



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

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March 26, 2024

Honorable Ralph King Anderson, III
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

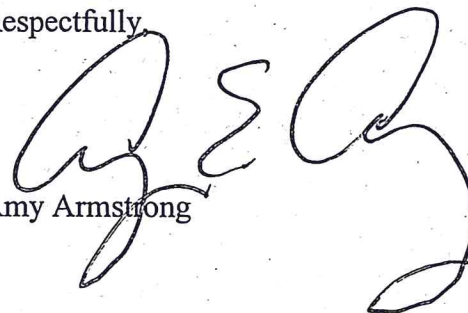
RE: DHEC v. Rom and Renee Reddy, Docket No. 24-ALJ-07-0032-IJ
Motion to Intervene

Dear Judge Anderson:

Please find enclosed a Motion to Intervene in the above-referenced matter, which is being filed on behalf of the Coastal Conservation League, along with a check for my filing fee. Kindly return a clocked in copy of the motion in the enclosed envelope.

Thank you for your assistance..

Respectfully,



Amy Armstrong

Enclosures

cc: Gerald M. Finkel, Esq.
Charles Krawczk, Esq.
Johnny J. Stewart, Jr., Esq.
Rachel L. Ferguson, Esq.
Sallie P. Phelan, Esq.
Bradley D. Churdar, Esq.

South Carolina Department of Health
and Environmental Control,

Petitioner,

v.

Rom Reddy and Renee Reddy,

Respondents.

CERTIFICATE OF SERVICE

Gerald M. Finkel, Esq.
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4000 Faber Place Drive, Suite 450
North Charleston, South Carolina 29405


Amy Armstrong

March 26, 2024

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Health and Environmental Control,	)	Docket No.: 24-ALJ-07-0032-IJ
	)	
Petitioner,	)	
	)	
v.	)	MOTION TO INTERVENE ON
	)	BEHALF OF THE COASTAL
Rom Reddy and Renee Reddy,	)	CONSERVATION LEAGUE
	)	
	)	
Respondents.	)	
_____	)	

TO: THE ADMINISTRATIVE LAW COURT AND COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the South Carolina Coastal Conservation League, Inc. (the “League” or “Coastal Conservation League”) hereby moves this Court, pursuant to Rule 20 of the Rules of Procedure for the Administrative Law Court, for an Order permitting it to intervene in the above-captioned proceeding. The basis for this motion is as follows:

Petitioner South Carolina Department of Health and Environmental Control (“DHEC” or the “Department”) is the agency charged with administering the provisions of the Coastal Tidelands and Wetlands Act, § 48-39-10 et seq. and the S.C. Beach Management Act, S.C. Code Ann. §48-39-250 *et seq.*

Respondents Rom Reddy and Renee Reddy are the owners of oceanfront property located at 118 Ocean Boulevard in Isle of Palms, Charleston County, South Carolina. DHEC alleges they carried out unauthorized activity in the beaches critical area, including the construction of an illegal seawall and disregarding of two Cease and Desist Directives.

The League is a non-profit membership corporation organized and existing under the laws of the State of South Carolina. The members of the League regularly use and enjoy the public trust beaches and other natural resources of the South Carolina coastal zone, which are impacted by the decisions of DHEC and its Office of Ocean and Coastal Resource Management (“OCRM”).

From October 5, 2023 through February 1, 2024, the Compliance Project Manager of OCRM, Jacques P. Prevost, observed and photographed non-beach-compatible materials and various types of marine debris from the Respondents’ construction in the alleged beaches critical area eight different times. Affidavit of Jacques Prevost, ¶¶ 5-13 (Feb. 9, 2024). On January 25, 2024, the Petitioner ordered the first Cease and Desist Directive to the Respondents to immediately stop all work in the beaches critical area and on active beach that is in violation of the Beachfront Management Act. Exhibit 1. On February 2, 2024, the Petitioner ordered for the second time a Cease and Desist Directive to the Respondents after the Petitioner received notification that unauthorized activities had not ceased at the site. Exhibit 2.

On February 9, 2024, Petitioner filed a Motion for Temporary Restraining Order and Petition for Preliminary Injunctive and Memorandum in Support with this Court. Petitioner seeks to have this Court order that the Respondents are prohibited from continuing to work in the critical area without a permit. On February 23, 2024, the Respondents filed a Motion for Removal to the Circuit Court and a Memorandum in Opposition of Petitioner’s Motion for Temporary Restraining Order and Petition for Injunctive Relief. The Respondents seek to have this Court deny the Motion for a Temporary Restraining Order and Petition for Injunctive Relief. Further, the Respondent alleges counterclaims of inverse condemnation, trespass, recovery of attorney’s fees, and declaratory judgement against the City of Isle of Palm’s City Management Act.

