

Circuit Court for Worcester County
Case No. C-23-CV-23-000202

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 718

September Term, 2024

COUNTY COMMISSIONERS OF
WORCESTER COUNTY, MARYLAND

v.

AYRES CREEK INVESTMENTS, LLC

Nazarian,
Reed,
Albright,

JJ.

Opinion by Albright, J.

Filed: August 6, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is a dispute about riparian rights and whether those rights have been severed or limited by a deed, a conservation easement, both, or neither. Appellee Ayres Creek Investments, LLC (“ACI”) owns a waterfront lot (Lot 14) that is bound by Ayres Creek in Worcester County. The lot is one of thirty-seven in a subdivision, Winding Creek Estates (“Winding Creek”). Where Lot 14 is bound by Ayres Creek, Ayres Creek is wetlands that Winding Creek’s developer purported to convey to Worcester County well before ACI bought Lot 14. Running along the waterfront edge of ACI’s lot (and others in the subdivision) is a “Buffer,” a 100-foot-wide strip of land that is subject to a conservation easement granted by Winding Creek’s developer to a land trust also before ACI bought the lot. Winding Creek is now governed by a homeowners association and subject to restrictive covenants.

In the Circuit Court for Worcester County, ACI sought a declaration that, by virtue of owning the lot, it had riparian rights in Ayres Creek and could apply for a shoreline construction permit to build a pier into Ayres Creek. Appellant, the County Commissioners of Worcester County (“County”), maintains that ACI’s lot does not have riparian rights. The County relies on a deed from Winding Creek’s developer to the County, contending that with the deed, the developer conveyed to the County 111.46 acres (approximately) of tidal wetlands abutting Winding Creek (“Parcel A”),¹ with the result that because the County owns the wetlands, it owns (and can prevent access to) the

¹ We refer to this wetlands out lot as “Parcel A” rather than “the Property” to avoid confusion with ACI’s property, Lot 14.

water into which ACI wants to build the pier. The County also points to the conservation easement, claiming that ACI's planned pier violates the easement.

Here, the County appeals the circuit court's declaration (via summary judgment in favor of ACI) that Lot 14 is a riparian property with riparian rights and that ACI is entitled to apply for a permit. The County contends that the circuit court erred by concluding that ACI has riparian rights.

The County presents two questions for our review,² which we rephrase as:

1. Did the circuit court err in declaring that Lot 14 is a riparian property with riparian rights and that ACI is entitled to apply for a permit?
2. Can the County enforce the terms of a deed of conservation easement as a third-party beneficiary?

For the reasons below, we answer the County's first question in the negative and affirm the judgment of the circuit court. In doing so, we also outline some of the questions that the circuit court (properly) did not answer. As to whether the County may enforce the conservation easement as to the Buffer, we conclude that the conservation easement is ambiguous. But because this ambiguity does not affect our conclusion that Lot 14 has riparian rights and that ACI may apply for a permit, we do not disturb the

² The County presented its questions as follows:

1. Does a deed conveying a tract of wetlands sever riparian rights from the property immediately landward of the wetlands?
2. Can the County enforce the terms of a deed of conservation easement as a third-party beneficiary?

circuit court’s summary judgment decisions on account of the ambiguity.

BACKGROUND

I. The Creation of Winding Creek, the Deed of Parcel A to the County, and the Conservation Easement

Winding Creek is a residential subdivision located in Worcester County.

Shamrock Sisters, LLC (“Shamrock”) was the owner and developer of Winding Creek.

As part of the development, Shamrock recorded a conservation easement the result of which was to place restrictions on two areas within Winding Creek: Parcel A and the Buffer. Below, we describe the conservation easement, including its list of restricted activities and the affected property. We also explain the interaction between the conservation easement and the deed from Shamrock purporting to convey Parcel A in fee simple to the County.

The deed of conservation easement, executed on December 7, 2004, was recorded on March 11, 2005, in the Land Records of Worcester County at Liber 4377, folio 259.

The purpose of the conservation easement is

to maintain the significant conservation values and the dominant scenic, cultural, rural, agricultural, woodland and wetland characteristics of [Parcel A] and [the] Buffer, and to prevent the use or development of [Parcel A] and [the] Buffer for any purpose or in any manner that would conflict with these features and characteristics and the maintenance of [Parcel A] and [the] Buffer in its open-space condition.

Article II of the conservation easement details the following prohibited and restricted activities on the burdened land:

- A. All activities not naturally occurring are prohibited on [Parcel A] and [the] Buffer.

