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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2017-001563

Cynthia Wright and Richard Wright, …….. Appellants

v.

South Carolina Department of, Transportation, Pilot Travel Centers, LLC, Speedway, LLC, Ashley Land Surveying, Inc. f/k/a Ashley Engineering and Consulting, Inc., and Munlake Contractors, Inc.

Of Whom

South Carolina Department of, Transportation, Pilot Travel Centers, LLC, Speedway, LLC, Ashley Land Surveying, Inc. f/k/a Ashley Engineering and Consulting, Inc., …… Respondents.

APPENDIX (VOL. 2)

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absolutely.
Q. So if the safety standards are followed, one of -- the intention is, is that that would ultimately protect people both on and around the highway?
MR. MAYBANK: Object to the form.
BY MR. SMITH:
Q. You can go ahead.
A. Yes. I mean, if -- if the -- if the pedestrians, bicyclists, the -- the -- and -- and vehicle drivers are following all the applicable laws, the -- that one E is part of safety, the engineering. Absolutely, it is -- it is one of the four E's regarding highway safety.
Q. Okay. Are there parts of the highway design process or the maintenance issues with changes to the highway or just simply the process of approving driveways or -- or curb cuts and the safety standards that apply to those issues, do those not take in account for situations where someone is performing a illegal use of the road? Or do all of these safety standards presume that people are going to legally use the road and just simply don't apply if there's any illegal use?
MR. MAYBANK: Object to the form.

THE WITNESS: I'm not sure -- I'm not sure I understand the question.
BY MR. SMITH:
Q. I know that was a long question, wasn't it?
You said that -- I thought you said that part of highway design and changes to a highway and curb cuts and things like that presume legal use of the roadway. Is that a fair summation of what you said?
A. That's fair, yes.
Q. Okay. Do those safety standards that affect those decisions, do those safety standards contemplate or deal with in any way situations where people are illegally using the roadway, maybe an illegal turn or driving too fast or really anything like that?
A. I think it's reasonable compliance. And we -- we put, you know, signage, pavement markings, spacing are all in reasonable compliance. I mean, on a two-lane road, I'm not sure that engineering when you look at signage and pavement markings can have somebody driving down the wrong lane. I'm not sure, so I'm -- that's a very difficult question to answer.

But yes, I would say reasonable conformity to the laws. Again, on a two-lane roadway, we can sign and we can mark the road with both paint and raised pavement markers; but if somebody decides to go in the wrong lane, I'm not sure we've got something that -- that can actually absolutely prevent that.
So in all cases, no, we -- it's got to be reasonable conformity to the -- to the state laws.
Q. But if -- let me just ask you more of a general question then: If -- if the safe -- if the safety standards are enforced and followed with regards to the highways and the curb cuts and stuff like that, is it meant to protect people in situations -- innocent people that come across other people that are doing illegal actions? Or do those safety standards just not protect people in -- in any way when that happens?
MR. MAYBANK: Object to the form.
THE WITNESS: It -- it's -- it's the reasonable compliance. I mean, if -- I'm not -- I don't think that engineering component of the four E's can protect everybody, no, I don't think that. If that's your question.

BY MR. SMITH:
Q. Well, I'm just saying if -- are -- are the -- the purpose of the -- the safety standards with regards to the highways and the curb cuts, you talked about your -- your own manuals and some federal manuals and stuff like that. Those manuals give certain protection to people both on and around the roadway. Is that true?
A. Yes. They -- they provide consistency amongst our state and, you mentioned AASHTO, other states for driver expectation. So you've got continuity amongst our state, continuity from state to state for reasonable driver expectations.
Q. Now, do -- do those manuals, those safety standards, do those manuals contemplate any illegal use of the road when they're figuring out how to protect people both on and around the highway?
A. I'm not sure.
Q. Okay. Just more of a general question about the -- the -- the manuals as far as you're aware, okay.
Do you believe the Department of Transportation must follow its own safety standards when considering changes to a highway or the

additions of driveways?
A. Yes.
Q. And is the reason for this to prevent injury or death to everyone using the road?
MR. MAYBANK: Object to the form.
THE WITNESS: It is to provide a reasonable -- again, I go back to those four E's. It's not to prevent every -- every collision that could potentially happen, but it's to provide that reasonable assurance to the reasonable uses of the road that they have the same driver expectancy as they should expect as a -- as a user of our system.
BY MR. SMITH:
Q. So it sounds like you're saying one of the reasons for the Department to follow its own safety standards is to try and prevent injury or death on the road. Is that a fair statement?
A. It is one of the factors, yes, that would -- would go into preventing collisions. Yes, absolutely.
Q. And do you believe the Department of Transportation must investigate proposed plans by corporations to make sure they are safe?
A. In the aspect of their tying into the state highway system, yes.

Q. Okay. And obviously the existence of a raised median or not, that ties into the state system, right?
A. Yes, sir.
Q. All right. And the curb cuts and driveways along 17A and Farmington Road, those would also tie into the highway?
A. Yes, sir.
Q. Okay. And is the -- is one of the reasons to investigate proposed plans by corporations to make sure they're safe, is one of the reasons for that to try and prevent injury or death to other people -- or to everyone using the road?
A. Yes, it would be one of the factors.
Q. Okay. And do you believe the South Carolina Department of Transportation must take steps to discover intersections that become unsafe?
A. Yes.
Q. All right. And is the reason to take those steps to try and prevent injury or death to everyone using that road?
MR. MAYBANK: Object to the form.
THE WITNESS: It is to increase the

safety of the roadway, yes, sir.
BY MR. SMITH:
Q. Okay. And do you believe the South Carolina Department of Transportation must never approve unsafe plans in returns for favors or financial gifts?
A. Yes.
MR. MAYBANK: Object to the form.
BY MR. SMITH:
Q. And the reason that's in place, obviously, is to protect people, to prevent injury or death, and -- and also be honest people --
A. Yes. I mean, I --
Q. -- who perform their --
A. -- I would say --
Q. -- duties?
A. -- that ethics law would rule on that one.
Q. But ultimately, if we -- let's just say ethics didn't even prevent that sort of thing, you wouldn't do that or the Department wouldn't do that simply because that would -- that would put people at risk?
MR. MAYBANK: Object to the form.
THE WITNESS: Yes.

BY MR. SMITH:
Q. Okay.
A. Yes.
Q. And I want to talk to you just in general about some different industry safety standards. We talked before about the ARMS manual?
A. Yes.
Q. You agree that that's an industry safety standard that applies to the South Carolina Department of Transportation?
A. Yes. It is a roadside access man -- manage -- manual that provides guidelines to private individuals, companies that are seeking access to the state highway system. And safety is one of the components that was used to develop those guidelines.
Q. Okay. And AASHTO, another industry safety standard that applies to both the highway and the curb cuts and -- and driveways and -- that are at issue in this case?
A. Yeah. I mean, I would say that -- my answer to that would be that yes, we used AASHTO guidance in developing ARMS. We use that state-specific manual, both the Highway Design Manual and the ARMS, taking guidance from AASHTO.

So we don't use AASHTO per se, we've got our own that's approved by federal highways that that's approved for South Carolina specifically, but it does take into account AASHTO as well.

Q. Okay. And how about the MUTCD, what is that?

A. That is a Manual of Uniform Traffic Control Devices.

Q. Is that an industry safety standard that you're aware of?

A. It is part of that. Part of that manual takes into consideration safety, yes, sir.

Q. Okay. And how about the NCHRP, which is the National Cooperative Highway Research Program? Have you ever heard of that?

A. I have.

Q. Okay. Is that an industry safety standard? Or does it represent a set of industry safety standards, I should say?

A. I don't know specifically.

Q. Okay. And we talked about this, I think, before: The U.S. Department of Transportation access management in the vicinity of intersections, would that represent an industry safety standard or a set of industry safety

standards?

A. I'm not familiar with that document.

Q. Okay. Oh, that was the one I had showed you, I think, before, the --

A. AASHTO?

Q. This one here (indicating). There's a lot of the same stuff from this was in the ARMS.

A. Yeah. I would -- I would say that DOT, in developing the state-specific guidelines, takes into consideration AASHTO and USDOT standards --

Q. Okay.

A. -- but applies those specifically to South Carolina conditions, as do most other state DOTs.

Q. All right. And I had a note here to ask you about any others. And I just want to -- I don't know if I wrote it down, but you -- early on, you said that one of the things you looked at was this highway and whether it met this certain manual. And I showed you this and showed you that, and you said that wasn't it. Can you just say that again so I can write it down?

A. Yeah. It's the South Carolina Highway Design Manual.

Q. Okay. And you have in your possession

the versions of that manual that existed back in 2000 up through today? Not in your physical possession right now, but that's available to you?

A. Yes, sir.

Q. Okay. After we're done here today, could you maybe take those -- those manuals, those versions from 2000 up through today, and provide them to your attorney?

A. Yes. I provided the one that was in place at the time of the design. But -- but the new one, there's been an updated version that we did not provide, so I can provide that as well. One has already been provided.

Q. Okay.

MR. MAYBANK: And -- and if you gave it to me, Kevin, it should be in the documents that we -- all these -- A, B, C, I think you've got a list of them. You've got those.

MR. SMITH: All right. Thanks.

THE WITNESS: I'll make a note of that.

MR. MAYBANK: Do you want the new manual, Kevin?

MR. SMITH: Yeah, any -- any changes since 2000.

MR. MAYBANK: Okay.

BY MR. SMITH:

Q. Are you personally familiar with the ARMS manual?

A. I am, yes, sir.

Q. And I believe your description of the ARM manual -- ARMS manual was it's a set of guidelines used by others when they are wanting to make changes to the highway or curb cuts and driveways and things like that?

A. It is. I mean, it's something that both the DOT as well as that private individual or company uses to provide those guidelines for -- for access to the state highway system. Something we use as well in a review if there are any encroachment permits.

Q. Does the ARMS manual contain -- does it contain a set of safety rules or -- or rules for the -- I'm trying to -- trying to figure out how you're using the word guidelines. Maybe I can rephrase the question.

The ARMS manual, are those merely suggestions or are those rules that are to be followed?

A. They are guidelines to be followed. There are -- the manual does allow for exceptions

to that, so there is a -- there is an exception process as -- as well that does -- that's within this -- incorporated within the manual itself.

Q. So what's in the ARMS manual is mandatory, but the ARMS manual itself provides examples for exceptions and procedures to -- to gain those exceptions. Is that a fair summary?

A. That is correct.

Q. Okay.

A. Yes.

MR. CRITES: Kevin, when you were referring to the manual as being mandatory, is that the South Carolina Highway Design Manual?

MR. SMITH: I'm talking about the ARMS manual.

MR. CRITES: Okay.

BY MR. SMITH:

Q. And maybe I'll -- I'll head off his question in advance.

The South Carolina Highway Design Manual, is that also a set of mandatory rules that would provide instances for exceptions and a set of procedures to try and qualify for those exceptions?

A. Yes, sir, it does. It provides a -- a process for exceptions to the manual.

Q. Does the community have a right to expect the Department of Transportation to make all changes in the roadway that are safe? I'm sorry. Bad question.

Does the community have a right to expect the Department of Transportation to make sure all changes in the roadway are safe?

A. I would say that the public has a reasonable expectation to make sure that we provide safe highways, and we have safety guidance that we use to -- to follow.

Q. Okay. Is it true that ordinary people in the community going up and down the highways, and in particular 17A, they wouldn't know about the particular safety standards or rules and regulations in the ARMS manual or those published by the Department of Transportation?

A. I think that's a fair assessment, yes, sir.

Q. And does the South Carolina Department of Transportation know that driveways have long been recognized as a major source of conflict for traffic on public highways? Is that a true statement?

A. That's a true statement.

Q. It comes out of the ARMS manual?

A. Certainly.

Q. Reasonable access means a property owner must have access to the public highway system rather than being guaranteed that potential patrons -- patrons should have convenient access from a roadway to the property. Is that a true statement, describing reasonable access?

MR. MAYBANK: Object to the form.

THE WITNESS: Could -- could you repeat that one more time, please?

BY MR. SMITH:

Q. Sure. I'm trying to define reasonable access --

A. Sure.

Q. -- with regards to the South Carolina Department of Transportation.

And would you agree with me that reasonable access means that a property owner must have access to the public highway system, rather than being guaranteed that potential patrons should have convenient access from a roadway to the property?

A. I agree with that statement.

Q. Okay. And the reason for that is

because the Department of Transportation is required more -- is required to care more about safety than what a property owner thinks will make him or her more money. Is that true?

A. Yeah. Our -- yes. We -- we are charged with providing safe, reasonable access to the state highway system.

Q. All right. And safety takes precedent over any wishes that private corporations may have that may result in them making more or less money? Safety trumps that?

A. Yes.

Q. Okay. And would you say that safety is the primary concern for any decision regarding access to private property?

A. Yes. I would say safety and the operation of the state highway system are the two primary functions that the DOT looks at for access to the state highway system.

Q. And I -- and I read a -- a little bit about that. And -- and I think that term, to me, seemed to say that we know what safety is, but the operation of the road, that's about traffic issues and stuff, about the road functioning smoothly and not backing up and -- is that what you were talking

about, the second end of it?
A. Yes. I mean, that -- that -- the -- the operation, the functionality of that roadway. In other words, you've got a different safety standard for a interstate system that does not have any access points, then an urban arterial, then a minor arterial, then a neighbor street. So each -- no one roadway is treated the same with regards to the reasonable expectation of those drivers.
Each functional class of that highway has different safety components that -- that are tied to that, which is -- which I would say most drivers understand those reasonable expectations. They've got a -- you know, driving along an interstate with higher speeds, less conflict points versus driving along a neighborhood street. And then you've got those roads in between those two.
Q. But in any of those situations where it's an interstate or it's a major highway or a neighborhood or a -- or a smaller street, in any of those situations, there's two concerns that the Highway Department would -- I'm sorry -- the Department of Transportation would have that would trump the wishes of private property owners. And those two concerns would be, number one, safety,

and, number two, the functioning of the highway or roadway in question?
A. Yes.
Q. Okay.
A. That's a fair statement, yes, sir.
Q. All right. Let's talk about -- and I think that maybe even Question 1 under yours? Let me get to the page so I don't have to keep flipping here.
So the history of the design, that Number 1 --
A. Sure.
Q. -- why it was decided to -- decided to separate the north- and southbound lanes, barrier-type median, that seems to be your topic rather than Mr. Clark's, right?
A. Correct.
Q. Okay. So talk to me about this history of the design here.
A. Sure. Well, first thing I think you've got to recognize, there's two different projects and they just happen to start in at Farm -- at the intersection of 17A and Farmington.
Q. And let me ask you -- let me stop you right there.

The two different projects, are you talking about the stuff that the -- that people that would be later identified as Pilot wanted to do? Or two separate DOT projects?
A. Two separate DOT projects.
Q. Okay. So tell me what those two separate projects were.
A. The first one is referred to -- there's two sets of plans that were provided, is that what the DOT commonly refers to -- they've got file numbers, but the common name is the I-26/US 17A intersection -- interchange improvement project. And that would be from Farmington Road back towards Summerville. I guess that's west. Then we'd refer to Farmington Road back to the east as the US 17A widening project.
Q. Okay. So basically at Farmington Road, you head towards Summerville and that is the interchange improvement project?
A. Yes, sir.
Q. And if you -- Farmington Road towards Moncks Corner, that would be the widening project?
A. Yes, sir.
Q. Okay. And those two projects, we talked about the history of the design here. Those

two projects, were they happening at about the same time?
A. They are roughly happening at about the same time. The interchange project was being designed by a outside consultant, and then the -- the widening project was designed, what we refer to, in-house by South Carolina DOT staff. A little bit of different purpose and needs from -- from those two, and -- and certainly different from a design aspect of -- of what we did.
The interchange project, do you want me to go ahead and describe kind of what that is or --
Q. Well, you had mentioned the -- I think that portion was designed by a private firm?
A. Yes.
Q. Who -- who was that?
A. It's Arcadis Geraghty, I think it's -- & Miller. Arcadis is kind of the name we went by. They have since been bought out, so I'm not sure what it belongs to at this point.
Q. Were they employed by the Department of Transportation for that portion of the -- or for that project?
A. Yes, sir, they were.
Q. And when you -- when we talk about the

history of the design here, did any part of the interchange improvement project from Farmington Road up to Summerville, that way, did any of those changes impact your analysis in this case?

When you're looking at the safety standards applied here and whether or not those were met by the Department and designs or the changes thereafter and things like that, did any of the interchange improvement project issues come up? Or were you just simply looking at basically Farmington Road, Moncks Corner?

A. No. There was -- when you looked at those two tie-ins of the project, you had to look at them together. I -- and -- and that's what we had to do. You know, when we stop one project and start another, we've got to make sure that project is designed so that the set -- the widening project was set up to accept the lanes coming to it.

In other words, you can't have five lanes just tying down into two.

Q. Yeah.

A. Same thing, the -- the widening project of 17A, similar to there, it had a stopping point at US 176. You just can't all of a sudden cut off

the lanes. You've got to neck those -- that -- that widening down back to the existing section.

So certainly when you look at the termini projects, there's some overlap there in -- in that you've got to make sure that you are -- you -- you -- I use the term necking down, but that's what -- I'll use that term, necking down to the existing lanes that are out there. So when you have that termini, you've got to make sure that you're able to accept those lanes and tie those back into existing conditions.

Q. Okay.

A. So there is some overlap there.

Q. All right. So we just started talking about really the history of the project, and you had described the two projects that were at play, and I interrupted you. So let me let you continue.

A. No. I think that was -- you know, when you -- when you look at this case and you look at the -- at the drives and -- and look at the -- the letter that went out from Tommy Smoak, our right-of-way, and -- and looked at kind of how that came into play, you know, Arcadis was designing the interchange. They had to certainly design to accept the lanes that -- that -- that -- on the

Moncks Corner side of Farmington Road to make sure they accepted those lanes.

And as -- as they did, they -- they drew up those lanes and put in that median or had that median initially shown in there as kind of to be built by others. But when you look at the 17A widening, if you look at that job and -- and what that entailed, it was your typical urban -- what we refer to as a five-lane section where you have two lanes in each direction with a center median turn lane.

So as we looked at those two and kind of got into the details of that right-of-way acquisition and what those -- the purpose and need of the widening project from Farmington Road out towards Moncks Corner and looking at what that cross-section of road would look like, that's where those decisions were made right there at that intersection.

Q. So it sounds like the Arcadis folks -- how do you spell that name? I wrote A-R --

A. They're -- they're on the design plans.

Q. Okay.

A. They're on the design plans.

Q. Okay. I'm going to just guess that it

might be on the first one.

A. It should be if that's the right project there.

MR. MAYBANK: Kevin, just so you know, we've turned all this --

MR. SMITH: Okay.

MR. MAYBANK: You've got all this.

MR. SMITH: Sure.

THE WITNESS: No, this is the intersection safety project. That's another project. Let's see, I can look at them.

Yes. There you go, right there.

BY MR. SMITH:

Q. Okay. Arcadis, A-R-C-A-D-I-S.

A. Yes.

Q. All right. And that other name you were --

A. Geraghty & Miller.

Q. So Geraghty, G-E-R-A-G-H-T-Y, & Miller?

A. Yes, sir.

Q. Okay.

A. Yes, sir.

Q. So it sounds like what you're saying is that the raised median, the plans for the raised median on Highway 17A coming from Moncks Corner to

Farmington Road, that that original plan for a raised median was something that was drawn in by Arcadis?

A. Correct.

Q. Okay. And that had to do with the interchange project that was happening from Farmington Road going to Summerville and dealt with accepting the widened lanes that were leading up to that point?

A. Yes, sir.

Q. Okay. All right. What else -- what else do you recall about sort of the -- the -- the history of that, the history of that work?

A. Yeah. So you had the property owners as part of the interchange. Again, that -- that intersection really defined the difference between the two projects, so there's certainly overlap in the design and overlap in the right-of-way acquisition. So in talking with Tommy Smoak and the letter and looking at, okay, what's -- what's Phase 2, and I'll call it Phase 2 from the lack of a better -- better terminology, but the widening project, what's it going to look like in refer -- in reference to the -- to the interchange project? What's -- what's the roadway typically going to

look like? Are we buying control access? Do we have control access?

So during that process of really digging into that one particular property owner and how it tied into the -- the scope and purpose on either of the projects, that decision was made that we're going to follow the same typical -- starting at Farmington Drive going east towards Moncks Corner, which was basically what we refer to as a flush median.

So you basically have two -- two lanes in each direction, not -- not the -- at this particular intersection with -- with that two-way left turn lane. Now, as you go in the intersections, we paint -- we paint in left turn lanes as you go into major intersections, like US 176. I can't recall the next intersection down as well.

So that's -- the decision was made. We didn't own control of access on the east side of Farmington Road. But if you go on Farmington Road back to the west, we did have control access. And when we have control access is where the Department goes in and acquires not only fee simple for the actual property that is acquired, there's also --

we buy the access. So we -- there's no access within a controlled access limits. And -- and that's where that was made.

Arcadis, again, were focused just on the interchange. So when we made the interchange project to the widening project, that was a decision that was made on how we got to that -- how we got to that issue regarding the median.

Q. And then where did -- so this -- this group, they were probably I think originally Marathon Ashland Petroleum. And then it became another group, and then eventually Pilot Travel Center moved in?

A. Certainly.

Q. What is your recollection of kind of the -- the timing there? You know, we've got this letter starting here in 2000. It looks likes most of the stuff that we saw really starts, you know, with regards to them in around 2000. And I think there was a final inspection maybe in 2003 or '4, something like that?

A. That -- that's correct. And we -- that's correct. We were buying the right-of-way and -- I mean, the name of the company, as long as the same purpose and need is there, it's a gas

station, travel way, convenience store, I mean, I don't know that -- I don't -- as long as that purpose and need of that property owner just stayed the same, there's no change in who that is, that -- whose name's on the front of the sign probably doesn't matter as much to us.

So we looked, then, as part of a couple things. We had to do an appraisal of the fee simple land that we were acquiring. And then they had existing access points to 17A prior to this project, and we had to go back, go and look at those access points as they related to the highway design. We made some changes regarding the radius, and they had three access points on 17A and one access point on Farmington Drive.

Q. Um-hum.

A. So we took that in consideration as part of the highway design.

Q. Okay. And the -- the property that you all would buy, the right-of-way, was -- was any of that property on any of the borders of the -- what is now the Pilot Travel Center, either on Farmington or 17A?

A. I would have to refer to the plan set, but I -- certainly they were on Farmington. I'd

have to refer to the plan set on 17A.
Q. Okay.
MR. MAYBANK: There you go.
BY MR. SMITH:
Q. Which one you need?
A. This one right here, C. Thank you very much. We'll just take those rubber bands off of that, that will help. Thank you.
Okay. So when you look at the interchange plans, it's File 8.790, this is the interchange plans and you go to Sheet 11.
MR. MAYBANK: And -- and there are Bates stamp numbers at the very bottom, so far down you can't see them.
THE WITNESS: Oh, okay.
MR. MAYBANK: So if you can identify --
THE WITNESS: That was it, 102.051.
MR. MAYBANK: That's the file number. Now what's underneath that?
THE WITNESS: Oh, sorry. SCDOT Colvin Documents 0037.
MR. MAYBANK: Perfect.
MR. SMITH: Got it.
THE WITNESS: Need a -- a magnifying glass.

MR. CRITES: I brought one if you need it.
THE WITNESS: Tell 'em not to go anywhere.
So as you can see within those plans at Sheet 11, you kind of see where -- the intersection of 17A and Farmington and -- and you can kind of see the max lines. But if you also go over to Plan Sheet 12, you can kind of see how 17A necks back down. So there's -- that's -- you know, we -- again, when I talked about as you're at the terminus of a project, you've got to get through that intersection and that's basically what's represented on Sheet 11.
BY MR. SMITH:
Q. Okay.
A. Now, also on Sheet 11, we talked about the right-of-way.
Q. Um-hum.
A. And this is where I want to make sure -- so yes, we acquired additional right-of-way along Farmington.
Q. Yeah. Would that be -- so this is Summerville this way, this is Moncks Corner that way, and this is the site of the Travel --

A. Correct.
Q. -- the Pilot Travel Center?
A. Yes, sir.
Q. Okay.
A. Yes, sir. So we bought -- acquired additional right-of-way along Farmington and some transition right-of-way along 17A.
Q. And is that this -- and we're still back here on Document Number 37, the Colvin Documents 37. I can see kind of like a little -- like some -- like a little section right there with -- with that. Is that -- is that the right-of-way portion that -- that ends right there?
A. It -- it is -- it is -- you know, all this is labeled. Of course, this is in metric, unfortunately.
Q. Um-hum.
A. All this is labeled as new right-of-way. You've got the transition at the corner of Farmington and 17A, and then you go back in to retain a present right-of-way along the frontage of 17A itself.
Q. Okay. I got you.
A. Now, I want to confirm, we did not have to acquire additional right-of-way as part of the

widening project, so let me do that. So that's the interchange project. I don't want to sit on the right thing -- the wrong thing.
MR. MAYBANK: Do you want him to mark anything with a highlighter?
MR. SMITH: I don't think so. I'm just trying to get an understanding of it for right now.
MR. MAYBANK: Oh, okay. Thank you.
THE WITNESS: All right. We retained -- it looks to me that we have retained -- we have retained present right-of-way along 17 to a certain point.
BY MR. SMITH:
Q. Um-hum.
A. And then we had to acquire new right-of-way as you get closer to this new box culvert that was installed.
Q. And where would that be? Kind of on the -- so this is Farmington on this one here. And that box culvert, where is that? Is that past the -- the travel center?
A. It is.
Q. Okay.
A. If you look at the portal company here as it's labeled here, it is to the east of that.

Yes, sir.
Q. Okay. And if we can just go back to number -- was that 37, was that the first one you were looking at?
MR. MAYBANK: Correct.
MR. SMITH: 36 maybe? 36 -- 37, yeah.
BY MR. SMITH:
Q. Yeah. I don't know. This is -- I printed off the same stuff, and this looks to be pretty small here. This is that 37. I was just trying to figure out here what areas you all would have -- do -- do you think you could use this one? It'd be a little bit easier to attach to the deposition, just to highlight the general area where a right-of-way was purchased?
A. Just generally, because it's so small.
Q. That's fine.
A. If that -- if that's okay.
Q. That's fine.
A. I mean, I would -- yeah, on this one sheet, I'm -- just highlight on it?
Q. Yeah.
A. Okay. That is new right-of-way there.
Q. Okay.
A. And it's retained to --

Q. The green highlighter is new right-of-way obtained.
A. Um-hum.
Q. And does that mean that the Department of Transportation actually purchased that property?
A. Yes, sir.
Q. Okay.
A. Yes, sir.
Q. All right. And then if we could put in yellow on that same one, you said something about that the DOT was going to maintain its current right-of-way or rights or what -- however you described that, just let me know.
A. Yeah. It's -- it's retained present right-of-way kind of right there along the frontage that stops on this plan sheet because this is where this start -- stopped. But also, I think that to paint the full picture, we need to make sure we look at the other set of plans as well. Two different projects, but that was tied to the interchange project. This is tied to the widening project.
Q. Got you.
(PLF. EXH. 2, SCDOT U.S. 17A Construction Plan, SCDOT Colvin Documents0037, was

marked for identification.)
BY MR. SMITH:
Q. Well, and so let me ask you this: So I've marked that, what we've just done, as Exhibit Number 2.
A. Yes, sir.
Q. And the yellow section, would that be property that the Department of Transportation previously owned and is maintaining their ownership of?
A. Yes, sir.
Q. Okay.
A. That's correct, yes, sir.
Q. Okay. I got you. All right.
And I think you were going to look for something else?
A. Yes. I was just -- again, that's -- that's associated with the interchange project, but when you look at it in its totality, there's some construction permissions.
Let me explain what that is. That is where in order to build a project, we may have to go outside of our right-of-way to get either -- there's several ease -- well, not easements. There's several -- let me think of the right term

here.
Q. Access permission or something like that?
A. Yeah. It's -- it's really permission to go onto the property to construct it. But once we finish with the construction, all of those --
Q. I think those are easements.
A. Not -- no.
Q. You use a temporary easement?
A. No. Maybe you could frame it that. They're not -- they're not easements, but there is their permission. They're construction permissions --
Q. Okay.
A. -- where we've got off our right-of-way to build whatever. It could -- you know, it could be several things. But -- but once we finish building it, that property -- we never take the property. The -- the property owner is just giving us permission, so when it's all said and done -- for instance, the sidewalk --
Q. Um-hum.
A. -- we may need to get on that property to build the sidewalk; but at the end of the day, the sidewalk itself proper is within our

right-of-way.
Q. Okay.
A. I know that's very confusing.
Q. But -- but in this case, the location of the sidewalk and the driveways, that was all property owned by the Department of Transportation?
A. Yes. But we had to get permissions, we call them permissions, from the property owner to -- in order to build the roadway.
Q. Okay. And you're talking about the property owner would have been the people that owned the -- what is today the Pilot Travel Center?
A. Yes, sir.
Q. And -- and -- and that would be to access more than just simply what you owned in terms of this curb, but you had to go a little bit further back from this as well. Is that what you're trying to say?
A. We had to get off of our right-of-way in order to build the project, to construct it.
Q. Okay.
A. So it's the constructability aspect of it's really what I'm -- I don't know if I explained that very well.
Q. Well, it -- it sounds to me at the very

least you need a place to park your stuff and, you know, you need to be able to park in the parking lot of --
A. No, it's not really for that.
Q. I really thought I had that one good.
A. No. It's really --
Q. I was confident in that one.
A. You know, if you had -- in other words, one example could be where you built the road up 2 feet --
Q. Um-hum.
A. -- and you feather that -- you feather that slope back onto the property.
Q. Okay.
A. That -- at the end of the day, the DOT doesn't need to own that -- that slope, so to speak, to maintain our roadway.
Q. Okay.
A. But we would need to get on that -- that -- off a right-of-way in order to build a road. But once it's built, that slope, we -- you know, the owners -- that -- that private property owner can own the slope, it's we just needed it to build the roadway. I know that was confusing as all get out, but...

Q. Okay. Well, I think I got you. So -- so here's -- here's -- what I was trying to figure out was, you know, we've got the -- the sidewalk on 17A --
A. Yes, sir.
Q. -- right, that is in front of what is today the Pilot Travel Center, how much of that property from the street back to the -- the -- the parking lot in the Pilot along 17A, how many feet of that from the street back to the Pilot does the Department of Transportation own?
A. I thought that was going to be a real easy one. This is where I need a magnifying glass.
Q. Would there be a --
MR. CRITES: I do have one, Mr. Colvin, if you want it.
MR. SMITH: Okay.
THE WITNESS: How specific do you need me to be?
BY MR. SMITH:
Q. I mean, I'm -- I'm trying to figure out how much of that is -- is owned by you all and how much of that is -- is their property. So really, just the best way that you could describe it. I -- I don't want to restrict you in terms of --

A. As we look at this together --
(Off-the-record discussion.)
THE WITNESS: See this line here that's -- that's marked present 55-foot right-of-way?
BY MR. SMITH:
Q. Yes.
A. That is the dividing line. If you go to the roadside of that line, SCDOT owns that property. If you go to the -- to the convenience store/gas station side of the line, that is owned by -- of course, it's shown here as Port Oil Company, but that would be owned by Pilot Speedway.
Q. Okay. So is there any way for us -- to tell us how many feet from this way to that way, right, this section here, how many feet off the roadway is the owned property by the DOT?
A. I would have to scale that off.
Q. Just estimate for me then. I don't want to -- I mean, is it like a foot or 5 feet or 10 feet? Maybe you could just estimate.
A. I would say, but I'm -- I'm estimating, I would say between 0 and 5 feet.
Q. Okay. And would it -- would it generally be about the size of the -- of the -- the

curb, the sidewalk?
A. Yes, I think that's a good general statement. I think 5 -- sidewalks are 5.5 feet wide.
Q. Okay.
A. So generally.
Q. And generally speaking in projects like this, the -- the DOT would -- would own the -- the sidewalk?
A. Yes.
Q. Okay.
A. Yes, sir.
Q. Is that the general policy --
A. That -- yes.
Q. -- when you see sidewalks?
A. Yes, sir. Absolutely.
Q. All right. And -- okay. I think I understand you.
So that explains why the people that would build what is today the Pilot Travel Center, that's why they would apply to the DOT for different curb cuts and driveways because that's DOT property those curb cuts and driveways will cut across, right?
A. That -- it would be the access to the

roadway. Now, as part of a widening project, there's not an encroachment permit to access the roadway because that access was already there.
Q. Um-hum.
A. So that access is negotiated and is incorporated to the right -- into the right-of-way settlement. In other words, you don't have to -- the ARMS manual talks about this encroachment permit process where, you know, we own 17A, there's a new -- a new gas station/convenience store -- I don't want to offend anybody in the room -- that that would go in there if they were building a new store or they -- there's an abandoned store, whatever, there's a change in use, they would come and -- and -- and submit an encroachment permit to SCDOT that we would review as part of the ARMS manual and -- and provide that access.
Now, as far as a widening project where access is there, that -- that process is -- is really taken in -- taken as part of highway design and right-of-way negotiation. Right-of-way acquisition, I guess, is probably the better thing. So it's a little bit different process because where the DOT is now making improvements to the roadway that it encroaches on that private

property, whether -- then the private property come into DOT, ask for access. So it's a little bit two -- kind of apples and oranges there a little bit, if that's making sense. So it's a little bit different situation here.
Q. Okay. Okay. Were there any traffic studies that were done with regards to either the interchange improvement project or the widening project?
A. Yes, absolutely.
Q. There were?
A. Yes.
Q. And do you -- have you seen those in any of the -- the documentation?
A. I have not. That -- that's part that goes back into the projects very, very -- very early on as far as the inception of the project and the -- developing that purpose and need. And part of that purpose and need is -- is the traffic study is -- is a piece of that.
It goes into our environmental document, and that environmental document is where we capture purpose and need. There's a purpose and need statement. It would be attached to that. And then of course as we go out there and we have a

preferred alignment, you go through public involvement, you go to the environmental impacts. All that's kind of -- that's kind of a stiff one in the whole process, is you determine purpose and need, you come up with a preferred alignment, you document the impacts.
And from that point over, you kind of go forward with the design. Once you get design complete, then you go to right-of-way acquisition, then you go to construction. So yes, that is one of the very, very first things we would do is do a -- do a traffic -- traffic study to -- to really formulate your purpose and need.
Q. Um-hum. And would the traffic study have been done before 2000?
A. Absolutely.
Q. And in terms of the history of this project, how much -- how much before 2000 do you think that would have happened?
A. Let me look at the dates on these. These plans, the interchange plans were completed in, it looks like, July of 1999. A typical study would have been completed 12 to 18 months prior to that.
Q. Okay.

A. I mean, that's -- those are general time frames.
Q. Are there any traffic studies that dealt with specifically the issue of whether or not a raised median should be put in front of the -- the gas station or the number of driveways or curb cuts on 17A for this particular gas station?
A. No. The -- the traffic study wouldn't have gotten that level of detail. It would have gotten together more of how many lanes do you need, the -- the capacity of the project, more -- more that type stuff, not specific to any individual property owner along that roadway. They -- it was not that specific.
Q. Okay. And it -- and it wasn't specific enough to address whether or not a raised median should be used in that --
A. No.
Q. -- stretch of Highway 17A?
A. No. No, sir. We relied back on the Highway Design Manual for that determination.
Q. Got you. And in the -- and we may be moving on from this particular portion. If we are, let me know.
But are there -- are there any notes

indicating what volume the -- what now is the Pilot Travel Center, are there any notes that indicate what type of volume that business was?
A. Not that I have seen. Again, if -- if this was a new gas station/convenience store going in, that would be part of the encroachment permit process was -- would be to determine those volumes since that is access already existed. It's not something that we would typically look at as part of a roadway widening project. Certainly the volume on the road itself, but not those individual property owner volumes.
Q. And how about -- I mean, is -- was that -- was that something that was ever considered in the history of the entire project? And what I'm talking about the project is, you know, the -- the -- the widening in front of the Pilot Travel Center and the construction of the driveways, was a -- was the volume of the Pilot, was that ever considered in any of those decisions?
A. Not that I recall.
Q. Okay. And I want to ask you about who did particular work. I see in their encroachment permit about, you know, things about you pay for this, we'll pay for that, and -- and things like

that. But I want to get sort of a little bit more specific if we can.
So painting the actual median where there used to be this plan for the raised median and then it became paint, who paid for the paint?
A. The SCDOT, as --
Q. Okay.
A. -- part of the widening project.
Q. And who paid for the paint to be put down?
A. SCDOT.
Q. Okay. So Pilot didn't have to pay for any of that stuff?
A. No.
Q. All right. Okay. And how about the -- the driveways and curb cuts along 17A, who would have paid for that?
A. SCDOT would pay for that.
Q. Okay. And signage alongside the road, paint markings on the road, DOT as well?
A. Yes, sir.
Q. All right. Is there any part of what Pilot was asking for -- and when I -- when I say Pilot in this case, I mean Pilot and the entities before them and all that. Okay?

A. Sure.
MR. BESLEY: Yeah, I'm going to object and ask that you clarify your question specifically. Because there are different parties in this case. If you can try to do that, that would be helpful. Could mean him having to ask all the questions over again when you get done.
BY MR. SMITH:
Q. Well, the group that was originally involved here, this Marathon Ashland Petroleum, okay, at some point they became somebody else, right? I think it was Marathon Speedway or Speedway Marathon; is that right?
MR. CRITES: (Moved head up and down.)
BY MR. SMITH:
Q. So what these people were wanting to do, they wanted the -- the raised median gone and they wanted these particular driveways on 17 and Farmington Road. Is that fair to say?
MR. CRITES: Object to the form.
MR. MAYBANK: Same objection.
THE WITNESS: Yeah. I mean, I think as part of any right-of-way acquisition, there's -- there's about two or three things that's contemplated. Certainly the value of the

acquisition land that's taken, any damages to the remainder of that, and then the access to the road system, those were the three general rule-of-thumb, broad-brush items that come into play when we're acquiring -- when we're acquiring right-of-way.
BY MR. SMITH:
Q. Okay. But in -- in terms of so we can figure out who paid for what --
A. Right.
Q. -- it's my understanding that Marathon Ashland Petroleum, that they were requesting basically two things: They wanted the raised median gone and they wanted some driveways along 17A and Farmington Road. Is that your understanding of basically what they were asking for in terms of this project?
MR. CRITES: Object to the form.
THE WITNESS: Yes. That as -- in -- in addition to the value of the property that was acquired by the Department.
BY MR. SMITH:
Q. Okay. I got you. The new right-of-way that was acquired?
A. Correct. Correct.
Q. Okay. And did Marathon Ashland

Petroleum --
MR. MAYBANK: What you looking for?
MR. SMITH: The right caption.
BY MR. SMITH:
Q. Pilot Travel Center, Speedway, LLC, did they pay for anything with regards to those topics? The removal of the raised median or any of the driveways on 17A or Farmington Road, did they have to pay for any of that?
A. No.
Q. Okay. So these were just simply things that they wanted to have happen on -- on DOT property and wanted DOTs approval and wanted DOT to do it?
A. Those were part of the acquisition process that -- that we go forward with for any property owner. But yes, specifically for that case, yeah, those are items that were involved in the acquisition process. Absolutely.
Q. Okay. But my -- my -- I guess my question is: With the -- with the median and what was done with the median, the painting of the median and the actual construction of the driveways on 17A going into what is now the Pilot Travel Center and the construction of the driveway off of

Farmington Road into what is now the Pilot Travel Center, all of that was paid for by the DOT?
A. Yes, sir.
Q. Okay. All right. And in the widening project of 17A in front of what is now the Pilot Travel Center, is it true that the original plans included a requirement for a raised median that would have basically spanned the entire length of the Pilot Travel Center on 17A going up to the stop bar at Farmington Road?
A. One iteration of the plans had that shown. I will say that was a placeholder for how the project to the east of Farmington would accept those lanes. That was one of the iterations, but the final right-of-way plans had that as -- as paint. But yes, there --
Q. Okay.
A. -- there was an iteration as part of the design that included a raised median versus a painted flush meeting -- median. Excuse me.
Q. What's an iteration?
A. As you go through design, you know, a -- a couple things: Number one, Arcadis, keep in mind, they -- they did the -- they did the interchange. So in their due diligence, they've

got to make sure that they're not ending -- you know, multiple lanes going into a section that only had a couple lanes to receive this. They had to do their due diligence to say, okay, I -- I am building a safe intersection through my project.
Now me, as a -- me, as the program manager, I had to look at the project that was to the east of Farmington that Arcadis was not responsible for that design, and I had to mirror those two projects together at the intersection of Farmington.
Q. Okay.
A. So when I looked -- when that -- so when you looked at both of those in its totality, not looking at one project versus just the second project, when you look at those in that totality, that's when we made those decisions. Say, okay, here's what we're planning on the widening project; Arcadis, it doesn't match what's being designed as part of the interchange; we need to go through that design to make sure they marry up, that on the widening project from Farmington out towards Moncks Corner, that was always going to be a flush median. So Arcadis need to, as part of their iteration, need to match that design to the east of

Farmington. It had -- certainly had a raised median and a controlled access, not only a raised median, you had controlled access from the interstate proper out to Farmington. From Farmington east you had a -- what we refer to as a flush painted median.

Q. Okay. But before that flush painted median was in the plans, the plans included a requirement for a raised median for that whole area, the flush median, which -- which --

A. Yes, sir. There -- there was -- there was a --

MR. MAYBANK: Object.

MR. CRITES: Object to the form.

MR. MAYBANK: Which -- which plans are you referring to?

MR. SMITH: Any of the plans.

BY MR. SMITH:

Q. What I'm saying here is when we look at the project originally, the plans, and I mean drawings or the requirements for building, whatever it be, the specs, whatever we want to call them, the original plans for the property on 17A in front of the Pilot Travel Center, those original plans included the requirement for a raised median. And

that raised median would have spanned the -- basically the entire length of the -- what is now the Pilot Travel Center area on 17A.

Originally there was -- there was a requirement for a raised median. And that was sometime later changed, I understand that. But my question is: The original plans for the widening in front of the Travel Pilot Center, the original plans had a requirement for a raised median at Farmington Road going towards Moncks Corner. True?

A. Can I look at this letter?

Q. Yeah.

A. Yes. There -- there was a -- yes. Absolutely at one point in time, the interchange plans showed a raised median.

Q. Okay. I got you.

A. At -- at -- at some point in time during the process --

MR. MAYBANK: Hold on. I don't mean to interrupt. He's talking interchange, you're talking road widening. You all -- you all aren't coming together, and I want to make sure the record is clear. I don't mean to interrupt you.

Is anybody else hearing this? Because that's --

MR. BERLINSKY: Well, you know, I -- I agree wholeheartedly with what you're saying.

MR. MAYBANK: Here's -- you know, I think you all are confusing one another.

MR. SMITH: Well, what -- what I'm hearing from him is that portions of the interchange project blended into the road widening. Because when doing the inter -- interchange project, they are drawing in this raised median as part of accepting these lanes from the widening project into their interchange improvement project.

BY MR. SMITH:

Q. That's what I heard you say.

A. Yes. When -- when -- in my job as the program manager for the project, we had to take a set of design plans that were done by a consultant, a set of design plans for the widening -- it doesn't really matter who did them -- and marry those two plans together.

Q. Okay.

A. And as part of that marrying and coming up with that final design, it was -- the final design was a flush painted median and not a raised median.

Q. Okay.

A. And that happened, no pun intended, that was flushed out as part of the merging of the two projects.

Q. Okay.

A. Keep -- keep in mind, both -- both documents had that piece of that design because they're just right here at the termini. So when you look at that termini, both -- both sets of plans had that same -- had -- had the road widening in front of the -- the gas station/convenience store included that. Okay? You -- you had to.

So in marrying the interchange project to the widening project, the decision was made to go with a -- a flush median from Farmington out toward Moncks Corner, yes.

Q. Well, just back to the original question: The original requirement was for a raised median in that section? Subsequently that was changed, but that was the original plan?

A. I would -- I would phrase that the original design. I would not phrase that as original requirement.

Q. Okay.

A. I would say the original design.

Q. Okay.

A. There was -- there was a design at some point prior to 1999 that had -- the plan showed a -- a raised median, yes.
Q. Okay. Got you.
And where in -- in this, these documents, do we see the original plan or design for the raised median? Maybe just give me the document number.
A. Yeah. I think the right-of-way, these are the right-of-way plans. They show a raised median at the location, the subject location.
Q. Okay. And we're back to -- I think you were on 37?
A. Yes.
Q. Okay.
MR. MAYBANK: Can I -- I don't mean to interrupt, but which set of plans are you referring to? The interchange plans or the road widening plans?
THE WITNESS: These are the interchange right-of-way plans.
MR. MAYBANK: Thank you. All right.
THE WITNESS: Now when I go to the interchange construction plans --
BY MR. SMITH:

Q. Can we do something before you do that?
A. Absolutely.
Q. Can you just maybe take a -- let's just go back to the green highlighter again.
A. Sure.
Q. And if you can, just highlight the raised median portion of Bates 37, which is Plaintiffs' Exhibit Number 2. All right. And as we look at that --
MR. CRITES: Can we mark that as something else with a pen since there's two green -- or can we just --
MR. SMITH: Sure.
MR. CRITES: -- just draw an arrow to it so --
MR. SMITH: Yeah.
MR. CRITES: I think it's clear, but just for the record.
BY MR. SMITH:
Q. What I'm going to do is I'm going to draw an arrow to the second highlighter, and I'm just going to put raised median. Is that accurate?
A. Yes.
Q. Okay. And -- okay.
And you said you wanted to look at

something else before I interrupted you?
A. So I go to the --
Q. This one?
A. -- construction plans, the interchange construction plans.
Q. All right.
A. So going from right-of-way to construction, marrying the two projects together, and we look back at that same sheet number, which I believe was Sheet 11, and these are documents --
Q. That's 190?
A. Yes. This is Colvin -- SCDOT Colvin Document 0190.
Q. Okay.
A. And I go back to these plans, this is where we marry the projects. And if you'll look at the note on these plans, it says we end the project -- again, associated --
Q. I don't think I'm on the same page. What's the Bates stamp number here? 193. Oh, sorry.
A. It's 0193, Sheet 11.
Q. Got it. I got you.
A. And again, you can tell we're marrying these projects together. So we take basically from

the intersection of Farmington east and we -- and you look at the note, I believe it's this note right here, you say end project, which is ending the interchange project. And it says this design here, project will be done by others.
Q. Right.
A. So now -- so now -- so that just kind of shows you there's -- here's the placeholder. We took off -- you know, we took out all of the hydrology, just basically lined up this intersection. So when you say project done by others, we go now to the widening plans.
Q. All right. Let's do this. Let's make that Page 193 an exhibit.
MR. MAYBANK: Can -- can you -- before he puts that in the record, can you highlight that area you -- you -- was reading from?
THE WITNESS: Yes, sir.
BY MR. SMITH:
Q. It's right there.
A. Yeah.
MR. MAYBANK: You've got your magnifying glass?
THE WITNESS: Yeah, it's over here.
(PLF. EXH. 3, SCDOT U.S. 17A

Construction Plan, SCDOT Colvin Documents1093, was marked for identification.)
BY MR. SMITH:
Q. All right.
A. So now --
Q. Back to A?
A. Yeah. So as you go through the plan process and marrying the two projects together, the note on the construction plans at the interchange refers you back to the widening project. So now when you go to the widening project on Page 6 -- and this is marked as SCDOT Colvin Document 0437 -- this shows the flush painted median.
MR. BESLEY: Is there a date on that document?
THE WITNESS: On --
MR. MAYBANK: That one you got your hands on.
THE WITNESS: What -- there's -- I'm not sure which date you're looking for, sir. I apologize.
MR. MAYBANK: Is it stamped?
THE WITNESS: This is stamped, it's --
MR. MAYBANK: No, on the front.
MR. SMITH: That's Roy's stamp.

MR. MAYBANK: Engineer's stamp.
THE WITNESS: I really can't read that, to be completely honest. 12 -- for construction, it's signed 12/9/98.
(PLF. EXH. 4, Plan diagram, SCDOT Colvin Documents0437, was marked for identification.)
BY MR. SMITH:
Q. All right. What I've done is I've marked as Plaintiffs' Exhibit Number 4 this page from the plans that's been marked as SCDOT Colvin Documents 0437, same page you're looking at?
A. Correct.
Q. Okay. So -- and I want you, if you could, take that same green highlighter and you can highlight the area which I believe is now going to be the flush median.
A. Correct.
Q. Okay.
A. You go outside the -- there you go.
Q. All right. Now, we had a discussion just a moment ago about some dates.
A. Yes.
Q. And I think you -- you looked at that and you saw a stamp of -- of 1998, right?

A. Correct.
Q. All right.
(PLF. EXH. 5, Letter dated 8/28/00 to Mr. Robert G. Greiwe from Tommy W. Smoak, PILOT 00045, was marked for identification.)
BY MR. SMITH:
Q. But we do know, as referenced on Plaintiffs' Exhibit Number 5 here --
A. Correct.
Q. -- we know that -- well, at least we can see references that the decision to remove the raised median were sometime around 2000. Or are we -- are we reading that incorrectly?
A. Well --
MR. CRITES: Object to the form.
THE WITNESS: Again, going back to maybe Number 1 in my deposition, talking about the history --
BY MR. SMITH:
Q. Uh-huh.
A. -- and you looking at marrying the widening project to the interchange project, I would say you could -- I mean, you can make an argument both ways. It's really to get the interchange projects to accurately reflect what was

in the widening project.
So the widening project had the design going east of Farmington --
Q. Um-hum.
A. -- as noted by this project, as well as noted by the interchange plans. And the -- the widening project always had that painted flush median. So there was a decision at some point, and you're exactly right, that we -- that the -- that the interchange projects that again stopped at Farmington Road, yes, they had a placeholder, so to speak, or a design or however you want to call that, east of Farmington with a -- with a raised median.
But at some point, we had to get the two plans to line up to show what was accurately was going to be constructed, and that was the -- the painted flush median. So at some point, you had to marry the two plan sets together. It just happened to be that joint is right there at Farmington Road.
Q. Okay.
A. So you had a raised median along 17A as part of the interchange projects in conjunction with controlled access, goes to Farmington Road.

Farmington Road east is a -- a flush painted median.

And -- and yes, we had to -- between the right-of-way plans and the construction plans on the interchange project, we got those two to marry -- marry at that point.

Q. Um-hum.

A. And I think the plans -- that timeline is certainly noted in the plans, the exhibits that were provided.

Q. Okay. In 2000, in August of 2000, what was the status of the plans for whether it be a raised median or a flush median? This seems to indicate the -- the decision to go with the flushed rather than the raised was made around the time of this letter. Is that incorrect -- an incorrect assumption?

A. Yes. And let -- let me explain that.

Q. Maybe -- do you want to read some of these also?

A. Sure. Sure.

Q. I keep asking you about this, I just want to make sure you've seen it.

A. Well, Tommy -- if you look at Tommy's letter --

Q. Um-hum.

A. -- and you look at the subject, it's 17A to I -- at I-26.

Q. Um-hum.

A. So as part of the project -- again, it's -- we're all right at this -- what I call this construction joint, which is Farmington Road.

Q. Um-hum.

A. So I mean, you can't just throw one out and look at the other. You've got to look at them in totality. And that's when -- when I prepared for this case and this deposition, I had to look at everything in totality. And when you do that, yes, there's -- always was a painted flush median.

And we had to correct the interchange plans to -- to reflect that. And part of that was done as part of the right-of-way because we were out buying right-of-way. Tommy was using the interchange plans to acquire the right-of-way, which is part of that. Because again, we had acquired right-of-way, as I showed you on that last exhibit highlighted in green along Farmington. And he was using this plans, the 17A plans, as we married those two together. We, in looking at this whole project in totality and not having that --

call that construction joint, whatever you want to call it, that terminus of one and the -- and the starting point of the other one and marrying those two together, that's when the correction was made to show that -- that flush painted median.

Q. All right. Was that around the time of this letter, marrying those two together?

A. Yes.

Q. Okay.

A. Yes, sir.

Q. Okay.

VIDEO TECHNICIAN: Fifteen minutes, counselor.

MR. SMITH: Okay.

BY MR. SMITH:

Q. All right. Whose decision was it to change the plans from what was in the interchange project from a raised median to a flush median in the final plans? Whose decision was that?

A. That was my decision as the program manager.

Q. Okay. Now, what discussions did you have with anyone associated with the property owners or the people developing what is now the Pilot Travel Center with regards to that raised

median?

A. I wouldn't have had -- I don't recall any direct contact. That would have been through our right-of-way acquisition agent, which was Tommy Smoak.

Q. Okay.

A. So as the PM, I'm coordinating those. I'm not saying from time to time, do I have a direct conversation with the property owner, I do. Generally speaking, that is done through our right-of-way agents. Again, Tommy was our right-of-way manager down here out of -- out of our local office. And that's one thing I would do is we -- you know, kind of like I said early on, is the PM part of that job duty is kind of quarterbacking between purpose and need, environmental, right-of-way, plan development, right-of-way acquisition, and construction.

Q. Okay.

A. So as part of that, yes, that where when Tommy went out, I started reviewing the interchange plans in conjunction with the road widening plans and said, nope, the plan is from Farmington east, we're going with that flush median.

Q. Okay. Now, with regards to the original, we saw some mention of a unmountable median. Does unmountable mean uncrossable?

A. Yes, un -- unmountable meaning uncross -- uncrossable. And I'm not sure that -- yes, that is what that word means.

Q. Okay. And is that -- is a raised median also a nontraversable median?

A. A -- a -- a raised median serves two purposes. A raised median serves for channelization and for access control. It's transversable from the standpoint that, yes, we want that median to be transversable for emergency services. So I don't want to contradict myself, but yes. The -- the intent of that is, yes, for everyday morning traffic -- well, not transversable, is it unmountable? That's why I say the term unmountable is probably -- this was done by -- I don't even know whose signature this is. I don't believe this is a DOT -- I don't believe that's a DOT person, but I -- I think that term probably is inaccurate. Certain -- but I don't want to mislead you. A -- a -- a raised median is not intended to be transversed by the motoring public.

Q. And -- and I had saw that term nontransversable median, I think in the ARMS manual.

A. That's probably a better term versus unmountable.

Q. And but -- but those are -- nontraversable median, is that describing a raised median such as what was in the original interchange plans?

A. Yes, sir.

Q. Okay. And is it against the law to drive over a raised median?

A. For the average motoring purpose -- average motoring public, yes. Not for emergency services.

Q. Right. Double yellow lines, is that what surrounds the -- the flush median that is there now or that was constructed?

A. It is a -- it is a painted median that incorporates double yellows, yes.

Q. Okay. And double yellow lines, it's legal to cross double yellow lines if you're turning into a private drive. Is that true?

A. Yes, sir.

Q. Okay. So the original plans in the

interchange improvement project was for a median that prohibited left-hand turns coming from Moncks Corner, but what was actually approved and done made left-hand turns into the Pilot Travel Center legal?

A. Yes.

Q. Okay. And if we look back to Exhibit 4 here -- and I think that's what you've got there. Is that 37?

A. Yes, sir, 0437.

Q. Yeah, looking at 37 also. So Plaintiffs' Exhibit Number 4, same thing you're looking at here, the painted portion of this median, so you see down here, coming up close to the intersection with Farmington Road, right?

A. Correct.

Q. And it's skinnier here and it gets wider up here, right?

A. Yes, sir.

Q. That was not intended to function as a median area or a turning lane for traffic, was it not?

A. If you work your way from Farmington Drive east --

Q. Um-hum.

A. -- yes, there is a dedicated left turn lane associated with the signal at Farmington. As you move farther east and, as you alluded to, it goes to skinny to -- widens out, this is referred -- referred to as a two-way left turn lane. So it does develop into a dedicated left turn lane at the signal as you get away from that intersection. That's -- that is referred to as a flush median that's utilized as two-way left turn lane.

Q. Okay. So this portion -- and what we're going to do is just maybe mark it on here, maybe with a -- a black pen. See how it turns from skinny into wide right here?

A. Yes.

Q. Maybe just mark it with yours because you've got a blue.

At what portion does this painted flush median serve that left-hand turn median -- I forgot which word you described, you used, the term you used to describe that.

A. Two-way left turn lane?

Q. Yes, two-way left turn lane, where does that start in -- in general?

A. Just put a little --

Q. Yeah.
A. Does it matter how I mark that?
Q. Just put a straight line. Okay.
And so --
MR. MAYBANK: Hold on. Write above that, two-way left turn lane. And then put the arrow back towards where it's going. There you go. Perfect. Thank you.
BY MR. SMITH:
Q. All right. So talk to me about the function of the two-way left turn lane. So if a -- if a driver is coming from Moncks Corner, right, and they want to go turn into one of the driveways at the Pilot Travel Center, what's the function of this turn lane in that situation? How early are they -- is it designed so that they're supposed to get into it? How much are they supposed to get into it? Are they supposed to get into it at all? Tell me about the -- the functioning of that per the plans or per its design.
A. Sure. So a -- so a two-way left turn lane is that flush median. And what that allows that -- the -- the purpose of that would allow a person turning left --
Q. Um-hum. Coming from Moncks Corner?

A. From Moncks -- it allows them to get out of the through lanes so that -- it allows them to get out of the lanes that are going toward Summerville, it gives them a place in the median so they're allowed -- out of that, so they can get in that median and make a left turn across the -- the folks go -- across the lanes that's going east towards Moncks Corner.
Q. Okay.
A. It also serves the purpose, again, why it's called a two-way left turn lane, that if you were making a left out of a drive, it allows you that refuge so that you've just got to cross the lanes coming toward you and allows you that refuge in the median without having -- then you can merge into the lanes that you're turning left to get into. So that's the purpose. Hence, a two-way left turn lane.
Q. So what -- what kind of merging is taking place in that two-way left turn lane?
A. You would be turning -- you -- you would be merging to make a left into the -- the gas station.
Q. Okay. But I mean, how early -- how early do you get into that? How many -- how

many -- you see what I'm saying? How -- how -- how early are you allowed to get into that -- that two-way left turning lane?
A. I don't know there's any specific distances noted, but certainly you -- the -- the intent is not to just travel down that road. It would -- you would get into that median at the appropriate time to make a legal left turn on -- a legal left turn. Excuse me.
Q. And then for the folks that are coming out and trying to make a left to go, you know, back towards -- or in this situation, they'd be making a left to go towards Summerville, what's the functioning of that turn lane at that point with regards to that particular type of maneuver?
A. It's the same thing. It'd allow them refuge to -- to get -- they would be looking to the left at folks traveling towards Moncks Corner, allow them refuge in the median, then they can merge into the -- to the turn -- to the lanes that are going towards Summerville.
Q. Okay. My understanding has always been -- and -- and you've -- I imagine you're going to correct me if I'm -- and I am wrong -- was that this double yellow lines here around this flush

median, that you're allowed to cross it to go into the private drives, but you're not allowed to get into this area. This is an illegal area to be in; is that incorrect?
A. That's incorrect, yes.
Q. Okay. I got you.
MR. MAYBANK: Can -- can you -- just for the record, can you make an X of where you thought was an illegal? Because I couldn't see. Your hand was in the way.
MR. SMITH: Oh, it -- it's just the -- the entire thing, the entire flush median. The entire painted flush median.
MR. MAYBANK: Okay.
VIDEO TECHNICIAN: Four minutes, counselor.
MR. SMITH: Okay. Let me see if this is a good time to stop. All right. Why don't we -- do you want to change tapes here?
Does anybody need a break for a minute?
THE WITNESS: Yeah.
MR. SMITH: Okay.
VIDEO TECHNICIAN: This concludes Video Number 1 in the video deposition of Leland -- Leland Colvin. The time is approximately 1:28 PM.

We are now off the record.
(A recess transpired.)
VIDEO TECHNICIAN: We are now back on the record. Today's date is March 13, 2017. The time is approximately 2:49 PM. This is Video Number 2 in the video deposition of Leland Colvin as 30(b)(6) representative for South Carolina Department of Transportation.
BY MR. SMITH:
Q. Mr. Colvin, thank you for coming back.
A. Yes, sir.
Q. So when we left off before we took our break, we were talking about some dates and times. And I think I may have figured this out in my head, just sort of thinking about it as -- as I was sitting at lunch. And maybe let me run this by you.
It looks like the -- the date stamp that you had seen, I forget which exhibit it was, but the date stamp you had seen from 1998 that showed no raised median in this section of 17A in front of what's now the Pilot Travel Center, that was stamped in 1998. Do you remember that?
A. Correct. Yes, sir.
Q. And that would have been off of the

widening project --
A. Correct.
Q. -- correct?
A. Yes, sir. Yes, sir.
Q. But the -- the interchange improvement project around that same time would have shown the raised median in that same area?
A. Yeah. The plan, the right-of-way plans that's date-stamped July of '99 showed the raised median, yes.
Q. Okay. And so what I want to talk about and we've been going back and forth to this letter here, and it says -- I imagine that -- that means September the 5th of probably 2000, just after this August 28th letter -- there was a per phone call verification with T. Smoak. And there's some notes here: Negotiated median removal and drive cuts.
And earlier, you were talking about marrying the two plans together, being the interchange improvement project and the widening project and the two different designs for the median in that area, right?
A. Right.
Q. And so my question is: Is the two plans, when they were put together and the final

decision made to go without the raised median, was that in this time frame of September or August of 2000?
A. You know, you had two concurrent designs going on at the same time. And like I said, I would -- I would almost state it that we got this -- we got the interchange plans corrected to show the appropriate median as designed on the widening project.
Q. Okay.
A. Now, certainly the right-of-way acquisition process facilitated that. There was -- I don't know there was anything that was really pushing that at that point in time, but certainly this -- this right-of-way acquisition pushed this -- pushed that -- accelerated making sure those two plans married up. Because you've got one set of plans that showed one thing, another set of plans that showed something else.
The set of plans that really was the design east of Farmington always had the painted median. The set of plans, the interchange that went up to -- to Farmington and just kind of had a placeholder, so to speak, beyond that showed the raised median.

Now, what makes it a little bit more difficult is the right-of-way acquisition. Because it included that section that we talked about along Farmington was actually acquired under the interchange.
Q. Right.
A. So that's kind of what spurred this letter and why the right-of-way acquisition was acquired as part of the interchange project and not the widening project.
Q. And the right-of-way acquisition, is that another way for just describing the dealings with Marathon Ashland Petroleum, LLC?
A. Yes, sir. Absolutely, yes, sir.
Q. And so is it true that Marathon Ashland Petroleum, as referenced on Plaintiffs' Exhibit Number 5 there, it was their desire that the raised median which appeared in the interchange improvement project, that the requirement for the raised median would go away?
MR. CRITES: Object to the form.
MR. MAYBANK: Same objection.
BY MR. SMITH:
Q. Is that your understanding?
A. Yeah. I mean, certainly Marathon

Ashland Petroleum would have liked to have maintained the same access they had prior to the widening project and the -- and a raised median would have changed that access.

Q. Okay. Because a raised median at that -- at that portion of Highway 17A would have meant they would only get business off of 17A, people turning right in, and they would lose access to the business for people who wanted to turn off 17A into the Pilot Travel Center?

A. I don't know if I would categorize it like that. It certainly would have -- would have restricted left turns into those drives. There could have been a -- still a left turn made at the signal at Farmington, another left made from Farmington into the gas station.

Q. But that -- that -- that entrance on Farmington Road, that was a right-in, right-out; is that right?

A. That is correct. It ended up being right in, right out, correct.

Q. So people coming down 17A from Moncks Corner, if they couldn't make a left across where this -- what -- what became the flush median, they go up to the intersection of Farmington Road

and took a left, they couldn't take a left into the Pilot Travel Center there either since that was a right-in and right-out only, right?

A. As -- as the final -- yes, the way the -- the curb cut was located in the final -- the final locations, that's a true statement. Absolutely.

Q. And so can you see the impact that it would have on the business that Marathon Ashland Petroleum was associated with? Can you see the impact that removing this raised median would have on their business?

MR. CRITES: Object to the form.

THE WITNESS: Sure. Absolutely. Can't use that access.

BY MR. SMITH:

Q. Right. And -- and is it fair to say that Marathon Ashland Petroleum stood to make more money because they had more access by customers with the removal of this raised median?

MR. CRITES: Object to the form.

THE WITNESS: I can't -- I can't answer that. I don't know how to answer that.

BY MR. SMITH:

Q. But we can say that the original

interchange improvement plan would have not allowed people coming from the Moncks Corner area to make a left into the -- what would then be the Pilot Travel Center?

A. Yes.

Q. Okay.

A. Correct.

Q. Now -- and now talk to me about this: Now, you said it was your decision that when you put the two plans together to go with the plan, that included the flush median, correct?

A. Correct.

Q. And this is talking about a phone verification and negotiation -- or negotiated median removal. And it says, number one, approved --

A. To have painted median only from four western curb cut to stop bar. In other words -- I can't --

Q. Unmountable?

A. Oh, yes -- unmountable median has been eliminated from the plan.

Q. Okay. So -- and this is signed by Mr. Greiwe here, at least it looks like, right? And Mr. Greiwe was the person that Mr. Smoak was

writing to in this letter, right?

A. Correct.

Q. So Mr. Greiwe is reporting back to somebody, at least with this handwritten note about the results of the phone call he had with Mr. Smoak. Is that the way you read it?

MR. CRITES: Object to the form.

THE WITNESS: I don't -- I don't -- I can't speculate what he was writing to.

BY MR. SMITH:

Q. Well, what do you -- if you look at the thing, just kind of read it from start to finish, tell me what you think is going on.

MR. CRITES: Same objection.

MR. MAYBANK: Object to the form.

THE WITNESS: I don't -- I have no clue on if that was just a note to himself, what he planned -- I can't speculate. I don't know what Mr. Greiwe -- it looks like he was writing notes based on a phone conversation, but that's purely speculative on my part.

BY MR. SMITH:

Q. Okay. So did you discuss removing the plan for a raised median in that area? Did you discuss that with Tommy Smoak?

A. Absolutely, yes.
Q. Okay. And did Mr. Smoak tell you that he had spoken to the folks at Marathon Ashland Petroleum and they wanted this to be a flush median rather than a raised median? Were you aware that that was going on?
A. I don't specifically recall a specific conversation related to that, but I am sure that as part of the right-of-way acquisition process, access into that tract would have been discussed.
Q. Okay. So what was the negotiation? What was the negotiation? I mean, this -- this references a negotiate --
Well, let me ask you this: Was there any negotiation in the decision to go with the flush median as opposed to the raised median?
A. No. I mean, not -- not from my perspective. No, definitely not from my perspective. From my perspective, it was a purely engineering decision based on the Highway Design Manual, based on the difference of the two projects, the purpose and need. Certainly one would have been easier for Mr. Smoak to negotiate than another one.
But no, it was not removed as a result

of right-of-way acquisition. It was removed as a result of meeting of the plans and the purpose and need of the two projects and matching the Highway Design Manual.
Q. Okay. So do you know -- all right.
You -- you mentioned a moment ago in the negotiation process with Mr. Smoak -- do you know what -- what Mr. Smoak negotiated? Meaning what did he give and what did he give up.
A. Sure. It's in the right-of-way document instrument that was provided as part of the discovery phase.
Q. Okay. Do you -- do you know where that is?
MR. MAYBANK: What are you looking for?
MR. SMITH: The --
THE WITNESS: The right-of-way instrument.
MR. MAYBANK: Would that have been something that you gave me?
THE WITNESS: It would have been.
MR. MAYBANK: Is it not in these documents?
MR. SMITH: How about this one?
THE WITNESS: I don't know that it's in

there. This -- I printed out what you said you needed.
MR. MAYBANK: The front cover, you've got that very first page?
MR. SMITH: Yeah.
MR. MAYBANK: I think you've got a list of what we produced. See if it's on one of those, what number it would be. Oh, no, you've got -- yeah, that first page.
THE WITNESS: It was part of H.
MR. SMITH: Okay.
THE WITNESS: The right-of-way exhibit. Yeah, H.
MR. MAYBANK: Let me -- and none of those are H?
MR. SMITH: I've got it. I mean, I printed it out.
MR. MAYBANK: And I know I've got a box of stuff.
MR. SMITH: Okay. Oh, okay. I just turned to Section H.
THE WITNESS: Yes. That is it.
MR. MAYBANK: Oh, never mind.
MR. SMITH: That's okay. This is it right here.

BY MR. SMITH:
Q. We're looking at it?
A. Yep.
Q. Okay. And so let's identify what we're looking at here. This is Bates Stamp SCDOT Colvin Documents Number 0613. And so the -- the question was in the negotiation process, what did the DOT get and what did the DOT give up?
A. Yes. So what this does, this -- this is what I refer as our right-of-way instrument that includes an exhibit that shows the roadway and the plans. It shows the area of acquisition. It shows the permission that we talked about earlier in my deposition as far as allowing us to -- to go in and do some work. And it also includes the payment in the amount of -- it appears to be 50,000 dollars.
And then in the -- in the special provisions, we acquired 9,102 square feet. It's showing in Exhibit A, attached to these documents. Like I said, also as part of the document, we got permission for construction slopes that extended beyond the right-of-way line.
So this is really the -- the document that basically binds both SCDOT as well as the property owner.

Q. Okay. So it looks like what Marathon Ashland Petroleum got out of this negotiation was, number one, the removal of the requirement for a raised median.

MR. MAYBANK: Object to the form.

MR. CRITES: Object to the form.

BY MR. SMITH:

Q. Is -- I'm just going to try and align these up, down -- sort of break this thing up. Would that be accurate in that statement? I'm going to try to make a Column A, Column B.

A. The raised median was clarified for sure.

Q. Okay.

A. I'm not sure that was a negotiation in or out. I think it was a clarification on what the access to the tract would be. I don't know if I want to clarify that as that's what we gave up or didn't. I would say it was certainly clarified.

Q. Okay. Can you pull that letter right there?

A. Sure.

Q. So -- all right. If Mr. Smoak on Exhibit Number 5 is referencing a phone call and certain approvals that have been given, right?

MR. MAYBANK: Well, Mr. Smoak isn't referencing anything.

BY MR. SMITH:

Q. I'm sorry. If Mr. Greiwe is making notes down here of a phone call he had with Mr. Smoak and he's talking about the negotiated median removal and drive cuts and he lists Items 1 through 4 -- do you see that?

A. Yes.

Q. Okay. And the first thing that he reports is approved to have the painted median only; the second thing he reports is a truck delivery -- or truck driveway on 17A, right?

A. Um-hum.

Q. The third thing he reports is two auto driveways. I imagine those are both on 17A as well?

A. I believe that's the case.

Q. And then the driveway on the frontage road, that would have been on Farmington Road, the one that ended up being the right-in, right-out?

A. Correct.

Q. Okay. So other than approving the median to go from raised to flush, did you make any of the other decisions that are reflected by

Notes 1 through 4?

A. Yes. The -- the driveway's width and purpose would have been part of the -- the plan development and what -- and -- and yes, that would have been part of the plan development process.

Q. And that would be not only the auto driveways, but the truck driveway on frontage road and the truck driveway on 17A?

A. Yes.

Q. So all of this?

A. Yes.

Q. So if we look here on Exhibit Number 5, Items 1 through 4, you approved each one of those?

A. Yes.

Q. Okay. And if Mr. Greiwe is representing this as a negotiation, other than Marathon Ashland Petroleum, LLC paying 50,000 dollars, is there anything else that they contributed to this so-called negotiation to result in Items 1 through 4 in Exhibit 5?

A. We --

MR. CRITES: Object to the form.

THE WITNESS: We would have paid the 50,000 dollars because we acquired the -- the right-of-way.

BY MR. SMITH:

Q. Oh, okay.

A. So SCDOT made a payment --

Q. Sorry.

A. -- to them for the right-of-way that's acquired. And as part of this is the plan sheet that showed the location and that specifically point out the driveways, but certainly shows the location of the property in relation to 17A.

Q. Okay. And this page, we had highlighted certain areas that were part of that right-of-way purchase agreement. And -- but it looks like it's a little more clearly laid out in this Exhibit 615 of the Colvin documents?

A. That's correct, yes, sir.

Q. Okay. So if Tommy Smoak gave up anything to give Marathon Ashland Petroleum Items 1 through 4 of Exhibit 5, you don't know what that would have been?

A. I do not know what that would have been.

MR. MAYBANK: Kevin, can we do -- can we mark those three pages that you have?

MR. SMITH: Um-hum.

MR. MAYBANK: We'll make a copy so you

can -- or each one of those, that one and then the other one in front of it?

MR. SMITH: Yeah.

(PLF. EXH. 6, Plan drawing, SCDOT Colvin Documents0615, was marked for identification.)

(PLF. EXH. 7, Title to Real Estate, SCDOT Colvin Documents0613, was marked for identification.)

BY MR. SMITH:

Q. So we're going to mark as Exhibit Number Page 615, SCOD -- SCDOT Colvin Documents 615, Exhibit Number 6. And that would have been showing the right-of-way area we were talking about?

A. Yes, sir.

Q. Okay. And then we're going to mark as Exhibit Number 7 -- and I forget what you called this. What was your name for this?

A. We -- we -- I call it our right-of-way instrument. That may not be the technical term.

Q. Well, I just wanted to know what you referred to it earlier as.

A. Yeah.

Q. Did -- did Marathon Ashland

Petroleum -- was anybody from the DOT running for some sort of political office at the time that maybe they would have donated to that campaign?

A. They should not have been, not that I'm aware of.

Q. Do you know of anyone that -- that was at the DOT around that time that was running for political office?

A. Not --

MR. MAYBANK: Object to the form. I don't think he's been listed as some kind of witness to give testimony in that regard.

MR. SMITH: Well, we're talking about the reasons the thing was approved, and we're exploring some of those.

BY MR. SMITH:

Q. So I just want to know any of the possibilities.

A. Not that I'm aware of.

Q. Are you aware of any contributions of any type that Marathon Ashland Petroleum made to the South Carolina Department of Transportation around, you know, August, September of 2000?

MR. MAYBANK: Same objection.

THE WITNESS: The only thing would be

noted in the right-of-way instrument where permission was granted for construction defense.

BY MR. SMITH:

Q. Okay. And you said that as part of merging those two, those two plans, you made the decision to go with the flush median, right?

A. Correct.

Q. And you said that -- that that decision was in line with the safety standards, with the industry safety standards for highway design?

A. Yes. The South Carolina Highway Design Manual, it -- it met that.

Q. Okay. And do you know what portion of the South Carolina Highway Design Manual says that or --

A. Sure. It was in the -- it was in the document provided as well.

Q. Okay.

MR. MAYBANK: Go to the first page of that binder.

MR. SMITH: Sure. Oh. Sorry.

BY MR. SMITH:

Q. Would that have been this Section 13422?

A. This is the updated -- let me

double-check. This is the updated manual that I first started. I also -- there's also relevant pages from the design manual that was -- that was in place at the time of the design. But yes, this is the Highway Design Manual, a revision of May of 2013. And I can -- I can read you through that.

Q. May of 2002, you mean?

A. Yes. Yes, I'm sorry. Yeah, May of 2003.

Q. Okay.

A. And you go to median types, which is in the Highway Design Manual, which we did here. And we talk about flush medians -- flush median -- various median types. And we used -- we did not use this particular manual because it's an update of an older manual, but this is where you looked at the raised medians. And you kind of go through and you -- you apply this where you would place flush medians or not place flush medians. So...

Q. Now, is it true that if you look at the area past where the Pilot Travel Center is now on Highway 17 and you go towards Moncks Corner, that area is a raised median?

A. Yes. Currently, it is.

Q. Because it -- the original interchange

improvement plan had a raised median from well past the Pilot Travel Center going all the way to the stop bar with Farmington Road?

A. Between the interstate and Farmington?

Q. No. If you -- where is one of these ones that we've got? So on this one here, so there's Farmington right there. And if we just were to look further back this way, let's just say the travel -- the Pilot Travel Center ends right here, is it true that past the Pilot Travel Center, this actually picks up with a raised median that goes that way?

A. That's -- that's not true. Yeah.

Q. You know, it's that way today.

A. It is that way today.

Q. Okay. But that wasn't what was done back then?

A. Correct.

Q. That raised median that starts after the Pilot Travel Center and goes toward -- on 17A towards Moncks Corner, that raised median happened after all of this?

A. Correct.

Q. Okay. And do we -- I know there was an exhibit showing the interchange improvement project

and their plan for the raised median. I believe that's on -- where was that exhibit we had with all the different color highlighting? Here it is.

A. Yeah.

Q. So this one here on Exhibit Number 2, it's kind of cut off there. But do you know in the original interchange improvement project plans, do you know how far this raised median went into Moncks Corner?

A. Sure.

Q. Or towards Moncks Corner?

A. Sure. Thanks. Sorry. Give you that back.

So if you go back to the interchange plans, the right-of-way plans that are stamped July of '99, you go to Page 11, it certainly shows a raised median there. And then as you go to Page 12, that's it.

So here's where you kind of tie them back in. And it just kind of further reiterates kind of the termination and how they're trying to align up -- match -- match where this project ended. As you can see, the plans here, which I guess goes back to the confusion between the widening project and the interchange.

As you can see, what Arcadis did is their plans, they just showed the existing 17A in its current form --

Q. Um-hum.

A. -- beyond on Sheet 12, which is the -- the next sheet that would incorporate 17A.

Q. Um-hum.

A. So --

Q. So that raised median plan on there is -- goes just basically to -- to the end of this, and they didn't take it any further than that?

A. Just to the -- the side, correct.

Q. Oh, I'm sorry.

A. Yeah, it's the station -- Station 12.1 -- plus 160.

Q. Okay. Okay. Got you.

Do you know when the raised median was put -- what is that north? I don't even know what direction that would be. Past the Pilot Travel Center towards Moncks Corner, do you know when that section was added?

A. I don't know the specific dates. As part of our discovery, we went through a Google Earth review and found some dates. But it's my understanding that Mr. Clark could testify to that

as part of the -- as part of the new location roadway that ties into 17A. It was part of that encroachment application program.

Q. Okay. I'll just ask him about that.

A. But it was not done as part of the 17A widening.

Q. Okay. And if we could just go back to -- you said that your decision when you were looking at the two plans to go with the flush median was based on the Highway Design Manual?

A. Yes, sir.

Q. And can you just point to me what the -- the factors that you considered or how it is consistent with the Highway Design Manual?

A. Sure. So we just --

MR. MAYBANK: Before he answers that, can I ask you -- it's not an objection because certainly that's -- that's what we use now. Since we didn't use that one to -- to design these plans, do you want to see if we can -- do we have a set of what we would have looked at then in 2000 that would have been applicable here in town?

THE WITNESS: I do.

MR. SMITH: Yeah, why don't we do that. Because I -- you know, I -- I would ask you if

there's anything substantially different between this and that, but you probably just review it -- rely on memory for that. So do you think you can grab the -- the one that was being used at the time?

THE WITNESS: Sure.

MR. SMITH: Okay. Do you want to do that?

THE WITNESS: Do you want to come with me while I --

MR. MAYBANK: Yeah. Yeah, yeah, yeah.

VIDEO TECHNICIAN: We will now go off the record. The time is approximately 3:18 PM.

(A recess transpired.)

VIDEO TECHNICIAN: We are now back on the record. The time is approximately 3:22 PM.

BY MR. SMITH:

Q. Okay. Before we took a break, you were going to go grab the version of this South Carolina Department of Transportation Highway Design Manual of 2003 that would have been in place at the time these decisions were being made. And I believe you walked in with this?

A. Correct.

MR. SMITH: Okay. Let's just mark this

so we -- I think we're on Number 8.

(PLF. EXH. 8, SCDOT Highway Design Manual, was marked for identification.)

MR. MAYBANK: And for the record, I apologize. I thought under E, Section E, we had both the 1991 version and the '03.

BY MR. SMITH:

Q. All right. So I marked here as Plaintiffs' Exhibit Number 8 what you brought in.

A. Correct.

Q. And that would be the 1991 version?

A. Correct.

Q. So was it 1991 and the next revisions were 2003?

A. Correct.

Q. Okay. And I'm just going to put a Number 9 so I don't have to keep counting.

Okay. And so the question is: What were the elements that you looked at to determine that the industry safety standards led to the flush median as opposed to the raised median?

A. Sure. So as we're doing our Highway Design Manual -- as we're doing our design, our designer would go in and this is kind of the bible that they use, so to speak, to -- to -- to design

our highways. Again, as mentioned very early in my deposition, we have our own Highway Design Manual that is specific to South Carolina, taking into consideration components or recommendations from AASHTO and USDOT.

So this is the Highway Design Manual from 1991 that was in place at the time of the design of both the interchange and the widening project was done. And I just -- I just -- I can get the whole thing. I just made copies of the pertinent sections and chapters, and this one is our medians.

Q. Um-hum.

A. And as you go through, it -- it talks about all kind of medians. But when it says at the very bottom:

In urban areas -- which is what 17A would be -- where design speeds are 45 miles an hour or less, a 15-foot flush median, paved median at the same elevation as adjoining lanes may be adopted. This width may be reduced to 14 feet where economic and existing right-of-way conditions justify. The median area may be used for turn lanes, storage lanes, et cetera. Typical barrier and flush medians are illustrated at 7-P.

So when I looked at this as a urban roadway with a design speed of 45 miles per hour or less, our design manual leads you directly towards a flush painted median.

Q. Okay. Now, did you consult the ARMS manual or the -- the U.S. Department of Transportation Federal Highway Administration, their access management in the vicinity of road -- sorry -- vicinity of intersections?

A. We did not. We would go by our Highway Design Manual, taken those. In the development of this, those have been taken in consideration. Our ARMS manual is really a manual when we are reviewing an encroachment permit from a private developer getting access to our roadway. In this particular case, there was already access to 17A. We were going through and widening the project.

Q. Okay.

A. So the access manual would not have been used. It would have been the Highway Design Manual. How -- now, if we were widening the roadway and a new gas station/convenience store was going in, then at that point they would have came to the DOT with an encroachment permit to access the highway and we would have gone back and

referred to the ARMS manual as part of that process.

Q. But do you know that an encroachment permit was filed in -- in this case, in this matter?

A. I'm not aware of that as associated with the widening project.

Q. Okay. Maybe it was associated with the interchange project?

A. Not that I'm aware of.

Q. You can see down here in the notes: An encroachment permit will be required from DOT when installing the cuts.

A. I -- I'm not sure where that came from. The DOT would install the curb cuts as part of the widening project.

Q. Okay. So I mean, I think I can represent to you, along with everybody's knowledge here, that the -- a -- an encroachment permit was filed with the DOT with regards to those curb cuts. And I -- I believe it mentioned the median as well, I'm just not sure off the top of my head.

A. Mr. Clark could comment on that.

Q. Okay. I want to ask you about what I'll mark as Exhibit Number 9, and this would be

the SCOD -- SCDOT ARMS manual.

A. Yes.

Q. Right?

A. Um-hum.

(PLF. EXH. 9, SCDOT Access & Roadside Management Standards, was marked for identification.)

BY MR. SMITH:

Q. And this section here, this is the 2008 edition. So I'm going to be asking you about things in here --

A. Sure.

Q. -- and then how that maybe relates to information from back then. Okay?

A. Sure.

Q. So if you -- if you look at that there and then you turn to Page 6 -- it's double-sided, so --

A. Okay, got you.

Q. -- it should be back there.

A. Sure.

Q. And that's where I was getting this term nontraversable -- nontraversable medians. Do you see that?

A. Yes.

Q. Is it true that nontraversable medians have the effect of a 35 percent reduction in traffic collisions?

A. Yes. I mean, on Page -- on -- on Table 1.1, a continuous two-way left turn lane, TWLTL is our engineering term, has 35 percent reduction in total crashes, as well as a nontraversable median. Both showed 35 percent reduction in total crashes.

Q. All right. So nontraversable medians, those would have the effect of a 35 percent reduction in traffic collisions?

A. Correct.

Q. Okay. And so the absence of a nontraversable would increase traffic collisions by 35 percent?

A. That is not what this table states. This table -- this table states that a continuous two-way left turn lane, which is what we have --

Q. Okay.

A. -- has -- the effects on that has a 35 percent reduction in total crashes, a 30 percent decrease in delay, and a 30 percent increase in capacity. The same increases and decreases as a nontraversable median as noted in this table.

