

No. COA26-2

FIRST DISTRICT

NORTH CAROLINA COURT OF APPEALS

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CHERRY, INC.,

Plaintiff-Appellant,

v.

TOWN OF NAGS HEAD,

Defendant-Appellee.

From Dare County

No. 23CVS000248-270

\*\*\*\*\*

**THE SURFRIDER FOUNDATION, NORTH CAROLINA LAND OF WATER, DR. ROBERT YOUNG, AND DR. STANLEY RIGGS' MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT-APPELLEE**

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TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

The Surfrider Foundation, North Carolina Land of Water, Dr. Robert Young, and Dr. Stanley Riggs hereby request leave, pursuant to Rule 28.1 of the North Carolina Rules of Appellate Procedure, to file an *amicus curiae* brief in support of Defendant-Appellee. The proposed brief is filed contemporaneously with this motion.

**INTERESTS OF AMICI CURIAE**

*Amicus curiae* The Surfrider Foundation (Surfrider) is a national nonprofit organization dedicated to the protection and enjoyment of the world's ocean, waves, and beaches for its members and the broader public. Two of Surfrider's primary initiatives are safeguarding natural shorelines and protecting low-impact public beach access. Surfrider has approximately 350,000 members and supporters organized into approximately 80 volunteer-driven Chapters, including the Outer Banks Chapter, which was founded in 1992. Its members include people who live in Nags Head, and people who enjoy fishing, birding, surfing, walking, swimming and otherwise recreating at the beach. Surfrider's Outer Banks Chapter members are harmed by structures at risk of collapse from erosion and sea level rise and other encroachments on the sandy beach. Members report feeling concerned and unsafe due to the treated wood, sandbags, and other debris that they see washed ashore on Outer Banks beaches from collapsed coastal structures encroaching on the beach. These debris fields impair their ability to surf, walk, and fish in affected areas.

Surfrider advances its primary initiatives through a combination of legal and policy advocacy along with active beach stewardship. In North Carolina, Surfrider chapters have engaged in state and local advocacy

campaigns, and the organization has served as *amicus curiae* in cases involving the protection of the state’s ocean beaches and associated public rights. For example, Surfrider filed an *amicus* brief with the North Carolina Supreme Court in a case that affirmed the public’s right to access, use, and enjoy North Carolina’s dry sand beach. *See Nies v. Town of Emerald Isle*, 244 N.C. App. 81, 780 S.E.2d 187 (2015), *aff’d*, 369 N.C. 484 (2016).

The Outer Banks Chapter’s programs include coordinating the “Adopt-A-Beach” program, to help keep beaches clean and free of debris for the public to safely use and enjoy,<sup>1</sup> and a campaign to support science-informed beach renourishment alternatives in Dare County. The campaign is motivated by the negative impacts that sand renourishment projects can have on the coastal environment, including impacts to nearshore fish habitat and the fishing economy.<sup>2</sup>

Clean and healthy beaches are important for Surfrider’s Outer Banks Chapter members as they value the preservation and protection of the natural balance for all life, and the recreational uses that a healthy coastal environment supports. At-risk structures encroaching on the beach and

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<sup>1</sup> Cleanup locations include beaches within one mile of the former location of the Cherry Inc. house, including at Limulus Drive and Seaside Drive.

<sup>2</sup> *See, e.g., Support Beach-Fill Alternatives in Dare County*, Surfrider Found., <https://outerbanks.surfrider.org/campaigns/support-beach-fill-alternatives-in-dare-county> (last accessed May 12, 2026).

collapsing houses that result in dangerous debris negatively impact tourism, the local economy, and the interests of Surfrider's members.

Surfrider's longstanding interests in and commitment to preserving and enhancing the quality of North Carolina's valuable and dynamic coastline, including for diverse low-impact recreational uses, qualifies the organization to aid the Court's understanding in this case.

*Amicus curiae* North Carolina Land of Water (NCLW) is a North Carolina-focused non-profit organization dedicated to research, education, and stewardship. Working in collaboration with other organizations, NCLW seeks to sustain the state's coastal resources – including its history and economic and cultural resources. It develops and disseminates lesson plans, conducts original research, works to guide resilient economic planning, and supports regional conservation, restoration, and preservation efforts. Its interests are affected by the resolution of this case, and its expertise is relevant to the court's understanding of the historic and scientific context underlying the legal issues at bar.

*Amicus curiae* Dr. Stanley R. Riggs has spent his professional life studying, researching, and educating others – students, law-makers, and laypersons alike – about the science of coastal environments. Now professor emeritus at Eastern Carolina University (ECU), Dr. Riggs joined the ECU

faculty in 1967 and established ECU's program in geology and marine science. He is widely recognized and celebrated as a leader in his field; among other awards, he is the recipient of the O. Max Gardner Award, conferred by the Board of Governors of the University of North Carolina System in 1983 in recognition of his contributions "to the welfare of the human race"; the Francis P. Shepard Medal of the Society for Sedimentary Geologists for "a sustained record of outstanding research contributions to marine geology," conferred in 2021; and The North Carolina Award, the state's highest civilian award, conferred in 2022 in recognition of his significant contributions to science. He received ECU's highest honor of Distinguished Professor in 1994.

Dr. Riggs earned his PhD in Geology from the University of Montana. In his 60-plus years of research and work in North Carolina, he has authored dozens of scientific papers on the geomorphic and ecologic dynamics of the state's barrier islands, coastal dynamics, and policy. His research includes patterns of erosion and deposition of sand along barrier islands, the impacts of storms on North Carolina's waterfronts, and the evolution of the northern Outer Banks and associated estuarine system. He has also published several books on coastal dynamics and climate change, including "Drowning the North Carolina Coast" and "The Battle for North Carolina's Coast."

