easier and will limit exposure. While control of development on an eroding beachfront may be a challenge for the City, such challenge does not rise to a real, material, and substantial interest of the City in Defendants’ properties, including the State’s interest in properties below Mean High Water.

The concerns and interests as defined by the City in Wetmore’s Affidavit are in stark contrast to the interests determined to be real, material, and substantial, in Town of Sullivan’s Island v. State of South Carolina and Felger, above. The City does not cite to or rely on a statute that empowers it execute conveyances of tidelands nor does it have authority from the State to approve conveyances of tidelands.

An “injury in fact” is an invasion of a legally protected interest. Smiley v. SCDHEC, 374 S. C. 326, 649 S. E. 2d 31 (S. Ct. 2007). The City has failed to demonstrate that it has a legally protected interest in lands below Mean High Water and in the individual Defendants’ properties. The City has demonstrated that it has multiple concerns about beachfront development but appears to be unaware of its legislative authority to address these concerns. Or, more likely, the

City understands the consequences of taking its citizens property and prefers to shift that responsibility to the Court through adoption of Plaintiffs' unsound legal theories.¹

Conclusion

The Plaintiffs do not possess littoral rights and, consequently, do not have a legal or personal interest to protect. Plaintiffs' objective in filing the lawsuit – to convert second row property to beachfront property at the expense of the individual Defendants' real property interests – does not convey standing to Plaintiffs to pursue this action.

SUBMITTED ON BEHALF OF ALL
DEFENDANTS:

/s/ Mary D. Shahid

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April 16, 2020
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¹ 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 proceeding occur in this case.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
City of Folly Beach, Coastal Conservation	)	C/A No. 2019-CP-10-0717
League, Save Folly Beach, Inc.,	)	
John Collins, Matt Napier, Paula	)	
Stubblefield, Troy Bode, and Carol Kruer,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' RETURN TO
	)	DEFENDANTS' REPLY
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.	)	
	)	

The reply filed by Defendants does little to counteract Plaintiffs' littoral rights argument, and Plaintiffs stand by the law set forth in their proposed order. The Defendants' insistence on submitting a reply as to this specific issue only serves to highlight the strength of this substantive legal argument. Defendants have not set forth any compelling reason to reject Plaintiffs' argument for standing on the basis of littoral rights.

Defendants have again attempted to argue lack of standing based on the assumption that Plaintiffs' underlying legal theory of avulsion is invalid. Of course, this is a misconstruction of the standing inquiry. Defendants acknowledge that the boundary between public trust property and private property is the mean high water line and that littoral rights begin at that point. If Plaintiffs' prevail on their theory of the case, Plaintiffs are likely to be determined to own property down to that critical point, thus possessing littoral rights. Defendants' counter to this obvious basis for standing is simply to ignore or reject Plaintiffs' theory of the case.

In response to Plaintiff Matt Napier's undeniable, actual injury of being blocked from accessing the beach in the manner he has done for years, Defendants argue that the blocking of access by Defendants Juanita Wright and/or Juan Enterprises does not constitute a cognizable injury because Mr. Napier acknowledges that he can in fact access the beach from other areas off of his property. First, this level of second-guessing is well outside the basic standing inquiry. Secondly, the logical extension of Defendants' argument would be that Mr. Napier could not establish standing unless he was somehow blocked from access along the entirety of the beach. Obviously, such a contention is not consistent with the law of standing in this State. See Smiley v. DHEC, 649 S.E.2d 31 (2007) ("Following the statement that Smiley failed to demonstrate how his enjoyment of the beach would be affected, the Court of Appeals went on to say 'Smiley's use and enjoyment will be only temporarily altered' in that 'his injury, at best, will be a temporary detour in his jogging route' ... We are unaware of any legal basis for the Court of Appeals' distinction of a temporary injury from a permanent injury.")

Plaintiffs will not belabor these arguments further and crave reference to the numerous affidavits submitted to this Court in support of their standing to bring this case. This court has not adjudicated the ultimate issue of how the doctrine of avulsion should be applied to these Defendants' properties, and that is not the function of this preliminary standing inquiry. Taking the allegations in Plaintiffs' Complaint as true, imminent injuries to Plaintiffs' are clear, including those injuries that would be remedied by Plaintiffs' establishment of littoral rights.

[SIGNATURE BLOCK FOLLOWS]

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