Q. Okay. Where was that -- TWLTL? Yeah. And these -- these percentages here --

Well, how do you -- how -- how do you square that? Because a nontraversable is going to prevent left-hand turns, a continuous two-way left turn lane is going to allow left-hand turns, each one of those results in a 35 percent reduction in total crashes? If you allow left-hand turns, it's a 35 percent reduction in crashes; if you don't allow left-hand turns, it's a 35 percent reduction in crashes?

A. I -- I'm just -- I'm reading the -- I'm reading the -- the book that you provided to me, which is a DOT access management. And it just -- I guess this is under the heading of effects of specific access management techniques. And it talks about -- that summarized the general safety and operation effects of specific access management techniques based on researches to date.

So again, if you don't have that TWLTL -- and you're right, that's the term we use -- you don't have that storage area to allow that -- that vehicle, as we talked early on in the deposition, to get out of that through lane of traffic.

Q. But can you -- can you -- can you square that -- that -- that statement that I just made that allowing left-hand turns with that area to get out of traffic reduces the number of crashes by the exact same percentage as simply not allowing left-hand turns at all by using a nontraversable median? Does that make sense?

A. Yeah. A nontraversable median cuts down on the number of conflict points compared to a flush painted median.

Q. And the number of conflict points, that talks about as a person is turning left, the conflict points would be the two or three lanes heading towards them. Those each would be conflict points, right?

A. Correct.

Q. Okay. And allowing left-hand turns in this particular area created three conflict points?

MR. MAYBANK: Object to the form.

BY MR. SMITH:

Q. If there were three lanes?

A. It didn't create any conflict points that -- those, that was already there. Those left turns are already allowable, so it didn't create any -- any conflict points that weren't on --

there's -- there's additional number of lanes, but there -- there was -- there -- that -- that access was already in place prior to the widening.

Q. Okay. One of the -- well, let me ask you this: The main type of -- of collision resulting from left-hand turns, could we describe those as T-bone collisions? Are you familiar with that term, what it means?

A. Yeah. We -- we call those right-angle crashes.

Q. Okay.

A. Collisions.

Q. Same thing as a T-bone?

A. In general, I would say yes.

Q. You've got one coming this way and one going that way, so that's a -- that's a right angle?

A. That is a right-angle crash.

Q. Okay. So if -- are you -- are you familiar with what a T-bone collision means?

A. I -- I think it's the same definition as a right angle.

Q. Okay. That's what I'm trying to -- I was trying to --

A. Yeah.

Q. -- trying to describe the same thing.

A. Yeah.

Q. And T-bone collisions or right-angle collisions, how do those rank in terms of the seriousness of collisions?

MR. MAYBANK: Object to the form.

THE WITNESS: I don't have that information.

BY MR. SMITH:

Q. Are they some of the most severe collisions? Or are they most -- some of the most minor collisions? Or they fall somewhere in between?

MR. MAYBANK: Same objection.

THE WITNESS: I don't have an answer to that.

MR. SMITH: Okay. All right. I think I only brought one copy of this, so I think we'll have to share. Can I have another -- have you got another sheet of yellow -- all right.

I'm going to mark as Plaintiffs' Exhibit Number 10 here this U.S. Department of Transportation Federal Highway Administration Access Management in the Vicinity of Intersections. Like I said, I -- I only brought one copy.

THE WITNESS: No problem.

(PLF. EXH. 10, Document entitled Access Management in the Vicinity of Intersections, was marked for identification.)

BY MR. SMITH:

Q. So what I want to do is in Page 3 --

MR. MAYBANK: Year? Is there a -- Kevin, is there a year coinciding with that?

MR. SMITH: 2008.

MR. MAYBANK: Okay.

BY MR. SMITH:

Q. Section 1.3.

A. Okay.

Q. It's down there. In general, the number of locations where travel paths meet affects safety. Is that true?

A. Yes.

Q. Okay. And left turns can lead to more severe crashes. True?

MR. MAYBANK: Object to the form.

THE WITNESS: In the context of this paragraph, but this does not make an absolute statement. I'm -- I'm not sure -- I'm not sure I understand the question.

BY MR. SMITH:

Q. Well, at least according to the United States Department of Transportation, left-hand turns can lead to more severe crashes than merging or diverging conflicts because of the angle and speed differential -- differentials between the vehicles.

A. Yes.

MR. MAYBANK: Hold on. What's the question?

BY MR. SMITH:

Q. That is according to the U.S. Department of Transportation, that statement?

A. What's the question?

MR. MAYBANK: Did he read it right?

BY MR. SMITH:

Q. It says -- the sentence starts out: For example, a crash due to crossing maneuvers created by motorists turning across the roadway or making left turns can lead to more severe crashes than -- and they list the other types of situations. So is that true, in your mind?

MR. MAYBANK: Objection.

THE WITNESS: In the context of that statement on this document that I'm not very familiar with, it -- it says basically that a

left -- a -- a crossing maneuver or making left turns is more severe than merging or diverging conflicts. Yes, I would agree with that statement.

BY MR. SMITH:

Q. Okay. And then page -- well, let me just ask you this in general.

Eliminating left turn movements at driveways is safer. True?

MR. MAYBANK: Object to the form.

THE WITNESS: Yes. Yeah.

BY MR. SMITH:

Q. And in fact, I think that's referenced in here as well. It's even in the title. Eliminating left turn movements at driveways is beneficial from a safety perspective.

Do you agree with that, in general?

A. Yes. At that one particular location, you've got to see how the access would be, is it going to resolve -- revolve -- result in U-turn maneuvers? Or how do you access that point? And at that one particular location, the conflict points at that one location would be reduced.

I don't know the results of what additional conflict points it may have. In other words, is there a U-turn that you have to come back

in and make a right? So I don't -- I don't know that I can say that wholeheartedly in -- in a vacuum. But yes, at a specific particular spot, eliminating left turners reduces the conflict points at that spot. Is it safer for the overall roadway? I -- I'm not sure I'm prepared to make that statement.

Q. Okay. And that was really what I was asking you about.

A. Yeah.

Q. With -- with regards to the these entrances and exits, these curb cuts on -- on 17A in front of what's now the Pilot Travel Center, I'm talking about that particular area, not necessarily any others.

A. Sure.

Q. Okay? And would that statement in this context of that particular location, the earlier statement about left turns leading to more severe crashes, would that also be true about that particular area?

MR. CRITES: Objection.

MR. MAYBANK: Object to the form. And just so -- when you say this context, you're looking -- if -- are you talking about this 2008

federal guideline document? Is that what the context -- what I don't --

BY MR. SMITH:

Q. The context is the area in front of the Pilot Travel Center.

MR. MAYBANK: Same objection.

THE WITNESS: It -- it -- I would say it depends. If we're going to make U-turns at the signal, maybe, maybe not. That's why I'm saying I don't think you can just look at one thing in a vacuum. Because us traffic engineers, we look at the entire roadway. I mean, on one particular point, you -- you can't put your blinders on and look at one particular point.

In other words, if you had that raised median and we allowed left turners at the light, is that safer or not? I don't know. It'd have to be evaluated. So I can't say at that one particular location is it, in front of that whole roadway, safer or not safer. I can't answer that.

BY MR. SMITH:

Q. Okay.

A. Because there is U-turns available on the western side of I-26 on 17A as part of the -- as part of the interchange project that we're

talking about. There's left turns -- U-turns allowed there.

Q. All right. But is -- is there -- you wouldn't allow a left-hand turn in this area -- let me see that, what we've got with the diagram.

On Exhibit Number 2 here, as we're looking at Farmington Road right there and you've got the -- the people coming down off the -- the bridge right there, with I-26 running kind of underneath it here, you wouldn't allow a U-turn here, would you?

A. I -- I can't answer that hypothetically.

Q. Does it -- does it matter to you that people coming down off this are merging in off of -- off of 26? Does that -- does that factor into a decision about whether or not to allow U-turns right here at Farmington Road?

A. It would be part of the equation, yes.

Q. Do you think that would -- I mean, just kind of gut reaction here, would it be a good idea to allow U-turns right here? Or would the nature of what's going on in the Summerville direction of people coming off the interstate and coming down off that hill, just a judgment call here, would

that be a good idea to allow U-turns right there?

A. You --

MR. MAYBANK: Hold on before you answer.

Kevin, I'm -- I'm not trying to be difficult. I -- because it's not marked on there and it -- and it's being videoed, what -- what U-turn are you asking for? Are you talking about the one --

MR. SMITH: I'm talking about people on Highway 17A coming from Moncks Corner --

MR. MAYBANK: Okay.

MR. SMITH: -- up to the stop bar at Farmington Road, allowing them to make a U-turn to go back down 17A towards Moncks Corner.

MR. MAYBANK: All right. Thank you.

THE WITNESS: You would have to take in consideration -- if you would allow a U-turn there, you'd have to take in consideration how far the traffic would back up going eastbound on 17A into the interstate. That would be one of the factors that you would look at.

BY MR. SMITH:

Q. Okay.

A. So that would be part of that -- that

would be part of that review of that intersection, whether you'd allow U-turns. Like I said, we've allowed them, they're part of the plans on the same -- exact same project west of I-26.

Q. So is that -- I'm sorry. I don't know west and --

A. That's on the Summerville side.

Q. Is that -- okay.

A. Summerville side of I-26.

Q. All right. Were you -- at the time that you were making decisions about the flush median versus the raised median, were you aware of what -- what we just talked about in Exhibit Number 10 from the U.S. Department of Transportation, those things about eliminating left turn movements at driveways is safer? Were you aware of that?

MR. MAYBANK: Object to the form. Not -- not that I -- I hate -- I don't mean to do this, but he approved this back in '98, '99, 2000. That's a 2008 document. You're asking him to -- to project into the future --

MR. SMITH: I know.

MR. MAYBANK: -- what the government was going to say.

MR. SMITH: Roy, I know. We've got

to -- we've got to stop this though. I mean, if he's got questions, he's going to ask me. I think you're kind of answering for him at this point.

MR. MAYBANK: Object to the form.

MR. SMITH: I got you. I mean, listen, all projections are -- are -- all objections are preserved, everything. There's really even no need for anyone to object ever.

If he's got a question about my question, ask me for a clarification.

MR. MAYBANK: Well --

MR. SMITH: You know, I --

MR. MAYBANK: No, I get it.

MR. SMITH: -- won't ask him about something you all talked to in private, but...

MR. MAYBANK: Sure.

MR. SMITH: Everything's preserved.

BY MR. SMITH:

Q. And so if you have a question about my question, just, you know, ask me.

A. Sure.

Q. I know this is from 2008. My question to you is: The information in here that we just talked about that eliminating left turn movements at driveways is safer and that left turns lead to

more severe crashes than these other types of merging or diverging situations, was that information known to you back in 2000? Were you aware of that information in general?

A. Yes.

Q. Or is this new since you made these decisions?

A. Yeah. I -- at the time that I was involved in this project, I understood access control. And I understood left turn maneuvers, I understood U-turn maneuvers. And I would also say it's not as simple as saying left turn maneuvers. It -- it depends on what the access would be.

So the statement that a left turn maneuver at this is safe or unsafe is hard for -- I cannot make that statement.

Q. Okay. So let's just clear that up then. With regards to this particular part of 17A and entrances and exits from what is now the Pilot Travel Center and people turning across 17A making a left into there, your testimony today as a representative with regards to the decisions that were made in this thing, your testimony today is that you don't know whether or not allowing or disallowing left turn movements in that area would

have any effect on safety. Is that your testimony?

A. No. My testimony is the 17A interchange and widening project was designed that met SCDOT Highway Design Manual standards. And that on the interchange project there -- where there was controlled access, a raised median was put into place. As you got off the interchange where controlled access and access control was not part of that project, a flush median was installed, which is as per our Highway Design Manual at the point in time in 1991 and in conformance with the 2003 version.

Q. Okay. But in terms of what's marked on here in Exhibit Number 10, this U.S. Highway Department of Transportation -- I'm sorry -- U.S. Department of Transportation talking about eliminating left turn movements at driveways is safer, left-hand turns lead to more severe crashes, you don't know if either one of those statements would apply to the area immediately in front of the Pilot Travel Center on 17A?

A. No, I'm -- I'm saying that you've got to look at the whole segment of roadway and how that would or would not have been accessed. And comparing a left turn mover -- maneuver compared to

a U-turn maneuver, since no controlled access was acquired or bought on the 17A wide -- 17A widening project, would have been what would have -- those decisions are what we take into account when we design the roadway.

And looking at this document, Number 10, in a vacuum, which is access management, is not a highway design -- is not the South Carolina Highway Design Manual.

Q. Okay. But I -- I thought you agreed with those terms in general, that left turn movements at driveways is safer -- I'm sorry -- eliminating left turn movements at driveways is safer. You agreed with that position in general earlier?

A. It -- it eliminates conflict points.

Q. Right. And what I'm asking you is: Did you consider that statement, that principle that eliminating left turn movements at driveways is safer, did you consider that principle in your decision to allow left-hand movements -- left-hand turns in front of the Pilot Travel Center?

A. Sure.

Q. Okay. And I -- and I apologize. I -- I got a little confused. This is a 2008 manual

that we're reading from, but those general principles about eliminating left turn movements at driveways is safer, left turns can lead to more severe crashes, those two general principles were known back in 2000, were they not?

A. Sure. Sure.

Q. Okay. Do you believe that research suggests that approximately 72 percent of crashes at a driveway involve a left turning vehicle?

MR. MAYBANK: Object to the form.

MR. CRITES: Objection.

THE WITNESS: I'm not aware of that statistic.

BY MR. SMITH:

Q. Okay. And it's -- I'm reading here from Page 4 of Exhibit 10, right there (indicating).

Does that sound accurate to you?

A. I don't know.

Q. Don't know either way?

A. I can't -- I can't -- I can't read just one word of a manual that I haven't seen and be able to comment intelligently on that. I -- I'd hate to do that.

Q. But in turning -- just in general, the

statement research shows that approximately 72 percent of crashes near driveways involve left turns, do you think that's true or not true? Based on your experience in the years that you've done this, what would you expect?

MR. MAYBANK: Object to the form.

THE WITNESS: I mean, this is a -- you're asking me to look at a manual that -- that I have not looked at until really today. And the next sentence, it says 34 percent of these crashes are due to outbound vehicles turning left, not in -- inbound. So that's --

BY MR. SMITH:

Q. Yeah, it's left in, left out.

A. Certainly.

Q. I mean, these -- these are left-hand turns at driveways.

A. Yep.

Q. And -- and this says that there are studies that show 72 percent of crashes near driveways involve left-hand turns. Based on your experience and your -- and the work you've done with the Department over the years, do you think that's accurate or not accurate?

A. We --

MR. MAYBANK: Object to the form.

THE WITNESS: I don't know if we're talking about -- are we talking about the 17A -- are we still back at the 17A driveways with the Speedway? We've done an accident diagram that shows some studies as part of the safety project that would show exactly what the accidents were in the last three years.

BY MR. SMITH:

Q. I'm just talking about just crashes near driveways.

A. I don't know. I don't know the answer to that question.

Q. Okay. Eliminating left turns to or from the Pilot Travel Center on 17A would have been -- would have been possible. True?

A. Certainly. Anything is possible.

Q. And here, a raised or unmountable or -- or untraversable median would have prevented left-hand turns?

A. Yes.

Q. Guardrails would have also prevented left-hand turns?

A. Certainly.

Q. Okay. And there was nothing that

prohibited the Department of Transportation from incorporating their raised median plans from the interchange improvement project. Nothing prohibited the DOT from going with the raised median plan, did it?

A. It would have been outside of the Highway Design Manual guidelines regarding this section of roadway and where it stood -- excuse me.

Q. Um-hum.

A. -- and how this urban section of roadway with a design speed less than 45 miles an hour, it would have been in conflict with our Highway Design Manual.

Q. Okay. What else would have prevented left-hand turns off of 17A or onto 17A in front of this section where the Pilot Travel Center is? We talked about medians, guardrails. Anything else would have prevented left-hand turns?

A. I mean, there is a --

MR. MAYBANK: Spikes.

THE WITNESS: There's un -- unlimited -- I mean, I won't say unlimited. But yeah, certainly -- certainly like control access, an interchange like we have at I-26 with Farmington and 17A would have prevented that. Which is safer

than an intersection, I think this book probably would tell you that as well. So it's just you've got to apply standards reasonably at the locations that best fit that.

BY MR. SMITH:

Q. Um-hum. You could have put just paint down the road that says no left-hand turns, too, right?

A. We -- yes.

Q. And signs along the highway or signs in this section that says no left turn?

A. Yes. We had found that that is very difficult to enforce. But yes, that could have been done.

Q. Okay. Is -- would it -- would Pilot be allowed to put signs in their driveway saying no left-hand turns for the people that are leaving the parking lot getting onto 17A? Would they be allowed to put a sign up like that?

MR. BESLEY: Object to the form.

THE WITNESS: If it was off the DOT right-of-way, we don't -- certainly. There's no reason why we would have not -- would not tell them they couldn't put a sign on their own property.

BY MR. SMITH:

Q. Okay. But what if they wanted to put that sign on the -- on the right-of-way? Let's say they came to you and said -- or to the DOT and just said, hey, you know, in the last 10 years or so, we've seen about 250 accidents happen right in front of our shop. And a lot of these involve people left in and left out. We want to stop that from happening, so we want to put a sign in our parking lot to the people exiting our parking lot onto 17A that says no left turns.

And they wanted to put that sign on the right-of-way. Would they be allowed to do that?

A. We would have probably -- if that was the case, we would have used other measures than a sign, other countermeasures than a sign in the parking lot.

Q. Like what?

A. Closing a drive. Put in islands within the driveway, we call them pork chop islands, that's right in, right out. Bollards on 17, a raised median on 17, closing a drive, for instance. There's a -- I don't think a sign -- we would not have used that countermeasure in that particular instance.

Q. Okay. Does that sound like a -- does

that sound like a lot of collisions in 10 years, 250? Assuming those 250 happened in this --

A. You have to --

Q. -- in this area?

A. You have to look at the rate. I mean, you know, when you look at just raw number of collisions, you've got to tie that to the amount of traffic. So without knowing the traffic volume and -- and you really need to -- you really need to convert it to rates. So it's to really -- that's the --

Q. Like per vehicle that passes by?

A. Yeah. That's -- that's the numerator. You've got to have that denominator to -- to -- that I would tell you that's a cause for concern, not a cause for concern.

Q. But you -- you know, you've obviously, if -- if you weren't before all this, you've been -- you've become quite familiar with this intersection now. Is that fair to say?

A. Yes.

Q. Through the preparation of this case?

A. Yes.

Q. All right. And from what you know about that stretch of highway, does that sound like

a lot, 250 in 10 years?

A. I can't -- I can't answer that.

Q. Okay. If a corporation is running a business where certain allowances have been made, specifically left in and left outs have been allowed, does the Department of Transportation expect that corporation to let them know if there have been a large number of traffic collisions in front of their store on that stretch of highway?

A. Not to my knowledge.

Q. Would the -- would the DOT want corporations to let them know if they're experiencing a high level of traffic collisions in front of their store involving left ins and left outs, especially with the history of the, you know, questions about letting that thing happen or not here, would the DOT want the corporation to tell them about that?

A. Not to my knowledge. That would not be a countermeasure that we would use as far as safety considerations.

Q. I want to ask you about the ARMS manual. You see in here the definitions for the functional area of an intersection?

A. Yes.

Q. And I imagine you're probably already familiar what the functional area of an intersection is. And what does that -- I know that -- the language in here. But if you could just explain to sort of a layperson, what is the functional area of an intersection?

MR. CRITES: Kevin, what page are you on on the ARMS manual?

MR. SMITH: I'm sorry. Page 9.

MR. MAYBANK: Thank you.

MR. SMITH: I have an extra if you want it. I did bring an extra of that. I don't think it's in there.

MR. CRITES: Okay. I know it was an exhibit in Mulligan's deposition.

MR. SMITH: Oh, yeah, it probably was. I better get my version out.

BY MR. SMITH:

Q. So functional area of an intersection, how would you explain to kind of a layperson what that is?

A. To a layperson, it's basically the turn lanes coming in and out of that intersection and the -- the perception of that driver to be able to make those allowable turning movements in and out

of that, in and out of that intersection.
Q. Okay. And if you could, could you use maybe one of our exhibits or maybe you can grab a new one -- what I want you to do is tell me where the functional intersection of this intersection, this 17A and Farmington is. It looks like we had a clean one here on Exhibit Number 6.
A. Okay.
Q. First of all, was that ever defined? Is there a document anywhere that you're aware of that defines where the functional area of the intersection between Farmington Road and Highway 17 is?
A. No.
Q. Okay. And was -- in the decision with the driveways and the raised median, was the functional area of the intersection considered in that process?
A. Yes. I mean, I think that's part of the design itself when you look at -- as -- as stated in the ARMS manual, the left turn lanes coming to and from intersections and -- and how you maneuver that, yes, that's part of the highway design of 17A.
Q. But in -- in all of the documents, the

thousands of pages of documents that have been produced so far, you've never seen a single page that would actually mark out where the functional areas of the intersection between 17A and Farmington Road are. True?
A. Correct. That's correct.
Q. And if we go back to this Exhibit Number 10, let me just ask you in general: Allowing driveways within the functional area of an intersection increases the likelihood of collisions. True?
MR. MAYBANK: Object to the form.
THE WITNESS: Any driveway anywhere increases conflict points.
BY MR. SMITH:
Q. Um-hum.
A. So by increasing a conflict point on any road anywhere, yes, there is a -- there is a higher chance. So yes, any conflict point whether it's right angle, whether it's as noted in that -- earlier in that document where there's a merging maneuver, diverging maneuver, yes, any -- any contact point, there's a -- there's an increased chance of accidents.
Q. And if you combine conflict points and

you put those conflict points in the functional area of an intersection, those conflict points became -- become even more dangerous. Is that true?
A. I would not say that necessarily.
Q. So conflict points outside of the functional area of an intersection are -- have the same danger as conflict points within the functional area of the intersection. Is that your testimony?
A. It -- it depends on several things. In -- for instance, if a intersection has a traffic signal, is that -- as -- as the control device, is it stop signs? It just depends on each -- each intersection is a case-by-case scenario that you have to evaluate that in context of that exact location.
I mean, I think you're talking hypotheticals. But you've got to take each case as a case-by-case scenario. A -- a driveway next to a signalized intersection, that signalized intersection provides gaps in traffic versus a -- versus a driveway that's in a mid block that you don't necessarily have the gaps in traffic based on a signalized intersection. So it's -- it's a

case-by-case scenario.
Q. And this Exhibit Number 10 here, this U.S. Highway Department -- or U.S. Department of Transportation, really this paragraph right here talks about limiting or -- I'm sorry -- limiting or possibly eliminating driveways within the functional area of an intersection upstream and downstream helps reduce the number of decisions motorists make while traveling through an intersection and improves the safety in the -- in the vicinity of an intersection.
Do you take that statement as true?
MR. MAYBANK: Object to the form.
THE WITNESS: I mean, I -- it's going to be hard for me to comment on a document that -- that I haven't really studied.
BY MR. SMITH:
Q. Okay. But do -- do you need to study anything to -- to know about left-hand turns in the functional area of -- well, let me ask you. Let's just break it down here.
If you limit or eliminate driveways within the functional area of an intersection, does that help reduce the number of decisions that motorists make when they're in the functional area

of the intersection?
A. Yes.
Q. Okay. And do you believe that limiting or eliminating driveways within the functional area of an intersection improves safety in the vicinity of an intersection?
MR. MAYBANK: Same objection.
THE WITNESS: Eliminating driveways?
BY MR. SMITH:
Q. Or limiting. Limiting or eliminating driveways within the functional area of an intersection improves safety in the vicinity of an intersection.
A. It -- I would say that's case by case.
Q. Okay. Well, how about -- how about here, let me ask you this: Are the driveways in the functional area of the intersection, the driveways in the Pilot Center -- Travel Center on 17A, are those driveways within the functional area of the intersection with 17A and Farmington Road?
A. I believe one of the three are, yes. Yes.
Q. And is there a -- just, you know, is -- is there a general rule or principle that you would initially start with when you think about allowing

driveways in the functional area of an intersection? A general principle like it doesn't really matter or we need to be real careful about this or that's a really safe thing to do and that's something we should look at trying to implement?
A. Yeah. I mean, I think driveway locations is -- is a part of the design of the highway. Absolutely.
Q. And allowing driveways in the functional area of an intersection is generally frowned upon in the decisions that you all make.
MR. MAYBANK: Objection.
BY MR. SMITH:
Q. Is that a fair statement?
MR. MAYBANK: Object to the form.
THE WITNESS: Not in a vacuum, I would not think that's a fair statement.
BY MR. SMITH:
Q. Okay. Oh, I'm sorry. I -- I asked you to do something, then I just kind of moved on from something else.
You were going to take one of those exhibits and you were going to circle for me the area -- the functional area of the -- the functional area of the intersection. I may have

grabbed that from you. Yep, here we go.
We were going to do that on Exhibit 6. And why don't you take a yellow highlighter and, you know, you can circle it the whole way around.
A. I can do it for the western side. I think this -- I think this exhibit, I cannot -- I cannot tell on the eastern side of the intersection, if that makes sense.
Q. All right. So you think that maybe the functional area of the intersection would -- would -- would encompass more than what's shown on the left-hand end of Exhibit 6 that might extend further than that?
A. I don't know the answer to that. I'd have to look at the 17A widening plans to determine that.
Q. Okay. So can you -- can you -- can you do that?
A. Sure.
Q. Okay.
A. Sure.
Q. Which one can I hand you?
A. I am looking at Document 0437.
Q. Oh. Oh, you've got it in front of you?
A. Yes.

Q. Sorry.
MR. MAYBANK: What number is that?
THE WITNESS: 0437.
MR. MAYBANK: Let us pull that so we can make that an exhibit.
MR. SMITH: Yeah. Is that this, 38? I've got this as 37.
MR. CRITES: I think we already marked that as an exhibit.
MR. SMITH: No, I'm sorry. We might have marked it. It might be the back side of one of those. Yeah, this is -- you know, you said 437, right?
THE WITNESS: O437, yeah.
MR. MAYBANK: Here you go, 437.
MR. SMITH: All right. Oh, that's that same one we were looking at before. I'm sorry. Okay.
BY MR. SMITH:
Q. So 0437 is actually Exhibit Number 4, and we've got some green highlighter markings that you made before.
A. Right.
Q. Now let's use the yellow highlighter marking to mark the functional area of the

intersection.
A. That is it.
MR. MAYBANK: You got a pen?
THE WITNESS: Yeah.
MR. MAYBANK: All right. Will you do the little thing that said -- draw a line that says functional area of the intersection?
THE WITNESS: (Witness complies.)
MR. MAYBANK: Perfect.
BY MR. SMITH:
Q. Okay. So if we look at what you've marked up here on Exhibit Number 4, that would seem to suggest that both of the auto driveways are in the functional area of the intersection?
A. Definitely the westernmost. The easternmost is kind of right on the borderline.
Q. Sort of half of it is, half of it isn't?
A. You know, I'm -- I'm going by way more than a half size set of plans. I would almost say the easternmost is not in the functional area. Here's your left turn lane here. This is just your taper back. And your -- so, you know, as per the AASHTO guide that you showed me or the SCDOT, it talked about the turn lane. So I would --

definitely the eastern -- the eastern -- excuse me, the westernmost drive was in the functional area.
MR. BESLEY: That's the one closest to the light?
THE WITNESS: Yes, sir.
(Reporter asks for clarification.)
MR. BESLEY: That's the one closest to the light?
THE WITNESS: Correct.
BY MR. SMITH:
Q. Now, tell me what -- and I -- I know I just put you on the spot and asked you to do this here today. We don't have any documents that have specifically identified this, but what's the sort of scientific process that you would go through if I said, Mr. Colvin, you know, you've got a week to sit down with pen and paper and rulers and everything else you need, and I want you to really man this thing out and tell me where it is on one of these things? What -- what do you look at to be able to, you know, go in and -- and do this with a little more specificity?
A. Yeah. I mean, first of all, I would go back and I would review the ARMS manual and review the statement of what is the functional area.

Q. Um-hum.
A. I would review that and then apply that to the plan sheet. And it -- right here, it says, you know, that the physical -- the area beyond the physical intersection of two roadways that comprise the decision and maneuvering distance plus any required vehicle storage.
And notice on Exhibit 4, the vehicle storage really ends about right here (indicating). That's the taper, so you really look at the -- that's the vehicle storage. Then you end the taper. So, you know, that's --
Q. So vehicle storage just means the -- the place where they can get -- they -- where they can start getting into that left turning lane that is a left up at the -- up at Farmington Road?
A. The -- the storage is the actual full-width left turn lane.
Q. Okay. All right. But the functional area of the intersection doesn't have anything to do with the lanes that are closest to the business on the opposite side of the street at the Travel Pilot Center? I'm sorry. The Pilot Travel Center?
A. Not according to the ARMS manual.
Q. Okay.

A. You -- and you asked about in relation to the intersection of Farmington and 17A.
Q. Um-hum.
A. It is the decision-making for that intersection, not for the driveways.
Q. Okay. And it's the decision-making for the left-hand turn? Is that what you're saying?
A. That would be one of them, yes.
Q. Okay. What would the other decision-making be? I guess the stopping?
A. And the -- the right turns out, the right turn lanes that -- could be coming in, the turn -- turning maneuvers associated with the intersection of Farmington and US 17A.
Q. All right. And now the location of these driveways, now that one across the street, that's definitely in the functional area of the intersection, huh?
MR. MAYBANK: I can't see. Are you talking about at the Hess station?
MR. SMITH: Yeah.
MR. MAYBANK: Okay.
THE WITNESS: It appears -- yes. Yes.
BY MR. SMITH:
Q. All right. And it appears the second

driveway at the Hess station across the street, that's also in that area as well, huh?
A. It's outside the storage, but it's in the -- the taper for the left turn lane.
Q. Okay.
A. I'd have to study this to get more exact.
Q. Okay. Would you say this, that -- that an argument could be made by a competent engineer that all four of these entrances and exits on 17A, both the Pilot Travel Center and the Hess gas station across the street, do you think an argument could be made that all four of those are within the functional area of the intersection?
A. I think argument for the two on the Hess, definitely the westernmost on the -- the Pilot; at easternmost, I think you would have to -- I don't think I could make that determination based on an 8.5 sheet -- 8.5 piece of paper. I think you need to blow it up and, like you said, put scales on it and so forth.
Q. Okay. And you -- I mean, you've got a -- you've got a bigger version of that same piece of paper right here in front of you, don't you?
A. I do.

Q. So the question is: Would you disagree with a traffic engineer who said, you know what, this driveway, this driveway, this driveway, and this driveway, which is all of the four -- the four driveways closest to Farmington Road going backwards to Moncks Corner, that all four of those driveways are within the functional area of the intersection?
I know people can differ on, you know, things. But is that -- is that something you'd see that engineers could differ on, whether or not those four are in? Or are you just saying these three are in it, that -- that one, last one, that ain't in it, that's definitely not in it?
MR. MAYBANK: Object to the form.
THE WITNESS: Me provide testimony in the deposition, these -- these three are definitely in it. This one, in my opinion, is not in it.
BY MR. SMITH:
Q. Okay.
MR. MAYBANK: So for the record, which one is not in it?
THE WITNESS: I -- I --
MR. MAYBANK: Nobody knows what these three means.

THE WITNESS: The -- the two drives going into the Hess station are in the functional area. The westernmost drive into the Pilot station is in the functional area. In my opinion, the eastern -- the eastern vehicle drive is not in the functional area.
BY MR. SMITH:
Q. But you -- you -- you would agree with me that when you circled the functional area of the intersection initially, both drives at the Pilot Travel Center were in the functional area of the intersection that you drew? Is that fair to say?
I mean, your mark's there, a driveway is here.
A. Yeah. I also noticed that -- noted it was approximate. I mean, I don't -- it's -- it's hard to be able to make a decision -- a -- an engineering decision on an 8.5 by -- 8.5-by-11 sheet of paper.
Q. Okay. I got you.
So if we're going to go back and have somebody else try and define the functional area of this intersection, we know what the ARMS says, the area beyond the physical intersection compromise (sic) decision and maneuvering distance plus any

required vehicle storage length. It includes the length of road upstream from oncoming intersection needed by motorists to perceive the intersection and begin maneuvers to negotiate it. Distance for travel during perception reaction time, travel for maneuvering and deceleration, Q storage. Also includes the length of road downstream from the intersection needed to reduce conflicts between through traffic and vehicles entering and exiting the property.
As the engineer for the South Carolina Department of Transportation, are there any other elements that you would put into defining the functional area of an intersection?
A. No, sir. I'd use that definition in our ARMS manual, Page 9.
Q. Okay. And is there a standard number of feet from an intersection that you would start with to say where the functional area of an intersection is? Or you -- you've got to look at all these different things that we've -- that we've talked about?
And I may be stating the question poorly, but let me maybe give it to you a little bit clearer: Is there a -- is there a distance you

kind of start with and then work backwards from? Or is there a standard length from an intersection that is the functional area of the intersection?

A. I don't know that there's a standard length. I think you start at the intersection and work away from it, not the other way around.

Q. And you don't start -- like generally it's about 200 feet from the intersection working outwards, and then we look at these different factors and see how that goes? But that's -- that's not how it works?

A. No. You start at the intersection, and -- and you look at the specifics of that actual case on the ground, in the surveys, number of turn lanes, number of through lanes, double widths, right turn lanes, left turn lanes.

Q. Okay.

A. All that comes into play.

Q. Okay.

MR. MAYBANK: Can we take a quick break?

MR. SMITH: Sure.

MR. MAYBANK: Thank you.

MR. SMITH: And let me just tell you, I'm going to -- I'm going to ask you next, just so

you can be thinking about this, the influence area of an adjacent driveway -- I'm sorry. Right before we -- we do that --

MR. MAYBANK: Yeah.

BY MR. SMITH:

Q. Does that -- does that add anything to the discussion, the influence area of an adjacent driveway? I just don't know what that means. Are any of these driveways adjacent?

A. Sure.

Q. Okay.

A. Yeah.

Q. So if we were to talk about the influence area of an adjacent driveway, where -- where would that be?

A. I don't know if I can define that. I'm -- I'm not -- I'm not familiar with that term.

MR. SMITH: Okay. All right. Let's go ahead and take a break now.

VIDEO TECHNICIAN: This concludes Video Number 2 in the video deposition of Leland Colvin. The time is approximately 4:20 PM. We are now off the record.

(A recess transpired.)

VIDEO TECHNICIAN: We are now back on

the record. Today's date is March 13, 2017. The time is approximately 4:33 PM. This is Video Number 3 in the video deposition of Leland Colvin as 30(b)(6) representative for the South Carolina Department of Transportation.

BY MR. SMITH:

Q. I'm going to ask you a little bit about the ARMS manual --

A. Sure.

Q. -- at this point, if you'd turn to Page 19.

Driveways are intersections. True?

A. Are driveways intersections?

Q. Are driveways, in effect, intersections?

A. Where -- where they connect to our roadway, yes.

Q. Okay. And the driveways at the Pilot Travel Center and the Hess gas station across the street, those are driveways connecting to the roadway. True?

A. Yes.

Q. Okay. Driveways should not be located within the functional area of a roadway intersection or the influence area of an adjacent

driveway. True?

A. In relation to the ARMS manual, correct.

Q. Okay. And then -- and the ARMS manual, again, was published by the South Carolina Department of Transportation, right?

A. Yes, that is correct.

Q. So it's the policy of the Department of Transportation that driveways are, in effect, intersections and should not be located within the functional area of a roadway. True?

A. Per the application of this manual --

Q. Okay.

A. -- correct.

Q. And so any driveways on 17A near Farmington Road that are in the functional area of the intersection would violate Page 19 or Section 3A of the ARMS manual?

A. No, not correct.

Q. Okay. Those driveways would be discouraged under this section of the ARMS manual?

A. Yes, in -- in relation to the ARMS manual. And new driveways are encroachments on to SCDOT right-of-way, which is what the ARMS manual was written for.

Q. Okay. And the reason that the ARMS manual says that driveways should not be located within the functional area of a roadway intersection is -- is a safety concern. Is that true?

A. Safety and operational, both.

Q. Okay. And on Page 2 -- I'm sorry. Page 20, driveway classification?

A. Yes.

Q. And I don't want to -- well, let me ask you this: What classification is the Pilot Travel Center? How does that -- is that low volume, medium volume, high volume, or major volume?

A. I -- I don't -- I don't have the answer to that.

Q. Did the Department of Transportation assign a driveway classification to the driveways on 17A at the Pilot Travel Center?

A. No, it did not.

Q. How many feet are between each of the three driveways in front of the Pilot Travel Center on 17A? How many feet apart are they?

A. I will need a scale to be able to scale that information off.

Q. I -- let me just ask you. I -- I did

this on Google with their little measuring tool. I measured 100 feet from Number 1 to 2, and 1 would be the closest to Farmington. I measured 100 feet between 1 and 2 and 135 feet from 2 to 3. Does that sound like it would be accurate?

MR. MAYBANK: Object to the form.

THE WITNESS: Based on eyeballing Sheet 6 of Document 0437, those distances seem reasonable.

BY MR. SMITH:

Q. Okay. And I did the same thing -- did -- does that sheet show you the distance between the intersection and the first Pilot driveway? And maybe we can --

A. I -- I could --

Q. Let me clarify here for a second.

A. I could scale that off.

Q. All right. Let me -- let me clarify here.

On -- on 0437, where would we start to measure, where would -- if we're talking about the distance between the intersection to the first driveway, where is the intersection on that mark?

A. Generally, the end of the radius return of the intersection of Farmington Drive.

Q. Okay. I got you.

And that would correlate with the -- what we've got here, this -- the section on that that marks the -- the flush median? The end of that, would that mark the -- the point of the intersection we're talking about?

A. That's the approximate location, yes, sir.

Q. Okay. And I -- I was going to ask you to tell us what the distance is between the intersection and the first driveway is.

A. I'd have to scale that off.

Q. I thought you just said you could do that one.

A. No, I said --

Q. Oh.

A. -- it can -- it -- yeah, I mean, I could -- I can get the distance for all of them. I need a scale to be able to scale that --

Q. Okay.

A. -- that information off.

Q. I had measured it from that same point using the same Google application. And it looks to me that it was 110 feet. Does that seem generally right to you?

A. That -- that's -- I think it's reasonable.

Q. Okay. And the other side of the street where the Hess gas station is, I measured this one starting at 37 feet from the intersection. Would that seem accurate to you?

A. That seems reasonable.

Q. Okay. And on Page 26 of the ARMS manual --

A. Yes.

Q. -- it looks like Section 3C-1, driveway spacing, starts to talk about spacing of driveways?

A. Correct.

Q. All right. And then it looks like on the very next page, there is a Figure 3-7, minimum driveway spacing. Do you see that?

A. Yes.

Q. That deals with the posted speed limits and the minimum driveway spacing or minimum driveway spacing on roadways. Do you see those two?

A. I do.

Q. Okay. And the speed limit here we know, 45 miles an hour in front of the Pilot?

A. That's correct.

Q. Okay. So either the minimum driveway spacing is either 325 feet or 225 feet. Would that be right?

A. Yes. For a -- for the application of this manual, correct.

Q. Okay. And then do you know which one it would be? Would it be the 325 or the 225? Some of this stuff above that seems a little Greek to me, so...

A. The spacing on the Pilot gas station?

Q. Yeah.

A. Well --

Q. Which one would apply?

A. Well, neither would apply.

Q. Okay.

A. Because it -- the ARMS -- the ARMS manual is -- the intent -- the -- the standards and the -- and the purpose behind writing that is for encroachment onto the right-of-way at SCDOT. Now this is a widening project that that access point was already established, so this -- again, this is not where Pilot came to DOT and asked for an encroachment permit to install drives. These drives were installed on -- by DOT as part of the widening project.

Q. Okay. Now, does that change if what I told you earlier was true, that Pilot had filed an encroachment permit? Would that --

A. Yes.

Q. -- then activate the ARMS manual?

A. Absolutely.

MR. SMITH: Okay. Does anybody -- does --

I don't want to mislead you here. It seems like you're unaware of that.

Does anybody have the encroachment permit? I mean, I can probably dig it up; but if anyone has it, we might -- we might want to give it to him.

MR. CRITES: Have you got Mulligan's deposition? It was in there.

MR. SMITH: We've got one.

MR. CRITES: It was an exhibit to his deposition. I mean, I can pull mine.

Can we go off the record for a second?

MR. SMITH: Yeah, we'll go off the record for a sec.

VIDEO TECHNICIAN: We will now go off the record. The time is approximately 4:42 PM.

(Off-the-record discussion.)

VIDEO TECHNICIAN: We are now back on the record. The time is approximately 4:51 PM.

BY MR. SMITH:

Q. All right. So we've just taken a -- a brief break, and I think you've looked at the encroachment application.

A. Sure.

Q. And had a chance to talk with your lawyer briefly as well?

A. Um-hum.

Q. And so does this satisfy the question in your mind about whether an encroachment application was filed?

A. Yes, sir.

Q. Okay.

A. It does, yes.

Q. And being that the encroachment application was filed, that's what should have triggered the consideration of the -- the ARMS manual?

A. Yes. I'm not sure it's this particular version. I think this is the 2008 version, and this -- this -- it's a permit that was approved in July of 2002.

Q. Okay.

A. So I don't know -- I -- I have not prepared to talk about encroachments. I think Mr. Clark was going to do that, so just FYI.

Q. Okay. The difference in the ARMS manual between 2002 or 2002 through 2008, were there substantial changes to that?

A. I'd have to -- I have not done that research to know the difference.

Q. Okay. But when you are sitting there and you are deciding the things that are listed on Exhibit Number 5, the approval to have a painted median only, in other words, the unmountable median had been eliminated from the plan, the truck driveway on 17A, the two auto driveways on 17A, and the Frontage Road driveway, the right-in/right-out, as you were making the decisions on each of these four things, is it true that you didn't know they applied for an encroachment and that you didn't know to apply the standards in the ARMS manual?

A. A couple of comments on that. Number one, the -- based on the letter, the dates on that letter and the date on this encroachment permit, that encroachment permit had not been filed at the time that that was considered and at the time I considered the raised median.

And the second one is, no, as part of the widening project, the ARMS manual is not a document that we would use, relied heavily on as part of the design. Again, this is new encroachments to our right-of-way. And encroachments were already pre-established based on what was already on 17A.

So a little bit -- little -- little things, but yet the -- but the answer to your question is, no, contemplating this and reading the dates in doing my research and then now seeing this encroachment permit, this permit was filed roughly 18 months after this was completed.

Q. And you see down here on the bottom, an encroachment permit will be required from DOT when installing the cuts. And so would it be reasonable to assume that this encroachment permit that occurred after that was the encroachment permit that will be required?

A. I -- I can't answer that. I don't know what Mr. Greiwe was referring to.

Q. Okay. But it's clear it just -- it at least says that in 2000, it appears the decisions were made on the encroachment permit issues. It appears the decisions were made in 2000, but the

encroachment permit wasn't filed until later, as the note suggests, in 2002?

A. Like I said early on in my testimony, as part of the widening projects, we would have put in at our expense a drive associated with the widening project. An encroachment permit where the permittee has come to DOT and asked for encroachment on our right-of-way, those encroachments associated with an encroachment permit would have been done at the expense of the permittee.

Q. So does that change your answers to any of this? Who paid for what stuff I was asking you in the beginning, being that now you know an encroachment application was in place?

A. It's -- it's a -- it's a timing -- it's a timing issue. And -- and I'm not -- I was not aware of the encroachment permit. Mr. Clark can -- that was -- you know, those -- that's approved locally by a resident maintenance engineer.

Q. But if -- is what we said -- or is what you said earlier still true, that Items 1 through 4 in Exhibit 5, painted median, unmountable median eliminated from the plan, truck delivery on 17A is 40 feet wide, 40-foot radius can be ingress or

egress if desired, the two auto driveways can only be 30 feet width, 30 feet radius, ingress and egress; Number 4, the driveway on the Frontage Road can be 50 feet wide, 20 feet radius, but can be right-in/right-out only, does that -- those four, do those still represent the decisions that you made with regards to these issues? Is that how it turned out?

A. Yes. Those decisions were made as part of the widening project and the location of those drives in August of 2000.

Q. Okay.

A. I'm not sure about the encroachment permit. I can't answer that.

Q. All right. Is there any -- did -- would you have any information or reason to suggest that the issues that the encroachment application addresses in here in Items 1 through 4, that -- that these same decisions in Items 1 through 4 don't relate exactly to this document?

A. I -- I can't answer that. The only thing I can note when I looked at these two, this is the address to Marathon Ashland Petroleum in Norcross, Georgia. The applicant on this is Pilot Travel Center located in Summerville,

South Carolina. So I -- I -- unfortunately, I can't answer that question.

Q. At some point, the Pilot Travel Center took over this plan. Are you aware of that?

A. I would have to go back and look at the right-of-way instrument that we had discussed earlier.

Q. Where was that?

A. That right there. Okay.

Q. And we were talking about the decisions here and whether or not these decisions relate to specific requests on the encroachment permit application, and you said you'd have to look at something to figure out...

A. Yes. I -- I'm not familiar with the encroachment permit. As I stated, I will tell you that -- that the information that was written, I'm not familiar with this. I'm familiar with the plan sheet, this document which talks to what was done, as well as the associated exhibits was done.

In fact, a note here says they actually requested payment in -- in November of 2000. The date on this document was October 31st of 2000. This is August of 2000. All this is related, and all of a sudden I've got an encroachment permit

that is dated submitted in 2002, 18 months later, and approved, you know, not quite two years later.

So I -- you're -- I don't know -- I don't know the correlation between those two. That -- this is a different company than what we dealt with here, it appears to me.

Q. Um-hum. And the -- if it says here an encroachment -- an encroachment permit will be required from DOT when installing the curb cuts, is around May of 2002 when the curb cuts were being installed?

A. I don't know the answer to that one.

Q. Is there anything that you have that could tell us that?

A. There's not. I'd have to go back and look at the construction project notes to see when those curb cuts were done as part of the widening projects and how they related to when the applicant on this encroachment permit, if they changed those locations, if they didn't change the locations.

I was -- again, like I said earlier at the very beginning, I was -- I'm not testifying on the encroachment permit.

(Off-the-record discussion.)

BY MR. SMITH:

Q. I just want to hand you a piece --

THE COURT REPORTER: Hold on.

MR. SMITH: I'm sorry.

(Off-the-record discussion.)

BY MR. SMITH:

Q. All right. So I pulled out a page here, and we can identify it as Pilot 00041. Okay? That's the Bates stamp page. And just take a moment for me and just look at that.

A. Okay.

Q. So this is a letter to the Department of Transportation --

A. Correct.

Q. -- right? April of 2002?

A. Yes.

Q. And the person is advising the South Carolina Department of Transportation that previously, this facility was redesigned and permitted by Nathan Fox of Marathon Ashland Petroleum. And that's the date -- that's the -- the group we've got on Exhibit 5, right?

A. Um-hum.

Q. Mr. Fox's design is still being used. But since the new company, Pilot Travel Center, is

a combination of Marathon Ash -- Marathon Ashland and Pilot Corporation was created, I have taken over this project.

A. All right. Okay.

Q. So in -- and the group on the encroachment permit application would be Pilot Travel Centers, LLC?

A. Correct.

Q. All right. And so it appears from this letter that Pilot Travel Centers, LLC is just simply taking over that project from Marathon Ashland Petroleum?

MR. CRITES: Object to the form.

BY MR. SMITH:

Q. Is that what you take this letter to say?

A. I -- I take that letter to say that evidently there was some redesign of the facility and, as part of that redesign, that would be typical that they would come back to the DOT for an encroachment permit.

Q. Okay. But does that explain to you why? I mean, the encroachment permit, you see Travel Center, LLC when you all were originally dealing with Marathon Ashland Petroleum? That

Travel Center, LLC took over the project?

A. I -- I can't answer that. I think on this -- here, we actually made a payment to Speedway SuperAmerica, LLC.

Q. Um-hum.

A. So there did -- it appears there was change in ownership or a combination all thereof throughout the process, that there was -- sounds like there was a redesign and a widening project and an interchange project all going on at the same time.

Q. Okay.

A. I can't speak on behalf of what Pilot -- Pilot Travel Center, Speedway SuperAmerica, and Marathon Ashland Petroleum, what they did or didn't do in that -- in that time period. I don't have any knowledge of that information.

Q. Okay. But when you prepared for the deposition, it didn't come across your preparation that originally this was a Marathon Ashland Petroleum project and they made certain applications and requests and paperwork was filed and then, at some point, Travel -- I'm sorry -- Pilot Travel Centers, LLC basically took over the

exact same project?
A. No. Like I said, it's -- as my role as PM in preparing for this deposition, my role was to discuss the I-26 interchange projects, as well as the 17A widening project, and how we applied the design standards of the flush median. As far as the encroachment permit, that was not in the purview of what I was...
Q. Well, the -- the design standards of the flush median would have been affected if you knew there was an encroachment permit application, and that would have triggered the use of the ARMS manual. Is that true?
A. Not necessarily. There -- there is an existing -- there is an existing facility at that location. And the Highway Design Manual, as far as the design of that flush median versus nonflush median, would not necessarily have triggered anything in the -- in the -- in the ARMS manual. Not necessarily.
Q. Does -- does the Highway Design Manual, does it talk about the distance, the required distance between the driveways? Does it talk about the required distance between the intersection and the first driveway? Does it even -- does it

even --
A. There's -- I would have to -- I'd have to go back and refresh my memory regarding that.
Q. Um-hum. But if we -- if we just look at the ARMS manual at Page 27 --
A. Certainly.
Q. -- and we know -- and the posted speed limit is 45 --
A. Um-hum.
Q. -- assuming that the -- the filing of the encroachment permit application would trigger the ARMS manual, if we assume that, then can we say that not only the distance between the driveways but also the distance between the intersection and the driveway is in violation of the ARMS manual, Page 27, Figure 3-7?
A. Again, if it was a undeveloped piece of property where the encroachment permittee was coming to DOT for access onto that road system, certainly the ARMS manual -- again, this is a 2008 edition, would have been in play.
This ARMS manual was not in play in 2000 or 2002. Matter of fact, I think if you go back to Page 5 and you look at 1A, it talks about the purpose. It says: These standards and

guidelines have been developed to establish uniformity for encroachments.
So I'd have to research prior to 2008 what guidelines were used on the current encroachment permit applications.
Q. Well, as you all developed these -- these safety standards and learned new things, do you -- do you go back and look at old projects and say, eh, I don't know if what we did back then was the right way to go?
A. Not necessarily. I mean, I think that what you looked at, you know, how -- the things we designed 50 years ago, when we come up with a new design, would we -- would a new design on a new project be different? Absolutely, it would. But no, we do not go back and -- and review every intersection and every roadway that we designed every time a new design manual or a design memorandum comes out, no. We do not do that.
Q. And I just want to maybe clarify the exceptions here. I guess we'll figure out at a later point if the same, you know, this Figure 3.7, if this is in a -- in a version that existed in 2000 or 2002. But the exceptions listed here, it looks like there's two: For residential

driveways -- and this is not a residential driveway, right?
A. Correct.
Q. -- and/or, Number 2, the replacement of a driveway to a property that may be lost or disrupted due to a -- due to a DOT project. That doesn't apply either, does it?
A. Absolutely that applies.
Q. It does?
A. Absolutely, it does.
Q. So disrupted, I guess?
A. Yes. I mean, we -- the -- basically that second bullet is referring to a driveway to a property that would be impacted, lost, or disrupted due to a DOT widening project. That's exactly what we have here.
Q. Okay. So the DOT widening project went into the old driveways that were there?
A. Absolutely it did, yes.
Q. And -- and so if the DOT is coming in and widening the road and widening it such that it is encroaching in the old driveways, aren't these new driveways now new construction?
A. No. You've -- no, not as -- not as stated on Page 27 on the exceptions that you noted

in -- in the 2008 ARMS manual.
Q. Um-hum.
A. No. Those would be exceptions on those drives.
Q. No. What I'm saying is: If you've got an area of the highway that's this wide -- right?
A. Um-hum.
Q. -- and you've got driveways over here and driveways over here, and then you widen it so -- such that those driveways just don't exist anymore, right, you've graded the street, you've pulled up the -- the stuff, you've put driveway -- you've put highway down where those driveways were, are those new -- are those driveways that are then being constructed, are those not new driveways?
A. Those -- those would not be new access points, no.
Q. Okay. The Pilot gas station and the McDonald's on that property, they both share the two driveways?
A. I'm not -- I'm not sure --
Q. All right.
A. -- how to answer that.
Q. If there's a Pilot Travel Center and a McDonald's in the same building there, both using

the same driveways, would those driveways be shared driveways?
A. In that circumstance, yes.
Q. Okay. And how do you say this, jogged driveways? Is that what it's called? Or jogged, J --
A. I believe it's jogged.
Q. Jogged? Okay.
Are jog -- jogged driveways, are they -- are they discouraged?
A. I would have to go back and refresh my memory.
Q. 28.
A. Page 28, okay.
Q. Are jogged driveways discouraged?
A. Absolutely.
Q. Okay. And if you look at the plans here, is that what we've got with the Pilot and the Hess across the street, jogged driveways?
A. Certainly the westernmost drive, I would say that would be a jogged driveway. But keep in mind when you -- referring to the ARMS -- the 2008 ARMS manual and the definition of jogged driveways, it doesn't apply necessarily to this, as noted in the exception that's on Page 27. I

believe it's Page 27. Yes, on Page 27. Because these are drives that are being disrupted or lost to a DOT project.
In other words, these applications of these drives as shown on this project are not -- they are not being -- they're not being approved as an encroachment permit. They're going back in as a result of a widening project.
Q. Okay. And the fact that the encroachment application specifically mentions these exact driveways, do you still maintain that these driveways have nothing to do with the encroachment application?
A. I may -- not to say that, I'm -- I'm not familiar with that encroachment permit application and the purpose behind that.
Q. All right. But you're saying -- so the exceptions we looked at are exceptions to minimum driveway spacing, right? That's what it says, doesn't it?
A. Correct.
Q. Right, minimum driveway spacing. So you are interpreting those same expect -- exceptions to apply to driveway connections on opposite sides of the roadways labeled avoid jogged

driveways? You're stating that the exceptions to minimum driveway spacing are also an exception to avoiding jogged driveways?
A. No. I'm saying that the access and roadside management standards, the 2008 edition is -- is published by the DOT. It's not intended to present all information that is needed by the permittee or designer. And it does not -- it does provide a majority of information needed for encroachments onto the right-of-way, and this is not what we have here. We've got a widening project.
Now, if the permittee went and changed their -- changed as you -- as was referenced in the letter that you provided earlier, if there's a change in that land use or additions was added to that property that wasn't contemplated at that -- as a part of the widening project, then an encroachment permit would have to be submitted.
Q. Okay. I -- but we can certainly say here today that in the Pilot Travel Center and the Hess across the street, those are jogged driveways that are specifically discouraged in the ARMS manual. True?
A. Yes. Those drives back in 2002 are

discouraged in the 2008 edition, correct.
Q. Yeah. And you don't know whether or not those same drives were discouraged back in 2000 or 2002?
A. I do not.
Q. Okay. And it sounds like, because an encroachment application wasn't submitted, you weren't even looking at ARMS when you were making the decisions that are referenced in Items 1 through 4 of Exhibit 5.
A. Correct. As part of the widening project, the -- the various drives along the project as part of the right-of-way acquisition process, we do not go through an encroachment permit for those. Typically those drives are -- are put in as part of the widening project itself.
Q. Okay. Now, the -- a raised median, from what you know about the particular collision with the Wrights, would a raised median have prevented this collision?
A. I don't -- I -- I cannot answer that.
Q. Well, you know the fellow was coming down on Highway 17A from Moncks Corner and he's taking a left into the Pilot?
A. Right.

Q. And the area where he was making a left, that's the area where the original plans included a raised median, right?
A. Correct.
Q. An unmountable or untraversable median, or nontraversable median?
A. Say -- ask the question one more time. I'm sorry.
Q. The original plans included a raised median, which is an also nonmountable median or a nontraversable median?
MR. MAYBANK: Object to the form.
THE WITNESS: Yes, it was -- the -- the median contemplated as part of the interchange project would have been defined as a nontransversable medium -- median.
BY MR. SMITH:
Q. So you don't know whether or not a unmountable or a nontraversable or a raised median would have prevented the left-hand turn by the fellow that turned in front of the Wrights that day?
A. Yes. I -- I cannot sit here and say that the impaired driver associated with the accident would not have transversed that median at

that particular time. I can't answer that. I -- I don't know the answer to that.
Q. But in general, a raised median or an unmountable median or a nontraversable median would eliminate or at least reduce the likelihood of left-hand turns across it.
A. Yes.
Q. Is that fair to say?
A. The -- the -- the purpose of that trans --
Q. Nontransversable?
A. The -- the purpose of the nontransversable is to discourage normal left-hand turn maneuvers not associated with emergency vehicles, yes.
Q. And so -- and you're aware that what this fellow did was turned left in front of the Wrights? You know that, right?
A. Yes.
Q. Okay.
A. Yes.
Q. And -- but you can't say that the absence of that raised median had anything to do with his ability to make that left turn?
A. That's correct, not in the condition as

noted on the DPS collision report.
Q. Okay. Did you -- were you -- did -- did anyone happen to share with you the testimony of the driver who said if there was a raised median, I never would have made that left turn?
A. I'm not aware of that. I've just reviewed the DPS report.
Q. Okay.
A. The collision report itself.
Q. Does the DOT rely on Pilot and the engineers they hire to submit plans that are safe?
MR. BESLEY: Object to the form of the question.
BY MR. SMITH:
Q. You can go ahead.
A. Ask the question again.
Q. Does the DOT rely on Pilot and the engineers they hire to submit plans that are safe?
A. As part of an encroachment permit application?
Q. Sure.
A. Absolutely.
Q. Okay. And if -- also if Pilot or the companies that were doing this project before them, if they're trying to get permission to take out a

raised median, would you -- would the DOT rely on Pilot and the engineers they hire that that request is a safe request?
A. I -- I can't answer that question.
Q. Okay. Plans that double profits at the cost of safety should never be approved. True?
MR. MAYBANK: Object to the form.
THE WITNESS: Ask -- ask that one more time.
BY MR. SMITH:
Q. Plans that double profits at the cost of safety should never be approved.
A. Absolutely.
Q. Okay. Does the Department of Transportation have a responsibility to maintain highways in a safe condition?
A. Absolutely.
Q. That includes making changes to the highways that the Department of Transportation learns are unsafe?
A. Absolutely.
Q. And does the DOT have a duty to investigate and determine if changes are needed to be made to a highway?
A. Absolutely.

Q. Okay. And one of the ways that the DOT could learn that a particular stretch of highway needs changes is the number of motor vehicle collisions that happen on that stretch of highway?
A. That would be one factor. The rate is a bigger factor, but that is part of that rate calculation, yes.
Q. Um-hum. And the DOT, do you all have access to the South Carolina Public Safety database showing GPS locations of collisions?
A. Absolutely.
Q. Okay. And is there any -- is there any particular number? I know you've talked about the -- the -- you want to know the vehicles that pass through, but is there any particular number like five collisions a year, ten collisions a year, is -- is there any sort of number of collisions per year that would trigger the DOT to come in and say, hey, we need to go look at something here?
A. Not necessarily just raw number of collisions. It goes back by rate.
Q. Um-hum. Was the -- was the rate ever established with this stretch of highway in front of the Pilot?
A. At what point in time?

Q. From 2000 to 2012.
A. Yes.
Q. And what was that rate?
A. There -- I would have to refer to some additional information that was provided.
Q. Would it be in this notebook --
A. It should be.
Q. -- we've been looking at?
A. Absolutely. It should be -- it should be associated with a G.
(Reporter asks for clarification.)
THE WITNESS: Yeah, G as in -- there you go. Clint Davis likes golf. Okay.
BY MR. SMITH:
Q. All right. So we're looking at Document SCDOT Colvin Documents 0612, and what is this?
A. This is a collision diagram that was put together by our traffic safety office out of Columbia.
Q. And when was that done?
A. Some of this stuff is cut off at the very bottom, but the date of this is 10 -- October 15th, 2013.
Q. All right. And to your knowledge, were

any similar studies ever done between 2000 and 2013?
A. Not that I'm aware of.
Q. And the -- the project here was finished at around 2003, was it not? I think that was the final inspection date?
A. The widening project was completed June 17, 2002. And the interchange project was completed November 1st, 2003.
Q. Okay. So basically ten years after those changes were made was the first accident study that the Department of Transportation undertook?
A. It was the first study that I'm aware of.
Q. Okay.
MR. MAYBANK: And -- and just for the record, the continued objection to any of the traffic safety studies and admissibility thereof.
MR. SMITH: Okay.
MR. MAYBANK: But ask him whatever you want.
BY MR. SMITH:
Q. Now, what -- what did -- what did this tell you?

A. The study that was looked at as part of our safety program -- you had asked the question, do we -- do we have one of those, absolutely we do -- basically indicates that the left turns out of the driveway farthest east.

Q. Okay. The middle driveway, could we say?

A. Yes.

Q. If we count the truck driveway that's far out?

A. Yes. Yeah, that is experiencing riding while accidents -- folks trying to make a left out of the Pilot, out of the drive -- the eastern automobile drive, middle drive, however you want to term that.

Q. So people coming out this middle driveway taking a left, heading toward Summerville, there's a lot of collisions happening because of that maneuver?

A. That is correct.

Q. Left-hand turn-outs?

A. Left turn-outs.

Q. All right. How about left-hand turn-ins?

A. If you look at the two driveways,

there's not any collisions on the driveway -- the westernmost driveway, there's not a single collision during this time frame noted. The left turns coming in, there are two left turns going out at the westernmost drive.

At the easternmost vehicular drive, there are three collisions in the four years -- three collisions in four years involving that left turn into that drive.

Q. Um-hum. So in the three years between, what, 2000 and 2013 (sic), I guess?

A. It's four -- four years' worth of data, 2010, 2011, 2012, and 2013.

Q. Okay. So in those four years, how many collisions are there because of left-ins and left-outs, put together, on -- on 17A?

A. At the two drives?

Q. Yeah.

A. Less out. There are two collisions at the westernmost drive, and zero collisions on left-in. On --

Q. Just -- just a total number of left -- left-in, left-outs. You can just --

A. Our left-outs at the -- at the easternmost commercial drive, there's one, two,

three -- sorry. Let's see.

Q. You want a piece of paper?

A. No. Where's that magnifying glass?

(Off-the-record discussion.)

THE WITNESS: Let's see. There is 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 left turners out; and 1, 2, 3 left turners in.

Q. So 15?

A. At that driveway, correct.

Q. Which driveway?

A. The easternmost commercial driveway.

Q. Okay. I'm -- I'm just talking about left-in, left-out access to the Pilot Travel Center 2010 to 2013, how many?

A. 17.

Q. Okay. And that's in four years?

A. That's correct.

Q. And -- and how do you all go about discovering, you know, which -- which ones go on here? Where -- where do you get that from?

A. DPS's database.

Q. Okay. Department of Public Safety?

A. Yes.

Q. All right. Now, I did a -- let me tell you what I did to figure this out.

A. Sure.

Q. I basically drew a box around this area right here (indicating).

A. Um-hum.

Q. And I got the GPS coordinates for what would be in here and then went to the Department of Public Safety and said, give me all the accidents on 17A.

A. Right.

Q. And then I was able to arrange those accidents by GPS location, and I was able to figure out that 280 accidents had occurred in this box location in front of there from, you know, basically 2002 to -- to 2012.

And then what I did was went through and looked at all the ones that would be affected by left-ins and left-outs. And what that showed was in those 10 years, I saw 77 that were left-in/left-out to the Pilot Travel Center.

Would that -- would 77 over 10 years, would that be consistent with the rate that you're seeing over the course of 4 years?

MR. MAYBANK: Object to the form.

THE WITNESS: The only thing I can testify to is there was 17 left-in or left-outs at

the two drives at the Pilot station in the 4 years, as noted on this diagram. I can't speak to the -- to the number that you've produced.
BY MR. SMITH:
Q. I mean, it sounds like you got a whole lot less than I came up with. I came up with 72 -- 72? I came up with 72 in 10 years with left-ins and left-outs, and it looks like you came up with 17 in 4 years, left-in and left-outs. Does -- does that seem to be a similar number or is that a lot different?
MR. MAYBANK: Object to the form.
THE WITNESS: Can I do a little bit of math?
BY MR. SMITH:
Q. You can Google. You can ask Siri if you want.
A. It's not Google. It's a calculator. I mean, based on the data here in the 4 years, there's about 4 collisions -- 4.25, to be exact, per year in the 4 years that were studied here. I can't -- I can't --
Q. All right. It says 4.2 a year with left-in, left-outs?
A. At both drives.

Q. At both drives?
A. Yes.
Q. And then why don't you do that with 77 over 10 years. I don't think you need a calculator for that, do you?
A. 7.7.
Q. 7.7 -- 7.2, sorry.
A. No, 7.7.
Q. 72.
A. Oh, oh, oh. I'm sorry. Yeah, 72. Yeah, 7.2. I thought you said 77.
Q. Do either of those numbers strike you, either 4.2 a year or 7.2 a year involving left-in/left-out, does that cause you any concern, either one of those numbers?
A. Not just the wrong numbers themselves. I think you have to -- we've got a process that we follow at SCDOT, and I'm looking at the process that we follow. We plot those. We look at several things or is there any -- is there any at night, is it wet conditions? So there's a whole lot that goes into that than just a raw number. You have to look at all the factors, and -- and we have got a very detailed process that we do that on.
Q. And so you --

A. So I don't want to comment on raw numbers.
Q. Okay. So these are raw numbers, right?
A. Those are -- no, those are -- those -- that --
Q. That's not the detailed --
A. That's the detailed --
Q. -- information?
A. That's the detailed information.
Q. Does that give the time of day and wet and dry and all that?
A. Absolutely, yes.
Q. All right. So are you -- with -- with the number you got, 4.2, considering all that additional data, is that something you're concerned about?
A. We are concerned about the left-out at this middle driveway is what we're concerned about. That's what the collision diagram shows us.
Q. Okay. And when you mean --
A. And the relations to the -- in -- in relation to the Pilot Travel Center truck stop.
Q. All right. So does that mean something needs to change?
A. Yes.

Q. Okay. And you know, the fact that originally there was a plan for --
Well, let me ask you this: Would a raised median help or cure that problem with the left-in/left-out of the middle driveway?
A. Yes.
Q. Okay. And considering the original plan was -- for that raised median was taken out and you've got this number of accidents that has happened, is -- is that what should be done now? Should the raised median be put back in?
A. We have -- a safety project was developed as a result of this accident diagram that -- sorry.
Q. Start over.
A. Where was I at?
Q. My name's Kevin.
A. Sorry.
Yes. As a result of this collision diagram, our safety office designed a counter -- countermeasure that would prohibit lefts out but still allow lefts in to the center driveway.
Q. Okay. And how do you do that? Is that just a sign or is that --
A. No. That is a physical concrete raised

median.
Q. That pork chop median?
A. No.
Q. No?
A. No. It was a long -- it's a long median that's in one of the -- I think it's one of the exhibits that we provided.
Q. Okay. I think I saw that in there. It's a project that I think was supposed to start by 2015, originally?
A. Yes. We have -- we have let that project, which means we received -- well, we tried to receive bids twice. We did not get any bidders two times. It's actually -- we expect to receive bids again tomorrow, which is in our March letting. We call that our highway letting.
Q. Okay. But you're still going to allow left-hand turns out of this first driveway closest to Farmington Road?
A. Can I look -- do you mind if I refer to that?
Q. Yeah, sure. I think it was last -- no, maybe I'm wrong. Maybe it's this. Is that it?
MR. MAYBANK: What number are you on?
THE WITNESS: We are on 0611?

BY MR. SMITH:
Q. Yeah.
A. And the question?
Q. So turns -- so is this Farmington here?
A. Correct.
Q. Okay. I don't see the first driveway. Is it -- is this the first driveway there?
A. No. It's the first driveway, second commercial driveway.
Q. Oh, okay. Okay. So is there going to be any change to the first driveway, whether or not left-ins or left-outs?
A. Yes. The -- the safety project as designed would restrict left turns into and left turns out of the westernmost drive.
Q. Okay. And so that's the drive closest to Farmington Road?
A. Correct.
Q. All right. And that's based on the accident -- the accident study that was done in 2013?
A. Correct.
Q. Okay. So no left-ins or outs from that first driveway closest to Farmington?
A. Correct.

Q. Second driveway is going to allow left-in but prohibit left-outs?
A. Correct.
Q. Any change to the third driveway?
A. No change.
Q. Okay. And what is going to be done to prevent the left-outs from the second driveway, the middle driveway?
A. It's part of the concrete median that is -- that is going in.
Q. Okay. Just a break in the median?
A. Yes.
Q. Okay. But a break in the median only in a certain direction that's going to allow those left-outs --
A. The lefts --
Q. -- but not left-ins?
A. No. You got it backwards.
Q. I'm sorry. Opposite?
A. Yes. It would -- left-ins on the easternmost commercial drive will be allowed. Lefts out of the easternmost drive will not be allowed out.
Q. Okay.
A. And no change to the truck drive.

Q. Okay. Is there -- and at what -- what's the -- what's the usual sort of frequency of these accident -- what would you call that, an accident analysis or traffic study? Or what do you call that thing?
A. It would be a -- yeah, a safety analysis.
Q. Okay. What's the frequency of the -- of a safety analysis? Is ten years between construction and a safety analysis the norm?
A. No. We do safety analysis annually.
Q. Oh, so every year?
A. Yes.
Q. Okay.
A. Across the state.
Q. Across the state. And is that -- would this particular driveway in front of the Pilot, would that have received a safety analysis every year since --
A. No. A safety analysis, the way that process works, we go out and we pull the intersections that have the highest accident rates.
Q. Okay.
A. So -- so that's -- that -- that analysis is done on an annual basis.

Q. So the -- so the reasoning that this accident analysis was done was because in 2013, this intersection was one of the high accident rates?

A. Correct.

Q. And if it -- and -- and because we know that the accident analysis was not done prior to 2013, is it your position that from -- from 2002 all the way up to 2012, this intersection was not one of the highest accident rate locations?

A. I don't know the answer to that. I -- I'm not aware of an accident study at this location prior to the 2013 that we looked at. That does not mean that I -- I'm not aware of one.

Q. But you -- but you do them every year, and the way that you determine which ones are going to be done is the frequency of accidents at those locations?

A. Yes.

Q. Okay. And -- and who tells you that this particular one needs to be looked at or that one needs to be looked at? Who -- who lets you know which ones of these high rate of accident locations? Who tells you which ones are which?

A. It is performed by our traffic safety

office.

Q. But do you know how they do that?

A. They -- they use the DPS accident information. That pulls the accidents, number of accidents, location. We have to determine if there's countermeasures available to -- to -- there's -- there's a whole -- there's a whole methodology that our traffic safety office uses.

Q. Okay. If a -- if a -- if a corporation, a private corporation notices, you know, a lot of collisions happening in front of their property -- we talked about this a little bit earlier -- and they wanted to call somebody to tell them about it, what -- what department with the transport -- with the Department of Transportation, who -- who would they call? Who would receive that call?

A. It depends on who they -- they talk to eventually. It would start locally --

Q. Um-hum.

A. -- which would be here in the -- in the -- in our district office here. But eventually, that -- that phone call would most likely be referred to a traffic safety office.

Q. Okay. And if the corporation had

advised the DOT that we've just noticed a lot of accidents in front of our property, what would the DOT's response to that be? Would they at least look into it?

A. Certainly.

Q. Maybe pull a -- an accident analysis for that area?

A. That would be one thing that we would do.

Q. And given the history of this project here with the original plan for a raised median, then it's -- then it's taken away, does the DOT have any expectation that the business owner who successfully negotiated away the raised median, that they would come back to the DOT at some point and -- if -- if large number of accidents were taking place in front of their location?

MR. CRITES: Objection.

BY MR. SMITH:

Q. Would the DOT expect them to come back and let them know something like that?

MR. CRITES: Object to the form.

MR. MAYBANK: Object to the form.

THE WITNESS: No. That's -- that's not part of how we -- how we do business, no.

BY MR. SMITH:

Q. Okay. But if they did call, it would get to the right people and you all would at least investigate it?

A. Certainly. Any -- any call, whether -- no matter who would make that phone call with concerns over safety at a -- at any particular inter -- intersection, we would take seriously.

Q. Now, we took the deposition of -- of this fellow at Pilot Travel Center, and I'm going to sort of paraphrase something that we heard from him: It doesn't matter if this stretch of the highway is safe or not, right? A free market's going to work this out, right? That means if it's unsafe and people are injured, people are dying, customers will figure that out and they just won't visit this location anymore. The free market's just going to figure all this out.

Now, assuming I have paraphrased that correctly, okay, what would you think if that was Pilot Travel Center's attitude or this Marathon Ashland's attitude? If you had known that that was their attitude when these encroachments were being applied for, when the -- when they are wishing for the raised median to go away, if you knew that,

would you have done anything differently?
MR. CRITES: Object to the form.
MR. MAYBANK: Yeah, same objection.
MR. BESLEY: Object for many reasons.
THE WITNESS: I mean, I can't -- I can't speak to the safety program at Ashland Marathon Oil just because I -- I can't speak to it.
BY MR. SMITH:
Q. Well, but -- but it -- that's not your way of looking at this though, right?
A. No.
Q. Okay. If -- if you had that attitude in terms of designing this stuff, that would be downright reckless, dangerous, and probably something you'd get fired for if you said it to anybody. Is that true?
MR. MAYBANK: Object to the form.
THE WITNESS: Would I be irresponsible as a professional engineer not taking safety into account on design of highways?
BY MR. SMITH:
Q. Yeah.
A. That would be a true statement.
Q. Okay. And if that was a sub -- if -- if you heard a subordinate of yours, a highway

design engineer, you heard a subordinate of yours saying something like that, that it doesn't matter if the highways are safe or not, the free market's going to work it out, if it's dangerous and people are injured or they die, customers will figure that out and they just won't visit the property anymore, would that highway engineer's attitude, would that be dangerous, reckless, something that would warrant immediate termination? I mean, how would you respond to that kind of thing?
MR. BESLEY: Object to the form of the question.
MR. CRITES: Objection.
MR. MAYBANK: Same objection.
THE WITNESS: I -- no, that is not the attitude we're looking for from our highway designers or our traffic safety engineers. Safety is -- safety is a very important part of what we do, and that's -- that's in our state statute, the safe and efficient design use and operation of the -- of the state highway system.
BY MR. SMITH:
Q. And -- and if someone has submitted plans or an encroachment application to do certain things and you learn that that's their attitude

about safety, would it cause you to scrutinize those requests a little bit harder?
MR. MAYBANK: Object to the form.
THE WITNESS: It -- it shouldn't. We -- we should be following the same set of guidelines and principles whether we got a -- regardless of the -- of the permittee.
BY MR. SMITH:
Q. Okay. So the -- the person that could tell us about the negotiation referenced on I think it was Exhibit Number 5, that would have to be Mr. Smoak?
A. It would be.
Q. Okay. Whatever that was, it -- it didn't get back to you?
A. Yeah. I mean, I -- I think the label that the gas station negotiated the removal of a raised median is not an accurate statement.
Q. I'm sorry?
A. The -- I -- the categorization -- I didn't pronounce that correctly -- of the Pilot station negotiating out the raised median is not an accurate statement.
Q. Okay.
A. That raised median was removed as a

result -- it was moved from the interchange plans as a result of tying the interchange to the 17A widening plans.
Q. Okay. So Exhibit Number 5 when it talks about negotiated median removal and drive cuts, that's not accurate? There was no negotiation, right? No give, no take?
A. No. I'm -- I'm saying that the plans -- the interchange plans as dated 1990 --
Q. '8, I think?
A. No. Let me get them.
Yes. The interchange plans that are dated 1999 for right-of-way, these are the right-of-way plans of -- of the interchange in 1999, are in direct conflict with the construction plans for the widening dated 1998.
Q. Um-hum.
A. And the resolution of that conflict is a result of the raised median being removed out of the interchange plans, which was really past the terminus, and the widening plans dictated that median --
Q. Okay.
A. -- design.
Q. But we've -- by we, I mean you -- have

learned since then that taking away this raised median and allowing unfettered ins, left-ins and left-outs, that's led to a high enough number of accidents such that it's the plan to put that back in, at least to a limited degree?

MR. MAYBANK: Object to the form.

MR. CRITES: Same objection.

THE WITNESS: I -- I think the conditions in today and the review of the collisions that happened in this area between 2010 and 2014 has led the DOT to develop a countermeasure that's shown in -- in the exhibit that we looked at earlier.

BY MR. SMITH:

Q. And the countermeasure is to -- in other words, the unmountable median is going back into the plan?

MR. CRITES: Object to the form.

THE WITNESS: As per the interchange plans? I'm not sure I --

BY MR. SMITH:

Q. An unmountable median is going back in that location?

A. No, that's not correct.

Q. Didn't you say that accident study in

2015, you all are putting an unmountable median back in?

A. For a portion of --

Q. Right.

A. For a portion of it, yes. It does not --

Q. Okay.

A. That does not -- it does not match the raised median shown at one point in time in the right-of-way plans.

Q. All right. Then the -- the last thing I want to ask you about here is I just want to -- if you know, you can tell me. If -- if other -- if other people know, you can tell me that too. But, you know, it has to do with when these accident studies are done. Okay?

And as part of these accident studies, do you all get the actual collision reports?

A. We do.

Q. You do? And that's how you get the time of day and --

A. Certainly.

Q. -- conditions and --

A. Yes.

Q. -- stuff like that?

A. Yes.

Q. So I -- I just want to go back and just make sure I absolutely understand what triggers this accident analysis, because we have every single accident that happened in front of that gas station from 2002 to 2012. So Public Safety, right, has the information about the GPS locations; Department of Transportation goes and gets that information from Department of Public Safety, right? Yes?

A. Yes.

Q. Analyzes that information and determines which particular intersections or areas have a high enough collision rate such that a accident analysis needs to be done?

MR. MAYBANK: Before you answer anything, let me re -- I know you said we don't have to redo it, but I want to -- I want to renote my objection to the record on anything having to do with safety studies on any -- under any of these federal/state projects.

Go ahead and answer if you can.

BY MR. SMITH:

Q. So is that what happens?

A. Ask it -- ask it again.

Q. All right. So --

A. I apologize.

Q. DOT goes to Public Safety each year and gets information about the number of collisions that are happening all over the state of South Carolina. True?

A. Yes.

Q. DOT then takes that information and figures out if there are any areas that have higher collision rates than other areas. True?

A. Yes. First -- first, we would -- we vet -- we vet the -- the -- the reports that are provided to us. For instance, if you note -- if -- we -- we plotted. As part of my deposition, I plotted the accident location, the GPS coordinates associated with the accident diagram here. And if you plot the coordinates, it's actually shown at the -- at the truck drive.

Q. Yeah.

A. So the first thing we do is we vet the accidents, we clean up that data, and then we -- then we actually plot that diagram as shown as -- as one of the exhibits we looked at earlier.

Q. Because the GPS spots wherever the cop parked his car, right?

A. I can't -- I -- I don't know where they -- how they do that.
Q. Okay. But the GPS locations will give you general enough, and you go and get the accident reports, you can tell exactly what's happening and where it is, right? By the diagrams?
A. There -- there is -- there's a process we go through to -- to review the accident report and fatality.
Q. So what is a -- what is a high enough accident frequency to trigger this accident analysis? What's a high enough frequency?
A. It -- we look at the -- the intersections. Have two parts of our safety program. We've got a corridor analysis and we've got an intersection analysis. So we compare the rates of intersections across the state and the resources, so -- so first, we -- we collect the data, then we analyze the data. Then we form countermeasures, and we bring those countermeasures, develop projects based on available funding. And we down that list of available funding to the -- to the number of -- of -- of locations that we can -- we can form.
Q. So --

A. Does that answer your question?
Q. Yeah. I don't really -- I mean, how many is enough to start doing that? What -- what -- what triggers? How many -- how many --
A. The -- the -- the rates and the type of the -- the rates and the type of accidents.
Q. Okay. And rates meaning a comparison to the number of vehicles that are traveling on the road to the number of collisions that are happening on that stretch?
A. Correct.
Q. And -- and then how would -- how would that be expressed here in this case? I guess that -- it's probably in the study?
A. It is.
Q. I think I put it away. Yeah, it's still out here.
A. It's cut off of here.
Q. Of course it is.
A. But -- yeah, but it -- there's a rate. You -- you can see there's a total number of accidents, there's an average annual daily traffic, there's a number of years. And then there's a rate that ties those accidents to the number of years to the traffic. So it's accidents per volume per

year. That is -- that's the --
Q. All right.
A. -- metric.
Q. And that particular number that I've been after is probably on this thing, we just can't see it because it's cut off?
A. Absolutely.
Q. Is that the -- would it be this -- this one right under the CR? That S -- I don't know if that even -- what that is.
A. I can't --
Q. But would it be that number or something even further down the page, you think?
A. I -- I don't know. I hate to speculate on something.
Q. Okay.
A. It looks like it was cut off.
Q. Okay. Let me just review for just a second.
A. Sure.
MR. MAYBANK: Not that I'm agreeing to it in any way, shape, or form, but just for clarity purposes, do you want to make that an exhibit? Since he talked --
MR. SMITH: Yeah, I might as well.

MR. MAYBANK: Though I'm only doing it for his -- a reference to further object at a later date.
MR. SMITH: I thought you were being nice.
MR. MAYBANK: No. I am, but...
And I'll be honest with you, so I don't have to go digging around and try to find that later.
MR. SMITH: All right. So we're going to mark that accident analysis as Exhibit Number 11. Okay?
(PLF. EXH. 11, SCDOT Collison Diagram, SCDOT Colvin Documents0612, was marked for identification.)
MR. MAYBANK: And then can we get the other document out? I think it's about four pages in front of that. That had the raised median, slash, left turn.
THE WITNESS: Yeah.
MR. SMITH: And we will mark the plans for the changes in front of the Pilot Travel Center with that kind of restricted left-in/left-out, that middle intersection, O611, we'll mark that as Exhibit Number 12.

(PLF. EXH. 12, Plan diagram, SCDOT Colvin Documents0611, was marked for identification.)

MR. SMITH: All right. Let me just look that thing over. Do you all mind if I chat with Amanda real quick? I think that's done, so maybe you all want to figure out who's going to...

VIDEO TECHNICIAN: We will now go off the record. The time is approximately 5:55 PM.

(A recess transpired.)

VIDEO TECHNICIAN: We are now back on the record. The time is approximately 6:01 PM.

BY MR. SMITH:

Q. This process of performing accident analysis, is that a normal part of the Department of Transportation's maintenance of highways?

MR. MAYBANK: One -- one more time, I'm going to put on the record, object to this line of questioning.

MR. SMITH: Okay.

THE WITNESS: It is part of our normal operations. I'm -- I'm not sure I'd say it's part of our normal maintenance operations; but yes, it's part of DOT operations.

MR. SMITH: Okay. And this is the last

thing I wanted to ask you about. And why don't we just go ahead and mark it as Number 13.

(PLF. EXH. 13, Plan diagram, was marked for identification.)

BY MR. SMITH:

Q. And there are some notes down here. You may want to use that thing. Do you see that, what's inside the box or inside the little bubble, it seems like, or cloud?

A. It's hard for me to read it though.

Q. You've got a bigger version, I think, that we've already -- actually already looked at. I don't know if we've -- let me -- let me just try to read it for you then.

All -- is it radii? Is that a word?

A. I guess.

Q. Okay. All radii shown are inadequate for use.

Is -- is -- is radii a term -- or radius a term?