- B. Display of billboards, signs or advertisements is prohibited on or over [Parcel A] and [the] Buffer.
- C. Dumping or placement of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery and other materials on [Parcel A] and [the] Buffer is prohibited.
- D. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal, petroleum and other materials are prohibited, except (1) for the purpose of combatting erosion or flooding, (2) for the construction and/or maintenance of means of access and wildlife habitat.
- E. Diking, draining, filling, dredging or removal of wetlands is prohibited. “Wetlands” means portions of [Parcel A] or [the] Buffer defined by Maryland state law or federal law as wetlands at the time of the proposed activity.
- F. Buildings, means of access and other structures are prohibited on [Parcel A] and [the] Buffer.
- G. The division, partition or subdivision (“Division”) of [Parcel A], including the lease of any portion less than one hundred percent (100%) thereof for a term in excess of twenty (20) years, is prohibited. However, grantees may approve the Division of [Parcel A] for reasons which Grantees determine, in their sole discretion, are sufficiently extraordinary to justify an exception to the prohibition. Notwithstanding the foregoing, the Grantees hereby acknowledge that the Buffer is to be divided so that portions of it are made a part of residential lots, portions of it are made a part of common areas, portions of it are made a part of outlots, or otherwise, as shown on the Plat entitled “Winding Creek Farms” recorded or intended to be recorded immediately prior hereto among the Land Records of Worcester County, Maryland (the “Plat”).
- H. Buffer shall be permitted to naturally revegetate or shall be planted with native species, and once established, shall not be disturbed, except as may be reasonably necessary for: (1) erosion control; (2) subject to Grantees’ approval, wildlife management; or (3) control of non-native and invasive species. Manure and compost shall not be stored and pesticides, insecticides, herbicides or fertilizers shall not be used or deposited within one hundred (100) feet of any creeks, streams, rivers, or shorelines without Grantees’ approval. Any tree removed in conformity with (1), (2) or (3) shall be promptly replaced.
- I. Except as shown on the Plat, Grantor hereby grants to Grantees all development rights (except as specifically reserved herein) that are

now or hereafter allocated to, implied, reserved or inherent in [Parcel A] and [the] Buffer, and the parties agree that such rights are terminated and extinguished and may not be used or transferred to any portion of [Parcel A] and [the] Buffer as it now is or hereafter may be bounded or described, or to any other property adjacent or otherwise, and may not be used for the purpose of calculating permissible lot yield of [Parcel A] or [the] Buffer or any other property. Except as shown on the Plat, Grantor further agrees that [Parcel A] and [the] Buffer shall not be used to provide required open space for the development or subdivision of another property, nor shall it be used in determining any other permissible residential, commercial or agricultural uses of another property.

- J. All rights reserved by Grantor or activities not prohibited by this Conservation Easement shall be exercised so as to prevent or to minimize damage to water quality, air quality, a forest and other vegetation, land/soil stability and productivity, wildlife, scenic and cultural values, and the natural topographic and open-space character of [Parcel A] and [the] Buffer.
- K. If Grantor believes or reasonably should believe that the exercise of a right not prohibited by this Conservation Easement may have a significant adverse effect on the purpose of this Conservation Easement or the conservation interests associated with [Parcel A], Grantor shall notify Grantees in writing before exercising such right.

Parcel A is a 111.46-acre (approximately) out lot comprised of tidal wetlands.³

³ Tidal wetlands are defined by the Maryland Department of Environment (“MDE”) in the Code of Maryland Regulations (“COMAR”) as “all State and private tidal wetlands, marshes, submerged aquatic vegetation, lands, and open water within the Chesapeake Bay and its tidal tributaries, the Coastal Bays and their tidal tributaries, and the Atlantic Ocean to a distance of 3 miles offshore of the low water mark.” COMAR 26.24.01.02(57).

State wetlands are defined in Maryland as “any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide.” Md. Code Ann., Environment (“EN”) § 16-101(p); COMAR 26.24.01.02(52).

Private wetlands are defined in Maryland as “any land not considered ‘State wetland’ bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and supports aquatic growth.” EN § 16-101(l); COMAR 26.24.01.02(42). This definition of private wetlands “includes wetlands, transferred by

The conservation easement burdening Parcel A was purportedly conveyed to the Lower Shore Land Trust, Inc. (the “Trust”) and the County.

Shamrock also recorded a deed purporting to convey Parcel A in fee simple to the County. This deed, executed on November 12, 2004, was recorded on March 11, 2005, and immediately follows the conservation easement in the Land Records of Worcester County at Liber 4377, folio 272. Because “under Maryland title conveyance law generally, legal title does not pass until a deed is executed and recorded[.]” the County did not acquire legal title to Parcel A until the deed was recorded, which happened after the recording of the conservation easement. *See Mayor & City of Balt. v. Thornton Mellon, LLC*, 478 Md. 396, 411 (2022); *see also* Md. Code Ann., Real Prop. (“RP”) § 3-101(a) (“Except as otherwise provided in this section, no . . . deed may pass or take effect unless the deed granting it is executed and recorded.”). However, the effective date of a deed is the date of delivery, which is “presumed to be the date of the last acknowledgement, if any, or the date stated on the deed, whichever is later.” RP § 3-201. As such, the deed to the County of Parcel A in fee simple took effect before the conservation easement, meaning that the conservation easement does not burden Parcel A. The circuit court addressed this timing issue in its opinion:

Oddly, based on the deed dates, the County may have already been the owner of the 111.46 acre out lot at the time that Shamrock Sisters LLC purported to burden it with this easement. If this is the case, then no easement was effectively placed on the 111.46 acre out lot because the grantor of the

the State by a valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred.” EN § 16-101(l); COMAR 26.24.01.02(42).

easement no longer owned the subject property.

The second area described in the conservation easement—the Buffer—is unaffected by the deed to the County of Parcel A. The Buffer is a 100-foot-wide strip of land traversing Lot 14 and the other lots in Winding Creek that are adjacent to Parcel A. The conservation easement burdening the Buffer was conveyed to the Trust only.⁴

Winding Creek’s thirty-seven lots were established by a plat recorded in 2005 in the Land Records of Worcester County in Plat Book SVH 197, folio 12–51. The plat shows Lot 14 as abutting Parcel A and as including part of the Buffer.

II. ACI’s Purchase of Lot 14, Permit Application for the Pier, and Related Petition for Judicial Review

In January 2017,⁵ ACI purchased Lot 14 in Winding Creek. Lot 14 is approximately 14.73 acres. In August 2021, ACI purchased an additional approximately 1.13 acres adjacent to Lot 14. Collectively, we refer to both lots as Lot 14.

