



A "super beachfront" lot on Folly Island before the August 2018 renourishment.

## CASE BRIEF

On behalf of the City of Folly Beach, the Coastal Conservation League and Save Folly Beach, we are challenging the ownership of new land created artificially through renourishment, arguing that private land cannot be created from what was in public ownership.

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As the South Carolina coast shifts from tides and storms, there are some who ignore the reality of an ever-changing shoreline in reckless pursuit of building on the ocean's edge.

On Folly Beach, one of the most sand-starved and erosive beaches in the state, a spate of landowners are making efforts to build houses on a number of "super beachfront lots" precipitated by the latest major renourishment in August 2018.

**These lots were underwater and below the high water mark prior to that renourishment.**

Under South Carolina's Public Trust Doctrine, the state owns all lands below the high water mark and holds these lands in trust for the benefit of all the citizens of the state.

In order to protect public trust beaches, we took legal action to prevent new houses from being constructed on Folly's freshly engineered beach.

Our lawsuit claims that super beachfront lot lost to the ocean over time cannot be put back into private hands as a result of an artificial, publicly-funded renourishment.

Rather, we argue that the renourishment was an "avulsion," or a sudden event through which massive amounts of sand

were gained, does not shift the boundary between public and private property.

If new, private oceanfront property could be created through artificial, publicly-funded renourishment, taxpayers would be both subsidizing dangerous development and on the hook when that development is threatened by rising waters.

"Right now on the beachfront, more structures are actively threatened by the forces of sea level, erosion, and storms, and, as a state, South Carolina is struggling with how to respond," SCELP Staff Attorney **Michael Corley** said.

While the law of avulsion is well established in other states, no South Carolina appellate court has ever been asked to determine the ownership status of beachfront land created by artificial renourishment.

*This case seeks to affirm an important principle of law that will be critical in protecting our public beaches, not just on Folly but all along our coastline.*



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# RENOURISHMENT: THE PROS AND CONS

Most of South Carolina's beaches are experiencing erosion from a combination of factors, including: wind and wave action transporting sand off the beach, sea level rise, and storm surge. One way that we have tried to mitigate this erosion is through beach renourishment, which brings new sand into the beach system from an external source. The purpose of renourishment is to restore the dry sand beach to its pre-erosion condition, which is often necessary in order to protect structures adjacent to the beach.

Renourishment is considered a "soft" engineering approach that avoids some of the negative impacts of hard structures such as groins and seawalls, which exacerbate erosion. At least on a temporary basis, renourishment maintains a dry sandy beach for recreation and protects upland structures. In areas where beachfront development prevents natural migration of the coastline, renourishment can be a preferable option for buffering coastal communities and infrastructure from storm surges, restoring eroded wildlife habitats and sustaining recreational activities for the public. The procedure, however, is not without its drawbacks.

## Beach Renourishment Issues:

**Sand.** Most often renourishment sand is borrowed from an offshore site. The mining of sand can disrupt marine and benthic habitats. When the mined sand is applied to the beach it buries marine organisms in the target area, crushing macroinvertebrates that shorebirds feed on. Additionally, state law requires renourishment sand to be beach compatible, but unpredictability in grain sizes and types has led to incompatible material being placed on our beaches, interfering with human and wildlife uses. Finally, sand is a finite resource, and taking sand from offshore simply removes the natural source of beach regeneration. Further, as diminishing supply makes borrow sites more difficult to access, the cost to mine and pump the sand onshore is ever-increasing.



Renourishment replenishes Folly's eroding beaches but this process has certain disadvantages.

**Cost.** Although, some nourishment activities are financed by private communities, many of these projects are funded by taxpayer dollars. According to the EPA, "the federal government spends an average of \$150 million every year on beach nourishment and other shoreline erosion control measures."

**Longevity.** Eventually, the added sand will wash out to sea, meaning continual nourishment is needed to maintain a dry sand beach. Simply stated, renourishment sand does not last on the beach as long as sand that is naturally deposited. Considering increased erosion and sea level, a critical tipping point exists where the frequency of renourishment needed to hold the beach in place will become cost prohibitive.