Standard for Intervention

SCALC Rule 20 governs intervention before this Court. A party should be granted intervention where it can show:

- (1) The movant will be aggrieved or adversely affected by the final order;
- (2) The interests of the movant are not being adequately represented by the existing parties, or that it is otherwise entitled to intervene;
- (3) That intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

SCALC Rule 20(B).

SCALC Rule 20(B) shares certain resemblances with Rule 24 of the South Carolina Rule of Civil Procedure, particularly concerning intervention in a legal proceeding. *Lexington County Health Services District, d/b/a/ Lexington Medical Center, Petitioner, vs. South Carolina Department of Health and Environmental Control and Prisma Health-Midlands, Respondents*, Docket No. 20-ALJ-07-0108-CC 2020 SC ENV LEXIS 89, *11 (Sept. 4, 2020) (Ralph King Anderson, III). Rule 24(a), SCRCF, known as “Intervention of Right,” requires an intervenor to demonstrate that their interest in the case is inadequately represented by current parties, mirroring SCALC Rule 20(B)(2). Moreover, Rule 24(b), SCRCF, “Permissive Intervention” necessitates the court to assess whether the intervention would unreasonably delay or harm the adjudication of the original parties’ rights, akin to SCALC Rule 20(B)(3). Under either standard, The League is entitled to intervene in this proceeding.

Position and Interest of the Proposed Intervenor

The League has proper and sufficient interest in this matter to justify intervention. The League seeks intervention in this case because an order in favor of the Respondent will would

enable the Respondent to disregard the multiple Cease and Desist Directive. Such an outcome would effectively allow ongoing construction of the seawall, setting a precedent that could encourage other property owners to adopt similar hard erosion control structures. This chain of events poses a direct threat to the interests of the League members who value and partake in the public's access to the dry sand areas for recreation and enjoyment. *See* 48-39-250(5) ("In reality, these hard structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while contributing to the deterioration and loss of the dry sand beach which is so important to the tourism industry."); *see also* 48-39-250(6) "It is in both the public and private interests to afford the beach/dune system space to accrete and erode in its natural cycle.").

Members of the League reside on the Isle of Palms and actively use and enjoy the waters, wetlands, and other natural resources of the area. They engage in boating activities and various recreational pursuits in the waters, wetlands, and beaches surrounding the Isle of Palms, including the area between Beach Access 1A and Beach Access 2 on which Respondent has constructed the seawall. *See* Affidavit, Exhibit 3. The League, therefore, is vitally interested in and affected by the outcome of this proceeding. In view of these allegations, any order issued by the Court in this proceeding would be binding on the League and its interest in these proceedings would not be adequately protected unless it is permitted to intervene.

I. The League will be aggrieved or adversely affected by the final order if it were to result in an outcome favorable to the Respondent.

Respondent opposes the Petitioner's Motion for Temporary Restraining Order and Petition for Injunctive Relief. Denial of the Petition for Injunctive Relief and Temporary Restraining Order will impact the League's interests due to the environmental effects of the hard erosional structure. The League has challenged similar hard erosion control structures in the past. The League will

suffer if the final order of this case is contrary to its mission and members' interests. This will affect the League's members who use the public beach, including Jimmy Carroll. *See* Affidavit, Exhibit 3.

II. The Petitioner does not adequately represent the interests of the League.

The showing required for inadequate representation is minimal. *Virginia v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976) (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1971)). A movant need only show its interests are different from the existing parties such that their representation "may be" inadequate. *Trbovich*, 404 U.S. 538 n.10. To determine whether the existing representation is adequate, the following must be considered: (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent. *Berkeley Elec. Coop. v. Town of Mt. Pleasant*, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990) (quoting *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983)).

The League's interests are not adequately represented by the existing parties, in particular DHEC. As a regulatory agency, DHEC cannot represent the environmental interests of the League and its members. *See, e.g., In Re Sierra Club*, 945 F.2d 776 (4th Cir. 1991). DHEC cannot adequately represent the interests of CCL here because generally 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, 352, 351 (4th Cir. 2013). While DHEC represents the members of the public generally, the League represents a subset of the public who have a particular mission to protect the environmental values of the coast for future generations, not just a proper application of the regulations. *See, e.g., Fund 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"); *Nat. 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").

