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May 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

C/A No. 2018CP0202797
Appellate Case No. 2024-000079

Elroy D. Fischer, Jr., CD&F Interests, LLC, Howard Lumber Company, and the
Robert E. Pentecost Trust, Respondents,

vs.

South Carolina Department of Transportation, Appellant.

RECORD ON APPEAL

INDEX

Order of November 6, 2023	1
Order of December 13, 2023	4
Summons and Complaint of Respondents	7
Answer of Appellant	12
First Amended Answer of Appellant	15
Second Amended Answer of Appellant.....	18
Appellant’s Motion to Alter and / or Amend.....	20
Notice of Appeal	22
Summons and Complaint for prior action between Parties	29
Settlement Agreement for prior action between Parties	35
Transcript of Trial Testimony of Robert Giddens	50
Transcript of Trial Testimony of Robert Usry	77
Transcript of Trial Testimony of David Simino	115
Transcript of Trial Testimony of Donald Auld.....	211
Transcript of Trial Testimony of Stuart Saunders	296
Transcript of Trial Testimony of Elroy Fischer, Jr.	308
Transcript of Trial Testimony of William Franke	364
Topographical Map of Subject Area, dated 1964	476
Chadwick Development Plat.....	477
Appraisal of Stuart Saunders	478
Photographs of Stuart Saunders	501
Plaintiff’s Trial Exhibit No. 2	504
Plaintiff’s Trial Exhibit No. 3	505
Plaintiff’s Trial Exhibit No. 4	506
Plaintiff’s Trial Exhibit No. 5	507
Plaintiff’s Trial Exhibit No. 6	508
Plaintiff’s Trial Exhibit No. 7	509
Plaintiff’s Trial Exhibit No. 8	510
Plaintiff’s Trial Exhibit No. 9	511
Plaintiff’s Trial Exhibit No. 10	512
Plaintiff’s Trial Exhibit No. 12	USB
Video of Water Flow taken by Respondents	USB

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Civil Action No.: 2018-CP-02-02797
	)	
Elroy D. Fischer, Jr., CD & F Interests,	)	
LLC, Howard Lumber Company and	)	
the Robert E. Pentecost Trust,	)	
	)	
Plaintiffs,	)	ORDER
	)	
v.	)	
	)	
South Carolina Department of	)	
Transportation,	)	
	)	
Defendant.	)	
	)	

This matter came before the Court on September 20 and 21, 2023 for a bench trial to determine if the Defendant inversely condemned the property of Plaintiff. The parties presented testimony and evidence to the Court over the course of two days. At trial, there were two primary issues for the Court to determine. First, a legal issue exists as to whether Plaintiffs released the claims made in this lawsuit by way of a previous release executed in 2006, before the construction complained of in this case occurred. The second issue is whether the facts and testimony prove, by a preponderance of the evidence, that the actions of Defendant constitute a taking under the Constitutions of South Carolina and the United States of America. Each issue will be addressed separately.

Legal Issue

The Court finds that Plaintiffs did not release the claims in this matter in the previous condemnation procedure. The Release in question was executed before any construction or land disturbance began with regards to I-520. More importantly, the Executed Release was in relation to the sale of land from Plaintiff to Defendant. The matter before the Court deals addresses the

remainder of Plaintiffs' land after the sale to Defendant. The language in the Release pertaining to future and unknown claims is confined to the property that changed hands, not the property unaffected by the sale. Plaintiff could not anticipate Defendant would begin directing voluminous runoff onto its remaining property once I-520 was complete. This Court finds that Plaintiff did not waive or release its future claims based on actions that had yet to occur. Therefore, Defendant's motion for directed verdict is denied.

Factual Determination

After reviewing the testimony and evidence submitted at trial, this Court finds that Defendant permanently and inversely condemned the remainder of Plaintiffs' property. The Court finds that the design of the outfall adjacent to Plaintiffs' property is defective and transmits water onto Plaintiffs' property with excessive speed and volume. The pictures and video evidence demonstrate visible damage to Plaintiffs' property. As the statute dictates, this matter should now be submitted to an Aiken County jury to determine the amount of damages due to Plaintiff for this taking.

THEREFORE, this Court finds that Plaintiffs did not release the claims prosecuted in this case and Defendant permanently and inversely condemned the remainder of Plaintiffs property through its actions. This matter should be placed on the next available jury roster to determine the amount of damages to which Plaintiffs are entitled.

IT IS SO ORDERED.

This ____ Day of November, 2023

Judge Courtney Clyburn Pope



Aiken Common Pleas

Case Caption: Elroy D Fischer Jr , plaintiff, et al VS Dept Of Transportation South Carolina

Case Number: 2018CP0202797

Type: Order/Judgment and Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2023-11-06 16:38:32 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP0202797

Elroy D Fischer, Jr et al
PLAINTIFF(S)

Dept Of Transportation South Carolina
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

A bench trial was held in the above referenced condemnation action on October 19, 2023. On November 7, 2023, this Court issued an Order finding the Defendant liable for inversely and permanently condemning the remainder of the Plaintiffs' tract of land. Further, the Court found that the Plaintiffs did not release their claims in a prior condemnation action. On November 17, 2023, the Defendant filed a Motion to Alter/Amend and Motion for a New Trial. Defendant's Motions are DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/13/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Aiken Common Pleas

Case Caption: Elroy D Fischer Jr , plaintiff, et al VS Dept Of Transportation South Carolina

Case Number: 2018CP0202797

Type: Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2023-12-13 14:49:02 page 3 of 3

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case Number: 2018-CP-02-_____

ELROY D. FISCHER, JR., CD & F)
INTERESTS, LLC, HOWARD LUMBER)
COMPANY and the ROBERT E.)
PENTECOST TRUST,)

Plaintiffs,)

SUMMONS
(JURY TRIAL DEMANDED)

vs.)

SOUTH CAROLINA DEPARTMENT OF)
TRANSPORTATION,)

Defendant.)

CIV-738-01

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

/s/Tucker S. Player
SCBAR # 16217
Attorney for Plaintiffs
1415 Broad River Road
Columbia, SC 29210
(803) 772-8008
email to: Tucker@playerlawfirm.com

November 28, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case Number: 2018-CP-02-_____

ELROY D. FISCHER, JR., CD & F)
INTERESTS, LLC, HOWARD LUMBER)
COMPANY and the ROBERT E.)
PENTECOST TRUST,)

Plaintiffs,)

COMPLAINT
(JURY TRIAL DEMANDED)

vs.)

SOUTH CAROLINA DEPARTMENT OF)
TRANSPORTATION,)

Defendant.)

CIV-738-01

TO: DEFENDANT ABOVE-NAMED:

Plaintiffs above-named, complaining of Defendant hereby alleges:

1. Plaintiff Elroy D. Fischer is a citizen and resident of the County of Aiken, State of South Carolina.
2. Plaintiffs Howard Lumber Company, C,D, & F Interests, LLC and the Robert E. Pentecost Trust are all fictional entities based in the State of Georgia.
3. Defendant, South Carolina Department of Transportation [hereinafter “SCDOT”] is a governmental entity of the State of South Carolina.
4. Venue and jurisdiction are proper before this Court.
5. Plaintiffs purchased the land located at 2026 Ascauga Lake Road, North Augusta, South Carolina 29841 in 2005.
6. In 2010 began to notice excessive, destructive and unreasonable water intrusion through

and onto the property during any significant rain event.

6. The excessive, destructive and unreasonable water intrusion onto Plaintiff's property increased in volume and intensity with each separate occurrence since the first rain event in 2010.
7. Plaintiff contacted SCDOT and the County of Aiken to seek a remedy for the aforementioned water intrusion.
8. SCDOT attempted to implement minor remedial measures, but the destructive water intrusion continues to occur during any significant rain event.
9. To date any and all remedial measures taken by SCDOT failed to alleviate any of the aforementioned water intrusion issues.
10. Through consultation with a hydrologist, Plaintiffs learned that the water invading their property is originating from the roads and waste water control systems constructed, owned and maintained by Defendant.
11. Through consultation with a hydrologist, Plaintiffs learned that the water intrusion onto their property is abatable through the implementation of proper waste water control mechanisms and procedures.
12. Plaintiffs suffered and continue to suffer damages to their land and quiet enjoyment of their property as a result of the water intrusion originating from Defendant.
13. The water intrusion has caused damage to Plaintiffs' property in the following particulars:
 - a. Severe erosion of the soil, resulting in a ditch that continues to expand on the property;
 - b. Washed out soil, excessive trash from the highway flowing onto the property, and the

movement of heavy rocks across the property;

c. Rendered property unusable due to water intrusion and flooding; and

d. Damaged or Rendered unusable personal property and real property.

14. The water intrusion significantly lowered the market value Plaintiffs' property rendering it unmarketable.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS

(Inverse Condemnation)

15. The allegations of the previous paragraphs are hereby repeated and incorporated herein.
16. Defendants took affirmative, positive, and aggressive acts through the construction of road improvement projects, stormwater disposal systems, and Interstate Highway I-520.
17. Through these aforementioned affirmative, positive, and aggressive acts, Defendants affirmatively directed water onto Plaintiffs' property, causing the property to flood over and over again.
18. By directing water onto Plaintiffs' property, Defendant did take Plaintiffs' property rendering it unusable for the purposes for which it was purchased and eliminating its market value.
19. Plaintiffs suffered and continues to suffer damages due to the taking of their property.
20. Defendant have failed to pay Plaintiffs for the value of their property as required by the Fifth Amendment of the United States Constitution.
21. As a direct and proximate result of the unconstitutional taking of Plaintiffs' property by Defendant, Plaintiffs are entitled to just compensation of the property taken in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
(Permanent Injunction)

22. The allegations of the previous paragraphs are hereby repeated and incorporated herein.
23. The water intrusion and flooding caused by Defendant is an abatable occurrence as described above.
24. Every event of water intrusion and/or flooding constitutes a different unconstitutional taking and Defendant refuses to stop these offenses from occurring.
25. Plaintiffs seek an Order from this Court enjoining Defendant from directing any water to their property and causing them damage.

WHEREFORE, Plaintiffs demand a jury trial and pray for an award of actual damages, compensatory damages, special damages, attorney's fees and costs against Defendant, all in an amount to be determined by a jury. Finally, Plaintiffs pray for an Order enjoining Defendant from directing any water to their property and causing them damage and for such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED

PLAYER LAW FIRM, LLC

/s/Tucker S. Player, Esq.
S.C. Bar # 16217
1415 Broad River Road
Columbia, SC 29210
(803) 772-8008-telephone
(803) 772-8037-facsimile
Tucker@playerlawfirm.com

Columbia, South Carolina
This 28th day of November, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Civil Action No.: 2018-CP-02-02797
	)	
Elroy D. Fischer, Jr., CD & F	)	
Interests, LLC, Howard Lumber	)	
Company and the Robert E.	)	
Pentecost Trust,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	<u>A N S W E R</u>
South Carolina Department of	)	<i>(Jury Trial Demanded)</i>
Transportation,	)	
	)	
Defendant.	)	
_____	)	

The Defendant, South Carolina Department of Transportation, answering the Plaintiffs' Complaint:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiffs' Complaint not herein specifically admitted, qualified or explained is denied either due to the false nature of the allegation or the Defendant's lack of sufficient information to form a belief.

2. Defendant admits the allegations contained paragraphs 3 and 4 of the Plaintiffs' Complaint.

3. Defendant has insufficient information to form a belief as to the allegations contained in paragraphs 5, 6, 6, 10, 11, 12 and 14 of the Plaintiffs' Complaint and therefore denies the same.

4. Defendant has insufficient information to form a belief as to the allegation contained in paragraph 7 of the Plaintiffs' Complaint which states "and the County of Aiken" and therefore denies the same but admits the remainder of said paragraph.

5. Defendant admits the allegations in paragraph 8 of the Plaintiffs' Complaint which state "SCDOT", "implement" and "remedial measures" but denies the allegations of "attempted to" and

“minor.” Defendant has insufficient information to form a belief as to the remainder of said paragraph and therefore denies the same.

6. Defendant denies the allegations contained in paragraphs 9, 13, 16, 17, 18, 19, 20, 21, 23, 24 and 25 of the Plaintiffs’ Complaint.

FOR A SECOND DEFENSE

7. Each and every allegation of the Defendants’ paragraphs 1 through 6 above is incorporated herein as if repeated verbatim.

8. The Defendant alleges that the Plaintiff cannot recover under the alleged claim, if any it has, and which claim the Defendant has heretofore denied, for the reason that the alleged claim occurred more than three years prior to the commencement of this action and the Defendant pleads the statute of limitations as a bar to this action for any acts, damages, or claims occurring more than three years prior to the commencement of this action.

WHEREFORE, Defendant prays that this suit be dismissed with costs to the Plaintiff and any other just relief.

December 28th, 2018

NANCE, McCANTS & MASSEY

By: /s/ James D. Nance
 James D. Nance
 SC Bar No.: 4171
 218 Newberry Street, SW (29801)
 P.O. Box 2881
 Aiken, South Carolina 29802-2881
 (803) 649-6200
jimnance@nancefirm.com

Attorney for Defendant:
 South Carolina Department of Transportation

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Civil Action No.: 2018-CP-02-02797
	)	
Elroy D. Fischer, Jr., CD & F	)	
Interests, LLC, Howard Lumber	)	
Company and the Robert E.	)	
Pentecost Trust,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
South Carolina Department of	)	<u>CERTIFICATE OF MAILING</u>
Transportation,	)	
	)	
Defendant.	)	
_____	)	

I certify that I have served the Plaintiff with the foregoing **Answer of South Carolina Department of Transportation** by placing a true and accurate copy thereof in the United States Mail, First Class postage affixed to ensure delivery upon the following:

Tucker S. Player
 PLAYER LAW FIRM, LLC
 1415 Broad River Road
 Columbia, SC 29210
Tucker@playerlawfirm.com
 (803) 722-8008

This 28th day of December, 2018

/s/ James D. Nance
 James D. Nance
 SC Bar No.: 4171
 218 Newberry Street, SW (29801)
 P.O. Box 2881
 Aiken, South Carolina 29802-2881
 (803) 649-6200
jimnance@nancefirm.com

Attorney for Defendant:
 South Carolina Department of Transportation

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Civil Action No.: 2018-CP-02-02797
	)	
Elroy D. Fischer, Jr., CD & F	)	
Interests, LLC, Howard Lumber	)	
Company and the Robert E.	)	
Pentecost Trust,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	<u>AMENDED ANSWER</u>
South Carolina Department of	)	<i>(Jury Trial Demanded)</i>
Transportation,	)	
	)	
Defendant.	)	
_____	)	

The Defendant, South Carolina Department of Transportation, amending its answer to the Plaintiffs' Complaint:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiffs' Complaint not herein specifically admitted, qualified or explained is denied either due to the false nature of the allegation or the Defendant's lack of sufficient information to form a belief.

2. Defendant admits the allegations contained paragraphs 3 and 4 of the Plaintiffs' Complaint.

3. Defendant has insufficient information to form a belief as to the allegations contained in paragraphs 5, 6, 6, 10, 11, 12 and 14 of the Plaintiffs' Complaint and therefore denies the same.

4. Defendant has insufficient information to form a belief as to the allegation contained in paragraph 7 of the Plaintiffs' Complaint which states "and the County of Aiken" and therefore denies the same and denies the remainder of said paragraph.

5. Defendant denies the allegations contained in paragraphs 8, 9, 13, 16, 17, 18, 19, 20, 21, 23, 24 and 25 of the Plaintiffs' Complaint.

FOR A SECOND DEFENSE

6. Each and every allegation of the Defendants' paragraphs 1 through 5 above is incorporated herein as if repeated verbatim.

7. The Defendant alleges that the Plaintiff cannot recover under the alleged claim, if any it has, and which claim the Defendant has heretofore denied, for the reason that the alleged claim occurred more than three years prior to the commencement of this action and the Defendant pleads the statute of limitations as a bar to this action for any acts, damages, or claims occurring more than three years prior to the commencement of this action.

WHEREFORE, Defendant prays that this suit be dismissed with costs to the Plaintiff and any other just relief.

January 11th, 2019

NANCE & McCANTS

By: /s/ James D. Nance
James D. Nance
SC Bar No.: 4171
218 Newberry Street, SW (29801)
P.O. Box 2881
Aiken, South Carolina 29802-2881
(803) 649-6200
jimnance@nancefirm.com

Attorney for Defendant:
South Carolina Department of Transportation

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

Civil Action No.: 2018-CP-02-02797

Elroy D. Fischer, Jr., CD & F
Interests, LLC, Howard Lumber
Company and the Robert E.
Pentecost Trust,

Plaintiffs,

v.

South Carolina Department of
Transportation,

Defendant.

CERTIFICATE OF MAILING

I certify that I have served the Plaintiff with the foregoing **Amended Answer of South Carolina Department of Transportation** by placing a true and accurate copy thereof in the United States Mail, First Class postage affixed to ensure delivery upon the following:

Tucker S. Player
PLAYER LAW FIRM, LLC
1415 Broad River Road
Columbia, SC 29210
Tucker@playerlawfirm.com
(803) 722-8008

This 11th day of January, 2019

/s/ James D. Nance

James D. Nance
SC Bar No.: 4171
218 Newberry Street, SW (29801)
P.O. Box 2881
Aiken, South Carolina 29802-2881
(803) 649-6200
jimnance@nancefirm.com

Attorney for Defendant:
South Carolina Department of Transportation

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Civil Action No.: 2018CP0202797
Elroy D. Fischer, Jr., CD & F	)	
Interests, LLC, Howard Lumber	)	AMENDED ANSWER
Company and the Robert E.	)	(Jury Trial Demanded)
Pentecost Trust,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
South Carolina Department of	)	
Transportation,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the Defendant, South Carolina Department of Transportation, amending its answer to the Plaintiffs' Complaint:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiffs' Complaint not herein specifically admitted, qualified or explained is denied either due to the false nature of the allegation or the Defendant's lack of sufficient information to form a belief.

2. Defendant admits the allegations contained paragraphs 3 and 4 of the Plaintiffs' Complaint.

3. Defendant has insufficient information to form a belief as to the allegations contained in paragraphs 5, 6, 6, 10, 11, 12 and 14 of the Plaintiffs' Complaint and therefore denies the same.

4. Defendant has insufficient information to form a belief as to the allegation contained in paragraph 7 of the Plaintiffs' Complaint which states "and the County of Aiken" and therefore denies the same and denies the remainder of said paragraph.

5. Defendant denies the allegations contained in paragraphs 8, 9, 13, 16, 17, 18, 19, 20, 21, 23, 24 and 25 of the Plaintiffs' Complaint.

FOR A SECOND DEFENSE

6. Each and every allegation of the Defendants' paragraphs 1 through 5 above is incorporated herein as if repeated verbatim.

7. The Defendant alleges that the Plaintiff cannot recover under the alleged claim, if any it has, and which claim the Defendant has heretofore denied, for the reason that the alleged claim occurred more than three years prior to the commencement of this action and the Defendant pleads the statute of limitations as a bar to this action for any acts, damages, or claims occurring more than three years prior to the commencement of this action.

FOR A THIRD DEFENSE

8. The Plaintiffs' claims and cause of action in this matter are barred by release.

FOR A FOURTH DEFENSE

9. The Plaintiffs' claims and causes of action in this matter are barred by payment.

FOR A FIFTH DEFENSE

10. Any recovery by the Plaintiffs in this matter is subject to set-off

WHEREFORE, Defendant prays that this suit be dismissed with costs to the Defendant and any other just relief.

Dated: January 3, 2023

NANCE & McCANTS

s/ Clarke W. McCants, III
Clarke W. McCants, III
Post Office Box 2881
Aiken, South Carolina 29802
S.C. Bar No. 3725
Attorney for Defendant
South Carolina Department of Transportation

State of South Carolina	)	
	)	In the Court of Common Pleas
County of Aiken	)	
 Elroy D. Fischer, Jr., CD&F	)	
Interests, LLC, Howard Lumber	)	CA No. 2018CP0202797
Company and the Robert E.	)	
Pentecost Trust,	)	
	)	NOTICE OF MOTION AND
Plaintiffs,	)	MOTION TO ALTER AND AMEND,
	)	AND MOTION FOR A NEW TRIAL
vs.	)	
	)	
South Carolina Department of	)	
Transportation,	)	
	)	
Defendant.	)	
_____	)	

PLEASE TAKE NOTICE that the Defendant, through its undersigned counsel, will move before the Court at such time and place as is hereafter directed, notice of which will be given to you, for an Order pursuant to Rules 52 and 59, SCRCP, and other applicable law and regulation, altering and / or amending the Order filed in this matter on November 7, 2023. In the alternative the Defendant hereby moves for a new trial of the claims, causes of action and defenses in this case. In support of these Motions Counsel for the Defendant would very respectfully show unto the Court as follows:

1. The Defendant renews its Motion for Summary Judgment in this matter on the grounds set forth in that Motion.
2. The Defendant also renews its Motions for a Directed Verdict as to the issue of whether or not the Plaintiffs, or their predecessors in interest, released the claims and causes of action they present in this matter, and received payment therefor.
3. The Defendant further renews its Motions for Directed Verdict as to the issue of whether or not it inversely condemned the real property involved in this case.
4. The Order of this Court filed in this matter on November 7, 2023 does not specially set forth findings of fact to support its decision with respect to whether

or not the Defendant inversely and permanently condemned the real property in this case. In particular, the Order does not contain findings of fact establishing the elements necessary to support the Plaintiffs' claim in this regard, that is (1) affirmative conduct on behalf of the Defendant which (2) constitutes a "taking" of real property by the Defendant for (3) a public use.

5. The Order of this Court does not set forth or address the lay and expert testimony, as well as the documentary and other evidence, presented by the Defendant and bearing directly upon the adequacy of the proof of the elements set forth above.

6. The Order does not set forth separately conclusions of law which are based upon evidentiary and factual findings made by the Court.

7. Without such specially made findings of fact and separately stated conclusions of law the Defendant is unable at this time to determine whether or not the decision of the Court is supported by sufficient evidence.

8. Such findings and conclusions are necessary in the event the Defendant elects to appeal the decision set forth in this Court's Order filed on November 7, 2023, and to ensure that the appellate courts are able to review the specific grounds supporting the Court's decision for this case.

9. Pending a ruling by this Court, the Defendant reserves the right to amend this Motion to include specific grounds for a new trial of the claims, causes of action and defenses presented in this matter.

For these reasons the Defendant respectfully requests that the Court convene a hearing to consider the facts and circumstances of this Motion and issue its Order granting or denying such relief as the Court deems just and proper.

MCCANTS & MCCANTS

s/ Clarke W. McCants, III
Clarke W. McCants, III
Clarke W. McCants, IV
Post Office Box 2881
Aiken, S.C. 29801
Counsel for the Defendant

November 17, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Case No. 2018CP0202797

Elroy D. Fischer, Jr., CD&F Interests, LLC, Howard Lumber Company, and the
Robert E. Pentecost Trust, Respondents

vs.

South Carolina Department of Transportation, Appellant.

NOTICE OF APPEAL

The South Carolina Department of Transportation appeals the Orders of the Honorable Courtney Clyburn Pope, dated November 6, 2023 and December 13, 2023. The Appellant received written notice of entry of the Order dated December 13, 2023, on December 13, 2023.

Dated: January 12, 2024

NANCE & MCCANTS

s/ Clarke W. McCants, III
Clarke W. McCants, III
Clarke W. McCants, IV
Post Office Box 2881
Aiken, South Carolina 29802
(803) 649-6200 Ext. 3

Other Counsel of Record:
Tucker Player, Esquire
Player Law Firm, LLC
512 Village Church Drive
Chapin, South Carolina 29036

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Civil Action No.: 2018-CP-02-02797
	)	
Elroy D. Fischer, Jr., CD & F Interests,	)	
LLC, Howard Lumber Company and	)	
the Robert E. Pentecost Trust,	)	
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Plaintiffs,	)	ORDER
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v.	)	
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South Carolina Department of	)	
Transportation,	)	
	)	
Defendant.	)	

This matter came before the Court on September 20 and 21, 2023 for a bench trial to determine if the Defendant inversely condemned the property of Plaintiff. The parties presented testimony and evidence to the Court over the course of two days. At trial, there were two primary issues for the Court to determine. First, a legal issue exists as to whether Plaintiffs released the claims made in this lawsuit by way of a previous release executed in 2006, before the construction complained of in this case occurred. The second issue is whether the facts and testimony prove, by a preponderance of the evidence, that the actions of Defendant constitute a taking under the Constitutions of South Carolina and the United States of America. Each issue will be addressed separately.

Legal Issue

The Court finds that Plaintiffs did not release the claims in this matter in the previous condemnation procedure. The Release in question was executed before any construction or land disturbance began with regards to I-520. More importantly, the Executed Release was in relation to the sale of land from Plaintiff to Defendant. The matter before the Court deals addresses the

remainder of Plaintiffs' land after the sale to Defendant. The language in the Release pertaining to future and unknown claims is confined to the property that changed hands, not the property unaffected by the sale. Plaintiff could not anticipate Defendant would begin directing voluminous runoff onto its remaining property once I-520 was complete. This Court finds that Plaintiff did not waive or release its future claims based on actions that had yet to occur. Therefore, Defendant's motion for directed verdict is denied.

Factual Determination

After reviewing the testimony and evidence submitted at trial, this Court finds that Defendant permanently and inversely condemned the remainder of Plaintiffs' property. The Court finds that the design of the outfall adjacent to Plaintiffs' property is defective and transmits water onto Plaintiffs' property with excessive speed and volume. The pictures and video evidence demonstrate visible damage to Plaintiffs' property. As the statute dictates, this matter should now be submitted to an Aiken County jury to determine the amount of damages due to Plaintiff for this taking.

THEREFORE, this Court finds that Plaintiffs did not release the claims prosecuted in this case and Defendant permanently and inversely condemned the remainder of Plaintiffs property through its actions. This matter should be placed on the next available jury roster to determine the amount of damages to which Plaintiffs are entitled.

IT IS SO ORDERED.

This ____ Day of November, 2023

Judge Courtney Clyburn Pope



Aiken Common Pleas

Case Caption: Elroy D Fischer Jr , plaintiff, et al VS Dept Of Transportation South Carolina
Case Number: 2018CP0202797
Type: Order/Judgment and Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2023-11-06 16:38:32 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP0202797

Elroy D Fischer, Jr et al
PLAINTIFF(S)

Dept Of Transportation South Carolina
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

A bench trial was held in the above referenced condemnation action on October 19, 2023. On November 7, 2023, this Court issued an Order finding the Defendant liable for inversely and permanently condemning the remainder of the Plaintiffs' tract of land. Further, the Court found that the Plaintiffs did not release their claims in a prior condemnation action. On November 17, 2023, the Defendant filed a Motion to Alter/Amend and Motion for a New Trial. Defendant's Motions are DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/13/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Aiken Common Pleas

Case Caption: Elroy D Fischer Jr , plaintiff, et al VS Dept Of Transportation South Carolina
Case Number: 2018CP0202797
Type: Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2023-12-13 14:49:02 page 3 of 3

SCDOT R/W Form 815 (06-01)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
Book 264184 Page 1585-1589
Date Recorded 1/28/08

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
C/A NO. 2008-CP-02-912

Road/Route Palmetto Parkway (Bobby Jones

File Expressway) (1-520)

Item 2.140B
Project SIB-SB02 (002)
PIN 27812

South Carolina Department of Transportation,

Condemnor.

VS.

CD&F Internatsl, L.L.C., a Georgia Limited
Liability Company, Robert D. Lever and Roy
Fletcher,

Landowner(s),

and

Howard Lumber Company and Lighting
Galleries, Inc., n/k/a Lighting Galleries Inc., d/b/a
Augusta Lighting and Design Center, Mortgagee
and Mary B. Lever, As Personal Representatives
of the Estate of Claude M. Lever,

Other Condemnee(s).

COPY TO: Marvin B. Poston, Powell & Poston, 318 Park Avenue, S.E., Post Office Box
728, Aiken, SC 29802-0728

TO: THE LANDOWNER(S) AND OTHER CONDEMNEE(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq.,
Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor
herein and seeks to acquire the real property described herein for public purposes.

Amount of Determination \$504,560.00
Certified copy of RMC on 8-31-07
By Michael L. DeLoach, Register of Deeds
CCCP&QS.

CONDEMNATION NOTICE
AND
TENDER OF PAYMENT
(JURY TRIAL DEMANDED)
AMENDED
Amount of Determination \$504,760.00
Certified copy of RMC on 1-28-08
By Michael L. DeLoach, Register of Deeds
CCCP&QS.

6-28-2006
11:30
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Condemnation Notice and Tender of Payment (continued)

2. CD&F Interests, Inc., a Georgia Limited Liability Company is named as Landowner(s) in this action by virtue of its claim(s) of title (or other interests) as shown by that certain Deed from Sherman & Heenstreet, Inc., a Georgia corporation through name change CD&F Interests, Inc., dated August 23, 2005 and recorded August 25, 2005 in Book 4014 at Page 739 in the records for Aiken County.

3. Robert D. Lever is named as Landowner(s) in this action by virtue of his claim(s) of title (or other interests) as shown by that certain Deed from S. Allan Stocks dated June 27, 1986 and recorded July 10, 1986 in Book 938 at Page 276 in the records for Aiken County.

