

extends the public beach area to 10 feet landward of the seaweed line, thereby placing the public beach on previously private lots, such as those owned by Stilts. The Act thus imposes a public easement on Stilts' parcels, authorizes a public invasion of its land, and destroys its right to exclude others from its property. This amounts to a taking and seizure of Stilts' property in violation of the United States Constitution.

PARTIES

3. Plaintiff Stilts, LLC is a Rhode Island limited liability company that owns a small beachfront home and four beachfront lots in South Kingstown, Rhode Island. Title to Stilts' lots includes land lying between the MHT line and 10 feet inland of the seaweed line, an area that is now publicly accessible under the challenged Act.

4. Defendant State of Rhode Island (State) is a body politic and a state of the United States of America.

5. Defendant Rhode Island Coastal Resources Management Council (CRMC) is a state agency created pursuant to R.I. General Laws § 46-23.

6. Under R.I. General Laws § 46-23-1, *et seq.*, of which the Act is now a part, the CRMC has power to enforce the Act through issuance of violation notices, cease and desist orders, administrative fines, and other actions.

7. Under the Act itself, the CRMC has authority to "determine appropriate language and signage details" about the Act "for use at shoreline locations."

JURISDICTION AND VENUE

8. The Court has jurisdiction under R.I. General Laws §§ 8-2-13, 8-2-14, and 9-30-1, *et seq.*, as well as under the Fourth and Fifth Amendments to the United States Constitution.

9. Venue is proper in this Court under R.I. General Laws § 9-4-2.

LEGAL BACKGROUND

10. Rhode Island beaches are generally characterized by the following features: (1) the “mean low tide” (MLT) line (also sometimes called the mean low water mark), which is calculated as the average of low tides over an approximately 19-year period and is typically located near open waters; (2) the “mean high tide” (MHT) line (also sometimes called the “mean high water” (MHW) line), which is calculated as an average of high tides over an approximately 19-year period; (3) the high water line, a mark created by the highest wash of the daily waves and often demarcated by the seaweed, debris, or wrack line that is inland of the MHW line; and (4) the first line of vegetation that spreads continuously inland.

11. The land located between the MHT line and 10 feet inland of the seaweed line is an area of predominantly dry land, such as dry-sand beach or other mostly dry terrain.

12. Under the common law of Rhode Island, the State owns or controls the wet-beach area that extends from the open ocean to the MHT line.

13. Yet, coastal areas lying landward of the MHT line are private property and within the title and rights of private owners like Stilts.

14. Article I, Section 17, of the Rhode Island Constitution recognizes the existence of public rights in the “shore,” stating:

The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values[.]

15. The Rhode Island Constitution does not define the location or extent of the “shore” area to which the public has the rights under Article I, Section 17. However, for more than a century, Rhode Island courts have identified the MHT line (not the more inland high water/seaweed line) as the terminus of the public “shore” area.

16. In 2021, a special legislative commission, the Shoreline Commission, was created to study shoreline access in the State and make recommendations on the issue to the Rhode Island House of Representatives. In a Final Report summarizing its views and recommendations, the Special Commission adopted findings, including that the high water mark/seaweed line is more landward than the MHT line. Ex. 2.

17. On June 26, 2023, the Governor of Rhode Island signed the Act, which is formally entitled, “An Act Relating to Waters and Navigation—Coastal Resources Management Council.”

18. The Act suddenly and dramatically altered Rhode Island’s coastal property boundaries, extending the public beach from its traditional terminus at the MHT line to more inland, private areas located ten feet landward of the seaweed line.

19. The Act declares, in part, that

[t]he general assembly accepts the conclusions of the coastal scientists from the University of Rhode Island who have documented that:

(i) The MHW line is not a visible feature that can be seen on the beach like a watermark or debris line. MHW is an elevation, calculated from the average of all the high tides, two (2) per day in Rhode Island, over a nineteen (19) year period and the MHW line is where this elevation intersects the beach profile. It cannot be determined by the naked eye and requires special surveying expertise and equipment, thereby making it impossible for the general public to know where the line is.