A. I mean, radius, radii, yeah. Radii is the plural of radius.

Q. Okay. So what does -- what would that mean on this, if that's what it says? All radii are inadequate for use.

A. I -- I can't read the note, but that -- that would refer to the -- the radii associated -- sorry. Sorry. I just grabbed it from you.

It appears that that is referring to the -- the radii associated with the -- the -- the two drive -- the three drives on -- off of 17A into the gas station/convenience store.

Q. All right. And what is it about those radii for those first two auto entrances, exits out of the Pilot Travel Center, what is it about those radii that are inadequate for use?

A. I -- I can't read the dimensions on this one.

Q. But is that talking about really the -- the size of the -- of the driveway?

A. No. That -- no.

Q. Okay. What does the radii refer to?

A. The radii is the -- the radius of the driveway on both sides and how that ties into the -- to the roadway, the -- thank you. I think the dimension you're referring to is the width. So you've got the width, and you've got the radii.

Q. Okay. And the radii would be the curve on the driveway?

A. Yes.

Q. Okay. Do you remember any determinations that the curve on those driveways or the radius or the radii, do you remember any discussions or anything about the -- changing that or saying it was inadequate for use?

A. Yeah. These -- I believe these are Mr. Smoak's notes. From what I recall, what I studied for this, I believe these are Mr. Smoak's notes -- notes referring to the ingress and egress into and out of the -- the gas station/convenience store. And he has notes from the discussions with both myself and I believe with Mr. Clark as well.

Q. All right. And is there a date on this?

A. I do not see a date on this.

Q. Okay. Can I grab it from you?

A. Sure. Absolutely. Oh, yeah, there's the date. Yeah, the date -- I believe this is saying August 16th, 2000.

Q. Okay. That would have been in the general time frame of that Exhibit 5 letter? That was August 2000, so...

A. Yeah, if that -- if that's what the letter stated. I don't recall the exact date.

Q. And what you see here -- thanks.

So that this note about all the radii shown are inadequate for use, that's a note from August 16th of 2000?

A. Yes.

Q. And the letter from Exhibit 5 is dated August 28th of 2000?

A. Correct.

Q. Around the same time frame?

A. Yes.

Q. Okay. Do you know what changes were made to the radii of those driveways? Can you tell if anything was changed?

A. I can't tell on that drawing. I -- I can infer. I mean, I can infer -- infer from this drawing, which is hard to read at that -- at that scale --

Q. Um-hum.

A. -- that -- that the Department agreed to both the width and the radii for both the truck driveway and the -- and the commercial driveways on 17.

Q. Okay. So this -- this last one and this one, but what about these?

A. No, those -- those two and this one.

Q. Okay.

A. Yeah.

Q. So you -- you're going to infer that the radii that are shown in Exhibit 13 were ultimately approved?

A. No. I would say just the opposite of that.

Q. Okay.

A. But it's -- I -- it was very hard to see. I -- it -- I can't -- I can't read that at that scale.

MR. SMITH: Okay. All right. Thank you. That's all I have.

THE WITNESS: All right. Thank you.

MR. SMITH: Somebody else might have something.

THE WITNESS: Oh.

MR. SMITH: If they do...

VIDEO TECHNICIAN: This concludes Video Number 3 in the video deposition of Leland Colvin. The time is approximately 6:08 PM. We are now off the record.

(Off-the-record discussion.)

VIDEO TECHNICIAN: We are now back on the record. Today's date is March 13, 2017. The time is approximately 6:08 PM. This is Video Number 4 in the video deposition of Leland Colvin, as 30(b)(6) representative for the South Carolina Department of Transportation.

EXAMINATION

BY MR. CRITES:

Q. Hey, Mr. Colvin.

A. Hey.

Q. It's been a long day, I know. We started about 10:00 and we're after 6:00. My name is Bennett Crites. I represent Speedway, LLC. They are the successor, if you will, to Marathon Ashland.

Mr. Smith has asked you a lot of questions here today. I might jump around a little bit. I'm not trying to. I'm certainly not trying to confuse you. There are just a couple of things I -- I want to go over with you and -- and try and clarify. So certainly if you need to take a break for any reason, just let me know and I'll be happy to accommodate you. Okay?

A. Sure. Thank you.

Q. Tell me this: We talked about the -- the two different projects. And there was the 17A widening project, which was directly in front of what is now the Pilot, correct?

A. Yes, sir.

Q. And were you somebody as the project -- I believe you said you were the project manager earlier?

A. Correct.

Q. You were actually on-site for the widening project?

A. During that time, my office was in Columbia; but, yes, I certainly made site visits, absolutely.

Q. Okay. And during that widening project, do you recall there actually being another convenience store there at any point in time that was a Speedway?

A. I -- I can't recall the details of that.

Q. Okay. But the 17 widening project, that stretched from essentially in front of this -- the Pilot Travel Center, what is now the Pilot Travel Center, towards Moncks Corner, correct?

A. Correct.

Q. And the design professional for that project was the South Carolina Department of Transportation, correct?

A. Correct.

Q. You testified earlier that there was a contemporaneous ongoing project which was the I-26 interchange with 17A, correct?
A. Correct.
Q. And that was a project that essentially started at Farmington Road and went towards Summerville, correct?
A. Yes, sir. Correct.
Q. Okay. So it just so happened that it was in the same general vicinity but two different projects, correct?
A. Correct.
Q. And the design professional for that project was the Arcadis engineering firm, I believe, correct?
A. Correct.
Q. Okay. Mr. Smith talked a lot about the questions about removing the median, and I know we reserved or preserved all objections until a later date. But some of the -- some of the questions were objected to, some of them weren't. So I just want to go through just to clarify a couple things.
The design plans for the 17A widening project which was in front of what is now the Pilot Travel Center did not nor did it ever include a

raised median or a nontraversable median; is that correct?
A. That's correct.
Q. And I believe your testimony earlier was that there was never an expectation during the 17A widening project in front of the Pilot Travel Center to have a raised or a nontransversable median because to do so would have been not compliant with the South Carolina Department of Transportation Highway Design Manual; is that correct?
A. That's correct.
Q. So to have put one in in front of the Pilot would have been in contravention to your own manual, correct?
A. Correct.
Q. And I believe you referred to that manual as the bible for design projects in the state of South Carolina; is that correct?
A. Yes, sir.
Q. Okay. Now, somebody, a design professional with Arcadis with the other project that didn't have anything to do with -- with the 17A widening project, but the interchange project with I-26, drew in some sort of raised median or

nontransversable median; is that correct?
A. Correct.
Q. Okay. But again, they were not the design professional for the widening project, correct?
A. Correct.
Q. Okay. And at some point in time with traffic flow, the DOT had to marry the two projects together, correct?
A. Correct.
Q. And at some point in time, you as the -- the program manager for that project with the Department of Transportation made the decision in conformance with the South Carolina Highway Design Manual that that was -- that a raised median was not going in front of the Pilot Travel Center, correct?
A. Correct.
Q. Okay. So there was never a raised median in front of the Pilot preventing a left-hand turn in that was ever installed or constructed on that roadway, correct?
A. Correct.
Q. Okay. And let me ask you this: Before the widening project began and there was a -- there

was a business there, I'll represent to you it was a Speedway before it became a -- a Pilot Travel Center. But there was a business there with driveways that provided ingress and egress from 17A into that business; is that correct?
A. Yes, sir.
Q. Okay. And at that time there was not a raised median preventing left-hand turns into that business, correct?
A. Correct.
Q. There's never been a raised median on that stretch of Highway 17A in front of what is now the Pilot Travel Center, correct?
A. Correct. There -- there was -- I'd have to see the limits. There -- there is a raised median that was installed in conjunction with the new location of roadway to the intersection just to the east. I -- I don't think the limits of that got in front of the -- the Pilot station.
Q. Okay.
A. I think that's correct.
Q. All right. So any discussion earlier about a -- a raised median or a nontransversable median being removed, it was never removed from the roadway itself, correct?

A. Correct.
Q. Nor was it ever removed from the design plans for the 17A widening project right in front of the Pilot Travel Center, correct?
A. Correct.
Q. It was -- I believe you referred to it earlier as a placeholder?
A. Correct.
Q. And it was a placeholder that was put in by another design professional who was in charge of another project that was not the 17A widening project right in front of the Pilot Travel Center, correct?
A. Correct.
Q. Mr. Smith spent a lot of time asking you questions about Exhibit 5, which is the letter dated August 28, 2000, to Mr. Greiwe from Tommy Smoak. And as I understand it, Mr. Smoak is no longer employed with the Department of Transportation, correct?
A. That's correct.
Q. Did he retire?
A. He did retire.
Q. Do you know how long ago he retired?
A. I don't have the specific dates.

Q. Have you spoken with him at all about this lawsuit or about this letter or about your deposition?
A. I have not.
Q. Okay. As you sit here today -- and I'm happy to --
MR. SMITH: Here's one. It's not marked, and I -- I already marked on this.
MR. CRITES: Okay.
BY MR. CRITES:
Q. I'm happy to show you my copy, but I'm just curious. The information contained on the bottom of this letter and these handwritten notes, do you know where that information came from?
A. I do not.
Q. Okay. And I understand up at the top it says 9/5 per phone verification with T. Smoak. But in terms of who was telling Mr. Smoak something that might have been referred back to Mr. Greiwe, you don't know where any of this information came from. Is that fair to say?
A. Ask that question one more time now.
Q. Sure.
In terms of the information that's actually contained down here with these handwritten

notes, you don't know where any of this information came from, do you?
A. As far as the information numbered in the notes?
Q. Yes, sir.
A. No, I don't.
Q. Okay. Have you ever spoken with Mr. Greiwe?
A. I -- not to my knowledge.
Q. Do you remember at any point in time back in the -- the 2000 time frame speaking with -- with a Mr. Greiwe or with anybody from Marathon Ashland Petroleum?
A. Not that I recall.
Q. And Mr. Smith had asked you some questions earlier about this letter and whether or not there was backup correspondence from the DOT. I'll represent to you on the bottom of my letter, it looks like it was actually produced by Pilot because it says -- it's Bates-labeled Pilot 00045.
So do you know if this letter was actually in the DOT's possession or it just came to be in everybody's possession because Pilot produced it?
A. I -- I don't know the answer to that.

Q. Okay. So your testimony earlier was that the design plans as per the South Carolina Department of Transportation for the 17A widening project, I believe, were dated in 1998. Was it December of '98; is that correct?
A. Yes, that's correct.
Q. And then the interchange plans that were provided by the design professional Arcadis were dated July of 1999; is that correct?
A. The -- the right-of-way plans set for that, correct.
Q. Okay. All right. And the letter that we're talking about here is dated August of 2000, correct?
A. Correct.
Q. And your testimony earlier was that there was never an expectation that -- that there was going to be a raised median that was going to be put in in front of that Pilot Travel Center as part of this widening project; is that correct?
A. That's correct.
Q. And it was always going to be a flush paved median, correct?
A. Correct.
Q. You testified a little while ago that

you thought that the characterization of -- let me see if I can find where I wrote it -- the characterization of people negotiating out the raised median was inaccurate. And I think that was in response to one of the -- the later questions that Mr. Smith had asked you about Exhibit 5.

And so I guess my question to you would be: What would there have been to have negotiated if the position of the DOT all along was that this raised median was never in the design plans to begin with, nor was this raised median even in conformance with the South Carolina Highway Design Manual? If it wasn't there to begin with, it was never going to be called -- and your manual didn't even call for it, what was there to negotiate? Do you know?

A. I -- I believe my previous testimony alluded that that was not a negotiation, that it was -- it was really -- it was just a combination of the plans, putting them together, that the widening project had a paving -- paid -- a flush paved median east of Farmington. And the correction of the interchange plans was just that, it was not a negotiation. It was just a correction of the plan to accurately reflect the Highway

Design Manual.

Q. And I think if I can use your own words, you, number one, talked about it as being a clarification. Would that be fair to say?

A. Yes.

Q. Okay. But I think, also, you referred to it earlier -- if I can find it -- was that when you were talking about the two designs, the marrying of these two projects essentially was the widening design plans were correcting the interchange design plans. Is that fair to say, as it relates to the raised median?

And I'm not trying to put words in your mouth, so if I've misspoke or I've misquoted you...

A. I -- I think that the revision to the interchange plans between the right-of-way plans and the construction plan is a result of us marrying the two projects together.

Q. Okay. But at the end of the day, the design plans always called for a painted -- the design plans for the 17A widening project in front of what is now the Pilot Travel Center always called for just a painted flush median?

A. Correct.

Q. And the design of that stretch of

roadway in front of what is now the Pilot Travel Center was in conformance with the South Carolina Highway -- the South Carolina Department of Transportation Highway Design Manual, correct?

A. Correct.

Q. And I think we looked at what you recently produced, which is Exhibit E to the 30(b)(5), where it talked about in urban areas where design speeds are 45 or less, a 15-foot flush median -- paved median -- parenthesis, paved median at the same elevation as adjoining lanes may be adopted. This width may be reduced to 14 feet where economic and existing right-of-way conditions justify. And then it says: The median area may be used for turn lanes, storage lanes, et cetera.

Is that correct?

A. That's correct.

Q. And this was the 1991 design manual?

A. Yes, sir.

Q. And that would have been applicable to this design at that point in time, correct?

A. Yes, sir.

Q. And then you also produced the May 2003 design manual, which was Exhibit I to the 30(b)(5). And I know the 2003 manual is not -- was not

applicable to this design, correct?

A. Correct.

Q. Okay. But it's still instructive because it talks about you-all developing your design criteria?

A. Certainly.

Q. And under Colvin 0625, 13.4.2.1, it talks about flush medians. And again, it says: Flush medians are used most often on urban highways and streets where design speeds are 45 miles per hour or less. Correct?

You don't have to take my word for it.

A. Yeah. That's correct.

Q. Okay. And then if I flip forward to Colvin 0627, it talks about raised medians. And it says: In general, the Department does not use raised medians. And then it says: They may only be considered by special request.

Let me show you that and just tell me if I read that correctly.

A. That is correct.

Q. Okay. And then let me finally show you real quick Colvin 0628, where it discusses flush medians as well. And it says: Flush medians provide an arrow -- excuse me -- flush medians

provide an area for left turn movements and permit direct access to adjoining properties. This allows for numerous unrestricted conflict points. The flush median may serve as refuge for disabled vehicles and serve as a temporary lane for emergency vehicles.

Is that correct and did I read that correct?

A. Yes, sir.

Q. Okay. And so when the individual who was operating the pickup truck, Mr. Sena, who was under the influence of alcohol and cocaine that evening, attempted to pull into that flush median, to the extent that he yielded the right-of-way, he would have been making a legal and lawful left-hand turn from that median -- from that flush median into the Pilot, correct?

A. Yes, as long as he yielded to the right-of-way.

Q. And that's what I said. Thank you.

A. Yeah.

Q. So you can make -- anybody when there's a flush median that's surrounded by the double solid -- solid yellow lines, it's both legal and appropriate to make a left-hand turn from that

median so long as when you do so, you maintain a proper lookout, correct?

A. Yes, sir.

Q. You maintain your vehicle under proper control, correct?

A. Correct.

Q. And you yield the right-of-way to oncoming traffic, correct?

A. Absolutely.

Q. Do you know anything as you sit here today about the relationship between -- and I know some of these documents refer to Speedway SuperAmerica, that some of them refer to Marathon Ashland. Mr. Smith and I and his co-counsel entered a stipulation, if you will, where we agreed that Speedway was the proper party because they were the successor in interest. So I'm just going to refer to them as Speedway, understanding that when I say Speedway, it -- it encompasses all of those parties except for Pilot Travel Centers. Okay?

A. Okay.

Q. So if you just assume that for purposes of my question.

As you sit here today, are you aware of

when Speedway was in South Carolina, when Speedway left, anything about a joint venture between itself and Pilot, when it began, when it ceased to exist, anything like that?

A. Not aware of any of that.

Q. Okay. You talked earlier about -- about that DOT has duties and responsibilities that are set out per statute, I believe. Did you say that?

A. I did.

Q. Okay. And does DOT have the statutory duty to move traffic safely among the public highways of this state?

A. Yes.

Q. And the DOT doesn't compromise safety, correct?

A. Correct.

Q. Safety is of utmost importance to the DOT, correct?

A. Yes.

Q. Because as Mr. Smith talked to you earlier about, I mean, if you compromise safety and you make a decision that's in contradiction to your Highway Design Manual, people can get hurt, correct?

A. Yes.

Q. Okay. And to the extent that a business owner or a private individual came to the DOT and asked a question about driveways or curb cuts or access, is there anything illegal about them doing that?

A. No.

Q. Okay. Does the DOT receive requests often in terms of an encroachment permit or in terms of access to and from their property, be it a -- a personal individual or be it a business?

A. I'd say daily.

Q. Okay. It's not unusual or uncommon, correct?

A. Correct.

Q. And the DOT can say yes or it can say no, correct?

A. We would apply our engineering judgment and guidelines to appropriately address that request.

Q. And I appreciate that. It's -- I'm just trying to move this through for you to try and get you out of here, but I'll slow down. But I appreciate the -- the more explained answer, if you will.

Applying those engineering design principles to a request that somebody might make, the DOT's position, though, is they're never going to compromise the safety of the individual or the public-at-large to accommodate a business if they don't believe that that's the right decision or the correct decision, correct?

A. Yes.

Q. The 17A widening project plans, those were DOT plans, correct?

A. Correct.

Q. Okay. And 17A is a DOT owned and controlled roadway, correct?

A. Yes.

Q. The discussion about the raised median, understanding that it was never in the design plans to begin with for the 17A widening project, but I'm just curious: Can you just describe for me what the dimensions of it would have been in terms of how wide it was, how tall it would have been, if it's feathered or tapered?

A. I would have to -- I'd have to refer back to my design documents, but it's -- no, I -- I don't know the dimensions right off the top of my head.

Q. Sure. Is it 4 inches off the ground? 6 inches? 12 inches?

A. I -- I'd have to look at the design detail. I'm -- I apologize.

Q. Okay. No, fair enough.

A. It's less than 12 inches, for sure.

Q. Fair enough. As you sit here today, you just don't know?

A. Correct.

Q. When you testified earlier about marrying the plans and that there was never going to be a raised median in front of Pilot Travel Center, I wrote down that it was a pure -- pure engineering decision on your part; is that correct?

A. Correct.

Q. Okay. That it was in compliance with the design manual --

A. Correct.

Q. -- that was applicable at the time, correct?

A. Correct.

Q. And then the third thing I wrote down was purpose and need, it was also based on purpose and need. So can you just tell me what purpose and need means --

A. Yeah.

Q. -- in this context?

A. Sure. Purpose and need defines why we are taking a certain action. And the action that -- that the DOT took with the 17 -- 17A widening project was to increase capacity along that section from Farmington Drive really all the way out to Moncks Corner. There's a -- it was constructed in phases, and this phase in that US 176. So that was the purpose and need.

So conjunction of this project, the purpose and need increased capacity to go back to the Highway Design Manual and implement with regards to the raised median -- or flush median those -- those design features would -- would dictate what we would put there.

Q. Okay. Did I write down earlier, as well, that the South Carolina Highway Design Manual is approved by the Federal Highway Administration?

A. It is.

Q. Okay. And can you just expound on that a little bit, please?

A. Yes. We -- all of our manuals, there's -- excuse me. I didn't mean to say that. Let me rephrase -- refrain from that. Restate

that. Excuse me.

Yeah. Our -- our -- our design standards, and our Highway Design Manual being one of those, goes over to Federal Highway for comment and approval. So that -- that is the design manual that we use for our design of federally eligible routes. And US 17A is a federally eligible route, and federal funds were spent to widen that project.

Q. Okay.

A. And that's the reason for the Federal Highway oversight is the expenditure of federal funds.

Q. One of DOT's jobs is to move traffic as safely as possible, correct?

A. Correct.

Q. Okay. And I believe you already answered this. But to the extent a developer makes a request, asks a question for access, for a curb cut, for a driveway, that question or that request in and of itself does not drive the decision by the DOT, correct?

A. Correct.

Q. There's a variety of factors that the DOT looks at to consider those requests in terms of whether to say yes or say no, correct?

A. Correct.
Q. Okay. But again, and I think it's clear, at least to me at this point in time, that with respect to any raised median that was to be in front of the Pilot during the widening project on Highway 17A, that was never in the SCDOT design plans, correct?
A. Correct.
MR. CRITES: Thank you, Mr. Colvin. I don't have any other questions for you.
THE WITNESS: Yes, sir.
EXAMINATION
BY MR. BESLEY:
Q. Mr. Colvin, I know it's been a long day. It's now, what, 6:30. We've been going since 10:00 this morning, but I have a few more questions for you, hopefully pretty quick.
The SCDOT has the -- has to approve anything that a landowner or business that abuts your -- one of your roads wants to do with their business that would affect your road. Is that not correct?
MR. MAYBANK: Object to the form.
THE WITNESS: We have to approve encroachment on the DOT right-of-way.

BY MR. BESLEY:
Q. Okay. And SCDOT would have the final and ultimate decision on any road of theirs or even the encroachment of driveways leading to that road. Would that be correct?
A. Correct.
Q. That would be based upon your DOT rules and regulations and even the national standards, as the other lawyers have pointed out; is that correct?
A. It would be based on the DOT standards, that -- that those standards took into account national standards.
Q. Okay. So in order for Pilot to construct entrances and exits to their property, Pilot had to submit an encroachment permit application to the SCDOT; is that correct?
A. Yes. That's how -- that's how our new -- that's how new encroachments are provided as via an encroachment permit process.
Q. Okay. And I know earlier you said you had not reviewed the one that you were shown, but you saw an encroachment permit; is that correct?
A. Sure. Yes.
Q. Okay. And so SCDOT had to approve the

design and location of the entrances and exits to Pilot's property before issuing the encroachment permit. Is that how it works?
A. Correct. Yes, sir.
Q. Okay. And a -- property owners can't do it themselves without your approval and your authority, and it must conform with your regs and standards; is that correct?
A. Correct.
Q. Okay. And someone at SCDOT would review the encroachment permit and make sure it's proper and give an independent analysis, would make sure it complies with your rules and standards; is that correct?
A. Correct.
Q. Okay. The SCDOT would not rely upon the person submitting the encroachment permit that it would be exactly up to your standards and rules. You guys give it an independent evaluation, make sure it's correct; and if it's not, you tell them, let's change it in these certain ways; is that correct?
A. Yeah. There's a review for conformity of the permit that was submitted by a licensed PE.
Q. Okay. And it does not get approved

unless the SCDOT says it's approved; is that correct?
A. Yes. The DOT approves the encroachment permit.
Q. Okay. You're not relying upon a landowner who submits an encroachment permit to you to make sure that the plan that they suggested is safe. You guys take a look at it yourself and determine if it's according with your regs and standards; is that correct?
A. I think there's some responsibility on the permittee to design it accordingly as well. In other words, we're not doing the design on behalf of the permittee. We're reviewing the permittee design for encroachment of the SCDOT right-of-way. We're not taking responsibility for that. In other words, a traffic impact study, we are relying that professional standards were used to determine that traffic -- traffic impact study.
Q. Okay. But not a traffic impact study, but just an encroachment permit to determine the location and widths of an ingress and egress on someone's property, that's something that you guys would take a look at yourselves and make that determination?

MR. MAYBANK: Object to the form.
THE WITNESS: Yes. We would review the encroachment permit as submitted by the permittee for conformance to our regulations.
BY MR. BESLEY:
Q. Okay. So perhaps not with the traffic study, you might -- you might rely upon someone who submits that to you to make sure it's correct. But for things that you can take a look at, your engineers take a look at, you make that determination on your own?
MR. MAYBANK: Object to the form.
THE WITNESS: I -- I would not say that, no.
BY MR. BESLEY:
Q. Okay. Does the SCDOT have the ultimate right to approve encroachment permits?
A. Absolutely.
Q. No one gets to tell you what is approved or not. You guys make that decision?
A. Absolutely.
Q. Okay. And do you know what happen -- has happened to the area? You know, you've been shown some diagrams and collision analysis over the last few years, a little while ago in the

questioning. Do you know offhand what has happened in that area in the last five years or so? Have other places gone in?
A. In -- in general, I know that this section of Berkeley County has definitely grown for sure. I mean, specific of what -- what -- what new businesses are in place, I don't have any specific knowledge of specific businesses. But certainly I'm aware in my position now of the -- of the amount of growth in Berkeley County.
Q. Okay. Well, for instance, we know that at the time of the accident, there was a Hess station across the street from the Pilot station; is that correct?
A. Correct.
Q. And it had all kind of in and out access, just like the Pilot station? Similar?
A. Yes. It had access to the roadway.
Q. Okay. And do you know when that Hess station was put in or constructed?
A. I do not.
Q. Okay. It could have been constructed between 2002 and 2012; is that correct?
A. No. I believe that was in place at the time of the widening project.

Q. At the widening project?
A. I believe that is the case. Can I refer to the plans?
Q. Sure.
A. Yeah. I'm -- I mean, I -- referring back to the plans, there -- there is certainly a business that is in place when we surveyed the plans. Certainly prior to 1998, that shows two driveways at the location. And Mr. Mike Kennedy is the property owner.
Q. Okay. So perhaps that might be the Hess station?
A. Perhaps.
Q. Okay. And now in the last few years, there's been like a Carolina Wings & Ale put in at that intersection and some other -- hotels and other things like that recently?
A. I don't have any direct knowledge.
Q. Okay. Would other businesses being put in affect a traffic analysis?
A. In what respect?
Q. Well, the -- the attorney seated next to you asked you all those questions about the number or frequency of accidents. Would you expect frequencies of accidents to increase when you add

more businesses to the direct area?
A. Yes. More conflict points would be introduced to the roadway, yes, sir.
MR. BESLEY: Okay. I think that's all I have for you. Thank you.
THE WITNESS: Yes, sir.
EXAMINATION
BY MR. BERLINSKY:
Q. Okay. I'm Bruce Berlinsky. I represent Ashley Surveying & Engineering, and it looks like my friends here and colleagues have whittled my list of 32 questions down to about 4.
A. Okay.
Q. So again, just to clarify, we have the interchange plans of '99, the widening plans of '98. And at that point, there's no -- there's no raised median in the project?
A. There's no raised medians on the US 17 widening plans.
Q. Widening project?
A. Correct.
Q. And then -- hand me the top letter. And then in -- could we say by August 28th of 2000 when Plaintiffs' Exhibit 5 went out, that at -- by that time, the plans have been merged or mirrored

to the point that whatever median was drawn in to the interchange plans had been removed and the only issue with this site was driveways?

A. I can say between the right-of-way plans dated July of '99 and the final construction plans dated June of 2001 that the marrying of the plans have taken place. And the construction plans basically said that the project east of Farmington Road would be constructed by others, and that others is the 17A widening project.

Q. Okay.

A. I can't tell you an exact date of when that merger actually happened; but I can tell you between the right-of-way plans for the interchange and the construction plans, that portion was basically referred back to -- instead of assuming something east of Farmington, that section of roadway referred us -- referred us back to the widening plans.

Q. Okay. And while you aren't completely familiar with the encroachment permit from '02, if you could pull that, the encroachment permit only deals with driveway --

A. Got it, a copy.

Q. -- driveway access in the truck

entrance. It has nothing to do with a median?

A. Yes, sir. That appears so, yes, sir.

Q. Okay. And again, kind of following up on one of Mr. Crites' questions but applying it to my client: Even if an engineering company asked to do something unsafe, in your review if you determined it was unsafe, you have the ultimate power to say no --

A. That's right.

Q. -- we're not going to allow you to do that?

A. Yes, sir.

Q. Okay. At the time of the encroachment permit or this entire project, it's my understanding -- and tell me if I'm wrong -- that encroachment permits started out with, I guess, the local county maintenance office and then would be reviewed by the district office; is --

A. That's the -- that's the normal procedures, correct.

Q. Okay. Now, the procedure has changed since then, right? It goes now to the district office and then up to Columbia?

A. Based on permit type. Based on permit type, it would, yes. There's been an additional --

in the last 18 months or so, there's been an additional position added at the district office that would review commercial permits, correct.

Q. Okay.

A. So certain permits that would follow that new form, resident -- other permits would follow the same procedure.

Q. The old procedure?

A. Yes, sir.

Q. Essentially residential, the old procedure; commercial then goes direct to -- to district office?

A. Essentially, yes, sir. Yes, sir.

MR. BERLINSKY: Okay. I don't have anything further.

MR. SMITH: I do have a couple. Pass that down.

EXAMINATION

BY MR. SMITH:

Q. Mr. Colvin, I -- I just want to confirm something you just said, that the decision regarding the differences between the interchange improvement project and widening project, difference being raised median in one, no raised median in the other, that the decision to square

that difference was made sometime before 2001?

A. Absolutely, yes.

Q. Okay. That decision was not made -- the final decision on that was not made in '98 or '99?

A. The design of the widening project between Farmingdale going east towards 17A, yes, it was made in 19 -- 1998.

Q. All right. But then sometime after 1998 when you took -- looking at these two plans with the interchange project and with the widening project, sometime before 2001, the decision was made about how are we going to square these two. One's got a median and one doesn't. The final decision, final construction plan was made sometime in 2001 or sooner about this raised median?

MR. CRITES: Object to the form.

BY MR. SMITH:

Q. Do you see what I'm trying to get at?

A. Yeah, yeah -- no. I mean, the -- the widening plans that started at Farmington was done in 1998.

Q. Okay.

A. And that's -- that's what -- that -- that -- so that's -- that's the ruling set.

Sometime between '99 and 2001, the interchange plans were updated to reflect the widening plans.
Q. Okay. Okay. Now, that company Arcadis, that was a -- a company that was hired by the DOT. True?
A. Yes, correct.
Q. Okay. And either -- whether it was the DOT in-house professionals or the Arcadis, these plans, both the interchange improvement plans and the widening project, both of those plans were developed for the DOT, right?
A. Correct. Yes.
Q. Okay. And whether it was plans developed by Arcadis, these are still the DOT's plans for the interchange improvement project, right?
A. That's correct.
Q. They were just technically written by somebody else, right?
A. They were designed by somebody else, but are DOT plans.
Q. Okay. And so part of the DOT's plans at some point were to have a raised median in this section in front of the Pilot Travel Center?
MR. CRITES: Object to the form.

BY MR. SMITH:
Q. They just happened to be the DOT's plans that were developed by Arcadis?
MR. MAYBANK: Same objection.
THE WITNESS: Again, as I stated earlier in my testimony, they -- they are a placeholder. You cannot end a set of plans at a terminus that would just tie in. You can't have six lanes of traffic coming to two lanes. So certainly, yes, the right-of-way plans for the interchange as part of that placeholder showed just marrying that -- that design going east of Farmington, but -- but however, with that being said, the plan was always a flush painted median east of Farmington going out to 176.
BY MR. SMITH:
Q. The DOT in-house people, that was their plan for the widening project, right?
A. Absolutely.
Q. All right. But the Arcadis people that were hired by the DOT, they wrote into the plans that there would a raised median. True?
A. They are -- yes, the right-of-ways plans associated with the interchange shows a raised median.

Q. All right. And those were done by people hired by the DOT?
A. Correct.
Q. And in fact, those plans at the top of those say DOT, right?
A. Absolutely.
Q. Okay. And did you expect Arcadis to use industry safety standards in their plans?
A. Sure.
Q. Okay. And would you expect that given the amount of traffic Arcadis determined was going to come down that road and especially with the road widening, that a raised median would have been required under the industry standards?
MR. CRITES: Object to the form.
MR. MAYBANK: Objection.
THE WITNESS: I -- I would not. I think that was a placeholder to show that they did their due diligence not to have a -- a six-lane roadway going into a -- tying into a two-lane roadway. Again, I -- I stated, as earlier, that I believe that is a placeholder east of Farmington, that it's -- it's a placeholder to show that they did their due diligence to tie a six-lane roadway into a six-lane roadway.

BY MR. SMITH:
Q. Well, how would they have to do anything other than just, you know, draw three lanes going one way, draw three lanes going the other way, and their project up on the Summerville side of Farmington Road has got three lanes coming one way and three lanes going the other way?
A. That's essentially what they did.
Q. Yeah. So -- so why would they -- why would they need to draw in a raised median as a placeholder in that area?
A. I -- I can't speak for them. I mean, they could have -- they could have shown that as raised or flushed, as long as they showed three lanes tying into three lanes, they were doing their due diligence to complete the transition at the terminus.
Q. But it's entirely possible that as Arcadis is looking at this thing, they're saying the industry safety standards with this area required a raised median?
MR. CRITES: Object to the form.
THE WITNESS: I can't speak for -- I can't speak for Arcadis.
BY MR. SMITH:

Q. Okay. It's -- it's possible that that was part of their decision process?
MR. MAYBANK: Object to the form.
THE WITNESS: I can't speak for -- I can't speak to Arcadis.
BY MR. SMITH:
Q. Okay. Because -- now this -- this bible that you've referred to, the South Carolina Highway Design Manual --
A. Certainly.
Q. -- right?
A. Yes.
Q. So we -- we've got one sentence with regards to raised median versus flush medians.
A. Yes.
Q. True?
A. Yes.
Q. And the one sentence is: In urban areas where design speeds are 45 miles an hour or less, a 15-foot flush median, parenthesis, paved median at the same elevation as adjoining lanes, end -- end parentheses, may be adopted. Correct?
A. Yes.
Q. So it's not the -- it's not the -- the specs of the South Carolina Highway Design Manual

to use flushed medians -- flush medians. It's just the Highway Design Manual references that flush medians may be adopted. True?
A. Sure.
Q. I mean, there's a difference between saying the High -- South Carolina Highway Design Manual dictates a flush median in this situation as opposed to saying that South Carolina Design Manual would allow a raised median or says it may be adopted. There's a difference between those two, isn't there?
A. Yeah. It doesn't reference a raised median. I think what that's referencing, that you can put in a 15-foot median, you don't have to have two lanes with no median whatsoever.
Q. Right. But this South Carolina Highway Design Manual doesn't talk anything about raised medians, whether or not there's a -- driveways and functional area of intersections, doesn't talk about the volume of traffic, anything like that. It just says: It's our position that flush medians may be adopted. True?
A. Sure.
Q. All right. And -- and that's a -- that's a very general statement, don't you think?

A. I don't think -- no, I don't.
Q. I mean, you -- you -- what we read in the ARMS manual about nontraversable median, reduction in 35 percent, about left turns contributing to 72 percent of crashes involving -- in front of driveways, I mean, which -- which one do you think is more detailed? The ARM -- about what was going on here? Do you think it would be the -- the South Carolina Highway Design Manual or the ARMS manual?
A. I think the Highway -- the South Carolina Highway Design Manual. Certainly we had the 1999, if I'm not mistaken, then we had a 2003 that we referred to as part of the discovery as well. The '03 has certainly more details regarding medians. The access manual, again, is used for where private individuals, companies, whatever the case may be, is trying to access a public roadway. In this scen -- in this scenario of widening 17A, the Highway Design Manual would hold true.
And I would point as well -- and you talked about reduction and the effects, again this is talking about medians in general --
Q. Um-hum.

A. -- that the same reductions for a continuous two-way left turn lane, TWLTL as we referred to, has the same effects and reductions as nontraversable median referred to in the 2000 -- 2008 edition of the ARMS manual.
Q. Is that still true today?
A. Yes. This is the current -- this is the current ARMS manual that we were -- you got -- you've got to understand that -- what the purpose of this manual is for and understand what the purpose of the Highway Design Manual is for.
Q. I got you. The ARMS is triggered when an application for an encroachment permit is filed. True?
A. True.
Q. Okay. And with regards to today, would you disagree that a -- most studies and the models derived from them also suggest that safety is improved where physical medians replace TWLTLs?
A. I think you're reading theory. I think we talked a lot of theory today on you -- that you referred to one of the theories that we've talked about as the functional area of the intersection.
Q. Um-hum.
A. And when we looked at the actual

accident diagram based on real data and not theory and the driveway that was with -- 100 percent within the functional area of -- of the intersection had significantly less collisions compared to the driveway that I testified to that I do not believe is in the functional classification. So yeah, you've got some theory and some data there; but you've got to make sure me, as a -- as an engineer, make sure that I take that theory and apply it to the right -- to the right location.

Q. But as we sit here today, do you disagree that most studies and the models derived from them suggest that safety is improved where physical medians replace the TWLTLs?

MR. MAYBANK: Object to the form.

THE WITNESS: I -- I've always stated that the -- that reducing the number of conflict points theoretically reduce -- increases safety.

BY MR. SMITH:

Q. Okay. And one way to reduce the number of conflict points is to eliminate left-in, left-outs?

A. Absolutely.

Q. Okay. And so do you think that this -- this data here on the 2008 edition of the ARMS

manual that the reduction in total crashes from TWLTLs is the same in reduction in crashes from nontraversable medians, do you think this number is still accurate?

A. Absolutely. I mean, I -- I think that what you're -- that what not -- what's not taken into consideration, we're looking at medians, so the effect of a median or not having a median all together.

Q. Um-hum.

A. So you've got to make sure you're comparing the right data, statistics, and theory to the right...

Q. Okay. I think I see what you're saying. So -- so this is talking about the reduction in total crashes between not having a median at all to a TWLTL --

A. Absolutely.

Q. -- right? And not having a median at all to a nontraversable median?

A. That's right.

Q. Same sort of thing, they're comparing it?

A. Yep.

Q. All right. And then so questions about

the permit for -- an application for a permit -- I'm sorry. Application for encroachment permit, those questions need to go over to Mr. Clark?

A. Correct.

Q. And the driveways?

A. Yes.

MR. SMITH: Okay. All right.

MR. MAYBANK: Anybody? Anybody?

MR. SMITH: Going once.

MR. MAYBANK: Thank you.

VIDEO TECHNICIAN: This concludes the video deposition of Lee -- Leland Colvin as 30(b)(6) representative for the South Carolina Department of Transportation.

The time is approximately 7:02 PM. We are now off the record.

(WHEREUPON, the proceedings concluded at 7:02 PM.)

(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

SIGNATURE OF DEPONENT

DEPONENT: LELAND D. COLVIN, JR.
DEPOSITION DATE: March 13, 2017
REPORTER: TERRI L. BRUSSEAU
AWR JOB #: 170313TLB
CASE CAPTION: CYNTHIA WRIGHT AND RICHARD WRIGHT vs. SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

(Please return both Signature of Deponent pages)

I, the undersigned, LELAND D. COLVIN, JR., do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

EXHIBIT B

EXHIBIT
B
ALL-STATE LEGAL®

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Cynthia Wright and Richard Wright,

Plaintiffs,

vs.

South Carolina Department of Transportation, Pilot Travel Centers, LLC, Speedway LLC, Ashley Land Surveying, Inc., f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc., and Munlake Contractors, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2016-CP-08-00334

ORDER

FILED
17 MAY -4 PM 2:26
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Before this Court came Defendant Pilot Travel Centers, LLC's (Pilot) Motion for Summary Judgment. A hearing was held at the Berkeley County Courthouse on April 10, 2017. For the reasons provided below, Pilot's Motion for Summary Judgment is GRANTED.

Factual Background

Defendant Pilot owns a Pilot Travel Center gas station and convenient store ("Pilot Travel Center") that abuts Highway U.S. 17A in Summerville, South Carolina. On October 6, 2012, Plaintiffs were injured in a motor vehicle accident while traveling on their motorcycle in the left lane of U.S. 17A in front of the Pilot Travel Center. The accident occurred when a pick-up truck traveling in the opposite direction pulled into the median and attempted to make a legal left turn into one of the driveways of the Pilot Travel Center. The pick-up truck struck the Plaintiffs' motorcycle in the left lane of the highway. At the time of the accident, the driver of the pick-up truck had a blood alcohol level above the legal limit and was under the influence of cocaine. Plaintiffs contend that the accident would not have occurred had there been a solid raised median

in the highway preventing motorists from making a left-hand turn onto Pilot's premises, and that the absence of such a median created a dangerous condition on the highway. Plaintiffs also contend that the location and design of Pilot's driveways created a dangerous condition on the highway.

Pilot constructed the subject Pilot Travel Center in or around August 2002 after acquiring the real property and existing gas station on or about September 1, 2001. The existing gas station, which was owned by Speedway SuperAmerica, LLC, already had three driveways with access to U.S. 17A. There was no solid raised median in the highway preventing left turns into the existing gas station. Moreover, there has never been a solid raised median in this section of the highway.

Around the time the Pilot Travel Center was being built, the South Carolina Department of Transportation (SCDOT) was in the process of widening the section of U.S. 17A in front of the Pilot Travel Center (the "Widening Project"). SCDOT was also reconstructing the intersection adjacent to the existing gas station (the "Interchange Project"). The Widening Project and Interchange Project were completed on June 17, 2002 and November 1, 2003, respectively. SCDOT designed the plans for the Widening Project, but used an outside firm to design the plans for the Interchange Project. According to SCDOT, the design plans for the Widening Project never included a raised median.[1] The decision to not install a raised median in front of the Pilot Travel Center was made by Leland Colvin, Jr., who was the Program Manager for the Widening Project. This decision was made when the Widening Project design plans were prepared in 1998. SCDOT testified that Mr. Colvin's decision to use a painted flush median, rather than a raised median, was

[1] SCDOT testified that the initial design plans for the Interchange Project, which were prepared by an outside engineering firm, depicted a raised median in front of the Pilot Travel Center. However, the Interchange Project did not concern work performed to this section of U.S. 17A. SCDOT performed work to this section of U.S. 17A as part of the Widening Project. According to SCDOT, the presence of the raised median in the first iteration of the Interchange Project's design plans was simply a placeholder, representing the location of the highway in which the design plans for both projects would eventually be merged.

made in conformance with SCDOT's Highway Design Manual.[2] According to SCDOT, installing a raised median as part of the Widening Project would have been in contravention to the standards set forth in the SCDOT's Highway Design Manual.

In order to construct the driveways into the Pilot Travel Center, Pilot submitted an application for an encroachment permit to SCDOT on or about May 13. 2002.[3] SCDOT had to approve the design and location of the driveways to Pilot's property before issuing Pilot the encroachment permit. According to SCDOT, it conducts an independent analysis when evaluating whether to approve an encroachment permit to ensure that the proposed driveways conform to SCDOT's regulations and standards. SCDOT also considers highway safety and how the access to private property affects traffic and the general operation of the highway system. SCDOT testified that it has the ultimate authority to approve encroachment permits and never compromises the public's safety to accommodate a property owner's interests when evaluating such permits. SCDOT ultimately approved Pilot's encroachment permit application and issued Pilot a permit to construct the driveways to the Pilot Travel Center.

Plaintiffs filed a Complaint against Pilot and the South Carolina Department of Transportation on March 31, 2014.[4] Plaintiffs allege that Pilot owed the driving public a duty to construct its driveways in such a way as to prevent the existence of hazardous road conditions on the highway. Specifically, Plaintiffs allege Pilot was negligent for failing to construct its driveways

[2] Mr. Colvin served as one of SCDOT's Rule 30(b)(6) designees. Mr. Colvin metaphorically referred to SCDOT's Highway Design Manual as "the Bible" when it comes to designing highways in South Carolina.

[3] Although the existing gas station on the property had driveways allowing for ingress and egress directly from the highway, the driveways to the Pilot Travel Center were relocated as part of Pilot's rebuild.

[4] On February 9, 2016, Plaintiffs filed a separate action arising from the accident against Speedway LLC (successor in interest to Speedway SuperAmerica, LLC), Ashley Land Surveying, Inc. (engineering firm who performed work for Pilot in connection with the construction of the Pilot Travel Center), and Munlake Contractors, Inc. (general contractor of the Pilot Travel Center). The two actions have since been consolidated.

to prevent Plaintiffs from being stricken by other motorists attempting to turn left across traffic onto its premises. Plaintiffs further claim that Pilot is responsible for the absence of a solid raised median in the portion of the highway where Plaintiffs' accident occurred. Plaintiffs allege Pilot negotiated with SCDOT regarding the type of median to install on the highway.

Pilot moved for Summary Judgment on the grounds that Plaintiffs have failed to present evidence sufficient to raise a genuine issue of material fact that Pilot owed them any duty or breached any duty owed; or, that any alleged negligent act or omission on the part of Pilot proximately caused Plaintiffs' injuries.

Standard of Law

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. When a party makes a motion for summary judgment that is supported by evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion but must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists. Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). "To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture." Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010).

Analysis

Pilot maintains that it did not owe the Plaintiffs any duty to prevent them from getting in a motor vehicle accident on the highway in front of its property, and that therefore, it is entitled to judgment as a matter of law. This Court agrees.

In order for the Plaintiffs to recover on their negligence claim, they must first establish that Pilot owed them a duty of care.[5] Absent such a duty, Pilot is entitled to judgment as a matter of law. See Hurst v. E. Coast Hockey League, Inc., 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006) ("The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law."). Under South Carolina law, a property owner whose land abuts a highway only owes a duty to motorists for highway conditions where the property owner "undertak[es] an activity that creates an artificial condition on the highway which is dangerous to travelers." Skinner v. South Carolina Dep't of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). Here, Plaintiffs cannot establish that Pilot created a dangerous artificial condition on the highway.

Plaintiffs allege the painted flush median in the highway in front of the Pilot Travel Center was a dangerous condition on the highway because it enabled motorists to make a left hand turn onto Pilot's premises. However, even if the median was a dangerous condition on the highway,[6] it was not a condition created by Pilot. SCDOT admits that it, and not Pilot, made the decision to not add a raised median in front of the Pilot Travel Center as part of the Widening Project. While Plaintiffs allege that Pilot negotiated SCDOT's decision to continue to use a painted flush median

[5] It is undisputed that Plaintiffs were neither invitees nor licensees of Pilot immediately prior to or at the time of the motor vehicle accident.

[6] The Court need not determine whether the median was a dangerous condition as alleged by Plaintiffs because the Court finds that Plaintiffs have failed to establish that Pilot created any artificial condition on the highway.

in the highway, Plaintiffs have failed to provide any evidence that such a negotiation took place beyond mere speculation and conjecture.[7] In fact, SCDOT maintains that there was no "negotiation" of the median and that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center.

Moreover, even if Pilot did negotiate with SCDOT concerning the median, this Court finds that such negotiation did not impose a duty on the part of Pilot to the Plaintiffs. Ultimately, the decision as to whether a raised median should be installed on a highway falls within the exclusive authority of SCDOT, which owns and controls the highway. See Giannini v. S. Carolina Dep't of Transp., 378 S.C. 573 n.1 (2008) (recognizing SCDOT has initial discretion to place median barriers on a highway); S.C. Code Ann. § 57-3-110(1) ("The Department of Transportation shall . . . [have the power and duty to] lay out, build and maintain public highways . . . including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways . . .."); S.C. Code Ann. § 57-3-110(3) ("The Department of Transportation shall . . . [have the power and duty to] cause the state highways to be marked with

[7] Plaintiffs' allegation that Pilot negotiated with SCDOT to prevent SCDOT from installing a raised median in front of the Pilot Travel Center is based solely upon handwritten notes on a letter dated August 28, 2000, from an SCDOT official to an employee of the prior owner of the subject property. However, these handwritten notes do not evidence that **Pilot** negotiated with SCDOT regarding the type of median to be used in the portion of the highway in front of the Pilot Travel Center. First, these handwritten notes were not made by an employee or agent of Pilot. Second, this particular letter is dated after the date by which SCDOT testified it made the decision to use a painted flush median on the highway instead of a raised median. Third, SCDOT testified that there was never a "negotiation" of the median, and that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center.

At the hearing on Pilot's Motion for Summary Judgment, Plaintiffs speculated that Pilot may have negotiated with SCDOT regarding the median as part of SCDOT's right-of-way acquisition of a portion of Pilot's property during the Interchange Project. However, the Title of Real Estate for this acquisition indicates that the right-of-way acquisition transaction was between SCDOT and the prior owner of Pilot's property. Moreover, Plaintiffs admitted it did not have any evidence that any such negotiation with Pilot took place. Therefore, even if a "negotiation" between Pilot and SCDOT could somehow create a duty on the part of Pilot with respect to the median, Plaintiffs cannot provide any evidence such a negotiation occurred beyond pure speculation, which is insufficient to survive summary judgment. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010) ("To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture.").

appropriate directions for travel and *regulate the travel and traffic along such highways*, subject to the laws of the State[.]" (emphasis added)). This decision-making authority arises from SCDOT's police power and duty to plan, maintain, and operate the state's highway system. See South Carolina State Highway Dep't v. Wilson, 254 S.C. 360, 365-66, 175 S.E.2d 391, 394 (1970) (noting that "the clear weight of authority from other jurisdictions is . . . that the construction of a median . . . is an exercise of the police power"); South Carolina State Highway Dep't v. Carodale Assocs., 268 S.C. 556, 561, 235 S.E.2d 127, 129 (1977) ("Re-routing and diversion of traffic are police power regulations."). Whether or not any negotiation of the median took place, the fact remains that only SCDOT has the authority to determine what type of median to install on the highway.

Furthermore, the median in question was part of the highway, and thus, under the exclusive control of SCDOT. Plaintiffs have failed to present any authority establishing that Pilot, as one of the property owners abutting the highway, has a duty to maintain, repair, or warn travelers of potentially dangerous conditions on the highway over which it has no control. The facts of this case are nearly identical to those in Allen v. Mellinger, 156 Pa. Commw. 113, 625 A.2d 1326 (1993). In that case, the plaintiffs attempted to make a left turn from the highway into the defendants' business premises when their vehicle was hit by a truck traveling in the opposite direction. Id. at 115. Relying on Restatement (Second) of Torts §349,[8] the Allen Court held that

[8] According to § 349:

> A possessor of land over which there is a public highway or private right of way is not subject to liability for physical harm caused to travelers upon the highway or persons lawfully using the way by his failure to exercise reasonable care
>
> (a) to maintain the highway or way in safe condition for their use, or
>
> (b) to warn them of dangerous conditions in the way which, although not created by him, are known to him and which they neither know nor are likely to discover.

the business owners owed no duty to the plaintiffs to maintain the highway in a safe condition or to warn them of any alleged dangerous condition on the highway. Id. at 118-119. According to the Allen Court, the Commonwealth owns the highway and "has the exclusive duty for the maintenance and repair of state highways." Allen at 118. The court further rejected the plaintiffs' argument that the business owners' failure to erect signs, paint lines or place curbing or barricades in the store's parking lot to indicate to customers the safest place to enter the parking lot created a dangerous condition. Allen at 119 n.1, 625 A.2d at 1329 n.1 (1993).

Like the business owners in Allen, here, Pilot owed no duty to the Plaintiffs to keep the highway in a safe condition or to warn Plaintiffs of any alleged dangerous condition on the highway. Medians are part of the highway subject to the exclusive control and authority of SCDOT. The decision to install a painted flush median on the subject highway was within the exclusive province of SCDOT as the governmental agency charged with the duty to design, maintain and operate the State's highways. SCDOT, not Pilot, has the duty to maintain medians. SCDOT, not Pilot, has the "duty to use reasonable care to keep streets and highways within its control in a reasonably safe condition for public travel." Ford v. South Carolina Dep't of Transp., 328 S.C. 481, 487, 492 S.E.2d 811, 814 (Ct. App. 1997). Thus, Pilot, as one of the landowners abutting U.S. 17A, has no duty (or authority) to maintain, repair, or warn others of potentially dangerous conditions on the highway over which it has no control.[9] See Skinner v. South Carolina Dep't of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). (noting that while "a contractor performing highway alterations owes a duty to travelers, . . . [there is] no analogous duty on the part of an owner of property abutting a highway who neither possesses nor controls

[9] SCDOT acknowledged during its Rule 30(b)(6) deposition that it owns and has control of US 17A, that it has the responsibility of maintaining highways in a safe condition and that it has the duty to investigate and determine whether changes need to be made to the highway.

the highway."); Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997) ("one who has no control [over property] owes no duty.").

To the extent that Plaintiffs maintain that Pilot created a dangerous condition on the highway by virtue of constructing a driveway to the Pilot Travel Center that was accessible by motorists travelling on the opposite side of the highway, such argument lacks merit. See Skinner at 525 (evidence that it was motorists' utilization of the property owner's driveway that led to alleged dangerous condition was insufficient to establish business owner "created" a defect on the highway).

This Court holds that having a driveway on the highway, in and of itself, is not an artificial condition as contemplated by South Carolina case law. In Skinner, the South Carolina Supreme Court noted that the types of artificial conditions on the highway that would impose potential liability on a property owner include hazards that result from the conduct of the property owner's business, such as material spilled on the road or smoke emitted from a plant that drifts over the highway. Id. Simply having a driveway on the highway allowing for the ingress to and egress from one's business does not impose liability on the business owner for motor vehicle accidents that occur in the highway.

Furthermore, like with medians, SCDOT has the ultimate decision-making authority with respect to the placement and design of driveways with access to a highway. In order to construct or reconstruct a private driveway with access to a highway, a property owner must first obtain an encroachment permit from SCDOT. As part of the permitting process, SCDOT reviews the permittees' design plans to ensure compliance with SCDOT's regulations and standards concerning the design and location of driveways. SCDOT also reviews a permittee's encroachment application to ensure driveways do not create any safety concerns or impede efficient traffic

operations. SCDOT "may deny any request for any permit for any driveway . . . which in [its] judgment . . . may create a hazard to the traveling public." S.C. Code Ann. § 57-5-1090. Thus, Pilot could not have constructed the driveways to its property unless SCDOT deemed them to comply with SCDOT's design standards and determined that they were safe for the public.

Finally, Plaintiffs argue that Pilot can be held liable for their injuries because Pilot had notice of the danger posed by motorists making left-hand turns onto its property and failed to take any remedial action. Specifically, Plaintiffs allege Pilot was on notice of this danger by virtue of prior motor vehicle accidents that occurred in and around the Pilot Travel Centers' driveways. This Court finds that no such affirmative duty on the part of Pilot exists. "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Rayfield v. South Carolina Dep't of Corr., 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). Plaintiffs cannot establish any source of a duty requiring Pilot to affirmatively act. Even if Plaintiffs could establish Pilot was aware of other motor vehicle accidents in the highway, having notice of other accidents does not give rise to a duty to warn. See Restatement (Second) of Torts § 349 (landowner owes no duty to warn travelers of dangerous conditions in the highway or private right-of-way which, although not created by him, are known to him). Moreover, foreseeability of an injury alone does not create a duty to act. South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). The occurrence of other motor vehicle accidents on U.S. 17A does not create an affirmative duty on the part of Pilot as a property owner abutting the highway.

Conclusion

In light of the foregoing, this Court finds that Plaintiffs cannot establish that Pilot owed them any duty as a landowner abutting the portion of the highway where Plaintiffs were injured. Therefore, Pilot is entitled to judgment as a matter of law.

IT IS ORDERED that Pilot's Motion for Summary Judgment shall be GRANTED, and all of Plaintiffs' causes of action against Pilot are DISMISSED.

AND IT IS SO ORDERED!

Roger M. Young Sr.
Presiding Judge

May 4/26, 2017
In Chambers, South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	C/A NUMBER: 2014-CP-08-675
Cynthia Wright and Richard Wright, Plaintiffs, vs. South Carolina Department of Transportation, C & A Unlimited, Inc. and Pilot Travel Centers, LLC, Defendants.		**AFFIDAVIT OF BILL MULLIGAN**

Personally appeared before me the undersigned, after being duly sworn, deposes and says:

1. The contents of this affidavit are based on my own personal knowledge.

2. I am of sound mind and over eighteen years of age.

3. I am familiar with the allegations alleged by the Plaintiffs in the above-captioned lawsuit pending in Berkeley County.

4. Beginning in 1994, I began serving as the Director of Construction for Pilot. That Directorship later became a Vice President's position, and I have continuously served as the Vice President of Construction to the present date, which title is now Vice President of Development.

5. On or about September 1, 2001, Pilot acquired the existing gas station and real property located at 1521 North Main Street, Summerville, South Carolina 29483 (the "Property").

6. After acquiring the Property in September 2001, Pilot redesigned and constructed a new Pilot Travel Center station on the Property.

7. When Pilot acquired the Property, the existing gas station located on the Property had three driveways with access to U.S. Hwy 17-A. There was no raised median in the highway preventing left turns into the existing gas station from the southbound lane.



8 Pilot was required to obtain an encroachment permit from the South Carolina Department of Transportation ("SCDOT") before Pilot could construct the driveways to the new Pilot Travel Center. In order to obtain the permit, the location and design of Pilot's driveways had to be approved by the SCDOT. In May 2002, Pilot submitted an application for an encroachment permit to the SCDOT, seeking approval of the location and design of its proposed driveways. The encroachment application was approved, and the SCDOT issued Pilot a permit to construct the driveways.

9. Construction of the Pilot Travel Center began in or around August 2002. Around the time the Pilot Travel Center was being planned/constructed, SCDOT was also performing an improvement project to the intersection of I-26 and U.S. Hwy 17-A, which was adjacent to the Property. The SCDOT did not install a raised median in the highway to prevent left turns into the Pilot Travel Center as part of the improvement project.

Bill Mulligan

April 28, 2016

Sworn to before me this 28th

day of April, 2016

Notary Public for Tennessee

(SEAL)

SHERRY L. BLAKE
STATE OF TENNESSEE
NOTARY PUBLIC
KNOX COUNTY

My commission expires: 9-11-16

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS
Cynthia Wright and Richard Wright, Plaintiffs, vs. South Carolina Department of Transportation, Pilot Travel Centers, LLC, Speedway LLC, Ashley Land Surveying, Inc., f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc., and Munlake Contractors, Inc. Defendants.	)	Civil Action No. 2016-CP-08-334 **Speedway LLC's Supplemental Memorandum in Support of Motion for Summary Judgment**

Speedway submits the following points for the Court's consideration in light of Plaintiffs' memorandum in opposition to Speedway's motion for summary judgment and the assertions made by Plaintiffs' counsel at the hearing:

- At the hearing on Speedway's Motion for Summary Judgment, Plaintiffs stated there was critical outstanding discovery which needed to be answered prior to the Court's summary judgment ruling because of Plaintiffs' unsupported hypothesis that (notwithstanding the statute outlining SCDOT's duty to make the decisions regarding the highway and subject median and notwithstanding the testimony that SCDOT indeed exercised that discretion) somehow Speedway and SCDOT had a *quid pro quo* wherein Speedway essentially gave away property to SCDOT for a SCDOT right of way in exchange for the alleged "negotiated" "removal" of the raised median (which again never existed to begin with). In response to Plaintiffs' request, Speedway located the appraisal in question and it, along with the accompanying correspondence, demonstrates that SCDOT paid Speedway an amount *greater than* the appraisal amount, which further solidifies the complete absence of merit to Plaintiffs' speculative theory of their case about the negotiation of the removal of a raised median. There simply cannot be a *quid pro quo* where SCDOT paid more than the appraised value for the subject property. This discovery has been fully responded to by Speedway. (Speedway Discovery Responses dated June 8, 2017 with document production, Ex. D.)

- Plaintiffs' memorandum contains incorrect representations of fact and conclusions unsupported by the record. For example, Plaintiffs improperly attribute the testimony of

William Mulligan to Speedway. In Mulligan's deposition, *noticed and taken by Plaintiffs*, it is clear that Mulligan is the "Vice President of Development" for "Pilot Travel Centers." (Mulligan Dep. p. 5, Ex. A) His role with Pilot was further established in his affidavit of record in this case. (Mulligan Aff., Ex. B.)

Plaintiffs incorrectly state in their Memorandum: "From Speedway's perspective, however, the planned non-transversable median could harm its business by making it harder for potential customers to make a left tum in to its parking lot. W. Mulligan Dep. 60:10-23."[1] (Pls.'s Mem. at p. 6.) Pilot's Vice President of Development, Mulligan, does not speak for Speedway and his testimony cannot bind Speedway as to what Speedway discussed or didn't discuss; nor could Mulligan or Pilot say what Speedway's perspective was. The only testimony in this case on the subject median demonstrates there was never a raised median ever contemplated, designed, or proposed by SCDOT to begin with in front of the Pilot Travel Center. (*See* Colvin Dep. previously submitted)

In addition, Plaintiffs made statements wholly unsupported by the record such as: "Here, however, Speedway did submit an encroachment permit and was subject to all ARMS Manual requirements including its sidewalk standards. W. Mulligan Dep. 11: 17-25; 62-66." (Pls.'s Mem. at p. 12.) These record citations offered by Plaintiffs do not support that Speedway was involved with the encroachment permit; to the contrary, the record is clear, and by Pilot's own admissions, that Pilot alone submitted the encroachment permit.

Significantly, "[w]hile statements of fact can constitute an 'admission[ ] on file' and thus be entitled to consideration by the court in determining whether a genuine issue of material fact exists, **factual statements of counsel, whether made during oral argument or in written briefs or memoranda, ordinarily may not be so considered.**" *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (S.C. Ct. App. 1986) (internal citation omitted) (emphasis added).

- The case law relied upon by Plaintiffs is inapposite as it relates to Speedway's motion for summary judgment.[2] As conclusively established in this case, Speedway was not the adjacent owner of the subject gas station property after its 2001 transfer of title to Pilot. (*See* Mulligan Aff., ¶ 5, Ex. B.) The outcome of Speedway's motion does not change when interpreting the term "artificial danger" in the light most favorable to Plaintiffs such that a median could be construed as an "artificial danger" because South Carolina Code Section 57-3-110 entitled "**Powers and duties of Department of Transportation**" clearly and conclusively establishes SCDOT's sole, exclusive, non-delegable, and statutorily-mandated **"power" and "duty"** over the subject highway and its median design and construction. To the extent Plaintiffs make these arguments with respect to the driveway design and construction, there is no dispute that Speedway had nothing to

[1] For the Court's reference, those deposition pages cited above are enclosed herein as Exhibit A.

[2] For example, *see Skinner v. South Carolina Department of Transportation*, 383 S.C. 520, 524, 681 S.E.2d 871, 873 (2009), chiefly relied upon by Plaintiffs. Nor does *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334 n. 8, 566 S.E.2d 536, 546 n. 8 (2002) (citing Restatement (Second) of Torts § 321) take the leap suggested by Plaintiffs.

do with the encroachment permitting process. Furthermore, the accident in question occurred on the roadway and not in the driveway.

- Speedway supplements its previous submission with the hearing transcript on Pilot's motion for summary judgment, attached hereto as Exhibit C. Speedway further submits that Plaintiffs misapprehend Judge Young's Order in their memorandum of law. Judge Young's Order speaks directly to the speculative nature of Plaintiffs' case and holds that even if a negotiation took place, it did not impute a duty owed to Plaintiffs on the part of Pilot. Likewise, in the light most favorable to Plaintiffs (and contrary to the record), if Speedway had any part in "negotiating" a "removal" of the raised median (which is impossible given the conclusive facts already established), such "negotiation" could not as a matter of law impart on Speedway a duty owed to Plaintiffs which is exclusive and nondelegable as to SCDOT. Plaintiffs seek to equate an alleged "negotiation" with **a decision**, and the decision over what kind of median would be placed on that stretch of highway is and was a decision that Speedway did not and could not have, as a matter of law.

- To the extent Plaintiffs rely on their experts to create questions of fact in their memorandum of law, there is no need to reach expert opinions where, as here, there is no legal duty owed to Plaintiffs by Speedway as a matter of law given the statute which clearly creates in SCDOT a sole, nondelegable, and exclusive duty over the subject roadway.

- Finally, to the extent co-Defendants' arguments are not inconsistent with Speedway's position, Speedway adopts the same.

For all of these reasons, Speedway is entitled to summary judgment as a matter of law.

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Attorneys for Defendant Speedway LLC

June 9, 2017
Charleston, South Carolina

EXHIBIT A



Condensed Transcript of the
Video Deposition of

William Mulligan

7/14/2016

Wright, et al. vs. South Carolina Department of Transportation, et al./Wright, e
2014-CP-08-675/2016-CP-08-334

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Page 1

State of South Carolina)
)
County of Berkeley)

Cynthia Wright and Richard Wright, Plaintiffs, v. South Carolina Department of Transportation and Pilot Travel Centers, LLC Defendants.) 2014-CP-08-675

Video Deposition of William Mulligan

Cynthia Wright and Richard Wright, Plaintiffs, v. Speedway, LLC, Ashley Land Surveying, Inc. F/K/A Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc., and Munlake Contractors, Inc., Defendants.) 2016-CP-08-334

Date: July 14, 2016
Time: 9:07 a.m.
Location: McGowan, Hood & Felder, LLC, 1517 Hampton Street, Columbia, South Carolina

Reported by
Kathleen R. Tackett, CVR-M

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APPEARANCES

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For the Defendants Speedway, LLC: J. Bennett Crites, III, Esq.
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For the Defendants Ashley Land Surveying, Inc. F/K/A Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc.: Bruce A. Berlinsky, Esq.
Berlinsky Law Firm
Charleston, South Carolina

For the Defendant South Carolina Department of Transportation: Roy P. Maybank, Esq.
Maybank Law Firm, LLC
Charleston, South Carolina

Also Present: Franklin Jones, Videographer

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STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

William Mulligan, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. HOOD:

Q Sir, my name is Randy Hood. I believe your name is -- is Bill Milligan (as spoken)?

A William Mulligan.

Q William Mulligan, I'm sorry. I apologize. Mr. Hulligan, I'm going to ask you some questions today. If I ask you something you don't understand, will you let me know?

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A Yes.
Q And, if you need to take a break for any reason, we'll be glad to take a break, for any reason. I really don't expect this to take a -- a huge amount of time.
And I've got documents. We've all got enough, we've probably killed the forest with all the documents that we have. And so, if there's something you feel like you need to see, if you'll just let us know, I would appreciate it, okay?
A Yes.
Q And is it fair for me to assume that if you answer my question, you understood it and answered it to the best of your ability?
A Yes.
Q Okay. You gave an affidavit in this case, right?
A Yes.
Q And what did -- tell us your position, Mr. Mulligan.
A I am vice president of development.
Q Okay. And, when you say you're "vice president of development," who are you vice president of development for?
A Pilot Travel Centers --
Q Okay.

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A -- LLC.
Q And -- and -- and what are your duties and responsibilities, as the vice president of development?
A I have responsibility for real estate, engineering, construction, environmental, outdoor advertising.
Q Okay. And, when you say "construction," are you talking about the design and construction of the travel centers themselves?
A No. Construction would be the actual construction of the travel centers themselves.
Q Okay. And -- and who would be responsible for the design of the travel centers?
A They fall under my group, also.
Q Okay. And so there is a group at Pilot Travel Centers that is responsible for the construction and design of a travel center, whether it's new or whether it's a redesign?
A Yes.
Q Okay. Now, you would agree with me that -- that, when you construct a travel center, you try to do it with safety in mind, right?
A Yes.
Q Okay. And, when you redesign a center, if you do redesign a center, you try to redesign it with

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safety in mind?
A Yes.
Q And you would agree that a -- a good corporate citizen would do those types of things?
A Yes.
Q Okay. Because you don't want somebody hurt, do you?
A No.
Q Okay. Now, you gave an affidavit in this case, right?
A Yes.
Q I'm going to -- I'll mark this as Plaintiff's Exhibit 1.
(Plaintiffs' Exhibit Number 1, "Affidavit of Bill Mulligan.")
Q There you go, sir. Okay. You've already -- do you have the affidavit?
MR. HOOD: I've got three of them. And I've got -- I apologize.
MR. MAYBANK: I got one.
MR. BERLINSKY: I -- yeah.
MR. HOOD: Okay.
MR. BERLINSKY: I got mine.
MR. HOOD: Okay.
MR. BERLINSKY: Right. That's the one that

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was attached to the summary judgement motion?
MR. HOOD: Yes.
MR. MAYBANK: Yes.
Q Okay. Mr. Mulligan, I'm just going to ask you some questions about your -- your affidavit. This was a -- a sworn affidavit by you, correct?
A Yes.
Q Exhibit 1. And I'm just going to kind of read over a couple of them, get you -- just ask you your questions and then I'll get to the meat of it, okay?
A (Nods head up and down.)
Q It says: "Beginning in '94, I began serving as director of construction for Pilot. That directorship later became a vice president's position. I've continuously served as vice president of construction through the present day, which title is now vice president of development."
And you agree with that?
A Yes.
Q And that's the thing that we just kind of talked about, irrespective of this affidavit, right?
A Yes.
Q It says: "On or about September 1st, 2001, Pilot acquired the existing gas station and real property

Speedway Exhibit A

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located at 1521 North Main Street Summerville, South Carolina 29483, the property." Do you see that?

A Yes.

Q Now, when y'all acquired that, that was in a -- a joint enterprise with Marathon and Ashland Petroleum, right?

A Yes.

Q Okay. And -- and when you -- when you go into a joint enterprise or a joint purchase agreement, why do y'all do that, as opposed to just buying it right out?

A It seemed economical and it's what the other party wanted.

Q Okay. And when you say "the other party," who are you talking about?

A Speedway Marathon.

Q Okay. It says: "After acquiring the property in 2001, Pilot redesigned and constructed a new Pilot Travel Center station on the property." You see that, right?

A Yes.

Q So, after the property was acquired in 2001, Pilot actually redesigned this -- this Pilot Travel Center, right?

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A Redesigned the Speedway Travel Center.

Q Okay. And that would be "the property," right?

A Yes.

Q "When Pilot acquired the property, the existing gas station located on the property had three driveways with access to US Highway 17-A. There was no raised median in the highway preventing left turns into the existing gas station from the southbound lane." That's part of your affidavit?

A Correct.

Q Now, do the three driveways that you're referencing there, are they the same three driveways that are there today?

A No.

Q They're different, right?

A Yes.

Q They've been redesigned?

A Yes.

Q Now, if you go to Page 8 -- I mean -- excuse me -- Page 2, which is Paragraph 8 --

A Gotcha.

Q -- it says "Pilot was required to obtain an encroachment permit from the South Carolina Department of Transportation before Pilot could construct the driveways to the new Pilot Travel

Page 11

Center." And, when you say that, what is an "encroachment permit"?

A It's a permit to access the state right-of-way of the state road.

(A cell phone rings.)

Q And the state road would've been Highway --

A 17-A.

THE DEPONENT: Sorry about that.

MR. HOOD: Oh, no problem.

THE DEPONENT: I thought I had that off.

MR. HOOD: Reminds me of mine.

MR. BESLEY: Everybody can now take a moment to --

MR. HOOD: Yes.

MR. BESLEY: -- silence their phones.

MR. HOOD: To silence my phone.

Q And you had to get that encroachment permit from the South Carolina DOT before you could construct the driveways to the -- to the new Pilot Travel Center?

A Correct.

Q And, when they talk about the new Pilot Travel Center, you're talking about the redesigned Pilot Travel Center?

A Correct.

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Q In order to obtain the permit, the location and design of Pilot's driveways had to be approved by the SCDOT?

A Correct.

Q And, in May 2002, Pilot submitted an application for an encroachment permit to the SCDOT seeking approval of the location and design of its proposed driveways?

A Correct.

Q And the encroachment application was approved and the SCDOT issued Pilot a permit to construct the driveways?

A Correct.

Q Okay. Now, you would agree with me that -- that the company that you work for had a duty of care to third parties traveling on a highway that was independent of its contract or its -- independent of its approval of the location of the driveways by the State, right?

MR. BESLEY: I'm going to object to the form of the question.

A No.

MR. CRITES: Same objection.

Q Okay. So you would disagree with that?

A Yes.

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accident report from the Richard Wright case that -- that precipitated this litigation.
A. Okay.
Q. Do you know anything about this -- this accident?
A. Other than there was a driver either in a truck -- I think it was a truck -- a pickup truck -- that was intoxicated, and I think on drugs, also, and he hit a motorcycle with two occupants on it.
Q. Okay. Did you ever talk to anybody or have you talked to anybody at the Pilot Travel Center if they saw this or anything like that?
A. No, sir.
Q. Okay. And, so, that's basically the only knowledge that you have about it?
A. Yes, sir.
Q. Okay. I believe that you've already answered this but I just want to ask again: A truck stop corporation has a responsibility to construct these centers in a safe way, correct?
MR. BESLEY: Object to the form of the question.
A. Truck stop centers?
Q. Corporation.
A. I -- I don't know what you mean by "truck stop corporation" or --

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Q. Pilot has a responsibility to construct one of their travel centers in a safe way?
A. Yes, sir.
Q. And, if they construct it unsafely, who does it put at risk?
A. Well, it would put at risk their customers that were coming into the facility.
Q. Okay. I believe you've already said that -- that Pilot employees do not have a responsibility to know state regs, right? Because y'all depend on someone else?
A. That -- that's correct. They will research the state regulations. They will research the professionals that they use. None of -- none of the guys -- Gary Bloom is not a licensed traffic engineer, so he is going to go -- he is going to hire professionals that are. He's going to rely on the Department of Transportation, again, who has responsibility for all roads, has immense amounts of data, has professionals that study this day in, day out. It's -- it's their living, so he's going to rely on those, and -- and that's what you, as the traveling public or as a customer, would -- would want. You want the -- the best people and that's why the DOTs are there: They're to protect

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our safety.
Q. Okay. And -- and the -- when you talk about that, you're talking about y'all -- y'all either hire someone or rely on the DOT, right?
MR. MAYBANK: Object to the form.
A. We -- but, well, ultimately it's the DOT, so --
Q. Okay.
A. Because it's -- it's -- they're the guys that're going to issue the permits. It's their road. It's their access.
Q. Okay. And we know that there's a book called, and they refer to it as, "The State -- State Regulations," right?
A. I -- I'm sure they have a book. I don't know what it's called, but I'm sure --
Q. But there are industry standards to -- you've heard of the term "industry standards"?
A. Absolutely.
Q. And you know there are industry standards, too, right?
A. Yes, sir.
Q. And, if -- if Pilot constructed a parking lot with a goal of maximizing profits over safety, bad things could happen, right?
A. I don't think we -- we design things like that.

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Q. Right. That's what I'm saying.
A. Right. Right.
Q. Bad things could happen if somebody did do that, right?
A. No. That's incorrect.
Q. Okay. So bad things couldn't happen if they maximize profits over safety?
A. No. You have a one-sided statement.
Q. How is it one-sided?
A. Well, today there's numerous choices that somebody could -- could buy, so if there's a lot of accidents or it's a safety issue, people just won't patronize your business. So, when you say, "Well, just do however you would -- design it however you want and -- and more people would come," that -- that's incorrect. People today have choices -- multiple choices, so if a site is unsafe -- like you said, if there's vagrants hanging around, if it's congested, if it's hard to get in and out, all those types of things, they won't come because there's so many other choices for them to go. Why would they risk themselves or their family in a dangerous situation?
Q. Okay. But somebody that's just driving down the road and is smacked while somebody's trying to move

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into your station, they're not actually trying to go into your station, they're just traveling down the road, right, like the person on this motorcycle?

A The person on this motorcycle was hit by a drunk, intoxicated driver.

Q Who was pulling into the Pilot station?

A That -- that's -- that's even more of a reason there. He was drunk and intoxicated and was hit by a person pulling in. He could've been hit -- the station could've been a thousand yards down the road, and he would've hit him anyway. He was drunk and intoxicated and hit a motorcycle in the closest lane to him. Could've happened a thousand -- could've happened a mile from the intersection.

Q Okay. I know you had said earlier you were down in Charleston yesterday. Was -- was it down there at this particular Pilot Travel Center?

A No, sir. We were opening a new travel center down by the port.

Q Okay. I'm going to hand you that -- where's that? We're almost done. Let's see.

Plaintiffs' Exhibit Number 15, "SCDOT ARMS Access & Roadside Management Standards."

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Q I think this was Exhibit 15, and it says, "SCDOT ARMS," which is the Access and Roadside Management Standards. And, when I go to the very first page, which is actually Page 19. I didn't make a copy of the whole manual, I just made the one about driveways.

It says, "The ASHTO A Policy of Geometric Design of Highways and Streets (Green Book, 2004) states: Driveways are, in effect, intersections and should be designed consistent with their intended use." Do you see that?

A Uh-huh.

Q And you would agree with that, right? They should be used for their intended use?

A Yeah. Yeah.

Q And then, at the bottom it says, "Appropriate engineering and safety factors should be considered in conjunction with these standards so that conditions unique to individual driveways are properly taken into account."

A Correct.

Q You would agree with that?

A Uh-huh. Yes, sir.

Q Now, on the -- Page 20, which is the third page, but -- and you may not know this, I just --

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A Uh-huh. Uh-huh.

Q I'm going to ask anyway.

It says, "Driveway Classification," and then on the left side it has, "Low Volume, Medium Volume, High Volume, and Major Volume."

Do you know which volume it was in front of this particular store?

A Well, this is not talking about traffic volume in front of a store. This is not talking about road traffic volume.

Q Oh. Okay.

A Has nothing to do with road traffic volume.

Q Is it trips to the store itself?

A That's what it is. Yes, sir.

Q Okay. Do y'all know if you have -- do -- do y'all know how many trips you have to the store a day or --

A I -- I am guessing it's somewhere in the high volume, 601 to 4,000.

Q Okay. If you go to the next page, it just talks about the angle of an intersection, the width and radii. That stuff that you -- when you say that you rely on others for that, that's what you rely on them for, right?

A You rely -- yes. You rely them on all types of

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design, yes.

Q Okay. Going to the next page, Page 22, under the first paragraph, the last sentence, it says, "Inadequate driveway design creates conflicts that can be detrimental to safety and operations on the mainline." Would you agree with that?

A Say that again.

Q Yes. "Inadequate driveway design creates conflicts that can be detrimental to safety and operations on the mainline."

A Okay. I'd agree to that.

Q Okay. The next page -- let's go to the next. When I go to Page 25, it says, "Islands."

It says, "Traffic islands are used to guide motorists into proper lanes and can be used for pedestrian access." You see that, right?

A Yes, sir.

Q It says, "They shall be used when the driveway characteristics or complexity is of such a nature that their use is needed to eliminate conflicts." Do you see that?

A Yes, sir.

Q And you would agree with that, right?

A Yes, sir.

Q Okay. If you go to the bottom, it says, "Right-in,

Page 65

Right-out Driveways."
A Uh-huh.
Q It says, "Their -- their" -- it says, "Right-in, right-out driveways are necessary in some locations in accordance with Section 3C. A right-in, right-out driveway should incorporate a triangular (pork chop) raised concrete island no smaller than 100 square feet with sides a minimum of 12 feet in length after rounding the corners." Do you see that?
A I do.
Q And you would agree with that, right?
A In general, yes.
Q Okay. It says, the next page, it says, "When a right-in, right-out driveway is implemented on an undivided highway, the use of a restrictive median in concurrence with the 'pork chop' island is preferred; however, adjacent impacts must be evaluated prior to implementing restrictive medians." You see that, right?
A Uh-huh.
Q Says, "A 4 foot wide raised median concrete median is recommended. However, if a concrete median cannot be provided, consider the use of a Department-approved surface-mounted curbing system

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with flexible delineator posts as an alternative." Do you see that?
A Uh-huh.
Q So you can actually have guardrails used instead of just a raised median to prevent left turns, right?
A Sure. The DOT can put whatever they want up in a median.
Q Okay.
A Can put trees.
Q Sure. Okay. Now, a couple general things and we're almost done.
Your name is William Mulligan. You're from Atlanta, Georgia?
A No, sir.
Q Where?
A Knoxville, Tennessee.
Q Knoxville, Tennessee. You're in Gamecock country.
A I know. There you go.
Q Date and place of birth?
A Dubuque, Iowa. April 20th, 1961.
Q Now, you got the Big Ten and the SEC.
A I'm telling you. I went to Texas A&M.
Q Oh, gosh. Then you got a Big Twelve. Well, now the SEC.
A Now the SEC.

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Q Do you have any relatives in Berkley or Dorchester County?
A Not to my knowledge.
Q Can you just tell us just a little bit about your education?
A Graduated from Texas A&M with a degree in engineering technology specializing in civil construction.
Q Okay. Texas A&M has one of the top highway engineering schools in the country.
A Yes, sir.
Q Did you -- did you take any courses in their --
A I think I had one class.
Q Okay. Did you get -- have you gotten any master's degree or doctoral degrees?
A No, sir.
Q Can you tell us just a little bit about your employment for the last 15 years/20 years? Well, since 1994 you've been with --
A Pilot Travel Centers.
Q -- Pilot Travel Centers.
A I started with Pilot Travel Centers as the director of construction. About a year and a half later, I took over as director of construction and engineering. About three years later, I took over

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part of real-estate. Early -- mid-2000s, I took over environmental and -- and facility maintenance. Somewhere in there, I picked up outdoor advertising. I also work on joint ventures.
And recently, two/three years ago, the president of our company left. And he was doing a lot of the -- we were doing the real estate together. He was doing a lot of it. So I took over the rest of the real estate and gave back maintenance.
Q When do you sleep?
A They don't pay me to sleep.
Q And are you licensed?
A I am not.
Q I mean, like, a civil engineer --
A I am not --
Q -- or anything?
A I do not have a -- I do not have a -- I'm not a PE, professional engineer.
Q Okay.
A Sorry.
Q Do you have any felony or misdemeanor convictions?
A I do not.
Q Ever been in any drug or alcohol rehab?
A I have not.

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Q Okay. When -- would it be safe to say that Gary Bloom, at the time, was, I guess, the project engineer for this particular . . .
A We would refer to him as "project manager."
Q Okay. So he would be in charge of this from closing, levelling the old center, getting it -- till it's reopened?
A No. The way he does it is: He would've got the site when we said, "Hey, we want to do something with this." So he would've done an investigation, figured out what needed to be done as far as to rebuild it, he would've got it all the way up until it went to bid. And at that point a construction manager, he would've worked with him, and then that would've got transferred over to a construction manager who would've then monitored it from the time construction started until the time he turned it over to operations.
Q Okay. Do you know who that person was after Bloom until it became -- till it went to operations?
A I would have to go back and review who it was. I'm not sure. I can't remember. I had multiple construction managers, so.
Q Okay. Thank you.
MR. CRITES: I don't have anything further.

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MR. BESLEY: Anything else? All right.
FURTHER DEPONENT SAITH NOT.
(Whereupon, there being no further questions, the deposition was concluded at 11:03 a.m.)
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(**Certificate accompanies sealed original only.)

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	C/A NUMBER: 2014-CP-08-675
Cynthia Wright and Richard Wright, Plaintiffs, vs. South Carolina Department of Transportation, C & A Unlimited, Inc. and Pilot Travel Centers, LLC, Defendants.		**AFFIDAVIT OF BILL MULLIGAN**

Personally appeared before me the undersigned, after being duly sworn, deposes and says:

1. The contents of this affidavit are based on my own personal knowledge.

2. I am of sound mind and over eighteen years of age.

3. I am familiar with the allegations alleged by the Plaintiffs in the above-captioned lawsuit pending in Berkeley County.

4. Beginning in 1994, I began serving as the Director of Construction for Pilot. That Directorship later became a Vice President's position, and I have continuously served as the Vice President of Construction to the present date, which title is now Vice President of Development.

5. On or about September 1, 2001, Pilot acquired the existing gas station and real property located at 1521 North Main Street, Summerville, South Carolina 29483 (the "Property").

6. After acquiring the Property in September 2001, Pilot redesigned and constructed a new Pilot Travel Center station on the Property.

7. When Pilot acquired the Property, the existing gas station located on the Property had three driveways with access to U.S. Hwy 17-A. There was no raised median in the highway preventing left turns into the existing gas station from the southbound lane.

8 Pilot was required to obtain an encroachment permit from the South Carolina Department of Transportation ("SCDOT") before Pilot could construct the driveways to the new Pilot Travel Center. In order to obtain the permit, the location and design of Pilot's driveways had to be approved by the SCDOT. In May 2002, Pilot submitted an application for an encroachment permit to the SCDOT, seeking approval of the location and design of its proposed driveways. The encroachment application was approved, and the SCDOT issued Pilot a permit to construct the driveways.

9. Construction of the Pilot Travel Center began in or around August 2002. Around the time the Pilot Travel Center was being planned/constructed, SCDOT was also performing an improvement project to the intersection of I-26 and U.S. Hwy 17-A, which was adjacent to the Property The SCDOT did not install a raised median in the highway to prevent left turns into the Pilot Travel Center as part of the improvement project.

Bill Mulligan

April 28, 2016

Sworn to before me this 28th

day of April, 2016

Sherry L. Blake (L.S.)