4. Roy Fischer is named as Landowner(s) in this action by virtue of his claim(s) of title (or other interests) as shown by that certain Deed from Robert D. Lever dated September 11, 1986 and recorded March 17, 1988 in Book 1029 at Page 66 in the records for Aiken County.

5. Howard Lumber Company and Lighting Galleries, Inc., n/k/a Lighting Galleries, Inc., d/b/a Augusta Lighting and Design Center is made a party to this action as "Other Condemnee" by virtue of its claim(s) of title (or other interests) in that certain Lis Pendens dated and filed May 23, 2006 in the South Carolina Court of Appeals and shown as Case Number 2005-CP-02-1673.

6. Mary S. Lever is made a party to this action as "Other Condemnee" by virtue of her claim(s) of title (or other interests) as Personal Representative of the Estate of Claude M. Lever as shown by that Will of Claude M. Lever, filed January 11, 1990, as reflected in Probate Roll No. 90ES4600028 in the Probate Court; also by Deed of Distribution filed April 2, 1990 in the records for York County.

7. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, in fee simple, containing 25.238 acres (1,099,389 square feet) of land and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by CD&F Investments, LLC, a Georgia limited liability company, Robert D. Lever and Roy Fischer, shown as the "Area of Acquisition" on Exhibits A, B & C, attached hereto and made a part hereof, between approximate I-520 Flyover survey station 448+00 and I-520 Flyover Ramp A survey station

Condemnation Notice and Tender of Payment (continued)

465+00, The Equality PC 451+00.00 I-520 Flyover Ramp A (12 Rt) - POT 451+00.00 I-520 Flyover.

Tax Map Number 010-20-01-001

8. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

9. The property sought herein is to be acquired for public purposes, more particularly for the construction of the Palmetto Parkway (Bobby Jones Expressway) (I-520) from South of US 1 to I-20.

10. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

11. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-27-405, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

12. Project plans may be inspected at the office of South Carolina Department of Transportation, Aiken County Maintenance Office, 1931 University Parkway, Aiken, SC 29801, under File 2.140B, Project SIB-SB02(002), Tract 77.

13. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF THREE HUNDRED SEVENTY EIGHT THOUSAND FIVE HUNDRED SEVENTY AND NO/100 DOLLARS (\$378,570.00) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

14. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Oscar K. Rucker, Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street,

Condemnation Notice and Tender of Payment (continued)

Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

15. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

16. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

17. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

18. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

Condemnation Notice and Tender of Payment (continued)

19. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

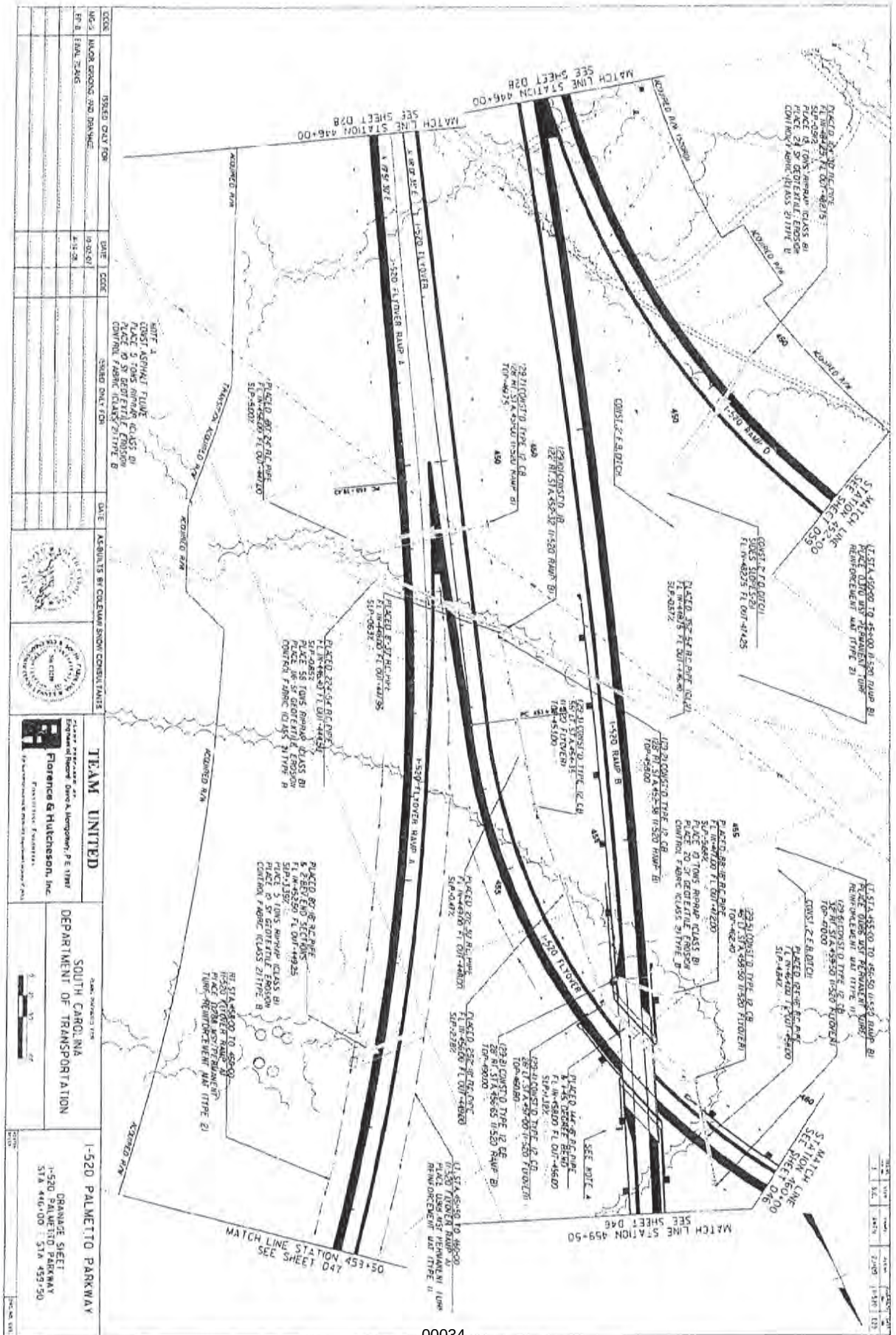
Law Office of James D. Bailey, PC

BY: James D. Bailey
Attorney for Condemnor (SCDOT)
James D. Bailey
P.O. Box 2376
Aiken, SC 29802
Telephone: (803) 648-9329
Fax: (803) 642-6041
jdb@jdb-law.com
SC Bar No. 0470

Aiken, South Carolina

June 28th, 2006

2008002699
COUNTY CLERK
RECORDED FILED
JUL 28 2006 11:34 AM
JUL 28 2006 11:34 AM
BY: JILL STEVENS
BK: RB 4184
PG: 1585-1589

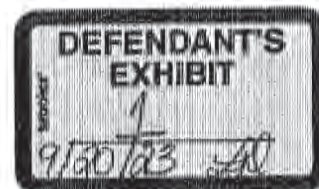


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.: 2006-CP-02-932
COUNTY OF AIKEN	)	
South Carolina Department of Transportation,	)	
Condemnor,	)	
vs.	)	RELEASE
	)	
CD&F Interest, L.L.C., a Georgia	)	
Limited Liability Company,	)	
Robert D. Lever, and Roy Fischer,	)	
	)	
Landowners,	)	
	)	
and	)	
	)	
Howard Lumber Company and	)	
Lighting Galleries, Inc., n/k/a Lighting	)	
Galleries, Inc., d/b/a Augusta Lighting	)	
and Design Center, Mortgagee, and	)	
Mary S. Lever, As Personal	)	
Representative of the Estate of Claude	)	
M. Lever.	)	
	)	
Other Condemnee(s).	)	

WHEREAS, the South Carolina Department Transportation (SCDOT), properly served the Condemnation Notice and Tender of Payment on Landowners and Other Condemnees above named for a certain portion of property necessary for the construction of Palmetto Parkway (Bobby Jones Expressway) (I-520) in Aiken County, South Carolina; and

WHEREAS, the plans for the SCDOT, File 2.140B, Project SIB-SB02(002), Pin No. 27912, Palmetto Parkway (Bobby Jones Expressway) (I-520) , for Tract 77, are specifically made a part hereof by reference, which plans reflect the property of the Landowners condemned by the SCDOT; and

WHEREAS, the Landowners rejected the SCDOT's offer for just compensation; and



WHEREAS, the SCDOT filed a Condemnation Notice and Tender of Payment with the Aiken County Clerk of Court on June 28, 2006, Case No. 2006-CP-02-932; and

WHEREAS, prior to the trial of this case in the Court of Common Pleas for Aiken County, the parties agreed upon the figure Five Hundred Four Thousand Five Hundred Sixty and 00/100 Dollars (\$504,560.00) as the just compensation and damages to be paid by the SCDOT to the Landowners for the acquisition of the property condemned by the SCDOT.

NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS, that for and in the consideration of the sum of Five Hundred Four Thousand Five Hundred Sixty and 00/100 Dollars (\$504,560.00) to the undersigned in hand paid by the SCDOT, receipt of which is hereby acknowledged, the Landowners and Other Condemnees, for themselves, their heirs, administrators, executors, and assigns, do hereby acknowledge the aforesaid sum as payment in full for the just compensation to them as a result of the aforesaid condemnation and acquisition by the SCDOT, and do hereby release, acquit and forever discharge the State of South Carolina, its agencies, departments, institutions, boards and commissions, and officials, agents or employees thereof or successors thereto, and particularly the SCDOT from any and all claims, demands, damages, actions, causes of action, and suits at law or in equity, of whatsoever kind or nature, arisen, arising, or to arise from or because of any matter relating to the construction of Palmetto Parkway (Bobby Jones Expressway) (I-520) in Aiken County, South Carolina.

The Landowners and Other Condemnees understand and agree that the aforesaid compensation is being paid by the SCDOT in full, final and complete settlement of the condemnation action known as Case No. 2006-CP-02-932, and that the SCDOT is not otherwise obligated.

Release

Case No. 2006-CP-02-932

IN WITNESS WHEREOF, We have hereunto set our hand and seal this 31 day of

January, 2006. 2007 ⁽²¹⁾

IN THE PRESENCE OF:

CD&F Interests, LLC, Landowner

By Its: _____

Robert D. Lever, Landowner

Roy Fisher, Landowner

Lighting Galleries, Inc, Other Condemnee

By Its: _____

Howard Lumber Company,
Other Condemnee

By Its: _____

Shianne Highower

Mary S. Lever

Mary S. Lever as Personal Representative of
the Estate of Claude M. Lever,
Other Condemnee

IN WITNESS WHEREOF, We have hereunto set our hand and seal this _____ day of

_____, 2006.

IN THE PRESENCE OF:

[Signature]

CD&F Interests, LLC, Landowner

By Its: _____

[Signature]
Robert D. Lever, Landowner

Roy Fisher, Landowner

Lighting Galleries, Inc, Other Condemnee

By Its: _____

Howard Lumber Company,
Other Condemnee

By Its: _____

Mary S. Lever as Personal Representative of
the Estate of Claude M. Lever,
Other Condemnee

Release

Case No. 2006-CP-02-932

IN WITNESS WHEREOF, We have hereunto set our hand and seal this 9TH day of

JANUARY, 2006.

IN THE PRESENCE OF:

CD&F Interests, LLC, Landowner

By Its: _____

Robert D. Lever, Landowner

Roy Fisher
Roy Fisher, Landowner

Lighting Galleries, Inc. Other Condemnee

By Its: _____

Howard Lumber Company,
Other Condemnee

By Its: _____

Mary S. Lever as Personal Representative of
the Estate of Claude M. Lever,
Other Condemnee

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

South Carolina Department
of Transportation,)

Condemnor,)

v.)

CD&F Interest, L.L.C., a Georgia
Limited Liability Company,
Robert D. Lever, and
Roy Fischer,)

CIVIL ACTION NO.: 06-CP-02-932

Landowners,)

and)

RELEASE

Howard Lumber Company and
Lighting Galleries, Inc., n/k/a
Lighting Galleries, Inc., d/b/a
Augusta Lighting and Design Center,
Mortgagees, and Mary S. Lever,
as Personal Representative of the
Estate of Claude M. Lever,)

Other Condemnee(s).)

This general Release is made and entered into this 11th day of June 2007,
by Condemnees Howard Lumber Company and Lighting Galleries, Inc:

WHEREAS, South Carolina Department of Transportation ("SCDOT") is Condemnor
and Howard Lumber Company and Lighting Galleries, Inc. are among the Condemnees in this
condemnation case, related to property necessary for the construction of the Palmetto Parkway
(Bobby Jones Expressway) (I-520) in Aiken County, South Carolina, Civil Action No. 2006-CP-
02-932; and

WHEREAS, the plans for SCDOT, File 2.140B, Project SIB-SB02(002), Pin No. 27912, Palmetto Parkway (Bobby Jones Expressway) (I-520), for Tract 77, are specifically made a part hereof by reference, which plans reflect the property of the Landowners condemned by the SCDOT; and

WHEREAS, Condemnees consented to a Consent Order for Settlement on November 6, 2006, which is incorporated herein by reference, in which the Landowners and the SCDOT agreed upon the figure of Five Hundred Four Thousand Five Hundred Sixty and 00/100 Dollars (\$504,560.00) as the just compensation and damages to be paid by SCDOT to acquire the property condemned by SCDOT; and

WHEREAS, the undivided 1/3 interest in said condemned property held by each of the above-named Landowners is valued at One Hundred Sixty Eight Thousand One Hundred Eighty-six and 66/100 Dollars (\$168,186.66); and

WHEREAS, Lighting Galleries, Inc., and Howard Lumber Company claim mortgagees on the undivided 1/3 interest in the condemned property held by Landowner Robert D. Lever; and

WHEREAS, the mortgage interest of Lighting Galleries, Inc., was satisfied by the Aiken County Master-in-Equity, but that decision is currently pending on appeal before the South Carolina Supreme Court;

NOW, THEREFORE, in consideration of the payment of One Hundred Sixty Eight Thousand One Hundred Eighty-six and 66/100 Dollars (\$168,186.66), receipt of which is **not** acknowledged by Lighting Galleries, Inc. and Howard Lumber Company, but which is instead to be deposited with the Clerk of Court for Aiken County, until the above-referenced appeal is

concluded in the Supreme Court of South Carolina, and after the resolution of the appeal, the Circuit Court for Aiken County shall decide how the funds are to be distributed:

1. Condemnees Howard Lumber Company and Lighting Galleries, Inc. hereby release and discharge the State of South Carolina, its agencies, departments, institutions, boards and commissions, and officials, agents or employees thereof or successors thereto, and particularly the South Carolina Department of Transportation, from any and every right and all manner of action or actions, cause or causes of action, claims or demands of any kind which they now have, or at any time claimed, arising from or because of any matter relating to this condemnation action.
2. Condemnees Howard Lumber Company and Lighting Galleries, Inc. understand and agree that the aforesaid compensation is being paid by the SCDOT in full, final and complete settlement of the condemnation action known as Case No. 2006-CP-02-932, and that the SCDOT is not otherwise obligated.
3. This release is governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this 11 day of

June, 2007.

Linda C. Andrisc
Witness

Jessie P. Stone
Witness *CD. City - Comm Ex. 11-1-
5/30/2007*

Robert Dentecorb
Lighting Galleries, Inc.
By its: President

W. Maden
Howard Lumber Company
By its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CASE NO. 06-CP-02-932

South Carolina Department of
Transportation,)
)
)

Condemnor,)
)
)

v.)
)
)

CD&F Interests, L.L.C., a Georgia Limited)
Liability Company, Robert D. Lever,)
and Roy Fischer,)
)
)

Landowners,)
)
)

and)
)
)

Howard Lumber Company and)
Lighting Galleries, Inc., n/k/a Lighting)
Galleries, Inc., d/b/a Augusta Lighting)
and Design Center, Mortgagee, and)
Mary S. Lever, As Personal)
Representative of the Estate of Claude)
M. Lever,)
)
)

Other Condemnee(s).)
)
)

4441 24.744

FILED

11.6 4

Liz Godard
C.C.P. & G.S.

Shannon G. Givens 10.00
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of the Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

NOV 06 2006

Liz Godard
C.C.P. & G.A., Aiken County, S.C.
Shannon G. Givens *COG*
Deputy Clerk

MAC
This matter comes before me upon the Motion of James D. Bailey, attorney for the
SCDOT, F. Craig Wilkerson, Jr., attorney for the landowners, Weston Adams, III, attorney for
mortgage holder Lighting Galleries, Inc., and R. E. Hanna III and Christopher A. Cosper,
attorneys for Howard Lumber Company, for an Order granting the settlement of this case
pursuant to S.C.R.C.P. Rule 41, and asking that the Court approve the terms of the Agreement.
As evidenced by their signatures below, the Condemnor/SCDOT's attorney, the Landowner's
attorney, the attorney for Lighting Galleries, Inc., and the attorney for Howard Lumber Company
are in agreement with this request.

IT APPEARING TO THE COURT:

That on or about June 28, 2006, the SCDOT brought an action for condemnation pursuant to South Carolina Code Section 57-5-320 and 28-2-60, Code of Laws of South Carolina, 1976, as amended, and served a copy of the Condemnation Notice and Tender of Payment on the parties hereto.

That condemnation consists of a parcel or strip of land, in fee simple, containing 25.228 acres of land, of TMS 010-20-01-00, as set forth in Exhibit A, B and C attached hereto and incorporated by reference, owned by CD&F Interests, L.L.C., Robert D. Lever, and Roy Fischer in equal one-third shares.

That the parties have reached a settlement in this matter and agreed to a price of \$20,000.00 per acre for a total sales price of \$504,560.00. Each landowner is entitled to \$168,186.66.

That the parties listed as Condemnees to include Howard Lumber, Lighting Galleries, Inc., and Mary Lever, have no ownership interest in the property.

 That Lighting Galleries, Inc., has a mortgage on the property interest of Robert D. Lever. That the Mortgage of Lighting Galleries, Inc., has been struck down by the Aiken County Master-in-Equity, but said action is currently pending before the South Carolina Supreme Court. Currently, the debt claimed to be owed to Lighting Galleries, Inc. is approximately \$178,558.99 through October 31, 2006, with interest continuing to accrue at 9% per annum. The debt is greater than the value of Robert D. Lever's one-third share in the condemned property. See Robert D. Lever v. Lighting Galleries, 2005-CP-02-1673.

That Howard Lumber Company has a mortgage on the property interest of Robert D. Lever. Currently, the debt claimed to be owed to Howard Lumber Company is approximately

\$219,222.38 through November 6, 2006, with interest continuing to accrue at 9% per annum. The debt is greater than the value of Robert D. Lever's one-third share in the condemned property.

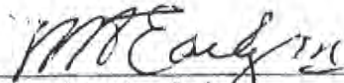
That all parties are in agreement that this Consent Order act as an Agreement and Request for Payment and that the Landowners shall not seek a trial by jury nor shall the Landowners seek an arbitration panel procedure as the landowners and Condemnor have reached an agreement.

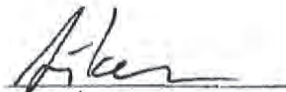
That upon approval of their settlement by the Court, the SCDOT shall pay into the Court Registry any additional funds necessary to equal the settlement amount of \$504,560.00 (SCDOT deposited \$378,570.00 into the Court Registry at the commencement of the action on June 28, 2006). After such deposit, the Clerk of Court shall pay CD&F Interests, L.L.C., and Roy Fisher \$168,186.66 each; however, the \$168,186.66 share of Robert D. Lever shall remain in the interest bearing account pending the resolution of the Appeal in Robert D. Lever v. Lighting Galleries, 2005-CP-02-1673. Following resolution of the appeal (including subsequent actions), at a subsequent hearing this Court shall determine how the funds shall be paid to the lien holders. The lien holders are Lighting Galleries, Inc., Howard Lumber Company, and Mary S. Lever.

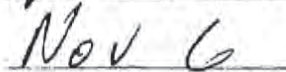
That the landowners, CD&F Interests, L.L.C., Robert D. Lever and Roy Fischer agree that the above settlement is just compensation for the property rights to be acquired by the South Carolina Department of Transportation. Accordingly, the landowners agree to execute the instruments necessary to convey to the South Carolina Department of Transportation the property interests and rights described herein. Upon signing and payment of the agreed upon amount, the landowners waive any and all rights pursuant to the Code of Laws of South Carolina, 1976, as amended by the Eminent Domain Procedure Act.

ORDERED, ADJUDGED AND DECREED that the settlement set forth herein above is approved.

AND IT IS SO ORDERED.

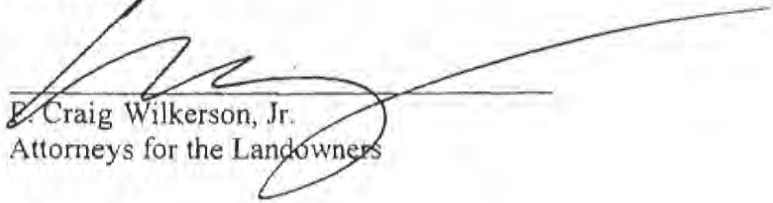

Chief Administrative Judge

, South Carolina

, 2006

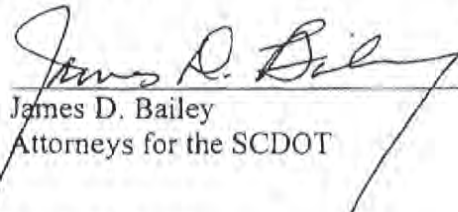
ON MOTION OF:

By:


E. Craig Wilkerson, Jr.
Attorneys for the Landowners

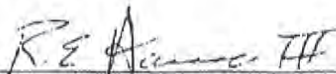
ON MOTION OF:

By:


James D. Bailey
Attorneys for the SCDOT

WITH CONSENT OF:

By:


R. E. Hanna III
Christopher A. Cosper
Attorneys for Howard Lumber Company

WITH CONSENT OF:

By:


Weston Adams, III
Attorneys for Lighting Galleries, Inc.

I, Mary Lever, am aware that there is a hearing at 9:30 in Aiken, South Carolina before the Circuit Court for the approval of this agreement between SCDOT and Lever, CD&F, etc.. I have received notice, but I will not be in attendance. I ask that the Court approve this settlement and I am in agreement with the proposed order which was last amended on Thursday, November 2, 2006.

Mary S Lever Nov. 5, 2006
Mary Lever

Dianne H. Hower
Witness

Jessica Sutton
Witness

JA 114,107

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

South Carolina Department of
Transportation,)

Condemnor,)

vs.)

CD&F Interest, L.L.C., a Georgia
Limited Liability Company,
Robert D. Lever, and Roy Fischer,

Landowners,)

and)

Howard Lumber Company and
Lighting Galleries, Inc., n/k/a Lighting
Galleries, Inc., d/b/a Augusta Lighting
and Design Center, Mortgagee, and
Mary S. Lever, As Personal
Representative of the Estate of Claude
M. Lever.)

Other Condemnee(s).)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2006-CP-02-932

STIPULATION OF DISMISSAL
AND ORDER TO REFER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

AUG 31 2007

Liz Godard
C.C.C.P. & G.A., Aiken County, S.C.
Barbara Riggs
Deputy Clerk

FILED 8-31-2007
Liz Godard
C.C.C.P. & G.S.
hr 8:30 AM
Deputy Clerk

This matter comes before me upon motion of the Condemnor, South Carolina Department of Transportation (SCDOT) pursuant to S.C. Code §28-2-40 and SCRCPP, Rule 41(a)(1)(B) for an order to dismiss Condemnor, SCDOT and Landowners, CD&F Interests, L.L.C. and Roy Fischer because there has been an agreement as to just compensation and to refer this case to the Master-in-Equity or Special Referee for a final order determining to whom payment of the just compensation amount represented by the 1/3 ownership interest of Robert D. Lever should be awarded pursuant to SC Code §28-2-460 and Rule 53 of the SCRCPP.

The Landowners, CD&F Interests, L.L.C. and Roy Fischer each have a 1/3 ownership interest in the settlement proceeds not subject to any claims by the Other Condemnees. Upon payment by the SCDOT of the balance of the settlement proceeds into the Registry of the Court,

DAE
#1

Stipulation of Dismissal and Order of Refer
Case No. 2006-CO-02-932

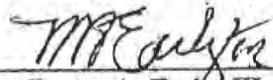
the Clerk shall pay Landowners, C&DF Interests, L.L.C. and Roy Fischer in accordance with the Consent Order for Settlement previously filed with the Court. Therefore, it is hereby

ORDERED that the SCDOT, C&DF Interests, L.L.C. and Roy Fischer are hereby dismissed and this case is to be referred to the Master-in-Equity or a Special Referee as hereinafter provided; that the Clerk of Court Annotate a copy of the Condemnation Notice and Tender of Payment with the date and amount of the settlement as Five Hundred Four Thousand Five Hundred Sixty and 00/100 Dollars (\$504,560.00) and file the Annotated Condemnation Notice and Tender of Payment with the Register of Mesne Conveyance for Aiken County to be duly indexed as provided by law for the recording and indexing of deeds. It is further

ORDERED that the determination of the distribution of the remaining 1/3 just compensation settlement proceeds attributable to Robert D. Lever's ownership interest be referred to the Master-in-Equity or a Special Referee *after* the pending appeal is resolved and concluded in the matter of Lighting Galleries, Inc. against Robert D. Lever in the Supreme Court of South Carolina.

IT IS SO ORDERED.

DONE at Bamberg, South Carolina this 22 day of August, 2007.



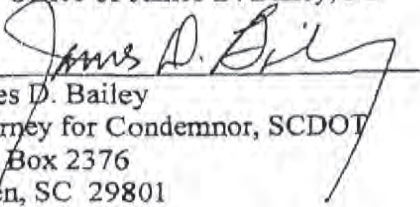
Hon. Doyet A. Early, III
Chief Administrative Judge
Second Judicial Circuit

Consents/signatures are on the following separate pages.

Stipulation of Dismissal and Order of Refer
Case No. 2006-CO-02-932

I SO MOVE:

Law Office of James D. Bailey, PC

By: 

James D. Bailey

Attorney for Condemnor, SCDOT

P.O. Box 2376

Aiken, SC 29801

(803) 648-9529

Dated: August 20th, 2007.

Stipulation of Dismissal and Order of Refer
Case No. 2006-CO-02-932

I CONSENT:

McAngus, Goudelock & Courie, LLC

By: Weston Adams, III

Weston Adams, III
Attorney for Lighting Galleries, Inc.
P. O. Box 12519
Columbia, SC 29211

Dated: July 25, 2007.

Stipulation of Dismissal and Order of Refer
Case No. 2006-CO-02-932

WE CONSENT:

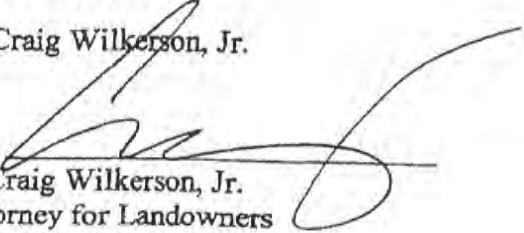
Hull, Towill, Norman, Barrett & Salley

By: 
R. E. Hanna, III
Chris Cospers
Attorneys for Howard Lumber Company
801 Broad St., Ste. 700
Augusta, GA 30901
Dated: July 17, 2007.

Stipulation of Dismissal and Order of Refer
Case No. 2006-CO-02-932

I CONSENT:

F. Craig Wilkerson, Jr.

By: 

F. Craig Wilkerson, Jr.
Attorney for Landowners
229 East Black St.
Rock Hill, SC 29730

Dated: July 24, 2007.

Stipulation of Dismissal and Order of Refer
Case No. 2006-CO-02-932

I CONSENT:

Mary S. Lever

By: Mary S. Lever
Mary S. Lever, Individually and as
Personal Representative of the
Estate of Claude M. Lever

Dated: August 16, 2007.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Judith V. Warner Clerk of R.M.C. for
Aiken County, South Carolina, do hereby certify
that the foregoing constitutes a true and correct
copy of the original document which has been filed
in my office.

5 day of Feb, 2008

Judith V. Warner
R.M.C. Aiken County, S.C.
John Stembridge
Deputy Clerk

R 114,107

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

South Carolina Department of
Transportation,

Condemnor,

v.

CD & F Interests, LLC, a Georgia
Limited Liability Company, Robert D.
Lever, and Roy Fischer,

Landowners,

and

WAE
51
Howard Lumber Company and Lighting
Galleries, Inc. n/k/a Lighting Galleries,
Inc. d/b/a Augusta Lighting and Design
Center, Mortgagee, and Mary S. Lever,
As Personal Representative of the
Estate of Claude M. Lever,

Other Condemnees.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NUMBER: 2006-CP-02-0932

AMENDMENT TO STIPULATION OF
DISMISSAL AND ORDER TO REFER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

JAN 23 2008

Liz Godard
C.C.C.P. & G.A., Aiken County, S.C.

