

**THE SOUTH CAROLINA BEACHFRONT MANAGEMENT ACT AND
DEBORDIEU COLONY: A CASE STUDY IN SOUTH CAROLINA’S BEACH
EROSION ISSUES**

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I. INTRODUCTION

Encompassing nearly two hundred miles of oceanfront shoreline, South Carolina’s beaches attract many tourists, residents, and real estate investors on an annual basis.¹ However, South Carolina oceanfront and ocean-adjacent property owners continue to wrestle with an emerging crisis situation, including “chronic erosion, gradual sea level rise, increased shoreline development and population growth, and a lack of comprehensive beachfront

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1. See S.C. DEP’T OF HEALTH & ENV’T CONTROL, SOUTH CAROLINA GUIDE TO BEACHFRONT PROPERTY: INSIGHT FOR INFORMED DECISIONS 1 (2017).

planning and management.”² DeBordieu Colony, located on Debidue Island in Georgetown County, South Carolina,³ is a prime example of a coastal community currently combatting accelerated erosion rates along its beachfront area due to “[c]hanges in the downdrift sediment transport, wave action, currents, and storms.”⁴

Twice during the past forty years, South Carolina ordered large-scale studies of its laws and regulations relating to the management of beachfront development.⁵ In the first study, conducted in 1987 and 1988, the South Carolina Coastal Council⁶ appointed a Blue Ribbon Committee on Beachfront Management to recommend long-term improvements regarding the state’s beach planning and management procedures.⁷ The Blue Ribbon Committee’s 1987 Report emphasized the “inevitability of sea level rise, the damage done by recent storms, and the futility of armoring the coastline.”⁸

The following year, the South Carolina legislature enacted the South Carolina Beachfront Management Act (Act), which provides limitations and restrictions on property owners attempting to protect their beachfront property from erosion-related issues.⁹ While its core provisions remain intact, the Act has been significantly amended multiple times since 1988.¹⁰ Several of these changes illustrate the “politically charged and on-going conflict between public and private interests” regarding the protection of South Carolina’s coastal areas.¹¹

2. S.C. DEP’T OF HEALTH & ENV’T CONTROL, BLUE RIBBON COMMITTEE ON SHORELINE MANAGEMENT FINAL REPORT: RECOMMENDATIONS FOR IMPROVED BEACHFRONT MANAGEMENT IN SOUTH CAROLINA 3 (2013) [hereinafter 2013 BLUE RIBBON COMMITTEE]; see also S.C. DEP’T OF HEALTH & ENV’T CONTROL, ADAPTING TO SHORELINE CHANGE: A FOUNDATION FOR IMPROVED MANAGEMENT AND PLANNING IN SOUTH CAROLINA 1 (2010) [hereinafter ADAPTING TO SHORELINE CHANGE].

3. See Mary D. Shahid & Angelica M. Colwell, *The Regulation of Coastal Properties in an Era of King Tides*, 53 REAL PROP. TR. & EST. L.J. 101, 110 (2018); see also Kendra Rudeen, *Analysis of Proposed DeBordieu Groin and Beach Nourishment Project* (Sept. 2, 2011) (graduate student assistant research paper for Western Carolina University’s Program for the Study of Developed Shorelines) (on file with the Western Carolina University Program for the Study of Developed Shorelines).

4. Rudeen, *supra* note 3, at 2.

5. See 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 3–4 (discussing the general history of South Carolina’s initiatives pertaining to beachfront management).

6. See *id.* at 3 (noting that the former South Carolina Coastal Council is now the South Carolina Department of Health and Environmental Control (DHEC), Ocean and Coastal Resource Management).

7. See J. Peter Byrne, *A Fixed Rule for a Changing World: The Legacy of Lucas v. South Carolina Coastal Council*, 53 REAL PROP. TR. & EST. L.J. 1, 6–7 (2018).

8. *Id.* at 6 (summarizing the South Carolina Blue Ribbon Committee’s 1987 Report regarding beachfront management recommendations).

9. See generally S.C. CODE ANN. §§ 48-39-250 to -360 (2008).

10. See Shahid & Colwell, *supra* note 3, at 105–07.

11. *Id.* at 107.

Left unchecked, sea level rise and associated environmental risks in the coming decades will likely exacerbate erosion along South Carolina's coastline.¹² In recent decades, South Carolina's coastal communities have largely relied on beach renourishment projects to combat erosion and rising sea level.¹³ "Beach renourishment is the process of adding sand onto beaches" to replace sand that has eroded away.¹⁴ Although beach renourishment is a viable short-term option to stabilize beachfront areas, renourishment projects are often expensive and do not serve as long-term solutions for beach erosion.¹⁵ Therefore, South Carolina's political, legal, and environmental institutions must recognize, emphasize, and implement additional protective measures to preserve the state's beaches. Without developing a cohesive plan that balances the long-term impacts of erosion with the short-term considerations of property owners and related parties, South Carolina will be wholly unprepared for the costly and detrimental impact of beachfront erosion in the future.

This Note does not seek to dispute that, in the wake of rising sea levels in the coming decades, short-term coastal defense measures such as beach renourishment may become fiscally and environmentally unsustainable. Furthermore, this Note does not attempt to remedy the cause of South Carolina's long-term beach erosion issues. Instead, this Note argues that South Carolina's lawmakers, environmental groups, coastal communities, and other relevant parties should work together to develop and implement erosion solutions that protect existing coastal properties without substantially hindering the state's public resources. Absent a good faith and concerted effort from all relevant parties, the long-term health of South Carolina's beaches will likely become increasingly at risk.

This Note proceeds in three parts. Part II provides background information about the Act, a brief history of South Carolina's shoreline stabilization efforts, and summaries of two recent beachfront erosion cases at DeBordieu Colony. Part III utilizes the DeBordieu Colony cases as a springboard to provide several recommendations for mitigating erosion issues along South Carolina's coastline. Finally, Part IV concludes by summarizing

12. See Byrne, *supra* note 7, at 25–26 (emphasizing that the South Carolina coastline will likely face "unprecedented, existential environmental risks . . . in the foreseeable future.").

13. See John H. Tibbets, *A Line in the Sand: Nourishing South Carolina's Beaches*, 18 COASTAL HERITAGE 3, 12 (2003).

14. Lora Naismith, *Taking Back the Beach*, 10 CHI.-KENT J. ENV'T & ENERGY L. 29, 38 (2020).

15. See JAMES B. LONDON ET AL., AN ASSESSMENT OF SHORELINE MANAGEMENT OPTIONS ALONG THE SOUTH CAROLINA COAST 67 (Sandra L. Sanderson ed., 2009) [hereinafter ASSESSMENT OF SHORELINE MANAGEMENT OPTIONS] (detailing an August 2009 report that, among other things, assessed the "effectiveness of beachfront management in reducing losses along the South Carolina shoreline").

possible suggestions for South Carolina to better address beach erosion in the coming decades.

II. BACKGROUND

A. *South Carolina Beachfront Management Act*

1. *The Act: Background and Pertinent Information*

Enacted in 1988, the South Carolina Beachfront Management Act attempts to protect South Carolina's beach and dune system by regulating the tools that landowners and communities can employ in their efforts to protect privately owned beachfront land and structures from erosion.¹⁶ Prior to the Act's passage, South Carolina beachfront property owners routinely installed seawalls, bulkheads, and similar hard structures to protect their investments by reinforcing the shoreline.¹⁷ Shoreline armoring structures are generally effective at shielding or fortifying the specific property they are constructed to protect.¹⁸

However, armoring devices also exacerbate beach erosion in neighboring areas and "can also change natural sand and sediment migration patterns, which can have detrimental ecological impacts on wetlands and beaches."¹⁹ Hard structures exacerbate erosion because the sand placed in front of the structure eventually washes away due to waves ricocheting against the hard surface.²⁰ For example, one major problem caused by seawalls is that they "allow waves to scour away sand and prevent beaches from naturally migrating inland," thereby causing the beachfront to gradually disappear underwater.²¹

Prior to the passage of the Act, South Carolina landowners insisted that constructing new seawalls, as well as repairing old ones, was necessary to

16. See generally S.C. CODE ANN. § 48-39-250(1) (2020) (explaining the legislative purpose of the Act, as well as why protecting the "beach/dune system along the coast of South Carolina is extremely important to the people of this State").

