

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2020-CP-07-02160
	)	
BAY POINT ISLAND, LLC,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>MOTION TO INTERVENE ON</b>
	)	<b>BEHALF OF THE GULLAH/GEECHEE</b>
COUNTY OF BEAUFORT AND	)	<b>FISHING ASSOCIATION</b>
BEAUFORT COUNTY ZONING	)	
BOARD OF APPEALS,	)	
	)	
Respondents.	)	
_____	)	

**TO: APPELLANT BAY POINT ISLAND, LLC AND RESPONDENTS COUNTY OF BEAUFORT AND BEAUFORT COUNTY ZONING BOARD OF APPEALS:**

YOU WILL PLEASE TAKE NOTICE that the Gullah/Geechee Fishing Association hereby moves this Court, pursuant to S.C. Code Ann. §6-29-825(A) and SCRCF Rule 24, for an Order permitting it to intervene in this proceeding. The basis for this motion is as follows:

**BACKGROUND**

This matter is an appeal of the Beaufort County Zoning Board of Appeals’ (“BZOA”) denial of Bay Point Island, LLC’s (“BPI”) Eco-Tourism Special Use Permit application to construct a luxury resort on Bay Point Island.

Bay Point Island is a dynamic and pristine barrier island located at the mouth of the Port Royal Sound in Beaufort County, and is accessible only by water. Under the County’s Community Development Code (“CDC”), the Island is zoned T1, Natural Preserve, which does not allow for the construction of a resort. The Beaufort County Staff Review Team issued a staff determination on March 16, 2020, concluding that BPI’s development met the definition of eco-tourism, paving the way for the implementation of this development. As a result of the SRT’s determination that

the proposed resort meets the eco-tourism definition – a determination which the Association has continuously asserted was made in error – BPI was then able to seek a Special Use Permit from the County to facilitate its proposed development. The BZOA held a hearing on BPI’s application for a Special Permit on September 24, 2020 and voted 5-0 to deny the application, with 1 member recusing himself and one member absent. The BZOA’s Written Decision and Order was entered and filed on October 9, 2020. See Written Decision and Order, **Exhibit 1**. BPI filed this appeal on November 4, 2020. The Gullah/Geechee Fishing Association is filing this motion expeditiously in order to protect the interests of its members who are part of the Gullah/Geechee Nation.

Bay Point Island is an ecologically and culturally significant natural resource for the citizens of South Carolina. Nationally designated as an Audubon Important Bird Area, the island serves as home to an estimated 8,000 shorebirds, due in large part to the pristine, undisturbed nature of the island, its relative inaccessibility, and the lack of human activity. It provides valuable sea turtle nesting habitat, with 107 Loggerhead sea turtle nests in 2019. More importantly, Bay Point Island is a vital part of Port Royal Sound’s fish and shellfish habitat that sustains so many people in the Lowcountry, and specifically the Gullah/Geechee people who fish and shellfish for sustenance and for their livelihoods.

The proposed intervenor, the Gullah/Geechee Fishing Association (“Association”) was formally organized in 2010. Its headquarters are located on St. Helena Island in Beaufort County, South Carolina, but its members live and work on the sea islands and inland from Jacksonville, North Carolina to Jacksonville, Florida. Along these sea islands and adjacent coastal areas, people from numerous African ethnic groups linked with indigenous Americans and created the unique Gullah language and traditions from which later came the name “Geechee.” The Gullah/Geechee people have been considered “a nation within a nation” from the time of chattel enslavement in

the United States until they officially became an internationally recognized nation on July 2, 2000. Affidavit of Ricky Wright, **Exhibit 2**.

The Association's mission is to advocate for the members of the Gullah/Geechee Nation whose livelihoods depend on the ocean's resources, in particular the fish and shellfish populations along our coast and in particular in and around Port Royal Sound where the proposed project is located. Affidavit of Ricky Wright, **Exhibit 2**. Its members consist of businesses whose profits derive from harvesting various types of seafood around the Sea Island region including oysters, fish, shrimps, and crabs. Many members also provide interactive educational demonstrations to groups concerning Gullah/Geechee fishing traditions.

Specific to Bay Point, the Association's members rely on access to Bay Point Island and the ecosystem surrounding it to harvest fish and shellfish which supports their businesses and their families. The members also rely on the healthy, clean waters and habitat surrounding Bay Point which provide the high quantity and quality of fish and shellfish needed for their businesses to be successful. Affidavit of Ricky Wright, **Exhibit 2**.

This massive development sought by BPI includes the construction of wellness centers, 50 cottages, restaurants, a cooking school, an "earth lab", administration office and a reception lobby totaling over 66,000 square feet. **Exhibit 1**. The Association has sought intervention in this case because its members' livelihoods and way of life are at stake. In particular, BPI's project will convert this pristine, undisturbed sea island into a resort with perpetual human activity, numerous physical structures, and all of the environmental impacts associated with these disturbances. This conversion will necessitate clearing and construction, resulting in stormwater runoff, degraded water quality, and loss of healthy habitat, which will substantially interfere with the Association's existing uses.

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (“the Act”), S.C. Code Ann. §6-29-310 et seq., governs appeals from boards of zoning appeals as well as intervention in those proceedings. Section 6-29-825(A) provides that in an appeal of a zoning board decision “[a] person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals.” Further, where an appellant requests pre-litigation mediation, an intervenor must have the opportunity to attend the mediation. §6-29-825(B). The South Carolina Rules of Civil Procedure provide for intervention in this instance where a statute confers the right to intervene. SCRCP Rule 24.