Notary Public for Tennessee

My commission expires: 9-11-16

SHERRY L. BLAKE STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

EXHIBIT C

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE FAMILY COURT 2016-CP-08-334
CYNTHIA WRIGHT, PLAINTIFF, vs. SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, PILOT TRAVEL CENTERS, LLC, SPEEDWAY, LLC, ASHLEY LAND SURVEYING, INC., F/K/A ASHLEY ENGINEERING & SURVEYING, INC., and ASHLEY ENGINEERING & CONSULTING, INC., AND MUNLAKE CONTRACTORS, INC. DEFENDANTS.	)	MOTION HEARING TRANSCRIPT OF RECORD

Monday, April 10, 2017
Moncks Corner, South Carolina

B E F O R E:

The Honorable Roger M. Young, Sr.

Maria Dempsey, RPR
Official Court Reporter
Berkeley County Family Court
Ninth Judicial Circuit
Moncks Corner, South Carolina

APPEARANCES

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Roy Pearce Maybank, Esq.
Attorney for Defendant
South Carolina Department of Transportation

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Speedway, LLC

Bruce Alan Berlinsky, Esq.
Attorney for Defendant
Ashley Surveying & Engineering

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EXHIBITS

(No Exhibits Proffered.)

THE COURT: Next I've got Wright versus Marathon. All right. Pilot versus Wright versus Marathon. What have we got?

MR. SILVERBERG: Your Honor, my name is Jeff Silverberg, and I represent Pilot Travel Centers, LLC in this action. This is our motion for summary judgment. Let me first just ask for the Court's indulgence, because there's quite a bit I'd like to try to get through this morning, because although the facts aren't that complex, we were recently, you know, served with -- the plaintiff's counsel recently submitted a long memo in opposition, and some affidavits of experts on the eve of this hearing, that I believe have a number of, I guess, assertions and allegation, and they're not based on the record. And so I'd like to clear them up, because I think it makes what otherwise is a very straightforward case seem more complex than it is. So I would like to address that. If at any point you think I've talked enough, I'm sure you'll let me know.

THE COURT: Who do you represent?

MR. SILVERBERG: Pilot Travel Centers, LLC. It's our motion for summary judgment, and my name is Jeff Silverberg.

MR. MAYBANK: Your Honor, we are all in the case. I'm Roy Maybank on behalf of the South Carolina Department of Transportation.

MR. CRITES: Bennett Crites on behalf of Speedway.

MR. BERLINSKY: Bruce Berlinsky for Ashley Surveying & Engineering.

THE COURT: Okay. Y'all just here to listen to him? Is there more than one motion?

MR. SILVERBERG: It's one motion. It's one single motion. It's Pilot's motion in this case.

THE COURT: Okay.

MR. SILVERBERG: I guess they're here for moral support.

THE COURT: They're just there for...

MR. SILVERBERG: As I was saying, if you think I've talked too much, perhaps you'll let me supplement with a response memo to their -- the memo of law, if need be.

And do you have the copy of the memo in support I submitted last Thursday? If not, I have a copy. I only have one copy. I assume you have a copy.

All right. Your Honor, today the plaintiffs are going to ask this Court to hold that a business owner that -- whose property abuts a highway, has a duty to protect travelers on that highway from being hit by a drunk driver who was under the influence of cocaine is, in a nutshell, is what this case is about. My client, Pilot Travel Centers LLC, owns a Pilot Travel Center gas station that abuts Highway US 17-A off of the I-26 exit in

Summerville, South Carolina. And the plaintiffs are asking this Court to hold that my client can be held liable for an automobile accident that involved the plaintiffs and another driver in the portion of the highway that is in front of our Pilot Travel Center.

Let me -- I'd like to provide a brief introduction to the facts of the case. In order to do that, I think it would be helpful if the Court looked at what's Exhibit B of my memo, which is a photograph, and I can just hand this up.

So this photograph is an aerial view of the Pilot Travel Center, which is at the top. And at the bottom, across the highway, is actually another gas station. I believe that's a Hess station. Now, I started to confuse myself which was east, west, north, south or whatnot, so I'll just kind of give directions based on this photograph.

What happened is, in this case, is on the night of October 6th, 2012, the plaintiffs were on a motorcycle traveling through the intersection to the right of this photograph towards the Pilot station in the left-hand lane, past the Pilot station, when at the same time an individual by the name of Daniel Sena, driving a pickup truck, was traveling in the left lane on the opposite side of the highway in the opposite direction. He was driving with a blood alcohol level above the legal limit, and he was under the influence of cocaine. He was also driving without a

suspended license due to a prior DUI.

What happens is that Mr. Sena turns on his left blinker, gets into the median right across from the driveway to the Pilot Travel Center that's highlighted on this photo. And his testimony, Daniel Sena's testimony is that he attempted to make a left turn in, and he hit the plaintiff's motorcycle, injuring the plaintiff. So the important thing here is, the accident occurred entirely in the highway. Neither Mr. Sena nor plaintiffs were invitees or licensees of the Pilot Travel Center.

According to Sena's testimony, he simply just didn't see the plaintiffs. He didn't see the motorcycle when he attempted to make the -- what was a legal, otherwise legal left turn. And he said, there's no reason I didn't see it, just bad judgment on my part. Can't blame anyone else but myself. I take full responsibility for the accident. All right. That, that right there is what this case is about, that accident. And then the plaintiffs have sued --

THE COURT: So he was wanting to make a left-hand turn into the Pilot?

MR. SILVERBERG: That was his testimony.

THE COURT: But he never turned into the Pilot?

MR. SILVERBERG: He never turned into the Pilot. He hit the plaintiffs.

THE COURT: So this happened in that little median

area?

MR. SILVERBERG: Well, I guess in the left lane. The left lane --

THE COURT: Well, you've got an X written, drawn, written on there.

MR. SILVERBERG: And Your Honor, I apologize, I'm not sure exactly what the X represents. This was an exhibit to Sena's deposition.

THE COURT: Hold on. It's already confusing enough to understand these, but to mark it with something and say, well, I don't know what that means, doesn't make my job easier. So what does the X stand for?

MR. SILVERBERG: Well, I could look at the testimony, but I believe this was -- perhaps plaintiff's counsel can elicit.

MR. SMITH: Judge, X is where he was turning left. The wreck happened in the right-hand inside lane just before X got into the Pilot Travel Center. The plaintiffs were traveling from Summerville down the overpass, heading straight towards Moncks Corner.

MR. SILVERBERG: Well, the testimony is that the plaintiffs were in the left lane, traveling left lane. No dispute the accident occurred in the highway. Now, the plaintiff's have sued Pilot Travel Center. They've also sued the Department of -- South Carolina Department of

Transportation. They've sued the prior owners of this property, which is Speedway, LLC. They've also sued Ashley Engineering, which did some design work for Pilot. And they sued the general contractor of this Pilot station.

The main claims are that the Pilot -- the plaintiffs are claiming that this median, this flush painted median in this photograph I've shown the Court, should have been a raised median, and that that would have prevented this incident; and that the driveway on our property was somehow -- there is a design flaw, and that somehow caused the accident, creating some sort of dangerous condition on the highway.

We filed the present motion on our viewing that, you know, we didn't owe any duty to the plaintiffs just by virtue of abutting this highway. That even if there was a duty, we didn't breach any duty, and the plaintiffs can establish that any duty may or may not have breached caused -- was a proximate cause of this accident or the plaintiff's injuries.

So let me just address, I guess, the duty argument first. The plaintiffs first must establish that we owe them a duty to prove their negligence action against us. They can't show duty, their claim fails. Now, in South Carolina, there's no common law duty owed by a property owner that abuts a highway to travelers. There's no just general duty.

Okay. In Skinner v. South Carolina Department of Transportation, which is 3-83-SC-520, in this case, the South Carolina Supreme Court did say that a property owner whose land abuts a highway only owes a duty to travelers for highway conditions where the property owner has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers.

Here, the plaintiffs cannot establish that Pilot created a dangerous artificial condition on the highway to serve as the basis of any duty. As I alluded to a little while ago, the allegations are that the dangerous conditions on the highway was the fact that this flush painted median should have been a raised median. And then again, the driveway that Mr. Sena testified was trying to turn into created an artificial condition that was dangerous on the highway. I'll take them one at a time.

The absence of the median. Even assuming that the absence of a raised median in this highway was a dangerous condition, it was not a condition on the highway created by Pilot. It was a condition created by the South Carolina Department of Transportation. All right. The decision as whether or not a median, a raised median, should be installed on a highway falls within the exclusive authority of the South Carolina Department of Transportation, because they are the state agency with the police power and the

duty, the exclusive authority to plan, maintain, and operate state highway, thus state highway system in our state, and we cite the several cases and statutes in our memo to support those propositions.

You know, the Department of Transportation has the exclusive authority to design the highways and to -- which includes the placement of traffic control structures, such as the raised median, you know, that the plaintiffs allege should have been in. In fact, the Department of Transportation, in their 30(b)(6) deposition, they said it was their decision not to put a raised median in that intersection.

The plaintiffs cannot point to any authority establishing that Pilot, merely by being an abutting property owner, had a duty to maintain or repair or warn others of the fact that there was no median here, because we don't have control of the highway. We don't have control of the median, which is part of the highway. One of the cases we cite in our memo is pretty on point. It's a Pennsylvania case, Allen v. Mellinger. In that case -- the facts are very similar. In that case, the plaintiffs were actually trying to make a left turn into a business property, and they were hit by someone as they were doing that, and the Commonwealth of Pennsylvania applied -- applying the Restatement Second of Torts Section 349, said that the

business owners owe no duty to the plaintiffs to maintain the highway in a safe condition. All right. Section 349, it's in a footnote in our memo, to speed things up, but it's essentially paraphrasing here, and it says, the possessor of land that is on a public highway, you know, is not liable by his failure to maintain the highway in a safe condition or to warn others, other travelers of dangerous conditions, even if they know of dangerous conditions. They just have no duty.

So using that statement, the Commonwealth Court of Pennsylvania in Allen v. Mellinger, basically said no duty was owed. The Court said, look, the highway is the -- you know, the Commonwealth owns the highway, has the exclusive duty for maintenance and repair of state highways. You know, the Court also rejected the argument of the plaintiffs in that case, that the business owner's failure to erect signs in their driveways or place curbing or barricades in the parking lot to indicate the safest place to turn into the property. The Court rejected that argument, then saying that argument didn't create a dangerous condition.

The Court said, even if this left turning lane, similar in our case, this median, even if it was a dangerous condition, all right, it was a condition of the highway, which is the responsibility of the Commonwealth of Pennsylvania, which is what we have here, like in Allen.

Even if the absence of a raised median was a dangerous condition, it was the condition of the highway created by the Department of Transportation.

So it seems pretty straightforward, however, perhaps to try to get around this, the plaintiffs allege that, well, Pilot somehow was involved in the decision to not put a raised median there. In other words, we negotiated or we somehow influenced the Department of Transportation's decision. Now, this might be a good time to point it out, in the memo and all that we submitted to the Court, I mean, I counted no less than 22 times does the plaintiff allege that Pilot negotiated the removal of a median. That's just simply not true. It's just not supported by any of the evidence in this case.

And in order to explain that, I'm going to have to just give you some more background into where this allegation that Pilot somehow influenced the decision not to put a raised median, I'm just going to have to explain where this comes from. So Pilot acquired this property on or about September 1st, 2001. When the property was acquired, there was already a gas station there. That gas station already had three entrances to the highway, okay, just like it does today. Now, there was never a median in that highway. The DOT has testified there was never a raised median in this highway.

Okay. Now, Pilot started to rebuild, to redesign and rebuild the existing gas station. They started to build it in around 2002, I think. I believe it was the testimony that it was August of 2002. It just so happens that around this time, the Department of Transportation had two ongoing projects in the area. And so I'm going to refer to the photograph I was referring to earlier. There were two projects in this area going on the same time as this Pilot Travel Center was being built. One, according to Department of Transportation, was what I will call the interchange project; that's what I refer to it in my memo. And with that, my understanding of what that project was, if you look at the photograph, you see on the right side, that interchange, it was basically to redesign and redevelop that interchange, and then all the way to the right of this photograph that cuts off to Summerville. So from the stop bar on the left side of that intersection, all the way to the right, that's what was referred to -- was the interchange project. That the plans for that project were designed by -- the Department of Transportation had an outside firm design those plans.

The second project was actually widening the highway right in front of the Pilot station. These were two projects going on around the same time. The widening plans were actually designed internally by the Department of

Transportation. And this is important, because the plans for the widening project, which were prepared in 1998, never had a raised median in them. They weren't there. There was never a raised median. Okay. Now, the DOT did testify that in the plans for the interchange project, that again, we're dealing with an area not related to the portion of the highway in front of our Travel Center. That interchange project was -- the designs that were prepared by, again, an outside firm did show, on one of their plans, a marker for a raised median right here, but the DOT testimony, their 30(b)(6) said, that was just a placeholder. It was a placeholder because we had to, at one point, take our widening plans, and we had to put them together with the outside firm's interchange plans, but there was never an intention for there to be a raised median here. That was just the outside firm having to put something there, a placeholder. And so the decision -- the testimony of the Department of Transportation was, the decision that a raised median was never -- it was never anticipated there be a raised median in here, and it was just a placeholder.

And I bring this distinction because one of the arguments is that, again, the original plans of the Department of Transportation, the plaintiffs claim it showed a raised median that was removed, and that's just not what the Department of Transportation has testified to. They

said there was never an expectation that there would be a raised median, and that decision was made by the Department of Transportation. The person who made that decision was deposed. He was one of the designees. He said, I made this decision when the widening plans were prepared in 1998. So to suggest otherwise, to suggest that there was always -- there was at one point plans for a raised median is just not accurate when you consider the testimony of the Department of Transportation.

Okay. So having explained that, the next question is, all right, well, then where's the evidence that plaintiff's counsel is alleging 22 times in their memo that the Pilot negotiated the median? Well, that comes from this document. This is the alleged smoking gun in this case. This is a letter dated August 28th. It's from Tommy Smoak from the Department of Transportation to a Robert Gru (phonetic) -- I think it may be Grivy (phonetic), with Marathon Ashland Petroleum, which I'll represent was part of the prior property owners before Pilot came along. It's dated August 28th, 2000.

Plaintiffs are relying on these handwritten notes on the bottom. You know, I'm not going to read them all, but you'll see the first line in parenthesis, it says, negotiated median removal and drive cuts (phonetic). This handwriting on this August 28th letter is what the

plaintiffs are relying on to argue that we negotiated the removal of the median. Again, the removal of the median, that according to the Department of Transportation plans, was never intended to even be there. I'll tell you why that's -- this offers no support for that proposition, and that's because, again, look at the date. The date is August 28th, okay, 2000. The Department of Transportation testified that the decision not to include a raised median was in the original widening plans, which were prepared in 1998. Okay. We got a date conflict there. Then Mr. Gru isn't an employee of Pilot. All right. Pilot wasn't involved at this point. He's never been an employee of Pilot. Therefore, you can't somehow say that this has anything -- this is any evidence that Pilot negotiated with the Department of Transportation. The Department of Trans -- the individual who made the decision to not have the median in the widening plans, he doesn't recall ever talking to anyone from Pilot about the median.

So again, this letter doesn't really prove in any way that Pilot had any involvement in the decision of whether or not to have a median in front of Pilot Travel Center, notwithstanding the allegations in the Plaintiff's memo of law. In fact, the Department of Transportation, their deposition, the deposition lasted over 10 hours. All right. We're talking about 400 pages of a 30(b)(6)

deposition, and several times the Department of Transportation's designee said there was no negotiation of the median. I'll just quote one excerpt of that long deposition. It's from Leland Colvin, who was a designee. It's from one Page 117 to 118, and there were some prefatory comments, but the substantive question was:

Well, let me ask you this. Was there any negotiation in the decision to go with the flush median as opposed to the raised median? Answer: No. I mean, not -- not from my perspective, no. Definitely not from my perspective. From my perspective, it was purely engineering -- it was a purely engineering decision based on the highway design manual.

And I'll represent to you that the highway design manual is allegedly the bible in terms of the Department of Transportation's design plans. They use that whenever they're designing something. They refer to it as their bible. So the deponent said, it was a purely engineering decision based on the highway design manual, based on the difference of the two projects, the purpose and need. Certainly, one would have been easier for Mr. Smoak to negotiate than another one, but no, it was not removed as a result of right-of-way acquisition. It was removed as a result of meeting of the plans, and the purpose and need of the two projects, and matching the highway design manual. That's the DOT's deposition

testimony. No negotiation took place.

And I will point out, despite the fact that plaintiff's counsel says 22 times in their memo that we negotiated or altered the plans that to get rid of the median, in Footnote 7, they actually -- the plaintiffs actually acknowledge that there was no negotiation. The plaintiffs acknowledge the Department of Transportation asserts the change in median design was unrelated to its discussions with Pilot. Pilot's VP of development testified he was unaware of whether there were earlier plans for a raised median.

In light of the evidence described in the negotiated resolution regarding the median and the parties' differing accounts, the issue presents a question of fact that a jury must resolve. I would submit to the Court there's no question of fact here. There's no scintilla of evidence that Pilot had anything to do with the decision of whether or not a raised median should be added, again, added, because there never was one, ever, to the portion of the highway in front of our Travel Center. So again, I would argue that there was no duty as it relates to the presence of a raised median.

The next allegation is that the construction of our driveway had something to -- somehow created a dangerous condition on the highway. I referenced the Skinner case

where it says you're only responsible for artificial dangerous conditions you can create on the highway. I'd come across a South Carolina case stating that a driveway in and of itself can be considered a dangerous artificial condition on a highway. In fact, if you look at the Skinner opinion, it sets forth what artificial conditions they're talking about. They're talking about situations where a business spills material on the roadway or emits smoke on the roadway. That's the artificial condition contemplated by our case law. And just think about the ramifications of that. If every business owner along this highway is going to be liable simply for having a driveway on its -- on the highway. It would be one thing maybe if there was something defective about the driveway itself, but that's not the case here.

And then I will add to this. I will add that, again, the Department of Transportation has the exclusive authority when it comes to determining where a business can put its driveways. A business can't just start building driveways. They have to get an encroachment permit. They have to submit that to the Department of Transportation.

According to the Department of Transportation, the location of driveways are part of the design of the highway, and as we've discussed, the Department of Transportation has the statutory duty to design the highways of our state.

They have control over the highways of our state. The Department of Transportation testified that they reviewed the business owner's design plans, the permit for an encroachment. They review those to ensure that they comply with the DOT regulations and the standards concerning the design and location in driveways. They also will review this permit to make sure that the driveways do not create safety concerns in the highway. That's part of their review process, and they use their independent analysis to determine whether or not those driveways should be allowed.

And in this case, Pilot submitted a encroachment permit, and it was granted. Therefore, Pilot could not have constructed these driveways to its property, unless the Department of Transportation determined that they comply with the Department of Transportation's design standards, and determine that they were safe for the public.

Briefly, I'll address, you know, there's some indication, well, you know, Pilot, you should have been aware of potential dangers on the highway because there were other accidents on the highway. Well, you know, there's no affirmative duty to act. All right. A legal duty -- an affirmative legal duty only exists if it's created by statute, contract, relationship status, property interest, or some other special circumstance. Here, that didn't exist.

There's no duty to affirmatively act. In fact, the Department of Transportation said, we don't expect business owners to tell us if there's accidents on their property. And I will add that there's no evidence in this case that anyone at Pilot was aware of any accidents that occurred in this same manner. There's been no testimony to that effect. And foreseeability of an injury alone, under our case law does not create a duty to act. So I'd argue there's no duty simply, even if you were to assume that there were a lot of accidents here.

Now, plaintiff's counsel attached to their memo Exhibit 14, this collision report. And they allege in their memo, there's over 254 accidents in this area, and at least a third of them involve turns into the Pilot station. Well, I would submit to the Court that that's not what this shows. In fact, there's no testimony in the record explaining what this collision report says or does not say. It doesn't tell you the exact locations of accidents. It gives general coordinates. It doesn't tell you -- it doesn't prove that any one accident was caused by not having a raised median. And in the absence of any testimony explaining what this does show, I would ask the Court to disregard any representations as to the amount of accidents that involved this particular driveway, because of the plaintiffs have failed to present any admissible evidence that this report

shows what they say it does.

All right. So to finish up the duty. There is no duty on the part of Pilot with respect to any dangerous conditions created by the median, because we didn't control the median. The Department of Transportation controls the median. There's also no duty owed by virtue of simply having a driveway, especially here where the driveway was approved by the Department of Transportation, and deemed to comply with their standards, both safety and otherwise.

So having established that we do not owe the plaintiffs duty to move to breaches of that duty, and again, thank you for the Court's indulgence in letting me go through all this. The two breaches, essentially, one is that, that's alleged, one is that we created an artificial condition, we being Pilot, by negotiating the removal of the median. Well, as I've said, and acknowledging probably, that's just false.

There's no evidence that Pilot in any way negotiated the removal of the median or was in any way involved in the discussions on whether or not the median should be there. So I'm not going to address that breach, because I think I've covered it. There's no dispute that the Department of Transportation made the decision, when it was doing the widening project, not to put that median there. It was a decision made before Pilot acquired the property. So let's

talk about the improper design of the driveways, because I think that's the other alleged breach of this alleged duty that we owed the plaintiffs. And before I address it specifically, now probably is a good time to briefly address the affidavits of plaintiffs' experts, which were sent to us, again, I think it was Thursday of last week, may have been Wednesday of last week, but nonetheless, I have to say, I'm going to address them essentially together, because they're pretty much verbatim substantively.

These affidavits essentially just opine on matters of law, which is within the sole providence of this Court. Dawkins v. Fields 354 SC 58, in general, expert testimony on issues of law is inadmissible. If you look at these, you know, Paragraphs 5 through 8, all they talk about are what the experts think are the duty owed by Pilot. All right. That's an issue of law for the Court. Paragraph 11 of both affidavits, both talk about what an artificial condition is. Again, I'd argue that that's for the Court to determine. Paragraph -- the rest of these, I mean, the rest of these affidavits, again, just make absurd statements not based on any evidence in the record or some of them don't even appear to be within the expert's alleged field of expertise. They contain the same allegations that Pilot somehow negotiated the removal of the median and that was a breach of duty. As I've explained to you, that's just not factually correct.

So they also talk about -- they both opine that it's their opinion that the absence of the median caused the damages. At one point they say, it's my belief the only reason why there's no median in there is because Pilot had a monitary incentive for there not be one. Again, it just doesn't make sense. It's not based on anything, because the Department of Transportation has said that they chose not to put a raised median. And so I would just ask the Court to disregard this based on Dawkins vs. Fields, where Superior Court, you know, agreed that an expert's affidavit shouldn't be considered, because although it offered some helpful factual information, the majority of the affidavit was simply just legal argument as to why summary judgment should be denied.

The Court noted in Dawkins that the affidavit just read like it could be plaintiffs' oral argument to the Trial Court. And I would submit to the Court that that's exactly what these affidavits are, and therefore, since they primarily contain legal arguments and conclusions, they should be disregarded. Notwithstanding that, let's talk about what they say about the breach of the duty allegedly owed with respect to the design of the highways. As I can tell, as I can, I guess, deduce from these, they're alleging that these -- this particular driveway didn't comply with one of the handbooks that the Department of Transportation

uses when evaluating whether or not to grant an encroachment permit to a business.

The first design flaw, I think, that they're saying is that it wasn't within the functional -- is that the driveway was within the functional area of the intersection. Now, I won't get too much into that. I'll just say that my understanding is that the functional area of intersection basically just refers to the amount of distance required for people entering that intersection to be able to navigate the intersection. Well, as we know, this accident happened well beyond the intersection. And even to the extent that that functional area of an intersection, having a driveway there creates a dangerous condition, there's no evidence that this particular driveway was within that functional area.

The DOT, at least one DOT official said that that wasn't -- that he didn't think that was within the functional area. And even the plaintiffs' expert, I think in Paragraph 9, both of them say -- they don't say it was within the functional area, they say it was too close to the functional area. They don't explain why that was a problem in this case or how that proximately caused the accident, but that's one of the allegations.

The other allegation is that, well, according to DOT's handbook, which again DOT said was just guidelines that they would use, and they don't always comply with them,

is the distance between the two driveways. Well, what does that have to do with this accident? Whether it's 100 feet, 200 feet, the distance between the two driveways had nothing to do with the fact that you had a drunk driver under the influence of cocaine failing to yield. So to the extent that's even true, that the distance between the driveways were not in compliance with some handbook, that wasn't the proximate cause of the accident.

Finally, the proximate cause issue, there's no evidence that any act or omission of Pilot proximately caused the plaintiffs' accident, when the cause of plaintiffs' injury may be as reasonably attributed to an act for which the defendant is not liable as to one for which he is liable. The plaintiff has failed to carry the burden of establishing the defendant's conduct proximately caused his injuries. That's McKnight vs. South Carolina Department of Corrections, 385 SC 380. Ordinarily, proximate cause is a question for the jury, for when the evidence is susceptible to only one inference, it becomes a matter of law for the Court.

I would argue that the only inference here is that the proximate cause of this accident was Mr. Sena, the at-fault driver, who was driving under the influence of alcohol and cocaine, failed to yield the right-of-way. He testified that it was ultimately his actions that caused

this accident. He can't blame anyone else but himself. He simply didn't see the plaintiffs' motorcycle and used bad judgment. He testified he doesn't blame Pilot. He doesn't blame the Department of Transportation. He doesn't blame the absence of a raised median. The only one who blames Pilot and the absence of a raised median are the plaintiffs.

Plaintiffs cannot establish that the raised median would have prevented this accident. All they can say is that it could have. You know, the plaintiff herself, one of the plaintiffs, Cynthia Wright, testified that she couldn't say whether or not the presence of this median would have prevented this drunk driver from doing what he did that day. So the plaintiffs had put forth just no admissible evidence that -- with respect to the driveways, no evidence that the spacing of driveways or its relation to the intersection in any way was the proximate cause of this accident.

So again, I appreciate the Court's time. In sum, the plaintiff owed no duty. Even if they owed a duty, there's no breach as a matter of law, and there's no evidence that any alleged breach proximately caused the plaintiffs' injuries. Thank you.

THE COURT: Who's talking?

MR. CALLOWAY: Good morning, Your Honor. Jordon Calloway, Kevin Smith, on behalf of the plaintiffs, Wrights. Your Honor, the plaintiffs were injured in that accident

right in front of the Pilot station, and there have been hundreds of accidents since Pilot took over and rebuilt this area. Your Honor, there was a duty under Skinner and under South Carolina Common Law, for them, if they created an artificial condition, which was dangerous to people on the highway, had a duty of reasonable care. Specifically under Skinner, the duty is stated as follows: When an individual or business is undertaking an activity that creates an artificial condition on the highway, which is dangerous to travelers, there is a duty on behalf of Pilot.

So that's part of the duty that we're relying on. The artificial conditions that they've created, both on their property and within the highway itself, which made the highway substantially more dangerous to the Wrights, and was a proximate cause of the accident, which caused the injuries to the plaintiff. That's the argument as it relates to duty.

THE COURT: Do you have any authority to stand for the proposition that Pilot is responsible for what DOT decided to ultimately do with that road?

MR. CALLOWAY: No, but the problem with that argument is they, Pilot, was heavily involved in the decision as to what was going to go on in the middle of that road.

THE COURT: Doesn't matter once DOT, a government agency, decides what to do. It's the end of the game.

MR. CALLOWAY: I disagree, Your Honor, for a couple of reasons.

THE COURT: Well, convince me otherwise, because right now, you have a big uphill battle.

MR. CALLOWAY: Your Honor, as it was explained by Pilot, when the plans were made for the driveways, they were made or supposed to be made by Pilot according --

THE COURT: This accident didn't take place in the driveway. It took place in the median.

MR. CALLOWAY: Well, it took place on the side of the -- side of the road, but not specifically in the median. The median was involved, but it was on the right side of the road they were traveling in.

THE COURT: It didn't take place in the driveway, did it?

MR. CALLOWAY: No, but it doesn't happen without the driveway in the condition they were in, without the driveway violating the ARMS manual.

THE COURT: Well, every business has got to have a driveway in order to get in to, right?

MR. CALLOWAY: Don't disagree with that, Your Honor, but they have a duty to comply with the ARMS manual on how they design those driveways. Now, they put in four driveways here. They're too close together. The ARMS manual says, for a 45-mile-an-hour road, 250 feet apart,

those are the rules. You want to attach your business to the highway, you've got to comply with DOT rules.

THE COURT: But where the driveway is at didn't cause the wreck. The accident didn't take place in the driveway.

MR. CALLOWAY: But -- I don't mean to interrupt Your Honor.

THE COURT: You did it.

MR. CALLOWAY: If the driveways' not there because you have to space them 250 feet apart, and they're further up the road, then it is a big impact on where this accident took place. It affects -- and the reason why that 250 feet rule is there, is so that people trying to turn are going to have enough time to see people coming. And so those rules are in effect for safety. DOT says that's a safety requirement. And they also say that under -- in this case, Pilot didn't meet those requirements under the ARMS manual. So they acknowledged those driveways too close together.

DOT also admits that at least one, possibly two of those driveways were within the functional area of that intersection. That too is a safety regulation. If you're right next to the intersection, people coming in at 45 miles an hour, it makes things much more difficult for a person making a left turn there. So that's why we get the driveway, for those two reasons, because they were too close together, and because they were so close to the functional

area of the intersection; that's what our experts say. That's what DOT essentially admitted, is that they were within, or at least a couple of them were within the functional area of the intersection.

Now, as it relates to the median, the letter that you have in front of you indicates that there was a negotiation that took place. The original plan, and this is in Colvin's testimony, the original plan for that median was, it was going to have a raised median. Then they come in -- Mr. Colvin also said, when the property owners came to us, they wanted the raised median gone. They wanted it gone. So they come, and there was a negotiated, as discussed here, where they say, we want the raised median out and we want these driveways. So those sorts of things.

And as this letter says, it says, in other words, the unmalleable median has been eliminated from the plan. Now, when defense counsel told you, well, it was never really in the plan. Well, that's not what the language of this letter says. It says it was eliminated from the plan. For something to be eliminated from the plan, it had to have been a part of the plan originally.

Also, to the extent they said there were no negotiations. They say we made that decision on our own. Well, that's not consistent with the plain language of this letter either. Negotiations are a two-party process. That

doesn't indicate that DOT made this decision on their own. There was a negotiation, and after the negotiation, this raised median was eliminated from the plan. That's what the letter says. So we have now -- we have this evidence that this property owner is coming to DOT and saying, we'd really like to have that gone. And then we've got this saying, well, the original plan was for it to be in there, and after the negotiations, we're eliminating that from the plan.

So to say they didn't have any involvements in what happened with that median is inconsistent with this. I understand Mr. Colvin says otherwise, but a jury should have to decide which one is right, which one is more credible. The plain language of this letter that says two parties negotiated? And Mr. Colvin says, no, that was all us. That's exactly the kind of question of fact that a jury should resolve.

And that brings us back to Skinner. That's the artificial condition we're talking about back here, creating an artificial condition on a highway dangerous to travelers, and that's what happened in this case. The median and the driveways, which were dangerous conditions, which caused a danger, which led to the accident involving the Wrights.

We don't dispute at all that Mr. Sena has some responsibility for this, no problem admitting that at all. Our statement is that both DOT and Pilot have a

responsibility, because both Pilot and DOT were involved in the process of getting that median in place. Also, specifically as it relates to the driveways, Pilot put together the plan for those driveways. Took them to DOT, and then constructed those driveways outside the context of the ARMS manual, the South Carolina Department of Transportation Regulations, which is also important under Skinner, because what Skinner said, in part, was that the plaintiff in that case could not rely on the ARMS manual as a duty creating mechanism. Why? Because in that instance, the plaintiffs, who were just property owners who had heavy horse trailers that were causing ruts beside the road, in that case they didn't have to get an encroachment permit. They weren't subject to the ARMS manual requirements.

Different case here. This is a party -- a commercial party trying to link their property to the highway, and they had a responsibility and obligation, and in fact, did send an encroachment permit to DOT. And so this is a different case than Skinner on the facts, but the duty that Skinner recognized is appropriate and does apply here in this case.

We also say in our memo, Your Honor, other bases for duty under South Carolina, for example, Restatement Second of Torts Section 321, which has been recognized as a duty creating mechanism on the Field (phonetic) case. And that

section basically says that you have a duty to act when a defendant's behavior creates a danger, specifically if an act or doesn't act, and subsequently realizes or should realize that it's created an unreasonable risk of causing physical harm to another, he's under a duty to use reasonable care to prevent the risk from taking effect.

So defense counsel mentioned the idea that there is no affirmative duty to act. Well, under section 321, there can be. And we believe, Your Honor, that that applies to this case, as it relates to breach, the two breaches. Specifically, the negotiations which we already talked about, the two pieces of evidence, specifically the letter that Your Honor has in front of him, and also, the driveways themselves.

The ARMS manual, which a part of the exhibits we submitted to the Court, the ARMS manual says, in particular on Page 10, driveways should be as far as possible from the intersection. As SCDOT admitted in their deposition, that one or two of the driveway's within the functional area of this intersection; that's Mr. Clark's testimony, and also Mr. Colvin's testimony. Also, in the ARMS manual on Page 9, there's a table which specifically talks about the distance that each driveway must be from one another, and DOT's 30(b)(6) designees admitted that one or two -- this is Mr. Clark's testimony -- did not meet that standard.

As it relates to proximate causation, one last thing on breach. We do have two experts that submitted affidavits, which identified breaches of the standard care. In other words, they identified that the way these driveways were designed, and the way they were implemented, violated engineering standards. So to say that those are simply legal conclusions is inaccurate. These are civil engineers. Engineers who do highway management and intersection management, that sort of thing, and they're saying, we've looked at the ARMS manual, we've looked at the national standards and compared them to what Pilot did here, and they breached those standards. So we've got Skinner saying that ARMS manual can possibly be a source of duty. We've got expert testimony establishing breach of duty under the ARMS manual and national standards, and so that satisfies the breach element.

As it relates to proximate causation. Defense counsel essentially seemed to indicate that didn't matter if there's a raised median there or not. Well, that's kind of inconsistent with what their own witness says. Basically, their witness admitted -- why do you have a raised median? We asked him. He says, well, to prevent left turns. That's why it's there. That's why it would ever be there. To force someone further down the intersection or say you can't do a left turn here, you've got to go to the traffic light

up there here, or you have to not take a left turn there, go make a U-turn and make a right turn. That's why raised medians are there. DOT basically provided similar testimony.

They also cited the testimony of the at-fault driver to essentially say he admitted that the median didn't have anything to do with this. Let me quote one line from Mr. Sena's deposition. He said, quote, the raised median could have prevented my accident and a lot more accidents, and any more to come. That's Mr. Sena's testimony on Page 119 of his deposition. So we've got the testimony of the at-fault driver, and we've also got basically the fact that this median could have an impact, as stated by DOT and the Pilot's representative himself. Also have experts, and the experts' affidavit, they have proximate cause opinions in there as well.

Your Honor, based on those principles, and also relying on the principles stated in our memorandum established on Friday, we believe that the defendant's motion should be denied. There was a duty in this case under South Carolina Common Law and Skinner. There were breaches in these two ways described a few moments ago, and there is evidence, at least specifically a scintilla of evidence on that question of fact of proximate cause, we ask that the motion should be denied.

MR. SMITH: Your Honor, can I just add one thing, specifically your question regarding duty?

THE COURT: Go ahead.

MR. SMITH: You know, I've lived with this case for quite a while now, and as I listen to the presentation over here, I was, you know, of course scrambling around, because I don't believe that paints the picture of what happened here. Your Honor, we have a position -- well, sort of a twofold position here, we have. The first position would simply be that when you undertake an action, you undertake that action with the duty to act reasonably and responsibly, especially with regards to creating dangerous conditions. That's our primary position. Okay. And I believe the case law says that when you're doing things that are going to affect a roadway, you're building driveways, you're having something taken out, you should have a duty to do that. Okay. That's the question of law, Judge, and that's the tougher question.

But the second part of our argument is the easier question for you. What if Pilot's involvement was more than simply we submitted for approval, they approved it, we built what they approved, right? What if it's more than that? What if there was actually, Judge, some money changing hands? What if there was some financial gain? What if Pilot had more involvement than what they said? We do know

this, Judge, at the same time all this was going on, there was a deal, a right-of-way acquisition, where the DOT was negotiating with Pilot to buy some land, a right-of-way acquisition, the land in front of the Pilot, right.

Well, we know from the time line here, within three or four months of this letter, the acquisition is made, the deal is struck. Here's the important thing, Judge. There's only really two considerations when you're talking about buying some land. How much it costs and how much land you're buying, right? Pilot here, in their -- in the text that they wrote, negotiated the removal of a raised median, but here's how you tie it to the money changing hands. There is specific testimony from Mr. Colvin, the representative of the DOT, stating that the removal of the raised median was part of the right-of-way acquisition. What that means is that in the land deal, that they were deciding how much land and how much to pay for it, that there was also this discussion of the removal of the raised median.

Now, DOT goes and destroys the original appraisals for that land before we can get our hands on them, but Judge, there is an open question of fact here. When you read about the negotiation for the removal of the raised median that was in the original plans that everyone says is removed, the unmountable median that would have prevented

the left-hand turn that caused this wreck, but when you take that, and then you take the DOT telling us that, oh, yeah, that removal of the raised median was part of our negotiation to buy that land, Judge, there's an issue of fact out there. There is an issue of fact.

A jury, at this point, could easily conclude that Pilot didn't just simply submit plans. That Pilot possibly offered to sell the land for cheaper in order to get the median removed, and to get their three driveways all within the functional area of the intersection. You know, counsel for Pilot told you, oh, you know, there's an issue about where they are.

When we held up the very map -- the very map, and asked the DOT to point to the functional area of the intersection, do you know where he put his mark? On the first one and in the middle of the second one. The DOT says that. And Judge, the significance there is, at this point, you've got six lanes of traffic. You got three lanes coming from Moncks Corner. You got three lanes coming from Summerville. It is a busy intersection.

Time has proved to show it's a deadly intersection, but we always knew it was busy. With the functional area of the intersection, the placement of driveways and the raised median, you don't want people making left-hand turns in and out across three lanes of traffic at 45 miles an hour,

because you know what happens when you do that, Judge. You create a book of business. A book of accidents of 254 wrecks occurring in front of that Pilot, right. And Judge, what we didn't give you was every single accident report, because we just thought it would just not be received, to be honest with you, electronically or bogging down the Court's file. I have every single accident report. There's 254. And interestingly, Judge, the DOT has found an extra 40 that I didn't even know about. Brings us up to close to 300 wrecks in the 10 years since they made these changes.

So Judge, there's an open issue of fact as to what level of involvement they did, and I hope that you will agree that if they had more than just simply submitting these plans, getting it approved and building what was approved, if they did more, if this was part of the deal, the land deal, if they paid less for the land in return for getting the removal of the raised median, and all of these driveways directly in the functional area of the intersection, which the DOT's manual say never do because it's not safe, Judge, that's an issue of fact, and if it's not an --

THE COURT: Do you have proof of this?

MR. SMITH: Well, I've got the letter talking about the negotiation. We have got the testimony saying the removal of the raised median was part of the right-of-way

acquisition.

MR. SILVERBERG: Your Honor, can I respond?

THE COURT: Yep. Are you finished?

MR. SMITH: Yes, sir.

MR. SILVERBERG: The problem with what-ifs is that there's no evidence for what-ifs. That's why they're what-ifs. Let me nip this in the bud right now.

Plaintiffs' Exhibit 7 to the Department of Transportation's 30(b)(6) is the Title to Real Estate for this right-of-way acquisition they're referring to. You will notice that Pilot did not sell the right-of-way. The prior owner, SuperAmerica, Speedway SuperAmerica sold the right-of-way in it looks like October 2000, again, before Pilot got on the scene. So that what-if, opposing counsel doesn't have to do any more investigation as to what if, as to what was part of those negotiations, because Pilot wasn't even part of those negotiations.

Quickly, the letter, again, this letter, first of all, the portion they're referring to, I would argue is hearsay. These handwritten notes? Hearsay. Okay. And it's not -- it's dated August. It's not Pilot. These aren't written by a Pilot employee. There's no dispute. And then I read you the quote that said that the removal of the median had nothing to do with the right-of-way acquisition. It was on 117 to 118 of the Colvin dep, of the

Department of Transportation's 30(b)(6). I mean, there's not -- it's such a long deposition transcript, and I wouldn't, you know, ask you to go through it, but the Department of Transportation said the decision not to put the median was made as part of the 1998 widening plans not to, you know, not to include it.

This letter is not a scintilla of evidence. There's just too many reasons why. This isn't a Pilot letter. Not Pilot. I wrote it on here. I don't know how else to convey that message. All right. So the median, you know, one thing I failed to tell Your Honor, was that the Department of Transportation testified that the reason why they decided not to put a raised median in there or add one -- remember, there was never one there to begin with, even though the preexisting gas station also had three entrances on this. There was never one there to begin with, but the reason why is because according to the highway design manual that the Department of Transportation uses, again, the bible of highway design for the Department of Transportation, according to the Department of Transportation, that bible required them not to put a median. And if they would have put a raised median, that would have been in contravention to that design manual. That is the 30(b)(6) testimony of the Department of Transportation.

And I'm just going to dispute flat out the fact that

no one's testified that this specific driveway, to the extent this is even relevant, was within the functional area of the deposition [sic]. The plaintiff -- the plaintiff, Richard Wright, who was driving the motorcycle, his testimony suggests that he saw the truck, and he actually consciously decided not to slow down, because he didn't want to give Mr. Sena the impression that he was making the left -- that he was allowing the left turn to be made.

There's no problem with how close this driveway is to the intersection. There's no evidence to back that up. It's just absurd to suggest that Pilot -- there was any quid pro quo. Pilot wasn't on the scene when the decision not to put a median was made and --

THE COURT: Is that true?

MR. SMITH: No, sir, and it's flatly true. Your Honor, if I could hand up a document that clears all of this up. Basically, in the letter that we've been talking about with the negotiation, you've got Marathon Ashland Petroleum, LLC. That's the title here. And Your Honor, what we've got -- and I've just got one copy here, and I'll hand it to you, but you can see here that Pilot talks about in 2002, here, somebody at SCDOT, we've been playing phone tag. I am the project manager for Pilot Travel Centers, LLC, a combination, parenthesis, a combination of Marathon Ashland Petroleum, LLC, and Pilot Corporation. So that it wasn't us

back then because of this Marathon Ashland Petroleum, LLC, here's Pilot themselves writing in. Let me tell you who Marathon Ashland Petroleum, LLC is. I'm sorry, let me tell you who Pilot Travel Center is, a combination of Marathon Ashland Petroleum, LLC, and Pilot Corporation. Judge, to say this wasn't us is just flatly untrue. And anyway, I'll hand this up to you. It's part of our exhibits in our memorandum.

MR. SILVERBERG: And Your Honor, I won't dispute that there was -- that Pilot Travel Centers acquired the property, but it was after the date of that letter. It was in 2001.

MR. SMITH: Judge, the point is, is that when these negotiations are taking place with Marathon Ashland Petroleum, LLC, it's Pilot Corporation who's doing this.

MR. SILVERBERG: There's no evidence of that, Your Honor.

MR. SMITH: Except the letter you're holding in your hand.

MR. SILVERBERG: No, that does not -- that letter does not show that these handwritten -- that Pilot negotiated the median. All it shows is that at some point, Pilot Corporation entered a joint venture to create Pilot Travel Centers, LLC. The plaintiffs did sue Pilot Corporation. The plaintiffs did sue Marathon Ashland. They sued Pilot

Travel Centers, LLC, which did not acquire this property until 2001.

MR. SMITH: And Your Honor, I guess the response we would have is, this is an open question of fact. I mean, it's something that I can tell you're interested in. We think a jury is going to be interested in it.

THE COURT: Well, I mean, it's interesting, except for the fact that once -- I mean, these are all things that I -- ultimately, DOT's responsible for what got put and not put in that median and, you know, if they negotiated with somebody to put in or not put in a raised median, ultimately, that's on the DOT, and I don't think you get co-conspirator status by virtue of negotiations that you or someone else had with SCDOT. They're ultimately the ones that made the decision to put that in or not put in a raised median.

You know, to me this case boils down to duty. If that accident took place within the driveway Pilot, then maybe I could see, you know, Pilot having some responsibility. But this took place in a median where which somebody wanted to turn into that driveway, and that doesn't fall on Pilot. And I don't think -- that's the law.

You got a big, thick book of what you say are accidents that took place in that area. That may keep DOT in the case later on, but it's not their motion that's here

today and, you know, in order to -- as I understand the law on these kind of things, is to get DOT on the hook because you've got to show, oh, they had notice that this was a dangerous condition, something should have been done. Well, you may have it.

But as far as Pilot goes, Pilot's not responsible for maintaining that road. Pilot's not responsible for building that road. And having a driveway into your business is not what is, I think, within the definition of an artificial condition to incur liability in this instance.

MR. SMITH: Well, Judge, I mean, what is there -- let me just ask you just straight out. If it turns out money changed hands --

THE COURT: Don't ask the Judge questions, but well, you make arguments and I rule.

MR. SMITH: I mean, if money changed hands, if Pilot had more involvement than simply --

THE COURT: You don't have any evidence that the money changed hands, other than there was a negotiation about a right-of-way somewhere else. Ultimately, that's not illegal. If they were negotiating with somebody down the road, it's not illegal, but ultimately, this is SCDOT's road. They built it, they designed it, they signed off on everything that's there. Pilot didn't. People negotiate for things all along the way; where can I have my curb cut.

Well, all sorts of things.

But I mean, to put liability on Pilot or any other business that's along the way and say, well, they should have done something about people turning in there, and there's accidents that take place there, unless it took place on their driveway, I don't see how they or any other business could be responsible for what happened in a median that was out there, which in this instance is where the people were at, waiting to turn into that turn. That's what I said.

MR. SMITH: I mean, without a driveway, he ain't making this left-hand turn.

THE COURT: You'll obviously stand here and argue with me all day. You prepare an order, and you can appeal it, all right?

MR. SILVERBERG: Thank you, Your Honor.

(END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Berkeley)

I, Maria Dempsey, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Family Court for Berkeley County, South Carolina, on the 10th day of April 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 7, 2017

_____

Maria Dempsey, RPR
Official Court Reporter
Charleston County Family Court
Ninth Judicial Circuit
Moncks Corner, South Carolina

EXHIBIT D

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS
Cynthia Wright and Richard Wright, Plaintiffs, vs. South Carolina Department of Transportation, Pilot Travel Centers, LLC, Speedway LLC, Ashley Land Surveying, Inc., f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc., and Munlake Contractors, Inc. Defendants.	)	Civil Action No. 2016-CP-08-334 Speedway LLC's Responses to Plaintiffs' Requests for Production

TO: KEVIN B. SMITH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

Defendant Speedway LLC responds to Plaintiffs' Requests for Production as follows:

1. Copies of all documents relating to the right of way acquisition for the I-26/US17A Interchange Improvement project.

RESPONSE: Defendant is in possession of the following:

(a) Title to Real Estate with Exhibit A executed by Speedway Super America LLC in favor of SCDOT dated October 31, 2000 (bates labeled Speedway 000001 – 000002);

(b) Appraisal prepared by Pledger M. Bishop on behalf of SCDOT dated June 20, 2000 (bates labeled Speedway 000003 – 000014);

(c) 6 pages of miscellaneous correspondence (bates labeled Speedway 000015 – 000020).

2. Please provide a copy of the Settlement Agreement relating to the right of way acquisition for the I-26/US17A Interchange Improvement project.

RESPONSE: Defendant is not in the possession of any documents that meet this Request.

3. Please provide a copy of any and all appraisals relating to the right of way acquisition for the I-26/US17A Interchange Improvement project.

RESPONSE: See attached appraisal prepared by Pledger M. Bishop on behalf of SCDOT dated June 20, 2000.

4. Please provide a copy of the Condemnation Notice relating to the right of way acquisition for the I-26/US17A Interchange Improvement project.

RESPONSE: Defendant is not in the possession of any documents that meet this Request.

SMITH MOORE LEATHERWOOD LLP

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Kathleen F. Monoc
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Attorneys for Defendant Speedway LLC

June 7, 2017
Charleston, South Carolina

DOT R/W Form 802EXHI (01-00)

05-45G-SC-31
(Doc 4)

HE STATE OF SOUTH CAROLINA

OUNTY OF BERKELEY

TITLE TO REAL ESTATE
Approximate Survey Station

ad/Route..... I-26/US17A Interchange Improvements
e..... 8.790
m.....
oject..... IU-0264(174)
N..... 22338

20+000 To 20+080
Farmington Road Survey
_____ To _____
_____ To _____

KNOW ALL MEN BY THESE PRESENTS, That I (or we) Speedway Super America LLC, 3200 Pointe rkway, Suite 200, Norcross, Georgia 30092 in consideration of the sum of Fifty Thousand and No/100 ($50,000.00) llars and other valuable consideration to me (or us) in hand paid at and before the sealing and delivering thereof, by the uth Carolina Department of Transportation, Columbia, South Carolina, receipt of which is hereby acknowledged, have nted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said South Carolina partment of Transportation, its successors and assigns, all that certain real property of the Grantor in fee simple absolute 17A From Berlin G. Myers Parkway to West of Sangaree Parkway on I-26/US17A Interchange Improvements, te and County aforesaid, as shown on plans prepared by the South Carolina Department of Transportation and dated July ,1999.

PECIAL PROVISIONS: All that certain parcel of land, containing 9,102 square feet of land, more or less and any provements thereon owned by Speedway Super America, LLC shown as the "Area of Acquisition" on Exhibit A, attached reto and made a part hereof. This being a portion of the property acquired from Emmaline B. Smith by deed dated ptember 11, 2000 and recorded September 12, 2000 in Deed Book 2027, Page 8 and from Meredith Brown by deed dated ptember 11, 2000 and recorded September 12, 2000 in Deed Book 2027, Page 4 in the records for Berkeley County and own as Tax Map Numbers 221-00-00-015 & 221-00-00-091.

Together with, all and singular, the rights, members, hereditaments and appurtenances thereunto belonging, or in any se incident or appertaining.

And I (or we) do hereby bind my (or our) heirs, executor and administrators, to warrant and forever defend all and igular the said premises unto the said South Carolina Department of Transportation, it's successors and assigns, against me r us) and my (or our) heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part ereof.

TO HAVE AND TO HOLD in fee simple, absolute and singular the said property and the rights hereinbefore anted, unto the said South Carolina Department of Transportation, its successors and assigns forever.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand(s) and seal(s) this 31st
y of October, in the year of our Lord, Two Thousand and 00.
gned, sealed and delivered in the presence of:

SPEEDWAY SUPER AMERICA LLC

Natalie A. Rogers
Witness

BY: _____
ITS: Sr. Vice President - Oper. (L.S.)

APPROVED AS TO FORM MK

Witness

_____ (L.S.)

NOTE: All right of way agreements must be in writing and are subject to rejection by the South Carolina Department of Transportation.

HE STATE OF
OUNTY OF

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within above named sign, seal and their act and deed, deliver the within affidavit; and that s/he with the other witness whose signature appears above witnessed the ecution thereof.

Natalie A. Rogers

VORN to before me this 31st
y of October, 2000
Rosalie B. Lawson
OTARY PUBLIC FOR
y Commission Expires: _____

ROSALIE B. LAWSON, NOTARY PUBLIC
IN AND FOR THE STATE OF OHIO
MY COMMISSION EXPIRES MARCH 2, 2005

iecked _____ By _____
icorded _____ By _____
oject _____ File No. _____ Tract 29

Speedway 000001

Speedway Exhibit D

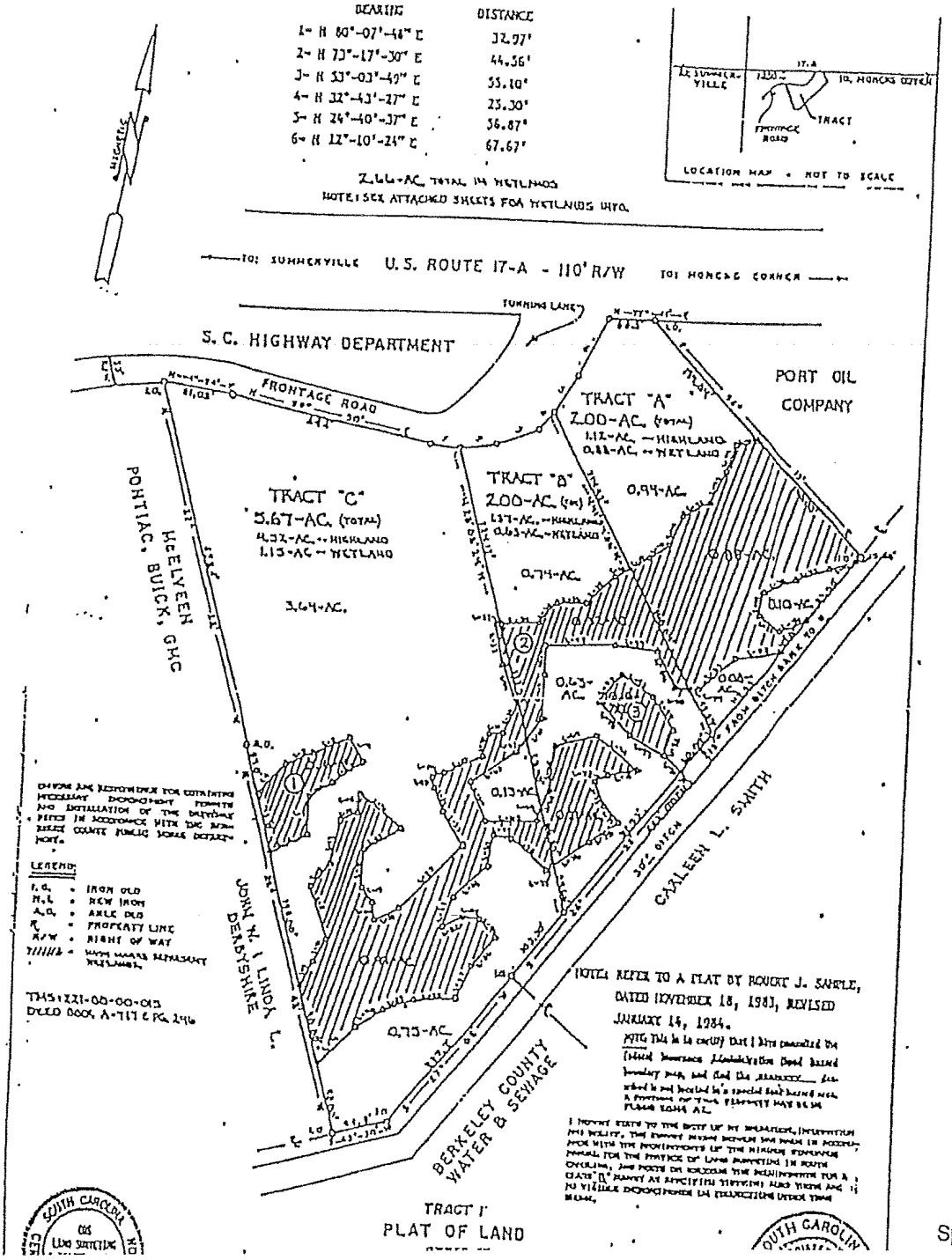
EXHIBIT "A"
To Option to Purchase

Between

MEREDITH BROWN (Seller)

and

SPEEDWAY SUPERAMERICA LLC



0.94 ACRE USABLE IN FRONT
0.88 ACRE WETLANDS
0.18 ACRE HIGHLANDS AT REAR ALONG DITCH
2.00 ACRE - TOTAL AREA

0.74 ACRE USABLE IN FRONT
0.63 ACRE WETLANDS
0.63 ACRE HIGHLAND AT REAR
2.00 ACRE - TOTAL AREA

Speedway 000002

Speedway Exhibit D

SCDOT R/W Form 102A (Revised 09-21-95)

South Carolina Department of Transportation

STANDARD APPRAISAL

1-	File: 8.790	Rd./Rt.: I/26 Interchange Improvements		
	Project: IU-0264(174)	Pin: 22338	County: Berkeley	
2-	From Station: 20+000	To Station: 20+080 L/T	Sheet: 4,4D,11	
3 a-	Owner: Emmaline B. Smith and Meredith Brown	Telephone: 873-3203		
	Owner Address: 122 Owens Circle, Summerville, S.C. 29483			
	Tract Location: Main Street (Hwy 17A) at Farmington Drive, Summerville, S.C.			
b.	Mortgages & Addresses: NOR			
	Recorded: Bk.	Pg.	Date	Amt.
c-	Lessees & Address: N/A			
	Terms of Leases: N/A			
4-	Size: A) Before: 3.9737 ac; 173,094 sf	Approx. Dimensions (Before): 275FF x 375 feet deep		
	B) After: 3.7649 ac; 163,992 sf	Approx. Dimensions (After): 275 FF x 335 feet deep		
	C) Acquired: .0289 ac; 9,102 sf	Width of R/W: Variable		

5- Tabulation of sales: (At least 5 years; if more than 5 years, last sale)

From	To	Date	Consideration	Book	Page
Roosevelt Brown	Emmaline B. Smith	3-28-97	$210,000	1023	176

Tax Map: 221-00-00-015 & 091 Plat: M 278

6- PURPOSE OF THE APPRAISAL: To estimate the difference in the market value of this property caused by acquisition of the right of way for the proposed construction of this project. This is a complete self-contained appraisal report as described by USPAP Standard 1 and 2.

Property Rights Appraised: Fee Simple

7- Present Use: Commercial - Vacant | Zoning: General Commercial

8- Highest and Best Use Before: Commercial

Highest and Best Use After: Commercial

9- Utilities: ☒ Elect. ☐ Gas ☐ Well ☒ Pub. Water ☐ Septic Tank ☒ Pub. Sewer ☐ Other -

10- Prior to inspection, the owner was contacted by (☒ telephone ☐ letter ☐ in person) and invited to be present during inspection of this property. The tract was inspected on June 20, 2000, and I was accompanied by no one. Required by Sec. 301(2) of Uniform Act.

Explain: (Why not accompanied, relation of representative, items discussed, etc.)

I contacted Ms. Brown via telephone and explained the proposed taking and the appraisal process. She explained that the adjacent property owners were negotiating to purchase the subject and that she was aware of the SCDOT highway changes. She instructed me to proceed and that she did not need to meet me at the site.

JUL 13 2000

Prepared by: Pledger Bishop, MAI

File No: 8.790.

Tract No: 29 & 29P

__ Original - R/W
✓ Copy - Agent
__ Copy - FHWA

RECEIVED
JUL 7 2000
ROBINSON COMPANY

Speedway 000003

Speedway Exhibit D

PHOTOGRAPHS OF SUBJECT

Date Taken: June 22, 2000
Taken By: Pledger M. Bishop, MAI



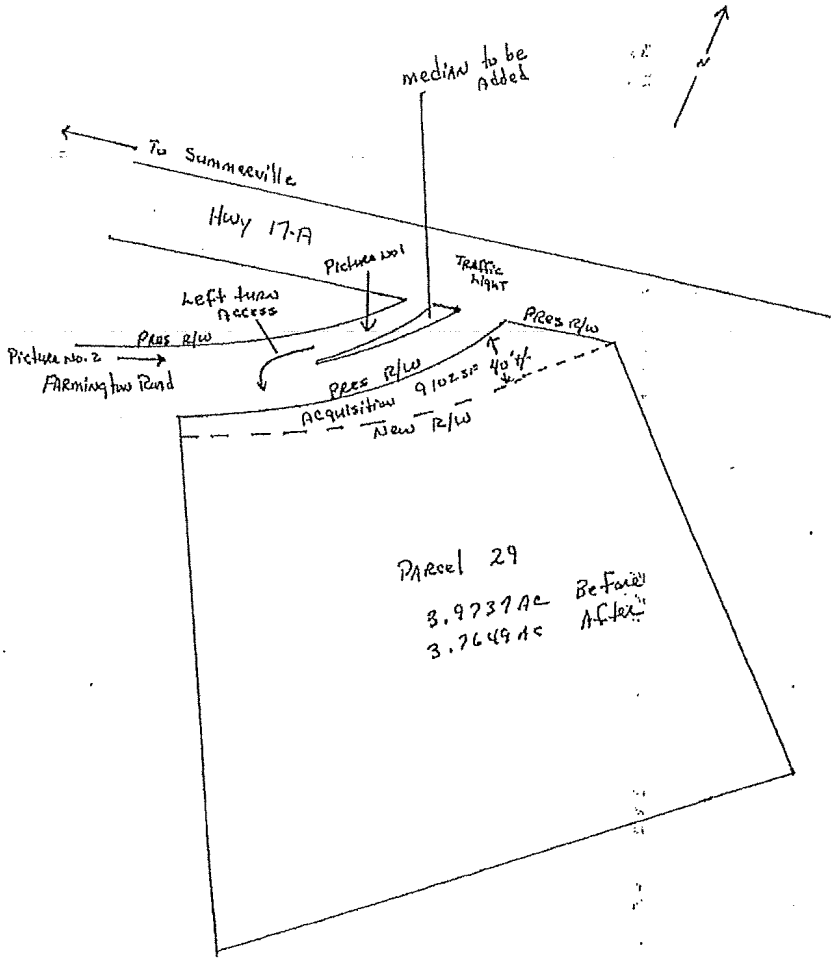
View of Subject from Farmington Road



View of Acquisition area

File No: 8.790
Parcel No: 29 & 29P

PROPERTY SKETCH



File No: 8.790
Tract No: 29 & 29P

Page 3

PARAGRAPH 11. Zoning and Health Requirements:

The subject is located in the Town of Summerville and is zoned for general commercial use. The zoning category permits most any type commercial use including service stations and convenience stores. The existing use is a vacant commercial partial, a portion of which is wetlands. All properties around the subject are improved commercially. I do not anticipate a zoning change for this parcel.

The subject is currently valued at $400. This is an agricultural use value that results in a property tax liability of $7. Anyone changing the use of the property may be obligated to pay a rollback tax based on market value over the last 5 years. According to public records, the property taxes are current.

PARAGRAPH 12. Highest and Best Use (Before):

The Highest and Best Use of a property should be scrutinized utilizing four criteria. The anticipated use must be:

1 - Physically Possible;
2 - Legally Permissible;
3 - Financially Feasible;
4 - Maximally Productive

Physically Possible - Size, shape and topography affect the uses to which land may be developed. The subject is semi-rectangular and totals 3.9737 acres or 173,094 square feet. It has approximately 275' of effective frontage on Farmington Road (frontage road) at the intersection of Highway 17A (Main Street) and a depth of approximately 375 feet. All utilities are available at the property line. There are no restrictions, other than zoning, on use of the property. The soil, to my knowledge, contains no deficiencies but a portion is classified as wetlands and cannot be developed. The front portion is below grade and will also require fill. This is a traffic light controlled intersection next to Interstate 26. Its proximity to Interstate 26 is a positive feature.

The subject's size, location, visibility and access are considered good.

Legally Permissible - The subject property is currently zoned for General Commercial use by the Town of Summerville. This commercial zoning category permits a variety of commercial uses ranging from professional office to retail use. The current use is conforming.

Financially Feasible - Based upon surrounding land use patterns, and the subject's location, commercial development of some type high volume retail business appears to be the highest and best use. Rental rates along this corridor range from $12.00 to $14.00 per square foot for typical retail, and could be substantially higher for specialty type uses such as convenience stores. It has been my observation that there are no significant differences in land prices amongst the potential commercial uses for the subject. A typical commercial lot along the Main Street corridor would sell for the same price regardless of the commercial use for which it is intended. Professional office, residential, or light industrial use would not be considered feasible as the rental rates in the area could not support acquisition and development of this site. High volume retail uses would be able to generate sufficient rental income to justify acquisition and development. Market rental rates along the Main Street corridor are sufficient to justify new commercial development compatible with the surrounding environment and trends for this neighborhood.

Maximally Productive - The productivity of any use may be measured by the potential return on the overall investment. High volume retail uses in this area can command rental rates sufficient to justify commercial construction due primarily to the subject's proximity to Interstate 26, downtown Summerville, and the abundance of new retail construction in the immediate area.

It is beyond the scope of this appraisal to ascertain a particular use for the subject site, but data discussed above reasonably indicates that the highest and best use of the site, if it were vacant, would be for commercial/retail development.

PARAGRAPH 13. Description of the Realty:

Site Description

Size - The subject site totals 3.9737 acres or 173,094 square feet. It has approximately 275' of frontage on Farmington Drive (frontage road), and a depth of 375 feet. It is typical in size of other commercial lots in the immediate area.

Access - Access to the subject is via a single curb cut from Farmington Road. The site has minimal frontage on Hwy 17A (Main Street), but is too close to the intersection for access from this corridor. This is a traffic light controlled intersection and access and exposure are good. Hwy 17A is a four lane commercial corridor.

Topography - The site is below grade and will require fill. The rear portion of the lot is classified as

wetlands.

Drainage - The lot abuts a natural drainge area providing good drainage for the subject.

Soil Conditions - I was not provided an engineering or soil analysis for the subject, but have assumed for purposes of this appraisal, that no unusual soil or subsoil conditions exist that might inhibit or prohibit continued use of the property. As stated, portions are low or below grade and will require suitable fill dirt for development.

Hazardous Soil Conditions - In the preparation of this report, I have made the assumption that there are no environmental pollution or hazardous materials present in any part of the subject property or nearby properties. I have made no environmental survey or study and assume no responsibility in connection with such matters or for any studies which might be required to discover such matters.

Utilities - Public water and sewer are available at the property line.

Flood Zone - According to FIRM Flood Map Panel 45029-0290C, dated May 6, 1996, the subject property is located in Flood Zone X. This is a non-hazardous flood zone permitting slab on grade construction.

Surrounding Properties - The subject is located between a convenience store/gasoline station and vacant commercial land on the frontage road of Interstate 26. There are numerous uses on this road including an automobile dealership, a commercial machinery dealership and a UPS distribution center.

Easements & Encroachments - Typical utility and access easements apply, but I am aware of no adverse easements affecting the subject site.

PARAGRAPH 14 Valuation Before Acquisition:

This analysis addresses a partial taking of the subject property. I have used the Sales Comparison Approach to prepare an estimate of market value on the subject property in its present or "as is" condition. Generally, this is the only approach applicable to the appraisal of vacant land. Sales of other commercial land sites in the immediate area have been directly compared to the subject.

A. Direct Sales Comparison Approach to Value
Land Valuation - Before Acquisition

I have researched the immediate neighborhood for recent sales of vacant land sites that might indicate value for the subject. I have located several closed transactions as well as information on the subject. It is my understanding that negotiations are ongoing with the adjacent proerty owner to acquire ther subject. Other transactions were investigated, and those that were sufficiently comparable have been discussed in detail in the sales brochure for this project. The sales selected that were considered comparable to the subject, are identified as L-24, L-25, L-26, and L-27. L-25 is the subject property.

Explanation of Adjustments

Time - This was discussed earlier in the original sales brochure section.

Location - Sale L-24 is on the town side of I-26 next to WalMart, which is superior. A pairing of L-24 to L-25 indicates a downward adjustment of 25% for L-24. L-24 and L-25 are similar in site condition as both require substantial land fill. Sale L-27 is 1/4 mile south of the Farmington Road intersection which limits its potential uses to service or industrial. A pairing of this sale with L-25, indicates a positive adjustment of 90% after sale L-27 is adjusted for a superior site condition.

Site Condition - The subject property is low and will require fill. Sale L-24 is similar and also required fill. Sales L-26 and L-27are level high land. A pairing of L-25 and L-26 suggests an adjustment of 20% for superior site condition.

Size - It has been my experience that with all else being equal, smaller parcels tend to sell for higher unit prices. All of the comparables are similar to the subject and no adjustments were required.

As shown, adjusted unit prices range from $2.31/sf to $2.33/sf. With the primary emphasis placed on Sale L-25, which is bracketed and adequately supported, it is my opinion that a unit value of $2.31/sf is reasonable.

The above sales have been compared to the subject in chart form on the following page:

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Tract No: 29 & 29P

LAND VALUATION - BEFORE ACQUISITION
SCDOT - TRACT NO. 29
FARMINGTON RD - SUMMERVILLE,S.C.

TRANSACTION NO:	L-24	L-25	L-26	L-27
TYPE TRANSACTION	SALE	SALE	SALE	SALE
LOCATION	Jockey Ct	Farmington Rd	Farmington Rd	Farmington Rd
IDENTIFICATION	Vacant Site	Vacant Site	Vacant Site	Vacant Site
DATE OF SALE	Mar-97	Jun-00	Jul-98	Apr-99
SALES PRICE	$ 445,000	$ 400,000	$ 355,000	$ 271,027
SIZE(SF)	87,120	173,094	159,430	192,274
SIZE(ACRE)	2.00	3.97	3.66	4.41
SALES PRICE/SF	$ 5.11	$ 2.31	$ 2.23	$ 1.41
SALES CONDITION	$ (225,000)	0	0	0
ADJ/ S.P./SF	$ 2.53	$ 2.31	$ 2.23	$ 1.41
TIME ADJUSTMENT	1.231	1.0000	1.300	1.078
TIME ADJ S.P./SF	$ 3.11	$ 2.31	$ 2.90	$ 1.52
ADJUSTMENTS:				
LOCATION	0.75	1.00	1.00	1.00
ACCESS/SHAPE	1.00	1.00	1.00	1.00
SIZE	1.00	1.00	1.00	1.00
SITE CONDITION	1.00	1.00	0.80	0.80
NET ADJ FACTOR	0.75	1.00	0.80	1.52
ADJUSTED SP/SF	$ 2.33	$ 2.31	$ 2.32	$ 2.16

RECONCILIATION:

INDICATED UNIT VALUE $/SF	$ 2.31
SIZE (SF)	173,094
INDICATED VALUE	$ 399,847
ROUNDED TO:	$ 400,000

B. Cost Approach to Value

Not Applicable

C. Income Approach to Value

Not Applicable

PARAGRAPH 15. Resolution of Before Value and Value Estimates:

Value Indicated by the Sales Comparison Approach----------$400,000
Value Indicated by the Cost Approach----------N/A
Value Indicated by the Income Approach----------N/A

Based on the above, it is my opinion that market value of the subject property before the acquisition, on June 20, 2000, is

FOUR HUNDRED THOUSAND DOLLARS ($400,000).

PARAGRAPH 16. Description of the Acquisition:

The Highway 17A right-of-way will be widened, which will require the taking of a strip across the front of the subject parcel. The strip will average 40' in depth. The actual acquisition will total .2089 acres or 9,102 SF.

At present, there is a single curb cut or access-way from Farmington Road. A raised concrete median will be added on Farmington Road at the immediate intersection of Hwy 17A. Left turn access to the subject from Farmington Road will have to negotiate around the end of the median but left turn access will be available. Left turn access would generally have to negotiate around traffic backed up at the traffic light; hence, it is my opinion that the median will cause no additional access problems for the subject.

There are no improvement acquisitions.

PARAGRAPH 17. Description of the Remainder:
The remaining tract will total 3.7649 acres or 163,992 sf. The parcel still has similar frontage and exposure. Access from Farmington Road is similar to the "before" condition. Left turn access must negotiate around the end of a concrete median but left turn access is adequate. Left turn access often has to negotiate around traffic backed up at the traffic light, which is similar to the median access. The acquisition and median result in no damage to the subject. The size of the subject is adequate and permits similar utility when compared to the "before acquisition" condition.

PARAGRAPH 18. Highest and Best Use (After)
The same considerations as discussed in the "before" status apply to the remainder. The remainder will total 163,992 square feet which is large enough to accommodate a variety of commercial improvements. Exposure will be excellent and access adequate for commercial development.

PARAGRAPH 19. Value After the Acquisition:

LAND VALUATION

I have used the same comparables as discussed in the "Before" section and the same adjustments apply. The reduction in size has not reduced the lots utility. There are no other damages to the subject. The same adjustments apply indicating adjusted unit values of $2.31 sf to $2.33/sf.. A unit value of $2.31/sf is reasonably supported indicating a property value in the after condition as follows:

163,992 sf x $2.31/sf = $378,882, rounded to $379,000.

LAND VALUATION - AFTER ACQUISITION
SCDOT - TRACT NO. 29
FARMINGTON RD - SUMMERVILLE,S.C.

TRANSACTION NO:	L-24	L-25	L-26	L-27
TYPE TRANSACTION	SALE	SALE	SALE	SALE
LOCATION	Jockey Ct	Farmington Rd	Farmington Rd	Farmington Rd
IDENTIFICATION	Vacant Site	Vacant Site	Vacant Site	Vacant Site
DATE OF SALE	Mar-97	Jun-00	Jul-98	Apr-99
SALES PRICE	$ 445,000	$ 400,000	$ 355,000	$ 271,827
SIZE(SF)	87,120	173,094	159,430	192,274
SIZE(ACRE)	2.00	3.97	3.66	4.41
SALES PRICE/SF	$ 5.11	$ 2.31	$ 2.23	$ 1.41
SALES CONDITION	$ (225,000)	0	0	0
ADJ/ S.P./$SF	$ 2.53	$ 2.31	$ 2.23	$ 1.41
TIME ADJUSTMENT	1.231	1.0000	1.300	1.078
TIME ADJ S.P./$SF	$ 3.11	$ 2.31	$ 2.90	$ 1.52
ADJUSTMENTS:				
LOCATION	0.75	1.00	1.00	1.00
ACCESS/SHAPE	1.00	1.00	1.00	1.00
SIZE	1.00	1.00	1.00	1.00
SITE CONDITION	1.00	1.00	0.60	0.60
NET ADJ FACTOR	0.75	1.00	0.60	1.52
ADJUSTED S.P./SF	$ 2.33	$ 2.31	$ 2.32	$ 2.32

RECONCILIATION:

INDICATED UNIT VALUE $/SF	$	2.31
SIZE (SF)		163,992
INDICATED VALUE	$	378,822
ROUNDED TO:	$	379,000

PARAGRAPH 20. Resolution of After Value and Value Estimate:
Since there are no improvements, I have used only the Sales Comparison Approach to estimate land value.

The estimated land value after acquisition as of June 20, 2000, is

THREE HUNDRED SEVENTY NINE THOUSAND DOLLARS ($379,000)

PARAGRAPH 21. Uneconomic Remainder
None

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Tract No: 29 & 29P

SCDOT R/W Form 104A (Revised 09-21-95)

22.	Final Estimate of Value	Before (P#14)		After (P#19)		Difference
	Indicated Value by Direct Sales Comparison	$400,000		$379,000		$21,000
	Indicated Value by Summation	$00		$00		$00
	Indicated Value by Income	$00		$00		$00

23.	Distribution of Values	Before (P#15)		After (P#20)		Difference
	Land Value	$400,000		$379,000		$21,000
	Improvement Value	$00		$00		$00
	Other – N/A	$00		$00		$00
	TOTAL	$400,000		$379,000		$21,000

24.	Recommended Distribution of Difference	
	Right of Way Acquired:	
	Land: 9,102 sf Acres Sq. Ft. @: $2.31/sf	$21,000
	Site Improvements: N/A	$00
	Buildings: N/A	$00
	Total for Acquisition	$21,000
	Damages (if any to remainder) Explain:	
	None	
	Total Damages	$00
	Benefits (if any to remainder) Explain:	
	00	
	Subtract Total Benefits	$00
	Total Value of part acquired, plus damages, less benefits (Should equal total difference above)	$21,000

25.	Final Statement of Value	
	I. Having considered all applicable approaches, it is my opinion that the indicated value of the whole property before the acquisition.....	$400,000
	II. Having considered all applicable approaches, it is my opinion that the indicated value of the remainder, after the acquisition.....	$379,000
	III. The difference between the indicated value of the property before the acquisition, and the indicated value of the remainder, after the acquisition.....	$21,000

26. Based on this report, the fair market rental for this property is $N/A per month.

Appraisal made as of: Date: June 20, 2000

* These values must agree exactly and also in the Certificate.

Pledger M. Bishop, MAI
SC General Real Estate Appraiser
CG795

File No: 8.790
Tract No: 29 & 29P

ASSUMPTIONS AND LIMITING CONDITIONS

The legal description, furnished by SCDOT is assumed to be correct, and no responsibility for matters legal in nature is assumed, nor is any opinion of title, which is assumed to be marketable, rendered. Any existing liens or encumbrances have been disregarded, and the property appraised as free and clear.

No current survey of the property was made, and the improvements are assumed to be within the lot lines, in accordance with the building codes and any restrictive covenants covering the property. The sketches in this report are included only to assist the reader in visualizing the property, and are not to be considered as accurate.

All information included in this report which was furnished by others is believed to be correct, but no responsibility for its accuracy is assumed.

Possession of this report, or a copy thereof, does not carry with it the right of publication, either in whole or in part, nor may it be used for any purpose by any except the party for whom it was prepared without the consent of the appraiser, and then only with proper qualification.

The appraiser is not required to give testimony or to appear in court with reference to this property by reason of this report unless prior arrangements have been made.

Distribution of the value reported between land and building applies only under the existing program of utilization, and separate valuations for land and improvements must not be used in conjunction with any other report, and are invalid if so used.

Unless otherwise stated in this report, the existence of hazardous material, which may of may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualifies to detect such substances. The presence of substance such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

REAL ESTATE DEFINITIONS

PROPERTY RIGHTS APPRAISED:

The property right considered in this appraisal is the fee simple estate of the subject property. The fee simple estate is the "*absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police powers, and escheat.*" (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 140)

SCOPE OF APPRAISAL:

The appraiser conducted market analysis to locate comparable sales and other relevant data. Local real estate brokers, appraisers, and public records, were used together information such as market conditions, sales, verification of sales, subject area data, etc.

HIGHEST AND BEST USE:

The highest and best use is defined as "*the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility and maximum profitability.*" (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 171)

Highest and best use of the site as vacant is defined as "*among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements.*" (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 170)

Highest and best use of a site as improved is defined as "*the use that should be made of the property as it exists. An existing property should be renovated or retained as is so long as it continues to contribute to the total market value of the property, or until the return from the new improvement would more than offset the cost of demolishing the existing building and constructing a new one.*" (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 171)

The four test for highest and best use enables the appraiser to determine the most probable use of the property and leads to the selection of comparable properties for the tract being appraised. The four test encompass the following:

1. Legally permissible describes the zoning, restrictions, easements, and regulations a tract must meet to be a permissible use.

2. Physically possible describes the physical character such as shape, size, and access which makes it possible for potential development.

3. Financially feasible describes the financial obligations and investment criteria the potential use must meet in order to be viable use.

4. Maximally productive describes the best use for the property based on the financially feasible conclusions.

(Appraisal of Real Estate, pages 275-297, 10th edition)

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VALUATION PROCESS:

The valuation process is "*a systematic procedure employed to provide the answer to a clients question about a real estate property value.*" (Appraisal of Real Estate, page 82, 10th edition)

MARKET VALUE

Market value is defined as "*the most probable price, as of a specified date, in cash or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest and assuming that neither is under undue duress.*" (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 222)

SALES COMPARISON APPROACH

The sales comparison approach is defined as "*a set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sale prices of the comparables based on the elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant; it is the most common and preferred method of land valuation when comparable sales data are available.*" (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 318)

COST APPROACH

The cost approach is used in valuing new improvements and specialty property. The cost approach is defined as "*a set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of, or replacement for, the existing structure; deducting accrued depreciation from the reproduction or replacement cost; and adding the estimated land value plus an entrepreneurial profit. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised.*" (Dictionary of Real Estate Appraisal, page 81, 3rd edition)

INCOME APPROACH

The income approach is used when value is derived from the future benefits of a income stream. The income approach is defined as "*a set of procedures through which an appraiser derives as value indication for an income-producing property by converting its anticipated benefits (cash flows and reversions) into property value. This conversion can be accomplished two ways. One year's income expectancy can be capitalized at a market derived capitalization rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in value of investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.*" (Dictionary of Real Estate Appraisal, page 178, 3rd edition)

File No: 8.790
Tract No: 29 & 29P

SCDOT R/W Form 109A (03-07-95)

CERTIFICATE OF APPRAISER

I Hereby certify:

That I have personally inspected the property herein and that I have also made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented in said appraisal or in the brochure which supplements said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with acquisition of right of way for a highway to be constructed by the State of South Carolina with the assistance of Federal-aid highway funds, or other Federal Funds.

That such appraisal has been made in conformity with the appropriate State laws regulations and policies and procedures applicable to appraisal of right of way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consist of items which are noncompensable under the established law of South Carolina.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the South Carolina Department of Transportation or officials of the Federal Highway Administration and I will not do so until so authorized by the State officials or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That the owner or his designated representative was given the opportunity to accompany me during my inspection of the property that was appraised.

That any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement for which such property is being acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to the physical deterioration with in the reasonable control of the owner, has been disregarded in determining the compensation for the property.

That my opinion of the fair market value of the acquisition as of the 20 th day of June, 2000, is $21,000 based upon my independent appraisal and the exercise of my professional judgment.

Date: July 3, 2000

BY: Pledger McBishop, MAI
State Certified General Real Estate Appraiser
AT: CG #795

File No. 8.790

12 Tract No. 29 & 29P

SCDOT
South Carolina
Department of Transportation

9-25-00

File 8.790 - Interstate 26/US HWY 17A Interchange Improvements - Berkeley County
PIN 22338 - Project IU-0264(174) - Tract 29

Marathon Ashland Petroleum
Attention: Mr. Robert Greiwe
3200 Pointe Parkway
Suite 200
Norcross, Georgia 30092

Dear Mr. Greiwe:

The South Carolina Department of Transportation proposes to acquire a portion of the property formerly owned by Ms. Emmaline B. Smith located off of US Highway 17A near the town of Summerville, SC. I understand that a closing has taken place and that Marathon Oil now holds title to the property.

An offer for the 9,102 square feet of land to be converted to state right of way was made to Ms. Smith on August 21, 2000, at which time she was still the property owner. No agreement was ever reached between Ms. Smith and the Department. Consequently, the Department will now make the offer to purchase the right of way to Marathon Oil as the new owner.

Enclosed please find the letter of offer and a copy of the appraisal from which the offer is derived. Please review the offer and let me know if you have any questions or concerns. I will be in touch with you shortly to discuss our offer. I will look forward to speaking with you soon to reach an amicable settlement.

Sincerely,

Timothy B. Bowers
Right of Way Agent
301 Stefan Drive
Charleston, SC 29412
(843) 762-7882

SCDOT
South Carolina
Department of Transportation

File 8.790 Road/Route I-26/17A Interchange Improvements -Berkeley County
PIN 22338 Project IU-0264(174) Tract-29

Marathon Ashland Petroleum
Attention: Mr. Robert Greiwe
3200 Pointe Parkway, Suite 200
Norcross, Georgia 30092

Dear Mr. Greiwe:

Reference is made to the above captioned project, under which the South Carolina Department of Transportation proposes to acquire a portion of your property for this improvement as has been discussed with you previously. The Department must pay just compensation for the property which is based on an appraisal made by a qualified real estate appraiser using comparable sales in the area.

The appraisal, which is available to the landowner upon request, has been made, reviewed and approved, and I am now authorized to make you the following offer:

$21,000.00 For fee simple title to 9,102 square feet of land and all improvements thereon, if any.

Please give this offer your prompt attention and let me know your decision as soon as possible.

If I can be of any further assistance, do not hesitate to contact me.

Sincerely,

Timothy Bowers

Timothy B. Bowers
Right of Way Agent
301 Stefan Drive
Charleston, SC 29412
(843) 762-7882

9-25-00
Date offer made

SCDOT

South Carolina
Department of Transportation

10-3-2000

File 8.790 - Interstate 29/ US 17A Interchange Improvements - Berkeley County
PIN 22338 - Project IU-0264(174) - Tract 29

Marathon Ashland Petroleum
Attention: Mr. Robert Greiwe
3200 Pointe PKWY, Suite 200
Norcross, Georgia 30092

Dear Mr. Greiwe:

Reference is made to the above captioned project, under which the South Carolina Department of Transportation proposes to acquire a portion of your property for this improvement as has been previously discussed with you. The Department must pay just compensation for the property which is based on an appraisal made by a qualified real estate appraiser using comparable sales in the area.

