THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court Of Common Pleas

The Honorable R. Markley Dennis, Jr, Circuit Court Judge
Trial Court Case No. 2018CP2600120

Appellate Case No. 2021-000078

East Cherry Grove Co., LLC and Ray & Nixon, LLC, ... Respondents,

v.

State of South Carolina, South Carolina Department of Health and Environmental Control, and Matt Leonhard, ……. Defendants,

Of whom The State of South Carolina is the Appellant

FINAL BRIEF OF APPELLANT STATE OF SOUTH CAROLINA

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STATEMENT OF ISSUES

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2. Whether the Circuit Court misapplied the law of the case doctrine to this case by applying an order that did not decide the issues present in the instant case.

3. Whether the Circuit Court erroneously used a standard of proof of the preponderance of the evidence when it should have used clear and convincing evidence?

4. Whether the Circuit Court erroneously determined that Respondents own the entirety of TMS or "Tax Map Number" 1450001001 when Respondents presented no evidence that they owned the area of the tract referenced as the "pig's ears" and "dome of the pig's head."?

5. Whether the Circuit Court erroneously determined that Respondents own the entirety of TMS or "Tax Map Number" 1450001001 when such maps fail to meet standards set forth by this Court for the specificity of tidelands conveyances?

6. Whether the Circuit Court should have used and applied the plat of the Russ Courtney (State's Exhibit 25) instead of the overlays prepared by Respondents' expert's office because the Courtney plat is much more consistent with the specificity and evidence required by the Appellate Courts including similarity to the original 200 acre Morrall grant?

7. Whether the Circuit Court improperly relied on the testimony of the title opinion expert about the general area of TMS 1450001001 when he is not a surveyor and cannot override the testimony of the two surveyors?

8. Whether the circuit court should have clarified that only the state controls the

navigable waterways?

STATEMENT OF THE CASE

Plaintiff brought suit pursuant to S. C. Code Ann. §48-39-220 which provides a means to determine the existence of a right, title or interest of such person in and to such tidelands as against the State. R. V. 1, p. 31 (Complaint). Plaintiff East Cherry Grove Realty claims to own TMS Tract 1450001001 which is a huge tract of land encompassing approximately 128 acres of what appears to be marsh and waterways. *Id.* & R. V. 1 p 51 (Ex. 3 to Complaint). The parties have referred to this tract as "the Oklahoma tract" because it somewhat resembles that state with the panhandle pointing in the opposite direction. Plaintiff Ray and Nixon, LLC also claims to own the smaller tract, TMS 1450225004, that is shown on the same exhibit and pasted below. Respondents requested that the court find them to be the owners of the property pursuant to 1969 settlement deeds and bar issuance of a dock permit to the Defendant Leonhard. They also alleged inverse condemnation and a taking of their property but later dropped those causes of action. R. V. 1, p. 26 (Order of December 5, 2019, p. 2).

The State's Answer included the defense throughout that Respondents had not clearly alleged what property they were claiming and provided sufficient information, including the location of its claims, from which the State could determine whether Respondents had title to any property at issue and, therefore, the State denied that Respondents had such title. R. V. 1, p. 60. The State asserted affirmative defenses that included that it had prima facie fee simple title to the property, that it owned the bottoms of any canals and other bodies of water, and that the public had the right to make use of navigable waters.

The Defendant Leonhard did not appear in this action and did not participate in the trial. The Clerk of Court entered an order of default against him on October 15, 2018. Respondents also named DHEC as defendant, but later dismissed the agency by consent. R. V. 1, p. 28 (Consent Order of Dismissal).

This matter was tried before the Honorable Markley Dennis via WebEx on August 25, 2020. The Court issued an Order on October 28, 2020, granting judgment to the Respondents as to both TMS tracts except for the bottoms of any navigable waters on the properties which are public highways subject to the "Plaintiffs'" control. R. V. 1, p. 13. The State moved to alter or amend on November 6, 2020 (R. V. 1, p. 69) which was denied by the Court on December 21, 2020, when it issued an amended order that was the same as the original except that it changed the reference to the waters being subject to the "Defendants'" control R. V. 1, p. 1.

