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.

FINAL BRIEF OF THE APPELLANTS

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May 10, 2021

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2. Did the Circuit Court err in determining that the Appellants do not possess constitutional standing, when: the Appellants have concrete property interests at stake in this litigation; the City's core functions as a municipality are impaired as a consequence of the issue presented in this litigation; and the individual Appellants have asserted their valid interests in property value, property use and enjoyment, and recreation.

3. Did the Circuit Court err in undertaking its analysis of standing without consideration of the fact that the Uniform Declaratory Judgments Act authorizes an action by any party "whose rights, status or other legal relations are affected"?

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7. Whereas the Appellants have sought to establish a legal principle and precedent of broad applicability, did the Circuit Court err in mistaking parties for whom the outcome of this case will be relevant for parties that must be named in the case?

8. Did the Circuit Court err in determining to be indispensable parties to this case a group of property owners for whom no active or live controversy exists?

9. Did the Circuit Court err in considering no other possible remedy but dismissal for Appellants' purported failure to name indispensable parties?

I. STATEMENT OF THE CASE

The Appellants filed this action for declaratory judgment and an injunction on February 12, 2019. Citing common law principles related to the public trust doctrine, the Appellants commenced this action in order to obtain a declaration of ownership status for certain sections of property on the beachfront of Folly Island, within the City of Folly Beach, that have been created by artificial beach renourishment. The defendants named in this action have claimed private ownership over such property, which the Appellants contend is part of the public trust.

Represented by various counsel, each of the Respondents filed a motion to dismiss this case, except for Respondent Michael Vandaele, who has not participated in these proceedings. Motions to dismiss were filed under both Rule 12(b)(6) and Rule 12(c), SCRCP. Upon consent of the parties, the motions to dismiss were referred to the master-in-equity for Charleston County, the Honorable Mikell Scarborough. After a hearing on January 28, 2020, Judge Scarborough accepted proposed orders and supplemental briefing from the parties before issuing an order of dismissal on May 11, 2020. Dismissal was granted on the basis of the arguments advanced by the Respondents, which were that the Appellants lacked standing, had failed to state a viable cause of action, and had not named all necessary parties. The Appellants filed their notice of appeal with this Court on June 10, 2020.

II. ARGUMENT

As will be explained fully herein, the Appellants have a number of bases for relief upon which this Court should reverse the Circuit Court's order of dismissal and remand this case for consideration on the merits.

SUMMARY OF APPEAL

Folly Beach–both the municipality and the shoreline itself–has a serious problem. What was undoubtedly intended as favorable treatment by state legislators drafting the Beachfront Management Act in the late 1980s has resulted in an intractable legal void that plagues the City and its residents. One can understand how it seemed sensible back in 1988 to exclude Folly Beach from most of the provisions of the Beachfront Management Act, given that Folly is in the impact zone from the Charleston Harbor jetties, causing a disruption to normal shoreline processes. In this way, Folly is different from other beaches, so it is sensible for Folly to receive alternative treatment under our beachfront statute. The problem comes in, however, in the fact that alternative statutory and regulatory controls were never created for Folly Beach. Instead, the City and its residents have simply been left entirely without the support of DHEC's Office of Ocean and Coastal Resource Management, which uses its authority to ensure sensible development on other beachfronts, and without the state regulatory system for determining which parts of the sandy beachfront are allowable for development. In essence, the City of Folly Beach has been handed all the difficulty of managing one of our state's most erosive beaches, but with very few of the legal tools necessary to undertake that management.

As a consequence of this disparity, the City has struggled for decades to find a legal mechanism for preventing dangerous development, even on the most ephemeral pieces of beachfront

sand. Unquestionably, the worst of this development has been that occurring on Folly's "super-beachfront lots," which are platted areas located in front of Folly Beach's long-established beachfront, too far seaward even for road access. These "lots" typically exist in a cycle of erosion and restoration, with natural erosive forces submerging the lots, before sand is added to the beach through artificial renourishment, temporarily creating dry ground–and then the process starts over. Because the state regulatory system that would forbid development of these areas does not apply, more than a dozen "super-beachfront" houses have been constructed in locations that are flatly outrageous by comparison to development on any other beach in South Carolina, and the consequences of such development have been predictable–homes have been condemned, public beach has been lost and damaged, and the financial and administrative burden has been great. Unfortunately, part of Folly Beach's identity has become as the place where abnormally tall and thin houses are squeezed onto the beach, walled off from the ever-encroaching ocean, and stuck in front of homes that are beachfront by every other indication.

Driven by the absence of any other viable legal option for addressing this dilemma, the City of Folly Beach and some of its most affected residents have resorted to the judicial system for clarity and relief, and the vehicle they have chosen for doing so is most straightforward and fundamental. The strikingly simple objective of this case is to have a South Carolina court enunciate a principle that is well-defined in many other jurisdictions——that being the principle of avulsion——and to have a South Carolina court answer a question that is clearly resolved in most other coastal states–that being the question of who owns dry ground created through artificial beach renourishment.

It is already well-established under South Carolina law that a platted property, while perhaps continuing to exist on paper 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. 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.

Even putting Folly Beach aside for a moment, the fact that these are unresolved questions in our coast-heavy state is both shocking and problematic. Surely a fundamental purpose of the judicial system is to serve as a locus for parties to seek clarity as to important legal principles like these, especially when presented within the context of a dangerous, persistent and publicly-significant problem.

Yet, the Circuit Court here has shown itself to be susceptible to the Respondents' efforts to shift the focus of this case onto everything but the very simple legal questions presented. Indeed, this case was dismissed before it even began, with arguments before the Circuit Court centering upon

the Appellants' standing to raise the claims in this case. By now, it has become a reflexive default on the part of those defending environmental-based claims in South Carolina to lean heavily upon the standing doctrine, regardless of the circumstances at play. And, to be sure, the propensity of our state's trial-level courts to become entangled by such arguments–especially in complex or novel environmental cases–counsels in favor of that approach. However, if our Supreme Court has conveyed one message in its environmental jurisprudence, especially in recent years, it is that the overreaching of lower courts in relation to what should be a basic preliminary inquiry must cease. Here, if the Appellants in this case truly lack standing, then they are completely without remedy for an ongoing, significant legal injury, and the traditional function of the common law has broken down in this case.

Finally, while the questions presented in this case are simple, the stakes are deceptively high. This Court's opinion will be the first South Carolina appellate court opinion ever to mention the legal principle of "avulsion," much less to consider the property implications of a beach renourishment. In a state where this sort of beach project has become ubiquitous, the ultimate outcome in this case will reverberate along our entire coastline. The novel nature of this case makes particularly troubling the Circuit Court's gratuitous venture into the law of avulsion. Specifically, after announcing that the Appellants lacked standing to raise an avulsion argument, the Circuit Court nevertheless went on to undertake a misguided legal analysis of the principle and related concepts. Without intervention from this Court, that order is now the seed from which our state's jurisprudence on this issue will grow. It is therefore imperative that the Court utilize this appeal to correct the Circuit Court's legal error and to enunciate the concepts at issue here in a manner comporting with the common law of this and other states.

STANDARD OF REVIEW

When reviewing dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. Sloan Constr. Co. v. Southco Grassing, Inc., 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008). "The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief." Id. at 112–113, 659 S.E.2d at 161. The court will not sustain the motion if the "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995).

An appellate court also applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(c), SCRCP. See Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006) (discussing the standard of review of a motion for judgment on the pleadings). When considering a motion for judgment on the pleadings under Rule 12(c), the court must regard all properly pleaded factual allegations as admitted. Falk v. Sadler, 341 S.C. 281, 286–87, 533 S.E.2d 350, 353 (Ct. App. 2000).

STATEMENT OF FACTS

Accepting the Appellants' allegations as true, as is necessary given the procedural posture of this appeal, the factual circumstances relevant to this matter are as follows:

Super-beachfront lots:

Based on a combination of factors, including 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. (Wetmore ¶4, R. pp. 139-140). Most

problematic, this combination of factors has spawned a type of unwelcome development that is unique to Folly–what has come to be called "super-beachfront" development.

"Super-beachfront" is the term used on Folly for relic lots, mostly created in the 1950s, which are platted seaward of the long-established beachfront on the Island and which have no direct road access. (Wetmore ¶4, R. pp. 139-140). Folly Beach generally has oceanfront development typical of South Carolina beaches, with the first row of oceanfront homes separated from the active beach by a strip of sand dunes. (Complaint ¶13, R. p. 36). All of the "super-beachfront" lots are platted seaward of this typical oceanfront development, usually on or in front of the most seaward dunes. (Complaint ¶13, R. p. 36). The existence of these lots would not be apparent to anyone surveying the area on the ground, as the platted lots lines typically bound only ocean, wet beach, and/or oceanfront sand dunes. (Complaint ¶12, R. p. 36). Put simply, dozens of old plats exist showing the beach and near-ocean on Folly Beach as private residential lots.