Based on said appraisal, an offer of $21,000.00 was made to you on Sept. 25, 2000. However, a settlement agreement was reached in the amount of $50,000.00. This settlement figure is not an admission by the Department that our original offer was not a true reflection of the property value, rather an attempt to avoid any litigation or further delay.

Sincerely,

Tim Bowers

Timothy B. Bowers
Right of Way Agent
301 Stefan Drive
Charleston, SC 29412
(843) 762-7882

South Carolina
Department of Transportation

10-3-2000

File 8.790 - Interstate 29/ US 17A Interchange Improvements - Berkeley County
PIN 22338 - Project IU-0264(174) - Tract 29

Marathon Ashland Petroleum
Attention: Mr. Robert Greiwe
3200 Pointe PKWY, Suite 200
Norcross, Georgia 30092

Dear Mr. Greiwe:

Please find enclosed the title to real estate for the 9,102 square feet of land to be converted to state right of way along with a request for the tax payer id information. Also enclosed per your request is a copy of the construction plans, a copy of the profile, and copies of the cross sections.

Please have the title and tax payer id request executed as quickly as possible and returned to me no later than October 23. If you have any questions or concerns, please contact me at once. Thank you for your cooperation.

Sincerely,

Tim Bowers

Timothy B. Bowers
Right of Way Agent
301 Stefan Drive
Charleston, SC 29412
(843) 762-7882

SCDOT R\W Form 812 (Revised 11-10-97)

SOCIAL SECURITY NUMBER INFORMATION

REQUEST FOR SOCIAL SECURITY NUMBER OR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

Road/Route I-26/US 17A Interchange Improvements

File 8.790

Project IU-0264(174)

Tract 29

PIN 22338

TMS 221-00-00-015 & 221-00-00-091

Amount $50,000.00

Acquisition (Sq. Ft./Acres) 9,102 sf.

You are required by law to provide the South Carolina Department of Transportation (Hereinafter "SCDOT") your correct Social Security Number or Taxpayer Identification Number. If you do not provide SCDOT your correct Social Security Number or Taxpayer Identification Number, you may be subject to civil or criminal penalties imposed by law.

Please print or type:

NAME: Speedway Super America, LLC
(If husband & wife filing jointly, enter both names and circle name of person whose Social Security Number appears below.)

MAILING ADDRESS: 539 South Main Street

CITY: Findlay **STATE:** OH **ZIP-CODE:** 45840

SOCIAL SECURITY NUMBER AND TAXPAYER ID NO.: [redacted]

Under penalties of perjury, I certify that the number shown on this statement is my correct Social Security Number or Taxpayer Identification Number.

Date: 10/31/00 Linda B. Miller
Signature of Landowner

You are further requested to provide to the South Carolina Department of Transportation the dollar amount of your share of the gross proceeds, or if gross proceeds are not known, the percentage of your share.

Your Share: $ 50,000.00 , or 100 **% of ownership**

Linda B. Miller
Signature of Landowner

Marketing – Real Estate

MARATHON ASHLAND Petroleum LLC

539 South Main Street
Findlay, OH 45840-3295
Telephone 419/422-2121
Fax 419/421-3522
Internet www.marathon.com/realest

November 9, 2000

VIA OVERNIGHT MAIL

Mr. Timothy B. Bowers, Right of Way Agent
South Carolina Department of Transportation
301 Stefan Drive
Charleston, SC 29412

RE: File 8.790 – Interstate 29/US 17A Interchange Improvements
Berkeley County – PIN 22338 – Project IU-0264(174) – Tract 29
SSA #0258, 1520 N. Main Street, Summerville, SC

Dear Mr. Bowers:

Enclosed please find the fully executed Title to Real Estate form and Social Security Information relating to the subject project for your further processing.

Please forward the check made payable to Speedway SuperAmerica LLC in the amount of Fifty Thousand ($50,000.00) to my attention.

If we can be of any further service, please advise.

Sincerely,

Linda B. Miller
Real Estate Coordinator

lm

Enclosures

ccs: G. R. Greiwe
R. Q. Scholes

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY Cynthia Wright and Richard Wright, Plaintiffs, versus South Carolina Department of Transportation, Pilot Travel Centers, LLC, Speedway, LLC, Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc., and Munlake Contractors, Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2016-CP-08-334 **ASHLEY LAND SURVEYING, INC.'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT**

TO: KEVIN B. SMITH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

This matter comes before the Court on Defendant Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc. ("Ashley) motion for summary judgment in the above-captioned action. For the reasons set forth below, Ashley respectfully requests that the Court grant its Motion.

STATEMENT OF FACTS

This action arises from a motor vehicle accident that occurred on October 6, 2012, while Plaintiffs were traveling North on Highway U.S. 17A on a motorcycle. Plaintiff Richard Wright was driving the motorcycle, and his wife, Plaintiff Cynthia Wright, was riding as a passenger. The accident occurred when a pick-up truck that had been travelling in the southbound lane of U.S. 17A (opposite lane of traffic) stopped in the median with its left blinker on and then suddenly turned left into the side of Plaintiffs'' motorcycle. The accident occurred on a portion of U S 17A located in front of a Pilot

Travel Center gas station ("Pilot Travel Center") owned by Pilot. The driver of the pick-up truck, Daniel Sena (Sena), testified that he has intended to make a left hand turn into one of the entrances to the Pilot Travel Center (Daniel Sena Deposition, May 6, 2015, 70-72, attached hereto as Exhibit A; see also Sena Dep Ex 3, attached hereto as Exhibit B). Police later determined that Sena had a blood alcohol level of .12, and Sena tested positive for Cocaine in his system shortly following the accident. Plaintiffs contend that the accident would not have occurred had there been a solid raised concrete median in the highway that prevented motorists travelling southbound from making a left-hand turn onto Pilot's premises. Plaintiffs also contend that the location and design of Pilot's entrances somehow caused the motor vehicle accident.

Pilot constructed the subject Pilot Travel Center in or around August 2002 after acquiring the real property and existing has station on or about September 1, 2001. (Aff of Bill Mulligan Paragraphs 5, 9, attached as Exhibit C). The existing station already had three driveways with access to US 17A, and there was no raised concrete median in the highway preventing left turns into the existing gas station (IS at Paragraph 7). In fact, there has never been a raised median in this section of the highway (Rule 30(b)(6) Deposition of SCDOT, Leland Colvin, Jr., March 13, 2017, at 256, attached hereto as Exhibit D).

1. All excerpts of Sena's deposition cited in this Memorandum are attached as Exhibit A.
2. All excerpts of the deposition of Leland Colvin, Jr., who served as one of SCDOT'S Rule 30(b)(6) designees, cited in this Memorandum are attached as Exhibit D.

Around the time the Pilot Travel Center was being built, the South Carolina Department of Transportation (SCDOT) was in the process of widening the section of US 17A in front of Pilot Travel Center (the "Widening Project"). SCDOT was also reconstructing the intersection adjacent to the existing has station (the "Interchange Project"). The Widening Project and Interchange Project were completed on June 17, 2002 and November 1, 2003, respectively (Exhibit D 216). SCDOT designed the plans for the Widening Project, but used an outside firm to design the plans for the Interchange Project (Exhibit D 252-53). According to SCDOT, the design plans for the Widening Project never included a raised median (Exhibit D 253: 17-254;3). The decision to not install a raised median in front of the Pilot Travel Center was made by Leland Colvin, Jr. (Colvin) who was the Project Manager for the Widening Project (Exhibit D 252:2-5,255). This decision was made when the Widening Project design plans were prepared in 1998 (Exhibit D 283:20-285:2). Colvin's decision to use a flush median (rather than a raised median) was made in conformance with SCDOT'S Highway Design Manual, which SCDOT considers "the Bible" for designing highways in the state (Exhibit D 254). in fact, according to SCDOT, installing a raised median as part of the Widening Project would have been in contravention to the standards set forth in the SCDOT Highway Design Manal (Exhibit D 254).

In order to construct the entrances/driveways to the subject gas station, Pilot had to submit an application to SCDOT for an encroachment permit (Exhibit C Paragraph 8; Exhibit D 274). SCDOT had to approve the design and location of the driveways to Pilot's property before issuing Pilot the encroachment permit (Exhibit C, Paragraph 8. Exhibit D 274-75). In evaluating whether to approve the encroachment permit, SCDOT conducts an independent analysis to ensure that the proposed driveways conform to its regulations and standards (Exhibit D 275). SCDOT also considers safety and how the access to private property affects traffic and the general operation of the highway system (Exhibit D 48-50). SCDOT has the ultimate authority to approve encroachment permits (Exhibit D 277). SCDOT would never compromise the public's safety to accommodate a property owner's interests when it comes to approving encroachment permits

(Exhibit D 267-69). SCDOT ultimately approved Pilot's encroachment permit application and issued a permit to construct the entrances/driveways to the Pit Travel Center (Exhibit C Paragraph 8).

On March 31, 2014, Plaintiffs filed the present negligence action against Ashley and SCDOT arising from the accident. Plaintiffs allege that SCDOT was negligent for failing to install a raised median in the highway that prevented left-hand turns into the Pilot Travel Center. Plaintiffs also allege that SCDOT was negligent for allowing Pilot to have an entrance/exit where it was located on the property. Additionally, Plaintiffs allege in their Complaint that Ashley owed the driving public a duty to construct its entrance/exit "in such a way as to prevent the existence of hazardous road conditions [on the highway]" and was negligent for failing to design the entrance/exit "to prevent . . .]Plaintiffs] from being stricken by other motorist[s] attempting to turn left across traffic . . ."(Amend. Compl. Paragraphs 54, 55). Plaintiffs further claim that Ashley is partially responsible for the painted/flush median being utilized by SCDOT as opposed to a raised concrete median. Their allegation is that Ashley allegedly influenced SCDOT's decision on which type of median to install on the roadway in front of the Pilot Travel Center.

3 On February 9, 2016, Plaintiffs filed a separate action against several other parties in connection with the accident. The two actions have since been consolidated

4. Plaintiffs' allegation that Ashley influenced or negotiated with SCDOT to prevent SCDOT from installing a raised median in front of Pilot's property is based solely upon handwritten notes on a letter from an SCDOT official to an employee of the prior owner of the subject property dated August 28, 2000. These notes were not made by an employee or agent of Ashley or SCDOT. Not only did SCDOT indicate that the decision to use a painted/flush median instead of a raised median was made when the design plans of the Widening Project were prepared in 1998 (prior to this letter), but SCDOT also testified that there was never a "negotiation" of the median. (Exhibit D 260:16-262:5, 283:20-285:2) Leland Colvin, the SCDOT employee who made the decision to use a painted/flush median, testified that he does not recall ever talking to anyone from Pilot about the median prior to making his decision (See Exhibit D 99:16 – 100:5). SCDOT testified multiple times throughout its Rule 30(b)(6) deposition that it made the decision as part of the Widening Project to use a painted/flush median instead of a raised median, and that here was never an expectation that there was going to be a raised median installed in front the the Pilot Travel Center (exhibit D 260:16-24). Plaintiffs cannot produce even a scintilla of evidence that Ashley did anything to influence SCDOT's independent decision to use a painted/flush median in front of the Pilot Travel Center.

Pilot filed the present Motion for Summary Judgment based on the grounds that Plaintiffs have failed to present evidence sufficient to raise a genuine issue of material

fact that Pilot owed them any duty or breached any duty owed, or, that any alleged negligent act of omission on the part of Pilot proximately caused Plaintiffs' injuries.

STANDARD OF LAW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c). When a party makes a motion for summary judgment that is supported by evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion by must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists *Klippel v Mid-Carolina Oilm, Inc*, 303 S.C. 127, 399 SE2d 163 (Ct. App. 1990); *Dyer v. Moss*, 284 S.C. 208, 325 S E 2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that here is a genuine issue for trial in order to overcome a summary judgment motion. *Baughman v. American Tel & Tel Co.*, 306 S.C. 101, 410 S E 2d 537 (1991).

DISCUSSION

In order to prevail at trial, Plaintiff must establish that (1) Ashley owed them a duty; (2) Ashley breached that duty by a negligent act or omission; (3) and that Plaintiffs' damages were proximately caused by this breach. Hubbard v Taylor, 339 S.C. 582, 588, 529 S E 2d 549, 552 (Ct. App. 2000). As will be discussed below, Plaintiff has failed to create a genuine issue of material fact regarding these essential elements of their claims.

I. Plaintiffs have failed to establish that Ashley owed them a duty of care.

Defendant did not owe Plaintiffs any duty of care as alleged in the Complaint, and therefore, Ashley is entitled to summary judgment. See *Hurst v. E. Coast*

Hockey League, Inc., 371 S.C. 33, 37, 637 S E 2 d 560, 562 (2006) ("The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law)

Plaintiffs allege that Ashley owed a duty of care to all motorists traveling on the highway in front of the Pilot property. 5. However, the Supreme Court of South Carolina has refused to recognize such a broad duty. *See Skinner v. S Carolina Dep't of Tranp*, 383 S.C. 520, 524-25, 681 s e 2D 871, 874 (2009) (noting that there is no general common law duty of care owed to travelers "on the part of an owner of property abutting a highway who neither possesses nor controls the highway"). To the contrary, a property owner whose land abuts a highway only owed a duty to travelers for highway conditions where the property owner "has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers." Id. Here, the Plaintiffs cannot establish that Ashley created a dangerous artificial condition on the highway to serve as the basis of any duty. 6.

5 Plaintiffs cannot establish that Ashley owed them a duty under a traditional premises liability theory as it is undisputed that the motor vehicle accident underlying this action did not occur on Pilot's property, and that Plaintiffs were neither invitees nor licensee of Pilot prior to the motor vehicle accident.

6 Examples of artificial conditions created by a property owner include spilling material on a roadway, emitting smoke that drifts over the highway, or creating traffic jams on the highway due to plant shift changes Skinner, at 525, 681 S E 2 d at 874.

Plaintiffs allege that the dangerous condition that lead to the subject accident was the absence of a solid raised median in the highway to prevent left hand turns onto Pilot's premises. However, the decision as to whether a raised median should be installed on a highway falls within the exclusive authority of SCDOT See Giannini v. S Carolina Dep't of Transp, 378 S.C. 573, n. 1 (2008) (recognizing SCDOT has initial discretion to place median barriers on a highway); S.C. Code Ann. and 57-3-110 (1) ("The Department of Transportation shall . . . [have the power and duty to] lay out, build an maintain public highways and bridges, including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges"). This decision-making authority arises from SCDOT's police power and duty to plan, maintain, and operate the state's highway system. *See Brashier v. S Caroina Dep't of Transp*, 327 S.C. 179, 190-91, 490 S E 2d 8, 14 (1997) overruled on other grounds by *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S E 2d 716 (2000) (recognizing SCDOT'S police power and duty to plan, maintain and operate the state highway system); *S. Carolina State Highway Dep't v. Wilson*, 254 S.C. 360, 365-66, 175 S E 2d 391, 394 (1970) (noting that "the clear weight of authority from other jurisdictions is that the construction of a median is an exercise of the police power"); *S Carolina State Highway Dep't v. Carodale Assocs*, 268 S.C. 556, 561, 235 SE 2d 127, 129 (1977) ("Re-routing and diversion of traffic are police power regulations."). Simply put, SCDOT has ultimate control over the design and construction of highways and the placement of traffic control structures such as raised medians. See S.C. Code Ann Section 57-3-110 (3) ("The Department of Transportation shall [have the power and duty to] cause the state highways to be marked with appropriate directions for travel and regulate the travel and

traffic along such highways, subject to the laws of the State []" (emphasis added)). One need only review South Carolina's takings jurisprudence to recognize that a business owner whose land abuts a state highway cannot usurp the authority of SCDOT to construct a solid median on that highway See e.g., Hilton head Auto, LLC v. S Carolina Dep't of Transp, 394 S.C. 27, 32, 714 S E 2d 308, 311 (2011) (business owner not entitled to just compensation where SCDOT closed a median crossover on the highway that prevented customers from continuing the make an immediate left turn onto business premises); Hardin v. S Carolina Dep't of Tranp, 371 S.C. 598, 641 S E 2d 437 (2007)(SCDOT's decision to close a median crossover did not disturb business owner's property rights because business still had access to and from the public road system); S. Carolina State Highway Dep't v. Carodale Assocs, 268 S.C. 556, 561, 235 S E 2d 127, 129 (1977) ("[a] landowner has no property right in the continuation or maintenance of the flow of traffic past its property. Traffic on the highway, to which they have access, is subject to the same police power regulations as every other member of the traveling public"). Moreover, SCDOT testified that it, and not Ashley, made the decision to not install a raised median in the portion of US 17A in front of the Pilot Travel Center (Exhibit D 255).

The facts of this case are comparable to those in Skinner v. S Carolina Dep't of Transp, 383 S.C. 520, 524-25, 681 S E 2d 871, 874 (2009) and Allen v. Mellinger, 156 Pa Cmwlth 113, 625 A 2d 1326 (1993). In Skinner, the Plaintiffs were injured in a motor vehicle accident after being hit head on by another motorist whose car crossed the center line of the highway. Id at 522. The at-fault motorist lost control of her vehicle when she veered onto the highway's shoulder near a driveway leafing to a stable and subdivision.

Id. Plaintiffs filed suit against several parties, including SCDOT and the owners was based on the argument that the at-fault motorist could not regain control of her vehicle due to deep shoulder ruts created by those using the driveway. Id at n. 1 The trial court granted the owners summary judgment, finding that the owners of the driveway and stable owed no duty to the Plaintiffs. 7. The South Carolina Supreme Court affirmed the trial court's holding that the owners wed no duty, noting that the shoulders were part of the highway and that SCDOT, not he owners, had the responsibility to maintain them. Moreover, the Court held that the ruts themselves were "natural consequences of highway use," and that an abutting landowner can only be liable for artificial conditions it creates, such as emitting smoke over the highway or spilling material on the highway. Thus, the owners did not have a duty to warn travelers of the shoulder ruts or to protect them from encountering them. Id at 523.

Similarly in Allen, the common wealth Court of Pennsylvania was presented with facts nearly identical to the facts at hand. The plaintiffs attempted to make a left hand turn from the highway into the defendants' business premises when their vehicle was hit by a truck traveling in the opposite direction. Allen, at 115. Relying on Restatement (Second) of Torts Section 349 8, the Court held that the business owners owed no duty to the plaintiffs to maintain the highway in a safe condition. According to the Allen Court,

7. The trial court also held that the Plaintiff's claim failed for lack of proximate cause; however, the South Carolina Supreme Court did not address this holding

8. According to Section 349,

A possessor of land over which there is a public highway or private right of way is not subject to liability for physical harm caused to travelers upon the highway or persons lawfully using the way by his failure to exercise reasonable care

(a) to maintain the highway or way in safe condition for their use, or
(b) to warn them of dangerous conditions in the way which, although not created by him, are known to him and which they neither know nor are likely to discover

the Commonwealth owns the highway and "has the exclusive duty for the maintenance and repair of state highways." Allen, at 118. The court further rejected the plaintiffs'' argument that the business owners' failure to erect signs, paint lines or place curbing or barricades in the store's parking lot to indicate to customers the safest place to enter the parking lot created a dangerous condition. Allen, at 119, n. 1, 625 A 2d at 1329 n 1 (1993).

Like the driveway and stable owners in Skinner and the business owners in Allen, Ashley did not create a dangerous condition on the highway. Even if the absence of a raised median was a dangerous condition, it was a condition on the highway created by SCDOT. Medians, like highway shoulders, are part of the highway subject to the control and authority of SCDOT; and the decision to install a painted median, as opposed to a raised median on the subject highway was within the exclusive providence of SCDOT as the governmental agency charged with the duty to design, maintain and operate the State's highways. SCDOT, not Ashley, has the duty to maintain medians. SCDOT, not Ashley, has the "duty to use reasonable care to keep streets and highways within its control in a reasonably safe condition for public travel." Ford v. S Carolina Dep't of Transp, 328 S.C. 481, 487, 492 S E 2d 811, 814 (Ct. App. 1997).

To the extent that Plaintiffs maintain that Ashley created a dangerous condition on the highway by virtue of applying for construction of a driveway to the property that was accessible by motorists travelling southbound, such argument lacks merit. See Skinner, at 526 (evidence that it was motorists' utilization of the property owner's driveway that led to alleged dangerous condition was insufficient to establish business owner "created" a defect on the highway). First, Plaintiffs cannot establish that the driveway Sena was

attempting to turn into on the date of the incident itself was dangerous. Second, and most importantly, like with the decision of which type of median to install on a highway, it is SCDOT who has the ultimate decision-making authority with respect to the placement and design of driveways (See Exhibit D 274-76). According to SCDOT, driveway locations are party of the design of the highway (Exhibit D 169:23-170:8). In order to construct or reconstruct a private driveway with access to a highway, a property owner must first obtain an encroachment permit from SCDOT S.C. Code Ann. 57-5-1080; Exhibit D 274). As party of the permitting process, SCDOT reviews the permittees' design plans to ensure compliance with SCDOT regulations and standards concerning the design and location of driveways (Exhibit D 274-76). SCDOT also reviews a permitee's encroachment application to ensure driveways do not create any safety concerns or impede efficient traffic operations. (Exhibit D 48-50; ACCESS AND ROADSIDE MANAGEMENT STANDARDS, October 1996, at 5, attached as Exhibit E). SCDOT "may deny any request for any permit for any driveway . . . which in [its] judgment . . may create a hazard to the traveling public." S.C. Code Ann. Section 57-5-1090. Even after driveways are constructed, SCDOT has the authority to require "driveways be narrowed, widened, or removed in order to correct safety and operational problems" (Exhibit E 6). Thus, Ashley could not have designed the driveways to the Pilot property unless SCDOT deemed them to comply with SCDOT's design standards and determined that they were safe for the public. Moreover, had the driveways ben deemed unsafe to the public at any time over the nine (9) years between the completion of Pilot's gas station and the Plaintiffs' accident, SCDOT had the authority to require Pilot to change them.

To the extent that Plaintiffs maintain that Ashley can be held liable for their injuries because Pilot had notice of the danger posed by motorists making left-hand turns onto its property 10 and failed to take any remedial action, no such affirmative duty on the party of Ashley exists. "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Rayfield v. S Carolina Dep't of Corr*, 297 S.C. 95, 100, 374 S. E. 2d 910, 913 (Ct. App. 1988). Plaintiffs cannot establish any source of a duty requiring Ashley to affirmatively act 11. Having notice of other accidents that had occurred on the highway does not give rise to a duty to warn. See Restatement (Second) of Torts Section 349 (landowner owes no duty to warn travelers of dangerous conditions in the highway or private right-of-way which, although not created by him, are known to him). Moreover, foreseeability of an injury alone does not create a duty to act. *S Carolina State Ports Auth v. Booz-Allen and Hamilton, Inc.*, 289 S.C. 373, 376, 346 S. E. 2d 324, 325 (1986). Finally, SCDOT testified that it does not expect businesses to notify it of accidents on the highway in front of the businesses' property. (Exhibit D 231).

10. Plaintiffs allege Ashley was on notice of the danger the driveways posed to motorists by virtue of prior motor vehicle accidents that occurred in and around the entrance to Pilot's property.

11. Even if Ashley did owe Plaintiffs some duty to affirmatively act, which is denied, as discussed above, Ashley did not have the authority to install a raised median or relocate the driveways on the property absent the approval of SCDOT. See S.C. Code Ann 57-5-1080(" it shall be unlawful for any person to open up, construct or reconstruct any private driveway which is intended for use by any vehicles in entering or leaving such highway unless a permit for such driveway shall have been obtained from the Department)

Finally, it should be noted that Judge Young concluded that as a matter of law Pilot did not owe the Plaintiffs any duty to prevent them from getting in a motor vehicle accident on the highway in front of its property. (Order at pp. 5-10 Ex. G) *See Rayfield v. S Carolina Dep't of Corr.*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988) ("An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.:), As was the case with Pilot, Plaintiffs have established no legal duty owed to them by Ashley. Ashley further incorporates the findings and determinations set forth in Judge Young's Order by reference and further seeks relief in accordance with the Order.

In light of the foregoing, Plaintiffs cannot establish that Ashley owed them any duty as a party to the construction of the landowner abutting the portion of the highway where plaintiffs were injured.

II. Plaintiffs have failed to establish any negligent act or omission on the part of Ashley.

Even if Plaintiffs can establish that Ashley owed them some duty, Plaintiffs cannot establish a breach of this duty as a matter of law. To prove Ashley breached a duty, Plaintiffs must establish a "negligent act or omission" on the party of Ashley. Bishop vv. S Carolina Dep't of Mental Health, 331, S.C. 79, 88, 502 S.E.2d 78, 82 (1998) ("To establish a cause of action in negligence three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of this duty" (Emphasis added)). Here, Plaintiffs have failed to present evidence of either a negligent act or omission.

Plaintiff cannot establish a negligent act or omission on the part of Ashley. As discussed above, Ashley did not have any decision-making authority with respect to which type of median to be placed on the highway. Moreover, the location and design of Pilot's driveways were approved by SCDOT as party of the encroachment permit review process. Since Plaintiffs cannot establish any breach of a duty, Plaintiffs' claims against Ashley fail as a matter of law.

III. Plaintiffs cannot establish that their damages were the proximate cause of any negligence on the party of Pilot as a matter of law.

In order to recover against Ashley, Plaintiffs must establish Ashley alleged negligence was the proximate cause of their injuries. McKnight v. S Carolina Dep't of Corr, 385 S.C. 380, 387, 684 S.E.2d 566, 569 (Ct. App. 2009). "When the cause of a plaintiff's injury may be as reasonably attributed to an act for which the defendant is not liable as to one for which he is liable, the plaintiff has failed to carry the burden of establishing the defendant's conduct proximately caused his/her injuries" Id. "For an intervening act to break the causal link and insulate the tortfeasor from further liability, the intervening act must be unforeseeable." *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 180, 463 S.E.2d 636, 640 (Ct. App 1995). "Ordinarily, proximate cause is a question for the jury, but when the evidence is susceptible to only one inference, it becomes a matte of law for the court."

Here, there is no evidence that any act or omission of Ashley proximately caused Plaintiffs accident. To the contrary, Sena, himself testified that the accident was his fault and that Pilot was no to blame for his actions that night (Exhibit A 108:21-109:4). Plaintiff Cynthia Wright also testified that Sena bears responsibility for hitting her and

her husband, and that she cannot say whether the existence of a raised median would have prevented the accident (Cynthia Wright Deposition, February 26, 2015, at 58, 69, attached as Exhibit F12). According to Plaintiff Cynthia Wright, "I think [Sena] was determined to go to McDonald's regardless..." (Exhibit F 68:22-69:3). According to Sena, the fact that here was no raised median in the highway does not negate the fact that it was his actions that led to the collision with Plaintiff's vehicle (Exhibit A 118-19). He testified that he simply did not see the Plaintiffs' motorcycle when he attempted to make a left turn into Pilot's parking lot (Exhibit A 73). Sena indicated that his failure to yield "was just bad judgment" (Exhibit A 106). Moreover, Sena admitted that he was under the influence of alcohol and cocaine at the time of the accident (Exhibit A 122). Thus, to the extent a negligent act or omission of Ashley did occur, which is denied, Sena's actions were an intervening cause of Plaintiffs' injuries. See Stephens v. CSX Transp, Inc., No 27587, 2015 WL 6735757, AT *10 (S.C. Nov. 4, 2015) (noting that the fact Plaintiff consumed alcohol and prescription medication prior to driving her vehicle was not reasonably foreseeable and could have served as the intervening cause of the accident.

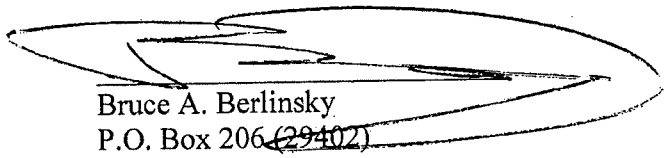
Moreover, as has been discussed avoce, to the extent Plaintiffs allege that the failure to install a raised median proximately caused the accident, such failure cannot be attributed to Ashley. SCDOT, not Ashley, has exclusive control over the highway and the ultimate decision as to which type of median should be placed on a highway. Similarly, it was SCDOT that ultimately approved the design and location of Pilot's driveways.

Thus, Plaintiffs cannot establish that any negligence on the part of Ashley proximately caused their injuries as a matter of law.

CONCLUSION

In light of the foregoing reasons, Ashley respectfully requests that the Court grant its Motion for Summary Judgment.

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ATTORNEY FOR DEFENDANT,
ASHLEY LAND SURVEYING, INC.

Charleston, South Carolina
June 5th, 2017.

Exhibit A

In the Matter Of:

Wright, Cynthia & Richard v

SCDOT, et al.

Daniel James Sena

May 06, 2015

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there are two on 17A. Would you agree with me on that?

A. Yes, sir.

Q. Then there's a fourth one back here which is for the trucks?

A. Yes, sir.

Q. All right. If you would --

MR. MAYBANK: Do you mind him -- we're going to mark this. Let's go ahead and mark it now so we don't forget.

(DFT. EXH. 3, Google Aerial Photograph of Accident Site, was marked for identification.)

BY MR. MAYBANK:

Q. All right. If you would for the record, I'm going to show you. This right here is the left turn lane that you were referring to that you could come up to to take a left on the frontage road; right?

A. Yes, sir.

Q. All right. At some point you were going to come into one of these entrances; correct?

A. Yes, sir.

Q. Can you circle the entrance with my pen -- or, actually, let me do this. Can you

highlight the entrance you were going to come into?

A. (Marking.)

Q. Okay. As you approached that entrance if you would, with my pen, would you put an arrow where you were driving and approaching that?

A. (Marking.)

Q. Okay. And you have -- yes. Unfortunately, you were going in the opposite direction. Let me ask you this. Instead of the arrow being in the oncoming traffic --

MR. BESLEY: I think he understood your question to be the direction generally.

BY MR. MAYBANK:

Q. I'm sorry. In the oncoming area, could you put the arrow of where you were driving?

A. Yes, sir. I'm sorry, I didn't see that there. It's right here. That's where the truck was, here. (Marking.)

Q. Okay. At what point -- if that's where your truck was, at what point did you begin to merge into that area?

A. You want me to put another arrow or X?

Q. If you kind of do, like, a little loop as if you're pulling into it which would be where?

A. (Marking.)

Q. Very good. And with your permission I'm going to just do a little thing there. (Marking.) So -- and it was your intent to take the left into the yellow marked highlighted entrance?

A. Correct.

Q. Did you at any time, to your recollection, come to a full stop in that median before you made that left-hand turn?

A. Yes, sir. I did.

Q. Okay. A full stop prior to the left-hand turn. You saw how many vehicles approaching you at that time, to the best of your knowledge?

A. To the best of my knowledge I want to say at least two.

Q. And did you wait for two vehicles to pass you before you made that left turn lane?

A. Yes, sir. I did.

Q. Okay. Is it a true statement that at no time prior to hitting the motorcycle did you ever see the motorcycle?

A. I'm sorry. Repeat that.

Q. Yes. You were not driving that night with the purpose of running into anybody, were you?

A. No, sir.

Q. Okay. Had you seen the motorcycle before impact, is it a true statement that you would not have taken a left in front of them?

A. Yes, sir.

Q. All right. So the question is, is it a fair statement or true statement to say that before you made that left turn to come into that McDonald's you simply didn't see the motorcycle?

A. Correct.

Q. Okay. When was your first realization that you had -- that you had had an accident?

A. As soon -- when I had the accident? I realized we was going to have an accident before we even had the collision. I seen the cars pass, I cut my wheel and went to turn. And when I went to turn I just glanced back this way and they were -- they were there. I slammed on brakes and my vehicle was halfway between that yellow line there and they said they hit -- they clipped the front corner of my vehicle. It was there and they couldn't avoid it.

Q. So you were already into the lane of travel prior to impact and right at impact?

A. Dead stop -- I was dead stopped by the time they hit me.

Q. Because you had seen them coming?

motorcycle that's reflective that you could have seen other than the headlight?

A. No, sir.

Q. Was it easier to see the car next to them than it was the motorcycle?

A. Yes, sir.

Q. Why was that?

A. It's a larger -- larger object. I -- as you can look in the picture -- may I use this? At nighttime, as you have the traffic light right there at the intersection going in the frontage road or whatever, there's cars stopped at that light. You come to a stop. I just made a judgment that the headlight that I seen was at that intersection and not, you know, coming toward me.

Like I said, the light changed -- it didn't change suddenly but it changed from green to yellow. And as I seen yellow, I seen the two cars coming through and, obviously, I was anticipating on the cars on the other side of the light not to come through. I mean, I wouldn't say that there wasn't no reason why I wouldn't see it. It was just bad judgment, I'd say.

Q. And basically, as I understood your testimony a little while ago, you messed up because

DANIEL JAMES SENA - EX. BY MR. BESLEY

work, undressed, got out of my work clothes, drank a beer and grabbed a second beer and went to my back door in the back of my truck and then did the cocaine.

Q. Okay.

A. And --

Q. And -- okay. Go ahead.

A. Smoked a cigarette, my wife came out with the list, you know, and then off to McDonald's.

Q. No other alcohol, no shots of anything?

A. No, sir.

Q. Nothing. Did it surprise you that you were a .10 alcohol level?

A. Yes, sir. If not, I would not have given consent to a Breathalyzer. In my own personal opinion, I just figured I wouldn't fail a Breathalyzer with two beers in my system.

Q. You're absolutely certain it was just two beers?

A. Yes, sir.

Q. Do you take full responsibility for the accident?

A. Yes, sir. I do.

Q. You don't blame the DOT for the accident?

DANIEL JAMES SENA - EX. BY MR. BESLEY

A. No, sir.

Q. You don't blame Pilot Gas Station for the accident?

A. No, sir.

Q. Okay. And whose truck were you driving?

A. That was our truck, mine and my wife's -- registered to her but ours.

Q. When you say it was yours or ours, is that because you both paid for it? Or why do you say it's ours?

A. When you're married, ain't half of everything yours?

Q. All right. Fair enough. Had you driven that truck previously?

A. Yes, sir.

Q. You were familiar with it?

A. Yes, sir. Just got home from work in it.

Q. And you had permission to drive that truck?

A. Yes, sir.

MR. BESLEY: I think that's all I've got for you at this time. Thanks -- wait, let me back up. I just want to confirm.

Q. I've got some pictures here in front of

DANIEL JAMES SENA - EX. BY MR. SMITH

Q. Okay. Do you know that in the original plans for widening this road and building these -- this Pilot Travel Center, do you know that in the original plans there was a requirement for a raised median?

A. No, sir. That's not something I would look into. That's something that sucks, I can say that.

Q. And do you know that the Pilot Travel Center got that requirement removed for the raised median?

MR. BESLEY: I'm going to object to the form of the question. That's mischaracterizing evidence and testimony.

THE WITNESS: No, sir. I was not aware.

BY MR. SMITH:

Q. Not aware of that. But you're going to accept responsibility for what you did; is that true?

A. Yes, sir. I was the driver of the vehicle.

Q. You're not looking to place blame anywhere else?

A. I mean, that's -- you say there was something in the original plans. I'm not going to

DANIEL JAMES SENA - EX. BY MR. SMITH

say that was the reason why -- what happened happened. I mean, that could have prevented my accident and a lot more accidents and any more to come. I'm not going to post blame on -- my actions on them for that evening because I was the one that was behind the vehicle.

Q. Sure.

A. I can leave it at that.

Q. And you told Mr. Maybank you're clearly sorry and remorseful for what happened?

A. Yes, sir. I am.

Q. And do you think about -- obviously while you're here being incarcerated, I mean, do you think about what happened and why you're here and things like that pretty often?

A. Every day.

Q. All right. And the fact that you have accepted responsibility for all this, does that help you deal with it and grow and mature and heal from all this?

A. It was -- yes. There's no way, you've got to -- lesson learned. Just be more cautious out there.

MR. SMITH: That's all I have. Thank you.

Q. Are you aware that it's illegal to drive as treating it as a lane, but it is not illegal to turn?

A. Yes, sir. I am aware of that.

Q. And that's why you made that turn; right?

A. That's because you can come to a stop to make a turn, but you can't go past 30 feet?

Q. You're the licensed driver, but I'll take that at your word. So, now, if it's a legal turn and you're making a legal turn, assuming that there was a wall eight feet tall in front of you at that given time, you couldn't have taken that turn; right?

A. Correct.

Q. But you were making a legal turn on that night. You simply did not see the Wrights before you turned, did you?

A. Correct.

Q. All right. And you're under the influence of alcohol?

A. Yes, sir.

Q. You're under the influence of cocaine?

A. Yes, sir.

Q. Cocaine was in your possession at the

Exhibit B

PENCAD 800-631-6989
DEFENDANTS' EXHIBIT
3
Stan Stitt

102,051 Cynthia Wiehl v SCDOT
SCDOT Oakland File0008

Exhibit C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	C/A NUMBER: 2014-CP-08-675
Cynthia Wright and Richard Wright, Plaintiffs, vs. South Carolina Department of Transportation, C & A Unlimited, Inc. and Pilot Travel Centers, LLC, Defendants.		**AFFIDAVIT OF BILL MULLIGAN**

Personally appeared before me the undersigned, after being duly sworn, deposes and says:

1. The contents of this affidavit are based on my own personal knowledge.

2. I am of sound mind and over eighteen years of age.

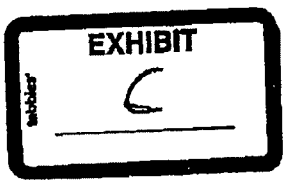
3. I am familiar with the allegations alleged by the Plaintiffs in the above-captioned lawsuit pending in Berkeley County.

4. Beginning in 1994, I began serving as the Director of Construction for Pilot. That Directorship later became a Vice President's position, and I have continuously served as the Vice President of Construction to the present date, which title is now Vice President of Development.

5. On or about September 1, 2001, Pilot acquired the existing gas station and real property located at 1521 North Main Street, Summerville, South Carolina 29483 (the "Property").

6. After acquiring the Property in September 2001, Pilot redesigned and constructed a new Pilot Travel Center station on the Property.

7. When Pilot acquired the Property, the existing gas station located on the Property had three driveways with access to U.S. Hwy 17-A. There was no raised median in the highway preventing left turns into the existing gas station from the southbound lane.



8 Pilot was required to obtain an encroachment permit from the South Carolina Department of Transportation ("SCDOT") before Pilot could construct the driveways to the new Pilot Travel Center. In order to obtain the permit, the location and design of Pilot's driveways had to be approved by the SCDOT. In May 2002, Pilot submitted an application for an encroachment permit to the SCDOT, seeking approval of the location and design of its proposed driveways. The encroachment application was approved, and the SCDOT issued Pilot a permit to construct the driveways.

9. Construction of the Pilot Travel Center began in or around August 2002. Around the time the Pilot Travel Center was being planned/constructed, SCDOT was also performing an improvement project to the intersection of I-26 and U.S. Hwy 17-A, which was adjacent to the Property. The SCDOT did not install a raised median in the highway to prevent left turns into the Pilot Travel Center as part of the improvement project.

Bill Mulligan

April 28, 2016

Sworn to before me this 28th day of April, 2016

Notary Public for Tennessee

(SEAL) SHERRY L. BLAKE STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

My commission expires: 9-11-16

Exhibit D

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY

CYNTHIA WRIGHT AND RICHARD WRIGHT,

Plaintiffs,

vs. CASE NO. 2016-CP-08-334

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C & A UNLIMITED, INC., and PILOT TRAVEL CENTERS, LLC, SPEEDWAY, LLC, ASHLEY LAND SURVEYING, INC., F/K/A ASHLEY ENGINEERING & SURVEYING, INC., and ASHLEY ENGINEERING & CONSULTING, INC., and MUNLAKE CONTRACTORS, INC.

Defendants.

VIDEOTAPE
DEPOSITION OF: LELAND D. COLVIN, JR.

DATE: March 13, 2017

TIME: 11:35 AM

LOCATION: SCDOT District 6
6355 Fain Boulevard
North Charleston, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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because the Department of Transportation is required more -- is required to care more about safety than what a property owner thinks will make him or her more money. Is that true?

A. Yeah. Our -- yes. We -- we are charged with providing safe, reasonable access to the state highway system.

Q. All right. And safety takes precedent over any wishes that private corporations may have that may result in them making more or less money? Safety trumps that?

A. Yes.

Q. Okay. And would you say that safety is the primary concern for any decision regarding access to private property?

A. Yes. I would say safety and the operation of the state highway system are the two primary functions that the DOT looks at for access to the state highway system.

Q. And I -- and I read a -- a little bit about that. And -- and I think that term, to me, seemed to say that we know what safety is, but the operation of the road, that's about traffic issues and stuff, about the road functioning smoothly and not backing up and -- is that what you were talking

about, the second end of it?

A. Yes. I mean, that -- that -- the -- the operation, the functionality of that roadway. In other words, you've got a different safety standard for a interstate system that does not have any access points, then an urban arterial, then a minor arterial, then a neighbor street. So each -- no one roadway is treated the same with regards to the reasonable expectation of those drivers.

Each functional class of that highway has different safety components that -- that are tied to that, which is -- which I would say most drivers understand those reasonable expectations. They've got a -- you know, driving along an interstate with higher speeds, less conflict points versus driving along a neighborhood street. And then you've got those roads in between those two.

Q. But in any of those situations where it's an interstate or it's a major highway or a neighborhood or a -- or a smaller street, in any of those situations, there's two concerns that the Highway Department would -- I'm sorry -- the Department of Transportation would have that would trump the wishes of private property owners. And those two concerns would be, number one, safety,

and, number two, the functioning of the highway or roadway in question?

A. Yes.

Q. Okay.

A. That's a fair statement, yes, sir.

Q. All right. Let's talk about -- and I think that maybe even Question 1 under yours? Let me get to the page so I don't have to keep flipping here.

So the history of the design, that Number 1 --

A. Sure.

Q. -- why it was decided to -- decided to separate the north- and southbound lanes, barrier-type median, that seems to be your topic rather than Mr. Clark's, right?

A. Correct.

Q. Okay. So talk to me about this history of the design here.

A. Sure. Well, first thing I think you've got to recognize, there's two different projects and they just happen to start in at Farm -- at the intersection of 17A and Farmington.

Q. And let me ask you -- let me stop you right there.

call that construction joint, whatever you want to call it, that terminus of one and the -- and the starting point of the other one and marrying those two together, that's when the correction was made to show that -- that flush painted median.

Q. All right. Was that around the time of this letter, marrying those two together?

A. Yes.

Q. Okay.

A. Yes, sir.

Q. Okay.

VIDEO TECHNICIAN: Fifteen minutes, counselor.

MR. SMITH: Okay.

BY MR. SMITH:

Q. All right. Whose decision was it to change the plans from what was in the interchange project from a raised median to a flush median in the final plans? Whose decision was that?

A. That was my decision as the program manager.

Q. Okay. Now, what discussions did you have with anyone associated with the property owners or the people developing what is now the Pilot Travel Center with regards to that raised

median?

A. I wouldn't have had -- I don't recall any direct contact. That would have been through our right-of-way acquisition agent, which was Tommy Smoak.

Q. Okay.

A. So as the PM, I'm coordinating those. I'm not saying from time to time, do I have a direct conversation with the property owner, I do. Generally speaking, that is done through our right-of-way agents. Again, Tommy was our right-of-way manager down here out of -- out of our local office. And that's one thing I would do is we -- you know, kind of like I said early on, is the PM part of that job duty is kind of quarterbacking between purpose and need, environmental, right-of-way, plan development, right-of-way acquisition, and construction.

Q. Okay.

A. So as part of that, yes, that where when Tommy went out, I started reviewing the interchange plans in conjunction with the road widening plans and said, nope, the plan is from Farmington east, we're going with that flush median.

Q. And I imagine you're probably already familiar what the functional area of an intersection is. And what does that -- I know that -- the language in here. But if you could just explain to sort of a layperson, what is the functional area of an intersection?

MR. CRITES: Kevin, what page are you on on the ARMS manual?

MR. SMITH: I'm sorry. Page 9.

MR. MAYBANK: Thank you.

MR. SMITH: I have an extra if you want it. I did bring an extra of that. I don't think it's in there.

MR. CRITES: Okay. I know it was an exhibit in Mulligan's deposition.

MR. SMITH: Oh, yeah, it probably was. I better get my version out.

BY MR. SMITH:

Q. So functional area of an intersection, how would you explain to kind of a layperson what that is?

A. To a layperson, it's basically the turn lanes coming in and out of that intersection and the -- the perception of that driver to be able to make those allowable turning movements in and out

of that, in and out of that intersection.

Q. Okay. And if you could, could you use maybe one of our exhibits or maybe you can grab a new one -- what I want you to do is tell me where the functional intersection of this intersection, this 17A and Farmington is. It looks like we had a clean one here on Exhibit Number 6.

A. Okay.

Q. First of all, was that ever defined? Is there a document anywhere that you're aware of that defines where the functional area of the intersection between Farmington Road and Highway 17 is?

A. No.

Q. Okay. And was -- in the decision with the driveways and the raised median, was the functional area of the intersection considered in that process?

A. Yes. I mean, I think that's part of the design itself when you look at -- as -- as stated in the ARMS manual, the left turn lanes coming to and from intersections and -- and how you maneuver that, yes, that's part of the highway design of 17A.

Q. But in -- in all of the documents, the

of the intersection?

A. Yes.

Q. Okay. And do you believe that limiting or eliminating driveways within the functional area of an intersection improves safety in the vicinity of an intersection?

MR. MAYBANK: Same objection.

THE WITNESS: Eliminating driveways?

BY MR. SMITH:

Q. Or limiting. Limiting or eliminating driveways within the functional area of an intersection improves safety in the vicinity of an intersection.

A. It -- I would say that's case by case.

Q. Okay. Well, how about -- how about here, let me ask you this: Are the driveways in the functional area of the intersection, the driveways in the Pilot Center -- Travel Center on 17A, are those driveways within the functional area of the intersection with 17A and Farmington Road?

A. I believe one of the three are, yes. Yes.

Q. And is there a -- just, you know, is -- is there a general rule or principle that you would initially start with when you think about allowing

driveways in the functional area of an intersection? A general principle like it doesn't really matter or we need to be real careful about this or that's a really safe thing to do and that's something we should look at trying to implement?

A. Yeah. I mean, I think driveway locations is -- is a part of the design of the highway. Absolutely.

Q. And allowing driveways in the functional area of an intersection is generally frowned upon in the decisions that you all make.

MR. MAYBANK: Objection.

BY MR. SMITH:

Q. Is that a fair statement?

MR. MAYBANK: Object to the form.

THE WITNESS: Not in a vacuum, I would not think that's a fair statement.

BY MR. SMITH:

Q. Okay. Oh, I'm sorry. I -- I asked you to do something, then I just kind of moved on from something else.

You were going to take one of those exhibits and you were going to circle for me the area -- the functional area of the -- the functional area of the intersection. I may have

Q. So the question is: Would you disagree with a traffic engineer who said, you know what, this driveway, this driveway, this driveway, and this driveway, which is all of the four -- the four driveways closest to Farmington Road going backwards to Moncks Corner, that all four of those driveways are within the functional area of the intersection?

I know people can differ on, you know, things. But is that -- is that something you'd see that engineers could differ on, whether or not those four are in? Or are you just saying these three are in it, that -- that one, last one, that ain't in it, that's definitely not in it?

MR. MAYBANK: Object to the form.

THE WITNESS: Me provide testimony in the deposition, these -- these three are definitely in it. This one, in my opinion, is not in it.

BY MR. SMITH:

Q. Okay.

MR. MAYBANK: So for the record, which one is not in it?

THE WITNESS: I -- I --

MR. MAYBANK: Nobody knows what these three means.

THE WITNESS: The -- the two drives going into the Hess station are in the functional area. The westernmost drive into the Pilot station is in the functional area. In my opinion, the eastern -- the eastern vehicle drive is not in the functional area.

BY MR. SMITH:

Q. But you -- you -- you would agree with me that when you circled the functional area of the intersection initially, both drives at the Pilot Travel Center were in the functional area of the intersection that you drew? Is that fair to say?

I mean, your mark's there, a driveway is here.

A. Yeah. I also noticed that -- noted it was approximate. I mean, I don't -- it's -- it's hard to be able to make a decision -- a -- an engineering decision on an 8.5 by -- 8.5-by-11 sheet of paper.

Q. Okay. I got you.

So if we're going to go back and have somebody else try and define the functional area of this intersection, we know what the ARMS says, the area beyond the physical intersection compromise (sic) decision and maneuvering distance plus any

raised median, would you -- would the DOT rely on Pilot and the engineers they hire that that request is a safe request?

A. I -- I can't answer that question.

Q. Okay. Plans that double profits at the cost of safety should never be approved. True?

MR. MAYBANK: Object to the form.

THE WITNESS: Ask -- ask that one more time.

BY MR. SMITH:

Q. Plans that double profits at the cost of safety should never be approved.

A. Absolutely.

Q. Okay. Does the Department of Transportation have a responsibility to maintain highways in a safe condition?

A. Absolutely.

Q. That includes making changes to the highways that the Department of Transportation learns are unsafe?

A. Absolutely.

Q. And does the DOT have a duty to investigate and determine if changes are needed to be made to a highway?

A. Absolutely.

any similar studies ever done between 2000 and 2013?

A. Not that I'm aware of.

Q. And the -- the project here was finished at around 2003, was it not? I think that was the final inspection date?

A. The widening project was completed June 17, 2002. And the interchange project was completed November 1st, 2003.

Q. Okay. So basically ten years after those changes were made was the first accident study that the Department of Transportation undertook?

A. It was the first study that I'm aware of.

Q. Okay.

MR. MAYBANK: And -- and just for the record, the continued objection to any of the traffic safety studies and admissibility thereof.

MR. SMITH: Okay.

MR. MAYBANK: But ask him whatever you want.

BY MR. SMITH:

Q. Now, what -- what did -- what did this tell you?

advised the DOT that we've just noticed a lot of accidents in front of our property, what would the DOT's response to that be? Would they at least look into it?

A. Certainly.

Q. Maybe pull a -- an accident analysis for that area?

A. That would be one thing that we would do.

Q. And given the history of this project here with the original plan for a raised median, then it's -- then it's taken away, does the DOT have any expectation that the business owner who successfully negotiated away the raised median, that they would come back to the DOT at some point and -- if -- if large number of accidents were taking place in front of their location?

MR. CRITES: Objection.

BY MR. SMITH:

Q. Would the DOT expect them to come back and let them know something like that?

MR. CRITES: Object to the form.

MR. MAYBANK: Object to the form.

THE WITNESS: No. That's -- that's not part of how we -- how we do business, no.

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

A. Yes, sir.

Q. And were you somebody as the project -- I believe you said you were the project manager earlier?

A. Correct.

Q. You were actually on-site for the widening project?

A. During that time, my office was in Columbia; but, yes, I certainly made site visits, absolutely.

Q. Okay. And during that widening project, do you recall there actually being another convenience store there at any point in time that was a Speedway?

A. I -- I can't recall the details of that.

Q. Okay. But the 17 widening project, that stretched from essentially in front of this -- the Pilot Travel Center, what is now the Pilot Travel Center, towards Moncks Corner, correct?

A. Correct.

Q. And the design professional for that project was the South Carolina Department of Transportation, correct?

A. Correct.

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

Q. You testified earlier that there was a contemporaneous ongoing project which was the I-26 interchange with 17A, correct?

A. Correct.

Q. And that was a project that essentially started at Farmington Road and went towards Summerville, correct?

A. Yes, sir. Correct.

Q. Okay. So it just so happened that it was in the same general vicinity but two different projects, correct?

A. Correct.

Q. And the design professional for that project was the Arcadis engineering firm, I believe, correct?

A. Correct.

Q. Okay. Mr. Smith talked a lot about the questions about removing the median, and I know we reserved or preserved all objections until a later date. But some of the -- some of the questions were objected to, some of them weren't. So I just want to go through just to clarify a couple things.

The design plans for the 17A widening project which was in front of what is now the Pilot Travel Center did not nor did it ever include a

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

raised median or a nontraversable median; is that correct?

A. That's correct.

Q. And I believe your testimony earlier was that there was never an expectation during the 17A widening project in front of the Pilot Travel Center to have a raised or a nontransversable median because to do so would have been not compliant with the South Carolina Department of Transportation Highway Design Manual; is that correct?

A. That's correct.

Q. So to have put one in in front of the Pilot would have been in contravention to your own manual, correct?

A. Correct.

Q. And I believe you referred to that manual as the bible for design projects in the state of South Carolina; is that correct?

A. Yes, sir.

Q. Okay. Now, somebody, a design professional with Arcadis with the other project that didn't have anything to do with -- with the 17A widening project, but the interchange project with I-26, drew in some sort of raised median or

nontransversable median; is that correct?

A. Correct.

Q. Okay. But again, they were not the design professional for the widening project, correct?

A. Correct.

Q. Okay. And at some point in time with traffic flow, the DOT had to marry the two projects together, correct?

A. Correct.

Q. And at some point in time, you as the -- the program manager for that project with the Department of Transportation made the decision in conformance with the South Carolina Highway Design Manual that that was -- that a raised median was not going in front of the Pilot Travel Center, correct?

A. Correct.

Q. Okay. So there was never a raised median in front of the Pilot preventing a left-hand turn in that was ever installed or constructed on that roadway, correct?

A. Correct.

Q. Okay. And let me ask you this: Before the widening project began and there was a -- there

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

was a business there, I'll represent to you it was a Speedway before it became a -- a Pilot Travel Center. But there was a business there with driveways that provided ingress and egress from 17A into that business; is that correct?

A. Yes, sir.

Q. Okay. And at that time there was not a raised median preventing left-hand turns into that business, correct?

A. Correct.

Q. There's never been a raised median on that stretch of Highway 17A in front of what is now the Pilot Travel Center, correct?

A. Correct. There -- there was -- I'd have to see the limits. There -- there is a raised median that was installed in conjunction with the new location of roadway to the intersection just to the east. I -- I don't think the limits of that got in front of the -- the Pilot station.

Q. Okay.

A. I think that's correct.

Q. All right. So any discussion earlier about a -- a raised median or a nontransversable median being removed, it was never removed from the roadway itself, correct?

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

A. Correct.

Q. Nor was it ever removed from the design plans for the 17A widening project right in front of the Pilot Travel Center, correct?

A. Correct.

Q. It was -- I believe you referred to it earlier as a placeholder?

A. Correct.

Q. And it was a placeholder that was put in by another design professional who was in charge of another project that was not the 17A widening project right in front of the Pilot Travel Center, correct?

A. Correct.

Q. Mr. Smith spent a lot of time asking you questions about Exhibit 5, which is the letter dated August 28, 2000, to Mr. Greiwe from Tommy Smoak. And as I understand it, Mr. Smoak is no longer employed with the Department of Transportation, correct?

A. That's correct.

Q. Did he retire?

A. He did retire.

Q. Do you know how long ago he retired?

A. I don't have the specific dates.

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

Q. Okay. So your testimony earlier was that the design plans as per the South Carolina Department of Transportation for the 17A widening project, I believe, were dated in 1998. Was it December of '98; is that correct?

A. Yes, that's correct.

Q. And then the interchange plans that were provided by the design professional Arcadis were dated July of 1999; is that correct?

A. The -- the right-of-way plans set for that, correct.

Q. Okay. All right. And the letter that we're talking about here is dated August of 2000, correct?

A. Correct.

Q. And your testimony earlier was that there was never an expectation that -- that there was going to be a raised median that was going to be put in in front of that Pilot Travel Center as part of this widening project; is that correct?

A. That's correct.

Q. And it was always going to be a flush paved median, correct?

A. Correct.

Q. You testified a little while ago that

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

you thought that the characterization of -- let me see if I can find where I wrote it -- the characterization of people negotiating out the raised median was inaccurate. And I think that was in response to one of the -- the later questions that Mr. Smith had asked you about Exhibit 5.

And so I guess my question to you would be: What would there have been to have negotiated if the position of the DOT all along was that this raised median was never in the design plans to begin with, nor was this raised median even in conformance with the South Carolina Highway Design Manual? If it wasn't there to begin with, it was never going to be called -- and your manual didn't even call for it, what was there to negotiate? Do you know?

A. I -- I believe my previous testimony alluded that that was not a negotiation, that it was -- it was really -- it was just a combination of the plans, putting them together, that the widening project had a paving -- paid -- a flush paved median east of Farmington. And the correction of the interchange plans was just that, it was not a negotiation. It was just a correction of the plan to accurately reflect the Highway

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

Design Manual.

Q. And I think if I can use your own words, you, number one, talked about it as being a clarification. Would that be fair to say?

A. Yes.

Q. Okay. But I think, also, you referred to it earlier -- if I can find it -- was that when you were talking about the two designs, the marrying of these two projects essentially was the widening design plans were correcting the interchange design plans. Is that fair to say, as it relates to the raised median?

And I'm not trying to put words in your mouth, so if I've misspoke or I've misquoted you....

A. I -- I think that the revision to the interchange plans between the right-of-way plans and the construction plan is a result of us marrying the two projects together.

Q. Okay. But at the end of the day, the design plans always called for a painted -- the design plans for the 17A widening project in front of what is now the Pilot Travel Center always called for just a painted flush median?

A. Correct.

Q. And the design of that stretch of

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

when Speedway was in South Carolina, when Speedway left, anything about a joint venture between itself and Pilot, when it began, when it ceased to exist, anything like that?

A. Not aware of any of that.

Q. Okay. You talked earlier about -- about that DOT has duties and responsibilities that are set out per statute, I believe. Did you say that?

A. I did.

Q. Okay. And does DOT have the statutory duty to move traffic safely among the public highways of this state?

A. Yes.

Q. And the DOT doesn't compromise safety, correct?

A. Correct.

Q. Safety is of utmost importance to the DOT, correct?

A. Yes.

Q. Because as Mr. Smith talked to you earlier about, I mean, if you compromise safety and you make a decision that's in contradiction to your Highway Design Manual, people can get hurt, correct?

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

A. Yes.

Q. Okay. And to the extent that a business owner or a private individual came to the DOT and asked a question about driveways or curb cuts or access, is there anything illegal about them doing that?

A. No.

Q. Okay. Does the DOT receive requests often in terms of an encroachment permit or in terms of access to and from their property, be it a -- a personal individual or be it a business?

A. I'd say daily.

Q. Okay. It's not unusual or uncommon, correct?

A. Correct.

Q. And the DOT can say yes or it can say no, correct?

A. We would apply our engineering judgment and guidelines to appropriately address that request.

Q. And I appreciate that. It's -- I'm just trying to move this through for you to try and get you out of here, but I'll slow down. But I appreciate the -- the more explained answer, if you will.

Applying those engineering design principles to a request that somebody might make, the DOT's position, though, is they're never going to compromise the safety of the individual or the public-at-large to accommodate a business if they don't believe that that's the right decision or the correct decision, correct?

A. Yes.

Q. The 17A widening project plans, those were DOT plans, correct?

A. Correct.

Q. Okay. And 17A is a DOT owned and controlled roadway, correct?

A. Yes.

Q. The discussion about the raised median, understanding that it was never in the design plans to begin with for the 17A widening project, but I'm just curious: Can you just describe for me what the dimensions of it would have been in terms of how wide it was, how tall it would have been, if it's feathered or tapered?

A. I would have to -- I'd have to refer back to my design documents, but it's -- no, I -- I don't know the dimensions right off the top of my head.

LELAND D. COLVIN, JR. - EX. BY MR. BESLEY

BY MR. BESLEY:

Q. Okay. And SCDOT would have the final and ultimate decision on any road of theirs or even the encroachment of driveways leading to that road. Would that be correct?

A. Correct.

Q. That would be based upon your DOT rules and regulations and even the national standards, as the other lawyers have pointed out; is that correct?

A. It would be based on the DOT standards, that -- that those standards took into account national standards.

Q. Okay. So in order for Pilot to construct entrances and exits to their property, Pilot had to submit an encroachment permit application to the SCDOT; is that correct?

A. Yes. That's how -- that's how our new -- that's how new encroachments are provided as via an encroachment permit process.

Q. Okay. And I know earlier you said you had not reviewed the one that you were shown, but you saw an encroachment permit; is that correct?

A. Sure. Yes.

Q. Okay. And so SCDOT had to approve the

design and location of the entrances and exits to Pilot's property before issuing the encroachment permit. Is that how it works?

A. Correct. Yes, sir.

Q. Okay. And a -- property owners can't do it themselves without your approval and your authority, and it must conform with your regs and standards; is that correct?

A. Correct.

Q. Okay. And someone at SCDOT would review the encroachment permit and make sure it's proper and give an independent analysis, would make sure it complies with your rules and standards; is that correct?

A. Correct.

Q. Okay. The SCDOT would not rely upon the person submitting the encroachment permit that it would be exactly up to your standards and rules. You guys give it an independent evaluation, make sure it's correct; and if it's not, you tell them, let's change it in these certain ways; is that correct?

A. Yeah. There's a review for conformity of the permit that was submitted by a licensed PE.

Q. Okay. And it does not get approved

LELAND D. COLVIN, JR. - EX. BY MR. BESLEY

unless the SCDOT says it's approved; is that correct?

A. Yes. The DOT approves the encroachment permit.

Q. Okay. You're not relying upon a landowner who submits an encroachment permit to you to make sure that the plan that they suggested is safe. You guys take a look at it yourself and determine if it's according with your regs and standards; is that correct?

A. I think there's some responsibility on the permittee to design it accordingly as well. In other words, we're not doing the design on behalf of the permittee. We're reviewing the permittee design for encroachment of the SCDOT right-of-way. We're not taking responsibility for that. In other words, a traffic impact study, we are relying that professional standards were used to determine that traffic -- traffic impact study.

Q. Okay. But not a traffic impact study, but just an encroachment permit to determine the location and widths of an ingress and egress on someone's property, that's something that you guys would take a look at yourselves and make that determination?

LELAND D. COLVIN, JR. - EX. BY MR. BESLEY

MR. MAYBANK: Object to the form.

THE WITNESS: Yes. We would review the encroachment permit as submitted by the permittee for conformance to our regulations.

BY MR. BESLEY:

Q. Okay. So perhaps not with the traffic study, you might -- you might rely upon someone who submits that to you to make sure it's correct. But for things that you can take a look at, your engineers take a look at, you make that determination on your own?

MR. MAYBANK: Object to the form.

THE WITNESS: I -- I would not say that, no.

BY MR. BESLEY:

Q. Okay. Does the SCDOT have the ultimate right to approve encroachment permits?

A. Absolutely.

Q. No one gets to tell you what is approved or not. You guys make that decision?

A. Absolutely.

Q. Okay. And do you know what happen -- has happened to the area? You know, you've been shown some diagrams and collision analysis over the last few years, a little while ago in the

in the last 18 months or so, there's been an additional position added at the district office that would review commercial permits, correct.

Q. Okay.

A. So certain permits that would follow that new form, resident -- other permits would follow the same procedure.

Q. The old procedure?

A. Yes, sir.

Q. Essentially residential, the old procedure; commercial then goes direct to -- to district office?

A. Essentially, yes, sir. Yes, sir.

MR. BERLINSKY: Okay. I don't have anything further.

MR. SMITH: I do have a couple. Pass that down.

EXAMINATION

BY MR. SMITH:

Q. Mr. Colvin, I -- I just want to confirm something you just said, that the decision regarding the differences between the interchange improvement project and widening project, difference being raised median in one, no raised median in the other, that the decision to square

that difference was made sometime before 2001?

A. Absolutely, yes.

Q. Okay. That decision was not made -- the final decision on that was not made in '98 or '99?

A. The design of the widening project between Farmingdale going east towards 17A, yes, it was made in 19 -- 1998.

Q. All right. But then sometime after 1998 when you took -- looking at these two plans with the interchange project and with the widening project, sometime before 2001, the decision was made about how are we going to square these two. One's got a median and one doesn't. The final decision, final construction plan was made sometime in 2001 or sooner about this raised median?

MR. CRITES: Object to the form.

BY MR. SMITH:

Q. Do you see what I'm trying to get at?

A. Yeah, yeah -- no. I mean, the -- the widening plans that started at Farmington was done in 1998.

Q. Okay.

A. And that's -- that's what -- that -- that -- so that's -- that's the ruling set.

Sometime between '99 and 2001, the interchange plans were updated to reflect the widening plans.

Q. Okay. Okay. Now, that company Arcadis, that was a -- a company that was hired by the DOT. True?

A. Yes, correct.

Q. Okay. And either -- whether it was the DOT in-house professionals or the Arcadis, these plans, both the interchange improvement plans and the widening project, both of those plans were developed for the DOT, right?

A. Correct. Yes.

Q. Okay. And whether it was plans developed by Arcadis, these are still the DOT's plans for the interchange improvement project, right?

A. That's correct.

Q. They were just technically written by somebody else, right?

A. They were designed by somebody else, but are DOT plans.

Q. Okay. And so part of the DOT's plans at some point were to have a raised median in this section in front of the Pilot Travel Center?

MR. CRITES: Object to the form.

Exhibit E

ACCESS and ROADSIDE MANAGEMENT STANDARDS

SCDOT

South Carolina Department of Transportation

Dual Units of Measurement:

US Customary Units & Metric



South Carolina Department of Transportation
Traffic Engineering Section
955 Park Street
Post Office Box 191
Columbia, South Carolina 29202-0191

1996 Edition

1st printing October, 1996 2,000 copies

Access and Roadside Management Standards is published by the South Carolina Department of Transportation and may be obtained at a cost of $5.00 per copy from the Director of Traffic Engineering at the above address.

As the need arises *Access and Roadside Management Standards* is revised, updated, and distributed within the South Carolina Department of Transportation. Others are responsible for obtaining the most current edition.

The mission of the South Carolina Department of Transportation is to provide South Carolina the best possible intermodal transportation systems and services for the safe, efficient movement of people and goods, and stewardship of the State's environment and natural beauty.

quirements shall apply; however the Department shall not issue a permit for an encroachment that meets local standards but violates the provisions of *Access and Roadside Management Standards*. Similarly, the Department's issuing of an encroachment permit does not relieve the applicant of the need to comply with local requirements, even if more restrictive.

2B REVIEW AND APPROVAL

Early submittal of the Application for Encroachment Permit will allow for proper review and approval prior to completion of design so that any required revisions can be incorporated into the construction plans The time involved in reviewing applications will depend upon the complexity of the application. All permits will be reviewed and returned as soon as practicable. Verbal approval will not be given to permit any work until an encroachment permit for the work has been issued. All extensions, amendments or additions to existing permits must be in writing.

2C PERFORMANCE BONDS

The Department may require a performance bond before issuance of an encroachment permit. Any such requirement shall be included in the special provisions of the permit, and evidence of the bond shall be attached to the permit. The amount of the bond shall be equal to 1 5 times the estimated construction cost or $5,000, whichever is greater The purpose of such a bond is to ensure compliance with all terms of the permit by providing in cases of noncompliance, for any and all damages and costs incurred in collecting damages through legal or other appropriate means. A bond shall be released only when the work described on the permit has been completed to the satisfaction of the Department.

2D CONDITIONS AND LIMITATIONS

2D-1 *Traffic Safety and Operational Restraints*

Safety and efficient traffic operations are important considerations in the review of Application for Encroachment Permits. In some cases it may be necessary to restrict access because of safety problems or operational restraints due to geometry, vertical grades, horizontal curves, or other conditions. Access at points within or near acceleration lanes or channelization may be restricted, limited, or prohibited. If operational or safety concerns exist, the application may be forwarded to the Director of Traffic Engineering for review

2D-2 *Land Use Changes and Redevelopment*

When there is a change in land use which will affect the amount, type, or intensity of traffic activity to a site, the Department reserves the right to require submission of a new Application for Encroachment Permit For example, a residential lot may be rezoned to allow for a professional office which will generate commercial traffic. In this case the Department may require the existing access

to be revised to better accommodate the expected traffic even if no significant building renovations are planned. In some cases the number and/or width of driveways allowed may change depending upon the land use change and the current standards. This provision will also apply to existing accesses when a property is redeveloped with the same general land use

2D-3 *Subdividing Large Parcels*

Access to future subdivided parcels shall be considered in the initial Application for Encroachment Permit's review process. The Department will not be obligated to allow direct access for any parcels which may be subdivided from a larger overall development at a later date. See also subsection 3C-2 2 on outparcels

2D-4 *Setback*

The area to which the driveway provides access shall be sufficiently large for stopping, parking, and maneuvering of vehicles completely off the right-of-way.

2D-5 *Maintenance Responsibilities*

The owner shall be responsible for the maintenance of access points, including any drainage structures, for areas within the rights-of-way of State maintained facilities. An encroachment permit is not required for routine maintenance such as mowing, patching potholes, clearing pipes and ditches, applying seal coating, and repairing minor erosion damage

The Department shall be responsible for the maintenance of permittee-provided crossovers, auxiliary lanes, and right-of-way.

2D-6 *Retrofitting by the Department*

The Department may require driveway accesses to be modified to conform to these standards. This may require that some driveways be narrowed, widened, or removed in order to correct safety and operational problems. Preferably, such actions should be considered during the preconstruction phase. When this is required as part of a road improvement project, it will be done by the Department as part of the construction contract

2D-7 *Private or Commercial Use of Right-of-Way*

Pursuant to Sections 57-7-210 and 57-25-10 of the *Code of Laws of South Carolina* (1976 as amended), erecting fruit and vegetable stands on the right-of-way, displaying automobiles for sale on the right-of-way, or any other private or commercial uses of the right-of-way are prohibited. Some exceptions, such as placing banners across the roadway, for which encroachment permits or letters of authorization have been issued in accordance with these standards are allowed.

Exhibit F

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
BERKELEY COUNTY
DEPOSITION OF CYNTHIA WRIGHT

CYNTHIA WRIGHT and
RICHARD WRIGHT,
Plaintiff,
vs. CASE NO. 2014-CP-08-675
SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION, C&A UNLIMITED,
INC., and PILOT TRAVEL
CENTERS, LLC.,

Defendants.

DEPONENT: CYNTHIA WRIGHT
DATE: February 26, 2015
TIME: 11:10 A.M.
LOCATION: HOFFMAN LAW FIRM
7087 Rivers Avenue
North Charleston, South Carolina

REPORTED BY: TRISHA RARICK
MAGNA LEGAL SERVICES
(866) 624-6221
WWW.MagnaLS.com

MAGNA LEGAL SERVICES

hurt because of somebody's stupidity. And I'm sorry, but that's the way I feel.

Q Sure. Now, you don't know of any legal requirement or duty by SCDOT that will require them to put what you are describing as that raised median in that area of your accident, do you?

A No, sir. No.

Q Okay. And I believe you testified, and you were right, that somebody took a left in front of you, correct?

A Yes, sir.

Q You are a bus driver or you were a bus driver, correct?

A Yes, sir.

Q All right. You're a licensed driver?

A Yes.

Q Do you believe that the individual that took that left in front of you bears responsibility for hitting you and your husband?

A Yes.

Q Do you know the man who took a left in front of you?

A I know of him.

Q Have you ever met him before?

A Yes.

THE WITNESS: C-H-I-N-N-E-R-S.

MR. BESLEY: Thank you.

BY MR. MAYBANK:

Q Thank you for that. All right. So is it your opinion then, or your -- the reason you're suing DOT -- I have got your complaint, but I like to hear from the people -- is that you felt that there should have been some kind of raised median at that area where the accident occurred?

A Yes.

Q All right.

A And that comes from also being a bus driver. It's a safety factor. You can't just cut in front of somebody, you know, like that. And also like that I'll never be the same, and I've accepted that, but somebody else shouldn't have to suffer for somebody as dumb as that.

Q Ms. Wright, you understand Mr. Sena was under the influence of alcohol; is that correct?

A And cocaine, yes. He tested positive for it.

Q Okay. And cocaine. Do you believe the presence of a raised barrier would have stopped somebody who was driving under the alcohol -- under the influence of both alcohol and drugs from making

that turn?

A Maybe. But at the same time, I think he was determined to go to McDonald's regardless, and I don't know. It may be he's said, well, I didn't see the motorcycle and just pulled out thinking he was going to make it. But I think if there was a median there, it would have kind of like stopped you a little bit and make you think more than not have one there, and you just pull on across.

Q All right. So you don't -- you can't say here or testify whether or not the existence of a median would have preventing the accident or not?

A No.

Q Okay. You have been driving a motorcycle since 1978?

A Uh-huh.

Q You have to say yes.

A Yes.

Q Since 1978, to the time of the accident, had you ever worn a motorcycle helmet?

A Yes.

Q All right. And did you regularly wear a motorcycle helmet?

A No.

Q Okay. I understand in the state of South



STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Cynthia Wright and Richard Wright,

Plaintiffs,

vs.

South Carolina Department of Transportation, Pilot Travel Centers, LLC, Speedway LLC, Ashley Land Surveying, Inc., f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc., and Munlake Contractors, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2016-CP-08-00334

ORDER

FILED
17 MAY -4 PM 2:26
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Before this Court came Defendant Pilot Travel Centers, LLC's (Pilot) Motion for Summary Judgment. A hearing was held at the Berkeley County Courthouse on April 10, 2017. For the reasons provided below, Pilot's Motion for Summary Judgment is GRANTED.

Factual Background

Defendant Pilot owns a Pilot Travel Center gas station and convenient store ("Pilot Travel Center") that abuts Highway U.S. 17A in Summerville, South Carolina. On October 6, 2012, Plaintiffs were injured in a motor vehicle accident while traveling on their motorcycle in the left lane of U.S. 17A in front of the Pilot Travel Center. The accident occurred when a pick-up truck traveling in the opposite direction pulled into the median and attempted to make a legal left turn into one of the driveways of the Pilot Travel Center. The pick-up truck struck the Plaintiffs' motorcycle in the left lane of the highway. At the time of the accident, the driver of the pick-up truck had a blood alcohol level above the legal limit and was under the influence of cocaine. Plaintiffs contend that the accident would not have occurred had there been a solid raised median

in the highway preventing motorists from making a left-hand turn onto Pilot's premises, and that the absence of such a median created a dangerous condition on the highway. Plaintiffs also contend that the location and design of Pilot's driveways created a dangerous condition on the highway.

Pilot constructed the subject Pilot Travel Center in or around August 2002 after acquiring the real property and existing gas station on or about September 1, 2001. The existing gas station, which was owned by Speedway SuperAmerica, LLC, already had three driveways with access to U.S. 17A. There was no solid raised median in the highway preventing left turns into the existing gas station. Moreover, there has never been a solid raised median in this section of the highway.

Around the time the Pilot Travel Center was being built, the South Carolina Department of Transportation (SCDOT) was in the process of widening the section of U.S. 17A in front of the Pilot Travel Center (the "Widening Project"). SCDOT was also reconstructing the intersection adjacent to the existing gas station (the "Interchange Project"). The Widening Project and Interchange Project were completed on June 17, 2002 and November 1, 2003, respectively. SCDOT designed the plans for the Widening Project, but used an outside firm to design the plans for the Interchange Project. According to SCDOT, the design plans for the Widening Project never included a raised median.[1] The decision to not install a raised median in front of the Pilot Travel Center was made by Leland Colvin, Jr., who was the Program Manager for the Widening Project. This decision was made when the Widening Project design plans were prepared in 1998. SCDOT testified that Mr. Colvin's decision to use a painted flush median, rather than a raised median, was

[1] SCDOT testified that the initial design plans for the Interchange Project, which were prepared by an outside engineering firm, depicted a raised median in front of the Pilot Travel Center. However, the Interchange Project did not concern work performed to this section of U.S. 17A. SCDOT performed work to this section of U.S. 17A as part of the Widening Project. According to SCDOT, the presence of the raised median in the first iteration of the Interchange Project's design plans was simply a placeholder, representing the location of the highway in which the design plans for both projects would eventually be merged.

made in conformance with SCDOT's Highway Design Manual.[2] According to SCDOT, installing a raised median as part of the Widening Project would have been in contravention to the standards set forth in the SCDOT's Highway Design Manual.

In order to construct the driveways into the Pilot Travel Center, Pilot submitted an application for an encroachment permit to SCDOT on or about May 13. 2002.[3] SCDOT had to approve the design and location of the driveways to Pilot's property before issuing Pilot the encroachment permit. According to SCDOT, it conducts an independent analysis when evaluating whether to approve an encroachment permit to ensure that the proposed driveways conform to SCDOT's regulations and standards. SCDOT also considers highway safety and how the access to private property affects traffic and the general operation of the highway system. SCDOT testified that it has the ultimate authority to approve encroachment permits and never compromises the public's safety to accommodate a property owner's interests when evaluating such permits. SCDOT ultimately approved Pilot's encroachment permit application and issued Pilot a permit to construct the driveways to the Pilot Travel Center.

Plaintiffs filed a Complaint against Pilot and the South Carolina Department of Transportation on March 31, 2014.[4] Plaintiffs allege that Pilot owed the driving public a duty to construct its driveways in such a way as to prevent the existence of hazardous road conditions on the highway. Specifically, Plaintiffs allege Pilot was negligent for failing to construct its driveways

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[2] Mr. Colvin served as one of SCDOT's Rule 30(b)(6) designees. Mr. Colvin metaphorically referred to SCDOT's Highway Design Manual as "the Bible" when it comes to designing highways in South Carolina.

[3] Although the existing gas station on the property had driveways allowing for ingress and egress directly from the highway, the driveways to the Pilot Travel Center were relocated as part of Pilot's rebuild.

[4] On February 9, 2016, Plaintiffs filed a separate action arising from the accident against Speedway LLC (successor in interest to Speedway SuperAmerica, LLC), Ashley Land Surveying, Inc. (engineering firm who performed work for Pilot in connection with the construction of the Pilot Travel Center), and Munlake Contractors, Inc. (general contractor of the Pilot Travel Center). The two actions have since been consolidated.

to prevent Plaintiffs from being stricken by other motorists attempting to turn left across traffic onto its premises. Plaintiffs further claim that Pilot is responsible for the absence of a solid raised median in the portion of the highway where Plaintiffs' accident occurred. Plaintiffs allege Pilot negotiated with SCDOT regarding the type of median to install on the highway.

Pilot moved for Summary Judgment on the grounds that Plaintiffs have failed to present evidence sufficient to raise a genuine issue of material fact that Pilot owed them any duty or breached any duty owed; or, that any alleged negligent act or omission on the part of Pilot proximately caused Plaintiffs' injuries.

Standard of Law

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. When a party makes a motion for summary judgment that is supported by evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion but must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists. Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). "To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture." Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010).

Analysis

Pilot maintains that it did not owe the Plaintiffs any duty to prevent them from getting in a motor vehicle accident on the highway in front of its property, and that therefore, it is entitled to judgment as a matter of law. This Court agrees.

In order for the Plaintiffs to recover on their negligence claim, they must first establish that Pilot owed them a duty of care.[5] Absent such a duty, Pilot is entitled to judgment as a matter of law. See Hurst v. E. Coast Hockey League, Inc., 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006) ("The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law."). Under South Carolina law, a property owner whose land abuts a highway only owes a duty to motorists for highway conditions where the property owner "undertak[es] an activity that creates an artificial condition on the highway which is dangerous to travelers." Skinner v. South Carolina Dep't of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). Here, Plaintiffs cannot establish that Pilot created a dangerous artificial condition on the highway.

Plaintiffs allege the painted flush median in the highway in front of the Pilot Travel Center was a dangerous condition on the highway because it enabled motorists to make a left hand turn onto Pilot's premises. However, even if the median was a dangerous condition on the highway,[6] it was not a condition created by Pilot. SCDOT admits that it, and not Pilot, made the decision to not add a raised median in front of the Pilot Travel Center as part of the Widening Project. While Plaintiffs allege that Pilot negotiated SCDOT's decision to continue to use a painted flush median

[5] It is undisputed that Plaintiffs were neither invitees nor licensees of Pilot immediately prior to or at the time of the motor vehicle accident.

[6] The Court need not determine whether the median was a dangerous condition as alleged by Plaintiffs because the Court finds that Plaintiffs have failed to establish that Pilot created any artificial condition on the highway.

in the highway, Plaintiffs have failed to provide any evidence that such a negotiation took place beyond mere speculation and conjecture.[7] In fact, SCDOT maintains that there was no "negotiation" of the median and that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center.

Moreover, even if Pilot did negotiate with SCDOT concerning the median, this Court finds that such negotiation did not impose a duty on the part of Pilot to the Plaintiffs. Ultimately, the decision as to whether a raised median should be installed on a highway falls within the exclusive authority of SCDOT, which owns and controls the highway. See Giannini v. S. Carolina Dep't of Transp., 378 S.C. 573 n.1 (2008) (recognizing SCDOT has initial discretion to place median barriers on a highway); S.C. Code Ann. § 57-3-110(1) ("The Department of Transportation shall . . . [have the power and duty to] lay out, build and maintain public highways . . . including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways . . ."); S.C. Code Ann. § 57-3-110(3) ("The Department of Transportation shall . . . [have the power and duty to] cause the state highways to be marked with

[7] Plaintiffs' allegation that Pilot negotiated with SCDOT to prevent SCDOT from installing a raised median in front of the Pilot Travel Center is based solely upon handwritten notes on a letter dated August 28, 2000, from an SCDOT official to an employee of the prior owner of the subject property. However, these handwritten notes do not evidence that Pilot negotiated with SCDOT regarding the type of median to be used in the portion of the highway in front of the Pilot Travel Center. First, these handwritten notes were not made by an employee or agent of Pilot. Second, this particular letter is dated after the date by which SCDOT testified it made the decision to use a painted flush median on the highway instead of a raised median. Third, SCDOT testified that there was never a "negotiation" of the median, and that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center.

At the hearing on Pilot's Motion for Summary Judgment, Plaintiffs speculated that Pilot may have negotiated with SCDOT regarding the median as part of SCDOT's right-of-way acquisition of a portion of Pilot's property during the Interchange Project. However, the Title of Real Estate for this acquisition indicates that the right-of-way acquisition transaction was between SCDOT and the prior owner of Pilot's property. Moreover, Plaintiffs admitted it did not have any evidence that any such negotiation with Pilot took place. Therefore, even if a "negotiation" between Pilot and SCDOT could somehow create a duty on the part of Pilot with respect to the median, Plaintiffs cannot provide any evidence such a negotiation occurred beyond pure speculation, which is insufficient to survive summary judgment. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010) ("To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture.").

appropriate directions for travel and *regulate the travel and traffic along such highways*, subject to the laws of the State[.]" (emphasis added)). This decision-making authority arises from SCDOT's police power and duty to plan, maintain, and operate the state's highway system. See South Carolina State Highway Dep't v. Wilson, 254 S.C. 360, 365-66, 175 S.E.2d 391, 394 (1970) (noting that "the clear weight of authority from other jurisdictions is . . . that the construction of a median . . . is an exercise of the police power"); South Carolina State Highway Dep't v. Carodale Assocs., 268 S.C. 556, 561, 235 S.E.2d 127, 129 (1977) ("Re-routing and diversion of traffic are police power regulations."). Whether or not any negotiation of the median took place, the fact remains that only SCDOT has the authority to determine what type of median to install on the highway.

Furthermore, the median in question was part of the highway, and thus, under the exclusive control of SCDOT. Plaintiffs have failed to present any authority establishing that Pilot, as one of the property owners abutting the highway, has a duty to maintain, repair, or warn travelers of potentially dangerous conditions on the highway over which it has no control. The facts of this case are nearly identical to those in Allen v. Mellinger, 156 Pa. Commw. 113, 625 A.2d 1326 (1993). In that case, the plaintiffs attempted to make a left turn from the highway into the defendants' business premises when their vehicle was hit by a truck traveling in the opposite direction. Id. at 115. Relying on Restatement (Second) of Torts §349,[8] the Allen Court held that

---

[8] According to § 349:

> A possessor of land over which there is a public highway or private right of way is not subject to liability for physical harm caused to travelers upon the highway or persons lawfully using the way by his failure to exercise reasonable care
>
> (a) to maintain the highway or way in safe condition for their use, or
>
> (b) to warn them of dangerous conditions in the way which, although not created by him, are known to him and which they neither know nor are likely to discover.

the business owners owed no duty to the plaintiffs to maintain the highway in a safe condition or to warn them of any alleged dangerous condition on the highway. Id. at 118-119. According to the Allen Court, the Commonwealth owns the highway and "has the exclusive duty for the maintenance and repair of state highways." Allen at 118. The court further rejected the plaintiffs' argument that the business owners' failure to erect signs, paint lines or place curbing or barricades in the store's parking lot to indicate to customers the safest place to enter the parking lot created a dangerous condition. Allen at 119 n.1, 625 A.2d at 1329 n.1 (1993).