STANDARD OF REVIEW

As stated in the tidelands case *Hoyler v. State*, 428 S.C. 279, 290, 833 S.E.2d 845, 851 (Ct. App. 2019), reh'g denied (Oct. 17, 2019), cert. dismissed (Jan. 29, 2020):

> When the complaint's main purpose "concerns the determination of title to real property, it is an action at law." Id.
>
> "In an action at law, '[the appellate court] will affirm the master's factual findings if there is any evidence in the record [that] reasonably supports them.' " Id. (quoting *Lowcountry Open Land Tr. v. State*, 347 S.C. 96, 101–02, 552 S.E.2d 778, 781 (Ct. App. 2001)). Further, "[the appellate c]ourt reviews all questions of law de novo." *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009); *see also Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) ("Questions of law may be decided with no particular deference to the trial court." (quoting *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 654, 667 S.E.2d 7, 12 (Ct. App. 2008))).

This case involves primarily questions of fact but also questions of law pertaining to the circuit

court's application of the law of the case doctrine.

STATEMENT OF FACTS

Tax Map / TMS Tract 1450001001

This tract, also known informally in these proceedings as the Oklahoma tract, is claimed by Plaintiff East Cherry Grove. Respondents' witness William Deschamps was qualified without objection as an expert in title examination and title opinions. R. V., p. 96, ll. 18-19; p. 97, ll. 9 & 10. He testified that the property claimed by Respondents was in a chain of title originating with the Morrall and Alston sovereign grants, but he never identified a deed into the Respondents or referenced a description of properties claimed by them. (R. p. 107, ll. 16 – 20. He identified no deed in evidence with a description of the property at issue.

Respondents' witness Joel Floyd was qualified as an expert in land surveying without objection. He testified that the 200 acre Morrall grant and plat applied to tract at issue. R. V. 1, p. 124, ll. 3-11 and p. 248 (Plaintiffs' Exhibit 6). The Morrall plat shows that it contains salt marsh within a long narrow section stretching vertically down the plat. R. V. 1, p. 248 (Pl. Ex. 6). Plaintiffs' Exhibit 4 (R. V. 1, p. 246), prepared by Mr. Floyd's Office, shows a much thicker depiction of that section extending across the Oklahoma tract; however, Plaintiffs' exhibits 1, p 9 (R, V. 1, p. 243) and 4 (R. V. 1, p. 246) do not show the grant covering marsh in the northwest section of the tract in an area described as looking like the dome of a pig's head with ears, and Mr. Floyd's testimony acknowledged that omission except for a vague reference to grants not in evidence. R. V. 1, p. 132, ll. 12-21.

Mr. Floyd also did not relate his testimony to any precise boundaries claimed by

Respondents as to the Oklahoma tract stating only generally that an unspecified map attached to Plaintiffs' Ex. 1 accurately depicted the grants and that the Ray and Nixon and reverse Oklahoma properties are within those boundaries. As testified by the State's expert, Russ Courtney, *infra*, TMS boundaries are not survey grade.

Respondents' witness William Fairey was qualified as an expert in surveying. He testified that the Leonhard dock would extend into the Ray & Nixon property (R, V. 1, p. 141, ll. 5 – 14); however, he did not do any survey maps on the area except for the Teague tract that was at issue in a 2014 case nor did he identify any exhibit identifying the property claimed within TMS 1450001001. R. V., p. 144, ll. 15-20. Order of the Honorable Larry B. Hyman in the action East Cherry Grove Realty, LLC v. State and Teague, 2014CP2601412, July 8, 2015 (Exhibit 18). The Teague tract, therefore, is only a small fragment of the larger Oklahoma tract, and the order in that case and does not apply anywhere else within the larger tract.

The State's witness Russ Courtney was qualified as an expert in land surveying and also testified about coastal tidal datum including location of mean high water mark. R. V. 1, p. 153, l. 5 – p. 154, l. 7. He testified about his Exhibit 25 R. V. 1, p. 233 and enlarged) showing his alignment of the grants. According to his map and testimony, the 200 acre Morrall grant applied to a portion of TMS 1450001001 running diagonally from the left lower corner of the tract to the upper right panhandle area of the Oklahoma tract and therefore excluded areas to the upper left and lower right within the Oklahoma tract. His application of the Morrall grant excluded the pig's ear's area and adjacent strip, and he found no grant that did apply. R. V. 1, p. 161, ll, 16-17; p. 162, ll. 2- 4) .