Not surprisingly, these super-beachfront lots historically have been regarded as possessing very little market value, as South Carolina simply has no history of development in such areas. Indeed, the most common fate for these lots has been donation to the City or simple abandonment.[1] (Complaint ¶22, R. p. 39). The traditional lack of regard for these lots is also of course reflected in their continuing vacancy in the otherwise heavily developed Folly Beach. Respondents Juan Enterprises, LLC and Juanita Wright, for example, own lots that were platted in 1951 and that have never been developed, despite decades of incredible demand for buildable beachfront property.

[1]For example the Court can take judicial notice of the fact that parcel TMS# 4391500048, located three lots down from that owned by Respondent Juan Enterprises, LLC, was donated to the City for the price of $1 in 2003.

(Napier ¶6, R. p. 122). That demand, though, began to drive some development interest in these lots by the late 1990s, when the first super-beachfront residences were constructed. (Wetmore ¶6, R. p. 140). Today, while the great majority of super-beachfront lots remain undeveloped and often submerged by the tides, residences have been constructed on fourteen of the lots.(Wetmore ¶6, R. p. 140). The individual Respondents in this case seek to add to that number by developing their own super-beachfront properties.

Beach renourishment:

A significant factor driving increased super-beachfront development has been the City's initiation of regular artificial beach renourishment projects. As a consequence of both natural erosion and disruption caused by the Charleston Harbor jetties, Folly Beach is one of the most sand-starved and erosive beaches on South Carolina's coast. (Complaint ¶15, R. p. 37). Consequently, a recurring cycle of major beach renourishment has become a necessity for the viability of Folly Beach, and those renourishment projects, funded by millions of dollars in federal money, are scheduled to occur every seven years. (Wetmore ¶17, R. p. 142). Folly's renourishment projects involve massive volumes of sand being pumped onto the beach from outside sources in order to build up the elevation of the beach. (Complaint ¶15, R. p. 37). Some portions of Folly's beachfront are buried under as much as ten feet of renourishment sand during these projects, and this increase in beach elevation converts many acres of shoreline from ocean or wet beach into sandy dry ground above the normal high tide line. (Complaint ¶18, R. p. 37-38).

The most recent renourishment project on Folly occurred during the summer and fall of 2018. This project, undertaken by the U.S. Army Corps of Engineers, included the pumping of nearly one million cubic feet of sand onto a two-mile stretch of Folly beach, with at least $11,000,000 in public

funds spent. (Complaint ¶18, R. p. 37-38). As a result of this renourishment, the shoreline was pushed out by approximately fifty yards, with significant additional beach created. (Napier ¶16, R. p. 124). Super-beachfront lots, including those of the Respondents, went from submerged or nearly submerged to dry ground covered in renourishment sand. (Napier ¶16, R. p. 124).

Of course, if renourishment projects were durable, it would not be necessary for the projects to occur on a seven-year (or shorter) cycle. No renourishment projects are permanent, to be sure, and that impermanence often plays out dramatically on erosive Folly Beach. Appellant Matt Napier, who owns a residence adjoining the beach on the northeastern portion of the Island, explained the following in relation to the 2018 renourishment:

> 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 it's pre-renourished / eroded state, with all the super beachfront lots being active, tidal beach.

(Napier ¶17, R. p. 121). In short, the shoreline and property configuration existing immediately post-renourishment is fleeting and significantly belies the normal condition of the beach. (Complaint ¶16, R. p. 37).

Despite this impermanence, the sand added by these renourishment projects has been utilized to facilitate super-beachfront development. (Complaint ¶17, R. p. 37). Remarkably, renourishment projects have triggered a sort of perverse land grab, wherein super-beachfront owners rush in to develop their properties in the brief window following a renourishment, before erosion reclaims the sand. (Complaint ¶20, R. p. 38). Residences are constructed on top of the renourishment sand, and seawalls are then built around these super-beachfront residences so that they won't wash into the

ocean when the beach inevitably reverts to its normal condition. (Complaint ¶17, R. p. 37).

Existing super-beachfront development:

Needless to say, the negative consequences of developing in this manner have been significant and widespread, and super-beachfront development has flatly been a disaster for the City of Folly Beach. Existing super-beachfront residences regularly end up on the active beach, inundated at every tide. (Wetmore ¶10, R. p. 141). Indeed, under typical beach conditions, the existing super-beachfront structures extend well onto the beach, kept out of the ocean only by seawalls. (Complaint ¶14, R. p. 36-37). Especially in the gaps between beach renourishments, it is not at all unusual for a super-beachfront house to end up imperiled by regular ocean tides, even with the seawalls that have been constructed around these developed lots. (Wetmore ¶19, R. p. 140-141). As the tides consistently come up, over, and around these beached houses, septic tanks are exposed and foundations are eroded, to the point of making the structures uninhabitable. (Wetmore ¶10, R. p. 141). Several of the existing super-beachfront homes have in fact been temporarily condemned by the City, some on multiple occasions. (Complaint ¶14, R. p. 36-37).

Of course, the impacts from these imperiled residences extend beyond the structures themselves. Perhaps most significantly, super-beachfront development results in the elimination of beachfront dunes, which the City rightfully considers to constitute an enhanced risk to safety and infrastructure. (Wetmore ¶7, 11, R. p. 140, 141). Once again, the image would be totally foreign on any other South Carolina beach, but oceanfront dunes have quite literally been bulldozed to make way for these residences. If the dunes are not outright destroyed, they may be claimed by the increased erosion created when these structures and their seawalls are battered on the active beach. (Napier ¶ 9, R. p. 121). Further, when super-beachfront residences are on the beach and within the

tides, the public beach is imperiled and even impassible, preventing tourists and residents from accessing Folly Beach's most valuable asset. (Wetmore ¶9, R. p. 140). In occupying and degrading Folly's sandy beachfront, super-beachfront development threatens to kill the goose that laid the golden egg. (Wetmore ¶8, R. p. 140). Every one of these impacts is completely predictable, of course, which is why this development could not occur on any other beach in South Carolina.[2] Yet, without a favorable outcome in this lawsuit, the City and its residents will be left simply standing by while more of this predictably destructive development is undertaken.

A. The Appellants Have Standing to Present the Claims in This Case.

It has become standard operating procedure in defending environmental claims to never answer a complaint outright, but rather to move for dismissal of the action, 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 trial courts hold for the complexity of environmental law issues, generally, and for the standing inquiry, specifically. As a consequence of this strategy, the record of lower court decisions on environmental standing in this

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[2]As is referenced several times herein, Folly Beach is exempt from the most meaningful shoreline development provisions of the Beachfront Management Act, including those provisions which would unquestionably prevent super-beachfront development. In order to place the facts of this case within the proper context, a more thorough explanation of that exemption is instructive.

On a normal beach in South Carolina, the ownership status of sandy beachfront land created by renourishment is likely to be inconsequential, as the Act's setback/baseline blocks any development on that sort of land. The locations of these "jurisdictional lines" are set by DHEC using a methodology that necessarily prohibits development on or in front of the primary oceanfront sand dunes. See S.C. Code 48-39-280(A)(1). This prohibition includes seawalls, which are necessary to make super-beachfront lots at least somewhat feasible. See S.C. Code 48-39-290(B)(2)(a). Folly Beach does not benefit from these prohibitions, however, because it alone is exempted from all of the Act's limitations on setback/baseline construction, based on proximity to the Charleston jetties. See S.C. Code 48-39-290(E); https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach-management/coastal-permits/beachfront ("The Folly Beach Exception").

state over the last decade is nearly incomprehensible and not indicative of any consistently applied principle of law. 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 defense default toward claiming that every single environmental plaintiff lacks standing must be soundly and consistently turned back.

This case is complex from the standpoint that it involves many parties (and lawyers) and it seeks to delineate a legal sub-principle with which South Carolina state courts have had very little experience thus far. Under these circumstances, it is easy to fling objections at this case, in the hopes that something will stick and prevent judicial resolution of the simple, but consequential, legal questions presented. It is abundantly clear, however, 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 Appellants more at stake in relation to that point of law than any other group of potential plaintiffs in the state could possibly possess. The Appellants 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 insisting that this case be resolved on the merits.

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.

Elements aside, the lodestar for this and every other constitutional 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 (emphasis added). In the context of a standing analysis, it is easy for lawyers and judges alike to slip into a hyper-technical and overwrought analysis in the face of a myriad of standing law precedent and convoluted terms of art. This propensity is especially strong in relation to environmental cases, and our Supreme Court has cautioned not to allow the basic question of environmental standing to subsume the substantive issues of the case. Pres. Soc'y of Charleston v. S.C. Dep't of Health & Envtl. Control, 430 S.C. 200, 215, 845 S.E.2d 481, 489 (2020) ("The courts below essentially, and erroneously, required Petitioners to prove the existence of an environmental impact on their members and the surrounding neighborhoods as part of establishing standing."). At base, an accurate and effective analysis of constitutional 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 Appellants meet that standard.