17. Tibbets, *supra* note 13, at 9.

18. See Naismith, *supra* note 14, at 38.

19. *Id.* at 37–38.

20. See S.C. CODE ANN. § 48-39-250(5), (6) (2008 & Supp. 2021) (stating that erosion is "a natural process which becomes a significant problem for man only when structures are erected in close proximity to the beach/dune system"); see also Chloe Johnson, *Questions of SC Beach Retreat or Preservation Come*, POST & COURIER (Feb. 13, 2022), https://www.postandcourier.com/environment/questions-of-sc-beach-retreat-or-preservation-come-to-a-head-in-debordieu/article_b243da3c-7959-11ec-873a-cff5410bd1b5.html [<https://perma.cc/N4WN-LAX3>] (discussing issues associated with hard erosion control structures).

21. Tibbets, *supra* note 13, at 9.

protect their beachfront properties from storms and erosion.²² However, members of the public complained that the seawalls equated to the loss of access to dry beaches in some areas along the state's shoreline.²³ By the early 1980s, coastal regulators and state policymakers began discussing how to balance the public's right to use and enjoy the oceanfront against the need of private landowners to protect their property.²⁴ In response to those discussions, the Act was adopted in 1988.²⁵

The Act establishes a coastal jurisdictional area created by two lines regulating development in the coastal zone—the baseline and the setback line.²⁶ Generally, “the baseline is the more seaward . . . of the two jurisdictional lines, while the setback line is the landward . . . line.”²⁷ The area between the two jurisdictional lines is the setback area.²⁸ Although specific requirements differ depending on the type of structure, “[c]onstruction, reconstruction, or alterations to habitable structures within the setback area is allowed under a permitting process.”²⁹

The original framework of the Act reflected a legislative intent to create a “line in the sand,”³⁰ which would prohibit property development and redevelopment from occurring too close to hazardous and high-erosion areas along South Carolina's coastline.³¹ The Act's intended purpose was to “prevent private interests from negatively impacting the private beach.”³² In 1988, the Act banned significant development seaward of the setback line.³³ However, the Act was subsequently amended in 1990 to allow the issuance of special permits for use of property “seaward of the baseline.”³⁴

South Carolina's coastline changes over time due to a variety of factors, including ocean currents, weather systems, beach usage, and maintenance activities.³⁵ Therefore, the South Carolina Department of Health and Environmental Control (DHEC) is required to review and, if necessary, adjust

22. *See id.*

23. *See id.*

24. *Id.*

25. *See generally* Shana Jones & J. Scott Pippin, *Stabilizing the Edge: Southeastern and Mid-Atlantic Shorescapes Facing Sea-Level Rise*, 46 COLUM. J. ENV'T L. 293, 327 (2021).

26. *Id.* at 326–27.

27. *State Beachfront Jurisdictional Lines*, S.C. DEP'T OF HEALTH & ENV'T CONTROL, <https://scdhec.gov/environment/your-water-coast/ocean-coastal-resource-management-oorm/beach-management/state-beachfront> [<https://perma.cc/7BTM-87S2>].

28. Jones & Pippin, *supra* note 25, at 327.

29. *Id.*

30. Shahid & Colwell, *supra* note 3, at 105.

31. *See id.*

32. *Id.*

33. Byrne, *supra* note 7, at 7.

34. Shahid & Colwell, *supra* note 3, at 106.

35. *State Beachfront Jurisdictional Lines*, *supra* note 27.

the position of beachfront jurisdictional lines approximately every decade to reflect changing trends and updated shoreline data.³⁶ Adjustments are based on multiple factors, including “long-term erosion or accretion rates, survey data, and historical shoreline positions.”³⁷

Additionally, the Act prohibits the construction of new erosion control structures or devices, including seawalls, bulkheads, and revetments.³⁸ Furthermore, “[e]xisting and functional . . . structures may not be enlarged, strengthened or rebuilt, although they may be maintained in their present condition.”³⁹ If the structure is destroyed more than “fifty percent above grade,” it must be removed at the owner’s expense.⁴⁰

However, the Act enumerates multiple exceptions to the general rule prohibiting erosion control structures.⁴¹ For example, “groins” are permitted in certain circumstances because they are not defined as erosion control structures by state statute or regulation, despite their intended function of trapping sand.⁴² Groins are man-made, shore-perpendicular structures “designed to stabilize an eroding beach or extend the life of some renourishment projects by trapping sand that is being transported as littoral drift.”⁴³ Littoral drift is “the movement of sand along the shoreline caused by ocean currents.”⁴⁴ Groins built perpendicular to a beach can interrupt naturally occurring patterns of littoral drift.⁴⁵ Controversy surrounding groin installation persists because groins “often cause the up current shoreline to accrete and the down current shoreline to erode in excess of that normally caused by littoral drift.”⁴⁶

In South Carolina, existing groins can be “reconstructed, repaired, and maintained.”⁴⁷ However, new groins are only permitted on beaches with high erosion rates where the erosion threatens existing developments or public parks.⁴⁸ Additionally, “new groins may be constructed and existing groins may be reconstructed only in furtherance of an on-going beach renourishment

36. *Id.*

37. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 7.

38. S.C. CODE ANN. § 48-39-270(1) (2020) (defining erosion control devices or structures as seawalls, bulkheads, or revetments).

39. Jones & Pippin, *supra* note 25, at 331.

40. *Id.*

41. See Shahid & Colwell, *supra* note 3, at 105.

42. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 22.

43. *Id.*

44. Max C. Sparwasser, *Groin Law Development in South Carolina*, S.C. LAW., Nov. 2004, at 33.

45. *Id.*

46. *Id.*

47. S.C. CODE ANN. REGS. 30-15(G) (2022).

48. *Id.*

effort.”⁴⁹ Applicants for groin construction projects must provide a “financially binding commitment to cover the estimated cost of reconstructing or removing the groin if monitoring indicates adverse downdrift impacts attributable to the project.”⁵⁰ Issues related to groin construction and maintenance include “inconclusive evidence of their long-term effectiveness, the potential for increased localized erosion, downdrift ‘sand starvation,’” and a potential public safety hazard when the groins are inadequately maintained.⁵¹ As a result, groins are a highly controversial method of shoreline stabilization.⁵²

Similarly, some property owners have recently utilized the Act’s “pilot project” exemption to implement “Wave Dissipation Systems,” which are “fence-like structures . . . intended to reduce wave energy levels.”⁵³ Wave Dissipation Systems “[are] an effort to implement new technology that avoids the classification of a prohibited ‘[e]rosion control devices’ but provides some measure of protection to oceanfront property.”⁵⁴ In other words, these systems are intentionally “designed to fall outside the category of prohibited erosion control devices” as outlined in the Act.⁵⁵

Importantly, Wave Dissipation Systems are controversial because they have not yet been proven to function correctly.⁵⁶ In 2015, the devices were installed at several South Carolina beach locations “in response to severe beach erosion.”⁵⁷ Their installation was authorized under an exemption for research activities.⁵⁸ However, homes protected by these devices were destroyed by Hurricanes Matthew and Irma, and “environmental groups have alleged that the devices threaten nesting sea turtles.”⁵⁹ Overall, both the Act’s “pilot project” exemption and the related “research” exemption remain controversial methods for circumventing the traditional requirements of the Act.⁶⁰

49. *Id.*

50. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 22.