On February 9, 2023, ACI applied to the County for a shoreline construction

⁴ In its brief, the County alleges that the Trust has since transferred all its rights in the conservation easement to the County. However, we do not consider this information as it is not part of the appellate record and was not before the circuit court when it issued its declaratory judgment. *See* Md. Rule 8-413(a) (limiting the appellate record to what was before the circuit court).

⁵ ACI’s brief, among other documents ACI has filed in this case, states that ACI purchased Lot 14 on January 6, 2012. However, the instrument recorded in the Land Records of Worcester County at Liber 6921, folio 5, is dated January 6, 2017.

permit to build a pier from Lot 14 to Ayres Creek.⁶ The County declined to process ACI's permit application, stating in an email on February 15, 2023, that the County was "not going to be able to accept" ACI's application. The email referred to a May 2021 letter from the County asserting that "Lot 14 has no riparian rights" because of the deed conveying Parcel A to the County and the conservation easement as to the Buffer.

On February 21, 2023, ACI sent a letter responding to and rejecting the County's arguments. First, ACI's letter referred to the opinion of Frank Lynch, Jr., a licensed professional land surveyor, who conducted a survey of Lot 14 and opined that "navigable waters extend into the platted property of Lot 14." The letter also stated that the pier "will not be a structure in the 100 foot Critical Area Buffer; it will emanate from the tidal wetland line." On February 24, 2023, ACI appealed to the County Board of Zoning Appeals ("BZA") for the same reasons cited in the February 21, 2023 letter. The County asserted in a March 2023 letter that ACI is "not eligible for a shoreline construction permit or a BZA appeal." Referring to the deed of Parcel A to the County, the conservation easement as to the Buffer, and Winding Creek's covenants, the County's letter stated that "[a]ll the documents indicate that no lots in Winding Creek, including Lot 14, have riparian rights." The BZA did not hold a hearing on ACI's appeal.

On March 17, 2023, in a case related to this appeal, ACI petitioned for judicial review in the circuit court of the County's decision to deny ACI's shoreline construction

⁶ ACI described the proposed construction on its application as "a new 3 foot wide by 12 foot long walkway over State Tidal wetlands to a 6 foot by 12 foot platform over open water."

permit. ACI’s petition was styled *In the Matter of Ayres Creek Investments, LLC, et al.*, Case No. C-23-CV-23-000062. In September 2023, the circuit court remanded the matter to the BZA to hold a hearing on ACI’s application for a shoreline construction permit. The circuit court also ordered that it “has primary jurisdiction over questions relating to whether Lot 14 of the Winding Creek Estates subdivision in Worcester County has riparian rights on Ayres Creek.”

While related, we emphasize that these two cases (and their procedural history) remain distinct. The case before us, as explained further below, deals only with ACI’s request for declaratory judgment in light of the “actual controversy” it alleges between itself and the County. *See* Md. Code Ann., Courts & Judicial Proceedings Article (“CJP”) § 3-409(a).⁷ ACI sought—and the circuit court granted—declaratory judgment that Lot 14 is a riparian property with riparian rights, and that ACI is entitled to apply for a shoreline construction permit. Whether ACI is entitled to, generally, apply for such a

⁷ CJP § 3-409(a), dealing with declaratory judgments, provides that:

a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:

- (1) *An actual controversy exists between contending parties;*
- (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
- (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

CJP § 3-409(a) (emphasis added).

permit is related to, but ultimately separate from, judicial review of the County’s decision on whether to issue ACI a permit to construct its proposed pier. We also note that neither party sought declaratory judgment in this case with respect to the effect of the conservation easement’s restrictions or Winding Creek’s covenants on ACI’s ability to ultimately build the proposed pier. Nor did either party seek declaratory judgment as to whether the County can enforce the conservation easement.

III. The Circuit Court’s Proceedings in This Case

Initiating the case on appeal here, ACI sought a declaratory judgment from the circuit court in September 2023 that “Lot 14 is a riparian property, with riparian rights, inasmuch as navigable waters of the State of Maryland extend into, and within, the boundary lines of Lot 14, as platted” and that “ACI, as owner of Lot 14, is entitled to apply for a shoreline construction permit to construct a pier or dock to reach navigable waters of Ayres Creek.” ACI attached as an exhibit to its complaint the report of David Wilkins, a licensed professional land surveyor, who surveyed ACI’s property. Mr. Wilkins found that the mean high water line (“MHWL”) was 0.30 feet, and that for a distance of approximately thirty-nine feet, the MHWL was within the platted area of Lot 14, “thus meaning Lot 14 directly abuts the waters of the State of Maryland for this 39’.” Mr. Wilkins explained that he obtained the MHWL by using local tidal benchmarks and the VDatum program provided by the National Oceanic and Atmospheric Administration (“NOAA”).

A. The Parties’ Cross-Motions for Summary Judgment

On December 15, 2023, the County moved for summary judgment on the basis of

the conservation easement’s restriction of structures and the deed conveying Parcel A to the County, which the County alleges severed the riparian rights from the neighboring lots of Winding Creek. The County asserted that, under the plain language of the conservation easement, it “is an express third party beneficiary of all rights connected with the Buffer” and “has the express authority to enforce all terms of the Easement.” The County attached a copy of the conservation easement and the deed conveying Parcel A to the County.