In the absence of constitutional standing, however, a party may also demonstrate the "public importance" exception to the general standing requirements. See Freemantle v. Preston, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012)."Public importance" standing "may be conferred upon a party 'when an issue is of such public importance as to require its resolution for future guidance.'" Sloan v. Greenville Cty., 356 S.C. 531, 548, 590 S.E.2d 338, 347 (Ct. App. 2003).

"Unlike with constitutional standing, a party is not required to show he has suffered a concrete or particularized injury in order to obtain public importance standing." S.C. Pub. Interest Found. v. S.C. Dep't of Transp., 421 S.C. 110, 118, 804 S.E.2d 854, 858 (2017). The party also need not show that he has "an interest greater than other potential plaintiffs." Davis v. Richland Cty. Council, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007). Instead, **"[t]he key to the public importance analysis is whether a resolution is needed for future guidance**." ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008).(emphasis added); Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 79–80, 753 S.E.2d 846, 853 (2014) ("Whether [public importance standing] applies in a particular case turns on whether resolution of the dispute is needed for future guidance .... [T]he need for future guidance generally dictates when [public importance standing] applies ...."). Clearly, Folly Beach should not be forced to continue operating under the hazardous shroud of uncertainty that exists due to the lack of guidance on the legal issues presented in this case.

1. The Claims in This Case and the Outcomes Sought:

To set the stage for a discussion of the Appellants' stake in this case, a full review of the claims presented and the potential outcomes arising from those claims is instructive. As previously referenced, the core question presented in this case is one of shoreline property ownership. Particularly, the Appellants seek to resolve the ownership status of land created when renourishment

sand is piled on top of the wet beach and nearshore (converting those areas into sandy dry ground) within the boundaries of platted private lots. As it is more specifically described in the Complaint, Appellants seek a declaration as to the ownership status of land created by the 2018 renourishment that falls within the boundaries of various super-beachfront lots. The Appellants contend that this newly created land belongs to the public.

The areas at issue in this case (i.e., the new land), indisputably belonged to the public prior to the 2018 renourishment. "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). Those cases unequivocally establish that the state owns all land below the normal high tide line and that it holds this land in trust for the benefit of the public. See 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, 354 S.C. at 149, 580 S.E.2d at 119-20; State v. Pacific Guano Co., 22 S.C. 50, 84 (1884); State v. Hardee, 259 S.C. 535, 193 S.E.2d 497 (1972); Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1889) ("The State has the exclusive right to control land below the high water mark for the public benefit."). Notably, this rule of public ownership over intertidal and submerged land applies equally to land that starts out dry and is submerged over time:

> 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). All of the areas at issue in this case were below the average high tide line before the 2018 renourishment and therefore were all part of the public trust.

Placed within this legal context, the core question in this case then becomes whether shoreline areas that are part of the public trust cease being state/public property when those areas are covered by artificial renourishment sand. The Appellants obviously contend that these public areas do not revert to private ownership just because sand is pumped overtop.

If this question is resolved in the Appellants' favor, that outcome will have practical consequences that are pertinent to evaluating the Appellants' stake in this case. Upon Appellants' legal success, the critical factual question would then become the location of the average high tide line prior to the 2018 renourishment. If public trust property is not lost through artificial renourishment, as the Appellants contend, then the location of the high tide line prior to the renourishment would continue to mark the division between public and private property after that renourishment.[3]

Applying this principle, the Appellants' success in this case would dictate that the individual Respondents do not actually own the super-beachfront lots they seek to develop, or at least not all of the land within those parcels. The Appellants have presented evidence that the entirety of some super-beachfront lots involved in this case were submerged prior to the renourishment. (Napier ¶ 15, R. p. 121) ("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 more or less reached my

[3]At this stage of the proceedings, the exact location of that pre-renourishment high tide line obviously has not been determined, so all inferences in relation to that question must be drawn in the Appellants' favor.

seaward property line, and the seaward lots were submerged."). If a super-beachfront lot was entirely submerged before the renourishment, the registered owner of the lot would not hold title to any of that property after this case. On the other hand, if a super-beachfront lot was only partially submerged before the renourishment, the registered owner of the lot would retain title to the non-submerged portion, though it is unlikely that residential development of this remaining portion would be feasible. Either way, the end result of this case, should the Appellants prevail, would be that super-beachfront lots that are presently undeveloped would remain that way for the foreseeable future.

With this framework in mind, the Appellants' specific bases for standing follow.

2. Public Importance Dictates That This Case Must be Heard.

Perhaps the most logical place to start in relation to standing is with the observation that, regardless of whether these Appellants can satisfy the elements of Lujan standing, it would constitute a significant unfairness and a serious miscarriage of justice to force the City and its residents to continue enduring the enhanced threats to public safety, public infrastructure, and public access/recreation described herein on the basis that the parties do not have standing to end such threats. Under the Appellants' theory of the case, residential development is taking place in areas that are actually part of the public trust beach, and the outcome of that development is unavoidable loss of important natural resources, property damage, threatened infrastructure, and significant public expenditure. Under such circumstances, it should be inconceivable to turn away the municipality in which all of this harm is occurring and to basically say, "sorry, this development may be unlawful and destructive, but you just have to live with it."

Before the Circuit Court, the Respondents' approach to clouding the standing inquiry was to cast this case in terms of a traditional property action. Because the Appellants' believe the super-beachfront lots are actually state-held public trust property, the argument went, it needs to be the State bringing this action and asserting a property interest. The obvious flaw in that argument, in the context of public importance standing, is that the State has done absolutely nothing to help Folly seek a resolution to its dilemma. In fact, just the opposite, the State joined the other Respondents in moving for dismissal and in trying to prevent the Appellants from getting an answer to the simple question of who owns this new land created by renourishment.

That the State would not only fail to assist the City of Folly Beach with its problem, but would then actively oppose the City's efforts to address the problem itself, constitutes an injury, to be sure, but the insult added to that injury is the disclaimer found in the Circuit Court's order of dismissal. That disclaimer, inserted into the Respondents' proposed order at the insistence of the State, purports to specify that any holdings from the Circuit Court as to the viability of the Appellants' legal theory in this case somehow do not apply if the State later decides to advance the same theory.[4] This disclaimer clearly reflects the State's understanding of the importance of the

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[4]The exact content of that disclaimer, dropped into a footnote, is as follows:

> 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**.

(Order p. 6-8, R. pp. 6-8 (emphasis added). The Appellants are obviously confounded by the inclusion of this provision and by the basic idea that a court's enunciation of general legal principles could somehow be disclaimed as to particular party. No legal basis exists for the proposition contained in this footnote, which is effectively that: "the court has determined that the Appellants' ownership theory is invalid as a matter of law, but maybe that determination will be different if the state advances the very same theory."

question presented in this case, but the manner in which the State has acted (or failed to act) upon this understanding simply exacerbates the harm to Folly Beach and its residents.

Regardless of whether the Respondents are correct in their assertion that it is the State alone who has the requisite constitutional standing to seek an answer to the question in this case, the State very obviously is not going to pursue that step, but the dire need for an answer to the question nevertheless persists.

The public importance of resolving the Appellants' claims in this case surely cannot be in doubt. In addition to the public impacts discussed above, Spencer Wetmore, Folly Beach's City Manager, has offered extensive uncontradicted testimony as to how the unresolved property ownership question presented here, and the super-beachfront development occurring as a consequence, significantly hampers the administration of public affairs. Namely:

- This issue makes it impossible for the City to effectively administer its municipal authority. "**[I]t 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**." (Wetmore ¶16, R. p.142 (emphasis added)). The City administers several permitting program, within which it must decide whether to authorize construction activities on the beachfront, including in the areas at issue in this case. In considering permit requests, 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." (Wetmore ¶14, R. p.141-142). Similarly, the City regularly "undertakes beach maintenance projects, like the erecting of sand fences, the planting of dune vegetation, and minor sand moving," in order to restore and protect the quality of the beach. (Wetmore ¶15, R. p. 142). As it stands right now, however, the City can't undertake this important work in super-beachfront areas that are claimed as private property. "The City would be more free to undertake publicly valuable beachfront work without the concern over private ownership over these avulsive areas." (Wetmore ¶15, R. p. 142).

Regardless, the clear takeaway here is that if the conclusion of the court is that the state must be the party pursuing an answer to the property ownership question in this case, this simply means that the question will not be answered.

- This issue dominates City staff's time and attention. Wetmore reports that issues surrounding super-beachfront development regularly occupy significant staff time, including when that development becomes imperiled, and that "the question of what to do with these houses when they inevitably become imperiled has occupied significant staff and Council time during my tenure as City Administrator." (,R. p. 140-141). This issue has "**impose[d] a significant management and administration burden on the City**." (Wetmore ¶10 R. p. 141 (emphasis added)).