Barbara Riggs
Deputy Clerk

Upon joint motion of CD & F Interests, LLC, Roy Fischer and the South Carolina
Department of Transportation, it appears that a scrivener error occurred in the Consent
Order for Settlement issued by this Court on November 6, 2006 and in a Stipulation of
Dismissal and Order to Refer issued by this Court on August 22, 2007, which must be
corrected. The number of acres condemned by the South Carolina Department of
Transportation appeared in the above-mentioned orders as 25.228 whereas the correct
number of acres is 25.238. As a result, the total compensation to be paid to the
Condemnees appeared incorrectly in the above-mentioned orders as five hundred four

1004 35

thousand five hundred sixty and 00/100 (\$504,560.00) dollars whereas the correct compensation should be five hundred four thousand seven hundred sixty and 00/100 (\$504,760.00) dollars.

Having considered the motion, the Court hereby orders as follows:

1) The parcel of land belonging to the Condemnees which is being condemned by the South Carolina Department of Transportation in this action is 25.238 acres. Since a consent order previously issued in the case provided for a price of twenty thousand and 00/100 (\$20,000.00) dollars per acre, the correct amount of compensation to be paid to the Condemnees is five hundred four thousand seven hundred sixty and 00/100 (\$504,760.00) dollars;

2) In every other respect, the Court hereby reaffirms and reiterates all other provisions contained in the Consent Order for Settlement and in the Stipulation of Dismissal and Order to Refer, and specifically orders the Clerk of Court to pay CD & F Interests, LLC and Roy Fischer the sum of one hundred sixty eight thousand two hundred fifty three dollars and 31/100 (\$168,253.31) dollars each plus 1/3 of any accumulated interest. The balance of the compensation shall be retained by the Clerk of Court until a determination by the Master in Equity or a special referee is issued as to how the funds shall be disbursed among the balance of individuals and entities with interest in the condemned land;

3) The Clerk of Court is further ordered to amend the annotated condemnation notice and tender of payment with a date and amount of the settlement as five hundred four thousand seven hundred sixty and 00/100 (\$504,760.00) dollars and file the amended annotated condemnation notice and tender of payment with the

114,107

Registrar of Mesne Conveyances for Aiken County, South Carolina to be duly indexed as provided by law for the recording and indexing of deeds, showing the reference of the transfer of the property to the Condemnor, said filing being exempt from filing fees under South Carolina Code Annotated § 12-24-40.

SO ORDERED this 22 day of Jan 2008 in
Aiken County, South Carolina.

Doyet A. Early, III
Doyet A. Early, III,
Judge, Second Judicial Circuit
State of South Carolina

PREPARED BY:

Ziva P. Bruckner
Capers, Dunbar, Sanders & Bruckner, LLP
1500 Wachovia Bank Building
699 Broad Street
Augusta, Georgia 30901-1454
Telephone (706)722-7542

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-02-932

MC JR 114,107

SC DOT

CD+F Interests, LLC et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

2008002698

COURT ORDER
RECORDING FEES \$0.00
PRESENTED & RECORDED:
01-29-2008 11:34 AM
JUDITH WARNER
REGISTER OF DEEDS CONVEYANCE
AIKEN COUNTY, SC
By: JULIE STUTTS DEPUTY
BK:RB 4184
PG:1581-1584

Dated at _____, South Carolina, this _____ day of _____

PRESIDING _____

This judgment/order was entered/filed on the 22 day of January, 2008, and a copy mailed/hand-delivered/boxed this 23 day of January, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

James Bailey

Ziva Bruckner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard
CLERK OF COURT

SCRCP APP-24

By Barbara Riggs

1 THE WITNESS: Yes, ma'am.

2 ROBERT GIDDENS, being first duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MCCANTS

6 Q. Mr. Giddens, you go by Robbie, is that correct?

7 A. Yes, sir.

8 Q. Where do you live?

9 A. I live in Manning, South Carolina.

10 Q. You are employed by the South Carolina Department
11 of Transportation?

12 A. Yes, sir, since 2010.

13 Q. What is your job title there?

14 A. Today I am the assistant director for acquisitions
15 and right-of-way and relocations.

16 Q. And within that division, is there a separate
17 right-of-way division?

18 A. Yes. I manage four regional right-of-way offices
19 with 49 employees. And inside that we handle
20 condemnation cases.

21 Q. All right. That was going to be my question. You
22 are now supervising 49 right-of-way agents, is
23 that correct?

24 A. Yes, sir.

25 Q. Tell Judge Pope, generally, and I want to

Giddens - Direct by Mr. McCants

1 understand this. You just said you started
2 working for DOT in 2010?

3 A. Yes, sir.

4 Q. You would not have been involved in the
5 acquisition of land from these plaintiffs'
6 property with the Palmetto Parkway in 2005 and 6,
7 is that correct?

8 A. Yes, correct.

9 Q. But you are familiar with that process --

10 A. Yes.

11 Q. -- and what's happened. And you have looked at
12 the documents pertaining to that, correct?

13 A. Yes, sir.

14 Q. I want to walk through for Judge Pope, not going
15 to spend all afternoon doing it, but we're going
16 to talk about the state's process of exercising
17 eminent domain for purposes of acquiring property
18 for public use, okay?

19 A. Okay.

20 Q. What is the beginning of that process?

21 A. Let me -- most of our projects are split with
22 federal highway, federal-aided projects and we
23 follow the Uniform Act requirements of 1970.
24 We -- and we follow -- we have a manual that is
25 produced under the Uniform Act, under the federal

Giddens - Direct by Mr. McCants

1 guidelines that lay out the process that we follow
2 for the acquisition process. And the relocation
3 process, and it's federal law and states. The
4 South Carolina manual is updated every five years
5 as federal law requires. The process that we
6 start with is we have agents in the field that do
7 title work, inspect the property with the
8 landowner --

9 Q. When you say title work, it speaks for itself but
10 you are looking at the history of ownership --

11 A. Yes.

12 Q. -- of the tract of the property?

13 A. Yes. We look at the 40-year title history of the
14 property to make sure we are talking to the owners
15 of the property. The acquisition process starts
16 after the title opinion, so we make sure that we
17 are talking to the owners and that we can ask the
18 owners what we found at public record to make sure
19 they are the owners during the inspection process.
20 And then we start with the explanation of the
21 project. And typically it is staked, which is
22 surveyed based on the new right-of-way and the
23 present right-of-way so we can walk them through
24 and the landowners understand the area of
25 acquisition.

Giddens - Direct by Mr. McCants

1 Q. All right. Now you weren't involved, again, with
2 this particular acquisition project but, but have
3 you by chance had a chance to look at the
4 right-of-way agent sheet for this case?

5 A. Yes, I have.

6 Q. All right. Explain to her what the right-of-way
7 agent sheet is.

8 A. The right-of-way sheet is a two-part sheet. We
9 use it to start the appraisal process and we also
10 use it to document any communications with the
11 landowner and any title opinions with the
12 landowner. And it's mortgages, leases, everything
13 is documented because everything we do we follow
14 the Uniform Act, which is -- and they have a
15 federal requirement of audit. And they can audit
16 at any time. So that document is used as
17 communication between us and the landowner, which
18 is admitted into court if we have to go into
19 condemnation.

20 Q. And once we get to the appraisal point, as
21 Mr. Saunders just testified to, an effort is made
22 to resolve cases with the landowners, is that
23 correct?

24 A. Correct.

25 Q. But if you are unable to do that, that is settle

Giddens - Direct by Mr. McCants

1 the issue, what happens then?

2 A. Then we will go to trial, if it's not settled
3 during mediation.

4 Q. When you say, well, when you say go to trial,
5 before then you have to file papers with the
6 Court, Summons and Complaint --

7 A. Yes.

8 Q. -- by which you set forth the details of the
9 condemnation process, correct?

10 A. Yes, we call it Eminent Domain Procedures Act of
11 South Carolina.

12 Q. And that's a state code also.

13 A. Yes.

14 Q. And that requires what with regard to a tender of
15 money into court?

16 A. To tender payment to the clerk of court as part of
17 the condemnation process. And then the landowner
18 has a 30-day challenge period to challenge the
19 acquisition of the condemnation.

20 Q. Let's, let's pause there.

21 A. Okay.

22 Q. You talk about the challenge -- not too long but
23 what you're saying is it's a civil action filed
24 and served that means it starts --

25 A. Yes.

Giddens - Direct by Mr. McCants

1 Q. It's commenced and you have given them under the
2 act 30 days for the landowners to do what?

3 A. To challenge the acquisition of the condemnation.

4 Q. Do you understand that a separate lawsuit has to
5 be filed to challenge?

6 A. Yes.

7 Q. And the vast majority of condemnation cases that
8 are filed do not face, produce a challenge action,
9 is that fair?

10 A. Yes.

11 Q. How many have you been involved with, do you know?

12 A. Three in the last 13 years.

13 Q. I've had one. It was with the bowling alley on
14 Whiskey Road, but we resolved that. But that's an
15 opportunity for landowners to contest whether or
16 not the state is acquiring the property for a
17 valid public use, is that correct?

18 A. Correct.

19 Q. And if they don't, you proceed on with the
20 condemnation process, is that correct?

21 A. Yes.

22 Q. You mentioned you mediate and settle or go to
23 court. Just walk us through, again, that process.

24 A. Yes, we -- even at that time, Aiken County, we
25 followed a mediation. So every -- we hire a

Giddens - Direct by Mr. McCants

1 mediator between the parties. They would do
2 depositions before mediation and then we would
3 have mediation to try to settle the case prior to
4 going to court.

5 Q. How much money was tendered or placed with the
6 court at the time that the condemnation action was
7 filed with respect to these landowners?

8 A. I'm not sure. I don't --

9 Q. If I showed it to you --

10 A. -- yes, it --

11 Q. -- would that refresh your memory? This is the
12 wrong piece of paper. I got it. Before I get
13 there I've got to back up a little bit. Do you
14 remember there was some timber cut off that
15 property?

16 A. Yes.

17 Q. And you looked at some documents?

18 A. Yes.

19 Q. And there's been some testimony after we filed the
20 condemnation case we cut the timber. Based upon
21 your review of the historical documents, is that
22 the case?

23 A. I don't recall the exact --

24 Q. After. After we filed --

25 A. -- yes. I don't recall the exact condemnation

Giddens - Direct by Mr. McCants

1 file date but you would have that. But the note
2 that I did read to the landowner, the timber was
3 still the landowners' and gave them permission to
4 harvest that timber.

5 Q. -- before the condemnation case was actually
6 filed?

7 A. Yes. It says in the letter before a title of real
8 estate transferred to the department.

9 Q. To the best of your knowledge it was harvested
10 before any action was filed and certainly before
11 any construction began up there?

12 A. All I can look at is the intent of the letters
13 that were done in '06.

14 Q. What letters are you talking about?

15 A. Oscar Rector, the prior director.

16 Q. How long was Oscar Rector the director over there
17 in that department?

18 A. Oscar was at that department almost 30 years.

19 Q. He's still around.

20 A. Yes, sir. He still is.

21 Q. Is he still working at all?

22 A. Yes, sir. He's said he's retired five times, but
23 he still works.

24 Q. Oscar is a great guy, isn't he? All right. You
25 are going to have to hold this sideways,

Giddens - Direct by Mr. McCants

1 Mr. Giddens, but that's the amended notice -- and
2 I think which we discussed earlier. Do you see
3 the amount tendered into the court?

4 A. Yes. \$378,570.

5 Q. All right. Now you mentioned mediation,
6 discovery, settlement. How much of -- well, this
7 matter was obviously settled. We talked about
8 that. But what amount was the case ultimately
9 settled for?

10 A. I don't remember the exact. It was 500 and
11 something.

12 Q. That release, the first release at the top.

13 A. \$504,560.

14 Q. All right. Now if the state is going to pay that
15 amount of money, or any amount of money to a
16 landowner in a condemnation case, what do they ask
17 from the landowner in return?

18 A. To any future claims or any claims against the
19 department.

20 Q. As a result of what?

21 A. Of the settlement.

22 Q. Of the --

23 A. Just compensation.

24 Q. For the acquisition --

25 A. For the acquisition or any damages or to the

Giddens - Direct by Mr. McCants

1 remainder.

2 Q. Now that's what I wanted you to talk about. The
3 remainder. Can you explain that concept to
4 Judge Pope? You talked about damages to the
5 remainder.

6 A. The state law, which is -- the appraiser follows
7 to determine his valuation process, the state law
8 says that it's the value of the acquisition, less
9 benefits or damages to the remainder of the
10 property, when it is a partial acquisition of the
11 property. This property wasn't a total
12 acquisition. So the appraiser determining just
13 compensation or fair market value, has to look at
14 did the acquisition or the construction cause any
15 damages to the remainder of the property. At
16 which time just compensation would be paid,
17 valued.

18 Q. And the remainder refers to the remainder of the
19 landowners' property, not in the area of
20 acquisition, is that correct?

21 A. Correct.

22 Q. All right. And it implies, I think you said but
23 can you read the language in that first release?
24 Just, not all of it, Mr. Giddens. Just that
25 highlighted portion that the judge, I'm sure, has

Giddens - Direct by Mr. McCants

1 looked at because that was one of the bases for
2 our motion.

3 A. From any and all claims, demands, damages,
4 actions, cause of action, and suits at law or in
5 equity or whatsoever kind or nature arisen,
6 arising, or to arise from or because of any matter
7 relating to the construction of the Palmetto
8 Parkway, Bobby Jones Expressway, I-520 in Aiken
9 County, South Carolina.

10 Q. And you heard my argument on our motion for
11 directed verdict. You will agree that the
12 language in the release as to Howard Lumber and
13 the Lighting Gallery is a little bit different,
14 agree?

15 A. Yes, sir.

16 Q. But that language there, and I believe we believe
17 that the subsequent release was all-encompassing,
18 too. You interpret that to mean all claims which
19 have arisen or will arise during the construction
20 of the parkway, is that correct?

21 MR. PLAYER: Objection, Your Honor. He's either
22 calling for a legal conclusion or specialized knowledge
23 that would require him to be qualified as an expert.
24 So I don't think he can interpret what language means
25 in a legal document.

Giddens - Direct by Mr. McCants

1 MR. MCCANTS: I will rephrase, if I may.

2 THE COURT: All right.

3 BY MR. MCCANTS

4 Q. Just from your lay standpoint as one of the
5 assistant directors for right-of-way, what is
6 y'all's intent when you resolve a case?

7 A. That we would also resolve any future claims
8 against the department.

9 Q. Now these landowners were represented by an
10 attorney during this mid-2000 period, is that
11 correct?

12 A. Yes, sir.

13 Q. Who was that attorney?

14 A. Keith Badcock.

15 Q. Do you know Mr. Badcock?

16 A. Very well.

17 Q. All lawyers are good lawyers, we trust. One,
18 lawyer, Number 1 is a good lawyer, but lawyer
19 Number 10 is the best lawyer you have ever dealt
20 with. In the law of eminent domain, where would
21 you place Mr. Keith Badcock?

22 A. I'd give him a 9.95.

23 Q. All right. I thought you may say 12 or something
24 like that. He knows what he's doing, doesn't he?

25 A. Yes.

Giddens - Cross by Mr. Player

1 Q. All right. He understands the concept of
2 remainders and damages and things like that,
3 doesn't he?

4 A. Yes.

5 Q. And you continue to work with Mr. Badcock today?

6 A. Yes. We have active cases today.

7 Q. All right. He zealously represents people,
8 doesn't he?

9 A. Yes.

10 MR. MCCANTS: All right. Those are all the
11 questions I have. Thank you, Mr. Giddens. Mr. Player
12 may have some questions for you.

13 THE COURT: Cross.

14 CROSS EXAMINATION

15 BY MR. PLAYER

16 Q. Afternoon, Mr. Giddens. You talked about this
17 remainder issue with the property. You said
18 appraisers are supposed to determine in terms of
19 the value paid for what's condemned, correct?

20 A. And any damages or benefits to the remainder.

21 Q. Right. And you said but --

22 A. I'm sorry.

23 Q. It's okay. How would they know what damage could
24 possibly occur to the remainder of the land?
25 Construction hadn't even begun.

Giddens - Cross by Mr. Player

1 A. That is an appraiser opinion based on the highest
2 and best use test from the acquisition.

3 Q. Right. So his analysis is taking 25 acres from
4 the 65, is going to diminish the value of the
5 remaining 45, correct?

6 A. Yes. That was the appraiser's analysis.

7 Q. How can appraisers analyze what construction is
8 going to happen in five years and how much water
9 DOT is going to dump on the remainder in
10 five years? How can they know what they are
11 waiving if it hasn't even been drawn up in plans
12 yet?

13 A. They do get engineering studies done for hydrology
14 during the environmental process.

15 Q. Okay. Well, I can assure you that didn't happen
16 in 2005.

17 A. Well.

18 Q. Because those plans were done in 2009. So, and
19 they haven't been presented, so I'm just wondering
20 how -- well, he's gone now. But he provided no
21 testimony that he considered all of this water
22 being dumped from DOT in the future. My question
23 is, how do you waive something when there's no way
24 to know what they are waiving? All right. Your
25 lay opinion and that was kind of enough leading.

Giddens - Cross by Mr. Player

1 A. Yes.

2 Q. I can lead you though.

3 A. I know.

4 Q. Let me ask your interpretation of the release.

5 DOT goes out there, they get the release for the
6 remainder and while they are building 520 they
7 have a chemical spill that goes on my clients'
8 property from one of their trucks. That's arising
9 out of construction, right?

10 A. I mean, that would be considered a third-party
11 issue. Would that be a contractor responsibility?
12 I mean, I don't know, your question is a
13 third-party incident.

14 Q. Okay. So it's DOT.

15 A. Okay.

16 Q. DOT, for some reason, sends a truck out there with
17 chemicals to help with the construction and it
18 spills on my clients' property. Is it --

19 A. Yes, they would have to clean that up based on
20 DHEC regulations.

21 Q. Okay, but not -- if they have been released, why
22 do they have to do anything?

23 A. I don't know if that is considered the same
24 release as a property right, in my opinion.

25 Q. What do you mean?

Giddens - Cross by Mr. Player

1 A. Property right from the acquisition is what we are
2 talking about, not a chemical spill. I mean that
3 would be the same thing if a semitruck was driving
4 down the road and DOT or the landowner had any
5 responsibility into it and it spilled onto the
6 property. Somebody is going to have to clean it
7 up.

8 Q. Sure. But I want to go back to what you just said
9 about property rights as opposed to a positive,
10 affirmative act sometime in the future that causes
11 damage to the remainder.

12 A. Well, we're talking about the property right of
13 the acquisition.

14 Q. Okay. So what property rights were granted to DOT
15 through the acquisition with regards to the water
16 that they sent to the property that they don't
17 own?

18 A. The settlement of just compensation, which
19 included any damages to the remainder of the
20 property.

21 Q. Correct. So there weren't any damages then
22 because what did the damage hadn't been built. So
23 that's my question is, how do you waive that? How
24 can you waive something that doesn't exist?

25 A. I'm not sure.

Giddens - Redirect by Mr. McCants

1 MR. PLAYER: Thank you. No further questions.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. MCCANTS

5 Q. Mr. Giddens, you have heard the testimony
6 regarding the condition of the interior of the
7 property, correct?

8 A. Yes, sir.

9 Q. You have heard Mr. Saunders talk about what he
10 did.

11 A. Yes, sir.

12 Q. And certainly all argument is that there has been
13 significant water flowing through that property
14 for years. You understand that?

15 A. Correct.

16 Q. And from the standpoint of the DOT, is the DOT
17 asking for a release with regard to what the
18 landowners should know about the condition of the
19 property and the remainder? Should know about the
20 remainder of the property?

21 A. Yes.

22 Q. And any damages?

23 A. Yes.

24 Q. Either then or in the future?

25 A. Yes.

Usry - Direct by Mr. McCants

1 MR. MCCANTS: All right. That's all I've got,
2 Your Honor.

3 MR. PLAYER: I'm just glad Clarke never leads a
4 witness.

5 THE COURT: Right.

6 MR. MCCANTS: I'll get you out of here today,
7 Tucker.

8 MR. PLAYER: I appreciate it. That's why I didn't
9 object.

10 THE COURT: All right. This witness can be
11 excused. Please watch your step, sir.

12 MR. MCCANTS: All right. We're moving along, Your
13 Honor, but can I have just a break to talk to my next
14 witness? It may not be necessary in light of
15 Mr. Giddens' testimony and that may help things.

16 THE COURT: Certainly. We'll stand down for
17 ten minutes.

18 (WHEREUPON, the Court took a recess.)

19 THE COURT: Mr. McCants.

20 MR. MCCANTS: Thank you, Your Honor. I call
21 Robert Usry to the stand, please. (inaudible) that's
22 your birth certificate name?

23 THE WITNESS: That is my birth certificate.

24 MR. MCCANTS: Oh, I'm sorry.

25 CLERK: Do you solemnly swear that the testimony

Usry - Direct by Mr. McCants

1 you shall give the Court in this case shall be the
2 truth, the whole truth, and nothing but the truth, so
3 help you God?

4 THE WITNESS: I do.

5 CLERK: Please take a seat in the witness stand
6 and state your full name for the Court.

7 THE WITNESS: Bobby Mathew Usry. Mathew with one
8 t.

9 COURT REPORTER: And spell your last name, please.

10 THE WITNESS: U-S-R-Y.

11 BOBBY MATHEW USRY, being first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MCCANTS

15 Q. Mr. Usry, how are you employed?

16 A. How am I employed?

17 Q. Yes, sir.

18 A. By the South Carolina Department of
19 Transportation.

20 Q. What is your job title?

21 A. Now my job title is resident construction engineer
22 for Aiken County.

23 Q. You are basically in charge of developing
24 construction activities in Aiken County for SC
25 DOT, is that correct?

Usry - Direct by Mr. McCants

1 A. Correct. For the project administration and
2 project management of new construction projects
3 here in Aiken County.

4 Q. For example, you were responsible for overseeing
5 the bypass construction that we are familiar with
6 right now?

7 A. Yes. I may not want to admit that right now, but
8 yes.

9 Q. While you are under oath I want to ask when it is
10 going to be completed.

11 A. I will -- I plead the fifth.

12 THE COURT: We all want to know.

13 THE WITNESS: Not soon enough for me, I can
14 promise you that.

15 MR. MCCANTS: I'll be honest with you. I didn't
16 expect that would elicit that much reaction. There's
17 no newspaper folks in here either.

18 BY MR. MCCANTS

19 Q. All right. You were not responsible for
20 overseeing the construction and engineering
21 aspects of the Palmetto Parkway, is that correct?

22 A. That is correct.

23 Q. But you did become involved in the issues at some
24 point in time, is that correct?

25 A. Yes, sir. That's correct.

Usry - Direct by Mr. McCants

1 Q. You went out there and observed the project area
2 at some point in time, is that correct?

3 A. Yes, sir.

4 Q. And when was that?

5 A. I mean, it's back a while, but I would say around
6 the 2010 timeframe because the construction of
7 I-20 had completed. I was in maintenance at that
8 time, so it would have had to have been around the
9 2010 timeframe.

10 Q. All right. And that's because certain water
11 issues were being presented by people in that
12 area?

13 A. Yeah. Typically once a project is constructed
14 with DOT, at some point in time, the department
15 will accept maintenance of that construction
16 project from the contractor. And then if anything
17 comes up at that point in time, that becomes the
18 responsibility of the department. And usually
19 that falls under the maintenance group, and I was
20 in maintenance at that time.

21 Q. Okay. I should have asked you. What is your
22 educational background? How did you become an
23 engineer?

24 A. Educational background, graduated high school,
25 went to Clemson University, graduated from there

Usry - Direct by Mr. McCants

1 in 1999, passed the EIT --

2 Q. Woah, woah, slowdown.

3 A. Oh, sorry.

4 Q. What was your degree in?

5 A. Civil engineering.

6 Q. Civil engineer?

7 A. Yes, sir.

8 Q. All right. And from that point, what did you do?

9 A. From that point -- work-related?

10 Q. Let's talk about your credentials.

11 A. Okay. I passed the EIT while I was in school at
12 Clemson. And then --

13 Q. What does that mean?

14 A. The engineering training. It's the very
15 similar -- well, it's the same thing that David
16 Simono spoke about this morning. It's the
17 pretest, kind of, to your professional
18 engineering?

19 Q. The PE --

20 A. Your PE.

21 Q. -- you call it.

22 A. Yeah.

23 Q. And you're a PE?

24 A. Yes, sir.

25 Q. When did you obtain your professional engineering?

Usry - Direct by Mr. McCants

1 A. 2003.

2 Q. All right. And the reason I ask, if you're
3 generally familiar with construction techniques
4 and engineering from a civil standpoint?

5 A. Yes, sir.

6 Q. Road construction?

7 A. Yes, sir.

8 Q. Things of that nature?

9 A. Yes, sir.

10 Q. Hydrology?

11 A. Yes, sir.

12 Q. All right. So you went out there on behalf of DOT
13 to look at issues that were being presented to the
14 department as to water, is that correct?

15 A. Correct.

16 Q. All right. And did you walk the property that's
17 involved in this case?

18 A. I did walk the property.

19 Q. You remember doing that.

20 A. Yes, I do.

21 Q. And that's part of doing the job of a civil
22 engineer. You have to have boots, don't you?

23 A. Yeah. Yeah.

24 Q. You get out in the woods?

25 A. Yes, sir.

Usry - Direct by Mr. McCants

1 Q. All right. And you hunt and everything, don't
2 you?

3 A. I do not hunt.

4 Q. You have walked in the woods a lot, though.

5 A. I have walked in the woods.

6 Q. And just, you know, to give a perspective here,
7 when you walked you saw these pipes out there on
8 this property, didn't you?

9 A. I did see those pipes.

10 Q. And you walked enough down in that area to observe
11 the physical layout of the property, is that
12 correct?

13 A. Yes, sir.

14 Q. Now when you did, Mr. Usry, walk, you actually
15 walked in the area of acquisition as we call it,
16 which is the section of this property up and
17 abutting I-20, is that correct?

18 A. Abutting I-520 is where I accessed it.

19 Q. Sorry about that. That would -- yeah, and the old
20 Chadwick Development labels it I-20. We could
21 easily today bring a (inaudible) and put I-520 on
22 here, couldn't we?

23 A. I-520 kind of runs somewhat perpendicular at that
24 point.

25 Q. This has got a compass derivation here. You see

Usry - Direct by Mr. McCants

1 that, north? So really, you know, for purposes of

2 --

3 A. Correct. That's correct.

4 Q. So that, that means 520 was doing this, correct,

5 basically? How would you characterize its

6 proximity to --

7 A. Can I come down and look at it?

8 Q. Yeah. Sure.

9 A. 520, ultimately, would be --

10 Q. That's what I was trying to show.

11 A. -- this neck of the woods.

12 Q. Yeah. It's, it's going to be doing a leafing

13 type, and then it connects down here to I-20.

14 A. Correct.

15 Q. All right. And my question --

16 A. Because I-520 comes perpendicular to -- this is

17 labeled Ascauga Lake Road.

18 Q. Wait a minute. You are blocking the judge's view.

19 A. I'm sorry. I know that 520, there's a bridge

20 going over 520 on Ascuaga Lake Road so it kind of

21 comes up here, bends, and then turns into I-20.

22 Q. Very -- and she's got some aerial maps which --

23 A. Okay.

24 Q. -- have the actual roadway. Stand right there

25 just a second, though.

Usry - Direct by Mr. McCants

1 A. Stand right where?

2 Q. Right next to this podium.

3 A. Okay.

4 Q. Don't want you to block Mr. Player's view. Did
5 you -- when you went out there as you described,
6 did you walk in this area of the property?

7 A. I mean, of course, that predates 520. I can tell
8 you that I pulled off the road on 520 where the
9 outfall that enters that property, that's where I
10 parked and accessed our right-of-way and then
11 slipped in, walked through the property.

12 Q. And that would have been what area of the
13 property? Point that out at least with regards to
14 the Chadwick development.

15 A. Best of my knowledge that would have been up in
16 this area.

17 MR. PLAYER: Y'all just -- can I point something
18 out?

19 MR. MCCANTS: What's that?

20 MR. PLAYER: That's the full property. Okay, If
21 we go back --

22 MR. MCCANTS: I understand.

23 MR. PLAYER: Number 1, y'all keep pointing at
24 stuff. That's what was shaved off. So 520 would be
25 like here.

Usry - Direct by Mr. McCants

1 THE WITNESS: Okay.

2 MR. PLAYER: That's where.

3 THE WITNESS: I mean, that's what I meant by this
4 is, this is a dated map.

5 BY MR. MCCANTS

6 Q. Well, hold on just a second. Come on in. He's
7 right. I mean, this is an outdated map because
8 DOT acquired a great deal of this property.

9 A. Correct.

10 Q. But you walked down through the area of
11 acquisition, obviously, because you had to access
12 the property somehow.

13 A. Well, the area of acquisition when I walked out
14 had already been constructed with I-520 features.

15 Q. All right. Then let's put it this way, you did
16 walk on then, onto property still owned by the
17 landowners, correct?

18 A. Yes, I did.

19 Q. Because you saw the pipes?

20 A. Yes.

21 Q. Down in this area?

22 A. Correct.

23 Q. And while we are at it, I think you told me while
24 you were there you actually saw the DHEC
25 monitoring wells that were still out there --

Usry - Direct by Mr. McCants

1 A. Well, I don't know how many were out there but I
2 did see at least one.

3 Q. And you know what they look like?

4 A. Yes.

5 Q. And you saw them?

6 A. Yes.

7 Q. So you are familiar with the property?

8 A. Yes.

9 Q. What did you observe with regard to any
10 characteristics of the property? That's what I
11 want to ask you about. And talk to Judge Pope
12 because she's the factfinder here. Describe to
13 her what you saw and where.