Mr. Courtney's narrow depiction of the 200 acre tract as it stretches across the Oklahoma

tract is much more similar to the original 200 acre Morrall plat than is Mr. Floyd's wider application. (Compare V. 1, pp. 240, 246, and 248 (Pl. Exs. 1, p. 6, 4, & 6); R. V. 1, p. 233 (Sts. Ex. 25), R. V. 1 p 167, l. 22 – p. 168, l. 1). As noted above, his Exhibit 25, unlike Plaintiffs' exhibits, plots the outlines of the property deeded to Plaintiff East Cherry Grove and then overlays it with the grant. His survey did not include the dome of the pig's head and ears that is also excluded by Mr. Floyd's survey. See above. Mr. Courtney also testified that a significant portion of the panhandle within the grant and the Oklahoma tract was owned by the City of North Myrtle Beach. R. V. 1, p. 233 and oversized x. 25 (curved line running between the words "Salt" and "Marsh" and the land within the panhandle below it); R. V. 1, p. 157, l. 15 – p. 159. l. 3.

Significant portions of TMS 1450001001 are covered by navigable streams including ones on which Mr. Courtney testified that he has been on boats and a jet ski and on which he has fished. Mr. Courtney identified a number of these streams in his testimony and referenced aerials, a GIS map and photographs. R. V. 1, p. 169, l. 19 – p. 173, l. 25; State's Ex.'s, 1- 4. As set forth above under tidelands law, the State owns the bottoms of those streams because they can be conveyed only by statute and no such Act has been identified. The Constitution requires that navigable waterways be "public highways." art. XIV, § 4. The circuit court found that Respondents "own the tidelands to the low water mark in all navigable creeks and own all the tidelands below the low water mark in all non-navigable creeks but that does not include the bottoms of any navigable waters on these properties, and under our Constitution, those waters are

public highways subject to Defendant's control." R. V. 1, p. 10 (Amended Order)[1]

Tax Map / TMS 1450225004

This tract is a small parcel claimed by Plaintiff Ray and Nixon. Complaint, Ex. 3; Plaintiff's Ex. 2. No exhibit or testimony provides a metes or bounds description of the boundary of the tract, other than Mr. Courtney's exhibit.

Mr. Courtney's survey (State's Ex. 25) shows the tract within the 300 acre Alston grant to an island that is bounded on one side by swash and another by the sea and which contains no express reference to marsh but does bear markings appearing to be marsh grass. R. V. 1, pp. 237 and 253 (Plaintiff's Ex. 1, p. 3; Pl. Ex. 9). Mr. Floyd's survey does not clearly depict which grant covers the tract, but possibly the same 300 acre grant. The testimony of both experts was that the tract was covered by a grant. Mr. Deschamps testified that the property was within a title chain with the Alston grant, but he identified no deed with a metes and bounds description of the tract claimed by Respondents. Mr. Fairey, as noted above, did not survey this tract, but he did testify that the proposed Leonhard dock would extend into property owned by Respondent Ray & Nixon.

More than half of TMS 1450225004 is underwater according to Mr. Courtney's testimony R. V. 1, 177, ll. 1-3), the State's photographs which he identified (St.'s Exs. 7-12); and Plaintiff's own exhibits. R. pp. 244 and 245 (Plaintiffs' Exs. 2 & 3). Mr. Courtney testified

1 The Amended Order should have referred to the State rather than the "Defendant's." The intent would be to name just the State in that the Defendant DHEC had been dismissed, and the Defendant Leonhard was not participating. The State's Motion to Alter or Amend had requested that the correction refer to the State of South Carolina to clarify that it does not refer to the Defendant Leonhard. R. V. 1, p. 73 (Motion at p. 5).

that he had water skied and boated on the water covering this tract and identified photographs depicting a creek covering a large section of the property. R. V. 1, p. 173 – p. 177, l. 7. As found by the circuit court, Respondents do not own the bottoms of navigable waterways nor do they control them.

