

STATE OF SOUTH CAROLINA  
 COUNTY OF Charleston  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2004 CP-10 - 4129

Edisto Island Open Land Trust, Inc.

State of South Carolina, Melissa M. Adams, Philip Rhodes, George Henry Walter, Gailya Privette, Jeffery Baker, June C. & William L. McRoy, and Patricia P. & Thomas M. New

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

FILED  
 2014 MAY 16 PM 4:10  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

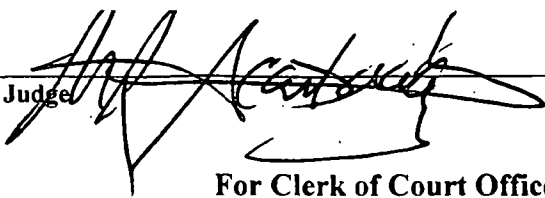
This order  ends  does not end the case.  
 Additional Information for the Clerk :

Defendant's Rule 59(e) Motion is hereby respectfully denied. The Order Confirming Title in Plaintiff, Edisto Island Open Land Trust, Inc., entered on July 19, 2011, is to constitute the deed.

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge



3062

Judge Code

5/14/2014

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter:**



respectively. The State timely answered the Second Amended Complaint on January 28, 2003, denying the material allegations of the Second Amended Complaint. On January 26, 2004, EIOLT filed a Motion for Summary Judgment with the Colleton County Clerk of Court, and on March 22, 2004, the case was referred to this Court for determining the title to the Marsh Tracts.

This matter was transferred to this Court on October 15, 2004. A hearing on the merits was held before this Court on March 8, 2005. Present at the hearing were: (1) Edward K. Pritchard, III, Esquire, representing the EIOLT; (2) Mark A. Mason, Esquire, representing Melissa M. Adams, Philip Rhodes, George Henry Walter, Gailya Privette, June C. McRoy, William McRoy, Patricia P. New and Thomas M. New; (3) Mary Duncan Shahid, Esquire, representing Jeffery Baker; and, (4) J. Emory Smith, Jr., Esquire, representing The State. Also present were Marion Downs Brailsford, Director of EIOLT, J. Howard Yates, Jr., Esquire, and Thomas V. Bessent, P.L.S.

Prior to the hearing, EIOLT, Melissa M. Adams, Philip Rhodes, George Henry Walter, Gailya Privette, June C. McRoy, William McRoy, Patricia P. New, Thomas M. New and Jeffery Bakers reached a tentative conditional agreement whereby they agreed to certain stipulations conditioned on this Court's confirming title to the Marsh Tracts in EIOLT. Specifically, the parties tentatively agreed that if the Court confirms title to the Marsh Tracts in EIOLT, they each stipulate to the following:

1. Melissa M. Adams and Philip Rhodes as owners of 8795 Palmetto Road, Colleton County parcel identification number 360-00-00-008, have the right to construct a dock over Marsh Tracts in accordance with OCRM Permit No. OCRM-00-278-M, but, in no event shall Adams and/or Rhoads construct a roof over the fixed pierhead as provided for in said Permit.
2. George Henry Walter and Gailya Privette, as owners of 8877 Palmetto Road, Colleton County parcel identification number 360-00-00-093, shall have the right to maintain their existing dock over the Marsh Tracts as constructed under OCRM Permit No. OCRM-96-354-G as amended.