14 A. You mean like up here?

15 Q. Well, go down here.

16 A. Okay.

17 Q. Just walk down the map, I think, is the best way
18 to do it.

19 A. Well, I mean, like I said, without this thing --
20 without 520 actually being shown it's -- obviously
21 this predates 520. I entered -- if 520 is in here
22 in this relative area, I entered the property from
23 our right-of-way here, which is the outfall that
24 has been discussed in here, which was the 54-inch
25 and the 24-inch outfall. Which is currently --

Usry - Direct by Mr. McCants

1 and there has been video shown currently where
2 large rock, riprap is placed. And I actually
3 hopped up under -- the fence was -- there was a
4 little gap between the fence and the riprap.

5 Q. All right. Pause there.

6 A. Yep.

7 Q. Is this the fence we -- that they were talking
8 about earlier?

9 A. I couldn't see clearly, but I would believe so,
10 yes.

11 Q. To the best of your knowledge.

12 A. Best of my knowledge, yes.

13 Q. Describe to Judge Pope the condition of that
14 fence. I think that that's something --

15 A. Well, it was, it was, again, there was, there was
16 riprap that was formed right there. Obviously,
17 you could tell at some point in time there was
18 remnants of a spillway. The fence was in front of
19 me, but the fence was not attached to the ground.
20 Because that's, that's where I went under.

21 Q. You crawled underneath the fence?

22 A. I went under, yes.

23 Q. Is this a typical cyclone fence?

24 A. Yes.

25 Q. A wire crisscross?

Usry - Direct by Mr. McCants

1 A. Yes.

2 Q. All right. It's important, again this is 2010-ish
3 area?

4 A. Yes.

5 Q. And based upon your research and understanding,
6 when was the ribbon-cutting for the Palmetto
7 Parkway?

8 A. The ribbon cutting, I believe, was right after
9 construction in 2009 timeframe, I think.

10 Q. All right. And so construction between 2006-ish
11 and 2009 would have been undertaken to improve or
12 create the Palmetto Parkway. Is that fair?

13 A. Yeah. I think that's fair.

14 Q. All right. So tell me again what you observed.
15 Tell the judge what you observed.

16 A. What I observed in relation to going in under that
17 outfall, once I migrated my way down it was, I
18 mean essentially, a ravine at that point, drainage
19 ditch where water has gone for a long time,
20 obviously.

21 Q. Okay. You can't just throw that out. What do you
22 base that conclusion on, Mr. Usry? That it's a
23 ravine and it's been there a long time. What do
24 you base that conclusion on?

25 A. Well, the depth of the ravine. It didn't just

Usry - Direct by Mr. McCants

1 happen overnight.

2 Q. Use your -- put your civil engineering hat on,
3 your construction hat on. Does that happen
4 overnight?

5 A. No. No. Absolutely not.

6 Q. You have been in the woods. You have seen
7 erosion. Did it look like a recent erosion to
8 you?

9 A. Not to that extent, no.

10 Q. Well, describe the ravine. A ravine --

11 A. Well, it was well over my head. It was I would --
12 I don't want to say a measurment because I can't
13 honestly say.

14 Q. How tall are you?

15 A. I'm six foot.

16 Q. You're six foot. Could you reach the top of the
17 ravine if you raised your hand?

18 A. In the very first part, no. Now as you, as you
19 went down this channel, it kind of, it tapers off,
20 then it becomes kind of more broader. And
21 water -- you can tell water -- water is defined
22 right here at the end of our right-of-way and at
23 the beginning of this property. And then it's
24 channelized, and then it kind of spreads out and
25 --

Usry - Direct by Mr. McCants

1 Q. A delta type thing?

2 A. Yeah. And then it, I mean, there's a point in
3 time, the best I can remember, it comes back
4 together in a kind of a defined little channel
5 which is much smaller than the one I'm referring
6 to up in this area.

7 Q. All right. An obvious question may be, you know,
8 in 2023 you don't have any photographs of this
9 available to you, do you?

10 A. I do not.

11 Q. All right. Because you really didn't think it was
12 going to go this far, did you?

13 A. I was -- no. I mean, I was just going to look at
14 the property based on several complaints that we
15 had received from, mainly, folks on Ascauga Lake
16 Road.

17 Q. Down below Chadwick, correct?

18 A. Oh, yeah. This was closer to this Sobo Lake area.

19 Q. That's why you were out there because --

20 A. Absolutely.

21 Q. -- there was really nothing to deal with, with
22 regard to this issue yet, is that fair?

23 A. Yeah, that's fair. I mean, I had no idea this was
24 going to be an issue.

25 Q. Okay. All right.

Usry - Cross by Mr. Player

1 MR. MCCANTS: That's all I have, Your Honor. I'm
2 going to take this down because Mr. Player probably
3 wants to talk to you.

4 THE COURT: Cross.

5 MR. PLAYER: Yes, Your Honor.

6 CROSS EXAMINATION

7 BY MR. PLAYER

8 Q. Good afternoon, Bobby.

9 A. Good afternoon.

10 Q. We've done this before, right?

11 A. Yes, sir.

12 Q. Can you show me where Ascauga Lake Road is on the
13 map?

14 A. I usually give it a fork and come back. That
15 should be Sudlow, so this would be Ascuaga.

16 Q. Okay. And this is without 520. This is just exit
17 5.

18 A. That's correct.

19 Q. All right. So where is 520 at this point?

20 MR. MCCANTS: Guys, I think the judge may --

21 MR. PLAYER: Oh, yes. I'm sorry.

22 THE WITNESS: All right. I pointed out
23 originally, this should be Sudlow Lake Road.

24 THE COURT: Correct.

25 THE WITNESS: Right here. The fork of Sudlow and

Usry - Cross by Mr. Player

1 Ascauga are right here. So this map is actually from
2 1964. Obviously well before 520. Do you need to see
3 this as well, Mr. Player?

4 MR. PLAYER: No.

5 THE WITNESS: I -- 520 should be kind of in --
6 coming up through here in this fashion.

7 MR. PLAYER: Okay.

8 THE WITNESS: Where Mathis Lake should be
9 (inaudible).

10 BY MR. PLAYER

11 Q. Okay. And you did not walk this property prior to
12 the four years of construction by DOT between 2006
13 and 2009, correct? You didn't know what it was
14 like --

15 A. No, sir. No, sir.

16 Q. If you could, hold that back up.

17 A. Sure.

18 Q. Show the judge -- let's talk about the meeting at
19 Hanson's house.

20 A. Okay.

21 Q. Tell the judge what (inaudible).

22 A. That meeting, and I do not recall the specific
23 date we had that. That was a meeting that was, I
24 guess, coordinated efforts through local
25 delegation members, local legislators and some

Usry - Cross by Mr. Player

1 other parties within DOT, along with property
2 owners, that best I can remember that fronted
3 along Ascauga Lake Road and right at the corner
4 where Ascauga Lake Road and Sudlow Lake Road meet.
5 So you had SC DOT officials, you had local
6 legislative delegation members and property
7 owners, homeowners, and I was there as well.

8 Q. And if we go off the record for a second, just
9 want to put something out there. We discussed
10 this before we put him up there. I do not think
11 your father was at this meeting but he was at a
12 subsequent one. But I don't think that's -- I'm
13 not bringing it up. I just wanted to make sure --

14 A. Yeah.

15 THE COURT: Well, let me put it on the record
16 (inaudible). Tell me.

17 (inaudible cross talk).

18 THE WITNESS: Honestly, I do not --

19 MR. PLAYER: All he did was show up to represent
20 his concern. That is all he did.

21 THE COURT: There was no discussion about --

22 MR. PLAYER: No, no, no. I doubt he has any idea.

23 THE WITNESS: And I do not think he was at the
24 meeting I was at to begin with.

25 MR. PLAYER: I don't think he was at the initial

Usry - Cross by Mr. Player

1 meeting in 2000.

2 THE WITNESS: I think it was Shane Massey and --

3 BY MR. PLAYER

4 Q. You said Brandon Smith earlier?

5 A. Roland Smith, I'm thinking, but I --

6 Q. Okay.

7 A. -- I wouldn't swear to it.

8 Q. Okay. All right. Show the judge on the map --
9 actually (inaudible).

10 MR. MCCANTS: I was going to have Mr. Auld show.

11 MR. PLAYER: I was going to show where the 520
12 outfall is, and then where Hanson Burke and --

13 THE WITNESS: I can, I can point to it.

14 MR. PLAYER: Well, I just wanted it to be, you
15 know --

16 MR. MCCANTS: Well, if you can accurately. You
17 have got to remember that is --

18 THE COURT: I have got Post-its.

19 THE WITNESS: I can do Post-its.

20 MR. MCCANTS: Oh, that will work.

21 THE WITNESS: That will work.

22 MR. MCCANTS: What did you want him to mark?

23 MR. PLAYER: Where the 520 outfall is we are
24 talking about, and where Burke, Hanson and Sykes lived.
25 The ones that were making complaints about water.

Usry - Cross by Mr. Player

1 THE WITNESS: Now this is a map from 1964. So
2 these are general, best I can do, locations.

3 BY MR. PLAYER

4 Q. Never mind. I think it's too narrow of an area
5 for those things to even point.

6 A. Yeah, do the arrows. That works. Let's move this
7 one a little bit. Again, these are general,
8 general locations.

9 Q. Mm-hmm.

10 A. I think this was Mr. Hanson on this side. Isn't
11 that what you said?

12 Q. Mm-hmm.

13 A. You said Mr. Burke, all right.

14 Q. And then Mr. Sykes would be right at the v.

15 A. Yeah.

16 Q. Okay.

17 A. Best I can remember this is how it was laid out.
18 Want the judge to see it?

19 Q. Sure. So the other folks other than Mr. Fischer,
20 they were from a long ways away from the outfall
21 weren't they?

22 A. I don't know the exact distance, but they were --
23 their properties are fronting Ascauga Lake Road.

24 Q. Okay.

25 A. Not along the interstate.

Usry - Cross by Mr. Player

1 Q. Correct.

2 A. I mean, I don't, I don't know the exact distance.

3 Q. Sure. I'm just saying is it, you know, is it fair
4 to say they were about -- I mean, Jim Nance said
5 2,500 about 17 times, 2,500 feet from the outfall.
6 Would you agree to that?

7 MR. MCCANTS: Well, Your Honor, I have got to
8 enter and propose an objection to relevance. He's,
9 he's trying to make a reference to other claims and
10 other cases and whatnot. And this case is very
11 confined to the pleadings and the evidence in this
12 courtroom. Which is the, I mean, if it goes to
13 watching the same videos we showed in that file, that's
14 fine, but another trial another claim, this is not in
15 front of you.

16 THE COURT: Yes, sir. I don't think that the
17 trial has a particular relevance to this one. But the
18 relevance of him pointing out this outfall is, is for
19 what, Mr. Player?

20 MR. PLAYER: It's to show you that no complaints
21 were made until 2010 when they finished 520. And it
22 wasn't just my people complaining, it was people as far
23 as 2,500 feet away down Ascauga Lake Road. And they
24 were all complaining about getting too much water from
25 520.

Usry - Cross by Mr. Player

1 MR. MCCANTS: Those people need to be here to talk
2 about that.

3 THE COURT: Okay. Well, let's, let's move on from
4 this point. Let's move on from this.

5 MR. PLAYER: Okay.

6 BY MR. PLAYER

7 Q. Are you aware -- what happened as a result of that
8 meeting?

9 A. I can't say that anything definitive happened
10 because as a result of that meeting, to be honest
11 with you.

12 Q. Well, let me ask -- and you were a maintenance
13 engineer for Aiken County when that was going on,
14 correct?

15 A. That's correct.

16 Q. And do you --

17 A. Well, yes, at that time I was, yes.

18 Q. -- do you recall sending emails to Columbia saying
19 these people are getting a lot of water?

20 A. I believe I coordinated with officials in
21 Columbia, yes.

22 Q. Okay. And they just told you, well, that's not
23 what the math says, right?

24 A. Not what?

25 Q. That's not what the math says.

Usry - Cross by Mr. Player

1 A. The map?

2 Q. Math.

3 A. Math. It was my understanding and, I mean, I can,
4 I can only assume, based on my education and work
5 experience and career, that there was engineering
6 design completed for the project. So I, you know,
7 I -- I didn't do it. I didn't design it. I
8 didn't see the design. I didn't review it. I
9 didn't approve it. But based on my conversations
10 with the folks that were involved with the
11 projects, that everything had checked out.

12 Q. Okay. And you have seen this before, right?

13 A. I don't know if I have or not. I don't recall.
14 May have.

15 Q. Okay.

16 A. I just don't remember it.

17 Q. Do you deny that that's at the outfall of 520?

18 A. That appears to be at the outfall of 520.

19 Q. You think that's okay?

20 A. I think you would have to let me know when that
21 was, and I would have to look at the rainfall data
22 for that. I mean, I can tell you for -- without a
23 shadow of a doubt I know of two very heavy
24 rainfall events that occurred in the 2013
25 timeframe that, I mean, good luck at stopping

Usry - Cross by Mr. Player

1 that. I don't, I don't know how you would stop
2 that type of water.

3 Q. Okay.

4 A. Well in, well in excess of a 50-year storm that
5 would have occurred.

6 Q. Okay.

7 A. So, I mean, to answer your question, is that a lot
8 of water? I mean it's pretty visible that there's
9 a good bit of water there, but I don't know what
10 that's in relation to. I don't know what kind of
11 storm event that is. So I don't have an opinion
12 of it, to be honest with you.

13 Q. Well, it was established and conceded to that this
14 is May 15, 2014, and we had less than three inches
15 of rainfall.

16 MR. MCCANTS: I don't know if that's been
17 stipulated to, Your Honor.

18 MR. PLAYER: That was res judicata (inaudible).

19 MR. MCCANTS: Say what now?

20 MR. PLAYER: That is res judicata --

21 MR. MCCANTS: Woah, woah, no. No, sir. These are
22 different parties.

23 MR. PLAYER: Not the substance. You can't use
24 it -- this is a fact. It's not -- this has had no
25 relation to my client. This is their outfall. This is

Usry - Cross by Mr. Player

1 DOT (inaudible).

2 THE COURT: This is where we are discussing the
3 three inches directly about rainfall?

4 MR. MCCANTS: We are, I think, discussing -- he
5 said I don't know what kind of rainfall was at the time
6 that video was taken. Mr. Player's offered a date to
7 him and said we stipulated that. I don't think we have
8 stipulated that. I have stipulated to use the videos
9 that have been taken since construction of the project
10 took place. But I didn't stipulate --

11 THE COURT: All right, but is it stipulated as to
12 the date of the events?

13 MR. PLAYER: The name of the video is 5/15/14.

14 MR. MCCANTS: Well --

15 MR. PLAYER: And I can bring Jamie Burke up here
16 tomorrow.

17 MR. MCCANTS: No. I don't want to have to go
18 through all that. And I'm not going to disagree, but
19 don't ask him to quote what the rainfall data was on
20 that date.

21 MR. PLAYER: No. He just said he didn't know, and
22 I was saying that that -- if this is less than
23 three inches of rain, is that proper.

24 MR. MCCANTS: I guess that's the problem.

25 THE WITNESS: I mean that's --

Usry - Cross by Mr. Player

1 THE COURT: No, hold on.

2 MR. MCCANTS: His statement that it was less than
3 three inches. Okay. Oh, I'm sorry. We'll slow down.

4 MR. PLAYER: Well, then I'm giving him a question
5 in a hypothetical.

6 MR. MCCANTS: Okay.

7 MR. PLAYER: If this was less than 3 inches.

8 THE COURT: All right. So we'll -- you good? All
9 right. So we will continue with your line of
10 questioning.

11 MR. PLAYER: Okay.

12 THE COURT: Mr. Player.

13 BY MR. PLAYER

14 Q. If this is a less than two-year rainfall, is that
15 okay? And I'll give you (inaudible).

16 A. That's not a, that's not a two-year rain event in
17 my opinion. I don't have data sitting in front of
18 me to tell me what that is. But I've got enough
19 experience to know that that's probably not a
20 two-year rainfall event, and to tell me there's
21 three inches of rain, that doesn't really dictate
22 what type of storm it is just to tell me that.
23 Three inches of rain in 20 minutes is a lot
24 different than three inches of rain over a 24-hour
25 period.

Usry - Cross by Mr. Player

1 THE COURT: I have a question. When you say two
2 year -- I've heard.

3 THE WITNESS: Well, his question to me was if that
4 was a two, is that okay.

5 THE COURT: Okay.

6 THE WITNESS: That was his question to me.

7 THE COURT: Right.

8 THE WITNESS: And my response was I don't have
9 rainfall data sitting in front of me to tell me exactly
10 what event that was. But I can tell you that I doubt
11 very seriously that's a two-year rainfall event.

12 THE COURT: Okay. Very good. I just wanted
13 clarification of that. I misheard something.

14 MR. PLAYER: Which wasn't an answer to my
15 question.

16 THE COURT: All right. Ask him your question.

17 THE WITNESS: Which what?

18 BY MR. PLAYER

19 Q. My question is, assume this is less than a
20 two-year rain event, is that okay?

21 A. Assume that this -- why would I assume this?

22 Q. Because that's part of my question.

23 A. I mean, I don't even know how to answer that,
24 Mr. Player.

25 Q. Well --

Usry - Cross by Mr. Player

1 A. Assume --

2 MR. PLAYER: Well, I showed this video five years
3 ago in trial --

4 MR. MCCANTS: Oh, ho. Here we go, again. Okay.

5 MR. PLAYER: This is a prior inconsistent
6 statement. If I need to go get the transcript from the
7 trial I will. We don't get to redo -- they have
8 brought no witness that they brought in that trial for
9 this trial. You know why? Because they can't testify.

10 THE COURT: So this was used in a prior trial, is
11 that what you're saying?

12 MR. PLAYER: Yes. This was an exhibit to the
13 trial in which people 2,000 feet away --

14 (inaudible crosstalk).

15 THE COURT: All right. Mr. McCants, you have an
16 objection based on what?

17 MR. MCCANTS: We are trying a civil action which
18 has a number here in this courtroom that is framed by
19 pleadings. It is completely different from that other
20 case, in my opinion. And I understand Mr. Player's
21 desire to pick up that case and place it in this
22 courtroom for you to consider all the facts and
23 evidence, but the fact of the matter is it's irrelevant
24 to his clients' causes of action in this case. Period.

25 THE COURT: And you are trying to use prior

Usry - Cross by Mr. Player

1 inconsistent statements, use under the guise of prior
2 inconsistent statements, Mr. Player?

3 MR. PLAYER: Yes, Your Honor, because this is
4 different from what I -- what happened five years ago.
5 There was no objection to the amount of rainfall.

6 MR. MCCANTS: Where's the statement, though, is my
7 point. He's testifying as to what that other statement
8 is, Judge. And we don't have those statements in front
9 of us.

10 MR. PLAYER: All right. Okay, then we're going to
11 be here tomorrow.

12 THE COURT: All right. Well, Mr. Player, why
13 don't you rephrase your question and see if we can --
14 why don't you rephrase your question for me.

15 BY MR. PLAYER

16 Q. You don't remember seeing this video five years
17 ago?

18 A. I don't recall it, specifically. I remember
19 seeing a video.

20 Q. Okay.

21 A. And I know you made reference earlier to you
22 falling in this one, and I remember a reference
23 being made to you falling in the one we saw that
24 day, so maybe this is it. I don't know.

25 Q. Okay. And do you have a single shred of evidence

Usry - Cross by Mr. Player

1 that says and indicates to you in any way that
2 this is a more than two-year rainfall event?

3 A. I do not have that evidence.

4 Q. So I'm asking you to assume it's a less than
5 two-year rain event. Is that proper flow for a
6 two-year rain event to a neighbor's property?

7 MR. MCCANTS: Your Honor, he may be struggling and
8 I'm --

9 THE WITNESS: I have a very --

10 MR. MCCANTS: -- but I'm not sure what he's
11 talking about when he talks about a two-year rain event
12 in terms of volume, in terms of how long, for example.
13 Maybe I could ask Mr. Player to define what a two-year
14 rain event is. Maybe that will help. I, I just, I'm
15 watching Mr. Usry, and he's really struggling to answer
16 this question.

17 MR. PLAYER: Your Honor, DOT has regulations,
18 okay.

19 BY MR. PLAYER

20 Q. Do you agree DOT has regulations?

21 A. Regarding?

22 Q. Rain events and what you have to control?

23 A. I agree that there are design criteria and design
24 requirements that are abided by to the best of my
25 knowledge.

Usry - Cross by Mr. Player

1 Q. What are those requirements with regards to rain
2 events? What do you have to protect up to?

3 A. I, I'm not familiar because I'm not in design.
4 I've done design before, but I do not do that --

5 Q. Okay.

6 A. -- with the department.

7 Q. So can you explain to the judge what the
8 difference between a two-year rain event, a
9 five-year rain event, and a ten-year rain event?

10 A. A two-year rain event -- the difference is, is
11 those are the frequencies and the probabilities
12 that those rainfall events may occur. That
13 doesn't mean necessarily that when you say a
14 five-year rainfall event that you're only going to
15 see that event every five years. That just means
16 there's, you know, a probability that of
17 five percent, basically, that you will see that.

18 Q. Okay, do you know what has to be controlled for in
19 a design?

20 A. Specifically for DOT?

21 Q. In terms of what type of rain events have to be --

22 A. I just said I don't know that off the top of my
23 head. I do not know that.

24 Q. -- okay.

25 A. I'm not responsible for that.

Usry - Cross by Mr. Player

1 Q. But you are a -- I mean you are trying to deny
2 that it's a two-year rain event, right?

3 A. Here's the thing --

4 MR. MCCANTS: Objection.

5 THE COURT: What's the basis of your objection?

6 MR. MCCANTS: Respectfully, he's, he's
7 mischaracterizing his testimony and is also trying to
8 mischaracterize what's going on in his head. He's
9 saying he's trying to deny something. I don't think he
10 is trying to deny anything. He's struggling with the
11 question.

12 THE COURT: All right. We'll let him answer the
13 question.

14 THE WITNESS: Here's the thing. You're trying to
15 get me to say something is what you're trying to do.
16 And I'm not going to say that because I don't feel like
17 there's enough facts in front of me. I don't have the
18 specific information to tell you, and there is no sense
19 in me sitting here going I assume that this is a
20 two-year storm. Either it is or it isn't. If it's
21 not, it's something else. And there is data. You can
22 go pull it now to be able to determine all this. I
23 don't know what it was on May 5th -- May 15, 2014.
24 No clue. I haven't looked it up.

25

Usry - Cross by Mr. Player

1 BY MR. PLAYER

2 Q. Okay.

3 A. So I'm not, I'm not going to speak on it.

4 Q. But that's what you don't understand. When I ask
5 you to assume a fact and present your opinion, or
6 your answer based on the assumption of that fact,
7 you have to answer those questions.

8 A. But you're trying to make me assume something for
9 your benefit that's --

10 THE COURT: Well, as he said he presents a
11 hypothetical. I am instructing you to answer the
12 hypothetical. And with the understanding that it is
13 hypothetical. It is not a fact.

14 THE WITNESS: Hypothetically, I'm still struggling
15 with this because I, I don't think that's a two-year
16 storm. Hypothetically, if it was a two-year storm, I
17 think that there could be measures taken to assist
18 that.

19 BY MR. PLAYER

20 Q. Okay. Well, this video is from 2014. What has
21 DOT done in the last nine years to correct this
22 problem, if it is actually a problem? And I --
23 let me, let me -- scratch that. Let's back up.
24 Why do you think it's not a two-year rain event?
25 It's too much water, right?

Usry - Cross by Mr. Player

1 A. Yeah. It looks more than a two-year rain event to
2 me.

3 Q. That should be controlled then.

4 A. But I don't have those facts.

5 Q. Okay.

6 A. Well, I think what I'm looking at here based on my
7 experience in active construction projects that
8 I'm responsible for, I think what was there -- and
9 I think there's a witness after me that will be
10 able to confirm this, but I believe that was a
11 temporary sediment basin, to the best of my
12 knowledge. Which a temporary sediment basin
13 are -- they are typically required during the
14 construction of a project. It may or may not have
15 an outfall structure. Typically they will have
16 some sort of spillway that will allow water to
17 leave.

18 But in most cases temporary sediment basins
19 are actually removed once you meet the
20 requirements of stabilization on a project. And
21 stabilization is usually, kind of, dictated by
22 DHEC with our permits on the project. Usually
23 70 percent stabilization is considered the project
24 stabilized. And that means 70 percent over the
25 entire project.

Usry - Cross by Mr. Player

1 So I think what I'm looking at here is a
2 sediment basin at one point in time. Once the
3 project was vegetated and it met the requirements
4 of the temporary sediment basin being removed, I
5 have a strong feeling they probably took that
6 riprap and just spread it out.

7 And it is not uncommon for us at most
8 discharge points to put a riprap pad. That is an
9 effort to displace the velocity before it leaves
10 the department's right-of-way.

11 Q. Does that look like it's slowing water down?

12 A. It's slowing it down versus if it wasn't there,
13 that's a fact.

14 Q. Okay. And does that look stable to you?

15 A. Does what look stable?

16 Q. That flow?

17 A. Does the flow look --

18 Q. Is that stable? I mean, what you are saying is
19 there should be less control there, right?

20 A. -- not, that's not --

21 Q. Because this is intended to be taken away.

22 A. I'm saying -- and I was not the construction
23 engineer on that particular project. Most of my
24 projects that I deal with at DOT at a discharge
25 location will have a riprap pad at the outfall at

Usry - Cross by Mr. Player

1 the discharge point. Riprap pads are designed to
2 displace velocity coming through it. I can't
3 speak on if that was a design outfall pad or not.
4 I'm not sure.

5 Q. Okay.

6 A. That's, that's common practice though.

7 Q. Does that appear safe for human traffic?

8 A. To walk through the water?

9 Q. Mm-hmm.

10 A. Well, I don't, I don't consider any discharge at
11 any pipe safe for human travel. I'm not sure why
12 you would be doing that.

13 Q. Do you think they should put up a sign warning
14 people?

15 A. I don't think they make that sign. I'm -- not
16 that I'm aware of.

17 Q. Okay. How many times has Ascauga Lake Road been
18 shut down in the last ten years for flooding?

19 A. I mean, that I can speak on, twice that I know of.
20 And I wouldn't say we shut all of it down. We --
21 there were some times -- and oh, man, I would say
22 probably 2010, 2011, 2012 timeframe there were a
23 couple of events I know we had that we created
24 some, some flooding on Ascauga Lake Road. We had
25 to either close the road for a brief period of

Usry - Cross by Mr. Player

1 time to allow everything to, to migrate out. And
2 I know when I was in maintenance that we came back
3 along Ascauga Lake Road and made some adjustments
4 and modifications to our, our roadside ditches,
5 you know, with riprap and things of the sort.

6 Q. And that was more for the folks down at the
7 intersection between Sudlow and Ascauga?

8 A. Well, I'm not going to say it was for anybody
9 specifically. I mean, yes, they were involved as,
10 as requestors for service. But I mean the
11 department never wants to put a bunch of water in
12 the middle of a road to create a safety hazard, so
13 it was an effort to, to, you know, control the
14 best we could the water that was, that was going
15 through there.

16 Q. You don't have any first-hand knowledge of the
17 conditions of this area prior to the construction
18 being complete on 520, correct?

19 A. So prior to 2009?

20 Q. Yes.

21 A. No, sir.

22 Q. Okay.

23 MR. PLAYER: No further questions, Your Honor.

24 THE COURT: Okay. Any redirect, Mr. McCants?

25 MR. MCCANTS: I think not, Your Honor. Ready to

Usry - Cross by Mr. Player

1 move on.

2 THE COURT: All right. This witness may be
3 excused. Please watch your step.

4 THE WITNESS: Yep.

5 MR. MCCANTS: All right. Now do you intend this
6 to be part of the exhibit? Or does that just
7 illustrate --

8 MR. PLAYER: Yeah, yeah, sorry.

9 (inaudible)

10 MR. MCCANTS: Woah, woah. You shouldn't trust
11 that guy.

12 THE COURT: I don't.

13 (inaudible crosstalk)

14 THE COURT: Well, thank you for defending my
15 honor, sir.

16 MR. PLAYER: I would not let him talk.

17 THE COURT: I know it. All right. Mr. McCants.

18 MR. MCCANTS: I'm going to call Mr. Auld to the
19 stand, Your Honor.

20 THE COURT: All right.

21 CLERK: Do you solemnly swear the testimony you
22 should give the Court in this case shall be the truth,
23 the whole truth, and nothing but the truth, so help you
24 God?