ARGUMENT

I

THE COURT SHOULD HAVE APPLIED A CLEAR AND CONVINCING EVIDENCE STANDARD TO THE EVIDENCE

The Court should have applied a clear and convincing standard to the evidence rather than the preponderance of the evidence. Although no tidelands case appears to address expressly the burden of proof, cases indicate that a standard of clear and convincing evidence must be applied to overcome the State's presumptive ownership rather than the preponderance of evidence standard applied in the Order of this Court. *Hoyler v. State*, 428 S.C. 279, 292, 833 S.E.2d 845, 852 (Ct. App. 2019), reh'g denied (Oct. 17, 2019), cert. dismissed (Jan. 29, 2020) ("[O]ne claiming an interest in tidelands pursuant to section 48-39-220(A) must convince the court that the State intended to include the tidelands within the boundaries expressed in the deed." (emphasis added)); *Lowcountry Open Land Tr. v. State*, 347 S.C. 96, 104, 552 S.E.2d 778, 783 (Ct. App. 2001)("These facts convince us the master correctly ruled the grant from the State of South Carolina intended to convey fee simple title of the tidelands to Peronneau." (emphasis added)). Nevertheless, the evidence failed to prove Respondents' owned certain parts of the property at issue regardless of which standard of proof is used.

II

THE COURT IMPROPERLY RELIED ON THE LAW OF THE CASE DOCTRINE

Judge Dennis held that "Judge Hyman's ruling in *East Cherry Grove Realty Co., LLC v. State of South Carolina and South Carolina Department of Health and Environmental Control*; C/A No.2014-CP-26-1412 [the Teague case] is not only instructive but is the law of the case." R. V. 1, p. 10; R. p. 52 (Teague Order). The Order in the Teague case is not the law of the case for the instant case because the Hyman Order was in a different case. Application of the law of the case to the instant case conflicts with the clear Supreme Court precedent applying the doctrine only to the case in which the law was made. As stated in *Builders Mut. Ins. Co. v. Bob Wire Elec., Inc*., 424 S.C. 161, 165, 817 S.E.2d 807, 809 (Ct. App. 2018):

> the doctrine of "law of the case" is just that—the law of the case in which it was made, not the law of future cases. *Lifschultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guérard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96–97 (1999) (law of the case doctrine "applies only to subsequent proceedings in the same litigation following an appellate decision"); *Flexon v. PHC-Jasper, Inc*., 413 S.C. 561, 571–72, 776 S.E.2d 397, 403 (Ct. App. 2015) (collecting cases and noting law of case doctrine prohibits matters decided on appeal from being relitigated in the trial court in the same case). *See also Messenger v. Anderson*, 225 U.S. 436, 444, 32 S.Ct. 739, 56 L.Ed. 1152 (1912) ("[T]he phrase, 'law of the case,' as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power."); Wright & Miller, Fed. Prac. & Proc. § 4478 (2d. ed.) (law of the case rules "do not apply between separate actions"). [emphasis added]

Therefore, the Order of Judge Hyman may not be applied to this suit under "the law of the case" doctrine. Moreover, that Order was limited to a narrow section of marsh under a proposed dock. R. V. 2, p. 473 (Pl. Ex. 18, Teague Order at page 8)("this Court finds that the part of the marsh area over which the proposed dock is to be built is owned by East Cherry Grove Realty under a

sovereign grant.") In fact, Judge Hyman specifically stated that he could not make a determination of ownership of any land other than the part under the marsh:

> Mr. Connell, I'm going to find as a matter of fact that the property upon which the dock was to encroach was property of East Cherry Grove Realty. I have not heard enough concerning the metes, the bounds, the size of the subject to make a determination that all of the subject tract --when I say subject, I mean that hundred-and-how-ever-many acres belongs to East Coast -- I mean, East Cherry Grove Realty. I don't know. I haven't -- the approach has not been such that I've been able to determine how big it is, what it's metes and bounds are. I don't have a description. I can say comfortably though that I believe that the dock will encroach on East Cherry Grove Realty's property.

R. V. 1, p. 232, ll. 8-19 (State's Ex. 18). Therefore, Judge Hyman did not rule that East Cherry Grove owned any property other than marsh immediately under the Teague dock, and his Order does not apply to the instant case except as to that strip under the Teague dock.

