

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Cainhoy Land & Timber, LLC; Seven Sticks, LLC; Tract 7, LLC; Tract 1 Timber, LLC, and Ack Ack, LLC.

Plaintiffs,

v.

Commissioners of Public Works of the City of Charleston, d/b/a Charleston Water System

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NUMBER: _____

SUMMONS

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 this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ Rhett DeHart

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March 13, 2026.

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**Request for an Expedited Hearing
under SCRCP 57**

COMPLAINT FOR DECLARATORY JUDGMENT

1. This is a Complaint for a Declaratory Judgment under South Carolina's Uniform Declaratory Judgment Act in S.C. Code Ann. §§ 15-53-10 to 140 (2005). This “Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship.” *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423–24, 593 S.E.2d 462, 466 (2004).

2. The Plaintiffs are Cainhoy Land & Timber, LLC; Seven Sticks, LLC; Tract 7, LLC; Tract 1 Timber, LLC, and Ack Ack LLC (herein the “Cainhoy Owners”).

3. The Defendant is the Commissioners of Public Works of the City of Charleston, d/b/a Charleston Water System (herein “CWS”). CWS is an independent public utility that provides water and wastewater services to approximately 450,000 customers in more than a dozen

municipalities throughout the Lowcountry. CWS is a local governmental entity that is governed by a publicly elected Board of Commissioners.

4. CWS does not receive tax revenue, and it generates income from rates and fees for residential and commercial water and wastewater services. According to its most recent financial report, CWS earned \$252 million in revenue in 2024. CWS's total assets exceed its total liabilities by \$1.4 billion.

5. The Court has personal jurisdiction because the parties are located in South Carolina. The Court has subject matter jurisdiction because the property at issue is located in Berkeley County. For these reasons, jurisdiction and venue are proper in this Court.

6. The Plaintiffs seek only a declaratory judgment in this Complaint, and there is no other litigation between the parties that would impede a declaratory judgment. As described below, there is a justiciable controversy between the parties. Pursuant to SCRCP 57, the Plaintiffs respectfully ask the Court to order a speedy hearing on this declaratory judgment action and advance it on the calendar.

BACKGROUND

7. In 1995, CWS (then known as CPW) entered into an agreement with the Plaintiffs to provide the water and wastewater system on the Cainhoy Plantation (herein "Cainhoy"). See Exhibit 1 and 1A. This agreement was memorialized in two separate contracts that were executed simultaneously and which covered different tracts of land on Cainhoy. Under this agreement, the parties were represented by experienced counsel.

8. Cainhoy was and is located in Berkeley County, S.C. Despite this location, the City of Charleston asked the Plaintiffs to agree to an annexation of Cainhoy into the City. This annexation occurred in 1996 and is the largest annexation of land in the history of the Lowcountry.

9. This agreement required CWS to provide the water and wastewater system at its cost to serve the Cainhoy property and to obtain the necessary permits from the State. Id. at ¶ 3. In return for the consideration below, the Plaintiffs received this development approval and associated vested rights.

10. Under the agreement, the Plaintiffs agreed (1) to an early annexation into the City of Charleston; (2) to provide to CWS, at no cost, easements for the installation, construction, operation, and maintenance of underground water and sewer lines, force mains, pump stations and related appurtenances; and (3) to allow CWS to be the sole entity to provide water and wastewater services on Cainhoy. Id. at 1 at ¶ 11; at ¶ 5; and ¶ 11.

11. By agreeing to the annexation under the water and wastewater infrastructure agreement, the Plaintiffs were required to pay taxes to the City of Charleston on the approximately 9,000-acres on Cainhoy. Before this agreement, Cainhoy was located in an unincorporated area in Berkeley County, and it was not subject to the City of Charleston taxes and regulations.

12. Cainhoy was in the service area of Berkeley County Water and Sanitation prior to the water and wastewater infrastructure agreement. Under this agreement, Cainhoy was placed in CWS's service area. Id. at 1 at ¶ 11. Upon completion of the Cainhoy development, CWS will have approximately 12,000 additional residential customers, as well as additional commercial customers. These additional customers will generate tens of millions of dollars in future revenue to CWS in perpetuity. Without the water and wastewater infrastructure agreement on Cainhoy, Berkeley County Water and Sanitation would serve these new customers and receive this additional revenue.