25 THE WITNESS: I do.

Simono - Direct by Mr. Player

1 DIRECT EXAMINATION

2 BY MR. PLAYER

3 Q. David, where are you from?

4 A. Originally born in Arkansas, grew up mostly in
5 Columbia, SC.

6 Q. And what brought you to Columbia?

7 A. My father moving for work.

8 Q. What year was that? Do you recall?

9 A. Let's see, fourth grade, so I would have been
10 about 10, about '61.

11 Q. Okay. So you have been here a while?

12 A. Yes.

13 Q. Where did you go to school?

14 A. Columbia High School for high school and Clemson
15 University for my bachelor's degree.

16 Q. And what was your major for your bachelor's at
17 Clemson?

18 A. Civil engineering.

19 Q. Okay. Any postgraduate work?

20 A. I did some preliminary work towards my master's,
21 but I didn't, didn't finish it.

22 Q. Okay. But once you got your degree from Clemson,
23 did you go out and get any type of professional
24 licenses?

25 A. Yes. I -- while I was still at Clemson I took the

Simono - Direct by Mr. Player

1 initial exam, which you have to take for the
2 engineering and training, which is the pre-license
3 for the PE, the Professional Engineering License.
4 And I passed that. And then after four years of
5 work, which is work that is creditable and the
6 NCEES board decides that, then you can take the
7 principal and practice exam. Which I took while I
8 was in Louisiana and passed that and have been a
9 registered professional engineer since then.

10 Q. Okay. Any other licenses or specializations that
11 you have obtained officially over the years?

12 A. There is a requirement in Georgia to have an
13 erosion control certification, and I obtained that
14 and keep that current.

15 Q. Okay. And erosion control, is it, is there --
16 kind of describe that, a little bit of the
17 language. What is that specialization or what is
18 that?

19 A. It's for the design of structures and/or practices
20 that will protect the downstream property owners
21 from erosion caused either during construction or
22 during some other activity that would disturb the
23 earth above it, including things like silt fence,
24 ditches, riprap, check dams, and sediment basins.

25 Q. Okay. Once you got licensed what was your --

Simono - Direct by Mr. Player

1 where was your first job as an engineer?

2 A. I was still working for Exxon Corporation in
3 Louisiana when I first got licensed. I did some
4 small jobs there that were truly
5 engineering-related jobs, but -- to my career
6 field. Then when I left there, I came to Aiken
7 County as the Aiken County engineer and worked
8 here for several years. Then became a, became the
9 county engineer for Richmond County, Georgia.
10 Worked there for about five years. Then I went
11 into private practice.

12 And in my private practice I worked for
13 Southern Partners for 14 years. And then after I
14 left them, I went to work for Cranston Engineering
15 Group for 10 years. And retired from there about
16 seven years ago.

17 Q. Okay. And what did you do primarily for Southern
18 Partners?

19 A. I designed subdivisions, some roadways, we didn't
20 do a lot of roads, stormwater piping, sanitary
21 sewer, water, potable water for drinking water,
22 and site plans for shopping centers, service
23 stations, small commercial sites.

24 Q. Did you do any hydraulic analysis for when you
25 were with Southern Partners?

Simono - Direct by Mr. Player

1 A. Yes. On every project you have to do some level
2 depending on, usually depending on the government.
3 You have to do enough to be able to determine how
4 your project will work. And then beyond that
5 for -- to meet government requirements. The
6 government may require that you do something that
7 would be more than what, what you might consider
8 necessary. But you do, you do the additional work
9 to make sure that you meet the qualifications of
10 what they request of you.

11 Q. Okay. And was it more of the same when you went
12 to Cranston?

13 A. Yes.

14 Q. And during your time at Cranston, you actually did
15 work that was related to the 520 project.

16 A. Indirectly, yes.

17 Q. Okay. And we'll come back to that. What have you
18 been doing since you retired seven years ago?

19 A. I have done a few small jobs for people to help
20 out. I actually went and helped out at the
21 company. And then this court case is the only
22 other thing that I've pursued.

23 Q. Okay.

24 MR. PLAYER: At this time, Your Honor, I would
25 offer Mr. Simono as an expert in civil engineering,

Simono - Direct by Mr. Player

1 hydraulic studies, and stormwater design plans.

2 THE COURT: All right. Mr. McCants, do you have
3 any questions that you wish to ask?

4 MR. MCCANTS: No, ma'am. No objection.

5 THE COURT: All right. Very good. So we will
6 qualify him as an expert.

7 MR. PLAYER: Thank you, Your Honor.

8 BY MR. PLAYER

9 Q. My favorite question, why are you here?

10 A. I was hired to determine the stormwater runoff
11 situation that existed at the property of the
12 plaintiffs to see if I -- if and what I saw and
13 how it should, how it could have been done. How
14 it did happen.

15 Q. Okay. So what was the first thing you did with
16 regards to developing your analysis on the
17 property?

18 A. I went out on the site with you and Billy Franke
19 and looked at the property, walking up from the
20 bottom side, up through the drainage pattern that
21 the water basically follows that comes from
22 Georgia DOT. And then got up to the site where it
23 spills onto the property. And then walked up
24 inside the sediment basin to where the pipes come
25 in, observing that the items there including the

Simono - Direct by Mr. Player

1 riprap that was at the outfall of their pipes and
2 the way the basin was configured.

3 Q. Okay. Would you -- anything significant about
4 your observations on that first field trip?

5 A. The, the first thing was, was the vegetation
6 adjacent to the, what has become a very deep ditch
7 at least up near its initial point where it comes
8 on to the property. And the soil had washed out
9 of the root significantly, and it appears to have
10 happened in a rather short period of time. And
11 then I noticed that the water coming -- where the
12 water came. I was not there while it was flowing
13 but where the water came it didn't seem to be any
14 protection downstream of that breach through the
15 sediment basin wall.

16 Q. Okay.

17 MR. MCCANTS: This is (inaudible)?

18 MR. PLAYER: Yes. It's 1964.

19 MR. MCCANTS: Gotcha.

20 BY MR. PLAYER

21 Q. Where did we start that walk? Do you recall?

22 A. We started on Ascauga Lake Road. At the edge of
23 their property there's a, there was a nice little
24 place -- I shouldn't say nice. It was a little
25 difficult to pull off. But you pulled off to the

Simono - Direct by Mr. Player

1 side and we parked our vehicles and walked up from
2 the very bottom.

3 Q. So we walked the line of the 520 property, not any
4 of the adjacent ones, correct?

5 A. That's correct.

6 Q. Okay. How -- and you say we walked it. How did
7 you know where to walk?

8 A. Well, you could follow, the drainage pattern is
9 very obvious from both sediment deposits and
10 eroded areas. So as you, as you walk up you can
11 see where that is. And we just stayed in that
12 route. And of course, I was in your company and
13 Billy Franke's, so both of you are very familiar
14 with the property, knew where we were headed. And
15 so it was easy to get there by following that.

16 Q. Okay. So the site visit, what documents did you
17 review in forming your analysis about the
18 property?

19 A. I reviewed the -- what information was provided to
20 me on the site, the sediment basin plan. There
21 were sub-hydraulic, hydrologic, hydraulic studies,
22 and I reviewed those. And I looked at the basin
23 as I delineated it because what I was provided
24 didn't have an exact delineation.

25 The numbers, however, were very similar, the

Simono - Direct by Mr. Player

1 numbers that I got and the numbers that they had
2 used for the total drainage basin was over
3 200 acres. And it's very similar between their
4 number and my number. I didn't see a great
5 disparity there.

6 Q. And just to make sure that I understand, not the
7 drainage basin, the drainage field, right? Or is
8 that, is that the same term?

9 A. This is the drainage basin. The drainage basin is
10 the entire area that drains to the point that
11 we're talking about.

12 Q. So not just that little outlet between where it
13 falls on my client's property and the 520 outfall,
14 that's not -- what -- is that a basin?

15 A. That's a sediment basin.

16 Q. Sediment, okay. I'm sorry.

17 A. And the basin, the drainage basin is the entire
18 area where the water drains and this drainage
19 basin comes from, as was pointed out in some
20 testimony last, or yesterday, it comes from
21 Walmart all the way down through there. It comes
22 down from the terminal. It comes partway up into
23 the interchange and back. And then there is a
24 breakpoint, probably close to the edge of their
25 property that goes both ways. Part of it comes

Simono - Direct by Mr. Player

1 toward them and part of it goes on down I-20.

2 Q. Okay. I'm trying to get that picture out. Here
3 we are. Exhibit 2, Plaintiff's Exhibit 2. This
4 was introduced yesterday when Mr. Franke
5 previously testified that's what he found when he
6 walked the pipes. Does that comport with what you
7 saw and what you got from --

8 A. Yes --

9 Q. -- your analysis.

10 A. This would be, this would be a representation of
11 the drainage path which would include ditches and
12 pipes. It doesn't include everything as far as
13 the area, but it does include the primary flow
14 pattern that you would, that the water would have
15 followed.

16 Q. Okay. And I'm trying to get it pulled up so I can
17 point some stuff out. It's not going to work.

18 THE COURT: Is it an exhibit that I have?

19 MR. PLAYER: Yes. Yes, Your Honor.

20 THE COURT: All right. What number?

21 MR. PLAYER: Number 2. Plaintiff's Number 2.

22 It's got yellow arrows on it.

23 BY MR. PLAYER

24 Q. I don't think Clarke's going to need to watch it.

25 I think we know this area well enough. The

Simono - Direct by Mr. Player

1 building with what appears to be the cylindric
2 silos on the property, do you know what that is?

3 A. Yes, the terminal. The Charter Terminal.

4 Q. The oil folks?

5 A. Yeah. Oil and gas from the, from the pipeline
6 goes there and then is distributed out from there.

7 Q. And then next to it is -- do you know what that
8 is?

9 A. I believe that's a trucking company.

10 Q. Okay. And then we get to where the arrows form
11 kind of a 90-degrees angle around a building. Do
12 you know what that is?

13 A. Yes. I designed the site for that. That was
14 Kauffman Tire at the time. I think they have
15 since changed names.

16 Q. Okay. But the flow of stormwater from across
17 I-20, do you agree with this pipe structure to
18 where all of these pipes eventually lead to the
19 520 outfall?

20 A. Yes.

21 Q. Okay. And the question that I tried to do
22 yesterday without an expert is, if there's an oil
23 spill here, where is it going?

24 A. It's going to go down along the ditch to the pipes
25 and through the pipes over to the plaintiff's

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1 property.

2 Q. Now that wasn't changed from the natural flow of
3 water -- now, wait a minute. Because when they
4 had the spill in the '80s or the '90s, the water
5 went there -- went to my client's property then,
6 correct?

7 A. That's correct.

8 Q. I want to kind of discuss what you do and what
9 your responsibility is when you design a roadway,
10 and when you design and implement stormwater
11 control. What, what is post-development flow and
12 pre-development flow and why do we care?

13 A. Well, there are several, several things involved
14 in that. First of all pre-development flow is a
15 calculation of the stormwater runoff amount,
16 volume, capacity, and rate of flow. So there are
17 several things you have to calculate. All those
18 interplay with one another. That is in place when
19 you don't -- haven't touched the property yet, so
20 it's before development. That's the term
21 pre-development. Before you develop the road,
22 before you develop the project.

23 Q. Raw land, trees, wilderness, correct?

24 A. Yes. And you determine the flow and it is based
25 on land use. There are some very precise things

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1 when you are using much smaller properties. You
2 use broader things when you use properties as
3 large as this. And the Corps of Engineers has
4 some specific things that are there.

5 There's models called the TR-20 and TR-55.
6 The HEC-1, HEC-2, you know. Since those days
7 HEC-HMS, HEC-RAS. Those are all computer programs
8 that tell you what the -- how to put these numbers
9 together.

10 And then you -- so you calculate those flows
11 and that's the pre-developed. The pre-developed
12 matters because in all jurisdictions now, it has
13 been for quite a while, there are requirements
14 that you control your stormwater flow so that the
15 flow you release after you are through with your
16 project is no greater than the flow rate that you
17 had when your -- before your project was built.

18 So the pre-developed flow governs how much
19 you can let go at a time in the post. It is not
20 purely a quantity because you -- in order to hold
21 the quantity you would have to make it evaporate,
22 pump it into holes in the ground, something else.
23 So it's not evaporation. It's a rate of flow.
24 It's the Q that you see in calculations a lot of
25 times. Capital Q , and that is the flow in cubic

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1 feet per second.

2 Q. Right. So you can still send the same amount of
3 water, but if you send it faster you're still
4 violating one of your duties, correct?

5 A. That's correct. The post-development is
6 determined by what happens once you put down your
7 pavement, once you have put down your building or
8 your roadway or whatever you are building, once
9 those things are established, then that plan that
10 you have created for that is the basis for
11 calculating your post-developed flow.

12 Q. Okay. Now you said that the drainage basin is
13 200, I think the number is 220, 220 acres go to
14 this single outflow of two pipes, the 54 and the
15 28 that is at the bottom here on Plaintiff's
16 Exhibit 1, correct?

17 A. Yes. That's right at the edge of the roadway.

18 Q. Okay. Before there was any development on the
19 site --

20 THE COURT: Mr. Player.

21 MR. MCCANTS: (inaudible).

22 MR. PLAYER: Oh, okay.

23 THE COURT: Hold on, Mr. Player.

24 MR. MCCANTS: Rats.

25 THE COURT: I don't want to mess up the courtroom

Simono - Direct by Mr. Player

1 (inaudible).

2 MR. PLAYER: Rodney has me in the basement as
3 usual.

4 THE COURT: Can you hear now? All right. We'll
5 proceed.

6 THE WITNESS: Your Honor, that was an interesting
7 face.

8 MR. PLAYER: We're just talking about
9 Judge People's order.

10 THE COURT: We still have some other guidance on
11 that.

12 MR. PLAYER: That's the look he would give you
13 just before he ripped you up. Like you (inaudible)
14 little boy?

15 THE COURT: I think I will practice that one.

16 MR. PLAYER: It was very effective. My favorite
17 part is when he said, Madam Court Reporter, you don't
18 have to type this. I want to talk to the jury.

19 THE COURT: No. I'm not going to do that. All
20 right. Proceed with your question, Mr. Player.

21 MR. PLAYER: Yes, ma'am.

22 BY MR. PLAYER

23 Q. All right. Before development, before any of 520
24 came out there, that 220 acres was draining to
25 that spot.

Simono - Direct by Mr. Player

1 A. Yes.

2 Q. That's the low point, right?

3 A. Yes.

4 Q. And physics says it's going to -- gravity is going
5 to move it to the lowest point.

6 A. Yes.

7 Q. How did it flow to that point before development?

8 A. The flow -- well, all of the developments have
9 impacted it.

10 Q. Sure.

11 A. The flow upstream where Walmart is today and their
12 detention behind them, there's property adjacent
13 to that. It's what's known as a Carolina Bay.
14 It's an area that holds water all the time. When
15 I was the county engineer we specifically
16 prohibited them from doing anything to it, but
17 immediately adjacent to where they did Walmart
18 they raised, so they added water to come that way.
19 So before some of the water was just flowing over
20 land instead of flowing through pipes or ditches.
21 So it would have been flowing at a slower rate.

22 Q. But, I guess, back when it was natural in the
23 pre-development, did it spread out or was it in a
24 channel?

25 A. What generally happens in the flow of water is it

Simono - Direct by Mr. Player

1 flows in a broad sense. And when I say that I
2 mean truly broad. It flows out in a low pattern
3 across grass, whatever it's flowing on. It will,
4 given enough velocity or enough time or enough
5 slope, it will begin to channelize. Which is why
6 if you look at any maps, including the one that he
7 had for any geologic maps, they do show areas
8 where the water has created a channel. And that
9 channel is where the water is going to end up
10 with. So it will eventually flow in channels.

11 However, when you pipe it you speed the water
12 up because the pipe has a much lower resistance to
13 the friction. Grass can have a Manning's of .25,
14 .5, and a pipe will have .015.

15 Q. And you said Manning's. We were at lunch talking
16 about Manning's coefficients. I'm not sure the
17 judge understands. What is the Manning's
18 coefficient and how does it play into your
19 analysis?

20 A. A Manning's coefficient is a friction number that
21 let's you determine -- so if you were rubbing
22 across the top of this with your hand, it's very
23 smooth so it will rub easily. If you put a piece
24 of sandpaper over here it would have more
25 resistance. That's the difference in Manning's

Simono - Direct by Mr. Player

1 number. The Manning's coefficient is used to
2 determine how easily water will flow through it.

3 In almost all calculations, in all pipe
4 calculations use, predominantly, use Manning's.
5 It's one of the big coefficients that are used for
6 the pipe calculations. So when you're designing a
7 pipe system, you design it to determine that.

8 One of the big sale's pitch by a lot of the
9 pipe companies is we can offer you a smoother
10 pipe. We can get your water there faster. Thus
11 the smooth-lined plastic pipes have come out and
12 they do indeed offer that extra velocity. So if
13 you're trying to clear out water quicker, they
14 have a lower Manning's even than concrete.

15 Q. Okay. And just to make that connection, the lower
16 the Manning coefficient the faster the water
17 moves?

18 A. Yes.

19 Q. Okay. Another thing about pre-development flows
20 going over a pervious surface as opposed to the
21 impervious surface of a pipe. How does that
22 affect the flow of water?

23 A. Water that's, water that's going on impervious
24 areas, and it depends on the impervious area, if
25 it's well-developed grass, it's much slower. If

Simono - Direct by Mr. Player

1 it's just dirt, it's a little bit slower. If it's
2 packed dirt, it's not too much slower. But the
3 paved surfaces, asphalt, concrete pipes all allow
4 the water to travel at a much faster rate. And it
5 will more quickly channelize because it will, it
6 will get to the other point quicker.

7 Q. If it's put in a pipe, isn't that channelizing the
8 water itself?

9 A. Yes. Once it's in the pipe there's no more
10 channelizing that needs to be done.

11 Q. Okay. And my question is more towards absorption.
12 When that water, for the last however many years
13 Clarke wants to go back, when it was flowing over
14 the natural surface it didn't all stay there,
15 right? Some of it was absorbed into the ground.

16 A. That's correct.

17 Q. And when you put it in an impervious surface like
18 a concrete pipe there's no absorption, correct?

19 A. There's almost, no.

20 Q. Okay.

21 A. The pipe is, the pipe itself would soak a little
22 bit up. You can wet concrete and see that happen.
23 But after a very short term, like it would seem to
24 be almost instantly, it will then not carry any
25 more and it will flow and go right across it.

Simono - Direct by Mr. Player

1 Q. So by putting it in the pipes you're raising the
2 rate that's its -- that it reaches the terminal
3 point, and you're also adding to it because it
4 can't absorb as you go to the pipe?

5 A. Yes. You allow more water to get there quicker,
6 and so the velocity goes up and the amount of
7 water would increase because you don't have any of
8 that infiltration or evaporation available.

9 Q. Okay. And when you were doing your background
10 research of the documents, did you ever notice any
11 plans from DOT that put anything other than riprap
12 on 520 to slow down the water?

13 A. There was, there was a sediment basin at the
14 outlet fall, which included riprap as would be in
15 most projects when you have an outfall for a
16 roadway project or an outfall for your project.
17 If you are designing an individual site, you put
18 in something to control sediment during
19 construction. And generally speaking those are by
20 their nature designed to be taken out after the
21 project is constructed and stabilized.

22 Q. Okay. And when you went out there and when you go
23 to the outfall, I think, and just -- did it appear
24 that something had been done to try and stop or
25 limit, reduce the flow of water?

Simono - Direct by Mr. Player

1 A. There, there was a -- the sediment basin remnants
2 were still there. There was a wall partially
3 around. There was riprap from the outlet pipes
4 down to the outfall onto their property. But
5 there was a, a breach or a specific design to
6 allow water to go through at that point. And so
7 what would happen as a result is the water would
8 collect in that sediment basin and be directed to
9 that single point which would accelerate the
10 release at that point.

11 Q. All right. So what was your ultimate opinion with
12 regards to the impact of 520 and whether or not
13 DOT has put in sufficient measures to stop the
14 damage caused by the water -- the 220 acres that
15 were directed there to the pipes?

16 A. When I finished looking at the numbers and then
17 observing what was out there, it appeared that
18 there was something missing to slow down the water
19 at the actual outlet. There was a, there was
20 sufficient erosion control with the riprap from
21 the pipe outlet to the property line. But from
22 the property line on it appeared that whatever was
23 there, if it had been built, it fell down. If it
24 was never built and it was intended to be that
25 way, then it was designed to have an opening that

Simono - Direct by Mr. Player

1 would allow water through, and that water would
2 then go directly down onto the plaintiff's
3 property and allow it to erode.

4 Q. And I think the regs talk about any drainage
5 outfall should be a free flow. What does that
6 mean?

7 A. The idea behind free flow is to do exactly what
8 they did when they came out of their pipe, to be
9 able to flow freely across the land without
10 disturbing it. And I did calculations to
11 determine, you know, what the flows would be
12 coming out of those pipes, and those calculations
13 are actually used to size the riprap. And based
14 on what I could see, the riprap that was inside
15 the sediment basin from their pipe to the edge of
16 the property was properly designed and was
17 functioning as it should.

18 Q. But the water was going too fast (inaudible). Is
19 that accurate?

20 A. Yeah. What happened at the edge of the property
21 was the water then accumulates back and was forced
22 through a single location and caused the erosion.

23 Q. Okay. Let's -- I know you have seen these videos.
24 This is the outfall. And to me, this might not be
25 the best picture. When, when this water flows

Simono - Direct by Mr. Player

1 from the outfall of 520, is it -- would you
2 consider this to be channeled or brief free flow
3 that allows this to spread out?

4 A. It is channelized to a certain extent because it
5 does have riprap immediately adjacent to it that
6 is keeping it, keeping it in. The, the problem
7 with it is, it's all going to a single point at
8 the discharge and so it's -- at that point it's
9 not controlled.

10 Q. Okay. And that's kind of my question. Is, you
11 see and we'll play it again, what I'm looking at,
12 and so Clarke can see, you have this, this channel
13 coming down the center and then you have what
14 appears to be kind of calm water sitting over to
15 the side. Is that what typically happens when you
16 allow the water to spread out from a discharge?

17 A. Generally you would like it to spread out more
18 than that, but in their case they did have to send
19 it to a single point. So they had to find some
20 way to control it at a single point downstream of
21 that.

22 Q. Okay. And if this water was allowed to continue
23 to spread out and then have a sheet-fall over the
24 Franke property -- I know there are more owners,
25 but that's what I call it. Would you have the

Simono - Direct by Mr. Player

1 problem -- well, let me ask you this. Is that
2 ever supposed to happen when -- we'll come back to
3 it. This is at the outfall. You see how the
4 water is calm here and then turns into a rapid.

5 A. Well, what you're getting is, as they're showing
6 right there, that's the edges of what would be the
7 sediment basin. And then in the middle there is a
8 gap that is narrow, and that's why the water
9 accelerates and it's going downhill as well. So
10 it has -- doesn't have anything stopping it from
11 increasing velocity.

12 Q. Should there ever be that type of flow from one
13 property to another if it was designed properly?

14 A. It should not be that kind of flow without
15 control.

16 Q. Okay. And there's no control there now.

17 A. No.

18 Q. Okay. Have you ever seen, other than the riprap
19 and the sediment basin, have you ever seen any
20 plans from DOT that put any controls for that type
21 of speed from water?

22 A. No.

23 Q. Did you do any calculations with regards to the
24 speed of the water coming out of the pipes?

25 A. Yes.

Simono - Direct by Mr. Player

1 Q. I'm going to ask you to identify those.

2 A. Yes, that's what these, these calculations show.

3 Q. And when you did those calculations you came up
4 with a cubic feet per second number, correct?

5 A. When I, when I came up with these what I was
6 gaining was the velocity of the water coming out,
7 and the flow capability of the pipes. So those,
8 both numbers are important.

9 Q. Okay. But you do have a CFS number.

10 A. Yes.

11 Q. What is the significance of that CFS number with
12 regards to when science says erosion begins?

13 A. Well, usually the number is actually on the
14 velocity, not on the CFS.

15 Q. Okay.

16 A. Erosion, in South Carolina, generally speaking, it
17 doesn't take but four or five feet per second to
18 cause erosion because we have a lot of sandy soil
19 over here. Sandy soil is more easily eroded. And
20 this shows that we had -- this particular
21 calculation was one for the 52-inch or 54-inch
22 pipe flowing at 52, which is the optimum flow for
23 that, and it's flowing at 13 feet per second.

24 Q. So that was definitely washing away land.

25 A. Yes. And that's why they have riprap downstream

Simono - Direct by Mr. Player

1 from their pipe.

2 Q. And that's not even the biggest number that you
3 came up with. Isn't there one that's 18 feet per
4 second, 18 cubic feet per second? I think that's
5 the 54 at max. Sorry.

6 A. That's okay. No, it's on the 24-inch pipe that we
7 got an 18 feet per second velocity. And the
8 reason for that is when you put a lot of water
9 through a smaller diameter pipe, you usually get a
10 higher velocity.

11 Q. Okay. I want to talk about -- we just talked
12 about you never saw any design with any controls.
13 I want you to explain to the Court what happened
14 to Kauffman. Kauffman was expanding their
15 building? What caused you to do the work for
16 Kauffman?

17 A. Kauffman built a tire warehouse and as part of
18 their process to build the warehouse we had to
19 design the site. The site included the stormwater
20 runoff, the piping system, how they were going to
21 park their trucks, the drainage for their truck
22 areas, et cetera. And we, so we designed that, I
23 designed that as the engineer, and finished my
24 design. I had sufficient space and capacity to
25 take care of the soil erosion requirements, the

Simono - Direct by Mr. Player

1 sediment control required by DHEC, but I didn't
2 have enough room to easily do control for the
3 stormwater volume required by the city and the
4 county. And so --

5 Q. Was there an existing detention measure on the
6 property before Kauffman built the warehouse?

7 A. There was a, was a sediment basin or detention
8 pond behind Kauffman Tire, behind where the
9 property is and where they developed. And we
10 would be basically cutting that off and sending
11 all their water to our little sediment basin.

12 Q. Okay. So you just had a sediment basin but there
13 was an area at the front of the property to
14 collect water, correct?

15 A. Yes.

16 Q. And since Kauffman was disturbing the land and
17 adding more impervious surfaces you were going to
18 increase your water footprint, correct?

19 A. That's correct.

20 Q. What did DOT say? Did they say you had to expand
21 your detention pond?

22 A. We went to DOT to ask for them to incorporate our
23 water into their plan, and they said that was fine
24 with them. And so we didn't proceed with any
25 further design for that.

Simono - Direct by Mr. Player

1 Q. So even when you were increasing the water from
2 your property, DOT said just send it to us, you
3 don't need a detention pond?

4 A. That's correct.

5 Q. Are you aware in your review of the plans whether
6 they replaced that detention pond or not?

7 A. No.

8 Q. I want to show you a video that I've shown you
9 before, and I want you to explain what you see to
10 the judge. The water flowing into what looks like
11 a hole and not coming out, where does it appear
12 that water is going?

13 A. It goes into the ground and it will surface later
14 on I am sure. It is one of the reasons that some
15 of the laws have been written so that stormwater
16 flow has to be -- has to include underground flow
17 because you have issues like this where it has
18 eroded enough to create an underground area for it
19 to flow into.

20 Q. And what is that called when water flows
21 underground unseen on the surface?

22 A. I don't know that I've ever given it a name. I'm
23 sure it has one.

24 Q. What's happening to the dirt underground when the
25 water is flowing through it?

Simono - Direct by Mr. Player

1 A. It gets softer and more susceptible to collapse.

2 Q. Collapse. And what is that called? We're talking
3 ordinary -- when the soil is eroded underneath the
4 surface and collapses, what is that called? A
5 sinkhole?

6 A. Well, it's like a sinkhole. Sinkholes have a lot
7 of different causes.

8 Q. Okay.

9 A. Sometimes sinkholes are actually caused by natural
10 geologic features that at some point, as you know,
11 South Carolina does have some geologic instability
12 and sometimes that is what causes sinkholes. Ones
13 could appear suddenly out of nowhere. But, yes it
14 would, it would also cause that.

15 Q. In your engineering expertise is it advisable to
16 build any type of structure for human habitation
17 where there is possible channeling underground
18 water where it's eroding the soil?

19 A. If you can identify it, it would not be advisable.

20 Q. Okay. What would it take to identify that type of
21 channeling over 35 acres. Is it cheap?

22 A. No. It would require -- first of all, you would
23 have a topographic survey to determine what the
24 ground surface was like. Then you would have to
25 go in with probes and probably some drilling.

Simono - Direct by Mr. Player

1 There are some local companies that do drilling
2 for testing purposes to determine what is
3 happening. Since you would see this particular
4 area you would go downstream a bit to see if you
5 could identify where the water went. It's quite
6 obvious that it's going somewhere, but it would
7 not be necessarily as obvious as to where it's
8 going to come out.

9 Q. Okay.

10 MR. PLAYER: And I'll put this in as Exhibit 11
11 just as a collective exhibit. No objection, Clarke on
12 the -- just the plat calculations that I showed you?

13 MR. MCCANTS: Oh. No objection.

14 THE COURT: All right. This is Plaintiff's 11.

15 (Exhibit entered into evidence.)

16 BY MR. PLAYER

17 MR. PLAYER: I know it's dangerous but can I have
18 Exhibits Number 3-10? Thank you.

19 BY MR. PLAYER

20 Q. This has been entered as Plaintiff's Exhibit
21 Number 3. And you recognize the area in that
22 picture?

23 A. Yeah. That's one of the areas along that drainage
24 pattern that had eroded from the outfall of DOT
25 onto the property down.

Simono - Direct by Mr. Player

1 Q. Okay. And this is, again, Plaintiff's Exhibit 3,
2 Your Honor. Now the trees, the trees in this area
3 tell you anything about -- and I think you
4 mentioned that from your opinion the erosion had
5 occurred in the last five years or so?