III

NO EVIDENCE SUPPORTS THE CIRCUIT COURT'S FINDING THAT RESPONDENTS OWN THE ENTIRETY OF TMS 1450001001

"Our State's tidelands are a precious public resource held in trust for the people of South Carolina." *Hoyler,* 833 S.E.2d at 852. Title to lands lying between the mean high water mark and mean low water mark is held by the State in trust for public purposes absent a grant from the State or the King of England. *See Hobonny Club v. McEachern*, 272 S.C. 392, 252 S.E. 2d 133 (1979). The burden rests upon the claimants to prove that the State had granted title to the lands in question to them or their predecessors in title. *State v. Yelsen Land Co.*, 265 S.C. 78, 216 S.E. 2d 876 (1975). "[O]ne claiming an interest in tidelands pursuant to section 48-39-220(A) must convince the court that the State intended to include the tidelands within the boundaries expressed in the deed." *Hoyler, supra*, 833 S.E.2d at 852. [emphasis added]. "Necessarily, the claimant

must show that the language of the conveyance is specific enough to determine a reasonably precise location of its boundaries so that members of the public will not be excluded from property rightfully belonging to them." *Id.* [emphasis added]. Further, a grant from the sovereign to a subject is construed strictly in favor of the government and against the grantee. *Hobonny Club, supra,* 252 S.E.2d at 135-36, 272 S.C. at 396.

The Court's Order fails to meet these standards as discussed below.

A

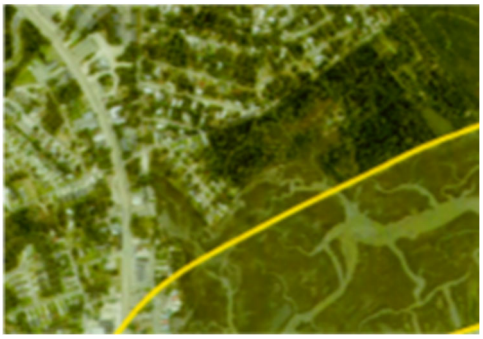
No Evidence Supports the Circuit Court's Order As To The Area Described As the Pig's Ears and the Dome of the Pig's Head And An Adjacent Strip

This area depicted on the Courtney Plat at State's Exhibit 25 (R. V. 1, p. 233 and oversized) and described as the "pig's ears" and "dome of the pig's head" and an adjacent strip are outside the boundaries of the 200 acre 1786 Morrall grant to that area. This area is shown in the section of Exhibit 25 pasted below as highlighted by the line in the upper left (green if viewed in color) and bordering on the bolder line below (red if viewed in color). Although this area may be identified on the reduced version of this plat at State's Ex. 25, the identifiers are more readily visible on the enlarged version of the plat (R. V. 1, p. 233) that shows the area as just to the right of Creek Front Rd., below Marsh Ct. and above the redline of the 200 acre grant overlay.

State's Ex. 25 (R. V. 1, p. 233 and enlarged)

As noted above, Plaintiffs' exhibits 1, p. 9 (R. V. 1, p. 243) and Exhibit 4 (R. V.1, p. 246) do not show the grant covering marsh in the northwest section of the tract in that area, and Mr. Floyd's testimony acknowledged that omission except for a vague reference to grants not in evidence. Pl. Ex. 1, p. 9 (R. V.1, p. 243); R. V. 1, p. 132, ll. 9-21.

Plaintiff's Ex. 1, p. 9 (R. V. 1, p. 243)



Plaintiffs' Ex. 4 (R. V. 1, p. 246)

With no evidence showing that the property in this area is owned by East Cherry Grove, this Order may be reversed as to that area under the above standard of review. Because of this failure, East Cherry Grove failed to satisfy the standards of proof and strict scrutiny applied to grants of tidelands property.

B

The Courtney Plat (State's Ex. 25) Must Be Used Because Respondents Presented No Evidence Of The Actual Boundaries Of The Property They Claim

The Order improperly relied on the vague outlines of the TMS plats on the Horry County GIS system and similar plats. R. V. 1, p. 3 (Amended Order at p. 3). Those plats lack specificity and are disclaimed by Horry County as to accuracy. R. V. 1, pp. 51 and 285 (Pl. Ex. 3 to

Complaint; Pl. Ex. 12). See also, R. V. 1, p. 219 (States Ex. 1); R. V. 1, p. 169, ll. 2 - 18) [2]. Mr. Courtney testified that the TMS depictions on the Horry system were "a close rendition" but "not survey grade." *Id*. Such TMS depictions, therefore, are insufficient to determine the extent of property claimed by Plaintiff in this case. Plaintiffs have introduced no exhibits with a metes and bounds or other description of the property they claim. The only exhibit showing the a deed based outline of the property at issue rather than more general TMS boundaries is the State's Exhibit 25, in which the State's surveyor Courtney plotted a green outline of the properties claimed by the Respondents in this action based upon deed books. See notations on exhibit at R. V. 1, p. 233 and large version separately filed. Therefore, that Courtney survey is the only reliable basis for determining the boundaries of the claimed property. Testimony of the Mr. Deschamps, Respondents' title opinion expert, about the general area of TMS 1450001001 is insufficient as he is not a surveyor and cannot override the testimony of the two surveyors that exclude that area. No evidence supports the circuit court's reliance on the TMS and Floyd plats or maps for the boundaries of the property.