(ii) The MHW line may change on a daily basis. Because the profile or shape of the beach changes constantly, as waves move sand onshore, offshore and alongshore, the location where MHW intersects the beach likewise changes.

20. The Act then states:

use of the MHW for determining shoreline access has restricted the public's rights. Retaining the MHW line rule employed by the court in 1982 results in the public only having meaningful shoreline access at or near the time of low tide, if at all, at some locations. Thus, the constitutional right and privileges of the shore delineated in the 1986 Constitutional Convention amendments have become illusory under such a rule.

. . . Insofar as the existing standard for determining the extent of the public's access to the shore is unclear and not easily discernable, due to the lack of a boundary that can be readily seen by the casual observer on the beach, resulting in confusion, uncertainty and even confrontation, the General Assembly is obligated to provide clarity. This enactment constitutes the necessary clarification in accordance with Article I Section 17 of the Rhode Island Constitution.

21. The Act then redefines the private/public beach boundary as follows:

For purposes of this chapter, the "recognizable high tide line" means a line or mark left upon tidal flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface level at the maximum height reached by a rising tide. The recognizable high tide line may be determined by a line of seaweed, oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the

foreshore or berm, other physical markings or characteristics, or other suitable means that delineate the general height reached by the water's surface level at a rising tide. If there is more than one line of seaweed, oil, scum, fine shell, or debris, then the recognizable high tide line means the most seaward line. In the absence of residue seaweed or other evidence, the recognizable high tide line means the wet line on a sandy or rocky beach. The line encompasses the water's surface level at spring high tides and other high tides that occur with periodic frequency, but does not include the water's surface level at storm surges in which there is a departure from the normal or predicted reach of the water's surface level due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storms.

22. The Act declares that the public now has access and use rights on coastal property, up to 10 feet inland of the high water mark/seaweed line:

the public's rights and privileges of the shore may be exercised, where shore exists, on wet sand or dry sand or rocky beach, up to ten feet (10') landward of the recognizable high tide line; provided, however, that the public's rights and privileges of the shore shall not be afforded where no passable shore exists, nor on land above the vegetation line, or on lawns, rocky cliffs, sea walls, or other legally constructed shoreline infrastructure. Further, no entitlement is hereby created for the public to use amenities privately owned by other persons or entities, including, but not limited to: cabanas, decks, and beach chairs.

23. The Act concludes by instructing the CRMC to "develop and disseminate information to educate the public and property owners about the rights set out in this section" and to "determine appropriate language and signage details for use at shoreline locations."

24. The Act does not include any provision or means to compensate owners of private beachfront lands that are regulated, declared, or treated as a public beach area under color of the Act.

THE EFFECT OF THE ACT ON STILTS' PRIVATE PROPERTY

25. Stilts owns four beachfront lots in South Kingstown, Rhode Island. David Welch is the sole member of Stilts LLC.

26. PARCEL ONE of Stilts' property is bounded on the seaward side by the "high water mark." PARCEL TWO is bounded on the seaward side by the "Atlantic Ocean." PARCEL THREE of Stilts' property is bounded on the seaward side by the "high water line." PARCEL FOUR is bounded on the seaward side by the "mean high water mark." *See* Ex. 3 (Stilts, LLC title documents).

27. A small, two-bedroom, beachfront home exists on the dry-sand portions of Parcel Three of Stilts' property. This home is used by David Welch for personal and family purposes.

28. Portions of Stilts' land lying between the high water mark/seaweed line and 10 feet inland of that line (now subject to public beach use under the Act) are immediately adjacent to, and at times under, the beach house owned by Stilts.

29. There are no recorded public beach access easements or rights-of-way on the title to the land owned by Stilts. Stilts has never dedicated its beach or shoreline properties to public beach use.

30. Stilts and David Welch acquired Stilts' coastal property with the understanding, right, and expectation that the property is for private, exclusive use, including for private family beach gatherings.

31. The Act authorizes the general public to enter, access, and use Stilts' property for unspecified public uses and access, and for indefinite periods of time.