13. The parties signed the water and wastewater infrastructure agreement in December 1995, and the agreement had a 30-year term. Id. 1 at ¶ 10. As described below, two unprecedented

events – the Great Recession and Covid-19 – prevented the completion of the water and wastewater infrastructure on Cainhoy within the 30-year term. In response to the Great Recession, the General Assembly – in two separate joint resolutions – extended the term of development approvals, including the water and wastewater infrastructure agreement on Cainhoy.

14. The General Assembly has spoken, and this Court should issue a declaratory judgment that the term of the water and wastewater infrastructure agreement on Cainhoy should be extended pursuant to these joint resolutions. The Court would ignore the intent of the General Assembly to rule otherwise.

The General Assembly Responds to the Great Recession in 2010

15. In 2008, the Great Recession struck the United States. The Great Recession was triggered by a collapse in the housing market, and it was the worst financial crisis in the United States since the 1930s. From 2008 to 2014, more than 500 FDIC-insured banks failed in the United States. The Great Recession devastated the real estate development and construction industries.

16. In response to the Great Recession, the South Carolina General Assembly unanimously passed, and the Governor signed into law, the “Permit Extension Joint Resolution of 2010.” S.C. Act No. 297, 118th Sess. (2010). See Exhibit 2. In enacting this law, the General Assembly found that “there exists a state of economic emergency in the State of South Carolina and the nation, which has drastically affected various segments of the South Carolina economy, but none as severely as the state’s banking, real estate, and construction sectors ...” Id. at 1.

17. The General Assembly further found that “as a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including home builders, commercial, office, and industrial developers, have experienced an industry wide decline, including reduced demand, canceled orders, declining sales and rentals, price reductions, increased

inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plan....Id.

18. The General Assembly further found that “obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions ... and the costs imposed fall on the public as well as the private sector ...” Id.

19. The General Assembly concluded that “it is the purpose of this joint resolution to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.” Id. at 2.

20. The Permit Extension Joint Resolution of 2010 applies to and extends the term of the water and wastewater infrastructure agreement on Cainhoy. The relevant passage of the Joint Resolution states the following:

This joint resolution is intended to apply retroactively. For development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2012, the running of the period of the development approval and any associated vested right is suspended during the period beginning January 1, 2008, and ending December 31, 2012. Id. at 4.

21. Under this Joint Resolution, “development approval” is defined broadly as “an approval issued by the State ... or a unit of local government, regardless of the form of the approval, that is for the development of land *or for the provision of water or wastewater services by a governmental entity* ... (Emphasis added). Id. at 3. Defendant CWS is a local governmental entity, and the water and wastewater infrastructure agreement on Cainhoy was for “provision of water or wastewater services by a governmental entity.”

22. The water and wastewater infrastructure agreement on Cainhoy was a “development approval” that was current and valid between 2008 and 2012. Consequently, the

Joint Resolution of 2010 applies to and extends the term of the water and wastewater infrastructure agreement on Cainhoy for five years.

23. The Permit Extension Joint Resolution of 2010 lists nine specific exceptions to relief. *Id.* at 4-5. Section 4 states that “[T]his Joint Resolution may not be construed or implemented to extend” the term of certain development approvals and permits, such as federal approvals and permits. Section 4 does not use expansive language such as “including” to describe the exceptions. These limited, enumerated exceptions do not mention a water and wastewater infrastructure agreement or describe anything resembling such an agreement. The enumerated exceptions are limited to these nine categories and do not apply to the water and wastewater infrastructure agreement on Cainhoy.

24. The broad language of the Permit Extension Joint Resolution of 2010 - coupled with the narrow and limited exceptions - make clear that it applies to and extends the term of the water and wastewater infrastructure agreement on Cainhoy

25. In the 2010 Joint Resolution, the General Assembly instructed the Court how to resolve any ambiguities regarding whether the resolution extends the duration of a development approval or permit. Section 6 of the Joint Resolution states the following: “The provisions of this joint resolution must be liberally construed to effectuate the purposes of this joint resolution.” *Id.* at 5.

