

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS

Harbor Island Owners' Association, )  
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 )  
Plaintiff, )  
 )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
 )  
Defendant. )  
 )  
 )

Case No. 18-CP-22-\_\_\_\_\_

**SUMMONS**

(non-jury)

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at (if by mail) P.O. Box 1380, Pawleys Island, South Carolina, 29585, or (if by personal delivery) 430 Highmarket Street, Georgetown, SC 29440, or [amy@scelp.org](mailto:amy@scelp.org) if by e-filing, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

s/Amy E. Armstrong  
Amy E. Armstrong, SC Bar #70352  
SOUTH CAROLINA ENVIRONMENTAL LAW  
PROJECT  
Mailing address: Post Office Box 1380  
Pawleys Island, SC 29585  
Office address: 430 Highmarket Street  
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Attorney for the Plaintiff

Georgetown, South Carolina  
November 29, 2018

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COUNTY OF BEAUFORT )

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**COMPLAINT**

(non-jury)

The Plaintiff, complaining of the Defendant, would respectfully show unto the Court:

**THE PARTIES**

1. The Plaintiff Harbor Island Owners' Association ("HIOA") is a property owners' association whose members consist of individuals and entities who own property on Harbor Island, which is a private residential community located on a two and a half square mile island in Beaufort County. HIOA represents its members in this action.

2. The Defendant is the State of South Carolina.

**GENERAL ALLEGATIONS**

3. Harbor Island is located in St. Helena Sound and is the smallest sea island in Beaufort County. Most of the beachfront is developed. The middle part of the beach is erosional while the northern and southern ends are accretional. Harbor Island has very little land higher than 10 feet above sea level.

4. Hurricanes Matthew and Irma have caused acute erosion on part of Harbor Island.

5. These erosional events have damaged many homes on Harbor Island. Moreover, these erosional events have caused six houses on Harbor Island to experience substantial change in boundary lines between private property and public trust property.

6. South Carolina abides by the common law when determining property rights regarding land abutting navigable waters, which include tidal waters. See McQueen v. S.C. Coastal Council, 354 S.C. 142, 150 n.7 (2003); Estate of Tenney v. S.C. Dep't of Health & Env'tl. Control, 393 S.C. 100, 106 (2011). The common law rule is that the State holds title to the land below the high water mark and to the land underneath the water. McQueen, 354 S.C. 142, 149. The littoral owner has a right to accretions under common law. See Hilton Head Plantation Prop. Owners' Ass'n, Inc. v. Donald, 375 S.C. 220, 224 (2007); 65 C.J.S. Navigable Waters § 105. However, the littoral owner's interest in accretions is limited by the doctrine of erosion, which means the littoral owner can lose property through erosion. See 65 C.J.S. Navigable Waters § 112. Title to land lost through erosion may vest in the State. Id.

7. The six properties whose boundaries have substantially changed are located at 76 North Harbor Drive, 82 North Harbor Drive, 84 North Harbor Drive, 90 North Harbor Drive, 106 North Harbor Drive, and 132 North Harbor Drive in Beaufort County, South Carolina. Now the six houses that were located within these property boundaries have become located either partially or entirely below the mean high water mark of the Atlantic Ocean. At least two houses are completely below the mean high water mark of the Atlantic Ocean, such that water will flow directly through the houses on the beach.

8. Under the common law, title to the portions of the six properties which have

eroded and become below the mean high water mark is now vested in the State. Thus, the six houses are now partially or entirely on State property.

9. These six houses have become uninhabitable structures on the active beach. The houses are unfit for dwelling and do not have power or water lines running to them. Presently these six houses have ropes and warning signs on the exterior to signal to the public the dangers of the physical deterioration. Siding, appliance fixtures, wires, and broken levels of porches are falling from the structures onto the active beach.

10. Beaufort County has determined that fourteen houses on Harbor Island are now “ocean homes, not oceanfront” and that their value had been reduced to Beaufort County’s minimum value of \$500, including the six houses that are located below the mean high water mark.

11. Lady’s Island St. Helena Fire District has declared that the fourteen houses, including the six houses that are at issue here, are unfit for habitation due to access issues, structural deterioration, sanitary issues, hazards of fire and accidents. The other houses have all been repaired, moved or demolished or otherwise remedied, and only the six identified in this complaint are still uninhabitable.

12. As a result of the six houses identified in paragraph 6 above being located on the active beach, property values on the island have decreased. In addition, the houses present safety and environmental hazards due to their deterioration and exposure to the tidal waters.

