

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Marvin H. Dukes, III, Master-In-Equity
Civil Action No.: 2007-CP-07-3212
Appellate Case No.: 2016-001277

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FEB 06 2017

SC Court of Appeals

H. Marshall Hoyler,

Appellant,

v.

The State of South Carolina; Merry Land Properties, LLC; Sherbert Living Trust; Supan Living Trust; Elizabeth R. Levin, Edward McCray Wise Revoc. Living Trust; Carol Ann DeVries Wise Revoc. Living Trust; Amelie Cromer; Philip Cromer; Robert Chiavello; Tocharoen Living Trust; Helen M. Olesak; Lesley Anne Glick a/k/a Lesley Ann Glick; Shirley G. Lackey; Patricia Banfield; Bertrand Cooper, Jr.; NHP SH South Carolina I, LLC n/k/a CCP Bayview 7176 LLC; Oyster Cove Homeowners Ass'n; Shirley Ann Moyer; Barry D. Malphrus; Garry D. Malphrus; Donnie Malphrus; Rita Brown; Houston Family Partnership – Joan Taylor Trustee; Michael Bull; Nancy Bull; Marny H. VonHarten; Dianne M. Donaldson; Brian R. Evans; Stephen Durbin; Valerie Durbin; Phillip Marti; Jane Marti; Michael Woodworth; Georgiana M. Cooke; Daniel B. Walsh; and Janet E. Walsh,

Respondents.

**RESPONDENT, MERRY LAND PROPERTIES, LLC's
DESIGNATION OF MATTER**

Stephen P. Groves, Sr., Esquire
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*Attorneys for the Respondent,
Merry Land Properties, LLC*

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT
OF APPEALS:

COMES NOW the Respondent, Merry Land Properties, LLC ("Merry Land"), pursuant to Rule 209 of the South Carolina Appellate Court Rules, and hereby submits its **Designation of Matters to be Included in the Record on Appeal** through which Merry Land herein designates the parts of the transcripts, orders, pleadings, affidavits, exhibits, and other materials which Merry Land proposes to include in the Record on Appeal of this matter and which may be in addition to or cumulative of those previously designed by the Appellant, H. Marshall Hoyler, or those which may be designated by the Respondent, South Carolina Department of Health and Environmental Control:

ORDERS

1. SCRCP Form 4C Order of the Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge, dated and filed 26 October 2016;
2. Order of the Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge, dated and filed 26 October 2016 (denying Motion to Alter or Amend);
3. SCRCP Form 4C Order of the Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge, dated and filed 27 May 2016;
4. Order of the Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge, dated and filed 27 May 2016 (denying Title to Marshlands);
5. SCRCP Form 4C Order of the Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge, dated and filed 19 May 2016 (denying Motion to Reconsider);
6. Order of the Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge, dated and filed 15 February 2013 (denying Motion to Reconsider/Amend Judgment and granting Nancy D. Carey's Motion to Intervene);
7. Order of the Honorable Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge, dated 14 March 2011, and filed 17 March 2011 (requiring joinder of adjoining property owners);

8. Order of the Honorable Carmen Mullen, Circuit Court Judge, dated and filed on or about 26 February 2008 (granting Merry Land's Motion to Intervene);

PLEADINGS

1. Summons and Complaint dated 6 November 2007, and filed 8 November 2007;
2. Merry Land's Motion to Intervene dated 26 November 2007;
3. Merry Land's Answer and Counterclaim dated 20 November 2007, and filed 26 November 2007;
4. Answer of the State of South Carolina dated 14 December 2007;
5. Plaintiff's Reply to Merry Land's Counterclaim dated Petition for Judicial Review dated and filed April 12, 2007;
6. Plaintiff's Motion to Reconsider and/or Amend Judgment filed on or about 8 April 2011;
7. State of South Carolina's Post-Trial Memorandum dated 25 March 2016, and filed 29 March 2016;
8. State of South Carolina's Post-Trial Memorandum dated 11 April 2016, and filed 14 April 2016;
9. Merry Land's Post-Trial Brief dated 28 March 2016, and filed 3 May 2016;
10. Plaintiff's Post-Trial Brief filed 3 May 2016;
11. Plaintiff's Post-Trial Motions Pursuant to Rule 52(b), SCRCivP, and Rule 59(e), SCRCivP, dated 2 May 2016, and filed 5 May 2016;
12. Merry Land's Return and Opposition to Plaintiff's Motions Pursuant to Rule 52(b), SCRCivP, and Rule 59(e), SCRCivP, dated 13 June 2016, and filed 16 June 2016;

TRANSCRIPTS (Trial and Deposition)

1. Deposition of James Gardner sworn to on or about 16 February 2016 (complete deposition including all exhibits);
2. Transcript of Hearing held on 31 January 2011 (complete transcript);
3. Transcript of Hearing held on 19 November 2015 (complete transcript);

EXHIBITS

Mr. Hoyler's Exhibits:

1. Plaintiff's Trial Exhibit No. 1 (2015 hearing);
2. Plaintiff's Trial Exhibit No. 2 (2015 hearing);
3. Plaintiff's Trial Exhibit No. 2A (2015 hearing);
4. Plaintiff's Trial Exhibit No. 3 (2015 hearing);
5. Plaintiff's Trial Exhibit No. 3A (2015 hearing);

Merry Land's Exhibits:

