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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. 3)

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Chapter 5 — Drainage

5A GENERAL REQUIREMENTS

Each access point shall be constructed in a manner that prevents water from flowing onto the roadway and from adversely affecting the existing storm drainage system. For example, driveways and paved areas sloping down toward the roadway should have provisions for water to be intercepted off the right-of-way and shall not have a low point within the shoulder break line. The driveway's slope between the shoulder break line and roadway edge shall be the same as the slope of the shoulder as specified in subsection 3G-4.

5B DESIGN AND DISCHARGE

Drainage collected off the right-of-way shall not be discharged into the highway drainage system unless a permit is issued by the Department. Release rates to the highway drainage system shall be equal to or less than that calculated for the predeveloped rate as determined in accordance with Department design policy for the given site conditions. The applicant may be required to submit a drainage plan justifying the proposed drainage system and the hydraulic adequacy of the existing highway drainage system. If the downstream highway drainage system capacity is inadequate, the applicant shall provide flow retention on the developed property. Details for retention structures and means of discharge as well as design calculations shall be approved by a registered professional engineer in compliance with Sections 40-21-10 and 40-21-30 of the *Code of Laws of South Carolina* (1976 as amended) and shall be submitted with the Application for Encroachment Permit. Approval by a professional engineer or the Department does not preclude the need for compliance with any applicable local regulations or ordinances.

5C MAINTENANCE AND SAFETY CONSIDERATIONS

Pipes or ditches discharging into the highway drainage system shall join the system at an appropriate angle and have other provisions as necessary to prevent scour, erosion, or blockage of the existing drainage components.

The design of drainage structures shall be in conformance with the Department's *Standard Drawings for Road Construction*. New drainage components that would create maintenance problems or compromise safety shall not be permitted. These may include, but are not limited to, vertical wingwalls/headwalls, grates, pipes, and above-ground catch basin covers which are within 30 feet (9 m) of the roadway. Curbing on driveways or streets shall not extend beyond the right-of-way line or ditch line when the driveway or street connects to a roadway not having curbing. Culverts shall extend at least the full distance from the toe of one side of a fill to the toe of the opposite side.

All drainage components shall conform to the existing roadway cross section and profile. All structures shall be brought to a final grade flush with the existing profile and cross section. Catch basins are strongly discouraged in curved sections and within intersection radii.

App 0797

Sediment and erosion control measures shall be shown on the application and constructed as the first phase of construction to prevent any sediment from reaching the highway right-of-way or drainage system.

Chapter 6 — Construction

6A GENERAL

All construction performed on highway rights-of-way, including modification to existing features, shall be subject to the terms and conditions of the encroachment permit along with accompanying plans, drawings, sketches, or other attachments. No work shall be performed on highway rights-of-way by the applicant or his contractor prior to approval of the encroachment permit by the Department. The permittee or his contractor shall have a copy of the encroachment permit available at the site during construction; therefore, verbal permission to begin work cannot be given.

6B MATERIALS AND METHODS

Construction practices and placement of materials on highway rights-of-way shall conform to the Department's *Standard Specifications for Highway Construction*, current edition.

A typical cross section drawing which shows the pavement thickness and design shall be shown on the Application for Encroachment Permit.

Special care shall be taken during the construction or modification of the access point and development of abutting property to avoid blocking drainage facilities or tracking mud or other material onto the highway.

Construction costs including those for all drainage features, modification, and repair of damage done to the existing highway shall be the responsibility of the permittee and not the Department.

6C TRAFFIC CONTROL

During the period of time the access point is being constructed or modified, care shall be taken to ensure the safety of workmen, the motoring public, and pedestrians within the right-of-way. Safe traffic control at the work site shall be the responsibility of the applicant or his contractor and shall be accomplished in accordance with Part V of the *South Carolina Manual on Uniform Traffic Control Devices*. A traffic control plan showing signs, channelizing devices, etc., shall be included with the Application for Encroachment Permit. Taking peak traffic periods into consideration, the work should be scheduled to minimize interference with normal highway operations. It may be necessary to restrict work to certain hours of the day. The Department may immediately stop work if proper traffic control is not maintained.

6D INSPECTION AND APPROVAL

The Department reserves the right to inspect and approve any construction within the right-of-way. In the event of faulty workmanship or materials, the

App 742799

Department shall have the right to stop all work or revoke the permission as set forth in the encroachment permit for such construction. This action may deny use of the access point until such time as the conditions are corrected. Proper workmanship and materials may be ensured by means of performance bonds as set forth in section 2C of these standards.

Appendix A

Addresses of Department Officials and Resident Maintenance Engineers

HEADQUARTERS:

South Carolina Department of Transportation
955 Park Street
Post Office Box 191
Columbia, South Carolina 29202-0191

The following officials are located in the headquarters building:

Deputy Director for Construction, Engineering, and Planning	(803) 737-1314
Director of Traffic Engineering	(803) 737-1462
Director of Maintenance	(803) 737-1290
Director of Construction	(803) 737-1308
Director of Preconstruction	(803) 737-1350
Utilities Engineer	(803) 737-1293

DISTRICT ENGINEERING ADMINISTRATORS AND OTHER DISTRICT PERSONNEL:

Note: Engineering districts are shown on map on page A-5.

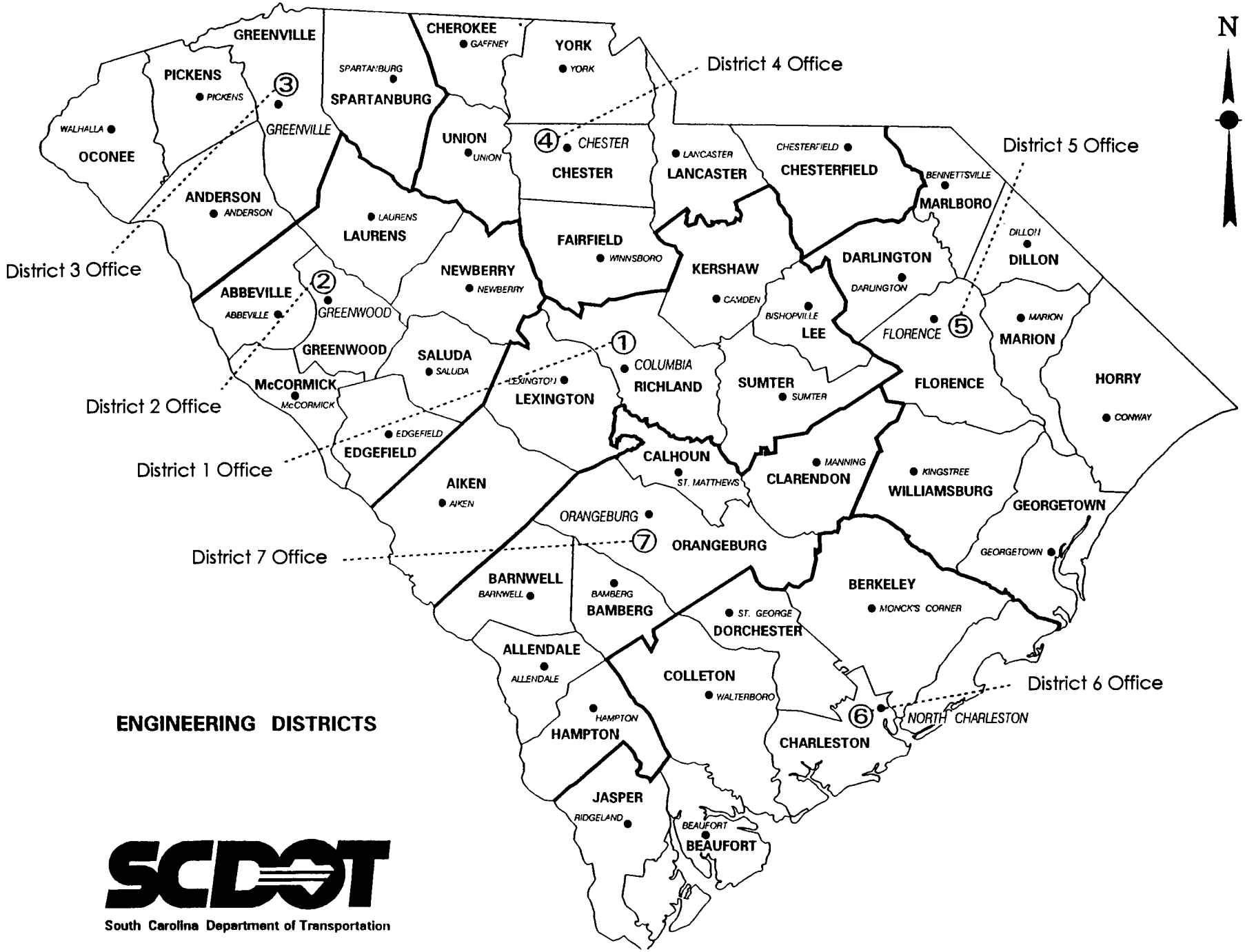
District One	1400 Shop Road Columbia, SC 29201	(803) 737-6660
District Two	510 W. Alexander Avenue Greenwood, SC 29646	(864) 227-6971
District Three	Post Office Box 6608 - Station B Greenville, SC 29606	(864) 241-1010
District Four	J. A. Cochran Bypass Post Office Box 130 Chester, SC 29706	(803) 377-4155
District Five	Post Office Box 1911 Florence, SC 29501	(803) 661-4710
District Six	6355 Fain Blvd. North Charleston, SC 29406-4989	(803) 740-1665
District Seven	US Route 178 East Bowman Road Drawer 1086 Orangeburg, SC 29116-1086	(803) 531-6850

RESIDENT MAINTENANCE ENGINEERS:

Abbeville	Post Office Box 609 Abbeville, SC 29620	(864) 459-4206
Aiken	Post Office Box 2010 Aiken, SC 29801	(803) 641-7665
Allendale	Post Office Box 296 Allendale, SC 29810	(803) 584-3465
Anderson	Post Office Box 221 Anderson, SC 29622	(864) 260-2215
Bamberg	Post Office Box 545 Bamberg, SC 29003	(803) 245-5181
Barnwell	Post Office Box 366 Barnwell, SC 29812	(803) 259-1141
Beaufort	13 Munch Drive Beaufort, SC 29902	(803) 524-7255
Berkeley	Post Office Box 698 Moncks Corner, SC 29461	(803) 761-8481
Calhoun	Post Office Box 406 St. Matthews, SC 29135	(803) 874-3231
Charleston	6355-C Fain Blvd. North Charleston, SC 29406-4989	(803) 740-1655
Cherokee	Post Office Box 237 Gaffney, SC 29340	(864) 489-2844
Chester	Post Office Box 386 Chester, SC 29706	(803) 377-8101
Chesterfield	Post Office Box 649 Chesterfield, SC 29709	(803) 623-2543
Clarendon	Post Office Box 26 Manning, SC 29102	(803) 435-4431
Colleton	Post Office Box 169 Walterboro, SC 29488	(803) 538-8031
Darlington	Drawer 495 Darlington, SC 29532	(803) 393-6171
Dillon	Post Office Box 1009 Dillon, SC 29536	(803) 774-7376
Dorchester	Post Office Box 96 St. George, SC 29477	(803) 563-3451

Edgefield	Post Office Box 490 Edgefield, SC 29824	(803) 637-6511
Fairfield	Post Office Box 261 Winnsboro, SC 29180	(803) 635-4222
Florence	Post Office Box 1911 Florence, SC 29501	(803) 661-4715
Georgetown	Post Office Box 593 Georgetown, SC 29442	(803) 546-2405
Greenville	13 Saluda Dam Road Greenville, SC 29611	(864) 241-1224
Greenwood	501 W. Alexander Avenue Greenwood, SC 29646	(864) 227-6701
Hampton	Post Office Box 278 Hampton, SC 29924	(803) 943-3721
Horry	Post Office Box 1663 Conway, SC 29526	(803) 365-2130
Jasper	Drawer 490 Ridgeland, SC 29936	(803) 726-3431
Kershaw	Post Office Box 509 Camden, SC 29020	(803) 432-4358
Lancaster	Post Office Box 929 Lancaster, SC 29721	(803) 283-3397
Laurens	Post Office Box 750 Laurens, SC 29360	(864) 984-7632
Lee	Post Office Box 191 Bishopville, SC 29010	(803) 484-6236
Lexington	Post Office Box 70 Lexington, SC 29072	(803) 359-4103
McCormick	Route 2 Post Office Box 83T Road 53 McCormick, SC 29835	(864) 465-2216
Marion	Post Office Box 986 Marion, SC 29571	(803) 431-1130
Marlboro	Post Office Box 276 Bennettsville, SC 29512	(803) 479-4161
Newberry	Drawer 39 Newberry, SC 29108	(803) 276-0554
Oconee	Post Office Box 38 Richland, SC 29675	(864) 647-0798

Orangeburg	Post Office Box 508 Orangeburg, SC 29116-0508	(803) 531-6870
Pickens	Post Office Box 877 Pickens, SC 29671	(864) 859-0039
Richland	7201 Fairfield Road Post Office Box 191 Columbia, SC 29202	(803) 786-0128
Saluda	Post Office Box 715 Saluda, SC 29138	(864) 445-2586
Spartanburg	Post Office Box 5706 Spartanburg, SC 29304	(864) 587-4725
Sumter	Post Office Box 417 Sumter, SC 29150	(803) 778-5466
Union	Post Office Box 458 Union, SC 29379	(864) 427-3575
Williamsburg	Post Office Box 190 Kingstree, SC 29556	(803) 354-7491
York	Post Office Box 2932 CRS Rock Hill, SC 29731	(803) 327-6186


GREENVILLE
PICKENS
PICKENS
WALHALLA
OCONEE
ANDERSON
ANDERSON
GREENVILLE
SPARTANBURG
SPARTANBURG
CHEROKEE
GAFFNEY
YORK
YORK
UNION
UNION
CHESTER
CHESTER
LANCASTER
LANCASTER
CHESTERFIELD
CHESTERFIELD
BENNETTSVILLE
MARLBORO
LAURENS
LAURENS
FAIRFIELD
WINNSBORO
KERSHAW
CAMDEN
DARLINGTON
DARLINGTON
DILLON
DILLON
ABBEVILLE
ABBEVILLE
GREENWOOD
GREENWOOD
NEWBERRY
NEWBERRY
SALUDA
SALUDA
BISHOPVILLE
LEE
FLORENCE
FLORENCE
MARION
MARION
HORRY
CONWAY
McCORMICK
McCORMICK
EDGEFIELD
EDGEFIELD
LEXINGTON
LEXINGTON
COLUMBIA
RICHLAND
SUMTER
SUMTER
CALHOUN
ST. MATTHEWS
MANNING
CLARENDON
KINGSTREE
WILLIAMSBURG
GEORGETOWN
GEORGETOWN
AIKEN
AIKEN
ORANGEBURG
ORANGEBURG
BARNWELL
BARNWELL
BAMBERG
BAMBERG
ST. GEORGE
DORCHESTER
BERKELEY
MONCK'S CORNER
ALLENDALE
ALLENDALE
COLLETON
WALTERBORO
HAMPTON
HAMPTON
CHARLESTON
NORTH CHARLESTON
JASPER
RIDGELAND
BEAUFORT
BEAUFORT
1
2
3
4
5
6
7
District 1 Office
District 2 Office
District 3 Office
District 4 Office
District 5 Office
District 6 Office
District 7 Office
N
ENGINEERING DISTRICTS
SCDOT
South Carolina Department of Transportation

A-208805

Appendix B

Directions for Completion of Permit Application

Note: Reference the following eight guidelines to the sample permit applications on pages B-2 through B-3. See pages B-4 and B-5 for a checklist and sample sketches.

1) A permit number will be assigned by the Department.

2) Fill in name and address of applicant (owner or his or her agent). Provide telephone number(s) at which the contact person may be reached 24 hours a day, 7 days a week. Give name of contact person if different from applicant.

3) Provide name of county, road or route number, and road name if known.

4) Provide a detailed description of the type of encroachment (driveway, landscape, subdivision street, etc.).

5) Provide description of location. For example, "2.1 miles north of intersection of road S-04-22" or "300 feet west of road S-04-66." This information shall also be included on the drawing as instructed in the permit application checklist.

6) Provide applicant's name and signature and date of application.

7) The Department will provide the date by which the work is to be completed.

8) The Department will add any special provisions to the permit. For example, "applicant shall erect Department approved stop signs" or "work shall only be done between hours of 9 A.M. and 4 P.M. on weekdays."

S.C. DEPARTMENT OF TRANSPORTATION
FORM 638 (REV. 7/93)

APPLICATION FOR ENCROACHMENT PERMIT

No. ①

(ENCROACHMENT PERMIT OTHER THAN A PUBLIC UTILITY)

APPLICANT: AND ADDRESS: ② TELEPHONE NUMBER:	COUNTY: ROAD/ROUTE: ③ ROAD NAME:

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
3. **Description of location:**

⑤

(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.

⑥

APPLICANT NAME: _____ DATE: _____
(PLEASE PRINT OR TYPE)

APPLICANT SIGNATURE: _____ TITLE: _____

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 _____. ⑦

SPECIAL PROVISIONS:

⑧

DATE RECEIVED BY RES. MAINT. ENGR.	DATE FORWARDED	SCDOT APPROVAL	DATE
DATE RECEIVED BY DIST. ENGR. ADMIN.	DATE FORWARDED	☐ RESIDENT MAINTENANCE ENGINEER ☐ DISTRICT ENGINEERING ADMINISTRATOR	☐ STATE HIGHWAY ENGINEER ☐ DISTRICT MAINT./CONSTRUCTION ENGINEER

GENERAL PROVISIONS

1. **NOTICE PRIOR TO STARTING WORK**: Before starting the work contemplated herein within the limits of the highway right of way, the Department's Maintenance Superintendent in the county in which the proposed work is located shall be notified 24 hours in advance so that he may be present while the work is under way and this permit is subject to any further restrictions.

2. **PERMIT SUBJECT TO INSPECTION**: This permit shall be kept at the site of the work at all times while said work is under way and must be shown to any representative of the Department or law enforcement officer on demand.

3. **PROTECTION OF HIGHWAY TRAFFIC**: Adequate provisions shall be made for the protection of the highway traffic at all times. Necessary detours, barricades, warning signs and flagmen shall be provided by and at the expense of the permittee and shall be in accordance with the South Carolina Manual on Uniform Traffic Control Devices. The work shall be planned and carried out so that there will be the least possible inconvenience to the highway traffic. The permittee agrees to observe all rules and regulations of the Department while carrying on the work contemplated herein and take all other precautions that circumstances warrant.

4. **STANDARDS OF CONSTRUCTION**: All work shall conform to recognized standards of construction and shall be performed in a workmanlike manner. Adequate provisions shall be made for maintaining the proper drainage of the highway. All work shall be subject to the supervision and satisfaction of the Department.

5. **FUTURE MOVING OF PHYSICAL APPURTENANCES**: If, in the opinion of the State Highway Engineer, it should ever become necessary to move or remove the physical appurtenances, or any part thereof contemplated herein, on account of change in location of the highway, widening of the highway, or for any other sufficient reason, such moving or removing shall be done on demand of the Department at the expense of the permittee.

6. **RESTORATION OF HIGHWAY FACILITIES UPON MOVING OR REMOVING OF PHYSICAL APPURTENANCES**: If, and when, the physical appurtenances contemplated herein shall be moved or removed, either on the demand of the Department or at the option of the permittee, the highway and facilities shall immediately be restored to their original condition at the expense of the permittee.

7. **COSTS**: All work in connection with the construction, maintenance, moving or removing of the physical appurtenances contemplated herein shall be done by and at the expense of the permittee.

8. **PERMITTEE**: The word "Permittee" used herein shall mean the name of the person, firm, or corporation to whom this permit is addressed, his, her, its, heirs, successors and assigns.

9. **PERMISSION OF ABUTTING PROPERTY OWNERS**: It is distinctly understood that this permit does not in any wise grant or release any rights lawfully possessed by the abutting property owners. Any such rights necessary shall be secured from said abutting property owners by the permittee.

10. **WORK PERFORMANCE**:
   (a) Poles shall be placed at the distance from the centerline of the highway as specifically stipulated herein.
   (b) All crossings over the highway shall be constructed in accordance with Specifications for Overhead Crossings of Light and Power Transmission Lines and Telephone and Telegraph Lines over each other and over Highway Rights of Way in South Carolina, as approved by the Public Service Commission of South Carolina and operative as of date of this permit.
   (c) All tunnelling, boring, or jacking shall be done in such a way as not to disturb the highway surfacing.
   (d) No pavement shall be cut unless specifically authorized herein.
   (e) No excavation shall be nearer than three feet to the edge of pavement unless specifically authorized herein.
   (f) Underground facilities will be located at minimum depths as defined in the Utility Accommodations Manual for the transmittant, generally as follows: (1) Bury under pavement - 4 feet minimum for hazardous or dangerous transmittant; 3 feet minimum for other lines. (2) Bury under other surfaces - 30 inches minimum for power and communication lines and 3 feet for all other facilities. Shallower depths may be approved if adequate protection is provided.
   (g) Service and other small diameter pipes shall be jacked, driven, or otherwise forced underneath the pavements on any surfaced road without disturbing said pavement. The section under the highway pavement and within a distance of two (2) feet on either side shall be continuous without joints.
   (h) Work shall be performed in accordance with the Department's "A Policy for Accommodating Utilities on Highway Rights-of-Way", and "Standard Specifications for Highway Construction".

11. For the purpose of this permit, the word "DEPARTMENT" shall mean the South Carolina Department of Transportation.

12. The permittee shall be responsible for obtaining any other approvals or permits necessary for installation.

13. Permittee is responsible for maintaining reasonable access to private driveways during construction.

14. It is expressly provided that with respect to any limited access highway, the permittee shall not have or gain access from the main travel way of said highway or its on or off ramps to any facility authorized by this permit except upon approval by the Department.

15. **DRIVEWAYS AND APPROACHES**:
   (a) The existing crown of the highway shall be continued to the outside shoulder line of the highway.
   (b) If the driveway or approach is of concrete pavement, the pavement shall be constructed at least 6 inches thick, and of a mix not leaner than 1-2-4. There shall be a bituminous expansion joint, not less than ¾ inches in thickness, placed between the highway paving and the paving of the approach for the full width of the latter.

16. **RAILROAD TRACKS**:
   (a) The rails of railroad tracks crossing the highway at grade shall conform to the grade of the highway.
   (b) The provisions of the Code of Laws for South Carolina as amended regarding the construction and maintenance of railroad and highway grade crossings shall be complied with in all respects.
   (c) Unless specifically authorized herein, all engines, trains or cars operating over the tracks across the highway at grade shall be brought to a complete stop immediately before crossing the highway and before proceeding across the highway, flagmen carrying a red flag by day and a lantern by night shall be stationed on each side of the train to warn approaching highway traffic. Should the permittee fail to consistently operate the railroad in accordance with this section, after having received written notice from the Highway Department of such failure, this permit shall automatically become null and void insofar as the continuance of the railroad is concerned.
   (d) The railroad track contemplated herein and its appurtenances shall be completely removed from the highway right of way within 60 days if, when, and after operations across the highway on the railroad shall have been abandoned, and the highway replaced in at least as good condition as the adjacent sections of the highway may be at the time of abandonment of said operations. The cost of same shall be borne by the permittee.

17. **BEAUTIFICATION WORK**:
   (a) All trees, plants, flowers, etc., shall be placed in accordance with the provisions specifically stipulated herein.
   (b) All trees, plants, flowers, etc., shall be taken care of by and at the expense of the permittee and the provisions of this letter shall become null and void if and when said permittee ceases to take care of said trees, plants, flowers, etc.

18. There shall be no excavation of soil nearer than two feet of any public utility line or appurtenant facility except with the consent of the owner thereof, or except upon special permission of this Department after an opportunity to be heard is given the owner of such line or appurtenant facility.

White Copy to be kept by Permittee. Blue Copy to be returned to this Department, Columbia, South Carolina. Pink Copy for files of District Engineering Administrator. Canary Copy for files of Maintenance Superintendent.

Encroachment Permit Application Checklist

I. Permit Form: The appropriate completed quadruplicate form is required.

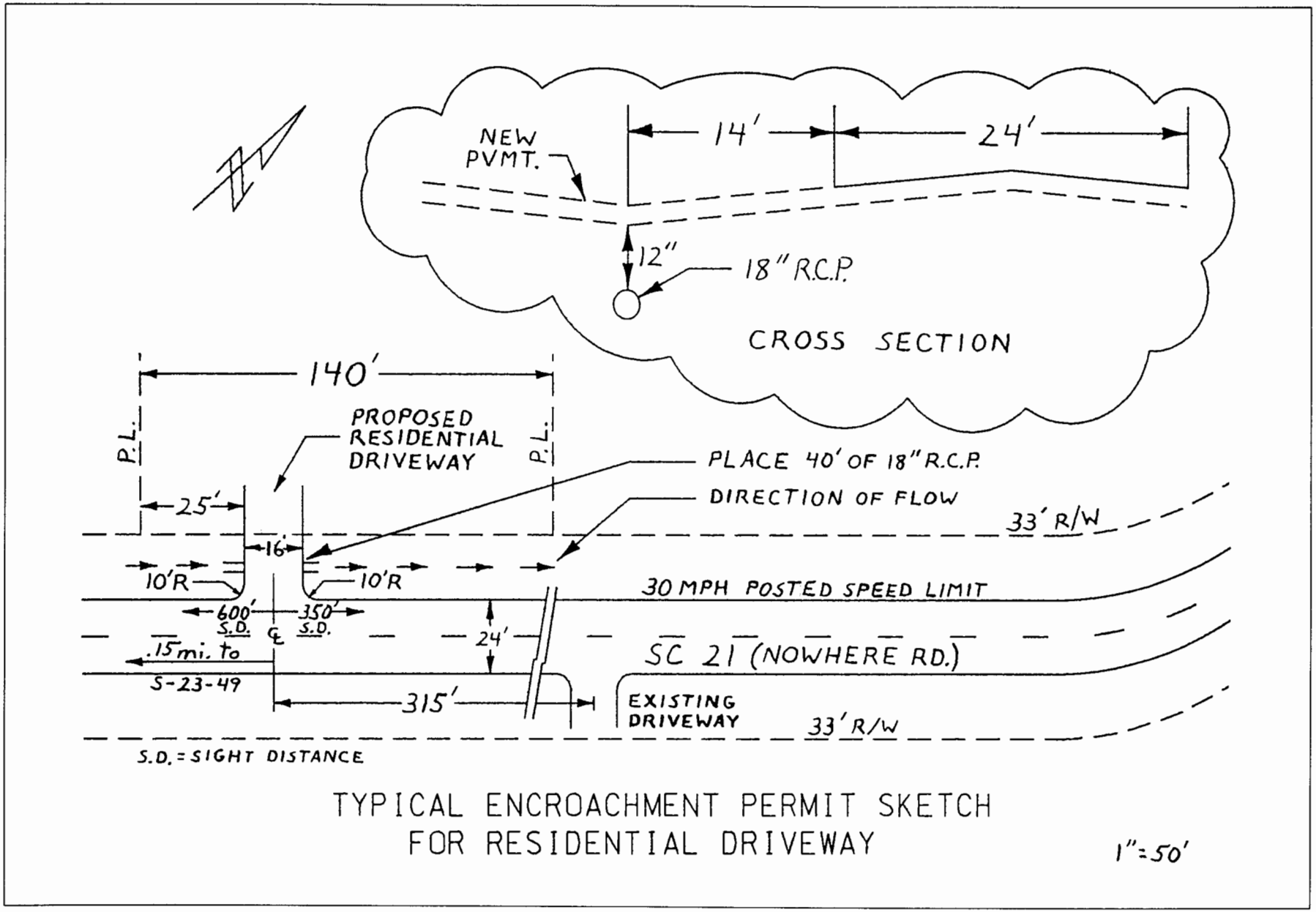
II. Drawing: At least four copies of a drawing are to be included, giving details of the proposed work and existing conditions and including but not limited to the following:

1) Roadway on which the encroachment is located.
2) Direction and distance to the nearest intersecting State and county roadways, if applicable.
3) North arrow.
4) Drawing to be to scale. For example, 1" = 20' (1:250), 1" = 50' (1:600), etc.
5) Existing and proposed roadway geometry including pavement widths, curves, driveways, etc.
6) Existing and proposed pavement design, if applicable.
7) Existing and proposed drainage features with flow direction.
8) Existing right-of-way and associated property lines.
9) Existing sight distance, if applicable.
10) Proposed utility work.
11) Traffic Control Plan, if applicable.
12) Erosion control.

Note: Drawing should be submitted on 8½" x 11" (215.9 x 279.4 mm) [or 11" x 17" (279.4 mm x 431.8 mm)] size paper. A 36" x 22" (914.4 x 558.8 mm) site plan showing the relationship of the driveways to the circulation plan and the site development may be required. When readily available, a 36" x 22" (914.4 x 558.8 mm) site plan should be submitted initially to facilitate review of the application.

III. Proof of Bonding: Evidence of any required bond must accompany the permit application.

IV. Stormwater Management and Sediment Control Plan: All applications for encroachment permits that involve bringing stormwater water runoff or sediment to the highway for a developed area of 2.0 acres or more must include a copy of a Stormwater Management and Sediment Control Plan approved by DHEC, the local government, or the conservation district responsible for approving such plans pursuant to The Stormwater Management and Sediment Reduction Act. See S. C. Code Ann. Section 48-14-10, et seq. (Supp. 1995). The plan should include drainage design computations. If the area is less than 2 acres, the application must include a drainage plan with supporting design computations limiting the post construction 10-year peak discharge to the pre-developed 10-year peak.



TYPICAL ENCROACHMENT PERMIT SKETCH
FOR RESIDENTIAL DRIVEWAY

1"=50'

AD53810

Appendix C

Standard and Typical Drawings

Minimum Driveway Location Standards C-2

Typical Driveway – Single Residences and Small Apartment Complexes C-3

Typical Commercial Two-Way Driveway C-4

Typical Commercial One-Way Driveways C-5

Typical Corner Lot Commercial Driveways C-6

High-Turnover or Drive-Through Commercial One-Way Driveways C-7

Typical Access to Outparcel – #1 ..... C-8

Typical Access to Outparcel – #2 ..... C-9

Plan of Standard High-Volume Driveway or Intersecting Street C-10

Profile of Standard High-Volume Driveway or Intersecting Street C-11

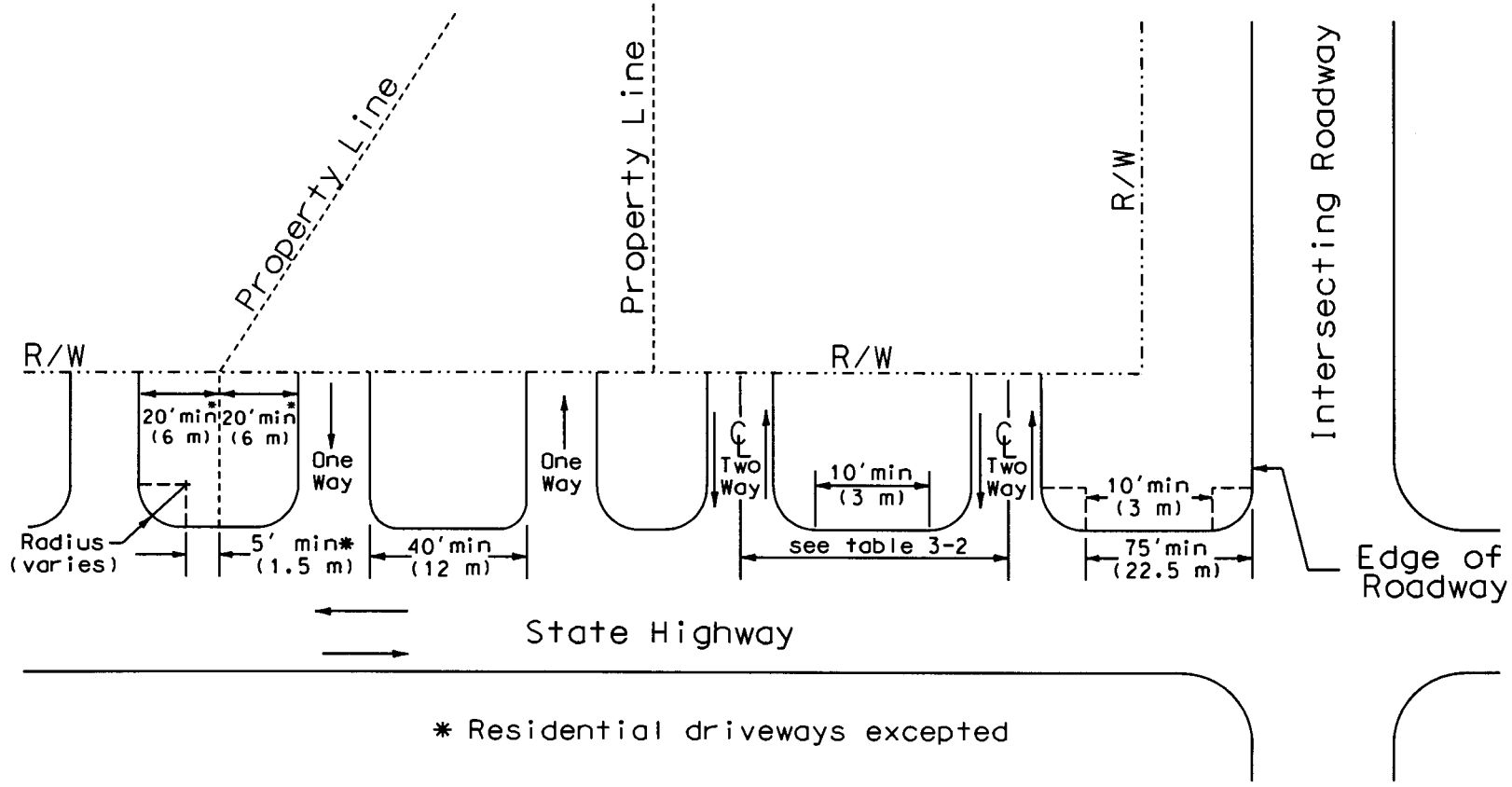
Detail of Standard Drop-Curb Driveway Where Sidewalk is Adjacent to Curb C-12

Detail of Standard Drop-Curb Driveway Where No Sidewalk Exists or A Grass Plot of 7'4¾" (2.25 m) or Greater Exists C-13

Detail of Drop-Curb Driveway Where A Grass Plot of Less Than 7'4¾" (2.25 m) Exists C-14

Angle Parking Geometry C-15

MINIMUM DRIVEWAY LOCATION STANDARDS



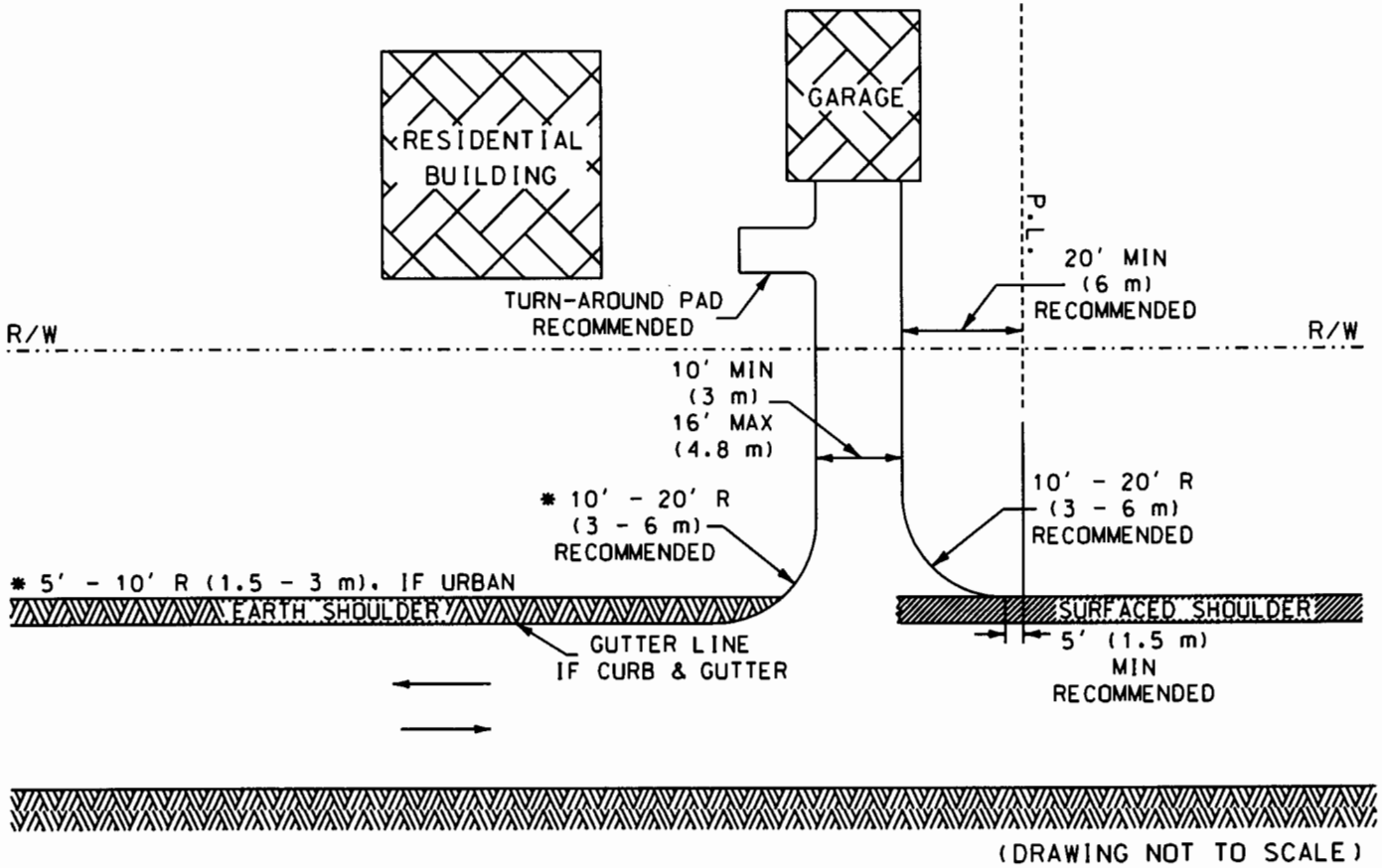
See table 3-3 for sight distance requirements

(DRAWING NOT TO SCALE)

C-2

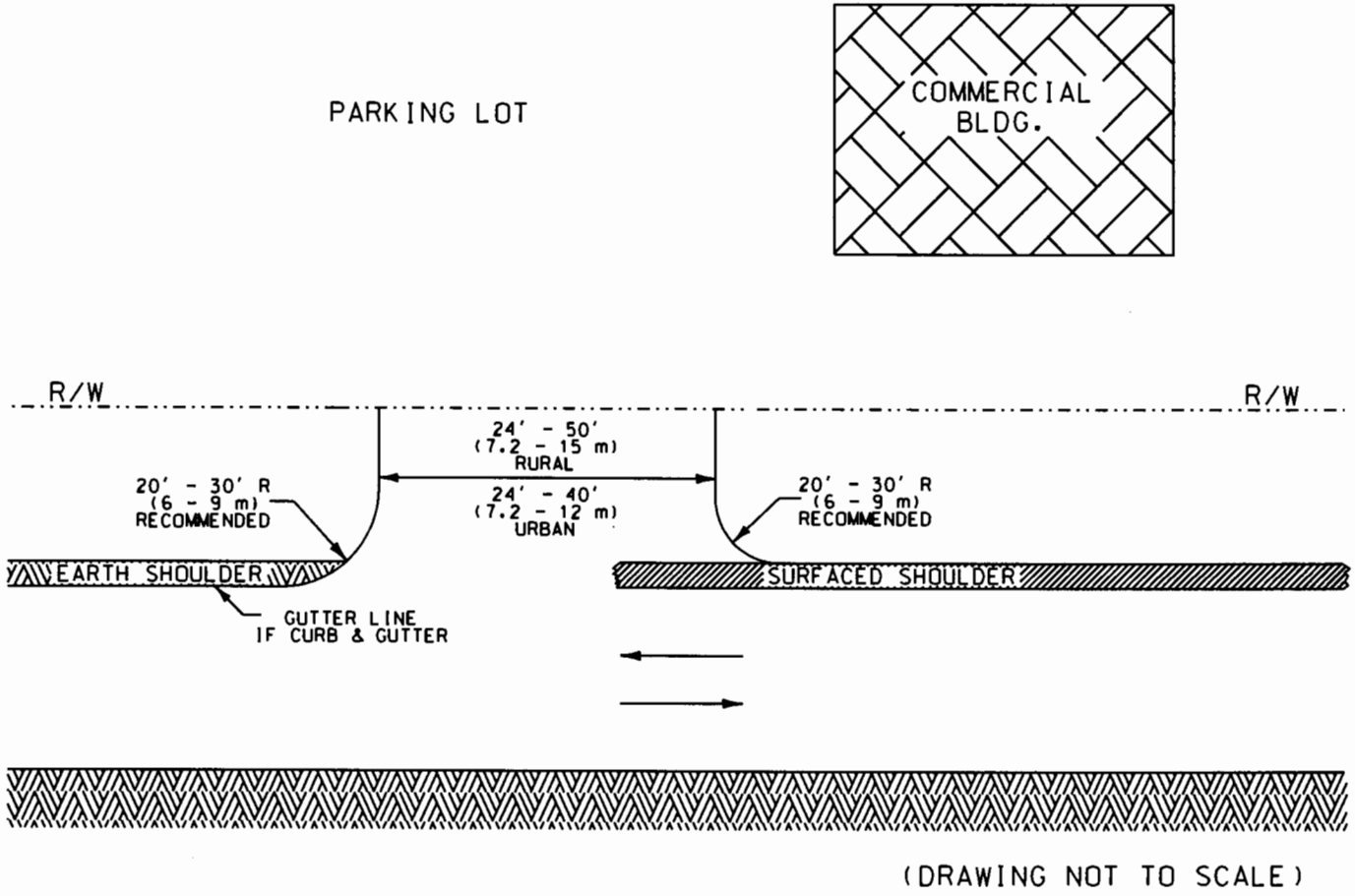
A05812

TYPICAL DRIVEWAY
SINGLE RESIDENCES AND SMALL APARTMENT COMPLEXES



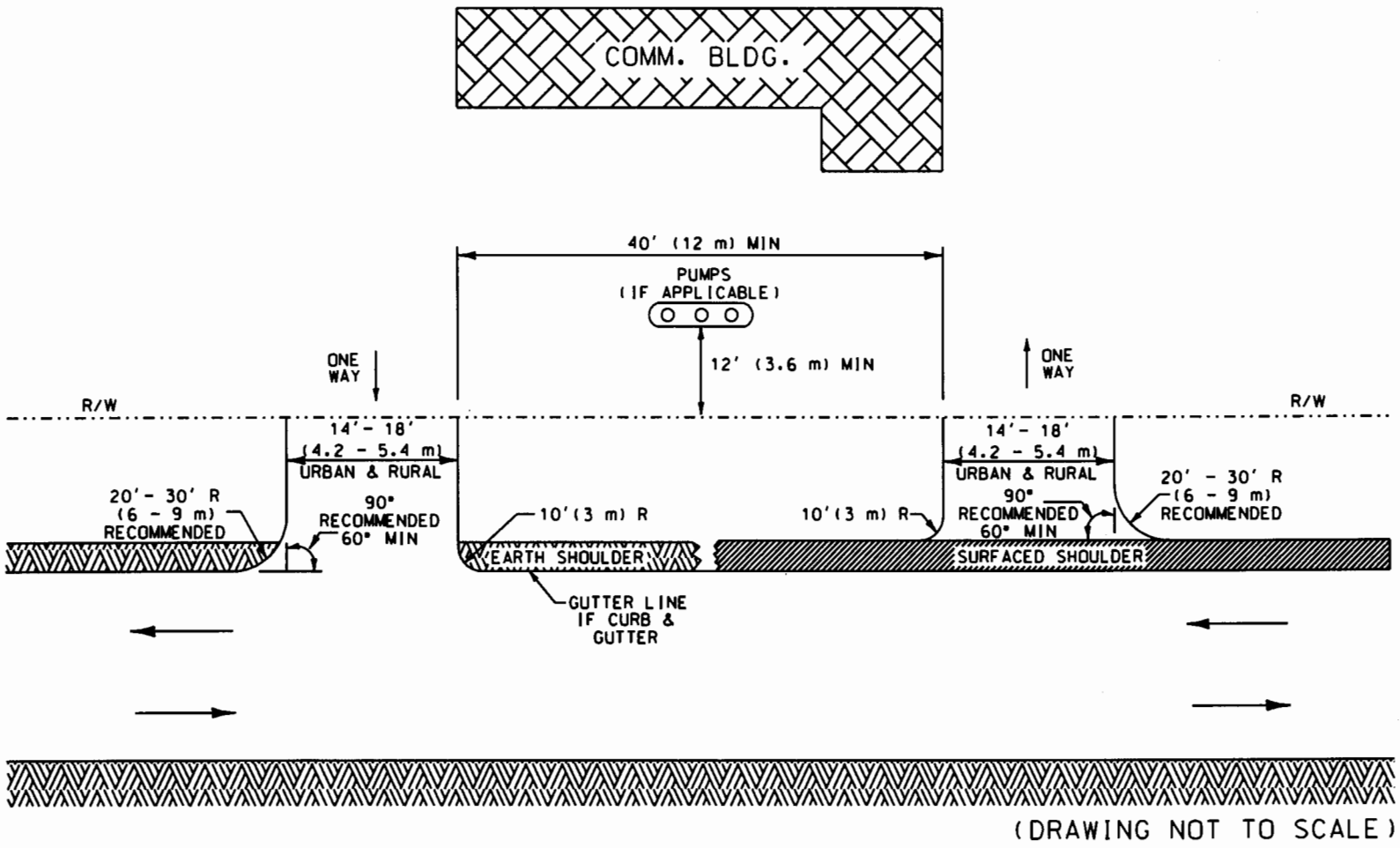
A056813

TYPICAL COMMERCIAL TWO-WAY DRIVEWAY



(DRAWING NOT TO SCALE)

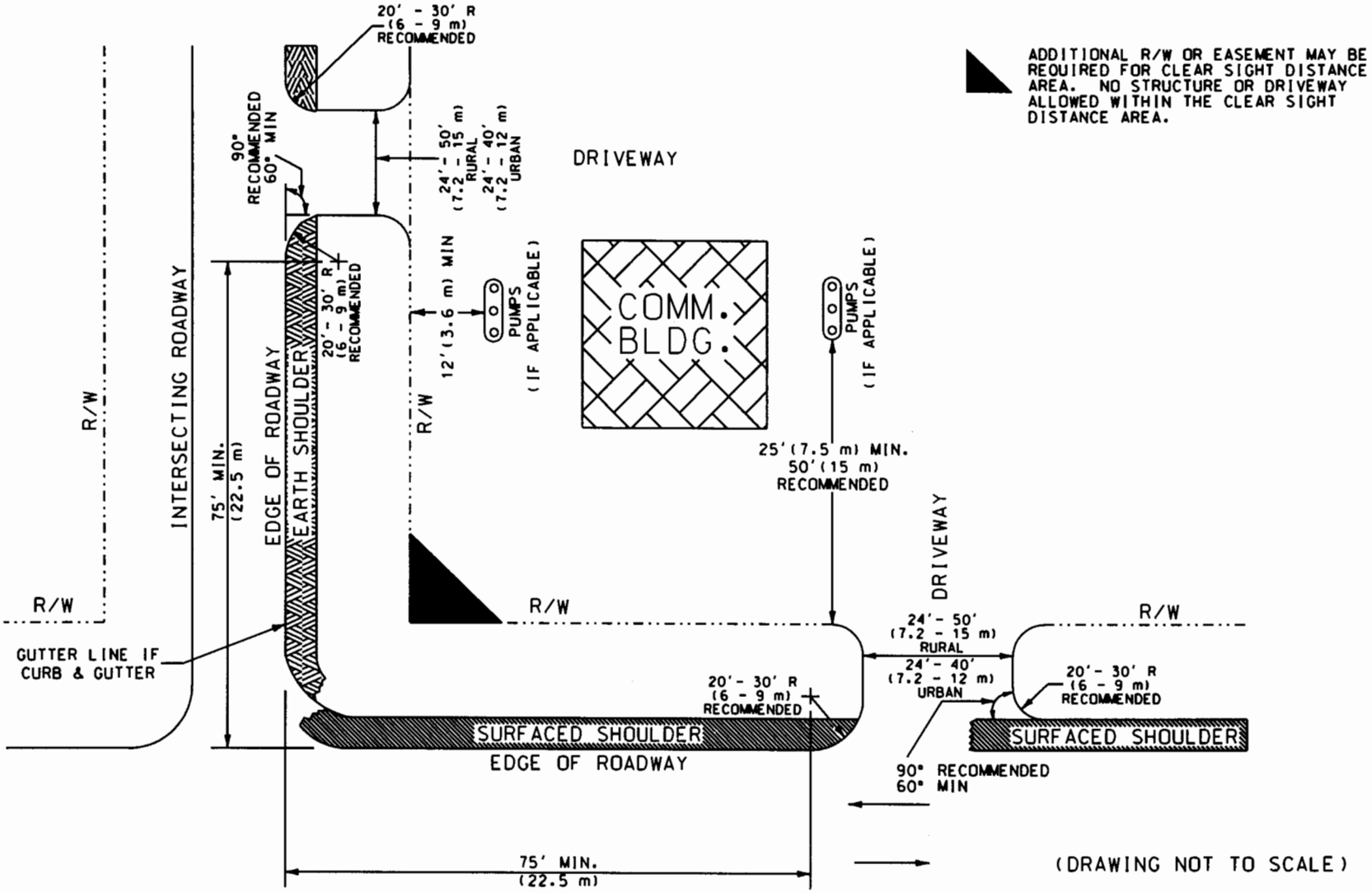
TYPICAL COMMERCIAL ONE-WAY DRIVEWAYS



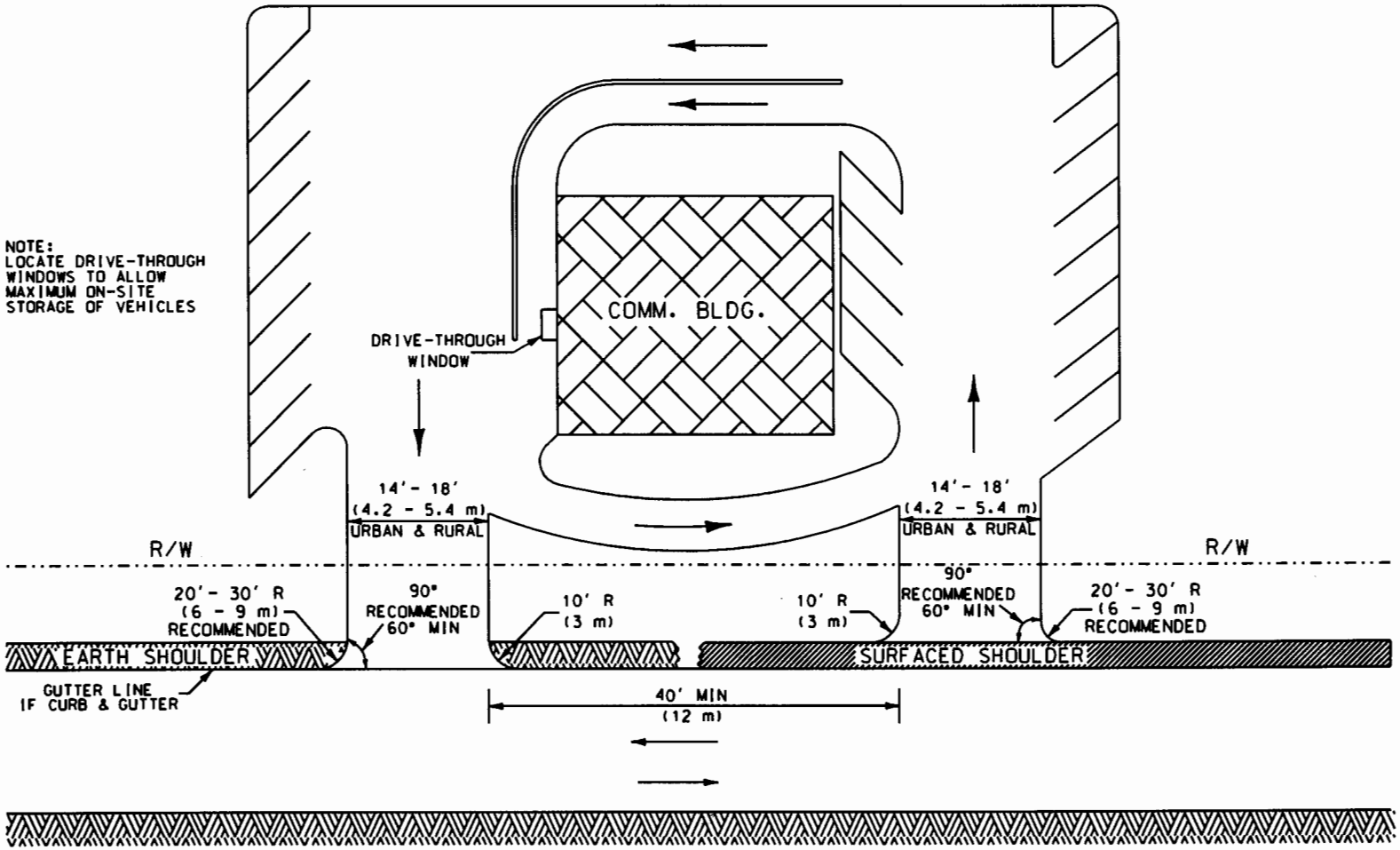
(DRAWING NOT TO SCALE)

A058815

TYPICAL CORNER LOT COMMERCIAL DRIVEWAYS



HIGH-TURNOVER OR DRIVE-THROUGH COMMERCIAL ONE-WAY DRIVEWAYS

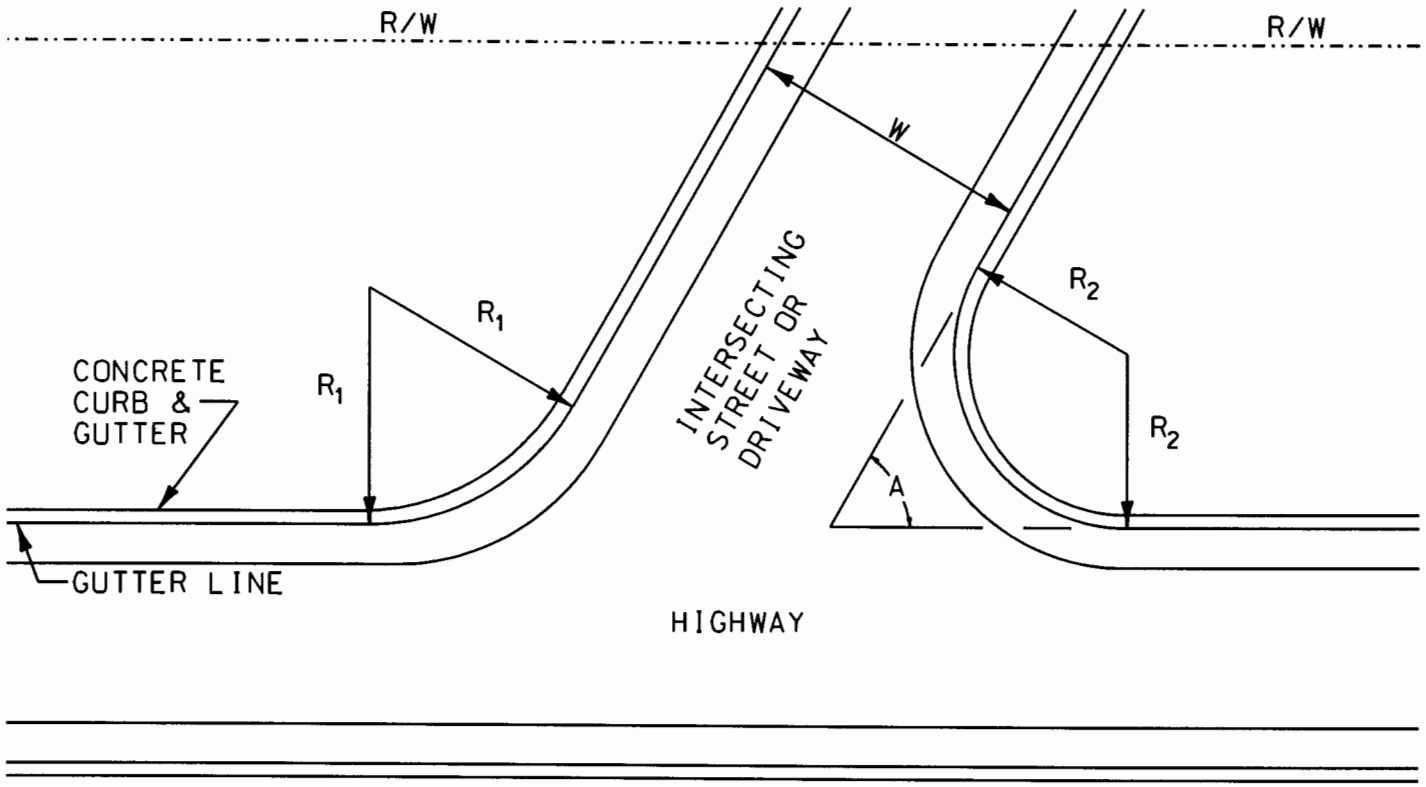


A060817

TYPICAL ACCESS TO OUTPARCEL - #1
BUILDING
Driveway
Driveway
Roadway
150' - 250'
(45 - 75 m)
Recommended
Roadway
Out Parcel
Comm. Bldg.
Driveway