Like the business owners in Allen, here, Pilot owed no duty to the Plaintiffs to keep the highway in a safe condition or to warn Plaintiffs of any alleged dangerous condition on the highway. Medians are part of the highway subject to the exclusive control and authority of SCDOT. The decision to install a painted flush median on the subject highway was within the exclusive province of SCDOT as the governmental agency charged with the duty to design, maintain and operate the State's highways. SCDOT, not Pilot, has the duty to maintain medians. SCDOT, not Pilot, has the "duty to use reasonable care to keep streets and highways within its control in a reasonably safe condition for public travel." Ford v. South Carolina Dep't of Transp., 328 S.C. 481, 487, 492 S.E.2d 811, 814 (Ct. App. 1997). Thus, Pilot, as one of the landowners abutting U.S. 17A, has no duty (or authority) to maintain, repair, or warn others of potentially dangerous conditions on the highway over which it has no control.[9] See Skinner v. South Carolina Dep't of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). (noting that while "a contractor performing highway alterations owes a duty to travelers, . . . [there is] no analogous duty on the part of an owner of property abutting a highway who neither possesses nor controls

[9] SCDOT acknowledged during its Rule 30(b)(6) deposition that it owns and has control of US 17A, that it has the responsibility of maintaining highways in a safe condition and that it has the duty to investigate and determine whether changes need to be made to the highway.

the highway."); Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997) ("one who has no control [over property] owes no duty.").

To the extent that Plaintiffs maintain that Pilot created a dangerous condition on the highway by virtue of constructing a driveway to the Pilot Travel Center that was accessible by motorists travelling on the opposite side of the highway, such argument lacks merit. See Skinner at 525 (evidence that it was motorists' utilization of the property owner's driveway that led to alleged dangerous condition was insufficient to establish business owner "created" a defect on the highway).

This Court holds that having a driveway on the highway, in and of itself, is not an artificial condition as contemplated by South Carolina case law. In Skinner, the South Carolina Supreme Court noted that the types of artificial conditions on the highway that would impose potential liability on a property owner include hazards that result from the conduct of the property owner's business, such as material spilled on the road or smoke emitted from a plant that drifts over the highway. Id. Simply having a driveway on the highway allowing for the ingress to and egress from one's business does not impose liability on the business owner for motor vehicle accidents that occur in the highway.

Furthermore, like with medians, SCDOT has the ultimate decision-making authority with respect to the placement and design of driveways with access to a highway. In order to construct or reconstruct a private driveway with access to a highway, a property owner must first obtain an encroachment permit from SCDOT. As part of the permitting process, SCDOT reviews the permittees' design plans to ensure compliance with SCDOT's regulations and standards concerning the design and location of driveways. SCDOT also reviews a permittee's encroachment application to ensure driveways do not create any safety concerns or impede efficient traffic

operations. SCDOT "may deny any request for any permit for any driveway . . . which in [its] judgment . . . may create a hazard to the traveling public." S.C. Code Ann. § 57-5-1090. Thus, Pilot could not have constructed the driveways to its property unless SCDOT deemed them to comply with SCDOT's design standards and determined that they were safe for the public.

Finally, Plaintiffs argue that Pilot can be held liable for their injuries because Pilot had notice of the danger posed by motorists making left-hand turns onto its property and failed to take any remedial action. Specifically, Plaintiffs allege Pilot was on notice of this danger by virtue of prior motor vehicle accidents that occurred in and around the Pilot Travel Centers' driveways. This Court finds that no such affirmative duty on the part of Pilot exists. "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Rayfield v. South Carolina Dep't of Corr., 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). Plaintiffs cannot establish any source of a duty requiring Pilot to affirmatively act. Even if Plaintiffs could establish Pilot was aware of other motor vehicle accidents in the highway, having notice of other accidents does not give rise to a duty to warn. See Restatement (Second) of Torts § 349 (landowner owes no duty to warn travelers of dangerous conditions in the highway or private right-of-way which, although not created by him, are known to him). Moreover, foreseeability of an injury alone does not create a duty to act. South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). The occurrence of other motor vehicle accidents on U.S. 17A does not create an affirmative duty on the part of Pilot as a property owner abutting the highway.

Conclusion

In light of the foregoing, this Court finds that Plaintiffs cannot establish that Pilot owed them any duty as a landowner abutting the portion of the highway where Plaintiffs were injured. Therefore, Pilot is entitled to judgment as a matter of law.

IT IS ORDERED that Pilot's Motion for Summary Judgment shall be GRANTED, and all of Plaintiffs' causes of action against Pilot are DISMISSED.

AND IT IS SO ORDERED!

Roger M. Young Sr.
Presiding Judge

May 4/26, 2017
In Chambers, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2017-001563

Cynthia Wright and Richard Wright, …….. Appellants

v.

South Carolina Department of, Transportation, Pilot Travel Centers, LLC, Speedway, LLC, Ashley Land Surveying, Inc. f/k/a Ashley Engineering and Consulting, Inc., and Munlake Contractors, Inc.

Of Whom

South Carolina Department of, Transportation, Pilot Travel Centers, LLC, Speedway, LLC, Ashley Land Surveying, Inc. f/k/a Ashley Engineering and Consulting, Inc., …… Respondents.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
Cynthia Wright and Richard Wright,	)	Civil Action No.: 2016-CP-08-334
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	**PLAINTIFFS' MEMORANDUM**
South Carolina Department of Transportation, Pilot Travel Centers, LLC Speedway, LLC, Ashley Land Surveying, Inc., F/K/A Ashley Engineering and Surveying, Inc. and Ashely Engineering & Consulting, Inc., and Munlake Contractors, Inc.,	)	**OF LAW IN OPPOSITION TO DEFENDANT PILOT TRAVEL CENTERS, LLC'S MOTION FOR SUMMARY JUDGMENT**
	)	
Defendants.	)	
	)	

Plaintiffs Cynthia and Richard Wright respectfully submit their Memorandum of Law in Opposition to Defendant Pilot Travel Centers, LLC's ("Pilot") Motion for Summary Judgment.

INTRODUCTION

There have been a total of 254 collisions in front of the Pilot Travel Center in just 10 years since changes were made to this stretch of Highway 17A. Roughly one-third of these preventable accidents are directly related to allowing left turns in and out of the Pilot Travel Center.[1] The intersection at issue is on the Moncks Corner side of Highway 17A, right past the I-26 exchange. The dangers Pilot created at this intersection mostly affect motorists exiting I-26 from Charleston at the Summerville exit headed towards Moncks Corner and those traveling from Summerville in the same direction.

[1] A SCDOT Accident Study and Collision data from 2004-14 is attached as **EXHIBIT 14**.

This case began when South Carolina Department of Transportation ("SCDOT") was making changes to Highway 17A from the I-26 interchange towards Moncks Corner. From the outset, SCDOT's plans mandated placement of a raised median which separated six lanes of travel. The purpose was to prevent left turns in or out of the businesses close to the functional area of this busy intersection right before the Pilot Travel Center. Nearly every authority on highway design mandates steps to limit turns across several lanes of traffic close to busy intersections. In addition, these same safety standards prohibit driveways from being placed within the functional area of an intersection. As will be shown and demonstrated, Pilot and SCDOT worked hand-in-hand through what they termed "negotiations" to remove the requirement for a raised median and allow unlimited access to the Pilot gas station by placing two of the three driveways on Highway 17A directly in the functional area of the intersection, all of which is a clear violation of the applicable safety standards and rules meant to protect against the very thing that happened to Richard and Cynthia Wright.

SCDOT and Pilot had a duty to ensure that safety standards were met when "negotiating" the terms of the intersection and raised median. Even if Pilot argues they did not have a duty, once they entered into a negotiation that culminated in the elimination of raised median and allowance of dangerous ingress and egress onto Highway 17A, they assumed a duty to all motorists on the Highway. It is only through these "negotiations" that necessary barriers and deadly routes into and out of the Pilot station were allowed to occur. Without these "negotiations", a raised median is placed at this intersection and safer ingress and egress routes are constructed or left in place at the Pilot Travel Center and the Plaintiffs are not severely injured. It is only through the breach of a duty by Defendants that Richard and Cynthia Wright's lives were changed forever.

To maximize customer access, Pilot built three driveways but ignored SCDOT rules by placing the driveways too close together and too close to a crowded intersection. Pilot went one step further by negotiating with SCDOT to eliminate a planned traffic safety device on the adjacent highway all in an effort to increase its customer base. Unsurprisingly, Pilot's business-boosting maneuvers made the area far more dangerous for motorists. Although counsel for Pilot has painted a picture of simply submitting plans that were ultimately approved by the SC-DOT, the documents and evidence suggests Pilot had a much greater role in the process. In fact, there is some evidence to suggest that Pilot may have agreed to sell land to the SC-DOT at a cheaper rate in exchange for allowing unfettered access to its gas station which stood to produce greater, if not double, profits. While the SC-DOT has already destroyed the original appraisals for the land at issue, the Plaintiffs are in the process of trying to discover them elsewhere.

In its motion, Pilot argues it owed the Wrights no duty, did not act unreasonably, and did not cause the Wrights' injuries. However, South Carolina law requires that landowners like Pilot act reasonably, follow SCDOT rules, and avoid creating dangerous conditions when connecting their business to a neighboring highway. Plaintiffs' evidence and Pilot's own witness testimony demonstrate that the collision that crippled the Wrights' likely would not have happened if Pilot followed nationally accepted highway design safety rules at issue in this case. Pilot may certainly take reasonable steps to make its business more attractive and accessible to customers, but it may not do so at the expense of innocent motorists like the Wrights. Pilot's motion should be denied.

FACTS

Cynthia and Richard Wright suffered severe injuries after being thrown from their motorcycle in an automobile collision on Highway 17 in Summerville, South Carolina on October 6, 2012. (Am. Compl. ¶¶ 27, 30). At this location, Highway 17 is a multilane surface road in a

heavily traveled area near a "very busy" intersection and within a few hundred feet of an Interstate 26 interchange. W. Mulligan Dep. 19:2-3; 63:18-19, excerpts attached as **EXHIBIT 1**; D. Sena Dep. 113:8-9, excerpts attached as **EXHIBIT 2**. At the time of the collision, the Wrights were traveling past Pilot's gas station and convenience store which also houses a McDonald's restaurant. A competing gas station and convenience store is located directly across the street.



Pilot acquired the property in 2001 and set out to redesign the existing premises to create a Pilot Travel Center. W. Mulligan Aff. ¶¶ 5-6, attached as **EXHIBIT 3**. During this process, Pilot (and its predecessors in interest)[3] added driveways to connect its premises to Highway 17 and submitted an "encroachment permit" (attached as **EXHIBIT 5**) to SCDOT to facilitate the driveways' construction. Id. at ¶ 8; see also SCDOT Encroachment Permit Final Approval Form, attached as **EXHIBIT 6**). Pilot designed and constructed three driveways to serve passenger vehicles and commercial trucks. In violation of SCDOT rules, Pilot constructed one or more of these driveways in an area that was unreasonably close to an adjacent intersection. R. Clark Dep.

[3] Pilot redesigned the property in question as part of a joint effort between its parent company (Pilot Corp.) and Marathon Ashland Petroleum, LLC. Letter from Pilot Project Manager Gary Bloom to SCDOT, dated May 7, 2002 (attached as **EXHIBIT 4**). Pilot submitted the plans that resulted in the driveways at issue in this suit. Id.

11:23 – 12:1-4, excerpts attached as **EXHIBIT 7**); L. Colvin Dep. 169:15-22; 173:11-16, excerpts attached as **EXHIBIT 8**). Pilot also violated SCDOT rules by failing to provide the minimum required space between each of its driveways. R. Clark Dep. 30:23-25.

Pilot was also very cognizant of the way in which certain features of Highway 17 itself could affect customer access to Pilot Travel Center. Specifically, Pilot learned SCDOT had a plan in place to install a raised, non-transversable median across the center of Highway 17 and running nearly the full length of Pilot Travel Center. (Letter from SCDOT Right-of-Way Manager dated Aug. 28, 2000 with handwritten notes, PILOT 000045, attached as **EXHIBIT 9**). A non-transversable median is specifically intended to increase safety for highway motorists by limiting left turns at locations that are either very busy or unreasonably close to an existing intersection. W. Mulligan Dep. 27:6-7; L. Colvin Dep. 101: 9-25. From Pilot's perspective, however, the planned non-transversable median could harm its business by making it harder for potential customers to make a left turn in to its parking lot. W. Mulligan Dep. 60:10-23. Accordingly, Pilot discussed the issue with SCDOT and eventually "negotiated" a resolution that would remove the proposed non-transversable median and replace it with a flush, painted median. See **EXHIBIT 9**.

At the same time, SCDOT was trying to buy a portion of land owned by Pilot as a right-of-way acquisition. While not much is known about that deal at this point, SCDOT admits that the issue of removing the requirement for the raised median was a part of the negotiations in the right-of-way acquisition with Pilot. (Colvin dep p. 121

As the Wrights rode along Highway 17 on October 6, 2012, a vehicle driven by Daniel Sena moved into the painted median and attempted a left turn into one of Pilot Travel Center's driveways. (Am. Compl. ¶ 29); see also Accident Report (attached as **EXHIBIT 10**). Mr. Sena did not see the Wrights and struck their motorcycle during his turn. According to Mr. Sena, if a non-

transversable median had been installed in front of Pilot Travel Center, then it "could have prevented my accident and a lot more accidents and any more to come." D. Sena Dep. 119:2-4.

SUMMARY JUDGMENT STANDARD

To grant a motion for summary judgment, the court must find that "there is no genuine issue as to any material fact." Rule 56(c), SCRCP. The judge is not to weigh the evidence but rather to determine if there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). For claims where the preponderance of evidence burden applies, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the party opposing summary judgment. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997); Pye v. Aycock, 325 S.C. 426, 480 S.E. 2d 455 (Ct. App. 1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp, 341 S.C. 372, 534 SE 2d 688 (2000); Moriarity v. Garden Sanctuary Church of God, 534 S.C. 150, 511 S.E.2d 699 (Ct. App.1999). "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing & Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999).

ARGUMENT

1. Pilot owed the Wrights a Legal Duty under South Carolina law.

Defendant Pilot (and its predecessors in interest) altered both the entrances to its premises and a traffic control device on an abutting highway during the redesign of its gas station and convenience center. Specifically, Pilot "negotiated" for the "removal" of a planned raised median intended to limit left turns into Pilot's station and designed driveway entrances to the station that were both too close together and improperly lying within the functional area of the intersection. Pilot's admitted goal was to make its location a more convenient and attractive option than neighboring gas stations. However, Pilot's design specifications and construction choices created a foreseeable danger to motorists traveling through the already cramped intersection. Since Pilot's conduct violated established South Carolina common law standards and SCDOT regulations, Pilot breached a legal duty to the Wrights and is liable for their losses.

South Carolina law establishes that the owner of land adjacent to a highway may face liability when its conduct unreasonably creates danger for highway travelers. According to the Supreme Court's ruling in Skinner v. South Carolina Department of Transportation, 383 S.C. 520, 524, 681 S.E.2d 871, 873 (2009), South Carolina common law imposes liability "where an individual or business has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers." Moreover, when a property owner's conduct creates a foreseeable danger to others, the owner must mitigate or eliminate that risk even if otherwise under no duty to act. Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 334 n. 8, 566 S.E.2d 536, 546 n. 8 (2002) (citing Restatement (Second) of Torts § 321). Additionally, long-standing common law rules hold that a highway's neighbor may not conduct activities on its own premises that unreasonably endanger motorists traveling on the highway. Skinner, 383 S.C. at 525, 681 S.E.2d at 874

(collecting cases from other jurisdictions imposing liability where "the conduct of the landowner's business has created an artificial condition on the highway").[4] Finally, the SCDOT Access and Roadside Management Standards ("ARMS manual") impose specific rules on the location of driveways the violation of which may serve as a basis for civil liability. Id. at 523, 681 S.E.2d at 873 (identifying ARMS manual as potential duty source but finding its regulations inapplicable to defendant before it).

At its core, Skinner stands for the proposition that property owners like Pilot must use reasonable care when creating an "artificial condition" on their property[5] or on the adjoining

[4] This same rule is recognized by the Restatement (Second) of Torts § 364 which reads as follows:

> A possessor of land is subject to liability to others outside of the land for physical harm caused by a structure or other artificial condition on the land, which the possessor realizes or should realize will involve an unreasonable risk of such harm if (a) the possessor created the condition, or (b) the condition is created by a third person with the possessor's consent or acquiescence while the land is in his possession, or (c) the condition is created by a third person without the possessor's consent or acquiescence, but reasonable care is not taken to make the condition safe after the possessor knows or should know of it.

[5] Skinner is consistent with rulings from a number of other jurisdictions permitting liability on property owner for condition on the owner's property that contributes to the injury of motorists on an adjoining highway. Keith v. Beard, 464 S.E.2d at 637; see also Rosengren v. City of Seattle, 205 P.3d 909, 913 (Wash. App. 2009) ("a person in possession of land may owe a duty to others outside the land on the abutting sidewalk"); Walsh v. Avalon Aviation, Inc., 118 F. Supp. 2d 675, 677 (D. Md. 2000) ("an owner of property abutting on a highway is under an obligation to use reasonable care not to endanger travelers on the highway by objects so located on his premises that they are likely to cause injury"); Donavan v. Jones, 658 So.2d 755, 764 (La. App. 1995) ("an owner of property abutting a highway . . . may be liable for causing or contributing to a defective or dangerous condition in the area, despite the fact that a public authority is charged with maintaining the highway"); Lawson v. B Four Corp., 888 S.W.2d 31, 34 (Tex. App. 1994) ("an owner or occupier of premises abutting a highway has a duty to exercise reasonable care to avoid endangering the safety of persons using the highway as a means of travel"); Zens v. Chicago, Milwaukee, St. Paul & Pac. R. Co., 386 N.W.2d 475, 479 (S.D. 1986) ("if an abutting landowner creates a hazard or defect in a public roadway or appurtenant thereto, which could foreseeably cause or contribute to injuries sustained by those using the public highway, or reasonably straying therefrom, the abutting landowner can be liable for such injuries"); Schulz v. Quintana, 576 P.2d 855, 856 (Utah 1978) ("Once a highway has been established there is an obligation upon the occupiers of abutting land to use ordinary care to see that the passage way is reasonably safe for

highway and may face liability when an artificial condition of their creation contributes to a passing motorist's injury. 383 S.C. at 524-25, 681 S.E.2d at 873-74. While Skinner does not define the term, "artificial condition" has been defined elsewhere to include both improperly designed or constructed driveways as well as an insufficient median. When used to describe a landowner's duty to highway motorists, "artificial condition" includes any "structure erected upon land" as well as "changes in the surface by excavation and filling." Restatement (Second) of Torts § 363 cmt. b. In fact, the only non-artificial (i.e. natural conditions) are those for which "the condition of the land has not been changed by any act of a human being." Id. A median, whether raised or painted, is not a naturally occurring phenomenon but rather a change in the surface of the roadway that lies squarely within the definition of an "artificial condition." The same is true of a driveway linking private property to the highway. A driveway is a structure erected upon land and has been specifically recognized as an artificial condition for landowner liability purposes. Keith v. Beard, 464 S.E.2d 633, 637 (Ga. App. 1995).

As the Supreme Court recognized in Faile, South Carolina common law also holds a party responsible for the foreseeable danger caused by harms the party created. 350 S.C. at 334, 566 S.E.2d at 546. Faile held that when a party's conduct creates danger for others, the party may be

travel"); De Ark v. Nashville Stone Setting Corp., 279 S.W.2d 518, 521 (Tenn. App. 1955) (quoting 25 Am. Jr. Highways § 530 at 811) ("The general rule is that one who creates or maintains, on premises adjacent to a highway, a condition of such character that danger therefrom to persons lawfully using the highway may or should, in the exercise of ordinary care, be foreseen or apprehended is under a duty of exercising reasonable care"); Concho Constr. Co. v. Okla. Natural Gas Co., 201 F.2d 673, 674-75 (10th Cir. 1953) ("the owner of land abutting a public highway owes a duty to keep it from being a source of danger to the public or to travelers upon and lawful users of the highway"); Mays v. Gamarnick, 93 N.E.2d 236, 237 (Mass. 1950) (owner of land abutting highway "must exercise reasonable care to maintain his premises in a proper and safe condition so as not to cause injury to the public traveling on the way").

required to take affirmative steps to protect foreseeable victims. Specifically, Faile adopted a Restatement provision that reads in full:

> If the actor does an act, and subsequently realizes or should realize that it has created an unreasonable risk of causing physical harm to another, he is under a duty to exercise reasonable care to prevent the risk from taking effect.

Id. at 334 n. 8, 566 S.E.2d at 546 n. 8 (citing Restatement (Second) of Torts § 321). Accordingly, Pilot had a duty to ensure that its median alteration and driveway construction did not unreasonably endanger motorists on the highway and also had a duty to take affirmative action to mitigate the danger once it became apparent through repeated collisions in the intersection. See also 65th Center, Inc. v. Copeland, 825 S.W.2d 574, 577 (Ark. 1992) (when owner of property adjoining highway creates condition that renders travel on highway unsafe, then owner "has a duty to take reasonable precautions to guard against the danger and to protect travelers from that danger"). Even if the Court were to find Pilot had no common law duty to make changes to Highway 17, Pilot undertook to do so by successfully negotiating for the planned non-transversable median's removal. Having voluntarily undertaken this duty, Pilot had an affirmative duty going forward since Pilot's conduct "increased the risk" of harm to motorists. Restatement (Second) of Torts § 323.[6]

Skinner appears to recognizes the ARMS Manual as a source for a legal duty related to a private landowner's construction project that connects to a state highway. 383 S.C. at 523, 681 S.E.2d at 873. Skinner declined to impose a duty based on the ARMS manual in the case before it but only because the manual's provisions did not apply to the defendant, a party who was not covered by the manual's "encroachment permit" provisions. Id.; see also Madison v. Babcock

[6] South Carolina recognizes Section 323 and has applied its principles in many different contexts. See e.g., Sherer v. James, 290 S.C. 404, 408, 351 S.E.2d 148, 150 (1986); Crowley v. Spivey, 285 S.C. 397, 406, 329 S.E.2d 774, 780 (Ct. App. 1985)).

Center, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006) (noting, in general, the role of "the common law, statutes, regulations, or [a state agency's] policies and guidelines" in determining a party's duty). The reconstruction project Pilot (and its predecessors in interest) undertook in this case are covered by ARMS Manual requirements including those related to encroachment permits. As acknowledged by Pilot's Vice President for Development, Pilot submitted an encroachment permit for the project, and Pilot acknowledges the importance of industry standards including ARMS Manual requirements governing driveways and medians. W. Mulligan Dep. 11:17-25; 62-66. Accordingly, ARMS Manual standards state a duty and define the parameter of the duty Pilot was required to meet during the design and construction of its new facility.

Finally, Plaintiffs note Pilot also cites Skinner and argues that it actually supports the position that Pilot did not owe the Wrights a legal duty. However, in the aggregate, Skinner strongly supports a property owner's duty to an adjoining highway's motorists and the Supreme Court refused to apply that duty in Skinner based only on factual distinctions that do not exist here. Skinner held that South Carolina recognizes a duty where "an individual or business has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers." 383 S.C. at 525, 681 S.E.2d at 873. That duty did not apply under Skinner's facts because the condition in question (i.e. ruts in the shoulder of a road caused by heavy trailers) was not "artificial" but rather normal wear and tear on the highway. Id. at 525, 681 S.E.2d at 874. In contrast, Pilot built driveways and removed a planned median, both of which created artificial conditions to which the duty discussed in Skinner applies. Moreover, Skinner recognized the ARMS Manual as a potential source of duty but refused to apply it because the defendants in that case were not required to seek an encroachment permit and were not subject to ARMS Manual requirements. Id. at 523, 681 S.E.2d at 873. Here, however, Pilot did submit an encroachment

permit and was subject to all ARMS Manual requirements including its sidewalk standards. W. Mulligan Dep. 11:17-25; 62-66. Despite its outcome on the facts, Skinner's holding definitively states the basis of a duty that, on the facts of this case, applies to Pilot's design and construction decisions.

In sum, Pilot's duty of care regarding artificial conditions on its property are well established in South Carolina case law and Restatement provisions adopted or otherwise utilized by South Carolina courts. Skinner also makes clear that this duty is owed not only to Pilot's customers but also to motorists on the adjacent highway endangered by Pilot's conduct. Moreover, Pilot's VP of Development acknowledged the company's duty to use reasonable care in designing and constructing those portions of its premises attached to the highway. W. Mulligan Dep. 58:1-3 (agreeing Pilot has duty to construct its facilities safely); J. Teague Aff. ¶ 6, attached as **EXHIBIT 11**. As discussed below, Pilot breached these duties in multiple ways resulting in an auto collision and injuries that were a foreseeable result of Pilot's misconduct.

2. Pilot Breached their Legal Duty by Negotiating for the Removal of a Non-Transversable Median and by Installing Unsafe Driveways.

Pilot planned, designed, and constructed its Pilot Travel Center to maximize its customer base by making customers' entry and exit to the facility as convenient as possible. However, to further this goal, Pilot made strategic decisions about access to the Center that rendered the adjoining highway more dangerous both for its customers and all other motorists passing through. Pilot went so far as to interfere with the original plan for a non-transversable median in the highway that would have made the intersection safer. Through each of these actions, Pilot created dangerous artificial conditions that violate its duties under South Carolina common law and SCDOT regulations.

Highway 17 abuts the Pilot Travel Center a few hundred feet from where the highway meets Interstate 26 and presents a very busy intersection. D. Sena Dep. 113:8-9 ("That's a very busy intersection"); W. Mulligan Dep. 19:2-3; 63:18-19 (acknowledging intersection is "heavily traveled" and "high volume"); L. Colvin Dep. 229:1-5 (agreeing this was a high accident rate intersection in 2013). At approximately the same time Pilot (and its predecessors in interest) began designing and constructing Pilot Travel Center, SCDOT had multiple projects underway to improve this heavily-traveled roadway. L. Colvin Dep. 50-51. According to renderings and the testimony of SCDOT's Deputy Secretary for Engineering, the original design called for the inclusion of a raised, non-transversable median running nearly the entire length of Pilot Travel Center's Highway 17 frontage. L. Colvin Dep. 86:14-15 ("at one point in time, the interchange plans showed a raised median"); 88:16-24 (stating that raised median was in intersection project's "original design"). The planned median would have a beneficial effect on traffic flow by restricting the areas from which motorists could turn left into Pilot Travel Center. L. Colvin Dep. 101:9-25; W. Mulligan Dep. 27:6-7. More importantly, the proposed non-transversable median was a safety matter. L. Colvin Dep. 141:8-10 ("A nontraversable median cuts down on the number of conflict points compared to a flush painted median").

While the non-transversable median would have a net positive effect on traffic in the area, it would have a decidedly negative impact on the number of cars that patronize Pilot Travel Center. After all, for motorists travelling south on Highway 17, it would be far more convenient to turn right into Pilot's competitor station than to be forced further down the highway before finally turning left toward Pilot Travel Center. See W. Mulligan Dep. 60:10-23 (acknowledging strong competition for customers by stating "if it's hard to get in and out . . . they won't come because there's so many other choices"); L. Colvin Dep 113:1-4 (noting raised median was undesirable to

property owner because it would "change . . . access to the premises"). Recognizing this potential threat to its profitability, Pilot took efforts to alter the proposed median design. See R. Balgowan Aff. ¶ 13 ("a monetary incentive is the only reason behind the removal of the concrete barrier in this case") (attached as **EXHIBIT 12**). Through meetings and correspondence with SCDOT officials during the encroachment permit process, Pilot conveyed their preferred design both for driveways linking their premises to Highway 17 and for the highway itself. L. Colvin Dep. 80:16 – 81:5. Specifically, Pilot raised concerns about the planned non-transverable median. Id. SC DOT considered these concerns and the two sides reached a "negotiated" resolution. (EXHIBIT 9). The primary result of that negotiation was a change in the design of the median fronting Pilot's property. At Pilot's behest[7], SCDOT:

> Approved to have painted median only from far western curb cut to stop bar (stop light). In other words, **the unmountable median has been eliminated from the plan**.

Id. (emphasis added).

Through this negotiation, Pilot effectively replaced a non-transversable median with one far more conducive to Pilot's business interest. Unfortunately, what benefited Pilot's business made Highway 17 far less safe for motorists like the Wrights. According to SCDOT, non-transversable medians have the effect of a 35 percent reduction in traffic collisions. L. Colvin Dep. 139:1-9. The benefit of raised medians is evident from SCDOT regulations. ARMS Manual, Section 3E (P. 18) (stating that "[d]ivided highways operate at higher levels of safety with a minimum of median crossovers" because "[a]dditional crossovers create more conflicts and can

[7] Plaintiffs acknowledge SCDOT asserts the change in median design was unrelated to its discussions with Pilot. L. Colvin Dep. 88:12-15. Pilot's VP of Development testified that he was unaware of whether there were earlier plans for a raised median. W. Mulligan Dep. 26:11-22. In light of the evidence describing a "negotiated" resolution regarding the median and the parties' differing accounts, this issue presents a question of fact that a jury must resolve.

lead to higher accident experience") (attached as **EXHIBI 13**). Plaintiffs have also produced expert testimony further establishing that it was unreasonable under the circumstances to replace the planned non-transversable median with a flush painted median.

Plaintiffs' first expert, John Mark Teague, is a civil engineer with extensive expertise in the field of intersection safety. J. Teague Aff. ¶¶ 2-3. Mr. Teague concluded that a non-transversable median at this location "would have significantly reduced the risk of harm" to motorists like the Wrights. J. Teague Aff. ¶ 13. Additionally, Mr. Teague found that the absence of a non-transversable median rendered the intersection "unsafe." J. Teague Aff. ¶ 9. Plaintiffs also presented an expert affidavit from Richard M. Balgowan, a civil engineer specializing in municipal and highway engineering. Mr. Balgowan stated that Pilot "owes a duty to design a premises that utilizes reasonably safe ingress and egress so potential customers and persons on highways adjacent to a company's facility will not be needlessly placed in a risk of harm." R. Balgowan Aff. ¶ 5. By negotiating to have the proposed non-transversable median removed from SC DOT's existing plans, Pilot did "the exact opposite" of what its duty required. R. Balgowan Aff. ¶ 14. As both experts concluded, Pilot created an artificial condition by altering the proposed median design and, as such, breached its duty owed to Highway 17 motorists. J. Teague Aff. ¶¶ 11, 13, 15; R. Balgowan Aff. ¶¶ 11, 13, 14. By creating this artificial condition that led to the Wrights' injuries, Pilot violated its duty as recognized in Skinner and the Restatement sections discussed above.

The foregone non-transversable median is directly related to Pilot's other major breach of duty. A raised median or other device to restrict left turns to Pilot Travel Center was especially important given Pilot's poor design for the Center's driveways. J. Teague Aff. ¶ 9. As Pilot acknowledges, driveway placement affects motorist safety on an adjoining highway and poorly

designed driveways are "detrimental to safety" on the highway. W. Mulligan Dep. 64:8-11. SCDOT agrees that regulations on driveway placement are important to the safety of motorists because "driveways have long been recognized as a major source of conflict for traffic on public highways." L. Colvin Dep. 32:1-13; 46:20-25.

As such, ARMS contains specific requirements and limitations on where a driveway may be placed and, in the case of multiple driveways, how far each must be from each other. In general, ARMS requires all roadway access points including driveways to be located "as far from roadway intersections . . . as possible." ARMS Manual at 10 § 3A-4. Moreover, every driveway "shall be located at a point which provides optimum sight distance along the roadway. Id. at 9 § 3A-3. ARMS includes a table outlining the acceptable minimum distances between driveways and stated in clear terms that "[n]o access point shall be located within the radius of intersecting roadways." Id. at 9 § Table 3-2, 10 § 3A-4. These statements are not mere suggestions or recommendations; they are mandatory rules. L. Colvin Dep. 45:20-25.

Fundamental among these rules is the express prohibition on driveways within the "functional area" of an intersection. Yet, two different SCDOT representatives testified that Pilot Travel Center violates this rule. SCDOT investigator Robert Clark testified that at least one of Pilot's driveways was in the functional area of the intersection. R. Clark Dep. 11:23 – 12:1-4. SCDOT Program Manager Leland Colvin agreed that one of Pilot Travel Center's driveways was in the functional area of the intersection and another was on the borderline. L. Colvin Dep. 169:15-22; 173:11-16. Another fundamental ARMS rule requires a certain minimum distance between driveways that varies based on the adjoining highway's speed limit. ARMS Manual at 9 § Table 3-2. The portion of Highway 17 where the Wrights were injured has a 45 miles-per-hour speed limit, and as a result, Pilot Travel Center's driveways were required to be spaced at least 250 feet

apart. Id.; R. Clark Dep. 30:16-22. Mr. Clark agreed that Pilot Travel Center's driveways did not meet this standard. R. Clark Dep. 30:23-25. This failure is crucial because the ARMS driveway spacing requirements Pilot breached are safety considerations. R. Clark Dep. 31:1-10. This testimony from SCDOT's corporate representative establishes that Pilot breached its legal duty by planning and constructing its driveways and made the intersection more dangerous for motorists. Plaintiffs' experts also found that Pilot's driveway design and construction made the intersection unsafe. J. Teague Aff. ¶ 9; R. Balgowan Aff. ¶ 9. Each expert found that the driveways were too close to the functional area of the intersection, and Pilot had a duty to take some affirmative action to prevent left turns into this dangerous area. Id.

Thus, Pilot is not entitled to summary judgment on the breach element of Plaintiffs' negligence claims. Plaintiffs have presented expert testimony demonstrating Pilot breached their legal duties and created dangerous artificial conditions by negotiating for the exclusion of a proposed non-transversable median and by installing driveways that violated multiple ARMS requirements. Plaintiffs' expert opinions are supported by the testimony of SCDOT's corporate representatives who acknowledge Pilot Travel Center's driveways were too close to the intersection and too close to each other.

3. Pilot's Conduct was a Proximate Cause of the Collision and the Wrights' Injuries.

Pilot's property design and construction errors were a proximate cause of the collision leading to the Wrights' injuries. Pilot's conduct was a cause-in-fact of the collision because the collision would not have happened at an adequately designed intersection. Moreover, innocent motorists are precisely the type of people Pilot should have foreseen as possible victims of their misconduct. Proximate causation is an essential element of any negligence cause of action. Burnett v. Family Kingdom, Inc., 387 S.C. 183, 191, 691 S.E.2d 170, 175 (Ct. App. 2010). This element

requires proof of both "causation in fact and legal cause." Small v. Pioneer Mach., Inc., 329 S.C. 448, 463, 494 S.E.2d 835, 842 (Ct. App. 1987) (citing Hurd v. Williamsburg County, 363 S.C. 421, 428, 611 S.E.2d 488, 492 (2005)). Causation in fact is established by proof that the injury "would not have occurred but for the defendant's negligence." Cody P. v. Bank of Am., N.A., 395 S.C. 611, 620, 720 S.E.2d 473, 478 (Ct. App. 2011) (citing Mellen v. Lane, 377 S.C. 267, 278, 659 S.E.2d 236, 245 (Ct. App. 2008). Legal cause is established by determining foreseeability, a factor which focuses on "whether the injury is the natural and probable consequence of the alleged negligent act." Id. As the Cooke court noted, "[p]roximate cause is generally a question for the jury." 741 F. Supp. at 1214; see also Ballou v. Sigma Nu Gen. Fraternity, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986) ("Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law"). Summary judgment on proximate cause is inappropriate where the plaintiff has produced "some evidence." Cooke, 741 F. Supp. at 1214.

Where a negligence claim alleges an injury directly caused by the intervening act of a third party, a "special case" is presented. Cody P. v. Bank of Am., N.A., 395 S.C. at 620, 720 S.E.2d at 478. In those special cases, the test becomes whether a third party criminal act was foreseeable to the defendant. The finder of fact must determine whether "the injury at the hand of the intervening party was within the general range of consequences which any reasonable person might foresee as a natural and probable consequence of the negligent act." Shepard v. S.C. Dep't of Corr., 299 S.C. 370, 375, 375 S.E.2d 37, 37 (Ct. App. 1989). Plaintiff need not prove the "particular chain of events" was foreseeable but only that the injury the criminal inflicted was "within the general range of consequences which any reasonable person might foresee." Cody P., 395 S.C. at 621, 720 S.E.2d at 478 (citing Shepard 299 S.C. at 375, 385 S.E.2d at 38).

Several different types of evidence may be used to demonstrate that a defendant could reasonably foresee injuries ultimately perpetrated by an independent third party. Expert testimony may be used to establish foreseeability. An expert with knowledge of the defendant's business may testify regarding the types of harms the defendant anticipates in its business. See Cody P., 395 S.C. at 621-22, 720 S.E.2d at 478 (considering banking expert's testimony that banks anticipate theft). Here, Plaintiffs' experts concluded that Pilot's design and construction errors were a proximate cause of the collision. For instance, Mr. Teague found that a non-transversable median would have significantly reduced the risk of harm to motorists like the Wrights. J. Teague Aff. § 13. Mr. Teague reached this conclusion because this accident occurred during a left turn into Pilot Travel Center and the non-transversable median Pilot negotiated to remove would have most likely prevented that turn. SC DOT shares this opinion. L. Colvin Dep. 101:9-25 (stating that non-transversable median's purpose is "access control" and "is not intended to be transversed by the motoring public"); 139:1-9 (agreeing that non-transversable median decrease traffic collisions by 35%).

Even Pilot's Vice President of Development admits that a non-transversable median's specific purpose is to prevent the type of turns that resulted in this collision. W. Mulligan Dep. 27:6-7 (acknowledging median's purpose would be "[t]o keep people from making a left turn"). Crucially, the at-fault driver also agrees that the absence of a non-transversable median was a crucial factor in the collision. According to the driver, a non-transversable median "could have prevented my accident and a lot more accidents and any more to come." D. Sena Dep. 119:2-4. Taken as a whole the lay and expert witness testimony establishes a substantial causal connection between the absent raised median and the collision that caused the Wrights' injuries.

The same is true for Pilot's defective driveways. As Pilot acknowledges, "inadequate driveway design creates conflicts that can be detrimental to safety" on the adjoining highway. W. Mulligan Dep. 64:8-11. When a person attempts to enter or exit a driveway that is either too close to a major intersection or too close to another heavily-utilized driveway, he has little time to react to opposing traffic. As this intersection has proven many times over the last fifteen years, traffic collisions are alarmingly common at Pilot Travel Center's driveways. L. Colvin Dep. 217:16-20 (agreeing many collisions happen when motorists attempt left turns out of Pilot Travel Center's driveways); 219:12-15 (noting 17 different accidents involving left turns at Pilot Travel Center over just a four-year period). Based on this historic accident data and their knowledge of intersection design principles, Plaintiffs experts concluded the driveways were also a proximate cause of the Wrights' injuries. J. Teague Aff. ¶ 15 (finding Pilot "created an artificial condition, which generated hazardous conditions and contributed to the injuries of the plaintiffs"). Viewing the situation as a whole, Plaintiffs' experts concluded that the collision most likely would not have occurred if the driveways had been properly designed. J. Teague Aff. ¶ 19.

CONCLUSION

Based on the arguments stated above, Plaintiffs respectfully request an order denying Pilot's motion for summary judgment. Pilot breached duties imposed by South Carolina common law and SCDOT regulations when it negotiated for the removal of a non-transversable median and constructed a series of improper and dangerous driveways at its facility. As a direct and proximate result of the dangers created by the Defendants, the Wrights were injured in a serious auto collision. Pilot's motion should be denied.

Respectfully submitted,

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April 7, 2017

EXHIBIT 1

State of South Carolina)
)
County of Berkeley)

Cynthia Wright and Richard Wright, Plaintiffs, v. South Carolina Department of Transportation and Pilot Travel Centers, LLC Defendants.)
2014-CP-08-675
Video Deposition of William Mulligan

Cynthia Wright and Richard Wright, Plaintiffs, v. Speedway, LLC, Ashley Land Surveying, Inc. F/K/A Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc., and Munlake Contractors, Inc., Defendants.)
2016-CP-08-334

Date: July 14, 2016
Time: 9:07 a.m.
Location: McGowan, Hood & Felder, LLC, 1517 Hampton Street, Columbia, South Carolina

Reported by
Kathleen R. Tackett, CVR-M

Center." And, when you say that, what is an "encroachment permit"?

A It's a permit to access the state right-of-way of the state road.

(A cell phone rings.)

Q And the state road would've been Highway --

A 17-A.

THE DEPONENT: Sorry about that.

MR. HOOD: Oh, no problem.

THE DEPONENT: I thought I had that off.

MR. HOOD: Reminds me of mine.

MR. BESLEY: Everybody can now take a moment to --

MR. HOOD: Yes.

MR. BESLEY: -- silence their phones.

MR. HOOD: To silence my phone.

Q And you had to get that encroachment permit from the South Carolina DOT before you could construct the driveways to the -- to the new Pilot Travel Center?

A Correct.

Q And, when they talk about the new Pilot Travel Center, you're talking about the redesigned Pilot Travel Center?

A Correct.

A I would agree.
Q You know, it's very heavily traveled.
A I would agree.
Q When you have a heavily traveled road like that, you agree that there are -- you had two different driveways independent of the truck driveway that fronted 17, right?
A Correct.
Q Now, if you had put those two together, it would've required a signal device, based on the amount of traffic, wouldn't it?
MR. MAYBANK: Object to the form.
A I do not know that. I do not know that.
Q Okay. And do you know if there was 220 feet between these two driveways?
A I do not know the exact amount of feet between the two driveways.
Q You would -- you would agree with me that, based on the amount of -- of traffic on that highway, it would've required them to be 220 feet apart, right?
A I do not know that.
MR. MAYBANK: Object to the form.
Q Okay. I'm going to hand you some of the stuff in regard to this project, sir. This is really only one -- it should only be one page, but I'm half

Q And -- and do you know why they would not be able to enter or turn right from US 17-A?
A "Trucks will not be able to turn right." Well, it looks like it's a one-way entrance. So, if it was a one-way entrance, you couldn't get the trucks back out.
Q Okay. And, I mean, it's -- they -- they take a much greater radius to get into a driveway too, don't they?
A Yes, sir.
Q And then, if you go to the last page, it -- it says here -- starting on the left side, it says, "Stop unmountable median." And then, it has, it looks like, a colored thing. And it says, "Painted median to stop bar per Leland Colvin, 8/16/2000. And "All radii shown are inadequate for use." Do you know what any of that means?
A No idea.
Q Okay. Were you aware that at one time, prior to the joint venture, that there was either a raised median or specifications for a raised median?
A No idea.
Q Okay. If there was a raised median, you would agree with me that people -- most people would not be able to make a left turn into the facility?

MR. MAYBANK: Object to the form.

A I disagree with that.

Q And -- and why is that?

A Anybody can make a left turn and go over a -- a median.

Q Okay. Why do they have medians?

A To keep people from making a left turn.

Q Okay. I'm going to have marked as Plaintiffs' Exhibit 3 . . .

MR. HOOD: There you go. Whoops. That's mine. I'm sorry.

MR. BERLINSKY: I've got one.

MR. HOOD: If you've got -- okay. Okay.

Plaintiffs' Exhibit Number 3, "Application for Encroachment Permit."

Q Have you had an opportunity to look at --

A Yes, sir.

Q Okay. This says "Application for Encroachment Permit." On the left side, it says, "Applicant, Pilot Travel Center, LLC; care of Ashley Engineering & Consultants, Inc." And then, it says, "Type of encroachment: four asphalt driveways for commercial truck access." You see that, right?

Q Pilot has a responsibility to construct one of their travel centers in a safe way?
A Yes, sir.
Q And, if they construct it unsafely, who does it put at risk?
A Well, it would put at risk their customers that were coming into the facility.
Q Okay. I believe you've already said that -- that Pilot employees do not have a responsibility to know state regs, right? Because y'all depend on someone else?
A That -- that's correct. They will research the state regulations. They will research the professionals that they use. None of -- none of the guys -- Gary Bloom is not a licensed traffic engineer, so he is going to go -- he is going to hire professionals that are. He's going to rely on the Department of Transportation, again, who has responsibility for all roads, has immense amounts of data, has professionals that study this day in, day out. It's -- it's their living, so he's going to rely on those, and -- and that's what you, as the traveling public or as a customer, would -- would want. You want the -- the best people and that's why the DOTs are there: They're to protect

our safety.
Q Okay. And -- and the -- when you talk about that, you're talking about y'all -- y'all either hire someone or rely on the DOT, right?
MR. MAYBANK: Object to the form.
A We -- but, well, ultimately it's the DOT, so --
Q Okay.
A Because it's -- it's -- they're the guys that're going to issue the permits. It's their road. It's their access.
Q Okay. And we know that there's a book called, and they refer to it as, "The State -- State Regulations," right?
A I -- I'm sure they have a book. I don't know what it's called, but I'm sure --
Q But there are industry standards to -- you've heard of the term "industry standards"?
A Absolutely.
Q And you know there are industry standards, too, right?
A Yes, sir.
Q And, if -- if Pilot constructed a parking lot with a goal of maximizing profits over safety, bad things could happen, right?
A I don't think we -- we design things like that.

Q Right. That's what I'm saying.
A Right. Right.
Q Bad things could happen if somebody did do that, right?
A No. That's incorrect.
Q Okay. So bad things couldn't happen if they maximize profits over safety?
A No. You have a one-sided statement.
Q How is it one-sided?
A Well, today there's numerous choices that somebody could -- could buy, so if there's a lot of accidents or it's a safety issue, people just won't patronize your business. So, when you say, "Well, just do however you would -- design it however you want and -- and more people would come," that -- that's incorrect. People today have choices -- multiple choices, so if a site is unsafe -- like you said, if there's vagrants hanging around, if it's congested, if it's hard to get in and out, all those types of things, they won't come because there's so many other choices for them to go. Why would they risk themselves or their family in a dangerous situation?
Q Okay. But somebody that's just driving down the road and is smacked while somebody's trying to move

into your station, they're not actually trying to go into your station, they're just traveling down the road, right, like the person on this motorcycle?

A The person on this motorcycle was hit by a drunk, intoxicated driver.

Q Who was pulling into the Pilot station?

A That -- that's -- that's even more of a reason there. He was drunk and intoxicated and was hit by a person pulling in. He could've been hit -- the station could've been a thousand yards down the road, and he would've hit him anyway. He was drunk and intoxicated and hit a motorcycle in the closest lane to him. Could've happened a thousand -- could've happened a mile from the intersection.

Q Okay. I know you had said earlier you were down in Charleston yesterday. Was -- was it down there at this particular Pilot Travel Center?

A No, sir. We were opening a new travel center down by the port.

Q Okay. I'm going to hand you that -- where's that? We're almost done. Let's see.

Plaintiffs' Exhibit Number 15, "SCDOT ARMS Access & Roadside Management Standards."

Q I think this was Exhibit 15, and it says, "SCDOT ARMS," which is the Access and Roadside Management Standards. And, when I go to the very first page, which is actually Page 19. I didn't make a copy of the whole manual, I just made the one about driveways.

It says, "The ASHTO A Policy of Geometric Design of Highways and Streets (Green Book, 2004) states: Driveways are, in effect, intersections and should be designed consistent with their intended use." Do you see that?

A Uh-huh.

Q And you would agree with that, right? They should be used for their intended use?

A Yeah. Yeah.

Q And then, at the bottom it says, "Appropriate engineering and safety factors should be considered in conjunction with these standards so that conditions unique to individual driveways are properly taken into account."

A Correct.

Q You would agree with that?

A Uh-huh. Yes, sir.

Q Now, on the -- Page 20, which is the third page, but -- and you may not know this, I just --

A Uh-huh. Uh-huh.
Q I'm going to ask anyway.
It says, "Driveway Classification," and then on the left side it has, "Low Volume, Medium Volume, High Volume, and Major Volume."
Do you know which volume it was in front of this particular store?
A Well, this is not talking about traffic volume in front of a store. This is not talking about road traffic volume.
Q Oh. Okay.
A Has nothing to do with road traffic volume.
Q Is it trips to the store itself?
A That's what it is. Yes, sir.
Q Okay. Do y'all know if you have -- do -- do y'all know how many trips you have to the store a day or --
A I -- I am guessing it's somewhere in the high volume, 601 to 4,000.
Q Okay. If you go to the next page, it just talks about the angle of an intersection, the width and radii. That stuff that you -- when you say that you rely on others for that, that's what you rely on them for, right?
A You rely -- yes. You rely them on all types of

design, yes.

Q Okay. Going to the next page, Page 22, under the first paragraph, the last sentence, it says, "Inadequate driveway design creates conflicts that can be detrimental to safety and operations on the mainline." Would you agree with that?

A Say that again.

Q Yes. "Inadequate driveway design creates conflicts that can be detrimental to safety and operations on the mainline."

A Okay. I'd agree to that.

Q Okay. The next page -- let's go to the next. When I go to Page 25, it says, "Islands."

It says, "Traffic islands are used to guide motorists into proper lanes and can be used for pedestrian access." You see that, right?

A Yes, sir.

Q It says, "They shall be used when the driveway characteristics or complexity is of such a nature that their use is needed to eliminate conflicts." Do you see that?

A Yes, sir.

Q And you would agree with that, right?

A Yes, sir.

Q Okay. If you go to the bottom, it says, "Right-in,

Right-out Driveways."

A Uh-huh.

Q It says, "Their -- their" -- it says, "Right-in, right-out driveways are necessary in some locations in accordance with Section 3C. A right-in, right-out driveway should incorporate a triangular (pork chop) raised concrete island no smaller than 100 square feet with sides a minimum of 12 feet in length after rounding the corners." Do you see that?

A I do.

Q And you would agree with that, right?

A In general, yes.

Q Okay. It says, the next page, it says, "When a right-in, right-out driveway is implemented on an undivided highway, the use of a restrictive median in concurrence with the 'pork chop' island is preferred; however, adjacent impacts must be evaluated prior to implementing restrictive medians." You see that, right?

A Uh-huh.

Q Says, "A 4 foot wide raised median concrete median is recommended. However, if a concrete median cannot be provided, consider the use of a Department-approved surface-mounted curbing system

with flexible delineator posts as an alternative."
Do you see that?
A Uh-huh.
Q So you can actually have guardrails used instead of just a raised median to prevent left turns, right?
A Sure. The DOT can put whatever they want up in a median.
Q Okay.
A Can put trees.
Q Sure. Okay. Now, a couple general things and we're almost done.
Your name is William Mulligan. You're from Atlanta, Georgia?
A No, sir.
Q Where?
A Knoxville, Tennessee.
Q Knoxville, Tennessee. You're in Gamecock country.
A I know. There you go.
Q Date and place of birth?
A Dubuque, Iowa. April 20th, 1961.
Q Now, you got the Big Ten and the SEC.
A I'm telling you. I went to Texas A&M.
Q Oh, gosh. Then you got a Big Twelve. Well, now the SEC.
A Now the SEC.

EXHIBIT 2

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BERKELEY

CYNTHIA WRIGHT AND RICHARD WRIGHT,

Plaintiffs,

vs. CASE NO. 2014-CP-08-675

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C&A UNLIMITED, INC. AND PILOT TRAVEL CENTERS, LLC,

Defendants.

DEPOSITION OF: DANIEL JAMES SENA

DATE: May 6, 2015

TIME: 10:17 A.M.

LOCATION: Walden Correctional Institution
4340 Broad River Road
Columbia, SC

TAKEN BY: Counsel for the Defendant SCDOT

REPORTED BY: LORI S. MORTGE,
Certified Court
Reporter, CCR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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me. And I may not even mark these but I want to show you here two pictures of a white truck with a dented hood. Is that the vehicle you were driving that night?

A. Yes, sir. From my truck.

MR. MAYBANK: Can we mark these, Bill? Do you mind? At least one, so we can establish.

MR. BESLEY: Taking all my stuff.

(DFT. EXH. 5, Photograph of White Truck, was marked for identification.)

(DFT. EXH. 6, Photograph of White Truck, was marked for identification.)

(DFT. EXH. 7, Photograph of Airbag in Truck, was marked for identification.)

MR. BESLEY: All right. I think that's all the questions I have right now, unless Kevin asks some question that prompts me to ask another.

EXAMINATION

BY MR. SMITH:

Q. Mr. Sena, I'm Kevin Smith. I introduced myself to you before we started but, for the record, I represent Cynthia and Richard Wright.

Mr. Maybank here went over with you in his questioning the time that you spent in Summerville, the fact that you're very familiar with

the area. Remember that?

A. Yes, sir.

Q. And you've been to this Pilot center several times before; right?

A. Correct.

Q. And you knew that if you approached it from the way that you approached it this night that you were allowed to make a left-hand turn into the Pilot Travel Center; is that fair to say?

A. Yes, sir.

Q. And you had made that same left-hand turn, that same route, many times before?

A. Yes, sir.

Q. And these would be times when you were 100 percent sober; is that true?

A. Correct.

Q. You started to talk a little bit about, when you saw some these pictures here, you started to talk about the difficulty you had seeing at night at this intersection. I don't want to put words in your mouth. Can you just maybe talk about that some more, maybe explain that? What did you mean by that?

A. I just -- as you're in the center and make the left-hand turn, you got -- you know what

I'm saying, I had two cars coming towards me, to the best of my knowledge I remember. And as two cars come, the light turned yellow. And you see cars come down the hill, you see people turning, you know, from -- come down the hill -- just a mixture of the lights. I just made a bad judgment and assumed that the headlight I seen was -- the motorcycle light is smaller than a car light, or I won't say as bright. You know, I just figured it was at the intersection and not coming through the intersection or where it was at the time.

Q. Okay. And I think I understand what you're saying because the head lamp on the motorcycle was a little bit -- was different than the head lamps on the cars, you're thinking that you assumed it was a little further back than it was?

A. Yes, sir.

Q. And -- but with regards to what you were saying before it sounds like you were here, you know, stopping to make this left-hand turn into the travel center. You've got the street lights, you've got the traffic lights, you've got the cars coming off the interstate, cars coming down the -- down the hill, cars on the left, cars on the right, cars behind you, cars coming in and out of the Pilot

Travel Center.

A. Yes, sir.

Q. Those are all things that you would encounter waiting to make that left-hand turn?

A. Yes, sir.

Q. And is it a little difficult to make out what's what at night?

A. At times it can be. That's a very busy intersection right there. The gas station is very popular, of course, so...

Q. Do you remember what you were going to order that night from the McDonald's for the family?

A. A Happy meal, kids meal, my wife eats the chicken sandwich with nothing, just plain chicken sandwich, and number 1 combo.

Q. Do you remember what you were going to have?

A. Number 1 combo.

Q. Were you supposed to get drinks there, too, or did you have drinks at home?

A. No, sir. Tea. We had tea at the house.

Q. When you were just answering Mr. Besley's questions you said that you were surprised yourself at the BA level given the fact that it was just two beers?

DANIEL JAMES SENA - EX. BY MR. SMITH

A. Yes, sir.
Q. And you said that that's the whole reason why you consented to all these tests, especially the blood alcohol test; right?
A. Yes, sir.
Q. Did you feel like you were intoxicated?
A. No, sir. I did not. I got a field sobriety on full camera that can show everything, you know, the whole nine yards.
Q. And you described on one of these exhibits here where you had pulled in and you made this -- right where this arrow here is, that's where you had pulled in, you had described that as -- what do you call that area?
A. That arrow right there would be where my truck was parked waiting for oncoming traffic to clear so I could make a left-hand turn.
Q. You think that was a turn lane?
A. If I'm not mistaken, to the best of my knowledge, it's designed to where you can turn into there. But as you see this lane here if -- you got the entry there, so this lane here is turn only -- turn only here so you can go to this light here. You can also make that turn there but as the -- traffic's waiting, that's where you pull as you

DANIEL JAMES SENA - EX. BY MR. SMITH

wait. That's what -- I would assume that's what that median is for. (Indicating.)
Q. Would you have any clue whatsoever that you're not allowed to pull in that median stop and make that turn?
A. No, sir. Like I said, I've lived there my whole life and done it my whole life. Everybody -- everybody does it.
Q. Is it fair to say you saw the bike, you just misjudged your turn?
A. I'd say I misjudged what it was doing, yes, sir. I wouldn't say I seen -- seen the bike. If I seen and known it was coming I would have made my turn, but I wouldn't be able to tell you it was a motorcycle coming or stopped.
Q. Okay. Had there been a raised median here where you had stopped to make that left-hand turn, would you have crossed over the raised median to turn into the Pilot?
A. No, sir.
Q. Where would you have gone to enter the Pilot if there had been a raised median where you pulled in?
A. The only way you can go is the turn lane, which is on the other side of the highway.

DANIEL JAMES SENA - EX. BY MR. SMITH

You've got Hardee's, Waffle House and all that, but you can't turn there because there's a raised median. You got to go to the Walmart entry, turn into Walmart and then go to whatever restaurant you want to go to.
Q. But you can still get to those restaurants in that area; right?
A. Correct.
Q. Just make a couple of extra turns?
A. Correct.
Q. And if there was a raised median here where you made your left-hand turn, couldn't you have just gone to this light, the frontage road, and come back up here and gone to McDonald's?
A. Correct.
Q. If a raised median had been there and you wanted to go to McDonald's, wouldn't you have simply done that?
A. Yes, sir.
Q. Okay. Have you ever -- in your life, have you ever crossed over a raised median in the road?
A. No, sir.
Q. To make a left-hand turn, right-hand turn, any kind of turn?

DANIEL JAMES SENA - EX. BY MR. SMITH

A. No, sir.
Q. On your way home that day from work did you run over any raised medians?
A. No, sir.
Q. And since this happened with the Wrights have you ever run over a raised median?
A. No, sir.
Q. Is it fair to say that had a median been there, a raised median had been there the night that this happened with the Wrights, that you -- that this accident, this wreck, would not have happened?
MR. BESLEY: Object to the form.
MR. MAYBANK: Same objection.
BY MR. SMITH:
Q. You can answer.
A. Like I say, it would have prevented the accident because, of course, it would have prevented me from turning. Not as much as a wall but, you know, I just wouldn't have drove over a raised median, as some people do.
Q. Are you familiar with how many accidents take place at this particular area since this construction or this road widening took place?
A. No, sir. I'm not familiar with the number of them.

DANIEL JAMES SENA - EX. BY MR. SMITH

Q. Okay. Do you know that in the original plans for widening this road and building these -- this Pilot Travel Center, do you know that in the original plans there was a requirement for a raised median?

A. No, sir. That's not something I would look into. That's something that sucks, I can say that.

Q. And do you know that the Pilot Travel Center got that requirement removed for the raised median?

MR. BESLEY: I'm going to object to the form of the question. That's mischaracterizing evidence and testimony.

THE WITNESS: No, sir. I was not aware.

BY MR. SMITH:

Q. Not aware of that. But you're going to accept responsibility for what you did; is that true?

A. Yes, sir. I was the driver of the vehicle.

Q. You're not looking to place blame anywhere else?

A. I mean, that's -- you say there was something in the original plans. I'm not going to

DANIEL JAMES SENA - EX. BY MR. SMITH

say that was the reason why -- what happened happened. I mean, that could have prevented my accident and a lot more accidents and any more to come. I'm not going to post blame on -- my actions on them for that evening because I was the one that was behind the vehicle.

Q. Sure.

A. I can leave it at that.

Q. And you told Mr. Maybank you're clearly sorry and remorseful for what happened?

A. Yes, sir. I am.

Q. And do you think about -- obviously while you're here being incarcerated, I mean, do you think about what happened and why you're here and things like that pretty often?

A. Every day.

Q. All right. And the fact that you have accepted responsibility for all this, does that help you deal with it and grow and mature and heal from all this?

A. It was -- yes. There's no way, you've got to -- lesson learned. Just be more cautious out there.

MR. SMITH: That's all I have. Thank you.

MR. BESLEY: Have you got anything else, Roy?

MR. MAYBANK: Yeah, I do, just a couple.

EXAMINATION

BY MR. MAYBANK:

Q. Your alcohol level was actually not a .1 but a .12. Did you realize that? It was even higher than what we talked about.

A. No, sir. In my discovery portion it was .10 there.

Q. Have you seen the police accident report?

A. On...

Q. Right down there.

A. Some paperwork. If you go back to my preliminary hearing it's also recorded and testified by officers it's a .10.

Q. All right. But right there is .12; correct? (Indicating.)

A. Okay.

Q. Do you see that?

A. Yes, sir.

Q. And you wouldn't have crossed over -- how high would that median have been where you wouldn't have crossed over it?

A. Sir, if there had been -- anything.

Q. An inch?

A. Anything. Considering, you know...

Q. Two inches?

A. Two inches.

Q. Six inches?

A. Yes, sir. Just been a piece of grass, it is what it is. You don't cross. The point of this median is for emergency vehicles to come through, for turning lanes to come through along this dotted line; correct? I mean, you're DOT; right? If it's a dotted -- solid dotted line?

Q. Are you aware that that is an actual -- you did a legal turn that night?

A. A legal?

Q. A legal turn.

A. Illegal?

Q. No, legal.

A. Oh, legal. I was allowed to --

Q. You did a legal turn that you did?

A. As you were saying --

Q. I'm just asking. Are you aware that that was a legal turn that you did?

A. I was hoping it was. Can I say it that way?

EXHIBIT 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	C/A NUMBER: 2014-CP-08-675

Cynthia Wright and Richard Wright,

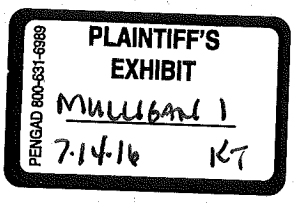
Plaintiffs,

vs.

South Carolina Department of Transportation, C & A Unlimited, Inc. and Pilot Travel Centers, LLC,

Defendants.

AFFIDAVIT OF BILL MULLIGAN



Personally appeared before me the undersigned, after being duly sworn, deposes and says:

1. The contents of this affidavit are based on my own personal knowledge.

2. I am of sound mind and over eighteen years of age.

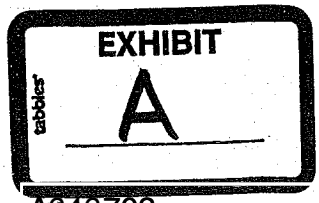
3. I am familiar with the allegations alleged by the Plaintiffs in the above-captioned lawsuit pending in Berkeley County.

4. Beginning in 1994, I began serving as the Director of Construction for Pilot. That Directorship later became a Vice President's position, and I have continuously served as the Vice President of Construction to the present date, which title is now Vice President of Development.

5. On or about September 1, 2001, Pilot acquired the existing gas station and real property located at 1521 North Main Street, Summerville, South Carolina 29483 (the "Property").

6. After acquiring the Property in September 2001, Pilot redesigned and constructed a new Pilot Travel Center station on the Property.

7. When Pilot acquired the Property, the existing gas station located on the Property had three driveways with access to U.S. Hwy 17-A. There was no raised median in the highway preventing left turns into the existing gas station from the southbound lane.



8. Pilot was required to obtain an encroachment permit from the South Carolina Department of Transportation ("SCDOT") before Pilot could construct the driveways to the new Pilot Travel Center. In order to obtain the permit, the location and design of Pilot's driveways had to be approved by the SCDOT. In May 2002, Pilot submitted an application for an encroachment permit to the SCDOT, seeking approval of the location and design of its proposed driveways. The encroachment application was approved, and the SCDOT issued Pilot a permit to construct the driveways.

9. Construction of the Pilot Travel Center began in or around August 2002. Around the time the Pilot Travel Center was being planned/constructed, SCDOT was also performing an improvement project to the intersection of I-26 and U.S. Hwy 17-A, which was adjacent to the Property. The SCDOT did not install a raised median in the highway to prevent left turns into the Pilot Travel Center as part of the improvement project.

Bill Mulligan

April 28, 2016

Sworn to before me this 28th

day of April, 2016

Sherry L. Blake (L.S.)

Notary Public for Tennessee

My commission expires: 9-11-16

SHERRY L. BLAKE STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

EXHIBIT 4

May 7, 2002

South Carolina Department of Transportation
Mr. Moskal, Encroachment Administrator
436 North Highway 52
Monks Corner, SC 29461
843/761-8481



RE: Pilot Travel Center, 1520 North Main Street, Summerville, SC.

Dear Mr. Moskal;

We have been playing phone tag today so I thought I would go ahead and send you this letter in the meantime. I am the Project Manager for Pilot Travel Center's, LLC (a combination of Marathon Ashland Petroleum, LLC and Pilot Corporation), which now owns the Speedway, operated at the above address. Previously this facility was being redesigned and permitted by Nathan Fox of Marathon Ashland Petroleum, LLC. Mr. Fox's design is based on meetings with Mr. Tommy Smoak and Mr. R.F. Clair, Jr. of the Department. I am submitting these drawings for a driveway access permit for the driveways as shown. I anticipate that there is an application form that will need to be completed. Would you please call me so that I can complete the additional information required for you. I can be reached at 1-800-562-6210 extension 2027.

Your assistance in this matter is greatly appreciated.

Sincerely,

PILOT TRAVEL CENTERS, LLC

Gary Bloom

EXHIBIT 5

APPLICATION FOR ENCROACHMENT PERMIT

No. 5-08-02016

(ENCROACHMENT PERMIT OTHER THAN A PUBLIC UTILITY)

APPLICANT: PILOT TRAVEL CENTER LLC
AND c/o ASHLEY ENGR & CONSULTANTS, INC
ADDRESS: 306 SANGAREE PKWY
SUMMERVILLE, SC 29483
TELEPHONE NUMBER: 843-873-9787

COUNTY: BERKELEY
ROAD/ROUTE: US 17-ALT & S-8-1258
ROAD NAME: N MAIN ST & FARMINGTON RD.

1. The undersigned applicant hereby applies to the South Carolina Department of Transportation (SCDOT) for a permit for encroachment on State Highway Right of Way as shown and described below:

2. Type of Encroachment: 4 - ASPHALT DRIVEWAYS FOR COMMERCIAL & TRUCK ACCESS

3. Description of location:

ALONG US 17-A FROM FARMINGTON ROAD, INSTALL 2-30' WIDE DRIVES & ONE 40' WIDE TRUCK ENTRANCE (ONE WAY) DRIVE.

ALONG FARMINGTON ROAD (S-8-1258) FROM US 17-A, INSTALL ONE 50' WIDE TRUCK EXIT DRIVE.

(Attach sketch indicating roadway features such as: pavement width, shoulder width, sidewalk and curb and gutter location, significant drainage structure, north arrow, right of way width, and location of the proposed encroachment with respect to the roadway centerline and the nearest intersecting road on the State system.)

4. The undersigned applicant hereby requests the SCDOT to permit encroachment on the Department right of way as described herein. It is expressly understood that the encroachment, if and when constructed, shall be installed in accordance with the sketch attached hereto and made a part hereof. The applicant agrees to comply with and be bound by the Department's "A Policy for Accommodating Utilities on Highways Rights of Way" and "Standard Specifications for Highway Construction" (made a part hereof by reference) on file in the Utility Office of the Department, and all general provisions on the reverse hereof and special provisions below or attached hereto during the installation, operation and maintenance of said encroachment within the Department Right of Way. The applicant hereby further agrees, and binds his heirs, successors, assigns, to assume any and all liability this Department might otherwise have in connection with accidents or injuries to persons, or damage to property, including the highway, that may be caused by the construction, maintenance, use, moving or removing, of the physical appurtenances contemplated herein and agrees to indemnify this Department for any liability incurred or injury or damage sustained by reason of the past, present, or future existence of said appurtenances.

APPLICANT NAME: GARY Bloom (PLEASE PRINT OR TYPE) DATE: 5-13-02

APPLICANT SIGNATURE: [signature] TITLE: Project Manager

In compliance with your request and subject to all the provisions, terms, conditions and restrictions stated in the application, general provisions on the reverse hereof, and special provisions below or attached hereto, the Department approves the request. This permit shall become null and void unless the work contemplated herein shall have been completed prior to 07/25/2003.

SPECIAL PROVISIONS:

SEE ATTACHMENT "A"
SEE ATTACHMENT "B"

PENGAD 800-631-6989 PLAINTIFF'S EXHIBIT MULLIGAN 3 7-14-16 KT

5/30/2002 DATE RECEIVED BY RES. MAINT. ENGR.	DATE FORWARDED	[signature] SCDOT APPROVAL	7/25/2002 DATE
DATE RECEIVED BY DIST. ENGR. ADMIN.	DATE FORWARDED	☑ RESIDENT MAINTENANCE ENGINEER ☐ DISTRICT ENGINEERING ADMINISTRATOR	☐ STATE HIGHWAY ENGINEER ☐ DISTRICT MAINT./CONSTRUCTION ENGINEER

EXHIBIT 6

PLAINTIFF'S EXHIBIT
MULLIGAN 7
7-14-16 KT
PENGAD 800-631-6989

PERMIT NO. S-08- 0201 61

SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ENCROACHMENT PERMIT
FINAL APPROVAL FORM

PERMITTEE Pilot Travel ROAD NUMBER US 17A & SR 1258

ADDRESS _____

ON SITE INSPECTION REQUIRED YES [ ] NO [ ]

FINAL ON-SITE INSPECTION DATE 10-10-03

INSPECTORS COMMENTS: Complete

PERMITTEE REQUEST FOR APPROVAL, LETTER DATED [ ]

SCDOT APPROVAL OF CONSTRUCTION YES [ ] NO [ ]

SCDOT LETTER OF APPROVAL ISSUED YES [ ] NO [ ]

LETTER DATED [ ]

ONE YEAR INSPECTION CONDUCTED YES [ ] NO [ ]

INSPECTORS COMMENTS: _____

Logged 2/3/2004 mm

EXHIBIT 7

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY

CYNTHIA WRIGHT AND RICHARD WRIGHT,

Plaintiffs,

vs. CASE NO. 2016-CP-08-334

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C & A UNLIMITED, INC., and PILOT TRAVEL CENTERS, LLC, SPEEDWAY, LLC, ASHLEY LAND SURVEYING, INC., F/K/A ASHLEY ENGINEERING & SURVEYING, INC., and ASHLEY ENGINEERING & CONSULTING, INC., and MUNLAKE CONTRACTORS, INC.

Defendants.

VIDEOTAPE
DEPOSITION OF: ROBERT T. CLARK

DATE: March 13, 2017

TIME: 7:16 PM

LOCATION: SCDOT District 6
6355 Fain Boulevard
North Charleston, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

Encroachment Permit, PILOT 001925 to 001936, was marked for identification.)
BY MR. SMITH:
Q. Exhibit Number 2, we've marked as the application for encroachment permit. The question is: Do you know what the specific differences were between the old driveway plans that were on the widening project versus the new driveway plans that were being requested in Exhibit Number 2?
A. I -- I can't -- I don't recall exactly what was originally there.
Q. Okay.
A. I -- I believe there were a couple of commercial-type drives --
Q. Okay.
A. -- but I can't say for sure.
Q. But the driveways that were approved that were requested in the encroachment permit, those driveways were still in the functional area of the intersection. True?
MR. BESLEY: Object to the form of the question.
MR. MAYBANK: Same objection.
THE WITNESS: The -- the driveways in Exhibit 2 in the functional area of the

intersection?
BY MR. SMITH:
Q. Yes, sir.
A. I don't believe all of them were, no, sir.
Q. Some of the driveways that were being requested in Exhibit Number 2 were in the functional area of the intersection of 17A and Farmington Road?
A. They may have been. Functional area of an intersection is kind of a theoretical concept that --
Q. Um-hum.
A. -- when you get in and start looking at driveways and how they function, how they interact with the roadway and the drivers, then you -- you -- you make those determinations. So say this is the cutoff line or this is the exact spot, from one year to the next or for five years, that may change. It depends on the traffic, on what the traffic's doing, what developments happen on the side streets.
So a lot of things can change. So at that point in time, I can't say exactly what was the functional area of the intersection. Probably

the first drive coming from Summerville was probably in the functional area of the intersection because of right turns coming off the frontage road. Beyond that, I can't say.
Q. And both driveways, the Hess gas station across the street, those were both in the functional area of the intersection?
A. They probably were.
Q. Okay. And when we look at the definition of the functional area of an intersection in the ARMS manual, is it true that that defines the functional section -- area of the intersection as the physical intersection of two roadways that comprises decision and maneuvering distance plus any required vehicle storage length?
A. If you read it correct, that's what it said.
Q. Okay. It includes the length of the road upstream from an oncoming intersection needed by motorists to perceive the intersection and begin maneuvers to negotiate it?
A. Right. Essentially a motorist driving any road perceives what's happening. They have to have time to process. They have to have time to react to it. So if you're approaching, say, a

signalized intersection, then you need to have enough room to be able to say, okay, I see a vehicle stopping in front of me, I put my foot on the brake, I come to a stop.
Over time, as traffic builds on a road or it may go down depending on what's happened in an area, that length or that functional area that's related to that intersection can change.
Q. Okay. Is it true that when the new driveways or the changed driveways reflected in Exhibit Number 2 were approved, there isn't a document anywhere that defines the functional area of the intersection with 17A and Farmington Road?
A. No, it doesn't need to be.
Q. Okay. No one determined where the functional area of the intersection was when they were considering --
A. You use engineering judgment when you're reviewing an encroachment permit. You know the area, you know what the traffic is, you review it. Depending on the type of development, you may actually have a traffic study done by a professional engineer. You know, the applicant may be asked to do that. So it depends on -- again, on the area, on the type of development. But you

Management Standards, was marked for identification.)

BY MR. SMITH:

Q. Marked as Exhibit Number 3 to this deposition, the ARMS manual from 1996?

A. Correct.

Q. Okay. We were talking about this width of driveways?

A. Yes, sir.

Q. Okay. And can you tell me whether or not the width of the driveways at the -- at what is now the Pilot Travel Center is in compliance with Page 21, Section 3G-2, Table 3-9? Well, I gave you the wrong page. I'll find the right page for you.

A. Okay.

Q. All right. Sorry. Page 9, Table 3-2, spacing of driveways. Operating speed, we know this was a 45-mile-an-hour zone?

A. Correct.

Q. Okay. And what does that say there is the minimum spacing from center to center?

A. 250 feet.

Q. Okay. And whatever the driveways ended up being, they weren't 250 feet, were they?

A. That is correct.

Q. What's the purpose of this? What's the purpose of the spacing?

A. When you have a large undeveloped tract that they envelope, say a shopping center is coming in or something like that in an area that hasn't had previous development on it, that's a way to space driveways so that the inter -- a road will operate functionally and efficiently, safely.

Q. Okay. That's a safety consideration?

A. Yes.

Q. Okay. There's one other thing I wanted to ask you about. I'm going to try and get through it real quick.

This Page 8 here, Table 3.1 (sic) --

MR. CRITES: Is that Exhibit 3, Kevin?

MR. SMITH: Yeah. Sorry.

BY MR. SMITH:

Q. Table 3.1 (sic), maximum number of driveways per frontage, can you apply that to the Pilot Travel Center?

A. I don't know the frontage, what the distance is.

Q. Is there any document that records what the frontage is that was considered in the application, Exhibit Number 2?

A. If -- if there was a -- an exhibit with the permit, you could see what the distance is on it, I would think. But I don't see an exhibit on this permit.

Q. But you would agree with me that under Table 3. -- 3-1, you've got to have between 1,000 and 1500 feet of frontage to be allowed four driveways? True?

A. You would need that much on one road for four driveways.

Q. Right. So when we're talking about the section of 17A, to have three driveways -- right?

A. Correct.

Q. -- you'd have to have between 600 and 1,000 feet of frontage on Highway 17A?

A. That's correct.

Q. Okay. Anything outside of that range and -- that's not in compliance with your ARMS manual?

A. That's correct. Again, it depends on internal circulation as to what you want to do. You may have a one-way pair. Or if you've got trucks, you don't want trucks and automobiles to mix. So you take that and then you look at site plan and look at what's being used on the site to

make an engineering judgment as to what is appropriate.

Q. But in any situation, if you are asked to review plans that are in conflict with the ARMS manual and you are using reasons to approve something different, the Department of Transportation wouldn't write those reasons down to say we know the ARMS manual requires this, but we considered X, Y, and Z and that's why we're not going with what the ARMS manual says?

A. They would be in those notes.

Q. The notes that get destroyed?

A. That's correct.

Q. So we don't know if -- we don't know what was considered, do we? We don't even know if the ARMS manual was considered at all, do we?

A. Well, it always is.

Q. But I mean, there's no -- there's no evidence, there's no documents, there's no proof of any kind that anyone ever looked at the ARMS manual when they were looking at these driveways for the Pilot Travel Center?

A. I would say that the staff when I was traffic engineer, traffic engineers that have followed me have always used that as a resource in

EXHIBIT 8

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY

CYNTHIA WRIGHT AND RICHARD WRIGHT,

Plaintiffs,

vs. CASE NO. 2016-CP-08-334

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C & A UNLIMITED, INC., and PILOT TRAVEL CENTERS, LLC, SPEEDWAY, LLC, ASHLEY LAND SURVEYING, INC., F/K/A ASHLEY ENGINEERING & SURVEYING, INC., and ASHLEY ENGINEERING & CONSULTING, INC., and MUNLAKE CONTRACTORS, INC.

Defendants.

VIDEOTAPE
DEPOSITION OF: LELAND D. COLVIN, JR.

DATE: March 13, 2017

TIME: 11:35 AM

LOCATION: SCDOT District 6
6355 Fain Boulevard
North Charleston, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

duties in ensuring the location will be safe and free from hazards. And it's kind of a general subject there.

A. Right.

Q. And Number 14 talks about the applicable safety standards and things like that. Okay?

A. Right, yes, sir.

Q. So do you believe the South Carolina Department of Transportation must only approve safe highway plans?

A. Yes.

Q. All right. And is the reason for that to prevent injury or death to other people on the road?

A. Yes, the -- the reasonable expectations. There's four E's of traffic safety, and engineering is one of the four E's.

Q. All right. And I -- I think I may have misspoken. The reason for only approving safe highway plans, is that to prevent injury or death to everyone using the road?

A. Reasonable, again, when I look at -- when I look at traffic safety, it's -- it's known amongst the community there's four E's. There's

education, there's enforcement, there's emergency, and there's engineering. And the -- and the Department of Transportation plays into a couple of those.

Certainly education, we -- we partner with the Department of Public Safety and engineering, so yes. That's part of that, is to -- is provide a -- a reasonably safe highway network.

Q. Okay. Do you believe the South Carolina Department of Transportation must follow industry safety standards when considering changes to a highway or the additions of driveways?

A. Yes.

Q. And is the reason for that to prevent injury or death to everyone using the road?

A. It is to ensure that we provide sound, safe engineering. Again, we can't -- we can't protect the motoring public from themselves sometimes. You have impaired drivers, you have drivers that are texting. So as to the reasonable expectation of engineering standards from a safety -- safety concern, yes. If they are reasonably using those roadways in state statute, the -- the engineering side of that should -- should -- should work.

Q. Okay. So one of the reasons that the Department of Transportation must follow the industry safety standards when considering changes to the highway or the additions of driveways, one of the reasons to follow these industry standards is to prevent injury or death to everybody using the road?

MR. CRITES: Object to the form.

MR. MAYBANK: Object to the form.

BY MR. SMITH:

Q. You can go ahead.

A. Yeah. That are using the road as intended.

Q. Okay.

A. That's following all state laws and statute, correct.

Q. Would it not encompass people just, you know, alongside the highway? Can you see how decisions regarding driveways or highways would also affect people, you know, on foot walking as pedestrians?

A. Certainly. I -- I think both the pedestrians and bicyclists are modes of transportation that's taken into account with our -- our highway design there. Yes, sir,

absolutely.

Q. So if the safety standards are followed, one of -- the intention is, is that that would ultimately protect people both on and around the highway?

MR. MAYBANK: Object to the form.

BY MR. SMITH:

Q. You can go ahead.

A. Yes. I mean, if -- if the -- if the pedestrians, bicyclists, the -- the -- and -- and vehicle drivers are following all the applicable laws, the -- that one E is part of safety, the engineering. Absolutely, it is -- it is one of the four E's regarding highway safety.

Q. Okay. Are there parts of the highway design process or the maintenance issues with changes to the highway or just simply the process of approving driveways or -- or curb cuts and the safety standards that apply to those issues, do those not take in account for situations where someone is performing a illegal use of the road? Or do all of these safety standards presume that people are going to legally use the road and just simply don't apply if there's any illegal use?

MR. MAYBANK: Object to the form.

standards?
A. I'm not familiar with that document.
Q. Okay. Oh, that was the one I had showed you, I think, before, the --
A. AASHTO?
Q. This one here (indicating). There's a lot of the same stuff from this was in the ARMS.
A. Yeah. I would -- I would say that DOT, in developing the state-specific guidelines, takes into consideration AASHTO and USDOT standards --
Q. Okay.
A. -- but applies those specifically to South Carolina conditions, as do most other state DOTs.
Q. All right. And I had a note here to ask you about any others. And I just want to -- I don't know if I wrote it down, but you -- early on, you said that one of the things you looked at was this highway and whether it met this certain manual. And I showed you this and showed you that, and you said that wasn't it. Can you just say that again so I can write it down?
A. Yeah. It's the South Carolina Highway Design Manual.
Q. Okay. And you have in your possession

the versions of that manual that existed back in 2000 up through today? Not in your physical possession right now, but that's available to you?
A. Yes, sir.
Q. Okay. After we're done here today, could you maybe take those -- those manuals, those versions from 2000 up through today, and provide them to your attorney?
A. Yes. I provided the one that was in place at the time of the design. But -- but the new one, there's been an updated version that we did not provide, so I can provide that as well. One has already been provided.
Q. Okay.
MR. MAYBANK: And -- and if you gave it to me, Kevin, it should be in the documents that we -- all these -- A, B, C, I think you've got a list of them. You've got those.
MR. SMITH: All right. Thanks.
THE WITNESS: I'll make a note of that.
MR. MAYBANK: Do you want the new manual, Kevin?
MR. SMITH: Yeah, any -- any changes since 2000.
MR. MAYBANK: Okay.

BY MR. SMITH:
Q. Are you personally familiar with the ARMS manual?
A. I am, yes, sir.
Q. And I believe your description of the ARM manual -- ARMS manual was it's a set of guidelines used by others when they are wanting to make changes to the highway or curb cuts and driveways and things like that?
A. It is. I mean, it's something that both the DOT as well as that private individual or company uses to provide those guidelines for -- for access to the state highway system. Something we use as well in a review if there are any encroachment permits.
Q. Does the ARMS manual contain -- does it contain a set of safety rules or -- or rules for the -- I'm trying to -- trying to figure out how you're using the word guidelines. Maybe I can rephrase the question.
The ARMS manual, are those merely suggestions or are those rules that are to be followed?
A. They are guidelines to be followed. There are -- the manual does allow for exceptions

to that, so there is a -- there is an exception process as -- as well that does -- that's within this -- incorporated within the manual itself.
Q. So what's in the ARMS manual is mandatory, but the ARMS manual itself provides examples for exceptions and procedures to -- to gain those exceptions. Is that a fair summary?
A. That is correct.
Q. Okay.
A. Yes.
MR. CRITES: Kevin, when you were referring to the manual as being mandatory, is that the South Carolina Highway Design Manual?
MR. SMITH: I'm talking about the ARMS manual.
MR. CRITES: Okay.
BY MR. SMITH:
Q. And maybe I'll -- I'll head off his question in advance.
The South Carolina Highway Design Manual, is that also a set of mandatory rules that would provide instances for exceptions and a set of procedures to try and qualify for those exceptions?
A. Yes, sir, it does. It provides a -- a process for exceptions to the manual.