1. Defendant's Trial Exhibit No. 1 (2015 hearing);
2. Defendant's Trial Exhibit No. 2 (2015 hearing);
3. Defendant's Trial Exhibit No. 3 (2015 hearing);
4. Defendant's Trial Exhibit No. 4 (2015 hearing);
5. Defendant's Trial Exhibit No. 5 (2015 hearing);
6. Defendant's Trial Exhibit No. 6 (2015 hearing);
7. Defendant's Trial Exhibit No. 7 (2015 hearing);
8. Defendant's Trial Exhibit No. 8 (2015 hearing);
9. Defendant's Trial Exhibit No. 9 (2015 hearing);
10. Defendant's Trial Exhibit No. 10 (2015 hearing);
11. Defendant's Trial Exhibit No. 11 (2015 hearing);
12. Defendant's Trial Exhibit No. 12 (2015 hearing);
13. Defendant's Trial Exhibit No. 13 (2015 hearing);
14. Defendant's Trial Exhibit No. 16 (2015 hearing);
15. Defendant's Trial Exhibit No. 17 (2015 hearing);
16. Defendant's Trial Exhibit No. 18 (2015 hearing);
17. Defendant's Trial Exhibit No. 19 (2015 hearing);

18. Defendant's Trial Exhibit No. 20 (2015 hearing);
19. Defendant's Trial Exhibit No. 21 (2015 hearing);
20. Defendant's Trial Exhibit No. 22 (2015 hearing);
21. Defendant's Trial Exhibit No. 23 (2015 hearing);
22. Defendant's Trial Exhibit No. 24 (2015 hearing);
23. Defendant's Trial Exhibit No. 25 (2015 hearing);
24. Defendant's Trial Exhibit No. 26 (2015 hearing);
25. Defendant's Trial Exhibit No. 27 (2015 hearing);
26. Defendant's Trial Exhibit No. 28 (2015 hearing);
27. Defendant's Trial Exhibit No.29 (2015 hearing);
28. Defendant's Trial Exhibit No. 39 (2015 hearing);
29. Defendant's Trial Exhibit No. 41 (2015 hearing);
30. Defendant's Trial Exhibit No. 42 (2015 hearing);
31. Defendant's Trial Exhibit No. 43 (2015 hearing);
32. Defendant's Trial Exhibit No. 46 (2015 hearing);
33. Defendant's Trial Exhibit No. 47 (2015 hearing);
34. Defendant's Trial Exhibit No. 47-A (2015 hearing);
35. Defendant's Trial Exhibit No. 48 (2015 hearing);
36. Defendant's Trial Exhibit No. 49 (2015 hearing);
37. Defendant's Trial Exhibit No. 50 (2015 hearing);
38. Defendant's Trial Exhibit No. 51 (2015 hearing);
39. Defendant's Trial Exhibit No. 52 (2015 hearing);
40. Defendant's Trial Exhibit No. 53 (2015 hearing);
41. Defendant's Trial Exhibit No. 54 (2015 hearing);
42. Defendant's Trial Exhibit No. 55 (2015 hearing);

43. Defendant's Trial Exhibit No. 56 (2015 hearing);
44. Defendant's Trial Exhibit No.57 (2015 hearing);
45. Defendant's Trial Exhibit No.58 (2015 hearing);
46. E-Mail from Mary D. Shahid, Esquire to Master-in-Equity and All Counsel of Record dated 4 February 2016 (concerning efforts to locate surveyor witness);
47. E-Mail from the Hon. Marvin Dukes to Carrie Schurg dated 1 March 2016, at 2:02 p.m. EST; and
48. E-mail from Carrie Schurg to the Hon. Marvin Dukes and Heather McLeod dated 28 March 2016, at 3:35 p.m. EST.

CERTIFICATE OF COMPLIANCE WITH RULE 209(C), SCACR

I, Stephen P. Groves, Sr., Esquire, hereby certify, pursuant to Rule 209(c), SCACR, that this Designation of Matters to be Included in the Record on Appeal submitted by the Respondent, Merry Land Properties, LLC, does not contain any matter and/or items which are not relevant to this appeal.

Respectfully submitted,

NEXSEN PRUET, LLC

By: 

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*Attorneys for the Respondent,
Merry Land Properties, LLC*

Charleston, South Carolina

2 February 2017

NPCHAR1:1863727.1-REC_APP-(SPG) 048740-00001

**STATE OF SOUTH CAROLINA
IN THE
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Appeal from the Court of Common Pleas For Beaufort County
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Respondents.

**PROOF OF SERVICE for the
INITIAL BRIEF AND DESIGNATION OF MATTERS of the
RESPONDENT, MERRY LAND PROPERTIES, LLC**

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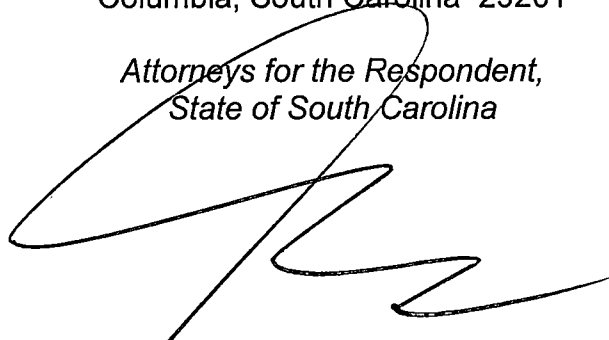
I, Stephen P. Groves, Esquire, hereby certify that on **2 February 2017**, I served one copy of the **Initial Respondent's Brief and Designation of Matters to be Included in the Record on Appeal** submitted by the Respondent, Merry Land Properties, LLC, on counsel for the Petitioner and the Respondents via the United States Mail, postage pre-paid, and addressed as follows:

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Stephen P. Groves, Sr., Esquire

Charleston, South Carolina

2 February 2017

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