- This issue diminishes and threatens the City's financial viability. "**The City relies heavily on tourism and a tax base that is driven by healthy, open, and visually appealing beaches**. When these super-beachfront houses end up on the beach, constituting an impediment to public use and enjoyment, the City suffers." (Wetmore ¶ 8, R. p. 140 (emphasis added)). As further explained by Wetmore, "a beach littered with exposed septic tanks and uninhabitable beach houses is obviously antithetical to the City's interests." (Wetmore ¶10, R. p. 141).

- This issue threatens public safety. "**The City considers the existing super-beachfront homes to constitute an enhanced risk to safety and infrastructure during storms, and any new development on super-beachfront lots would be the same**." (,Wetmore ¶11, R. p. 141). Particularly, "development of super-beachfront 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 super-beachfront 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." (Wetmore ¶7, R. p. 140).

- This issue diminishes and threatens the public beach. Wetmore explains how, as a result of erosion, "super-beachfront houses end up on the beach, constituting an **impediment to public use and enjoyment**" of the beach. (Wetmore ¶8, R. p. 140). As explained further in the affidavit of Appellant Matt Napier, existing super-beachfront development has "**made the beach impassible for walking and jogging when the tide is up to the seawalls, and the beach is submerged**." (Napier ¶ 9, R. p. 122). Napier has been forced to "abandon[ ] 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." (Id.)

In considering this evidence from Wetmore and Napier, the Court must assume for purposes of the standing inquiry that the Appellants' legal theory is valid and that all of this harm is occurring because of development that is actually taking place on the public beach. Surely the highest level of

public importance exists in providing the guidance necessary for Folly Beach and other locales to end this type of infringement.

Our Supreme Court's most recent "public importance" case provides valuable guidance as to why the circumstances at hand warrant the invocation of this special branch of the standing doctrine. In Adams v. McMaster, No. 2020-001069, 2020 WL 5939936, at *4 (S.C. Oct. 7, 2020), the Supreme Court keenly focused on the "need for future guidance," which it found to be dictated by "evidence the entity would undertake the conduct at issue again." The question in Adams related to the Governor's allocation of Cares Act funds. Citing its previous holdings that "[t]he key to the public importance analysis is whether a resolution is needed for future guidance," the Court relied upon the fact that another round of that funding was likely. Id.; see also Vicary v. Town of Awendaw, 425 S.C. 350, 359, 822 S.E.2d 600, 604 (2018) ("we reiterate the need for 'future guidance' is the key to transcending a purely private matter and rising to the level of public importance.").[5]

Here, repetition of the scenario that has led to super-beachfront development is not in doubt, and the need for future guidance is firmly entrenched. The Appellants have already explained how a recurring cycle of renourishment on Folly Beach triggers development of areas that are temporarily brought above the high tide line during each project. Many more undeveloped super-beachfront lots exist, and renourishment on Folly is set to occur again within five years. Given this pattern,

[5]Our appellate courts have been particularly pre-disposed to finding the requisite "need for future guidance" in cases involving property disposition or other property transactions, given the likelihood that such scenarios will recur. See, e.g., Evins v. Richland Cty. Historic Pres. Comm'n, 341 S.C. 15, 532 S.E.2d 876 (2000) (Supreme Court utilizing public importance standing to consider the authority of a historic preservation entity to convey real property.); Vicary, 425 S.C. 350, 822 S.E.2d 600 (Supreme Court utilizing public importance standing to consider a municipality's authority to annex National Forest land).

additional development unquestionably will be sought on the shoreline areas disputed in this case. Further, even as this case is being argued, the recurring question of who owns these disputed areas remains at the fore. To wit, the Respondents in this case, other than the State of South Carolina, purport to own undeveloped super-beachfront lots that were rebuilt by the 2018 renourishment, and the Respondents are pursuing residential development on these lots. (Complaint ¶11, R. p. 36). Indeed, the very essence of this case is the exigency of the City's need for guidance on this high-stakes question with which it has been repeatedly confronted for decades.

Further, while a South Carolina appellate court has never been presented with the opportunity to consider this point, surely enhanced consideration as to the presence of "public importance" is owed to the status of the City of Folly Beach as a duly incorporated municipality representing the interests of thousands of residents. It was no small matter for the City Council of Folly Beach to vote to join this litigation and to subject itself to the possibility of petitions for fees under the State Action Statute (which indeed have been filed) and other exposure, and Council's decision to proceed is reflective of the imperative public interest at stake.

In sum, while public importance standing should obviously be unusual, it is by no means a stretch to find such a level of importance as it relates to the unresolved ownership status of significant sections of Folly Island's beaches. Indeed, it would reflect a serious shortcoming in the function of judicial review if such an important question went unresolved, and the problems flowing from ownership uncertainty persisted, because no party can establish "real party in interest" status. On the basis of providing the guidance necessary to prevent foreseeable occupation and obstruction of the public beach, an overriding public interest exists in establishing the limits of super-beachfront development.

3. The Appellants Possess Constitutional Standing.

Undersigned's decision to begin with a discussion of public importance standing is in no way meant to diminish or minimize the very clear bases upon which the Appellants also possess constitutional standing.

i. *The Appellants' Property-Based Interests:*

While the Circuit Court and the Respondents were misguided in squeezing this case into the box of a traditional property action, treating Appellants' declaratory judgment claim as if it is a quiet title claim of ownership, the fact remains that the Appellants very clearly do have property interests at stake in relation to this litigation that would be sufficient for standing even in that sort of property action.

To start, the City of Folly Beach itself owns a great deal of super-beachfront property. Just as a few examples, the Court can take judicial notice of the fact that the City owns parcels numbered TMS# 4391300027, TMS# 4391300030, TMS# 4391300032, TMS# 4391300034, and TMS# 4391300035, nearly back-to-back on the Folly beachfront, and all of these properties, just like the Respondents' lots, are platted seaward of Folly's long-established beachfront and without road access.[6] Consequently, when the City seeks a declaration as to the ownership status of new high

[6]A fact is subject to judicial notice if its accuracy is capable of verification by reference to readily available sources of indisputable reliability. In the Matter of Harry C., 280 S.C. 308, 313 S.E.2d 287 (1984). Here, Folly's ownership of these and many more super-beachfront properties is easily verifiable from a variety of Charleston County records available in the Register of Deeds Office and online, including through the County's Geographic Information System available at: <https://gisccweb.charles toncounty.org/Public_Search/>.

ground created by renourishment, it is very much seeking a declaration that will determine the ownership status of its own properties. Standing could be no more clear cut.

As for the individual Appellants, Matt Napier and his property are illustrative. Mr. Napier owns property and resides at 1661 East Ashley Avenue, Folly Beach, behind and abutting super-beachfront lots owned by Respondents Juan Enterprises, LLC and Juanita Wright. (Napier ¶ 3-4, R. p. 121-122). While these lots are platted seaward of Mr. Napier's lot, his property is for all intents and purposes on the beachfront. (Napier ¶5, R. p. 122,). The Defendants' platted lots have never been developed, do not have road access, and have been submerged during Mr. Napier's ownership, including complete submersion prior to the 2018 renourishment. (Napier ¶15, R. p. 122, 1246). In short, anyone lacking prior knowledge of the property peculiarities on Folly Beach would assume without question that Mr. Napier owns an oceanfront lot.

The problem, however, is that the Respondents claim ownership over the sandy areas in front of Napier's property and have erected large wooden barricades within the dunes in order to prevent Mr. Napier from crossing their "property" onto the beach. (Napier ¶19, R. p. 125). The barricades are emblazoned with "No Trespassing" signs and reflect the Respondents' belief that they own the narrow strip of dry sand between Napier's property and the ocean. (Napier ¶19, R. p. 125). Remarkably, Mr. Napier is now in the position of owning a home that is separated from the active beach only by a narrow strip of dunes, but he must travel to a public access point in order to reach that beach. (Napier ¶20, R. p. 125). Yet, the Circuit Court has held that Mr. Napier lacks standing to determine whether the placement of these barricades is legitimate.

The Court will recall that, if a super-beachfront lot was fully submerged before the 2018 renourishment, the Appellants' theory of the case posits that the registered owner of the lot actually holds no title and that the entire lot is actually part of the public trust. Given the previous submersion of the lots seaward of Mr. Napier, it must be assumed at this point that private ownership over those areas will not be maintained. Mr. Napier has a great deal to gain from such outcome in terms of his property rights.