On January 17, 2024, ACI opposed the County’s motion and itself moved for summary judgment, asserting again that Lot 14 has riparian rights because it binds directly on the navigable waters of Ayres Creek and adding that the County does not have standing to enforce the conservation easement as to the Buffer. ACI attached an affidavit of Mr. Wilkins concluding, based on his survey, that “the mean high tide mark of Ayres Creek binds Lot 14” and “Lot 14 is a riparian lot.”

On February 16, 2024, the County responded to ACI’s motion for summary judgment. The County disputed ACI’s conclusion that Lot 14 has riparian rights and asserted that it was expressly authorized to enforce the conservation easement burdening the Buffer. As to Parcel A, the County acknowledged that while there was no delineation between State wetlands and private wetlands on Parcel A when the County assertedly acquired it in 2004,⁸ the State waived its rights to Parcel A by consenting to the creation

⁸ Consultants for the Winding Creek project did identify a 14.39-acre area of tidal wetlands within Winding Creek Farms “which, based on various vegetative and physical

of Winding Creek on the condition that Parcel A would be conserved. To illustrate this alleged waiver and consent, the County pointed to an attached letter from the State Board of Public Works in which the Wetlands Administrator wrote “it is further understood that as a condition of approval of this subdivision of lands, Parcel A will be donated to the Lower Shore Lands Trust for conservation purposes.”

The County also reiterated its argument that the conveyance of Parcel A was intended to sever the riparian rights of the Winding Creek lots. As further evidence of this intent to deny riparian rights, the County attached: (1) meeting minutes from the Worcester County Technical Review Committee noting that none of the Winding Creek lots would have riparian rights; (2) meeting minutes from the Worcester County Planning Commission discussing the purpose of conveying Parcel A “so that no further development is done on this 111 acre site”; (3) Winding Creek’s covenants, which prohibit activities in the wetland and wetland buffer areas, including the construction of structures on or above the ground;⁹ and (4) a February 2004 report by a professional

characteristics, most clearly lies above the elevation of local mean high water.” This 14.39-acre area of private wetlands is not part of the 111.46 acres of Parcel A. Parcel A is made up of the remaining areas of tidal wetlands within the Winding Creek Farms property. Shamrock decided to attempt to convey these wetlands to the County rather than conduct more extensive studies to delineate what portion it actually owned.

⁹ Article II, Paragraph 31 of Winding Creek’s covenants provides, in pertinent part:

(b) Except as expressly authorized pursuant to any permits or letters of authorization previously obtained from and issued by the U.S. Army Corps of Engineers and/or Maryland Department of the Environment (or their

wetland scientist explaining that, rather than conduct studies to determine the ownership of Parcel A, Shamrock decided to donate it for conservation purposes.

The County emphasized that the practice of deeding out lots to limit riparian rights is common in Worcester County, citing four examples of nearby subdivisions employing this technique. The County argued that allowing ACI to build this pier would set a concerning precedent and would mean that “decades of planning in Worcester County will be thrown out the window.” Finally, the County attached an affidavit of David Bradford, the Deputy Director of the Department of Environmental Programs of Worcester County. Mr. Bradford attested to his belief that “Mr. Wilkins’s opinions are

successors or assigns), neither the Declarant, nor any subsequent owner or owners of the Property or any portion thereof, nor any Record Owner, shall undertake or cause to be undertaken any of the following within or upon the wetland or buffer areas:

- (i) Construct or place buildings, sheds, walkways, roads, signs or other structures on or above the ground within the wetland or buffer areas;
- (ii) Dump or place trash, brush, soil waste, or other fill material within the wetland or buffer areas, or otherwise use the ground within the wetland or buffer areas for disposal of such materials;
- (iii) Excavate, dredge, or remove loam, peat, gravel, soil, rock or other material substance within the wetland or buffer areas;
- (iv) Remove or destroy trees, shrubs or other vegetation, or any other material substance within the wetland or buffer areas in violation of Section 404 of the Clean Water Act and/or the applicable provisions of the Maryland Nontidal Wetlands Protection Act, or
- (v) Engage in any activities on the wetland or buffer areas that would violate any governmental regulation concerning drainage, flood control, water conservation, erosion control, soil control, or fish or wildlife habitat preservation.

unreliable because they are not based on an adequate study period and a proper scientific evaluation to accurately determine the location of a [MHWL].”

On March 21, 2024, the County supplemented its opposition with a letter from the Trust in which the Trust expressed its view that the pier ACI seeks to build is in clear violation of the easement as to the Buffer.

On March 29, 2024, ACI filed a reply to the County’s opposition that also served as a supplement to its own opposition to the County’s motion for summary judgment. ACI explained that riparian rights can be severed from riparian land only by an express reservation in the deed conveying the land or by a prior conveyance of the rights to a third party in a deed. ACI argues that neither happened with respect to Lot 14. Regarding the chain of title for Lot 14, ACI submitted an affidavit of Joel Leininger, a registered property line surveyor. To his affidavit, Mr. Leininger attached as an exhibit the most recent deed for Lot 14. ACI also dismissed the conservation easement’s restrictions as not applicable to the proposed pier. ACI pointed out that the proposed pier is below the MHWL, and because that land has reverted to the State, it is not subject to the conservation easement. ACI reiterated that, even if the pier were located in the Buffer, the County would not have standing to enforce the provisions of the conservation easement as to the Buffer. As to Mr. Bradford’s affidavit challenging Mr. Wilkins’ MHWL determination, ACI attached another affidavit of Mr. Wilkins describing the methodology utilized in his report as being consistent with Maryland regulations and NOAA Special Publication NOS CO-OPS 1.