The General Assembly Responds to The Great Recession in 2013

26. The effects of the Great Recession continued beyond 2010. In response, the General Assembly unanimously passed, and the Governor signed into law, the “Permit Extension Joint Resolution of 2013.” S.C. Act No. 112, 120th Sess. (2013). *See* Exhibit 3. The 2013 Joint

Resolution is identical in all material respects to the 2010 Joint Resolution, and both resolutions apply to real estate developers and units of local government.

27. Like the 2010 Resolution, the 2013 Joint Resolution defines “development approval” broadly as “an approval issued by the State ... or a unit of local government, regardless of the form of the approval, that is for the development of land *or for the provision of water or wastewater services by a governmental entity ...*” (Emphasis added). Id. at 3-4. Defendant CWS is a local governmental entity, and the water and wastewater infrastructure agreement on Cainhoy was for “provision of water or wastewater services by a governmental entity.”

28. The 2013 Joint Resolution further extended the term of development approvals and permits. The relevant passage of the 2013 Joint Resolution states the following:

This joint resolution is intended to apply retroactively. For development approval that is current and valid on December 31, 2012, the running of the period of the development approval and any associated vested right is suspended during the period beginning January 1, 2013, and ending December 31, 2016. Id. at 4.

29. The 2013 Joint Resolution extends the term of the water and wastewater infrastructure agreement on Cainhoy for an additional four years. The broad definition of “development approval” that is eligible for relief is the same under the 2010 and 2013 Joint Resolutions. Both Resolutions apply to a development approval “regardless of the form of the agreement...”

30. The 2013 Joint Resolution is even broader than the 2010 Joint Resolution as it reduced the number of approvals and permits that are not eligible for relief. Section 5 of the 2013 Joint Resolution lists eight specific exceptions, which are identical to the first eight exceptions in the 2010 Joint Resolution. Id. at 5. These limited, enumerated exceptions do not mention a water and wastewater infrastructure agreement or describe anything resembling such an agreement. Section 5 does not use expansive language such as “including” to describe the

exceptions. The exceptions are limited to these eight categories and do not apply to the water and wastewater infrastructure agreement on Cainhoy.

31. In enacting the 2013 Joint Resolution, the General Assembly had the benefit of the 2010 Joint Resolution and three years of experience regarding the tolling provisions therein. The General Assembly could have narrowed the applicability of the tolling provisions in the 2013 Resolution, and it could have excluded water and wastewater infrastructure agreements and development agreements generally. The General Assembly did not do so. Instead, the General Assembly made only one substantive change to the 2013 Joint Resolution: it broadened the Joint Resolution by eliminating one of the exceptions eligible for relief.

32. The broad language of the Permit Extension Joint Resolution of 2013 – coupled with the narrow and limited exceptions therein – make clear that it applies to and extends the term of the water and wastewater infrastructure agreement on Cainhoy.

33. In the 2013 Joint Resolution, the General Assembly – again - instructed the Court how to resolve any ambiguities regarding whether the resolution extends the duration of a development approval or permit. Section 7 of the 2013 Joint Resolution states the following: “The provisions of this joint resolution must be liberally construed to effectuate the purposes of this joint resolution.”

The 2010 and 2013 Joint Resolutions Apply to Statutory Development Agreements.

34. Development agreements are more comprehensive than the water and wastewater infrastructure agreement on Cainhoy. South Carolina Code Ann. § 6-31-10 through § 6-31-160 governs development agreements. Statutory development agreements address a broad range of issues, including zoning laws and land use regulations; residential densities and building sizes;

infrastructure costs for roads and utilities; impact fees; affordable housing; open space requirements; and environmental mitigation.

35. The 2010 and 2013 Joint Resolutions do not mention “development agreements,” or the code sections that govern development agreements. Nevertheless, these resolutions have been interpreted to apply to - and have extended the term of - development agreements in South Carolina.