3. The June C. McRoy and William McRoy, as owners of 8793 Palmetto Road, Colleton County parcel identification number 360-00-00-026, shall have the right to construct a dock over the Marsh Tracts in accordance with OCRM Permit No. OCRM-00-170-M.
4. The Patricia P. New and Thomas M. New as owners of Lot 4F, Neck Subdivision, Colleton County parcel identification number 360-00-00-181, shall have the right to maintain their existing dock which is not constructed on the Marsh Tracts and consequently shall be dismissed from this action and shall not be bound by any of the restrictions of this Settlement Agreement or any Order issued in this matter.
5. Jeffrey Baker as owner of 8791 Palmetto Road, Colleton County parcel identification number 360-00-00-185, shall have the right to construct a dock over the tidelands claimed to be owned by Plaintiff in accordance with OCRM Permit No. OCRM-99-456-G.
6. Melissa M. Adams, Philip Rhodes, George Henry Walter, Gailya Privette, June C. McRoy, William McRoy and Jeffrey Baker shall not construct handrails on the walkway section of any dock constructed over the Marsh Tracts.
7. The dock permits referenced in Paragraphs 1 through 5 above were all issued prior to the decision of the South Carolina Court of Appeals in the case of *Lowcountry Open Land Trust v. Atkins*, 374 S.C. 96, 552, S.E.2d 778 (2001).
8. Melissa M. Adams, Philip Rhodes, George Henry Walter, Gailya Privette, June C. McRoy, William McRoy and Jeffrey Baker hereby agree that their right to keep their existing docks or construct their docks is by virtue of their existing dock permits and the permission of EIOLT as claimed rightful owner of the Marsh Tracts. Melissa M. Adams, Philip Rhodes, George Henry Walter, Gailya Privette, June C. McRoy, William McRoy and Jeffrey Baker's construction, maintenance or use of the existing docks is purely permissive and shall not ripen into a claim by any or each of them or their successors in title of ownership, easement or other property right over any portion of the Marsh. Melissa M. Adams, Philip Rhodes, George Henry Walter, Gailya Privette, June C. McRoy, William McRoy and Jeffrey Baker, their heirs, and successors in title shall have the right to continue to utilize the existing docks or docks to be constructed over the Marsh Tracts provided the successors in title acknowledge in a written document, that their use of the existing docks over the Marsh Tracts is permissive and shall not ripen into a claim of ownership to the Marsh Tracts.
9. The claims and counterclaims of the parties shall be dismissed with prejudice following the entry of the orders contemplated by this Settlement Agreement.

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The above stipulations were agreed to, subject to the approval by EIOLT's Board of Directors, which I am informed agreed to these stipulations subsequent to the hearing.

After considering the testimony of Marion Downs Brailsford, J. Howard Yates, Jr., Esquire, and Thomas V. Bessent, P.L.S., the respective exhibits to each of the foregoing testimonies, the affidavits of Mr. Yates and Mr. Bessent, arguments of counsel, and after reviewing and considering the applicable law, this Court issued its oral order from the bench on March 8, 2005 which order was to be reduced to writing upon submission of a proposed order to this Court. However, prior to the submission of the proposed order, the matter was administratively dismissed on June 17, 2005. The matter was then reinstated to this Court on March 9, 2009, for purposes of issuing the written order and closing the case.

For reasons not fully known to this court, this matter has taken too long to conclude. The court acknowledges and apologizes for this delay and notes further that, while this matter has been one of great concern for all involved, there have been numerous telephone conferences between counsel and the court, a search for the transcript of the hearing after retirement of the court's reporter, as well as changes and delayed communications between the court and the Colleton County Clerk of Court. The court is in hopes that this matter may finally be resolved.

Based on the foregoing information, this Court hereby makes the following findings of fact and conclusions of law, and confirms title to the Marsh Tracts to the EIOLT.

#### FACTS

Based on the pleadings in this matter, the testimony of Marion Downes Brailsford, J. Howard Yates, Jr., Esquire, and Thomas V. Bessent, P.L.S., the respective exhibits introduced into evidence, the affidavits of Mr. Yates and Mr. Bessent, and the applicable law of the State of South Carolina, I hereby make the following findings of fact.

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EIOLT is South Carolina eleemosynary organization which has been granted 501(C)(3) status under the IRC by the IRS, whose mission is to preserve and protect the scenic views, open spaces, and the overall natural resources of Edisto Island, South Carolina, and its environs. EIOLT is the record owner of certain Marsh Tracts located in Colleton County by virtue of that certain deed from Edisto Sales & Rentals Realty, Inc., to EIOLT dated December 16, 1994, and recorded in the office of the Clerk of Court for Colleton County in Deed Book 649 at Page 334.