Q. Does the community have a right to expect the Department of Transportation to make all changes in the roadway that are safe? I'm sorry. Bad question.

Does the community have a right to expect the Department of Transportation to make sure all changes in the roadway are safe?

A. I would say that the public has a reasonable expectation to make sure that we provide safe highways, and we have safety guidance that we use to -- to follow.

Q. Okay. Is it true that ordinary people in the community going up and down the highways, and in particular 17A, they wouldn't know about the particular safety standards or rules and regulations in the ARMS manual or those published by the Department of Transportation?

A. I think that's a fair assessment, yes, sir.

Q. And does the South Carolina Department of Transportation know that driveways have long been recognized as a major source of conflict for traffic on public highways? Is that a true statement?

A. That's a true statement.

Q. It comes out of the ARMS manual?

A. Certainly.

Q. Reasonable access means a property owner must have access to the public highway system rather than being guaranteed that potential patrons -- patrons should have convenient access from a roadway to the property. Is that a true statement, describing reasonable access?

MR. MAYBANK: Object to the form.

THE WITNESS: Could -- could you repeat that one more time, please?

BY MR. SMITH:

Q. Sure. I'm trying to define reasonable access --

A. Sure.

Q. -- with regards to the South Carolina Department of Transportation.

And would you agree with me that reasonable access means that a property owner must have access to the public highway system, rather than being guaranteed that potential patrons should have convenient access from a roadway to the property?

A. I agree with that statement.

Q. Okay. And the reason for that is

because the Department of Transportation is required more -- is required to care more about safety than what a property owner thinks will make him or her more money. Is that true?

A. Yeah. Our -- yes. We -- we are charged with providing safe, reasonable access to the state highway system.

Q. All right. And safety takes precedent over any wishes that private corporations may have that may result in them making more or less money? Safety trumps that?

A. Yes.

Q. Okay. And would you say that safety is the primary concern for any decision regarding access to private property?

A. Yes. I would say safety and the operation of the state highway system are the two primary functions that the DOT looks at for access to the state highway system.

Q. And I -- and I read a -- a little bit about that. And -- and I think that term, to me, seemed to say that we know what safety is, but the operation of the road, that's about traffic issues and stuff, about the road functioning smoothly and not backing up and -- is that what you were talking

about, the second end of it?

A. Yes. I mean, that -- that -- the -- the operation, the functionality of that roadway. In other words, you've got a different safety standard for a interstate system that does not have any access points, then an urban arterial, then a minor arterial, then a neighbor street. So each -- no one roadway is treated the same with regards to the reasonable expectation of those drivers.

Each functional class of that highway has different safety components that -- that are tied to that, which is -- which I would say most drivers understand those reasonable expectations. They've got a -- you know, driving along an interstate with higher speeds, less conflict points versus driving along a neighborhood street. And then you've got those roads in between those two.

Q. But in any of those situations where it's an interstate or it's a major highway or a neighborhood or a -- or a smaller street, in any of those situations, there's two concerns that the Highway Department would -- I'm sorry -- the Department of Transportation would have that would trump the wishes of private property owners. And those two concerns would be, number one, safety,

and, number two, the functioning of the highway or roadway in question?

A. Yes.

Q. Okay.

A. That's a fair statement, yes, sir.

Q. All right. Let's talk about -- and I think that maybe even Question 1 under yours? Let me get to the page so I don't have to keep flipping here.

So the history of the design, that Number 1 --

A. Sure.

Q. -- why it was decided to -- decided to separate the north- and southbound lanes, barrier-type median, that seems to be your topic rather than Mr. Clark's, right?

A. Correct.

Q. Okay. So talk to me about this history of the design here.

A. Sure. Well, first thing I think you've got to recognize, there's two different projects and they just happen to start in at Farm -- at the intersection of 17A and Farmington.

Q. And let me ask you -- let me stop you right there.

The two different projects, are you talking about the stuff that the -- that people that would be later identified as Pilot wanted to do? Or two separate DOT projects?

A. Two separate DOT projects.

Q. Okay. So tell me what those two separate projects were.

A. The first one is referred to -- there's two sets of plans that were provided, is that what the DOT commonly refers to -- they've got file numbers, but the common name is the I-26/US 17A intersection -- interchange improvement project. And that would be from Farmington Road back towards Summerville. I guess that's west. Then we'd refer to Farmington Road back to the east as the US 17A widening project.

Q. Okay. So basically at Farmington Road, you head towards Summerville and that is the interchange improvement project?

A. Yes, sir.

Q. And if you -- Farmington Road towards Moncks Corner, that would be the widening project?

A. Yes, sir.

Q. Okay. And those two projects, we talked about the history of the design here. Those

two projects, were they happening at about the same time?

A. They are roughly happening at about the same time. The interchange project was being designed by a outside consultant, and then the -- the widening project was designed, what we refer to, in-house by South Carolina DOT staff. A little bit of different purpose and needs from -- from those two, and -- and certainly different from a design aspect of -- of what we did.

The interchange project, do you want me to go ahead and describe kind of what that is or --

Q. Well, you had mentioned the -- I think that portion was designed by a private firm?

A. Yes.

Q. Who -- who was that?

A. It's Arcadis Geraghty, I think it's -- & Miller. Arcadis is kind of the name we went by. They have since been bought out, so I'm not sure what it belongs to at this point.

Q. Were they employed by the Department of Transportation for that portion of the -- or for that project?

A. Yes, sir, they were.

Q. And when you -- when we talk about the

history of the design here, did any part of the interchange improvement project from Farmington Road up to Summerville, that way, did any of those changes impact your analysis in this case?

When you're looking at the safety standards applied here and whether or not those were met by the Department and designs or the changes thereafter and things like that, did any of the interchange improvement project issues come up? Or were you just simply looking at basically Farmington Road, Moncks Corner?

A. No. There was -- when you looked at those two tie-ins of the project, you had to look at them together. I -- and -- and that's what we had to do. You know, when we stop one project and start another, we've got to make sure that project is designed so that the set -- the widening project was set up to accept the lanes coming to it.

In other words, you can't have five lanes just tying down into two.

Q. Yeah.

A. Same thing, the -- the widening project of 17A, similar to there, it had a stopping point at US 176. You just can't all of a sudden cut off

indicating what volume the -- what now is the Pilot Travel Center, are there any notes that indicate what type of volume that business was?

A. Not that I have seen. Again, if -- if this was a new gas station/convenience store going in, that would be part of the encroachment permit process was -- would be to determine those volumes since that is access already existed. It's not something that we would typically look at as part of a roadway widening project. Certainly the volume on the road itself, but not those individual property owner volumes.

Q. And how about -- I mean, is -- was that -- was that something that was ever considered in the history of the entire project? And what I'm talking about the project is, you know, the -- the -- the widening in front of the Pilot Travel Center and the construction of the driveways, was a -- was the volume of the Pilot, was that ever considered in any of those decisions?

A. Not that I recall.

Q. Okay. And I want to ask you about who did particular work. I see in their encroachment permit about, you know, things about you pay for this, we'll pay for that, and -- and things like

that. But I want to get sort of a little bit more specific if we can.

So painting the actual median where there used to be this plan for the raised median and then it became paint, who paid for the paint?

A. The SCDOT, as --

Q. Okay.

A. -- part of the widening project.

Q. And who paid for the paint to be put down?

A. SCDOT.

Q. Okay. So Pilot didn't have to pay for any of that stuff?

A. No.

Q. All right. Okay. And how about the -- the driveways and curb cuts along 17A, who would have paid for that?

A. SCDOT would pay for that.

Q. Okay. And signage alongside the road, paint markings on the road, DOT as well?

A. Yes, sir.

Q. All right. Is there any part of what Pilot was asking for -- and when I -- when I say Pilot in this case, I mean Pilot and the entities before them and all that. Okay?

A. Sure.

MR. BESLEY: Yeah, I'm going to object and ask that you clarify your question specifically. Because there are different parties in this case. If you can try to do that, that would be helpful. Could mean him having to ask all the questions over again when you get done.

BY MR. SMITH:

Q. Well, the group that was originally involved here, this Marathon Ashland Petroleum, okay, at some point they became somebody else, right? I think it was Marathon Speedway or Speedway Marathon; is that right?

MR. CRITES: (Moved head up and down.)

BY MR. SMITH:

Q. So what these people were wanting to do, they wanted the -- the raised median gone and they wanted these particular driveways on 17 and Farmington Road. Is that fair to say?

MR. CRITES: Object to the form.

MR. MAYBANK: Same objection.

THE WITNESS: Yeah. I mean, I think as part of any right-of-way acquisition, there's -- there's about two or three things that's contemplated. Certainly the value of the

acquisition land that's taken, any damages to the remainder of that, and then the access to the road system, those were the three general rule-of-thumb, broad-brush items that come into play when we're acquiring -- when we're acquiring right-of-way.

BY MR. SMITH:

Q. Okay. But in -- in terms of so we can figure out who paid for what --

A. Right.

Q. -- it's my understanding that Marathon Ashland Petroleum, that they were requesting basically two things: They wanted the raised median gone and they wanted some driveways along 17A and Farmington Road. Is that your understanding of basically what they were asking for in terms of this project?

MR. CRITES: Object to the form.

THE WITNESS: Yes. That as -- in -- in addition to the value of the property that was acquired by the Department.

BY MR. SMITH:

Q. Okay. I got you. The new right-of-way that was acquired?

A. Correct. Correct.

Q. Okay. And did Marathon Ashland

that raised median would have spanned the -- basically the entire length of the -- what is now the Pilot Travel Center area on 17A.

Originally there was -- there was a requirement for a raised median. And that was sometime later changed, I understand that. But my question is: The original plans for the widening in front of the Travel Pilot Center, the original plans had a requirement for a raised median at Farmington Road going towards Moncks Corner. True?

A. Can I look at this letter?

Q. Yeah.

A. Yes. There -- there was a -- yes. Absolutely at one point in time, the interchange plans showed a raised median.

Q. Okay. I got you.

A. At -- at -- at some point in time during the process --

MR. MAYBANK: Hold on. I don't mean to interrupt. He's talking interchange, you're talking road widening. You all -- you all aren't coming together, and I want to make sure the record is clear. I don't mean to interrupt you.

Is anybody else hearing this? Because that's --

MR. BERLINSKY: Well, you know, I -- I agree wholeheartedly with what you're saying.

MR. MAYBANK: Here's -- you know, I think you all are confusing one another.

MR. SMITH: Well, what -- what I'm hearing from him is that portions of the interchange project blended into the road widening. Because when doing the inter -- interchange project, they are drawing in this raised median as part of accepting these lanes from the widening project into their interchange improvement project.

BY MR. SMITH:

Q. That's what I heard you say.

A. Yes. When -- when -- in my job as the program manager for the project, we had to take a set of design plans that were done by a consultant, a set of design plans for the widening -- it doesn't really matter who did them -- and marry those two plans together.

Q. Okay.

A. And as part of that marrying and coming up with that final design, it was -- the final design was a flush painted median and not a raised median.

Q. Okay.

A. And that happened, no pun intended, that was flushed out as part of the merging of the two projects.

Q. Okay.

A. Keep -- keep in mind, both -- both documents had that piece of that design because they're just right here at the termini. So when you look at that termini, both -- both sets of plans had that same -- had -- had the road widening in front of the -- the gas station/convenience store included that. Okay? You -- you had to.

So in marrying the interchange project to the widening project, the decision was made to go with a -- a flush median from Farmington out toward Moncks Corner, yes.

Q. Well, just back to the original question: The original requirement was for a raised median in that section? Subsequently that was changed, but that was the original plan?

A. I would -- I would phrase that the original design. I would not phrase that as original requirement.

Q. Okay.

A. I would say the original design.

Q. Okay.

A. There was -- there was a design at some point prior to 1999 that had -- the plan showed a -- a raised median, yes.

Q. Okay. Got you.

And where in -- in this, these documents, do we see the original plan or design for the raised median? Maybe just give me the document number.

A. Yeah. I think the right-of-way, these are the right-of-way plans. They show a raised median at the location, the subject location.

Q. Okay. And we're back to -- I think you were on 37?

A. Yes.

Q. Okay.

MR. MAYBANK: Can I -- I don't mean to interrupt, but which set of plans are you referring to? The interchange plans or the road widening plans?

THE WITNESS: These are the interchange right-of-way plans.

MR. MAYBANK: Thank you. All right.

THE WITNESS: Now when I go to the interchange construction plans --

BY MR. SMITH:

Q. Um-hum.
A. -- and you look at the subject, it's 17A to I -- at I-26.
Q. Um-hum.
A. So as part of the project -- again, it's -- we're all right at this -- what I call this construction joint, which is Farmington Road.
Q. Um-hum.
A. So I mean, you can't just throw one out and look at the other. You've got to look at them in totality. And that's when -- when I prepared for this case and this deposition, I had to look at everything in totality. And when you do that, yes, there's -- always was a painted flush median.
And we had to correct the interchange plans to -- to reflect that. And part of that was done as part of the right-of-way because we were out buying right-of-way. Tommy was using the interchange plans to acquire the right-of-way, which is part of that. Because again, we had acquired right-of-way, as I showed you on that last exhibit highlighted in green along Farmington. And he was using this plans, the 17A plans, as we married those two together. We, in looking at this whole project in totality and not having that --

call that construction joint, whatever you want to call it, that terminus of one and the -- and the starting point of the other one and marrying those two together, that's when the correction was made to show that -- that flush painted median.
Q. All right. Was that around the time of this letter, marrying those two together?
A. Yes.
Q. Okay.
A. Yes, sir.
Q. Okay.
VIDEO TECHNICIAN: Fifteen minutes, counselor.
MR. SMITH: Okay.
BY MR. SMITH:
Q. All right. Whose decision was it to change the plans from what was in the interchange project from a raised median to a flush median in the final plans? Whose decision was that?
A. That was my decision as the program manager.
Q. Okay. Now, what discussions did you have with anyone associated with the property owners or the people developing what is now the Pilot Travel Center with regards to that raised

median?
A. I wouldn't have had -- I don't recall any direct contact. That would have been through our right-of-way acquisition agent, which was Tommy Smoak.
Q. Okay.
A. So as the PM, I'm coordinating those. I'm not saying from time to time, do I have a direct conversation with the property owner, I do. Generally speaking, that is done through our right-of-way agents. Again, Tommy was our right-of-way manager down here out of -- out of our local office. And that's one thing I would do is we -- you know, kind of like I said early on, is the PM part of that job duty is kind of quarterbacking between purpose and need, environmental, right-of-way, plan development, right-of-way acquisition, and construction.
Q. Okay.
A. So as part of that, yes, that where when Tommy went out, I started reviewing the interchange plans in conjunction with the road widening plans and said, nope, the plan is from Farmington east, we're going with that flush median.

Q. Okay. Now, with regards to the original, we saw some mention of a unmountable median. Does unmountable mean uncrossable?
A. Yes, un -- unmountable meaning uncross -- uncrossable. And I'm not sure that -- yes, that is what that word means.
Q. Okay. And is that -- is a raised median also a nontraversable median?
A. A -- a -- a raised median serves two purposes. A raised median serves for channelization and for access control. It's transversable from the standpoint that, yes, we want that median to be transversable for emergency services. So I don't want to contradict myself, but yes. The -- the intent of that is, yes, for everyday morning traffic -- well, not transversable, is it unmountable? That's why I say the term unmountable is probably -- this was done by -- I don't even know whose signature this is. I don't believe this is a DOT -- I don't believe that's a DOT person, but I -- I think that term probably is inaccurate. Certain -- but I don't want to mislead you. A -- a -- a raised median is not intended to be transversed by the motoring public.

widening project --
A. Correct.
Q. -- correct?
A. Yes, sir. Yes, sir.
Q. But the -- the interchange improvement project around that same time would have shown the raised median in that same area?
A. Yeah. The plan, the right-of-way plans that's date-stamped July of '99 showed the raised median, yes.
Q. Okay. And so what I want to talk about and we've been going back and forth to this letter here, and it says -- I imagine that -- that means September the 5th of probably 2000, just after this August 28th letter -- there was a per phone call verification with T. Smoak. And there's some notes here: Negotiated median removal and drive cuts.
And earlier, you were talking about marrying the two plans together, being the interchange improvement project and the widening project and the two different designs for the median in that area, right?
A. Right.
Q. And so my question is: Is the two plans, when they were put together and the final

decision made to go without the raised median, was that in this time frame of September or August of 2000?
A. You know, you had two concurrent designs going on at the same time. And like I said, I would -- I would almost state it that we got this -- we got the interchange plans corrected to show the appropriate median as designed on the widening project.
Q. Okay.
A. Now, certainly the right-of-way acquisition process facilitated that. There was -- I don't know there was anything that was really pushing that at that point in time, but certainly this -- this right-of-way acquisition pushed this -- pushed that -- accelerated making sure those two plans married up. Because you've got one set of plans that showed one thing, another set of plans that showed something else.
The set of plans that really was the design east of Farmington always had the painted median. The set of plans, the interchange that went up to -- to Farmington and just kind of had a placeholder, so to speak, beyond that showed the raised median.

Now, what makes it a little bit more difficult is the right-of-way acquisition. Because it included that section that we talked about along Farmington was actually acquired under the interchange.
Q. Right.
A. So that's kind of what spurred this letter and why the right-of-way acquisition was acquired as part of the interchange project and not the widening project.
Q. And the right-of-way acquisition, is that another way for just describing the dealings with Marathon Ashland Petroleum, LLC?
A. Yes, sir. Absolutely, yes, sir.
Q. And so is it true that Marathon Ashland Petroleum, as referenced on Plaintiffs' Exhibit Number 5 there, it was their desire that the raised median which appeared in the interchange improvement project, that the requirement for the raised median would go away?
MR. CRITES: Object to the form.
MR. MAYBANK: Same objection.
BY MR. SMITH:
Q. Is that your understanding?
A. Yeah. I mean, certainly Marathon

Ashland Petroleum would have liked to have maintained the same access they had prior to the widening project and the -- and a raised median would have changed that access.
Q. Okay. Because a raised median at that -- at that portion of Highway 17A would have meant they would only get business off of 17A, people turning right in, and they would lose access to the business for people who wanted to turn off 17A into the Pilot Travel Center?
A. I don't know if I would categorize it like that. It certainly would have -- would have restricted left turns into those drives. There could have been a -- still a left turn made at the signal at Farmington, another left made from Farmington into the gas station.
Q. But that -- that -- that entrance on Farmington Road, that was a right-in, right-out; is that right?
A. That is correct. It ended up being right in, right out, correct.
Q. So people coming down 17A from Moncks Corner, if they couldn't make a left across where this -- what -- what became the flush median, they go up to the intersection of Farmington Road

the SCOD -- SCDOT ARMS manual.
A. Yes.
Q. Right?
A. Um-hum.
(PLF. EXH. 9, SCDOT Access & Roadside Management Standards, was marked for identification.)
BY MR. SMITH:
Q. And this section here, this is the 2008 edition. So I'm going to be asking you about things in here --
A. Sure.
Q. -- and then how that maybe relates to information from back then. Okay?
A. Sure.
Q. So if you -- if you look at that there and then you turn to Page 6 -- it's double-sided, so --
A. Okay, got you.
Q. -- it should be back there.
A. Sure.
Q. And that's where I was getting this term nontraversable -- nontraversable medians. Do you see that?
A. Yes.

Q. Is it true that nontraversable medians have the effect of a 35 percent reduction in traffic collisions?
A. Yes. I mean, on Page -- on -- on Table 1.1, a continuous two-way left turn lane, TWLTL is our engineering term, has 35 percent reduction in total crashes, as well as a nontraversable median. Both showed 35 percent reduction in total crashes.
Q. All right. So nontraversable medians, those would have the effect of a 35 percent reduction in traffic collisions?
A. Correct.
Q. Okay. And so the absence of a nontraversable would increase traffic collisions by 35 percent?
A. That is not what this table states. This table -- this table states that a continuous two-way left turn lane, which is what we have --
Q. Okay.
A. -- has -- the effects on that has a 35 percent reduction in total crashes, a 30 percent decrease in delay, and a 30 percent increase in capacity. The same increases and decreases as a nontraversable median as noted in this table.

Q. Okay. Where was that -- TWLTL? Yeah. And these -- these percentages here --
Well, how do you -- how -- how do you square that? Because a nontraversable is going to prevent left-hand turns, a continuous two-way left turn lane is going to allow left-hand turns, each one of those results in a 35 percent reduction in total crashes? If you allow left-hand turns, it's a 35 percent reduction in crashes; if you don't allow left-hand turns, it's a 35 percent reduction in crashes?
A. I -- I'm just -- I'm reading the -- I'm reading the -- the book that you provided to me, which is a DOT access management. And it just -- I guess this is under the heading of effects of specific access management techniques. And it talks about -- that summarized the general safety and operation effects of specific access management techniques based on researches to date.
So again, if you don't have that TWLTL -- and you're right, that's the term we use -- you don't have that storage area to allow that -- that vehicle, as we talked early on in the deposition, to get out of that through lane of traffic.

Q. But can you -- can you -- can you square that -- that -- that statement that I just made that allowing left-hand turns with that area to get out of traffic reduces the number of crashes by the exact same percentage as simply not allowing left-hand turns at all by using a nontraversable median? Does that make sense?
A. Yeah. A nontraversable median cuts down on the number of conflict points compared to a flush painted median.
Q. And the number of conflict points, that talks about as a person is turning left, the conflict points would be the two or three lanes heading towards them. Those each would be conflict points, right?
A. Correct.
Q. Okay. And allowing left-hand turns in this particular area created three conflict points?
MR. MAYBANK: Object to the form.
BY MR. SMITH:
Q. If there were three lanes?
A. It didn't create any conflict points that -- those, that was already there. Those left turns are already allowable, so it didn't create any -- any conflict points that weren't on --

thousands of pages of documents that have been produced so far, you've never seen a single page that would actually mark out where the functional areas of the intersection between 17A and Farmington Road are. True?

A. Correct. That's correct.

Q. And if we go back to this Exhibit Number 10, let me just ask you in general: Allowing driveways within the functional area of an intersection increases the likelihood of collisions. True?

MR. MAYBANK: Object to the form.

THE WITNESS: Any driveway anywhere increases conflict points.

BY MR. SMITH:

Q. Um-hum.

A. So by increasing a conflict point on any road anywhere, yes, there is a -- there is a higher chance. So yes, any conflict point whether it's right angle, whether it's as noted in that -- earlier in that document where there's a merging maneuver, diverging maneuver, yes, any -- any contact point, there's a -- there's an increased chance of accidents.

Q. And if you combine conflict points and

you put those conflict points in the functional area of an intersection, those conflict points became -- become even more dangerous. Is that true?

A. I would not say that necessarily.

Q. So conflict points outside of the functional area of an intersection are -- have the same danger as conflict points within the functional area of the intersection. Is that your testimony?

A. It -- it depends on several things. In -- for instance, if a intersection has a traffic signal, is that -- as -- as the control device, is it stop signs? It just depends on each -- each intersection is a case-by-case scenario that you have to evaluate that in context of that exact location.

I mean, I think you're talking hypotheticals. But you've got to take each case as a case-by-case scenario. A -- a driveway next to a signalized intersection, that signalized intersection provides gaps in traffic versus a -- versus a driveway that's in a mid block that you don't necessarily have the gaps in traffic based on a signalized intersection. So it's -- it's a

case-by-case scenario.

Q. And this Exhibit Number 10 here, this U.S. Highway Department -- or U.S. Department of Transportation, really this paragraph right here talks about limiting or -- I'm sorry -- limiting or possibly eliminating driveways within the functional area of an intersection upstream and downstream helps reduce the number of decisions motorists make while traveling through an intersection and improves the safety in the -- in the vicinity of an intersection.

Do you take that statement as true?

MR. MAYBANK: Object to the form.

THE WITNESS: I mean, I -- it's going to be hard for me to comment on a document that -- that I haven't really studied.

BY MR. SMITH:

Q. Okay. But do -- do you need to study anything to -- to know about left-hand turns in the functional area of -- well, let me ask you. Let's just break it down here.

If you limit or eliminate driveways within the functional area of an intersection, does that help reduce the number of decisions that motorists make when they're in the functional area

of the intersection?

A. Yes.

Q. Okay. And do you believe that limiting or eliminating driveways within the functional area of an intersection improves safety in the vicinity of an intersection?

MR. MAYBANK: Same objection.

THE WITNESS: Eliminating driveways?

BY MR. SMITH:

Q. Or limiting. Limiting or eliminating driveways within the functional area of an intersection improves safety in the vicinity of an intersection.

A. It -- I would say that's case by case.

Q. Okay. Well, how about -- how about here, let me ask you this: Are the driveways in the functional area of the intersection, the driveways in the Pilot Center -- Travel Center on 17A, are those driveways within the functional area of the intersection with 17A and Farmington Road?

A. I believe one of the three are, yes. Yes.

Q. And is there a -- just, you know, is -- is there a general rule or principle that you would initially start with when you think about allowing

driveways in the functional area of an intersection? A general principle like it doesn't really matter or we need to be real careful about this or that's a really safe thing to do and that's something we should look at trying to implement?

A. Yeah. I mean, I think driveway locations is -- is a part of the design of the highway. Absolutely.

Q. And allowing driveways in the functional area of an intersection is generally frowned upon in the decisions that you all make.

MR. MAYBANK: Objection.

BY MR. SMITH:

Q. Is that a fair statement?

MR. MAYBANK: Object to the form.

THE WITNESS: Not in a vacuum, I would not think that's a fair statement.

BY MR. SMITH:

Q. Okay. Oh, I'm sorry. I -- I asked you to do something, then I just kind of moved on from something else.

You were going to take one of those exhibits and you were going to circle for me the area -- the functional area of the -- the functional area of the intersection. I may have

grabbed that from you. Yep, here we go.

We were going to do that on Exhibit 6. And why don't you take a yellow highlighter and, you know, you can circle it the whole way around.

A. I can do it for the western side. I think this -- I think this exhibit, I cannot -- I cannot tell on the eastern side of the intersection, if that makes sense.

Q. All right. So you think that maybe the functional area of the intersection would -- would -- would encompass more than what's shown on the left-hand end of Exhibit 6 that might extend further than that?

A. I don't know the answer to that. I'd have to look at the 17A widening plans to determine that.

Q. Okay. So can you -- can you -- can you do that?

A. Sure.

Q. Okay.

A. Sure.

Q. Which one can I hand you?

A. I am looking at Document 0437.

Q. Oh. Oh, you've got it in front of you?

A. Yes.

Q. Sorry.

MR. MAYBANK: What number is that?

THE WITNESS: 0437.

MR. MAYBANK: Let us pull that so we can make that an exhibit.

MR. SMITH: Yeah. Is that this, 38? I've got this as 37.

MR. CRITES: I think we already marked that as an exhibit.

MR. SMITH: No, I'm sorry. We might have marked it. It might be the back side of one of those. Yeah, this is -- you know, you said 437, right?

THE WITNESS: O437, yeah.

MR. MAYBANK: Here you go, 437.

MR. SMITH: All right. Oh, that's that same one we were looking at before. I'm sorry. Okay.

BY MR. SMITH:

Q. So 0437 is actually Exhibit Number 4, and we've got some green highlighter markings that you made before.

A. Right.

Q. Now let's use the yellow highlighter marking to mark the functional area of the

intersection.

A. That is it.

MR. MAYBANK: You got a pen?

THE WITNESS: Yeah.

MR. MAYBANK: All right. Will you do the little thing that said -- draw a line that says functional area of the intersection?

THE WITNESS: (Witness complies.)

MR. MAYBANK: Perfect.

BY MR. SMITH:

Q. Okay. So if we look at what you've marked up here on Exhibit Number 4, that would seem to suggest that both of the auto driveways are in the functional area of the intersection?

A. Definitely the westernmost. The easternmost is kind of right on the borderline.

Q. Sort of half of it is, half of it isn't?

A. You know, I'm -- I'm going by way more than a half size set of plans. I would almost say the easternmost is not in the functional area. Here's your left turn lane here. This is just your taper back. And your -- so, you know, as per the AASHTO guide that you showed me or the SCDOT, it talked about the turn lane. So I would --

Q. Okay. And one of the ways that the DOT could learn that a particular stretch of highway needs changes is the number of motor vehicle collisions that happen on that stretch of highway?

A. That would be one factor. The rate is a bigger factor, but that is part of that rate calculation, yes.

Q. Um-hum. And the DOT, do you all have access to the South Carolina Public Safety database showing GPS locations of collisions?

A. Absolutely.

Q. Okay. And is there any -- is there any particular number? I know you've talked about the -- the -- you want to know the vehicles that pass through, but is there any particular number like five collisions a year, ten collisions a year, is -- is there any sort of number of collisions per year that would trigger the DOT to come in and say, hey, we need to go look at something here?

A. Not necessarily just raw number of collisions. It goes back by rate.

Q. Um-hum. Was the -- was the rate ever established with this stretch of highway in front of the Pilot?

A. At what point in time?

Q. From 2000 to 2012.

A. Yes.

Q. And what was that rate?

A. There -- I would have to refer to some additional information that was provided.

Q. Would it be in this notebook --

A. It should be.

Q. -- we've been looking at?

A. Absolutely. It should be -- it should be associated with a G.

(Reporter asks for clarification.)

THE WITNESS: Yeah, G as in -- there you go. Clint Davis likes golf. Okay.

BY MR. SMITH:

Q. All right. So we're looking at Document SCDOT Colvin Documents 0612, and what is this?

A. This is a collision diagram that was put together by our traffic safety office out of Columbia.

Q. And when was that done?

A. Some of this stuff is cut off at the very bottom, but the date of this is 10 -- October 15th, 2013.

Q. All right. And to your knowledge, were

any similar studies ever done between 2000 and 2013?

A. Not that I'm aware of.

Q. And the -- the project here was finished at around 2003, was it not? I think that was the final inspection date?

A. The widening project was completed June 17, 2002. And the interchange project was completed November 1st, 2003.

Q. Okay. So basically ten years after those changes were made was the first accident study that the Department of Transportation undertook?

A. It was the first study that I'm aware of.

Q. Okay.

MR. MAYBANK: And -- and just for the record, the continued objection to any of the traffic safety studies and admissibility thereof.

MR. SMITH: Okay.

MR. MAYBANK: But ask him whatever you want.

BY MR. SMITH:

Q. Now, what -- what did -- what did this tell you?

A. The study that was looked at as part of our safety program -- you had asked the question, do we -- do we have one of those, absolutely we do -- basically indicates that the left turns out of the driveway farthest east.

Q. Okay. The middle driveway, could we say?

A. Yes.

Q. If we count the truck driveway that's far out?

A. Yes. Yeah, that is experiencing riding while accidents -- folks trying to make a left out of the Pilot, out of the drive -- the eastern automobile drive, middle drive, however you want to term that.

Q. So people coming out this middle driveway taking a left, heading toward Summerville, there's a lot of collisions happening because of that maneuver?

A. That is correct.

Q. Left-hand turn-outs?

A. Left turn-outs.

Q. All right. How about left-hand turn-ins?

A. If you look at the two driveways,

there's not any collisions on the driveway -- the westernmost driveway, there's not a single collision during this time frame noted. The left turns coming in, there are two left turns going out at the westernmost drive.

At the easternmost vehicular drive, there are three collisions in the four years -- three collisions in four years involving that left turn into that drive.

Q. Um-hum. So in the three years between, what, 2000 and 2013 (sic), I guess?

A. It's four -- four years' worth of data, 2010, 2011, 2012, and 2013.

Q. Okay. So in those four years, how many collisions are there because of left-ins and left-outs, put together, on -- on 17A?

A. At the two drives?

Q. Yeah.

A. Less out. There are two collisions at the westernmost drive, and zero collisions on left-in. On --

Q. Just -- just a total number of left -- left-in, left-outs. You can just --

A. Our left-outs at the -- at the easternmost commercial drive, there's one, two,

three -- sorry. Let's see.

Q. You want a piece of paper?

A. No. Where's that magnifying glass?

(Off-the-record discussion.)

THE WITNESS: Let's see. There is 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 left turners out; and 1, 2, 3 left turners in.

Q. So 15?

A. At that driveway, correct.

Q. Which driveway?

A. The easternmost commercial driveway.

Q. Okay. I'm -- I'm just talking about left-in, left-out access to the Pilot Travel Center 2010 to 2013, how many?

A. 17.

Q. Okay. And that's in four years?

A. That's correct.

Q. And -- and how do you all go about discovering, you know, which -- which ones go on here? Where -- where do you get that from?

A. DPS's database.

Q. Okay. Department of Public Safety?

A. Yes.

Q. All right. Now, I did a -- let me tell you what I did to figure this out.

A. Sure.

Q. I basically drew a box around this area right here (indicating).

A. Um-hum.

Q. And I got the GPS coordinates for what would be in here and then went to the Department of Public Safety and said, give me all the accidents on 17A.

A. Right.

Q. And then I was able to arrange those accidents by GPS location, and I was able to figure out that 280 accidents had occurred in this box location in front of there from, you know, basically 2002 to -- to 2012.

And then what I did was went through and looked at all the ones that would be affected by left-ins and left-outs. And what that showed was in those 10 years, I saw 77 that were left-in/left-out to the Pilot Travel Center.

Would that -- would 77 over 10 years, would that be consistent with the rate that you're seeing over the course of 4 years?

MR. MAYBANK: Object to the form.

THE WITNESS: The only thing I can testify to is there was 17 left-in or left-outs at

the two drives at the Pilot station in the 4 years, as noted on this diagram. I can't speak to the -- to the number that you've produced.

BY MR. SMITH:

Q. I mean, it sounds like you got a whole lot less than I came up with. I came up with 72 -- 72? I came up with 72 in 10 years with left-ins and left-outs, and it looks like you came up with 17 in 4 years, left-in and left-outs. Does -- does that seem to be a similar number or is that a lot different?

MR. MAYBANK: Object to the form.

THE WITNESS: Can I do a little bit of math?

BY MR. SMITH:

Q. You can Google. You can ask Siri if you want.

A. It's not Google. It's a calculator. I mean, based on the data here in the 4 years, there's about 4 collisions -- 4.25, to be exact, per year in the 4 years that were studied here. I can't -- I can't --

Q. All right. It says 4.2 a year with left-in, left-outs?

A. At both drives.

BY MR. SMITH:
Q. Yeah.
A. And the question?
Q. So turns -- so is this Farmington here?
A. Correct.
Q. Okay. I don't see the first driveway. Is it -- is this the first driveway there?
A. No. It's the first driveway, second commercial driveway.
Q. Oh, okay. Okay. So is there going to be any change to the first driveway, whether or not left-ins or left-outs?
A. Yes. The -- the safety project as designed would restrict left turns into and left turns out of the westernmost drive.
Q. Okay. And so that's the drive closest to Farmington Road?
A. Correct.
Q. All right. And that's based on the accident -- the accident study that was done in 2013?
A. Correct.
Q. Okay. So no left-ins or outs from that first driveway closest to Farmington?
A. Correct.

Q. Second driveway is going to allow left-in but prohibit left-outs?
A. Correct.
Q. Any change to the third driveway?
A. No change.
Q. Okay. And what is going to be done to prevent the left-outs from the second driveway, the middle driveway?
A. It's part of the concrete median that is -- that is going in.
Q. Okay. Just a break in the median?
A. Yes.
Q. Okay. But a break in the median only in a certain direction that's going to allow those left-outs --
A. The lefts --
Q. -- but not left-ins?
A. No. You got it backwards.
Q. I'm sorry. Opposite?
A. Yes. It would -- left-ins on the easternmost commercial drive will be allowed. Lefts out of the easternmost drive will not be allowed out.
Q. Okay.
A. And no change to the truck drive.

Q. Okay. Is there -- and at what -- what's the -- what's the usual sort of frequency of these accident -- what would you call that, an accident analysis or traffic study? Or what do you call that thing?
A. It would be a -- yeah, a safety analysis.
Q. Okay. What's the frequency of the -- of a safety analysis? Is ten years between construction and a safety analysis the norm?
A. No. We do safety analysis annually.
Q. Oh, so every year?
A. Yes.
Q. Okay.
A. Across the state.
Q. Across the state. And is that -- would this particular driveway in front of the Pilot, would that have received a safety analysis every year since --
A. No. A safety analysis, the way that process works, we go out and we pull the intersections that have the highest accident rates.
Q. Okay.
A. So -- so that's -- that -- that analysis is done on an annual basis.

Q. So the -- so the reasoning that this accident analysis was done was because in 2013, this intersection was one of the high accident rates?
A. Correct.
Q. And if it -- and -- and because we know that the accident analysis was not done prior to 2013, is it your position that from -- from 2002 all the way up to 2012, this intersection was not one of the highest accident rate locations?
A. I don't know the answer to that. I -- I'm not aware of an accident study at this location prior to the 2013 that we looked at. That does not mean that I -- I'm not aware of one.
Q. But you -- but you do them every year, and the way that you determine which ones are going to be done is the frequency of accidents at those locations?
A. Yes.
Q. Okay. And -- and who tells you that this particular one needs to be looked at or that one needs to be looked at? Who -- who lets you know which ones of these high rate of accident locations? Who tells you which ones are which?
A. It is performed by our traffic safety

EXHIBIT 9

South Carolina
Department of Transportation

August 28, 2000

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
MULLIGAN 11
7.14.16 KT

Marathon Ashland Petroleum LLC
3200 Pointe Parkway
Suite 200
Norcross, Georgia 30092
Attn: Mr. Robert G. Greiwe

SUBJECT: Curb Cuts, 17A @ I-26 Summerville

Dear Mr. Greiwe:

Enclosed is a copy of the driveway drawings for the 17A project at Summerville. If you have any questions, please call.

Sincerely,

Tommy W. Smoak
District Right of Way Manager
P. O. Box 308
St. George, South Carolina 29477
1-800-690-5130

TWS/hjh

9/5 Per Phone Verification w/ T. Smoak (Negotiated Medians Removal & Drive Cuts)

1. Approved To Have Painted Medians Only From Far Western Curb Cut To Stop Bar (Stop Light). In Other Words, The Monument Medians Has Been Eliminated From The Plan.
2. Truck Driveway on 17A is 40' w/40' Radius - Can Be Ingress and Egress If Desired.
3. The 2 Auto Driveways can only Be 30' w/30' Radius - Ingress and Egress.
4. The Driveway on The Frontage Rd can Be 50' w/20' Radius But Can Be A Right In / Right Out Only.

An Encroachment Permit Will Be Required From DOT When Installing The Cuts.

AN EQUAL OPPORTUNITY/
AFFIRMATIVE ACTION EMPLOYER

EXHIBIT 10

ORIGINAL-AMENDED

2012570776

SOUTH CAROLINA DPS/OHS & DMV USE ONLY | Page # 1 Of 2 | SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR - 310 (Rev. 7/2010) | # Of Units 02 | X Amended - Attach Copy of Original Report Corrected | Notified 2109 | Arrived 2118

Date	Time of Collision	County	Collision Location (Rt. # / Name)	Miles:	Dir.	In (Near) City or Town of:
10-06-2012	2104	08	S 17 / NORTH MAIN STREET	.02	N E S W	SUMMERVILLE

1- Interstate 4- Secondary; 2- US Primary 5- County; 3- SC Primary 6- PP
0-Main 6-Connection; (2)-Alternate 7-Business; 5-Spur

Lane #	Of	Dir.	Distance Offset	Direction	From Base Intersection (Rt # / Name)	GPS COORDINATES 00 00' 00.00" (DEGREES MINUTES SECONDS)
1	6	(N) E S W	.02 Miles Feet	N E S W	F. 570 / ROSE DRIVE	Latitude 33 02 21.73
R.R. Id.	From: N E S W	Ramp Only: 1 - Entrance 2 - Exit	To: N E S W	Toward	Second Intersection (Rt. # / Name) / SANGAREE PARKWAY	Longitude 80 08 33.94

1- Interstate 4- Secondary; 2- US Primary (5)-County; 3- SC Primary 6 - Other
0-Main 6-Connection; 2-Alternate 7-Business; 5-Spur 9-Other

E-378565 — Driver/Pedestrian's Full Name: WRIGHT RICHARD THORNE

Unit #	Sex	Race	Street/R.F.D.
01	M	W	304 FOREST CIR

# Occ	Birth Date	City, State, & Zip
2	[redacted]	SUMMERVILLE SC 294832808

State	Driver's License #	Class	Insurance Company
SC	[redacted]	AM	PROGRESSIVE

Year	Body	Vehicle Make	VIN #
2007	MC	HD	1HD1FS4157Y663138

State	Year	License Plate #	Owner's D.L. #
SC	2012	ZZ0956	004455712

Home Telephone: (843) 3038378 — Owner's Full Name: WRIGHT RICHARD THORNE
Bus. Telephone: ( ) — Street/R.F.D.: 304 FOREST CIR
Contributed To Collision: Yes (No) — City, State, & Zip: SUMMERVILLE SC 294832808

Estimated Speed	Speed Limit	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Alc/Drg Info (see back): Yes (No)	Summons #	Code	Summons #	Code	Towed (Yes) No
30	45								HENRYS

E-378566 — Driver/Pedestrian's Full Name: SENA DANIEL JAMES

Unit #	Sex	Race	Street/R.F.D.
02	M	W	238 WINDING TRAIL LN

# Occ	Birth Date	City, State, & Zip
1	[redacted]	SUMMERVILLE SC 294831738

State	Driver's License #	Class	Insurance Company
SC	[redacted]	D	GEICO

Year	Body	Vehicle Make	VIN #
1998	PK	CHEV	1GCEC14W7WZ273426

State	Year	License Plate #	Owner's D.L. #
SC	2013	HKU349	100650647

Home Telephone: (843) 2097237 — Owner's Full Name: CHINNERS JESSICA NICOLE
Bus. Telephone: ( ) — Street/R.F.D.: 127 ASHWOOD DR
Contributed To Collision: (Yes) No — City, State, & Zip: SUMMERVILLE SC 29483

Estimated Speed	Speed Limit	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Alc/Drg Info (see back): (Yes) No	Summons #	Code	Summons #	Code	Towed (Yes) No
10	45								HOWDY BOYS

Driver/Pedestrian's Full Name

Unit #	Sex	Race	Street/R.F.D.

# Occ	Birth Date	City, State, & Zip

State	Driver's License #	Class	Insurance Company

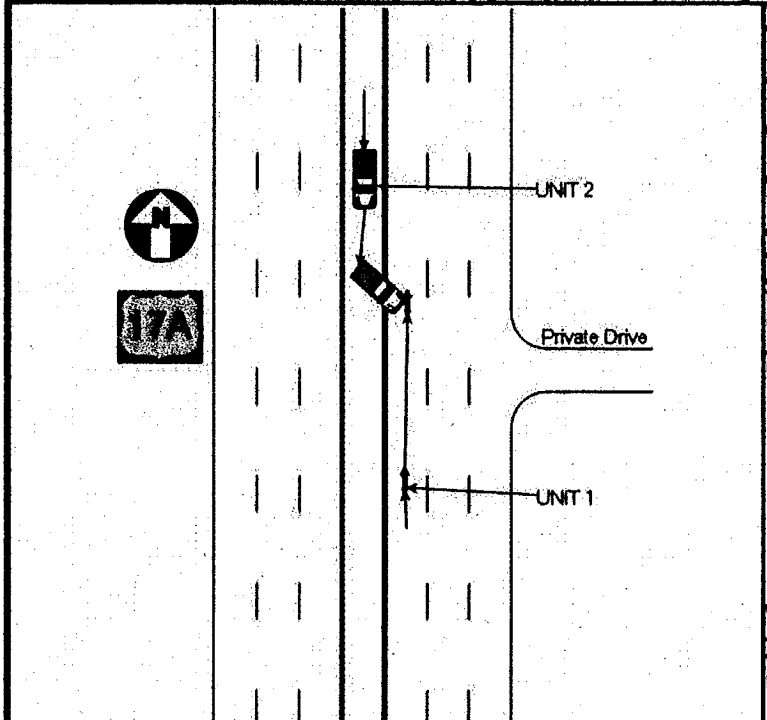
Year	Body	Vehicle Make	VIN #

Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No	Summons #	Code	Summons #	Code	Towed Yes No

State	Year	License Plate #	Owner's D.L. #

Home Telephone: ( ) — Owner's Full Name:
Bus. Telephone: ( ) — Street/R.F.D.:
Contributed To Collision: Yes No — City, State, & Zip:

Dir. of Travel: Unit 1: (N) S E W — Unit 2: N (S) E W — Unit 3: N S E W



Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2
$5200	$2000	$	$	$

Property Owner (Witness)			Property Owner (Witness)		
COOLEY	LYNNETTE	G	HAMM	KEVIN	
Address		City	Address		City
143 LAKE JOGASSEE DR		SUMMERVI	223 N. LIVE OAK DR		MONCKS
State	Zip	Phone	State	Zip	Phone
SC	294858861	8435602515	SC	29461	8437233800

Photo: (Y) N

Describe What Happened (Refer to Units by Number)

UNIT # 1 WAS TRAVELING NORTH ON US 17A IN THE #1 LANE. UNIT #2 ATTEMPTED TO TURN LEFT INTO A PRIVATE DRIVE AND STRUCK THE LEFT SIDE OF UNIT #1. THE DRIVER OF UNIT #2 FLED THE SCENE.

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
Mullinax 14
7.14.16 KT

01/07/2013 MAIT INVESTIGATION COMPLETE; DIAGRAM ATTACHED; NARRATIVE COMPLETE;SPEED ADDED
02/04/2013 AMENDED TO SHOW DRUG RESULTS ON BACK OF REPORT FOR UNIT #2 DRIVER.

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name	Rank	Badge #	Jurisdiction Code	Review Date	Reviewer's Name	Rank	Internal Agency Code
PEARSON - C A	CPL	A 1 4 3	H P 0 6	02-05-2013	C M Wooten	Cpl	12CH090602

2012570776

Unit:	Date of Birth	Sex:	Race	INJ:	Seat:	R/SD	A.S.D.	Eject	LAI:	Tran:	Name	Street Address	Zip Code
01	[redacted]	M	W	3 2	01	00	7 3	1	1	1 1	WRIGHT RICHARD THORN	304 FOREST CIR SUMMERVIL SC	294832808
02	[redacted]	M	W	0	01	13	1 3	1	1	2	SENA DANIEL JAMES	238 WINDING TRAIL LN SUMMERVIL SC	294831738
01	[redacted]	F	W	3 1	70	00	7 3	1	1	1 1	WRIGHT CYNTHIA	304 FOREST CIR SUMMERVIL SC	294831738

Race: A - Asian/Pacific Islander; B - African American; H - Hispanic; I - Alaskan Native or American Indian; O - Other; U - Unk.; W - Caucasian

a) Injury Status: 0-Not Injured; 1-Possible Injury; 2-Non-incapacitating; 3-Incapacitating; 4-Fatal

Seating Loc.: 01 02 03 / 04 05 06 / 07 08 09; 20-Pedestrian; 30-Trailing Unit; 40-Bus or Van (4th row or Higher); 50-Other Enclosed Area (nontrailing); 51-Other Unenclosed Area (nontrailing); 60-Sleeper of Cab; 70-Riding on Unit Exterior; 80-Lap; 99-Unk./NA

Restraint/Safety Device: 00-None Used; 11-Shoulder belt; 12-Lap Belt Only; 13-Shoulder & Lap Belt; 21-Child; Safety Seat; 98-Other; 99-Unk.

Air Bag Deployment / Switch

a) 1-Deployed Front; 2-Deployed Side; 3-Deployed Both; 4-Not Deployed; 7-Not Applicable; 9-Deployment Unk.

b) 1-Switch in On Position; 2-Switch in Off Position; 3-No Switch; 9-Unknown

Ejection: 1-Not Ejected; 2-Part. Ejected; 3-Tot. Ejected; 7-Not App.; 9-Unk.

b) 2 or 3 Wheel Motorized Vehicle

Head Injury: 1-Yes; 2-No

Location After Impact: 1-Not Trapped; 2-Extricated (Mechanical Means); 3-Freed (non-mech.); 4-Not Applicable; 9-Unknown

a) Transported to Medical Facility: 1-Yes; 2-No; 3-Unknown

b) By: 1-EMS; 2-Police; 8-Other; 9-Unk.

Pedestrian, Motor/Pedalcycle Only: 31-Helmet; 51-Reflective Clothing; 41-Protective Pads; 61-Lighting

Sequence of Events

Event 1	Event 2	Event 3	Event 4	Most Harmful
1 22	1 12	1	1	1 22
2 22	2	2	2	2 22
3	3	3	3	3

1st Harmful: 22

Non-Collision: 04-Equipment Failure; 01-Cargo/Equip Loss or Shift; 05-Fire/Explosion; 08-Overturn/Rollover; 02-Cross Median/Center; 06-Immersion; 09-Ran off Road Left; 03-Downhill Runaway; 07-Jackknife; 10-Ran off Road Right; 11-Separation of Units; 12-Spill (Two-Wheeled Veh.); 18-Other Non-collision; 19-Unk. Non-collision

Collision: Not Fixed: 20-Animal (Deer Only); 21-Animal (All Other); 22-Motor Veh. (In Transport); 23-Motor Veh. (Stopped); 24-Motor Veh. (Other Roadway); 25-Motor Veh. (Parked); 28-Pedalcycle; 27-Pedestrian; 28-Railway Veh.; 29-Work Zone Maint. Equip.; 38-Other Movable Object; 39-Unk. Movable Object

Collision: Fixed Object: 40-Bridge Overhead Structure; 41-Bridge Parapet End; 42-Bridge Pier or Abutment; 43-Bridge Rail; 44-Culvert; 45-Curb; 46-Ditch; 47-Embankment; 48-Equipment; 49-Fence; 50-Guardrail End; 51-Guardrail Face; 52-Highway Traffic Sign Post; 53-Impact Attenuator/Crash Cushion; 54-Light/Luminaire Support; 55-Mail Box; 56-Median Barrier; 57-Overhead Sign Support; 58-Other (Post, Pole, Support, Etc.); 59-Other (Wall, Building, Tunnel, Etc.); 60-Tree; 61-Utility Pole; 62-Work Zone Maint. Equipment; 69-Other; 99-Unk.

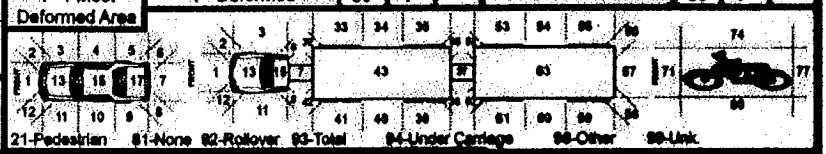
Manner of Collision (Struck Veh.): 142

00-Not Coll. w/ Motor Veh.; 10-Rear End; 20-Head On; 30-Rear-to-Rear; 41-Angle (↘|↙); 42-Angle (→|←); 43-Angle (↗|↖); 50-Sideswipe Same Dir.; 60-Sideswipe Opposite Dir.; 70-Backed Into; 99-Unknown

1st / Most Deformed Area

1st Deformed: 80 1

Most Deformed: 80 1



21-Pedestrian; 81-None; 82-Rollover; 83-Total; 84-Under Carriage; 98-Other; 99-Unk.

Vehicle Type: 125 / 212 / 3

01-Automobile; 02-Pickup Truck; 13-Truck Tractor; 14-Other Truck; 15-Full Size Van; 16-Mini Van; 17-Sport Utility; 25-Motorcycle; 26-Other Motorbike; 27-Pedalcycle; 38-Animal Drawn Veh; 39-Animal (Ridden); 41-Pedestrian; 51-Train; 61-School Bus; 62-Passenger Bus; 98-Other; 99-Unk. (Hit and Run Only)

Vehicle Use Code: 101 / 201 / 3

01-Personal; 02-Driver Training; 03-Construction/Maint.; 04-Ambulance; 05-Military; 06-Transport Passengers; 07-Transport Property; 08-Farm Use; 09-Wrecker or Tow; 10-Police; 11-Government; 12-Fire Fighting; 13-Logging; 18-Other

Vehicle Attachment: 11 / 21 / 3

1-None; 2-Mobile Home; 3-Semi-Trailer; 4-Utility Trailer; 5-Farm Trailer; 7-Camper Trailer; 8-Towed Motor Vehicle; 9-Petroleum Tanker; B-Autocarrier Trailer; C-Other Tanker; D-Flat Bed; A-Lowboy Trailer; E-Twin Trailers; F-Other

Action Prior to Impact: 106 / 210 / 3

(Vehicle)	(Non-motorist)
01-Backing	21-Approaching/Leaving Vehicle
02-Changing lanes	22-Entering/Crossing Location
03-Entering traffic lane	23-Playing/Working on Vehicle
04-Leaving traffic lane	24-Pushing Vehicle
05-Making U-turn	25-Standing
06-Movements Essentially Straight Ahead	26-Walking, Playing, Cycling
07-Overtaking/passing	27-Working
08-Parked	
09-Slowing or Stopped in traffic	
10-Turning left	
11-Turning right	
88-Other 99-Unk.	

Alcohol / Drug Test Given: A1 01; A2 1 02 1; A3 03

1-Given - Known Results; 2-Given - Unusable; 3-Given - Pending; 4-None; 5-Refused

Special Use Only

Test Type: A1 01; A2 1 02 2; A3 03

1-Breath (Alc Only); 2-Blood; 3-Urine; 4-Serum; 8-Other

Drug Results: 01; 02 2; 03

1-Amphetamines; 2-Cocaine; 3-Marijuana; 4-Opiates; 5-PCP; 8-Other

Alc Test Results: A1-; A2- .120; A3-

Underride/Override: 6 / 6

1-Under-Compartment Intrusion; 2-Under-No Intrusion; 3-Under-Unknown; 4-Over-MV in transport; 5-Over-Other Vehicle; 8-None; 9-Unk.

Extent of Deformity: 3 / 2

0-None/Minor; 1-Functional Damage; 2-Disabling Damage; 4-Severe/Totaled; 5-Not Applicable; 9-Unk.

Trafficway: 2

1-Two-way, Not Divided; 2-Two-way, Divided, Unprotected Median; 3-Two-way, Divided, Barrier; 4-One-Way; 8-Other

A: 1-Gore; 2-Island; 3-Median; 4-Roadside; 5-Roadway; 6-Shoulder; 7-Sidewalk; 8-Outside Trafficway; 9-Unk.

B: X-walk: 1-Y; 2-N; 9-U

1st Harmful Event Loc.: 5 / 2

Road Character: 1

1-Straight - Level; 2-Straight - On grade; 3-Straight - Hillcrest; 4-Curve - Level; 5-Curve - On grade; 6-Curve - Hillcrest

Road Surface Condition: 1

1-Dry; 2-Wet; 3-Snow; 4-Slush; 5-Ice; 6-Contaminate; 7-Water (Standing, etc.); 8-Other; 9-Unk.

Traffic Control Type: 31

01-Stop and Go Light; 02-Flashing Traffic Signal; 11-RR (X-bucks, Lights & Gates); 12-RR (X-bucks & Lights); 13-RR (X-bucks Only); 21-Officer or Flagman; 22-Oncoming Emergency Vehicle; 31-Pavement Markings (only); 41-Stop Sign; 42-School zone Sign; 43-Yield Sign; 44-Work Zone; 45-Other Warning Signs; 51-Flashing Beacon; 98-None; 99-Unk.

Weather Condition: 1

1-Clear (no adverse conditions); 2-Rain; 3-Cloudy; 4-Sleet, Hail; 5-Snow; 6-Fog, Smog, Smoke; 7-Blowing Sand, Oil, Dirt or Snow; 8-Severe Crosswinds; 9-Unk.

Light Condition: 5

1-Daylight; 2-Dawn; 3-Dusk; 4-Dark (Lighting Unspecified); 5-Dark (Street Lamp Lit); 6-Dark (Street Lamp Not Lit); 7-Dark (No lights)

School Bus Involved: 3

1-Yes, Directly; 2-Yes, Indirectly; 3-No; 9-Unk.

Work Zone: 2

1-Yes 2-No

Work Zone Location:

1-Before 1st Sign; 2-Advanced Warning Area; 3-Transition Area; 4-Activity Area; 5-Termination Area

Work Zone Type:

1-Shoulder/Median Work; 2-Lane Shift/Crossover; 3-Intermittent/Moving Work; 4-Lane Closure; 8-Other; 9-Unk.

Workers Present: 1-Yes 2-No

Junction Type: 02

01-Crossover; 02-Driveway; 03-Five/More Points; 04-Four-way Intersection; 05-Railway Grade Crossing; 07-Shared Use Paths or Trail; 08-T-Intersection; 09-Traffic Circle; 12-Y-Intersection; 13-Nonjunction; 99-Unk.

Primary Contributing Factors: 16

Driver

01-Disregarded Signs, Signals, Etc.; 02-Distracted/Inattention; 03-Driving Too Fast for Conditions; 04-Exceeded Authorized Speed Limit; 05-Failed to Yield Right of Way; 06-Ran off Road; 07-Fatigued/Asleep; 08-Followed Too Closely; 09-Made an Improper Turn; 10-Medical Related; 12-Aggressive Operation of Vehicle; 13-Over-correcting/Over-steering; 14-Swerving to Avoiding Object; 15-Wrong Side or Wrong Way; 16-Under the Influence; 17-Vision Obscured (Within Unit); 18-Improper lane Usage/Change; 19-Cell Phone; 20-Texting; 28-Other Improper Action; 29-Unk.

Others:

Roadway: 30-Debris; 31-Non-highway Work; 32-Obstruction in Roadway; 33-Road Surface Condition (I.e., Wet); 34-Rut, Holes, Bumps; 35-Shoulders (None, Low, Soft, High); 36-Traffic Control Device (I.e., Missing); 37-Work Zone (Const./Maint./Utility); 38-Worn, Travel-Polished Surface; 48-Other; 49-Unk.

Non-Motorist: 50-Inattentive; 51-Lying &/or Illegally in Roadway; 52-Failure to Yield R. of W.; 53-Not Visible (Dark Clothing); 54-Disregard Signs, Signals, Etc.; 55-Improper Crossing; 56-Darting; 57-Wrong Side of Road; 58-Other; 59-Unk.; 66-Under the Influence; 67-Other Person Under Influence

Environmental: 60-Animal in Road; 61-Glare; 62-Obstruction; 63-Weather Cond.; 68-Other; 69-Unk.

Vehicle Defect: 70-Brakes; 71-Steering; 72-Power Plant; 73-Tires/Wheel; 74-Lights; 75-Signals; 76-Windows/Shield; 77-Restraint System; 78-Truck Coupling; 79-Cargo; 80-Fuel System; 88-Other; 89-Unk.

ORIGINAL-AMENDED

2012570776

SOUTH CAROLINA DPS/OHS & DMV USE ONLY | Page # 2 Of: 2

SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM

TR - 310 (Rev. 7/2010)

Of Units: 02 | X Amended - Attach Copy of Original Report | Corrected | Notified: 2109 | Arrived: 2118

Date	Time of Collision	County	Collision Location (Rt. # / Name)	Miles:	Dir.	In (Near) City or Town of:
10-06-2012	2104	08	17 / NORTH MAIN STREET	.02	N	SUMMERVILLE

1- Interstate 4- Secondary; (2)-US Primary 5- County; 3- SC Primary 6- PP

0-Main 6-Connection; (2)-Alternate 7-Business; 5-Spur

Lane # / Dir.	Of		Distance Offset		Direction
1	6	N E S W	.02	(Miles) Feet	N E S W

1- Interstate (4)-Secondary; 2- US Primary (5)-County; 3- SC Primary 6- Other

Base Intersection (Rt # / Name): F. From 570 / ROSE DRIVE

0-Main 6-Connection; 2-Alternate 7-Business; 5-Spur 9-Other

GPS COORDINATES 00 00' 00.00" DEGREES MINUTES SECONDS

	°	'	"
Latitude	33	02	21.73
Longitude	80	08	33.94

R.R. Id. | From: N E S W | Ramp Only: 1 - Entrance 2 - Exit | To: N E S W

Toward: Second Intersection (Rt. # / Name): / SANGAREE PARKWAY

0-Main 6-Connection; 2-Alternate 7-Business; 5-Spur 9-Other

Unit 1

Driver/Pedestrian's Full Name

Unit # | # Occ | Sex | Race | Street/R.F.D. | Birth Date | City, State, & Zip

State | Driver's License # | Class | Insurance Company

Year | Body | Vehicle Make | VIN #

State | Year | License Plate # | Owner's D.L. #

Home Telephone ( ) | Owner's Full Name

Bus. Telephone ( ) | Street/R.F.D.

Contributed To Collision: Yes No | City, State, & Zip

Estimated Speed | Speed Limit | C.D.L. Req: Yes No | T/B S Req: Yes No | Alc/Drg Info (see back): Yes No | Summons # | Code | Summons # | Code | Towed: Yes No

Unit 2

Driver/Pedestrian's Full Name

Unit # | # Occ | Sex | Race | Street/R.F.D. | Birth Date | City, State, & Zip

State | Driver's License # | Class | Insurance Company

Year | Body | Vehicle Make | VIN #

State | Year | License Plate # | Owner's D.L. #

Home Telephone ( ) | Owner's Full Name

Bus. Telephone ( ) | Street/R.F.D.

Contributed To Collision: Yes No | City, State, & Zip

Estimated Speed | Speed Limit | C.D.L. Req: Yes No | T/B S Req: Yes No | Alc/Drg Info (see back): Yes No | Summons # | Code | Summons # | Code | Towed: Yes No

Unit 3

Driver/Pedestrian's Full Name

Unit # | # Occ | Sex | Race | Street/R.F.D. | Birth Date | City, State, & Zip

State | Driver's License # | Class | Insurance Company

Year | Body | Vehicle Make | VIN #

State | Year | License Plate # | Owner's D.L. #

Home Telephone ( ) | Owner's Full Name

Bus. Telephone ( ) | Street/R.F.D.

Contributed To Collision: Yes No | City, State, & Zip

Estimated Speed | Speed Limit | C.D.L. Req: Yes No | T/B S Req: Yes No | Alc/Drg Info (see back): Yes No | Summons # | Code | Summons # | Code | Towed: Yes No

Dir. of Travel: Unit 1: N S E W | Unit 2: N S E W | Unit 3: N S E W

Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2
$	$	$	$	$

Property Owner (Witness)	Address	City	State	Zip	Phone
COLLINS CHRIS	223 N. LIVE OAK DRIVE	MONCKS	SC	29461	8437233800
VAUGHN PHILLIP	223 N. LIVE OAK DRIVE	MONCKS	SC	29461	8437233800

Photo: (Y) N

Describe What Happened (Refer to Units by Number)

PAGE 2 IS FOR ADDITIONAL WITNESS INFORMATION ONLY.

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name	Rank	Badge #	Jurisdiction Code	Review Date	Reviewer's Name	Rank	Internal Agency Code
PEARSON - C A	CPL	A 1 4 3	H P 0 6	02-05-2013	C M Wooten	Cpl	12CH090602

2012570776

Unit:	Date of Birth	Sex:	Race	INJ:	Seat:	R/SD	A.B.D.	Eject	LAI:	Tran:	Name	Street Address	Zip Code

Race: A - Asian/Pacific Islander; B - African American; H - Hispanic; I - Alaskan Native or American Indian; W - Caucasian; O - Other; U - Unk.

a) Injury Status: 0-Not Injured; 1-Possible Injury; 2-Non-incapacitating; 3-Incapacitating; 4-Fatal

b) 2 or 3 Wheel Motorized Vehicle

Head Injury: 1-Yes; 2-No

Seating Loc.: 01 02 03 / 04 05 06 / 07 08 09; 20-Pedestrian; 30-Trailing Unit; 40-Bus or Van (4th row or Higher); 50-Other Enclosed Area (nontrailing); 51-Other Unenclosed Area (nontrailing); 60-Sleeper of Cab; 70-Riding on Unit Exterior; 80-Lap; 99-Unk./NA

Restraint/Safety Device: 00-None Used; 11-Shoulder belt; 12-Lap Belt Only; 13-Shoulder & Lap Belt; 21-Child Safety Seat; 98-Other; 99-Unk.

Air Bag Deployment / Switch

a) 1-Deployed Front; 2-Deployed Side; 3-Deployed Both; 4-Not Deployed; 7-Not Applicable; 9-Deployment Unk.

b) 1-Switch in On Position; 2-Switch in Off Position; 3-No Switch; 9-Unknown

Ejection: 1-Not Ejected; 2-Part. Ejected; 3-Tot. Ejected; 7-Not App.; 9-Unk.

Location After Impact: 1-Not Trapped; 2-Extricated (Mechanical Means); 3-Freed (non-mech.); 4-Not Applicable; 9-Unknown

a) Transported to Medical Facility: 1-Yes; 2-No; 3-Unknown

b) By: 1-EMS; 2-Police; 8-Other; 9-Unk.

Pedestrian, Motor/Pedalcycle Only: 31-Helmet; 81-Reflective Clothing; 41-Protective Pads; 91-Lighting

Sequence of Events

Event 1	Event 2	Event 3	Event 4	Most Harmful	1st Harmful
1	1	1	1	1	22
2	2	2	2	2	
3	3	3	3	3	

Non-Collision: 04-Equipment Failure; 01-Cargo/Equip Loss or Shift; 06-Fire/Explosion; 08-Overturn/Rollover; 02-Cross Median/Center; 09-Immersion; 09-Ran off Road Left; 03-Downhill Runaway; 07-Jackknife; 10-Ran off Road Right; 11-Separation of Units; 12-Spill (Two-Wheeled Veh.); 18-Other Non-collision; 19-Unk. Non-collision

Collision: Not Fixed: 20-Animal (Deer Only); 21-Animal (All Other); 22-Motor Veh. (In Transport); 23-Motor Veh. (Stopped); 24-Motor Veh. (Other Roadway); 25-Motor Veh. (Parked); 26-Pedalcycle; 27-Pedestrian; 28-Railway Veh.; 29-Work Zone Maint. Equip.; 38-Other Movable Object; 39-Unk. Movable Object

Collision: Fixed Object: 40-Bridge Overhead Structure; 41-Bridge Parapet End; 42-Bridge Pier or Abutment; 43-Bridge Rail; 44-Culvert; 45-Curb; 46-Ditch; 47-Embankment; 48-Equipment; 49-Fence; 50-Guardrail End; 51-Guardrail Face; 52-Highway Traffic Sign Post; 53-Impact Attenuator/Crash Cushion; 54-Light/Luminaire Support; 55-Mail Box; 56-Median Barrier; 57-Overhead Sign Support; 58-Other (Post, Pole, Support, Etc.); 59-Other (Wall, Building, Tunnel, Etc.); 60-Other; 99-Unk.; 80-Tree; 81-Utility Pole; 82-Work Zone Maint. Equipment

Manner of Collision (Struck Veh.): 1; 2; 3; 1st Harmful Collision; 00-Not Coll. w/ Motor Veh.; 10-Rear End; 20-Head On; 30-Rear-to-Rear; 41-Angle; 42-Angle; 43-Angle; 50-Sideswipe Same Dir.; 60-Sideswipe Opposite Dir.; 70-Backed Into; 99-Unknown

1st / Most Deformed Area



1st Deformed: 1 2 3 **Most Deformed:** 1 2 3

Vehicle Type: 01-Automobile; 12-Pickup Truck; 13-Truck Tractor; 14-Other Truck; 15-Full Size Van; 16-Mini Van; 17-Sport Utility; 25-Motorcycle; 26-Other Motorbike; 27-Pedalcycle; 28-Animal Drawn Veh; 39-Animal (Ridden); 41-Pedestrian; 51-Train; 61-School Bus; 62-Passenger Bus; 98-Other; 99-Unk. (Hit and Run Only)

Vehicle Use Code: 01-Personal; 02-Driver Training; 03-Construction/Maint.; 04-Ambulance; 05-Military; 06-Transport Passengers; 07-Transport Property; 08-Farm Use; 09-Wrecker or Tow; 10-Police; 11-Government; 12-Fire Fighting; 13-Logging; 18-Other; 41-Pedestrian

Vehicle Attachment: 1-None; 2-Mobile Home; 3-Semi-Trailer; 4-Utility Trailer; 5-Farm Trailer; 6-Trailer w/Boat; 7-Camper Trailer; 8-Towed Motor Vehicle; 9-Petroleum Tanker; A-Lowboy Trailer; B-Autocarrier Trailer; C-Other Tanker; D-Flat Bed; E-Twin Trailers; F-Other

Action Prior to Impact

	(Vehicle)	(Non-motorist)
1	01-Backing	21-Approaching/Leaving Vehicle
2	02-Changing lanes	22-Entering/Crossing Location
3	03-Entering traffic lane	23-Playing/Working on Vehicle
X	04-Leaving traffic lane	24-Pushing Vehicle
	05-Making U-turn	25-Standing
	06-Movements Essentially Straight Ahead	26-Walking, Playing, Cycling
	07-Overtaking/passing	27-Working
	08-Other 99-Unk.	

Alcohol / Drug Test Given: 1-Given - Known Results; 2-Given - Unusable; 3-Given - Pending; 4-None; 5-Refused

Test Type: 1-Breath (Alc Only); 2-Blood; 3-Urine; 4-Serum; 8-Other

Drug Results: 1-Amphetamines; 2-Cocaine; 3-Marijuana; 4-Opiates; 5-PCP; 8-Other

Alc Test Results: A1-; A2-; A3-

Special Use Only

Underride/Override: 1-Under-Compartment Intrusion; 2-Under-No Intrusion; 3-Under-Unknown; 4-Over-MV in transport; 5-Over-Other Vehicle; 8-None; 9-Unk.

Extent of Deformity: 1-Functional Damage; 2-Disabling Damage; 3-Severe/Totaled; 8-Not Applicable; 9-Unk.

Trafficway: 1-Two-way, Not Divided; 2-Two-way, Divided, Unprotected Median; 3-Two-way, Divided, Barrier; 4-One-Way; 8-Other — 2

A: 1-Gore; 2-Island; 3-Median; 4-Roadside; 5-Roadway; 6-Shoulder; 7-Sidewalk; 8-Outside Trafficway; 9-Unk.

B: X-walk: 1-Y 2-N 9-U — **1st Harm/Ful Event Loc.:** 5 2

Road Character: 1-Straight - Level; 2-Straight - On grade; 3-Straight - Hillcrest; 4-Curve - Level; 5-Curve - On grade; 6-Curve - Hillcrest — 1

Road Surface Condition: 1-Dry; 2-Wet; 3-Snow; 4-Slush; 5-Ice; 6-Contaminate; 7-Water (Standing, etc.); 8-Other; 9-Unk. — 1

Traffic Control Type: 01-Stop and Go Light; 02-Flashing Traffic Signal; 11-RR (X-bucks, Lights & Gates); 12-RR (X-bucks & Lights); 13-RR (X-bucks Only); 21-Officer or Flagman; 22-Oncoming Emergency Vehicle; 31-Pavement Markings (only); 41-Stop Sign; 42-School zone Sign; 43-Yield Sign; 44-Work Zone; 45-Other Warning Signs; 51-Flashing Beacon; 98-None; 99-Unk. — 31

Weather Condition: 1-Clear (no adverse conditions); 2-Rain; 3-Cloudy; 4-Sleet, Hail; 5-Snow; 6-Fog, Smog, Smoke; 7-Blowing Sand, Oil, Dirt or Snow; 8-Severe Crosswinds; 9-Unk. — 1

Light Condition: 1-Daylight; 2-Dawn; 3-Dusk; 4-Dark (Lighting Unspecified); 5-Dark (Street Lamp Lit); 6-Dark (Street Lamp Not Lit); 7-Dark (No lights) — 5

Junction Type: 01-Crossover; 02-Driveway; 03-Five/More Points; 04-Four-way Intersection; 05-Railway Grade Crossing; 07-Shared Use Paths or Trail; 08-T-Intersection; 09-Traffic Circle; 12-Y-Intersection; 13-Nonjunction; 99-Unk. — 02

School Bus Involved: 1-Yes, Directly; 2-Yes, Indirectly; 3-No; 9-Unk. — 3

Work Zone: 1-Before 1st Sign; 2-Advanced Warning Area; 3-Transition Area; 4-Activity Area; 5-Termination Area; 1-Yes 2-No — 2

Work Zone Location:

Work Zone Type: 1-Shoulder/Median Work; 2-Lane Shift/Crossover; 3-Intermittent/Moving Work; 4-Lane Closure; 8-Other; 9-Unk.

Workers Present: 1-Yes 2-No

Contributing Factors

Primary: 16

Driver: 01-Disregarded Signs, Signals, Etc.; 02-Distracted/Inattention; 03-Driving Too Fast for Conditions; 04-Exceeded Authorized Speed Limit; 05-Failed to Yield Right of Way; 06-Ran off Road; 07-Fatigued/Asleep; 08-Followed Too Closely; 09-Made an Improper Turn; 10-Medical Related; 12-Aggressive Operation of Vehicle; 13-Over-correcting/Over-steering; 14-Swerving to Avoiding Object; 15-Wrong Side or Wrong Way; 16-Under the Influence; 17-Vision Obscured (Within Unit); 18-Improper lane Usage/Change; 19-Cell Phone; 20-Texting; 28-Other Improper Action; 29-Unk.

Other:

Roadway: 30-Debris; 31-Non-highway Work; 32-Obstruction in Roadway; 33-Road Surface Condition (I.e., Wet); 34-Rut, Holes, Bumps; 35-Shoulders (None, Low, Soft, High); 36-Traffic Control Device (I.e., Missing); 37-Work Zone (Const./Maint./Utility); 38-Worn, Travel-Polished Surface; 48-Other; 49-Unk.

Non-Motorist: 50-Inattentive; 51-Lying &/or Illegally in Roadway; 52-Failure to Yield R. of W.; 53-Not Visible (Dark Clothing); 54-Disregard Signs, Signals, Etc.; 55-Improper Crossing; 56-Darting; 57-Wrong Side of Road; 58-Other; 59-Unk.; 66-Under the Influence; 67-Other Person Under Influence

Environmental: 60-Animal in Road; 61-Glare; 62-Obstruction; 63-Weather Cond.; 66-Other; 69-Unk.

Vehicle Defect: 70-Brakes; 71-Steering; 72-Power Plant; 73-Tires/Wheel; 74-Lights; 75-Signals; 76-Windows/Shield; 77-Restraint System; 78-Truck Coupling; 79-Cargo; 80-Fuel System; 88-Other; 89-Unk.

EXHIBIT 11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
Cynthia Wright and Richard Wright,	)	C.A. No.: 2015-CP-08-675
	)	
Plaintiffs,	)	
	)	
vs.	)	**AFFIDAVIT OF JOHN MARK TEAGUE, P.E., CPM**
	)	
South Carolina Department of Transportation, C & A Unlimited, Inc., and Pilot Travel Centers, LLC,	)	
	)	
Defendants.	)	
	)	

FILED
17 APR -6 P 1:17
MARY B. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Personally appeared before me the undersigned, and after being duly sworn, deposes and states the following:

1. I am the owner and principal engineer of J.M. Teague Engineering, PLLC, in Waynesville, North Carolina.

2. I am a civil engineer by education and training and a certified professional engineer in North Carolina, Georgia, South Carolina, Virginia, Alabama, and Tennessee.

3. As the owner and principal engineer of Teague Engineering, I have extensive experience and familiarity with any number of traffic-related engineering issues and on a regular basis provide engineering services to local governments, school systems, private engineering firms, developers, colleges, and others in private industry. These services include (among other things): intersection safety, traffic flow, traffic impact analyses, risk management, forensic traffic engineering, roadway maintenance, sign operation and installation, traffic signal warrant and design, work zone safety, parking lot design and operation (including ingress and egress access

points), training, traffic calming, and traffic control design and operation, as well as serving as an expert in these areas.

4. I am familiar with the facts of the above-captioned case and have reviewed extensive amounts of documentation produced by various parties including, but not limited to, Pilot and South Carolina Department of Transportation ("SCDOT"). These documents encompass many areas, but relevant to the current issue, include design drawings for improvements to Pilot's facility, SCDOT plans for the design of US Highway 17-A, applications for permits to encroach upon same, correspondence between Pilot (or representatives) and SCDOT, the layout of the traffic signal adjoining the subject property, etc.

5. From my professional experience, as briefly outlined above, I am familiar with what a reasonably prudent company should do, or should not do, in undertaking the design, construction, warning, and communication in regard to the creation of artificial conditions (i.e. those conditions that are not the natural consequence of highway use). Specifically, I am informed about the industry standards in conforming with the reasonably prudent standard. In sum, Pilot has a duty to design, construct, warn, and communicate artificial conditions which may impede reasonably safe ingress and egress so that potential customers and persons known to use highways adjacent to the facilities (i.e. the public) will not be put at needless risk of harm.

6. This duty is common and one that was, for all practical purposes, admitted by Pilot's witness, William Mulligan, Pilot's Vice President of Development, when he essentially said Pilot had a duty to construct its premises in a safe manner. He also admits a company should be aware of potential dangers that are inherent in a particular piece of property.

7. Regardless, such companies must design and construct premises that; are in compliance with industry standards and design, construct, warn, and communicate artificial

conditions which may impede safe ingress and egress into a facility like Pilot. These industry standards would include, but not necessarily be limited to, the South Carolina Department of Transportation Access and Roadside Management Guide ("ARMS Manual"), the standards promulgated by the American Association of State Highway and Transportation Officials ("AASHTO"), and the Manual on Uniform Traffic Control Devices ("MUTCD").

8. Mr. Mulligan's affidavit, dated April 28, 2016, and more specifically Paragraph 8 therein, suggests because Pilot's driveway plans were submitted and approved by SCDOT the facility's obligation to customers and the public utilizing the highway was satisfied. To the extent that is the import of the assertions contained therein, unfortunately they are misguided. The duty to design a safe premises is independent to any requirement to get approval for the designs. Approval may not absolve responsibility. Just as the duty to design is independent, so is the duty to construct, warn and communicate dangers caused by artificial conditions created by a facility such as Pilot.

9. The design, construction, warnings, and communication regarding ingress and egress into the Pilot's facility is unsafe for a number of particulars, including, but not limited to, the fact that the driveways are too close to the functional area of the adjoining intersection. Given the driveways' proximity to the intersection, a more safe and proper undertaking would have included measures to prevent traffic crossing over opposite bound lanes to access the facility as happened in this case. This mitigation would have included a barrier to prevent traffic from turning left—whether it was a raised median or a raised island restricting the Pilot's access to a right-in / right-out movement. Moreover, given Pilot's knowledge of accidents at this location, and similarly situated facilities, the design Pilot implemented ignores its responsibility to provide a proper means for ingress and egress off of US Highway 17-A, and created an

artificial condition, thereby placing the general public and Pilot's customers at risk. Additionally, Pilot's overall site design, specifically the traffic flow, is inadequate to properly serve customers and to protect the traveling public. Pilot does not have an ingress from Farmington Road, forcing all left-turning patrons to either make a U-Turn near the congested area of I-26 or risk turning left across opposite bound traffic at the two access points on US Highway 17-A. Pilot's truck egress on Farmington Road is too close to US Highway 17-A, especially for vehicles turning left toward I-26. Pilot's passenger car egress, although technically connected to the truck egress onto Farmington Road, is obscure and inadequately marked, fooling drivers into re-entering US Highway 17A by making a left turn

10. The unsafe nature of the construction of the ingress and egress into Pilot's facility off of US Highway 17-A should have become apparent to Pilot in the time since the facility was renovated. I have reviewed a significant amount of material from the South Carolina Department of Public Safety which indicates, as previously mentioned, accidents in this location have been common place since the construction at issue was completed. These accidents would have put Pilot on notice of the unsafe nature of its access points.

11. As noted in Paragraph 9 of Mr. Mulligan's affidavit, at or around the time Pilot was constructing and/or renovating the subject facility, SCDOT had plans that included the installation of a raised "unmountable" concrete barrier between the east and west-bound lanes of US Highway 17-A. This barrier would have prevented traffic crossing over oncoming traffic on US Highway 17-A. While Mr. Mulligan is correct in his affidavit that SCDOT elected not to install that median, what he omits is the reason the median was not installed. Whether or not to install this median or create a means of safe ingress and egress points are artificial conditions.

The natural shoulder of the property does not include curb cuts or ingress or egress point for the Pilot facility.

12. There is correspondence which indicates that the SCDOT did not install the unmountable barrier because Pilot (or others working on its behalf) negotiated to have the barrier removed from the plans. The correspondence at issue is attached to this affidavit as **Exhibit A**.

13. In my experience as a civil (and traffic) engineer, the primary reason a company would negotiate the removal of such a barrier, a type of artificial condition, is to increase traffic into their facility in an effort to increase profits. It is my belief that such a reason could be the only motivation behind the removal of the concrete barrier in this case. In my opinion, the placement of an artificial barrier like a median would have significantly reduced the risk of harm.

14. The absence of the unmountable barrier, among other things, is responsible for the tremendous injuries and damages suffered by Plaintiffs in this case.

15. The overall goal of any facility is to create a safe ingress and egress point into a facility. That can be achieved through proper design, construction, warnings, and communication of artificial conditions created by a facility. However, the creation of an unmitigated ingress and egress point off a busy highway close to an expansive situation is the creation of an artificial condition. By utilizing proper design, construction, warnings and communication, Pilot could have created a safe ingress and egress point into their facility. By virtue of their failure to remedy the unmitigated access into their facility off of US Highway 17-A. Pilot created an artificial condition, which generated hazardous conditions and contributed to the injuries of the Plaintiffs.

16. Pilot should have worked with SCDOT to create the safest facility possible for potential customers and members of motoring public utilizing the adjoining roads, intersections,

etc. Unfortunately, it appears Pilot did the exact opposite by negotiating to have the barrier removed. Moreover, even if Pilot initially constructed an improper means of ingress and egress at the time of renovation, if it had acknowledged and accepted both its role and responsibility in creating an artificial condition Pilot could have contacted SCDOT to implement a means to curtail the artificial condition and construct a safer form of ingress and egress into the facility. For example, Pilot could have constructed a right turn in-right turn out only feature which would have disallowed left hand turns into the facility off of US Highway 17-A.

17. While my expertise is engineering, it is my understanding Plaintiffs suffered horrible injuries including as to Richard Wright: fractures to his fibula, tibia, right hip, scarring, and others, and as to Cynthia Wright: a traumatic brain injury, pulmonary contusions, abdominal hematoma, and countless abrasions.

18. It is my belief that Pilot perpetrated improper actions and/or inactions, including, but not limited to negotiating the removal the barrier, and constructing the facility without care or concern for the public, not providing adequate access points for trucks egressing the facility, not providing adequate internal traffic flow to steer drivers to a safe traffic signalized intersection, not providing drivers an adequate left-turn ingress from US Highway 17-A.

19. In my opinion, Pilot should have constructed the facility consistent with the cited regulations, created a right in-right out feature as the only ingress and egress off of US Highway 17-A, accepted and acknowledged responsibility for the large number of accidents occurring for vehicles entering its facility off of US Highway 17-A, and constructed proper ingress and egress points. Had such action be taken among other things, this accident, and Plaintiffs' injuries would not have occurred.

Signature on following page

John Mark Teague, P.E., CPM

Sworn to me this 5th

day of December, 2016

Notary Public for Haywood County, NC

My Commission Expires: 01/08/19

NICOLE POLZELLA
Notary Public
Haywood
County
My Comm. Exp.
01-08-2019
NORTH CAROLINA

EXHIBIT 12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
Cynthia Wright and Richard Wright,	)	C.A. No.: 2015-CP-08-675
	)	
Plaintiffs,	)	
	)	
vs.	)	**AFFIDAVIT OF RICHARD M. BALGOWAN, P.E., P.P., CPWM, CPM**
	)	
South Carolina Department of Transportation, C & A Unlimited, Inc., and Pilot Travel Centers, LLC,	)	
	)	
Defendants.	)	
	)	

FILED
17 APR-6 PM 1:11
MARY E. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Personally appeared before me the undersigned, and after being duly sworn, deposes and states the following:

1. I am an associate engineer, specializing in municipal and highway engineering and parking lot safety, at Robson Forensic in Mount Laurel, New Jersey.

2. I am a civil engineer by education and training and a certified professional engineer in New Jersey, North Carolina, Colorado, Texas, Pennsylvania, New York, Maryland, Delaware, Connecticut, New Mexico, South Carolina, and Washington.