TYPICAL ACCESS TO OUTPARCEL - #2
BUILDING
Driveway
Roadway
150' - 250'
(45 - 75 m)
Recommended
Out Parcel
Comm. Bldg.
Out Parcel
Comm. Bldg.
Out Parcel
Comm. Bldg.
Driveway
Roadway

PLAN OF STANDARD HIGH-VOLUME DRIVEWAY OR INTERSECTING STREET

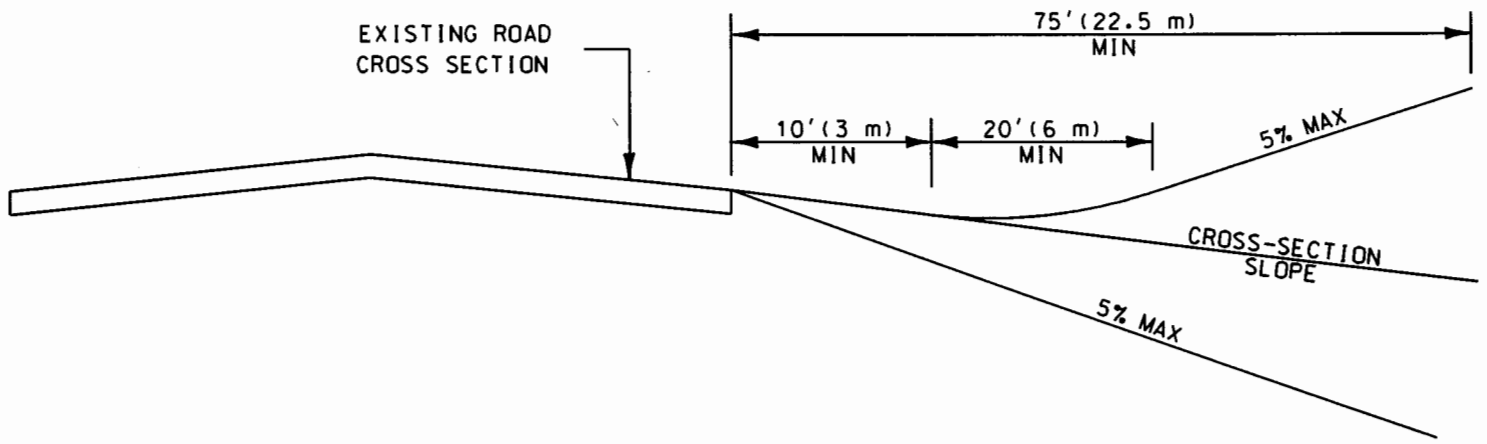


W = WIDTH (MEASURED FROM CURB FACE TO CURB FACE* AT 90° TO APPROACH)
R = RADIUS (MEASURED TO CURB FACE*)
A = ANGLE OF INTERSECTION (MIN 60°)

* IF NO CURB AND GUTTER, USE EDGE OF ROADWAY

A063820

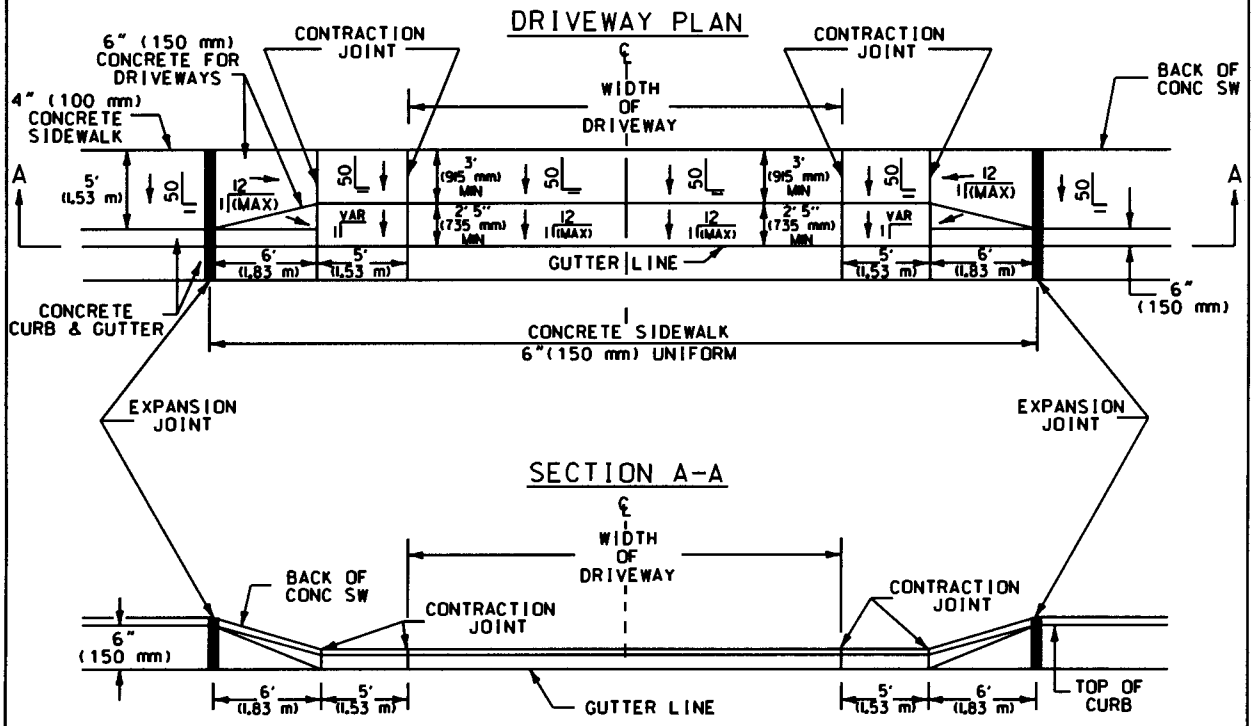
PROFILE OF STANDARD HIGH-VOLUME DRIVEWAY OR INTERSECTING STREET



(DRAWING NOT TO SCALE)

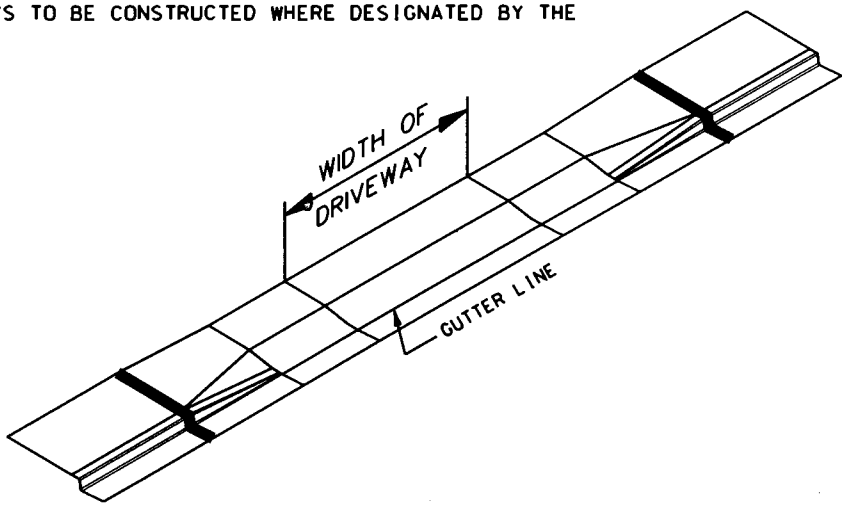
A064821

DETAIL OF STANDARD DROP-CURB DRIVEWAY WHERE SIDEWALK IS ADJACENT TO CURB

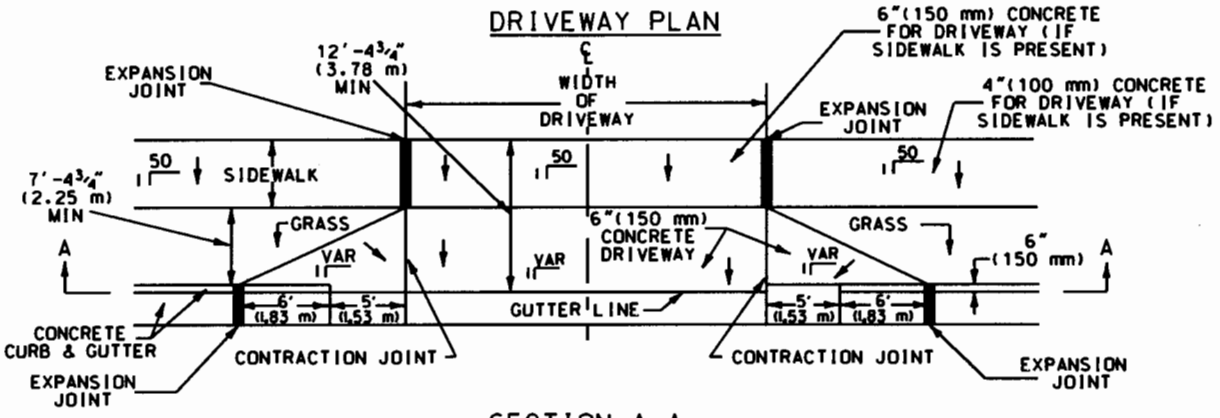


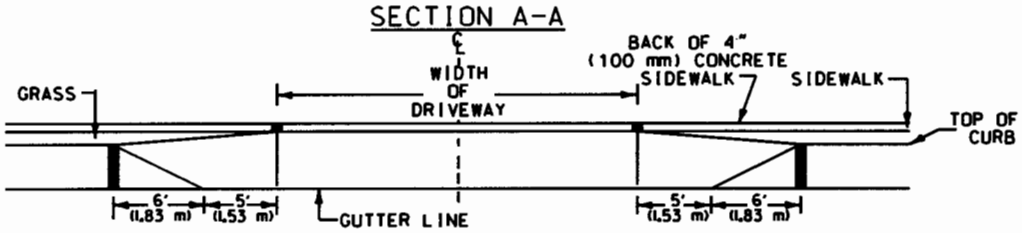
NOTE:
1. WHERE THE WIDTH OF A DRIVEWAY IS 15 FT.(4.5 m) OR GREATER. A CONTRACTION JOINT SHALL BE PLACED IN THE CENTER OF THE DRIVE. IF THE WIDTH EXCEEDS 30 FT.(9 m). TWO JOINTS SHALL BE USED.

2. DRIVEWAYS TO BE CONSTRUCTED WHERE DESIGNATED BY THE ENGINEER.



DETAIL OF STANDARD DROP-CURB DRIVEWAY WHERE NO SIDEWALK EXISTS OR A GRASS PLOT OF 7'-4 3/4" (2.25 m) OR GREATER EXISTS

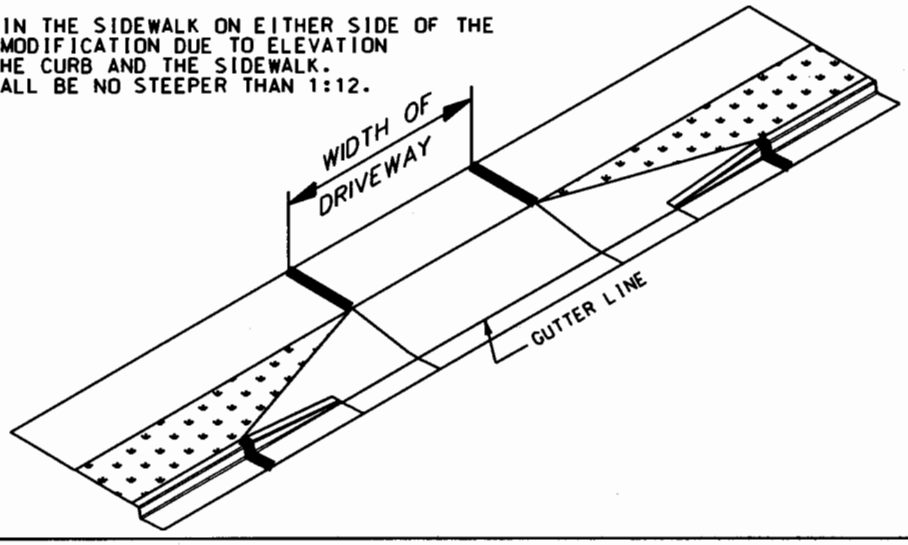




NOTE:
1. WHERE THE WIDTH OF A DRIVEWAY IS 15 FT.(4.5 m) OR GREATER. A CONTRACTION JOINT SHALL BE PLACED IN THE CENTER OF THE DRIVE. IF THE WIDTH EXCEEDS 30 FT.(9 m), TWO JOINTS SHALL BE USED.

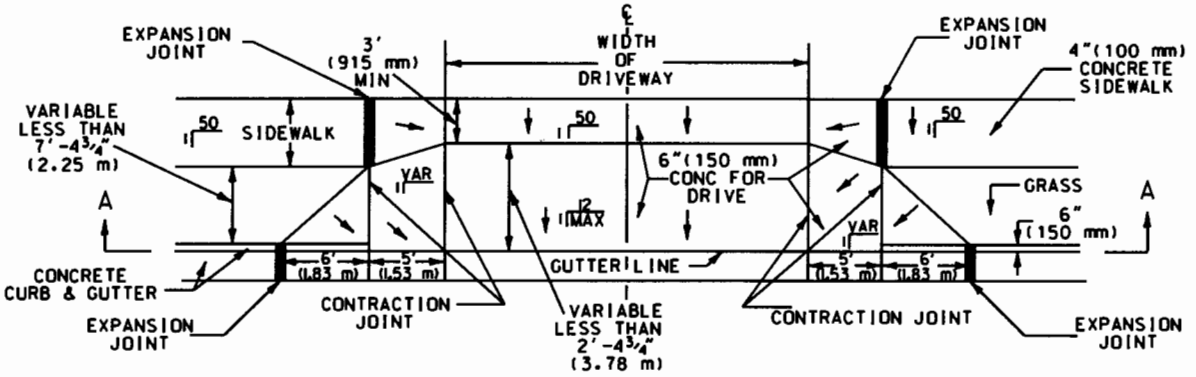
2. DRIVEWAYS TO BE CONSTRUCTED WHERE DESIGNATED BY THE ENGINEER.

3. THE FLARED SLOPE IN THE SIDEWALK ON EITHER SIDE OF THE DRIVEWAY MAY REQUIRE MODIFICATION DUE TO ELEVATION DIFFERENCES BETWEEN THE CURB AND THE SIDEWALK. HOWEVER, THE SLOPE SHALL BE NO STEEPER THAN 1:12.

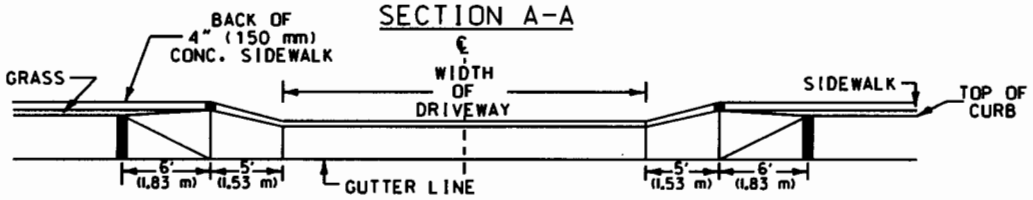


DETAIL OF DROP-CURB DRIVEWAY WHERE A GRASS PLOT OF LESS THAN 7'-4 3/4" (2.25 m) EXISTS

DRIVEWAY PLAN



SECTION A-A

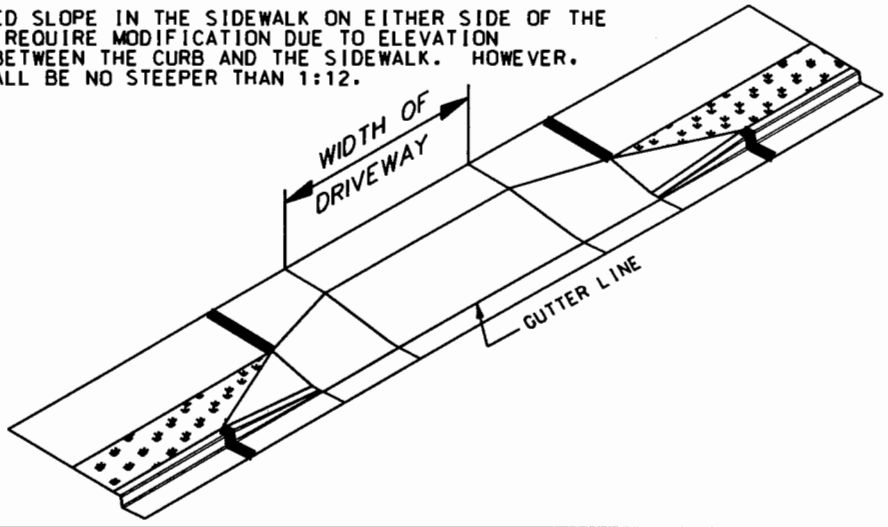


NOTE:

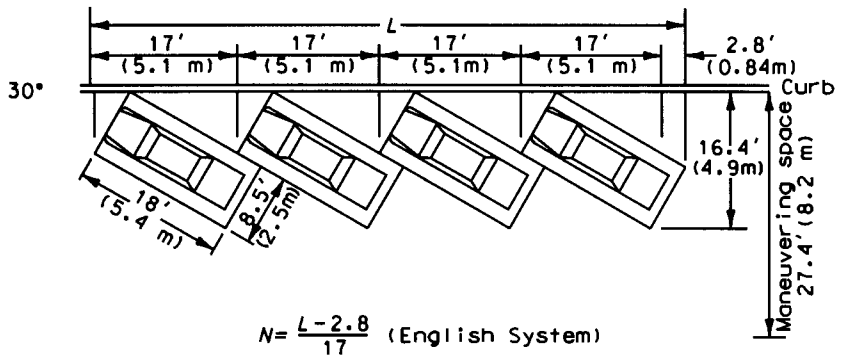
1. WHERE THE WIDTH OF A DRIVEWAY IS 15 FT.(4.5 m) OR GREATER. A CONTRACTION JOINT SHALL BE PLACED IN THE CENTER OF THE DRIVE. IF THE WIDTH EXCEEDS 30 FT.(9 m). TWO JOINTS SHALL BE USED.

2. DRIVEWAYS TO BE CONSTRUCTED WHERE DESIGNATED BY THE ENGINEER.

3. THE FLARED SLOPE IN THE SIDEWALK ON EITHER SIDE OF THE DRIVEWAY MAY REQUIRE MODIFICATION DUE TO ELEVATION DIFFERENCES BETWEEN THE CURB AND THE SIDEWALK. HOWEVER, THE SLOPE SHALL BE NO STEEPER THAN 1:12.

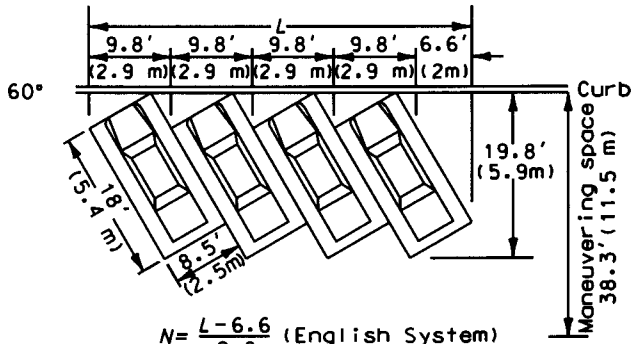


ANGLE PARKING GEOMETRY



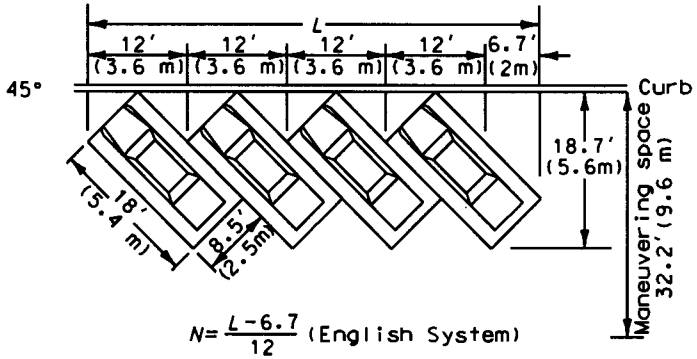
$N = \frac{L - 2.8}{17}$ (English System)

$N = \frac{L - 0.84}{5.1}$ (Metric System)



$N = \frac{L - 6.6}{9.8}$ (English System)

$N = \frac{L - 2}{2.9}$ (Metric System)

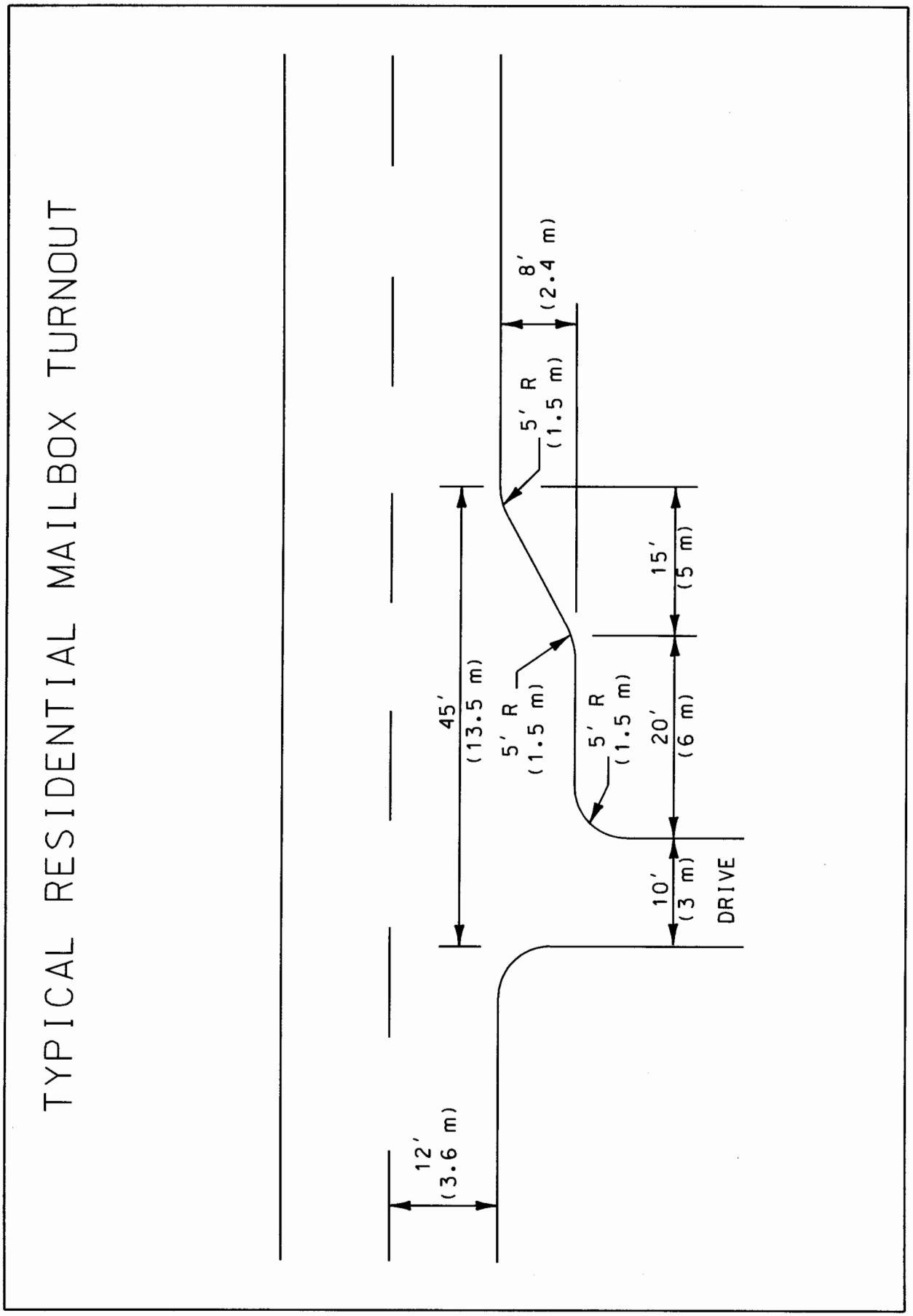


$N = \frac{L - 6.7}{12}$ (English System)

$N = \frac{L - 2}{3.6}$ (Metric System)

N = Number of spaces
L = Curb length

A008825


TYPICAL RESIDENTIAL MAILBOX TURNOUT
12'
(3.6 m)
45'
(13.5 m)
5' R
(1.5 m)
8'
(2.4 m)
5' R
(1.5 m)
15'
(5 m)
5' R
(1.5 m)
20'
(6 m)
10'
(3 m)
DRIVE

Appendix E

Engineering Directives

M-1 Encroachment Permits E-2

M-11 Daylighting Commercial and Industrial Buildings Adjacent to Controlled Access Highways E-5

M-26 Landscaping Projects Within the Department's Right-of-Way E-7

App 0827

South Carolina Department of Transportation
Engineering Directive Memorandum

Number: M-1 (revised 7/29/96)

Subject: Encroachment Permits

1. Submittal of applications. Applications for Encroachment Permits will be made available at all SCDOT offices. Permit applications must be submitted to the SCDOT county office in the county in which the encroachment will be located. 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.

2. Approval of applications. The Resident Maintenance Engineer ("RME") will review and finally approve all applications for permits, unless otherwise provided in writing by the District Engineering Administrator. Prior to final approval of permits, the RME should obtain recommendations from the following SCDOT offices:

Permit	Recommendation
Longitudinal encroachments on controlled access facilities	Utilities Engineer
Railroad crossings	Utilities Engineer
Bridge attachments	Bridge Maintenance
Major reconstruction or relocation of State-maintained roads, including storm drainage, curb, gutter and paving	Preconstruction
All road connections	Traffic Engineering
Access to major traffic generators such as shopping centers, planned developments, and industrial or office parks	Traffic Engineering
School site plans or renovations	Traffic Engineering (HQ)
Beautification	Landscape Engineer (HQ)

Where a recommendation is required from another SCDOT office prior to final approval of a permit application, the RME shall promptly forward to that office the information necessary for making the recommendation.

3. Monitoring wells. Prior to final approval of a permit application for a monitoring well, the RME must obtain from the applicant a letter from the South Carolina Department of Health and Environmental Control ("DHEC") stating that the monitoring well is required by DHEC.

4. Multi-county encroachments. Prior to final approval of applications for permits involving encroachments which cross county lines, the RME shall coordinate with the RME in the other affected county or counties.

5. Maintaining record of applications. The original application, with supporting documentation and the required recommendations and approval, shall be maintained in the RME's Office. Other offices may keep copies of the applications and approved permits as they deem appropriate.

6. No verbal approvals, extensions, or amendments. Verbal approval will not be given to perform any work until an encroachment permit for the work has been issued. All extensions, amendments or additions to existing permits must be in writing.

7. Traffic control responsibilities. Traffic control devices and procedures required during the installation and maintenance of the encroachment shall be the responsibility of the applicant, which shall be stated on the permit. Traffic control devices and procedures shall be in accordance with the South Carolina Manual on Uniform Traffic Control Devices (SCMUTCD).

8. Longitudinal pavement cuts. Resurfacing of the entire roadway will be required where longitudinal pavement cuts are made.

9. Stormwater Management and Sediment Control Plan. All applications for encroachment permits that involve bringing stormwater water runoff or sediment to the highway for a developed area of 2.0 acres or more must include a copy of a Stormwater Management and Sediment Control Plan approved by DHEC, the local government, or the conservation district responsible

for approving such plans pursuant to The Stormwater Management and Sediment Reduction Act. See S. C. Code Ann. Section 48-14-10, et seq. (Supp. 1995). The plan should include drainage design computations. If the area is less than 2 acres, the application must include a drainage plan with supporting design computations limiting the post construction 10-year peak discharge to the pre-developed 10-year peak.

Approved: W. A. Keller III
Deputy Director of Engineering

Effective date: 7-29-96

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

ENGINEERING DIRECTIVE MEMORANDUM

Number: M-11 (Revised 5-5-93)

Subject: Daylighting Commercial and Industrial Buildings Adjacent to Controlled Access Highways

For Policy: See Engineering Policy Memorandum No. 19

In order to make the area surrounding commercial and industrial building sites more attractive and visible, it is proposed to allow selective clearing within the Department's rights-of-way in accordance with the Policy of Vegetation Preservation on SC Highways and the following procedures:

1. An Encroachment Permit will be required in the usual manner.

2. Only bona fide commercial and industrial establishments will be allowed to participate in this program. Locations consisting of sign locations only shall be excluded.

3. Prior to submitting an Application for Encroachment Permit to the Columbia office, the Landscape Architect, the District Outdoor Advertising Coordinator, the Resident Maintenance Engineer, and the applicant's representative shall make an on-site inspection and determine what type of work will be allowed within the right-of-way. The work shall be limited to limbing up of large trees, the removal of selected small trees, the removal of underbrush and vines, and mowing as necessary. After the team makes a determination of the extent of work to be accomplished, they shall mark the trees to be removed and show all work agreed upon the application in the usual manner.

4. The extent of the area to be daylighted shall generally be limited to the right-of-way immediately in front of the applicant's property. (Property line to property line and abutting the right-of-way line.)

5. Any trees of 6" diameter or larger that the Department determines can be cut shall be replaced with another tree and/or shrub as approved by the Landscape Architect. The replacement trees or shrubs shall be detailed on a sketch plan and prepared by a reputable landscaping firm who will also perform the removal and replanting as specified thereon. All tree removal and planting, and shrubbery planting shall be in accordance with the S.C.D.H.P.T. Standard Specifications - 1986 Ed, and Special Provisions shown on the Encroachment Permit. The Department may also require the planting of trees, shrubbery, and wildflowers where no 6" or larger caliper trees are removed in keeping with the specific area or locale where the work is performed.

6. Perpetual maintenance of the area will not be allowed. When additional work becomes necessary to renew the visibility, another Encroachment Permit will be required.

7. No work shall be accomplished from the mainline side of the controlled access facility. Ingress and egress from the work area shall be made from private property and shall so be stated on the "Application for Encroachment Permit."

8(a) A performance and idemnity bond in the amount of $5,000.00 or an equivalent guarantee, as approved by the Department, will be required and shall be submitted along with the application. The bond or approved equivalent is to guarantee the completion of the work in accordance with the approved encroachment permit.

(b) When an approved guarantee other than a performance bond is accepted, such as a money order or cashiers check, it shall be promptly submitted using Form 3025A in the usual manner. The following entry should be made thereon:

"To be deposited in Special Account Number 3900.950"

When the work is successfully completed a Form 608 shall be submitted to reimburse the permittee using the above account number as the charge code.

9. This type permit should be used only where a legitimate need is to be served and should be kept to a minimum.

Approved: _____
Director of Maintenance

Effective Date: 5 - 5 - 93

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

ENGINEERING DIRECTIVE MEMORANDUM

Number: M-26

Subject: Landscaping Projects Within the Department's Right-of-Way

1. All landscaping projects within the Department's right-of-way and accomplished under a standard encroachment permit shall be maintained by the permittee or his designee.

2. Since the mowing around the plant material within a landscaped area would be costly and burdensome to most garden clubs and other permittees, the Department will be responsible for the mowing of permitted landscaped areas if the following conditions are met:

   (a) The design of the landscaped area shall be such that mowing can be accomplished by regular highway mowers that are routinely used to mow the grass on the interstate, primary, and secondary systems.

   (b) Any mowing by the Department will be in accordance with our standards and no special or additional mowings will be done.

   (c) A request, in writing, is to be made by the permittee for the Department to mow the landscaped area and a statement holding the Department harmless for any damage by our mowers will be required.

3. District and county engineering personnel should encourage landscaping and vegetation management on our streets and highways and offer suggestions to prospective permittees that will allow our mowers to work within the planted areas to eliminate hand mowing.

APPROVED: _____
Director of Maintenance

Date: 4 - 18 - 94

Appendix F

South Carolina Forestry Commission
Regional Urban Foresters

State Urban Forestry Coordinator
Post Office Box 21707
Columbia, South Carolina 29221

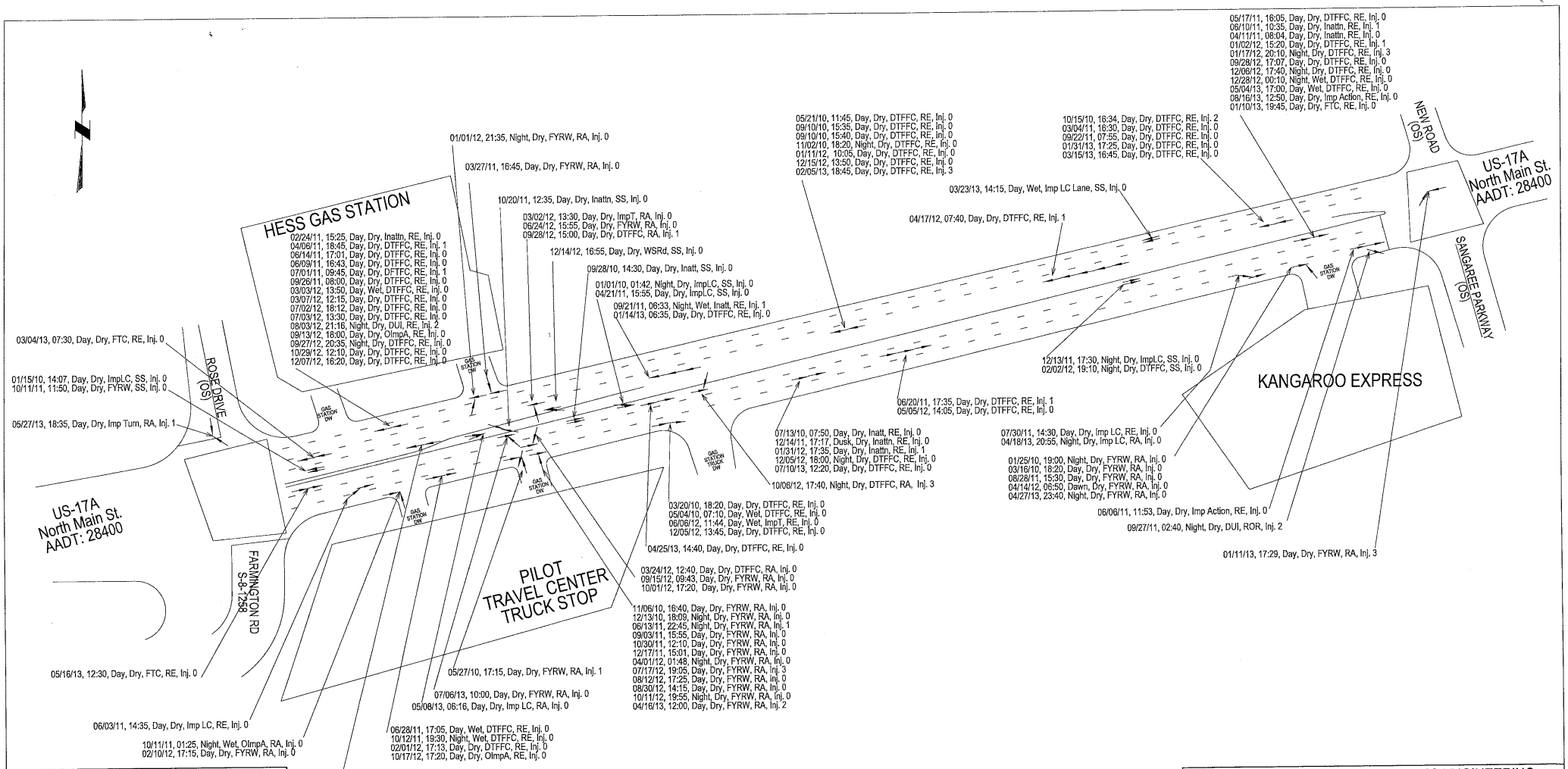
URBAN FORESTER	ASSISTANCE AREA	
Coastal Region Urban Forester 6501 Back Bay Drive Isle of Palms, South Carolina 29451 (803) 886-3183	Aiken County Allendale County Bamberg County Barnwell County Beaufort County Berkeley County Calhoun County	Charleston County Colleton County Dorchester County Hampton County Jasper County Orangeburg County
Pee Dee Region Urban Forester Post Office Box 457 Camden, South Carolina 29020 (803) 432-3181	Chesterfield County Clarendon County Darlington County Florence County Georgetown County Kershaw County Lancaster County	Lee County Lexington County Marlboro County Richland County Sumter County Williamsburg County
Piedmont Region Urban Forester Post Office Box 84 Greenwood, South Carolina 29648 (864) 374-7111	Abbeville County Anderson County Cherokee County Chester County Edgefield County Fairfield County Greenville County Greenwood County Laurens County	McCormick County Newberry County Oconee County Pickens County Saluda County Spartanburg County Union County York County
Marion Area Urban Forester 1949 Industrial Park Rd. Suite #6 Conway, South Carolina 29526 (803) 365-5810	Dillon County Horry County Marion County	

Appendix G

Conversion Factors

From English Units	To Metric Units	Multiply By	From Metric Units	To English Units	Multiply by
Mile	kilometer	1.609344	kilometer	Mile	0.621371
yard	meter	0.9144	meter	yard	1.0936
foot	meter	0.3048	meter	foot	3.2808
foot	millimeter	304.8	millimeter	foot	.00328
inch	millimeter	25.4	millimeter	inch	0.0394
square mile	square kilometer	2.59	square kilometer	square mile	0.3861
acre	square meter	4,046.856	square meter	acre	.000247
acre	hectare	0.4046856	hectare	acre	2.471
square yard	square meter	0.83612736	square meter	square yard	1.19599
square foot	square meter	0.09290304	square meter	square foot	10.7639
square inch	square millimeter	645.15	square millimeter	square inch	.00155
cubic yard	cubic meter	0.764555	cubic meter	cubic yard	1.3079
cubic foot	cubic meter	0.0283168	cubic meter	cubic foot	35.3147
cubic foot	Liter	28.31685	Liter	cubic foot	0.0353
cubic inch	cubic millimeter	16,387.064	cubic millimeter	cubic inch	.000061024
pound	kilogram	0.453592	kilogram	pound	2.2046
ounce	gram	28.34952	gram	ounce	0.0353
ton (2,000 lbs.)	metric ton	0.907184	metric ton	ton (2,000 lbs.)	1.1023
mile/hour	kilometer/hour	1.609344	kilometer/hour	mile/hour	0.6214

EXHIBIT 14



LEGEND
DSS - Disregarded Sign or Signal
Inatt - Inattention
DTFFC - Driving Too Fast for Conditions
FYRW - Failure to Yield Right of Way
ROR - Ran off Road
FTC - Followed Too Closely
AGG - Aggressive Operation of Vehicle
SWO - Swerving to Avoid Object
DUI - Under the Influence
Imp LC - Improper Lane Change
RA = Right Angle
RE = Rear End
SS = Side Swipe
HO = Head On
OC = Out of Control
HA = Hit Animal

YR	2010	2011	2012	2013	Total
RA	5	7	15	7	34
RE	8	19	24	12	63
SS	3	4	2	1	10
HO	0	0	0	0	0
OC	0	1	0	0	1
HA	0	0	0	0	0
OTH	0	0	0	0	0

Night - 23
Day - 85
Wet - 82
Dry - 26

Total = 108
Length = 0.253
AADT = 28400
Years = 3.58
01/01/10 - 07/31/13
CR = 2.910

PDO - 87
Inj. 1 - 12
Inj. 2 - 5
Inj. 3 - 4

SCDOT
South Carolina Department of Transportation

TRAFFIC ENGINEERING DIVISION
COLUMBIA, S.C.

TRAFFIC SAFETY PROGRAM

SUBJECT TITLE: Collision Diagram

SPECIFIC LOCATION: US 17 Alt MP 1.36 - 1.613

CITY: Summerville | COUNTY: Berkeley

DRAWN BY	DATE	SCALE	PAGE
CLW/REW	10/15/13	None	1 of 1

102.051 Wright v. SCDOT
SCDOT Colvin Documents0812

	Motor Vehi Roadway	33022140	80083090	33	0.033333	0.005944	33.03928	80	0.133333	0.008583
	Motor Vehi Roadway	33022060	80083350	33	0.033333	0.005722	33.03906	80	0.133333	0.009306
	Motor Vehi Roadway	33022250	80083060	33	0.033333	0.00625	33.03958	80	0.133333	0.0085
	Motor Vehi Roadway	33022130	80083270	33	0.033333	0.005917	33.03925	80	0.133333	0.009083
	Motor Vehi Roadway	33022020	80083400	33	0.033333	0.005611	33.03894	80	0.133333	0.009444
	Motor Vehi Roadway	33023900	80083580	33	0.033333	0.010833	33.04417	80	0.133333	0.009944
	Motor Vehi Roadway	33023900	80083580	33	0.033333	0.010833	33.04417	80	0.133333	0.009944
	Motor Vehi Roadway	33024220	80083320	33	0.033333	0.011722	33.04506	80	0.133333	0.009222
	Motor Vehi Roadway	33023940	80083000	33	0.033333	0.010944	33.04428	80	0.133333	0.008333
	Motor Vehi Roadway	33022280	80083510	33	0.033333	0.006333	33.03967	80	0.133333	0.00975
	Motor Vehi Roadway	33022180	80083160	33	0.033333	0.006056	33.03939	80	0.133333	0.008778
	Motor Vehi Roadway	33022230	80083580	33	0.033333	0.006194	33.03953	80	0.133333	0.009944
	Motor Vehi Roadway	33022260	80083370	33	0.033333	0.006278	33.03961	80	0.133333	0.009361
	Motor Vehi Roadway	33022130	80083070	33	0.033333	0.005917	33.03925	80	0.133333	0.008528
	Motor Vehi Roadway	33022230	80083110	33	0.033333	0.006194	33.03953	80	0.133333	0.008639
	Motor Vehi Roadway	33022050	80083370	33	0.033333	0.005694	33.03903	80	0.133333	0.009361
	Motor Vehi Roadway	33022050	80083280	33	0.033333	0.005694	33.03903	80	0.133333	0.009111
	Motor Vehi Roadway	33022160	80083260	33	0.033333	0.006	33.03933	80	0.133333	0.009056
	Motor Vehi Roadway	33022120	80083350	33	0.033333	0.005889	33.03922	80	0.133333	0.009306
	Motor Vehi Roadway	33022160	80083210	33	0.033333	0.006	33.03933	80	0.133333	0.008917
Fast for Conditions	Motor Vehi Roadway	33022280	80083160	33	0.033333	0.006333	33.03967	80	0.133333	0.008778
	Motor Vehi Roadway	33022090	80083370	33	0.033333	0.005806	33.03914	80	0.133333	0.009361
	Motor Vehi Roadway	33022260	80083060	33	0.033333	0.006278	33.03961	80	0.133333	0.0085
	Motor Vehi Roadway	33022030	80083390	33	0.033333	0.005639	33.03897	80	0.133333	0.009417
	Motor Vehi Roadway	33022130	80083300	33	0.033333	0.005917	33.03925	80	0.133333	0.009167
	Motor Vehi Roadway	33022100	80083500	33	0.033333	0.005833	33.03917	80	0.133333	0.009722
	Motor Vehi Roadway	33022070	80083350	33	0.033333	0.00575	33.03908	80	0.133333	0.009306
	Motor Vehi Roadway	33022380	80083590	33	0.033333	0.006611	33.03994	80	0.133333	0.009972
	Motor Vehi Roadway	33022190	80083440	33	0.033333	0.006083	33.03942	80	0.133333	0.009556
	Motor Vehi Roadway	33022130	80083346	33	0.033333	0.005917	33.03925	80	0.133333	0.009294
	Motor Vehi Roadway	33022280	80083230	33	0.033333	0.006333	33.03967	80	0.133333	0.008972
	Motor Vehi Roadway	33022070	80083420	33	0.033333	0.00575	33.03908	80	0.133333	0.0095
	Motor Vehi Roadway	33022270	80083510	33	0.033333	0.006306	33.03964	80	0.133333	0.00975

App 1838

3137104	Berkeley	11/15/03	1625	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	5
3135982	Berkeley	11/18/03	1020	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	7
3139492	Berkeley	11/19/03	1020	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	E	5
4019141	Berkeley	2/21/04	1335	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0.4	N	6
4022646	Berkeley	3/4/04	1520	3	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
4030915	Berkeley	3/24/04	1716	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	8
4040064	Berkeley	4/13/04	800	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
4040065	Berkeley	4/13/04	1505	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
4040068	Berkeley	4/13/04	2105	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0	N	8
4047500	Berkeley	4/30/04	1515	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
4123032	Berkeley	10/20/04	2035	3	0	0	US	Primary	17	Alternate	Secondary	1187	Main	0	N	7
4124169	Berkeley	10/25/04	1720	3	0	1	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
4125786	Berkeley	10/29/04	705	3	0	1	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
4127787	Berkeley	11/1/04	1815	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	W	6
4140858	Berkeley	12/1/04	1625	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	7
4140846	Berkeley	12/4/04	2240	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.2	N	6
4153930	Berkeley	12/31/04	1710	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	4
5014560	Berkeley	2/12/05	320	2	0	0	US	Primary	17	Main	Secondary	1258	Main	0	N	4
5028004	Berkeley	3/15/05	1945	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0.1	S	8
5028317	Berkeley	3/15/05	1945	3	0	0	US	Primary	17	Main	Secondary	1258	Main	0	S	6
5031025	Berkeley	3/24/05	1300	2	0	0	US	Primary	17	Main	Secondary	570	Main	0.1	N	6
5034534	Berkeley	4/1/05	1740	2	0	0	US	Primary	17	Main	Secondary	1258	Main	0.1	S	7
5041175	Berkeley	4/10/05	1300	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	W	2
5059507	Berkeley	5/25/05	1510	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	W	4
5078678	Berkeley	7/7/05	1309	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	S	7
5081696	Berkeley	7/15/05	735	2	0	2	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
5085403	Berkeley	7/19/05	635	2	0	1	US	Primary	17	Alternate	Secondary	1258	Main	0	N	7
5092333	Berkeley	8/5/05	2136	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.1	S	6
5093273	Berkeley	8/10/05	1050	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	5
5100812	Berkeley	8/27/05	1530	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	6
5105523	Berkeley	9/2/05	1600	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	1	S	8
5104320	Berkeley	9/5/05	1958	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	6
5121306	Berkeley	10/8/05	1325	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6

5136593	Berkeley	11/18/05	1619	2	0	0	US	Primary	17	Alternate	Secondary	1258	Alterna	0.3	W	5
5149705	Berkeley	12/14/05	1149	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0	N	8
6001245	Berkeley	1/3/06	1300	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
6009978	Berkeley	2/2/06	1950	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	8
6015862	Berkeley	2/16/06	1300	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0	S	8
6017032	Berkeley	2/17/06	1900	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	5
6017033	Berkeley	2/17/06	1900	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	5
6029838	Berkeley	3/22/06	845	2	0	0	US	Primary	17	Alternate	Secondary	157	Main	0	S	4
6037138	Berkeley	4/7/06	1022	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	4
6039504	Berkeley	4/11/06	1510	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	S	7
6053957	Berkeley	5/13/06	850	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
6068592	Berkeley	6/14/06	1315	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	S	8
6070879	Berkeley	6/21/06	650	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	S	
6070884	Berkeley	6/22/06	1456	3	0	0	US	Primary	17	Alternate	Interstate	26	Main	0	N	8
6071757	Berkeley	6/23/06	1645	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
6081567	Berkeley	7/14/06	1500	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	4
6081577	Berkeley	7/16/06	2030	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0.1	S	6
6081726	Berkeley	7/18/06	1920	2	0	1	US	Primary	17	Alternate	Secondary	1258	Main	0	S	6
6089587	Berkeley	8/1/06	17	2	0	0	US	Primary	17	Main	Secondary	1258	Main	0.1	N	6
6097067	Berkeley	8/19/06	920	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	S	6
6101795	Berkeley	8/24/06	1740	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
6099092	Berkeley	8/25/06	2205	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
6104173	Berkeley	9/5/06	1912	2	0	1	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
6107078	Berkeley	9/11/06	1632	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	S	8
6108622	Berkeley	9/13/06	2010	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	S	9
6114610	Berkeley	9/26/06	700	2	0	1	US	Primary	17	Alternate	Secondary	570	Main	0	S	6
6114501	Berkeley	9/28/06	1453	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	S	7
6122104	Berkeley	10/17/06	1115	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	7
6124388	Berkeley	10/18/06	640	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	S	7
6124341	Berkeley	10/19/06	2005	3	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
6139853	Berkeley	11/22/06	1710	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	5
6143978	Berkeley	11/22/06	1020	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0.1	N	7
6139855	Berkeley	11/22/06	2100	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0	S	6

7005028	Berkeley	1/15/07	1500	2	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0	N	7
7005046	Berkeley	1/18/07	955	2	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0	S	8
7005051	Berkeley	1/19/07	2115	2	0	0	US	Primary	17	Alternate	Secondary		570	Main	0	E	6
7009997	Berkeley	1/26/07	1120	2	0	0	US	Primary	17	Alternate	Secondary		1156	Main	0.1	N	6
7014957	Berkeley	2/11/07	125	2	0	2	US	Primary	17	Alternate	Secondary		1258	Main	0.5	N	7
7030216	Berkeley	3/15/07	2045	2	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0	N	6
7035445	Berkeley	4/3/07	150	1	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0	N	
7037387	Berkeley	4/7/07	1455	2	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0	N	7
7040971	Berkeley	4/15/07	1400	2	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0	S	8
7060189	Berkeley	5/26/07	635	2	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0	N	6
7070723	Berkeley	6/20/07	1305	2	0	0	US	Primary	17	Alternate	Secondary		570	Main	0.1	N	6
7088628	Berkeley	7/21/07	349	2	0	0	US	Primary	17	Alternate	Secondary		986	Main	0	S	6
7099205	Berkeley	8/13/07	1525	2	0	1	US	Primary	17	Alternate	Secondary		1258	Main	0	N	6
7098930	Berkeley	8/21/07	801	2	0	0	US	Primary	17	Alternate	County	SANG		Main	0	S	4
7108516	Berkeley	9/11/07	1850	2	0	0	US	Primary	17	Alternate	Secondary		570	Main	0	N	7
7110127	Berkeley	9/11/07	900	2	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0	S	6
7162363	Berkeley	10/14/07	1300	2	0	1	US	Primary	17	Main	Secondary		1252	Main	0.2	N	6
7124605	Berkeley	10/18/07	1909	3	0	4	US	Primary	17	Alternate	Secondary		570	Main	0	N	6
7138211	Berkeley	11/14/07	1440	2	0	1	US	Primary	17	Alternate	Secondary		1258	Main	0.1	S	7
7138212	Berkeley	11/14/07	940	2	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0.1	S	7
7153637	Berkeley	12/22/07	1243	2	0	0	US	Primary	17	Alternate	Secondary		570	Main	0	N	7
7153653	Berkeley	12/24/07	1745	3	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0.1	S	7
8001588	Berkeley	1/11/08	1348	2	0	1	US	Primary	17	Alternate	Secondary		570	Main	0	N	6
8004818	Berkeley	1/15/08	1450	2	0	0	US	Primary	17	Alternate	Secondary		570	Main	0	N	7
8005969	Berkeley	1/26/08	1920	2	0	0	US	Primary	17	Alternate	Secondary		570	Main	0	N	
8008855	Berkeley	2/1/08	1740	2	0	0	US	Primary	17	Alternate	Interstate		26	Main	0.2	S	
8010024	Berkeley	2/6/08	2400	2	0	1	US	Primary	17	Alternate	Secondary		1258	Main	0.1	N	7
8024158	Berkeley	3/8/08	2005	2	0	2	US	Primary	17	Alternate	Secondary		1258	Main	0.1	S	6
8026295	Berkeley	3/15/08	1225	2	0	0	US	Primary	17	Alternate	Secondary		570	Main	0.2	N	6
8029671	Berkeley	3/22/08	1600	2	0	0	US	Primary	17	Alternate	Interstate		26	Main	0	N	8
8032437	Berkeley	3/25/08	2352	2	0	0	US	Primary	17	Alternate	Secondary		1258	Main	0.2	N	5
8050148	Berkeley	5/5/08	2200	3	0	1	US	Primary	17	Alternate	Secondary		570	Main	0	S	5
8071772	Berkeley	6/22/08	1025	2	0	1	US	Primary	17	Alternate	Secondary		1258	Main	0.2	S	6

8074426	Berkeley	7/1/08	835	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
8080517	Berkeley	7/20/08	1335	3	0	1	US	Primary	17	Alternate	Secondary	1258	Main	0.2	N	6
8083345	Berkeley	7/25/08	1548	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	S	8
8093773	Berkeley	8/10/08	1532	2	0	1	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
8094198	Berkeley	8/12/08	2200	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	6
8103677	Berkeley	9/14/08	1615	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	1	N	7
8123648	Berkeley	10/29/08	1530	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0.3	N	8
8133783	Berkeley	11/9/08	1625	2	0	2	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
8133779	Berkeley	11/17/08	1545	3	0	1	US	Primary	17	Alternate	Secondary	1258	Main	0	S	6
8143045	Berkeley	12/13/08	1135	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	4
8148182	Berkeley	12/17/08	548	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0	S	6
9001174	Berkeley	1/10/09	1625	3	0	0	US	Primary	17	Alternate	Secondary	1259	Main	1	N	6
9001636	Berkeley	1/13/09	1605	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	7
9007498	Berkeley	1/28/09	800	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	6
9015548	Berkeley	2/23/09	1130	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	S	8
9017234	Berkeley	2/26/09	1935	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.8	N	8
9020349	Berkeley	3/5/09	2021	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	6
9020348	Berkeley	3/5/09	1820	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	S	7
9022840	Berkeley	3/12/09	1800	3	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.5	N	7
9040926	Berkeley	4/18/09	1250	2	0	2	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
9049201	Berkeley	5/2/09	1435	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0.1	N	9
9049185	Berkeley	5/6/09	1015	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	7
9060307	Berkeley	6/3/09	1335	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	6
9063877	Berkeley	6/9/09	830	2	0	1	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	4
9074183	Berkeley	7/8/09	900	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	S	7
9076475	Berkeley	7/15/09	2235	2	0	4	US	Primary	17	Alternate	Secondary	570	Main	0.8	N	8
9079614	Berkeley	7/22/09	1230	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	W	4
9087076	Berkeley	8/6/09	1830	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	6
9103047	Berkeley	9/15/09	1505	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	S	8
9104105	Berkeley	9/16/09	1610	2	0	1	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	7
9103052	Berkeley	9/16/09	1613	3	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	7
9106622	Berkeley	9/25/09	1810	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
9115072	Berkeley	10/6/09	1630	1	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6