The Association’s standing to intervene in this matter is readily apparent from our Court of Appeals’ recent decision in Citizens for Quality Rural Living, Inc. v. Greenville Planning Commission & RMDC, Inc., 426 S.C. 97, 825 S.C.2d 721 (Ct. App. 2019). In that case, a community group attempted to appeal a county land use decision under the Act, but the Circuit Court determined that the group lacked standing. The Court of Appeals reversed, concluding that the community group had established such interest because its “members, including those who own property and live in the immediate vicinity of the proposed subdivision, spoke in opposition to the proposal. They expressed concern over . . . environmental problems that could result from the subdivision as well as the incompatibility of the subdivision with the surrounding rural community.” Id. at 101. The court relied on the purpose and intent of the Comprehensive Planning Enabling Act, which is “to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes” and “to assure ... the wise and timely development of new areas ... in harmony with the comprehensive plans of municipalities and counties.” § 6-29-

1120. The court held that “[i]t would defeat these very purposes to deny affected persons the right to appeal a commission decision to the circuit court.” Citizens at 111. The very clear message emerging from the CQRL case is that the right of stakeholders to participate in legal proceedings under the Act should be construed broadly.

Just as with the community group in the CQRL case, the Association participated at the ZBOA hearing here and has expressed concerns over the environmental impacts of the proposed project, and specifically on their members’ ability to earn a livelihood and support their families, as well as the incompatibility of the project in the context of the surrounding area. Given its participation and allegations, the Association has demonstrated a “substantial interest” in the decision at issue in this appeal, the only requirement imposed by the statute, and is thus entitled to intervene. And it must have the opportunity to participate in the pre-litigation mediation requested in this case.

In addition, the Association is so situated that the disposition of the appeal may as a practical matter impair or impede its ability to protect its interest. Here, the government’s interest is different from that of private citizens because the government has a “basic duty of representing the people in matters of public litigation” and serves “in a representative capacity on behalf of its people.” Stuart v. Huff, 706 F.3d 345, 351-52 (4th Cir. 2013); see also In re Sierra Club, 945 F.2d 776, 780 (4th Cir. 1991) (stating that a government party should represent all citizens including those who may oppose the proposed intervenor’s interest). In the present case, while county represents the members of the public generally, the Association represents a subset of the public who have utilized Bay Point Island and its surrounding environment for many generations for their livelihood. This difference in their respective interests means that Proposed Intervenor and the ZBOA may — and probably will — diverge in the course of litigating the present action. See, e.g.,

Funds for Animals, Inc. v. Norton, 322 F.3d 728, 736 (D.C. Cir. 2003) (granting intervention where federal defendant and proposed intervenor’s interests “might diverge during the course of litigation”); Natural Res. Def. Council v. Costle, 561 F.2d 904, 912 (D.C. Cir. 1977) (reversing the district court’s denial of motions for intervention and finding separate representation justified where the proposed intervenor “may well have honest disagreements with EPA on legal and factual matters”).

It is significant to note that the County staff, prior to the BZOA’s decision, concluded that the resort did in fact meet the definition of ecotourism contained in the Community Development Code. That decision allowed this project to move forward in the first place, even while contested by the Association. Beyond the divergence between county’s interest and that of Proposed Intervenor is the legitimate concern that county will not vigorously defend its denial. One of the Association’s concern is that the county may reach settlement with PBI, particularly given its request for pre-litigation, in a way that harms the Association’s interests. See Defenders of Wildlife, 281 F.R.D. at 269 (finding that the proposed intervenor “satisfied its minimal burden of showing that representation of its interests, absent intervention, may be inadequate” where the proposed intervenor argued that the defendant “could settle this case in a matter that would harm [proposed intervenor’s] interests”). There is no guarantee that the existing parties will not change their positions and reach a settlement in mediation that would result in the negative impacts to the Association identified herein.

South Carolina courts interpret the rules of intervention liberally, in particular where the declaration of the rights of all affected parties will promote judicial economy. See Stoney v. Stoney, 425 S.C. 47, 819 S.E.2d 201 (Ct. App. 2018); Berkeley Electric v. Town of Mt. Pleasant, 302 S.C. 186, 392 S.E.2d 712 (1990). In this case, where coastal fisheries are absolutely essential

to the sustainability of the Gullah/Geechee people and to the Gullah/Geechee Nation's economy, and its interests could be substantially impaired by a reversal of the BZOA's decision, §6-29-825(A) dictates that intervention be granted.

For these reasons, the Gullah/Geechee Fishing Association respectfully request that it be granted intervention in this matter. The undersigned has consulted with the parties' counsel concerning this motion. Respondents do not object to this motion and Appellant had not indicated its position as of this filing.

Respectfully submitted,

/s/ Leslie S. Lenhardt

Leslie S. Lenhardt  
SC Bar No. 15858  
Amy E. Armstrong  
SC Bar No. 70352  
SC ENVIRONMENTAL LAW PROJECT  
P.O. Box 1380  
Pawleys Island, SC 29585  
(843) 527-0078  
[leslie@scelp.org](mailto:leslie@scelp.org)

Attorneys for the Gullah Geechee Fishing Association

November 17, 2020