3. I have worked for more than thirty five years for state and municipal departments of transportation, and commonly serve as an expert in these areas. Specifically, I participate in investigations, and routinely testify in matters related to highway and municipal infrastructure design, construction, operations, and maintenance.

4. I am familiar with the facts of the above-captioned case and I have reviewed documentation provided by Pilot and the South Carolina Department of Transportation (hereinafter "SCDOT"). These materials, including, but are not limited to, design drawings for improvements to the

Pilot facility, SCDOT plans for the design of Highway 17-A, applications for permits to encroach upon same, correspondence between Pilot (or representatives) and SCDOT, along with the layout of the traffic signal adjoining the subject property, etc.

5. From my professional experience, I am familiar with what a reasonably prudent company should do, or should not do, in undertaking the design, construction, warning, and communication in regard to the creation of artificial conditions (i.e. those conditions that are not the natural consequence of highway use) for a facility such as Pilot's facility. In sum, a company owes a duty to design a premises that utilizes reasonably safe ingress and egress so potential customers and persons on highways adjacent toa company's facility will not be needless placed in a risk of harm. Included within this duty is an obligation to design, construct, warn, and communicate artificial conditions which may impede reasonably safe ingress and egress.

6. This duty is a common one, and for all practical purposes, acknowledged and admittedby Pilot's witness, William Mulligan, Pilot's Vice President of Development, when he explained Pilot had a duty to construct its premises in a safe manner. Mulligan admits a company should be aware of potential dangers that are inherent in a particular piece of property and arise from said property.

7. Generally, pursuant to industry standards, a company must design and construct a premisesin compliance with industry standards, which includes properly designing, constructing, warning, and communicating artificial conditions arising as a result of their facility that may impede ingress and egress into a facility like Pilot. These industry standards include, but are not necessarily limited to, the South Carolina Department of Transportation Access and Roadside Management Guide ("ARMS Manual"), the standards promulgated by the American Association of State Highway and Transportation Officials ("AASHTO"), and the Manual on Uniform Traffic Control Devices ("MUTCD").

8. Mulligan's affidavit, specifically Paragraph 8 therein, suggests because Pilot's driveway plans were submitted and approved by SCDOT the company's obligation to customers and the public utilizing the highway was satisfied. To the extent these are the assertions contained therein, they are misguided. The duty to designasafe premises is independent from any requirement to get approval for the designs. Approval does not absolve a company of its responsibility. The company has an independent duty to construct, warn, and communicate dangers created by artificial conditions created by a facility such as Pilot.

9. The design of the subject facility is unsafe for a number of reasons including, but not limited to, the fact that the driveways are too close to the functional area of the adjoining intersection.Given the driveway'sproximity to the intersection, a more safe and proper design would have included a restricted means of ingress and egress to prevent traffic from crossing over opposite bound lanes to access the facility as in this case, which could have been achieved in a multitude of ways, including the utilization of a raised median or right turn in-right turn out only concept. In addition, signs prohibiting turning movements should have been installed. This was not done and was in violation of the federal Manual on Uniform Traffic Control Devices (MUTCD), Section 2B.19 and the South Carolina DOT supplemental MUTCD. The functional area of the intersection was also in violation of the Institute of Traffic Engineers (ITE)Intersection Design GuidelinesManual (Chapter 10), ITE Travelled Way Design Guidelines (Chapter 9), ITE Toolbox on Intersection Design and Safety (Chapter 5 and 7), National Cooperative Highway Research Program (NCHRP) Report 780 Design Guidance for Intersection Auxiliary Lanes, NCHRP Report 279 Intersection Channelization Design Guide, American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets (Chapter 9), South Carolina Department of Transportation (SCDOT) Design Manual, SCDOT Access & Roadside Management Standards (ARMS) and the Federal Highway

Administration's Access Management in the Vicinity of Intersections Manual. Moreover, given Pilot's knowledge of prior accidents at this location, and similarly situated facilities, the design Pilot implemented ignored itsresponsibility to provide a proper means for ingress and egress off of Highway 17-A, and in turn created an artificial condition. Thereby placing the general public at risk, as well as Pilot's customers.

10. The construction's unsafe nature of ingress and egress into Pilot's facility from Highway 17-A should have become apparent to Pilot in recent years. I have reviewed a significant amount of material from the South Carolina Department of Public Safety which indicates, as previously mentioned, accidents in this location have been common place since the construction at issue was completed. These accidents put Pilot on notice of the unsafe nature of its access points.

11. As noted in Paragraph 9 of Mulligan's affidavit, at or around the time Pilot was constructing and/or renovating the subject facility, SCDOT had plans that included the installation of a raised "unmountable" concrete barrier between the east and west-bound lanes of Highway 17-A. This barrier would have prevented traffic crossing over oncoming traffic on Highway 17-A. While Mulligan is correct in his affidavit that SCDOT elected not to install that median, what he omits is the reason the median was not installed. Whether or not to install this median or create a means of safe ingress and egress points are artificial conditions.

12. There is correspondence indicating SCDOT did not install the unmountable barrier because Pilot (or others working on its behalf) negotiated to have the barrier removed from the plans. The correspondence at issue is attached to this affidavit as **Exhibit A**.

13. In my experience as a highway and parking lot engineer, the main reason a company would negotiate the removal of such a barrier is to increase traffic into their facility as an effort to increase profits. I believe a monetary incentive is the only reason behind the removal of the concrete

barrier in this case. In my opinion, the placement of an artificial barrier like a median would have significantly reduced the risk of harm created by the Pilot's driveways, a hazardous artificial condition. The absence of the unmountable barrier, among other things, is responsible for the tremendous injuries and damages suffered by Plaintiffs in this case.

14. The overarching goal of any facility is to create a safe ingress and egress point into a facility. That can be achieved through proper design, construction, warnings, and communication of artificial conditions created by a facility. However, the creation of an unmitigated ingress and egress point off a busy highway close to an expansive situation is the creation of an artificial condition. By utilizing proper design, construction, warnings and communication, Pilot could have created a safe ingress and egress point into their facility. By virtue of their failure to remedy the unmitigated access into their facility off of Highway 17-A Pilot created an artificial condition, which generated hazardous conditions and contributed to the injuries of the Plaintiffs. Pilot should have worked with SCDOT to create the safest facility possible for potential customers and members of motoring public utilizing the adjoining roads, intersections, etc. Unfortunately, Pilot appears to have done the exact opposite by negotiating to have the barrier removed.

15. Moreover, even if Pilot initially constructed an improper means of ingress and egress at the time of renovation, if it had acknowledged and accepted both its role and responsibility in creating an artificial condition Pilot could have contacted SCDOT to implement a means to curtail the artificial condition and construct a safer form of ingress and egress into the facility. For example, Pilot could have constructed a right turn in-right turn out only feature which would have disallowed left hand turns into the facility off of Highway 17-A.

16. The lack of measures to prevent unsafe entry into Pilot's facility (the planned unmountable barrier) and the unsafe nature of the ingress and egress points as designed by Pilot are, in

my opinion, the cause of the damages suffered by Plaintiffs. While my experience stems from engineering, my understanding is Plaintiffs suffered significant injuries as a result. Specifically, Richard Wright sustained fractures to his fibula, tibia, right hip, scarring, etc., and as to Cynthia Wright she experienced a traumatic brain injury, pulmonary contusions, abdominal hematoma, and countless abrasions.

17. In my opinion, Pilot ignored industry standards and prioritized its own revenue over the safety of its customers and the general public. Instead, it ignored the artificial condition it created by the placement of its driveways. Pilot should have worked with SCDOT to create the safest and most accessible facility possible for both customers and those members of the public using the adjacent roads and intersections.

Further Affiant Sayeth Not

Richard M. Balgowan, PE, PP, CPM, CPWM, PWLF

Sworn to me this 12th
day of December, 2016

Notary Public for New Jersey State

My Commission Expires: 07/01/2020

TIANA M BROWN - NOTARY PUBLIC 50018433
THE GREAT SEAL OF THE STATE OF NEW JERSEY
My Comm. Exp. 07-01-2020

EXHIBIT 13

ACCESS and ROADSIDE MANAGEMENT STANDARDS

SCDOT

South Carolina Department of Transportation

Dual Units of Measurement:

US Customary Units &



South Carolina Department of Transportation
Traffic Engineering Section
955 Park Street
Post Office Box 191
Columbia, South Carolina 29202-0191

1996 Edition

1st printing October, 1996 2,000 copies

Access and Roadside Management Standards is published by the South Carolina Department of Transportation and may be obtained at a cost of $5.00 per copy from the Director of Traffic Engineering at the above address.

As the need arises, *Access and Roadside Management Standards* is revised, updated, and distributed within the South Carolina Department of Transportation. Others are responsible for obtaining the most current edition.

The mission of the South Carolina Department of Transportation is to provide South Carolina the best possible intermodal transportation systems and services for the safe, efficient movement of people and goods, and stewardship of the State's environment and natural beauty.

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Chapter 1 — Introduction

1A PURPOSE

These standards have been developed to establish uniformity for encroachments upon roads in the State Highway System so as to provide for the safe and efficient movement of traffic while allowing reasonable access to abutting property.

1A-1 History

Points of access have long been recognized as major sources of conflict for traffic on public highways. In order to reduce these conflicts and address the need for basic access, legislation was enacted in 1956 to establish a permitting process for driveways, and a handbook was developed to regulate the location, design and construction of driveways adjoining highways.

Reasonable access means that a property owner must have access to the public highway system, rather than being guaranteed that potential patrons should have convenient access from a specific roadway to the owner's property.

1A-2 Need

The above mentioned standard recognized that the efficiency and safety of a highway depend to a large extent upon roadside interference and its detrimental effect upon the movement of traffic. However, recent years have brought changes in land use and developmental impacts to our highways. With higher traffic volumes came increased pressure to allow a variety of additional activities to occupy the roadside. The Department's desire to satisfy the public's need for efficient and safe traffic movement has to be weighed against property owners' needs for adequate access while taking into consideration significant changes in traffic and roadside characteristics. Since the primary purpose of highways is to provide for the safe and efficient movement of traffic, control of access points on the roadside is paramount. Previous standards became inadequate for regulating the location, design, construction, operation, and maintenance of points of access to the State Highway System and other activities within highway rights-of-way. This necessitated the development of more comprehensive standards in step with current highway and land development practices in the region and nation.

1B AUTHORITY

These standards are enacted pursuant to Sections 57-3-610, 57-5-1080, and 57-5-1090 of the *Code of Laws of South Carolina* (1976 as amended) and with the approval of the South Carolina Department of Transportation Commission.

1C DEFINITIONS

Access – Entrance to and/or exit from land fronting on the public highway system.

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Access Point – A location on a property frontage at which access is allowed by the Department.

Applicant – The owner of a property or his or her agent applying for an encroachment permit.

Auxiliary Lane – A lane adjoining the roadway and used for the purpose of acceleration, deceleration, or storage of vehicles for turning maneuvers.

Controlled-Access Highway – A highway over, from, or to which owners or occupants of abutting properties or others have no legal right of access except at such points and in such manner as determined by the Department.

Crossover – A paved or graded area in the highway median designed specifically for vehicles to cross the median of a divided highway.

Department – The South Carolina Department of Transportation.

Driveway – An access point that is not a public street, road, or highway.

Encroachment – Use of the right-of-way by anyone other than the Department's personnel or authorized agents for any purpose other than that generally intended.

Flag Lot – A large lot not meeting minimum frontage requirements and where access to a public road is by a narrow, private right-of-way or driveway.

Frontage – The length of that portion of a property which directly adjoins a highway.

Frontage Road – A highway, road, or street which is auxiliary to and located on the side of another highway, road, or street for service to abutting property and adjacent areas and for the control of access to the main highway, road, or street.

Highway; Street; Road – The entire width between right-of-way or boundary lines of a public way open for vehicular travel.

"May" – see *"Shall," "Should," and "May."*

Median – The portion of a divided highway which separates opposing traffic flow.

Outparcel – Any lot created from an overall tract wherein the remaining tract is larger than any single lot created and wherein the conditions and locations of access to such lot from a public highway or street may be restricted and/or provided through easements granted by the larger tract holder.

Permit – A legal document in which the Department gives written permission for an encroachment by an applicant.

Permittee – The owner of a property or his or her agent to whom a permit is issued.

Right-of-Way – The land secured and reserved by the Department for the construction and maintenance of a highway and its appurtenances.

Road – See *Highway; Street; Road.*

Roadway – The portion of a highway ordinarily used for vehicular travel, exclusive of the sidewalk, shoulder, or median.

"Shall," "Should," and "May" : Shall – A *mandatory* condition. Where certain requirements in the design or application are described with the "shall" stipulation, it is mandatory when an installation is made that these requirements be met.

Should – An *advisory* condition. Where the word "should" is used, it is considered to be advisable usage, recommended but not mandatory.

May – A *permissive* condition. No requirement for design or application is intended.

Speed: Operating – Operating speed is the highest overall speed at which a driver can travel on a given highway under favorable weather conditions and under prevailing traffic conditions without at any time exceeding the safe speed as determined by the design speed on a section-by-section basis.

Design – Design speed is the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern.

Street – See *Highway; Street; Road.*

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Chapter 2 — Encroachment Permits

2A APPLICATION AND REQUIREMENTS

An encroachment permit must be obtained prior to any encroachment including nonroutine maintenance of (see subsection 2D-5) and revisions to any existing encroachment. The property owner or his agent will be responsible for all requirements of the permit (see appendix E, South Carolina Department of Transportation Engineering Directive Memorandum M-1). The agent of the property owner shall be a person with actual or apparent authority conferred on him or her *in writing* by the property owner, who has been expressly granted the power to act in the place of and instead of the property owner, and upon whom the SCDOT may rely to do all acts within the scope of the encroachment permit.

2A-1 Application

The permitting procedure is begun by contacting the Department's Resident Maintenance Engineer in the county in which the work is to be done (see appendix A). Where application is made for a permit for an encroachment which will cross county lines, the application may be submitted in any county in which a part of the encroachment is to be located. Once the extent of the proposed work on the right-of-way is determined, the requesting individual will be given an Application for Encroachment Permit (SCDOT Form 638) to complete. To assist the applicant, directions for completing the application and a check list are provided in appendix B. The completed application form with all the necessary documents must then be submitted to the Resident Maintenance Engineer. The completed application is intended to provide all information needed for the Department to make a decision on the request and will be a record of the work when the work is completed.

2A-2 Preliminary Site Plan Review

In cases such as large developments (e.g. industrial parks, shopping centers, large apartment complexes, or school sites) where significant traffic volumes are expected, considerable time and effort often can be saved and the permitting time shortened when the Department and the local jurisdiction are involved in the early stages of development planning. In such cases the Department recommends a preliminary site development plan be submitted before the permitting process is begun. Preliminary plans should be submitted to the Resident Maintenance Engineer.

2A-3 Coordination with Local Jurisdictions

In the event that regulations or ordinances of more than one jurisdiction apply, the applicant shall contact each involved entity to ascertain the requirements of and obtain approval from all jurisdictions. The more restrictive re-

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quirements shall apply; however, the Department shall not issue a permit for an encroachment that meets local standards but violates the provisions of *Access and Roadside Management Standards*. Similarly, the Department's issuing of an encroachment permit does not relieve the applicant of the need to comply with local requirements, even if more restrictive.

2B REVIEW AND APPROVAL

Early submittal of the Application for Encroachment Permit will allow for proper review and approval prior to completion of design so that any required revisions can be incorporated into the construction plans. The time involved in reviewing applications will depend upon the complexity of the application. All permits will be reviewed and returned as soon as practicable. Verbal approval will not be given to permit any work until an encroachment permit for the work has been issued. All extensions, amendments or additions to existing permits must be in writing.

2C PERFORMANCE BONDS

The Department may require a performance bond before issuance of an encroachment permit. Any such requirement shall be included in the special provisions of the permit, and evidence of the bond shall be attached to the permit. The amount of the bond shall be equal to 1.5 times the estimated construction cost or $5,000, whichever is greater. The purpose of such a bond is to ensure compliance with all terms of the permit by providing, in cases of noncompliance, for any and all damages and costs incurred in collecting damages through legal or other appropriate means. A bond shall be released only when the work described on the permit has been completed to the satisfaction of the Department.

2D CONDITIONS AND LIMITATIONS

2D-1 Traffic Safety and Operational Restraints

Safety and efficient traffic operations are important considerations in the review of Application for Encroachment Permits. In some cases it may be necessary to restrict access because of safety problems or operational restraints due to geometry, vertical grades, horizontal curves, or other conditions. Access at points within or near acceleration lanes or channelization may be restricted, limited, or prohibited. If operational or safety concerns exist, the application may be forwarded to the Director of Traffic Engineering for review.

2D-2 Land Use Changes and Redevelopment

When there is a change in land use which will affect the amount, type, or intensity of traffic activity to a site, the Department reserves the right to require submission of a new Application for Encroachment Permit. For example, a residential lot may be rezoned to allow for a professional office which will generate commercial traffic. In this case the Department may require the existing access

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to be revised to better accommodate the expected traffic even if no significant building renovations are planned. In some cases the number and/or width of driveways allowed may change depending upon the land use change and the current standards. This provision will also apply to existing accesses when a property is redeveloped with the same general land use.

2D-3 Subdividing Large Parcels

Access to future subdivided parcels shall be considered in the initial Application for Encroachment Permit's review process. The Department will not be obligated to allow direct access for any parcels which may be subdivided from a larger overall development at a later date. See also subsection 3C-2.2 on outparcels.

2D-4 Setback

The area to which the driveway provides access shall be sufficiently large for stopping, parking, and maneuvering of vehicles completely off the right-of-way.

2D-5 Maintenance Responsibilities

The owner shall be responsible for the maintenance of access points, including any drainage structures, for areas within the rights-of-way of State maintained facilities. An encroachment permit is not required for routine maintenance such as mowing, patching potholes, clearing pipes and ditches, applying seal coating, and repairing minor erosion damage.

The Department shall be responsible for the maintenance of permittee-provided crossovers, auxiliary lanes, and right-of-way.

2D-6 Retrofitting by the Department

The Department may require driveway accesses to be modified to conform to these standards. This may require that some driveways be narrowed, widened, or removed in order to correct safety and operational problems. Preferably, such actions should be considered during the preconstruction phase. When this is required as part of a road improvement project, it will be done by the Department as part of the construction contract.

2D-7 Private or Commercial Use of Right-of-Way

Pursuant to Sections 57-7-210 and 57-25-10 of the *Code of Laws of South Carolina* (1976 as amended), erecting fruit and vegetable stands on the right-of-way, displaying automobiles for sale on the right-of-way, or any other private or commercial uses of the right-of-way are prohibited. Some exceptions, such as placing banners across the roadway, for which encroachment permits or letters of authorization have been issued in accordance with these standards are allowed.

2D-8 Parking

Facilities and accommodations for parking on the State Highway System's right-of-way shall be permitted only when installed by local governments who maintain the responsibility for enforcing parking regulations within their jurisdiction. At no time shall any on-street parking be allowed on the right-of-way that is not in accordance with Section 56-5-2550 of the *Code of Laws of South Carolina* (1976 as amended).

Only parallel parking is permitted on the State Highway System's right-of-way, unless the Department specifically permits otherwise. Parking other than parallel parking increases the accident potential due to vehicles backing into the roadway while under the restraint of limited sight distances created by vehicles in adjacent spaces. Angle parking, therefore, shall be permitted only on minor streets where there is sufficient width to allow maneuvering without interfering with the free movement of traffic (see appendix C, page C-15, for angle parking geometry). At no time shall 90° parking be permitted. Internal parking of a development or improvement will not be allowed to extend onto the State Highway System's rights-of-way.

2D-9 Transfer of Responsibility and Liability

When, for any reason, there is a change in property ownership, all responsibilities and liabilities of the owner as pertains to these standards shall become those of the owner's heirs, successors, or assignees upon the legal transfer of ownership.

2D-10 Other Restrictions on Access

Owners of private property which is separated from the highway right-of-way by railroad or utility right-of-way must have the railroad or utility company's written approval prior to applying for the encroachment permit.

A controlled-access (full or partial) highway or frontage permits no legal right of access except at such points and in such manner as determined by the jurisdictional authority. On highways with partial control of access, points of access are restricted to driveways on a planned spacing in addition to normally provided interchanges and/or at-grade intersections.

Access may be required to be from service or frontage roads when direct access to the main highway is restricted or prohibited.

The median of a divided highway provides for safer, more efficient traffic movement by reducing accidents involving left-turn access maneuvers as well as head-on collisions. Access to adjacent property is provided by right-in and right-out maneuvers in conjunction with U-turn and crossing maneuvers at paved median crossovers. Crossovers are provided at a planned spacing and at intersections, and additional crossovers are not normally permitted at access points.

Chapter 3 — Points of Access

3A GENERAL

Appropriate engineering and safety factors should be considered in conjunction with these standards so that conditions unique to individual access points are properly taken into account.

3A-1 Number Allowed per Frontage

Generally, one point of access to a given property will be allowed, situated in a safe location and in accordance with other provisions of this manual. However, additional access points may be allowed as given in table 3-1, provided the continuous roadway frontage of the property exceeds 200 feet (60 m).

TABLE 3-1 MAXIMUM NUMBER OF DRIVEWAYS PER FRONTAGE

Length of Frontage		Maximum Number of Driveways
ft.	m	
200 or less	60 or less	1*
200+ to 600	60+ to 180	2
600+ to 1,000	180+ to 300	3
1,000+ to 1,500	300+ to 450	4
More than 1,500	More than 450	4 plus 1 per each additional full increment of 500 feet (150 m) of frontage
* On frontages of 200 feet (60 m) or less, a pair of one-way driveways may be substituted only if the internal circulation on the site is compatible with the one-way driveways and wrong-way movements on the driveways are rendered impossible or extremely difficult for motorists.		

Driveways will be limited to the number needed to provide adequate and reasonable access to a property. Factors such as alignment with opposing driveways and minimum spacing requirements will have a bearing on the number of driveways approved. A residential property with a frontage of less than 50 feet (15 m) or a commercial property with a frontage of less than 64 feet (19.4 m) will be permitted a point of access only upon special consideration by the Department. A property with more than one frontage may have the frontages considered separately.

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3A-2 Location, Spacing, and Offset

Points of access should be located to avoid undue interference with or hazard to traffic on the roadway. They should be located where there are no sharp curves or steep grades and where the provisions outlined in the following subsections are met. Access points should not be located on auxiliary lanes or their tapers.

In the interest of public safety and convenience, the Department may restrict a point of access to a particular location along the frontage. On properties where points of access would not otherwise be clearly defined, a physical barrier such as curbing may be required along the frontage to define specific access points.

Table 3-2 is a recommended spacing chart for adjacent driveways on the same frontage. High-volume driveways should align with driveways on the opposite side of the street or should be offset in the same manner as streets as shown in figure 3-3 (see section 3D). Minimum spacing will be increased if right-turn deceleration lanes are required and shall equal the length of the turning lane and taper plus 50 feet (15 m), unless a continuous right-turn lane is approved. Nowhere shall a distance of less than 40 feet (12 m) between edges of one-way driveways be permitted (See appendix C, page C-2).

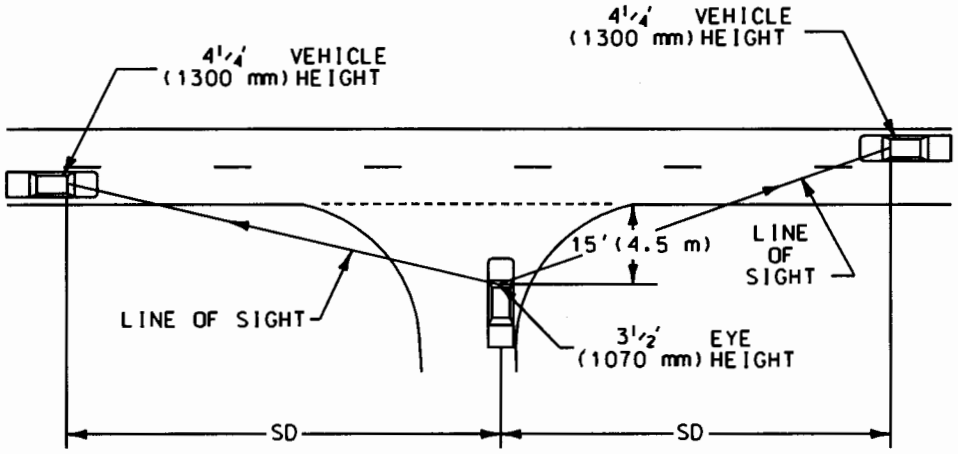
TABLE 3-2 SPACING OF DRIVEWAYS

Operating Speed		Recommended Minimum Spacing from Center to Center	
mph	km/h	ft.	m
30 or less	50 or less	100	30
35	60	150	45
40	60	200	60
45	70	250	75
50	80	300	90
55 and above	90 and above	350	105

3A-3 Sight Distance

To the extent feasible, an access shall be located at a point which provides optimum sight distance along the roadway. The recommended intersection sight distance required at a driveway is set forth in table 3-3. Sight distances for streets and higher-volume driveways shall comply with the Department's *Highway Design Manual*. Proper sight distance shall be provided for all turning movements into and out of driveways.

TABLE 3-3 RECOMMENDED SIGHT DISTANCES FOR DRIVEWAYS



(DRAWING NOT TO SCALE)

Design vehicle entering arterial	Sight distance (SD)* per 10 mph (16 km/h) of arterial speed for arterial width of:					
	2 lanes		4 lanes		6 lanes	
	ft.	m	ft.	m	ft.	m
Passenger Car (P)	100	31	120	37	130	40
Single Unit Truck (SU)	130	40	150	46	170	52
Tractor Trailer (WB-50 ft. {15 m})	170	52	200	61	210	64
* Distances given are for flat grades.						

3A-4 Proximity to Intersections, Ramps, Crossovers, and Railroads

Points of access should be located as far from roadway intersections or railroads as feasible and practical. No access point shall be located within the radius of intersecting roadways. The beginning of the radius of driveways close to intersections shall be at least 10 feet (3 m) from the point of tangency of the intersecting roadway's radius and not closer than 75 feet (22.5 m) to the edge of the intersecting roadway when property frontage allows. See the minimum driveway location standards in appendix C, page C-2. These requirements may limit or exclude access points on some corner lot frontages.

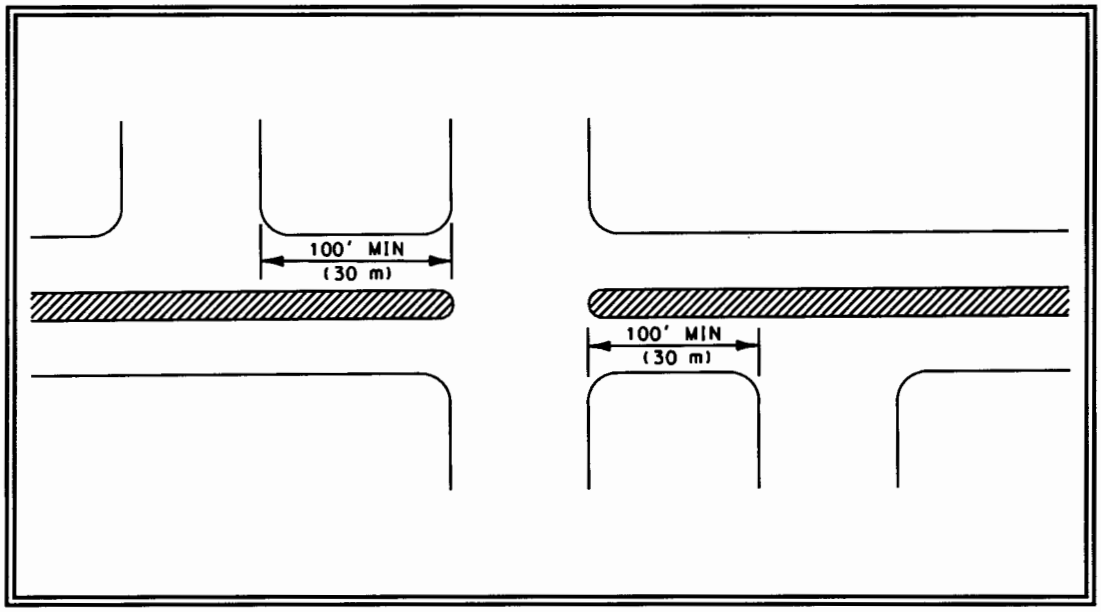
At intersections where corner right-of-way or sight-distance areas have been obtained, no driveways shall be permitted to cross or enter the area, except where the elongation of areas may warrant special consideration.

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Points of access in the vicinity of freeway or expressway ramps shall comply with the requirements outlined above for those near roadway intersections. However, in addition, these access points shall not be located in such proximity to a ramp that, as determined by the Department, they may interfere with the safe and orderly transition of traffic from one roadway system to another. In no case shall a point of access be permitted on a freeway or expressway ramp or on a controlled-access highway unless illustrated on the original design plan for the controlled-access highway.

Whenever applicable, points of access should align directly with existing median crossovers. Those that do not align directly should be located a minimum of 100 feet (30 m) (edge to edge) from the nearest crossover so that conflicts with traffic using the crossover can be avoided (See figure 3-1).

FIGURE 3-1 POINTS OF ACCESS WITH MEDIAN CROSSOVERS



3A-5 Property-Line Clearance

With the exception of residential driveways, points of access shall be located a minimum distance of 20 feet (6 m) and have a minimum radius offset of 5 feet (1.5 m), as measured parallel to the roadway, from the intersection of the right-of-way and property lines. See the minimum driveway location standards in appendix C, page C-2. No point of access shall be located so that its radius encroaches on the adjacent property frontage unless the adjacent property's owner agrees in writing.

3A-6 Traffic Control

Traffic control at access points shall comply with the *South Carolina Manual on Uniform Traffic Control Devices* and shall be designed to accommodate the needs of traffic generated by development while minimizing interference with other traffic. Traffic control devices shall be installed on all streets and on drive

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ways which have geometric and operational characteristics resembling those of a street. Design, equipment, installation, and maintenance of traffic control devices (except maintenance of traffic signals) shall be the responsibility of the owner and shall require approval by the Department.

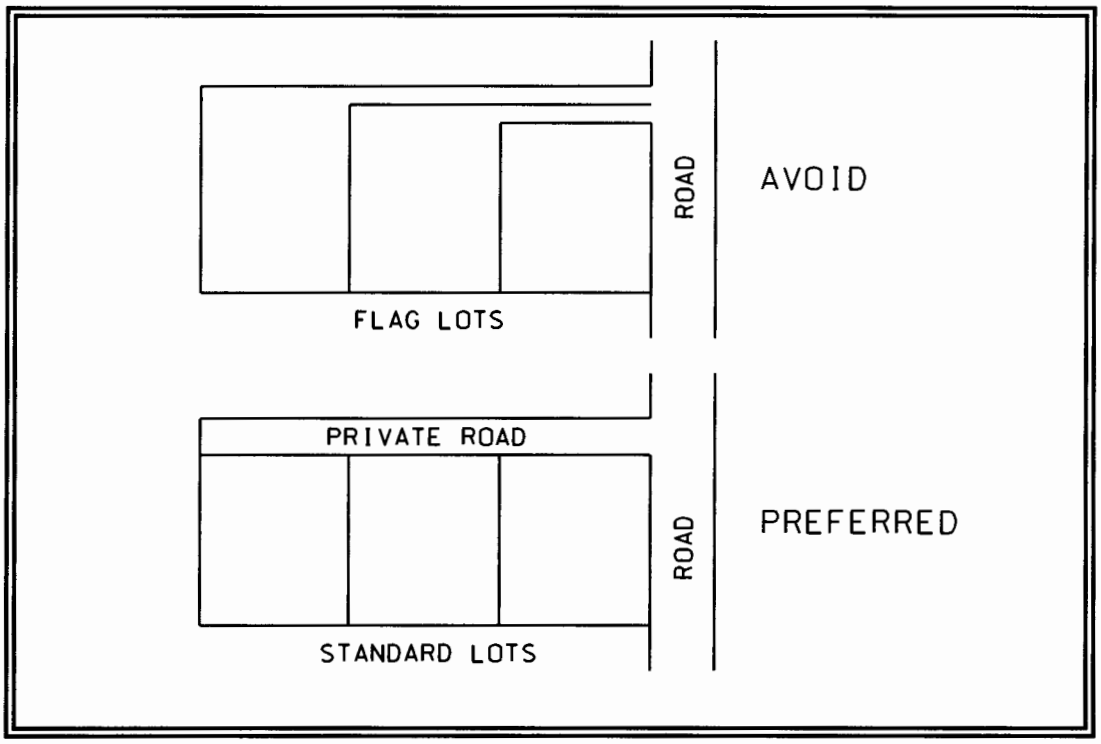
3A-7 Shared Driveways

Shared driveways requiring mutually executed easements are encouraged and, in some circumstances, may be required by the Department. The requirements of subsection 3A-5 shall not apply to shared driveways.

3A-8 Flag Lots

Access problems often occur as the result of land development techniques that produce lots shaped like flags with long narrow access poles (see figure 3-2). Landowners often stack flag lots when dividing a parcel to provide interior lots with direct access to the State Highway System, thereby avoiding the expense of providing a public or private road.

FIGURE 3-2 FLAG LOTS AND ALTERNATIVE ACCESS



Access problems frequently occur when drives from stacked flag lots violate driveway spacing standards on the State Highway System. Inadequate spacing between these driveways increases safety hazards from vehicles turning on and off the high speed roadway.

To reduce the potential for access problems and improve safety, the construction of one drive per flag lot should be avoided. Instead, internal flag lots should be served by an internal street or road system that provides access to the State Highway System at one location. This access point should meet the design standards for a street or roadway and not those of a driveway.

A residential property with a frontage of less than 50 feet (15 m) will be permitted a point of access only upon special consideration by the Department.

3A-9 Auxiliary Lanes

On roadways with substantial traffic volumes and/or higher speeds, lanes for deceleration, or turn storage may be required by the Department or as the result of an impact study. The design and construction of auxiliary lanes, as well as the acquisition of additional right-of-way where necessary, shall be the responsibility of the permittee and shall be accomplished at no expense to the Department. Design guidelines for auxiliary lanes are given in subsection 3G-7.

3A-10 Frontage Roads

The objective of a frontage road is to provide a means of access where direct access to the main roadway is not advisable or is limited by access control. This concept holds significant value for high-speed and divided highways and should be considered especially along areas susceptible to strip development. At an intersecting roadway, the frontage road should be separated from the main roadway by 300 feet (90 m) or more to allow adequate space for vehicle storage on the intersecting roadway between the frontage road intersection and the main roadway intersection.

3B RESIDENTIAL DRIVEWAYS

3B-1 Single Residences and Small Apartment Complexes

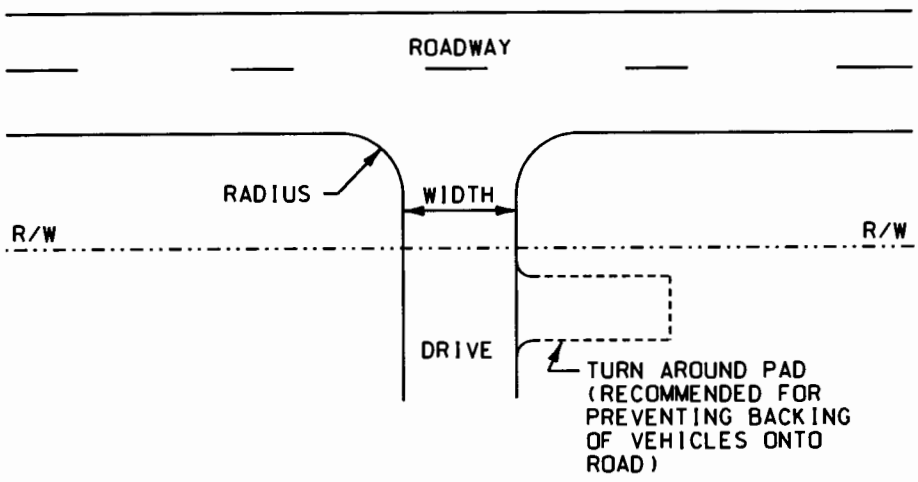
This subsection covers driveways for single-family residences, duplexes and small apartment complexes consisting of five apartments or fewer. Generally, only one driveway will be allowed on a residential lot. Any exception to this must be justified on the basis of safety or special circumstances. See table 3-4 for applicable standards.

3B-2 Large Apartment Complexes

Multi-unit complexes of more than five apartments are considered large apartment complexes. The number of driveways allowed per frontage will generally be one. Additional driveways may be justified provided the required property frontage and spacing as discussed in subsections 3A-1 and 3A-2 are met. Widths and radii for these driveways are given in table 3-5. Divided driveways should comply with subsection 3G-6.

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TABLE 3-4 SINGLE RESIDENCE AND SMALL APARTMENT COMPLEX DRIVEWAY WIDTHS AND RADII



	Urban with Curb & Gutter		Urban & Rural with Shoulder	
	ft.	m	ft.	m
Width*	10 – 16	3 – 4.8	10 – 16	3 – 4.8
Radius*	5 – 10	1.5 – 3	10 – 20	3 – 6

* Within ranges given, dimensions should be based on the characteristics, including the speed of the roadway, at each site.

TABLE 3-5 LARGE APARTMENT COMPLEX DRIVEWAY WIDTHS AND RADII

	ft.	m
Width*	24 – 40	7.2 – 12
Radius*	20 – 40	6 – 12

* Within ranges given, dimensions should be based on the characteristics, including the speed of the roadway, at each site.

3C COMMERCIAL AND INDUSTRIAL DRIVEWAYS

3C-1 High-Turnover and/or Drive-Through Businesses

High turnover driveways should have a suitable connection to the arterial street comparable to that for a well-designed street intersection serving a similar volume of traffic. Applications for high-turnover businesses and those which depend heavily on drive-through traffic must have accompanying site plans for a design which will prevent negative impacts on the road system. Examples of these types of businesses are fast-food restaurants, financial institutions with drive-through windows, convenience stores, and car washes. The site plan shall show

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internal areas for drive-through lanes that will prevent traffic from queuing on the right-of-way. Also, internal circulation must be on private property and the parking design must not allow backing of vehicles onto the right-of-way. Developments with one-way traffic flow systems shall have internal circulation plans that are compatible with the one-way flow plan and discourage wrong-way use of the one-way driveways. See the typical sketch in appendix C, page C-7.

3C-2 *Shopping Centers and Other Large Developments*

3C-2.1 Impact Studies

Early contact with the Department by the developer is recommended. A traffic impact study may be required for large developments such as major shopping centers, large planned-unit developments, industrial complexes, and other projects as may be determined by the Department. In table 3-6 are guidelines that may be used to determine whether a study will be required.

TABLE 3-6 GUIDELINES FOR DETERMINING THE NEED FOR AN IMPACT STUDY

Shopping Center	**100,000+ gross square feet (9,300 m²)**
Planned-Unit Development	**75+ acres (303,500 m²)**
Industrial	**350+ employees**
Residential Development	**100+ single-family detached units or 200+ total dwelling units**
Office	**100,000+ gross square feet (9,300 m²)**

A Traffic impact study shall meet the criteria of the Institute of Transportation Engineers and shall be conducted by a qualified engineer. An impact study shall analyze traffic conditions for both the initial opening and full development of the site under the most critical traffic situations expected. The study will be used to help assess the need for changes in traffic control devices and roadway improvements necessary to lessen the impact of the new development. The study must also justify the proposed access plan and demonstrate the effects of the development on public roadways. The developer of a site will be responsible for making roadway improvements and installing traffic control devices which may be necessary to reduce the impacts of the new development. The Department may require road improvements by the developer without a traffic impact study.

3C-2.2 Outparcels

Outparcels derive a significant portion of their attraction from their relationship and connection to their associated major development. The prime development generates a large portion of the traffic which will be attracted

to the outparcel; therefore, it is appropriate that access be from the major development. This will reduce the number of conflict points and improve safety while giving greater emphasis to the main development. Access for outparcels should be provided only internally; however, shared or individual access points may be permitted provided that twice the normal spacing requirements of subsection 3A-2 are met. See also subsection 2D-3 on subdividing large parcels. When direct access is approved, it may be limited to right turns. Even when single or shared out-parcel access points are allowed, additional access from the outparcels to the major development should be provided. Notation of access for outparcels shall be made on the plans for the development. For sample drawings of out-parcel access, see appendix C, pages C-8 and C-9.

3C-3 Industrial Driveways

Access points for industrial sites shall be located and designed to accommodate the traffic which the facilities will generate. Consideration in design should be given to the type of vehicles which will use the driveways, especially when they are likely to be large trucks. In addition, the higher volumes of traffic entering and leaving industrial sites at shift changes must be considered in the design of queuing areas and turning lanes. The number and spacing of points of access for industrial sites are established in subsections 3A-1 and 3A-2. Data on geometric design is provided in section 3G. The minimum corner radii recommended when trucks are used as design vehicles are given in table 3-7.

Table 3-7 Driveway Radii

Design Vehicle			Minimum Radius	
	ft.	m	ft.	m
Single Unit Truck	SU	SU	40	12
Tractor Trailer	WB-40	WB-12	40	12
Tractor Trailer	WB-50	WB-15	50	15
Tractor Trailer	WB-62	WB-19	50	15

3D STREET INTERSECTIONS

Street intersections whether commercial or residential, public or private, shall be designed and constructed in conformance with the SCDOT *Highway Design Manual*; the American Association of State Highway and Transportation Officials' *A Policy on Geometric Design of Highways and Streets*, current edition; and the Department's *Standard Specifications for Highway Construction*, current edition.

Right-of-way for new streets should provide triangular areas sufficient to accommodate the intersection turn radii and provide for adequate intersection sight distance.

The minimum radius for street intersections is 30 feet (9 m). Recommended travelway widths at intersections for streets with no provisions for parking and/or islands

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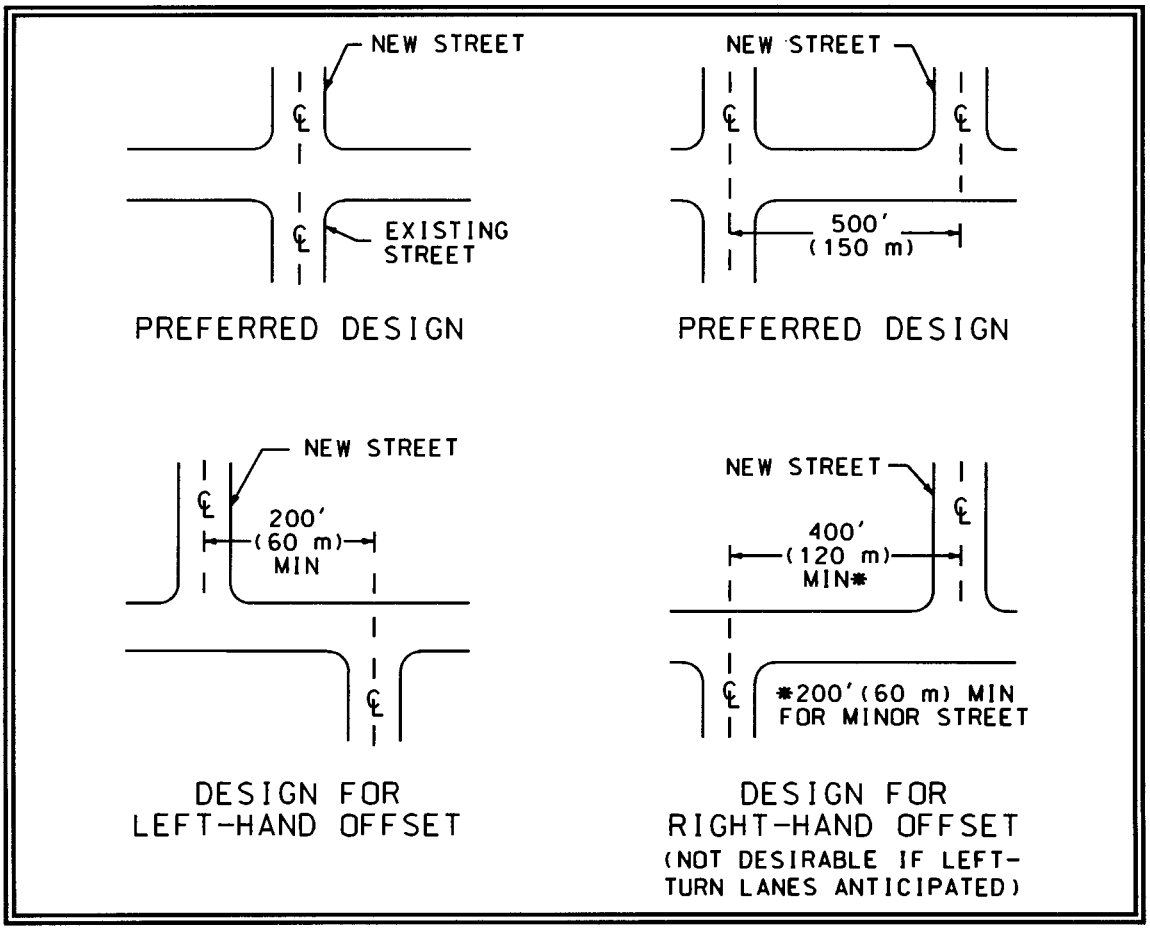
are presented in table 3-8. The values for street and high volume driveway widths in table 3-8 shall be adjusted for parking and islands to provide minimum travel width.

TABLE 3-8 STREET AND HIGH-VOLUME DRIVEWAY WIDTHS

Number of Lanes	Recommended Travelway Width Without Parking and/or Islands	
	ft.	m
2	24 – 36	7.2 – 10.8
3	36 – 44	10.8 – 13.2
4	48 – 54	14.4 – 16.2
5	60 – 66	18 – 19.8

Streets should align opposite other streets or major driveways or shall have sufficient offset so that operational problems cannot develop. See figure 3-3.

FIGURE 3-3 STREET ALIGNMENT/OFFSET



3E MEDIAN CROSSOVERS

The initial placement of median crossovers along divided highways was determined by engineering design. Divided highways operate at higher levels of safety with a minimum of median crossovers. Additional crossovers create more conflicts and can lead to higher accident experience and loss of the advantages of the divided highway. They, therefore, are not normally permitted at access points, and the Department reserves the right to limit access to right turns only. However, when additional median crossovers are warranted, in order not to compromise the operation of existing crossovers or the highway, the spacing of these additional median crossovers should follow a typical pattern for each roadway and shall be limited by the criteria set forth in this section. Applications for median crossovers which are difficult to reconcile shall be forwarded for review to the Director of Traffic Engineering.

3E-1 Requirements

A median crossover may be permitted when an engineering review by the Department indicates that all of the conditions listed below are met.

a) The spacing to the nearest crossover is at least 500 feet (150 m) in urban areas and 1000 feet (300 m) in rural areas (centerline to centerline).
b) When needed as determined by the Department, a suitable left turn lane and taper shall be included.
c) Sight distance criteria are met (see subsection 3A-3).
d) Significant traffic volumes will be generated.
e) The operation of the highway, other accesses, or crossovers will not be adversely affected.
f) The maximum grade on the crossover shall not exceed 8 percent and should not exceed 5 percent.

The Department may approve the relocation of a median crossover if the new location meets the above requirements and all directly affected property owners concur.

A median crossover and any associated turn lanes are considered components of the driveway and are to be constructed by the permittee where approved.

3E-2 Design

The length of a median opening shall be based on the control radii in accordance with figure 3-4.

For median crossovers provided for points of access, median ends should be of the bullet nose design with a minimum radius at the nose of one-fifth the median width and a control radius of between 40 feet (12 m) and 75 feet (22.5 m). See figure 3-4 for design dimensions.

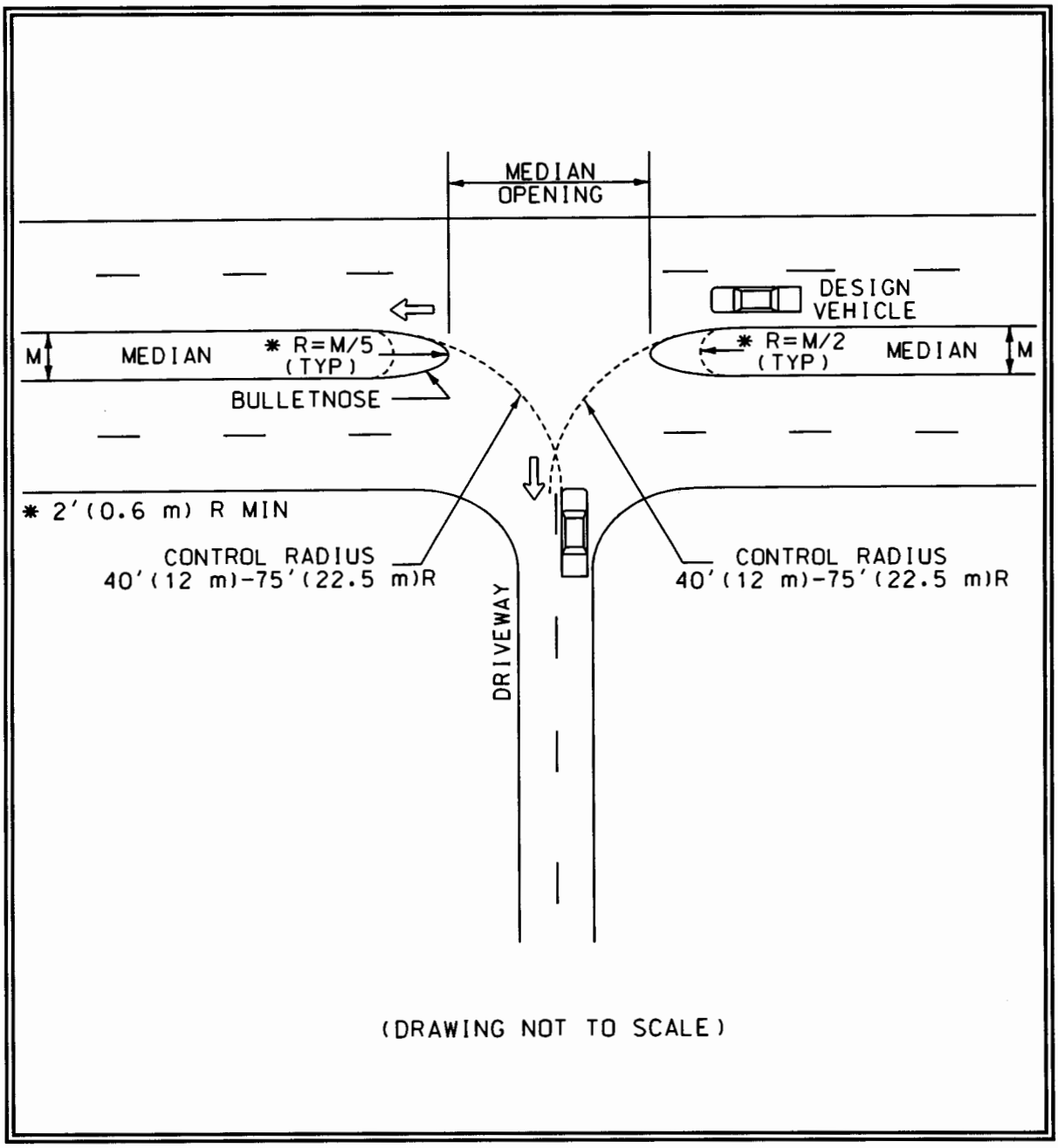
The length of median crossovers for U-turns should be determined by the turning radius of the type of vehicle normally expected to use the crossover. A U-

turn crossover should have a minimum length of 24 feet (7.2 m) and should have semicircular median ends.

Pavement design shall equal or exceed that of the existing roadway.

If auxiliary lanes are required they shall be designed in accordance with subsection 3G-7.

FIGURE 3-4 MINIMUM MEDIAN OPENING



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3F OTHER DRIVEWAYS

3F-1 Temporary Driveways

Any driveway which is not for use by the general public and which will be closed after being used for only a limited time may be considered a temporary driveway. The limited time shall be specified on the permit and shall not exceed two years. The requirements for temporary driveways will be the same as for permanent driveways except that a stone surface may be used instead of pavement. Temporary driveways shall not block existing drainage features. When the driveway is closed, all materials shall be removed and the site restored to its original condition by the permittee.

3F-2 School and Church Driveways

School and church driveways are considered commercial driveways for the purposes of these standards. Special consideration should be given to ensure sufficient on-site storage and circulation of vehicles.

3F-3 Farm Driveways

Farm driveways may be considered either commercial or residential depending on usage. An area off the right-of-way for cleaning mud off tires may be required.

3F-4 Car Wash Driveways

Car wash driveways are commercial driveways, and special consideration should be given to ensure sufficient on-site storage of vehicles. The size and layout of the site shall ensure operation without exceeding the maximum driveway widths allowed herein. Also, the car wash shall have adequate drainage to prevent water from draining onto the roadway.

3F-5 Logging Driveways

Driveways to logging operations can generally be considered temporary driveways with special consideration being given to ensure that mud and debris are not carried onto the highway. An area off the right-of-way for cleaning mud and debris off tires shall be required. Proper warning signs shall be provided, installed, and maintained by the permittee in accordance with the *South Carolina Manual on Uniform Traffic Control Devices*.

3F-6 Construction Driveways

A driveway to a construction site may be considered a temporary driveway. An area off the right-of-way for cleaning mud and debris off tires shall be required.

3G GEOMETRIC DESIGN

3G-1 Angle of Intersection

The angle between a two-way driveway and the roadway it intersects preferably should be 90 degrees but no less than 60 degrees. The angle of a one-way driveway entering a property may be decreased to 45 degrees, but the angle of a one-way driveway exiting a property shall not be less than 60 degrees and preferably should be 90 degrees.

3G-2 Width

The width of driveways, exclusive of any shoulder, should be based on various conditions including the type of highway facility, the driveway volumes, the driveway alignment angle, and the turning radii. Table 3-9 indicates minimum and maximum driveway widths for various types of driveways. Streets and high-volume driveways are governed by the widths given in table 3-8 (see section 3D).

TABLE 3-9 DRIVEWAY WIDTHS

Driveway Type		Width	
		ft.	m
Residential & Minimum Use		see table 3-4	see table 3-4
Urban Commercial	(One-Way)	14 – 24	4.2 – 7.2
Urban Commercial	(Two-Way)	24 – 40	7.2 – 12
Rural Commercial	(One-Way)	18 – 24	5.4 – 7.2
Rural Commercial	(Two-Way)	24 – 50	7.2 – 15

3G-3 Radii

Driveway radii should be designed to provide safety and ease of vehicle movement for the largest vehicle that will regularly use the driveway.

On roadways with curb and gutter, driveways serving low volumes of traffic may have a drop curb design instead of curb returns. On higher-volume driveways and on higher-speed roadways, curb returns should be utilized and may be required. Design drawings for driveways with drop curb and for driveways with curb returns are given in appendix C, pages C-10, C-12-C14.

Refer to table 3-7 for minimum corner radii.

3G-4 Approach Grade and Side Slope

On streets or higher-volume driveways or when curb and gutter are present, the approach should be in accordance with appendix C, page C-11.

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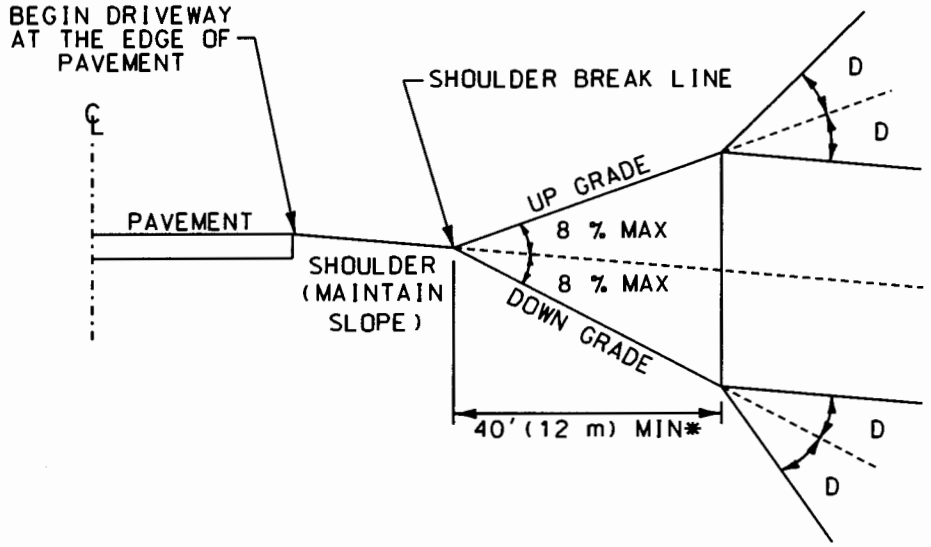
Where a shoulder exists the profile grade of the approach from the edge of the pavement shall slope at the same rate as the highway shoulder for the full width of the shoulder. A grade not to exceed plus or minus 8 percent shall be maintained from the edge of the shoulder for a minimum distance of 40 feet (12 m). Low-volume drives can have an additional grade change at this point not to exceed 14 percent total grade change from the shoulder grade. See figure 3-5.

Driveways shall have a maximum side slope ratio of 4:1 (1:4 metric).

3G-5 Islands

Traffic islands are used to guide motorists into proper lanes. They shall be used when the driveway characteristics or complexity is of such a nature that their use is needed to eliminate conflicts. They should be constructed with a mountable curb and should be offset from the traffic lanes as shown in figure 3-6. The minimum size of a raised concrete island is 100 square feet (9.3 m²).

FIGURE 3-5 DRIVEWAY APPROACH GRADE

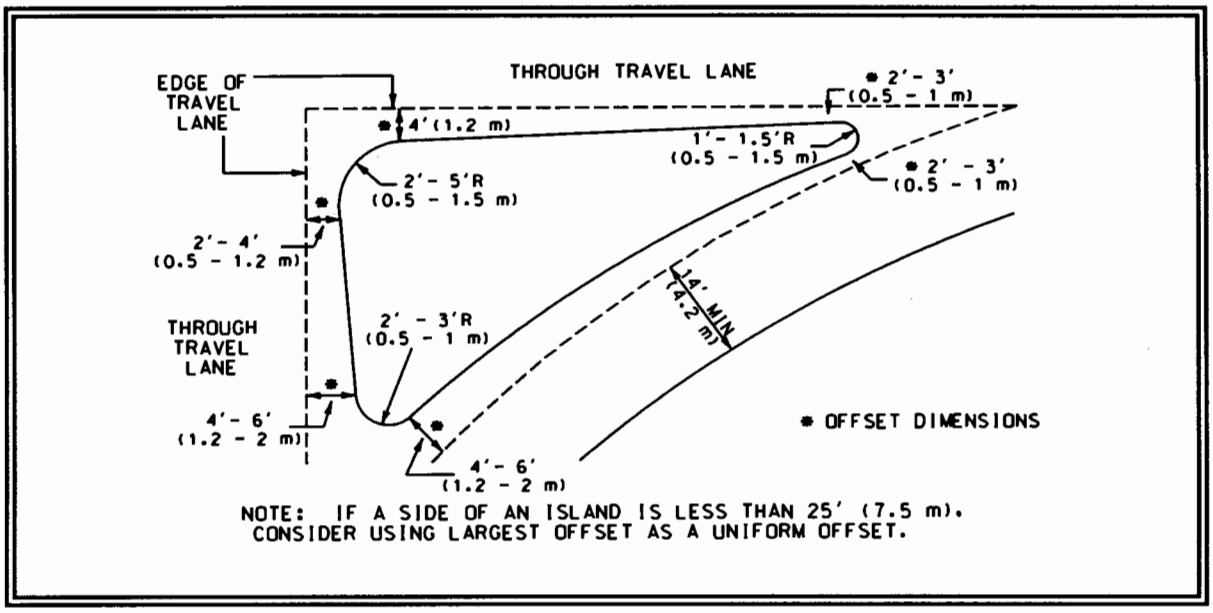


* May be reduced to 10 feet (3 m) for minimum use residential driveways.

D = Maximum 6 percent grade change for low volume driveways. D for all other driveways should be 0 percent.

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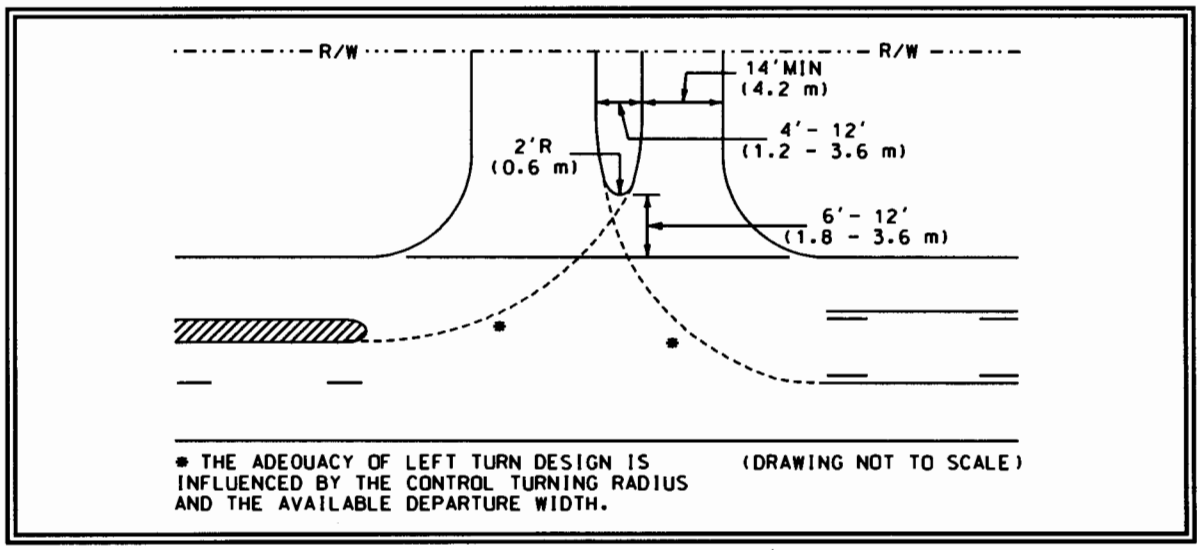
FIGURE 3-6 CHANNELIZING ISLAND DESIGN



3G-6 Driveway Medians

When a median is used to separate opposing traffic on a driveway, the part of the median within the right-of-way shall have a minimum width of 4 feet (1.2 m) and a maximum width of 12 feet (3.6 m). The nose of the median shall be set back 6 to 12 feet (1.8 to 3.6 m) from the edge of the roadway. Landscape plants on the median and within 25 feet (7.5 m) of the roadways should be limited to low growing plants not exceeding 2½ feet (760 mm) in height. See also subsection 3A-3 and section 4E regarding sight distance and landscaping respectively. When the median width is larger than 4 feet (1.2 m), the nose shall be defined with a 2 foot (0.6 m) radius and the control turning radius. See figure 3-7.

FIGURE 3-7 DRIVEWAY MEDIAN DESIGN



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3G-7 Auxiliary Lanes

When adding auxiliary lanes, the entire roadway at the site shall be resurfaced to prevent differential settlement, to eliminate undesirable pavement contrast, and to provide proper pavement markings.

When the through travelway shifts alignment to a new location, the entire roadway within the limits of the shift shall be resurfaced. However, when a right turn lane only is added, resurfacing of the entire area may not be required.

3G-7.1 Acceleration and Deceleration Lanes

Acceleration and deceleration lanes should be 12 feet (3.6 m) wide and constructed in accordance with table 3-10. Greater corner radii or channelization should be used to encourage and facilitate higher-speed turns at locations where right turns are made into acceleration lanes. An acceleration lane shall not be permitted on a two or three lane roadway.

TABLE 3-10 ACCELERATION AND DECELERATION LANE AND TAPER LENGTHS

Roadway Design Speed	Minimum Length of Taper		Minimum Length* of Full Width Lane	
	ft.	m	ft.	m
40 mph (60 km/h) and less	150	45	150	45
45 and 50 mph (70 and 80 km/h)	180	54	200	60
55 mph (90 km/h) and above	200	60	250	75
* Lengths given are for flat grades. For downgrades on deceleration lanes and upgrades on acceleration lanes, increase lengths 10 percent for every 1 percent of grade.				

3G-7.2 Left-Turn Storage Lanes

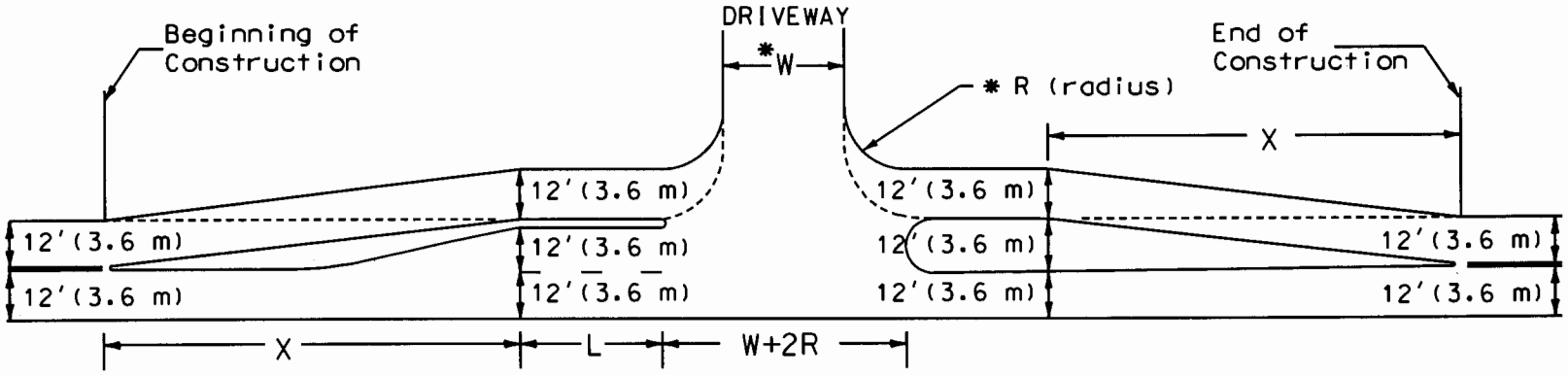
If a left-turn lane is required, it should be 12 feet (3.6 m) wide and constructed in accordance with table 3-11. When widening is necessary to accommodate a left-turn lane, the methods presented in tables 3-12 and 3-13 should be used. The method in table 3-12 is preferred.

TABLE 3-11 LEFT-TURN STORAGE LANE AND TAPER LENGTHS

Roadway Design Speed	Minimum Length of Taper		Minimum Length of Storage Lane	
	ft.	m	ft.	m
40 mph (60 km/h) and less	150	45	150	45
45 and 50 mph (70 and 80 km/h)	180	54	200	60
55 mph (90 km/h) and above	200	60	250	75

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TABLE 3-13 METHOD FOR WIDENING ON ONE SIDE OF ROAD TO ACCOMMODATE A LEFT-TURN LANE



L = Storage lane length from table 3-12

* See sections 3B & 3C for driveway widths and radii

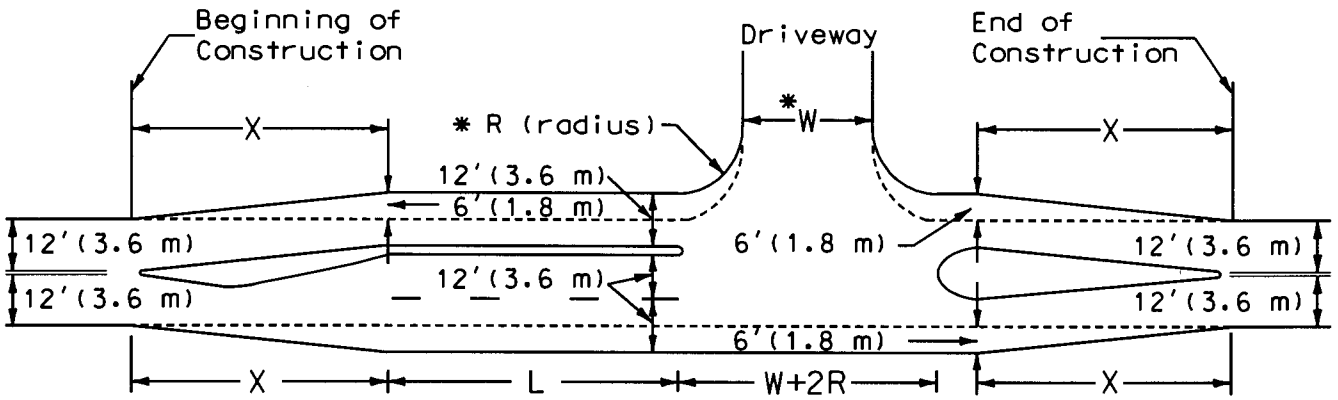
RESURFACING OF THE ENTIRE AREA WITHIN THE LIMITS OF CONSTRUCTION IS REQUIRED. IN ADDITION, AN EXTENSION OF RESURFACING BEYOND THE CONSTRUCTION LIMITS MAY BE REQUIRED IN ORDER TO OBTAIN A SMOOTH RIDING SURFACE.

(DRAWING NOT TO SCALE)

Speed		Minimum Length of Taper "X"	
mph	km/h	ft.	m
40 and less	60 and less	480	144
45 and 50	70 and 80	600	180
55 and above	90 and above	660	198

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TABLE 3-12 METHOD FOR WIDENING ON BOTH SIDES OF ROAD TO ACCOMMODATE A LEFT-TURN LANE



L = Storage lane length from table 3-12

* See sections 3B & 3C for driveway widths and radii

RESURFACING OF THE ENTIRE AREA WITHIN THE LIMITS OF CONSTRUCTION IS REQUIRED. IN ADDITION, AN EXTENSION OF RESURFACING BEYOND THE CONSTRUCTION LIMITS MAY BE REQUIRED IN ORDER TO OBTAIN A SMOOTH RIDING SURFACE.

(DRAWING NOT TO SCALE)

Speed		Minimum Length of Taper "X"	
mph	km/h	ft.	m
40 and less	60 and less	240	72
45 and 50	70 and 80	300	90
55 and above	90 and above	330	99

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Chapter 4 — Roadside Encroachments

4A MAILBOXES, SUPPORTS, AND TURNOUTS

The location and construction of mailboxes shall conform to these standards and the rules and regulations of the United States Postal Service. An encroachment permit is not required for such mailbox installations. A mailbox installation that does not conform to the provisions of these standards constitutes an obstruction in the highway pursuant to Section 57-7-210 of the *Code of Laws of South Carolina* (1976 as amended).

4A-1 Structure

Mailboxes and newspaper boxes shall be constructed of light-weight materials.

The post-to-box attachment should be of sufficient strength to prevent the box from separating from the post if the installation is struck by a vehicle.

Mailbox supports should be a single 4-inch x 4-inch (100 mm x 100 mm) or 4½-inch (115 mm) diameter wooden post or a metal post with strength no greater than that of a 2-inch (50 mm) diameter standard strength steel tubing and shall be embedded no more than 24 inches (600 mm) into the ground. A metal post shall not be fitted with an anchor plate, but it may have an anti-twist device that extends no more than 10 inches (250 mm) below the ground surface.

No more than two mailboxes may be mounted on a support structure; however, lightweight newspaper boxes may be mounted below the mailbox or on the side of the mailbox support. Consecutive installations must be separated by a distance of at least 3 feet (1 m).

Mailbox support designs not described in these standards will be acceptable only if approved by the Department. Any construction which is considered a hazardous fixed object shall not be allowed as a support, encasement, or housing for the mailbox.

4A-2 Location

For safety and operational purposes, mailbox installations should be placed a sufficient distance from the edge of the roadway to permit the delivery and receipt of mail without vehicles occupying any part of the roadway.

Mailboxes shall be located on the right-of-way side of the roadway in the direction of the delivery route except on one-way streets where they may be placed on the left-hand side. The bottom of the box shall be set at an elevation established by the United States Postal Service, usually between 3 feet, 6 inches (1 m) and 4 feet (1.2 m) above the roadway surface. The roadside face of the box shall be offset from the edge of the roadway a minimum distance as set forth in table 4-1.

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TABLE 4-1 MINIMUM OFFSET OF MAILBOXES

Roadside Character	Offset of Mailbox Face*
Shoulder (paved or unpaved)	Shoulder width plus 8 to 12 inches (200 to 300 mm)
Paved valley gutter	Gutter width plus 8 to 12 inches (200 to 300 mm)
All-weather turnout	Turnout width specified by Department plus 8 to 12 inches (200 to 300 mm)
Curb and gutter with no paved emergency lane (except residential areas)	5 foot, 8 inch (1.5 m) minimum from curb face or 8 to 12 inches (200 to 300 mm) back of sidewalk
Primarily residential	8 to 12 inches (200 to 300 mm) from edge of roadway, face of curb or back of sidewalk

*** Under extenuating circumstances the Department may deem it in the public interest to permit lesser clearances or require greater clearances.**

Where a mailbox is located at a driveway, it should be placed on the far side of the driveway in the direction of the delivery route.

A mailbox at an intersecting road shall be located not less than 100 feet (30 m) from the edge of the intersecting road or at the far corner of the nearest property.

For those installations requiring numerous mailboxes such as apartment complexes, mobile home parks, etc., the property owner shall place the installation on a low volume intersecting road or on private property whenever possible.

Paved turnouts should be considered by the owner when shoulders, whether paved or unpaved, are less than 8 feet (2.4 m) wide and any of the following conditions exist:

a) There is a multiple mailbox installation.
b) Sight distance is inadequate.
c) Average daily traffic exceeds 400 vehicles per day.
d) The speed limit is 45 mph (70 km/h) or greater.

The design details for turnouts as presented in appendix D are intended to represent minimum requirements for these installations.

4A-3 Nonconformance

Any mailbox installation that is found to violate the intent of these standards shall be removed by the postal patron upon written notification by the Department. At the discretion of the Department, based on an assessment of danger to the public, the patron will be granted not less than 10 nor more than 30 days to remove an unacceptable mailbox installation. After the specified removal period has expired, the unacceptable mailbox may be removed by the Department at the postal patron's expense.

4B SIGNS

Any unauthorized sign placed on the highway right-of-way by an individual or private organization constitutes a public nuisance and will be removed pursuant to Section 56-5-1020 of the *Code of Laws of South Carolina* (1976 as amended). By the same authority, any sign in view of a highway which purports to be or interferes with the effectiveness of an official traffic control device is likewise a public nuisance and will be removed accordingly.

4C LIGHTS AND REFLECTIVE SURFACES

When in view of a highway, any sign lighting must be constructed and maintained to prevent light from being directed at any portion of the roadway. Sign lighting which causes glare, impairs vision, unduly distracts, or otherwise interferes with the operation of a motor vehicle is prohibited. These conditions also apply to individual lights, lighting or surfaces reflecting light or sun glare. Flashing or pulsing lights may not be attached to or used to illuminate any sign, except a sign giving brief messages regarding public service information such as time, temperature, weather, or similar information. Lights which change color may not be attached to or used to illuminate any sign.

Where roadway lighting is provided, light standards on the right-of-way or within 30 feet (9 m) of the roadway should have breakaway supports designed so that no fixed part of the support extends further than 3 inches (76 mm) above ground level. When used, the breakaway capability of the support shall incorporate the use of breakaway electrical connectors so that no live electrical wires exist after impact by a vehicle.

4D WALLS, FENCES, AND OTHER STRUCTURES

Walls, fences, decorative structures, or other unyielding, hazardous structures are not permitted on the right-of-way pursuant to Section 57-7-210 of the *Code of Laws of South Carolina* (1976 as amended). Upon notification, a property owner is required to remove a structure erected on the right-of-way. If, after notification, it is not removed or relocated, the Department will remove the structure at the owner's expense. The Department will not be responsible for any damage to the structure nor be required to re-erect it or to provide or erect a replacement structure. The Department will hold any removed materials for 30 days and then, if not claimed, will dispose of them.

Gates associated with points of access shall be set back far enough from highway right-of-way to allow the longest vehicles normally using the access to completely clear the roadway while the gate is being opened.

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4E LANDSCAPING

4E-1 General

The South Carolina Department of Transportation desires to cooperate as much as possible with organizations desiring to undertake projects to beautify certain sections of various highway rights-of-way. An encroachment permit is required for any landscaping work performed on the highway right-of-way. A sketch plan of the proposed project must be attached to the Encroachment Permit Application. This plan should show the planting arrangement and the type of plants to be used. Photographs may also be helpful.

All proposed beautification permits should clearly state the following information:

a) Speed limit (mph).
b) Cut or fill slope (Check with local Resident Maintenance Engineer).
c) Traffic volume – less or greater that 1,500 ADT (Check with local Resident Maintenance Engineer).
d) Label guardrail; barrier curb; sidewalks; edge of pavement and right-of-way line on sketch.
e) State distance plant material is from curb or edge of pavement (offset).

The following guidelines establish a framework for preparing design work for projects of this nature.

Applicants shall furnish, install, and maintain all plantings. They shall be responsible for maintaining all vegetation within the right-of-way that is contiguous with the landscaping. If the applicant is a city, this may include mowing the grass around the plantings. See Engineering Directive Memorandum M-26 in appendix E for guidelines. The Department shall not be responsible for providing water, fertilizer, labor, materials, or maintenance within the landscaping limits of the right-of-way.

The Department will exercise care in maintenance, construction, or reconstruction to avoid unnecessary damage. It cannot, however, accept responsibility to protect plants or irrigation systems against damage or theft. If subsequent changes in the highway require removal of plants, this must be done by applicant.

All landscaping work within the SCDOT right-of-way must conform to all local ordinances and all state environmental regulations.

The applicant will make this installation under the supervision of the SCDOT, and shall not block traffic at any time. All traffic control devices will be the responsibility of the applicant and shall conform to section V of the *South Carolina Manual on Uniform Traffic Control Devices*. Planting work that may block billboards will have to be approved on-site by the local District Outdoor Advertising Coordinator prior to the start of planting. The use of plant materials to block the visibility of billboards is not desired.

No tree, shrub, etc., shall be permitted in any location where it may interfere with highway safety or traffic visibility. Plants that might prove detrimental to safety, to the highway, or to adjacent property will not be permitted. Otherwise, the selection of

plants is left to the discretion of the applicant. Experience has proven that indigenous plant material is more satisfactory. Features such as autumn foliage, flower effects, etc., should be considered. If advice in landscape planning is needed, the Department's Landscape Architect may be contacted through the Director of Maintenance at the headquarters building in Columbia. Applicants may want to contact the Urban Forester for their region for advice (see list in appendix F).

Minimum offsets for trees and shrubs shall be as described in Table 4-2. This offset would not apply if the location does not leave at least 5 feet (1.5 m) of a grassed area suitable for pedestrian traffic along roads without sidewalks. This area is to be seeded or sodded as needed to prevent erosion and provide stable footing for pedestrian traffic. Cross tie planters may be allowed 5 feet (1.5 m) from any roadway structure if buried flush with the existing grade.

No trees will be allowed close enough to the road to allow root systems to undermine or damage any roadway structure, such as curbing, sidewalk, or drainage components, at any time during the tree's life. A biological or physical root barrier system may be considered in extenuating circumstances, on a case-by-case basis, as determined by the Landscape Architect.

Trees, shrubs, or earthen mounds shall not block the line of sight along the roadway. This means that no planting shall occur in the area bounded by the sight area formed as shown in section 3A-3. This information shall be determined on a local level by the Resident Maintenance Engineer or his assistant.

Landscape lighting on the right-of-way shall be flush with the ground.

If in the future a plant's growth obstructs the view of signs or interferes with the sight distances of approaching traffic, the Department will require the applicant to remove, relocate, or prune the plants to eliminate this obstruction at his expense. Plants other than low ground covers shall not be permitted within 50 feet (15 m) of a median crossover.

On a case-by-case basis, plantings may be allowed in sight triangle areas, but in these cases the plants must be kept to a maximum height of 2½ feet (0.762 m). Generally, all grass should be removed in these triangles and ground covers planted.

All trees shall be delimbed and kept limbless for the first 6 feet (1.83 m) in height and up to 7 feet (2.13 m) in height where trees are near pedestrian walkways.

Trees shall be selected and placed so that, even when they are fully matured, their limbs shall not overhang into the roadway and block vehicles. The applicant agrees that the trees shall be kept trimmed, if this is required to keep limbs from overhanging into the road.

4E-2 Irrigation Systems

Irrigation systems for landscaping should be designed so that irrigation can be achieved without any system components encroaching on the right-of-way. When encroachment is unavoidable, details of the irrigation system shall be included in the landscaping plan. In any case, the landscaping plan shall detail

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provisions for the drainage of water used to irrigate the right-of-way. In no case shall water used to irrigate the right-of-way drain or be sprayed onto the roadway. The correction of any problem involving irrigation water draining or spraying onto the roadway will be the responsibility of the permittee, regardless of the Department's approval of the permit and landscaping plan.

4E-3 Offset of Trees and Shrubs

A tree or shrub that will attain a 4-inch (100 mm) or greater diameter at maturity shall have the edge of its trunk offset from the edge of the roadway a minimum distance as specified in table 4-2. When a tree or shrub with multiple trunks or a group of small trees close together will have at maturity a combined cross-sectional area equivalent to that of a 4-inch (100 mm) diameter tree, it shall be offset likewise.

4F UTILITIES

Public Utility lines may be located within the highway right-of-way provided they are constructed so as not to endanger the safety of persons or to interfere with the use of the highway. Such an encroachment must be approved by the Department. Applications from the utility companies are reviewed for acceptance using the Department's *A Policy for Accommodating Utilities on Highway Rights-of-Way* as a guide. A copy of this document is available from the Department's Utilities Engineer.

4G DAYLIGHTING

Clearing of trees, bushes, and underbrush for the purpose of making commercial and industrial sites more attractive and visible is governed by the Department's Engineering Directive M-11, included in appendix E (or latest revision).

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TABLE 4-2 MINIMUM OFFSET OF TREES AND SHRUBS AT MATURITY

Roadside Feature	Roadway Design Speed	Offset from Roadway for Current Volume (ADT) of:			
		≤ 1,500		> 1,500	
		ft.	m	ft.	m
Guardrail *	All	4	1.2	4	1.2
Barrier curb *	40 mph (60 km/hr) and less	1.5	0.5	1.5	0.5
	45 and 50 mph (70 and 80 km/h)	6	1.8	8	2.4
	55 mph (90 km/h)	10	3	12	3.6
6:1 or flatter cut slope ** (Metric 1:6)	40 mph (60 km/hr) and less	10	3	14	4.2
	45 and 50 mph (70 and 80 km/h)	14	4.2	20	6
	55 mph (90 km/h)	16	4.8	22	6.6
6:1 or flatter fill slope (Metric 1:6)	40 mph (60 km/hr) and less	10	3	14	4.2
	45 and 50 mph (70 and 80 km/h)	12	3.6	18	5.4
	55 mph (90 km/h)	16	4.8	22	6.6
4:1 to 5:1 cut slope (Metric 1:4 to 1:5)	40 mph (60 km/hr) and less	10	3	14	4.2
	45 and 50 mph (70 and 80 km/h)	12	3.6	18	5.4
	55 mph (90 km/h)	14	4.2	20	6
4:1 to 5:1 fill slope (Metric 1:4 to 1:5)	40 mph (60 km/hr) and less	12	3.6	16	4.8
	45 and 50 mph (70 and 80 km/h)	16	4.8	24	7.2
	55 mph (90 km/h)	20	6	26	7.8
3:1 cut slope (Metric 1:3)	40 mph (60 km/hr) and less	10	3	14	4.2
	45 and 50 mph (70 and 80 km/h)	10	3	14	4.2
	55 mph (90 km/h)	10	3	16	4.8
3:1 fill slope (Metric 1:3)	40 mph (60 km/hr) and less	14	4.2	18	5.4
	45 and 50 mph (70 and 80 km/h)	20	6	28	8.4
	55 mph (90 km/h)	28	8.4	30	9

* Where barrier curb or guardrail exists, offset is measured from face of curb or guardrail.

**Use for all medians with curbing.