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9117920	Berkeley	10/14/09	1530	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0.2	N	8
9115215	Berkeley	10/14/09	1614	2	0	0	US	Primary	17	Alternate	Secondary	986	Main	0.9	S	5
9122917	Berkeley	10/30/09	835	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0	N	6
9125263	Berkeley	11/6/09	1334	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0.1	S	7
9126523	Berkeley	11/12/09	1400	2	0	2	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	7
9126524	Berkeley	11/12/09	1400	2	0	1	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	7
9143868	Berkeley	12/19/09	1720	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0.1	S	8
9148965	Berkeley	12/23/09	1945	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
10004851	Berkeley	1/1/10	142	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	4
10007441	Berkeley	1/30/10	1530	2	0	0	US	Primary	17	Main	Secondary	1258	Main	0	N	8
10027230	Berkeley	3/12/10	1310	2	0	0	US	Primary	17	Alternate	Interstate	26	Main	0.2	N	8
10029757	Berkeley	3/20/10	2105	2	0	3	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	4
10045382	Berkeley	5/4/10	1710	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
10053063	Berkeley	5/21/10	1145	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	6
10056982	Berkeley	5/27/10	1715	3	0	2	US	Primary	17	Alternate	Secondary	1258	Main	0.1	N	6
10078359	Berkeley	7/13/10	750	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	4
10086989	Berkeley	8/4/10	1210	2	0	1	US	Primary	17	Main	Secondary	1258	Main	0.1	N	6
10101046	Berkeley	9/3/10	2245	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	S	9
10115695	Berkeley	9/13/10	1300	2	0	0	US	Primary	17	Alternate	Secondary	930	Main	0.1	N	2
10102939	Berkeley	9/14/10	800	3	0	0	US	Primary	17	Alternate	Secondary	375	Main	0.3	S	2
10114534	Berkeley	9/28/10	1430	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0.1	N	6
10111343	Berkeley	9/29/10	1640	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	S	6
10127314	Berkeley	10/21/10	1130	2	0	0	US	Primary	17	Main	Secondary	1258	Main	0.2	N	6
10121233	Berkeley	10/21/10	1218	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	S	7
10130156	Berkeley	11/4/10	1340	2	0	0	US	Primary	17	Alternate	Secondary	1258	Main	0	N	9
10143987	Berkeley	12/11/10	1940	1	0	0	US	Primary	17	Main	Secondary	1258	Main	0	N	
10141905	Berkeley	12/13/10	1809	2	0	0	US	Primary	17	Alternate	Secondary	570	Main	0	N	6
10155995	Berkeley	12/22/10	606	1	0	0	US	Primary	17	Alternate	Interstate	26	Main	0	N	7
10155999	Berkeley	12/26/10	1540	3	0	0	US	Primary	17	Alternate	Secondary	1259	Main	0	N	7
10154465	Berkeley	12/31/10	1203	2	0	4	US	Primary	17	Alternate	Secondary	1258	Main	0.1	S	8
11016844	Berkeley	2/24/11	1525	2	0	0	US	Primary	17	Main	Secondary	570	Main	0	N	
11012209	Berkeley	3/27/11	1645	2	0	0	US	Primary	17	Main	Secondary	570	Main	0.1	N	
11513770	Berkeley	4/6/11	1845	2	0	1	US	Primary	17	Main	Secondary	570	Main	0.1	N	

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11529526	Berkeley	6/3/11	1435	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	N
11529509	Berkeley	6/9/11	1643	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
11530593	Berkeley	6/13/11	2245	2	0	2	US	Primary	17	Main	N	Secondary	986	Main	2.7	S
11532121	Berkeley	6/14/11	1701	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
11528613	Berkeley	6/15/11	1325	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	S
11530803	Berkeley	6/20/11	1735	4	0	1	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
11532131	Berkeley	7/1/11	945	2	0	1	US	Primary	17	Main	N	Secondary	570	Main	0	N
11532247	Berkeley	7/5/11	2114	3	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	S
11538035	Berkeley	8/1/11	754	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	S
11549788	Berkeley	9/3/11	1555	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
11558010	Berkeley	9/26/11	800	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
11567636	Berkeley	10/11/11	125	2	0	0	US	Primary	17	Main		Secondary	1258	Main	0	N
11567015	Berkeley	10/20/11	1235	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
11573068	Berkeley	10/30/11	1210	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
11576005	Berkeley	11/9/11	1620	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	S
11585267	Berkeley	12/2/11	1135	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
11588025	Berkeley	12/14/11	1717	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0.1	N
11587444	Berkeley	12/17/11	1501	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	N
11591708	Berkeley	12/31/11	1926	3	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	S
12500316	Berkeley	1/1/12	2135	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
12501616	Berkeley	1/11/12	1005	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
12504940	Berkeley	1/31/12	1735	2	0	2	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
12505951	Berkeley	2/1/12	1713	3	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
12507196	Berkeley	2/10/12	1715	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
12511303	Berkeley	3/3/12	1350	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	N
12512659	Berkeley	3/7/12	1215	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
12515244	Berkeley	3/14/12	1605	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	S
12521495	Berkeley	3/24/12	1240	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	N
12518964	Berkeley	4/1/12	148	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
12534457	Berkeley	5/30/12	1540	3	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	S
12539842	Berkeley	6/24/12	1555	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
12543208	Berkeley	7/2/12	1812	3	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
12541404	Berkeley	7/3/12	1330	3	0	0	US	Primary	17	Main	N	Secondary	570	Main	0.1	N

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12544218	Berkeley	7/3/12	1644	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	S
12552412	Berkeley	8/2/12	1251	2	0	0	US	Primary	17	Main	N	County	SANG		Main	0.4	S
12550382	Berkeley	8/3/12	2116	2	0	1	US	Primary	17	Main	N	Secondary		570	Main	0	N
12555957	Berkeley	8/12/12	1725	2	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0	N
12559428	Berkeley	8/30/12	1415	2	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0	N
12565482	Berkeley	9/13/12	1800	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	S
12565037	Berkeley	9/15/12	943	2	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0.1	N
12568659	Berkeley	9/28/12	1500	2	0	1	US	Primary	17	Main	N	Secondary		570	Main	0	N
12570770	Berkeley	10/1/12	1720	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0.1	N
12570776	Berkeley	10/6/12	2104	2	0	2	US	Primary	17	Main	N	Secondary		570	Main	0	N
12574845	Berkeley	10/11/12	1955	2	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0.1	N
12580597	Berkeley	10/29/12	1210	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	N
12597412	Berkeley	12/5/12	1345	2	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0	N
12596928	Berkeley	12/7/12	1620	4	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	N
12597271	Berkeley	12/14/12	1655	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	N
12602689	Berkeley	12/14/12	1520	2	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0	S
13513535	Berkeley	3/4/13	730	2	0	0	US	Primary	17	Main	N	Secondary		986	Main	0.1	S
13516715	Berkeley	3/7/13	1930	2	0	0	US	Primary	17	Main		Secondary		570	Main	0	N
13516771	Berkeley	3/14/13	1025	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	S
13524697	Berkeley	4/16/13	1200	2	0	2	US	Primary	17	Main	N	County	SANG		Main	0.1	S
13532315	Berkeley	5/8/13	616	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	N
13532708	Berkeley	5/9/13	1738	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	S
13543481	Berkeley	6/10/13	1530	2	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0	S
13545819	Berkeley	6/13/13	1430	1	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0	N
13578676	Berkeley	9/6/13	1815	2	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0	N
13595610	Berkeley	9/27/13	1622	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0.1	N
13600595	Berkeley	10/22/13	615	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0.1	N
13614333	Berkeley	11/26/13	1200	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0.1	N
13617048	Berkeley	11/27/13	1120	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	N
13619832	Berkeley	12/11/13	1837	2	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0	N
14511278	Berkeley	2/14/14	1545	2	0	4	US	Primary	17	Main	N	Secondary		570	Main	0.1	N
14511878	Berkeley	2/17/14	842	2	0	0	US	Primary	17	Main	N	Secondary		570	Main	0	N
14534042	Berkeley	4/5/14	1333	1	0	0	US	Primary	17	Main	N	Secondary		1258	Main	0	N

14536841	Berkeley	4/20/14	1112	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0.1	S
14541860	Berkeley	5/8/14	1745	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	S
14546409	Berkeley	5/22/14	1230	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
14551651	Berkeley	5/30/14	2115	2	0	1	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
14555022	Berkeley	6/9/14	1755	2	0	2	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
14566025	Berkeley	7/3/14	956	2	0	1	US	Primary	17	Main	N	Secondary	570	Main	0	N
14562891	Berkeley	7/3/14	953	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
14567258	Berkeley	7/16/14	2005	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	N
14568670	Berkeley	7/21/14	1208	3	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
14568650	Berkeley	7/21/14	1225	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	N
14575294	Berkeley	8/8/14	1541	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
14576450	Berkeley	8/8/14	1540	6	0	4	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
14582479	Berkeley	8/17/14	2030	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
14581481	Berkeley	8/22/14	1811	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
14588028	Berkeley	9/4/14	2018	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	N
14587921	Berkeley	9/8/14	735	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
14595013	Berkeley	9/26/14	1238	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
14598607	Berkeley	9/30/14	1622	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0	N
14605811	Berkeley	10/10/14	1800	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
14603571	Berkeley	10/15/14	1520	2	0	0	US	Primary	17	Main	N	Secondary	1258	Main	0	S
14606045	Berkeley	10/24/14	835	2	0	2	US	Primary	17	Main	N	Secondary	570	Main	0.1	N
14606142	Berkeley	10/25/14	950	2	0	1	US	Primary	17	Main	N	Secondary	570	Main	0	N
14608927	Berkeley	10/29/14	755	2	0	0	US	Primary	17	Main	N	Secondary	570	Main	0.1	N

Non-Junction	3	N	Dark (Lighti	Clear, No A	Dry	Distracted/Inattention		0	0
Four-Way Intersection	4	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions		0	0
Four-Way Intersection	4	E	Daylight	Clear, No A	Dry	Made an Improper Turn		0	0
Driveway	1	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	Driving Too Fast for Cor		
Non-Junction	1	S	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions			
Four-Way Intersection	4	S	Daylight	Clear, No A	Dry	Improper Lane Usage/Change			
Driveway	1	N	Daylight	Rain	Wet	Failed To Yield Right of Way			
Driveway	1	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way			
Non-Junction	3	N	Dark (Stree	Cloudy	Wet	Distracted/Inattention	On Cell Phone		
Non-Junction	1	N	Daylight	Clear, No A	Dry	Distracted/Inattention	Driving Too Fast for Cor		
Four-Way Intersection	3	N	Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions	Unknown		
Non-Junction	2	N	Daylight	Clear, No A	Dry	Other Improper Action			
Non-Junction	1	S	Dawn	Clear, No A	Dry	Driving Too Fast for Conditions			
Driveway	2		Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way			
Non-Junction	3	S	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	Vision Obscured (Withir		
Non-Junction	3	N	Dark (Stree	Clear, No A	Dry	Improper Lane Usage/Change			
Non-Junction	2	S	Daylight	Clear, No A	Dry	Followed Too Closely	Distracted/Inattention		
T-Intersection	2	N	Dark (Stree	Clear, No A	Dry	Driver Under Influence			
Non-Junction	1	S	Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions			
Non-Junction	1	S	Dark (Stree	Cloudy	Dry	Driving Too Fast for Conditions	Distracted/Inattention		
Driveway	1	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way			
Driveway	3	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way			
Driveway	1	E	Daylight	Clear, No A	Dry	Other Improper Action			
Four-Way Intersection	2	W	Daylight	Clear, No A	Dry	Improper Lane Usage/Change			
Four-Way Intersection	4	N	Daylight	Clear, No A	Dry	Distracted/Inattention			
Non-Junction	1	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way			
Four-Way Intersection	2	S	Daylight	Clear, No A	Dry	Followed Too Closely			
Non-Junction	1	N	Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions	Distracted/Inattention		
Non-Junction	1	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change			
Non-Junction	3	N	Daylight	Rain	Wet	Improper Lane Usage/Change			
Non-Junction	3	S	Daylight	Clear, No A	Dry	Improper Lane Usage/Change			
Non-Junction	1	N	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way			
Four-Way Intersection	2	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change			

Four-Way Intersection	4	W	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	3	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Non-Junction	1	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	4	N	Dark (Lighti	Rain	Wet	Distracted/Inattention	
Non-Junction	4	S	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	2	N	Dark (Lighti	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	N	Dark (Lighti	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	S	Daylight	Clear, No A	Dry	Driver Under Influence	
T-Intersection	2	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Driveway	3	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Four-Way Intersection	4	S	Daylight	Cloudy	Dry	Failed To Yield Right of Way	
Four-Way Intersection			Daylight	Clear, No A	Dry	Other Improper Action	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	3	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Followed Too Closely	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	3	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	3	N	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	3	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	1	N	Daylight	Rain	Wet	Failed To Yield Right of Way	Driving Too Fast for Cor
Driveway	1	N	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
T-Intersection	1	N	Daylight	Cloudy	Wet	Failed To Yield Right of Way	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	Distracted/Inattention
Non-Junction	3	N	Dark (No Li	Rain	Wet	Driving Too Fast for Conditions	
Four-Way Intersection	1	S	Daylight	Clear, No A	Dry	Disregarded Signs/Signals/Etc.	
Four-Way Intersection	1	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Non-Junction	2	S	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	3	S	Dawn	Cloudy	Wet	Driving Too Fast for Conditions	
Non-Junction	3	N	Dusk	Clear, No A	Dry	Driving Too Fast for Conditions	Distracted/Inattention
Non-Junction	1	S	Daylight	Cloudy	Wet	Driving Too Fast for Conditions	
Driveway	1	S	Daylight	Rain	Wet	Made an Improper Turn	
T-Intersection	1	N	Dark (Stree	Cloudy	Dry	Driving Too Fast for Conditions	

Non-Junction	1	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Four-Way Intersection	3	N	Daylight	Rain	Wet	Distracted/Inattention	
Four-Way Intersection	2	S	Dark (Lighti	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Four-Way Intersection	2	S	Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	1	N	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction			Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	3	N	Daylight	Clear, No A	Dry	Distracted/Inattention	
Four-Way Intersection	3	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	2	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	3	S	Daylight	Cloudy	Wet	Failed To Yield Right of Way	
Non-Junction	3	N	Dark (Stree	Clear, No A	Dry	Made an Improper Turn	
Four-Way Intersection	3	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
T-Intersection	1	N	Daylight	Clear, No A	Dry	Disregarded Signs/Signals/Etc.	
Driveway	1	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	0	N	Daylight	Clear, No A	Dry	Distracted/Inattention	Made an Improper Turn
Cross-Over	1	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	2	S	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	2	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	3	S	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	2	S	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	3	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	S	Daylight	Cloudy	Dry	Medical Related	
Non-Junction	2	S	Daylight	Clear, No A	Dry	Other Improper Action	
Non-Junction			Dark (Stree	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	2		Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	2	N	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	2	N	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	3	S	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	0	S	Dark (Stree	Clear, No A	Dry	Made an Improper Turn	
Four-Way Intersection	1	N	Dark (Stree	Rain	Wet	Driving Too Fast for Conditions	
Non-Junction	1	S	Daylight	Clear, No A	Dry	Disregarded Signs/Signals/Etc.	

T-Intersection	1	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	3	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Cross-Over	1	N	Daylight	Clear, No A	Dry	Other Improper Action	
Driveway	3	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	0	N	Dark (Stree	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	1	S	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	1	N	Daylight	Clear, No A	Dry	Followed Too Closely	
Non-Junction	1	S	Daylight	Clear, No A	Dry	Distracted/Inattention	Glare
Non-Junction	2	N	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	1	S	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	N	Dark (Stree	Cloudy	Dry	Driver Under Influence	
Non-Junction	1	S	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	S	Daylight	Cloudy	Wet	Driving Too Fast for Conditions	
Non-Junction	2	N	Daylight	Cloudy	Wet	Failed To Yield Right of Way	
Four-Way Intersection	2	N	Daylight	Clear, No A	Dry	Made an Improper Turn	
Non-Junction	5	S	Dark (Stree	Clear, No A	Dry	Improper Lane Usage/Change	
Driveway	2	N	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	3	N	Daylight	Clear, No A	Dry	Distracted/Inattention	
Four-Way Intersection	2	S	Dusk	Clear, No A	Dry	Brakes	
Non-Junction	1	E	Daylight	Clear, No A	Dry	Other Improper Action	
Non-Junction	4	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	S	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Driveway	1	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	1	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	2	S	Daylight	Clear, No A	Dry	Other Improper Action	
Four-Way Intersection	2	S	Dark (Stree	Clear, No A	Dry	Driver Under Influence	
Non-Junction	1	S	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	2	S	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	3	N	Daylight	Clear, No A	Dry	Other Improper Action	Distracted/Inattention
Non-Junction	1	S	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	Improper Lane Usage/C
Non-Junction	2	S	Daylight	Clear, No A	Dry	Other Improper Action	
Non-Junction	1	S	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Distracted/Inattention	

Non-Junction	2	N	Daylight	Rain	Wet	Improper Lane Usage/Change	
Non-Junction	3	S	Daylight	Rain	Wet	Swerving To Avoid Object	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Non-Junction	3	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	S	Daylight	Rain	Wet	Driving Too Fast for Conditions	
Non-Junction	2	S	Daylight	Rain	Wet	Driving Too Fast for Conditions	
Non-Junction	5	N	Dark (Stree	Clear, No A	Dry	Improper Lane Usage/Change	
Non-Junction	3	N	Dark (No Li	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	1	N	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	1	N	Daylight	Rain	Wet	Driving Too Fast for Conditions	
Non-Junction	3	N	Daylight	Cloudy	Wet	Driving Too Fast for Conditions	
Non-Junction	2	N	Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	3	N	Daylight	Rain	Wet	Driving Too Fast for Conditions	
Non-Junction	1	S	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	3	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	2	N	Dark (No Li	Clear, No A	Dry	Other Improper Action	
Non-Junction	1	N	Daylight	Clear, No A	Dry	Wrong Side/Wrong Way	
Non-Junction	1	N	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	1	N	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	1	N	Daylight	Rain	Wet	Driving Too Fast for Conditions	
Non-Junction	2	N	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Y-Intersection	1	S	Daylight	Clear, No A	Dry	Distracted/Inattention	
Four-Way Intersection	1	N	Daylight	Rain	Wet	Driving Too Fast for Conditions	
Non-Junction			Dark (Stree	Cloudy	Wet	Tires/Wheels	
Driveway	3	N	Dark (Lighti	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	4	S	Dark (Stree	Clear, No A	Ice	Road Surface Condition (ie. Wet)	
Non-Junction	1	S	Daylight	Fog,Smog,S	Wet	Distracted/Inattention	
Non-Junction	4	N	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	Distracted/Inattention
Four-Way Intersection	4		Daylight	Clear, No A	Dry	Distracted/Inattention	
Driveway	2		Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	3		Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	On Cell Phone

Driveway	2	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Non-Junction	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	2	Dark (No Li	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	Daylight	Clear, No A	Dry	Other Improper Action	
Non-Junction	3	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Four-Way Intersection	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Four-Way Intersection	1	Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions	Distracted/Inattention
Four-Way Intersection	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	1	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	3	Dark (Stree	Rain	Wet	Other Improper Action	
Non-Junction	0	Daylight	Clear, No A	Dry	Distracted/Inattention	
Driveway	2	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	4	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	1	Daylight	Clear, No A	Dry	Made an Improper Turn	
Non-Junction	2	Dusk	Clear, No A	Dry	Distracted/Inattention	
Driveway	1	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	1	Dark (Lighti	Clear, No A	Dry	Improper Lane Usage/Change	
Driveway	3	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	1	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	2	Daylight	Cloudy	Dry	Failed To Yield Right of Way	
Non-Junction	1	Daylight	Rain	Wet	Driving Too Fast for Conditions	
Non-Junction	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Four-Way Intersection	1	Daylight	Clear, No A	Dry	Other Improper Action	
Driveway	3	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
T-Intersection	2	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	Distracted/Inattention
Driveway	1	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	4	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	1	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	

Non-Junction	1	Daylight	Clear, No A	Dry	Other Improper Action	
Non-Junction	1	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	1	Dark (Stree	Clear, No A	Dry	Driver Under Influence	
Driveway	1	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	2	Daylight	Cloudy	Dry	Failed To Yield Right of Way	
Four-Way Intersection	2	Daylight	Clear, No A	Dry	Other Improper Action	
Driveway	1	Daylight	Clear, No A	Dry	Distracted/Inattention	Failed To Yield Right of '
Non-Junction	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	2	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	1	Dark (Stree	Clear, No A	Dry	Driver Under Influence	
Driveway	2	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	3	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	Distracted/Inattention
Driveway	1	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Four-Way Intersection	1	Daylight	Clear, No A	Dry	Other Improper Action	
Four-Way Intersection	2	Daylight	Clear, No A	Dry	Followed Too Closely	
Non-Junction	1	Dark (Stree	Clear, No A	Dry	Distracted/Inattention	Followed Too Closely
Non-Junction	3	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	2	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	0	Dawn	Clear, No A	Dry	Improper Lane Usage/Change	
Four-Way Intersection	1	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Four-Way Intersection	1	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Non-Junction	3	Daylight	Clear, No A	Dry	Truck Coupling	
Driveway	3	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	3	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	1	Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions	Distracted/Inattention
Driveway	2	Daylight	Rain	Wet	Failed To Yield Right of Way	
Non-Junction	2	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Four-Way Intersection	2	Dark (Stree	Clear, No A	Dry	Fatigued/Asleep	Distracted/Inattention
Driveway	3	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Four-Way Intersection	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	Debris
Four-Way Intersection	1	Daylight	Clear, No A	Dry	Cargo	

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Driveway	3	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Four-Way Intersection	1	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Driveway	1	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	3	Dark (Stree	Clear, No A	Dry	Driving Too Fast for Conditions	Ran Off Road
Driveway	0	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Driveway	3	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	Distracted/Inattention
Non-Junction	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	0	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Four-Way Intersection	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Four-Way Intersection	1	Daylight	Clear, No A	Dry	Disregarded Signs/Signals/Etc.	Failed To Yield Right of
Non-Junction	1	Daylight	Cloudy	Dry	Improper Lane Usage/Change	
Non-Junction	2	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Driveway	3	Dark (Stree	Clear, No A	Dry	Failed To Yield Right of Way	
Driveway	3	Daylight	Clear, No A	Dry	Failed To Yield Right of Way	
Non-Junction	3	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Non-Junction	1	Daylight	Rain	Wet	Improper Lane Usage/Change	
Non-Junction	2	Daylight	Clear, No A	Dry	Distracted/Inattention	Driving Too Fast for Cor
Non-Junction	4	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Non-Junction	2	Daylight	Clear, No A	Dry	Improper Lane Usage/Change	
Four-Way Intersection	4	Daylight	Clear, No A	Other	Driving Too Fast for Conditions	
Non-Junction	1	Daylight	Clear, No A	Dry	Distracted/Inattention	
Non-Junction	3	Daylight	Clear, No A	Dry	Driving Too Fast for Conditions	
Non-Junction	1	Daylight	Clear, No A	Dry	Followed Too Closely	

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0	0	Motor Vehi	Roadway	33022140	80083270	33	0.033333	0.005944	33.03928	80	0.133333	0.009083
0	0	Motor Vehi	Roadway	33022110	80083330	33	0.033333	0.005861	33.03919	80	0.133333	0.00925
0	0	Motor Vehi	Roadway	33022070	80083530	33	0.033333	0.00575	33.03908	80	0.133333	0.009806
Fast for Conditions		Motor Vehi	Roadway	33022230	80083120	33	0.033333	0.006194	33.03953	80	0.133333	0.008667
		Motor Vehi	Roadway	33022160	80083330	33	0.033333	0.006	33.03933	80	0.133333	0.00925
		Motor Vehi	Roadway	33022170	80083440	33	0.033333	0.006028	33.03936	80	0.133333	0.009556
		Motor Vehi	Roadway	33022200	80083140	33	0.033333	0.006111	33.03944	80	0.133333	0.008722
		Motor Vehi	Roadway	33022200	80083140	33	0.033333	0.006111	33.03944	80	0.133333	0.008722
		Motor Vehi	Roadway	33022150	80083280	33	0.033333	0.005972	33.03931	80	0.133333	0.009111
Fast for Conditions		Motor Vehi	Unknown	33022190	80083000	33	0.033333	0.006083	33.03942	80	0.133333	0.008333
		Motor Vehi	Roadway	33022040	80083310	33	0.033333	0.005667	33.039	80	0.133333	0.009194
		Motor Vehi	Roadway	33022260	80083000	33	0.033333	0.006278	33.03961	80	0.133333	0.008333
		Motor Vehi	Roadway	33022250	80083070	33	0.033333	0.00625	33.03958	80	0.133333	0.008528
		Motor Vehi	Roadway	33022101	80083340	33	0.033333	0.005836	33.03917	80	0.133333	0.009278
ured (Within Unit)		Motor Vehi	Roadway	33022230	80083390	33	0.033333	0.006194	33.03953	80	0.133333	0.009417
		Motor Vehi	Roadway	33022150	80083220	33	0.033333	0.005972	33.03931	80	0.133333	0.008944
		Motor Vehi	Roadway	33022250	80083460	33	0.033333	0.00625	33.03958	80	0.133333	0.009611
		Motor Vehi	Roadway	33022140	80083320	33	0.033333	0.005944	33.03928	80	0.133333	0.009222
		Motor Vehi	Roadway	33022250	80083300	33	0.033333	0.00625	33.03958	80	0.133333	0.009167
		Motor Vehi	Roadway	33022250	80083300	33	0.033333	0.00625	33.03958	80	0.133333	0.009167
		Motor Vehi	Roadway	33022170	80083280	33	0.033333	0.006028	33.03936	80	0.133333	0.009111
		Motor Vehi	Roadway	33022150	80083060	33	0.033333	0.005972	33.03931	80	0.133333	0.0085
		Motor Vehi	Roadway	33022300	80083520	33	0.033333	0.006389	33.03972	80	0.133333	0.009778
		Motor Vehi	Roadway	33022130	80083480	33	0.033333	0.005917	33.03925	80	0.133333	0.009667
		Motor Vehi	Roadway	33022050	80083370	33	0.033333	0.005694	33.03903	80	0.133333	0.009361
		Motor Vehi	Roadway	33022170	80083230	33	0.033333	0.006028	33.03936	80	0.133333	0.008972
		Motor Vehi	Roadway	33022300	80083480	33	0.033333	0.006389	33.03972	80	0.133333	0.009667
		Motor Vehi	Roadway	33022330	80083480	33	0.033333	0.006472	33.03981	80	0.133333	0.009667
		Motor Vehi	Roadway	33022270	80083530	33	0.033333	0.006306	33.03964	80	0.133333	0.009806
		Motor Vehi	Roadway	33022150	80083230	33	0.033333	0.005972	33.03931	80	0.133333	0.008972
		Motor Vehi	Roadway	33022050	80083220	33	0.033333	0.005694	33.03903	80	0.133333	0.008944
		Motor Vehi	Roadway	33022220	80083160	33	0.033333	0.006167	33.0395	80	0.133333	0.008778
		Motor Vehi	Roadway	33022040	80083350	33	0.033333	0.005667	33.039	80	0.133333	0.009306

	Motor Vehi	Roadway	33022240	80083480	33	0.033333	0.006222	33.03956	80	0.133333	0.009667
	Motor Vehi	Roadway	33022160	80083220	33	0.033333	0.006	33.03933	80	0.133333	0.008944
	Motor Vehi	Roadway	33022070	80083410	33	0.033333	0.00575	33.03908	80	0.133333	0.009472
	Motor Vehi	Roadway	33022060	80083410	33	0.033333	0.005722	33.03906	80	0.133333	0.009472
	Motor Vehi	Roadway	33022170	80083430	33	0.033333	0.006028	33.03936	80	0.133333	0.009528
	Motor Vehi	Roadway	33022250	80083090	33	0.033333	0.00625	33.03958	80	0.133333	0.008583
	Other	Outside Tra	33022140	80083260	33	0.033333	0.005944	33.03928	80	0.133333	0.009056
	Motor Vehi	Roadway	33022190	80083230	33	0.033333	0.006083	33.03942	80	0.133333	0.008972
	Motor Vehi	Roadway	33022150	80083040	33	0.033333	0.005972	33.03931	80	0.133333	0.008444
	Motor Vehi	Roadway	33022250	80083070	33	0.033333	0.00625	33.03958	80	0.133333	0.008528
	Motor Vehi	Roadway	33022330	80083230	33	0.033333	0.006472	33.03981	80	0.133333	0.008972
	Motor Vehi	Roadway	33022050	80083010	33	0.033333	0.005694	33.03903	80	0.133333	0.008361
	Motor Vehi	Roadway	33022130	80083020	33	0.033333	0.005917	33.03925	80	0.133333	0.008389
	Motor Vehi	Roadway	33024100	80083100	33	0.033333	0.011389	33.04472	80	0.133333	0.008611
	Motor Vehi	Roadway	33022200	80083250	33	0.033333	0.006111	33.03944	80	0.133333	0.009028
proper Turn	Motor Vehi	Median	33022260	80083330	33	0.033333	0.006278	33.03961	80	0.133333	0.00925
	Motor Vehi	Roadway	33022096	80083238	33	0.033333	0.005822	33.03916	80	0.133333	0.008994
	Motor Vehi	Roadway	33022230	80083480	33	0.033333	0.006194	33.03953	80	0.133333	0.009667
	Motor Vehi	Roadway	33022220	80083200	33	0.033333	0.006167	33.0395	80	0.133333	0.008889
	Motor Vehi	Roadway	33022300	80083520	33	0.033333	0.006389	33.03972	80	0.133333	0.009778
	Motor Vehi	Roadway	33022170	80083450	33	0.033333	0.006028	33.03936	80	0.133333	0.009583
	Motor Vehi	Roadway	33022070	80083380	33	0.033333	0.00575	33.03908	80	0.133333	0.009389
	Motor Vehi	Roadway	33022210	80083320	33	0.033333	0.006139	33.03947	80	0.133333	0.009222
	Motor Vehi	Roadway	33022300	80083500	33	0.033333	0.006389	33.03972	80	0.133333	0.009722
	Motor Vehi	Roadway	33022360	80083270	33	0.033333	0.006556	33.03989	80	0.133333	0.009083
	Motor Vehi	Roadway	33022020	80083340	33	0.033333	0.005611	33.03894	80	0.133333	0.009278
	Motor Vehi	Roadway	33022080	80083220	33	0.033333	0.005778	33.03911	80	0.133333	0.008944
	Motor Vehi	Roadway	33022250	80083190	33	0.033333	0.00625	33.03958	80	0.133333	0.008861
	Motor Vehi	Roadway	33022320	80083250	33	0.033333	0.006444	33.03978	80	0.133333	0.009028
	Motor Vehi	Roadway	33022090	80083410	33	0.033333	0.005806	33.03914	80	0.133333	0.009472
	Motor Vehi	Roadway	33022170	80083070	33	0.033333	0.006028	33.03936	80	0.133333	0.008528
	Motor Vehi	Roadway	33022380	80083470	33	0.033333	0.006611	33.03994	80	0.133333	0.009639
	Motor Vehi	Roadway	33022190	80083560	33	0.033333	0.006083	33.03942	80	0.133333	0.009889

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	Motor Vehi	Roadway	33022250	80083050	33	0.033333	0.00625	33.03958	80	0.133333	0.008472
	Motor Vehi	Roadway	33022170	80083220	33	0.033333	0.006028	33.03936	80	0.133333	0.008944
	Motor Vehi	Roadway	33022380	80083490	33	0.033333	0.006611	33.03994	80	0.133333	0.009694
	Motor Vehi	Roadway	33022150	80083220	33	0.033333	0.005972	33.03931	80	0.133333	0.008944
	Motor Vehi	Roadway	33022090	80083320	33	0.033333	0.005806	33.03914	80	0.133333	0.009222
	Motor Vehi	Roadway	33022240	80083120	33	0.033333	0.006222	33.03956	80	0.133333	0.008667
	Motor Vehi	Roadway	33022260	80083510	33	0.033333	0.006278	33.03961	80	0.133333	0.00975
	Motor Vehi	Roadway	33022260	80083480	33	0.033333	0.006278	33.03961	80	0.133333	0.009667
	Motor Vehi	Roadway	33022110	80083380	33	0.033333	0.005861	33.03919	80	0.133333	0.009389
	Motor Vehi	Roadway	33022290	80083530	33	0.033333	0.006361	33.03969	80	0.133333	0.009806
	Motor Vehi	Roadway	33022170	80083400	33	0.033333	0.006028	33.03936	80	0.133333	0.009444
	Motor Vehi	Roadway	33022120	80083050	33	0.033333	0.005889	33.03922	80	0.133333	0.008472
	Motor Vehi	Roadway	33022090	80083420	33	0.033333	0.005806	33.03914	80	0.133333	0.0095
	Motor Vehi	Roadway	33022130	80083260	33	0.033333	0.005917	33.03925	80	0.133333	0.009056
	Motor Vehi	Roadway	33022270	80083500	33	0.033333	0.006306	33.03964	80	0.133333	0.009722
	Motor Vehi	Roadway	33022250	80083460	33	0.033333	0.00625	33.03958	80	0.133333	0.009611
	Motor Vehi	Roadway	33022210	80083250	33	0.033333	0.006139	33.03947	80	0.133333	0.009028
	Motor Vehi	Roadway	33022030	80083340	33	0.033333	0.005639	33.03897	80	0.133333	0.009278
	Motor Vehi	Roadway	33022280	80083490	33	0.033333	0.006333	33.03967	80	0.133333	0.009694
	Motor Vehi	Roadway	33022150	80083020	33	0.033333	0.005972	33.03931	80	0.133333	0.008389
	Motor Vehi	Roadway	33022080	80083420	33	0.033333	0.005778	33.03911	80	0.133333	0.0095
	Motor Vehi	Roadway	33022190	80083260	33	0.033333	0.006083	33.03942	80	0.133333	0.009056
	Motor Vehi	Roadway	33022130	80083200	33	0.033333	0.005917	33.03925	80	0.133333	0.008889
	Motor Vehi	Roadway	33022210	80083190	33	0.033333	0.006139	33.03947	80	0.133333	0.008861
	Motor Vehi	Roadway	33022320	80083230	33	0.033333	0.006444	33.03978	80	0.133333	0.008972
	Motor Vehi	Roadway	33022150	80083380	33	0.033333	0.005972	33.03931	80	0.133333	0.009389
	Motor Vehi	Roadway	33022050	80083440	33	0.033333	0.005694	33.03903	80	0.133333	0.009556
	Motor Vehi	Roadway	33022160	80083120	33	0.033333	0.006	33.03933	80	0.133333	0.008667
	Motor Vehi	Roadway	33022040	80083060	33	0.033333	0.005667	33.039	80	0.133333	0.0085
ane Usage/Change	Motor Vehi	Roadway	33022250	80083290	33	0.033333	0.00625	33.03958	80	0.133333	0.009139
	Motor Vehi	Roadway	33022000	80083300	33	0.033333	0.005556	33.03889	80	0.133333	0.009167
	Motor Vehi	Roadway	33022240	80083120	33	0.033333	0.006222	33.03956	80	0.133333	0.008667
	Overturn/R	Roadway	33022100	80083000	33	0.033333	0.005833	33.03917	80	0.133333	0.008333

Motor Vehi	Roadway	33022200	80083200	33	0.033333	0.006111	33.03944	80	0.133333	0.008889
Motor Vehi	Roadway	33022270	80083310	33	0.033333	0.006306	33.03964	80	0.133333	0.009194
Motor Vehi	Roadway	33022140	80083020	33	0.033333	0.005944	33.03928	80	0.133333	0.008389
Motor Vehi	Roadway	33022080	80083380	33	0.033333	0.005778	33.03911	80	0.133333	0.009389
Motor Vehi	Roadway	33022250	80083150	33	0.033333	0.00625	33.03958	80	0.133333	0.00875
Motor Vehi	Roadway	33022250	80083150	33	0.033333	0.00625	33.03958	80	0.133333	0.00875
Motor Vehi	Roadway	33022600	80083300	33	0.033333	0.007222	33.04056	80	0.133333	0.009167
Motor Vehi	Roadway	33022120	80083060	33	0.033333	0.005889	33.03922	80	0.133333	0.0085
Motor Vehi	Roadway	33022230	80083130	33	0.033333	0.006194	33.03953	80	0.133333	0.008694
Motor Vehi	Roadway	33022280	80083530	33	0.033333	0.006333	33.03967	80	0.133333	0.009806
Motor Vehi	Roadway	33022150	80083220	33	0.033333	0.005972	33.03931	80	0.133333	0.008944
Motor Vehi	Roadway	33022130	80083100	33	0.033333	0.005917	33.03925	80	0.133333	0.008611
Motor Vehi	Roadway	33022070	80083230	33	0.033333	0.00575	33.03908	80	0.133333	0.008972
Motor Vehi	Roadway	33022210	80083000	33	0.033333	0.006139	33.03947	80	0.133333	0.008333
Motor Vehi	Roadway	33022170	80083190	33	0.033333	0.006028	33.03936	80	0.133333	0.008861
Motor Vehi	Roadway	33022090	80083400	33	0.033333	0.005806	33.03914	80	0.133333	0.009444
Motor Vehi	Roadway	33022230	80083130	33	0.033333	0.006194	33.03953	80	0.133333	0.008694
Motor Vehi	Roadway	33022140	80083230	33	0.033333	0.005944	33.03928	80	0.133333	0.008972
Motor Vehi	Roadway	33022350	80083230	33	0.033333	0.006528	33.03986	80	0.133333	0.008972
Motor Vehi	Roadway	33022350	80083230	33	0.033333	0.006528	33.03986	80	0.133333	0.008972
Motor Vehi	Roadway	33022120	80083310	33	0.033333	0.005889	33.03922	80	0.133333	0.009194
Motor Vehi	Roadway	33022100	80083270	33	0.033333	0.005833	33.03917	80	0.133333	0.009083
Motor Vehi	Roadway	33022170	80083150	33	0.033333	0.006028	33.03936	80	0.133333	0.00875
Motor Vehi	Roadway	33022200	80083500	33	0.033333	0.006111	33.03944	80	0.133333	0.009722
Motor Vehi	Roadway	33022120	80083550	33	0.033333	0.005889	33.03922	80	0.133333	0.009861
Other(Post,	Roadside	33022090	80083330	33	0.033333	0.005806	33.03914	80	0.133333	0.00925
Motor Vehi	Roadway	33022080	80083320	33	0.033333	0.005778	33.03911	80	0.133333	0.009222
Bridge Rail	Roadway	33022210	80083420	33	0.033333	0.006139	33.03947	80	0.133333	0.0095
Motor Vehi	Roadway	33022090	80083420	33	0.033333	0.005806	33.03914	80	0.133333	0.0095
Motor Vehi	Roadway	33022120	80083050	33	0.033333	0.005889	33.03922	80	0.133333	0.008472
Other Mov	Roadway	33022152	80083523	33	0.033333	0.005978	33.03931	80	0.133333	0.009786
Motor Vehi	Roadway	33022206	80083242	33	0.033333	0.006128	33.03946	80	0.133333	0.009006
Motor Vehi	Roadway	33022202	80083268	33	0.033333	0.006117	33.03945	80	0.133333	0.009078

Motor Vehi Roadway	33022166	80083430	33	0.033333	0.006017	33.03935	80	0.133333	0.009528
Motor Vehi Roadway	33022144	80083545	33	0.033333	0.005956	33.03929	80	0.133333	0.009847
Motor Vehi Roadway	33022216	80083199	33	0.033333	0.006156	33.03949	80	0.133333	0.008886
Motor Vehi Roadway	33022195	80083314	33	0.033333	0.006097	33.03943	80	0.133333	0.009206
Motor Vehi Roadway	33022141	80083556	33	0.033333	0.005947	33.03928	80	0.133333	0.009878
Motor Vehi Roadway	33022195	80083203	33	0.033333	0.006097	33.03943	80	0.133333	0.008897
Motor Vehi Roadway	33022177	80083394	33	0.033333	0.006047	33.03938	80	0.133333	0.009428
Motor Vehi Roadway	33022141	80083577	33	0.033333	0.005947	33.03928	80	0.133333	0.009936
Motor Vehi Roadway	33022137	80083570	33	0.033333	0.005936	33.03927	80	0.133333	0.009917
Motor Vehi Roadway	33022180	80083386	33	0.033333	0.006056	33.03939	80	0.133333	0.009406
Motor Vehi Roadway	33022155	80083512	33	0.033333	0.005986	33.03932	80	0.133333	0.009756
Motor Vehi Roadway	33022141	80083199	33	0.033333	0.005947	33.03928	80	0.133333	0.008886
Motor Vehi Median	33022216	80083188	33	0.033333	0.006156	33.03949	80	0.133333	0.008856
Motor Vehi Roadway	33022202	80083275	33	0.033333	0.006117	33.03945	80	0.133333	0.009097
Motor Vehi Roadway	33022141	80083548	33	0.033333	0.005947	33.03928	80	0.133333	0.009856
Motor Vehi Roadway	33022144	80083545	33	0.033333	0.005956	33.03929	80	0.133333	0.009847
Motor Vehi Roadway	33022209	80083210	33	0.033333	0.006136	33.03947	80	0.133333	0.008917
Motor Vehi Roadway	33022188	80083336	33	0.033333	0.006078	33.03941	80	0.133333	0.009267
Motor Vehi Roadway	33022134	80083566	33	0.033333	0.005928	33.03926	80	0.133333	0.009906
Motor Vehi Roadway	33022180	80083397	33	0.033333	0.006056	33.03939	80	0.133333	0.009436
Motor Vehi Roadway	33022231	80083098	33	0.033333	0.006197	33.03953	80	0.133333	0.008606
Motor Vehi Roadway	33022234	80083098	33	0.033333	0.006206	33.03954	80	0.133333	0.008606
Motor Vehi Roadway	33022195	80083275	33	0.033333	0.006097	33.03943	80	0.133333	0.009097
Motor Vehi Roadway	33022159	80083451	33	0.033333	0.005997	33.03933	80	0.133333	0.009586
Motor Vehi Roadway	33022198	80083278	33	0.033333	0.006106	33.03944	80	0.133333	0.009106
Motor Vehi Roadway	33022159	80083487	33	0.033333	0.005997	33.03933	80	0.133333	0.009686
Motor Vehi Roadway	33022144	80083548	33	0.033333	0.005956	33.03929	80	0.133333	0.009856
Motor Vehi Roadway	33022177	80083394	33	0.033333	0.006047	33.03938	80	0.133333	0.009428
Motor Vehi Roadway	33022213	80083167	33	0.033333	0.006147	33.03948	80	0.133333	0.008797
Motor Vehi Roadway	33022134	80083592	33	0.033333	0.005928	33.03926	80	0.133333	0.009978
Motor Vehi Roadway	33022180	80083358	33	0.033333	0.006056	33.03939	80	0.133333	0.009328
Motor Vehi Roadway	33022159	80083505	33	0.033333	0.005997	33.03933	80	0.133333	0.009736
Motor Vehi Roadway	33022245	80083044	33	0.033333	0.006236	33.03957	80	0.133333	0.008456

	Motor Vehi	Roadway	33022144	80083566	33	0.033333	0.005956	33.03929	80	0.133333	0.009906
	Motor Vehi	Roadway	33022216	80083163	33	0.033333	0.006156	33.03949	80	0.133333	0.008786
	Motor Vehi	Roadway	33022152	80083523	33	0.033333	0.005978	33.03931	80	0.133333	0.009786
	Motor Vehi	Roadway	33022184	80083347	33	0.033333	0.006067	33.0394	80	0.133333	0.009297
	Motor Vehi	Roadway	33022177	80083293	33	0.033333	0.006047	33.03938	80	0.133333	0.009147
	Motor Vehi	Roadway	33022141	80083566	33	0.033333	0.005947	33.03928	80	0.133333	0.009906
eld Right of Way	Motor Vehi	Roadway	33022195	80083293	33	0.033333	0.006097	33.03943	80	0.133333	0.009147
	Motor Vehi	Roadway	33022166	80083426	33	0.033333	0.006017	33.03935	80	0.133333	0.009517
	Motor Vehi	Roadway	33022209	80083232	33	0.033333	0.006136	33.03947	80	0.133333	0.008978
	Motor Vehi	Roadway	33022173	80083394	33	0.033333	0.006036	33.03937	80	0.133333	0.009428
	Motor Vehi	Roadway	33022249	80083023	33	0.033333	0.006247	33.03958	80	0.133333	0.008397
	Motor Vehi	Roadway	33022152	80083530	33	0.033333	0.005978	33.03931	80	0.133333	0.009806
	Motor Vehi	Roadway	33022170	80083386	33	0.033333	0.006028	33.03936	80	0.133333	0.009406
	Motor Vehi	Roadway	33022180	80083358	33	0.033333	0.006056	33.03939	80	0.133333	0.009328
	Motor Vehi	Roadway	33022162	80083433	33	0.033333	0.006006	33.03934	80	0.133333	0.009536
	Motor Vehi	Roadway	33022144	80083548	33	0.033333	0.005956	33.03929	80	0.133333	0.009856
	Motor Vehi	Roadway	33022177	80083368	33	0.033333	0.006047	33.03938	80	0.133333	0.009356
	Motor Vehi	Roadway	33022191	80083289	33	0.033333	0.006086	33.03942	80	0.133333	0.009136
	Motor Vehi	Roadway	33022137	80083595	33	0.033333	0.005936	33.03927	80	0.133333	0.009986
	Motor Vehi	Roadway	33022224	80083134	33	0.033333	0.006178	33.03951	80	0.133333	0.008706
	Motor Vehi	Median	33022198	80083282	33	0.033333	0.006106	33.03944	80	0.133333	0.009117
	Motor Vehi	Roadway	33022141	80083577	33	0.033333	0.005947	33.03928	80	0.133333	0.009936
	Motor Vehi	Roadway	33022141	80083566	33	0.033333	0.005947	33.03928	80	0.133333	0.009906
	Overturn/R	Roadway	33022137	80083592	33	0.033333	0.005936	33.03927	80	0.133333	0.009978
	Motor Vehi	Roadway	33022177	80083332	33	0.033333	0.006047	33.03938	80	0.133333	0.009256
	Motor Vehi	Roadway	33022198	80083250	33	0.033333	0.006106	33.03944	80	0.133333	0.009028
	Motor Vehi	Roadway	33022198	80083214	33	0.033333	0.006106	33.03944	80	0.133333	0.008928
	Motor Vehi	Roadway	33022220	80083170	33	0.033333	0.006167	33.0395	80	0.133333	0.008806
	Motor Vehi	Roadway	33022170	80083412	33	0.033333	0.006028	33.03936	80	0.133333	0.009478
	Motor Vehi	Roadway	33022155	80083512	33	0.033333	0.005986	33.03932	80	0.133333	0.009756
	Motor Vehi	Roadway	33022242	80083055	33	0.033333	0.006228	33.03956	80	0.133333	0.008486
	Motor Vehi	Roadway	33022148	80083545	33	0.033333	0.005967	33.0393	80	0.133333	0.009847
	Equipment	Roadway	33022137	80083574	33	0.033333	0.005936	33.03927	80	0.133333	0.009928

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	Motor Vehi Roadway	33022202	80083260	33	0.033333	0.006117	33.03945	80	0.133333	0.009056	
	Motor Vehi Roadway	33022141	80083588	33	0.033333	0.005947	33.03928	80	0.133333	0.009967	
	Motor Vehi Roadway	33022177	80083397	33	0.033333	0.006047	33.03938	80	0.133333	0.009436	
	Motor Vehi Roadway	33022198	80083232	33	0.033333	0.006106	33.03944	80	0.133333	0.008978	
	Motor Vehi Median	33022198	80083260	33	0.033333	0.006106	33.03944	80	0.133333	0.009056	
	Motor Vehi Roadway	33022166	80083412	33	0.033333	0.006017	33.03935	80	0.133333	0.009478	
	Motor Vehi Roadway	33022148	80083520	33	0.033333	0.005967	33.0393	80	0.133333	0.009778	
	Motor Vehi Roadway	33022162	80083455	33	0.033333	0.006006	33.03934	80	0.133333	0.009597	
	Motor Vehi Roadway	33022188	80083318	33	0.033333	0.006078	33.03941	80	0.133333	0.009217	
eld Right of Way	Motor Vehi Roadway	33022162	80083444	33	0.033333	0.006006	33.03934	80	0.133333	0.009567	
	Motor Vehi Roadway	33022216	80083170	33	0.033333	0.006156	33.03949	80	0.133333	0.008806	
	Motor Vehi Roadway	33022220	80083170	33	0.033333	0.006167	33.0395	80	0.133333	0.008806	
	Motor Vehi Roadway	33022234	80083077	33	0.033333	0.006206	33.03954	80	0.133333	0.008547	
	Motor Vehi Roadway	33022234	80083106	33	0.033333	0.006206	33.03954	80	0.133333	0.008628	
	Motor Vehi Roadway	33022152	80083484	33	0.033333	0.005978	33.03931	80	0.133333	0.009678	
	Motor Vehi Roadway	33022188	80083311	33	0.033333	0.006078	33.03941	80	0.133333	0.009197	
Fast for Conditions	Motor Vehi Roadway	33022144	80083520	33	0.033333	0.005956	33.03929	80	0.133333	0.009778	
	Motor Vehi Roadway	33022195	80083307	33	0.033333	0.006097	33.03943	80	0.133333	0.009186	
	Motor Vehi Roadway	33022206	80083235	33	0.033333	0.006128	33.03946	80	0.133333	0.008986	
	Motor Vehi Roadway	33022141	80083559	33	0.033333	0.005947	33.03928	80	0.133333	0.009886	
	Motor Vehi Roadway	33022224	80083145	33	0.033333	0.006178	33.03951	80	0.133333	0.008736	
	Motor Vehi Roadway	33022177	80083383	33	0.033333	0.006047	33.03938	80	0.133333	0.009397	
	Motor Vehi Roadway	33022234	80083084	33	0.033333	0.006206	33.03954	80	0.133333	0.008567	

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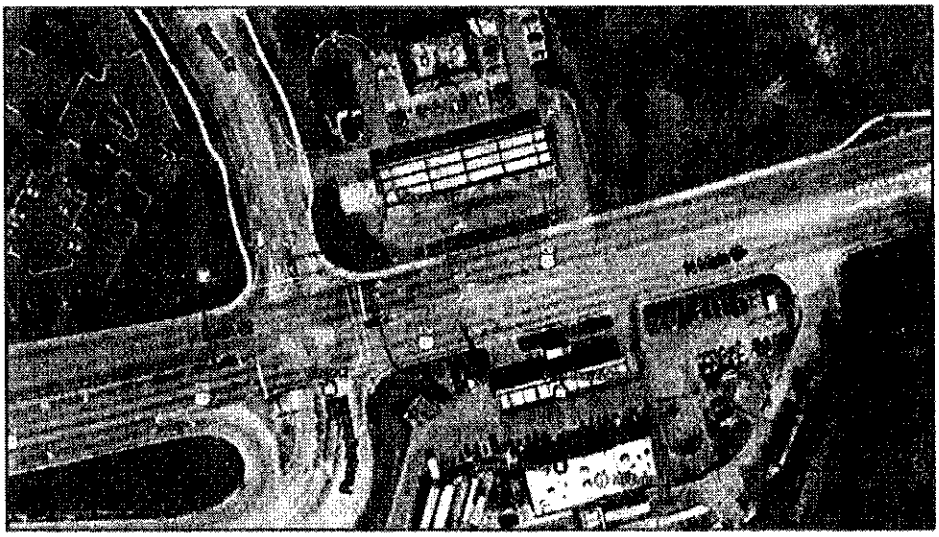
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
Cynthia Wright and Richard Wright,	)	Civil Action No.: 2016-CP-08-334
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	**PLAINTIFFS' MEMORANDUM**
South Carolina Department of	)	**OF LAW IN OPPOSITION TO**
Transportation, Pilot Travel Centers, LLC	)	**DEFENDANT SOUTH CAROLINA**
Speedway, LLC, Ashley Land Surveying,	)	**DEPARTMENT OF**
Inc., F/K/A Ashley Engineering and	)	**TRANSPORTATION'S MOTION**
Surveying, Inc. and Ashley Engineering &	)	**FOR SUMMARY JUDGMENT**
Consulting, Inc., and Munlake Contractors,	)	
Inc.,	)	
	)	
Defendants.	)	
	)	

Plaintiffs Cynthia and Richard Wright respectfully submit their Memorandum of Law in Opposition to Defendant South Carolina Department of Transportation's ("SCDOT") Motion for Summary Judgment.

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)[1] planned 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's designed included three driveways to serve passenger vehicles and commercial trucks. In violation of its own rules, SCDOT approved Pilot's plan to construct one or more of these driveways in an area that was unreasonably close to an adjacent intersection. R. Clark Dep. 11:23 – 12:1-4, excerpts attached as **EXHIBIT 7**); L. Colvin Dep. 169:15-22; 173:11-16, excerpts attached as **EXHIBIT 8**). SCDOT also approved the plan despite the fact that the driveways were not the required distance from each other. R. Clark Dep. 30:23-25.

Pilot also 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

[1] 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.

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. Pilot worried that 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**.

As the Wrights rode along Highway 17 on October 6, 2012, a vehicle driven by Daniel Sena attempted a left turn across the painted median to which SCDOT improperly acceded and into one of the driveways SCDOT should not have approved. (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

The Wrights were injured in a severe auto collision when their motorcycle were struck by a driver attempting a left-turn at a busy intersection. The at-fault driver's fateful turn would never have been possible had SCDOT properly maintained the highway, timely responded to substantial evidence of the intersection's danger, and resisted the urge to approve an adjoining landowner's plan to increase its profits by making the intersection more dangerous. The Wrights' Complaint alleges SCDOT's negligent, grossly negligent, and reckless conduct was a proximate cause of the collision and their injuries. (Am. Compl. ¶¶ 25-30). SCDOT's motion for summary judgment on these claims should be denied because the Wrights have presented evidence on all required elements of a negligence claim and SCDOT cannot meet its burden to obtain immunity under the South Carolina Tort Claims Act ("SCTCA").

1. **The Wrights' Negligence Claim Presents Factual Questions a Jury Must Answer.**

Negligence is the breach of a duty of care owed by the defendant to the plaintiff. Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 251, 734 S.E.2d 161, 163-64 (2012). To prevail on their negligence claim against SCDOT, the Wrights must only prove SCDOT owed a legal duty, breached that duty by negligent act or omission, and the negligent conduct proximately caused the Wrights' damages. Id. (citing Thompson v. Poole, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002)). The evidence in the record supports all required elements of a negligence claim, and SCDOT's summary judgment motion should be denied.

a. Legal Duty

SCDOT has extensive duties for South Carolina roadways including that portion of Highway 17 in Berkeley County where the Wrights were injured. SCDOT expressly acknowledged these duties in the testimony of their designated corporate representative Leland Colvin. Mr. Colvin, who also served as program manager for multiple projects on Highway 17, testified that SCDOT has a duty to maintain the highway in a safe condition. L. Colvin Dep. 213:14-17. SCDOT also has an affirmative obligation to monitor highways to determine whether their physical state or traffic conditions have created dangerous circumstances for motorists. L. Colvin Dep. 38:16-20; 213:22-25. If the department knows or should know of dangerous highway conditions, SCDOT has a duty to undertake any reasonable changes available to make the highway reasonably safe. L. Colvin Dep. 213:14-21. When performing these changes and in all other highway-related activities, SCDOT must follow industry safety standards including the SCDOT Access and Roadside Management Standards ("ARMS manual") (attached as **EXHIBIT 13**). L. Colvin Dep.

31:9-13; 40:8-16. In light of SCDOT's admissions, the Wrights have properly demonstrated a legal duty owed by SCDOT.[2]

b. Breach of Duty

SCDOT failed to comply with its duties regarding Highway 17 in a number of different ways. First, despite acknowledging its affirmative duty to monitor highways for dangerous conditions (L. Colvin Dep. 213:22-25), SCDOT failed to take reasonable steps to determine the safety of the intersection where the Wrights were injured. For example, while annual safety analyses are typical for high traffic intersections, SCDOT did not conduct a single safety analysis of the subject intersection in the 10 year period (2003-2013) after the highway was widened and its capacity greatly increased. L. Colvin Dep. 215:25 – 216:15. This failure is especially unreasonable given that all parties associated with this case agree the subject intersection was a heavily-traveled roadway at the time of the Wrights' injuries. 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); D. Sena Dep. 113:8-9 (at-fault driver acknowledging "[t]hat's a very busy intersection").

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[2] The Court should also reject SCDOT's assertion that the Wrights' claims are barred by the public duty rule. See Answer to Am. Compl. ¶ 18. The public duty rule applies only to statutorily-created duties. Trousdell v. Cannon, 351 S.C. 636, 641, 572 S.E.2d 264, 266 (2002) (quoting Arthurs v. Aiken Cnty., 346 S.C. 97, 103, 551 S.E.2d 579, 582 (2001) (limiting public duty to instances "[w]hen, and only when, the plaintiff relies upon a *statute* as creating the duty") (emphasis in original). South Carolina courts have specifically held that the rule does not apply to common law duties. Trousdell, 351 S.C. at 641, 572 S.E.2d at 266-67; see also Platt v. S.C. Dep't of Transp., 388 S.C. 441, 697 S.E.2d 575 (2010) (refusing to consider common law negligence claim against SCDOT but only because issue was not raised to lower court). The Wrights' negligence claim is based on SCDOT common law duties. A party that undertakes to perform construction, maintenance, or repair to a highway has a common law duty in addition to any contractual obligations. Dorrell v. S.C. Dep't of Transp., 361 S.C. 312, 319-20, 605 S.E.2d 12, 15-16 (2004). The common law duty includes a responsibility to conduct road work "in a manner that provide[s] for the safety of the traveling public." Id.