51. *Id.*

52. *See generally* Sparwasser, *supra* note 44, at 34 (discussing the legal history and related controversies in South Carolina pertaining to groin installation and maintenance).

53. Jones & Pippin, *supra* note 25, at 331.

54. Shahid & Colwell, *supra* note 3, at 108 (quoting S.C. CODE ANN. § 48-39-290(B)(2) (2008 & Supp. 2015)).

55. Jones & Pippin, *supra* note 25, at 331.

56. *Id.*

57. Shahid & Colwell, *supra* note 3, at 108.

58. *Id.* (citing S.C. CODE ANN. § 48-39-130(D)(2) (2008)).

59. Jones & Pippin, *supra* note 25, at 331.

60. Shahid & Colwell, *supra* note 3, at 108.

In addition, “special permits” issued by DHEC are a contentious aspect of the Act.⁶¹ The Act’s special permit provision allows certain property owners to seek authorization for the construction of habitable structures seaward of the baseline along the beachfront area.⁶² To date, DHEC has granted the majority of special permit requests pertaining to beachfront erosion control.⁶³ In response to criticism regarding its special permit issuance process, DHEC officials have highlighted that “the instability of many developed beach areas has required human intervention to protect habitable structures and infrastructure, primarily through minor and major renourishment projects and the implementation of Emergency Orders.”⁶⁴ However, critics of special permit usage suggest that “there is insufficient statutory or regulatory language to restrict development of property in highly unstable and hazardous areas.”⁶⁵ Additionally, critics argue that DHEC fails to properly consider historical beach renourishment data when determining the potential vulnerability of property during the evaluation of special permit requests.⁶⁶

Emergency Orders are an additional controversial aspect of the Act, particularly pertaining to sandbag installation.⁶⁷ In the context of Emergency Orders, an “emergency” is defined as “any unusual incident resulting from natural or unnatural causes which endanger the health, safety, or resources of the residents of the State, including damages or erosion to any beach or shore resulting from a hurricane, storm, or other such violent disturbance.”⁶⁸ Local South Carolina governments often issue Emergency Orders “either prior to or following a storm event, . . . thereby permitting property owners to construct temporary barriers against wave uprush by utilizing methods such as sandbag installation, sand scraping, or minor beach renourishment.”⁶⁹ The property owners are responsible for overall maintenance of the sandbags as well as the complete removal of the bags when so ordered by DHEC.⁷⁰ Overall, critics

61. See generally, e.g., Charles Swenson, *Second Permit Extension for Renourishment Raises Concerns for Turtles*, COASTAL OBSERVER (July 15, 2022), <https://coastalobserver.com/second-permit-extension-for-renourishment-raises-concern-for-turtles/> [<https://perma.cc/23W3-GQW6>] (providing a contested case in which a beach renourishment project received a special exception permit).

62. See S.C. CODE ANN. § 48-39-290(D) (2008) (detailing requirements associated with special permits in connection with beach erosion control devices and structures).

63. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 11.

64. *Id.*

65. *Id.*

66. *Id.*

67. See Shahid & Colwell, *supra* note 3, at 112–14 (discussing issues regarding sandbag usage as a response to beach erosion); see also Johnson, *supra* note 20.

68. S.C. CODE ANN. § 48-39-10(U) (2008).

69. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 13.

70. *Id.*

argue that Emergency Orders and “temporary” sandbags are potential loopholes for circumventing the Act’s ban on permanent hard structures.⁷¹

As previously stated, many South Carolina coastal communities have largely relied on beach renourishment to combat erosion and rising sea level in recent decades.⁷² The Act “promote[s] carefully planned renourishment as a means of beach preservation and restoration where economically feasible.”⁷³ The process of beach renourishment can occur in multiple ways, including “min[ing] sand from pits on land and truck[ing] it to the eroded beach, or dredg[ing] sand from offshore sites and pumping [the sand] onto shore.”⁷⁴ Beach renourishment projects typically occur approximately every seven to ten years, so they are not considered a long-term solution for combatting natural beach erosion.⁷⁵

Beach renourishment projects aim to “preserve the ecology and natural landscape of the beach.”⁷⁶ However, such projects potentially harm coastal wildlife and only provide a short-term solution to beach erosion and sea-level rise.⁷⁷ Supporters of beach renourishment argue that “artificially widening a beach can reduce damages from storm surges and waves during hurricanes.”⁷⁸ Those supporters also suggest that “wide sandy beaches are the central attraction of [South Carolina’s] coastal tourism, which draws billions in revenue each year, and supports local businesses.”⁷⁹ Therefore, supporters emphasize that, absent beach renourishment, tourism decline would remove an enormous tax stream from visitors’ spending at the local and state levels.⁸⁰

However, critics argue that beach renourishment is often short-term, expensive, and wasteful.⁸¹ Beach renourishment projects typically must be repeated approximately every seven to ten years, thereby making beach renourishment arguably less economically feasible than other erosion control methods.⁸² Furthermore, by potentially attracting visitors to erosion-impacted

71. *See id.* at 13–14.

72. *See Tibbets, supra* note 13, at 12.

73. § 48-39-260(5).

74. Tibbets, *supra* note 13, at 4.

75. *See* Prentiss Findlay, *Battling Erosion an Endless Job for South Carolina Beach Towns*, POST & COURIER (Apr. 23, 2017), https://www.postandcourier.com/news/battling-erosion-an-endless-job-for-south-carolina-beach-towns/article_09e10444-205a-11e7-88fa-07bc76aa9e23.html [<https://perma.cc/X9XY-JV33>].

76. Naismith, *supra* note 14, at 38.

77. *Id.*

78. Tibbets, *supra* note 13, at 4.

79. *Id.*

80. *See id.*

81. *See* Lewis Van Alstyne III, *Changing Winds and Rising Tides on Beach Renourishment in Florida: Short-Term Alternatives and Long-Term Sustainable Solutions Using Law and Policy from Florida and Nearby States*, 11 FLA. A&M U. L. REV. 283, 293–96 (2016) (discussing issues associated with beach renourishment projects).

82. *Id.* at 296.

beaches instead of naturally healthy beaches, critics suggest that beach renourishment is irresponsible and shortsighted.⁸³ Lastly, it is important to note that beach renourishment alone “will not stop an inexorable rise of the sea,” so longer-term measures are also necessary to combat beachfront erosion.⁸⁴

In connection with beach renourishment, a recent policy shift occurred pertaining to the Act’s original policy of promoting an “orderly retreat from the sea.”⁸⁵ Originally, the Act discouraged new construction near the beach and dune system and encouraged owners with structures too close to the beach to retreat from those at-risk areas.⁸⁶ The Act’s initial policy involved a forty-year period of “managed retreat from imperiled areas, with safety, environmental protection, and tourism as primary objectives.”⁸⁷ Policymakers’ intentions regarding retreat were that newly constructed structures “would be significantly set back from the ocean, and construction of new seawalls and repair of old ones would be prohibited.”⁸⁸ However, wide-scale retreat never fully developed.⁸⁹ Efforts to encourage retreat have been unsuccessful, in part because beach renourishment has largely kept pace with erosion in South Carolina, because it is “politically and economically difficult to back off of a highly developed coastline,” and because “[p]eople don’t want to give up [the] front row of houses.”⁹⁰ Most importantly, the Act did not contain any measures that required retreat with respect to existing structures.⁹¹ Therefore, the Act’s retreat policy only affected undeveloped beach lots, as well as the rebuilding of structures wholly or partially destroyed by storms.⁹²

As a result, in 2018, South Carolina officially replaced the Act’s long-standing policy of retreat with a “policy of beach preservation.”⁹³ Beachfront “preservation” can be defined as the “implementation of coastal management techniques such as beach nourishment, the landward movement and/or removal of habitable structures whenever necessary and feasible, the conservation of undeveloped shorelines and sand dune creation, and stabilization using sand fencing and native vegetation.”⁹⁴ Supporters of beach preservation suggest that it is easier to implement than a retreat initiative and

83. Tibbets, *supra* note 13, at 4.

84. *Id.* at 6.