B. The Circuit Court’s Hearing

The circuit court held a hearing on the parties’ respective summary judgment motions on May 14, 2024. The County reiterated that the “key documents” are the deed purporting to convey Parcel A to the County—which the County argued severed Lot 14’s riparian rights—and the conservation easement as to the Buffer. The County contended that it is a “clear third-party beneficiary” and has the right to enforce the conservation easement as to the Buffer under the document’s “broad enforcement powers.” In response to the circuit court’s questioning about the specific language needed to strip riparian rights from a property, the County proposed that it need not be “magic words” and pointed to the “diagram showing the shoreline” on the deed purporting to convey Parcel A to the County and the conservation easement as evidence of the intent to sever riparian rights in this case.

ACI, for its part, discussed the common law principles explained in *Gunby v. Old Severna Park Improvement Ass’n*, 174 Md. App. 189 (2007), and how these principles support ACI’s assertion that “it is undisputed that Lot 14 currently binds on Ayres Creek.” ACI described Mr. Bradford’s affidavit as “not sufficient to create a genuine dispute of material fact in this case” because Mr. Bradford did not explain how Mr. Wilkins failed to follow the appropriate methodology in this case, and because Mr. Bradford had no qualifications to review the work of Mr. Wilkins.

Acknowledging that riparian rights can be severed from property, ACI argued that there is nothing in Lot 14’s chain of title that severed Lot 14’s riparian rights.

Specifically, argued ACI, because Lot 14 binds on navigable waters, it is presumed that Lot 14 has riparian rights. This presumption is not overcome because “[t]he deeds in the chain of title for Lot 14 contain no language reserving riparian rights to the grantor, let alone language that could be construed as express, clear and definite.” As to Shamrock’s deed of Parcel A to the County, ACI pointed out as an aside that when Shamrock purported to convey Parcel A, Shamrock may not have owned what it attempted to convey because at the time, there was no delineation on Parcel A to determine whether it was State or private wetlands. Moreover, the deed for Parcel A is not in the chain of title for Lot 14 and does not mention riparian rights.

As to the conservation easement, ACI argued that the document’s prohibitions do not specifically mention riparian rights or reserve them to Shamrock. ACI also pointed out that, because the deed purporting to convey Parcel A to the County predated the conservation easement, Shamrock “almost certainly did not have title to [Parcel A] at the time there was an attempt to impose the conservation easement on the property portion.”

ACI also reiterated that the pier would not be in the Buffer because it would be in the navigable waters below the MHWL and that, under the terms of the conservation easement, the County has no authority to enforce the easement as it relates to the Buffer. ACI concluded by arguing that none of the documents that the County points to refer to riparian rights specifically, nor do any constitute reservations to the developer or conveyances to a third party.

C. The Circuit Court's Opinion and Order

The circuit court issued its written opinion and order on May 23, 2024, granting ACI's motion for summary judgment. The circuit court declared "that Lot 14 is riparian property with riparian rights, inasmuch as the navigable waters of the State of Maryland extend into, and within, the boundary lines of Lot 14, as platted, and that [ACI], as owner of Lot 14, is entitled to apply for shoreline construction permit to construct a pier and/or dock to reach navigable waters of Ayers Creek." The circuit court further explained, however, that Lot 14's riparian rights are "subject to any restrictions which the Trust or [the Winding Creek] Homeowners Association might choose to assert."

Referring to Mr. Wilkins' affidavit, the circuit court determined that Lot 14 is a riparian property because the navigable waters of Ayres Creek bind on Lot 14. The circuit court explained that the portion of wetland abutting the thirty-nine feet of Lot 14 is State property because even "[a]ssuming for purposes of argument that the County did at one time own the entire 111.46 acre out lot, it is clear under Maryland law that land which is inundated by the mean high tide of a navigable body of water reverts to State ownership." The circuit court rejected the County's argument that Parcel A is "private wetlands":

There is no documentation to support any delineation or conveyance of [Parcel A] by the State as private wetlands nor any conveyance or reservation of riparian rights on the subject lot such as that contemplated by *Gunby v Old Severna Park Improvement Association*, 174 Md. App. 189, 240 (2007).

Relatedly, the circuit court rejected the County's argument that the deed conveying Parcel A to the County stripped the owners of lots in Winding Creek of their

riparian property rights. Acknowledging that Lot 14’s riparian rights would have been affected by the County’s ownership of Parcel A, the circuit court again explained that it is not clear that the County ever owned Parcel A—and clearly does not own the relevant portion abutting Lot 14 now, as it belongs to the State. As such, the deed does not impair or restrict any of Lot’s 14 riparian rights.

The circuit court also found that no express, definite, or clear language “appears in any deed to Lot 14 or its title chain” as would be required to sever riparian property rights from Lot 14.

Regarding the effect of the conservation easement (sometimes called the “buffer easement” by the circuit court) on the riparian rights of Lot 14, the circuit court explained that this issue was not before the court in this case. The circuit court found that the Trust, which was not a party to the case, has the authority to enforce the conservation easement while the County does not. The circuit court noted that “arguably, the Trust could appear and enforce its rights under the buffer easement,” and that Winding Creek’s covenants “arguably impair the rights of lot purchasers to build structures such as piers and docks and could potentially be enforced by [Shamrock] or other lot purchases, but there is no indication they have chosen to do so.”

The County timely noted this appeal on June 11, 2024.