36. In 1993, Beaufort County entered into a development agreement with a real estate development company for a 20-year term. This development agreement included water and wastewater infrastructure in addition to other issues. Near the expiration of this development agreement, Beaufort County sought guidance from the South Carolina Attorney General’s Office regarding whether the 2010 and 2013 Joint Resolutions apply to statutory development agreements. The Attorney General issued an opinion that these Joint Reorganizations apply to, and extend the term of, development agreements because (1) the joint resolutions have such a broad definition of “development approval;” and (2) both joint resolutions state that the resolutions “must be liberally construed to effectuate the purposes of this joint resolution.” See Exhibit 4 at 5-6.

37. After receiving the Attorney General’s Opinion, Beaufort County agreed that the Joint Resolutions extended the term of the above development agreement.

38. In 2007, the City of Hardeeville entered into a development agreement with a real estate development company for a 10-year term. After receiving the Attorney General’s Opinion, City of Hardeeville agreed that the Joint Resolutions extended the term of this development agreement.

39. Upon Information and Belief, the 2010 and 2013 Joint Resolutions extended the term of every development agreement in South Carolina that was current between 2008 and 2016.

The Attorney General's Office Issued a Formal Opinion that the Joint Resolutions Extend the Term of the Water and Wastewater Infrastructure Agreement on Cainhoy.

40. While Attorney General Opinions are not binding, the Supreme Court has held that Attorney General Opinions are "persuasive" authority. 393 S.C. 552, 560, 713 S.E.2d 604, 609 (2011).

41. On March 5, 2026, the Attorney General issued an opinion regarding the water and wastewater infrastructure agreement on Cainhoy. See Exhibit 5. In so doing, the Attorney General's Office addressed this issue: "Whether two permit extension resolutions enacted in 2010 and 2013 apply to a contractual agreement between property owners and a municipal water and sewer entity"? *Id.* at 1.

42. In issuing this opinion, the Attorney General's Office reviewed the following: (1) the water and wastewater infrastructure agreement on Cainhoy; (2) a brief history of the property; (3) the 2010 and 2013 Permit Extension Joint Resolutions; and (4) the prior Attorney General Opinion regarding the Joint Resolutions and development agreements.

43. The Attorney General opined that the 2010 and 2013 Joint Resolutions apply to and extend the term of the water and wastewater infrastructure agreement on Cainhoy. *Id.* at 5. The Attorney General's Opinion noted that the water and wastewater infrastructure agreement on Cainhoy is similar to, but narrower than, a statutory development agreement. *Id.* at 2. It further noted that development agreements that included water and wastewater infrastructure have been tolled pursuant to the 2010 and 2013 Joint Resolutions. *Id.* at 4. In reaching this opinion, the Attorney General's Office noted that the 2010 and 2013 Joint Resolutions do not mention development agreements but do mention water and

wastewater services provided by a governmental entity. Id. at 2. The Attorney General's Office reasoned that CWS cannot provide water and wastewater services on Cainhoy without water and wastewater infrastructure on the property. Id.

44. The Attorney General's Office concluded that the "Joint Resolutions were intended to apply to the provision of water and wastewater services by a government entity.... This is precisely the case here. Read broadly, as they must be, the Joint Resolutions are applicable to the [Cainhoy] Agreement here." Id. at 5.

45. Upon Information and Belief, no Court has addressed or interpreted the 2010 and 2013 Joint Resolutions. The two Attorney General's Opinions are the only authority available on this issue.

46. Based on the above, the Plaintiffs respectfully ask the Court to issue a declaratory judgment that (1) the Permit Extension Joint Resolution of 2010 suspended the term of the Cainhoy agreement from "the period beginning January 1, 2008, and ending December 31, 2012;" (2) the Permit Extension Joint Resolution of 2013 further suspended the term of the Cainhoy agreement from "the period beginning January 1, 2013, and ending December 31, 2016;" and (3) the new expiration date for the water and wastewater infrastructure agreement on Cainhoy is December 29, 2034.

COVID-19 DELAYED THE COMPLETION OF THE INFRASTRUCTURE ON CAINHOY AND CONSTITUTES A FORCE MAJEURE EVENT UNDER THE AGREEMENT.