6 A. Yes.

7 Q. What did the trees tell you?

8 A. And I would have to correct that. Probably in the
9 last seven years since when I first thought about
10 that, that was two years ago, so.

11 Q. Right.

12 A. So it would be the last seven years or so.

13 Q. Okay.

14 A. When you look at it you can see that there, that
15 there are root structures of what would have been
16 established trees that have since had their roots
17 exposed due to erosion.

18 Q. Is that proper from an engineering design
19 standpoint?

20 A. No. It's not what you want to have downstream of
21 your project.

22 Q. And the -- what's the word, the technical word for
23 water scraping or damaging the soil?

24 A. Scour.

25 Q. Scour. And as a professional designing the

Simono - Direct by Mr. Player

1 stormwater system it's your responsibility -- what
2 is your responsibility with scouring? Can you
3 elect to allow it to happen?

4 A. There's a lot of different uses of scour. Scour
5 at a bridge abutment, for instance, is actually
6 designed for and planned. And you plan how to
7 control it to where it is acceptable. When you're
8 doing a channel you don't want any scour in the
9 channel, and to stop that in past projects I have
10 put riprap walls on the channel to control it so
11 that the water stays inside the channel. And I
12 have done other things to reduce the flow going to
13 my channel.

14 Q. Okay. And you said you don't want the scour to
15 occur in a channel. Why is that?

16 A. Well, it does several things. The scour is in and
17 of itself a detriment of removing soil as the soil
18 erosion people it's wrested that W-R-E-S-T-E-D,
19 its wrested from the bank. And it, it's basically
20 violence to the soil that causes soil to be lost
21 and carried downstream.

22 Q. And what does that do to the channel?

23 A. It widens the channel and deepens the channel.

24 Q. So it's exponentially causing more damage because
25 more soil is not there for resistance, correct?

Simono - Cross by Mr. McCants

1 A. Yes.

2 Q. Okay.

3 MR. PLAYER: I know I'm leading, Clarke. Just
4 trying to be brief.

5 BY MR. PLAYER

6 Q. More pictures. Number 4, my favorite tree. This
7 one right here. It looks like the root structure
8 of that tree has been pretty extensively eroded.

9 A. Yes.

10 Q. But it's still alive.

11 A. Yes.

12 Q. Is there -- in your opinion is there any way that
13 that amount of erosion has been occurring for a
14 hundred years?

15 A. No. That -- this tree would have -- had it been
16 that long would have already long since fallen
17 over.

18 Q. Okay. And did you see evidence of, of live trees
19 that are fallen over like the one in Exhibit 5,
20 along the pathway that you walked?

21 A. Yes.

22 Q. And this pathway that you walked that leads
23 directly to the bottom of the outfall, correct?

24 A. That's correct.

25 Q. Okay. With regards to your observations of the

Simono - Cross by Mr. McCants

1 damage in the immediate area of the outfall, a
2 collection of these pictures that you have seen
3 before, it, what, what is causing this erosion?
4 Is there any debate where the water is coming
5 from?

6 A. No. This water is definitely the water that is
7 coming through the DOT piping system, ditch and
8 piping system. There, where it had flowed down to
9 their pipes and then being directed to the
10 plaintiff's property.

11 Q. And not necessarily too much volume, but it's
12 definitely too much speed.

13 A. Yes, the velocity is too much.

14 MR. PLAYER: I think that's all I have, Your
15 Honor.

16 THE COURT: Cross.

17 CROSS EXAMINATION

18 BY MR. MCCANTS

19 Q. Good morning, Mr. Simono.

20 A. Good morning.

21 Q. You do not disagree with the evidence and
22 testimony in this case which, I believe,
23 establishes that for a long, long time -- I can't
24 quantify, but there's been what they call a
25 blue-line stream traversing North, Northeast --

Simono - Cross by Mr. McCants

1 A. No, sir.

2 Q. -- into the Plaintiff's property?

3 A. It's not a blue-line stream. It's an intermittent
4 stream. There's a difference.

5 Q. Okay. Explain to the Court the difference.

6 A. Yes. An intermittent stream only carries water on
7 rainfall occasions or thereafter because of
8 groundwater weepage. So once that's over, it
9 quits carrying water. And a stream is one defined
10 by either the Corps of Engineers or the EPD or
11 DHEC in South Carolina as to one that is, in their
12 determination, navigable. But -- so those flow on
13 a constant basis or have a source of water to flow
14 on a constant basis.

15 Q. How would you characterize, or how would you
16 describe by name, the historical with imagery maps
17 and topography, topo map, that showed a blue line?

18 A. It's not a blue line. Is a blue dashed line with
19 dots in blue.

20 Q. Solid or dotted, how would you characterize that?

21 A. The solid ones are streams. The ones with the
22 dots are intermittent streams.

23 Q. Intermittent.

24 A. Yes.

25 Q. But can we not generically call them blue-line

Simono - Cross by Mr. McCants

1 intermittent and regular streams?

2 A. You can call them intermittent streams, you can
3 call them streams, if they are. But you can't use
4 those terms interchangeably. They are separate.
5 And they are separate on purpose. That is, that's
6 the way that the government looks at them in order
7 to determine regulation, what's applied and what's
8 not applied.

9 Q. All right. But you don't dispute that old maps
10 and topo maps depict what shows a blue line on it?

11 A. The maps that I had showed the blue dotted line,
12 which is an intermittent stream.

13 Q. Okay.

14 MR. MCCANTS: One second, Your Honor?

15 THE COURT: Certainly.

16 BY MR. MCCANTS

17 Q. When you first visited the property, we'll clear
18 up the nomenclature of a blue dotted or otherwise
19 stream on the maps, I think, through my witnesses
20 but --

21 A. Okay.

22 Q. When did you first set foot on this property
23 again, David?

24 A. Hmm. Four years ago.

25 Q. And when you did so, you basically walked the

Simono - Cross by Mr. McCants

1 entire property down to Ascauga Lake Road, is that
2 fair?

3 A. No. We started at Ascauga Lake Road and walked
4 up.

5 Q. Fair enough.

6 A. Yeah.

7 Q. Either way you walked up to the I-20 area?

8 A. That's correct, yes.

9 Q. And was that on the first visit?

10 A. Yes.

11 Q. What did you observe with regards to the interior
12 of the property at that point in time?

13 A. It was wooded, had a lot of sediment out on the --
14 around the edge of the flow pattern. And what has
15 become a ditch area that's actually of concern
16 where the water is flowing, it had some existing
17 roads that had been started or partially done.
18 They were never paved.

19 Q. We'll talk about that a little bit later.

20 A. But it has those and it had trees, and as was
21 shown in the pictures it had trees that had had
22 their root systems eroded, and had trees that were
23 away from there that were just regular trees
24 growing in the woods.

25 Q. And have you looked at, have you reviewed

Simono - Cross by Mr. McCants

1 historical imagery of this area by way of Google
2 Earth or otherwise?

3 A. I went back and looked some. I didn't study it to
4 see what all was there. I don't -- I remember
5 doing it but that's all I can tell you. I didn't,
6 I didn't look for any, because I didn't see any
7 great detail.

8 Q. Any picture, any imagery within the ten years
9 prior to the construction of the Palmetto Parkway?

10 A. Not that I remember.

11 Q. All right. Do you use Google Earth as part of
12 your practice?

13 A. I do.

14 Q. Very handy tool?

15 A. It is. It is indeed. Unfortunately they are not,
16 they are not good resolution photos oftentimes, so
17 it's not as nice as you would like for it to be.

18 Q. Well, these satellites have improved since
19 Sputnik, don't you agree?

20 A. I agree.

21 Q. And what you're telling the Court is some of the
22 old USDA, United States Department of Agriculture,
23 imagery which were done to observe crop formation
24 and whatnot, is kind of hard to look at, correct?

25 A. Yeah. And even some of Google Earth's stuff is --

Simono - Cross by Mr. McCants

1 I've looked at it and the new stuff, man, it's
2 crisp. You can see all sorts of things. People
3 love to show the errors it shows. So it's lots of
4 fun to look at. The older stuff is not --

5 Q. It's a remarkable program, isn't it?

6 A. It is.

7 Q. Using the eyes in the skies.

8 A. Yes.

9 Q. But we all know a picture is worth many words.
10 It's also subject -- pictures are also subject to
11 alteration, Photoshopping and whatnot. But have
12 you ever had any concerns about looking at images
13 taken from above and wonder whether or not you're
14 really seeing what was actually received and they
15 had been altered in some regards?

16 A. No, not altered, but there are things that you see
17 that aren't really there. There's a very famous
18 one. It shows a jetliner flying through a house.
19 And it's not a jetliner flying through a house.
20 It's the timing of the photo, and the way it hit
21 and the jet flew and they made it look like it.
22 So it wasn't Photoshopped. It was actually a
23 picture from the satellite. It just -- and when
24 you look at it carefully you can see it's not
25 doing that. But that's what it appears on first

Simono - Cross by Mr. McCants

1 look.

2 Q. Well, there is no dimension from that height, so.
3 Well, that's interesting. I haven't seen a
4 photograph yet capturing a plane flying above
5 earth and not being able to tell where the plane
6 is in relation to the earth. But my question --
7 Google Earth is very reliable in your opinion?

8 A. Yes.

9 Q. All right. You haven't stumbled any on --
10 stumbled upon any images that you think were not
11 reliable?

12 A. No.

13 Q. You have been in the courtroom with us, I think,
14 during most if not the entire trial. And you have
15 seen some of the images that we have introduced
16 into evidence, at least from the standpoint of my
17 client. And one series of photographs that I do
18 want to talk to you about are these. That is
19 Exhibits 6, 7 and 8. You were in the courtroom
20 and you heard us talking about these?

21 A. I did.

22 Q. And at some point during the trial, have you
23 gotten up and looked at them closely?

24 A. No.

25 Q. All right. What I can tell you, Mr. Steward

Simono - Cross by Mr. McCants

1 Saunders is here. He's the individual who
2 originally appraised the property for the DOT as
3 part of the condemnation action in 2006. He was
4 out there in 2005 and took these pictures. I want
5 you to assume that's true for purposes of our
6 discussion.

7 A. I have no doubt about that. That's fine.

8 Q. All right. And what I believe are these
9 photographs -- these are photographs of the
10 interior of the plaintiff's property --

11 A. Okay.

12 Q. -- involved in this case. And in particular
13 number 6, what do you perceive that to show?

14 A. I'll be real honest. It looks like there may be
15 some water flowing through something. It's quite
16 grown-up. I couldn't tell you much more than
17 that.

18 Q. Do you remember seeing this area of the property
19 when you first walked it?

20 A. Do I remember that piece of property?

21 Q. That area.

22 A. I'm sorry. I can't, I can't relate well enough to
23 tell you that I know where that is.

24 Q. Did you yourself take any photographs of the
25 interior of the property when you visited?

Simono - Cross by Mr. McCants

1 A. I did.

2 Q. All right. And I think (inaudible), but you don't
3 remember this specific area?

4 A. No, I don't.

5 Q. All right. And what I can also offer to you is
6 that this image on the board, that's the actual
7 exhibit we had retrieved from Mr. Saunders'
8 appraisal, his written appraisal that he prepared.

9 MR. MCCANTS: I don't know if I've marked this
10 yet. Have I Madam Court Reporter? The appraisal --

11 MR. PLAYER: Can I look at it?

12 MR. MCCANTS: Hmm?

13 MR. PLAYER: I think so.

14 (inaudible crosstalk)

15 THE COURT: I don't believe --

16 MR. MCCANTS: I don't think that's marked yet. I
17 would like to go ahead and do that, Your Honor.

18 THE COURT: No objection?

19 MR. PLAYER: No, ma'am.

20 MR. MCCANTS: And we're at what --

21 COURT REPORTER: Number 9.

22 MR. MCCANTS: Number 9. Okay, I'm going to give
23 you this one to mark. Judge, I've got a copy of it for
24 you. And, of course, I provided it to Mr. Player. I'm
25 pleased to give you another one. Judge, I'm looking.

Simono - Cross by Mr. McCants

1 We had several copies, if you can bear with me.

2 THE COURT: Certainly.

3 MR. MCCANTS: I'm looking for one in color. Here
4 it is. Let's do this one.

5 (Exhibit entered into evidence.)

6 THE COURT: If you all need to stand up and
7 stretch. If you've got back issues like me go ahead
8 and stand up and stretch. Or is it just me?

9 MR. MCCANTS: That's me. I get up and move
10 around. Okay. Judge, are you ready for us to proceed?

11 THE COURT: Yes. Yes.

12 BY MR. MCCANTS

13 Q. All right. Mr. Simono, let me show you what has
14 been marked as Exhibit Number 9. I will tell you
15 that that is a full copy of Mr. Saunders --
16 Steward Saunders' appraisal. If you look down in
17 the lower right-hand corner you see his name. Are
18 you with me?

19 A. Yes.

20 Q. All right. And if you thumb through that what you
21 will see are several photographs which are
22 characterized as the interior of the property with
23 which we are dealing today. And you have one with
24 color in it.

25 MR. MCCANTS: Judge, I'm going to give you a copy

Simono - Cross by Mr. McCants

1 which doesn't have color in it. But Mr. Simono has one
2 in case you need to see that. All right.

3 BY MR. MCCANTS

4 Q. Okay, you with me so far?

5 A. Yes.

6 Q. You see that photograph -- if I may --

7 THE COURT: Where are you, Mr. McCants?

8 MR. MCCANTS: Excuse me. This is Page 6.

9 BY MR. MCCANTS

10 Q. Two photographs on that page, both marked -- one
11 is marked interior view, and the one below it is
12 marked drainage ditch. Do you see that?

13 A. I do.

14 Q. All right. Would you agree with me that that --
15 what's in that exhibit that I just gave to you,
16 the full appraisal, is a clearer picture of
17 Number 6?

18 A. Appears to be the same to me. Yes.

19 Q. All right. What do you see, then, in the
20 photograph that's identical to Number 6 in
21 Mr. Saunders' actual written appraisal that you're
22 holding in your hand?

23 A. Again, it looks like a ditch. I can't define much
24 about it, but it does look like a ditch. It's
25 grown up pretty well around the edges.

Simono - Cross by Mr. McCants

1 Q. You got any thoughts about how that ditch, as you
2 call it, was created?

3 A. I'm sure it was created by the flow of water.
4 Most ditches are.

5 Q. All right. Did you hear the other witnesses in
6 this case really unable to tell me what it was and
7 how it came about?

8 A. I did and what they said are good bases. They had
9 nothing to compare it to. I couldn't tell you
10 exactly what it -- I wouldn't try and venture what
11 it's shape or size was other than what you can
12 see. So there's no scale. But yes, it appears to
13 be a ditch.

14 Q. It appears to be a pretty big ditch. You agree?

15 A. I'm sorry. I really can't say that. One side of
16 it looks higher than the other side of it. I
17 can't tell you.

18 Q. You talked about scouring. Is that the term you
19 used?

20 A. Yes.

21 Q. Will you spell that for us?

22 A. S-C-O-U-R.

23 Q. Is it like the scouring pad that you use --

24 A. It is similar in nature, yes.

25 Q. And water scours dirt, sand, sediment, clay.

Simono - Cross by Mr. McCants

1 Water has been known to move so fast it moves
2 rocks, according to the evidence in this case.

3 A. That's correct.

4 Q. Don't you think that picture right there on that
5 Page 6 of that appraisal shows serious evidence of
6 the scouring of the land?

7 A. I would say it shows a ditch. There's not a lot
8 of extra sediment around. The ditch sides are
9 actually -- if this is a ditch as we are
10 portraying it, the ditch sides seem to be
11 straight. So the scour does not seem to be the
12 issue here. I mean, it obviously was created --

13 Q. I don't mean to interrupt you. That's the term --
14 I wasn't using that term. I want to use terms
15 like creating a riverbed.

16 A. There's no, there's no indication that this
17 created a riverbed.

18 Q. Does it look like a dry riverbed to you?

19 A. No. It looks like a drainage ditch.

20 Q. And draining what?

21 A. Stormwater.

22 Q. And again these were taken in 2005.

23 A. Okay.

24 Q. That's evidence of a serious flow of water, David.
25 Wouldn't you agree with me?

Simono - Cross by Mr. McCants

1 A. It's over time there was a lot of water that did
2 flow through there.

3 Q. A lot of water. That's your testimony. A lot of
4 water --

5 A. Yes. Over time. That's correct.

6 Q. And you understand that's at least two or
7 three years before South Carolina Department of
8 Transportation touched the upper part of that
9 property for purposes of what they did.

10 A. Okay.

11 Q. Well, what does that -- be honest. What does that
12 show you? What degree of water flowed through
13 this property or streamed through this property
14 over the years?

15 A. It showed that in this location, wherever this is,
16 there was water that flowed through it.

17 Q. All right. I will finish this if you will offer
18 to the Judge what you believe to be the degree of
19 severity of the water flowing through that area to
20 create that image that you see on Page 6.

21 A. Oh. It would not have to be very severe. It
22 would just have to be large over time.

23 Q. All right. Moderate to severe water?

24 A. Probably moderate.

25 Q. What you see on the screen in those videos is --

Simono - Cross by Mr. McCants

1 how would you characterize that water?

2 A. That's severe.

3 Q. All right. Is there a possibility that severe
4 water flowed through that property - a severe
5 amount of water flowed through that property to
6 create that ditch, depression, channel, however
7 you want to characterize it? I want to call it a
8 riverbed. Will you agree with me that's evidence
9 of severe and high water flow?

10 A. I think I already answered that. No, it's not
11 severe.

12 Q. Okay. You don't think --

13 A. It's moderate.

14 Q. Okay. All right. Just go ahead and set that
15 down.

16 A. Okay.

17 Q. We'll look at it in a second. You have as part of
18 your professional practice in here, you have
19 actually been very involved with the design of
20 residential and commercial development, is that
21 correct?

22 A. I have.

23 Q. And can you give us an idea of how many
24 developments you have worked on or assisted with
25 over the years, possibly?

Simono - Cross by Mr. McCants

1 A. I probably, in an average year, might do 20. And
2 I have been doing this, as a design engineer, for
3 25 years, so 2,500 site plans or subdivisions.

4 Q. Many?

5 A. Many.

6 Q. And obviously you know what's required to develop
7 the property to meet the demands and any
8 regulatory requirements for stormwater, correct?

9 A. Oh, yes.

10 Q. And the judge is familiar, I'm sure, with that
11 term, but what is our technical and legal
12 definition of stormwater?

13 A. Stormwater is runoff caused by a rain event that
14 leaves the area, and it doesn't have to leave the
15 property, so it -- but it can flow on the property
16 or it can flow across the property. The
17 stormwater is the result of a rain event running
18 off the property.

19 Q. Rain from above falls onto a property. And you
20 have got to manage it and control it if you're
21 going to develop residential communities or
22 commercial ventures, is that correct?

23 A. That's correct.

24 Q. And to the point where this is a science. I think
25 we all agree with that. To the point where the

Simono - Cross by Mr. McCants

1 government has to oversee what you do to ensure
2 that it's being done properly. Most importantly
3 to help protect people, their property, real or
4 personal, correct?

5 A. That is reasonably correct. The government
6 doesn't necessarily have to, but they have chosen
7 to.

8 Q. Well, you -- we won't get into good or bad
9 government. That's a good rule isn't it?

10 A. Overall it's a very good rule and most of the
11 rules and requirements are good and beneficial.

12 Q. And historically governments have gotten to get
13 involved with stormwater management and control
14 because of commercial growth and residential
15 growth where the people are doing things to the
16 land to create situations where the land is no
17 longer pervious, so to speak. They create
18 impervious areas of land where water doesn't sink
19 into the land. It's going somewhere, correct?

20 A. That's correct.

21 Q. All right. Did you -- you heard about Chadwick,
22 as it's called?

23 A. I have.

24 Q. Have you take a moment to look at the Chadwick
25 development plan that we have?

Simono - Cross by Mr. McCants

1 A. Other than just seeing it across the room after
2 you put it up there.

3 Q. All right. Of interest when I was looking at it a
4 second ago, tell me what -- you were employed or
5 associated with Cranston Engineering for a long
6 time?

7 A. Yes. Ten years.

8 Q. Ten years. And I don't know if you've seen, but
9 there's a note on here, and of course you want to
10 look at it. It's kind of blurred and there's some
11 handwriting that says boundary and topographic
12 survey by William Mackey. We all know Mr. Mackey.

13 A. Yes, sir.

14 Q. A surveyor?

15 A. Yes, sir.

16 Q. And it -- additional information by Cranston
17 Robertson and Whitehurst.

18 A. Right.

19 Q. Who's that group?

20 A. That's Cranston Engineering today.

21 Q. The group you worked with?

22 A. Yes. They actually changed their name just before
23 I went to work for them.

24 Q. Yeah. So you worked with Cranston, Robertson and
25 Whitehurst?

Simono - Cross by Mr. McCants

1 A. Again, I worked for Cranston Engineering, which is
2 what they changed their name to from Cranston,
3 Robertson and Whitehurst.

4 Q. All right.

5 A. They had another name prior to that which was
6 Baldwin, Cranston.

7 Q. Well, you having worked with Cranston, as I call
8 it, for many years and did the work that you
9 described over so long a period of time, to me
10 that tells me that if Cranston was involved with
11 the development plan of Chadwick, they knew what
12 they were doing.

13 A. Well, first of all, what you just read does not
14 imply that Cranston had anything to do with the
15 development plan, but rather some of the survey
16 work. They supplied additional survey work.

17 Q. Well, they were involved to some degree then with
18 the development of Chadwick. Do you agree?

19 A. Again, not with the development of Chadwick. They
20 had to do with the information that was used for
21 the development of Chadwick.

22 Q. Well, that's getting involved with it to some
23 degree, wouldn't you think?

24 A. They may not even have any idea that the term
25 Chadwick was ever used because they didn't do

Simono - Cross by Mr. McCants

1 that. And I think you said Dudley Engineering was
2 the one that designed it.

3 Q. I can't read this fancy handwriting. It looks
4 like maybe CC Dudley and Associates?

5 A. Yeah. That's probably Ed Dudley, was the
6 engineer's name.

7 Q. Are they a pretty good group?

8 A. They were so-so.

9 Q. So-so. Well --

10 A. That does not mean they did not do a good job on
11 that project. I wouldn't say one way or the other
12 on the project. But they were always one of the
13 ones that I had to watch more closely.

14 Q. All right. And you had to watch more closely
15 because they overdid it or underdid (sic) it?

16 A. Underdid.

17 Q. Underdid it?

18 A. Yes.

19 Q. So there's a chance this plan that we've got in
20 evidence in this case was underdone by Dudley? Is
21 that what you're saying?

22 A. I'm saying that I did have difficulty with him
23 underdoing things on projects.

24 Q. And they could have done more, is what you're
25 saying? If they didn't do enough, underdid it.

Simono - Cross by Mr. McCants

1 And I'm making up that word. And you were
2 concerned with them -- are you saying they should
3 have done more?

4 A. No. By the time it would have been approved it
5 would have been reviewed, and what was underdone
6 or overdone would have been addressed. So if that
7 plan was approved and that was what they were
8 constructing, then somebody would have reviewed it
9 in the County Engineer's office or in the City
10 Engineer, depending on whether it was in the city
11 of North Augusta -- the city of North Augusta has
12 blurring lines through there, so.

13 Q. Let's go ahead and talk about that for a second.
14 Do you understand the property involved in this
15 case is within the municipality of North Augusta,
16 South Carolina?

17 A. Right.

18 Q. It is in the city?

19 A. Yes.

20 Q. And certainly in Aiken County?

21 A. Yes.

22 Q. What were the requirements -- because you have
23 been involved a good bit in development, what were
24 the requirements of the city of North Augusta's
25 planning department with regard to plans for

Simono - Cross by Mr. McCants

1 developments back in the mid-80s?

2 A. I don't really know. And the reason I say that is
3 because that was when I was still in government,
4 and not their government because their rules were
5 different. Every time I dealt with them -- when I
6 would send somebody over there to review or to
7 work with them, we had to relearn their stuff
8 because they did things differently.

9 Q. How about Aiken County? What was the county's
10 requirements in the 1980s, if you can remember?

11 A. Aiken County required that you design the
12 stormwater flow to handle -- the pipe system to
13 handle the 25-year storm, the detention to handle
14 the 50-year storm. Had to have, if available,
15 water and sewer. If not then the lots had to be
16 sized for septic tanks and wells. And they had
17 roadway widths. The roadway width was 31 feet
18 back to back, curb and gutter. You could avoid
19 curb and gutter and go just ditches, but then you
20 had to make it wide enough so the South Carolina
21 DOT could eventually accept it because that was
22 always their goal, was wanting DOT to take over
23 those roads. South Carolina is one of the few
24 states that does that. A lot of states do not.

25 Q. Well, just to bring us current there is even more

Simono - Cross by Mr. McCants

1 and more pushback on that these days, correct?

2 A. Yes.

3 Q. It's hard to find cities and counties which will
4 accept roads within developments, correct?

5 A. It's getting harder to do.

6 Q. Why is that?

7 A. Because there's a great liability and cost that
8 cities and counties don't want to accept. And for
9 the same reason the state doesn't want to accept
10 them either.

11 Q. Sure. The City of Aiken doesn't accept roads
12 anymore because they don't have the equipment to
13 maintain them, correct? That's part of the --

14 A. I have heard that that is one of their problems.

15 Q. All right. They couldn't move an ice storm for
16 example. We went through that and that's
17 apparent, don't you think?

18 A. I didn't pay as much attention to the ice storm
19 over here as I did over there where I was.

20 Q. All right. Explain this for the record, and to
21 some degree maybe Judge Pope's benefit, and her
22 law clerk's benefit. What is the situation where
23 you have properties in a city but it's in a
24 county, and the regulations kind of overlap each
25 other? What -- how does a developer handle that?

Simono - Cross by Mr. McCants

- 1 A. The regulations that rule are the city's unless
2 it -- it goes in a hierarchy. The federal
3 government always has rules that override
4 everybody else. State governments have ones that
5 override all the ones below them. Rarely does the
6 county have rules that override the city. The
7 city can write their own rules and there's
8 usually, usually no conflict. The city -- the
9 county may never see the plan if it's inside the
10 city.
- 11 Q. What you are suggesting also is the city
12 regulations may require more than the county?
- 13 A. In often cases that is true.
- 14 Q. All right. We will agree that these plans of
15 Chadwick were never stamped as approved by any
16 governmental entity. I don't think that's an
17 issue so much. But if you have looked at -- and
18 I'm going to show you a couple of things in just a
19 second, you can see that there were revisions to
20 these plans over time. Revisions -- you know, the
21 first date it's very difficult to pick up, but it
22 looks like the date of the plans, the original
23 date was April 1, 1985, and then there were
24 revisions in '85 '86 and '86, again. That's not
25 unusual, is it?

Simono - Cross by Mr. McCants

1 A. Not at all.

2 Q. And why, in your mind, would they be revising
3 these plans over time?

4 A. There are a lot of reasons. The primary reason
5 usually is a difference of opinion with the
6 regulatory officials.

7 Q. That shows some governmental interaction in your
8 mind, correct?

9 A. Yes.

10 Q. Because these are expensive to produce,
11 development plans. Do you agree?

12 A. In one sense, yes. In another sense, no. They --
13 in the overall scheme of a project the plans are
14 actually a very minor cost. But they are a cost
15 nonetheless.

16 Q. Let's look at the plans a little bit together.
17 Let's do it.

18 MR. MCCANTS: May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. MCCANTS

21 Q. I'll give you this and just orient yourself a
22 little bit while I go get some notes. You don't
23 need to pay attention to any highlighting. I
24 don't want to emphasize any highlighting.
25 Everything on this Exhibit Number 2 is important,

Simono - Cross by Mr. McCants

1 okay? Have you had a chance to look at those
2 plans?

3 A. Sure.

4 Q. All right. The first question I've got is -- I
5 don't want to argue over what is characterized in
6 the (inaudible) maps with regard to intermittent
7 streambed, blue-line, or otherwise. But whatever
8 depiction on these maps indicating a blue-line
9 stream or whatnot flowing down through this
10 property, do you agree that this highlighted
11 portion of this map, which is described up at the
12 top as an easement from I-20 and then a drainage
13 and utility easement, follows that line on the
14 historical imagery?

15 A. Yes, it appears that is the way it would flow, and
16 based on the contours here, that looks like the
17 right.

18 Q. So the developer, and whomever the developer hired
19 to be -- produce these plans and meet stormwater
20 requirements, noted that there was some evidence
21 or some indication that water had flowed naturally
22 across this property for years. Is that fair?

23 A. Oh, yes.

24 Q. So what the person drafting these plans had to do
25 is account for that water or --

Simono - Cross by Mr. McCants

1 MR. PLAYER: Your Honor, this is all speculation.
2 We don't even know what person drafted it. We have no
3 idea what was in his mind or why he drafted anything.

4 THE COURT: Mr. McCants.

5 MR. MCCANTS: Your Honor, Mr. Simono has testified
6 that he has been involved extensively with planning
7 developments, residential and commercial over the
8 years. I'll lay a better foundation. He's testified
9 these are reliable plans and I'm simply asking for his
10 interpretation of the plans, and what was envisioned in
11 order to prepare the plans.