Ownership of land directly abutting a public trust shoreline confers special status and rights under the law. "Under the common law, owners of land along rivers, streams, lakes and other bodies of water possess a property right incident to their ownership … that is distinct from those rights that may be enjoyed by the public at large." White's Mill Colony Inc. v. Williams, 363 S.C. 117, 129, 609 S.E.2d 811, 817 (Ct. App. 2005). These rights held by property owners adjoining the water's edge are not possessed by proximate, but non-adjoining property owners. In other words, the owner of a property directly bordering the public beach possesses rights (called littoral rights) that the owner of a "second row" beach house does not possess. See Id. at 129, 609 S.E.2d at 817–18 ("owners of

land along rivers and streams are said to hold 'riparian' rights, while owners of land abutting oceans, seas, or lakes, are said to hold 'littoral' rights."); Lowcountry Open Land Tr. v. State, 347 S.C. 96, 108, 552 S.E.2d 778, 785 (Ct. App. 2001) ("interests attached to property abutting an ocean, sea or lake are termed 'littoral.'").

As is particularly relevant here, "littoral rights" include the right of access. "[O]ur state has recognized the general right of access enjoyed by littoral property owners." White's Mill Colony Inc., 363 S.C. at 130, 609 S.E.2d at 818. "This right guarantees access from the front of the owner's land to the navigable [body of water]." Lowcountry Open Land Tr., 347 S.C. at 107, 552 S.E.2d at 784. In other words, littoral rights in this state "afford[] an owner of land fronting a navigable tidal [waterbody] access from his land to the water." Id. at 109, 552 S.E.2d at 785.

With the context of this legal framework, it is apparent that Mr. Napier has littoral property rights at stake in this action. Assuming this case establishes Mr. Napier's lot as abutting the public trust shoreline, littoral rights would then attach to his property. While it is not the only littoral right that Mr. Napier would gain, clearly the littoral right of access is of great significance here, as such right would render unlawful the Respondents' spiteful dune barricades. The Circuit Court's confounding conclusion that Mr. Napier lacks standing to test whether he is being unlawfully denied beach access from his property is based upon the court's failure to apprehend the nature of littoral rights. Mr. Napier is being denied the right of access that is part of the bundle of rights possessed by littoral property owners. Napier does not claim to own the public beach, of course, but he certainly does claim a littoral right of access to such property—a right that can only be vindicated through this litigation. Put very simply, this action directly seeks to vindicate Mr. Napier's property rights.Certainly this is an adequate stake in the litigation to confer standing.

Even if this Court were to be persuaded, like the Circuit Court, that the Appellants must claim a direct property interest in relation to the shoreline areas at issue in this case, the Appellants easily satisfy that standard.

ii. *The Appellants' Non-Property Interests:*

The truth of the matter, though, is that this is not a quiet title action, and the Appellants need not claim a property interest in the disputed shoreline areas in order to establish standing. In requiring otherwise, the Circuit Court stripped away the function of a declaratory judgment action.

To start, the field of environmental law is very much built on the concept of citizens litigating to end harm or misuse of public natural resources, without those citizens asserting an ownership right over said resources. Indeed, it is quite ordinary in South Carolina for citizens to challenge activities that degrade public trust lands or waters, obviously without claiming ownership of those areas. See, e.g., Smiley v. S.C. Dep't of Health & Envtl. Control, 374 S.C. 326, 649 S.E.2d 31 (2007) (Plaintiff found to have standing to challenge sand scraping project on public trust beach, based on his recreational use of that beach.); Sierra Club v. Kiawah Resort Assocs., 318 S.C. 119, 456 S.E.2d 397 (1995) (environmental group found to have standing to challenge permit for 36 docks constructed over public trust marsh, on the basis that the docks impeded public access to resources within the public trust.); Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 766 S.E.2d 707 (2014) (a developer sought a "permit to construct a bulkhead and revetment stretching 2,783 feet in length and 40 feet in width over the State's tidelands." Plaintiffs were granted standing to challenge that permit on the basis of their recreational use of the public trust tidelands). The imposition of a requirement for environmental plaintiffs to claim a property interest in the public trust resources they seek to protect is without any legal basis, and the Court should take great care

not to cloud the well-established right of the public to pursue this sort of relief.

Even more significantly, the Court's standing analysis here must be informed by the fact that the Appellants are exercising their right to bring this action as provided by the Declaratory Judgments Act, S.C. Code § 15-53-10, et seq. "The requirement of standing is not an inflexible one," and our appellate courts' indisputably have addressed standing differently within the context of a declaratory judgement action. See Sloan v. Sch. Dist. of Greenville Cty., 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000). The purpose of the Declaratory Judgment Act "is to settle and to afford **relief from uncertainty and insecurity with respect to rights**, status and other legal relations. **It is to be liberally construed and administered**." S.C. Code Ann. §15-53-130 (2005) (emphasis added). Further, the Act gives courts of record the power to "**declare rights**, status and other legal relations **whether or not further relief is or could be claimed**." S.C. Code Ann. §15-53-20 (2005) (emphasis added).

Note that the above highlighted language reads as though it was crafted exactly for this case. The Appellants desperately seek relief from "uncertainty and insecurity" caused by the unsettled nature of shoreline property rights described herein. But, the Circuit Court has stepped in to say that this relief is not available because the Appellants don't claim to own the disputed shoreline property–a holding which is the equivalent of requiring that the Appellants must claim "further relief" in relation to the declaration they seek. Without question, the Circuit Court's imposition of a requirement that the Appellants must seek a remedy beyond the simple declaration of rights as to the disputed shoreline areas constitutes a clear error of law. The language above plainly dictates that the Appellants, as sufferers of uncertainty, insecurity, and other harm, may seek to settle rights in

relation to the disputed shoreline property, even if they could not claim any further relief in relation to that property.

In considering standing within the context of declaratory judgement claims, our appellate courts have undertaken analyses very much in line with this conclusion. While the relevant standard has been stated variously, the most common refrain is that exemplified by this Court in Citizens for Quality Rural Living v. Greenville County Planning Commission, which frames the analysis as follows: "section 15-53-30 [of the Declaratory Judgments Act] **confers standing on Appellant because Appellant qualifies as '[a]ny person ... whose rights, status or other legal relations are affected by**' the subject matter of the declaratory action." 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019) (emphasis added). See also, Whittle v. Jeffcoat, 307 S.C. 90, 91, 413 S.E.2d 865, 866 (Ct. App. 1992) ("In order to seek a declaratory judgment under this statute, the plaintiff must show he has **a legally recognized right, status or other relationship that is affected**."(emphasis added)). This Court's recent opinion in the Citizens for Quality Rural Living case provides an ideal example of manner in which typical constitutional standing considerations must be shaped to meet the context of actions authorized by the Declaratory Judgements Act. To wit, this Court noted in CQRL an alternative basis for standing as follows: "section 15-53-60 [of the Act] confers standing on Appellant **because the specific ruling Appellant seeks would remove the uncertainty** concerning" the legal issue presented in the case. 426 S.C. at 113–14, 825 S.E.2d at 730 (emphasis added).[7]

[7] The language utilized by this Court in CQRL, Whittle, and similar cases approaches the territory of "statutory standing," which is the final manner in which a litigant may establish standing, on top of constitutional and public importance standing. While no appellate court in South Carolina has specifically held that the Declaratory Judgments Act creates statutory standing, this idea is certainly supported by judicial references to the Act "conferring standing." This Court would be justified in concluding that the Act's authorization of "[a]ny person ... whose rights, status or other legal relations are affected," establishes a statutory test for standing. See Pres. Soc'y of Charleston v. S.C. Dep't of Health & Envtl. Ctrl, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (2020), reh'g denied (Aug. 7, 2020) ("statutory

In discussing "public importance" standing above, the Appellants have already covered many of the rights and legal relations that are at stake in this litigation for the City, and the Appellants will not fully repeat that analysis here. As concisely summarized by Folly's City Manager, "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 ¶, R. p. 143). Within her affidavit, Ms. Wetmore has enumerated and explained how the City's "rights, status, or other legal relations" are detrimentally affected in many respects by the uncertainty surrounding the legal question at issue here,[8] and any one of these interests is adequate to establish the City's standing to maintain this declaratory judgment action. Indeed, certainly it would serve as a total contradiction of this Court's previous application of the Declaratory Judgments Act and of the plain language of the statute itself to hold that a coastal municipality, tasked with regulating and managing its beachfront, does not have standing to determine the ownership status of newly created land on that beachfront.[9]

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standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation.").

[8] Particularly, the City's asserted interests in relation to this lawsuit 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. (Wetmore, R. p. 139).

[9]Reemphasis is warranted as to the self-evident proposition that a municipality's inability to determine the ownership status of property within its jurisdiction is a hindrance to that municipality's effective administration of its laws and ordinances. That is especially true for Folly Beach, as it faces the particularly difficult task of regulating an imperiled beachfront where property lines are presently unclear. Ms. Wetmore's affidavit points to a variety of City ordinances and permitting regimes that are difficult or impossible to effectively apply on Folly's beachfront because of the City's uncertainty in who

A comparable analysis can be applied to the individual Appellants in this case. On top of Mr. Napier's property rights and littoral status discussed above,[10] he has offered testimony as to additional "rights, statuses, and legal relations" that are presently jeopardized by the unanswered question of property ownership. Utilizing his experience as a real estate developer and real estate license holder, Mr. Napier explained how his and other similarly situated lots are devalued because property rights associated with the disputed super-beachfront areas remain uncertain:

> I have 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 my own.