When a safety analysis was finally conducted in 2013, it revealed an alarming number of collisions at the intersection involving left turns to and from the Pilot Travel Center. Over a period of four years from 2010 to 2013 (including the time of the Wrights' collision in 2012), there were 17 left turn collisions in this single intersection. L. Colvin Dep. 219:12-15. This finding (4.25 collisions/year) was evidence that something needed to be done to improve safety at this dangerous intersection. L. Colvin Dep. 221:18-25; 223:13-25 (describing collision rate as "concern[ing]" and agreeing these numbers "mean something needs to change"). As a result of this belated safety analysis, SCDOT has planned for a "countermeasure" to make left turns safer in this intersection. L. Colvin Dep. 224:19-22. While it chose to address the situation with something other than a raised median, SCDOT acknowledged a raised median would have effectively addressed the spate of left turn accidents that have infected this intersection since the highway was widened. L. Colvin Dep. 224:3-6.

Moreover, the data is even more concerning than SCDOT acknowledges. SCDOT's safety analysis covers only 2010-2013. When the parameters are extended back to 2003 when Highway 17 was widened and Pilot Travel Center was completed, accident reports reveal well over 200 collisions in the immediate vicinity of the intersection where the Wrights were injured. This information was readily available to SCDOT before the Wrights' collision as Plaintiffs' counsel acquired the reports from the South Carolina Department of Public Safety ("DPS"), the precise agency from which SCDOT collects collision data when planning and conducting safety analyses. L. Colvin Dep. 229:20 – 230:8 (stating that SCDOT's traffic safety office "use the DPS accident information").

Second, SCDOT breached its legal duties by approving driveway plans for Pilot Travel Center that violated existing safety standards. As Mr. Colvin acknowledged, SCDOT must follow

industry safety standards when considering the addition of driveways because "driveways have long been recognized as a major source of conflict for traffic on public highways." L. Colvin Dep. 31:9-13; 46:20-25. The ARMS Manual is an essential component of the governing standards for driveway design and placement. L. Colvin Dep. 40:8-16. 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 the Pilot Travel Center plan SCDOT approved 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 Mr. 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 SCDOT breached are safety considerations. R. Clark Dep. 31:1-10. This testimony from SCDOT's corporate representative establishes that SCDOT breached its legal duty by approving driveways and made the intersection more dangerous for motorists. Plaintiffs' experts also found that the driveway design and construction made the intersection unsafe. J. Teague Aff. ¶ 9 (**EXHIBIT 11**); R. Balgowan Aff. ¶ 9 (**EXHIBIT 12**). Each expert found that the driveways were too close to the functional area of the intersection.

Third, SCDOT breached its legal duties by altering its plan for a raised median across Highway 17 at the request of Pilot Travel Center's owners. SCDOT's duty in maintaining highways and in approving driveways that connect to highways require SCDOT to prioritize safety. A property owner's profit-driven preference for more expansive physical access to its premises cannot take precedence over motorist safety. L. Colvin Dep. 39:3-7; 213:11-17. 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. 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").

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. The primary result of that negotiation was a change in the design of the median fronting Pilot's property. At Pilot's behest[3], 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 lead to higher accident experience"). 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' expert John Mark Teague, a civil engineer with extensive expertise in the field of intersection safety concluded that a non-transversable median at this location "would have significantly reduced the risk of harm" to

[3] 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.

motorists like the Wrights. J. Teague Aff. ¶ 2-3, 13. Additionally, Mr. Teague found that the absence of a non-transversable median rendered the intersection "unsafe." J. Teague Aff. ¶ 9.

Accordingly, the Wrights have provided substantial evidence demonstrating SCDOT breached its legal duties. By ignoring an easily-observable problem with left turns at this busy intersection and by permitting the Pilot Travel Center's owners to construct driveways within the functional area of the intersection, SCDOT failed to perform its essential functions in highway maintenance. Moreover, SCDOT affirmatively made the intersection less safe by negotiating for the removal of a planned raised median.

c. Proximate Cause

SCDOT's failure to comply with its duties to maintain Highway 17 were a proximate cause of the collision leading to the Wrights' injuries. SCDOT's conduct was a cause-in-fact of the collision because the collision would not have happened at an adequately designed intersection. Under South Carolina law, any negligence or even criminal conduct of the at-fault driver does not absolve SCDOT from liability. Moreover, SCDOT's conduct was a proximate cause of the Wrights' injuries because, as innocent motorists, they are precisely the type of people SCDOT 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). The Wrights 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 the intersection and driveway design were proximate

causes of the Wrights' 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 SCDOT planned but then chose to remove would have most likely prevented that turn. SCDOT 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 the defective driveways SCDOT reviewed and approved. 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). 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. 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.

2. The SCTCA does not Immunize SCDOT's Misconduct.

The Wrights' negligence claim against SCDOT is governed by the SCTCA which holds governmental entity liable for their torts "in the same manner and to the same extent as a private individual under like circumstances" except for those limited instances where the SCTCA itself provides a different standard. S.C. Code Ann. § 15-78-40. Section 15-78-60 enumerates a variety of tortious acts and omissions for which the state refuses to waive its sovereign immunity and for which governmental entities may not face liability. SCDOT's answer alleges that 17 different provisions of Section 15-78-60 immunize its conduct in this case.[4] However, the vast majority of the cited provisions plainly have no relevance to the allegations in the Wrights' Complaint.[5] For the reasons described below, the remaining provisions on which SCDOT relies do not apply and SCDOT's request for immunity should be denied.

[4] Specifically, SCDOT cites subsections 1-5, 7, 8, 10, 12, 13, 15-17, 20, 21, 25, and 27.

[5] The Wrights do not allege claims based on legislative/judicial action (subsections 1 and 2), adoption/enforcement/or compliance with a law (4), nuisance (7), "natural conditions" on a roadway (8, 10), defects in a public park (16), supervision of inmates (21, 25), or charitable solicitations (27).

When a governmental entity cites SCTCA immunity provisions to avoid liability, it is asserting an affirmative defense. Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994). SCDOT bears the burden to establish it is entitled to assert each immunity provision under these facts and the burden to prove it is entitled to summary judgment on each immunity provision. Id.The Wrights allege SCDOT's negligent conduct includes (1) improperly approving Pilot's encroachment permit application that was based on a plan that violated unambiguous highway management standards; (2) failing to identify and improve the intersection where the Wrights were injured despite substantial evidence of dangerous conditions; and (3) altering its plan for a raised median on Highway 17 as part of negotiations with Pilot. Am. Compl. ¶ 29. SCDOT first argues it is immune for any action relating to the encroachment permit pursuant to Section 15-78-60(12) which generally covers "the issuance . . . or refusal to issue . . . any permit." However, the same section expressly excludes from immunity permit-related activities performed "in a grossly negligent manner." Gross negligence is "the failure to exercise slight care." Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). Gross negligence is a "relative term" meaning "the absence of care that is necessary under the circumstances." Id. The issue of gross negligence "is a mixed question of law and fact" that should generally be resolved by a jury. Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000); Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 332, 566 S.E.2d 536, 545 (2002) (holding that gross negligence determination "best rests with the jury").

A number of factors may be considered to determine whether a defendant's conduct rises from ordinary to gross negligence. Cole v. S.C. Elec. & Gas, Inc., 335 S.C. 183, 193, 584 S.E.2d 405, 411 (Ct. App. 2003) (holding that a jury determining gross negligence may consider statutory and regulatory violations as well as "other facts and circumstances surrounding the event"). A

governmental entity's violation of its only operational policies can be strong evidence of gross negligence. Proctor v. S.C. Dep't of Health & Envtl. Control, 368 S.C. 279, 297, 628 S.E.2d 496, 506 (Ct. App. 2006) (finding jury question on gross negligence where state agency's conduct was against what "was its policy to do"); Clark v. S.C. Dep't of Public Safety, 362 S.C. 377, 384-85, 608 S.E.2d 573 (2005) (holding that trial court properly submitted gross negligence to jury based in part on an expert description of department policy).

In this case, SCDOT's approval of Pilot's encroachment permit application was grossly negligent. Pilot's application was based on a driveway plan that violates clear SCDOT policy as stated in the ARMS Manual. SCDOT acknowledges the policy and admits the violation. SCDOT's corporate representative Robert Clark testified that the ARMS Manual provides that driveways may not be placed in the functional area of the intersection. R. Clark Dep. 19:15-20. Mr. Clark also acknowledged the ARMS Manual requires a minimum distance between driveways. In the same deposition, Mr. Clark acknowledges SCDOT approved a plan calling for one or more driveways within the functional area of the intersection and that the proposed driveways did not meet the minimum distance standard. R. Clark Dep. 12:1-4; 30:10-25; L. Colvin Dep. 169:15-22; 173:11-16. In light of the policy violation and SCDOT's acknowledgments, a reasonable jury could conclude SCDOT failed to exercise slight care in issuing an encroachment permit for Pilot Travel Center.

SCDOT is also not entitled to immunity under Section 15-78-60(13), which refers to "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection." However, a state agency's total failure to inspect or investigate an easily observable is grossly negligent conduct that supports SCTCA liability notwithstanding Section 15-78-60(13)'s seemingly broad scope. For example, in Bass v. S.C.

Department of Social Services, 414 S.C. 558, 574, 780 S.E.2d 252, 260 (2015), the South Carolina Supreme Court found SCTCA liability was supported by evidence that the state "failed to conduct any investigation" when it had a duty to do so. See also Proctor, 368 S.C. at 297, 628 S.E.2d at 506 (finding jury question on gross negligence where stage agency "did not perform an inspection, as it was its policy to do"). Here, SCDOT had not conducted a single safety analysis of the subject intersection for 10 years at the time the Wrights were injured. L. Colvin Dep. 215:25 – 216:15.

In light of the substantial number of collisions at this specific intersection (4.25/year and over 200 since Pilot Travel Center opened), SCDOT's failure to investigate and respond to the danger was grossly negligent. While Section 15-78-60(13) does not reference that standard, since SCDOT asserts the permit immunity provision (Section 15-78-60(12)) that contains a gross negligence standard, the same standard applies to all the SCTCA immunity provisions on which SCDOT relies. Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999) ("when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception"). Just as in this case, Steinke applied a gross negligence standard to the inspection immunity provision because the defendant also asserted the licensing immunity provision which includes an explicit gross negligence standard. Id. at 395-96, 520 S.E.2d at 153-54. Thus, SCDOT's total failure to inspect the subject intersection and to investigate its dangerous conditions constitute gross negligence and defeats SCDOT's immunity assertion.

SCDOT also may not rely on Section 15-78-60(15), which provides immunity for the "absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier." This section covers a broad section of traffic control devices but its plain terms do not cover the allegations related to the deficient *driveways* SCDOT improperly

approved. Plus, while decisions regarding medians are generally immune, SCDOT can face liability when a defective median is not corrected "within a reasonable time after actual or constructive notice." S.C. Code Ann. § 15-78-60(15). Based on the numerous collisions reported in this area, SCDOT was on actual or constructive notice of the dangers motorists faced as a result of customers attempting left turns in to and out of Pilot Travel Center. Collision reports were readily available to the public including SCDOT's own traffic safety office. L. Colvin Dep. 229:20 – 230:8. SCDOT did not act on the danger within a reasonable time as it failed to conduct any safety analyses for 10 years. L. Colvin Dep. 215:25 – 216:15.

In this way, the Wrights' claim is similar to Giannini v. S.C. Dep't of Transp., 378 S.C. 573, 664 S.E.2d 450 (2008), where the South Carolina Supreme Court refused to apply Section 15-78-60(15) to a claim based on SCDOT's failure to install median barriers along an interstate highway. Giannini held that, while this immunity provision immunizes median design choices[6], it does not immunize SCDOT's failure to install a more substantial barrier when events provided notice of dangerous highway conditions. 378 S.C. at 580, 664 S.E.2d at 453 ("This is not a claim of defective construction but, rather, one of failure to take corrective action subsequent to notice of a defect"); see also Wooten v. S.C. Dep't of Transp., 333 S.C. 464, 467-68, 511 S.E.2d 355, 357 (1999) (holding that design immunity is not "perpetual" and that once SCDOT has notice intersection is hazardous, it is no longer immune from liability). Giannini found that SCDOT was

[6] SCDOT is also not entitled to immunity on SCDOT's decision to alter its original plan for a raised median. Since SCDOT asserts at least one immunity provision with a gross negligence standard, that standard applies to all immunity provisions including Section 15-78-60(15)'s general protection for median design choices. Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. at 398, 520 S.E.2d at 155. Here, there is evidence of gross negligence in that SCDOT changed its plan from a much safer raised median to a painted median during "negotiations" with Pilot Travel Center's owners who prioritized profits over highway safety. As SCDOT acknowledges, planning for a median based on business interests rather than safety is antithetical to SCDOT's core objectives. L. Colvin Dep. 39:3-25; 213:11-13.

on notice of the need for a median based on "several" similar collisions on the interstate. 378 S.C. at 580, 664 S.E.2d at 453.

Here, Plaintiffs' counsel has obtained hundreds of collision reports for incidents in the immediate vicinity of the subject intersection. SCDOT even admits left turn related collisions were occurring in this intersection at a rate of 4.25 per year at the time the Wrights were injured. This information placed SCDOT on actual or constructive notice of the need to more tightly control the areas at which left turns would be permitted in this intersection. At the very least, the collision reports and SCDOT representatives' testimony creates a question of fact for the crucial issue of notice. Wooten, 326 S.C. 516, 528, 485 S.E.2d 119, 125 (Ct. App. 1997) (*aff'd as modified* 333 S.C. 464, 467-68, 511 S.E.2d 355, 357 (1999) ("Whether there was a history of accidents which put SCDOT on notice of a potentially dangerous situation is a quintessential matter for the jury").

Finally, the Court should reject SCDOT's assertion of discretionary immunity under S.C. Code Ann. § 15-78-60(5). As with all SCTCA immunity provisions, SCDOT bears the burden of proving it is entitled to discretionary immunity. To prove discretionary immunity, SCDOT must prove that, "when faced with alternatives, it actually weighed competing considerations and made a conscious choice." Pike v. S.C. Dep't of Transp., 343 S.C. 224, 230, 540 S.E.2d 87, 90 (2000). SCDOT must also demonstrate that "in weighing the competing considerations and alternatives, it utilized acceptable professional standards appropriate to resolve the issue." Id. (citing Foster v. S.C. Dep't of Highways & Pub. Transp., 306 S.C. 519, 525, 413 S.E.2d 31, 35 (1992)). Mere room for discretion is not enough and "[i]t is not enough to say the defect was noted and a decision was made not to repair it." Id. SCDOT cannot meet this burden for its negligent failure to discover and respond to the dangerous conditions at the subject intersection. SCDOT has no explanation for the failure to conduct proper safety analyses at this busy intersection (L. Colvin Dep. 216:4-15) and,

therefore, cannot argue this was a discretionary decision. SCDOT's approval of Pilot's deficient driveway plan is not entitled to discretionary immunity because it did not apply acceptable professional standards. Driveways located within the functional area of an intersection and spaced too closely together violated the ARMS Manual and SCDOT's decision to sanction those violations is not entitled to immunity. Pike, 343 S.C. at 230, 540 S.E.2d at 90 (limiting discretionary immunity to actions where governmental entity "utilized acceptable professional standards").

In sum, SCDOT's summary judgment motion should be denied to the extent it relies on SCTCA immunity provisions. SCDOT bears the burden of proof for each of these affirmative defenses and cannot meet the requirements for any of them. SCDOT's conduct from the time Pilot submitted its driveway plans until the date of the Wrights' collision was grossly negligent and not protected from liability.

CONCLUSION

Based on the arguments stated above, Plaintiffs respectfully request an order denying SCDOT's motion for summary judgment. Evidence in the record supports all required elements of the Wrights' negligence claim, and SCDOT cannot meet their burden to obtain summary judgment on any of their affirmative defenses.

Respectfully submitted,

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Rock Hill, South Carolina

June 5, 2017

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 OF LAW IN OPPOSITION TO DEFENDANT SPEEDWAY LLC'S MOTION FOR SUMMARY JUDGMENT**
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.,)	
)	
Defendants.)	
)	

Plaintiffs Cynthia and Richard Wright respectfully submit their Memorandum of Law in Opposition to Defendant Speedway LLC's Motion for Summary Judgment.

INTRODUCTION

There has 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. Pilot Travel Center was the product of a joint venture formed in 2001 by Defendants Pilot Travel Centers, LLC ("Pilot") and Speedway, LLC. W. Mulligan Dep. 23:13-15, excerpts attached as **EXHIBIT 1**. 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 Speedway created at this intersection mostly affect motorists exiting I-

[1] A SCDOT Accident Study and Collision data from 2004-14 is attached as **EXHIBIT 14**.

26 from Charleston at the Summerville exit headed towards Moncks Corner and those traveling from Summerville in the same direction.

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/Speedway 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 Speedway had a duty to ensure that safety standards were met when "negotiating" the terms of the intersection and raised median. Even if Speedway 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 gas 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/Speedway built three driveways but ignored SCDOT rules by placing the driveways too close together and too close to a crowded intersection. Speedway 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, Speedway's business-boosting maneuvers made the area far more dangerous for motorists. Although Speedway suggests it simply submitted plans that were ultimately approved by the SCDOT, the documents and evidence suggests Speedway had a much greater role in the process.

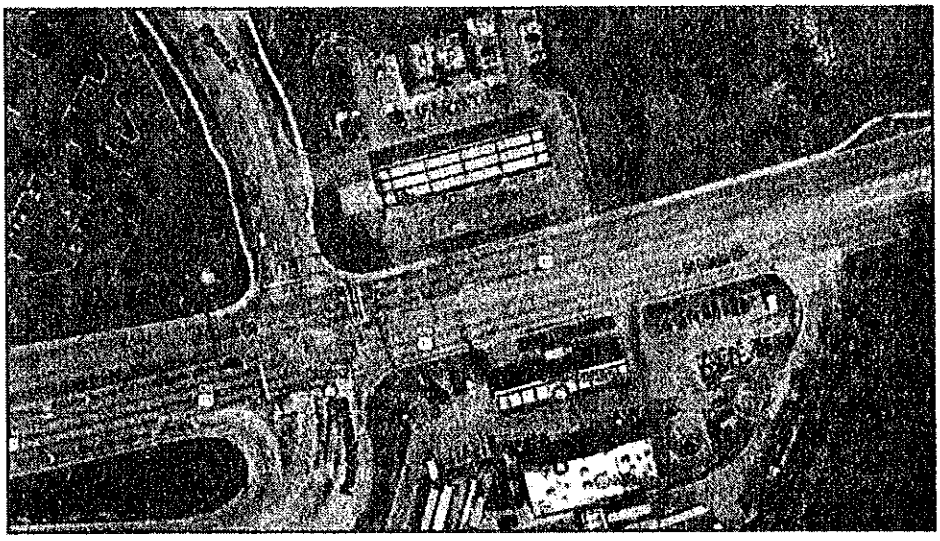
In its motion, Speedway argues it owed the Wrights no duty, did not act unreasonably, and did not cause the Wrights' injuries. However, South Carolina law requires that landowners like Speedway act reasonably, follow SCDOT rules, and avoid creating dangerous conditions when connecting their business to a neighboring highway. Plaintiffs' evidence and witness testimony demonstrate that the collision that crippled the Wrights' likely would not have happened if Speedway followed nationally accepted highway design safety rules at issue in this case. Speedway 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.

Speedway's motion mimics the arguments Pilot made in support of summary judgment and cites an order granting Pilot summary judgment as evidence for why Speedway should also be dismissed. This argument should be rejected for two reasons. First, Plaintiffs have filed a motion to alter or amend judgment on the order granting Pilot summary judgment and that motion has not been resolved. Plaintiffs' motion argues the order granting Pilot summary judgment overlooked legal duties Pilot owed in relation to the driveways on its property and for the median design

alteration that it negotiated to obtain. Second, the order granting Pilot summary judgment made a critical finding of fact that does not apply to Speedway. In the Pilot order, the court refused to consider a letter documenting "negotiations" for an altered design of the median because the court found the letter was neither addressed to nor written by a Pilot employee. Order at 6 n. 7. Speedway cannot make the same argument because the letter was addressed to its agent. Therefore, the court should not rely on the Pilot motion in ruling on Speedway's motion and, for the reasons stated above, Speedway'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; D. Sena Dep. 113:8-9, excerpts attached as **EXHIBIT 2**. At the time of the collision, the Wrights were traveling past Pilot Travel Center, a 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.



A joint venture between Pilot and Speedway 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, one or more of these driveways were constructed in an area that was unreasonably close to an adjacent intersection. R. Clark Dep. 11:23 – 12:1-4, excerpts attached as **EXHIBIT 7**); L. Colvin Dep. 169:15-22; 173:11-16, excerpts attached as **EXHIBIT 8**). The property owners also violated SCDOT rules by failing to provide the minimum required space between each of its driveways. R. Clark Dep. 30:23-25.

Speedway was also very cognizant of the way in which certain features of Highway 17 itself could affect customer access to Pilot Travel Center. Specifically, Speedway 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

[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**). Marathon Ashland and Speedway are simply different names for the same entity. W. Mulligan Dep. 21:3-10. Thus, the joint venture consisted of Pilot and Marathon/Speedway and "the joint venture rebuilt the facility" into Pilot Travel Center. W. Mulligan Dep. 23:17-18.

intersection. W. Mulligan Dep. 27:6-7; L. Colvin Dep. 101: 9-25. 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 turn in to its parking lot. W. Mulligan Dep. 60:10-23. Accordingly, Speedway 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**.

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. Speedway Owed the Wrights a Legal Duty under South Carolina law.

Defendant Speedway 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, Speedway "negotiated" for the "removal" of a planned raised median intended to limit left turns into Pilot Travel Center and designed driveway entrances to the station that were both too close together and improperly lying within the functional area of the intersection. Speedway's goal was to make its location a more convenient and attractive option than neighboring gas stations. However, its design specifications and construction choices created a foreseeable danger to motorists traveling through the already cramped intersection. Since Speedway's conduct violated established South Carolina common law standards and SCDOT regulations, Speedway 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

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[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,

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

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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 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").

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 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, Speedway 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 Speedway had no common law duty to make changes to Highway 17, Speedway undertook to do so by successfully negotiating for the planned non-transversable median's removal. Having voluntarily undertaken this duty, Speedway had an

affirmative duty going forward since Speedway'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 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 Speedway and Pilot 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, the joint venture's members 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 and Speedway were required to meet during the design and construction of its new facility.

Finally, Plaintiffs note Speedway 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

[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)).

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, Speeway 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, 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. 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 Speedway's design and construction decisions.

In sum, Speedway'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 Speedway's customers but also to motorists on the adjacent highway endangered by Speedway's conduct. As discussed below, Speedway breached these duties in multiple ways resulting in an auto collision and injuries that were a foreseeable result of Speedway's misconduct.

2. Speedway Breached its Legal Duty by Negotiating for the Removal of a Non-Transversable Median and by Installing Unsafe Driveways.

Speedway planned, designed, and constructed 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, Speedway 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. Speedway 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, Speedway 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 a 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, Speedway 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, Speedway 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, Speedway raised concerns about the planned non-transverable median. Id. SCDOT 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 Travel Center. At Speedway'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, Speedway effectively replaced a non-transversable median with one far more conducive to Speedway's business interest. Unfortunately, what benefited Pilot's

[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.

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 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 landowners like Speedway "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 SCDOT's existing plans, Speedway did "the exact opposite" of what its duty required. R. Balgowan Aff. ¶ 14. As both experts concluded, Speedway 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, Speedway violated its duty as recognized in Skinner and the Restatement sections discussed above.

The foregone non-transversable median is directly related to Speedway's other major breach of duty. A raised median or other device to restrict left turns to Pilot Travel Center was especially important given Speedway'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 Speedway breached are safety considerations. R. Clark Dep. 31:1-10. This testimony from SCDOT's corporate representative establishes that Speedway breached its legal duty by planning and constructing its driveways and made the intersection more dangerous for motorists. Plaintiffs' experts also found that the 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 the landowners had a duty to take some affirmative action to prevent left turns into this dangerous area. Id.

Thus, Speedway is not entitled to summary judgment on the breach element of Plaintiffs' negligence claims. Plaintiffs have presented expert testimony demonstrating Speedway breached its 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. Speedway's Conduct was a Proximate Cause of the Collision and the Wrights' Injuries.

Speedway's property design and construction errors were a proximate cause of the collision leading to the Wrights' injuries. Speedway'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 Speedway 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). Plaintiffs 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 Speedway'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 Speedway negotiated to remove would have most likely prevented that turn. SCDOT 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 the 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 Speedway's motion for summary judgment. Speedway 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. Speedway's motion should be denied.

Respectfully submitted,

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June 5, 2017

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 OF LAW IN OPPOSITION TO DEFENDANT ASHLEY LAND SURVEYING, INC.'S MOTION FOR SUMMARY JUDGMENT**
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.,	)	
	)	
Defendants.	)	

Plaintiffs Cynthia and Richard Wright respectfully submit their Memorandum of Law in Opposition to Defendant Ashley Land Surveying, Inc.'s ("Ashley") Motion for Summary Judgment.

INTRODUCTION

This motion is part of a multi-defendant action arising from a motor vehicle collision on Highway 17 in Summerville right in front of the Pilot Travel Center.[1] The Wrights, who were seriously injured by a vehicle attempting a left turn into Pilot Travel Center, argue activities undertaken by Pilot Travel Center's owners made the intersection substantially less safe and proximately caused the collision and the Wrights' injuries. While Ashley did not own Pilot Travel Center, it played a crucial role in the road conditions present on the night of the Wrights' collision.

[1] Plaintiffs incorporate by reference the statement of facts included in their Memorandum in Opposition to Defendant Speedway LLC's Motion for Summary Judgment as well as the exhibits cited in that memorandum.

Ashley is listed as one of the submitting parties for an encroachment permit submitted to the South Carolina Department of Transportation ("SCDOT") in which Ashley sought approval for driveways linking Pilot Travel Center to Highway 17 even though some of the driveways were in the functional area of a busy intersection and violated state regulations by being too close together.

Ashley's motion mimics the arguments Defendant Pilot Travel Centers, LLC ("Pilot") made in support of summary judgment and cites an order granting Pilot summary judgment as evidence for why Ashley should also be dismissed. This argument should be rejected for two reasons. First, Plaintiffs have filed a motion to alter or amend judgment on the order granting Pilot summary judgment and that motion has not yet been resolved. Plaintiffs' motion argues the order granting Pilot summary judgment overlooked legal duties Pilot owed in relation to the driveways on its property and for the median design alteration that it negotiated to obtain. Second, there is evidence suggesting Ashley had a greater connection to the poor design and construction choices than Pilot. Pilot takes the position that it fully trusted Ashley to submit an encroachment permit application that complied with state driveway location regulations. W. Mulligan Dep. 48:21 – 49:10; 79:24 – 80:3. Accordingly, the Pilot order should have no bearing on the court's ruling for this motion and, for the reasons stated below, Ashley's motion should be denied.

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. Ashley 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, these design specifications and construction choices created a foreseeable danger to motorists traveling through the already cramped intersection. According to Pilot, many of the design and construction choices it made for this intersection were made by or

in conjunction with Ashley, the construction company Pilot hired for the project. W. Mulligan Dep. 79:24 – 80:3 (acknowledging Pilot hired Ashley to "get the compliance" from the state to complete the Pilot Travel Center project). Ashley contribution to the project included, among other things, construction work and submitting a faulty encroachment permit to SCDOT. Since Ashley's conduct violated established South Carolina common law standards and SCDOT regulations, Ashley 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").[2] Finally, the SCDOT Access and

[2] 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

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[3] or on the adjoining

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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.

[3] 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 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").

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 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, Ashley had a duty to ensure that the 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 Ashley had no common law duty to make changes to Highway 17, Ashley undertook to do so by successfully negotiating for the planned non-transversable median's removal. Having voluntarily undertaken this duty, Ashley had an affirmative duty going forward since Ashley's conduct "increased the risk" of harm to motorists. Restatement (Second) of Torts § 323.[4]

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 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 Ashley 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, Ashley 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

[4] 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)).

Manual standards state a duty and define the parameter of the duty Ashley was required to meet during the design and construction of the new facility.

Finally, Plaintiffs note Ashley 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, Ashley 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, Ashley 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 Ashley's design and construction decisions.

In sum, Ashley'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 Travel

Center customers but also to motorists on the adjacent highway endangered by Ashley's conduct.. As discussed below, Ashley breached these duties in multiple ways resulting in an auto collision and injuries that were a foreseeable result of Pilot's misconduct.

2. Ashley Breached its Legal Duty by Installing Unsafe Driveways.

Ashley planned, designed, and constructed Pilot Travel Center to make customers' entry and exit to the facility as convenient as possible. However, to further this goal, Ashley made strategic decisions about access to the Center that rendered the adjoining highway more dangerous both for customers and all other motorists passing through. Acting in consultation with Pilot, Ashley submitted an encroachment permit to SCDOT based on a plan for driveways that violated multiple state highway regulations. Through each of these actions, Ashley created dangerous artificial conditions that violate its duties under South Carolina common law and SCDOT regulations.

The encroachment permit application Ashley submitted for Pilot Travel Center was based on a 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 Ashley breached are safety considerations. R. Clark Dep. 31:1-10. This testimony from SCDOT's corporate representative establishes that Ashley breached its legal duty by planning and constructing its driveways and made the intersection more dangerous for motorists. Plaintiffs' experts also found that Ashley'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, Ashley is not entitled to summary judgment on the breach element of Plaintiffs' negligence claims. Plaintiffs have presented expert testimony demonstrating Ashley 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. Ashley's Conduct was a Proximate Cause of the Collision and the Wrights' Injuries.

Ashley's property design and construction errors were a proximate cause of the collision leading to the Wrights' injuries. Ashley'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 Ashley 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 Ashley's design and construction errors were a proximate cause of the collision. 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 Ashley's motion for summary judgment. Ashley breached duties imposed by South Carolina common law and SCDOT regulations when it submitted a plan for and constructed a series of dangerous driveways at Pilot Travel Center. As a direct and proximate result of the dangers created by the Defendants, the Wrights were injured in a serious auto collision. Ashley's motion should be denied.

Respectfully submitted,

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Attorneys for the Plaintiffs

Rock Hill, South Carolina

June 5, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-08-334

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 ENGINERRING & CONSULTING, INC., AND MUNLAKE CONTRACTORS, INC.

Defendants.

NOTICE OF MOTION AND MOTION TO COMPEL

2017 JUN 12 PM 3:44
MARY P
CLERK OF
BERKELEY COUNTY, SC
FILED

TO: WILLIAM G. BESLEY, ESQUIRE, ATTORNEY FOR DEFENDANT PILOT TRAVEL CENTERS, LLC

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas of Berkeley County, on the tenth (10) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order requiring the Defendant Pilot Travel Centers, LLC to produce the documents set out in Plaintiff's Requests for Production. On April 4, 2017, Plaintiff served requests for production upon counsel for Defendant Pilot Travel Centers, LLC requesting information, but no response has been made.

The parties have conferred and were unable to resolve this matter. Plaintiffs ask the Court for an Order requiring the Defendant to comply with the requests for production and to award costs and attorney's fees to the Plaintiff in the seeking of this Order.

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Attorney for Plaintiff

North Charleston, South Carolina

June 7, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-08-334

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 ENGINERRING & CONSULTING, INC., AND MUNLAKE CONTRACTORS, INC.

Defendants.

NOTICE OF MOTION AND MOTION TO COMPEL

FILED
2017 JUN 12 PM 3:54
BERKELEY COUNTY, SC

TO: ROY P. MAYBANK, ESQUIRE, ATTORNEY FOR DEFENDANT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas of Berkeley County, on the tenth (10) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order requiring the Defendant South Carolina Department of Transportation to produce the documents set out in Plaintiff's Requests for Production. On April 4, 2017, Plaintiff served requests for production upon counsel for Defendant South Carolina Department of Transportation requesting information, but no response has been made.

The parties have conferred and were unable to resolve this matter. Plaintiffs ask the Court for an Order requiring the Defendant to comply with the requests for production and to award costs and attorney's fees to the Plaintiff in the seeking of this Order.

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Attorney for Plaintiff

North Charleston, South Carolina

June 7, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-08-334

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 ENGINERRING & CONSULTING, INC., AND MUNLAKE CONTRACTORS, INC.

Defendants.

NOTICE OF MOTION AND MOTION TO COMPEL

FILED
2017 JUN 12 PM 3:57
CLERK OF COURT
BERKELEY COUNTY, SC

TO: J. BENNETT CRITES, III, ESQUIRE, ATTORNEY FOR DEFENDANT SPEEDWAY LLC

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas of Berkeley County, on the tenth (10) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order requiring the Defendant Speedway LLC to produce the documents set out in Plaintiff's Requests for Production. On April 4, 2017, Plaintiff served requests for production upon counsel for Defendant Speedway LLC requesting information, but no response has been made.

The parties have conferred and were unable to resolve this matter. Plaintiffs ask the Court for an Order requiring the Defendant to comply with the requests for production and to award costs and attorney's fees to the Plaintiff in the seeking of this Order.

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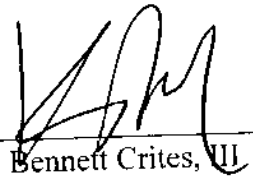
June 7, 2017

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 Civil Action No. 2016-CP-08-334 **Speedway LLC's Return to Plaintiffs' Motion to Compel**

BERKELEY COUNTY
2017 JUN 15 PM 03

Following Speedway and other Defendants' Motions for Summary Judgment on June 6, 2017, Plaintiffs' counsel conferred with the parties about the subject Requests for Production. Counsel for Speedway LLC (hereinafter Speedway) explained it would immediately look into the Request and locate the responsive documents, if any. Counsel for Plaintiffs emailed the subject Request for Production that afternoon, and Counsel for Speedway again communicated its intent to comply with Plaintiffs' request. On June 8, 2017, Speedway fully responded to the subject Request for Production. (Ex. A.) Notwithstanding, on June 7, 2017, Plaintiffs submitted the attached Motion to Compel to the Court by U.S. Mail. Defendant Speedway received the same on June 12, 2017. (Ex. B.) Because Speedway fully responded to Plaintiffs' Request, Plaintiffs' Motion is now moot and should be withdrawn by Plaintiffs or denied by the Court. Speedway requests further relief as the Court deems just and proper under these circumstances.

SMITH MOORE LEATHERWOOD LLP



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Attorneys for Defendant Speedway LLC

June 13, 2017
Charleston, South Carolina

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 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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Attorneys for Defendant Speedway LLC

June 7, 2017
Charleston, South Carolina

DOT R/W Form 602EXHI (01-00)

05-456-SC-31
(Doc 4)

TE 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 gular 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 reof.

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.)

Witness

(L.S.)

APPROVED AS TO FORM 7/12

NOTE: All right of way agreements must be in writing and are subject to rejection by the South Carolina Department of Transportation.

TE 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.

VORN to before me this 31st
y of October, 2000
OTARY PUBLIC FOR
y Commission Expires:

Natalie A. Rogers

ROSALIE B. LAWSON, NOTARY PUBLIC
IN AND FOR THE STATE OF OHIO
MY COMMISSION EXPIRES MARCH 3, 2005

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oject File No.

Tract 29

Speedway 000001

App0937

EXHIBIT "A"

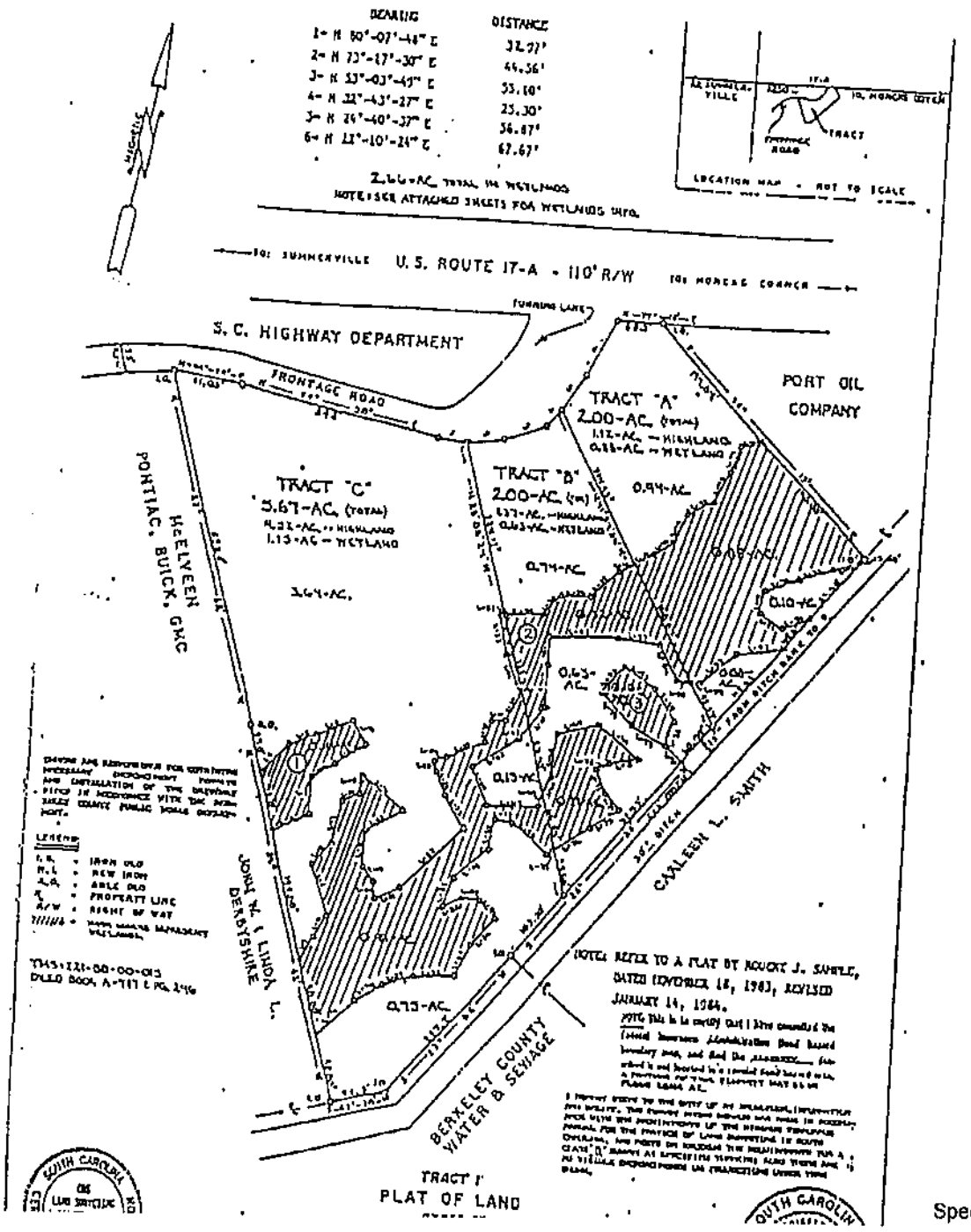
To Option to Purchase

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

0.94 ACRE USABLE IN FRONT
0.63 ACRE WETLANDS
0.63 ACRE HIGHLAND AT REAR
2.00 ACRE - TOTAL AREA

Speedway 000002

SCDOT R/W Form 102A (Revised 09-21-95)

South Carolina Department of Transportation

STANDARD APPRAISAL

1- File: 8.795 | Rd./Rt.: I/26 Interchange Improvements
Project: 10-0264(174) | Pin: 22338 | County: Berkeley

2- From Station: 204000 | To Station: 204080 LT | Sheet: 4,40,11

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 Farrington Drive, Summerville, S.C.
b- Mortgages & Addresses: NOR
Recorded: Bk. | Pg. | Date | Amt.
c- Lessees & Address: N/A
Terms of Lease: 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: .0389 ac; 9,102 sf | Width of R/W: Variable

5- Tabulation of sales: (At least 3 years; if more than 3 years, last sale)

From	To	Date	Consideration	Book	Page
Roosevelt Brown	Emmaline B. Smith	3-28-97	$210,000	1603	178

Tax Map: 237-00-00-015 & 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. 201(2) of Uniform Act.
Explain: (Why not accompanied, relation of representative, items discussed, etc.)
I contacted Ms. Drown 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.

☐ Original - R/W
☑ Copy - Agent
☐ Copy - FHWA

RECEIVED
JUL 7 2000
ROBINSON COMPANY

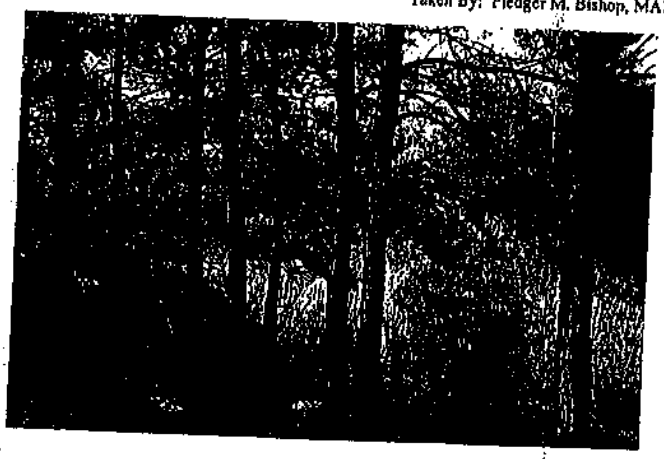
JUL 13 2000

Prepared by: Fledger Bishop, MAI
File No: 8.795
Tract No: 28 & 28P

Speedway 000003

PHOTOGRAPHS OF SUBJECT

Date Taken: June 22, 2000
Taken By: Pledger M. Bishop, MAI



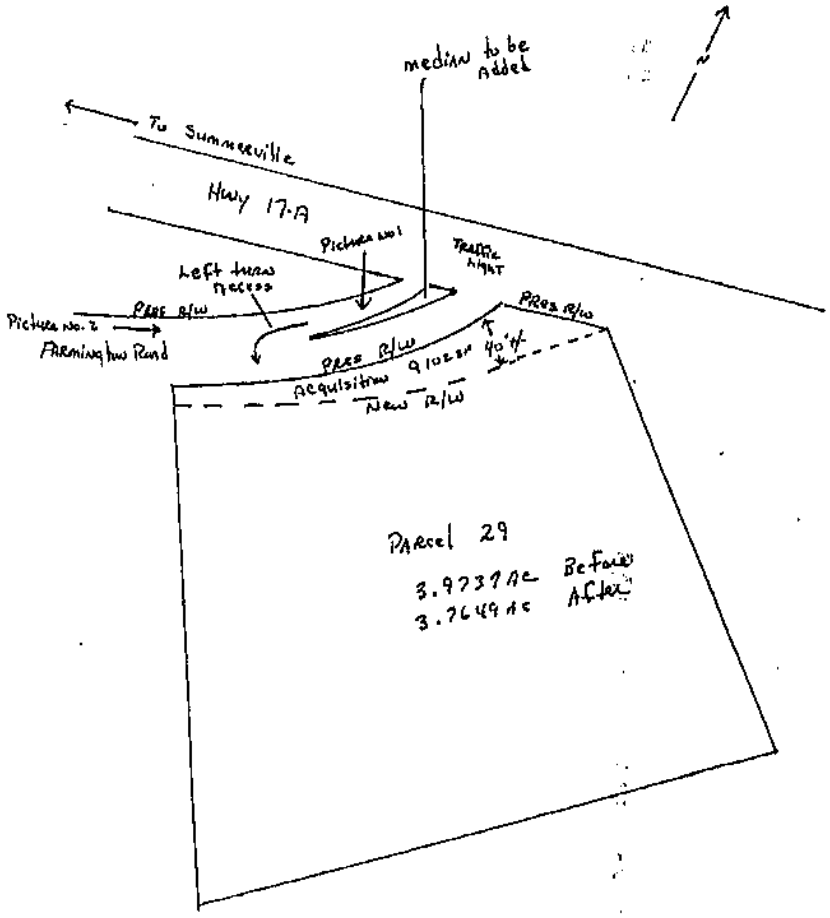
View of Subject from Farmington Road



View of Acquisition area

File No: 8.790
Parcel No: 29 & 29P

PROPERTY SKETCH



File No: 8.790
Tract No: 29 & 29P

Page 3

Speedway 000005

App. 941

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 pbuts 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 property owner to acquire the 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:

File No: 8,790
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 Cl	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 CONDITION	$ (226,000)	0	0	0
ADJ S.P./SF	$ 2.53	$ 2.31	$ 2.23	$ 1.41
TIME ADJUSTMENT	1.231	1.0000	1.300	1.076
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	0.80

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. 39
FARMINGTON RD - SUMMERVILLE,S.C.

TRANSACTION NO:	L-24	L-25	L-26	L-27
TYPE TRANSACTION	SALE	SALE	SALE	SALE
LOCATION	Jockey Cl	Farmington Rd	Farmington Rd	Farmington Rd
IDENTIFICATION	Vacant Site	Vacant Site	Vacant Sits	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	169,430	192,274
SIZE(ACRE)	2.00	3.97	3.85	4.41
SALES CONDITION	$ (226,000)	0	0	0
ADJ S.P./SF	$ 2.83	$ 2.31	$ 2.23	$ 1.41
TIME ADJUSTMENT	1.231	1.0000	1.300	1.075
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	0.80
NET ADJ FACTOR	0.75	1.00	0.60	1.52

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

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#13)		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 Inspected On:

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 qualified 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.

Speedway 000011

App0947

SCDOT R/W Form 112A (09-21-95)

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)

File No: 8,790
Tract No: 29 & 29P

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 at 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: 8.780
Tract No: 29 & 29P

SCDOT R/W Form 109A (03-07-96)

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

Pledger Mc Bishop, MAI
State Certified General Real Estate Appraiser
CG 2795

File No. 8.790

Tract No. 29 & 29P

12

Speedway 000014

App3950

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

Speedway 000017

App 953

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:

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

Speedway 000018

App 7954

SCDOT RW 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 S. 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 S. 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. Grelwe
R. Q. Scholes

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO: 2016-CP-08-334
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 ENGINERRING & CONSULTING, INC., AND MUNLAKE CONTRACTORS, INC. Defendants.	**NOTICE OF MOTION AND MOTION TO COMPEL**

TO: J. BENNETT CRITES, III, ESQUIRE, ATTORNEY FOR DEFENDANT SPEEDWAY LLC

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas of Berkeley County, on the tenth (10) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order requiring the Defendant Speedway LLC to produce the documents set out in Plaintiff's Requests for Production. On April 4, 2017, Plaintiff served requests for production upon counsel for Defendant Speedway LLC requesting information, but no response has been made.

The parties have conferred and were unable to resolve this matter. Plaintiffs ask the Court for an Order requiring the Defendant to comply with the requests for production and to award costs and attorney's fees to the Plaintiff in the seeking of this Order.

Kevin B. Smith
SC Bar No. 70587
Hoffman Law Firm, LLC
7087 Rivers Ave.

N. Charleston, SC 29406
Ph: 843-769-7077
Fax: 843-769-4567
ksmith@hoffmanlaw.net
Attorney for Plaintiff

North Charleston, South Carolina

June 7, 2017

intersection, at every vehicle that comes your way or is driving around you. You ride aware, all the time, not just there; anywhere.

Q. Did you slow down as you approached the white truck?

A. I maintained my constant speed. Slowing down could possibly give people the indication that they could make it.

Q. Okay.

A. No different than if you were in a car and you saw a car about to turn in front of you. If you slow down, then he can't decide if you're letting him go or not.

Q. Were you aware of other people having accidents in that same location prior to your accident?

A. I was aware of one.

Q. Did you ever consider writing the DOT, prior to your accident, about your concerns?

A. I did not. I didn't say I had a "concern." I was aware of somebody else having an accident there, that was a friend of mine. I never had a concern.

Q. Prior to the accident, did you ever have a belief that there should be a raised median there?

A. No.

Q. Educate me a little bit on motorcycles. What

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

RECEIVED
JUN 22 2018
SC Court of Appeals

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 & Consulting, Inc., and Munlake Contractors, Inc.,

Of whom

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

APPENDIX TO RECORD ON APPEAL

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Attorneys for Respondent Pilot Travel Centers, LLC

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 & Consulting, Inc., and Munlake Contractors, Inc.,

Of whom

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

APPENDIX TO RECORD ON APPEAL

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EXHIBIT 1

State of South Carolina	)	
	)	
County of Berkeley	)	
Cynthia Wright and Richard Wright,	)	2014-CP-08-675
Plaintiffs,	)	
v.	)	
	)	
South Carolina Department of Transportation and Pilot Travel Centers, LLC	)	Video Deposition of
Defendants.	)	William Mulligan
	)	
Cynthia Wright and Richard Wright,	)	2016-CP-08-334
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.	)	

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

Okay.

-- recently.

And what is your understanding of what this is?

This looks like a Marathon drawing of a proposed site.

Okay. And -- and Marathon would've been somebody independent of Speedway, right?

No. Marathon is Speedway.

Okay.

Or Speedway is Marathon.

Okay.

MR. BESLEY: For clarification, I don't -- I think he's saying that, when it was done, it was Marathon. I think the company is now Speedway, but someone else here could answer that definitively.

MR. HOOD: Okay.

MR. CRITES: Randy, it's the same entity. It's --

Speedway is the brand name --

Gotcha.

-- of the company.

Gotcha. Okay. Okay. So -- and -- and I apologize for going --

Uh-huh.

Q -- back; it's just very briefly. Okay.

In 2002, Pilot took over, right?

A In 2002, Pilot formed a joint venture with Marathon/Speedway.

Q Okay. So is it fair to say that -- that Marathon and Pilot own this facility together?

A The joint venture on this --

MR. CRITES: Object to the form.

A -- facility.

Q Together?

A Together.

Q Today?

A No.

MR. CRITES: Object to the form.

Q Only until 2002?

A You're confusing me.

Q Okay. I apologize. I -- I --

MR. CRITES: Same objection.

Q I'm confusing myself, and I apologize for that. I'm just trying to make sure, in my mind, it gets straight.

In 2000, Marathon/Speedway -- Marathon/Speedway, which was the trade name, owned the property and had a station there. Y'all entered into a joint -- Pilot Travel Centers

entered into a joint venture with them in -- sometime in 2001, probably around September 2001, and then, in -- sometime in 2002, Pilot took over the entire facility and bought out whatever interest Marathon/Speedway would've had?

A No.

MR. CRITES: Object to the form.

Q Okay. I apologize. If you could elucidate me, that would be great.

A What -- what question would you like me to answer?

Q Basically, if you could just kind of just lay it out for me the way that it really is?

A The way that it -- okay. In 2001, Pilot and Speedway formed a joint venture; this was one of the facilities in that joint venture.

Q Okay.

A And that's -- and, in 2002, Pilot, or the joint venture, rebuilt the facility.

Q Okay. And -- and, when the -- the -- the joint venture rebuilt the facility, did, at some point, Pilot become the sole owner of the facility?

MR. CRITES: Object to the form.

A In 2006.

Q 2006, they became the sole owner of the facility?

A Correct.

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?

2001, there would've still been the submission of an encroachment permit in May of 2002 in regard to the driveways into speed -- into the -- the Pilot station off 17-A, right?

A Yes, sir.

Q Now, if -- would you agree that employees of Pilot need to be aware of state regulations?

A Depending on --

Q Depending on -- and I -- I will say this -- and I apologize.

A Does the janitor need to be there?

Q That's so vague and I apologize. I -- I'm talking about when you're talking about the -- the width of a -- of a driveway based on the traffic pattern -- what is safe, what's not safe and that kind of thing.

A Well, no. They don't -- they don't need to.

Q Okay. So it's -- it's your testimony under oath that they don't need to be aware of state regulations?

A The state regulations are designed -- first of all, we use professionals to design -- to review any drawings or things that we come up with. So we use a professional engineering firm such as Ashley. On top of that, you have -- whichever state you're in

-- whether it's the South Carolina Department of Transportation or the Tennessee Department of Transportation, that you have to get a permit from them. It is their access -- it is their encroachment permits and they have tons of professionals on staff, that their whole career and whole life is designed around safely designing roadways. So we're going to trust those guys in their opinions because they do it every single day of their life.

Q Okay. And what if they make a mistake? How are you supposed to know if somebody made a mistake or not?

A They are the professionals. I assume they have enough reviews and they've done enough that they don't make mistakes. These are pretty common. It's not like it's -- we're building a -- the spacecraft that went and orbited Jupiter on a one-time event. How many left turns are in the State of South -- State of South Carolina? How many intersections are there? There's -- from my understanding, there's standard designs that they research and they spend their whole life -- some of these guys have PhDs in safety engineering.

Q Okay. And, so, is -- just so I understand it, it's

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.

until 10:59 a.m.)

MR. CRITES: Mr. Mulligan, thank you. That's all the questions I have for you.

EXAMINATION

BY MR. BERLINSKY:

Q Again, Bruce Berlinsky with Ashley -- Ashley Surveying. I just want to talk about generalities. I assume the goal of Pilot is just like any other national entity whether it's Texas Roadhouse, McDonalds, Burger King. It's consistency at the stations?

A Yes, sir.

Q And, in that regard, do y'all have a model design, I guess, of -- I guess, what the store looks like?

A Yes, sir.

Q And then the pumps are based on the topography of whatever size lot you have?

A Yes, sir.

Q Okay. Who are those designed by?

A We will do them ourselves. We'll do a general layout of the building is this size, the gas islands are in front, the diesel islands are in the back, so much parking.

Q Okay. And then, from that point, depending on which state, what location you go to, you will hire

a local engineering company to get the compliance for everything else you need?

A Yes, sir.

Q Or other companies for whatever it is you need?

A For what -- yes.

Q Some -- but for engineering purpose --

A Storm water engineering, traffic; all those, we'll -- we'll hire local guys, and they will make sure that that facility meets local, state, federal regulations for that area.

Q Okay. And I believe it would -- it's correct that you stated earlier that the individual who signed the application for the encroachment permit, Gary Bloom, is an -- or was an employee of Pilot?

A Yes.

Q Or --

A Yes. He was a Pilot employee.

Q At the time?

A At the time.

Q And he no longer is?

A He no longer is.

Q Okay. And -- or do you know what Ashley Surveying -- what the scope of their work was when they were contracted?

A I -- I do not know specifically.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
Cynthia Wright and Richard Wright,	)	C.A. No.: 2016-CP-08-334
Plaintiffs,	)	
vs.	)	**PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT**
South Carolina Department of Transportation, Pilot Travel Centers, LLC, Speedway, LLC, Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Consulting, Inc., and Munlake Contractors, Inc.,	)	
Defendants.	)	

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Pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure, Plaintiffs Cynthia and Richard Wright hereby move to alter or amend the Court's order granting Defendant Pilot Travel Centers, LLC's ("Pilot") Motion for Summary Judgment. Specifically, Plaintiffs' motion is based on the following grounds:

First, the Court's order fails to address Plaintiffs' argument that Pilot owed Plaintiffs a duty pursuant to Restatement (Second) of Torts § 321. Pla.' Mem. in Opp. to Mot. for Summ. J. at 9-10 (quoting 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)). As the Supreme Court recognized in Faile, South Carolina common law (as derived from Section 321) holds a party responsible for the foreseeable danger caused by harms the party created. Plaintiffs presented substantial evidence that Pilot contributed to the decision to alter an existing plan for a raised median by negotiating for the use of a less safe but more business friendly painted median. Letter from SCDOT Right-of-Way Manager dated Aug. 28, 2000 with

handwritten notes, PILOT 000045; L. Colvin Dep 113:1-4 (noting raised median was undesirable to property owner because it would "change . . . access to the premises").

While the Court's order cites South Carolina statutes to support the proposition that Defendant South Carolina Department of Transportation ("SCDOT") is responsible for highway alterations, the evidence in this case suggests the median selection for this intersection **was not solely SCDOT's decision** but rather the product of negotiations in which Pilot was an active participant. Moreover, none of the statutes cited in the Court's order preclude SCDOT and Pilot from being joint tortfeasors responsible for Plaintiffs' injuries. In other words, while the statutes cited in the order may state SCDOT's duties, they do not immunize Pilot from liability for its misconduct which coincides with SCDOT's grossly negligent performance of its duties.

Second, the Court's order fails to address Plaintiffs' argument that Pilot owed Plaintiffs a duty to safely locate its driveways (linking the business to the roadway) pursuant to SCDOT Access and Roadside Management Standards ("ARMS manual"). In Skinner v. South Carolina Department of Transportation, 383 S.C. 520, 523, 524, 681 S.E.2d 871, 873 (2009), the Supreme Court 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. 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.

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 states 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. SCDOT representatives testified that Pilot's driveways violated ARMS standards in multiple ways. R. Clark Dep. 11:23 – 12:1-4 (agreeing that at least one of Pilot's driveways were in the functional area of the adjacent intersection); R. Clark Dep. 30:23-25 (testifying that Pilot's driveways violated ARMS by being too close together).