The Marsh Tracts are more particularly described as follows:

TRACT 1: All that certain piece, of parcel or tract of land situate, lying and being at "The Neck" Subdivision on Edisto Island, in the County of Charleston, State of South Carolina, containing 198 acres, more or less, and being bounded on the North by Fishing Creek; on the West and South by Big Bay Creek; and on the East by developed portions of "The Neck" Subdivision. SAVE AND EXCEPTING a 4-acre tract lying between the parcel designated as TMS No. 360-00-00-092 and Fishing Creek and a previously conveyed 33-acre tract designated as TMS No. 360-00-00-067. Said Tract being further shown cross-hatched in red ink on portion of Colleton County Tax Map #360 which is attached hereto and incorporated herein by reference as Exhibit "A."

TMS No. 360-00-00-055 and a portion of TMS No. 360-00-00-054.

TRACT 2: All that certain piece, parcel or tract of land situate, lying and being at "The Neck" Subdivision on Edisto Island in the County of Charleston, State of South Carolina, containing 120 acres, more or less, and being bounded on the North and West by Fishing Creek; on the South by developed portions of "The Neck" Subdivision; and on the East by the Charleston County line. Said tract being further shown cross-hatched in red ink on a portion of Colleton County Tax Map #360 which is attached hereto and incorporated herein by reference as Exhibit "B".

TMS No, 360-00-00-122

Being a portion of the property conveyed to Sea Island Resorts, Inc., n/k/a Edisto Sales & Rentals Realty, Inc. by the following described deeds, all recorded in the RMC Office for Charleston County: (1) Deed of Sarah S. Bell dated February 25, 1981, and recorded in Book U-124 at page 156; (2) Deed of Harriet K. Greer dated February 20, 1981, and recorded in Book U-124 at Page 169; (3) Deed of Nell King Harriss dated February 17, 1981, and recorded in Book U-124 at Page 171; and (4) Deed of DeWitt W. King, Jr. and Samuel B. King dated February 20, 1981, and recorded in Book U-124 at Page 179.

EIOLT's title to the property derives from the grant of property from The State to John R. Matthews, dated June 4, 1821, pursuant to an Act of the Legislature entitled "An Act for Establishing the Mode of Granting the Lands Now Vacant in This State, and for Allowing a commutation to be Received for Some Lands that Have Been Granted," which was passed on February 19, 1791 (hereinafter referred to as the "Grant").

### CONCLUSIONS OF LAW

The rights of owners of lands bounded by the sea or on navigable rivers where the tide ebbs and flows extend to the high-water mark. *State v. Pacific Guano Co.*, 22 S.C. 50 (1884). The high-water mark is the line on the shore which is reached by the limit of the flux of the usual tide; that is, the high mark made on the shore as the tide ebbs and flows twice in each lunar day and not the point reached by new or full moon nor weather as an intervening disturbance, such as a storm or earthquake. *Cape Romain Land & Improvement Co. v. Georgia-Carolina Canning Co.*, 148 S.C. 428, 146 S.E. 434 (1928). Title to property below the mean high water mark is presumed to be in the State of South Carolina. *Rice Hope Plantation v. South Carolina Pub. Serv. Auth.*, 216 S.C. 500, 59 S.E.2d 132 (1950); *Sanders v. Coastal Capital Ventures, Inc.*, 296 S.C. 132, 370 S.E.2d 903 (Ct. App. 1988), *cert. denied*, 298 S.C. 204, 379 S.E.2d 133 (1989).

The State holds presumptive title to all tidelands (land lying between the usual high water mark and the usual low water mark, on a tidal navigable water course and often referred to as "marshland") within its borders and are held in trust for the benefit of the public. *Coburg Dairy, Inc. v. Lesser*, 318 S.C. 510, 458 S.E.2d 547 (1995); *Hobony Club, Inc. v. McEachern*, 272 S.C. 392, 252 S.E.2d 133 (1979); *State v. Yelsen Land Co.*, 265 S.C. 78, 216 S.E.2d 876 (1975); *Conch Creek Corp. v. Guess*, 263 S.C. 211, 209 S.E.2d 560 (1974); *State v. Hardee*, 259 S.C. 535, 193 S.E.2d 497 (1972); *State v. Pinckney*, 22 S.C. 484 (1884); *Lowcountry Open Land Trust*