**FOR A FIRST CAUSE OF ACTION  
(Violation of the Public Trust Doctrine)**

13. Plaintiff incorporates and re-alleges all the allegations contained in paragraphs 1 - 12.

14. Navigable waterways are public trust assets: “All navigable waters shall forever remain public highways free to the citizens of the State and the United States without tax, impost, or toll imposed. . . .” S.C. Const., art XIV, §4.

15. Under the Public Trust Doctrine the State holds presumptive title to land below the high water mark in trust for the benefit of all the citizens of this State. McQueen v. S. Carolina Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119-20 (2003); State v. Pacific Guano Co., 22 S.C. 50, 84 (1884); State v. Hardee, 259 S.C. 535, 193 S.E.2d 497 (1972). “The State has the exclusive right to control land below the high water mark for the public benefit, Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1889), and cannot permit activity that substantially impairs the public interest in marine life, water quality, or public access.” McQueen, 354 S.C. at 149, 580 S.E.2d at 119-20 (citing Sierra Club v. Kiawah Resort Assocs., 318 S.C. 119, 456 S.E.2d 397 (1995)).

16. “The underlying premise of the Public Trust Doctrine is that some things are considered too important to society to be owned by one person. Traditionally, these things have included natural resources such as air, water (including navigation and fishing), and land (including but not limited to seabed and riverbed soils). Under this Doctrine, everyone has the inalienable right to breathe clean air; to drink safe water; to fish and sail, and recreate upon the high seas, territorial seas and navigable waters; as well as to land on the seashores and riverbanks.” Kiawah Resort Assocs., 318 S.C. at 128, 456 S.E.2d at 402 (citing Syridon and LeBlanc, The Overriding Public Interest in Privately Owned Natural Resources: Fashioning a Cause of Action, 6 Tul.Envntl.L.J. 287 (1993)).

17. The public has the right to access lands below the mean high water mark, and

these six houses on the active beach are obstructing and preventing the public's access to these public trust resources in which the State holds title.

18. Because of their fixed presence and lack of stability, it is physically impossible to walk along the shoreline in the area where the houses are located without having to walk near or through the houses at various tidal stages. The location of the houses is depriving the public its right to pass or repass over the beach, which is public trust property.

19. Under the public trust doctrine, the State is entitled to transfer or “dispose of” trust assets to private parties in perpetuity in only two limited circumstances: first, if the transfer is in furtherance of trust purposes, e.g., helps to promote navigation; second, if the transfer has a *de minimis* impact on the public's ability to engage in established trust uses. Illinois Central R.R. Co. v. Illinois, 146 U.S. 387 (1892).

20. Courts have interpreted disposals broadly, to include State actions that effectively dispose of trust assets by allowing private interference with established trust uses. See, e.g., McQueen v. S. Carolina Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119-20 (2003).

21. Structures on the beach cannot substantially impair marine life, water quality, or public access to the public trust land. Kiawah Resort Assocs., 318 S.C. at 128. The public has the “inalienable right to breathe clean air; to drink safe water; to fish and sail, and recreate upon the high seas, territorial seas and navigable waters; as well as to land on the seashores and riverbanks.” Id. at 127–28.

22. The State of South Carolina has the “inherent authority” to protect the public trust land and this authority “requires the State to act if and when the need arises.” See Jowers v. S.C. Dep't of Health & Env'tl. Control, 423 S.C. 343, 815 S.E.2d 446 (2018). As title holder, the State

is the *only* party that has the authority to protect the rights in the public trust land, and that authority requires them to do so. See Town of Nags Head, 219 N.C. App. 66, 723 S.E.2d 156 (2012); Jowers, 423 S.C. 343.

23. The public has the right to enjoyment of public trust land freed from obstruction or interference of private properties. The houses on the active beach prevent that right from being actualized. The public's right to access and use of the beach means nothing if the State allows that beach to be cluttered with abandoned beach houses.

24. The State of South Carolina, in failing to act to protect public trust resources, and specifically the lands below the mean high water mark where the subject houses are located, has been and is violating its duties under the Public Trust Doctrine.

25. The State of South Carolina, in failing to undertake its duties under the Public Trust Doctrine, has and is interfering with the public's inalienable right to recreate on the high seas and shoreline of the Atlantic Ocean below the mean high water mark. In failing to protect the public's use of public trust resources, the State has caused the public to be alienated from its rights.

WHEREFORE, Plaintiff prays that this Court issue its order declaring that the state of South Carolina has a duty under the Public Trust Doctrine to protect public trust lands, and the beach below the mean high water mark specifically, from obstructions and environmental degradation, and further ordering the Defendant to remove or require removal of the offending structures; requiring the Defendant to pay the costs of this action; and granting such other and further relief as may be just and proper.

s/Amy E. Armstrong

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