32. The Act imposes a public beach easement on the portions of Stilts' land subject to the Act.

33. The Act divests Stilts of its property right to exclude strangers from the portions of its land subject to the Act.

34. Members of the public have already trespassed on Stilts' beachfront properties under color of the Act.

35. The Act diminishes the value, privacy, and enjoyment of Stilts' property.

36. No provision of the Act limits the time, duration, or nature of the activities the public may engage in on private land, like that owned by Stilts, between the MHW and 10 feet inland of the seaweed line.

37. No provision of the Act purports to provide concurrent compensation to owners of private land, like the land owned by Stilts.

DECLARATORY RELIEF ALLEGATIONS

38. Under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, Stilts has a federal right to be free from an uncompensated taking and unreasonable seizure of its property.

39. Under R.I. General Laws § 46-23-1, *et seq.*, CRMC and other State officials have authority to enforce the Act against Stilts.

40. There is a justiciable controversy as to whether enforcement of the Act to impose a "public beach" on Stilts' private land amounts to a taking and seizure of property for public use, without just compensation, and an inverse condemnation.

41. A declaratory judgment as to whether the Act violates Stilts' right to be free from an uncompensated taking and unreasonable seizure of property will serve a useful purpose in clarifying and settling the legal relations between the parties.

42. A declaratory judgment as to whether the Act unconstitutionally takes and seizes Stilts' property will terminate and afford relief from the uncertainty and insecurity giving rise to this controversy.

INJUNCTIVE RELIEF ALLEGATIONS

43. Stilts has no available or adequate remedy at law to redress the violation of its constitutionally protected property rights caused by the Act.

44. There is a substantial likelihood that Stilts will succeed on its claim that the Act unconstitutionally converts its property into a "public beach" area or public easement.

45. Stilts has no adequate remedy at law to remedy the taking and seizure of its property caused by the Act. It will suffer irreparable injury absent a preliminary and permanent injunction halting the violation of its constitutional rights and restraining the State and CRMC from enforcing the Act on Stilts' private beachfront property.

46. The injury to Stilts—the unconstitutional imposition of a public beach and resulting taking and seizure of its property interests—outweighs any harm the injunction might cause State officials.

47. An injunction halting the violation of federal constitutional rights occurring under the Act will not impair, but rather enhance, the public interest.

COUNT I
Taking of Private Property in Violation of the
Fifth Amendment to the United States Constitution

48. All prior allegations are hereby included and incorporated in this claim.

49. The authorization of a “public beach” or public beach easement on private land constitutes an ongoing physical invasion and occupation of property that is per se unconstitutional.

50. The Act converts every area of private coastal land lying between the MHW and 10 feet inland of the seaweed line into public beach property.

51. In creating a public beach area on beach land up to 10 feet inland of the seaweed line, the Act authorizes the general public to access and use private coastal land, eviscerating the owners’ constitutionally protected right to exclude others from those areas, without just compensation.

52. With respect to Stilts’ property, the Act unconstitutionally takes portions of Stilts’ Parcel One lying between the high water mark/seaweed line and ten feet inland of that mark.

53. On Parcel Two, the Act unconstitutionally takes Stilts’ property lying between the Atlantic Ocean (or mean high tide line) and ten feet inland of the high water/seaweed line.

54. On Parcel Three, the Act unconstitutionally takes Stilts’ property lying between the high water mark/seaweed line and ten feet inland of that mark.

55. On Parcel Four, the Act unconstitutionally takes Stilts’ property lying between the mean high water mark and ten feet inland of the high water line/seaweed line.

56. The Act unconstitutionally takes an interest in Stilts' real property, without just compensation.

57. The Act takes a public easement in and from Stilts' land, and burdens its title, without just compensation.

58. The Act unsettles and frustrates Stilts' legitimate expectations related to its property boundaries and right of ownership and use.

59. The Act harms the privacy and peaceable enjoyment of Stilts' property, without compensation.

60. The Act diminishes and injures the use, value, and marketability of Stilts' property.

61. By imposing a "public beach" or public access easement on private land lying between the mean high water mark and 10 feet inland of the seaweed line, the Act unconstitutionally takes Stilts' private property, under color of state law.