Dr. Riggs has also contributed as an adjunct professor at several leading universities and served on advisory panels that informed state and regional coastal management policies. As a scientist and educator, he is an experienced and trusted advisor, and his expertise qualifies him to educate the court about the natural and dynamic processes that shape our coasts.

*Amicus curiae* Dr. Robert S. Young grew up vacationing at Nags Head with his family and has directly experienced the dynamic ecosystem of the Outer Banks. He now serves as the Director of the Program for the Study of Developed Shorelines (PSDS), a joint venture of Duke University and Western Carolina University (WCU) and is a Professor of Geology at WCU; he is also a licensed professional geologist in three states, including North Carolina. He earned his undergraduate degree in Geology from the College of William & Mary, graduating Phi Beta Kappa, and his PhD in Geology from Duke University where he was a James B. Duke Distinguished Doctoral Fellow.

Dr. Young researches coastal processes and examines the economics, policies, and strategies for managing hazards in a time of rising sea levels and increasing intensity of coastal storms, and translates that knowledge into recommendations for science-based management of developed shorelines. With PSDS, he has worked with the National Park Service to develop a

methodology for evaluating the vulnerability of infrastructure at coastal parks to aid the agency's risk management and adaptation plans. Dr. Young has more than 100 technical publications and serves on the Editorial Board of the Journal of Coastal Research and Environmental Geosciences. In addition to other professional service, he served on the Science Panel for the North Carolina Coastal Resources Commission for eight years. Dr. Young's decades of work to educate the public and policymakers about the risks and trade-offs inherent in managing developed shorelines uniquely qualify him to aid the court's understanding of the law.

**REASONS WHY AN *AMICUS CURIAE* BRIEF IS BENEFICIAL**

*Amici* have significant experience and expertise with the issues at the heart of this case. As the accompanying brief reflects, Plaintiff-Appellant's takings claim is inextricably intertwined with the practical realities of chronic erosion and rising sea levels along North Carolina's coast and the complex economic and policy challenges that these forces present for state and local governments. *Amici* include organizations whose members are directly affected by these issues as well as experts who have spent their professional careers informing the public and policymakers about these forces and the dilemmas they pose. The *amicus* brief would provide valuable information about these considerations to the Court, allowing it to better

understand the natural forces that gave rise to the events of this case, the difficult decisions that coastal communities like Nags Head face, and the public interests at stake.

Furthermore, the *amicus* brief would also provide beneficial legal background. For example, as noted above, Surfrider Foundation has previously served as *amicus curiae* in coastal takings litigation, including in North Carolina. *See, e.g., Nies v. Town of Emerald Isle*, 244 N.C. App. 81, 780 S.E.2d 187 (2015), *aff'd*, 369 N.C. 484 (2016) (participated as *amicus curiae*). Drawing on this expertise, the *amicus* brief will enable the court to better understand fundamental legal principles that have been established over decades of coastal property cases, all of which govern the present case.

Finally, *Amici* offer a unique and valuable perspective based on their collective experiences engaging with the significant public safety issues of chronic erosion and rising seas, from persistent road washouts to collapsing oceanfront houses, up and down North Carolina's coast. *Amici* are aware of the chilling effect that takings claims may have on reasonable, and often vital, regulatory efforts, which ultimately affect their own and their members' ability to enjoy North Carolina's ocean beaches. By speaking to these concerns, the *amicus* brief will enable the Court to better understand the broader policy implications of its decision in this case.

Thus, *Amici*'s perspective will provide the Court with important insight into the practical, legal, and policy context and implications of this case.

### **ISSUES OF LAW TO BE ADDRESSED AND POSITION OF *AMICI***

The *amicus* brief will begin by providing an overview of the natural forces that have long shaped North Carolina's dynamic ocean shoreline as well as the recent escalation in threats to coastal communities due to rising sea levels and accelerating erosion. *Amici* will also discuss the complex policy decisions local governments navigate, faced with the significant costs and public safety risks of persistent road washouts and collapsing oceanfront structures. *Amici* will then review how North Carolina courts have repeatedly recognized that coastal property owners cannot fault the government when the ocean and natural processes of erosion take their property. Based on this well-established principle, *Amici* will argue that no compensable taking has occurred in the instant case because Plaintiff-Appellant's losses are all attributable to natural forces, and Plaintiff-Appellant's own inactions, not government action. Finally, *Amici* will explain why, under principles of North Carolina takings law and coastal property law, the Town of Nags Head was under no obligation to provide Plaintiff-Appellant with a "plan for permanent access" to their beach house. *Amici* will conclude with a discussion of why accepting Plaintiff-Appellant's argument

threatens to open a slippery slope of further litigation, with adverse consequences for North Carolina's ocean beaches and the many members of the public who enjoy this constitutionally protected resource.

### **CONCLUSION**

For the foregoing reasons, Surfrider, North Carolina Land of Water, Dr. Robert Young, and Dr. Stanley Riggs respectfully request that the Court grant them leave to file an *amicus* brief in support of Defendant-Appellee.

Respectfully submitted, this 12th day of May, 2026.

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Motion for Leave to File *Amicus Curiae* Brief in support of Defendant-Appellee has been served this day by email, addressed as follows:

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This the 12th day of May, 2026.

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