To the extent the Court found the ARMS Manual violations (and the driveways in general) were irrelevant to Plaintiffs' losses, the Court's order is in error because it makes a determination on the causation portion of Plaintiffs' claims that is rebutted by evidence in the record. While the existence of a legal duty is a purely legal question, proximate causation is a question of fact and generally an issue for the jury to resolve. 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"). 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. Cody P. v. Bank of Am., N.A., 395 S.C. 611, 621-22, 720 S.E.2d 473, 478 (Ct. App. 2011). In this case, Plaintiffs' experts provided uncontroverted testimony that the driveway locations were a proximate cause of the collision that resulted in Plaintiffs' injuries. J. Teague Aff. ¶ 15 (finding Pilot "created an artificial condition, which generated hazardous conditions and contributed to the injuries of the plaintiffs"); ¶ 19. Plaintiffs also presented evidence of over 200 motor vehicle collisions in the immediate vicinity of Pilot's driveways (accident reports attached as **EXHIBIT 1**). Even Pilot's Vice President for Development acknowledged poor driveway design and placement affects

safety. W. Mulligan Dep. 64:8-11. Based on this evidence, there is a material question of fact on proximate causation which must be resolved by a jury. See Rule 56(c), SCRCP.

This motion is further based on any memorandum of law to be filed and other evidence as may be submitted to the Court prior to a hearing on this motion.

Respectfully submitted,

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May 5, 2017

CERTIFICATE OF SERVICE

I, Jessica L. Cooksey, an employee of the law firm McGowan, Hood & Felder, LLC do hereby certify that I served copies of the above ***Plaintiffs' Motion to Alter or Amend Judgment*** on the Defendants in the above-captioned matter by depositing the same in the United States Postal Service, with proper postage affixed thereto, on this 5th day of May, 2017, addressed to the attorney(s) listed below:

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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

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SC Court of Appeals

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 & Consulting, Inc., and Munlake Contractors, Inc.,

Of whom

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies pursuant to Rule 210(g), SCACR and Rule 212, SCACR, that the *Appendix to Record on Appeal* only contains material previously proposed to be included in the Record on Appeal by the parties.

[*Signature Block on Next Page*]

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June 22, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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SC Court of Appeals

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

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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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STATEMENT OF THE ISSUES ON APPEAL

1. Whether the circuit court erred in finding Respondents owed no duty for the dangerous median and driveways they planned, approved, and constructed.
2. Whether Respondents' breached their duties in the ways in which the dangerous median and driveways were planned, approved, constructed, and allowed to remain uncorrected.
3. Whether the circuit court erred in finding no question of fact on proximate cause despite evidence the collision injuring the Wrights would not have occurred had the median and driveways complied with governing safety standards.
4. Whether the circuit court erred in granting SCDOT summary judgment on its South Carolina Tort Claims Act defenses.

STATEMENT OF THE CASE

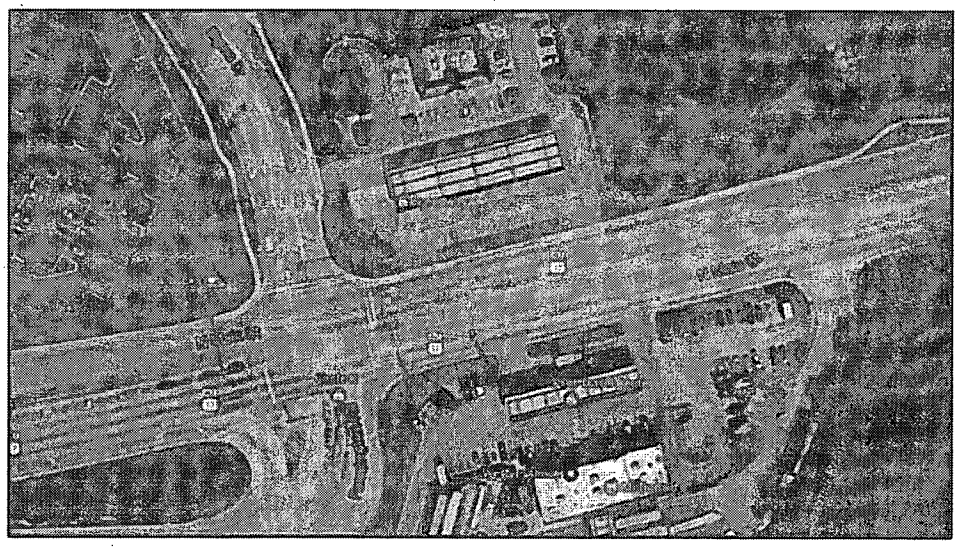
Appellants Cynthia and Richard Wright filed and served an action against the South Carolina Department of Transportation ("SCDOT"), Pilot Travel Centers, LLC ("Pilot"), and C & A Unlimited, Inc. for negligence and loss of consortium in the Berkeley County Court of Common Pleas on March 28, 2014. (R. pp. 18-31) The Complaint was amended May 1, 2014, and C & A Unlimited, Inc. was later dismissed by stipulation. (R. pp. 32-47) The Wrights filed and served a separate action against Marathon Petroleum Company, LP f/k/a Marathon Ashland Petroleum, LLC, Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying, Inc./Ashley Engineering & Consulting, Inc. ("Ashley") and Munlake Contractors, Inc. for negligence and loss of consortium in the Dorchester County Court of Common Pleas on October 1, 2015. (R. pp. 51-66) This Complaint was amended on March 10, 2016, to substitute Respondent Speedway, LLC ("Speedway") as a party for Marathon Petroleum Company, LP f/k/a Marathon Ashland Petroleum, LLC. (R. pp. 67-82) Munlake Contractors, Inc. failed to answer the Complaint and an order of default was entered against it. (R. p. 1). The actions were later consolidated in Berkeley County.

Pilot moved for summary judgment on May 6, 2016 and its motion was heard by the Honorable Roger M. Young, Sr. on April 10, 2017. (R. pp. 164-81). In an order received May 4, 2017, the circuit court granted Pilot's motion finding Pilot owed the Wrights no duty to support their negligence claims. (R. p. 11). The Wrights filed a timely motion under Rule 59(e), SCRCP on May 9. 2017, which was denied in an order for which the Wrights received written notice on July 14, 2017. (R. pp. 16-17). SCDOT, Ashley, and Speedway filed motions for summary judgment in May-June 2017. (R. pp. 244-593). The Honorable Kristi Lea Harrington held a hearing on these motions on June 6, 2017, and granted summary judgment in an order received on June

26, 2017. The order cited both a lack of duty and evidence of proximate cause to support claims against Ashley and Speedway. (R. p. 13). The order cited the South Carolina Tort Claims Act ("SCTCA") as the basis for granting summary judgment in SCDOT's favor. The Wrights filed and served a timely Notice of Appeal on July 19, 2017.

STATEMENT OF THE FACTS

Cynthia and Richard Wright suffered severe injuries after being thrown from their motorcycle in a collision on Highway 17 in Summerville, South Carolina on October 6, 2012. (r. p. 74 ¶¶ 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. (R. p. 628, lines 2-3; 636, lines 18-19; 642 at 113, lines 8-9). At the time of the collision, the Wrights were traveling past Pilot Travel Center, a 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.



Respondents Pilot and Speedway were part of a joint venture in 2001 that set out to redesign an existing gas station on the property to create a Pilot Travel Center. (R. p. 646 ¶¶ 5-6). During that process, Pilot and Speedway planned driveways to connect their premises to Highway 17 and,

through their construction agent Ashley, submitted an "encroachment permit" to SCDOT to facilitate the driveways' construction. (R. p. 647 ¶ 8; 653). Pilot, Speedway, and Ashley's design included three driveways to serve passenger vehicles and commercial trucks. In violation of its own rules, SCDOT approved the plan to construct one or more of these driveways in an area that was unreasonably close to an adjacent intersection. (R. p. 656 at 11, line 23 – p. 12, line 4; 669 at 169, lines 15-22; 670 at 173, lines 11-16). SCDOT also approved the plan despite the fact that the driveways were not the required distance from each other. (R. p. 657 at 30, lines 23-25).

Pilot and Speedway also 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. (R. p. 675). 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 perilously close to an existing intersection. (R. p. 630, lines 6-7; 666 at 101, lines 9-25). Pilot and Speedway worried that 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. (R. p. 633, lines 10-23). Accordingly, they 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. (R. p. 675).

As the Wrights rode along Highway 17 on October 6, 2012, a vehicle driven by Daniel Sena attempted a left turn across the painted median to which SCDOT improperly acceded and into one of the driveways SCDOT should not have approved. (R. p. 74 ¶ 29; 677). 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." (R. p. 644 at 119, lines 2-4.)

STANDARD OF REVIEW

To grant a motion for summary judgment, the circuit 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 (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 S.E.2d 688 (2000). An appellate court "applies the same standard used by the [circuit] court" when reviewing a summary judgment order. Epstein v. Coastal Timber Co., 393 S.C. 276, 281, 711 S.E.2d 912, 915 (2011).

ARGUMENT

The Wrights were catastrophically injured in a motor vehicle collision that never should have happened. Daniel Sena was listed at the at-fault driver but the collision was also directly attributable to a series of poor decisions by the parties that constructed the highway on which he was traveling and the owner of property he was attempting to access. Pilot[1] did not own the highway adjoining its gas station/convenience store but played an integral role in determining how it would function. SCDOT effectively delegated a portion of its roadwork authority to Pilot and together Respondents swapped out a planned raised median in favor of a markedly less safe painted median and went forward with a plan for driveways that were effectively within a bustling intersection adjacent to an interstate off-ramp. Collisions were not just foreseeable, they became an unfortunate trend Respondents did nothing to address.

Having taken such a prominent role in shaping this stretch of highway, Pilot should not be allowed to hide behind SCDOT to avoid liability for dangers Pilot helped create. Nor should SCDOT be allowed to use the SCTCA as a shield when SCDOT violated its own standards by letting the median and driveway plans go forward. Admittedly, SCDOT offers an alternative explanation for how this roadway became so dangerous for motorists like the Wrights. But, SCDOT officials' self-interested denial of collaborations with Pilot should not have ended the

[1] Pilot Travel Centers, LLC and Speedway, LLC, were part of a joint venture for the gas station property at issue in this case. (Speedway Br. at 2 n. 2). Speedway was the brand name of an entity known as Marathon Ashland Petroleum, LLC that was also an active participant in designing and negotiating the gas station's driveways and the type of median across Highway 17 directly in front of the gas station. As parties to a joint venture, South Carolina partnership law applies to these entities. Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 238, 391 S.E.2d 538, 543 (1989) (citing Polikoff v. Levy, 270 N.E.2d 540, 546 (Ill. App. 1971)). Individual partners are liable for partnership debts. Mansour v. Massey, 287 S.C. 176, 336 S.E.2d 15 (1985). Therefore, Pilot and Speedway are one and the same for purposes of the Wrights' claims. For brevity, this brief uses "Pilot" to reference both Respondents Pilot Travel Centers, LLC and Speedway, LLC unless otherwise noted.

Wrights' case when they offered documentary evidence showing Pilot "negotiated" the raised median right out of SCDOT's original plan. The most concerning part of the circuit court's orders is how they depart from basic summary judgment principles by choosing Respondents' version of events over the Wrights' and by dismissing as "speculation" a crucial record documenting the original plan for this roadway including how SCDOT allowed Pilot to change it. In sum, South Carolina law recognizes legal duties for parties in Respondents' position and a jury must resolve the parties' factual disputes over whether those duties were breached and whether those breaches caused the Wrights' losses.

I. The Circuit Court Erred in Finding Respondents Owed No Duty to the Wrights.

A. Pilot and Speedway's Duty

The circuit court ruled Pilot and Speedway had no duty because the median across Highway 17 was SCDOT's decision as part of its exclusive authority over highways, and they had no duty for the dangerous driveways because SCDOT issued a permit for them. These rulings violate basic summary judgment principles by ignoring evidence showing Pilot in fact chose the dangerous median. Moreover, the rulings err by construing SCDOT's authority over highways as providing immunity for private entities with whom SCDOT chooses to share its highway activities. Finally, the circuit court should be reversed because, by relying on SCDOT's mistakenly-issued permit to excuse Pilot's dangerous driveway plan, the ruling absolves Pilot of responsibility for driveways it knew or should have known to be against state safety standards.

Pilot 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. (R. p. 675). Pilot's admitted goal was to make its location a more convenient and attractive option than neighboring gas stations. (R. p. 633, lines 10-23). 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").[2] Finally, the SCDOT Access and

[2] 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

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[3] or on the adjoining

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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.

[3] 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 633, 637 (Ga. App. 1995); 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 travel"); De Ark v. Nashville Stone Setting Corp., 279 S.W.2d 518, 521 (Tenn. App. 1955) (quoting 25 Am. Jur. 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").

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 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 task, Pilot had an affirmative duty going forward since Pilot's conduct "increased the risk" of harm to motorists. Restatement (Second) of Torts § 323.[4]

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 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 undertook in this case is 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. (R. p. 627, lines 17-25; 635-39). Accordingly, ARMS Manual

[4] 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)).

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.

In granting Pilot summary judgment, the circuit court cited SCDOT's statutory duty for the state's highways as an independently sufficient basis for finding Pilot had no responsibility for median selection. (R. pp. 7-8). This finding overlooks that SCDOT often chooses to carry out its highway construction authority through or in conjunction with a private entity or individual. When SCDOT so chooses and the resulting highway project exposes motorists to danger, liability accrues to SCDOT *and/or* the private entity. E.g. Dorrell v. S.C. Dep't of Transp., 361 S.C. 312, 316, 605 S.E.2d 12, 13-14 (2004) (noting SCDOT settlement and contractor liability for motor vehicle accident allegedly caused by contractor's negligent paving of state roadway); Citizens & Southern Nat'l Bank of S.C. v. Dickerson, Inc., 370 F.2d 692 (4th Cir. 1966) (affirming verdict against private company that widened road under contract with South Carolina State Highway Department).

Similarly, in Skinner, the court held that, even with SCDOT's expansive authority over state highways, "a contractor performing highway alterations owes a duty to travelers" for dangerous highway conditions it created. 383 S.C. at 524-25, 681 S.E.2d at 874. Skinner further held that adjoining landowners generally do not owe the same duty but only because they typically lack both "possess[ion]" and "control[]" over the highway. Id. While Pilot had no contract with SCDOT, there is no legal or practical reason for refusing to apply the duty recognized in Skinner in this case if SCDOT chose to delegate median selection to Pilot or to collaborate with Pilot on that decision. As discussed below, the Wrights presented evidence supporting the conclusion that Pilot was granted and actually exercised significant "control" over the median selection process

and, therefore, stands in a starkly different position than the passive adjoining property owner absolved in Skinner.

As these South Carolina precedents demonstrate, the key question is not the amount of statutory authority SCDOT has been granted over highways. See also Kraus v. Hy-Vee, Inc., 147 S.W.3d 907, 921 (Mo. App. 2004) ("That the government has a non-delegable duty to maintain the road does not preclude liability as to others who have assumed such a duty as well"); 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"). Instead, this case turns on whether Pilot participated in the median selection process and, as a result, created a dangerous condition on the highway. Even the case law cited in the circuit court's order shows Pilot can face liability if a jury finds Pilot successfully negotiated for the replacement of a planned raised median. (R. pp. 8-9) (citing Allen v. Mellinger, 625 A.2d 1326 (Pa. Commw. 1993)). Allen held that an adjoining landowner owed no duty related to a dangerous highway condition by relying on a Restatement provision that bars liability for all adjoining landowners *except* those that create a dangerous highway condition. Id. at 1328 (quoting Restatement (Second) of Torts § 349) (eliminating liability only for adjoining landowner for highway danger "not created by him"). The very next Restatement section recognizes adjoining landowners may be liable for any highway dangers they had a personal role in creating.[5] Perhaps recognizing this distinction, Allen went on

[5] Restatement (Second) of Torts § 350 reads in full:

> A possessor of land over which there is a public highway is subject to liability for physical harm caused to travelers thereon by a failure to exercise reasonable care in creating or maintaining in reasonably safe condition any structure or other artificial condition created or maintained in the highway by him or for his sole benefit subsequent to its dedication.

to distinguish a prior Pennsylvania precedent where an adjoining property owner was charged with a legal duty to motorists because the property owner "actually erected" the offending traffic control device and "thereby creat[ed] the dangerous condition." 625 A.2d at 1329 and n. 7 (citing Colangelo v. Penn Hills Ctr., Inc., 292 A.2d 490 (Pa. Super. 1972)). Allen never suggests immunity for adjoining property owners that actively participate in creating dangerous highway conditions.[6]

This case is much more similar to Swieckowski v. City of Fort Collins, 923 P.2d 208 (Colo. App. 1995), where a government entity entered an agreement allowing an adjoining property owner to design and construct a portion of the highway along with its curbs, gutters, and sidewalks. Even though it was a public highway subject to government standards, the property owner owed a duty of care to motorists because the property owner was invited to participate in the highway's construction and was personally involved in creating the highway features that led to a bicyclist's fall and injuries. Id. at 213. Swieckowski further demonstrates the widely-held principle that, while passive property owners near a highway face no liability, a duty arises "when an adjacent landowner acts affirmatively to create a dangerous condition" on the highway while working alongside or with the permission of the highway's owner. Id.

Thus, there is no way to rule on Pilot's potential liability without determining whether Pilot was an active participant in the median selection process. The parties make very different arguments and present competing evidence on this crucial issue. The Wrights argue Pilot and SCDOT negotiated over the traffic control devices near Pilot's station and settled on a plan to replace a planned raised median with a painted median more conducive to Pilot's business

[6] See also 40 C.J.S. *Highways* § 254 (1991) (stating that a private landowner may be liable for a dangerous highway condition when the landowner has been "granted the right to construct or improve a public highway on proper authorization from the responsible public authority").

interests. Pilot counters by citing testimony from SCDOT's project manager Leland Colvin who denied any negotiations and claimed SCDOT alone chose a painted median for the area.[7]

The circuit court's order chose Pilot's argument over the Wrights', dismissing the Wrights' claim in a single footnote as relying exclusively on "speculation and conjecture." (R. p. 7 and n. 7) (citing Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010)). However, the Wrights' supported their argument with a letter outlining a written discussion between Pilot and a SCDOT manager which, by its plain language, documents a "negotiated median removal" with SCDOT agreeing "the unmountable median has been eliminated from the plan" in favor of a "painted median only." (R. p. 675). Pilot points to Mr. Colvin's testimony, offering an alternative explanation by directly denying the negotiations recorded in the letter and by claiming a raised median had been chosen before the letter was ever drafted.

Presented with this conflicting evidence, the circuit court should have denied summary judgment. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006) ("A court considering summary judgment neither makes factual determinations nor considers the merits of competing evidence"). The circuit court mistakenly relied on Mr. Colvin's testimony to the point of making it dispositive when that testimony actually demonstrates why summary judgment is not appropriate here. SCDOT's opposition to the letter's unambiguous language does not eliminate factual disputes, it creates them and those disputes preclude summary judgment. Montgomery v.

[7] Pilot also argues the letter documenting negotiations over the median cannot support a claim against Pilot because the letter was a communication between SCDOT and Marathon Ashland Petroleum LLC. (R. p. 675). However, according to Pilot's own representations, Pilot and Marathon Ashland Petroleum LLC were the same for purposes of this Pilot Travel Center. See (R. p. 649) (a letter from Pilot's project manager identifying Pilot as "a combination of Marathon Ashland Petroleum, LLC and Pilot Corporation").

CSX Transp., Inc., 376 S.C. 37, 54, 656 S.E.2d 20, 29 (2008) (finding the parties' dispute over evidence in record "simply establishes that summary judgment is not appropriate"). Moreover, SCDOT's denial of the letter's contents is entirely self-interested. Acknowledging the median was a concession to a business-minded neighbor rather than strictly a safety and efficiency decision further supports the Wrights' claim not only against Pilot but also against SCDOT itself. In other words, the circuit court dismissed out of hand a crucial piece of evidence because an individual with a personal interest in the litigation disputed its contents in a deposition. Dismissing a lawsuit under these circumstances was a significant departure from South Carolina summary judgment principles. A jury should decide whether Mr. Colvin's after-the-fact denials are sufficient to overcome the written record created contemporaneously with the relevant construction project.

The circuit court's reliance on Harris Teeter is also misplaced for several reasons. First, the circuit court cited Harris Teeter's non-precedential concurring/dissenting opinion signed by only one justice. (Order at 6 n. 7) (citing Harris Teeter, 390 S.C. at 299, 701 S.E.2d at 754 (Hearn J. concurring in part, dissenting in part)). Second, the language cited in the circuit court's order does not support Pilot's position as it argued the evidence in question was not speculation and conjecture but rather was sufficient to defeat a summary judgment motion. Harris Teeter, 390 S.C. at 302, 701 S.E.2d at 756. Third, Harris Teeter rejected as speculative proposed expert affidavits in a legal malpractice case. 390 S.C. at 290, 701 S.E.2d at 750. Expert affidavits are subject to evidentiary standards that do not apply to documentary evidence like the letter the circuit court ignored here. Id. (citing "admissibility standard for experts in professional negligence cases" as basis for rejecting affidavits). Expert testimony is different from other forms of evidence because it allows a person without personal knowledge of key events to offer conclusions rather than direct observations on crucial issues.

An expert cannot offer conclusions without first proving he has the requisite qualifications to make his testimony reliable. Rule 702, SCRE. The proposed experts in Harris Teeter attempted to offer conclusions on the legal acumen of an attorney without proving they were familiar with the applicable standard of care and without limiting their causation testimony to opinions held to a reasonable degree of certainty. 390 S.C. at 290, 701 S.E.2d at 750 (refusing to consider affidavit where proposed expert admitted his testimony was "speculation"). It was for these reasons that the affidavits and their opinions were rejected as conjecture and speculation. See also McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 389-90, 684 S.E.2d 566, 570-71 (Ct. App. 2009) (rejecting speculative expert affidavit that could not meet causation standard for medical negligence claims). Here, however, the letter in question offers no opinions and there is no reason to write it off as speculation. In fact, it is the Wrights' argument that relies on the letter's plain language and Pilot's position that would require a factfinder to go beyond the letter's unambiguous statements in search of a more Respondent-friendly explanation for the dangerous median selection.

Therefore, the circuit court erred in finding Pilot owed no legal duty to the Wrights. While SCDOT has statutory authority over state highway, it chose to share that authority with Pilot, which must be accountable for the dangerous conditions it helped create. Respondents' disagreement with evidence of SCDOT-Pilot negotiations over the highway does not invalidate that evidence and cannot meet Respondents' burden to obtain summary judgment.

B. Ashley's Duty

For similar reasons, Ashley owed the Wrights a duty of reasonable care related to the Pilot Travel Center driveways. Pilot owned the land and initiated the project where the dangerous driveways were approved, but Ashley was the entity responsible for all relevant compliance issues. Ashley submitted an encroachment permit application that proposed driveways at Pilot Travel

Center that Ashley and Pilot knew or should have known were both too close together and in the functional area of the adjacent intersection. (R. p. 651). The permit was submitted by Pilot "c/o Ashley Engineering & Consultants, Inc." and Pilot is responsible for Ashley's conduct as much as it would be for its own employees. R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 432, 540 S.E.2d 113, 117 (Ct. App. 2000) (finding principal is bound by act of agent). Since the Wrights allege negligence claims, Ashley is also liable even though it represented itself as Pilot's agent. See Thomas v. Delta Enters., Inc., 302 S.C. 351, 396 S.E.2d 122 (Ct. App. 1990) (citing Lawlor v. Scheper, 232 S.C. 94, 101 S.E.3d 269, 271 (1957) (while an agent with a disclosed principal is not liable for contract claims, the agent is responsible in tort for its misconduct).

C. SCDOT's Duty

SCDOT has extensive duties for South Carolina roadways including that portion of Highway 17 in Berkeley County where the Wrights were injured. SCDOT expressly acknowledged these duties in the testimony of their designated corporate representative Leland Colvin. Mr. Colvin, who also served as program manager for multiple projects on Highway 17, testified that SCDOT has a duty to maintain the highway in a safe condition. (R. p. 390 at 213, lines 14-17). SCDOT also has an affirmative obligation to monitor highways to determine whether their physical state or traffic conditions have created dangerous circumstances for motorists. (R. p. 346, lines 16-20; 390 at 213, lines 22-25). If the department knows or should know of dangerous highway conditions, SCDOT has a duty to undertake any reasonable changes available to make the highway reasonably safe. (R. p. 390 at 213, lines 14-21). When performing these changes and in all other highway-related activities, SCDOT must follow industry safety standards including the

ARMS Manual. (R. p. 344 at 31, lines 9-13; 346 at 40, lines 8-16; 697-778). In light of SCDOT's admissions, the Wrights have properly demonstrated a legal duty owed by SCDOT.

II. Respondents Breached their Duties Regarding Pilot Travel Center's Driveways and the Median on the Adjacent Highway.

Pilot (and Ashley) planned, designed, and constructed a Pilot Travel Center to maximize a customer base by making customers' entry and exit to the facility as convenient as possible. However, to further this goal, Pilot and Ashley 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. SCDOT was a full participant in this negligent conduct by effectively delegating a portion of its highway authority to Pilot and by approving plans SCDOT knew or should have known were in violation of industry standards. In sum, Respondents' breaches of duty fall in three general categories: (1) Pilot and SCDOT altered existing plans for a raised median across Highway 17 in favor of a less safe painted median more conducive to Pilot's business; (2) Pilot/Ashley pursued and SCDOT approved a plan for driveways that were too close together and too close to an adjacent intersection; (3) Pilot and SCDOT did nothing to address the dangerous intersection they created despite readily-available evidence that the area had become a magnet for motor vehicle collisions.

First, Respondents were negligent in their joint action of replacing a planned raised median with a painted median across Highway 17 at the precise spot where the Wrights' were ultimately injured. Highway 17 abuts the Pilot Travel Center a few hundred feet from where the highway meets Interstate 26 and presents a very busy intersection. (R. p. 642 at 113, lines 8-9) ("That's a very busy intersection"); 628, lines 2-3; 636, lines 18-19 (acknowledging intersection is "heavily traveled" and "high volume"); 673 at 229, lines 1-5 (agreeing this was a high accident rate intersection in 2013). At approximately the same time Pilot began designing and constructing Pilot

Travel Center, SCDOT had multiple projects underway to improve this heavily-traveled roadway. (R. p. 663 at 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. (R. p. 665 at 86, lines 14-15) ("at one point in time, the interchange plans showed a raised median"); 665 at 88, lines 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. (R. p. 666 at 101, lines 9-25; 630, lines 6-7). More importantly, the proposed non-transversable median was a safety matter. (R. p. 668 at 141, lines 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. (R. p. 633, lines 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"); 667 at 113, lines 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. pp. 693-94 ¶ 13) ("a monetary incentive is the only reason behind the removal of the concrete barrier in this case").

SCDOT was an equal participant in altering the original plan for a raised median across Highway 17 at Pilot's request. SCDOT's duty in maintaining highways and in approving

driveways that connect to highways require SCDOT to prioritize safety. SCDOT acknowledges a property owner's profit-driven preference for more expansive physical access to its premises cannot take precedence over motorist safety. (R p. 346 at 39, lines 3-7; 390 at 213, lines 11-17). 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. (R. p. 358 at 86, lines 14-15). 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. (R. p. 356 at 80, line 16 – 81, line 5). Specifically, Pilot raised concerns about the planned non-transversable median. Id. SCDOT considered these concerns and the two sides reached a "negotiated" resolution. (R. p. 675). The primary result of that negotiation was a change in the design of the median fronting Pilot's property. At Pilot's behest[8], 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-

[8] The Wrights acknowledge SCDOT asserts the change in median design was unrelated to its discussions with Pilot. (R. p. 358 at 88, lines 12-15). However, Mr. Colvin's statement cannot be considered the definitive word on the median selection process because he acknowledges Pilot and SCDOT discussed options for the median but he did not know the substance of that discussion. Mr. Colvin acknowledged the median type was part of discussions when SCDOT acquired the right-of-way needed to expand Highway 17, (R. p. 357 at 81). Pilot's VP of Development testified that he was unaware of whether there were earlier plans for a raised median. (R. p. 629, lines 11-22). In light of this testimony and the documentary evidence of a "negotiated" resolution regarding the median and the parties' differing accounts, this issue presents a question of fact that a jury must resolve.

transversable medians have the effect of a 35 percent reduction in traffic collisions. (R. p. 371 at 139, lines 1-9). The benefit of raised medians is evident from SCDOT regulations. (R. p. 724) (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 lead to higher accident experience"). The Wrights 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.

The first expert, John Mark Teague, is a civil engineer with extensive expertise in the field of intersection safety. (R. pp. 682-83 ¶¶ 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. (R. p. 686 ¶ 13). Additionally, Mr. Teague found that the absence of a non-transversable median rendered the intersection "unsafe." (R. p. 684-85 ¶ 9). The Wrights also presented an expert affidavit from Richard M. Balgowan, a civil engineer specializing in municipal and highway engineering. Mr. Balgowan stated that Pilot "owe[d] 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. p. 691 ¶ 5). By negotiating to have the proposed non-transversable median removed from SCDOT's existing plans, Pilot did "the exact opposite" of what its duty required. (R. p. 694 ¶ 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. (R. pp. 685-86 ¶¶ 11, 13, 15; 693-94 ¶¶ 11, 13, 14). By creating this artificial condition that led to the Wrights' injuries, Respondents breached their duties under South Carolina law and are liable for the Wrights' foreseeable injuries.

Second, Respondents breached their legal duties regarding the driveways leading to Pilot Travel Center. (R. pp. 684-85 ¶ 9). Pilot admits driveway placement affects motorist safety on an adjoining highway and poorly designed driveways are "detrimental to safety" on the highway. (R. p. 637, lines 8-11). As Mr. Colvin acknowledged, SCDOT must follow industry safety standards when considering the addition of driveways because "driveways have long been recognized as a major source of conflict for traffic on public highways." (R. p. 344 at 31 lines 9-13; 348 at 46, lines 20-25). The ARMS Manual is an essential component of the governing standards for driveway design and placement. (R. p. 346 at 40, lines 8-16).[9] The ARMS Manual 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." (R. p. 716). Moreover, every driveway "shall be located at a point which provides optimum sight distance along the roadway." (R. p. 715 § 3A-3). The ARMS Manual includes a table outlining the acceptable minimum distances between driveways and states in clear terms that "[n]o access point shall be located within the radius of intersecting roadways." (R. p. 715 § Table 3-2, 716 § 3A-4). These statements are not mere suggestions or recommendations; they are mandatory rules. L. Colvin Dep. (R. p. 348 at 45, lines 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 the Pilot Travel Center plan SCDOT approved violates this rule. SCDOT investigator Robert Clark

[9] Mr. Colvin also testified the ARMS Manual is an industry safety standards, its provisions are mandatory (except for limited exceptions) and that, in general, its requirements are "to be followed" when approving driveways connected to state highways. (R. p. 346 at 40, lines 4-16; 347 at 44, line 24; 345 at 45, lines 5-8).

testified that at least one of Pilot's driveways was in the functional area of the intersection. (R. p. 656 at 11, line 23 – 12, line 4). SCDOT Mr. Colvin agreed that one of Pilot Travel Center's driveways was in the functional area of the intersection and another was on the borderline. (R. p. 379 at 169, lines 15-22; 380 at 173, lines 11-16). Another fundamental ARMS Manual rule requires a certain minimum distance between driveways that varies based on the adjoining highway's speed limit. (R. p. 715 § 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. p. 657 at 30, lines 16-22. Mr. Clark agreed Pilot Travel Center's driveways did not meet this standard. (R. p. 657 at 30, lines 23-25). This failure is crucial because the ARMS driveway spacing requirements Respondents breached are safety considerations. (R. p. 657 at 31, lines 1-10). This testimony from SCDOT's corporate representative establishes that SCDOT breached its legal duty by approving driveways and made the intersection more dangerous for motorists. The Wrights' experts also found that Pilot/Ashley's driveway design and construction made the intersection unsafe. (R. pp. 684-85 ¶ 9; 692-93 ¶ 9). Each expert found the driveways were too close to the functional area of the intersection and Pilot/Ashley had a duty to take some affirmative action to prevent left turns in this dangerous area.

Third, Pilot and SCDOT failed to properly respond to dangerous conditions they created through the median and driveway errors. Despite acknowledging its affirmative duty to monitor highways for dangerous conditions (R. p. 390 at 213, lines 22-25), SCDOT failed to take reasonable steps to determine the safety of the intersection where the Wrights were injured. For example, while annual safety analyses are typical for high traffic intersections, SCDOT did not conduct a single safety analysis of the subject intersection in the 10-year period (2003-2013) after the highway was widened and its capacity greatly increased. (R. p. 390 at 215, line 25 – 216, line

15. This failure is especially unreasonable given that all parties associated with this case agree the subject intersection was a heavily-traveled roadway at the time of the Wrights' injuries. R. p. 628, lines 2-3; 636, lines 18-19 (acknowledging intersection is "heavily traveled" and "high volume"); 394 at 229, lines 1-5) (agreeing this was a high accident rate intersection in 2013); 642 at 113, lines 8-9 (at-fault driver acknowledging "[t]hat's a very busy intersection").

When a safety analysis was finally conducted in 2013, it revealed an alarming number of collisions at the intersection involving left turns to and from the Pilot Travel Center. Over a period of four years from 2010 to 2013 (including the time of the Wrights' collision in 2012), there were 17 left turn collisions in this single intersection. (R. p. 391 at 219, lines 12-15). This finding (4.25 collisions/year) was evidence that something needed to be done to improve safety at this dangerous intersection. (R. p. 392 at 221, lines 18-25; 223, lines 13-25) (describing collision rate as "concern[ing]" and agreeing these numbers "mean something needs to change"). As a result of this belated safety analysis, SCDOT has planned for a "countermeasure" to make left turns safer in this intersection. (R. p. 392 at 224, lines 19-22). While it chose to address the situation with something other than a raised median, SCDOT acknowledged a raised median would have effectively addressed the spate of left turn accidents that have infected this intersection since the highway was widened. (R. p. 392 at 224, lines 3-6).

Moreover, the data is even more concerning than SCDOT acknowledges. SCDOT's safety analysis covers only 2010-2013. When the parameters are extended back to 2003 when Highway 17 was widened and Pilot Travel Center was completed, accident reports reveal well over 200 collisions in the immediate vicinity of the intersection where the Wrights were injured. (R. pp. 781-812). This information was readily available to SCDOT before the Wrights' collision as Plaintiffs' counsel acquired the reports from the South Carolina Department of Public Safety

("DPS"), the precise agency from which SCDOT collects collision data when planning and conducting safety analyses. (R. p. 384 at 229, line 20 – 230, line 8) (stating that SCDOT's traffic safety office "use the DPS accident information").

In sum, the Wrights presented substantial evidence Respondents breached their duties both in how the intersection was planned and constructed as well as the way in which it was allowed to remain unaltered over the years as the collisions continued to pile up. Respondents acknowledge a raised median effectively prevents left turns like the one that caused the collision in this case, and the Wrights' experts concluded there was no safety-based reason to ever remove a raised median from this intersection's plans. Moreover, SCDOT acknowledges some of Pilot Travel Center's driveways violated the ARMS Manual by being too close together and in the functional area of a busy intersection. Finally, Respondents did nothing to address the situation even though readily available collisions reports demonstrated the growing danger.

III. Respondents' Negligence was a Proximate Cause of the Wrights' Damages Notwithstanding the Intervening Act of a Third Party.

Respondents' misconduct was a proximate cause of the collision leading to the Wrights' injuries. SCDOT's conduct was a cause-in-fact of the collision because the collision would not have happened at an intersection with the traffic control devices and reasonably safe driveways required by industry standard. Under South Carolina law, any negligence or even criminal conduct by Mr. Sena does not absolve Respondents from liability. Additionally, Respondents' conduct was a proximate cause of the Wrights' injuries because, as innocent motorists, they are precisely the type of people Respondents 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. Since it often requires factual determinations, proximate cause is generally a question for the jury. Cooke v. Allstate Mgmt. Corp., 741 F. Supp. 1205, 1214 (D.S.C. 1990); 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., 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). The Wrights 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 must anticipate 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, the Wrights' experts concluded that the median selection and driveways at Pilot Travel Center were proximate causes of the Wrights' collision. For instance, Mr. Teague found that a non-transversable median would have significantly reduced the risk of harm to motorists like the Wrights. (R. p. 686 § 13). Mr. Teague reached this conclusion because this accident occurred during a left turn into Pilot Travel Center and the non-transversable median SCDOT planned but then chose to remove would have most likely prevented that turn. SCDOT shares this opinion. (R. p. 362 at 101, lines 9-25 (stating that non-transversable median's purpose is "access control" and "is not intended to be transversed by the motoring public"); 371 at 139, lines 1-9 (agreeing that non-transversable median decrease traffic collisions by 35%).

Even Pilot's Vice President of Development admits a non-transversable median's specific purpose is to prevent the type of turns that resulted in this collision. (R. p. 630, lines 6-7 (acknowledging median's purpose would be "[t]o keep people from making a left turn"). Crucially, Mr. Sena also agrees that the absence of a non-transversable median was a crucial factor in the collision. According to Mr. Sena, a non-transversable median "could have prevented my accident and a lot more accidents and any more to come." (R. p. 644 at 119, lines 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 the defective driveways. As this intersection has proven many times over the last fifteen years, traffic collisions are alarmingly common at Pilot Travel Center's driveways. R. p. 391 at 217, lines 16-20 (agreeing many collisions happen when motorists attempt left turns out of Pilot Travel Center's driveways); 391 at 219, lines 12-15 (noting 17 different accidents involving left turns at Pilot Travel Center over just a four-year period). As Pilot acknowledges, "inadequate driveway design creates conflicts that can be detrimental to safety" on the adjoining highway. (R. p. 637, lines 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. Based on this historic accident data and their knowledge of intersection design principles, experts concluded the driveways were also a proximate cause of the Wrights' injuries. (R. p. 686 ¶ 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, the Wrights' experts concluded that the collision most likely would not have occurred if the driveways had been properly designed, constructed, and maintained. (R. p. 687 ¶ 19).

IV. The SCTCA Does Not Protect SCDOT from Liability for the Wrights' Claims.

SCDOT also sought summary judgment based on provisions stating exceptions to the SCTCA's waiver of sovereign immunity. While its motion cites eight such provisions, SCDOT only attempted to support one in its argument to the circuit court. SCDOT should not have been granted summary judgment on its SCTCA defenses because SCDOT failed to correct the dangerous median despite actual and constructive notice that it posed harm to motorists. Similarly, SCDOT's approval of Pilot's driveway plan is not entitled to SCTCA discretionary immunity

because SCDOT ignored its own standards (i.e. ARMS Manual) indicating the proposed driveways were dangerously close to a major intersection.

The Wrights' negligence claim against SCDOT is governed by the SCTCA which holds governmental entity liable for their torts "in the same manner and to the same extent as a private individual under like circumstances" except for those limited instances where the SCTCA itself provides a different standard. S.C. Code Ann. § 15-78-40. Section 15-78-60 enumerates a variety of tortious acts and omissions for which the state refuses to waive its sovereign immunity and for which governmental entities may not face liability. SCDOT's motion alleged eight different provisions of Section 15-78-60 immunize its conduct in this case.[10] However, several of the cited provisions plainly have no relevance to the allegations in the Wrights' Complaint.[11] For the reasons described below, the remaining provisions on which SCDOT relies do not apply and SCDOT's request for immunity should have been denied.

When a governmental entity cites SCTCA immunity provisions to avoid liability, it is asserting an affirmative defense. Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994). SCDOT bears the burden to establish it is entitled to assert each immunity provision under these facts and the burden to prove it is entitled to summary judgment on each immunity provision. Id. The Wrights allege SCDOT's negligent conduct includes (1) improperly approving Pilot's encroachment permit application that was based on a plan that violated unambiguous highway management standards; (2) failing to identify and improve the intersection where the Wrights were injured despite substantial evidence of dangerous conditions;

[10] Specifically, SCDOT cited subsections 1-5, 7, 10, 12, 13, and 15. SCDOT's supporting memorandum also cited 15-78-60(9), but this defense was waived because SCDOT did not raise it in its answer. (R. p. 109 ¶ 33).

[11] The Wrights do not allege claims based on legislative/judicial action (subsections 1 and 2) or adoption/enforcement/or compliance with a law (4).

and (3) altering its plan for a raised median on Highway 17 as part of negotiations with Pilot. (R. pp. 23-25 ¶ 29). SCDOT first argues it is immune for any action relating to the encroachment permit pursuant to Section 15-78-60(12) which generally covers "the issuance . . . or refusal to issue . . . any permit." Since SCDOT made no effort to support this argument at the circuit court, summary judgment should be denied. Faile, 350 S.C. at 324, 566 S.E.2d at 540 ("The governmental entity claiming an exception to the waiver of immunity under the Tort Claims Act has the burden of establishing any limitation on liability"). To the extent the Court considers Section 15-78-60(12), that section expressly excludes from immunity permit-related activities performed "in a grossly negligent manner." Gross negligence is "the failure to exercise slight care." Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). Gross negligence is a "relative term" meaning "the absence of care that is necessary under the circumstances." Id. The issue of gross negligence "is a mixed question of law and fact" that should generally be resolved by a jury. Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000); Faile, 350 S.C. at 332, 566 S.E.2d at 545 (holding that gross negligence determination "best rests with the jury").

A number of factors may be considered to determine whether a defendant's conduct rises from ordinary to gross negligence. Cole v. S.C. Elec. & Gas, Inc., 335 S.C. 183, 193, 584 S.E.2d 405, 411 (Ct. App. 2003) (holding that a jury determining gross negligence may consider statutory and regulatory violations as well as "other facts and circumstances surrounding the event"). A governmental entity's violation of its only operational policies can be strong evidence of gross negligence. Proctor v. S.C. Dep't of Health & Envtl. Control, 368 S.C. 279, 297, 628 S.E.2d 496, 506 (Ct. App. 2006) (finding jury question on gross negligence where state agency's conduct was against what "was its policy to do"); Clark v. S.C. Dep't of Public Safety, 362 S.C. 377, 384-85,

608 S.E.2d 573 (2005) (holding that trial court properly submitted gross negligence to jury based in part on an expert description of department policy).

In this case, SCDOT's approval of Pilot's encroachment permit application was grossly negligent. Pilot's application was based on a driveway plan that violates clear SCDOT policy as stated in the ARMS Manual. SCDOT acknowledges the policy and admits the violation. SCDOT's corporate representative Robert Clark testified that the ARMS Manual provides that driveways may not be placed in the functional area of the intersection. Mr. Clark also acknowledged the ARMS Manual requires a minimum distance between driveways. In the same deposition, Mr. Clark acknowledges SCDOT approved a plan calling for one or more driveways within the functional area of the intersection and that the proposed driveways did not meet the minimum distance standard. 656 at 12, lines 1-4; 657 at 30, lines 10-25; 379 at 169, lines 15-22; 380 at 173, lines 11-16. In light of the policy violation and SCDOT's acknowledgments, a reasonable jury could conclude SCDOT failed to exercise slight care in issuing an encroachment permit for Pilot Travel Center.

SCDOT is also not entitled to immunity under Section 15-78-60(13), which refers to "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection." Again, this section was not actively pursued at the circuit court level, and SCDOT never attempted to meet its burden to obtain summary judgment on this affirmative defense. Moreover, this argument fails on the merits because a state agency's total failure to inspect or investigate an easily observable fault is grossly negligent conduct that supports SCTCA liability notwithstanding Section 15-78-60(13)'s seemingly broad scope. For example, in Bass v. S.C. Department of Social Services, 414 S.C. 558, 574, 780 S.E.2d 252, 260 (2015), the South Carolina Supreme Court found SCTCA liability was supported by evidence that the state

"failed to conduct any investigation" when it had a duty to do so. See also Proctor, 368 S.C. at 297, 628 S.E.2d at 506 (finding jury question on gross negligence where stage agency "did not perform an inspection, as it was its policy to do"). Here, SCDOT had not conducted a single safety analysis of the subject intersection for 10 years at the time the Wrights were injured. L. Colvin Dep. 215:25 – 216:15.

In light of the substantial number of collisions at this specific intersection (4.25/year and over 200 since Pilot Travel Center opened), SCDOT's failure to investigate and respond to the danger was grossly negligent. While Section 15-78-60(13) does not reference that standard, since SCDOT asserts the permit immunity provision (Section 15-78-60(12)) that contains a gross negligence standard, the same standard applies to all the SCTCA immunity provisions on which SCDOT relies. Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999) ("when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception"). Just as in this case, Steinke applied a gross negligence standard to the inspection immunity provision because the defendant also asserted the licensing immunity provision which includes an explicit gross negligence standard. Id. at 395-96, 520 S.E.2d at 153-54. Thus, SCDOT's total failure to inspect the subject intersection and to investigate its dangerous conditions constitute gross negligence and defeats SCDOT's immunity assertion.

SCDOT also may not rely on Section 15-78-60(15), which provides immunity for the "absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier." This section covers a broad section of traffic control devices but its plain terms do not cover the allegations related to the deficient *driveways* SCDOT improperly approved. Plus, while decisions regarding medians are generally immune, SCDOT can face

liability when a defective median is not corrected "within a reasonable time after actual or constructive notice." S.C. Code Ann. § 15-78-60(15). Based on the numerous collisions reported in this area, SCDOT was on actual or constructive notice of the dangers motorists faced as a result of customers attempting left turns in to and out of Pilot Travel Center. Collision reports were readily available to the public including SCDOT's own traffic safety office. (R. p. 394 at 229, line 20 – 230, line 8). SCDOT did not act on the danger within a reasonable time as it failed to conduct any safety analyses for 10 years. (R. p. 390 at 215, line 25 – 216, line 15).

In this way, the Wrights' claim is similar to Giannini v. S.C. Department of Transportation, 378 S.C. 573, 664 S.E.2d 450 (2008), where the South Carolina Supreme Court refused to apply Section 15-78-60(15) to a claim based on SCDOT's failure to install median barriers along an interstate highway. Giannini held that, while this immunity provision immunizes median design choices[12], it does not immunize SCDOT's failure to install a more substantial barrier when events provided notice of dangerous highway conditions. 378 S.C. at 580, 664 S.E.2d at 453 ("This is not a claim of defective construction but, rather, one of failure to take corrective action subsequent to notice of a defect"); see also Wooten v. S.C. Dep't of Transp., 333 S.C. 464, 467-68, 511 S.E.2d 355, 357 (1999) (holding that design immunity is not "perpetual" and that once SCDOT has notice intersection is hazardous, it is no longer immune from liability). Giannini found that SCDOT was

[12] SCDOT is also not entitled to immunity on SCDOT's decision to alter its original plan for a raised median. Since SCDOT asserts at least one immunity provision with a gross negligence standard, that standard applies to all immunity provisions including Section 15-78-60(15)'s general protection for median design choices. Steinke, 336 S.C. at 398, 520 S.E.2d at 155. Here, there is evidence of gross negligence in that SCDOT changed its plan from a much safer raised median to a painted median during "negotiations" with Pilot Travel Center's owners who prioritized profits over highway safety. As SCDOT acknowledges, planning for a median based on business interests rather than safety is antithetical to SCDOT's core objectives. (R. p. 346 at 39, lines 3-25; 390 at 213, lines 11-13).

on notice of the need for a median based on "several" similar collisions on the interstate. 378 S.C. at 580, 664 S.E.2d at 453.

Here, the Wrights and their attorneys obtained hundreds of collision reports for incidents in the immediate vicinity of the subject intersection. SCDOT even admits left turn related collisions were occurring in this intersection at a rate of 4.25 per year at the time the Wrights were injured. This information placed SCDOT on actual or constructive notice of the need to more tightly control the areas at which left turns would be permitted in this intersection. At the very least, the collision reports and SCDOT representatives' testimony creates a question of fact for the crucial issue of notice. Wooten, 326 S.C. 516, 528, 485 S.E.2d 119, 125 (Ct. App. 1997) (*aff'd as modified* 333 S.C. 464, 467-68, 511 S.E.2d 355, 357 (1999) ("Whether there was a history of accidents which put SCDOT on notice of a potentially dangerous situation is a quintessential matter for the jury").

Finally, the Court should reject SCDOT's assertion of discretionary immunity under S.C. Code Ann. § 15-78-60(5). As with all SCTCA immunity provisions, SCDOT bears the burden of proving it is entitled to discretionary immunity. To prove discretionary immunity, SCDOT must prove that, "when faced with alternatives, it actually weighed competing considerations and made a conscious choice." Pike v. S.C. Dep't of Transp., 343 S.C. 224, 230, 540 S.E.2d 87, 90 (2000). SCDOT must also demonstrate that "in weighing the competing considerations and alternatives, it utilized acceptable professional standards appropriate to resolve the issue." Id. (citing Foster v. S.C. Dep't of Highways & Pub. Transp., 306 S.C. 519, 525, 413 S.E.2d 31, 35 (1992)). Mere room for discretion is not enough and "[i]t is not enough to say the defect was noted and a decision was made not to repair it." Id. SCDOT cannot meet this burden for its negligent failure to discover and respond to the dangerous conditions at the subject intersection. SCDOT has no explanation for the

failure to conduct proper safety analyses at this busy intersection (R. p. 390 at 216, lines 4-15) and, therefore, cannot argue this was a discretionary decision. SCDOT's approval of Pilot's deficient driveway plan is not entitled to discretionary immunity because it did not apply acceptable professional standards. Driveways located within the functional area of an intersection and spaced too closely together violated the ARMS Manual and SCDOT's decision to sanction those violations is not entitled to immunity. Pike, 343 S.C. at 230, 540 S.E.2d at 90 (limiting discretionary immunity to actions where governmental entity "utilized acceptable professional standards").

In sum, SCDOT's summary judgment motion should have been denied to the extent it relied on SCTCA immunity provisions. SCDOT bore the burden of proof for each of these affirmative defenses and failed to meet the requirements for any of them. SCDOT's conduct from the time Pilot submitted its driveway plans until the date of the Wrights' collision was grossly negligent and not protected from liability.

CONCLUSION

For all these reasons, the Wrights respectfully request the Court reverse the circuit court's order granting Respondents summary judgment. Records show Respondents wrongfully collaborated on a median across Highway 17 that facilitated Pilot's business interests at the expense of motorists like the Wrights. Additionally, Respondents planned, approved and constructed a system of driveways that violated mandatory SCDOT safety standards. Pilot and SCDOT then allowed the dangerous median and driveways to remain unchanged as collisions continued to pile up. Finally, notwithstanding the conduct of the at-fault driver, his fateful left turn would have never happened if a raised median was in place or if there was no driveway at that location for him to utilize. Ultimately, the circuit court should be reversed because it misconstrued

South Carolina law on Respondents' duties and ignored key evidence establishing Respondents' misconduct.

Respectfully submitted,

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April 16, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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 & Consulting, Inc., and Munlake Contractors, Inc.,

Of whom

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

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STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENT PILOT TRAVEL CENTERS, LLC.

STATEMENT OF THE CASE

On March 31, 2014, Appellants filed a negligence and loss of consortium action against Pilot Travel Centers, LLC ("Pilot") and the South Carolina Department of Transportation ("SCDOT") arising from a motor vehicle accident that occurred on Highway U.S. 17A (the "Highway") in front of a Pilot Travel Center gas station ("Pilot Travel Center") owned by Pilot. The accident involved an intoxicated driver traveling in the opposite direction of the Appellants on the Highway who drove his truck into the Appellants' motorcycle while attempting to make a left hand turn into one of the Pilot Travel Center's entrances. Appellants subsequently filed a separate action arising from the accident against Speedway LLC[1] ("Speedway"), Ashley Land Surveying, Inc.[2] ("Ashley"), and Munlake Contractors, Inc.[3] The two actions were consolidated.

Appellants allege 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. Appellants also contend that the location and design of Pilot's driveway created a dangerous condition on the Highway.

Pilot filed a Motion for Summary Judgment on May 12, 2016, based on the grounds that Appellants 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 Appellants' injuries. After a hearing on April 10, 2017, the

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[1] Speedway is the successor in interest to Speedway SuperAmerica, LLC, which owned the gas station located on the subject real property prior to Pilot acquiring this property in September 2001.

[2] Ashley Land Surveying, Inc. is an engineering firm Pilot retained to assist with obtaining an encroachment permit from SCDOT as part of Pilot's construction of the Pilot Travel Center.

[3] Munlake Contractors, Inc. was the general contractor of the Pilot Travel Center.

Honorable Roger M. Young, Sr. entered an order on May 4, 2017, granting summary judgment to Pilot. Judge Young held that Pilot did not owe Appellants any duty to support their negligence claims. Appellants filed a timely Motion to Alter or Amend Judgment pursuant to Rule 52, SCRCP and Rule 59, SCRCP, alleging that the Court erred in finding Pilot did not owe them a duty and arguing that genuine issues of fact remained concerning Pilot's breach of a duty and on the issue of proximate cause. Appellants' Motion to Alter or Amend Judgment was denied on June 8, 2017.

SCDOT, Speedway and Ashley filed their own motions for summary judgment in May and June 2017. These motions were heard by the Honorable Kristi Lea Harrington and, ultimately, granted. Appellants served a timely Notice of Appeal on July 19, 2017.

STATEMENT OF THE FACTS

This action arises from a motor vehicle accident that occurred on October 6, 2012, while Appellants were traveling North on the Highway in front of a Pilot Travel Center owned by Pilot. Appellant Richard Wright was driving the motorcycle, and his wife, Cynthia Wright, was riding as a passenger. The Appellants were traveling in the left lane when a pick-up truck traveling in the opposite direction stopped in the median with its left blinker on and suddenly turned left into the side of Appellants' motorcycle while attempting to turn into the driveway to the McDonald's restaurant attached to the Pilot Travel Center. The pick-up truck was driven by Daniel Sena (Sena), who was under the influence of alcohol and cocaine.[4]

Appellants contend that the accident would not have occurred had there been a raised, non-transversable median in the Highway that prevented motorists traveling southbound from making a left-hand turn onto Pilot's premises. Appellants also allege the location of Pilot's driveway on

[4] Sena admitted in his deposition that he was under the influence of alcohol and cocaine, (R. p. 193, lines 20-24), and pled guilty to two counts of felony DUI, (R. p. 273, lines 7-21).

the Highway caused the accident. Sena testified that the accident was his fault and that Pilot was not to blame for his actions that night. (R. p. 277, line 21-p. 278, line 4). According to Sena, the fact that there was no solid raised median in the Highway does not negate the fact that it was his actions that led to the collision with Appellants' motorcycle. (R. p. 191, line 17-p.192, line 6). Sena testified that his failure to yield "was just bad judgment." (R. p. 188, lines 21-23).

I. History of the Pilot Travel Center

Pilot constructed the subject Pilot Travel Center in or around 2002 after acquiring the real property and existing gas station from Defendant Speedway, LLC in or around September 2001. (R. p. 166-167, at ¶¶ 5, 9). The existing gas station had three driveways with access to the Highway, and there was no raised non-transversable median in the Highway preventing left turns into the existing gas station from the southbound lane. (R. p. 166, at ¶ 7).

In order to construct the driveways to the Pilot Travel Center, Pilot had to submit an application to the South Carolina Department of Transportation (SCDOT) for an encroachment permit. (R. p. 167, at ¶ 8). SCDOT had to approve the design and location of the driveways to Pilot's property before issuing Pilot the encroachment permit.[5] In May 2002, Pilot submitted an application to SCDOT for an encroachment permit, seeking approval of the location and design of its proposed driveways. (R. p. 167, at ¶ 8). SCDOT approved Pilot's application and issued Pilot an encroachment permit to construct the driveways to the Pilot Travel Center. *Id.*

II. History of Highway U.S. 17A and the Median

At no point since the original construction of the Highway has there ever been a raised, non-transversable median in the portion of the Highway where this accident occurred. (R. p. 219,

[5] Although the original gas station on the property had driveways allowing for ingress and egress directly from the highway, the driveways to the property were relocated as part of Pilot's rebuild. (Bill Mulligan Dep. at 10:11-18, R. p. 434, line 11-18)

lines 7-21). Rather, the median in front of Pilot's property has always been a painted flush median, which allows motorists traveling in either direction to make left turns into the businesses abutting this portion of the Highway (on both sides). (R. p. 218, line 19-p. 220, line 1).

In the late 1990s and early 2000s, SCDOT engaged in two separate highway projects that modified the portion of the Highway in front of the Pilot Travel Center. The first project was widening the section of the Highway directly in front of the Pilot Travel Center (the "Widening Project"), and the second project involved reconstructing the intersection of I-26 and the Highway that was adjacent to the Pilot Travel Center (the "Interchange Project"). (Colvin Dep. 50:18-51:23, R. p. 349). These projects were initiated by SCDOT, not Pilot. (Colvin Dep. 51:1-5, R. p. 349). The design plans for the Widening Project were prepared internally by SCDOT staff in 1998. (Colvin Dep. 51:24–52:15, R. p. 349). SCDOT hired an outside firm to design the Interchange Project, and the plans for this project were prepared in 1999. (R. p. 216, lines 13-16; R. p. 221, lines 7-11). Importantly, the scope of the Interchange Project did not concern the portion of the Highway where the Appellants' accident occurred. Rather, the Interchange Project involved reconstructing the intersection adjacent to the Pilot Travel Center and the portion of the Highway on the opposite side of the intersection. (*See* Colvin Dep. 51:6-23, R. p. 349).