12 THE COURT: I'll allow that questioning.

13 MR. MCCANTS: All right. What was my question?

14 THE WITNESS: How would I know? I just remember
15 you asking about this drainage pattern.

16 THE COURT: Yes. The question was whether or not
17 the drafter took into account that there was a natural
18 flow of water.

19 BY MR. MCCANTS

20 Q. The judge said it better than I. What is your
21 answer to that question?

22 A. Yes. That does appear to be the area where that
23 water has come through.

24 Q. And that's born out in the simple fact that that's
25 kind of an odd line across this property. It was

Simono - Cross by Mr. McCants

1 meant to follow something. Would you agree?

2 A. Yes, the contours show that.

3 Q. All right. That's where water has been flowing
4 for years and years, correct? During certain rain
5 events, as you call it.

6 A. Yes.

7 Q. Certain stormwater events.

8 A. Yes.

9 Q. All right, now. These plans indicate that as part
10 of accounting for the drainage of water, which had
11 been flowing across this property for years, one
12 plan was to use 72-inch reinforced concrete
13 piping. Do you agree with that?

14 A. There is a note that that was to be used on here.

15 Q. And we talked many times about D-13 that's
16 highlighted here, and then D-13, the note over
17 here talks about reinforced concrete pipes, is
18 that correct?

19 A. Yes.

20 Q. And you heard the discussion yesterday about
21 whether or not there were enough pipes and whatnot
22 to account for this entire drainage easement of
23 this area of flow, and nobody could really give me
24 an exact number of the pipes that are left on this
25 property. But track with me a second. First,

Simono - Cross by Mr. McCants

1 that line, that yellow line on that plan doesn't
2 indicate where those pipes are actually going to
3 go. Is that correct? Does that make sense?

4 A. I know what you're saying, but that's -- the pipes
5 are shown on the plan that I see, that yellow line
6 does not show any pipe being -- carrying that
7 water from there all the way down here.

8 Q. Where the big pipes are supposed to go on that
9 yellow line. That's what you're saying, correct?

10 A. Yes. That yellow line up here from the proposed
11 road back shows no pipe in it at all.

12 Q. Let me float this to you now. Whoever invested in
13 those large concrete pipes purchased them to place
14 them at strategic points along that drainage area,
15 and the rest of the yellow line would remain an
16 open drainage area. Is that a reasonable
17 interpretation of the plan of action by the
18 developer?

19 A. Regardless of what pipes the developer did plan to
20 specifically have, pipes installed at locations,
21 I'm assuming based on the plan that he had, if
22 this was the plan that he had.

23 Q. Yes, sir. I don't see roads crossing that yellow
24 line. Do you?

25 A. Well, yes and no. They don't cross it from the

Simono - Cross by Mr. McCants

1 road here back up. You stopped the yellow line
2 before it crossed the road and the drainage
3 pattern continues.

4 Q. Fair enough. And I'm happy to highlight that. I
5 look forward to it. We can do that.

6 A. Yeah.

7 Q. Well, put yourself in the shoes of the developer.
8 Pretend like you, based on your experience and
9 whatnot, where would you place the pipes?

10 A. Under the road.

11 Q. All right. And in particular, show Judge Pope and
12 opposing counsel where the pipes would need to be
13 installed under a road.

14 A. Right where that (inaudible) is coming that
15 direction. I think that's where the pipes would
16 be.

17 Q. All right. You referred, if I can tell you that,
18 at the bottom of Cedric Court as it runs into
19 Chadwick Drive. Is that correct?

20 A. No. There's actually three pipes there. It's the
21 one that crosses Chadwick upstream of Cedric
22 Court.

23 Q. All right. And I can't -- I haven't counted them
24 on the photographs but, so you think there would
25 be two big pipes down in that area, correct? At

Simono - Cross by Mr. McCants

1 least?

2 A. The number of pipes, I'm sorry I can't tell you
3 how many pipes it's going to be.

4 Q. Well, I'm just asking what you would do.

5 A. Well, I would put it on underneath the road to
6 make sure my road didn't wash away.

7 Q. Yeah. People have got to cross the drainage area,
8 the drainage ditch also, correct?

9 A. No. They wouldn't have to cross any drainage
10 ditch. They would drive across the roads. The
11 roads have got a pipe in it.

12 Q. The pipe is underneath it though.

13 A. Yeah.

14 Q. Yeah.

15 A. So they're not crossing the ditch. They're
16 crossing the pipe.

17 Q. Well, yes. And I'm just maybe being too liberal
18 with my words, but I view that whole line as a
19 drainage area.

20 A. It is a drainage area but it's not a -- there's
21 no, there's no ditch once they put the pipe in.
22 The ditch goes away.

23 Q. Ditch ends and becomes a pipe?

24 A. That's correct.

25 Q. But upstream from that pipe remains a ditch,

Simono - Cross by Mr. McCants

1 correct?

2 A. That's correct.

3 Q. And it's reasonable, I think, based on what you
4 said, to believe that while the placement of these
5 huge 72-inch pipes would be done in this area
6 where Cedric Court meets Chadwick, the rest of
7 that blue line would be an open drainage ditch, is
8 that correct?

9 A. Yes, it would, it would remain an open ditch.

10 Q. Would you put riprap or rocks in that ditch as a
11 developer or person helping to design the
12 development? Would you do that?

13 A. I would have to, to have observed it to see what
14 flows were there and what, what was, what the
15 channel looked like now. Riprap channels were not
16 as big back in the '80s as they are now.

17 Q. How would you protect the water flow then through
18 a ditch -- just out of curiosity. Help me and
19 help the judge. And I'll come back here so she
20 can hear you. I see Judge Pope maybe turning
21 around to make sure you hear. What did people do
22 before riprap became popular?

23 A. Oh, no. It's not that it was not popular.
24 Riprap, when you try to riprap properly you have
25 to extend it far enough to cover everything. If

Simono - Cross by Mr. McCants

1 you line a ditch with it, it becomes very
2 expensive. You did -- instead of lining you would
3 go in and put intermittent -- they're called ditch
4 checks, in place throughout the length of the
5 ditch settings. And there are actually prescribed
6 ways in which to do that. And you would put
7 riprap check dams, as they would be called, up
8 through the channel.

9 Q. I feel confident that Judge Pope and the Court
10 knows what riprap is, but for the record would
11 you, please --

12 A. Yes.

13 Q. -- describe it generally?

14 A. Riprap is a stone and its size varies. In Georgia
15 DOT they only have two sizes. They have really,
16 really big and they have -- and the really big
17 used in rivers. And the smaller is used in sites
18 like this. And it is usually stones that are less
19 than one cubic foot, so they are roughly the size
20 of a basketball or smaller. They are angular so
21 that they adhere to one another -- not really
22 adhere. They interlock with one another and
23 prevent the water from washing it away.

24 If you ever want to establish a ditch check
25 properly, it needs to be bedded. The bedding can

Simono - Cross by Mr. McCants

1 be smaller stone. Some people like to use the
2 fabrics that are now popular to put riprap on to
3 keep it from washing below. I personally like to
4 put fabric then put the smaller stone and the
5 riprap on top.

6 And what you're doing by doing that is you're
7 building something strong enough to hold back the
8 flow that would let the -- that would actually
9 wash those away. And so you would put the check
10 dams in, and then there's prescribed ways in which
11 to put them in. This actually flattens out at the
12 bottom so you wouldn't put in, any in the flatter
13 area. You would go up where it's got steeper
14 walls.

15 Q. And in fact, the reason riprap is a certain size
16 is because workers have to be able to handle those
17 rocks once they are dumped out of a truck,
18 correct?

19 A. Yes and no. There, there's a process called
20 stone-dumped riprap and there's hand-placed
21 riprap. Stone-dumped is basically just a big
22 excavator grabs a stone, takes it over and drops
23 it in place. It doesn't have a lot of shape to
24 it. They might put some upper shape on it. It's
25 supposed to have a little low spot in the middle

Simono - Cross by Mr. McCants

1 of the dam. That doesn't always happen. And when
2 it doesn't it usually washes around the edges and
3 causes a problem.

4 Q. And basically riprap is used to assist with the
5 control of water.

6 A. It's primarily, actually, the control of the
7 stormwater sediment. So it's intention is to slow
8 the flow so the sediment falls out above it and
9 doesn't get continued to carry out down the
10 property.

11 Q. I'll rephrase. The water and the effects of water
12 eroding or channeling or scouring land, fair?

13 A. That is correct.

14 Q. All right. Take a second, and I haven't seen
15 this. Do you see any indication that the person
16 planning Chadwick is intending to place the riprap
17 in whatever is going to be the open drainage
18 ditch, or whatever, when this plan was to be
19 completed? Any evidence of that?

20 A. Nothing shows on the plan. In the channel itself
21 there's water, where the water dumps out of the
22 24-inch pipe onto the channel area, there is
23 riprap specified. Down inside the sediment basin
24 there is riprap specified. That seems to be the
25 only places I see riprap specified.

Simono - Cross by Mr. McCants

1 Q. Interesting. So you do see evidence that the
2 planner here intended to use riprap to some
3 degree.

4 A. Yes.

5 Q. All right. Let's go back to your testimony and
6 looking at that. You think this plan was
7 underdone, if I can use that term, by the planner,
8 drafter, engineers? In other words, was it enough
9 in your opinion and based on your experience,
10 based on engineering principles, was more needed
11 in that ditch?

12 A. The evidence that apparently was available at the
13 time to anybody who reviewed this or he who
14 created it, was that the ditch, the channel was
15 stable enough without adding riprap.

16 Q. And, of course, as we all know that's, that's,
17 that's planning for here and now. Nobody really
18 knows what could happen in the future.

19 A. That's correct.

20 Q. We could have tremendous rain events like we've
21 had in the last five or ten years which have come
22 through here.

23 A. Actually, we had a much worse one in 1990. That
24 was probably the biggest storm that's been through
25 here in a long, long, long, long, long time.

Simono - Cross by Mr. McCants

1 Q. Which one was that?

2 A. It was when two different storms converged over
3 the area at the same time.

4 Q. The perfect storm?

5 A. It was -- yes.

6 Q. Didn't we have another one in 2000?

7 A. We did, but it wasn't as bad.

8 Q. The one that tore up Columbia, South Carolina.

9 A. Now Columbia had worse than us. It depends on
10 where you're talking about. I'm talking about the
11 CSRA. Our area.

12 Q. I gotcha.

13 A. I walked roads in 1990 because I was the County
14 Engineer, and I was responsible for a big, old dam
15 that was right next to somebody's house, so.

16 Q. Well, and as history just proves, there's no way
17 to accurately predict what's going to fall from
18 the sky eventually. We can calculate and
19 speculate and try to predict, but we don't know,
20 correct?

21 A. That's correct. We have to, we have to do it
22 based on what information we have seen and
23 observed in the past.

24 Q. That's why we have a hundred-year plan and if it
25 rains in the thousand-year plan, rains and things

Simono - Cross by Mr. McCants

1 like that, correct?

2 A. Well, I don't know anybody that plans anything in
3 the thousand years, but we have the 100-year, the
4 50-year, the 25-year, the 10-year, the 5-year and
5 the 2-year.

6 Q. I'm still waking up. I think I saw a
7 thousand-year plan or something. That's not
8 realistic.

9 A. No.

10 Q. What's the highest they go, a hundred?

11 A. A hundred. They do, in the calculation of storm
12 fall, there actually are 500-year storms, but you
13 rarely hear about them. The one in 1990 was
14 between a hundred and a five-hundred year storm.
15 So it was a very rare storm. That does not mean
16 that it only happens every hundred years. It
17 means that the probability of it happening is .01.
18 And that then turned into numbers is 100-year, so.

19 Q. Gotcha. But planners need to account for those
20 possibilities or predictabilities --

21 A. That's correct.

22 Q. Mr. Simono, look down at the bottom at Note 13. I
23 was listening to your testimony on CSF. That's
24 cubic feet per second, is that correct?

25 A. That's correct.

Simono - Cross by Mr. McCants

1 Q. You may have already done this but explain what
2 cubic feet per second means with regard to
3 planning and dealing with water.

4 A. The -- CFS, the cubic feet per second is a measure
5 of flow rate. Not flow as in total volume. But
6 flow rate, which includes both the volume and the
7 velocity. And it's used in erosion control
8 measures as is the velocity. It's used in sizing
9 detention ponds. It's used in sizing pipes. It's
10 used in sizing riprap. It's used in almost
11 anything that has to do with stormwater flow.

12 Q. And it shows how fast water is moving, correct?

13 A. No.

14 Q. To some degree --

15 A. Yes. It does involve that component, but it's a
16 volume rate of flow, not a velocity. Velocity is
17 feet per second. That's how fast it flows. You
18 have to differentiate because the rules
19 differentiate.

20 Q. You heard I was a failed engineer. What does
21 hundred 180 CFS mean with regard to Note 13?

22 A. It means that in the 100-year storm there was
23 going to be a really big flow to get down to that
24 point.

25 Q. 180 CFS to me as a lay person seems like a lot.

Simono - Cross by Mr. McCants

1 A. It is a lot.

2 Q. And it's -- it's planning for a big 100-year rain?

3 A. It says there that it's for the 100-year flows.

4 Q. All right.

5 A. So.

6 Q. The 100-year flows, it's talking about the
7 100-year rain.

8 A. Yes.

9 Q. So whatever the plan was doing for Chadwick was
10 making sure that that long drainage ditch was
11 prepared to handle a 100-year rain event, which
12 could produce 180 CFS coming through that
13 property. Is that fair?

14 A. No. It was for the pipes specifically. It was
15 not for the channel. It doesn't seem to be any,
16 any addressing the channel in this plan.

17 Q. So that large of a CFS, is that why that plan
18 suggested we needed a 72-inch reinforced concrete
19 pipe at some point along the way?

20 A. There's actually two reasons that I can see. One
21 is the fact that he had extremely flat -- he has
22 it .5 percent. You don't run storm pipe at
23 .5 percent generally speaking. That's more like
24 you would run sewer pipes. So it's really, really
25 flat.

Simono - Cross by Mr. McCants

1 Q. Break that down for me.

2 A. Well, 1 percent is 1 foot in 100 feet, or 1 inch
3 in 100 inches. So that's one percent. This is
4 half of that. And the reason he's laying it very
5 flat is probably, again speculating, I don't know.
6 But he may not have had cover. So, but you have
7 got a very flat pipe with a very large potential
8 flow, and generally speaking the 25-year storms,
9 the only storm we design for in subdivisions. So
10 he designed for the 100. I don't know where that
11 came from, but since that is a handwritten note
12 and one of Mr. Dudley's ways of modifying his
13 plans was with handwritten notes when he got a
14 revision request from somebody. He would
15 handwrite the revisions. Because it was very hard
16 to do this.

17 Q. Sir?

18 A. It's very hard to redo a whole plan --

19 Q. Sure. Yes.

20 A. -- and today's plotters, your guy sitting at your
21 table over there, he's done this before. You can
22 plot these out like this now and they --

23 Q. Computer?

24 A. -- they print out. Yeah, very quickly.

25 Q. This ain't hand drawn.

Simono - Cross by Mr. McCants

1 A. Both. Actually it was partially hand drawn and
2 partially plotted, probably. He -- but all this
3 stuff, all these notes out here and he cut these
4 in probably. He would actually run that off a
5 xerox machine.

6 Q. Point that out to Judge Pope if you would.

7 A. This part down here that looks like typewritten.
8 You could actually type it, put it on a sticky,
9 peel it off and stick it on the plan. And that
10 saves them time. He's got a border that is
11 probably pre-plotted that he uses on his paper.
12 And then probably, or possibly the layout of the
13 subdivision itself might have been done and then
14 all the rest of the stuff is hand noted and/or
15 hand drawn. And that looks like it would even be
16 the contours the way they are laying out, but that
17 would be hard to say.

18 Q. All right. Very good. Now I'm going to try to
19 move forward. I remember you said you have got an
20 appointment.

21 A. Yes.

22 Q. So I'm going to try to keep moving forward. I do
23 have a couple of other questions. There was an
24 account for a temporary and then a permanent
25 sediment pond down in this area. Is that correct?

Simono - Cross by Mr. McCants

1 A. Yes.

2 Q. There were plans for an emergency spillway?

3 A. Yes.

4 Q. Would that have been on the permanent pond
5 sediment plan?

6 A. It could have been on both. Depends -- nowadays
7 you have to do it for both. It didn't always have
8 to be done. Primarily, its purpose there was to
9 keep from washing the dam away.

10 Q. In an emergency?

11 A. Yes. In a large storm.

12 Q. Like a 100-year rain?

13 A. Yes.

14 Q. Which is a plan you have to account for, the
15 chances of that happening, correct?

16 A. In the, in the detention/retention -- and this is
17 probably detention, in those type of ponds you do
18 have to account for the 100-year. Yes.

19 Q. Can you spend 20 seconds and explain to
20 Judge Pope, unless she knows, the difference
21 between a detention and a retention pond.

22 A. In the --

23 Q. I always have to get my notes and look at them.

24 A. -- yeah. Detention is more its name. It detains
25 the water and doesn't hold it back -- it doesn't

Simono - Cross by Mr. McCants

1 hold it, just holds it back. Retention is its
2 name. It retains water. So if you see an amenity
3 in your subdivision, and its got a nice pond out
4 there but you got a pipe that's sticking up above
5 it, it's meant to do both, but it would be
6 referred to as a retention pond. And then it
7 would candle the stormwater above the water level.

8 Q. Both of which are to control and manage stormwater
9 and slow it down before it takes its next step
10 going wherever it's going to go?

11 A. That's correct.

12 Q. And you see a lot of, you see a lot of retention
13 ponds and maybe some -- excuse me. A lot of
14 detention ponds that are dry.

15 A. Yes.

16 Q. But we see even some retention ponds that are dry.
17 The city of Aiken has a huge one, for example,
18 behind the Sports Academy facility.

19 A. Mm-hmm.

20 Q. Are you familiar with that one?

21 A. I can't say that I am. Sports Academy wasn't here
22 when I was here, so.

23 Q. Well, it was a source of some litigation.

24 A. Yeah.

25 Q. But it's a pond in that area of Aiken.

Simono - Cross by Mr. McCants

1 A. I mean they have got some what are called Carolina
2 Bays, the high wet-weather ponds that hold water.
3 Nothing can happen --

4 Q. Well, those are natural wetlands.

5 A. No. Well, sometimes they are wetlands. They are
6 not always wetlands.

7 Q. It's God's management of water.

8 A. They are not always wetlands but, yes, it's a way
9 to control the water that the Lord left behind
10 when, whatever he decided to do with it.

11 Q. The main thing I want to point out, this Exhibit
12 Number 2 -- I appreciate your comments that you
13 made -- differently, may have done more, but this
14 is a very comprehensive plan which approves a
15 great deal of stormwater management, correct?

16 A. It has a good bit of storm management on it.

17 Q. And that's because of this natural bed where water
18 has been flowing, to some degree intermittently or
19 otherwise, for hundreds, maybe even thousands of
20 years.

21 A. Definitely for a long time.

22 Q. Can you -- Mr. Simono, how much did these 72-inch
23 reinforced pipes cost back in the 1980s? Can
24 you give the judge any idea?

25 A. The rule of thumb used when we priced pipes like

Simono - Cross by Mr. McCants

1 this that were large and we were doing a cost
2 estimate for a client for construction was, twice
3 the diameter in the dollar per foot. So a 72-inch
4 would be \$144 a foot. Those are probably
5 eight-foot sections and so it's less than \$1,400,
6 but somewhere in that area.

7 Q. Apiece?

8 A. Yes.

9 Q. Did they have a brass or even a PVC device of that
10 size back in the day?

11 A. They don't even have PVC in that size now. They
12 have some other plastics but I don't believe there
13 was any plastic in that, in that time that might
14 have been -- they probably were actually metal
15 pipes of that size.

16 Q. That was my next question, whether or not it was
17 steel pipes.

18 A. Yeah. Galvanized steel pipes would, would have
19 come in 72, 84, 96, some really large sizes.
20 Because they were used, in fact, there's one by
21 Hounds Lake right now that goes underneath the
22 bypass and it's a cart path. And it's made from a
23 very large metal pipe.

24 Q. Much more expensive than concrete.

25 A. No. It's the other way around.

Simono - Cross by Mr. McCants

1 Q. Oh, really?

2 A. Yeah.

3 Q. Shows how much I know. How much -- why didn't
4 they use steel or --

5 A. Probably because the city, county, whoever was
6 reviewing it at the time, you said it was the
7 city, wouldn't let them. We, we never, when I was
8 the reviewer I never let people use metal pipe
9 under the road.

10 Q. You mean a stainless steel pipe of that size is
11 cheaper --

12 A. It's not stainless steel - galvanized. Stainless
13 steel is extremely expensive.

14 Q. All right. So a stainless steel pipe would cost
15 more?

16 A. Oh, unbelievable. Yeah. If they wanted to
17 volunteer stainless I might have let them do that.

18 Q. All right. But these railed steel pipe is less
19 than concrete?

20 A. Yes.

21 Q. Expense-wise. And I get into that because of your
22 testimony about the friction going through pipes
23 and whatnot, correct?

24 A. Correct.

25 Q. And in other words, a steel pipe is this much,

Simono - Cross by Mr. McCants

1 concrete pipe is this much, and stainless even
2 more, correct?

3 A. Yeah. I don't know of anybody that does stainless
4 drainage pipe.

5 Q. Well, whoever was planning would not let them go
6 on the cheap, so to speak. They had to purchase
7 reinforced concrete pipes. Is that a fair
8 assumption?

9 A. Based on what I did. That's what we did and I
10 would assume that that is what they went with.

11 Q. Thank you. You don't disagree the 72-inch
12 reinforced concrete pipe is a big pipe to carry a
13 lot of water?

14 A. No. It definitely is.

15 Q. And you can actually put smaller diameter piping
16 underneath roadbeds, correct?

17 A. You can under certain circumstances, sure.

18 Q. All right. How about where --

19 A. Because there is some on that project.

20 Q. -- Chadwick cross Cedric, in that area where pipe,
21 pipes were to be installed somebody required that
22 they be 72 inches as opposed to smaller.

23 A. Yeah. Obviously that calculation on the side
24 shows that he calculated for a 100-year storm at a
25 very flat slope of half a percent.

Simono - Cross by Mr. McCants

- 1 Q. All right. I listened to your testimony and
2 Mr. Nance took your deposition. Let me walk
3 through a couple of things. You are of the
4 opinion that DOT's engineer's calculations of
5 water flow, amount, velocity, and everything were
6 actually correct with regard to developing the
7 stormwater plan for the parkway. Do you agreement
8 with that?
- 9 A. The calculations that I was able to review that
10 they did were reasonably the same as mine. And so
11 I, I would determine, I determined from that that
12 they were reasonably correct.
- 13 Q. And as part of your investigation you focused on
14 the outfall, as it's being called, on the Chadwick
15 Development side of I-20, correct?
- 16 A. I focused on the point at which it leaves DOT and
17 enters the property. So that is just downstream.
18 So that's on that same yellow line that you're
19 talking about.
- 20 Q. That's right here.
- 21 A. Well, no because they took 25 acres away.
- 22 Q. Excuse me. In that area.
- 23 A. Yes.
- 24 Q. All right.
- 25 MR. MCCANTS: And, Judge, I hope you understand

Simono - Cross by Mr. McCants

1 what I'm doing here. This is preconstruction of the
2 Palmetto Parkway. We're conceding we acquired 25 acres
3 in this area.

4 BY MR. MCCANTS

5 Q. But you examined the outfall here where the
6 development met the property after it had been
7 acquired.

8 A. That's correct.

9 Q. And walked up to the outfall actually on the
10 Parkway or shortly below, shortly below it.

11 A. That's correct.

12 Q. All right. Mr. Simono, did you ever inspect the
13 drainage area across the Palmetto Parkway and
14 follow up the drainage pattern?

15 A. I did not walk any further. I relied on the DOT
16 plans that were provided to me.

17 Q. In other words, did not walk up in the Mathis Lake
18 area. Is that fair?

19 A. That's fair.

20 Q. Are you -- You are aware that there was a system
21 installed above the Parkway on the other side from
22 Chadwick, the development, in 2013? Are you aware
23 of that?

24 A. I have become aware of that. I did not know that
25 at the time I was doing the calculations.

Simono - Cross by Mr. McCants

1 Q. All right. I'm not picking on you but don't you
2 really need to analyze, inspect that device that
3 was installed in 2013 for purposes of formulating
4 opinions in this case?

5 A. I used the information that was supplied to me.
6 As I understood, it came from South Carolina DOT.
7 I had no reason to suspect they would leave
8 anything out. So I calculated based on that
9 information.

10 Q. All right. Well, try following my question now.
11 In order for you to provide a reliable opinion to
12 Judge Pope in this case, don't you really need to
13 examine and look at that equipment that was
14 installed on the other side of the Parkway?

15 A. If I needed to depend on the volume of the flow,
16 yes. My contention is it's the velocity of the
17 flow that's causing the problem. And that was not
18 impacted.

19 Q. Well, a riser was installed across the Parkway.
20 You are aware of that now?

21 A. Yeah, and the water rises up over it and goes
22 through that -- flows out.

23 Q. Just like this riser that was installed -- to be
24 installed in Chadwick, correct?

25 A. Similarly, yeah, I'm sure.

Simono - Cross by Mr. McCants

1 Q. All right. You did not take that into
2 consideration as part of formulating any opinion
3 in this case?

4 A. I did not.

5 Q. That's true?

6 A. That's true.

7 Q. All right.

8 (WHEREUPON counsel conferred about exhibits.)

9 BY MR. MCCANTS

10 Q. Okay. All right. Mr. Simono, if you would look
11 at Mr. Tucker's Exhibit Number 2. It's drawn and
12 shows a lot of things. This is a busy exhibit,
13 you agree?

14 A. Sure.

15 Q. All right. You know, here's the Parkway, here's
16 I-20 going towards Augusta or whatnot. Here's the
17 old Charter Terminal facility you talked about,
18 and there's been discussion of a Walmart up here.

19 A. Yes.

20 Q. Or other commercial development?

21 A. Yes.

22 Q. Which has created impervious --

23 A. Surfaces, yes.

24 Q. -- is that fair?

25 A. Yes.

Simono - Redirect by Mr. Player

1 Q. Once it's impervious water doesn't absorb. It has
2 to go somewhere.

3 A. That's correct.

4 Q. All this -- there's no question Charter Terminal
5 was here at the time of the construction of the
6 Parkway. Do you know if that Walmart was there?

7 A. Yes.

8 Q. It was there at the time of the construction of
9 the Parkway?

10 A. Yes.

11 Q. Are you sure about that?

12 A. I'm pretty sure.

13 Q. All right. Is there any other development that
14 has occurred after construction of the Parkway
15 that would cause you any concern towards the
16 amount of water directed towards I-20? That would
17 be north of I-20. How far up did you go, for
18 example? I didn't mean to interrupt the question
19 but --

20 A. I mean, I looked up at, looked up the drainage
21 basin based on the contours to see how far it
22 would go. It goes up above the Walmart area. The
23 road is actually a divide, so Highway 25 flows --
24 splits the flow across it. So the stuff to the
25 west of I-20 or West of 25, does not enter into

Simono - Redirect by Mr. Player

1 it. It stays out of the way. Most of the rest of
2 that stuff was already developed.

3 Q. All right. So your testimony is there was no
4 significant development north, west or east of
5 I-20 that would create impervious areas that would
6 create more water for DOT to deal with?

7 A. Right.

8 MR. MCCANTS: Fair. Thank you, Mr. Simono. I
9 appreciate your patience with me this morning.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Redirect.

12 MR. PLAYER: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. PLAYER

15 Q. Does anything on this affect your analysis?

16 A. No.

17 Q. Does it have anything to do with what we are here
18 about?

19 A. Not that I can see.

20 Q. Okay. I want -- I don't see it. Maybe you can
21 point to me. I think I heard you say that the
22 yellow line came from a 28-inch pipe. Is that
23 right? Said there was a -- I thought I heard you
24 say -- there was a reference to a 28-inch pipe
25 that was the origination of this flow or?

Simono - Redirect by Mr. Player

1 A. No. There are pipes down below that are not part
2 of the large pipe that are smaller, and there's a
3 24-inch pipe that drains into it --

4 Q. Okay.

5 A. -- from the existing -- from the proposed road.
6 And another one up here that drains into it from
7 the proposed road. And these drain into the
8 drainage basin.

9 Q. Okay. Down here on the famous D-13, let's keep
10 going. What does the second line say? Drain area
11 --

12 A. Drains an area of 82 acres.

13 Q. So we're actually dealing with two and a half
14 times what this drawing was for.

15 A. Yes.

16 Q. Okay. Is that an indication that they increased
17 the flow between the time (inaudible) the
18 development and they built the interstate?

19 A. It indicates that at that time that was the basin
20 he saw. And the one we saw after their
21 development of the project was larger.

22 Q. And I will make this clarification so that the
23 judge will understand. You are not complaining
24 about the amount of water, correct?

25 A. That's correct.

Simono - Redirect by Mr. Player

1 Q. It's the speed?

2 A. Yes, the velocity.

3 Q. What happens if DOT had used 72-inch pipes? It
4 would have slowed the water down, right?

5 A. It actually would have allowed more flow, would
6 have been a broader flow so it would probably have
7 gone slower.

8 Q. And would not have damaged my clients' property in
9 the same way, correct?

10 MR. MCCANTS: Objection, Your Honor. That's
11 really speculation.

12 BY MR. PLAYER

13 Q. Okay. So what's the difference? We have --

14 THE COURT: What's your response, Mr Player?

15 MR. PLAYER: I'll withdraw the question.

16 THE COURT: All right.

17 BY MR. PLAYER

18 Q. What's the difference between the flow we have now
19 and what you just described that would come out of
20 a 72-inch pipe? Would it be faster or slower?