STANDARD OF REVIEW

“Maryland Rule 2-501 establishes a two-part test for summary judgment: the trial court must decide whether there is any genuine dispute as to material facts and, if not,

whether either party is entitled to judgment as a matter of law.” *Gunby*, 174 Md. App. at 234–35 (citing cases); *see* Md. Rule 2-501(f) (“The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.”). To defeat summary judgment, the nonmoving party must produce evidence demonstrating a genuine dispute of material fact and present such facts “in detail and with precision.” *Gunby*, 174 Md. App. at 320 (adding that “[m]ere general allegations or conclusory assertions will not suffice”).

The standard of review for declaratory judgment entered as a result of the grant of a motion for summary judgment is whether that declaration was correct as a matter of law. *Rogers v. State*, 468 Md. 1, 13 (2020). Like the circuit court, we must determine whether a genuine dispute of material fact exists. *Gunby*, 174 Md. App. at 235–36. In doing so, we review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party. *Rogers*, 468 Md. at 13. Where an issue surrounding a declaratory judgment order involves an interpretation and application of Maryland law, we review the trial court’s conclusions de novo. *Id.*

DISCUSSION

We conclude that Lot 14 is a riparian property, that ACI retains riparian rights as the owner of Lot 14, and that ACI may apply for a shoreline construction permit. But this does not necessarily mean that ACI will get the permit for which it applies (or has

applied). ACI’s riparian rights are subject to the conservation easement and Winding Creek’s covenants. Because the specifics of the conservation easement and the covenants are not before us, today’s decision is likely the beginning, not the end, of this story.

I. Lot 14 is a Riparian Property

As to whether Lot 14 is a riparian property, we start by reviewing who owns what when it comes to navigable waters and shorelines. The State of Maryland owns in public trust, for the benefit of its citizens, the navigable waters of the State and the lands beneath them. *Clickner v. Magothy River Assoc. Inc.*, 424 Md. 253, 267 (2012). A riparian landowner is one who “owns land bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with a body of water[.]” *MKOS Props. LLC v. Johnson*, 264 Md. App. 465, 483 (2025) (quoting *Conrad/Dommel, LLC v. West Dev. Co.*, 149 Md. App 239, 268 (2003)). The MHWL ordinarily “marks the division between state and private ownership of the shoreline.” *MKOS Props LLC*, 264 Md. App. at 474. “Land inundated by mean high water reverts to State ownership.” *Dept. of Nat. Res. v. Mayor & Council of Ocean City*, 274 Md. 1, 14–15 (1975) (clarifying that this rule is applicable to a gradual erosion, but not an avulsion, “defined as a sudden or violent change, which does not generally affect land boundaries”).

Maryland’s regulations define the boundaries between navigable waters and private shoreline the same way. MDE regulations define the “mean high water line” as “the line where the land meets the water surface at the elevation of mean high water.” COMAR 26.24.01.02(32); *see also* COMAR 26.24.01.02(31) (defining “mean high

water” as “the average of all the high water levels observed over the national tidal datum epoch”¹⁰). State wetlands are defined in Maryland as “any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide.” EN § 16-101(p); COMAR 26.24.01.02(52). MDE regulations also provide permissible methods to determine the MHWL.¹¹ COMAR 26.24.02.02(E).

¹⁰ The “National tidal datum epoch” means “the specific 19-year period adopted by the National Ocean Service as the official time segment over which tidal observations are taken and reduced to obtain mean values for tidal datums.” COMAR 26.24.01.02(35)

¹¹ COMAR 26.24.02.02 provides, in pertinent part:

E. For purposes of an application, mean high water and mean low water are:

(1) Referenced in feet to a benchmark elevation based upon:

- (a) The National Geodetic Vertical Datum of 1929 (NGVD) which is incorporated by reference under 41 FR 20202 (1976);
- (b) The North American Vertical Datum of 1988 (NAVD) which is incorporated by reference under 48 FR 50784 (1983); or
- (c) A benchmark established and documented by an applicant and approved by the Department;

(2) Determined using one of the following methods:

- (a) Control tide station data as published by the U. S. Department of Commerce, National Oceanic and Atmospheric Administration;
- (b) Derivation of the equivalent high water datum using a comparison of observational records with control tide station data as published by the U. S. Department of Commerce, National Oceanic and Atmospheric Administration; or
- (c) An evaluation of the project site conditions based upon the following parameters:
 - (i) Predicted tide range elevations,
 - (ii) Meteorologic conditions,

As to whether Lot 14 is a riparian property, summary judgment in favor of ACI was appropriate because there was no genuine dispute that Lot 14 “currently binds on the navigable waters of Ayres Creek[.]” ACI provided the circuit court with the report and two affidavits of Mr. Wilkins, a licensed professional land surveyor, indicating that Lot 14 binds on the MHWL. Mr. Wilkins explained in detail how these findings were obtained using a methodology set forth by NOAA and consistent with the requirements of Maryland regulations. The County challenged Mr. Wilkin’s opinions as “unreliable,” but the attached affidavit of Mr. Bradford did not explain how Mr. Wilkins failed to follow the appropriate methodology in this case. Such “general allegations or conclusory assertions will not suffice” to demonstrate a genuine dispute of material fact. *See Gunby*, 174 Md. App. at 320. The County did not provide “in detail and with precision” any evidence, such as a competing report by a licensed professional land surveyor, demonstrating that Lot 14 does not bind on the MHWL. *See id.* As such, there can be no dispute in this case that Lot 14 is a riparian property because it binds on navigable waters.

