STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.: 2020-CP-07-02173
COUNTY OF BEAUFORT	)	
	)	
DOLPHIN DAUFUSKIE GROUP, LLC And DOLPHIN SHARED MGMT SERVICES, LLC,	)	
	)	
Appellants,	)	**MOTION TO INTERVENE**
	)	
v.	)	
	)	
COUNTY OF BEAUFORT AND BEAUFORT COUNTY ZONING BOARD OF APPEALS,	)	
	)	
Respondents.	)	
_____	)	

TO: APPELLANTS DOLPHIN DAUFUSKIE GROUP, LLC AND DOLPHIN SHARED MGMT SERVICES, LLC, AND RESPONDENTS COUNTY OF BEAUFORT AND BEAUFORT COUNTY ZONING BOARD OF APPEALS:

YOU WILL PLEASE TAKE NOTICE that the parties listed herein hereby move this Court, pursuant to S.C. Code Ann. §6-29-825(A) and Rule 24, SCRCP for an Order permitting it to intervene in this proceeding. The moving parties ("Proposed Intervenors") are as follows: Sallie Ann Robinson; John and Susan Van Horn; Eddie and Julie Pennebaker; Georgia Shotts Renck; Kimberley Kerchmar; Freddie Grant; Ella Mae Stevens, the Community Preservation Zone Association and the Gullah/Geechee Sea Island Coalition. The basis for this motion is as follows:

BACKGROUND

This matter is an appeal of the Beaufort County Zoning Board of Appeals' ("BZOA") denial of the Appellants' Special Use Permit application to construct a sand mine on Daufuskie Island. The proposed mine was to be located within the unincorporated boundaries of Beaufort County.

The Beaufort County Staff Review Team reviewed the application request and recommended to the BZOA that the application be approved with conditions. The BZOA held a hearing on BPI's application for a Special Permit on September 24, 2020 and voted unanimously to deny the special permit. The BZOA's Written Decision and Order was entered and filed on September 30, 2020. See Written Decision and Order, **Exhibit 1**. Appellants filed this appeal on November 6, 2020. The Proposed Intervenors are filing this motion expeditiously in order to protect the interests of its members who all own property on Daufuskie Island. Daufuskie Island is listed on the National Register of Historic Places and is an invaluable part of South Carolina's history and culture.

INTERVENORS

Sallie Ann Robinson is a sixth generation Gullah born and raised on Daufuskie and resides at 188 School Road on Daufuskie Island. She regularly conducts an authentic Gullah tour, where she visits the historic trial extremely close to the mining project location, the Oyster Union Society Hall and the historical Mayfield Cemetery. Her concerns include the potential for noise pollution and the clearing of trees and vegetation that function to control flooding.

Georgia Renck owns property at 205 Haig Point Road, who normally visits her property for a few months each year. Her concerns include the noise pollution that would inevitably come and the property actually touches Haig Point Road which means it is a recognized part of the Historic corridor and, therefore, it is not in keeping of the Historic area to have a sand mine dug there. Further, there are 4 other existing sand mine locations on the island- a fifth is not needed. They are located on the Webb Track, Amber Lane, White School Road and Oak Ridge properties.

Eddie and Julie Pennebaker reside at 58 Mayfield Road. The proposed sand mine location's boundary is the shared property boundary line with the Pennebakers. Their concerns include

creating opportunities to attract such nuisance species as alligators, mosquitos and venomous snake species, to be located literally in their backyards.

John and Susan Van Horn own property at 62 Mayfield Road. Though their permanent residence is located on Hilton Head Island, they spend the majority of their time on Daufuskie. The proposed sand mine would be located only about 200 to 300 feet from their back door.

Kimberley Kerchmar owns property at 7 Hinson White. She along with the rest of her family spend about half of the year there. She also depends on the income she receives from renting her property the other half the time. She plans to move there permanently in the next couple of year. Her property also directly adjoins the proposed sand pit. She has similar concerns about the noise pollution and impacts to the historic properties and culture of the island.

Freddie Grant owns property at 231 Haig Point Road. He is a native of Daufuskie Island and all of his family lives on the island and supports the Gullah culture there by putting on a weekly produce and fish market. He is extremely invested in the well-being of Daufuskie Island and shares many of the same concerns as the other Proposed Intervenors.

The Community Preservation Zone Association is made up of both non-residential and residential property owners, who all seek to improve the quality of life on Daufuskie Island.

The Gullah/Geechee Sea Island Coalition was founded in 1996 by Queen Quet, Chieftess and Head of State for the Gullah/Geechee Nation. It has become the leading organization for the continuation of the Gullah/Geechee culture and protection of the rights of the Gullah/Geechees.

The proposed project would be located at 255 Haig Point Road, in the middle of the residential neighborhood where the Proposed Intervenors own property. The proposed mine would require the excavation of 4.8 acres.

GROUNDS FOR INTERVENTION

The grounds the BZOA identified in their written decision are as follows:

1. The special use is inconsistent with the Beaufort County's Comprehensive Plan's purposes, goals, objectives, policies and applicable standards of this Development Code, including standards for building and structural intensities and densities and intensities of use;
2. It is incompatible with the character of the land in its vicinity;
3. Is not designed to minimize adverse impacts on the environment, traffic, congestion, infrastructure or governmental services.

