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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APR 01 2015

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

SC Court of Appeals

The Honorable J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-7399  
Appellate Case No. 2014-002118

Lynne Vicary, Kent Prause, and South Carolina Coastal Conservation League, ..... Respondents,

v.

Town of Awendaw, and EBC, LLC ..... Defendants,  
Of whom Town of Awendaw is the Appellant

CONSENT MOTION FOR LEAVE TO FILE SUPPLEMENTAL DESIGNATION OF  
MATTER OUT OF TIME

The Appellant respectfully moves this Court for an order allowing Appellant to file a Supplemental Designation of Matter out of time. Appellants omitted by oversight certain exhibits identified in its Initial Reply Brief filed on March 16, 2015. The two documents that were inadvertently omitted are:

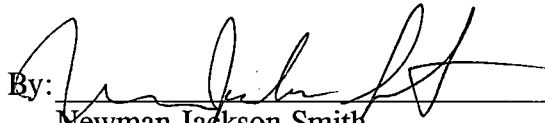
- Plaintiff's Suppl. Exhibit 8 (deposition of Megan Desrosiers, November 9, 2010) (filed Mar. 22, 2011).
- Plaintiff's Suppl. Exhibit 5 (Affidavit of Richard D. Porcher, Ph.D., March 16, 2011) (filed Mar. 22, 2011).

Appellant moves to file its supplemental designation of matter attached as Exhibit A. Respondents' counsel has consented to this motion and supplementation by email. Respondents' consent is attached as Exhibit B.

Appellant respectfully requests that the Court grant this motion and in the interest of time respectfully moves that the Court accept the attached Supplemental Designation of Matter for filing.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:   
Newman Jackson Smith  
SC Bar No. 005245  
E-Mail: jack.smith@nelsonmullins.com  
151 Meeting Street / Sixth Floor  
Post Office Box 1806 (29402-1806)  
Charleston, SC 29401-2239  
(843) 853-5200

Attorneys for Town of Awendaw

Charleston, South Carolina

March 30, 2015

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v.

Town of Awendaw, and EBC, LLC ..... Defendants

Of whom Town of Awendaw is the Appellant

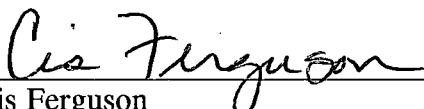
PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Town of Awendaw, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Consent Motion for Leave to File Supplemental Designation of Matter Out of Time

Counsel Served: Attorneys for Respondents

W. Jefferson Leath, Jr., Esq. Leath Bouche & Seekings, LLP P.O. Box 59 Charleston, SC 29402-0059	Christopher K. DeScherer Southern Environmental Law Center 463 King Street, Suite B Charleston, SC 29403-7204
---	--

  
Cis Ferguson  
Administrative Assistant

March 30, 2015

# Exhibit A

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Town of Awendaw, and EBC, LLC ..... Defendants,

Of whom Town of Awendaw is the Appellant

SUPPLEMENTAL DESIGNATION OF MATTER TO BE INCLUDED IN THE  
RECORD ON APPEAL

Pursuant to Rule 209, SCACR, Appellant Town of Awendaw designates the following additional material for inclusion in the record on appeal:

- Plaintiff's Suppl. Exhibit 8 (deposition of Megan Desrosiers, November 9, 2010) (filed Mar. 22, 2011).
- Plaintiff's Suppl. Exhibit 5 (Affidavit of Richard D. Porcher, Ph.D., March 16, 2011) (filed Mar. 22, 2011).

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: \_\_\_\_\_

Newman Jackson Smith  
SC Bar No. 005245  
E-Mail: jack.smith@nelsonmullins.com  
151 Meeting Street / Sixth Floor  
Post Office Box 1806 (29402-1806)  
Charleston, SC 29401-2239  
(843) 853-5200

Attorneys for Town of Awendaw

Charleston, South Carolina

March \_\_\_\_, 2015

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-7399

Lynne Vicary, Kent Prause, and South Carolina Coastal Conservation League, ..... Respondents,

v.

Town of Awendaw, and EBC, LLC ..... Defendants

Of whom Town of Awendaw is the Appellant

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Town of Awendaw, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Supplemental Designation of Matter to be Included in the Record on Appeal

Counsel Served: Attorneys for Respondents

W. Jefferson Leath, Jr., Esq. Leath Bouche & Seekings, LLP P.O. Box 59 Charleston, SC 29402-0059	Christopher K. DeScherer Southern Environmental Law Center 463 King Street, Suite B Charleston, SC 29403-7204
---	--

Cis Ferguson  
Administrative Assistant

March \_\_, 2015

# Exhibit B

## Cis Ferguson

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**From:** Chris DeScherer <cdescherer@selcsc.org>  
**Sent:** Friday, March 27, 2015 12:17 PM  
**To:** Jack Smith  
**Subject:** Re: Town of Awendaw

Sounds good. Thanks Jack!