85. *Id.* at 9; accord Jones & Pippin, *supra* note 25, at 327.

86. See S.C. CODE ANN. § 48-39-250 (2008 & Supp. 2022).

87. Jones & Pippin, *supra* note 25, at 327.

88. Tibbets, *supra* note 13, at 9.

89. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 5.

90. Tibbets, *supra* note 13, at 10.

91. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 5.

92. See *id.* at 6.

93. See S.C. CODE ANN. § 48-39-280(A) (2008).

94. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 6.

that preservation can arguably encourage “new and innovative erosion control measures.”⁹⁵

However, others remain skeptical. Critics emphasize that forced retreat is arguably unavoidable for high-risk coastal communities, so a policy of “beach preservation” is simply delaying the inevitable.⁹⁶ Additionally, critics argue that “beach preservation” is not a clearly defined term and can therefore be interpreted differently by multiple parties.⁹⁷ Ultimately, state lawmakers are attempting to utilize the Act “to balance economic development and private property rights with public access and conservation of fragile public trust resources.”⁹⁸

Additionally, South Carolina officially adopted a “hold the line” policy in 2018, which stated that the 2018 jurisdictional baselines and setback lines “do not move landward from their positions set during the 2008–2012 establishment cycle.”⁹⁹ The baseline location was determined as “the most seaward location of either the baseline established during the 2008–2012 establishment cycle, or the baseline proposed by DHEC on October 6, 2017.”¹⁰⁰ Similarly, the setback line was specified as “the most seaward location of either the setback line established during the 2008–2012 establishment cycle, or the setback line proposed by DHEC on October 6, 2017.”¹⁰¹ Lastly, DHEC was provided additional guidance for “the implementation of future line review processes, which will be initiated on or after January 1, 2024.”¹⁰²

Prior to the 2018 “hold the line” policy, DHEC periodically moved state beachfront jurisdictional lines “either seaward or landward, depending on long-term erosion rates and changes to the shoreline.”¹⁰³ In multiple South Carolina beachfront areas during recent decades, “[p]eriods of [natural or man-made] accretion . . . resulted in the seaward movement of jurisdictional lines, bringing development closer to dynamic shorelines.”¹⁰⁴ Therefore, to establish increased protections against new development along the state’s oceanfront, South Carolina’s recent “hold the line” policy generally restricts future seaward movement of the state’s beachfront jurisdictional lines, absent the granting of a special permit or other Act exception.¹⁰⁵

95. Shahid & Colwell, *supra* note 3, at 117.

96. See Johnson, *supra* note 20 (exploring a temporary solution to rising sea levels in a high-risk coastal community).

97. See *id.* (discussing a possible interpretation of beach “preservation”).

98. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 3.

99. *State Beachfront Jurisdictional Lines*, *supra* note 27.

100. *Id.*

101. *Id.*

102. *Id.*

103. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 8.

104. *Id.*

105. See *State Beachfront Jurisdictional Lines*, *supra* note 27.

Critics of “holding the line” suggest that “restricting the movement of jurisdictional lines seaward would deprive private property owners of certain rights and would amount to a regulatory taking.”¹⁰⁶ Specifically, critics argue that “holding the line” rises to the level of an unconstitutional regulatory taking under the Fifth and Fourteenth Amendments to the United States Constitution, which may occur when a regulation seriously restricts a property owner’s rights.¹⁰⁷ However, others suggest that “holding the line” does not rise to the level of a regulatory taking because there are regulatory remedies for affected property owners, such as “current regulatory provisions allowing reconstruction of existing habitable structures, coupled with the preservation of special permit allowances for building seaward of the baseline.”¹⁰⁸ Importantly, simply because a governmental action ends a financially beneficial circumstance for a property owner does not automatically mean that the property has been negatively affected from a regulatory taking perspective.¹⁰⁹

2. *The Act and Regulatory Takings*

Courts utilize different tests to analyze potential regulatory takings, depending on whether the situation involves a “total taking” or “partial taking.”¹¹⁰ In *Lucas v. South Carolina Coastal Council*, the United States Supreme Court held that government regulation that completely eliminates the economic use of land constitutes a total taking.¹¹¹ The *Lucas* case involved a significant threat to the legality of the Act.¹¹² The case involved two beachfront lots owned by Mr. Lucas on the Isle of Palms in Charleston County, South Carolina.¹¹³ The two lots were located within the Act’s newly created “setback area.”¹¹⁴ Mr. Lucas sued the State of South Carolina and the

106. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 8; *see also* *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992) (detailing the Act’s application when considering possible total regulatory takings of beachfront properties without just compensation), *remanded to* 309 S.C. 424, 424 S.E.2d 484 (1992).

107. *Regulatory Taking*, BLACK’S LAW DICTIONARY (11th ed. 2019); *see also* *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) (“[I]f regulation goes too far it will be recognized as a taking.”).

108. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 8.

109. *See* Robert Meltz, *Takings Law Today: A Primer for the Perplexed*, 34 *ECOLOGY L.Q.* 307, 316–17 (2007) (noting that where regulation incidentally frustrates contractual performance, no taking occurs).

110. *Id.* at 329–30.

111. *See Lucas*, 505 U.S. at 1019.

112. *See* GERED LENNON ET AL., *LIVING WITH THE SOUTH CAROLINA COAST* 183–85 (David M. Bush et al. eds., 1996) (discussing the impact of the *Lucas* case, specifically pertaining to confirming the constitutionality of the Act in South Carolina).

113. *See id.* at 183; *see also Lucas*, 505 U.S. at 1006–07.

114. LENNON ET AL., *supra* note 112, at 183.

South Carolina Coastal Council, arguing that the Act's restriction on beachfront land development deprived him of all "economically viable use" of his property and therefore constituted a taking under the Fifth and Fourteenth Amendments.¹¹⁵ Specifically, Mr. Lucas argued that "the Beachfront Management Act prevented him from making a profit on his land, at least during the period from 1988 to 1990."¹¹⁶

Generally, the issue in *Lucas* was whether the regulation promulgated by the Act constituted a taking of property without just compensation.¹¹⁷ If so, the regulation would be unconstitutional, and the State of South Carolina would be required to pay Mr. Lucas just compensation.¹¹⁸ "Given the enormous amount of property owners who stood to profit from such deregulation, the *Lucas* case represented an almost unimaginable threat to South Carolina's environment."¹¹⁹

In 1992, the United States Supreme Court determined that the regulation would constitute a taking unless South Carolina could identify "background principles of nuisance and property law" that prohibited Mr. Lucas's proposed construction activities.¹²⁰ Importantly, the United States Supreme Court did not find that a taking had occurred, instead holding that the South Carolina Supreme Court erred in its determination that that the so-called "nuisance defense" could be based solely on legislative proclamations.¹²¹ The *Lucas* case was remanded to the South Carolina Supreme Court to determine whether such common law principles existed in South Carolina.¹²² The South Carolina Supreme Court held a hearing on the matter, and the court ruled that there were no such common law principles in South Carolina.¹²³ The *Lucas* case ultimately settled before a damages hearing could take place.¹²⁴

In connection with *Lucas*, when government interference "falls short of completely eliminating use and/or value," courts utilize the test established in *Penn Central Transportation Co. v. City of New York*.¹²⁵ The *Penn Central*

115. *Lucas*, 505 U.S. at 1006–07, 1020.