Even beyond the divergence between DHEC's interest and that of the League is the legitimate concern that the DHEC might not vigorously defend its decision on the Petition. *See Teague*, 931 F.2d at 262 (finding that the proposed intervenors' interests were not adequately represented where the existing defendants had "financial constraints" that raised a "significant chance that they might be less vigorous than" the proposed intervenor in defending the case); *Mausolf v. Babbitt*, 85 F.3d 1295, 1303–04 (8th Cir. 1996) (finding that the government inadequately represented the proposed intervenor's interests by waiving and failing to enforce the regulations at issue in the case).

It is not without precedent that a settlement is reached that harms the interests of Proposed Intervenor. *See Defs. 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"). Similarly, DHEC may choose not to pursue an appeal of an adverse ruling, whereas Proposed Intervenor might. Therefore, the "minimal" burden to show a possibility that the government's representation "may be" inadequate has manifestly been met under *Trbovich*. 404 U.S. at 538 n.10.

Further, members of the League offer this Court a unique perspective on the damage this unauthorized activity has caused, both to them and members of the public. The League can provide

evidence as to the impacts to those who use the beach and would be adversely affected by the existing structure and any continued alterations of the critical area.

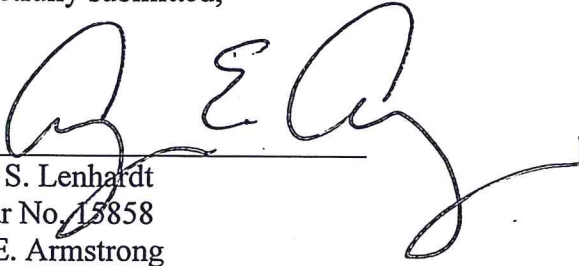
III. Intervention by the League will not unduly delay or prejudice the adjudication of the right of the existing parties.

The League has timely moved to intervene in these proceedings. *See* SCALC Rule 20(C) (“[t]he motion to intervene shall be filed at least twenty (20) days before the hearing.”). Currently, a hearing has been set for April 18th. Furthermore, the League will not seek to prolong the adjudication of any issue and will comply with all Court scheduling orders and deadlines.

Conclusion

The League has substantial interest in preventing the Respondent from disregarding the Cease and Desist Directives, which would lead to ongoing construction of a seawall, potentially encouraging similar actions that directly threaten the League members’ access to dry sand areas for recreation and enjoyment on the Isle of Palms. Additionally, the League has effectively demonstrated that all criteria for intervention have been met, substantiating its request for intervention in the proceedings. For these reasons, the Coastal Conservation League respectfully request that it be granted intervention in this matter. The undersigned has consulted with the parties’ counsel concerning this motion. The Petitioner does not object to this motion and the Respondents have not indicated its position as of this filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'L. S. Lenhardt', written over a horizontal line.

Leslie S. Lenhardt
SC Bar No. 13858
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

Attorneys for the Coastal Conservation League

March 26, 2024

EXHIBIT 1



CEASE AND DESIST DIRECTIVE

VIA EMAIL: MERRITT.ABNEY@NELSONMULLINS.COM

January 25, 2024

Rom L. Reddy
c/o Merritt Abney, Esq.
118 Ocean Blvd
Isle of Palms, SC 29451

RE: Unauthorized Activity

Dear Mr. Reddy,

On January 25, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) staff conducted an inspection at your property located on and adjacent to the Atlantic Ocean at 118 Ocean Blvd, Isle of Palms, Charleston County, SC (PID 5680900155) (Site). During the inspection, Department staff observed unauthorized structures and materials in the beaches critical area and/or on active beach that included an approximately 92 LF erosion control structure, metal screw piles, and scattered clay and riprap debris. As a result of this inspection, Department staff concluded that metal screw piles were being installed below grade on the seaward side of the erosion control structure in the beaches critical area and/or on active beach at the Site without authorization from the Department.

Such activity is a violation of the South Carolina Coastal Tidelands and Wetlands Act (Act) and Coastal Division Regulations (Regulations) which require that any utilization/alteration of the critical area be permitted or otherwise legally authorized by the Department prior to performing the activity.¹ As a result, the Department is required to take appropriate corrective action and may assess civil penalties.