(Napier ¶13, R. p. 124). This observation is particularly true as it relates to Mr. Napier's property, given the large wooden barricades in the oceanfront dunes in front of his home. The Respondents' insistence on blocking beach access from the Napier property is a major impediment to Mr. Napier's rights, a fact which he relays as follows:

> 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.

(Napier ¶21, R. p. 125). Mr. Napier also asserts a variety of recreational interests, which do not deserve the short shrift they are receiving here, because such interests are universally recognized as a sound basis for standing in this sort of case. (Napier ¶9, R. p. 122); Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 183 (2000) ("We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are

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owns land created by renourishment. (Wetmore, R. p. 141-142).

[10]Mr. Napier's aforementioned status as a littoral property owner, which would be determined in this case, is the quintessential example of a "right, status, or legal relation" giving him standing to maintain this action.

persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity"). However, at this point, the Appellants do not feel as though it is worthwhile to continue belaboring the list of rights at stake for the Appellants in relation to the declaration they seek.

Hearkening back to the very beginning of this discussion of standing, it is clear from all that is presented herein that to deny the Appellants standing under these circumstances would require a total detachment of the standing analysis from the purpose of the doctrine. Honing in on that purpose, it would be wholly unreasonable to conclude that the Appellants have to just stand aside while public trust property that they use, depend upon, and/or govern is improperly developed under claim of private ownership. This Court must correct the Circuit Court's clear legal error and reinstate the Appellants standing to resolve the substantive issues presented in this case.

B. The Appellants Have Alleged a Viable Cause of Action.

After determining that it lacked subject matter jurisdiction to consider this case, based on the Appellants' purported lack of standing, the Circuit Court nevertheless went on to examine and, unfortunately, create South Carolina law on the public trust doctrine and the related principles of erosion, accretion, and avulsion. Avulsion, particularly, is a concept previously undefined in South Carolina, and the Circuit Court's venture into the nature of that principle, while not technically precedential, will undoubtedly set the tone for how that principle is considered in South Carolina, at least until appellate guidance is available. For this reason, it is absolutely critical that this Court examine and correct the holdings laid down by the Circuit Court in relation to avulsion and renourishment, irrespective of how the Court may resolve the other bases for dismissal discussed

herein.

Among the more distressing aspects of the Circuit Court's order of dismissal is that it thwarts the Appellants' pursuit of an extension or refinement of existing legal precedent before this case even began. As will be explained herein, the extension of existing common law sought by the Appellants in relation to avulsion and renourishment is actually quite a small and incremental one. Nevertheless, the Circuit Court squashed this effort at the very outset, concluding even before the facts of this case have been developed that the basic legal theory advanced by the Appellants in this case is invalid. Remarkably, the very last content in the court's order of dismissal is a section noting the impropriety of dismissing novel questions of law before a case is developed, citing the proposition that: "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). This section, submitted to the court through Respondents' proposed order, was apparently drafted in the hopes that drawing attention to this principle would somehow lighten the impact of its plain message. In reality, the section only serves to highlight the court's premature rejection of the meager extension/clarification sought by the Appellants.

1. The Legal Framework for This Case is Solidly Rooted in Common Law.

The precise legal theory presented by the Appellants in this case is that the 2018 renourishment on Folly Beach constituted an "avulsion" under the common law and therefore did not affect the existing boundary between public trust and private property (that being the average high tide line). The Appellants' theory fits 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, 354 S.C. at 149. 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, 393 S.C. at 108 (emphasis added). The Appellants have merely asked a new question under this very well established doctrine and line of cases, and there can be no legitimate basis for rejecting the Appellants' legal theory under such circumstances, especially on motion to dismiss.

The key legal distinction in this case is between the related common law principles of erosion, accretion and avulsion. In a legal context, "[t]he term 'erosion' is defined as the gradual washing away of land bordering on a stream or body of water by the action of the water. It similarly has been defined as the gradual eating away of soil by the operation of currents or tides." 78 Am. Jur.

2d Waters § 323. In South Carolina, as with everywhere else, a riparian / littoral[11] property owner who loses land to erosion loses ownership of what is submerged. Horry Cty. v. Woodward, 282 S.C. 366, 370 (Ct. App. 1984) ("[L]ands gradually encroached upon by water cease 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."); McQueen, 354 S.C. at 150 ("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."); Estate of Tenney, 393 S.C. at 108.

Correspondingly, "[a]n 'accretion' is the increase of riparian land by the gradual deposit, by water, of solid material, whether mud, sand, or sediment, so as to cause that to become dry land which was before covered by water." 78 Am. Jur. 2d Waters § 321; State v. Beach Co., 271 S.C. 425, 428 (1978) (describing the "process of natural accretion (deposits of shifting sands).") In South Carolina, as with everywhere else, a riparian property owner whose land grows on account of accretion gains ownership of the dry ground created. See Woodward, 282 S.C. 366 at 369 ("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."); Hilton Head Plantation Prop. Owners' Ass'n, Inc. v. Donald, 375 S.C. 220, 224 (discussing addition to property by accretion). In sum, the basics of property ownership on the oceanfront are that owners of those parcels lose property by erosion and gain property by accretion. See McQueen, 393 S.C. at 150.

[11]From here forward, Appellants will use "riparian" to refer collectively to riparian and littoral properties, as these water-adjacent properties are equivalent under the law, for all purposes relevant here.

In terms of changes in riparian land, the only remaining scenario occurs when a relatively sudden, en masse, creation or destruction of land is generated by a one-off event like a hurricane. Remarkably, while the principles of accretion and erosion are bedrock common law in South Carolina, no appellate court in our state has ever mentioned, by name, the principle of avulsion. South Carolina's recognition of that general principle is perfectly clear, however, based on a variety of considerations, including precedent from the United States Supreme Court. In Georgia v. South Carolina, the U.S. Supreme Court applied common law to resolve a border dispute between the two states along the shoreline of the Savannah River, delineating that "avulsive action ordinarily calls to mind something somewhat sudden or, at least, of short duration, whereas accretion has as its essence the gradual deposit of material over a period by action of water flow." 497 U.S. 376, 404, 110 S. Ct. 2903, 2919 (1990) ("The rapidity of some aspects of the dredging and other processes led the Special Master to conclude that the changes in the Savannah River were primarily avulsive in nature."). In addition to this precedent from the highest court, it is well-established nationwide that avulsion is a necessary corollary to the aforementioned principles of erosion and avulsion, and that each of the principles is necessary to form a cohesive common law doctrine. The principles are legs on the same stool. Indeed, the traditional definition of the three principles described herein 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. Finally, 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, the circuit judge in this very case previously issued a decision based heavily on avulsion, which stated the principle as follows: "[I]f the additions or subtractions from riparian land are sudden and perceptible

the different rule of avulsion, with an opposite legal effect, applies…" Yelsen Land Company, Inc. v. S.C. Ports Authority, C/A No. 7-CP-10-2053, 16-17 (April 16, 2010).

Unlike erosion and accretion, changes to a riparian property on account of avulsion do not modify property boundaries or property rights. [I]f an avulsion has occurred, the boundary line remains the same regardless of the change in the river channel or shoreline." Id. "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."); Georgia v. South Carolina, 497 U.S. at 404, 110 S. Ct. at 2919 ("When the bed is changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream. But if the stream leaves its old bed and forms a new one by the process known as avulsion, the result works no change of boundary.").

With this legal framework in place, the core issue of the Folly renourishment's place within this framework emerges.

2. Appellants' Theory of the Case has a Firm Legal Foundation in South Carolina Law.

While no appellate court in the state has explicitly mentioned avulsion, that is not to say relevant precedent does not exist. Indeed, the most confounding aspect of the Circuit Court's dismissal of the Appellants' legal theory is that several precedential cases have all but recognized said theory, to the point that the City and its residents in this case would likely have been justified in simply treating all beachfront areas brought above water by renourishment as public property, without even filing this case.