116. LENNON ET AL., *supra* note 112, at 183.

117. Naismith, *supra* note 14, at 41.

118. *See* LENNON ET AL., *supra* note 112, at 183.

119. *Id.*

120. *Lucas*, 505 U.S. at 1031.

121. *Id.* at 1031–32.

122. *Id.*

123. *Lucas v. S.C. Coastal Council*, 309 S.C. 424, 427, 424 S.E.2d 484, 486 (1992) (order on remand). *See generally* Byrne, *supra* note 7, at 22–26 (detailing the aftermath of the *Lucas* case, as well as arguing that "we should reject *Lucas*'s approach to regulatory takings as willful blindness to accommodate environmental risks.").

124. *See* LENNON ET AL., *supra* note 112, at 185 (generally discussing the events following the *Lucas* case).

125. Meltz, *supra* note 109, at 329; *see also* *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 130–35 (1978).

test for determining whether a partial regulatory taking has occurred involves examining “the government action for its (1) economic impact on the property owner, (2) degree of interference with the owner’s reasonable investment-backed expectations, and (3) character.”¹²⁶ Overall, takings cases frequently involve disputes about coastal property restrictions, so South Carolina regulators must remain aware of potential takings issues when implementing the state’s recent “hold the line” policy along its beachfront properties.¹²⁷

B. DeBordieu Colony

DeBordieu Colony is a private, coastal community located in Georgetown County, South Carolina.¹²⁸ Contained within the larger Debidue Island, the DeBordieu Colony community consists of more than 1,200 homesites and encompasses approximately 2,700 acres of land and wildlife preserve.¹²⁹ DeBordieu Colony’s beachfront area, especially the location’s south end, has experienced high rates of coastal erosion for decades and has been at the center of multiple erosion-related legal challenges.¹³⁰

Debidue Island encompasses three separate sections.¹³¹ The northern portion of the island is undeveloped and susceptible to high rates of erosion because “[t]he area is low, lies in the flood zone, and has been damaged in the past by storms that caused erosion and overwash.”¹³² The island’s middle section encompasses the “luxury development of DeBordieu Colony and the forested high ground on the southern half of the island.”¹³³ The beachfront properties in the middle section are at high risk of erosion and overwash potential.¹³⁴ Lastly, the southern section of the island is an “undeveloped, low-elevation sand flat [that] is an extreme-risk zone subject to flooding and

126. Meltz, *supra* note 109, at 329.

127. See generally, e.g., *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1007 (1992) (providing an example of one takings case that involved a dispute about coastal property restrictions).

128. See Rudeen, *supra* note 3, at 2, 11.

129. See *Experience DeBordieu Colony*, DEBORDIEU COLONY, <https://www.debordieucolony.org/> [<https://perma.cc/643D-CHR9>]; see also *S.C. Coastal Conservation League v. S.C. Dep’t of Health and Env’t Control*, Nos. 19-ALJ-07-0089-CC, 20-ALJ-07-0161-CC, 2021 WL 227378, at *2 (S.C. Admin. L. Ct. Jan. 15, 2021).

130. See Timothy W. Kana, *A Brief History of Beach Nourishment in South Carolina*, 80 SHORE & BEACH, Fall 2012, at 9, 9, 19 (describing DeBordieu Beach as a chronic problem area for erosion); see also Johnson, *supra* note 20.

131. LENNON ET AL., *supra* note 112, at 93.

132. *Id.*

133. *Id.* at 95.

134. *Id.*

overwash.”¹³⁵ The controversial beach preservation and erosion-related disputes primarily occur within Debidue Island's middle section.¹³⁶

DeBordieu Colony's beachfront erosion is considered extreme for South Carolina beaches.¹³⁷ Therefore, DeBordieu Colony has undertaken multiple beach alteration and stabilization projects designed to protect its at-risk or threatened oceanfront development.¹³⁸ In 1981, a bulkhead (seawall) was built at DeBordieu Colony to address erosion.¹³⁹ The original bulkhead failed in 1989 due to Hurricane Hugo and was thereafter rebuilt.¹⁴⁰ The current bulkhead is “approximately 4,500 feet long and terminates about 1,000 feet north of the last house in DeBordieu Colony.”¹⁴¹

DeBordieu Colony also conducted beach renourishment projects in 1990, 1998, 2006, 2015, and 2022.¹⁴² Each renourishment attempt required an increasing amount of sand to protect the beach.¹⁴³ The projects in 1990 and 1998 placed approximately 100,000 to 200,000 cubic yards of sand on the beach.¹⁴⁴ However, the 2006 and 2015 projects were significantly larger, placing approximately 500,000 to 600,000 cubic yards of sand.¹⁴⁵ DeBordieu Colony's most recent project was completed in May 2022, in which property owners privately funded the pumping of approximately 650,000 cubic yards of sand from the ocean floor with a dredge.¹⁴⁶ Overall, as is common with beach renourishment projects, DeBordieu Colony's beachfront area is likely to require additional renourishment efforts in the future.¹⁴⁷

135. *Id.*

136. *See* Kana, *supra* note 130, at 19.

137. Johnson, *supra* note 20.

138. Rudeen, *supra* note 3, at 3.

139. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, Nos. 19-ALJ-07-0089-CC, 20-ALJ-07-0161-CC, 2021 WL 227378, at *5 (S.C. Admin. L. Ct. Jan. 15, 2021).

140. *Id.*

141. *Id.*

142. *See id.* (outlining the recent history of beach erosion issues at DeBordieu Colony); *see also* Swenson, *supra* note 61.

143. *S.C. Coastal Conservation League*, 2021 WL 227378, at *5.

144. *Id.*

145. *Id.*

146. *See* Swenson, *supra* note 61 (outlining the most recent beach stabilization project at DeBordieu Colony); *see also* Charles Swenson, *Ruling Clears Way for DeBordieu to Start Groin Project*, COASTAL OBSERVER (Oct. 1, 2021), <https://coastalobserver.com/ruling-clears-way-for-debordieu-to-start-beach-project/> [<https://perma.cc/X6SN-X9FM>] [hereinafter *Ruling Clears Way for DeBordieu to Start Groin Project*].

147. *See* ASSESSMENT OF SHORELINE MANAGEMENT OPTIONS, *supra* note 15, at 67 (noting that beach renourishment is a viable short-term stabilization option, despite its fiscal-related issues, because renourished beach areas require renourishment in the future).

1. Permit Dispute Case

The following two cases are examples of DeBordieu Colony beachfront property owners' recent attempts to circumvent the requirements of the Act. DeBordieu Colony's most recent beach renourishment project, completed in May 2022, was at the center of litigation regarding DHEC permits for beach renourishment and the construction of three groins along a 1.5-mile section of the island's beachfront area.¹⁴⁸ The permit, originally issued on January 24, 2019, authorized two pertinent activities within the beachfront area at DeBordieu Colony.¹⁴⁹ First, the permit allowed respondent DeBordieu Colony Community Association (DCCA) to conduct a beach renourishment project to add up to 650,000 cubic yards of beach-compatible sand along approximately 1.5 miles of Debidue Island shoreline.¹⁵⁰ Second, the permit authorized the installation of three permanent groins extending from "300 and 400 feet from the back beach/bulkhead to the low tide line."¹⁵¹

DCCA's proposed groin system was to be installed at the southernmost end of its beachfront area, "with the southernmost groin located on the boundary with Hobcaw Barony, the Baruch Foundation property," and the location of the North Inlet-Winyah Bay Estuarine Research Reserve (NERR).¹⁵² The purpose of the proposed groins was to trap sand on the critically eroding area of DeBordieu Colony's beachfront area, thereby slowing the rate of erosion at the location.¹⁵³ Dr. Timothy Kana, President of Coastal Science & Engineering (CSE), estimated that installing the groins would result in the renourishment lasting "twice as long as a renourishment conducted without them."¹⁵⁴ Dr. Kana also predicted that installing the groins "would reduce the frequency of renourishments to approximately every twelve years."¹⁵⁵

148. See generally *S.C. Coastal Conservation League*, 2021 WL 227378, at *1. The procedural history is as follows: The original case was consolidated with another Request for Contested Case filed by the Belle W. Baruch Foundation (Baruch) challenging the same permit issued by DHEC. *Id.* During litigation, Baruch and DCCA filed a Joint Motion for Approval of a Settlement Agreement, contingent upon the court approving an amended permit. *Id.* The court approved the modification, and DHEC issued an amended permit on April 15, 2020. *Id.* Thereafter, the South Carolina Coastal Conservation League contested the original permit and the amended permit, and the hearing was held before the court in August 2020. *Id.*

149. *Id.* at *2.