You are hereby directed to immediately cease and desist all work in the beaches critical area and/or on active beach that is in violation of the Act. The Department is issuing this directive as authorized by S.C. Code Ann. Regs. 30-8(B), *as amended*. If you do not comply with this directive, please be advised that the Department, pursuant to S.C. Code Ann. §48-39-160, may seek relief in the appropriate Circuit Court. If you have any questions or concerns regarding this directive and notice, you may contact me at (843) 709-3998 or prevosjp@dhec.sc.gov.

¹S.C. Code Ann. §48-39-130(A) & S.C. Code Ann. Regs. 30-2(B)

Respectfully,



Jacques P. Prevost
Compliance Project Manager
Office of Ocean and Coastal Resource Management

ec: Morgan H. Flake, Manager, Compliance and Enforcement Section
Matt Slagel, Manager, Beachfront Management Section

ec: Douglas Kerr, Deputy City Administrator, City of Isle of Palms
Desiree Fragoso, City Administrator, City of Isle of Palms

EXHIBIT 2



CEASE AND DESIST DIRECTIVE

VIA EMAIL: MERRITT.ABNEY@NELSONMULLINS.COM

February 2, 2024

Rom L. Reddy
c/o Merritt Abney, Esq.
118 Ocean Blvd
Isle of Palms, SC 29451

RE: Unauthorized Activity

Dear Mr. Reddy,

On January 25, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) issued a Cease and Desist Directive to you for unauthorized activity in the beaches critical area and/or on active beach at 118 Ocean Blvd, Isle of Palms, Charleston County, SC (PID 5680900155) (Site). The January 25, 2024 Cease and Desist Directive identified an unauthorized erosion control structure and active installation of metal screw piles, among other things, and specifically directed that you immediately cease and desist **all work** in the beaches critical area and/or on active beach that is in violation of the Act. The Department received notification that unauthorized activities had not ceased at the Site. As a result, Department staff conducted an additional inspection on February 1, 2024, and confirmed that unauthorized activities continued to occur at the Site. These observed activities included excavation of the beaches critical area and/or active beach, installation of rebar, wood forms and supports, and newly-poured concrete immediately landward of the unauthorized erosion control structure and in beaches critical area and/or on active beach.

Such activity is a violation of the South Carolina Coastal Tidelands and Wetlands Act (Act) and Coastal Division Regulations (Regulations) which require that any utilization/alteration of the critical area be permitted or otherwise legally authorized by the Department prior to performing the activity.¹ As a result, the Department is required to take appropriate corrective action and may assess civil penalties.

You are hereby directed to immediately cease and desist all work in the beaches critical area and/or on active beach that is in violation of the Act. The Department is issuing this directive as authorized by S.C. Code Ann. Regs. 30-8(B), *as amended*. If you do not comply with this directive, please be advised that the Department may seek relief in the appropriate court. If you have any questions or concerns regarding this directive and notice, you may contact me at (843) 709-3998 or prevosjp@dhec.sc.gov.

¹S.C. Code Ann. §48-39-130(A) & S.C. Code Ann. Regs. 30-2(B)

Respectfully,



Jacques P. Prevost
Compliance Project Manager
Office of Ocean and Coastal Resource Management

ec: Morgan H. Flake, Manager, Compliance and Enforcement Section
Matt Slagel, Manager, Beachfront Management Section

ec: Douglas Kerr, Deputy City Administrator, City of Isle of Palms
Desiree Fragoso, City Administrator, City of Isle of Palms

EXHIBIT 3

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Health
and Environmental Control

Petitioner

v.

Rom Reddy and Renee Reddy,

Respondent.

Docket No. 24-ALJ-07-0032-IJ

AFFIDAVIT OF JAMES CARROLL

1. My name is James Carroll, but I usually go by Jimmy. This Affidavit is based on my personal knowledge, information, and belief. I am over the age of eighteen (18) and suffer from no legal incapacity. These statements are being submitted to the Court as a member of the Coastal Conservation League and as a Charleston County property owner and in no other capacity.
2. I currently reside at 9 Ocean Park Court, Isle of Palms, South Carolina.
3. My parents moved our family to Isle of Palms in 1959 when I was four years old.
4. Since 1959, I have lived in the Isle of Palms for my whole life except for 15 years when I was living nearby in Sullivans Island.
5. I consider Isle of Palms my home and intend to stay for the rest of my life. I know a good amount about the area's history.
6. I am currently 69 years old.
7. I worked as a realtor since 1978 and a broker since 1979. I started Carroll Realty, Inc. in 1981 but am now retired.