The easiest place to start on this point is with the aforementioned property dispute in Georgia

v. South Carolina. While not within the state court system, the U.S. Supreme Court's holdings are perfectly in line with the theory of this case. In that case, one of the pieces of land in dispute was attached to South Carolina's side of the Savannah River, but the land had been formed when the Army Corps of Engineers constructed a wall along the shoreline and backfilled the wall with sediment dredged from the River. In other words, the South Carolina shoreline was added to by sediment artificially placed by the Army Corps. 497 U.S. at 402, 110 S. Ct. at 2918. Resolving the ownership status of such land, the U.S Supreme Court directly and unequivocally held that the artificially placed backfill constituted an avulsion and that the new land therefore did not belong to South Carolina:

> [Georgia] asserts that the land in dispute did not form as gradual accretion from the South Carolina shore toward the river but, instead, rose in the river immediately behind the training wall and was the result of the construction of the wall and the deposit of dredge spoil behind it. ...
>
> **It is generally held, of course, that one cannot extend one's own property into the water by landfilling or purposefully causing accretion**.
>
> We conclude, not without some difficulty, that Georgia has the better of the argument as to these two areas. It is true, of course, that avulsive action ordinarily calls to mind something somewhat sudden or, at least, of short duration, whereas accretion has as its essence the gradual deposit of material over a period by action of water flow. This is so even though it may have been caused partly or wholly by placed obstructions.
>
> Some of the changes here were caused gradually by the deposit of sediment by river waters. Others were caused by the deposit of fill through the use of a hydraulic-pipeline dredge employed by the Corps pursuant to the paramount right of the United States Government to improve navigation. **The rapidity of some aspects of the dredging and other processes led the Special Master to conclude that the changes in the Savannah River were primarily avulsive in nature.** Although the question is close, on balance, we think this particular record as to this particular river supports the recommendation made by the Master.

Id. at 404, 110 S. Ct. at 2919–20 (emphasis added) (internal citations omitted). Once again, the

holding in this case is practically the exact declaration the Appellants seek here, to the point that one has to wonder whether it was even necessary to file this case that also involves the U.S. Army Corps' artificial placement of fill on the shoreline.[12]

Just the same, the legal theory presented here departs very little from this Court's holding in Hilton Head Plantation Prop. Owner's Ass'n, Inc. v. Donald. That case similarly involved a determination of the ownership status of land artificially added to the shoreline of a riparian lot: "[T]he Developer dredged a nearby creek in 1972 and 1973. This dredging caused spoil to build up and created a berm between Hilton Head Plantation and the marsh area. ... [P]rior to these activities, the area now constituting the Property was tidal." Id. at 223, 651 S.E.2d at 616. While using the term "artificial accretion," though it constituted what the Appellants would term as an avulsion, this Court rejected the lot owner's claim to ownership, enunciating what is basically 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 … 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. at 224, 651 S.E.2d at 617. Just as is sought here, this Court declared the state to be the true owner

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[12]Interestingly, one of the Respondents' (surprisingly effective) strategies before the Circuit Court was to basically fault the City of Folly Beach for the fact that it hasn't always simply presumed the accuracy of the Appellants' legal position in this case. Particularly, the Respondents repeatedly invoked to the lower court, as if revealing a grand conspiracy, that the City had previously charged super-beachfront property owners for renourishment of areas disputed in this case. The simple response to this red herring is to point out the obvious fact that the City has for many years been compelled to treat these Respondents as if their claims of super-beachfront ownership are legitimate, because the state of the law on this point is unresolved in South Carolina. The fact that the City has had no choice but to treat these Respondents as if they own the disputed super-beachfront areas isn't emblematic of some shocking conspiracy or improper motive but, rather, reflects the exact reason why this case is necessary.

of this artificially created property, by virtue of the public trust doctrine. Id. at 225, 651 S.E.2d at 617. The fundamental principle in Donald—that public trust property can't be taken away through artificial addition of sand—translates directly to this case.

Our state Supreme Court reached the same conclusion in Epps v. Freeman.[13] In once again rejecting a lot owner's claim to artificially added shoreline expansion, the Court held as follows:

> [T]he former Swash area has become dry land by the exertions of man—not by the gradual deposit by water of mud, sand or sediment. Hence, the principle that title to imperceptible additions to the shore from such deposits should follow the title to the shore itself has no application. 56 Am.Jur., Waters, Sec. 476, et seq. (1947); Spigener v. Cooner, 8 Rich. (42 S.C.L.) 301 (1855). The circuit court erred in refusing to strike the plea of title by accretion from the various answers.

Epps v. Freeman, 261 S.C. 375, 386, 200 S.E.2d 235, 241 (1973). Yet again, artificial shoreline additions were determined to be part of the public trust, just as the Appellants assert here. See also, Lucas v. S.C. Coastal Council, 304 S.C. 376, 379, 404 S.E.2d 895, 896 (1991) ("when a landowner causes his land to accrete through artificial means, he does not become the owner under the doctrine of title by accretion.").

The linchpin of the Circuit Court's decision to ignore this clear authority (and authority from other states discussed below) seems to be the inordinate weight given by the court to the fact that normal sand replenishment processes on Folly are disrupted by the Charleston Harbor jetties. (See, e.g. Complaint, R. p. 15). While it is certainly true that the jetties account for part of the chronic erosion problem on Folly, the idea that this sort of inherent manmade disruption somehow alters the calculation between avulsion and accretion, or somehow diminishes the import of those principles, has been roundly rejected. One need look no further than Georgia v. South Carolina to confirm this

[13]While the Appellants are resistant to belaboring the point, the fact that the Circuit Court was not persuaded by the clear authority above compels the Appellants to proceed.

fact. 497 U.S. at 404, 110 S. Ct. at 2919 ("It is true, of course, that avulsive action ordinarily calls to mind something somewhat sudden or, at least, of short duration, whereas accretion has as its essence the gradual deposit of material over a period by action of water flow. **This is so even though it may have been caused partly or wholly by placed obstructions**." (emphasis added). In that case, the normal process of sediment deposition had been disrupted by the Army Corps' construction of a wall. In other words, the presence of the wall caused sediment to be laid down through natural processes in a different manner than before construction of the wall. Id. at 402-03, 110 S. Ct. at 2818-20. Nonetheless, the relevant legal distinction remained whether the deposition of material occurred gradually by the action of water flow (accretion) or over a sudden or short duration (avulsion). Id. at 404, 110 S. Ct. at 2919. Such legal conclusion is a practical necessity, as it would be impossible to factor in the innumerable ways in which humans have impacted the shoreline and disrupted the normal processes that would otherwise exist there. Thankfully, none of these things are to be factored into the Court's inquiry, contrary to the Circuit Court's fixation on the Charleston Harbor jetties.

On the basis of these South Carolina cases alone, it should have been inconceivable that the Circuit Court would reject the Appellants' theory of the case on a motion to dismiss. However, since the court has done so and has enunciated legal principles contrary to that theory, it is necessary for this Court to firmly establish the terms of South Carolina's law on avulsion and renourishment, and doing so will require reference to other states that have considered this issue.

3. Appellants' Theory of the Case is Borrowed Directly From Other Jurisdictions.

Not surprisingly, other coastal states have already been called upon to contend with the question of how beach renourishment affects the property lines on renourished lots. Indeed, this case

has direct parallels in other jurisdictions, and the results have been strikingly aligned with the Appellants now-dismissed legal position.

The Supreme Court of New Jersey previously considered a scenario practically identical to the one at hand in City of Long Branch v. Jui Yung Liu, 203 N.J. 464 (2010). In that case, the plaintiffs claimed that the City had insufficiently valued their property during a condemnation action because "the value of their property should have been increased to reflect the approximately 225 feet of dry land added to the shoreline of their property as the result of a government-funded beach replenishment program." 203 N.J. at 469–70. The issue presented to the court was, of course, whether the plaintiffs actually owned the land added to their property by renourishment. In rejecting the plaintiffs' legal position, the court's holding could not be a better encapsulation of the Appellants' legal theory in this case:

> Under the public trust doctrine, and long-standing common-law principles, the land seaward of the mean high water mark belongs to the people of this State. The rapid infusion of sand to the beach by the government-funded project, extending the dry land seaward from that earlier mean high water mark, did not result in a change in title to the formerly submerged land. That new dry beachfront—previously lapped by the ocean's tides—remained in trust for the benefit of the people of New Jersey.

Id. at 470. Undersigned wishes that he possessed the rhetorical dexterity to emblazon this holding upon the collective attention of the Court, but there really isn't much more to say here beyond the obvious fact that the Supreme Court of New Jersey has unequivocally recognized, down to the last detail, the legal theory that the lower court in this case rejected on motion to dismiss.[14]

[14]The New Jersey court elaborated on its holding in a passage that is equally compelling in favor of the Appellants' position:

> 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

The United States Supreme Court has also adopted the Appellants' exact theory of the case on a few occasions, including in relation to a property dispute between the states of New York and New Jersey. Stated concisely by the SCOTUS: "The **littoral owner's act of placing artificial fill is thus treated under the traditional common-law rule governing avulsive littoral changes**." New Jersey v. New York, 523 U.S. 767, 784, 118 S. Ct. 1726, 1737 (1998) (emphasis added). This case specifically involved Ellis Island, which is owned by the United States, but is located within tidelands belonging to the State of New Jersey (by way of the public trust doctrine). The original footprint of Ellis Island has been expanded over the years through the United States' placement of fill dirt into New Jersey marshlands. Id. at 767, 118 S. Ct. at 1728. In resolving the owner of those filled marshland areas, the U.S. Supreme Court relied upon the highlighted principle above, in concluding that "we follow [the principle] to conclude that the lands surrounding the original Island remained the sovereign property of New Jersey when the United States added landfill to them." New Jersey v. New York, 523 U.S. at 784, 118 S. Ct. at 1737. Again, not much more can be said but that this is an embodiment of the Appellants' exact legal theory.