v. *State*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001). Title to marshland is presumed to rest in the State, and title to islands situated within marshland follows title to the marshland. *Coburg Dairy, Inc. v. Lesser*, 318 S.C. 510, 458 S.E.2d 457 (1995); *Coburg Dairy, Inc. v. Lesser*, 309 S.C. 252, 422 S.E.2d 96 (1992). Highlands which become tidelands by the encroachment of tidal waters presumptively belong to the State. *McQueen v. South Carolina Coastal Council*, 354 S.C. 116, 580 S.E.2d 116 (2003); *Coburg Dairy, Inc. v. Lesser*, 318 S.C. 510, 458 S.E.2d 457 (1995); *State v. Fain*, 273 S.C. 748, 259 S.E.2d 606 (1979).

The presumption of ownership in the State below the high water mark, however, can be successfully rebutted, if a claimant can establish two factors. **First**, he must prove intent to convey title to land below the usual high-water mark by specific language in the grant or in attached or referenced plat. *State v. Yelsen Land Co.*, *supra*; *State v. Griffith*, 265 S.C. 43, 216 S.E.2d 765 (1975); *State v. Hardee*, *supra*; *Cape Romain Land & Improvement Co. v. Georgia-Carolina Canning Co.*, *supra*; *Lowcountry Open Land Trust v. State*, *supra*. **Second**, he must trace his title in a direct and unbroken chain to a grant from an English sovereign or show that the State has conveyed the property to a predecessor in title. *State v. Yelsen Land Co.*, *supra*; *State v. Griffith*, *supra*; *Lane v. McEachern*, *supra*; *Conch Creek Corp. v. Guess*, *supra*. Nevertheless, once the sovereign admits it has divested itself of title, the “perfect chain to title” rule does not apply and the sovereign, like any other litigant, must recover on the strength of its own title, not the weakness of its opponents. *State Ex Rel McCloud v. Sloan Constr. Co.*, 284 S.C. 491, 328 S.E.2d 84 (Ct. App. 1985). South Carolina does not disallow conveyance of the public trust title. The State, as trustee, has the power to dispose of the property as it thinks best for its citizens and can modify or extinguish public trust uses. *Lowcountry Open Land Trust v. State*, *supra*.

EIOLT's title to the Marsh Tracts derives from the Grant. The Grant evidences The State's intent to grant title to tidelands to the lower water mark of such property. Thomas V. Bessent, P.L.S., the EIOLT's surveying expert<sup>1</sup>, and J. Howard Yates Jr., Esquire, the EIOLT's title abstracting expert<sup>2</sup>, as stated in their affidavits, both examined the boundaries for the marshlands conveyed in the deed from Edisto Sales & Rentals Realty to the EIOLT, as recorded in Book 649 at Page 334 in the Office of the Colleton County Register of Deeds. When they compared the marshlands in said deed as lying opposed to tax map parcel numbers 92, 93, 94, 95, 96, 16, 8, 9, 10, 158, and 11, the marshlands were the same as those included within the boundaries of the State plats. Mr. Yates concluded that the EIOLT has title to the marshlands lying opposite the tax map parcel numbers referenced above, and that upon review and by comparison of boundary lines, that a portion of the marshlands conveyed to the EIOLT were included in The State's grants to John R. Matthews in 1821. Furthermore, Mr. Yates' concluded that while there is no perfect chain of title, The State has divested itself of title to the Marsh Tracts through the grants. Therefore, as there is no evidence the Marsh Tracts were re-conveyed to The State, The State's presumption of ownership of the Marsh Tracts has been rebutted.

Mr. Yates also testified, however, that he was not able to discover sufficient evidence from which to render an opinion that all of the real property conveyed in the December 16, 1994, deed from Edisto Sales & Rentals Realty, Inc., to EIOLT, is included within the Grant. Rather, according to Mr. Yates, he was only able to conclude that the area within the cross-hatched notation on Trial Exhibit "B"<sup>3</sup> "reflects property that the Edisto Island Land Trust has title to, and property that was granted, or was included within the grant made in 1821 to Johns

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<sup>1</sup> Mr. Bessent was qualified as an expert in the field of surveying without objection.