8. I've been involved in the community for many years. I used to be a lifeguard at the Isle of Palms during my college years. I volunteer for and am a supporter of the island's youth sports programs every year and sports season since their beginning in 1981.
9. I was a city council member for the Isle of Palms for six years (2012-2018) and served as mayor of the Isle of Palms for four years (2018-2022). While holding these positions, I served on the Beach Control Board.
10. I have long-standing interest in coastal protection topics, stemming from my passion for the beach, surfing, and boating.
11. I first became a member of the Coastal Conservation League in 1990 and am a current member. I am a member because of my interest and investment in supporting the island community's effort in environmental protection.
12. I am highly concerned about the impact of the seawall at 118 Ocean Boulevard.
13. I walk the beach regularly and have witnessed the negative effects of Rom Reddy's actions on myself, the environment, and beachgoers' experiences. I walk the beach around two to three times a week, and I typically walk for around five miles. 118 Ocean Boulevard is about 2.5 miles from where I reside.
14. Before construction of the seawall began, I observed Reddy's plastic turf in his backyard separating from erosion. It appeared that there was zero attempt to collect artificial turf that littered the beach.
15. I saw what the area looked like in late October before construction began and saw bags of sand brought to their property in November. The pictures attached as Exhibit 1 and Exhibit 2 are a fair and accurate depiction of my observations from these walks.

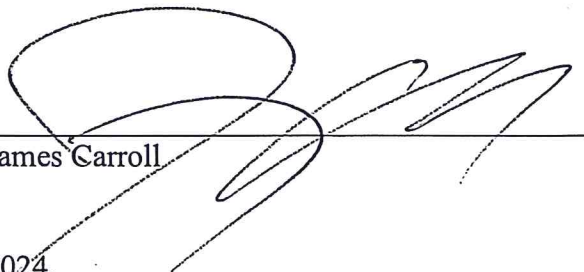
16. I do not know the exact date the seawall was put in, but I believe it to be in November. Prior to December 17th, the wall was covered up with sand. On December 17th, there was a storm that exposed the wall. Exhibit 3 shows a fair and accurate depiction of what I saw that day. It became more visible on December 18th. I went on a walk the day of the storm and after.
17. I witnessed firsthand that it was hastily constructed, leading to safety hazards and interference with beach access and enjoyment. Exhibit 4 and Exhibit 5 portray a fair and accurate depiction of the wall.
18. I have observed the seawall sinking and causing environmental damage, including redirecting waves and creating litter on the beach. I have seen turf, rocks, and wooden planks washing down the beach, which creates a hazard.
19. I am deeply concerned about the structure's potential to collapse. At one point, I saw the wall leaning 45 degrees, as fairly and accurately depicted in Exhibit 6 and Exhibit 7, and I was worried about the danger this could pose. Further, I am concerned that if the wall were to break up and come down, Reddy will refuse to do anything about it. I would want it taken down in a controlled manner.
20. As a neighboring property owner and member of the League, I have a perspective on the impacts of the proposed project that Petitioner DHEC cannot provide.
21. The impact of the seawall on me is significant. At high tide, I am unable to walk around the seawall because of the wall and rocks. I would have to go around it and into the water, but there have been rocks and pieces of rebar and wood in the water, which has caused the ocean to be like a river swishing by you and is highly unsafe. I have seen many other people turn back because it is blocking the beach.

22. I have seen that work has continued after DHEC's Cease and Desist Orders were posted.

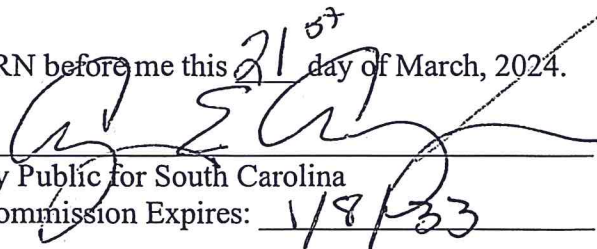
Exhibit 8 is a fair and accurate depiction of what I witnessed on the date specified by the timestamp. I am able to monitor Reddy's activities more actively than OCRM because I live so close to the property.