II. No Deed Severed Lot 14’s Riparian Rights

The County argues that Lot 14’s riparian rights were severed at the development of Winding Creek because Shamrock deeded Parcel A to the County. The County

(iii) Vegetation and other biological factors at the site including barnacles and algae lines, and

(iv) Physical indicators at the site such as rack lines, stain marks on nearby structures, and beach particle sorting.

COMAR 26.24.02.02(E).

contends that the deed conveying Parcel A rebuts the presumption that Lot 14 has riparian rights because “[t]he primary purpose—if not the sole purpose—of this Deed was to strip away the riparian rights to the neighboring lots along the shoreline and to prevent anything from being built into the marsh.” The County points to other contemporaneous documents—the meeting minutes of the Worcester County Technical Review Committee and the Worcester County Planning Commission, Winding Creek’s covenants, and the professional wetland scientist’s report—as corroboration of the deed’s intent to deny Lot 14 riparian rights.

We disagree that Shamrock’s deed of Parcel A to the County severed Lot 14’s riparian rights. Generally, a reservation of riparian rights will not be implied. *See Conrad/Dommel, LLC*, 149 Md. App. at 277. We reiterate that the undisputed evidence before the circuit court demonstrated that Lot 14 binds on the navigable waters of the State. That means that Lot 14 has riparian rights. If Shamrock did not own the State wetlands that lay below the navigable waters of Ayres Creek binding on Lot 14, it could not, through its deed of Parcel A to the County, have conveyed these State wetlands to the County. That contemporaneous documents may have described the purpose behind Shamrock’s Parcel A deed did not give Shamrock the ability to convey something it did not own.

Nor does any other deed to Lot 14 or in its chain of title sever Lot 14’s riparian rights. The term “riparian rights” describes a bundle of rights including the right to build a wharf or pier into the water. *MKOS Props. LLC*, 264 Md. App. at 483–84. We have

previously said that the bundle of riparian rights includes at least the following rights:

- (i) of access to the water;
- (ii) to build a wharf or pier into the water;
- (iii) to use the water without transforming it;
- (iv) to consume the water;
- (v) to accretions (alluvium); and
- (vi) to own the subsoil of nonnavigable streams and other “private” waters.

Conrad/Dommel, LLC, 149 Md. App. at 268–69. The right of a riparian landowner to construct structures to provide access to the water also is provided by statute. EN § 16-201(a) (“A person who is the owner of land bounding on navigable water . . . may make improvements into the water in front of the land to preserve that person’s access to the navigable water[.]”).

Riparian rights may be completely severed from land and, once severed, no subsequent owner will have riparian rights unless the owner independently acquires riparian rights to unite with the formerly riparian land. *Steuart Transp. Co. v. Ashe*, 269 Md. 74, 99 (1973); *Conrad/Dommell, LLC*, 149 Md. App. at 271–72. “Although a conveyance of land bordering on navigable water presumptively carries with it the grantor’s riparian rights, . . . this presumption may be rebutted.” *Williams v. Skyline Dev. Corp.*, 265 Md. 130, 162 (1972). In *Williams*, the Supreme Court held that the presumption of riparian rights was successfully rebutted because the deed to ocean bay property made clear through express reservations that the property owner “did not acquire all the rights incident to waterfront land.” *Id.* In coming to this conclusion, the Court focused on the deed’s explicit denial of the grantee’s right to extend the lots beyond their

present lines, reservation to the grantor of all lands adjacent to the lots lying beneath the water of the bay (which had been conveyed by the State to the grantor), and restriction of the grantee's right to construct a wharf or dock. *Id.* Because of these express reservations, the grantee did not acquire the full riparian right of natural accretion or to build a wharf or pier into the water. *Id.*

Rebutting the presumption that riparian rights are conveyed requires an “express, definite, and clear” reservation in a deed. *Gunby*, 174 Md. App. at 244 (“Riparian rights may be separated from the ownership of the land to which they are appurtenant, either by grant of such rights to another in a deed, or by a reservation of rights to the grantor as part of the conveyance of the land.”). While a grant of riparian rights may be implied, a reservation of riparian rights generally will not be implied. *Conrad/Dommel, LLC*, 149 Md. App. at 277. In *Conrad/Dommel*, the appellee conceded that there was no express reservation in the deed of trust but argued that the intent to reserve riparian rights was clear. *Id.* This Court rejected appellee's argument and held that nothing in the deed of trust rebutted the presumption that the riparian rights were conveyed. *Id.*

No such express language appeared in any deed here. The County suggests that the circuit court overstated what Maryland law requires in order to sever riparian rights from a property, contending that *Williams* “contains no such requirement that ‘express, definite, and clear language’ must exist to sever riparian rights.” However, unlike the facts before us here, *Williams* involved “an express denial” of riparian rights in a deed. *See Williams*, 265 Md. at 166. While the Supreme Court in *Williams* did not use the exact

phrase “express, definite, and clear” to describe what is required to rebut the presumption that riparian rights are conveyed, this Court later used such language in *Gunby*, as noted above. *See Gunby*, 174 Md. App. at 244 (“[I]n order to rebut the presumption discussed above, which favors the transfer of riparian rights, a reservation in a deed must be express, definite, and clear.”).

Because the County does not own the portion of Parcel A abutting Lot 14 (as Lot 14 binds on the navigable waters of Ayres Creek), and riparian rights were not reserved to Shamrock in the deed to Lot 14 or elsewhere in its chain of title, Lot 14 is a riparian property with riparian rights. As a result, ACI acquired riparian rights when it purchased Lot 14.