According to SCDOT, the design plans for the Widening Project never included the installation of a raised median in front of the Pilot Travel Center. (Colvin Dep. 253:17-254:3 R. p. 216-217). The original design plans for the Interchange Project, which were prepared by an outside firm, did show a raised median in front of the Pilot Travel Center. (R. p. 217, line 21-p. 218, line 2). However, SCDOT testified that the inclusion of the raised median in the original design plans for the Interchange Project was simply a "placeholder" until SCDOT ultimately merged its

Widening Project plans with the Interchange Project plans.[6] (R. p. 217, line 21-p. 218, line 10; R. p. 220, lines 6-14). There was never an expectation that there was going to be a raised median in front of the Pilot Travel Center as part of the Widening Project.[7] (R. p. 221, lines 16-21). Leland Colvin, the SCDOT program manager who oversaw the Widening Project and Interchange Project, (Colvin Dep. 9:23-10:2, R. p. 339), testified that he was the one who made the decision to not add a raised median to the portion of the Highway in front of the Pilot Travel Center, and that this decision was made when the plans were prepared in 1998 (R. p. 231, line 20-p. 232, line 8). According to Mr. Colvin, the decision to keep the painted flush median was made in conformance with SCDOT's Highway Design Manual, which SCDOT considers "the Bible" for designing highways in the state. (R. p. 217, lines 4-20). He also testified that the installation of a raised

[6] Leland Colvin was the SCDOT program manager for the Widening Project and Interchange Project. (Colvin Dep. 9:23-10:2, R. p. 339). He served as one of SCDOT's 30(b)(6) deponents and testified that the "construction joint" for the two projects—i.e. the point on the Highway where the two projects met one another—occurred at the intersection of Farmington Road and the Highway. (Colvin Dep. 98:5-7, R. p. 361). This construction joint was before the area where the accident occurred and was where the Interchange Project plans depicted a raised median. (*See* R. pp. 128, 194).

[7] Appellants claim numerous times throughout their Brief that the SCDOT design plans for the Widening Project initially called for a raised non-transversable median (*E.g.*, Appellants' Brief 3, 6, 13-14, 20). This repeated allegation is, at best, misleading. There is no admissible evidence in the record to indicate that SCDOT ever intended to use a non-transversable median to prevent left turns into Pilot's property. For example, on page 20 of Appellants' Brief, Appellants cite to the deposition testimony of Leland Colvin as support for the proposition that the original design called for the inclusion of a raised, non-transversable median. However, the testimony to which Appellants cites does not support this claim. To the contrary, the testimony cited concerns the design plan for the Interchange Project, not the Widening Project. (*See* Colvin Dep. 86, R. p. 358). Mr. Colvin repeatedly stated that the plans for the Widening Project never contained a raised, non-transversable median, and that to the extent a raised non-transversable median was depicted on the plans for the completely separate Interchange Project, this median was simply a "placeholder". (*E.g.* R. p. 220, lines 6-14) Moreover, Appellants' citations to Mr. Leland's testimony to support the proposition on page 20 of their Brief that Pilot "raised concerns about the planned non-transversable median," is also a misrepresentation of Mr. Colvin's testimony. The testimony cited, which was subject to multiple objections, refers to Marathon Ashland, not Pilot. (*See* Colvin Dep. 80-81, R. pp. 356-357). Mr. Colvin testified that he did not recall ever speaking with anyone from Pilot regarding his decision to install a flush median, and there was no negotiation with Pilot regarding the median. (Colvin Dep. 99-100, R. p. 361; R. p. 222, lines 17-25).

median as part of the Widening Project would have been in contravention of the standards set forth in the SCDOT Highway Design Manual. *Id.*

Appellants filed the present negligence action against Respondents arising from their accident. Appellants allege that Pilot owed the driving public a duty to construct its driveway "in such a way as to prevent the existence of hazardous road conditions [on the Highway]" and was negligent for failing to construct and maintain its driveway "to prevent . . . [Appellants] from being stricken by other motorist[s] attempting to turn left across traffic . . .." (R. p. 41-42, at ¶¶ 38, 41(a)). Appellants also claim that Pilot is responsible for SCDOT's decision to utilize a painted flush median in the Highway.[8]

STANDARD OF REVIEW

"An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Lanham v. Blue Cross & Blue Shield of S. Carolina, Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). "Summary judgment is appropriate where it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997)(citing Rule 56(c), SCRCP). While the appellate court should review the evidence and inferences to be derived therefrom in a light most favorable to the non-moving party, *Lanham*, at 362, 563 S.E.2d at 333, summary judgment should be upheld where the evidence is susceptible of only one reasonable interpretation, *see Brooks*, at 403, 489 S.E.2d at 648

[8] At the time of the accident, there was a Hess gas station located directly across from the Pilot Travel Center. The entrances to the Hess gas station allowed motorists traveling northbound on the Highway to make left-hand turns onto its premises. (Colvin Dep. 278-279, R. p. 406).

(citing *Clyburn v. Sumter County Sch. Dist. No. 17,* 317 S.C. 50, 52, 451 S.E.2d 885, 887–88 (1994)).

ARGUMENT

In order to prevail at trial, Appellants must establish that (1) Pilot owed them a duty; (2) Pilot breached that duty by a negligent act or omission; (3) and that Appellants' 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, Appellants have failed to create a genuine issue of material fact regarding these essential elements of their claims.

I. THE TRIAL COURT PROPERLY HELD THAT PILOT TRAVEL CENTERS, LLC DID NOT OWE THE APPELLANTS A DUTY OF CARE.

Pilot did not owe Appellants any duty of care as alleged in the Complaint, and therefore, the trial court properly granted Pilot summary judgment. *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.").

Appellants allege that Pilot owed them a duty of care to prevent them from getting in a motor vehicle accident in the Highway in front of its property. However, the Supreme Court of South Carolina has refused to recognize such a broad duty. *See Skinner v. S. Carolina Dep't of Transp.*, 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 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."[9] *Id.* As the trial court correctly held, the Appellants cannot establish that Pilot engaged in an activity that created a dangerous artificial condition on the highway. (R. p. 6).

Here, Appellants allege that the dangerous condition that caused their accident was the painted flush median in the Highway that allowed Sena to make a legal left hand turn onto Pilot's premises. Appellants also contend that the location of the driveway on Pilot's property (that Sena was attempting to turn into at the time of the accident) created a dangerous condition on the Highway. However, neither the painted flush median or the location of Pilot's driveway impose a duty on the part of Pilot to prevent the Appellants' motorcycle from being hit by an intoxicated driver on the Highway.

A. Pilot Owed No Duty to Appellants Concerning the Median

Even if one assumes the painted flush median on the Highway in front of Pilot's property was dangerous to motorists, which is adamantly denied, Appellants have failed to establish that Pilot engaged in any activity that created the painted flush median. It is undisputed that a painted flush median has existed at this location long before the Pilot Travel Center was built on Pilot's property. (*E.g.,* R. p. 166, at ¶ 7). In fact, the pre-existing gas station at this location had three driveways with access to the Highway and motorists were able to make left hand turns into the property.[10] *Id.* Moreover, SCDOT testified that it made the decision to leave the painted flush median in place as part of the Widening Project and that this decision was made at the time the Widening Project plans were prepared in 1998. (Colvin Dep. 283:20-284:8, R. p. 407). Therefore,

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[9] 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.2d at 874.

[10] There was also a gas station on the opposite side of the highway prior to the Widening Project that had driveways that allowed motorists traveling northbound on the highway to make left turns into the property. (Colvin Dep. 278-279, R. p. 406).

SCDOT's testimony establishes that the decision to keep the existing painted flush median in the Highway was made prior to Pilot acquiring the subject property in September 2001. (Colvin Dep. 283:20-284:8, R. p. 407; *see* R. p. 166, at ¶ 5). There is no evidence in the record that any decision regarding the type of median to place in this section of the Highway occurred after Pilot acquired the subject property. The timeline of events itself makes it impossible for the Appellants to establish Pilot was responsible for the absence of a raised non-transversable median in the section of the Highway in front of its property.

Notwithstanding the above timeline, Appellants argue that Pilot is responsible for the absence of a non-transversable median in the Highway because it "negotiated" with SCDOT to remove a non-transversable median from the Widening Project plans.[11] As evidence of this, Appellants rely solely on unauthenticated handwritten notes on a letter dated August 28, 2000, from an SCDOT official to a representative of Marathon Ashland Petroleum, LLC. As an initial matter, this letter and the handwritten notes are hearsay, and thus, inadmissible for purposes of challenging Pilot's motion for summary judgment. *See Hall v. Fedor*, 349 S.C. 169, 175-76, 561 S.E.2d 654, 657 (Ct. App. 2002) ("materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence."); *Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct. App. 1994), *aff'd*, 319 S.C. 79, 459 S.E.2d 850 (1995) ("A genuine issue of fact ... can be created only by evidence which would be admissible at trial."). However, even if this document and the notes thereon were admissible, they do not evidence any "negotiation" between Pilot and SCDOT for several reasons. First, there is no evidence that the

[11] SCDOT testified that the Widening Project plans never called for a non-transversable median in the Highway in front of the Pilot Travel Center. (*E.g.*, R. p. 221, lines 16-24; R. p. 222, lines 17-25). Therefore, it is a misrepresentation to state that such a median was ever removed from the Widening Project plans. (*See* Colvin Dep. R. p. 219, line 22-p. 220, line 5).

individual who allegedly wrote these notes was an employee or agent of Pilot.[12] In fact, Pilot did not even acquire the subject property until September 2001. (R. p. 166, at ¶ 5). Second, SCDOT testified that the decision to keep a painted flush median in front of the Pilot Travel Center was made in 1998, which is two years prior to the date of the letter on which the notes are written.[13] (*See* R. p. 675). Finally, SCDOT testified that it did not "negotiate" the removal of any median and that there was never any expectation that a non-transversable median would be placed in front of the Pilot. (R. p. 217, lines 4-12). Therefore, to the extent Appellants rely on this inadmissible letter to create an issue of fact as to whether Pilot owed them a duty, such reliance is misplaced;[14] and Appellants cannot survive summary judgment based upon the argument that a jury could disbelieve the testimony of Mr. Colvin that no negotiations took place between Pilot and SCDOT concerning the median. *See Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010)

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[12] Appellants argue that Pilot is liable for the actions of Speedway because Pilot was a joint venture with Speedway. (*See* Appellants Brief 5, at n. 1). However, even if the joint venture somehow imputes liability on Pilot for Speedway's actions, which is denied, there is no legal basis to hold that Pilot is responsible for actions performed by employees of Speedway prior to the joint venture. According to Bill Mulligan, the joint venture was formed in 2001. (Mulligan Dep. 23:11-15, Ex. 1 to Pls. Mem. in Opp. Def. S.C. Dept. of Transp.'s Mot. for Summ J, R. p. 909, lines 11-15).

[13] Even if for arguendo, the decision to use a flush median was made around the alleged date of the handwritten notes contained on the letter from SCDOT to the prior owner of the property, this date is still a year prior to Pilot acquiring the property. (*See id.*; R. p. 675).

[14] Appellants attack the trial court's Order for citing a non-precedential proposition of law when it dismissed Appellants' argument that this SCDOT letter is evidence that Pilot "negotiated" the removal of a raised, non-transversable median. (Appellants' Brief 13-16). However, the proposition of law cited by the trial court—that a plaintiff must present evidence that amounts to more than mere speculation to survive summary judgment— has been cited by the South Carolina Court of Appeals. *See King v. Miller*, No. 2017-UP-325, 2017 S.C. App. Unpub. LEXIS 356, at *2 (Ct. App. Aug. 2, 2017) (*citing Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010). This proposition of law is also consistent with other court decisions. *See, e.g., Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17-18, 677 S.E.2d 612, 616 (Ct. App. 2009) (affirming summary judgment for defendant where plaintiff's assertions of liability were speculative and based upon conjecture). Moreover, Appellants misinterpret the trial court's Order as to the "speculation and conjecture" the trial court was referring to. The trial court was not referring to the letter specifically, but rather, to Appellants' counsel's "speculation 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." (R. p, 6, at n. 7; *see* R. p. 152, line 19-p. 153, line 4; R. p. 155, line 11-p. 156, line 17; R. p. 161).

("One may not . . . avoid summary judgment by asserting that a jury may disbelieve uncontradicted evidence. . . . A plaintiff cannot create a genuine issue of material fact with the argument that the jury does not have to believe a witness.").

Additionally, the notion that Pilot is somehow responsible for "the 'removal' of a planned raised median" or that Pilot "chose the dangerous median," as Appellants allege in their Brief, (Appellants' Brief 6), not only belies the evidence in the record, it contravenes well-settled case law holding that 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. § 57-3-110 (1) ("The Department of Transportation shall . . .[have the power and duty to] lay out, build and 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. Carolina Dep't of Transp.*, 327 S.C. 179, 190-91, 490 S.E.2d 8, 14 (1997) *overruled on other grounds by I'On, L.L.C. 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 Associates*, 268 S.C. 556, 561, 235 S.E.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 non-transversable medians. *See* 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 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 a 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 to make an immediate left turn onto business premises); *Hardin v. S. Carolina Dep't of Transp.*, 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 Associates,* 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.").

The trial court correctly recognized that SCDOT ultimately has the exclusive authority and control over the Highway, and that Pilot, as one of the property owners abutting the Highway, did not have a duty to maintain, repair or warn travelers of potentially dangerous conditions on the Highway over which it has no control.[15] (R. p. 8). As the trial court determined, the facts of the

[15] Recognizing that SCDOT has exclusive authority and control over the Highway, the Court also correctly held that even if Appellants could show some form of "negotiation" between Pilot and SCDOT concerning what type of

present case are very similar to those in *Allen v. Mellinger,* 156 Pa. Cmwlth. 113, 625 A.2d 1326 (1993). In *Allen*, 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 §349[16], the *Allen* 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, 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.

Like the business owner in *Allen*, Pilot 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 are part of the highway[17] and subject to the control and authority of SCDOT; and the decision to install a painted median as opposed to a solid raised median on the Highway was within the exclusive province of SCDOT as the governmental agency

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median to install in the Highway as part of SCDOT's Widening Project, any such negotiation does "not impose a duty on the part of Pilot to the Plaintiffs." (R. p. 7).

[16] 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
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> (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.

[17] S.C. Code 57-3-120 defines "highway" as including "the entire area within the right-of-way" and "all other facilities commonly considered component parts of highways."

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. S. 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 the Highway, has no duty (or authority) to maintain, repair, or warn others of potentially dangerous conditions on the Highway over which it has no control.[18]

Appellants argue that *Allen* actually supports a finding of a duty on the part of Pilot because "Allen never suggests immunity for adjoining property owners that actively participate in creating dangerous highway conditions." (Appellants' Brief 13). It is unclear what Appellants mean by the phrase "actively participates;" however, Appellants cite to *Swieckowski by Swieckowski v. City of Fort Collins*, 923 P.2d 208, 211 (Colo. App. 1995) in support of establishing Pilot owed them a duty. *Swieckowski* is inapposite to the present case as it involved a situation where the abutting property owner actually designed and constructed the road, sidewalk and bicycle path at issue pursuant to a development agreement with the city. *Id.* at 211. Here, there was no such agreement between Pilot and SCDOT to design and construct the portion of the Highway where the accident occurred. There is also no evidence that Pilot was an "active participant" in the design or construction of widening the Highway in front of its property. To the contrary, the Widening Project was initiated, designed and constructed solely by SCDOT. The fact that Pilot may have benefited by SCDOT's design decisions with respect to the Widening Project does not mean Pilot was responsible for, or owed Appellants a duty in relation to, said decisions.

[18] SCDOT acknowledged during its Rule 30(b)(6) depositions that it owns and has control of the Highway, 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. (R. p. 212, lines 14-25; R. p. 226, lines 12-14).

B. Pilot Owed No Duty to Appellants Concerning the Driveway

Appellants' argument that Pilot created a dangerous condition on the Highway by virtue of constructing a driveway to the property that was accessible by motorists traveling southbound on the Highway lacks merit. *See Skinner v. S. Carolina Dep't of Transp.*, 383 S.C. 520, 526 (evidence that it was motorists' utilization of the property owner's driveway that led to alleged dangerous condition on the highway was insufficient to establish business owner "created" a defect on the highway and did not create a duty on the part of the property owner). First, as the trial court correctly held, "having a driveway on the highway, in and of itself, is not an artificial condition as contemplated by South Carolina case law." (R. p. 10; *see also* R. p. 161, lines 6-10). In arguing that the driveway was a dangerous condition on the Highway, Appellants misinterpret the South Carolina Supreme Court's decision in *Skinner*. The *Skinner* Court held 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." *Skinner,* at 524, 681 S.E.2d at 873 (Emphasis added). Appellants focus on the phrase "artificial condition" but overlook the Court's reference to an "activity" undertaken by the property owner. The imposition of liability contemplated by *Skinner* is for artificial conditions resulting from business activity. This is evident from the types of artificial conditions cited by the *Skinner* Court as potentially imposing liability on a property owner: 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.2d at 874. The *Skinner* decision does not contemplate that simply having a driveway with access to a highway creates a duty on the part of the property owner to prevent accidents that occur entirely on the highway.[19] *Cf. Rosas v.*

[19] In their Brief, Appellants cite to *Keith v. Beard*, 219 Ga. App. 190, 464 S.E.2d 633 (1995) as evidence that a driveway can be considered an artificial condition. However, *Keith* is distinguishable from the facts of the case at

O'Donoghue, No. 03-5071, 2005 U.S. Dist. LEXIS 17165, at *19 (E.D. Pa. Aug. 17, 2005) *aff'd by Bradley v. O'Donoghue*, 216 F. App'x 150, 152 (3d Cir. 2007) (holding a business owner was not liable to a pedestrian who was hit by a motorist after the pedestrian entered the intersection from the business's driveway, and noting that the claim that the business's driveway was an artificially dangerous condition was a "dubious" one.)

Estes v. Peels, No. E1999-00582-COA-R3-CV, 2000 Tenn. App. LEXIS 641 (Ct. App. Sep. 21, 2000) is also instructive with respect to whether a business's driveway can serve as the basis for imposing liability on a property owner. In *Estes*, the plaintiff was injured on the public highway when a vehicle exiting a manufacturing plant abutting the highway failed to yield to the plaintiff's right of way. *Id.* At *2. The plaintiff sued the owner of the manufacturing plant, alleging that the driveway was inadequate and caused drivers to unsafely enter the public highway. *Id.* The *Estes* court held that the property owner owed no duty to protect a plaintiff from an accident that occurred off its premises. *Id.* at *22. The court found significant the fact that the plaintiff did not enter onto the abutting landowner's property, nor did she come into contact with any condition on the property. *See id.* at *18. The court further held that the decision of the motorist exiting the driveway to pull out in front of the plaintiff was not attributable to any condition on the

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hand. First, unlike here, the driveway in *Keith* was not approved and permitted by the state's department of transportation. Second, *Keith* concerned a situation where the at-fault driver hit a motorist on the highway while pulling out of the unpermitted driveway. The plaintiff/motorist sued the property owner, alleging that the "driveway had insufficient sight distance and created a situation of poor visibility for traffic attempting to exit safely onto [the highway]." *Id.* at 635. The property owner also admitted that he knew about the alleged sight distance problem regarding the driveway prior to the accident. *Id.* Based upon the specific facts of the case, the *Keith* Court held that a driveway could be considered an artificial condition "in certain circumstances." *Id.* at 637. Importantly, unlike in *Keith*, the driveway at issue in this case was approved and permitted by SCDOT. Moreover, there is no evidence in the record that the driveway created a sight distance problem. To the contrary, Sena indicated that his failure to yield "was just bad judgment." Moreover, Richard Wright, who was driving the Appellants' motorcycle, indicated in his deposition that he saw Sena's truck prior to the accident, and that he made the decision not to slow down as he did not want to give Sena the impression that he was letting the truck turn. (R. p. 902, lines 4-13; R. p. 158, lines 3-8).

landowner's property. *Id.* at *19. Rather, the at-fault motorist "simply failed to yield to oncoming vehicles, in violation of [the motorist's] statutory duty." *Id.* The court held "there [was] nothing dangerous about the defendant's parking lot absent the failure of a driver to obey traffic laws and yield to oncoming traffic." *Id.* Moreover, according to the court, even if the conduct of the at-fault motorist was foreseeable, the landowner owed no duty "to prevent a driver from pulling out on a highway without yielding to oncoming traffic." *Id.* at *21. The *Estes* Court explained that imposing such a duty on the landowner would be an onerous burden, noting that the landowner "could not, without governmental approval, install lights or signs upon the highway to control traffic exiting its facility." *Id.* Additionally, the court emphasized that the landowner could not have prevented the plaintiff's injuries as the landowner "had no control over the instrumentality that caused [the plaintiff's injuries]; it could not prevent [the at-fault motorist] from failing to yield to oncoming traffic...." *Id.*[20]

Like the plaintiff in *Estes*, here, Appellants seek to impose liability on Pilot by arguing that Pilot's driveway itself was a dangerous artificial condition on the Highway. However, just like in *Estes*, there is nothing dangerous about Pilot's driveway absent the failure of Sena to obey traffic laws and yield to oncoming traffic. In fact, the only danger Appellants seem to allege concerning the location of the driveway is that traffic on the Highway was able to turn into the driveway from

[20] Other courts have similarly held that a property owner does not owe a duty for accidents that occur off of the property owner's property. *See, e.g., Chouinard v. N.H. Speedway*, 829 F. Supp. 495, 503 (D.N.H. 1993) (holding that a property owner does not owe a duty to control traffic on the public way adjacent to its business or to guard against the negligent acts of third party tortfeasors on the public way over which the property owner has no control.); *Holter v. Sheyenne*, 480 N.W.2d 736, 738 (N.D. 1992) ("The key factor to finding that a property owner owes no duty to an injured party is that the owner has no control over the property where the injury occurred or the instrumentality causing the injury); *Ziemba v. Mierzwa*, 142 Ill. 2d 42, 52-53, 566 N.E.2d 1365, 1369 (1991) (holding property owner owed no duty to plaintiff who was hit by driver exiting property owner's driveway because it was not reasonably foreseeable "that a driver would exit his driveway without first ascertaining whether any traffic was approaching . . ..").

both directions.[21] However, the ability to turn into the driveway from either direction depends entirely on what traffic signals and/or traffic control devices are in the Highway—a responsibility that is exclusively SCDOT's.

Additionally, Appellants' argument that SCDOT's ARMS Manual serves as the basis of a legal duty is unavailing. In *Skinner*, the court rejected the plaintiffs' argument that SCDOT's ARMS manual was the source of a legal duty owed by an abutting property owner to motorists on a highway. Specifically, the *Skinner* Court determined that the ARMS manual's regulations concerning the need for an encroachment permit were not applicable because the property owner "did not need to seek such a permit" and "[SCDOT] did not exercise its authority and require them to obtain one." *Id.* at 523. To the extent *Skinner* suggests the ARMS manual could be a source of a duty, the situation the case seems to contemplate is where a property owner that is required to obtain an encroachment permit does not do so. *See id.* Here, Pilot did obtain an encroachment permit from SCDOT for the subject driveway, which was approved by SCDOT.

Moreover, SCDOT has the ultimate decision-making authority with respect to the placement and design of driveways. (*See* R. p. 227, line 2-p. 229, line 4). According to SCDOT, driveway locations are part of the design of the highway. (R. p. 208, line 23-p. 209, line 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; (R. p. 227). As part of the permitting process, SCDOT reviews the permittees' design plans to ensure

[21] Appellants allege that Pilot's driveways were within the "functional area" of the intersection as evidence that Pilot's driveways were dangerous. Even if this was evidence that the placement of Pilot's driveways was dangerous, which Pilot adamantly denies, Appellants have provided zero evidence that the driveway Sena was attempting to enter on the date of the accident was within the functional area of the intersection. (*See* discussion *infra* Section II(B)). Appellants' own experts only go as far as saying the driveway is "too close to the functional area of the intersection." (R. p. 684, at ¶ 9; R. p. 692, at ¶ 9).

compliance with SCDOT regulations and standards concerning the design and location of driveways. (R. pp. 227-229). SCDOT also reviews a permittee's encroachment application to ensure driveways do not create any safety concerns or impede efficient traffic operations. (R. pp. 201-203; R. p. 237). 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. 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." (R. p. 238). 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. Moreover, had the driveways been deemed unsafe to the public at any time over the nine (9) years between the completion of Pilot's gas station and the Appellants' accident, SCDOT had the authority to require Pilot to change them.

SCDOT had the ultimate decision-making authority with respect to the placement and design of Pilot's driveway, and there is no evidence that the driveway was constructed in contravention to the encroachment permit granted by SCDOT. Moreover, SCDOT, not Pilot, is responsible for maintaining rights of way. *See Skinner*, at 523 (noting that the ARMS manual also did not impose a duty on the property owner because it imposes responsibility for maintaining rights-of-way on SCDOT). Finally, SCDOT testified that the design guidelines in the ARMS manual do not represent hard-and-fast rules, but rather, are "suggestions" that the department will take into consideration when exercising its independent engineering judgment when evaluating encroachment permits. (R. pp. 306-308). Therefore, the ARMS manual is not a source of any duty on the part of Pilot.

To the extent that Plaintiffs maintain 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[22] and failed to take any remedial action, no such affirmative duty on the part of Pilot existed. "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 such that Pilot had an obligation to affirmatively act.[23] 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* § 349 (landowner owes no duty to warn travelers of dangerous conditions in the highway 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 & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986).

Furthermore, from a public policy perspective, Appellants' attempt to impose liability on Pilot for a motor vehicle accident that occurred entirely on the highway and involved motorists—

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[22] Appellants allege Pilot was on notice of the danger its driveways posed to motorists by virtue of prior motor vehicle accidents that allegedly occurred in and around the entrance to Pilot's property. Notwithstanding the fact that Appellants have failed to put forth any evidence that Pilot was on notice of these accidents, Appellants have failed to submit any admissible evidence establishing that these accidents were in any way caused by Pilot's driveway or the painted flush median. Appellants submitted a collision report to the trial court as an exhibit to their memorandum in opposition to Pilot's motion for summary judgment, alleging that the collision report was proof that more than 254 accidents occurred in the portion of the Highway in front of the Pilot Travel Center. However, there is no evidence in the record to establish that any of these accidents occurred as a result of the flush median or the location of the subject driveway. (*See* R. p. 136, line 1-p. 137, line 1).

[23] Even if Pilot did owe Plaintiffs some duty to affirmatively act, as discussed above, Pilot did not have the authority to install a raised median or relocate the driveway on its 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); *Estes*, at *20-21 (finding no duty owed by property owner and noting that property owner "could not, without governmental approval, install lights or signs upon the highway to control traffic exiting its facility[] [because][t]he responsibility for the placement and maintenance of traffic controls on the public way rests with the government, not a private entity . . .").

one of whom was under the influence of alcohol and cocaine—who were never even on Pilot's property, would have far-reaching implications. To hold that Pilot owes a duty to motorists like Appellants traveling passed its business property simply by virtue of having a driveway allowing for ingress from and egress to the highway would subject every property owner abutting a main thoroughfare to potential liability. This is an onerous burden for a property owner, particularly where the driveway is approved and permitted by SCDOT—the governmental entity responsible for designing our state's highway system and controlling traffic thereon. This burden is increased due to the fact that SCDOT is statutorily immune from liability for the design and location of driveways. *See S.C. Code Ann* 15-78-60(15). Property owners are therefore placed in a paradoxical position where they cannot design and construct driveways to their property without obtaining SCDOT's independent engineering judgment that the design and placement of said driveways comply with the Department's design and safety standards, but, due to the immunity granted to the Department, property owners are the ones left liable to motorists who are involved in accidents that happen to occur in front of these government-approved driveways. This burden is simply too onerous to impose a duty on property owners like Pilot. *See Estes*, at *20-21 (Ct. App. Sep. 21, 2000) (finding it would be too burdensome to impose a duty on a property owner to prevent a driver exiting its property from failing to yield to oncoming traffic); *Ziemba v. Mierzwa*, 142 Ill. 2d 42, 52-53, 566 N.E.2d 1365, 1369 (1991) (noting it would be an "intolerable burden on society" to impose a duty on a property owner to guard against an injury occurring off of his property where the condition on his land "posed no danger to the plaintiff, absent the [at-fault driver] violating his own standard of care.").

C. The "Expert Affidavits" Submitted by Appellants are Inadmissible and Cannot Serve as the Basis for Establishing an Issue of Fact to Survive Summary Judgment

To the extent Appellants rely upon the affidavits of John Mark Teague and Richard M. Balgowan to support the existence of a duty owed by Pilot, such affidavits should be disregarded by the Court as their opinions as to the existence of a duty is inadmissible. "[O]pinion testimony, including that of an expert, which would be inadmissible if testified to at trial may not properly be set forth in an affidavit." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 111, 410 S.E.2d 537, 543 (1991). "In general, expert testimony **on issues of law** is inadmissible." *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (Emphasis in original).

Here, the testimony contained in the affidavits of Mr. Teague and Mr. Balgowan concern questions of law within the sole province of the trial court. Mr. Teague and Mr. Balgowan each attempt to offer testimony concerning the duty owed by Pilot. (*See* R. pp. 683-684, at ¶¶ 5-8; R. pp. 691-692, at ¶¶ 5-8). However, whether a duty exists and the scope of that duty are matters of law for the Court. *Miller v. City of Camden*, 317 S.C. 28, 31, 451 S.E.2d 401, 403 (Ct. App. 1994). Thus, Mr. Teague's and Mr. Balgowan's opinions on matters of law are irrelevant.

In *Dawkins*, the South Carolina Supreme Court addressed a Plaintiff's attempt to survive summary judgment based upon an expert affidavit containing primarily legal opinions:

> The Court of Appeals also concluded that the expert affidavit should have been considered by the trial court despite the fact that it contained an opinion on the ultimate issue. *Dawkins,* 345 S.C. at 31, 545 S.E.2d at 519. However, because Professor Freeman's affidavit primarily contained **legal** arguments and conclusions, we hold the trial court properly refused to consider the affidavit.
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> . . . While it is true that "an opinion ... is not objectionable because it embraces an ultimate issue to be decided by the trier of fact," Rule 704, SCRE, Professor Freeman's affidavit inappropriately attempted to usurp the trial court's role in determining whether petitioners were entitled to summary judgment. *See O'Quinn v. Beach Assocs.,* 272 S.C. 95, 106-07, 249 S.E.2d 734, 739-40 (1978) (where expert testimony was offered to establish a conclusion of law, the Court held that

> the trial court properly excluded the testimony because that was within the exclusive province of the trial court).
>
> In general, expert testimony **on issues of law** is inadmissible. *See generally* Note, *Expert Legal Testimony,* 97 Harv.L.Rev. 797, 797 (1984); *see also Askanase v. Fatjo,* 130 F.3d 657, 673 (5th Cir.1997) (where the court disallowed a legal expert's opinion on whether corporate officers and directors breached their fiduciary duties because "[s]uch testimony is a legal opinion and inadmissible."); *United States v. Sinclair,* 74 F.3d 753, 758 n. 1 (7th Cir.1996) (commenting that Federal Rules of Evidence 702 and 704 prohibit experts from offering opinions about legal issues that will determine the outcome of a case).
>
> . . .
>
> . . .. Here, Professor Freeman's affidavit reads as if it could have been respondents' oral argument to the trial court at the summary judgment hearing. Although Professor Freeman arguably offered some helpful, factual information, the overwhelming majority of the affidavit is simply legal argument as to why summary judgment should be denied. For that reason, we hold the trial court correctly refused to consider it, and the Court of Appeals erred in finding otherwise.

Dawkins, at 65-67, 580 S.E.2d at 436-37 (2003) (Emphasis in original) (internal footnote omitted).

Like the expert affidavit in *Dawkins*, the affidavits of Mr. Teague and Mr. Balgowan primarily consist of legal arguments and conclusions of law intended to usurp the trial court's role in determining whether Pilot was entitled to summary judgment. The existence of a duty and the scope of any such duty are questions of law for the court. Thus, the affidavits of Mr. Teague and Mr. Balgowan, which read as if they could have been Appellants' oral argument at the summary judgment hearing, are inadmissible and should not be considered by this Court.

In light of the foregoing, Appellants cannot establish that Pilot owed them any duty as a landowner abutting the Highway.

II. APPELLANTS HAVE FAILED TO CREATE A GENUINE ISSUE OF MATERIAL FACT THAT PILOT TRAVEL CENTERS, LLC BREACHED ANY DUTY OWED TO APPELLANTS.

While Pilot adamantly denies that it owed the Appellants any duty, even if such a duty was owed, the Appellants have failed to present any evidence to create a genuine issue of material fact that Pilot breached any duty as alleged in their Brief.

Appellants maintain that Pilot breached a duty owed to them in three general ways:

> (1) Pilot and SCDOT altered existing plans for a raised median across Highway 17 in favor of a less safe painted median more conducive to Pilot's business; (2) Pilot/Ashley pursued and SCDOT approved a plan for driveways that were too close together and too close to an adjacent intersection; and (3) Pilot and SCDOT did nothing to address the dangerous intersection they created despite readily-available evidence that the area had become a magnet for motor vehicle collisions.

(Appellants' Brief 18). The record does not contain even a scintilla of evidence to create a genuine issue of material fact that the above alleged breaches on the part of Pilot occurred.

A. There is No Evidence that Pilot Altered Existing Plans for a Raised Median in the Highway

The crux of Appellants' argument that Pilot is liable for their injuries rests upon the allegation that Pilot altered SCDOT's plans to install a raised, non-transversable median in the portion of the Highway in front of Pilot's property. However, not only is there zero evidence that Pilot was involved in the decision to keep the existing painted flush median in this portion of the Highway, the Appellants' allegation is based upon the false premise that the initial SCDOT design plans for the Widening Project ever included a raised median. To the contrary, SCDOT testified that it never intended there to be a raised, non-transversable median in this portion of the Highway. (*E.g.*, R. p. 217, lines 4-12).

Appellants presented no admissible evidence to the trial court at the hearing on Pilot's motion for summary judgment to create an issue of fact as to whether SCDOT ever planned to

install a raised, non-transversable median in front of the Pilot Travel Center. The only admissible evidence concerning the use of a painted, flush median in the highway comes from the Rule 30(b)(6), SCRCP, deposition testimony of SCDOT. Leland Colvin, the SCDOT program manager who oversaw the Widening Project and Interchange Project for SCDOT, testified that SCDOT's initial design plans for the Widening Project did not contain a raised median. Moreover, Mr. Colvin testified that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center. (*E.g.*, R. p. 221, lines 16-24).

Appellants rely on design plans for the separate SCDOT Interchange Project, which were created by an outside engineering firm, to argue that a raised median was initially planned to be installed in front of the Pilot Travel Center. However, as Mr. Colvin testified during SCDOT's Rule 30(b)(6) deposition, the depiction of a raised median on the initial Interchange Project plans was simply a "placeholder" on the plans until SCDOT could merge its Widening Project plans with those of the Interchange Project. (*E.g.*, Colvin Dep. 286; R. p. 408). The scope of the Interchange Project had nothing to do with the portion of the Highway where the accident occurred, as the work associated with the Interchange Project ended at the intersection of Farmington Road and the Highway before the Pilot Travel Center. (*See* R. pp. 128, 195). The drawn raised median on the Interchange Project Plans (which were created by an outside engineering firm) concerned an area of the Highway that was outside the scope of the Interchange Project. Therefore, at best, it is misleading to argue that SCDOT's original design for widening the portion of the Highway in front of the Pilot Travel Center "called for the inclusion of a raised, non-transversable median running nearly the entire length of [the Pilot Travel Center]." (Appellants' Brief 19).[24]

[24] Appellants cite to the testimony of Leland Colvin to support the allegation that 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

Even if Appellants could establish an issue of fact as to whether SCDOT's original design plans for widening the portion of the Highway in front of the Pilot Travel Center included a raised median, Appellants have failed to present any admissible evidence that Pilot altered SCDOT's design plans or otherwise requested that SCDOT remove a raised median from the design plans as alleged in their Brief. Appellants make the repeated assertion throughout their Brief that Pilot negotiated with SCDOT to ensure that the median in front of the Pilot Travel Center was not a raised one; however, they have presented no admissible evidence that any such negotiation took place. Instead, Appellants cite to objected testimony of Leland Colvin that does not support the allegation that any agent or employee of Pilot requested SCDOT to remove a raised median. (See Appellants' Brief 20 (citing L. Colvin Dep 80:16–81:5, R. pp. 356-357). Appellants then cite to handwritten notes contained on a letter from SCDOT to the former owner of Pilot's property. However, as previously discussed, this letter, in addition to being inadmissible hearsay, does not create an issue of fact as to whether Pilot negotiated with SCDOT to remove a raised median from SCDOT's Widening Project design plans. (*See* discussion *supra* pp. 10–12). Mr. Colvin testified on behalf of SCDOT that no negotiation took place regarding SCDOT's decision to keep a flush median in the Highway instead of adding a raised median, but rather, the decision "was purely [an] engineering decision based on the Highway Design Manual." (Colvin Dep. 117:11–118:4, R. p. 366; R. p. 132, lines 3-13).

Appellants admit that SCDOT denies that Pilot negotiated with the Department to remove a median. (Appellants' Brief, at n. 8). Nevertheless, Appellants argue that Mr. Colvin's testimony in this regard "cannot be considered the definitive word on the median selection process . . .." (*Id.*)

---

frontage." (Appellants' Brief 19). However, the testimony to which Appellants cite concerns the design plans for the Interchange Project, not the Widening Project. (*See* Colvin Dep. 86:14-15, R. p. 358, at p. 86, lines 14-15).

However, Mr. Colvin was the Program Manager for the Widening Project and testified that he was the one who made the decision to keep the flush median in the Highway. (R. p. 204, lines 16-21). Moreover, Mr. Colvin testified that he did not even recall having direct contact with the property owners of the property where the Pilot Travel Center was eventually built. (R. p. 204, line 22-p. 205, line 5). There is no admissible evidence to rebut Mr. Colvin's testimony that the Department did not negotiate with Pilot to remove a median from SCDOT's design plans.

B. The Placement of Pilot's Driveway Did Not Breach Any Duty Pilot Owed to Appellants

Even if Pilot owed some duty to Appellants with respect to the placement of its driveway, which is adamantly denied, Appellants have failed to create an issue of fact that any such duty was breached.

Appellants allege that the driveway Sena was attempting to turn into on the date of the accident violated SCDOT's ARMS Manual. As an initial matter, Appellants' reliance on the ARMS manual is misplaced. SCDOT testified that the ARMS manual is one of several resources used by the Department when evaluating encroachment permits. (*See* R. p. 306, line 16-p. 307, line 6). SCDOT also testified that it is impossible for all encroachments to be in exact conformance with SCDOT's various design manuals. (*See id.* R. p. 309, line 10-p. 310, line 2).

Moreover, the violations of the ARMS manual that Appellants allege have no relation to the accident itself. Appellants argue that the distance between the two driveways to the Pilot Travel Center on the Highway were not spaced in accordance with the ARMS manual. However, even if this were true, Appellants' do not provide any evidence that the distance between the two driveways contributed in any way to their accident. The accident did not involve a motorist exiting any of the driveways on Pilot's property. The Appellants also allege that the subject driveway was within the "functional area" of the intersection. The "functional area" of an intersection is a

"theoretical concept" that refers to the perception of motorists approaching an intersection and the area needed to allow motorists to navigate the intersection. (R. p. 656, at pp. 11-13). SCDOT testified that the functional area of an intersection changes over time depending on traffic conditions. *Id.* Thus, it is difficult to know for sure what the functional area of the intersection was at the time Pilot's driveways were approved by SCDOT. (*See id.* at p. 11).

In the present case, there is no evidence that the driveway Sena was attempting to turn into on the date of the accident was within the functional area of the intersection. The Appellants seem to acknowledge this in their Brief, noting that SCDOT only testified that the driveway closest to the intersection—which is not the driveway Sena was attempting to turn into—could be considered within the functional area of the intersection. (Appellants' Brief 23; *see also* Colvin Dep. 173, R. p. 670). In fact, even Appellants' own experts cannot say that the subject driveway was within the functional area of the intersection. According to their affidavits, Appellants' experts only allege that Pilot's driveways "are **too close** to the functional area of the adjoining intersection." (R. p. 684, at ¶ 9; R. p. 692 at ¶ 9). Thus, setting aside the issue of whether having a driveway within the functional area of an intersection is a breach of any duty, which is adamantly denied, there is no evidence that the driveway at issue was actually within the functional area of the intersection at the time SCDOT used its independent engineering judgment and approved the placement of Pilot's driveway. (*See* Robert Clark Dep. 13:18-20, R. p. 656 (noting that SCDOT uses its engineering judgment when reviewing an encroachment permit based upon the traffic conditions at the time)).

The placement of Pilot's driveways were permitted and approved by SCDOT, which has the ultimate authority to designate the design and location of driveways in the right-of-way. Ultimately, it was SCDOT, not Pilot, who determined where Pilot could construct its driveways. SCDOT would not have approved the placement of Pilot's driveways if they did not comply with

the Department's standards or if their placement would be unsafe to the public. (*See* R. pp. 285-287; R. p. 405, at pp. 274-76). SCDOT used its engineering judgment to determine that Pilot could construct the subject driveway to its property.

C. Appellants Cannot Establish Pilot Had Notice of Any Alleged Dangerous Condition Posed by the Median or Driveway

Appellants allege Pilot was on notice of the danger its driveways posed to motorists by virtue of prior motor vehicle accidents that allegedly occurred in and around the driveway to Pilot's property. However, Appellants have failed to put forth any evidence that Pilot was on notice of these accidents. Moreover, Appellants have failed to submit any admissible evidence establishing that these accidents were in any way caused by Pilot's driveway or the painted flush median. Appellants submitted a collision report to the trial court as an exhibit to their memorandum in opposition to Pilot's motion for summary judgment, alleging that the collision report was proof that more than 254 accidents occurred in the portion of the highway in front of the Pilot Travel Center. However, there is no evidence in the record to authenticate or explain the data in this collision report or to establish that any of these accidents occurred as a result of the flush median or the location of the subject driveway. (*See* R. p. 136, line 1-p. 137, line 1; R. pp. 780-812).

Even if Appellants could establish that Pilot was aware of accidents occurring in front of its property due to the flush median or driveway, as previously discussed, Pilot did not have the authority to make any changes to the median or its driveway. SCDOT, not Pilot, is responsible for planning, maintaining, and operating the state's highway system.

III. NO NEGLIGENT ACT OR OMISSION ON THE PART OF PILOT PROXIMATELY CAUSED APPELLANTS' INJURIES

In order to recover against Pilot, Appellants must establish Pilot's 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). However, Appellants cannot establish any act or omission on the part of Pilot proximately caused their injuries.[25]

> 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 injuries. For an intervening act to break the causal link and insulate the tortfeasor from further liability, the intervening act must be unforeseeable. Ordinarily, proximate cause is a question for the jury, but when the evidence is susceptible to only one inference, it becomes a matter of law for the court.

McKnight, at 387 (internal citations omitted).

Here, there is no evidence that any act or omission of Pilot proximately caused Appellants' accident. To the contrary, Sena himself testified that the accident was his fault and that Pilot was not to blame for his actions that night. (R. p. 189, line 21-p. 190, line 4). According to Sena, the fact that there was no solid raised median in the Highway does not negate the fact that it was his actions that led to the collision with Plaintiff's vehicle. (R. p. 191, line 22-p. 192, line 6). Sena testified that his failure to yield "was just bad judgment." (R. p. 188, lines 21-23). Even Appellant Cynthia Wright acknowledged that she could not say whether the presence of a raised non-transversable median would have prevented the accident. (R. p. 243, lines 10-13). According Cynthia Wright, she believes Sena "was determined to go to McDonald's regardless . . .." (R. p.

[25] Pilot argued Appellants could not establish proximate cause as a matter of law at the hearing on Pilot's Motion for Summary Judgment. (Hearing Transcript 26:9–27:21, R. p. 141, line 9-p. 142, line 21; *see also* R. pp. 180-181). Appellants also raised the issue of proximate cause in their Motion to Alter or Amend Judgment. (Pls.' Mot. to Alter or Amend J. 3–4, R. pp. 927-28).

243, lines 2-3). Cynthia Wright also testified that Sena bears responsibility for hitting her and her husband. (R. p. 241, lines 17-20)

Moreover, Sena admitted that he was under the influence of alcohol and cocaine at the time of the accident. (R. p. 193, lines 20-24). Thus, even if there was some causal connection between some alleged negligent act or omission on the part of Pilot, both of which are adamantly denied, Sena's decision to drive under the influence of alcohol and cocaine and to fail to yield to oncoming traffic was an intervening act and the proximate cause of the Apellants' accident. *See Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 204, 781 S.E.2d 534, 546 (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); *Ziemba v. Mierzwa*, 142 Ill. 2d 42, 52-53, 566 N.E.2d 1365, 1369 (1991) (holding at-fault driver's violation of his own statutory duty by failing to yield to oncoming traffic was not reasonably foreseeable).

Moreover, as has been discussed above, to the extent Plaintiffs allege that the failure to install a raised median proximately caused the accident, such a failure cannot be attributed to Pilot. SCDOT, not Pilot, has exclusive control over the Highway and the ultimate decision as to which type of median should be placed on a highway. The same is true with respect to the location of Pilot's driveway. SCDOT has the exclusive authority to determine where Pilot could place its driveways.

Additionally, even if Appellants could show that Pilot owed a duty to Appellants with respect to its driveway and that the driveway's location somehow breached some duty, all of which is adamantly denied, Appellants have not presented any evidence that the location of the driveway caused Sena to fail to yield to oncoming traffic. Sena, who was admittedly under the influence of alcohol and cocaine at the time of the accident, simply exercised "bad judgment" and violated his

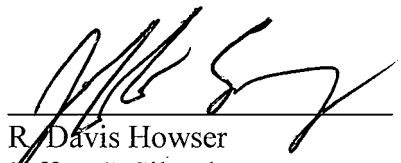
own duty of care by not yielding to the Appellants' motorcycle. (R. p. 188, lines 21-23; *see Rosas v. O'Donoghue*, 2005 U.S. Dist. LEXIS 17165, *20, 2005 WL 1993846, *aff'd*, *Bradley v. O'Donoghue*, 216 F. App'x 150 (3d Cir. 2007) (holding that the property owner's driveway was not the proximate cause of injuries sustained by a pedestrian who was hit by a motor vehicle after the pedestrian entered the intersection from the driveway)).

In light of the foregoing, Appellants cannot establish that any negligence on the part of Pilot proximately caused their injuries as a matter of law.

CONCLUSION

For the reasons discussed above, as well as for any other ground appearing on the record, Respondent Pilot Travel Centers, LLC respectfully requests this Court affirm the circuit court's grant of summary judgment.

Respectfully submitted,



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May 4, 2018.

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

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SC Court of Appeals

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 & Consulting, Inc., and Munlake Contractors, Inc.,

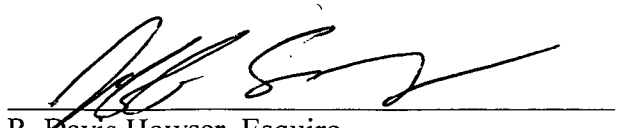
Of whom

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the *Final Brief of Respondent Pilot Travel Centers, LLC* complies with Rule 211(b), SCACR.

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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
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COUNTER-STATEMENT OF ISSUES ON APPEAL

1. **Whether The Circuit Court Properly Held That Speedway Owed No Duty To The Appellants To Prevent The Subject Accident From Occurring On A Public Highway Owned And Maintained By SCDOT.**

2. **Whether The Circuit Court Properly Held That There Was No Issue Of Material Fact That Speedway Breached Any Alleged Duty Owed To Appellants.**

3. **Whether The Circuit Court Properly Held That Speedway Was Not The Proximate Cause Of Appellants' Injuries That Occurred On A Public Highway.**

STATEMENT OF THE CASE

Appellants Cynthia and Richard Wright ("Appellants") filed lawsuits on March 28, 2014 (R. pp. 18-31) and October 8, 2015 (R. pp. 48-66), which were later consolidated in Berkeley County, alleging negligence and loss of consortium against South Carolina Department of Transportation ("SCDOT"), Pilot Travel Centers, LLC ("Pilot"), Speedway LLC[1] ("Speedway"), and Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying, Inc./Ashley Engineering & Consulting, Inc. ("Ashley").

Appellants' allegations revolve around an October 6, 2012 motor vehicle accident involving an intoxicated driver not a party to the lawsuits. Appellants 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 from Highway 17A into the Pilot Travel Center, and that the absence of such a median created a dangerous condition on the highway. Appellants also contend that the location and design of the Pilot Travel Center's driveways created a dangerous condition on the highway.

Pilot moved for summary judgment on May 6, 2016 (R. pp. 164-167), and its motion was heard by the Honorable Roger M. Young, Sr. on April 10, 2017. In an order filed May 4, 2017 (R. pp. 2-12), Judge Young granted Pilot's motion finding Pilot owed the Appellants no duty to support their negligence claims. Appellants' timely filed a motion under Rule 59(e), SCRCP (R. pp. 925-929) that was denied by order dated June 8, 2017 (R. pp. 16-17).

SCDOT, Speedway (R. pp. 313-316), and Ashley filed similar motions for summary judgment in May and June of 2017. The Honorable Kristi Lea Harrington heard these motions on June 26, 2017, and granted summary judgment finding Speedway and Ashley had no duty to

[1] Appellants' original complaint named Marathon Petroleum Company, LP f/k/a Marathon Ashland Petroleum, LLC as a party, but an amended complaint filed March 10, 2016, substituted Speedway, LLC. (R. pp. 69-82).

Appellants and there was no evidence of proximate cause (R. pp. 13-15). The order cited the South Carolina Tort Claims Act ("SCTCA") as the basis for granting summary judgment in SCDOT's favor (R. pp. 13-15). Appellants filed and served a timely Notice of Appeal on July 19, 2017.

STATEMENT OF THE FACTS

On October 6, 2012, Appellants were injured in a motor vehicle accident while traveling on their motorcycle in the left lane of Highway U.S. 17A ("Highway") in Summerville, South Carolina. The accident occurred when the intoxicated driver of a pick-up truck traveling in the opposite direction pulled into the median and attempted to make a legal left-hand turn into one of the driveways of the Pilot Travel Center. The pick-up truck struck the Appellants' motorcycle in the left lane of the Highway (R. pp. 186-187; 193). 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 (R. p. 193).

The subject accident occurred in the left lane of the Highway in front of the Pilot Travel Center, which abuts the Highway. Pilot constructed the Pilot Travel Center in or around August 2002 after acquiring the real property and existing gas station on or about September 1, 2001. (R. pp. 166-167). The existing gas station, which was owned by Speedway SuperAmerica, LLC[2], already had three driveways with access to the Highway. It is undisputed that there was no solid raised median in the Highway preventing left turns into the existing gas station. (R. p. 400 at 256, lines7-10) (R. p. 166 ¶ 7). Moreover there has never been a solid raised median in this section of the Highway. Instead, the median in front of Pilot's property has always been a

[2] Respondents Pilot and Speedway were part of a joint venture that set out to redesign an existing gas station on the property to create the Pilot Travel Center.

painted flush median allowing motorists on both sides of the Highway to make left turns into abutting businesses. (R. p. 400 at 256 lines 7-21).

Around the time the Pilot Travel Center was being built, the SCDOT was in the process of widening the section of the Highway in front of the Pilot Travel Center (the "Widening Project"). SCDOT was also reconstructing the Interstate 26 interchange intersection adjacent to the existing gas station (the "Interchange Project"). The Widening Project and Interchange Project were adjacent but unrelated projects completed on June 17, 2002 and November 1, 2003, respectively. SCDOT designed the plans for the Widening Project, but it used an outside firm to design the plans for the Interchange Project.

According to the uncontroverted testimony of SCDOT, the design plans for the Widening Project never included a raised median. (R. p. 400 at 253 line 23 – at 254 line16; R. p. 401 lines 2-5; R. p. 401 at 260 lines 16-24).[3] 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. (R. p. 400 at 255 lines 11-18). This decision was made when the Widening Project design plans were prepared, finalized and date stamped in 1998. (R. p. 401 at. 260 lines1-6). SCDOT testified that Mr. Colvin's decision to use a painted flush median, rather than a raised median, was made in conformance with SCDOT's Highway Design Manual. (R. p. 402 at 262 line 19 – at 263 line 22). 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

[3] 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. As stated above, 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 unrelated 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. (R. p. 401 at 257 lines 6-14).

Highway Design Manual, which SCDOT considers "the Bible" for its design projects. (R. p. 400 at 254 lines 13-16).

As part of the construction of the Pilot Travel Center, Pilot redesigned the driveways into the Center and submitted an application for an encroachment permit to SCDOT on or about May 13, 2002. SCDOT had to approve the design and location of the driveways to the Pilot Travel Center before issuing the encroachment permit. According to SCDOT, it conducts an independent analysis when evaluating whether to approve an encroachment permit to ensure that the proposed driveway(s) conforms to SCDOT's regulations and standards. (R. p. 405 at 275 lines 5-24). 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. (R. p. 406 at 277 lines 16-21). SCDOT ultimately approved the encroachment permit application and issued a permit to Pilot to construct the driveways to the Pilot Travel Center.

STANDARD OF REVIEW

On appeal from the grant of a summary judgment motion, the Court of Appeals applies the same standard as that required for the circuit court under Rule 56(c), SCRCP. Brockbank v. Best Capital Corp., 341 S .C. 372, 379, 534 S.E.2d 688, 692 (2000). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Adamson v. Richland Cnty. Sch. Dist. One, 332 S.C. 121, 124, 503 S.E.2d 752, 753 (Ct.App.1998). "To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the [nonmoving] party." Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d

161, 165 (2003). Further, "in cases applying the preponderance of the evidence burden of proof, the [nonmoving] 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., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"The purpose of summary judgment is to expedite disposition of cases [that] do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ." Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct.App.1990). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." Id. "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).

ARGUMENTS

Appellants were injured in a motor vehicle accident on the public Highway when an intoxicated driver, making a legal left hand turn, failed to maintain the proper look out and collided with their motorcycle. Despite the admitted liability of the at-fault, intoxicated driver (R. p. 277 line 21 – p. 278 line 4), Appellants claim SCDOT, the owner of that public Highway, and Speedway, a former owner of property that abuts that public Highway, are responsible for their injuries as a result of the (1) alleged negligent construction of the Highway and driveways accessing the Highway and (2) removal from the design plans of a raised median in front of the Pilot. However, and as discussed supra, there has never been a raised median in front of the Pilot

on the Highway preventing left turns into and out of the store. Furthermore, there was never a raised median drawn into the Widening project's design plans.

Under South Carolina law, SCDOT has the exclusive ownership, control, maintenance, and authority over public highways. S.C. Code Ann. § 57-3-110(1). Additionally, South Carolina law is very clear regarding the extremely limited circumstances in which a property owner has a duty to motorists for conditions on a public highway, none of which are present in this case. See Skinner v. South Carolina Dep't of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). As a matter of law, Speedway, the former owner of property next to the public Highway where the accident occurred, does not owe a duty to Appellants. Id.

In an attempt to create some sort of duty, Appellants theorize that Speedway "negotiated" a change to SCDOT's design plans for the Highway, alleging Speedway convinced SCDOT to abandon its plan for a nontransversable raised median in favor of keeping the existing more business-friendly, painted flush median. Appellants argue that because of these theoretical negotiations, Speedway actively participated in the creation of the median and therefore had a duty to ensure the median and the driveways did not unreasonably endanger motorists on the Highway, as well as a duty to take affirmative action to mitigate the danger once it became apparent. Appellants' theory is just that – a theory, unsupported by South Carolina law and the testimony in this case.

I. The Circuit Court Properly Held That Speedway Owed No Duty To The Appellants To Prevent The Subject Accident From Occurring On A Public Highway Owned And Maintained By SCDOT.

In any negligence action, the threshold issue is whether the defendant owed a duty to the plaintiff. See Sabb v. South Carolina State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002); Bishop v. South Carolina Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998); Parks v.

Characters Night Club, 345 S.C. 484, 548 S.E.2d 605 (Ct.App.2001). The existence of a duty owed is a question of law for the courts. Doe v. Batson, 345 S.C. 316, 548 S.E.2d 854 (2001); Washington v. Lexington County Jail, 337 S.C. 400, 523 S.E.2d 204 (Ct.App.1999). In a negligence action, if no duty exists, the defendant 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); Simmons v. Tuomey Reg'l Med. Ctr., 341 S.C. 32, 533 S.E.2d 312 (2000).