Exhibit 1. The Proposed Intervenors concur with these reasons for denial and also have their distinct bases for objection to this project.

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 ("the Act"), S.C. Code Ann. §6-29-310 et seq., governs appeals from boards of zoning appeals as well as intervention in those proceedings. Section 6-29-825(A) provides that in an appeal of a zoning board decision "[a] person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals." Further, where an appellant requests pre-litigation mediation, an intervenor must have the opportunity to attend the mediation. §6-29-825(B). The South Carolina Rules of Civil Procedure provide for intervention in this instance where a statute confers the right to intervene. SCRCP Rule 24.

The Proposed Intervenors' standing to intervene in this matter is readily apparent from our Court of Appeals' recent decision in Citizens for Quality Rural Living (CQRL), Inc. v. Greenville Planning Commission & RMDC, Inc., 426 S.C. 97, 825 S.C.2d 721 (Ct. App. 2019). In that case, a community group attempted to appeal a county land use decision under the Act, but the Circuit

Court determined that the group lacked standing. The Court of Appeals reversed, concluding that the community group had established such interest because its "members, including those who own property and live in the immediate vicinity of the proposed subdivision, spoke in opposition to the proposal. They expressed concern over . . . environmental problems that could result from the subdivision as well as the incompatibility of the subdivision with the surrounding rural community." Id. at 101. The court relied on the purpose and intent of the Comprehensive Planning Enabling Act, which is "to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes" and "to assure ... the wise and timely development of new areas ... in harmony with the comprehensive plans of municipalities and counties." § 6-29-1120. The court held that "[i]t would defeat these very purposes to deny affected persons the right to appeal a commission decision to the circuit court." Citizens at 111. The very clear message emerging from the CQRL case is that the right of stakeholders to participate in legal proceedings under the Act should be construed broadly.

Just as with the community group in the CQRL case, the Proposed Intervenors participated at the BZOA hearing here and have expressed concerns over the mine, their objections being included in the certified record on appeal. Given their participation and allegations, the Proposed Intervenors have demonstrated a "substantial interest" in the decision at issue in this appeal, the only requirement imposed by the statute, and is thus entitled to intervene. And it must have the opportunity to participate in the pre-litigation mediation requested in this case.

In addition, the Proposed Intervenors are so situated that the disposition of the appeal may as a practical matter impair or impede its ability to protect its interest. Here, the government's interest is different from that of private citizens because the government has a "basic duty of

representing the people in matters of public litigation" and serves "in a representative capacity on behalf of its people." Stuart v. Huff, 706 F.3d 345, 351-52 (4th Cir. 2013); see also In re Sierra Club, 945 F.2d 776, 780 (4th Cir. 1991) (stating that a government party should represent all citizens including those who may oppose the proposed intervenor's interest). In the present case, while county represents the members of the public generally, the Proposed Intervenors would be directly impacted by this activity of it were to be constructed. This difference in their respective interests means that Proposed Intervenors and the BZOA may diverge in the course of litigating the present action. See, e.g., Funds for Animals, Inc. v. Norton, 322 F.3d 728, 736 (D.C. Cir. 2003) (granting intervention where federal defendant and proposed intervenor's interests "might diverge during the course of litigation"); Natural Res. Def. Council v. Costle, 561 F.2d 904, 912 (D.C. Cir. 1977) (reversing the district court's denial of motions for intervention and finding separate representation justified where the proposed intervenor "may well have honest disagreements with EPA on legal and factual matters").

It is significant to note that the County staff, prior to the BZOA's decision, concluded that the project should be approved. Beyond the divergence between county's interest and that of Proposed Intervenors is the legitimate concern that the county will not vigorously defend its denial. One of the Proposed Intervenors' concerns is that the county may reach settlement with the Appellants, particularly given its request for pre-litigation, in a way that harms the Proposed Intervenors' interests. See Defenders of Wildlife, 281 F.R.D. at 269 (finding that the proposed intervenor "satisfied its minimal burden of showing that representation of its interests, absent intervention, may be inadequate" where the proposed intervenor argued that the defendant "could settle this case in a matter that would harm [proposed intervenor's] interests"). There is no

guarantee that the existing parties will not change their positions and reach a settlement in mediation that would result in the negative impacts to the property owners identified herein.

South Carolina courts interpret the rules of intervention liberally, in particular where the declaration of the rights of all affected parties will promote judicial economy. See Stoney v. Stoney, 425 S.C. 47, 819 S.E.2d 201 (Ct. App. 2018); Berkeley Electric v. Town of Mt. Pleasant, 302 S.C. 186, 392 S.E.2d 712 (1990). In this case, these property owners and the historic properties and culture of the island could be substantially impaired by a reversal of the BZOA's decision, §6-29-825(A) dictates that intervention be granted.

CONCLUSION

For these reasons, the Proposed Intervenors listed herein respectfully request that it be granted intervention in this matter. The undersigned has consulted with the parties' counsel concerning this motion. The parties had not indicated its position as of this filing.

Respectfully submitted,

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

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