47. In March 2020, the Covid-19 global pandemic struck the United States. In April 2020, the President of the United States declared a national state of emergency, and Governor of South Carolina issued a stay-at-home order that restricted commerce.

48. Federal, state, and local governments issued various governmental restrictions, including stay-at-home orders, to slow the spread of Covid. These governmental restrictions lasted in different forms from 2020 until 2023. Economic activity, including real estate development and construction, fell drastically due to these governmental restrictions.

49. In response to Covid, Defendant CWS ordered all non-essential staff to work remotely, and on-site crews were limited to emergencies, for a finite period. Upon information and belief, Defendant CWS offered extended payment plans to its customers for up to one year due to Covid.

50. The water and wastewater infrastructure agreement on Cainhoy contained a Force Majeure clause that anticipated unforeseen events - such as Covid - could require an extension of the agreement. Unlike most Force Majeure clauses, which address payment obligations or performance obligations, the Cainhoy Force Majeure clause addressed only extensions of the agreement. Section 9 of the agreement states the following:

Force Majeure. The time for performance by any party of any term or provision of this Agreement *shall be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, floods, fire or other casualty, unavailability of material or labor, and restrictions by governmental authorities.* (Emphasis added).

See Exhibit 1 at ¶ 9.

51. It is indisputable that Covid delayed the construction and installation of the water and wastewater infrastructure on Cainhoy. The delays caused by Covid affected both parties and were due to the “unavailability of material or labor” and “restrictions by governmental authorities.”

52. Federal and state courts have found that COVID and related governmental restrictions constituted force majeure events and fell within force majeure clauses. See

JN Contemp. Art LLC v. Phillips Auctioneers LLC, 29 F.4th 118, 124 (2d Cir. 2022) (“the COVID-19 pandemic, coupled with the state government's orders restricting the activities of nonessential businesses, constitute an occurrence beyond the parties’ reasonable control” and constituted force majeure event.).

53. According to the Centers for Disease Control, the public health emergency caused by Covid lasted until May 2023.

A Justiciable Controversy Exists between the Plaintiffs and CWS

54. To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. “A justiciable controversy is 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.” *Power v. McNair*, 255 S.C. at 154, 177 S.E.2d at 553.

55. An actual, justiciable controversy exists between the parties regarding whether the 2010 and 2013 Permit Joint Resolutions and the Covid pandemic extended the term of the water and wastewater infrastructure agreement on Cainhoy. On November 10, 2025, the attorneys for the Plaintiffs sent a formal letter asking CWS to extend the term of the water and wastewater infrastructure agreement on Cainhoy.

56. In response, the attorneys for CWS declined the request and stated that neither the Joint Resolutions nor the Force Majeure clause extended the water and wastewater infrastructure agreement on Cainhoy. Upon information and belief, CWS has taken the position that this agreement expired on December 29, 2025, and its obligation to pay for the remaining water and wastewater infrastructure ended on this date, even for projects under construction.

57. Because a substantial portion of the water and wastewater infrastructure on Cainhoy has not been built due to the Great Recession and Covid, there is actual, justiciable controversy regarding who is responsible to pay for the remaining infrastructure. A declaratory judgment would end this uncertainty and controversy giving rise to this Complaint and save the Court and the parties from protracted litigation.

58. There is no other litigation between the parties that would impede a declaratory judgment.

59. Based on the above, the Plaintiffs respectfully ask the Court to issue a declaratory judgment that (1) the Permit Extension Joint Resolution of 2010 suspended the term of the Cainhoy agreement from “the period beginning January 1, 2008, and ending December 31, 2012;” (2) the Permit Extension Joint Resolution of 2013 further suspended the term of the Cainhoy agreement from “the period beginning January 1, 2013, and ending December 31, 2016;” and (3) the new expiration date for the water and wastewater infrastructure agreement on Cainhoy is December 29, 2034.

60. The Plaintiffs respectfully ask the Court to issue another declaratory judgment that Covid-19 constitutes a Force Majeure event under the Cainhoy agreement and extends the term of the agreement for an additional one year, and the new expiration date for the water and wastewater infrastructure agreement on Cainhoy is December 29, 2035.

Respectfully Submitted,

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