A. SCDOT has exclusive ownership, control, maintenance, and authority over the Highway, the subject median, and the placement and design of driveways with access to the Highway.

It in undisputed that under South Carolina law SCDOT has the exclusive ownership, control, maintenance, and authority over public highways. 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 appropriate directions for travel and regulate the travel and traffic along such highways, subject to the laws of the State[.]". This exclusive authority includes the discretionary placement of medians. See Giannini v. S. Carolina Dept. of Transp., 378 S.C. 573 n.1 (2008) (recognizing SCDOT has initial discretion to place median barriers on a highway). 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 Dept 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 Dept 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.").

In fact, SCDOT admits it has the final and ultimate decision on all public highways as well as any encroachment of driveways leading to those highways. (R. p. 405 at 274 lines 2-6).

Despite SCDOT's exclusive authority, Appellants contend that Speedway owed a duty to Appellants because Speedway created dangerous artificial conditions on the Highway by 1) allegedly negotiating the removal of a SCDOT-planned nontransversable raised median, and 2) the negligent designing and constructing Pilot Travel Center's driveways.

B. Speedway did not create a dangerous artificial condition on the highway.

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 Dept. of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). (emphasis added).

1. The subject median was not created by Speedway.

Appellants argue that 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 the premises. While they do not dispute that SCDOT had the final decision making authority, Appellants contend that Speedway "created" the condition by "participating in the median selection process" and is therefore liable for the "dangerous artificial condition." (Appellants' Final Brief at pg. 12).

To support this proposition, Appellants rely exclusively on their unsubstantiated ***theory*** that SCDOT planned to install a nontransversable raised median, but that Speedway negotiated with SCDOT to ensure a more business-friendly, painted flush median was installed instead.

However, the uncontroverted testimony shows 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. (R. p. 400 at 253 line 23 – at 254 line 16). In fact, installing a nontransversable raised median in that location would be in contravention to SCDOT's own Highway Design Manual. Id.

There is only one single reference to a negotiation in the entire record, contained in handwritten notes ("Note") at the bottom of a letter dated August 28, 2000, from a SCDOT official to a Speedway employee, which is inadmissible hearsay. Appellants' reliance on a single reference in a Note written after the date SCDOT testified that the decision to use the painted flush median had already been made is not enough to create a genuine issue of material fact to survive summary judgment.[4]

The SCDOT unequivocally testified that the SCDOT never planned to change the existing median by installing a nontransversable raised median, and even doing so would

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[4] As the Circuit Court noted, these handwritten notes do not evidence that Speedway 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, 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. Second, 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.

Additionally, while Appellants have speculated that Speedway may have negotiated with SCDOT regarding the median as part of SCDOT's right-of-way acquisition of a portion of the property during the Interchange Project, a *quid pro quo* where Speedway essentially gave away property in exchange for the alleged negotiated removal of the raised median, documents produced in discovery show the SCDOT paid Speedway an amount more than the appraisal amount for the right-of-way.

Appellant 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.").

violate its own guidelines. If there has never a plan to install a nontransversable raised median, then there was never a reason for Speedway to negotiate an alternative.

However, even if Speedway did negotiate with SCDOT concerning the median, which there is no evidence of and which is adamantly denied, ultimately, the decision as to whether a raised median should be installed on the Highway falls within the exclusive authority of SCDOT, which owns and controls the Highway. Simply stated, an adjacent landowner cannot be held liable for SCDOT's decisions. See Giannini v. S. Carolina Dept. of Transp., 378 S.C. 573 n.1 (2008). The Circuit Court ruled this statutory duty was an independently sufficient basis for finding Speedway had no responsibility for the median.

Appellants argue that SCDOT's choice to carry out its highway construction authority in conjunction with a private entity – again through alleged median negotiations with Speedway - creates liability for both SCDOT and the private entity if the project exposes motorists to danger. However, the case law relied on by Appellants to support of this claim all involve contractors that actually performed work on the highway. See Dorrell v. S.C. Dep't of Transp., 361 S.C. 312, 316, 605 S.E.2d 12, 13-14(2004) (involving contractor's negligent paving of state road); Citizens & South Nat'l Bank of S.C. v. Dickerson, Inc., 370 F.2d 692 (4th Cir. 1996) (involving private company that widened road under SCDOT contract); Swieckowski v. City of Fort Collins, 923 P.2d 208 (Colo. App. 1995) (involving a property owner that designed and constructed a portion of the highway). Here there is no allegation that Speedway actually performed any work or construction on the SCDOT highway, and therefore simply no basis to establish liability on the part of Speedway.

2. Properly permitted driveways are not dangerous artificial condition on the highway.

Relying on case law from other jurisdictions, Appellants argue that a driveway linking private property to the Highway is an artificial condition for landowner liability purposes. See Keith v. Beard, 464 S.E.2d 633, 637 (Ga. App. 1995). However, Keith is distinguishable from this case because it involved a landowner who constructed a driveway ***without*** obtaining the proper permits required by the Georgia Code of Public Transportation. In this case, it is undisputed that the driveways at the Pilot Travel Center were permitted by SCDOT.

Under South Carolina law, evidence that it was a motorists' use of the property owner's driveway that led to alleged dangerous condition is insufficient to establish a business owner "created" a defect on the highway. See Skinner at 525. 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. Appellant has not asserted any such artificial conditions in this case.

Additionally, in the case of Estes v. Peels, No. E1999-00582-COA-R3-CV, 2000 Tenn. App. LEXIS 641 (Ct. App. Sep. 21, 2000), that Court held that a property owner owed no duty to protect a plaintiff from an accident that occurred off its premises. In Estes plaintiff was injured on a public highway when a vehicle exiting a manufacturing plant abutting the highway failed to yield to the plaintiff's right of way. As the court discussed, significant was the fact that accident occurred in the highway, plaintiff did not come into any contact with a condition on the premises of the manufacturing plant, and the proximate cause of the accident was the at-fault motorist's failure to yield the right of way to oncoming traffic. Succinctly stated, the at-fault motorist

"simply failed to yield to oncoming vehicles, in violation of [the motorist's] statutory duty." "[T]here [was] nothing dangerous about the defendant's parking lot absent the failure of a driver to obey traffic laws and yield to oncoming traffic." According to the court, even if the conduct of the at-fault motorist was foreseeable, the landowner owed no duty "to prevent a driver from pulling out on a highway without yielding to oncoming traffic." Id. at *21.

Finally, SCDOT has the ultimate decision-making authority with respect to the placement and design of driveways with access to a highway. SCDOT testified that, in order to construct the entrances and exits to the property from the Highway, encroachment permits were required. (R. p. 405 at 274 lines 14-20). As part of the permitting process, SCDOT reviews the design and location of the driveways and conducts an independent evaluation to ensure conformance with SCDOT rules and regulations. (R. p. 405 at 275 lines 10-15). 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.

C. Speedway owed no duty to the Appellants to keep the Highway in a safe condition or to warn Appellants of any alleged dangerous condition on the Highway.

Appellants have failed to present any authority establishing that Speedway, 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.

As the Circuit Court pointed out, 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[5], the Allen Court held that 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. In fact, 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, Speedway owed no duty to the Appellants to keep the Highway in a safe condition or to warn Appellants 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 Speedway, has the duty to maintain medians. SCDOT, not Speedway, 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 Dept. of Transp., 328 S.C. 481, 487, 492 S E 2d 811, 814 (Ct. App. 1997).

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[5] 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.

Thus, Speedway, 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.] See Skinner v. South Carolina Dept. 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 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.").

Because Appellants cannot establish that Speedway owed them any duty as a landowner abutting the portion of the Highway where they were injured, Speedway is entitled to judgment as a matter of law.

II. There Is No Issue Of Material Fact That Speedway Breached Any Alleged Duty Owed To Appellants.

Assuming arguendo that Speedway owed Appellants a duty, which is strenuously denied, the fact remains that there is no evidence that Speedway breached any duty to Appellants.

A. No raised median has ever been present on the Highway in front of the Pilot.

At no point in time since the original construction of Highway U.S. 17A has a raised, nontransversible median been present on the Highway in front of the Pilot where the Accident occurred. (R. p. 400 at 256 lines 7-21). Rather, the median in front of Pilot's property has always been a painted flush median.

B. No raised median was ever contemplated or included in SCDOT's design plans for the Widening Project in front of the Pilot.

What is clear from the record based on the testimony of Leland Colvin is that SCDOT's design plans for the Widening Project never included a raised median. SCDOT testified that it

never contemplated or intended there to be a raised, nontransversable median in this portion of the highway, because to have done so would have been in contravention of its design manual. What was required, and what has been present since the original construction of Highway 17A in this area, was a painted flush median.

In an effort to argue a raised median was called for in front of the Pilot, Appellants point to the design plans for the Interstate 26 Interchange Project. This Interchange project was going on around the same time as the Widening project. The Interchange project's design plans were created by an outside engineering firm. While on one drawing for the Interchange project there was a raised median drawn in on the plans in front of the Pilot, Colvin's testimony was that this median was not applicable and inconsequential to the design plans for the Widening project. Colvin testified that the reason this was so was again because the depiction of a raised median on the Interchange project's plans was simply a "placeholder" on the Interchange project until SCDOT could merge its Widening Project with the Interchange Project. Colvin described this as simply "due diligence" on the part of the outside engineering firm. (R. p. 358 at 86 line 13 - at 87 line 24; R. p. 360 at 96 line 5- R. p. 361 at 97 line 2).

There is no admissible evidence to create a material issue of fact that the Widening Project's plans ever included a raised median in front of the Pilot. While Appellants allege that Speedway negotiated with SCDOT to ensure that the median in front of the Pilot Travel Center was not raised, there is no admissible evidence to substantiate this conjecture. Instead, Appellants point to the inadmissible hearsay of the Note purportedly dated August 28, 2000, discussed supra, to support this alleged negotiation, which the SCDOT testified did not occur. Regardless, the design plans for the Widening Project were date stamped December 1998 with no raised median. Thus the decision had already been made well before August 2000 that there

would not be a raised median or unmountable median in front of the Pilot. (R. p. 401 at 260 line 1 – R. p. 402 at 262 line 5).

Additionally, and in a continued effort to substantiate some negotiation for removal of the median, or *quid pro quo*, by the property owners parties in this case, Appellants argued at the motion for summary judgment hearing on June 6, 2017 that a necessary piece of discovery was information related to the appraised value of a portion of Speedway's property subject to SCDOT's right of way acquisition efforts. Appellants hypothesized that if the property appraised for more than what it was ultimately sold for to the SCDOT by Speedway, then this would arguably be evidence of a negotiation for the removal of a raised mediation from the design plans was part of a negotiation.

In response to Appellants' request that information be provided and that the record be supplemented, during the time that Judge Harrington still had the motions for summary judgment under advisement, and prior to any ruling being issued, Speedway produced the requested appraisal documents and information in its possession. What those documents showed was that the property for the right-of-way acquisition appraised for $21,000.00. However, the property was ultimately sold to SCDOT by Speedway for $50,000.00. (R. pp. 492-514).

Simply stated, the appraisal documents set the record clear that there was no negotiation by Speedway. There is no admissible evidence that Speedway altered SCDOT's design plans, caused to be removed a raised median from the Widening Project's design plans, or negotiated the removal of a raised median that never existed to begin with, and thus no breach of this alleged duty. Regardless, however, the ultimate decision in this regard would have still rested with and been made by the SCDOT, not Speedway.

C. No evidence has been presented of Speedway's involvement with the store driveways.

What has been testified to by Bill Mulligan of Pilot, both at his deposition and in his affidavit, was that Pilot was the entity that applied for the encroachment permit for the driveways leading to its store. (R. p. 167 ¶ 8). No evidence has been submitted to establish Speedway's involvement in this process. Nevertheless, the accident did not occur in the driveway - it occurred on the Highway owned and maintained by SCDOT. Speedway would submit that the driveway had nothing to do with the accident, aside from the fact that an intoxicated driver failed to yield the right of way to the Appellants as he was making a legal left turn from the Highway. Furthermore, and as thoroughly discussed in Pilot's brief, SCDOT approved the driveways as per the encroachment permit submitted by Pilot and in accordance with SCDOT's design criteria. For these reasons there can be no breach of any duty by Speedway in this regard.

D. No evidence has been presented of Speedway's notice of substantially similar accidents in front of the Pilot.

Appellants have generally alleged that Speedway was on notice of accidents occurring on the Highway in front of the Pilot. However, there is no admissible evidence which creates a material issue of fact to substantiate the allegation that Speedway was on notice of any of these accidents, much less accidents substantially similar to the accident in question.

Furthermore, and as previously discussed, any accidents occurring in front of the Pilot were on a Highway owned and maintained by SCDOT. As SCDOT is the entity with the statutory duty and authority to design, construct and maintain the Highway, any changes would have to be initiated by it.

Interestingly, and based on the deposition testimony of Colvin taken on March 13, 2017, SCDOT developed a safety project to add certain countermeasures to the area. Specifically, and

as it relates to the second driveway that Daniel Sena was attempting to turn into when the accident occurred, SCDOT has designed a countermeasure to prevent left turns out of the Pilot and onto the Highway. However, SCDOT has no plans to prevent left turns from the Highway into the Pilot, which is the accident scenario we have here. (R. p. 393 at 226 line 10 – at 227 line 5).

III. The Circuit Court Properly Held That Speedway Was Not A Proximate Cause Of Appellants' Injuries That Occurred On A Public Highway.

In addition to the requirement that the Appellants prove the existence and breach of a duty, Appellants must show that Speedway's negligence was a proximate cause of their injuries. See Bishop v. South Carolina Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003).

A negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred. Driggers v. City of Florence, 190 S.C. 309, 2 S.E.2d 790 (1939); See also Hughes v. Children's Clinic, P.A., 269 S.C. 389, 237 S.E.2d 753 (1977). An act or omission that does no more than furnish the condition or give rise to the occasion by which the injury is made possible is not the proximate cause of the injury. Driggers v. City of Florence, supra. Proximate cause is the efficient cause of the injury-the very thing which brings it about. Hughes v. Children's Clinic, P.A., supra. In addition, foreseeability of some injury from the act or omission is a prerequisite to its being the proximate cause of the particular injury complained of. Kennedy v. Carter, 249 S.C. 168, 153 S.E.2d 312 (1967). As the South Carolina Supreme Court has noted:

> While it is not necessary that the actor must have contemplated or could have anticipated the particular event which occurred, liability cannot rest on mere possibilities. The actor cannot be charged with "that which is unpredictable or that which could not be expected to happen.

Young v. Tide Craft, Inc., 270 S.C. 453, 456, 242 S.E.2d 671, 676 (1978). Furthermore, "the law requires only reasonable foresight, and when the injury complained of is not reasonably foreseeable in the exercise of due care, there is no liability." Woody v. South Carolina Power Co., 202 S.C. 73, 24 S.E.2d 121 (1943); Berry v. Atlantic Coast Line R.R. Co., 273 F.2d 572 (4th Cir. 1960) (applying South Carolina law).

As an initial matter, there is no evidence that any act or omission by Speedway was a proximate cause of Appellants' alleged injuries. Conversely, all evidence in this case demonstrates that Daniel Sena's decision to operate his vehicle under the influence of alcohol and drugs, and then fail to yield the right of way to Appellants, was the proximate cause of the accident.

Furthermore, to the extent that lack of a raised median is alleged to have been a proximate cause of the accident, which is strenuously denied, that was again a design decision that rested solely with the SCDOT as per its statutory duty and not with Speedway.

It was simply not foreseeable to Speedway that Appellants would be injured by an intoxicated driver, making a legal left hand turn, who then failed to maintain a proper look out and yield the right-of-way, thereby colliding with Appellants' motorcycle.

Appellants argue that "the collision would not have happened at an intersection with the traffic control devised and reasonably safe driveways" and that their injury was foreseeable because of the amount of traffic accidents in and around the area. This is pure speculation. In fact, it is just as likely the collision would have occurred approximately fifty yards further up the road with Sena attempting to turn left at the intersection of the Highway and Farmington Road to enter the Pilot as it was that the accident occurred where it did. Any injuries suffered by the Appellants as a result of Speedway's alleged actions were not foreseeable by Speedway.

Appellants' injuries were not foreseeable because if Sena had been keeping a proper lookout, maintaining his vehicle under proper control, not operating his vehicle under the influence of alcohol and drugs, and had yielded the right of way to Appellants, the accident would not have occurred.

The burden of proof is on the Appellants to prove by a preponderance or greater weight of the evidence what caused their injuries. If the real cause of the injury is left in doubt by the evidence, the Appellants have not met this burden. If the cause of the Appellants' injuries may be just as reasonably attributed to an act for which Speedway is not liable as to one for which it is liable, Speedway is not a proximate cause for the accident. In this particular case, and aside from anything attributable to Speedway, the several probable causes for Appellants' injuries as a result of the accident have been discussed. There has been no showing that Appellants' injuries most probably resulted from a cause for which Speedway is responsible; accordingly, the Appellants have failed to carry their burden here. Messier v. Adicks, 251 S.C. 268, 161 S.E.2d 845, 846 (1968); Colonial Motor Freightline, Inc. v. Nance, 216 Va. 552, 221 S.E.2d 132, 137 (1976).

CONCLUSION

For the reasons discussed above, this Honorable Court should affirm the grant of summary judgment to Respondent Speedway LLC.

Respectfully submitted,

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May 7, 2018

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

RECEIVED
DEC 20 2018
SC Court of Appeals

Appellate Case No. 2017-001563

Cynthia Wright and Richard Wright.....Appellants,

v.

SC Department of Transportation; Pilot Travel Centers. LLC; Speedway, LLC; Ashley Land Surveying, Inc. f/k/a Ashley Engineering and Consulting, Inc.

Of Whom

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

RESPONDENT ASHLEY LAND SURVEYING, INC.'S FINAL BRIEF

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COUNTER-STATEMENT OF ISSUES ON APPEAL

1. **Whether The Circuit Court Properly Held That Ashley Owed No Duty To The Appellants To Prevent The Subject Accident From Occurring On A Public Highway Owned And Maintained By SCDOT.**

2. **Whether The Circuit Court Properly Held That There Was No Issue Of Material Fact That Ashley Breached Any Alleged Duty Owed To Appellants**

3. **Whether The Circuit Court Properly Held That Ashley Was Not The Proximate Cause Of Appellants' Injuries That Occurred On A Public Highway**

STATEMENT OF THE CASE

Appellants Cynthia and Richard Wright ("Appellants") filed lawsuits on March 28, 2014 (R. pp. 18-31) and October 1, 2015 (R. pp. 48-66), which were later consolidated in Berkeley County, alleging negligence and loss of consortium against South Carolina Department of Transportation ("SCDOT"), Pilot Travel Centers, LLC ("Pilot"), Speedway LLC ("Speedway"), and Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying. Inc./Ashley Engineering & Consulting, Inc. ("Ashley").

Appellants' allegations revolve around an October 6, 2012 motor vehicle accident involving an intoxicated driver not a party to the lawsuits. Appellants 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 from Highway 17A into Pilot Travel Center, and that the absence of such a median created a dangerous condition on the highway. Appellants also contend that the location and design of the Pilot Travel Center's driveways created a dangerous condition on the highway.

Pilot moved for summary judgment on May 6, 2016 (R. pp. 164-167), and its motion was heard by the Honorable Roger M. Young, Sr. on April 10, 2017. In an order filed May 4, 2017 (R. pp. 2-12), Judge Young granted Pilot's motion finding Pilot owed the Appellants no duty to support their negligence claims. Appellants' timely filed motion under Rule 59(e), SCRCP (R. pp. 925-929) was denied by order dated June 8, 2017 (R. pp. 16-17).

SCDOT, Speedway, and Ashley (R. pp. 313-316) filed similar motions for summary judgment in May and June of 2017. The Honorable Kristi Lea Harrington heard

these motions on June 26, 2017, and granted summary judgment findings Speedway and Ashley had no duty to Appellants and there was no evidence of proximate cause (R. pp. 13-15). The order cited the South Carolina Tort Claims Act ("SCTCA") as the basis for granting summary judgment in SCDOT's favor (R. pp. 13-15). Appellant filed and served a timely Notice of Appeal on July 19, 2017.

STATEMENT OF THE FACTS

On October 6, 2012, Appellants were injured in a motor vehicle accident while traveling on their motorcycle in the left lane of Highway U.S. 17A ("Highway") in Summerville, South Carolina. The accident occurred when the intoxicated driver of a pick-up truck traveling in the opposite direction pulled into the median and attempted to make a legal left-hand turn into one of the driveways of the Pilot Travel Center. The pick-up truck struck the Appellants' motorcycle in the left lane of the Highway (R. pp. 186-187; 193). 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 (R. p. 193).

The subject accident occurred in the left lane of the Highway in front of the Pilot Travel Center, which abuts the Highway. Pilot constructed the Pilot Travel Center in or around August 2002 after acquiring the real property and existing gas station on or about September 1, 2001. (R. pp. 166-167). The existing gas station, which was owned by Speedway SuperAmerica, LLC, already had three driveways with access to the Highway. It is undisputed that there was no solid raised median in the Highway preventing left turns into the existing gas station. (R. p. 400 at 256, lines7-10) (R. p. 166 ¶ 7). Moreover there has never been a solid raised median in this section of the Highway. Instead, the

median in front of Pilot's property has always been a painted flush median allowing motorists on both sides of the Highway to make left turns into abutting businesses. (R. p. 400 at 256, lines7-21).

Around the time the Pilot Travel Center was being built, the SCDOT was in the process of widening the section of the Highway in front of the Pilot Travel Center (the "Widening Project"). SCDOT was also reconstructing the Interstate 26 interchange intersection adjacent to the existing gas station (the "Interchange Project). The Widening Project and Interchange Project were adjacent but unrelated projects completed on June 17, 2002 and November 1, 2003, respectively. SCDOT designed the plans for the Widening Project, but it used an outside firm to design the plans for the Interchange Project.

According to the uncontroverted testimony of SCDOT, the design plans for the Widening Project never included a raised median. (R. p. 400 at 253, line 23 – at 254 line 16; R. p. 401 lines 2-5; R. p. 401 at 260 lines 16-24). 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. (R. p. 400 at 255 lines 11-18). This decision was made when the Widening Project design plans were prepared, finalized and date stamped in 1998. (R. p. 401 at 260 lines 1-6). SCDOT testified that Mr. Colvin's decision to use a painted flush median, rather than a raised median, was made in conformance with SCDOT's Highway Design Manual. (R. p. 402 at 262 line 19 – at 263 line 22). According the 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, which SCDOT considers "the Bible" for its design projects. (R. p. 400 at 254 lines 13-16).

As part of the construction of the Pilot Travel Center, Pilot redesigned the driveways into the Center and submitted an application for an encroachment permit to SCDOT on or about May 13, 2002. SCDOT had to approve the design and location of the driveways to the Pilot Travel Center before issuing the encroachment permit. According to SCDOT, it conducts an independent analysis when evaluating whether to approve an encroachment permit to ensure that the proposed driveway(s) conforms to SCDOT's regulations and standards. (R. p. 405 at 275 lines 5-24). 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. (R. p. 406 at 277 lines 16-21) SCDOT ultimately approved the encroachment permit application and issued a permit to construct the driveways to the Pilot Travel Center.

STANDARD OF REVIEW

On appeal from the grant of a summary judgment motion, the Court of Appeals applies the same standard as that required for the circuit court under Rule 56(c), SCRCP. Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Adamson v. Richland Cnty. School Dist. One, 332 S.C. 121, 124, 503 S.E.2d 752, 753

(Ct.App.1998). "To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the [nonmoving] party." Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404,581 S.E.2d 161, 165 (2003). Further, "in cases applying the preponderance of the evidence burden of proof, the [nonmoving] 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., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"The purpose of summary judgment is to expedite disposition of cases [that] do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "Summary Judgment is appropriate in those cases in which plan, palpable and undisputable facts exist on which reasonable minds cannot differ." Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct.App.1990). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." Id. "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).

ARGUMENTS

Appellants were injured in a motor vehicle accident on the public highway when an intoxicated driver making a legal left hand turn, failed to maintain the proper look out and collided with their motorcycle. Despite the admitted liability of the at-fault, intoxicated driver (R. p. 277 line 21 – p. 278 line 4), Appellants claim SCDOT, the owner of that public Highway, and Ashley are responsible for their injuries as a result of the (1)

alleged negligent construction of the Highway and driveways accessing the Highway and (2) removal from the design plans of a raised median in front of the Pilot. However, and as discussed supra, there has never been a raised median in front of the Pilot on the Highway preventing left turns into and out of the store. Furthermore, there was never a raised median drawn into the Widening project's design plans.

Under South Carolina law, SCDOT has the exclusive ownership, control, maintenance, and authority over public highways. S.C. Code Ann Section 57-3-110(1). Additionally, South Carolina law is very clear regarding the extremely limited circumstances in which a property owner has a duty to motorists for conditions on a public highway, none of which are present in this case. See Skinner v. South Carolina Dep't of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). As a matter of law, Ashley does not owe a duty to Appellants. Id.

In an attempt to create some sort of duty, Appellants theorize that Speedway "negotiated" a change to SCDOT's design plans for the Highway, and since the encroachment permit was mailed to Pilot's employee c/o Ashley, that Ashley somehow owes a duty to Appellants. Appellants argue that because of these theoretical negotiations, Ashley actively participated in the creation of the median and therefore had a duty to ensure the median and the driveways did not unreasonably endanger motorists on the highway, as well as a duty to take affirmative action to mitigate the danger once it became apparent. Appellants'' theory is just that – a theory, unsupported by South Carolina law and the testimony in this case.

I. The Circuit Court Properly Held That Ashley Owed No Duty To The

Appellants To Prevent The Subject Accident From Occurring On A Public Highway Owned And Maintained By SCDOT.

In any negligence action, the threshold issue is whether the defendant owed a duty to the plaintiff. See Sabb v. South Carolina State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002); Bishop v. South Carolina Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998); Parks v. Characters Night Club, 345 S.C. 484 548 S.E.2d 605 (Ct.App.2001). The existence of a duty owed is a questions of law for the courts. Doe v. Batson, 345 S.C. 316, 548 S.E.2d 854 (2001); Washington v. Lexington County Jail, 337 S.C. 400, 523 S.E.2d 204 (Ct.App.1999). In a negligence action, if no duty exists, the defendant 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); Simmons v. Tuomey Reg'l Med. Ctr., 341 S.C. 32, 533 S.E.2d 312 (2000).

A. SCDOT has exclusive ownership, control, maintenance, and authority over the Highway, the subject median, and the placement and design of driveways with access to the Highway.

It is undisputed that under South Carolina law SCDOT has the exclusive ownership control, maintenance, and authority over public highways. SC Code Ann Section 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. 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[.]". This exclusive authority includes the discretionary placement of medians. See Giannini v. S. Carolina Dept. of Transp., 378 S.C.573 n.1 (2008) (recognizing SCDOT has initial discretion to place median barriers on a highway). 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 Sept 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 Dept 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.").

In fact, SCDOT admits it has the final and ultimate decision on all public highways as well as any encroachment of driveways leading to those highways. (R. p. 405 at 274 line 2-6).

Despite SCDOT's exclusive authority, Appellants contend that Ashley owed a duty to Appellants because Ashley created dangerous artificial conditions on the Highway by 1) allegedly negotiating the removal of a SCDOT-planned nontransversable raised median, and 2) the negligent designing and constructing Pilot Travel Center's driveways.

B. Ashley did not create a dangerous artificial condition on the highway.

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 Dept. of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871,874 (2009). (emphasis added).

1. The subject median was not created by Ashley.

Appellants argue that the painted flush median in the Highway in front of the Pilot Travels Center was a dangerous condition on the Highway because it enabled motorists to make a left hand turn onto the premises. While they do not dispute that SCDOT had the final decision making authority, Appellants contend that Ashley "created" the condition by "participating in the median selection process" and is therefore liable for the "dangerous artificial condition." (Appellants' Initial Brief at pg. 12).

To support this proposition, Appellants rely exclusively on their unsubstantiated ***theory*** that SCDOT planned to install a nontransversable raised median, but that Ashley negotiated with SCDOT to ensure a more business-friendly, painted flush median was installed instead.

However, the uncontroverted testimony shows 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. (R. p. 400 at 253 line 23 – at 254 line 16). In fact, installing a nontransversable raised median in that location would be in contravention to SCDOT's own Highway Design Manual. Id.

There is only one single reference to a negotiation in the entire record, contained

in handwritten notes ("Note) at the bottom of a letter dated August 28, 2000, from a SCDOT official, which is inadmissible hearsay. Appellants' reliance on a single reference in a Note written after the date SCDOT testified that the decision to use the painted flush median had already been made is not enough to create a genuine issue of material fact to survive summary judgment.

The SCDOT unequivocally testified that the SCDOT never planned to change the existing median by installing a nontransversable raised median, and even doing so would violate its own guidelines. If there has never been a plan to install a nontransversable raised median then there was never a reason for Ashley to negotiate an alternative.

However, even if Ashley did negotiate with SCDOT concerning the median, which there is no evidence of and which is adamantly denied, ultimately, the decision as to whether a raised median should be installed on the Highway falls within the exclusive authority of SCDOT, which owns and controls the Highway. Simply stated, an adjacent landowner cannot be held liable for SCDOT's decisions. See Giannini v. S. Carolina Dept. of Transp., 378 S.C. 573 n.1 (2008). The Circuit Court ruled this statutory duty was an independently sufficient basis for finding Ashley had no responsibility for the median.

Appellants argue that SCDOT's choice to carry out its highway construction authority in conjunction with a private entity-against through alleged median negotiations with Ashley – creates liability for both SCDOT and the private entity if the project exposes motorists to danger. However, the case law relied on by Appellants to support of this claim all involve contractors that actually performed work on the highway. See Dorrell v. S.C. Dep't of Transp., 361 S.C. 312, 316, 605 S.E.2d 12, 13-14(2004)

(involving contractor's negligent paving of state road); Citizens & South Nat'l Bank of S.C. v. Dickerson, Inc., 370 F.2d 692 (4th Cir. 1996) (involving private company that widened road under SCDOT contract); Swieckowski v. City of Fort Collins, 923 P.2d 208 (Colo. App. 1995) (involving a property owner that designed and constructed a portion of the highway). Here there is no allegation that Ashley actually performed any work or construction on the SCDOT highway, and therefore simply no basis to establish liability on the part of Ashley.

2. Properly permitted driveways are not dangerous artificial condition on the highway.

Relying on case law from other jurisdictions, Appellants argue that a driveway linking private property to the Highway is an artificial condition for landowner liability purposes. See Keith v. Beard, 464 S.E.2d 633, 637 (Ga. App.1995). However, Keith is distinguishable from this case because it involved a landowner who constructed a driveway ***without*** obtaining the proper permits required by the Georgia Code of Public Transportation. In this case, it is undisputed that the driveways at the Pilot Travel Center were permitted by SCDOT.

Under South Carolina law, evidence that it was a motorists' use of the property owner's driveway that led to alleged dangerous condition is insufficient to establish a business owner "created" a defect on the highway. See Skinner at 525. 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. Appellant has not asserted any such artificial conditions in this case.

Additionally, in the case of Estes v. Peels, No. E1999-00582-COA-R3-CV, 2000 Tenn. App. LEXIS 641 (Ct. App. Sep. 21, 2000), that Court held that a property owner owed no duty to protect a plaintiff from an accident that occurred on its premises. In Estes, plaintiff was injured on a public highway when a vehicle exiting a manufacturing plant abutting the highway failed to yield to the Plaintiff's right of way. As the court discussed, significant was the fact that accident occurred in the highway, plaintiff did not come into any contact with a condition on the premises of the manufacturing plant, and the proximate cause of the accident was the at-fault motorist's failure to yield the right of way to oncoming traffic Succinctly stated, the at-fault motorist "simply failed to yield to oncoming vehicles, in violation of [the motorist's] statutory duty." "[T]here [was] nothing dangerous about the defendant's parking lot absent the failure of a driver to obey traffic laws and yield to oncoming traffic." According to the court, even if the conduct of the at-fault motorist was foreseeable, the landowner owed no duty "to prevent a driver from pulling out on a highway without yielding to oncoming traffic." Id. at *21.

Finally, SCDOT has the ultimate decision-making authority with respect to the placement and design of driveways with access to a highway. SCDOT testified that, in order to construct the entrances and exits to the property from the Highway, encroachment permits were required. (R. p. 405 at 274 lines 14-20). As part of the permitting process, SCDOT reviews the design and location of the driveways and conducts an independent evaluation to ensure conformance with SCDOT rules and

regulations. (R. p. 405 at 275 lines 10-15). 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 taveling public." S.C. Code Ann Section 57-5-1090. Thus, Pilot could not have constructed the driveways to its property unless DCDOT deemed them to comply with SCDOT's design standards and determined that they were safe for the public.

C. Ashley owed no duty to the Appellants to keep the Highways in a safe condition or to warn Appellants of any alleged dangerous condition on the Highway.

Appellants have failed to present any authority establishing that Ashley, as on eof the property owners abutting the Highway, has a duty to maintain, repair, or warn travelers of potentially dangerous conditions on the Highway over which is has no control.

As the Circuit Court pointed out, 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 Section 349, the Allen Court held that 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. In fact, 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, Ashley owed no duty to the Appellants to keep the Highway in a safe condition or to warn Appellants 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 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. South Carolina Dept. of Transp., 328 S.C. 481, 487, 492, S E 2d 811, 814 (Ct. App. 1997).

Thus, Ashley, 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.] See Skinner v. South Carolina Dept. of Transp., 282 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 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.").

Because Appellants cannot establish that Ashley owed them any duty as a landowner abutting the portion of the Highway where they were injured, Ashley is entitled to judgment as a matter of law.

II. There Is No Issue Of Material Fact That Ashley Breached Any Alleged Duty Owed To Appellants.

Assuming arguendo that Ashley owed Appellants a duty, which is strenuously denied, the fact remains that there is no evidence that Ashley breached any duty to Appellants.

A. No raised median has ever been present on the Highway in front of the Pilot.

At no point in time since the original construction of Highway U.S. 17A has a raised, non-transversible median been present on the Highway in front of the Pilot where the Accident occurred. (R. p. 400 at 256 lines 7-21). Rather, the median in front of Pilot's property has always been a painted flush median.

B. No raised median was ever contemplated or included in SCDOT's design plans for the Widening Project in front of the Pilot.

What is clear from the record based on the testimony of Leland Colvin is that SCDOT's design plans for the Widening Project never included a raised median. SCDOT testified that it never contemplated or intended there to be a raised, non-transversable median in this portion of the highway, because to have done so would have been in contravention of its design manual. What was required, and what has been present since

the original construction of Highway 17A in this area, was a painted flush median.

In an effort to argue a raised median was called for in front of the Pilot, Appellants point to the design plans for the Interstate 26 Interchange Project. This Interchange project was going on around the same time as the Widening Project. The Interchange project's design plans were created by an outside engineering firm. While on one drawing for the Interchange project there was a raised median drawn in on the plans in front of the Pilot, Colvin's testimony was that this median was not applicable and inconsequential to the design plans for the Widening Project. Colvin testified that the reason this was so was again because the depiction of a raised median on the Interchange Project's plans was simply a "placeholder" on the Interchange project until SCDOT could merge its Widening Project with the Interchange Project. Colvin described this as simply "due diligence" on the part of the outside engineering firm (R. p. 358 at 86 line 13 – at 87 line 24; R. p. 360 at 96 line 5- R. p. 361 at 97 line 2).

There is no admissible evidence to create a material issue of fact that the Widening Project's plans ever included a raised median in front of the Pilot. While Appellants allege that Ashley negotiated with SCDOT to ensure that the median in front of the Pilot Travel Center was not raised, there is no admissible evidence to substantiate this conjecture. Instead, Appellants point to the inadmissible hearsay of the Note purportedly dated August 28, 2000, discussed supra, to support this alleged negotiation, which the SCDOT testified did not occur. Regardless, the design plan for the Widening Project were date stamped December 1998 with no raised median. Thus the decision had already been made well before August 2000 that there would not be a raised median or

unmountable median in front of the Pilot. (R. p. 401 at 260 line 1 – R. p. 402 at 262 line 5).

Additionally, and in a continued effort to substantiate some negotiation for removal of the median, or *quid pro quo*, by the property owners parties in this case, Appellants argued at the motion for summary judgment hearing on June 6, 2017 that a necessary piece of discovery was information related to the appraised value of a portion of Pilot's property subject to SCDOT'S right of way acquisition efforts. Appellants hypothesized that if the property appraised for more than what it was ultimately sold for to the SCDOT, then this would arguably be evidence of a negotiation for the removal of a raised mediation from the design plans was part of a negotiation.

In response to Appellants' request that information be provided and that the record be supplemented, during the time that Judge Harrington still had the motions for summary judgment under advisement, and prior to any ruling being issued, The requested appraisal documents and information was produced. What those documents showed was that the property for the right-of-way acquisition appraised for $21,000.00. However, the property was ultimately sold to SCDOT by Pilot for $50,000.00 (R. pp. 492-514).

Simply stated, the appraisal documents set the record clear that there was no negotiation by Ashley. There is no admissible evidence that Ashley altered SCDOT's design plans, caused to be removed a raised median from the Widening Project's design plans, or negotiated the removal of a raised median that never existed to begin with, and thus no breach of this alleged duty. Regardless, however, the ultimate decision in this regard would have still rested with and been made by the SCDOT, not Ashley.

C. No evidence has been presented of Ashley's involvement with the store driveways.

What has been testified to by Bill Mulligan of Pilot, both at his deposition and in his affidavit, was that Pilot was the entity that applied for the encroachment permit for the driveways leading to its store (R. p. 167 ¶ 8). No evidence has been submitted to establish Ashley's involvement in this process. Nevertheless, the accident did not occur in the driveway – it occurred on the Highway owned and maintained by SCDOT. Ashley would submit that the driveway had nothing to do with the accident, aside from the fact that an intoxicated driver failed to yield the right of way to the Appellants as he was making a legal left turn from the Highway. Furthermore, and as thoroughly discussed in Pilot's brief, SCDOT approved the driveways as per the encroachment permit submitted by Pilot and in accordance with SCDOT's design criteria. For these reasons there can be no breach of any duty by Ashley in this regard.

D. No evidence has been presented of Ashley's notice of substantially similar accidents in front of the Pilot.

Appellants have generally alleged that Ashley was on notice of accidents occurring on the Highway in front of the Pilot. However, there is no admissible evidence which creates a material issue of fact to substantiate the allegation that Ashley was on notice of any of these accidents, much less accidents substantially similar to the accident in question.

Furthermore and as previously discussed, any accidents occurring in front of the Pilot were on a Highway owned and maintained by SCDOT. As SCDOT is the entity

with the statutory duty and authority to design, construct and maintain the Highway, any changes would have to be initiated by it.

Interestingly, and based on the deposition testimony of Colvin taken on March 13, 2017, SCDOT developed a safety project to add certain countermeasures to the area. Specifically, and as it relates to the second driveway that Daniel Sena was attempting to turn into when the accident occurred, SCDOT has designed a countermeasure to prevent left turns out of the Pilot and onto the Highway. However, SCDOT has no plans to prevent left turn from the Highway into the Pilot, which is the accident scenario we have here. (R. p. 393 at 226 line 10 – at 227 line 5).

III. The Circuit Court Properly Held That Ashley Was Not A Proximate Cause Of Appellants' Injuries That Occurred On A Public Highway.

In addition to the requirement that the Appellants prove the existence and breach of a duty, Appellants must show that Ashley's negligence was a proximate cause of their injuries. See Bishop v. South Carolina Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003).

A negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred. Driggers v. City of Florence, 190 S.C. 309, 2 S.E.2d 790 (1939); See also Hughes v. Children's Clinic, P.A., 269 S.C. 389, 237 S.E.2d 753 (1977). An act or omission that does no more than furnish the condition or give rise to the occasion by which the injury is made possible is not the proximate cause of the injury. Driggers v. City of Florence, supra. Proximate cause is the efficient cause of the injury-the very thing

which brings it about. Hughes v. Children's Clinic, P.A., supra. In addition, foreseeability of some injury from the act or omissions a prerequisite to its being the proximate cause of the particular injury complained of Kennedy v. Carter, 249 S.C. 168, 153 S.E.2d 312 (1967). As South Carolina Supreme Court has noted:

> While it is not necessary that the actor must have contemplated or could have anticipated the particular event which occurred, liability cannot rest on mere possibilities. The actor cannot be charged with "that which is unpredictable or that which could not be expected to happen."

Young v. Tide Craft, Inc., 270 S.C. 453, 456, 242 S.E.2d 671, 676 (1978). Furthermore, "the law requires only reasonable foresight, and when the injury complained of is not reasonably foreseeable in the exercise of due care, there is no liability." Woody v. South Carolina Power Co., 202 S.C. 73, 24 S.E.2d 121 (1943); Berry v. Atlantic Coast Line R.R. Co., 273 F2d 572 (4th Cir. 1960) (applying South Carolina law).

As an initial matter, there is no evidence that any act or omission by Ashley was a proximate cause of Appellants' alleged injuries. Conversely, all evidence in this case demonstrates that Daniel Sena's decision to operate his vehicle under the influence of alcohol and drugs, and then fail to yield the right of way to Appellants, was the proximate cause of the accident.

Furthermore, to the extent that lack of a raised median is alleged to have been a proximate cause of the accident, which is strenuously denied, that was again a design decision that rested solely with the SCDOT as per its statutory duty and not with Ashley.

It was simply not foreseeable to Ashley that Appellants would be injured by an intoxicated driver, making a legal left hand turn, who then failed to maintain a proper look out and yield the right-of-way, thereby colliding with appellants' motorcycle.

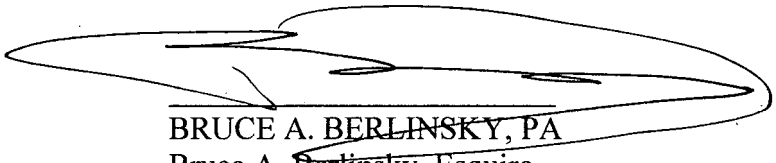
Appellants argue that "the collision would not have happened at an intersection with the traffic control devised and reasonably said driveways" and that their injury was foreseeable because of the amount of traffic accidents in and around the area. This is pure speculation. In fact, it is just as likely the collision would have occurred approximately fifty yards further up the road with Sena attempting to turn left at the intersection of the Highway and Farmington Road to enter the Pilot as it was that the accident occurred where it did. Any injuries suffered by the Appellants as a result of Ashley's alleged actions were not foreseeable by Ashley. Appellants' injuries were not foreseeable because if Sena had been keeping a proper lookout, maintaining his vehicle under proper control, not operating his vehicle under the influence of alcohol and drugs, and had yielded the right of way to Appellants, the accident would not have occurred.

The burden of proof is on the Appellants to prove by a preponderance or greater weight of the evidence what caused their injuries. If the real cause of the injury is left in doubt by the evidence, the Appellants have not met this burden. If the cause of the Appellants' injuries may be just as reasonably attributed to an act for which Ashley is not liable as to one for which it is liable, Ashley is not a proximate cause for the accident. In this particular case and aside from anything attributable to Ashley, the several probable causes for Appellants' injuries most probably resulted from a cause for which Ashley is responsible; accordingly, the Appellants have failed to carry their burden here. Messier v. Adicks, 251 S.C. 268, 161 S.E.2d 845, 846 (1968); Colonial Motor Freightline, Inc. v. Nance, 216 Va. 552, 221 S.E.2d 132, 137 (1976).

CONCLUSION

For the reasons discussed above, this Honorable Court should affirm the grant of summary judgment to Respondent Ashley.

Respectfully submitted,



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December 18th, 2018

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SC Court of Appeals

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

Case No.: 2016-CP-08-334
Appellate Case No.: 2017-001563

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SC Court of Appeals

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 & Consulting, Inc., and Munlake Contractors, Inc., Defendants,

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

RESPONDENT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION'S FINAL BRIEF

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STATEMENT OF ISSUE ON APPEAL

I. THE CIRCUIT COURT PROPERLY GRANTED RESPONDENT SCDOT'S MOTION FOR SUMMARY JUDMGNET PURSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT, S.C. CODE ANN. 15-78-60 ET AL.

STATEMENT OF THE CASE

This appeal stems from a motorcycle/ motor vehicle collision that occurred on October 6, 2012, while the Appellants were traveling North on Highway U.S. 17A in Summerville, SC. Appellant Richard Wright was driving the motorcycle and his wife, Appellant Cynthia Wright was riding as a passenger. The accident occurred when the driver of a pick-up truck traveling southbound on U.S. 17A failed to yield to oncoming traffic and attempted to turn left into a Pilot Travel Center. The Plaintiffs' motorcycle struck the side of the pick-up truck causing the Plaintiffs' injuries. The police determined that the driver of the pick-up truck had a blood alcohol level of .12 and also had cocaine in his system.

Following the accident, on March 28, 2014, Appellants filed suit against the South Carolina Department of Transportation, ("SCDOT"), Pilot Travel Centers, (Pilot), and C&A Unlimited.[1] The Appellants field a separate action on February 9, 2016, against Marathon Petroleum Company, LP, f/k/a Marathon Ashland Petroleum, LLC, Ashley Land Surveying, Inc., f/k/a/ Ashley Engineering & Surveying, Inc., and Mulake Constractors. These two cases have since.been consolidated.

On May 6, 2067, Pilot filed a motion for summary judgment. On May 4, 2017, the Honorable Roger M. Young issued an order granting Pilot's motion for summary judgment on the basis that Pilot did not owe a duty to Appellants.

On May 2, 3, and 9, 2017, Speedway, SCDOT and Ashley Land Surveying, respectively, filed motions for summary judgment. Following a hearing, the Honorable Kristi L. Harrington granted the motions. On the Form 4 Order issued June 17, 2017, Judge Harrington held that the South Carolina Tort Claims Act barred Appellants' suit against SCDOT. With regard to

[1] C&A Unlimited, Inc., was dismissed by stipulation on May, 2014.

Speedway and Ashley Land Surveying, Judge Harrington held there was no duty or proximate cause. This appeal followed.

STATEMENT OF THE FACTS

As stated above, this case stems from a motorcycle/motor vehicle accident that occurred on October 6, 2012, in Summerville, South Carolina. Appellants were traveling North on Highway U.S. 17 A on a motorcycle. Appellant Richard Wright was driving and his wife, Appellant Cynthia Wright was a passenger. The accident occurred when a pick-up truck that had been traveling in the southbound lane of U.S. 17A failed to yield to oncoming traffic and attempted to turn left into the Pilot Travel Center. The Appellants' motorcycle struck the side of the pick-up truck causing Appellants' injuries. The police determined that at the time of the accident, the driver of the pick-up truck had a blood alcohol level of .12 and had cocaine in his system.

The driver of the pick-up truck was Daniel Sena, (hereinafter "Sena"). Mr. Sena testified that he intended to make a left-hand turn into the Pilot Travel Center to pick up McDonald's for dinner. (R. p. 263, lines 10-13). Mr. Sena testified that ten (10) to fifteen (15) minutes before the accident, he had just gotten home from work and changed his clothes. He then proceeded to drink two beers and did cocaine. (R. p. 276, line 3 - p. 277, line 9).

Mr. Sena stated that he was extremely familiar with the intersection where the accident occurred and that he had driven the route for many years of his life. (R. p. 264, line 14 - p. 265, line 8). According to Mr. Sena, he was at a full stop in the median waiting to make the left-hand turn. He waited for two vehicles to pass when he began to make the left turn.[2] (R. p. 266, lines 6-18). Mr. Sena stated that after starting the turn, he saw the Appellant's motorcycle and slammed on his breaks, but could not avoid the collision. (R. p. 267, line 12 - p. 268, line 4).

[2] Contrary to Sena's testimony, video of the accident shows that Mr. Sena did not come to a stop in the median. (R. p. 245).

Following the accident, instead of calling 911 or getting out of his vehicle to assist the injured Appellants, Mr. Sena fled the scene. Mr. Sena testified that he was "scared" because he had cocaine in his system, had been drinking alcohol and was driving even though his driver's license had been suspended for a previous DUI arrest. (R. pp. 271, line 4 - p. 272, line 16.). Fortunately, there was a group of undercover police officers preparing for a meth raid who witnessed the accident. (R. p. 272, lines 18-22). The officers followed Sena and apprehended him. (R. p. 272, lines 22-23).

Mr. Sena was taken into custody where it was determined that his blood alcohol level was .12 and that he had cocaine in his system. Mr. Sena ultimately pled guilty to two counts of felony DUI, leaving the scene of an accident with great bodily injury and possession of cocaine. (R. p. 273, lines 9-21).

Mr. Sena does not blame SCDOT, Pilot or anyone else for the accident and takes full responsibility for the accident. (R. p. 277, line 21 - p. 278, line 4). Mr. Sena admits that it was his duty to ensure that there was no oncoming traffic before taking the left-turn and that he is the sole cause of the Appellants' injuries. (R. pp. 269, lines 8-18; p. 274, lines 4-7).

Despite the fact that the accident was caused by an impaired driver who 10 to 15 minutes before the accident was drinking beer and doing cocaine, and who admits his actions where the cause of Appellants' injuries, Appellants contend that the accident would not have occurred had the SCDOT designed and built a raised concrete median as part of the US 17A improvement projects that were completed in 2002 and 2003, that would have prevented motorists from making left-hand turns into the Pilot Travel Center. Appellants further contend that the location and design of Pilot's entrances caused the Appellants' accident.

As the basis of Appellants' allegations is the design of the highway in front of the Pilot Travel Center, some background regarding the location of the accident and the immediate vicinity is necessary.

The area where the accident occurred underwent two SCDOT projects during the late 1990s and early 2000s. SCDOT widened the intersection of U.S. 17A in front of the Pilot Travel Center ("the Widening Project"), and reconstructed the intersection at the exit from I-26 at Farmington Road as you head toward Summerville ("the Interchange Project"). The Widening Project was completed on June 17, 2002 and the Interchange Project was completed on November 1, 2003. (R. p. 294, lines 7-9)

Before either of the SCDOT projects began, there was an existing gas station in the location of the current Pilot Travel Center. The existing gas station had driveways with access to U.S. 17A, and there was no raised concrete median preventing left turns into the existing gas station. (R. p. 299, lines 1-10) In fact, there has never been a raised median preventing left hand turns into that location. (R. p. 299, lines 11-15). In 2001, Pilot acquired the existing gas station, redeveloped the property, and constructed the current Pilot Travel Center. (R. pp. 168 – 243)

Leland Colvin is currently the Deputy Secretary of Engineering for SCDOT, and at the time was the project manager for both the Interchange Project and the Widening Project. (R. p. 281, line 23 - p. 282, line 9). Mr. Colvin testified that SCDOT designed the plans for the Widening Project, but used an outside firm to design the plans for the Interchange Project. (R. p. 296, line 2 - p. 297, line 16).

Mr. Colvin stated that the design plans for the Widening Project did not nor did they ever, include a raised median in front of the Pilot Travel Center. (R. p. 297, line 23 - p. 298, line 3). In fact, Mr. Colvin stated that a raised median was never considered for the location because it

would not have been compliant with the SCDOT Highway Design Manual. (R. p. 297, line 23 - p. 298, line 16) Mr. Colvin testified that the SCDOT Highway Design Manual is "the Bible" for design projects in the State of South Carolina. (R. p. 298, lines 17-20).

As previously stated, the design plans for the Interchange Project were prepared by an outside design firm. The Interchange plans showed a raised median in front of the Pilot Travel Center as a "placeholder" for how the project to the east of Farmington Road would accept traffic. (R. p. 299, line 22 - p. 300, line 13). Mr. Colvin explained that as the program manager for these two projects, he had to look at them "in totality" and marry the two plans together. (R. p. 288, lines 6-24). When the plans were "married" to show how the projects would come together, the Interchange Plans showing the raised median in front of the Pilot were corrected to accurately reflect the Highway Design Manual. (R. p. 87, lines 14-24). Again, Mr. Colvin testified numerous times that there has never been a raised median preventing left-hand turns at the portion of U.S. 17A in front of the Travel Center nor was a raised median ever considered because doing so would have violated the SCDOT Highway Design Manual. (R. p. 298, lines 17-20).

With regard to the driveways which provide ingress and egress to the Pilot Travel Center, Mr. Colvin stated that there were three existing driveways providing ingress and egress to the property before Pilot redeveloped the property to construct the Travel Center. (R. p. 299, lines 1-6). In order to construct the driveways to the Travel Center, Pilot had to submit an encroachment permit application to SCDOT. Mr. Colvin testified that SCDOT has to approve encroachments on to the DOT right-of-way and that when reviewing an encroachment permit application, SCDOT considers safety and how the access to the private property affects traffic and the general operation of the highway. (R. p. 285, lines 16-19).

Robert Clark, a District 6 Engineering Administrator with the SCDOT, testified that when SCDOT employees review an encroachment permit for access to the roadway, they use their engineering judgment which consists of reviewing the traffic in the area, the type of development, and the operations at the particular intersection. This includes analyzing traffic backups, the amount of storage and types of turning maneuvers. (R. p. 305, lines 3-20) SCDOT also uses its manuals and design criteria. (R. p. 306, line 8 - p. 307, line 6). Mr. Clark testified that it is impossible for all encroachments to be in exact conformance with the design manuals. He explained,

> If we lived in the Midwest or lived in Phoenix where everything's laid out in a grid and, as cities grow, they're always growing in a grid and every block is the same, and as you grow out, you have the opportunity to have a clean slate, you can do that.
>
> When you have properties that have been cut up for 3 or 400 years and you've got redevelopment going on on those properties, you don't have a clean slate, but you're trying to do the best you can to create an efficient, effective, and safe interface with the road system.

(R. p. 309, line 13 - p. 310, line 2).

Mr. Clark testified that the ARMS manual is just one of several different sources or resources that SCDOT uses when evaluating an encroachment permit for access to the roadway:

> We use information in our ARMS manual, we use information relating to the SCDOT, we use design criteria. So, there's a lot of inputs and a lot of different sources or resources you can go to. For instance, depending on speed or the signal controlled intersection, you have got to have a certain amount of sight distances to the actual signal ahead in order to see it, process it and react to it. [S]o . . . each intersection is reviewed, the information that's being asked for in an encroachment permit is reviewed, and then we use a lot of resources and . . . engineering judgment to say, okay, this look like it is in substantial conformity with – with what our rules are.

(R. p. 306, line 16 - p. 307, line 6).

When specifically asked regarding the distances between driveways and the requirements in the ARMS manual and whether these were considered at the time, the encroachment permit was issued to Pilot, Mr. Clark reiterated,

> Distances in the manual in place at the time were probably considered. But again, **these are suggestions**. And you have to look at the site that you've got and what the – what the traffic is doing at the site, how it's circulating on the site, and bring all of those factors together to make that determination.

(R. p. 308, lines 11-20)

The testimony and evidence in this case establish that SCDOT is entitled to immunity pursuant to the South Carolina Tort Claims Act. There is no evidence that the flush median was designed improperly or that the encroachment permit was improperly approved. Moreover, there is no evidence that the median and the driveway locations were hazardous conditions of which the SCDOT had notice.

Accordingly, the circuit court properly granted SCDOT summary judgment based on the South Carolina Tort Claims Act § 15-78-60 et seq and the order should be affirmed.

ARGUMENT

Standard of Review

On review of a grant of summary judgment, the Appellate Court applies the same standard that governs the trial court, namely, summary judgment is properly granted when "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, SCRCP; *Hawkins v. City of Greenville,* 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004). "In determining whether any triable issues of fact exists, the evidence and all inferences which can be reasonably drawn there from must be viewed in the light most favorable to the nonmoving party. *Id.*

The South Carolina Tort Claims Act – Generally

As stated in *Hawkins v. City of Greenville,* supra, the Tort Claims Act governs all tort claims against governmental entities. It is the exclusive civil remedy for any tort committed by a governmental entity or its employees or agents. S.C. Code Ann. § 15-78-20(b). However, while the Tort Claims Act makes governmental entities liable for their torts, a Plaintiff must present evidence of the governmental entity's duty to act in order to recover under the Act, and any potential liability is subject to certain limitations and exemptions as provide in the Act. S.C. Code Ann. 15-78-40.

Section 15-78-60 sets out forty "exceptions" to this waiver of sovereign immunity which significantly limit the tort liability of governmental entities, and those limitations and exemptions must be liberally construed in favor of limiting liability of the State. S.C. Code Ann. § 15-78-20(f). The circuit court's Form 4 Order did not specify which section of § 15-78-60, she relied upon, however, potentially applicable sections cited in SCDOT's memorandum in support of its motion for summary judgment include:

The governmental entity is not liable for a loss resulting from:

(1) legislative, judicial or quasi-judicial action or inaction

(2) administrative action or inaction of a legislative, judicial, or quasi-judicial in nature:

(3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies:

(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

. . .

(9) entry upon any property where the entry is expressly or impliedly authorized by law;

. . .

(13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

. . .