On Mar 27, 2015, at 11:16 AM, Jack Smith <[jack.smith@nelsonmullins.com](mailto:jack.smith@nelsonmullins.com)> wrote:

Chris, that's fine with me. I'll put her whole deposition and all of Porcher's affidavit in.  
Thanks very much.  
Safe and happy travels!  
Best,  
Jack

---

**From:** Chris DeScherer [<mailto:cdescherer@selcsc.org>]  
**Sent:** Friday, March 27, 2015 12:13 PM  
**To:** Jack Smith  
**Subject:** Re: Town of Awendaw

I'm on a plane right now. Without seeing it, I'd be more comfortable just putting in the entire affidavit and transcript to make sure there is context to explain whatever you are citing to. Does that work for you?

On Mar 27, 2015, at 11:01 AM, Jack Smith <[jack.smith@nelsonmullins.com](mailto:jack.smith@nelsonmullins.com)> wrote:

No, we cited a few pages in a footnote. Pages 105 through 107. Porcher reference is paragraphs 9-11.  
Sorry to bug you while out of the office.  
Thanks!  
Jack

---

**From:** Chris DeScherer [<mailto:cdescherer@selcsc.org>]  
**Sent:** Friday, March 27, 2015 11:57 AM  
**To:** Jack Smith  
**Subject:** Re: Town of Awendaw

Jack,

I'm out of the office and don't have access to the brief at the moment. Are you proposing to include the entire Desrosiers depo transcript and Porcher affidavit?

Chris

On Mar 27, 2015, at 10:25 AM, Jack Smith <[jack.smith@nelsonmullins.com](mailto:jack.smith@nelsonmullins.com)> wrote:

Chris,

Hope you are doing well in what has finally warmed up into spring!

I realized I did not file a supplemental designation of matter for the record to add the Desrosiers deposition and Porcher affidavit referenced in our reply brief. I will file a motion to allow me to file the supplemental designation, will you please consent to it? I have begun creating the final record on appeal and realized this oversight.

Thanks!

Have a good weekend.

Best,

Jack

**Newman J Smith | Nelson Mullins Riley & Scarborough LLP**  
[jack.smith@nelsonmullins.com](mailto:jack.smith@nelsonmullins.com) | 843.534.4309  
151 Meeting Street Suite 600 | Charleston SC 29401

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# Nelson Mullins

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
151 Meeting Street / Sixth Floor / Charleston, SC 29401-2239  
Tel: 843.853.5200 Fax: 843.534.4350  
www.nelsonmullins.com

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APR 01 2015

SC Court of Appeals

Newman Jackson Smith  
Tel: 843.534.4309  
Fax: 843.534.4350  
jack.smith@nelsonmullins.com

March 30, 2015

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: Lynne Vicary, Kent Prause, and South Carolina Coastal Conservation League  
v. Town of Awendaw  
Civil Action No.: 2009-CP-10-07399  
Appellate Case No.: 2014-002118  
NMRS File No.: 44743/01500

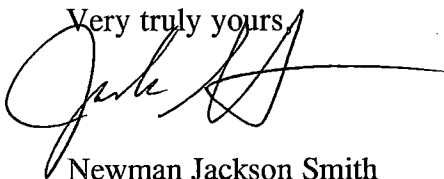
Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion for Leave to File Supplemental Designation of Matter Out of Time in regard to the above-referenced matter, as well as our check for the \$25 filing fee. We ask that you file the original and return the clocked-in copy in the enclosed stamped envelope.

In addition, if the Motion meets with the Court's approval, we ask that you also accept for filing the enclosed Supplemental Designation of Matter to be Included in the Record on Appeal. Please include the clocked-in copy in the enclosed return envelope.

By copy of this letter to counsel of record in this matter, we are serving them with copies.

Very truly yours,



Newman Jackson Smith

NJS:csf

Enclosures

cc: (all via U.S. mail w/enc.)  
W. Jefferson Leath, Jr., Esq.  
Christopher K. DeScherer

Hasler

PRIORITY MAIL

03/30/2015

US POSTAGE

\$05.75<sup>0</sup>



ZIP 29401  
011D11645519

**Nelson  
Mullins**

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
Post Office Box 1806  
Charleston, SC 29402-1806

44743/01500

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1015 Sumter Street - 5th Floor  
Columbia, SC 29201

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