<sup>2</sup> Mr. Yates was qualified as an expert in the field of title abstracting without objection.

<sup>3</sup> A copy of Trial Exhibit "B" is attached hereto as "Exhibit 1" and incorporated herein by reference.

Mathews.” *Transcript of Hearing before the Honorable Mikell R. Scarborough, Master in Equity for Charleston County* dated March 8, 2005, p.14, l.5 – p.14, l.8. Mr. Yates further explained:

[T]he Edisto Island Land Trust deed conveyed to it property that was outside the cross-hatched areas. It conveyed marshland that, in my opinion, were not granted by the State of South Carolina. . . . [T]he State’s presumption [sic] was not able to find sufficient data to . . . overcome as to any property, except for the cross-hatched. The cross-hatched area is Open Land Trust property. And that property was included within grants.

*Transcript of Hearing before the Honorable Mikell R. Scarborough, Master in Equity for Charleston County* dated March 8, 2005, p.15, l.7 – p.15, l.19.

Because the Marsh Tracts are within marshland, title to these tracts would normally be vested in The State. EIOLT, however, has rebutted the presumption that title to the Marsh Tracts is vested in The State as to the area within the cross-hatched notation on Exhibit “B” since it has established: (1) the grant of property from The State to John R. Matthews, dated June 4, 1821, evidences an intent by The State to grant title to the tidelands to the low water mark of the property, (2) the “perfect chain of title” rule no longer applies as the State has divested itself of the title, (3) and there is no evidence that the Marsh Tracts have been re-conveyed to The State. The State has submitted no evidence in contravention of the evidence submitted by EIOLT. As EIOLT introduced evidence to rebut the presumption that title to the Marsh Tracts is vested in the State, the State cannot simply rest on the mere denials contained in its answer, but rather is required to come forward with some evidence in contravention of the evidence EIOLT introduced to overcome the presumption. In this instance, the State has failed to do so. Therefore, this court finds that title to the property within the cross hatched area noted on Exhibit 1 (hereinafter referred to as the “EIOLT Tracts”) rests in EIOLT as owner thereof.

As a further ground for finding in favor of Plaintiffs and, as a consequence of a significant change in the law since the 2005 hearing in this matter, our Supreme Court in Estate of Patricia

Tenney v. SC DHEC-OCRM, Op. No. 26965 filed April 25, 2011, specifically overruled the holding of Coburg v. Lesser, 318 SC 510, 458 SE 2d 547 (1995), that "title to islands situate within marshlands follows title to the marshland." The Supreme Court ruled in Tenney that the holding of Coburg II was an "unprecedented expansion of the public trust doctrine." Accordingly, the presumption previously provided the State that title to islands in the marshlands no longer applies. Absent this, I conclude that title to these islands rests with the Plaintiff.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

- A. That title to the EIOLT Tracts is confirmed in the EIOLT;
- B. That The State of South Carolina is divested of all title and interest in and to the EIOLT Tracts;
- C. That neither The Office of Coastal Resource Management or The Department of Health and Environmental Control or any successor agency, department or entity to either of the foregoing shall withhold any permits relating to the EIOLT Tracts, including, without limitation, dock permits, to Edisto Island Open Land Trust, Inc., or any of its successors in interest to the EIOLT Tracts, on the basis that it or its successors in interest do not have title to the EIOLT Tracts or on the basis that title to the EIOLT Tracts are presumed to be vested in The State of South Carolina;
- D. That the Edisto Island Open Land Trust, Inc., and its successors in interest to the EIOLT Tracts, shall have and enjoy all incidents relating to ownership of real property in and to the EIOLT Tracts;
- E. Melissa M. Adams and Philip Rhodes, or their successors in interest, as owners of 8795 Palmetto Road, Colleton County parcel identification number 360-00-00-008, shall have

the right to construct a dock over EIOLT Tracts in accordance with OCRM Permit No. OCRM-00-278-M, but, in no event shall they construct a roof over the fixed pierhead as provided for in said Permit.