(15) absence, condition or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of

> any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals barriers referred to in the item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising from a defect or a condition in, on, under, or overhanging a highway, read, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice.

As written, the South Carolina Tort Claims Act, specifically provides immunity to governmental entities with regard to any loss caused by the absence of a median or lack of a median in the initial design or any loss arising from a defect or condition on any public way unless, after notice, the defect is not corrected within a reasonable amount of time. S.C. Code 15-78-60(15). Discretionary immunity, based on the sections also cited above is contingent on proof the governmental entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards. *Wooten v. South Carolina DOT*, 333 S.C. 464, 511 S.E.2d 355, 357 (Sup. Ct. 1999).

In the present case, the Appellants did not present any evidence that the flush median was designed improperly or that the flush median was a hazardous condition of which SCDOT had notice. Likewise, the Appellants failed to present any evidence that the encroachment permit allowing construction of the Pilot Travel Center driveways was improperly approved or that the driveways were hazardous, let alone, notice of such. Accordingly, the circuit court correctly held that the claims against SCDOT were barred by the South Carolina Tort Claims Act.

I. SUMMARY JUDGMENT AS TO APPELLANT'S CLAIMS AGAINST SCDOT WAS PROPER AS THE SOUTH CAROLINA TORT CLAIMS ACT BARS THE SUIT.

The Appellants' argument with regard to SCDOT is three-fold, the first turning on the allegation that the flush median in front of the Pilot Travel Center was improperly designed during the Widening and Interchange Projects. Even though the installation of a raised median would have been in violation of the South Carolina Highway Design manual, Appellants contend that during the Widening Project, SCDOT should have installed a raised median in front of the Pilot that would act to prevent left-hand turns into the Travel Center. Second, Appellants contend that SCDOT should have been on notice that the flush median was a hazardous condition. Appellants cite to no evidence of notice, instead, relying on an inadmissible traffic study that was conducted a year after the Appellants' accident and the fact the area in general is a "highly traveled." Finally, the Appellants contend that SCDOT improperly approved Pilot's encroachment permit for the Travel Center's driveways in that it ignored safety considerations regarding the driveways placement and that the driveways' location is a hazardous condition of which SCDOT had notice. Each allegation is addressed in turn below.

South Carolina Code Ann. § 15-78-60(15), specifically provides design immunity to the SCDOT, "Governmental entities are not liable for the design of highways and other public ways." *Wooten,* supra. When addressing the design immunity contained in this section, the South Carolina Supreme Court has focused on whether the SCDOT had notice of a hazardous condition and did not take action to correct such condition within a reasonable time.

In *Wooten*, a twelve-year old was hit by a car while attempting to cross a multi-lane roadway. Her mother brought suit alleging that SCDOT was negligent for failing to install a traffic light that would allow adequate time for a pedestrian to cross, for failing to provide

pedestrian walk signals and for failing to warn pedestrians of the hazardous nature of the intersection.

In determining whether the design immunity provision of 15-78-60(15), was applicable the Court cited to the testimony of an SCDOT engineer. Although the engineer testified that SCDOT had no complaints regarding pedestrians at the intersection, the Court focused on the portion of his testimony admitting that the crosswalk at the intersection in question violated several mandatory regulations regarding pedestrian safety and that the intersection was hazardous for pedestrians. The court stated,

> No pedestrian count was done at this intersection, however, and Garrett admitted the intersection was dangerous for pedestrians.
>
> Because the traffic signal is traffic-actuated, the crossing time allowed a pedestrian varies. The minimum time allowed is eight seconds to cross the width of the road which is 112 feet. This crossing time would therefore require a crossing speed of fourteen feet per second. Garrett testified a reasonable crossing speed is four feet per second and the median is not designed for pedestrians to wait in the middle of the road.
>
> Further, Garrett testified DOT guidelines *mandate* that pedestrian signals and detectors be installed when there is not adequate time to cross even when such signals are not otherwise warranted because of the amount of pedestrian traffic. The guidelines specify that pedestrians should be assured sufficient time to cross the roadway at an intersection controlled by traffic lights.

Id. at 469, 511 S.E.2d at 357-358 (emphasis in the original).

Installation of a Flush Median

In the present case, Appellants argue that SCDOT improperly "altered existing plans for a raised median across Highway 17 in favor of a less safe painted median more conductive to Pilot's business." (Appellants' Initial Brief, p.18) First off all, the testimony of Leland Colvin of SCDOT establishes that Pilot was not involved in the decision to install a flush median. (R. p.

222, line 7 – p. 223, line 1 and R. p. 402) Second, Appellants do not site to any mandatory regulations that SCDOT allegedly violated by installing a flush mediation.

Contrary to the facts in *Wooten,* in this case, the testimony of Leland Colvin, the Deputy Secretary of Engineering for SCDOT and the project manager for both the Interchange Project and the Widening Project of 17A, establishes that a raised median was never intended as part of the Widening project in front of the Pilot. Rather the Interchange Project, which was designed by an outside professional, used the raised median in their plans and Colvin had to "marry" the Interchange and Widening plans together. Mr. Colvin testified as follows:

> Q: Nor was [the raised median] 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.

(R. p. 300, lines 2-14).

Mr. Colvin further testified:

> 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. . . . 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.

(R. p. 290, lines 14-24).

In fact, Mr. Colvin's testimony established that installing a raised median as advocated by Appellants would have been in violation of the SCDOT Highway Design Manual[3]:

> 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 non-transversable 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.

(R. p. 298, line 4-20).

Appellants also argue that SCDOT "did nothing to address the dangerous intersection they created despite readily available evidence that the area had become a magnet for motor vehicle collisions." However, Plaintiff does not offer any evidence that the flush median was a hazardous condition or that SCDOT was on notice that the flush median was hazardous.

With regard to notice, in *Pike v. SCDOT*, 343 S.C. 224, 549 S.E.2nd 87 (2000), the South Carolina Supreme Court addressed the issue in the context of S.C. Code Ann. 15-78-60(15). In *Pike*, the plaintiff's wife was killed in a car accident. Plaintiff alleged that SCDOT was negligent in failing to remove a sign from the roadway which obstructed motorists' view of

[3] Appellants have argued that a raised median would have prevented Sena from turning left. However, raised medians are not "non-transversable as Emergency vehicles must be able to drive over raised medians. (R. p.292, lines 9-14).

oncoming traffic. The *Pike* Court focused on specific evidence that SCDOT had notice that there was a problem at the intersection in question.

First, the court noted that SCDOT had received several letters from citizens and politicians regarding the safety of the intersection requesting that a traffic signal be installed. *Pike* at 233, 540 S.E.2nd 87, 93. In fact, one of the letters to SCDOT, prior to the Plaintiff's wife's accident had a sketch of the intersection and stated, "The newly erected Chapman High School sign and the tree limbs over the sidewalk a little farther up toward Asheville make it difficult for one to see the traffic coming from toward [sic] Asheville. Therefore crossing this intersection is a little dangerous. Removal of sign, trimming limbs and installing a traffic light might be the answer to this dangerous situation. *Pike* at 227, 540 S.E.2d 87, 89.

Second, in *Pike,* SCDOT actually sent an employee out to the intersection in response to the letter. The SCDOT employee was not an engineer, had no technical degree of any kind and was not qualified to take sight measurements. Pike at 227-28, 540 S.E.2d 87, 89. Despite the letters and visit, no calculations were performed by any SCDOT engineers to determine the minimum sight distance at the intersection and removing the sign was never considered. *Id.*

The court also cited to testimony that SCDOT violated accepted engineering practices for failing to remove the sign once on notice that it created sight problems as well as the failure to conduct precise sight calculations for the intersection. *Id* at 228-29, 540, S.E.2d 87, 89-90. Accordingly, the *Pike* court held that the letters and visit by the SCDOT established notice of a hazardous condition at the intersection in question.

Again, in *Giannini v. SCDOT*, 378 S.C. 573, 664 S.E.2d 450 (2008), the South Carolina Supreme Court addressed the issue of notice in the context of S.C. Code Ann. 15-78-60 (15). In *Giannini*, a car traveling north on I-77 hydroplaned and crossed over the median and into

southbound traffic, colliding with the cars driven by the Plaintiffs. The accident occurred between the Boyden Arbor overpass and Pervical Road. *Id.* 578, 664 S.E.2d 450, 452. One person was killed and the others were seriously injured. The plaintiffs claimed that SCDOT was negligent in failing to install barriers in that location. *Id.* SCDOT raised the defense of 15-78-60(15).

The *Giannini* court held that SCDOT was on notice that a hazardous condition existed in the location where the accident occurred due to the fact that several well publicized cross-over accidents had occurred in the same location of the accident at hand. The court stated:

> [T]he portion of I-77 where the accident occurred was built in 1995, and there had been several crossover accidents within two miles of this accident in which two people had been killed; the accidents had been publicized by local media. This is not a claim of defective construction but, rather, one of failure to take corrective action subsequent to notice of a defect. This case is more analogous to Wooten v. SCDOT, 333 S.C. 464, 511 S.E.2d 355 (1999).

Wooten, Pike and *Giannini* are all distinguishable from the case at hand. In all of these cases, the Court found SCDOT was on notice of a specific hazardous condition such as the lack of a crossing signal at the intersection in *Wooten*, the obstruction of vision created by a sign in *Pike*, and several crossover accidents in the same stretch of highway in *Giannini.* Moreoer, in *Wooten* and *Pike* the court cited to violations of mandated SCDOT regulations and of accepted engineering practice.

Appellants did not present any evidence that installation of the flush median was a violation of any mandates or engineering principles. Appellants also did not present any evidence such as letters or complaints that would Act to put SCDOT on notice that the flush median was a hazard. To the extent Appellants rely on a traffic study of the area of the accident that was completed by the Department of Public Safety, these traffic studies are inadmissible

pursuant to 23 U.S.C. (h)(4) and 23 U.S. 409. Second, the traffic study was done in October of 2013, approximately a year after the Appellants' accident. Therefore, it is inapplicable to the analysis of whether SCDOT was on notice that the flush median was a hazardous condition at the time or prior to the accident at issue.

Finally, accepting Appellant's argument that SCDOT was somehow negligent in not conducting a traffic study of the area in the ten years since the completion of the Interchange and Widening Project even though the intersection is highly traveled creates an impossible standard. It simply is not possible for SCDOT to monitor and study all highly traveled intersections in the State. Moreover, Appellants do not cite to any regulation, mandate or statute requiring SCDOT to conduct traffic studies within a certain time period.

The installation of the flushed median was installed properly, and done pursuant to the South Carolina Highway Design Manual. Mr. Covlin used his engineering judgment in "marrying" the Interchange Plans and the Widening Plans. Moreover, there is no evidence that the flush median is a hazard, or that SCDOT had notice that the flush median was a hazardous condition. Accordingly, South Carolina Code Ann. § 15-70-68(15) provides immunity to SCDOT and the circuit court properly granted summary judgment.

Location of Pilot's driveways

Appellants contend that SCDOT ignored safety considerations and improperly approved the encroachment permit with regard to the location of the Travel Center's driveways. The arguments above with regard to the flush median are also applicable to the approval of the encroachment permit and location of the Travel Center driveways. Appellants cannot site to any mandatory regulation or law that was violated by the approval of the encroachment permit nor can they cite to any evidence that the location of the driveways were a hazard, let alone, that

SCDOT was on notice of a hazard. See *Wooten, Pike and Giannini,* supra. Rather, they cite to two provisions in the ARMS manual, which the evidence establishes is but one of the several manuals and references used by SCDOT when using their engineering judgment to make decisions regarding encroachment permit approvals.

Leland Colvin of SCDOT testified that SCDOT has to approve encroachments onto the DOT right away. As part of that approval process, SCDOT considers safety and how the access to the private property affects traffic and the general operation of the highway. (R. p. 285, lines 16-19).

Robert Clark of SCDOT testified at length regarding the approval process regarding encroachment permits. According to Mr. Clark, SCDOT uses its engineering judgment which consists of reviewing the traffic in the area, the type of development and the operations at the particular intersection. This includes analyzing traffic backups, the amount of storage, and types of turning maneuvers. (R. p. 305, lines 3-23). Clark testified that SCDOT also uses its manuals and design criteria as references. (R. p. 306, line 16-p.17, line 6).

Appellants argue that location of the Travel Center driveways violated the ARMS manual. However, Mr. Clark testified that the ARMS manual is not mandatory and just one of several resources available to SCDOT when reviewing an encroachment permit:

> We use information in our ARMS manual, we use information relating to the SCDOT, we use design criteria. So, there's a lot of inputs and a lot of different sources or resources you can go to. For instance, depending on speed or the signal controlled intersection, you have got to have a certain amount of sight distances to the actual signal ahead in order to see it, process it and react to it. [S]o . . . each intersection is reviewed, the information that's being asked for in an encroachment permit is reviewed, and then we use a lot of resources and . . . engineering judgment to say, okay, this look like it is in substantial conformity with – with what our rules are.

(R. p. 306, line 16 - p. 307, line 6).

When specifically asked regarding the distances between driveways and the requirements in the ARMS manual and whether these were considered at the time, the encroachment permit was issued to Pilot, Mr. Clark reiterated,

> Distances in the manual in place at the time were probably considered. But again, **these are suggestions**. And you have to look at the site that you've got and what the – what the traffic is doing at the site, how it's circulating on the site, and bring all of those factors together to make that determination.

(R. p. 308, lines 11-20). Mr. Clark also explained that it is impossible for all encroachments to be in exact conformance with the design manuals:

> If we lived in the Midwest or lived in Phoenix where everything's laid out in a grid and, as cities grow, they're always growing in a grid and every block is the same, and as you grow out, you have the opportunity to have a clean slate, you can do that.
>
> When you have properties that have been cut up for 3 or 400 years and you've got redevelopment going on on those properties, you don't have a clean slate, but you're trying to do the best you can to create an efficient, effective, and safe interface with the road system.

(R. p. 309, line 13 - p. 310, line 2)[4].

Just as there is no evidence that SCDOT improperly approved the Travel Center's encroachment permit, there is no evidence that SCDOT was on notice that the Travel Center's driveways were a hazardous condition. As discussed in the flushed median section, an inadmissible traffic study conducted a year after the Appellant's accident is insufficient to put SCDOT on notice. Likewise, the fact that a traffic study of the area was not done until 10 years after the completion of the Widening Project and the Interchange Project is not dispositive of any

[4] Leland Colvin also testified that the manuals used by SCDOT contain regulations but each manual recognizes the difficulty of being able to comply with each provision. As such, the manuals all contain "exceptions" to allow non conformance with provisions that are impossible to satisfy. (R. p. 284, lines 4-25).

wrongdoing. Appellants do not cite to any regulation, requirement or statue that mandates SCDOT conduct traffic studies within a certain time period. Moreover, it is impossible for SCDOT to monitor and study all "heavily traveled" intersections in the state on a continual basis.

The only evidence presented established that SCDOT used its engineering judgment when evaluating and approving the encroachment permit for the Travel Center's driveways. Moreover, the evidence established that it is simply impossible to be in compliance with all of the manuals and design criteria due to the fact that all properties do not have "a clean slate," but rather, are limited by existing conditions when under re-development.

Accordingly, the provisions of the South Carolina Tort Claims Act, § 15-78-60 et al, namely § 15-70-68 (15), bar Appellants claims against, SCDOT and the circuit court properly granted SCDOT's motion for summary judgment.

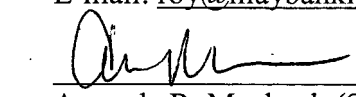
CONCLUSION

The State Tort Claims Act § 15-70-68 et al, namely 15-70-68 (15), provides immunity to SCDOT for the design and maintenance of the public ways. While the immunity is not in perpetuity, to survive summary judgment, Appellants were required to present evidence of a hazardous condition and that SCDOT failed to take corrective action after notice of the hazardous condition. Appellants have not presented evidence to support either requirement. In this case, the evidence establishes that SCDOT used its engineering judgment in both the installation of the flush median and the approval of the encroachment permit for the Travel Center's driveways. Moreover, there is no evidence in the record that either the median or the driveway locations were hazardous conditions or that SCDOT had any notice of hazardous conditions. The Appellants' accident was a terrible situation caused by Daniel Sena who made the decision to drive while under the influence of both cocaine and alcohol. The circuit court

properly granted SCDOT's motion for summary judgment and the order should be affirmed.

Respectfully submitted,

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Dated:_____

Charleston, 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.

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SC Court of Appeals

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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REPLY ARGUMENT

Respondents rely on three arguments in asking the Court to affirm summary judgment but none support the circuit court's order. Pilot Travel Centers, LLC ("Pilot") and Speedway, LLC ("Speedway") insist they can have no duty because the South Carolina Department of Transportation ("SCDOT") has statutory highway authority. However, under South Carolina Supreme Court precedent, landowners abutting a highway are equally liable with the state for dangers they helped create. Pilot/Speedway also argue the Court should ignore documentary evidence linking them to the decision to alter the existing median plan in a way that was more dangerous but more conducive to Pilot/Speedway's business. Yet, this evidence is admissible under our evidence rules and directly rebut the deposition testimony on which Pilot/Speedway rely. Finally, Pilot/Speedway and SCDOT point a finger toward the driver whose vehicle struck the Wrights (Daniel Sena), holding up Sena as the sole bad actor. But, regardless of Sena, the Wrights' evidence shows a proper median and driveways likely would have prevented the collision.

Nothing prevents Respondents from pursuing their three defenses at trial but nothing in South Carolina law supports summary judgment on these bases either. There is evidence showing Pilot/Speedway contributed to the median and driveway errors, evidence median and driveway conditions violated industry standards, and evidence these conditions were a proximate cause of the collision. The circuit court improperly dismissed this evidence along with the material factual disputes they create and summary judgment should have been denied.

1. Correspondence Documenting SCDOT-Speedway Negotiations over Median Selection is Competent Evidence of Respondents' Negligence.

At the hearing, the parties presented the circuit court competing accounts of the process for selecting a flush, painted median on the highway fronting Pilot Travel Center instead of a raised,

non-transversable median. While the parties agree an original plan for the highway included a raised median, they dispute who was responsible for altering the plan. The circuit court wrongly chose a side in this debate by discarding pertinent evidence supporting the Wright's claims and, as a result, deciding a factual dispute that must be resolved by a jury.

All three Respondents argue an SCDOT engineer (Leland Colvin) made the change of his own accord while merging two highway improvement projects into one. Pilot and Speedway disclaim any role in the process but offer no additional evidence to support their conclusion. Pilot's only witness has "no idea" how the median selection was made (R. p. 629, lines 11-22), and Speedway offered no additional witnesses to support its summary judgment motion. In contrast, the Wrights argue existing plans for a raised median were revised following an exchange of letters and phone calls between a SCDOT District Right-of-Way Manager and a Speedway employee. The Wrights' argument is no more a "theory" (Speedway Br. at 6, 8) than Respondents' as it is supported by a letter documenting the exchange and confirming a "negotiated median removal" which meant "the unmountable median has been eliminated from the plan." (R. p. 675).

Ultimately, a factfinder must determine how a flush median replaced plans for a raised one. However, on summary judgment, the key question for the circuit court was only whether there was a "genuine" dispute regarding the median. Rule 56(c), SCRCP. The competing evidence creates a genuine dispute, and the circuit court erred by relying on Respondents' evidence while dismissing the Wrights' evidence in a single footnote. On appeal, Respondents incorrectly and belatedly argue the Wrights' evidence was properly excluded because it would be inadmissible at trial. These arguments, which were not presented to the circuit court, should be rejected because they are at odds with the South Carolina Rules of Evidence.

Respondents never challenged the letter's admissibility on hearsay or authenticity grounds before the circuit court. At best, Pilot made passing reference to hearsay at the summary judgment hearings. (R. p. 156, line 20). Pilot's brief is the first inkling of a challenge to the letter's authenticity. (Pilot Br. at 10). While Respondents are not barred from raising as proposed additional sustaining grounds arguments omitted below, they are disfavored. I'on, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000) ("the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it"). Notably, when raised in their briefs, Pilot and Speedway make no real attempt to support these arguments. They cite no cases or even the evidence rules governing hearsay and authentication and their arguments are effectively unpreserved. In the Matter of the Care and Treatment of McCracken, 346 S.C. 87, 551 S.E.2d 235 (2001) (explaining an issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory).

Even on the merits the evidentiary challenges must be rejected because, by definition, the letter's contents are not hearsay. Rule 801(c), SCRE defines hearsay generally to include a statement by an out-of-court declarant offered at trial for the truth of the matter asserted. However, Rule 801(d)(2), SCRE specifically excludes from that definition admissions of a party-opponent. The exclusion of out-of-court statements does not apply when the statement offered against a party is its own statement, "a statement by a person authorized by the party to make a statement concerning the subject," or "a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship." Rule 801(d)(2)(A), (C), (D), SCRE.

This provision codified a long-standing court practice of admitting a party's admissions as evidence. Llewellyn v. Atl. Greyhound Corp., 204 S.C. 156, 28 S.E.2d 673, 676 (1944) ("The

voluntary declarations or omissions of a party to a civil suit against his interest are clearly receivable in evidence"); Cox v. Buck, 34 S.C.L. 367 (1849) ("parties to a suit are bound by admissions, against their interest, respecting the subject of the action"). An admission of a party-opponent can be made through an oral or written statement and the rule applies in equal measure to the State as it does to private parties. Cornwell v. Plummer, 265 S.C. 587, 220 S.E.2d 879 (1975) (finding party's entries in tax return were admissible as statement of party-opponent); Bunch v. Cobb, 273 S.C. 445, 452, 257 S.E.2d 225, 228 (1979) (admitting highway commissioner's prior oral statements over hearsay objection as an admission of a party-opponent). Here, the letter is an exchange between SCDOT District Right-of-Way Manager Tommy W. Smoak and Robert G. Greiwe, whom Speedway acknowledges as its employee. (R. p. 675); Speedway Br. at 9 ("from a SCDOT official **to a Speedway employee** . . .") (emphasis added).

Moreover, the letter's statements concern a highway improvement project lying squarely within Smoak and Greiwe's duties as SCDOT and Speedway employees. See S.C. Dep't of Revenue v. Meenaxi, Inc., 417 S.C. 639, 656, 790 S.E.2d 792, 800-01 (Ct. App. 2016) (finding store clerk's statement concerning the store's video poker machines were within scope of employment for hearsay purposes). Therefore, the letter's statements by SCDOT and Speedway's employee and authorized representatives are admissible against these parties pursuant to Rule 801(d)(2)(C) and (D). Respondents' passing references to hearsay also fail to acknowledge hearsay exceptions applicable to the letter including the present sense impression exception in Rule 803(1), SCRCP. Greiwe's notes were "verification" of a very recent phone call with Smoak that provided a step-by-step description of the call's contents.

Similarly, Pilot offers no support for its suggestion that the letter should be excluded as inauthentic. The Wrights can admit the letter by providing evidence sufficient to support a finding

that the letter is what they claim. Rule 901(a), SCRE. The Rule 901 burden "is not high" and requires only a foundation on which a jury could "reasonably find that the evidence is authentic." Deep Keel, LLC v. Atlantic Private Equity Grp., LLC, 413 S.C. 58, 64, 778 S.E.2d 607, 610 (Ct. App. 2015) (quoting U.S. v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014)). Rule 901 does not require "direct proof" and may be shown by circumstantial evidence. Winburn v. Minn. Mut. Life Ins. Co., 261 S.C. 568, 576-77, 201 S.E.2d 372, 376 (1973). Moreover, multiple factors demonstrate the negotiations letter is authentic. Since the letter is on SCDOT letterhead, the Rules state that it is self-authenticating. Rule 902(7), SCRE (stating that documents are authentic if they contain "inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicat[e] ownership, control, or origin"); see also JKT Co., Inc. v. Hardwick, 274 S.C. 413, 420, 265 S.E.2d 510, 513 (1980) (finding letter appearing on company letterhead was authentic); Alexander v. Caresource, 576 F.3d 551, 561 (6th Cir. 2009) (finding a document on company letterhead was self-authenticating under FRE 902). In addition, the letter was signed by Smoak who identified himself as an SCDOT manager. Greiwe, the letter's recipient, is also identified as Speedway's agent and Speedway acknowledges Greiwe was its employee. Speedway Br. at 9. These factors as a whole meet Rule 901's low barrier to admission.

More broadly, Respondents' insistence that the Court brush aside this crucial evidence shows their disregard for the summary judgment standard. Pilot and SCDOT both argue Colvin's testimony "establishes" there were no median negotiations involving the gas station owners. (Pilot Br. at 9-10; SCDOT Br. at 14). Speedway argues any suggestion of gas station owner involvement is "unsubstantiated." (Speedway Br. at 8). These conclusions require the Court to far exceed the proper summary judgment analysis by either excluding competing documentary evidence or by making a credibility determination in choosing one party's deposition testimony over an

opponent's contrary evidence. Neither proposal is proper at the summary judgment stage. See Appellants' Br. at 14-15.[1]

Finally, Respondents argue summary judgment was proper even if the letter had been considered. However, this argument ignores multiple factual disputes the letter creates on the case's core issues. For example, Respondents' primary argument is that Colvin alone chose a flush median but the letter shows the decision was the product of discussions between SCDOT and Speedway during which a Speedway employee garnered "approv[al]" for a flush median from a SCDOT Right-of-Way Manager. Respondents also cite Colvin's testimony to argue the median was selected in 1998 before Pilot or Speedway ever became involved with the property. However, the letter's date show median selection was still being decided until at least September 2000. Finally, Respondents repeatedly refer to Colvin's testimony indicating initial plans were merely a "placeholder" and argue a raised median was never seriously considered for the disputed stretch of highway. (R. p. 401 at 257:2-10). This too is contradicted by the letter which demonstrates, absent SCDOT-Speedway "negotiations," a raised median never would have been "eliminated from the plan." (R. p. 675).

In sum, Respondents should not be permitted to pursue admissibility challenges to competent evidence they failed to raise to the circuit court. If this Court exercises its discretion to consider these arguments, they should be rejected because they were effectively abandoned, the

[1] Pilot's slight variation on this argument is a citation to Hoard v. Roper Hospital, Inc., 387 S.C. 539, 694 S.E.2d 1 (2010). However, Hoard says only summary judgment opposition may not be exclusively grounded in arguing a jury could choose to disbelieve "uncontradicted evidence." Id. at 549, 694 S.E.2d at 6. Colvin's testimony on the median selection process is not uncontradicted. A letter on SCDOT letterhead documenting negotiations between a SCDOT official and a Speedway employee indicates Colvin's account of the median selection process is untrue. In other words, the Wrights opposed summary judgment not by baldly accusing Colvin of falsehoods but by pointing to documentary evidence contradicting his testimony. Neither Hoard nor any citation in Respondents' briefs support summary judgment under these circumstances.

letter is not hearsay, and it bears sufficient indications of authenticity to be admitted in evidence. While Respondents have offered contrasting evidence regarding the median, this evidence only creates material factual disputes a jury must resolve.

2. SCDOT's Statutory Duties do not Absolve Pilot or Speedway for Harms Caused by Hazards They Helped Create.

Beyond their misguided evidentiary objections, Pilot and Speedway's primary defense is that they can have no liability for the median or driveway errors because the median crosses and the driveways abut a State-maintained highway. Respondents devote their briefs to citing statutes identifying SCDOT's highway maintenance responsibilities. But, these citations do not demand the conclusion Pilot and Speedway offer. The briefs never take the additional step of explaining how SCDOT's duties absolve Pilot and Speedway.

As a result, Pilot and Speedway's argument makes an analytical leap unsupported by South Carolina law. Under the South Carolina Tort Claims Act ("the SCTCA"), liability for collaborative errors by a governmental entity and private party is not a one-or-the-other proposition. The SCTCA imposes a special verdict requirement while expressly recognizing a state agency and private party may be joint tortfeasors. S.C. Code Ann. § 15-78-100(c). This Court previously rejected Pilot/Speedway's argument that a defendant's statutory duty relieves codefendants from liability. See Shaw v. City of Charleston, 351 S.C. 32, 43, 567 S.E.2d 530, 535-36 (Ct. App. 2002) (citing Epps v. U.S., 862 F. Supp. 1460, 1464 (D.S.C. 1994) ("Legal duty of municipality to maintain sidewalk does not absolve landowner with abutting property from similar duty to traveling public"). In Epps, South Carolina's federal district court found that a city's duty to maintain its sidewalks "does not . . . necessarily absolve" post office owner for sidewalk safety issues. 862 F. Supp. at 1464.

In reaching this decision, the Epps court relied on the South Carolina Supreme Court which previously held that "a municipality and an abutting landowner or occupier may be joined as defendants in an action for injuries resulting from defects in a sidewalk or highway . . ." Hollifield v. Keller, 238 S.C. 584, 121 S.E.2d 213, 216-17 (1961) (*overruled on other grounds by* McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741, 744 (1985)). Epps also cited the Fourth Circuit which held that "the fact that a duty is imposed upon public officials to maintain the safety of a street or highway does not necessarily absolve an abutting owner from duty." Chambers v. Whelen, 44 F.2d 340, 341 (4th Cir. 1930). Significantly, South Carolina is not alone in recognizing joint tortfeasors even when the state owes a statutorily-imposed duty. See Appellants' Br. at 12 (citing Kraus v. Hy-Vee, Inc., 147 S.W.3d 907, 921 (Mo. App. 2004); Donavan v. Jones, 658 So.2d 755, 764 (La. App. 1995)).

Ultimately, Epps found that, for an abutting landowner to be liable for a customer's fall on the sidewalk, the facts must show the abutting landowner help create the hazard or that the hazard was "legally traceable" to the landowner. 862 F. Supp. at 1467. This case satisfies the Epps standard because the Wrights presented evidence to show the median selection and driveway errors were traceable to SCDOT and Pilot/Speedway. Thus, Pilot/Speedway's two duty arguments must be rejected. Their efforts to exclude correspondence regarding the median are at odds with the rules of evidence. Pilot/Speedway's further argument that they can have no liability even if the correspondence is admitted is at odds with South Carolina substantive law. If a jury finds the median selection was changed from a safe raised median to a dangerous flush one at the urging of Pilot/Speedway during a negotiation session, then the negligence is legally traceable to SCDOT *and* Pilot/Speedway regardless of SCDOT's statutory duty for the highways.

3. SCDOT is not Entitled to Immunity under S.C. Code Ann. § 15-78-60(15).

SCDOT's immunity claim under the SCTCA should be considered only in light of the protections provided by Section 15-78-60(15). SCDOT makes a cursory reference to eight provisions within Section 15-78-60 (SCDOT Br. at 10) but only attempts to apply subsection 15. SCTCA immunity provisions are affirmative defenses. Frazier v. Badger, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004). SCDOT would bear the burden of proof at trial for any immunity provision and may not obtain summary judgment on those it has made no effort to prove. Id. (citing Tanner v. Florence City-County Bldg. Comm'n, 333 S.C. 549, 552, 511 S.E.2d 369, 371 (Ct. App. 1999)).

The Wrights allege claims against SCDOT for median selection, approval of Pilot's driveway plan, and failure to alter the highway following the early 2000s projects and before the Wrights' October 2012 incident. SCDOT's immunity claim should be rejected because SCDOT bears the burden to prove immunity and the Wrights presented evidence showing SCDOT breached nondiscretionary duties by violating mandatory industry standards.

a. Median Selection

SCDOT is not entitled to immunity for the Wrights' two median-related claims. The Wrights allege SCDOT negligently selected a painted, flush median rather than a raised, unmountable one and negligently failed to correct hazards created by the painted median despite notice of the dangers. (R. p. 36 ¶¶ 19, 22-23). Two portions of Section 15-78-60(15) should be considered for SCDOT's immunity defense to these claims. SCDOT is immune from liability for "failure . . . to initially place" a median but only "when the failure is the result of a discretionary act." Id.; Wooten v. S.C. Dep't of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (finding that discretionary immunity language was proper portion of Section 15-78-60(15) for initial placement decision rather than blanket design immunity). For claims based on median issues after

initial placement, SCDOT is immune for a raised median's absence unless the issue is not corrected "within a reasonable time after actual or constructive notice." S.C. Code Ann. § 15-78-60(15).

SCDOT presents two arguments in support of immunity for its initial decision to install a painted median rather than a raised one. First, SCDOT contends the painted median posed no hazard to motorists along the highway. SCDOT Br. at 12. Second, SCDOT argues that, regardless of any hazard the painted median posed, SCDOT's decision to install it rather than a raised median was a product of "engineering judgment" protected by discretionary immunity. SCDOT Br. at 19. Contrary to SCDOT's first argument, the Wrights presented evidence that a raised median was appropriate for this portion of the highway and its absence posed hazards for motorists. SCDOT attempted to distinguish previous cases rejecting Section 15-78-60(15) immunity claims by arguing the Wrights failed to present evidence that the median selection violated any "mandates or engineering principles." SCDOT Br. at 18. The record does not support this conclusion.

Bypassing a raised median for a painted one was inconsistent with SCDOT's Access and Roadside Management Standards Manual ("ARMS Manual"). The ARMS Manual states that a raised median to create a divided highway "provides for safer, more efficient traffic movement by reducing accidents involving left-turn access maneuvers as well as head-on collisions." (R. p. 713). All median selection decisions for analogous divided highways must be made with the understanding that highways "operate at higher levels of safety with a minimum of median crossovers" and "[a]dditional crossovers create more conflicts and can lead to higher accident experience." (R. p. 724). "Crossovers," i.e. areas designed for motorists to cross the median of a divided highway, are generally prohibited for "access points" including the driveway near where the Wrights' incident occurred. (R. p. 708, 713. When median crossovers are permitted at driveways, they "shall be limited by" criteria specified in the ARMS Manual including traffic

volume requirements and sight distance restrictions. (R. p. 724). The same criteria require that, before a median crossover is permitted at a driveway, SCDOT must consider and determine "[t]he operation of the highway, other accesses, or crossovers will not be adversely affected." Id. SCDOT violated these requirements by foregoing a raised median based not on independent safety considerations but negotiations with a neighboring property owner.

SCDOT, as well as Pilot, dismiss the ARMS Manual in total arguing its provisions are aspirational, voluntary, or even impossible to follow. (SCDOT Br. at 20-21; Pilot Br. at 20-21). However, the ARMS Manual contains "standards" and thus itself refutes the notion that its provisions are suggestions only. Colvin, SCDOT's project manager, agreed ARMS Manual provisions are industry safety standards and, with some exceptions, these provisions are mandatory. (R. p. 346 at 40, lines 8-16; 348 at 45, lines 4-10). Specifically presented with the opportunity to relegate ARMS Manual provisions to "suggestion" status, Colvin refused and labeled the provisions "guidelines to be followed." (R. p. 347 at 44, lines 16-24). Moreover, what Respondents now calls "suggestions," the South Carolina Supreme Court calls "regulations." Skinner v. S.C. Dep't of Transp., 383 S.C. 520, 523, 681 S.E.2d 871, 873 (2009).

Despite SCDOT's assertion that there is no evidence of "engineering principle[]" violations (SCDOT Br. at 18), the Wrights presented two experts who surveyed highway engineering standards and specified violations during the median selection process. For example, the Wrights offered an affidavit from certified engineer John Teague who reviewed SCDOT's conduct using the ARMS Manual and other highway requirements including standards created by the American Association of State Highway and Transportation Officials ("AASHTO")[2] and the Manual on Uniform Traffic Control Devices ("MUTCD"). (R. pp. 683-84 ¶ 7). Based on these standards, the

[2] SCDOT used AASHTO standards to create the ARMS Manual. (R. p. 346 at 40, lines 21-23).

"proper" approach to SCDOT's early 2000s highway projects required "measures to prevent traffic cross over opposite bound lanes to access the facility." (R. p. 684 ¶ 9). Installing a raised median in front of Pilot Travel Center "would have significantly reduced the risk of harm." (R. p. 686 ¶ 13). The Wrights' second expert, certified highway engineer Richard Balgowan, testified SCDOT's median selection constituted "the creation of an unmitigated ingress and egress point off a busy highway" which "generated hazardous conditions and contributed to the injuries" suffered by the Wrights. (R. p. 690 ¶ 2; 694 ¶ 14). SCDOT should have taken "measures to prevent unsafe entry" to Pilot Travel Center but instead "ignored industry standards." (R. p. 694-95 ¶¶ 16, 17); Elledge v. Richland/Lexington Sch. Dist. 5, 352 S.C. 179, 189, 573 S.E.2d 789, 794 (2002) ("One of the main purposes of industry standard evidence is to provide support for an expert's opinion on what the applicable standard of care is").

SCDOT's second argument is that its median selection is protected by Section 15-78-60(15)'s discretionary immunity. However, discretionary immunity only applies to actions taken after the state weighs competing considerations and uses "acceptable professional standards appropriate to resolve the issue." Pike v. S.C. Dep't of Transp., 343 S.C. 224, 230, 540 S.E.2d 87, 90 (2000) (citing Foster v. S.C. Dep't of Highways & Pub. Transp., 306 S.C. 519, 525, 413 S.E.2d 31, 35 (1992)). SCDOT cites Colvin's testimony suggesting he used engineering judgment to select the median and summarily concludes discretionary immunity applies. Pike rejected SCDOT's attempt to use discretionary immunity in this way. Since discretionary immunity is an affirmative defense, SCDOT bears a burden of production and a burden of persuasion. Id. at 231-32, 540 S.E.2d at 91. To obtain summary judgment on discretionary immunity, it is not enough to offer "some evidence" the alleged error was a discretionary act. Id. at 227, 540 S.E.2d at 88-89.

SCDOT must meet the additional burden of proving there are no genuine issues on the immunity's applicability and that SCDOT is entitled to judgment as a matter of law. That standard is not met when a plaintiff offers expert testimony concluding SCDOT's conduct was not discretionary because it violated accepted professional standards. Id. at 228-29, 540 S.E.2d at 89-90 (denying SCDOT's immunity claim based on expert testimony that failure to remove dangerous roadway sign "was a violation of accepted engineering practices"). The Supreme Court reached a similar result in Wooten where even SCDOT's expert testimony failed to demonstrate regulatory compliance and left a jury question on discretionary immunity. 333 S.C. at 469, 511 S.E.2d at 358; see also Clark v. S.C. Dep't of Public Safety, 353 S.C. 291, 305, 578 S.E.2d 16, 23 (Ct. App. 2002) (*aff'd* 608 S.E.2d 573 (2005)) (affirming denial of directed verdict based on discretionary immunity where parties offered competing expert testimony as to whether government actor's decision properly considered accepted professional standards).

In short, while discretionary immunity includes "the right to be wrong," the immunity's application is not a summary judgment issue where there is competing evidence as to whether SCDOT followed industry standards. Giannini v. S.C. Dep't of Transp., 378 S.C. 573, 581 n. 1, 664 S.E.2d 450, 454 n. 1 (2008). As discussed above, the Wrights' experts both testified SCDOT's median selection violated mandatory state and industry standards. SCDOT countered with Colvin's statements but no supporting expert testimony despite the fact that SCDOT bears the burden on this issue. This is the type of factual dispute that routinely goes to a jury and, since the applicability of discretionary immunity is an "inherently factual" question, this case should be no exception. Pike, 343 S.C. at 232, 540 S.E.2d at 91.

b. Driveways

SCDOT is also not entitled to SCTCA immunity for the Wrights' claim related to the driveways linking Highway 17 to Pilot Travel Center. Similar to the median issue, the Wrights presented evidence showing the driveways SCDOT approved violated SCDOT's own rules and industry standards. Even its own witnesses acknowledge issues with the driveway plan. Most importantly, SCDOT bases its defense on an immunity provision that does not apply to driveways or the approval of a driveway plan.

SCDOT has chosen to pursue immunity only under Section 15-78-60(15), a section that does not cover driveways. Section 15-78-60(15) limits its coverage to "any sign, signal, warning device, illumination device, guardrail, or median barrier." Driveways are not included in the statute's exclusive list, and SCDOT never explains how this section can apply to driveways. The section also provides no protection for the process by which SCDOT reviews proposed driveway plans submitted by private parties whose property adjoins a state highway. There is a SCTCA immunity provision related to permits (S.C. Code Ann. § 15-78-60(12)) but SCDOT has not chosen to actively litigate that provision. In fact, subsection 12 is not even included in the laundry list of SCTCA provisions cited in passing in SCDOT's brief. See SCDOT Br. at 11-12.

Even if the Court were to consider SCTCA immunity for permit rulings, that provision includes a gross negligence exception. S.C. Code Ann. § 15-78-60(12) (granting immunity for decisions related to state's permitting power "except when the power or function is exercised in a grossly negligent manner"). The Wrights' presented evidence showing SCDOT's approval of Pilot/Speedway's driveway plan was grossly negligent including evidence SCDOT violated its own policies and regulations. See Appellants' Br. at 30-31 (collecting cases where state agency policy was recognized as evidence of gross negligence). The ARMS Manual contains an entire

chapter on "Points of Access" with many different requirements for driveways. (R. pp. 714-30). Generally speaking, all driveways "should be located to avoid undue interference with or hazard to traffic on the highway" and "as far from roadway intersections . . . as feasible and practical." (R. pp. 715-16). More specifically, when determining driveway locations relative to an intersection, SCDOT (and the property owner seeking a permit) must consult "minimum driveway location standards" the ARMS Manual calls "requirements." (R. p. 716 § C-2). The same standards are mandatory for driveways which, like Pilot Travel Center's, are in the vicinity of interstate exit ramps. (R. pp. 716-17) ("Points of access in the vicinity of freeway or expressway ramps shall comply with the requirements" imposed by the ARMS Manual").

The driveway plan Pilot/Speedway submitted to SCDOT when seeking an encroachment permit did not comply with the ARMS Manual requirements. SCDOT acknowledges the proposed driveways were not spaced at least 250 feet apart as the ARMS Manual required for a highway with a 45 mile-per-hour speed limit. (R. p. 715; 657 at 30, lines 23-25). SCDOT also acknowledges one or more of the driveway were in the functional area of the adjacent intersection. (R. p. 656 at 11, line 23 – 12, line 4; 379 at 169, lines 15-22; 380 at 173, lines 11-16. In addition to the ARMS Manual violations, the Wrights' expert testimony presented evidence of gross negligence. Mr. Balgowan found the driveway plan Pilot/Speedway submitted and SCDOT approved was unsafe because "the driveways are too close to the functional area of the adjoining intersection." (R. p. 675). By proposing (Pilot/Speedway) and approving (SCDOT) this plan, Respondents violated numerous industry safety standards including those promulgated in the MUTCD, the Institute of Traffic Engineers Intersection Design Guidelines Manual, a National Cooperative Highway Research Program Report, and the Federal Highway Administration's Access Management in the Vicinity of Intersections Manual.

In sum, SCDOT is not entitled to summary judgment on the Wrights' driveway-related claims because Section 15-78-60(15) does not pertain to driveways and SCDOT has not pursued any other immunity provision applicable to the claims. Even if the Court were to consider immunity under other SCTCA provisions, the Wrights presented expert testimony and industry standard violations showing SCDOT acted with gross negligence when approving the dangerous driveway plan that contributed to the Wrights' injuries.

c. Failure to Correct Hazard After Notice

Finally, SCDOT argues it is entitled to immunity under Section 15-78-60(15) for its alleged failure to correct hazards on the highway abutting Pilot Travel Center because SCDOT lacked notice of the hazards. The Court should reject this argument because the Wrights present the same types of evidence of notice previously cited to reject SCTCA immunity claims.

The Wrights presented accident reports for over 200 motor vehicle collision in the immediate vicinity of the Wrights' incident. (R. pp. 781-812). From 2010 to 2013, SCDOT acknowledges 17 collisions involving left turns on the highway fronting Pilot Travel Center. (R. p. 391 at 219, lines 12-17). Citing Giannini, Pike, and Wooten, SCDOT argues these reports provide no evidence of notice. However, Pike held that evidence of previous accidents is "relevant to the issue of whether the DOT was negligent" in failing to make an intersection reasonably safe. 343 S.C. at 234, 540 S.E.2d at 92. SCDOT also insists the Court refuse to consider a 2013 report showing a plethora of accidents at this intersection starting in 2010. SCDOT Br. at 18-19; R. p. 780. SCDOT cites two federal statutes that bar admission of reports related to highway safety construction improvement projects under certain circumstances. See 23 U.S.C. § 409.[3] Section 409

[3] SCDOT cites a second statute in support of exclusion but omits the section number. SCDOT Br. at 19. Based on the citations in SCDOT's memorandum to the circuit court, the Wrights assume the intended reference is 23 U.S.C. § 148(h)(4).

imposes an evidentiary privilege and must be construed narrowly because privileges "impede the search for the truth." Pierce Cnty., Wash. v. Guillen, 537 U.S. 129, 144-45 (2003). By its terms, the Section 409 privilege does not extend to every highway report but is limited to those created for the specific purpose of identifying or planning a highway safety construction improvement project. Since SCDOT seeks to invoke the privilege, it bears the burden of proving all required components. Carson v. CSX Transp., Inc., 400 S.C. 221, 734 S.E.2d 148 (2012). Carson applied the privilege only because a SCDOT engineer testified the evidence in question was produced during a site visit where SCDOT followed criteria in federal regulations for obtaining federal highway funds. Id. at 233, 734 S.E.2d at 154. The privilege should not be applied here because SCDOT has offered no evidence to show the report in question meets Section 409's strict requirements.

Evidence of industry standard violations is also relevant to notice. Wooten v. S.C. Dep't of Transp., 326 S.C. 516, 525, 485 S.E.2d 119, 124 (Ct. App. 1997) (*aff'd on alternative grounds* 333 S.C. 464, 511 S.E.2d 355 (1999)) (finding constructive notice based in part on plaintiff's expert testimony that SCDOT failed to follow MUTCD). As discussed above, the Wrights' experts identified a number of industry standards SCDOT violated including MUTCD. This testimony and the readily available incident reports show SCDOT had at least constructive knowledge of the hazards posed by the painted median and improperly placed driveways. As used in Section 15-78-60(15), "constructive notice" includes "instances when a condition has existed for such a period of time that a [government entity] in the use of reasonable care should have discovered the condition." Major v. City of Hartsville, 410 S.C. 1, 763 S.E.2d 348 (2014) (citing Fickling v. City of Charleston, 372 S.C. 597, 609-10 n. 34, 643 S.E.2d 110, 117 n. 34 (Ct. App. 2007) (additional citation omitted)). Summary judgment is not appropriate where at least some evidence in the record

suggests a road condition was present for so long it should have been discovered. Major, 410 S.C. at 4, 763 S.E.2d at 350.

Lastly, SCDOT argues it would pose an impractically high burden to find constructive notice because the state highway system is large and it is impossible to monitor all its highly traveled roadways. (SCDOT Br. at 19). However, the Wrights' notice argument does not suggest an increased burden on SCDOT at all. SCDOT already conducts annual safety analyses focusing on intersections with high accident rates. (R. p. 393 at 228, lines 8-22). In 2013, a safety analysis was performed at the subject intersection because it was found to have a high accident rate. (R. p. 394 at 229, lines 1-5). The Wrights' contention is simply that SCDOT had information at its disposal to find a high accident rate (and to respond accordingly) in the years before the 2012 incident where the Wrights were injured. This is a contention Colvin could not refute. R. p. 394 at 229, lines 6-14 (stating that he was unsure whether intersection was a high accident rate area in years before 2013). At the very least, the Wrights' evidence presents a question of fact as to whether SCDOT had constructive notice and failed to act. Accordingly, SCDOT is not entitled to summary judgment on its Section 15-78-60(15) immunity defense.

4. Respondents' Proximate Cause Argument Overlooks Key Evidence.

Respondents' proximate cause argument focus on two points. First, Respondents note the at-fault driver (Daniel Sena) had a role in the Wrights' collision. Second, Respondents contend the Wrights have not offered any affirmative evidence linking alleged median or driveway errors to the collision. The Court should reject both arguments because Respondents provide an incomplete and misleading account of Sena's testimony and overlook important expert testimony establishing the required causal connection.

The Wrights' do not contest Sena's role in the collision is a relevant factor for determining fault for their damages. But, Respondents go much further and argue that, because Sena may be liable for the Wrights' losses, Respondents cannot be. This assertion is not supported by fundamental South Carolina tort law. It is well-settled that there can be more than one proximate cause for a single loss. Mellen v. Lane, 377 S.C. 261, 281, 659 S.E.2d 236, 247 (Ct. App. 2008) (quoting State v. Burton, 302 S.C. 494, 496-97, 397 S.E.2d 90, 91 (1990)). Sena's conduct does not exculpate Respondents[4] where there is evidence Respondents both acted unreasonably and were a proximate cause of injury. Shepard v. S.C. Dep't of Corrections, 299 S.C. 370, 375, 385 S.E.2d 35, 37 (Ct. App. 1989) ("the fact that the negligence of a third party concurred with his own negligence to produce the harm does not relieve him of liability"). Plus, Respondents citations to Sena's deposition, designed to suggest a median would not have stopped his ill-fated turn, are not a full or accurate representation of his testimony. Sena testified that a non-transversable median "could have prevented my accident and a lot more accidents and any more to come." (R. p. 644 at 119, lines 2-4).

Pilot's also contends the Wrights produced no evidence to support a causal connection between the median or driveway and the collision. Pilot Br. at 31. Pilot can reach this conclusion only by implicitly asking the Court to ignore the Wrights' experts.[5] Both Mr. Teague and Mr.

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[4] Stephens v. CSX Transp., Inc., 415 S.C. 182, 204, 781 S.E.2d 534, 546 (2015), which Pilot cites in favor of its proximate cause argument does not support the circuit court's summary judgment order. See Pilot Br. at 32. Stephens held only that a trial judge may charge a jury on intervening cause where there is evidence an at-fault driver was intoxicated during the collision. Id. Such a charge may be appropriate in this trial. However, there is a significant difference between charging a jury on intervening cause and, as here, granting judgment as a matter of law on proximate cause.

[5] Earlier in its brief Pilot makes explicit its request that the Court ignore the Wrights' experts. Pilot Br. at 23-24. To the extent Pilot's argument is limited to the notion that expert testimony cannot create a legal duty, their assertion is not contested but also not implicated here. There is not a single citation to expert testimony in the duty creation section of the Wrights' initial brief. However, expert testimony is relevant to and can establish the remaining elements of a negligence cause of

Balgowan linked Respondents' conduct to the collision and the Wrights' injuries. Mr. Teague testified that a raised median "would have significantly reduced the risk of harm" to motorists like the (R. p. 686 ¶ 13). Choosing a painted median and permitting unsafe driveways created an unmitigated access point and "contributed to the injuries." Id. ¶ 15. Ultimately, if Respondents' median selection and driveways complied with regulations, then the Wrights' injuries would not have occurred. (R. p. 687 ¶ 19). Mr. Balgowan concluded both the median ("lack of measures to prevent unsafe entry into Pilot's facility") and driveways ("unsafe nature of the ingress and egress points") are causes of the Wright's damages. (R. p. 694-95 ¶ 16).

In fact, the industry standards Respondents violated are specifically designed to protect against this type of collision. The ARMS Manual requires raised medians for this sort of intersection to "reduc[e] accidents involving left-turn access maneuvers." (R. p. 713). By choosing a painted median and creating an additional crossover for this highway, Respondents "create[d] more conflicts" which the ARMS Manual links to "higher accident experience." (R. p. 724). Improperly located driveways, especially those in proximity to major intersections or interstate off-ramps, create "undue interference" or a "hazard to traffic on the highway." (R. p. 715).

Therefore, the Wrights presented sufficient evidence to present a jury question on proximate cause. While Sena's conduct may have contributed to the collision, he testified that a raised median would have prevented him from making a left turn. His testimony is reasonable given the ARMS Manual provisions identifying left-turn dangers as the express purpose for favoring a raised median for this stretch of highway. Finally, unopposed testimony from the only

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action. E.g. Vortex Sports & Entm't, Inc. v. Ware, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (2008) (noting expert testimony may be used to establish breach of duty); Schmidt v. Courtney, 357 S.C. 310, 326-27, 592 S.E.2d 326, 335 (Ct. App. 2003) (noting importance of expert testimony to proximate cause).

expert witnesses offered in this case draws a straight line between median and driveway errors and the collision.

CONCLUSION

For all these reasons and those discussed in the Wrights' earlier brief, the circuit court's summary judgment order should be reversed and the case should proceed to trial.

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April 16, 2018

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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REPLY BRIEF (AS TO RESPONDENT ASHLEY LAND SURVEYING, INC. F/K/A ASHLEY ENGINEERING AND CONSULTING, INC.)

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REPLY ARGUMENT

1. Ashley Breached a Legal Duty by Pursuing an Encroachment Permit for Dangerous Driveways Connecting Pilot Travel Center to the Highway.

Ashley Land Surveying, Inc. f/k/a Ashley Engineering and Consulting, Inc.'s ("Ashley") brief contains many of the flawed duty arguments advanced by Respondents Pilot Travel Centers, LLC ("Pilot") and Speedway, LLC ("Speedway") including the contention that Pilot Travel Center's owners and their agents bear no responsibility for highway dangers because the highway is controlled and maintained by Respondent South Carolina Department of Transportation ("SCDOT"). Accordingly, the Wrights reaffirm and incorporate by reference Argument No. 2 of their reply brief to Pilot, Speedway, and SCDOT (Reply Br. to Pilot et al. at 7-9) citing South Carolina and Fourth Circuit precedent establishing SCDOT's duty for highway maintenance does not immunize abutting property owners for highway dangers they helped create.

Ashley also asserts the Wrights' duty claim is based on (1) the median selection process; and (2) the mere fact an encroachment permit was mailed to Pilot via Ashley. (Ashley's Br. at 6). However, Ashley misconstrues the scope of the Wrights' claim and undersells its role in the process leading to hazardous highway conditions. The Wrights' claim against Ashley focuses not on the median selection process but rather on Ashley's role in pursuing the plan for Pilot Travel Center's dangerous driveways. (R. p. 55-56 ¶¶ 13-14). Ashley now argues it had no involvement with the driveways (Ashley's Br. at 17-18) but has offered no evidence to support this conclusion. In contrast, the Wrights presented evidence Ashley was a prime factor in the driveway plan and in pursuing it to fruition through the encroachment permit process.

For example, Ashley was identified along with Pilot as applicants for the encroachment permit submitted to SCDOT. (R. p. 651). The address for Ashley's principal place of business in Summerville, South Carolina was the only point of contact provided for the applicants. Id.; R. p.

55. Moreover, the application was supported by sketches Ashley created of the proposed driveways. (R. p. 651). The Wrights also showed Ashley negligently failed to conform the proposed driveway plan to regulatory requirements and instead pursued a plan it knew or should have known to contain driveways dangerously close to one another and a busy intersection. See Reply Br. to Pilot et al. at 14-16. In other words, Ashley negligently pursued a driveway plan in violation of SCDOT's Access and Roadside Management Standards Manual, federal requirements, and industry standards. Id. Since Ashley was acting as Pilot's agent during the encroachment permit process, Pilot bears responsibility for Ashley's conduct. However, Ashley is also liable to the Wrights for its negligent conduct. See Thomas v. Delta Enters., Inc., 302 S.C. 351, 396 S.E.2d 122 (Ct. App. 1990) (quoting Lawlor v. Scheper, 232 S.C. 94, 101 S.E.2d 269, 271 (1957) ("An agent's liability for his own tortious acts is unaffected by the fact that he acted in his representative capacity").

2. The Wrights' Injuries were a Foreseeable Consequence of Ashley's Conduct.

Like Pilot, Speedway, and SCDOT, Ashley argue they were entitled to judgment as a matter of law on proximate cause because the Wrights' collision involved the intervening criminal act of a third party (Daniel Sena). However, Mr. Sena's negligence is not a superseding act so long as the ultimate result—i.e. an auto accident involving a left-turn to Pilot Travel Center—was a foreseeable harm at the time Respondents acted. Roddey v. Wal-Mart Stores E., L.P., 415 S.C. 580, 590-91, 784 S.E.2d 670, 676 (2016). These issues are discussed in detail in the Wrights' Reply Brief to Pilot, Speedway, and SCDOT, which the Wrights incorporate by reference here. (Reply Br. as to Pilot, Speedway, and SCDOT at 18-21). Along with the evidence of foreseeability outlined in the earlier brief, Respondents' proximate cause argument should be rejected because the foreseeable harm of their misconduct is evident on the face of the encroachment permit

application. By submitting the application, Ashley was acknowledging "accidents, or injuries to persons, or damage to property . . . may be caused by the construction, maintenance, use, moving or removing, of the" driveways Ashley and Pilot were proposing. (R. p. 651). Therefore, none of the Respondents can feign surprise over liability for a motor vehicle collision involving a vehicle accessing Pilot Travel Center's driveways because the legal and industry standards Respondents ignored were in place for the specific purpose of preventing incidents like the one at issue in this case.

CONCLUSION

For these reasons and those stated in earlier briefing, the Wrights respectfully request the Court reverse the circuit court's summary judgment order.

Respectfully submitted,

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