III. Lot 14’s Riparian Rights Are Subject to the Restrictions of the Conservation Easement as to the Buffer and the Winding Creek Covenants

We emphasize, as the circuit court acknowledged, that Lot 14’s riparian rights are subject to restrictions. While no deed severed the riparian rights from Lot 14, Lot 14 is subject to the conservation easement burdening the Buffer and Winding Creek’s covenants. As such, Lot 14’s riparian rights are likely restricted by, e.g., Article II of the conservation easement and Article II, paragraph 31 of Winding Creek’s covenants (both of which prohibit the construction of structures in the Buffer).

Below, the circuit court did not address the specific effect of the conservation easement or Winding Creek’s covenants on ACI’s permit application for the proposed pier. We also decline to do so as well, as no party sought appellate relief on these issues. It is not before us to address whether ACI would be prevented from constructing the

proposed pier under the conservation easement or the subdivision's covenants, respectively. Nor does this appeal arise from a petition for judicial review of an administrative decision with respect to a particular permit application. Instead, we affirm the circuit court's resolution of the parties' related (but distinct) controversy about the riparian nature of Lot 14 via declaratory judgment.

IV. The Conservation Easement Is Ambiguous as to Whether the County Has Enforcement Rights as to the Buffer, but This Ambiguity Does Not Affect Our Conclusion that Lot 14 Has Riparian Rights

Below, neither party sought declaratory judgment on whether the County could enforce the conservation easement's restrictions as to the Buffer. However, both parties raised this issue in their cross-motions for summary judgment, the County contending that it had such enforcement rights and ACI arguing the opposite. The circuit court, agreeing with ACI, concluded "that the County does not have enforcement rights as to the [B]uffer[.]" Our review of the conservation easement leads us to conclude that there is ambiguity as to whether the County may enforce the conservation easement as to the Buffer.¹² The circuit court erred when it decided otherwise as a matter of law.

Our primary consideration when interpreting an easement created by deed is the language of the grant itself, and we are guided by the parties' intent at the time the easement was granted. *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 432 Md. 292, 314 (2013). Only if the intent of the parties is unclear based on the actual language will

¹² As above, we do not consider here the County's allegation, made only in its appellate brief, that since the proceedings below, the Trust has transferred all its rights in the conservation easement to the County. *See* Md. Rule 8-413(a).

we look to extrinsic evidence in construing an easement. *Long Green Valley Ass’n*, 432 Md. at 314 (quoting *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 681 (2007)).

“Who was intended to benefit from the covenant, with the correlative right to enforce the restrictions, presents a fact question which turns upon the intention of the original parties to the agreement.” *Id.* at 315 (quoting *First United Pentecostal Church v. Seibert*, 22 Md. App. 434, 440 (1974)). It is the court’s role to determine whether the language of an easement manifests an intent for a third party to have standing to enforce contractual provisions. *Id.* at 315.

Looking to the language of the conservation easement, the habendum clause of the conservation easement provides:

TO HAVE AND TO HOLD unto the Lower Shore Land Trust, Inc., the County Commissioners of Worcester County, their successors and assigns, forever as to [Parcel A] and unto the Lower Shore Land Trust, Inc., its successors and assigns, forever, as to the Buffer.

The language of Article III of the conservation easement, titled “Enforcement and Remedies,” provides that

Each Grantee has independent authority to enforce the Terms of this Conservation Easement. In the event that Grantees do not agree as to whether the Grantor is complying with the Terms, each Grantee may proceed with enforcement actions without the consent of the other Grantee.

The language of the “Duration of Easement” section in Article I provides that the easement is

in gross and as such is inheritable and assignable in accordance with Article VI and runs with the land as an incorporeal interest in the Property and Buffer, enforceable with respect to [Parcel A] and [the] Buffer by Grantees against Grantor and its successors and assigns.

Whether the parties intended for the County to have the right to enforce the provisions in the conservation easement that relate to the Buffer is unclear. The Habendum clause clearly grants the easement as to the Buffer only to the Trust. This suggests that only the Trust has the right to enforce the conservation easement’s restrictions as to the Buffer. However, the enforcement and duration provisions create ambiguity by providing that the County, as a Grantee, “has independent authority” to enforce the terms of the conservation easement and that the conservation easement is “enforceable with respect to [Parcel A] and [the] Buffer by Grantees[.]” ACI’s proposed interpretation, which the circuit court adopted, reconciles these provisions and the Habendum clause by explaining that the enforcement authority granted to both the Trust and the County applies only to the part of the conservation easement purporting to burden Parcel A, which was conveyed for the benefit of both the Trust and the County. However, this is not the only reasonable interpretation based on this language. That the enforcement and duration provisions do not distinguish between the Grantees could suggest that the intent was to allow the County to enforce the restrictions as to the Buffer. In light of this ambiguity, the circuit court’s decision as a matter of law that the County did not have the right to enforce the conservation easement, a decision the circuit court reached based on the language of the conservation easement alone, was in error.

Regardless of whether the County has enforcement authority, though, our decision to affirm the circuit court’s judgment remains the same. As above, ACI, as owner of Lot 14, is a riparian landowner who, by law, enjoys riparian rights and is entitled to *apply* for

a shoreline construction permit. However, again, we do not read the circuit court's opinion to mean that ACI has the right to *construct* the proposed pier. This is because ACI's riparian right to construct a pier, otherwise afforded under the common law and by statute, is likely limited by the conservation easement and the subdivision's covenants.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**