- F. George Henry Walter and Gailya Privette, or their successors in interest, as owners of 8877 Palmetto Road, Colleton County parcel identification number 360-00-00-093, shall have the right to maintain their existing dock over the EIOLT Tracts as constructed under OCRM Permit No. OCRM-96-354-G as amended.
- G. June C. McRoy and William McRoy, or their successors in interest, as owners of 8793 Palmetto Road, Colleton County parcel identification number 360-00-00-026, shall have the right to construct a dock over the EIOLT Tracts in accordance with OCRM Permit No. OCRM-00-170-M.
- H. Patricia P. New and Thomas M. New, or their successors in interest, as owners of Lot 4F, Neck Subdivision, Colleton County parcel identification number 360-00-00-181, shall have the right to maintain their existing dock which is not constructed on the EIOLT Tracts and are hereby dismissed from this action and shall not be bound by any of the terms of this Order.
- I. Jeffrey Baker, or his successor in interest, as owner of 8791 Palmetto Road, Colleton County parcel identification number 360-00-00-185, shall have the right to construct a dock over the tidelands claimed to be owned by the Edisto Island Open Land Trust, Inc., in accordance with OCRM Permit No. OCRM-99-456-G.
- J. Melissa M. Adams, Philip Rhodes, George Henry Walter, Gailya Privette, June C. McRoy, William McRoy and Jeffrey Baker shall not construct handrails on the walkway section of any dock constructed over the EIOLT Tracts.

A handwritten signature in black ink, appearing to be "J. Baker", is located in the bottom right corner of the page.

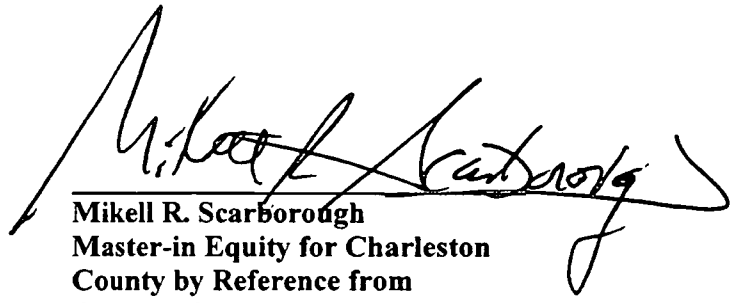
K. Melissa M. Adams', Philip Rhodes', George Henry Walter's, Gailya Privette's, June C. McRoy's, William McRoy's and Jeffrey Baker's respective rights to keep their existing docks or to construct their docks is by virtue of their existing dock permits and the permission of the Edisto Island Open Land Trust, Inc., as claimed rightful owner of the EIOLT Tracts. Melissa M. Adams', Philip Rhodes', George Henry Walter's, Gailya Privette's, June C. McRoy's, William McRoy's and Jeffrey Baker's construction, maintenance or use of the existing docks is purely permissive and shall not ripen into a claim by anyone or each of them or their successors in title of ownership, easement or other property right over any portion of the EIOLT Tracts. Melissa M. Adams, Philip Rhodes, George Henry Walter, Gailya Privette, June C. McRoy, William McRoy and Jeffrey Baker, their respective heirs and successors in title, shall have the right to continue to utilize the existing dock or docks to be constructed over the EIOLT Tracts provided the successors in title acknowledge in a written document, that their use of the existing docks over the EIOLT Tracts is permissive and shall not ripen into a claim of ownership to the EIOLT Tracts; *provided, however*, in the event an heir or successors in title acknowledges in a written document, that their use of the existing docks over the EIOLT Tracts is not permissive and shall ripen into a claim of ownership to the EIOLT Tracts, his, her, its or their right(s) to continue to utilize the existing docks or docks to be constructed over the EIOLT Tracts ordered herein shall be thereupon revoked.

L. The claims and counterclaims of the parties shall be dismissed with prejudice following the entry of the orders contemplated by this Settlement Agreement.



M. This Order shall be recorded in the Office of the Clerk of Court's Office for Colleton County, South Carolina, and indexed in the chain of title to the March Tracts in the same manner as are deeds.

**AND IT IS SO ORDERED!**

  
**Mikell R. Scarborough**  
**Master-in Equity for Charleston**  
**County by Reference from**  
**Colleton County**

July 8, 2011  
Charleston, South Carolina