150. *Ruling Clears Way for DeBordieu to Start Groin Project*, *supra* note 146.

151. *S.C. Coastal Conservation League*, 2021 WL 227378, at *2.

152. *Debidue Groins, II*, S.C. ENV'T L. PROJECT, <https://www.scelp.org/cases/debidue-groins-ii> [<https://perma.cc/T9VY-PN92>] [hereinafter *Debidue Groins, II*].

153. *S.C. Coastal Conservation League*, 2021 WL 227378, at *9.

154. *Id.* at *10.

155. *Id.*

The primary rebuttal of petitioner South Carolina Coastal Conservation League (League) was that the groin installation would exacerbate erosion downdrift of DeBordieu Colony's beachfront area.¹⁵⁶ The League argued that the increased erosion would alter the Baruch Institute's beach and dune system, thereby causing "irreparable harm . . . for downdrift beaches, for wildlife, and for one of the country's last remaining pristine estuaries."¹⁵⁷ However, the court ultimately upheld the granting of the permit, thereby allowing DeBordieu Colony to complete the construction of the groins and renourishment project.¹⁵⁸

The court determined that the groins and beach renourishment were necessary to combat the erosion threatening existing development at DeBordieu Colony.¹⁵⁹ Additionally, the court held that the League failed to show by a preponderance of evidence that DCCA's financial commitment was insufficient to cover the costs of mitigation and/or groin removal, which was a necessary element to overturn the permit's issuance.¹⁶⁰ Furthermore, the court concluded that the DCCA's overall erosion mitigation plan, which recommended renourishment with the installation of three groins, was the best option for minimizing the loss of use and enjoyment of the beach area.¹⁶¹ Therefore, DHEC's issuance of the permit was affirmed, and the project was ultimately completed in May 2022.¹⁶²

2. Sandbag Case

The most recent erosion-related dispute in DeBordieu Colony was the 2022 case before the South Carolina Administrative Law Court, *Coastal Conservation League v. South Carolina Department of Health and Environmental Control*.¹⁶³ The dispute involved four beachfront property owners in DeBordieu Colony who installed permanent sandbag walls in front of their properties for erosion mitigation purposes.¹⁶⁴ The sandbag walls are

156. *Debidue Groins, II*, *supra* note 152.

157. *Id.*

158. *S.C. Coastal Conservation League*, 2021 WL 227378, at *25.

159. *See id.* at *12–13.

160. *Id.* at *14.

161. *Id.*; *see also Ruling Clears Way for DeBordieu to Start Groin Project*, *supra* note 146.

162. *S.C. Coastal Conservation League*, 2021 WL 227378, at *25; *see also Swenson*, *supra* note 61.

163. *See Coastal Conservation League v. S.C. Dep't Health & Env't Control*, No. 22-ALJ-07-0082-CC, 2022 WL 3373821, at *1–13 (S.C. Admin. L. Ct. Aug. 10, 2022) [hereinafter *Sandbag Case*].

164. Chloe Johnson, *Coastal Conversation League Appeals DeBordieu*, POST & COURIER (Mar. 8, 2022), <https://www.postandcourier.com/environment/coastal-conservation-league->

installed at the extreme lower section of a sagging seawall at the southern end of DeBordieu Colony's beachfront area.¹⁶⁵ The sandbag walls are located inland from a newly renourished area of the beach, but the sandbags are expected to become exposed to the ocean when the renourishment washes away "in a few years."¹⁶⁶ In South Carolina, sandbags are temporarily allowed in emergency situations, such as extreme erosion instances or serious threats to property.¹⁶⁷ However, the primary issues in this case were that the homeowners failed to obtain a temporary permit and that they intended the sandbags to remain on the beach in perpetuity.¹⁶⁸

On August 10, 2022, the *Sandbag Case* was dismissed by the court, thereby allowing the property owners to "keep a wall of sandbags they were accused of installing illegally to protect their homes from rising seas."¹⁶⁹ This case stems from the DHEC board approving the sandbags as part of a research project conducted by Dr. Paul Gayes, Director of Coastal Carolina University's Burroughs & Chapin Center for Marine and Wetland Studies.¹⁷⁰ Dr. Gayes stated that he intends to utilize the permanent sandbag installations as a "research study and/or pilot project," which would be permitted as an exemption in the Act and therefore exempt from the traditional permitting process.¹⁷¹ The DHEC board's decision, which occurred on February 10, 2022, overruled members of the DHEC staff who argued that the sandbag walls were illegally installed and that leaving the sandbags did not constitute a proper research project under state law.¹⁷²

Importantly, the case's dismissal was not based on the merits.¹⁷³ Instead, the decision stemmed from the petitioner, the League, failing to provide Dr. Gayes with proper notice of the permit challenge.¹⁷⁴ Therefore, because the League failed to provide Dr. Gayes with notice of the challenge, the case was dismissed.¹⁷⁵

The *Sandbag Case* is significant for multiple reasons. First, the placement of the sandbags, as well as the associated scientific research project, may assist

appeals-debordieu-sandbag-decision-by-dhec/article_cf352fac-9f05-11ec-adbc-938e9e4f1e98.html [https://perma.cc/3YVV-LHXP].

165. Sammy Fretwell, *Property Owners Win Court Case In Sand Bags Fight*, THE STATE, Aug. 25, 2022, at 1A.

166. *Id.*

167. *See Sandbag Case*, 2022 WL 3373821, at *3; *see also* S.C. CODE ANN. REGS. 30-15(H) (Supp. 2022).

168. Johnson, *supra* note 20.

169. Fretwell, *supra* note 165.

170. *Sandbag Case*, 2022 WL 3373821, at *1-2.

171. *Id.* at *2.

172. *Id.*

173. *Id.* at *12.

174. *Id.*

175. *Id.*

environmental experts and decision-makers in determining the impact of permanent sandbag walls at high-risk erosion areas like the southern end of DeBordieu Colony's beachfront area.¹⁷⁶ However, it is important to note that, although sandbags protect homes threatened by the ocean, "they also can speed up erosion of the public beach when hit by waves."¹⁷⁷ Second, this case involves a larger issue regarding whether the state's decision to allow the sandbags to remain permanently in place will "embolden other property owners to install sandbags without state permission, as the DeBordieu Colony property owners did, and to rely on exceptions in the Act that allow for experimental beach protection matters."¹⁷⁸ Therefore, the *Sandbag Case*, as well as the *Permit Dispute Case*, may result in far-reaching ramifications beyond the scope of DeBordieu Colony because the cases arguably serve as roadmaps for parties seeking to bend the rules of the Act.