One final example can be found in a case examining Florida common law that also went to the U.S. Supreme Court. In Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection, the Court acknowledged the common law principle that "formerly submerged land that has become dry land by avulsion continues to belong to the owner of the seabed (usually the State)" and then applied such principle in the context of an avulsive artificial beach renourishment. 560 U.S.

> 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.

702, 730-31, 130 S. Ct. 2592, 2610-11 (2010) ("Florida law as it stood before the decision below allowed the State to fill in its own seabed, and the resulting sudden exposure of previously submerged land was treated like an avulsion for purposes of ownership.").

In sum, the overwhelming weight and clarity of supporting authority from South Carolina and elsewhere makes it plain that this case represents but the next incremental step in our state's 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?

C. The Appellants Have Named the Proper Defendants in This Case.

The Appellants previously hinted at the idea that, in a novel and high stakes case like this one, the Circuit Court may develop an unconscious tilt in favor of finding bases for dismissal, so as to sidestep the heavy legal burden. If such a tendency does exist, the best evidence for it in this case is the court's reaching for a third basis for dismissal, citing the purported failure of the Appellants to name necessary defendants. Given the nature of this case–in that it seeks this state's first enunciation of legal principles of potentially widespread relevance–it is nearly certain that the Respondents would have challenged the composition of the defendant group under any scenario. Yet, some acceptable class of "necessary parties" must exist in this case—the line must be drawn somewhere—and the Appellants' choice in this regard is most reasonable.

Rule 12(b)(7), SCRCP, establishes as a basis for dismissal a plaintiff's "failure to join a party under Rule 19." Pursuant to Rule 19, the Court must first consider whether a party is "indispensable" under the standard of 19(a). If a party is determined to be indispensable, the second part of the analysis occurs in 19(b), which establishes a court's range of options when an indispensable party is not joined. According to Rule 19(a), a party is indispensable if: (1) complete relief cannot be afforded among the existing parties; or (2) the missing party claims an interest in the subject matter of the litigation and that interest will be impaired or impeded if he is not joined; or (3) continuation of the litigation without the missing party will leave parties already in the suit subject to substantial risk of incurring multiple or inconsistent obligations. If an indispensable party is not initially named in an action, Rule 19(b) empowers a court to order joinder, to proceed with the case anyway, or to dismiss the case.

"[T]he number of cases in which there is truly an 'indispensable party' in whose absence the court should not proceed are very rare." 24 S.C. Jur. Rules of Civil Procedure § 19.1. "A party is not a necessary party unless it has rights which must be ascertained and settled before the rights of the parties to the action can be determined." S.C. Dep't of Health & Envtl. Control v. Fed-Serv Indus., Inc., 294 S.C. 33, 37, 362 S.E.2d 311, 314 (Ct. App. 1987); Owen Steel Co. v. S.C. Tax Comm'n, 281 S.C. 80, 85, 313 S.E.2d 636, 639 (Ct. App. 1984). As this quotation suggests, a "proper" party to an action very well may not be a "necessary" or "indispensable" one. Id.; Owen Steel Co. 281 S.C. at 85, 313 S.E.2d at 639 ("In considering whether there is a defect of parties, the distinction between necessary and proper parties is crucial."). Moreover, "[o]nly if pragmatic considerations strongly indicate that it would be preferable to dismiss the action rather than proceed with the parties before it, should the court conclude that the absent party is truly 'indispensable.'" 24 S.C. Jur. Rules of

Civil Procedure § 19.1. In short, South Carolina precedent stacks up strongly against dismissal on the basis ordered by the Circuit Court.

The Circuit Court arrived at this disfavored and incorrect outcome here by jumbling the function of ordinary legal precedent with the notion of an indispensable party. The basis for the court's SCRCP Rule 12(b)(7) dismissal was its conclusion that other super-beachfront lot owners will be impacted by the outcome of this case: "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." (Order, p. 24, R. p. 24). The court was certainly not incorrect that if the Appellants prevail, meaning this Court announces the legal principle that dry land created by renourishment constitutes an avulsion, such legal principle will have broad implications, including for super-beachfront property owners who are not named here. After all, this Court is being asked to render what is seemingly South Carolina's first holding on a "renourishment-as-avulsion" theory, and that holding will have implications for any property owner in the state who gains high ground as a result of renourishment. What the court is decidedly incorrect about, however, is that this fact makes all of those property owners indispensable to this particular action. Very obviously, the standard for inclusion as an "indispensable party" under Rule 19 is not so broad as to include everyone who may be impacted by the Court's announcement of a legal principle.

The aforementioned CQRL case presents an ideal illustration of the Circuit Court's significant misapprehension. The extent of municipal authority is an issue commonly raised in declaratory judgment actions, and the CQRL case follows that line. See 426 S.C. at 113, 825 S.E.2d at 729. In particular, the plaintiff in CQRL sought a declaration regarding the scope of authority possessed by county planning commissions, which are local zoning/planning bodies authorized by

state law. See S.C. Code 6-29-310 et seq. Without question, the principles laid down in relation to planning commission authority in CQRL have significant implications as to the other 45 planning commissions in the state. However, it would be absurd to suggest that each one of those other planning commissions therefore must be named as defendants. Rather, the CQRL case proceeded against the Greenville County Planning Commission alone, as this was the entity with which the plaintiff had a concrete and live dispute. Here, the Circuit Court has simply failed to grasp the critical distinction between those for whom the legal principles announced in this case may be relevant and those for whom the legal principles announced in this case will resolve an active controversy.

The very nature of our judicial system, especially at the appellate level, is that legal principles are laid down as necessary to resolve a particular controversy, and such principles thereafter have precedential value in relation to subsequent controversies and parties. The Circuit Court has concluded, however, that all parties whose future conduct may be limited by the legal principles announced in this case should be named in the case. What the CQRL case reflects, and what the Circuit Court failed to grasp, is that a party is not necessary to an action if no justiciable controversy exists in relation to that party. In the context of a declaratory judgment action like this one, our courts still 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). Particularly, "[t]he 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) (emphasis added). The Appellants have named these particular

property owners as defendants, while not naming the owners of other super-beachfront lots, because these property owners are undisputedly the only super-beachfront owners who have taken affirmative steps to develop their lots by pursuing permits related to residential construction (See Complaint ¶11, R. p. 36). For the many super-beachfront owners on Folly Beach who are not pursuing development of their properties, the subject matter of this case is hypothetical and abstract. There is no "ripening seed" as to these other Folly property owners. Indeed, it is unknown whether such property owners even purport to own the land within their lot boundaries that has been created by renourishment.

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, Fripp, or any other South Carolina beach, 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 super-beachfront owners on Folly. Undoubtedly, though, the Respondents would have objected with equal zeal had the Appellants included this large group of disinterested defendants in this action.

Each of the Respondents named in this action have sought development of avulsive renourishment land, thus affirmatively asserting a claim of ownership over the areas at issue in this case. In naming only these parties, the Appellants have bounded the class of defendants in the manner most comporting with logic and law. In not only finding other parties to be necessary, but also jumping right to the conclusion that dismissal is required, the Circuit Court has simply demonstrated its eagerness to avoid the important legal questions at the heart of this case. The Circuit Court's inclination toward finding irreconcilable fault with the composition of the defendant group risks making this case and others like it virtually impossible to prosecute. Reversal is necessary.

III. CONCLUSION

Through this litigation, the City of Folly Beach and some of its most impacted residents seek to resolve an issue that has bred chaos and difficulty on the Folly beachfront for years. The municipality and its residents seek legal clarity that will bring to the Folly beachfront certainty, workability, and a reasonable path forward. This case calls upon an important point of law that has been delineated in other states and that is overdue for delineation in South Carolina. Based on the particular circumstances of Folly Beach, these parties present an ideal case for an examination of avulsion and renourishment.

Some of the most important issues facing our state today fall beneath the umbrella of "environmental law." If our judicial system is to fulfill its role in addressing these important issues, our courts must be willing to take on the often difficult and impactful underlying merits, when those merits are properly presented. On the basis of everything stated herein, this Court must reverse the improper bases for dismissal improperly reached by the Circuit Court and must make a clear pronouncement of this state's law on avulsion and renourishment, correcting the lower court's serious error.

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May 10, 2021