23. The impacts if the permit denial is reversed would be devastating to my recreational and aesthetic interest in the Isle of Palms, undermining the very essence of why I choose to reside here. The wall stands out. It is a blemish on the beach and to people visiting the beach. For me personally, going to the beach usually brings about feelings of relaxation; however, the sight of this construction negatively impacts my mood. It causes me to worry about its potential to collapse, which would result in additional littering and danger to myself and others. I am concerned about its impact to others' decisions regarding the adoption of hard erosion control structures because they see someone not following the rules. Additionally, I am worried about the possibility of permanently losing my right to access and traverse the beach at the location of the seawall. I have already suffered a significant impediment to my regular use of the beach.

Further the Affiant sayeth not.


James Carroll

SWORN before me this 21st day of March, 2024.


Notary Public for South Carolina

My Commission Expires: 1/8/33

EXHIBIT 1



October 31, 2023

EXHIBIT 2



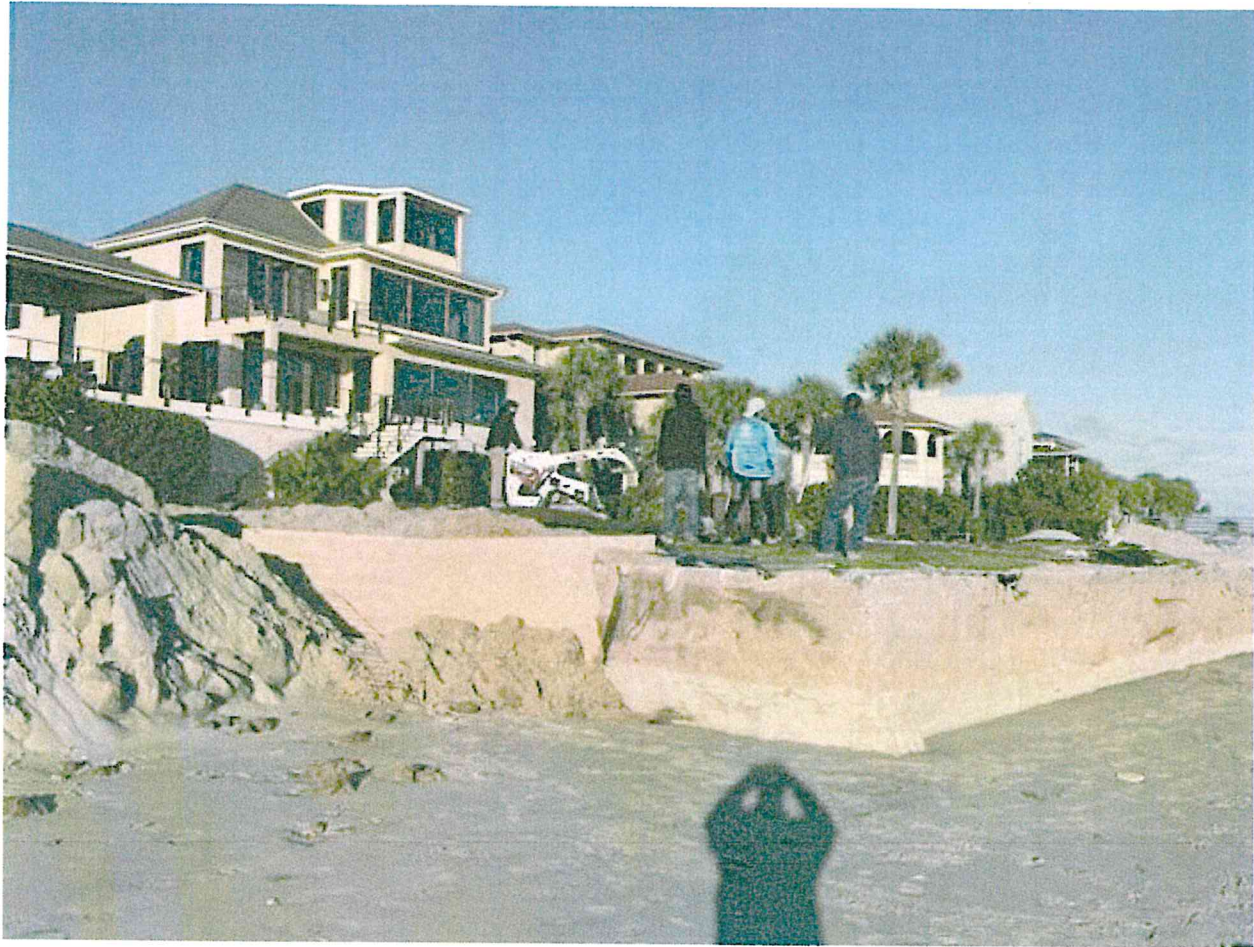
November 8, 2023

EXHIBIT 3



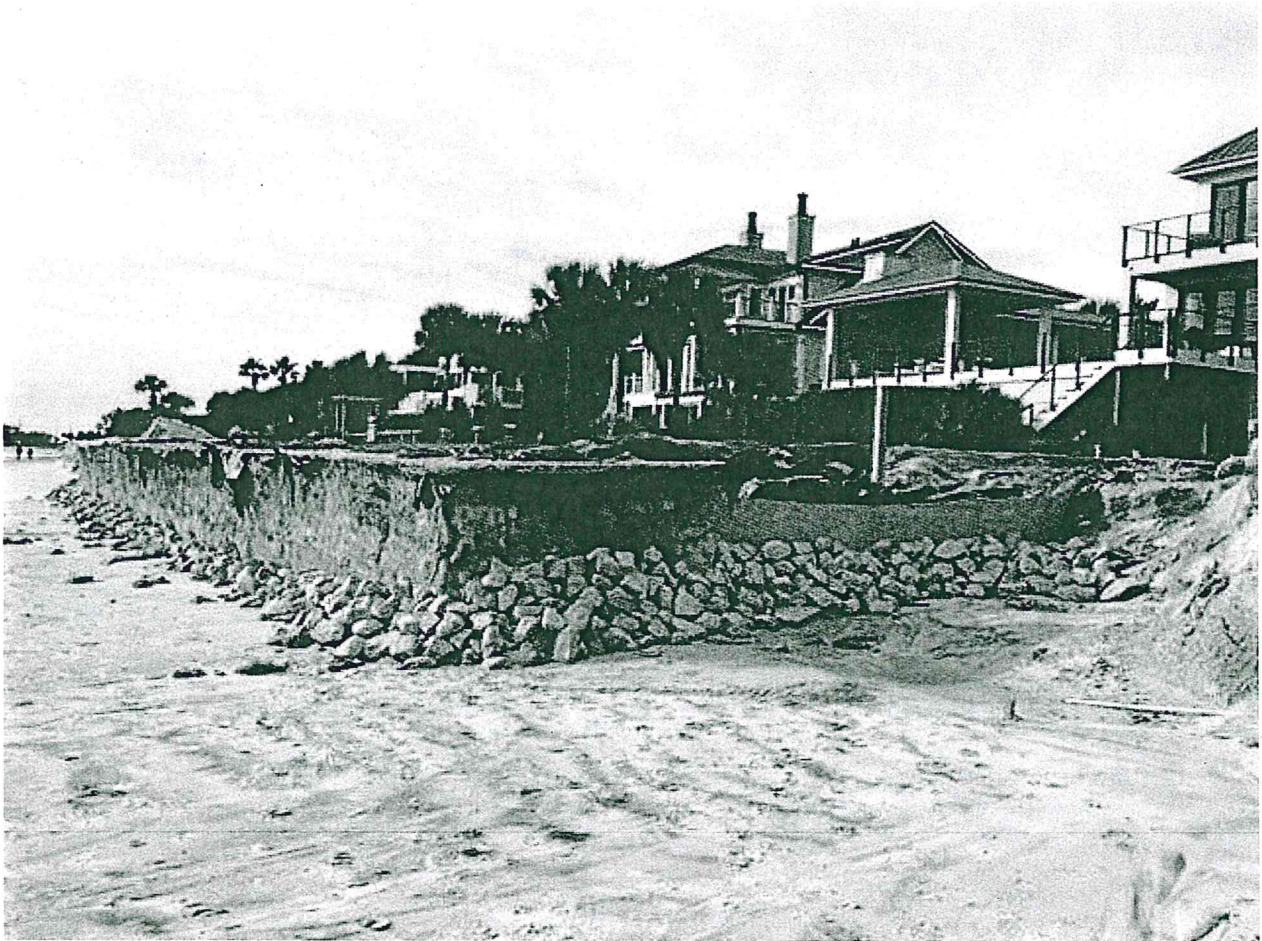
December 17, 2023

EXHIBIT 4



December 28, 2023

EXHIBIT 5



January 7, 2024

EXHIBIT 6



January 11, 2024

EXHIBIT 7



January 13, 2024

EXHIBIT 8



February 1, 2024