COUNT II
Unreasonable Seizure in Violation of the
Fourth Amendment to the United States Constitution

62. All prior allegations are hereby included and incorporated in this claim.

63. Stilts' property, and its right to exclude others from that property, is protected from unreasonable seizures by the Fourth Amendment to the United States Constitution. A public invasion of private property authorized by the government is a "seizure" for purposes of the Fourth Amendment.

64. Stilts' land immediately around its beachfront homes is constitutionally protected curtilage. The Act unreasonably seizes this area, interfering with Stilts' possessory interests in its property.

65. Stilts has a legitimate expectation of privacy in its residential beachfront properties and surrounding curtilage.

66. State procedural safeguards normally utilized prior to the seizure of private property were not used or followed prior to the seizure of Stilts' property under the Act.

67. The Act has unreasonably seized Stilts' land and right to exclude others by authorizing a public invasion and occupation of its property.

68. The Act unreasonably seizes Stilts' land by authorizing a public easement on its land that is indefinite in location and indefinite with respect to the scope of permitted public uses.

69. The Act unreasonably seizes Stilts' land by authorizing a public easement on its land by legislative fiat, without compliance with state law procedures for determining and establishing easements on private land.

COUNT III Inverse Condemnation

70. All prior allegations are hereby included and incorporated in this claim.

71. An inverse condemnation cause of action provides landowners with a means of seeking redress for governmental intrusions that, if performed by private citizens, would warrant analysis under the law of trespass.

72. An inverse condemnation is “[g]overnmental action short of actual acquisition [which] deprives the property owner of all or most of his interest in the subject matter.” *Brunelle v. Town of South Kingstown*, 700 A.2d 1075, 1082 (R.I. 1997) (quoting *E & J Inc. v. Redevelopment Agency of Woonsocket*, 405 A.2d 1187, 1189 (R.I.

1979)). “A plaintiff need not prove actual deprivation of possession but merely serious impairment of the use and enjoyment of property.” *Harris v. Town of Lincoln*, 668 A.2d 321, 327 (R.I. 1995).

73. An inverse condemnation action is based “on the constitutional right to compensation in the law of eminent domain found in the Fifth and Fourteenth Amendments to the United States Constitution and article I, section 16, of the Rhode Island Constitution.” *Mesolella v. City of Providence*, 508 A.2d 661, 669 (R.I. 1986).

74. Stilts brings this inverse condemnation claim pursuant to the Fifth and Fourteenth Amendments to the United States Constitution.

75. The Act does not provide or guarantee just compensation to Stilts. Stilts has not been compensated.

76. The Act authorizes a public physical invasion and occupation of Stilts’ property, eviscerates its right to exclude others from its property, and imposes an encumbrance on Stilts’ land, all of which (separately and jointly) amount to an unconstitutional taking and inverse condemnation of its property.

RELIEF SOUGHT

Wherefore, Plaintiff respectfully requests that the Court:

1. Declare that the Act takes a public easement from Stilts and deprives it of its right to exclude non-owners from private beachfront property without just compensation;
2. Declare that enactment of the Act unconstitutionally takes Stilts' property, in violation of the Fifth Amendment;
3. Declare that application of the Act to Stilts' property effects an unconstitutional taking of Stilts' private property;
4. Declare that the Act unreasonably seizes Stilts' property, in violation of the Fourth Amendment;
5. Preliminarily and permanently enjoin application and enforcement of the Act against Stilts' property;
6. Award damages for the taking and seizure of Stilts' land; and
7. Attorneys' fees and costs under 42 U.S.C. § 1988.

NOTICE OF CONSTITUTIONAL CHALLENGE

Pursuant to R.I. General Laws § 9-30-11 and Superior Court Rule 24(d), Plaintiff Stilts, LLC will provide a copy of this Complaint to Rhode Island Attorney General Peter F. Neronha contemporaneously with service of process upon the Defendants.

DATED: October 6, 2023.

Respectfully submitted,

STILTS, LLC

By its attorney,

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