Although the Floyd testimony and exhibits show that the Morrall grant covers much more of TMS 1450001001 than does the Courtney plat and testimony, their failure to define the boundaries of the property with the precision required by *Hoyler* and *Hobonny* provides no reliable evidence of the location of the boundaries of the property claimed. Furthermore, the Courtney overlay in Exhibit 25 is much more similar to the original 200 acre Morrall plat than is Mr. Floyd's wider application. (Compare R. V. 1, pp. 240, 246, 248 (Pl. Exs. 1, p. 6, 4, & 6) and R. V. 1, p.233)(Sts. Ex. 25 and enlarged version) and V. 1, p. 167, l. 22 – p. 168, l.1). Therefore, the

2 https://www.horrycounty.org/Online-Services/Land-Records.

Courtney plat should be controlling as to Respondents' claims to the properties at issue in this case.

IV

THE CIRCUIT COURT SHOULD HAVE CLARIFIED THAT ONLY THE STATE CONTROLS THE NAVIGABLE WATERWAYS

As noted above, the circuit court found that Respondents "own the tidelands to the low water mark in all navigable creeks and own all the tidelands below the low water mark in all non-navigable creeks but that does not include the bottoms of any navigable waters on these properties, and under our Constitution, those waters are public highways subject to Defendant's control." R. V.1, p. 10 (Amended Order at p. 10). The circuit court should have specified that the waters are public highways subject to the State's control rather than the more general "Defendant's," but the order is correct that Respondents do not own tidelands below mean low water in navigable waterways and do not control the waterways.[3] See, R. V. 1, p. 73 (Motion to Alter or Amend at p. 5).

CONCLUSION

The State respectfully requests that this Court reverse the circuit court's order as set forth above and conclude that the law of the case doctrine does not apply the Teague case to the instant

3 Any grant from the sovereign does not include land below the mean low water of tidal navigable streams in that title remains in the State absent a specific act of the legislature. *State v. Pacific Guano Co*., 22 S.C. 50, 83–84 (1884) ("the beds of such [tidal] channels below low water mark are not held by the state simply as vacant lands, subject to grant to settlers in the usual way through the land office . . . it would seem to follow that in order to give effect to an alienation which the state might undertake to make it would be necessary to have a special act of the legislature expressing in terms and formally such intention."); *see also, State v. Head*, 330 S.C. 79, 498 S. E. 2d 389 (Ct. App. 1997); S.C. Const. art. XIV, § 4 ("All navigable waters shall forever remain public highways free to the citizens of the State . . . .")

case, that the Courtney plat (State's Ex. 25) is controlling as to this case, that Respondents do not own the "pig's ears," the "dome of the pig's head," the adjacent strip and other property outside the boundaries of the grants as depicted on the Courtney plat, and clarify that the State controls the waterways on navigable streams within the property at issue in this case.

Respectfully submitted,

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October 5, 2021

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SC Court of Appeals

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v.

State of South Carolina, South Carolina Department of Health and Environmental Control, and Matt Leonhard, ……. Defendants,

Of whom The State of South Carolina is the Appellant

CERTIFICATE OF COMPLIANCE WITH RULE 211 (b)

I hereby certify that the Final Brief and Final Reply Brief of the Appellant State of South Carolina complies with Rule 211(b), SCACR. I do note that in the first paragraph at the top of page 3 of the Final Brief, I deleted an erroneous reference to the Record regarding the Order of Default. That Order was not designated for the Record nor is it in the filed Record on Appeal. Counsel for Respondents consents to this deletion. This correction appears to be consistent with provisions for references to the Record in Rule 211(b)(1), SCACR. If the Court desires further action, please let me know.

s/J. EMORY SMITH, JR.
Deputy Solicitor General
Counsel for Respondent Attorney General

October 6, 2021