III. ANALYSIS

The DeBordieu Colony cases highlight examples of parties arguably subverting the rules and intended purpose of the Act.¹⁷⁹ Therefore, to promote the long-term health of South Carolina's at-risk beachfront areas, statutory and regulatory changes are likely necessary to prevent further sidestepping of the requirements of the Act. In 2010, DHEC created the second Blue Ribbon Committee, the "Blue Ribbon Committee on Shoreline Management" (Committee), to address these issues.¹⁸⁰ The Committee published its final recommendations in 2013.¹⁸¹ Although the Committee's recommendations largely failed to gain significant traction with South Carolina's governmental leaders and decision-makers, the following recommendations should be revisited due to the increasing frequency of beachfront erosion-related issues in South Carolina.

A. Continued Ban of New Hard Structures

First, continuing the statewide ban regarding the construction of new hard structures, such as seawalls, revetments, and bulkheads on beachfront areas,

176. Fretwell, *supra* note 165; *see also* Shahid & Colwell, *supra* note 3, at 117 (discussing possible benefits associated with promoting "the investigation and development of additional protective measures that can be implemented to preserve property, and at the same time, protect public resources").

177. Fretwell, *supra* note 165.

178. *Id.*

179. *See id.* (discussing the controversial issues associated with DeBordieu Colony's recent initiatives associated with beachfront management efforts).

180. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 3.

181. *Id.* at 4.

is necessary to battle beachfront erosion seaward of the baseline.¹⁸² Although maintenance of existing erosion control devices is allowed, the “repair and reconstruction of existing erosion control devices is restricted.”¹⁸³ Oceanfront erosion control devices exacerbate erosion rates on adjacent properties, often resulting in the loss of dry sand beach for recreational use and natural habitats.¹⁸⁴ Therefore, state lawmakers should maintain the status quo by continuing to ban construction of new hard structures seaward of the baseline.

B. Restricting Future Seaward Movement of Beachfront Jurisdictional Lines

Second, South Carolina lawmakers should continue to promote a “consistent and more conservative statewide policy that effectively ‘holds the line’ on development along the oceanfront.”¹⁸⁵ As previously discussed, South Carolina officially adopted a “hold the line” policy in 2018, which generally restricts future seaward movement of the state’s beachfront jurisdictional lines, absent the granting of a special permit or other Act exception.¹⁸⁶ Absent the “hold the line” policy, the seaward movement of the jurisdictional lines would permit further development of the area between the former lines and the newly established lines.¹⁸⁷ By continuing to emphasize “holding the line,” South Carolina can more easily prevent future development seaward of the current jurisdictional lines, thereby benefitting the long-term health of South Carolina’s beach communities like DeBordieu Colony.¹⁸⁸ Therefore, by fully implementing a “hold the line” policy that restricts future seaward movement of beachfront jurisdictional lines, South Carolina can more effectively combat beach erosion.

C. Beach Retreat versus Beach Preservation

Third, instead of abandoning a long-term beachfront retreat policy, South Carolina lawmakers should consider adopting a modified approach that combines policies of retreat and preservation. Specifically, by combining a long-term policy of organized “retreat” from at-risk coastal areas with a general emphasis on preservation and “holding the line,” South Carolina can better balance the interests of beachfront property owners with the concerns

182. *Id.* at 7.

183. *Id.*

184. *Id.* at 5.

185. *Id.* at 8.

186. *See* S.C. CODE ANN. § 48-39-280(C) (Supp. 2022); *see also* 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 8.

187. *See* 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 8.

188. *Id.*

of all state citizens pertaining to maintaining the long-term health of the South Carolina coastline.¹⁸⁹

As previously discussed, the Act originally established a forty-year policy of retreat from the shoreline.¹⁹⁰ The retreat policy involved “discouraging new construction in close proximity to the beach/dune system” and encouraging those who have erected structures too close to the system to retreat from it.¹⁹¹ However, widespread active retreat from the beach failed to occur in South Carolina.¹⁹² Instead, South Carolina’s beach communities, including DeBordieu Colony, experienced increased beachfront development in the decades following the 1988 enactment of the Act.¹⁹³

Multiple factors, which remain present today, have contributed to the state’s limited implementation of the retreat policy. For example, the small average size of South Carolina’s beachfront lots makes retreat difficult for property owners because many beachfront lots lack sufficient area to “retreat” from the beach while remaining on the same property.¹⁹⁴ Additionally, the heavy urbanization and lack of affordable land for relocation in the state’s beachfront communities have increased demand for beachfront properties and minimized the incentive for policymakers to promote a “retreat” policy.¹⁹⁵ Also, recent beach renourishment projects have largely kept pace with erosion in most areas in South Carolina.¹⁹⁶ Furthermore, few broad-scale emergency erosion events, such as hurricanes or tropical storms, have occurred in South Carolina in recent decades.¹⁹⁷ Importantly, minimal incentives or financial assistance programs are currently in place to encourage relocation from beachfront lots.¹⁹⁸ Lastly, a significant portion of South Carolina’s developed beachfront property lies within close proximity to the ocean, and “landward movement of existing structures is often not economically feasible for private property owners.”¹⁹⁹ These factors admittedly remain difficult reasons why state policymakers have failed to fully implement a beachfront retreat policy in South Carolina.

Critics argue that the Act’s policy of retreat fails to establish “clear mechanisms to encourage or require active relocation or removal of

189. *See* S.C. CODE ANN. § 48-39-280(C) (Supp. 2022) (detailing South Carolina’s “hold the line” policy).

190. Jones & Pippin, *supra* note 25, at 327.

191. *See* S.C. CODE ANN. § 48-39-250(d) (Supp. 2022) (pre-amendment version originally incorporated the “retreat” policy until May 3, 2018).

192. *See* 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 5.

193. *Id.*

194. *Id.*

195. *Id.*

196. Tibbets, *supra* note 13, at 10.

197. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 5.

198. Tibbets, *supra* note 13, at 10.

199. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 5.

structures.”²⁰⁰ Furthermore, the retreat policy arguably lacks methods to “prevent new development or redevelopment in any areas within the beach/dune system or seaward of the baseline.”²⁰¹ Therefore, the Act’s stated policy of retreat has failed to achieve its intended purpose. Instead, a policy of “beachfront preservation” is likely a better short-term option for mitigating beachfront erosion issues in South Carolina. Preservation is arguably less onerous for policymakers to promote throughout the state and is easier to implement than widescale, organized retreat from the beach.

D. Restricting Usage of Sandbags, Emergency Orders, and Special Permits

Fourth, the long-term health of South Carolina’s beaches requires a modification of the current practices involving erosion management, as is illustrated by the DeBordieu Colony cases. For a modified policy of beachfront preservation to be successful, South Carolina lawmakers should enact stricter policies to minimize “loophole” areas associated with the Act. For example, as is detailed in the *Sandbag Case*, the DeBordieu Colony property owners arguably exploited DHEC regulations associated with Emergency Orders and the installation of permanent sandbags for scientific research purposes.²⁰²

The permanent implementation of sandbags on beachfront areas should be prohibited, and DHEC should outline stricter and clearer guidelines associated with the use of sandbags. Also, DHEC’s requirements associated with the granting of Emergency Orders are arguably too lenient and unclear, specifically regarding the usage of sandbags and erosion control devices. The Committee noted that “serious deficiencies exist, specifically pertaining to when it is appropriate to issue an Emergency Order, what design criteria should be applied to temporary structures, and what administrative enforcement procedures should be used when the criteria of an issued Emergency Order are not met.”²⁰³ For a beachfront preservation policy to be successful in South Carolina, state lawmakers must include more specific and strict regulations to limit future exploitation of the Act.

In connection with Emergency Orders, state lawmakers should also emphasize prohibiting the use of permanent sandbags for emergency erosion control usage. Permanent sandbags exacerbate long-term erosion problems because “[e]ven a well-designed sandbag revetment has the same potential to cause increased erosion at the site and along adjacent beach property as would

200. *Id.*

201. *Id.*

202. See Fretwell, *supra* note 165.

203. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 13.

a rock revetment or wooden bulkhead.”²⁰⁴ Furthermore, when compared to minor beach nourishment and sand scraping, sandbags can cause significant environmental harm and should only be used in the more serious shoreline emergencies.²⁰⁵ Sandbags essentially function as hard erosion control devices by reinforcing upland property while exacerbating erosion and degrading public beach accessibility.²⁰⁶ Therefore, South Carolina lawmakers should incentivize the removal of permanent sandbags at DeBordieu Colony and discourage the use of permanent sandbags throughout the state’s beachfront areas.

To properly incentivize the removal of sandbag installations, the Committee specifically discussed the requirement of a “sufficient financial bond to allow DHEC to remove sandbags in the event of non-compliance” by the property owner.²⁰⁷ The financial commitment would create a substantial incentive for “long-term shoreline change planning, timely execution, . . . and an implicit preference for ‘soft’ intervention strategies, if feasible.”²⁰⁸ A financial incentive is one possible mechanism for state legislators to minimize the long-term negative consequences associated with permanent sandbag walls on South Carolina beaches. Although financial issues were less prominent in the recent DeBordieu Colony cases due to the property owners’ private funding of the beach preservation actions at issue, the DeBordieu Colony cases nevertheless highlight that financial incentives play a potentially significant role in determining the erosion mitigation methods utilized by South Carolina beachfront communities.²⁰⁹

In connection with Emergency Orders and permanent sandbags, DHEC should consider reexamining its frequent granting of special permits in connection with the construction of habitable structures seaward of the baseline.²¹⁰ Although the continued availability of the special permit provision is important as a remedy for countering assertions of regulatory takings, DHEC should consider “whether a proposed structure would be constructed on renourished beach when evaluating a request for a special

204. *See id.* at 13–14 (outlining various issues associated with the use of sandbags in conjunction with long-term erosion control plans).

205. *See* Shahid & Colwell, *supra* note 3, at 112–14 (discussing issues regarding sandbag usage as a response to beach erosion); *see also* Johnson, *supra* note 20.

206. Johnson, *supra* note 20.

207. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 15.

208. *Id.*

209. S.C. Coastal Conservation League v. S.C. Dep’t Health & Env’t Control, Nos. 19-ALJ-07-0089-CC, 20-ALJ-07-0161-CC, 2021 WL 227378, at *14 (S.C. Admin. L. Ct. Jan. 15, 2021) (discussing the DCCA’s method for privately funding its 2022 beach renourishment project).

210. *See* S.C. CODE ANN. § 48-39-290(D) (Supp. 2022) (detailing the requirements associated with special permits).

permit to construct a habitable structure seaward of the baseline.”²¹¹ Ongoing maintenance of beach renourishment areas requires a significant financial commitment,²¹² so it is important that DHEC more strongly consider the vulnerability of a property’s location during the evaluation of a special permit request.²¹³ Overall, for South Carolina to best combat long-term beachfront erosion issues, these potential “loopholes” should be addressed to ensure that the Act cannot be easily exploited.

E. Utilize Beach Renourishment Projects as a Short-Term “Solution”

Finally, South Carolina should continue utilizing beach renourishment projects as a temporary means of mitigating beachfront erosion. Although beach renourishment is likely the best short-term option for combatting beachfront erosion, it is neither a long-term nor permanent solution.²¹⁴ Admittedly, there are emerging challenges associated with nearshore alteration projects and beach renourishment projects, “including the availability and potential competition for beach compatible sand for renourishment, the ability to evaluate potential downdrift impacts, ecological and economic sustainability, and the implementation of effective regulatory and project monitoring standards.”²¹⁵

Furthermore, issues persist with acquiring sufficient funding for widespread renourishment projects throughout the state.²¹⁶ Coastal communities often have difficulty uniting behind community-funded beach renourishment projects.²¹⁷ The most successful beach renourishment projects are generally “undertaken by municipalities through ordinances requiring private contribution.”²¹⁸ In South Carolina, several beach communities, including DeBordieu Colony, privately funded their beach renourishment projects.²¹⁹ However, without a dedicated funding source enforceable through

211. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 11.

212. Van Alstyne III, *supra* note 81, at 286.

213. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 11.

214. Van Alstyne III, *supra* note 81, at 286.

215. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 21.

216. Shahid & Colwell, *supra* note 3, at 112.

217. See, e.g., Christopher Flavelle, *Tiny Town, Big Decision: What Are We Willing to Pay to Fight the Rising Sea?*, N.Y. TIMES (Mar. 14, 2021), <https://www.nytimes.com/2021/03/14/climate/outer-banks-tax-climate-change.html> [<https://perma.cc/W57H-GFDB>] (highlighting financial controversies related to coastal erosion mitigation in the coastal town of Avon, North Carolina).

218. Shahid & Colwell, *supra* note 3, at 112–13.

219. See S.C. Coastal Conservation League v. S.C. Dep’t Health & Env’t Control, Nos. 19-ALJ-07-0089-CC, 20-ALJ-07-0161-CC, 2021 WL 227378, at *13 (S.C. Admin. L. Ct. Jan. 15, 2021) (discussing the DCCA’s method for privately funding its 2022 beach renourishment project).

an ordinance, it is often difficult to organize communities to pursue and fund renourishment.²²⁰ Therefore, many beachfront communities in South Carolina have failed to implement beach renourishment projects because of insufficient financial resources.²²¹

Anticipating this funding issue, the Committee unanimously supported a “Beach Renourishment Trust Fund” as an appropriate mechanism for funding public beach renourishment projects throughout the state.²²² However, to provide the necessary current and future financial resources, South Carolina legislators must consider utilizing state tax resources to ensure reliable and incremental funding of the Trust Fund.²²³ This economic requirement is an obvious political issue, so state legislators should emphasize the economic and environmental importance of maintaining the long-term health of South Carolina’s beach communities. Overall, because beach renourishment projects are merely a temporary method of combatting erosion, state decision-makers should also continue emphasizing realistic, long-term options to maintain the health of South Carolina’s beaches.

IV. CONCLUSION

Coastal tourism is vital to South Carolina’s economy, and adequate options must be implemented to sufficiently support the state’s beach communities. Proper state legislative planning, support, and guidance are crucial to ensure that private parties cannot exploit the Act’s policies and procedures. Individuals and government entities must adopt a long-term perspective when considering shoreline change issues because a recurring series of short-term fixes will lead to costly and repetitive corrective actions, as is illustrated at DeBordieu Colony.²²⁴

Although long-term retreat is likely inevitable for high-risk areas along South Carolina’s coastline, a retreat initiative is arguably an unrealistic policy for state lawmakers to promote at this time. Instead, beachfront preservation is likely easier to implement throughout South Carolina’s coastal communities, which otherwise lack incentive to abandon their beachfront properties. However, by solely focusing on beach preservation, South Carolina will potentially be ill-prepared to combat beach erosion in the long run.

220. Shahid & Colwell, *supra* note 3, at 113.

221. *See id.* (discussing financial difficulties associated with beach renourishment in South Carolina).

222. 2013 BLUE RIBBON COMMITTEE, *supra* note 2, at 21.

223. *Id.*

224. *See* LONDON ET AL., *supra* note 15, at 68.

Therefore, state lawmakers should consider a modified approach that utilizes a long-term retreat initiative for severe erosion areas while continuing to implement a broad initiative of beach preservation and “holding the line.”²²⁵ Additionally, South Carolina lawmakers should enact stricter policies to minimize potential “loophole” areas associated with the Act, including DHEC’s authorizations of special permits and other related exemptions. Overall, by acknowledging the likely inevitability of beach retreat from at-risk areas while also broadly utilizing beach preservation initiatives, including beach renourishment, South Carolina will be better prepared to combat beach erosion in the coming decades.

225. *See* S.C. CODE ANN. § 48-39-280(C) (Supp. 2022).