21 A. A 72-inch pipe, the flow would be slower because
22 it would have had a broader base.

23 Q. Would that do anything to alleviate the problem of
24 what you discuss as that break in the wall where
25 everything happens?

Simono - Redirect by Mr. Player

1 A. It might have reduced it, but it would not have
2 repaired it or fixed it.

3 Q. Okay. Is there -- in your experience and work in
4 engineering, these 72-inch pipes, they have to be
5 huge because they're going to support load and
6 cargo that's going on the road, correct?

7 A. The thickness of the pipe is there because of the
8 road load -- the load that's over it. They
9 usually use H20 loading, which is heavy loads
10 based on trucks.

11 (inaudible crosstalk).

12 A. That doesn't deal with the diameter.

13 Q. Okay. Number 6. Do you have any idea where that
14 is?

15 A. I do not.

16 Q. Is it possible from looking at it from, I guess
17 the slope of what he calls the gully wall, could
18 that have been cut by a machine?

19 MR. MCCANTS: Your Honor, I'm going to object.
20 He's testified he doesn't know where that is. He is --
21 anything there absent a foundation is speculation from
22 an engineering standpoint.

23 MR. PLAYER: Your Honor, his entire testimony with
24 Mr. Simono was could water have cut that. And I'm
25 asking in the alternative could a machine cut that.

Simono - Redirect by Mr. Player

1 THE WITNESS: Yes.

2 THE COURT: I'll allow --

3 THE WITNESS: I'm sorry.

4 THE COURT: -- the question. Overruled.

5 MR. PLAYER: Thank you.

6 THE WITNESS: My apologies.

7 THE COURT: That's okay.

8 THE WITNESS: Yes. A machine could have cut that.

9 BY MR. PLAYER

10 Q. And I guess my more fundamental question is, the
11 erosion that's shown here, is it the same kind of
12 erosion that you personally witnessed when you
13 walked to the outfall at 520?

14 A. No.

15 Q. Does this look like new or old erosion to you?

16 A. It looks like it's been done over time. So it was
17 not brand-new. It was some time before he took
18 those photos.

19 Q. And the erosion that you witnessed when you walked
20 the, where they are dumping the 220-acres of
21 water, was that -- how was that different erosion
22 from what this picture seems to indicate?

23 A. The severity is greater and it was basically
24 currently -- the small flow that was there when I
25 was there was currently causing some erosion and

Simono - Redirect by Mr. Player

1 had obviously, very recently caused erosion.

2 Q. And under fundamental engineering design
3 principles, are you allowed to increase the volume
4 or the rate of flow to a neighboring property?

5 A. You are not allowed to increase the rate of flow.

6 Q. Okay. And once again, well, let me ask you this.
7 This is actually a picture. Number 10. Look at
8 the fence line.

9 (Whereupon an exhibit was marked.)

10 A. Yes, the fence is --

11 Q. In your experience when you put a fence up does it
12 touch the ground physically?

13 A. -- or close to it, yes.

14 Q. Where is the ground that that fence was touching?

15 A. It's significantly below. Based on the size of
16 this riprap it looks like it's 3 or 4 feet below.

17 Q. What does that indicate to you as an expert?

18 A. That something moved from the time the fence was
19 built to the time this photograph was taken.

20 Q. Is it possible that water moved it?

21 A. Water could have easily washed underneath and
22 allowed things to settle underneath it, yes.

23 Q. And that would be the improper erosion and
24 scouring that we have been talking about, correct?

25 A. Yes.

Simono - Redirect by Mr. Player

1 Q. Okay.

2 MR. PLAYER: And Your Honor, just kind of a
3 protocol thing, I need to give you a zip drive with all
4 of the videos. I think Clarke and I have talked about
5 them. Everything I have shown is going to be on a zip
6 drive.

7 THE COURT: All right.

8 MR. PLAYER: If I can just introduce that. It
9 will be number --

10 THE COURT: Any objections to that?

11 MR. PLAYER: -- 12?

12 MR. MCCANTS: No objection.

13 THE COURT: All right.

14 (Exhibit entered into evidence.)

15 MR. PLAYER: I've just got to, I have got to -- I
16 have a disk at the moment with other crap. So I'm
17 going to take all the other crap off so you just get
18 the disk and you'll get (inaudible).

19 THE COURT: All right. Very good.

20 MR. MCCANTS: Legal term.

21 MR. PLAYER: I know legal term, crap. I'm really
22 good at that.

23 THE COURT: I do general sessions, as well.

24 MR. PLAYER: Thank you, David.

25 THE COURT: All right. Recross?

Simono - Recross by Mr. McCants

1 RE-CROSS EXAMINATION

2 BY MR. MCCANTS

3 Q. So to recap Mr. Player's redirect, you don't have
4 any problems with the amount of water that is
5 flowing through this system above the Parkway
6 coming through a pipe in the Parkway and onto the
7 plaintiff's property. You don't have a problem
8 with the volume of water, is that correct?

9 A. That's correct.

10 Q. You, you are concerned about the speed.

11 A. That is correct, the velocity.

12 Q. I thought velocity had another component besides
13 just how fast it travels? Is that --

14 A. No. Velocity is speed. Velocity is speed.

15 Q. I'm reaching back into my physics. And whoever --
16 well the folks we know who did it. Mr. Dudley and
17 whomever developed Chadwick accounted for volume
18 and velocity through the use of 72-inch pipes. Is
19 that fair?

20 A. They accounted for the volume flow, volume rate of
21 flow. Not the velocity itself but the volume rate
22 of flow.

23 Q. Well, you just testified --

24 A. Which is the cubic feet per second.

25 Q. -- the larger the pipe, the less velocity,

Simono - Recross by Mr. McCants

1 correct?

2 A. Well, that's a whole different thing. Yes, that's
3 true, too.

4 Q. All right. So the larger the pipe, that would
5 slow the water?

6 A. Yes.

7 Q. And that's what the Chadwick developers were
8 looking at, correct?

9 A. I mean, I can't say what they were looking at, but
10 I can say what appears to have happened on the
11 plan. They did indeed put in a large pipe because
12 they were planning for a 100-year storm. They put
13 it on a very flat slope so it had to be a large
14 pipe to carry that water.

15 Q. Yeah. I'm not pitting you against them. I'm
16 asking from your experience in developing
17 properties and trying to include -- look at that
18 plan. Do you --

19 A. That's why I answered that additional answer.
20 That is correct.

21 Q. So you agree with me? That they were using
22 72-inch pipes to account for flow -- amount of
23 flow and velocity?

24 A. I agree that that is what they would have done,
25 yes.

Simono - Recross by Mr. McCants

1 Q. Looking at a lot of water, correct?

2 A. Looking at a lot of water.

3 Q. And I heard Tucker, Mr. Player, talk to you about
4 whether or not that -- the condition depicted by
5 Exhibit Number 6, whatever we're going to call it,
6 roadway, riverbed, intermittent or constant
7 stream, he suggests it's a possibility that it was
8 man-made. Do you remember that?

9 A. I do.

10 Q. Is this is man-made? It's not erosion is it?

11 A. No.

12 Q. And you testified --

13 A. But you can erode man-made things.

14 Q. I agree with that. But at the same -- well, you
15 used the word when we were talking about it is
16 erosion.

17 A. Yes, there appears there is erosion there.

18 Q. And in his lead -- directing your testimony
19 earlier this morning there wasn't any suggestion
20 this was man-made. It was erosion, correct?

21 A. I agree, yes.

22 MR. MCCANTS: Tucker.

23 MR. PLAYER: I deserve it.

24 MR. MCCANTS: Nice try. That's all I have. Thank
25 you, Your Honor.

Simono - Re-Redirect by Mr. Player

1 THE COURT: Any re-redirect?

2 MR. PLAYER: Your Honor, just one clarification.

3 THE COURT: All right.

4 RE-REDIRECT EXAMINATION

5 BY MR. PLAYER

6 Q. Does DOT design their systems for a 100-year
7 storm? What do the records say? I can show them
8 to you.

9 A. My understanding is you have to be able to
10 accommodate the 50-year storm and not overtop the
11 roadway in a 100-year storm.

12 Q. I think you're off. I think it's 25.

13 A. Okay.

14 Q. But my question is, the design that you reviewed
15 for DOT, would it be sufficient to handle a
16 100-year storm?

17 A. Not that I could see, no.

18 MR. PLAYER: Okay. Thank you. No further
19 questions.

20 MR. MCCANTS: No, ma'am.

21 THE COURT: All right. Thank you. This witness
22 may be excused. Watch your step, sir.

23 SPEAKER7: Thank you, Your Honor.

24 THE COURT: Yes, sir. All right. Mr. Player, you
25 have one more witness, or is this is your final

Auld - Direct by Mr. McCants

1 CLERK: Okay. Please take a seat in the witness
2 stand and state your full name for the Court.

3 THE WITNESS: Donald Krishjen Auld.

4 COURT REPORTER: Spell your last name for me.

5 THE WITNESS: A-U-L-D.

6 DONALD KRISHJEN AULD, being first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MCCANTS

10 Q. Mr. Auld, you go by Krishjen, is that correct?

11 A. That's correct.

12 Q. Can you spell that for the court reporter?

13 A. Kr -- all right. I'll go ahead and spell it for
14 you. It's K-R-I-S-H-J-E-N.

15 COURT REPORTER: K-R-I-S-H --

16 THE WITNESS: J-E-N. It took me a while in
17 elementary school to spell that.

18 COURT REPORTER: Thank you.

19 BY MR. MCCANTS

20 Q. It's a very unique spelling of Christian, but you
21 pronounce it Christian, is that correct?

22 A. You can thank my parents for that. I'm still not
23 sure where they came up with it.

24 Q. I understand. Where do you live?

25 A. I live in Columbia, South Carolina in the

Auld - Direct by Mr. McCants

1 (inaudible).

2 Q. All right. You are from there originally?

3 A. More or less. I grew up out in Elgin in Kershaw
4 County, and then moved into Columbia.

5 Q. Say you're not sure how your mother wound up with
6 that spelling. You haven't got any idea?

7 A. No. I'm not too sure.

8 Q. Your mother's background, she's a schoolteacher.
9 Where?

10 A. I don't know. My grandmother was a schoolteacher.

11 Q. Excuse me.

12 A. She used to teach at Greer.

13 Q. You asked me if I remembered her and I told you I
14 think I do remember Ms. Auld.

15 A. Sarah Auld. Yes, sir. She was a math teacher.

16 Q. Didn't have the pleasure, anyway. Okay. How are
17 you employed?

18 A. I work for Civil Engineering Consulting Services,
19 Inc. in Columbia.

20 Q. How long have you worked for them?

21 A. I've worked for them since January of 2009.

22 Q. And you, right now, are a professional engineer,
23 is that correct?

24 A. That's correct.

25 Q. You have got a PE?

Auld - Direct by Mr. McCants

1 A. That's correct.

2 Q. You hear that testimony earlier about Bobby Usry
3 and his credentials? So you are a PE?

4 A. Yes, as of 2013.

5 Q. Gotcha. Well, let's talk a little bit about your
6 education and your training. Let's start with
7 high school. Where did you finish high school?

8 A. I graduated from Hammond Academy.

9 Q. And what year was that?

10 A. That was in 1990.

11 Q. We were talking about Hammond earlier. Okay.
12 From Hammond where did you go?

13 A. From Hammond I went to Carolina. And I took some
14 time off. I graduated from Carolina with a
15 business degree in 1999.

16 Q. And ultimately you returned to USC, correct?

17 A. That's correct.

18 Q. Was it the Sumwalt School of Engineering?

19 A. It was the Swearingen, was where they --

20 Q. Was it Swearingen?

21 A. -- yes, sir. Down near the Whaley's Mill.

22 Q. Gotcha. So you took some time off between your
23 degree with business administration and returned
24 what year to Carolina?

25 A. Let's see. I graduated in December 2008, so

Auld - Direct by Mr. McCants

1 probably around 2005, I believe.

2 Q. What did you do in the interim?

3 A. Well, coming out with my business degree I worked
4 for a mechanical contracting firm.

5 Q. Which one?

6 A. North Valley Services. They're heating and air
7 conditioning. And then, after that I went into
8 surveying and field engineering for a construction
9 firm. And then I went back to Carolina, got my
10 civil degree, graduated in '99 and then went to
11 work for Civil Engineering Consulting Services.

12 Q. All right. So you say you have civil.
13 Specifically, what did you obtain a degree in when
14 you graduated from Carolina the second time in
15 1999?

16 A. It was engineering. It's a bachelor's degree of
17 engineering, majoring in civil engineering.

18 Q. That was my next question. But with an emphasis
19 in civil, correct?

20 A. That's correct.

21 Q. And part of that would have also been a
22 sub-emphasis in hydrology?

23 A. That's correct.

24 Q. Took classes regarding all that. And then came to
25 work for what I would call CECS, is that correct?

Auld - Direct by Mr. McCants

1 A. That's correct.

2 Q. All right. And you have worked there ever since,
3 is that correct?

4 A. Yes.

5 Q. Tell, tell Judge Pope a little bit about what you
6 have done as part of that consulting work.

7 A. Well, CECS is a transportation firm, so we do
8 civil engineering for highway roadway projects. I
9 started in their hydrology department and have
10 since taken over for the director of hydrology and
11 of SUE, which is subsurface utility engineering.
12 The bulk of my design work has been roadway
13 drainage, bridge hydraulics, sediment and erosion
14 control design for highway projects.

15 Q. I'm looking at your sheet. You're a registered PE
16 in South Carolina?

17 A. Yes, sir.

18 Q. And you said in North Carolina, also?

19 A. Yes, sir.

20 Q. And Georgia, also?

21 A. Yes, sir.

22 Q. Florida, also?

23 A. Yes, sir.

24 Q. You have got in here certified floodplain manager?

25 A. Yes, CFM.

Auld - Direct by Mr. McCants

1 Q. Tell us what that is.

2 A. So FEMA designates floodplains for communities.
3 And in the course -- generally you would have -- a
4 certified floodplain manager would work for the
5 municipalities, for counties, and they would help
6 that community plan their response to floodplains,
7 and the maps and manage things with that. And so
8 my certification, I have those same credentials
9 that I am familiar with flood mapping, flood
10 insurance, and so forth.

11 Q. And floodplain, by its very nature means you do a
12 lot with water, is that correct?

13 A. Yes, sir.

14 Q. And water is also designated as the subset, subset
15 field that you specialize in, which is what?

16 A. Drainage, hydrology, hydraulics.

17 Q. Hydraulics. And that's a pretty extensive field
18 of engineering, isn't it.

19 A. It is. You have the roadway design, but then we
20 design how any runoff and drainage of that road,
21 the rainfall that the road deals with, how to
22 convey it away safely to protect the road to
23 protect the traveling public.

24 Q. Which not always has been done with the designs of
25 roads throughout the world. Is that fair?

Auld - Direct by Mr. McCants

1 A. That's fair.

2 Q. It takes an expert to deal with the water that
3 comes from above, from heaven, correct?

4 A. Yes, sir.

5 Q. And that's your specialty, isn't it?

6 A. It is.

7 Q. And civil engineering in general deals a lot with
8 road construction and design, is that correct?

9 A. Yes, sir.

10 Q. Or design and construction. All right. And you
11 have been asked to provide expert services before
12 and litigate -- in consulting work and in
13 litigated cases, is that correct?

14 A. I have. I've never testified before but I
15 provided expert work for the cases, but have never
16 gone to trial.

17 Q. But when you say you have never testified, you
18 have been under oath, you just haven't been in a
19 courtroom like this. Is that correct?

20 A. That's correct. I have been deposed on cases
21 previously.

22 Q. Well, every expert has to have a first time
23 testifying. This is your day.

24 MR. MCCANTS: With that, Your Honor, I would ask
25 he be qualified as an expert in civil engineering with

Auld - Direct by Mr. McCants

1 a subset specialty in hydrology.

2 THE COURT: Mr. Player, do you have any questions
3 for this proposed expert?

4 MR. PLAYER: No, Your Honor. No questions, no
5 objections.

6 THE COURT: All right. We will designate him as
7 an expert in civil engineering.

8 MR. MCCANTS: Thank you, Your Honor. Thank you,
9 Mr. Player.

10 BY MR. MCCANTS

11 Q. You were asked by the Department of Transportation
12 to review this case, is that correct?

13 A. Yes, sir.

14 Q. And do you have certain opinions you want to offer
15 to Judge Pope with respect to what you have done?

16 A. I do.

17 Q. We'll talk about those opinions in a little bit,
18 but what I want you to do is tell her what you did
19 to get to the point where you can offer her, offer
20 to her your opinions. Okay. What did you do in
21 this case?

22 A. I reviewed the information that was provided by
23 the plaintiff. Information that was provided to
24 me by Mr. McCants. I looked at previous drainages
25 studies, the plan for the roadway, drainage

Auld - Direct by Mr. McCants

1 studies that were done after the road was
2 constructed, and I looked at USGS information for
3 topography. I looked at aerial imagery. I walked
4 the site, and reviewed the -- Mr. Simono's
5 testimony and reviewed the case material in
6 general.

7 Q. You have been out to the property involved in this
8 case?

9 A. Yes, I have.

10 Q. You have walked it and looked at it?

11 A. I have.

12 Q. That's generally part of being a civil engineer,
13 isn't it?

14 A. It is.

15 Q. You have to get out in the woods, don't you?

16 A. Yes, sir.

17 Q. We promised Judge Pope from the beginning in my
18 opening statement, we have got some historical
19 data for her to look at. Do you have historical
20 data for her to consider?

21 A. I do.

22 Q. And that historical data includes what?

23 A. It includes satellite imagery and USGS topographic
24 maps. That would be the bulk of the historical
25 information.

Auld - Direct by Mr. McCants

1 Q. All right. I kind of want to go back as far as
2 you feel comfortable going back, Mr. Auld, to
3 obtain from you information or facts that you used
4 to support your opinions in this case. I'm not
5 going back 10,000 years. I trust that is okay
6 with Mr. Player?

7 MR. PLAYER: Well, I mean you were just a little
8 toddler back then.

9 MR. MCCANTS: Okay.

10 BY MR. MCCANTS

11 Q. I'm going to show you this. And we actually
12 haven't marked this. You looked at this, Judge.
13 We, maybe, should mark it at some point. Let me
14 hand this to you, Mr. Auld, and ask you to
15 identify this if you would, sir.

16 A. This is the subject property.

17 Q. Let's work on the map first.

18 A. Okay.

19 Q. What kind of map is this?

20 A. Oh, I'm sorry. This is a USGS topographic map.
21 It's dated 1964 with a revision in 1980.

22 Q. (inaudible) topographic maps.

23 A. Okay.

24 Q. But give her a couple of minutes on what they are
25 and why they existed and what they're used for, if

Auld - Direct by Mr. McCants

1 you would.

2 A. Okay. So the USGS, United States Geological
3 Service surveyor goes out and they map the United
4 States. And they do survey work and will draw it
5 up into a topographic map. And the topography is
6 just how the land lays outs, hills and valleys and
7 rivers and streams. And they will detail that on
8 a map.

9 Q. What do the squiggly lines mean, for example, as
10 far as the topography. Show her the squiggly
11 lines.

12 A. So we have these lines here, you see these curving
13 lines. Those are contours. So these are areas of
14 equal elevation. So say, for instance, we have a
15 350 contour, that's your darker line right there.
16 So as that line goes around, everything is a
17 350-foot elevation relative to sea level. And
18 this would be either the top or bottom, and it's
19 going to drop down into it or rise up towards it.
20 And so this is a 400, so you know this is a
21 hilltop and it goes down into a valley. And
22 that's where you have this stream running through
23 the property.

24 Q. When I was in Boy Scouts the general principle was
25 the farther the lines are apart, the flatter it

Auld - Direct by Mr. McCants

1 is.

2 A. That's correct.

3 Q. The closer the lines are together, that indicates
4 steepness.

5 A. That's correct. It's, it's --

6 Q. We would use those maps to avoid the lines close
7 together because that means it was steep and it
8 was harder than to walk on a flat surface.

9 A. That's right. That's correct. The distance
10 between the lines is -- it depends on the scale of
11 the lines themselves but it could be one-foot
12 contours, which for every one contour it would be
13 a foot in elevation change. And then the distance
14 between them would be how quickly that, that foot
15 changes.

16 Q. And I'm not trying to make you an expert in
17 mapmaking, but you had to become familiar with
18 these types of maps to do your work, correct?

19 A. That's correct.

20 Q. And how in the world did they decide where the
21 lines are squiggly and how far apart they are?

22 A. It's based off of survey information. They have
23 gone out and physically surveyed the area.

24 Q. You were a surveyor?

25 A. Yes.

Auld - Direct by Mr. McCants

1 Q. So you know about going into the woods with one of
2 those things on a tripod and scope, and sending
3 somebody down, I don't know, 300 yards and scoping
4 it and getting an idea of where those lines should
5 be.

6 A. That's correct.

7 Q. A lot of work has gone into these lines over the
8 years, haven't they?

9 A. It has.

10 Q. And President Jefferson was a surveyor back in the
11 day. He drew contour maps. Is that true?

12 A. I couldn't speak to that.

13 Q. I'm just trying to impress you with my knowledge
14 of presidential history. Now, how reliable are
15 these maps for the purposes of what you do?

16 A. We, historically, have used USGS maps in design.
17 It's the basis of what we would use in delineating
18 watersheds, and for getting a general idea of
19 topography. So they are very reliable.

20 Q. And they're a product of an agency of the United
21 States government?

22 A. Yes.

23 Q. We talked about a blue ink line on the maps as
24 part of this case. We have bantered back and
25 forth about whether or not that is a blue-line

Auld - Direct by Mr. McCants

1 stream, or intermittent stream, or whatever it is,
2 and every little symbol on these maps has a
3 designation, is that correct?

4 A. That's correct.

5 Q. And you gave to me -- you have given this to me?

6 A. Yes.

7 Q. Which is kind of an index of symbols on what we
8 call a topo map. I'm going to call it a topo map,
9 okay?

10 A. Okay.

11 Q. Just explain briefly, if you can, to Judge Pope a
12 little bit about how the index, the guide to topo
13 maps, describes these blue lines.

14 A. It has -- so every symbol (inaudible) that's used
15 on a map, it has to be in this legend. So the
16 section we are looking at, it would be dealing
17 with rivers, lakes and canals. And so you have
18 perennial streams, perennial rivers -- of course,
19 perennial, it flows year-round.

20 Then we come down and we will have
21 intermittent stream or intermittent river. Now
22 the intermittent stream, it flows during periods
23 of wet weather, but it doesn't always flow like a
24 perennial stream would. And so it -- if you have
25 rainfall it's going to flow. But it also, as long

Auld - Direct by Mr. McCants

1 as it's not an overly dry spell, it will have some
2 base flow just from water that's flowing
3 underground that ends up in the stream. So it
4 gets water from there and then from rainfall
5 events. And so they don't flow year-round, but
6 it's -- if it's overly dry, they dry up. But,
7 generally, in wet weather conditions they're going
8 to have water in them.

9 Q. And you call mapmakers cartographers. Is that
10 what they are called?

11 A. That sounds right.

12 Q. Over the years, accumulate data to make marks on
13 topo maps, correct?

14 A. Correct.

15 Q. And we had a lot of testimony and discussion in
16 this case about this yellow line traversing the
17 Chadwick Development in Exhibit Number 2, and its
18 relationship to some reference on a topo map.

19 A. Correct.

20 Q. Correct?

21 A. Yes, sir.

22 Q. And what, in your professional opinion in
23 engineering, how would you characterize the
24 characterization of this yellow line on this topo
25 map? What is it?

Auld - Direct by Mr. McCants

1 A. It's an intermittent stream according to the topo
2 map.

3 Q. And I think we all know what those words mean but,
4 formally, would you tell us and tell the Court
5 what an intermittent stream is.

6 A. An intermittent stream is represented by a line
7 with breaks and dots in it. And so this stream
8 flows through the property is detailed on this map
9 as a blue line -- a broken blue line with dots.

10 Q. That was going to be my next question. What color
11 is it on the topo map?

12 A. Blue.

13 MR. MCCANTS: Have you got an issue with me
14 marking this, Mr. Tucker? You okay? This will be my
15 next exhibit, Your Honor.

16 THE COURT: All right.

17 MR. MCCANTS: Thank you, ma'am.

18 BY MR. MCCANTS

19 Q. All right. Mr. Auld, if you would, would you
20 write in, probably red, perhaps that won't be
21 confused with any other color in this plan. I
22 want you to draw a circle around that intermittent
23 stream that you describe. But before you do let's
24 make sure that it includes enough of the property
25 involved in this case. In other words, not a

Auld - Direct by Mr. McCants

1 little circle. Kind of make it big enough so that
2 she can see it in relation to the property in this
3 case.

4 A. Just circle the track basically. This stream
5 comes down through here. It's not showing up too
6 good, but I tried to capture the full extent of
7 the stream as it ties into Franklin Branch.

8 MR. MCCANTS: Do you have a Flair pen? What
9 colors you got?

10 MR. PLAYER: What pen?

11 MR. MCCANTS: A Flair.

12 MR. PLAYER: I've got a whole lot.

13 MR. MCCANTS: Red Flair.

14 THE COURT: Mr. McCants, what is a Flair?

15 MR. MCCANTS: We used to use in elementary school.
16 I'm sorry.

17 MR. PLAYER: It's a brand, Judge.

18 MR. MCCANTS: Raise your hand if you know what a
19 Flair pen is. Does anybody else besides Mr. Fischer
20 know what a Flair pen is?

21 (Whereupon an off-the-record discussion was
22 held.)

23 MR. MCCANTS: All right. That looks good, I
24 think. I think the judge can see that now. So the
25 rest of everybody can see that. I'll pick that up. So

Auld - Direct by Mr. McCants

1 that is, what you circled with a red -- excuse me,
2 orange felt tipped pen on Exhibit Number 10 is the
3 intermittent blue stream, is that correct?

4 A. That's correct.

5 Q. Okay. What's the date of this map again?

6 A. 1964.

7 Q. All right. Now, Mr. Auld, do you know when topo
8 maps were first created by the United States
9 government?

10 A. I do not.

11 Q. Have you -- we were going to try and get an old
12 one in here. It may be too late. But have you
13 looked at other older topo maps?

14 A. Yes, sir.

15 Q. Does that blue-line stream appear on those maps?

16 A. Yes.

17 Q. Have you got any idea how long that blue-line
18 stream has traversed the property involved in this
19 case and through -- meandered through this neck of
20 the woods?

21 A. I do not know the full extent. I do know that I
22 looked at a map from 1923 that had that same
23 stream on it.

24 Q. What does that tell you that if you see a
25 reference to a stream on a map in the late '20s?

Auld - Direct by Mr. McCants

1 What does that tell you?

2 A. It's been there for quite a while.

3 Q. Long time?

4 A. A long time.

5 Q. It's not man-made.

6 A. That's correct.

7 Q. All right. As a designer and engineer dealing
8 with roadways, what do you do when you confront
9 either bodies of water, or streams, or rivers, or
10 intermittent streams?

11 A. We have to design -- so the roadway is going to be
12 where the road goes. So they will choose the
13 alignment of where, the way it is going to best
14 fit. And that's determined off of certain
15 mathematical equations they have to, to use to
16 make sure that the road is safe for cars to drive
17 on.

18 Aside from that, whatever it goes over the
19 top of. We -- if it's going over a stream or a
20 river or anything, we have got to design the
21 conveyance for that body of water to pass under
22 the roadway. And so we'll look at the overall
23 contributing watershed, or drainage basin I think
24 is the term I heard frequently, but -- so a
25 watershed or drainage basin is that area of land

Auld - Direct by Mr. McCants

1 that if a drop of water falls on it, it's going to
2 end up eventually going to that low spot. And so
3 we'll define that drainage basin.

4 We'll look at land cover. And we'll look at
5 how steep it is. If it's flat. The land cover
6 and steepness, those dictate what's called time
7 and concentration. So time and concentration is
8 how long it takes a drop of water at the
9 furthest (sic) distance time-wise, for a drop of
10 water to go -- to fall on the ground out of the
11 sky and end up to your point of analysis. And so
12 that's a function of the steepness and what the
13 land cover is, if it's wooded, or if it's just
14 grass, or if it's pavement, whatever the case may
15 be. And so that will determine our time and
16 concentration.

17 We'll take that and then look at land cover
18 again, to see -- so when a storm event starts, you
19 have rainfall that's going to fall out of the air,
20 and it's going to land on the ground. Well, some
21 of that is going to be absorbed. And that's what
22 we typically call initial extractions, when it's
23 absorbed into the ground.

24 Then once that ground absorbs as much as it
25 can, the rest of it goes to runoff. And the

Auld - Direct by Mr. McCants

1 runoff is the surface water that then we have to
2 deal with, with our designs, our pipes and our
3 outfalls. It's to convey that underneath the
4 roadway through the DOT's property and out, allow
5 it to continue on its path.

6 Q. I think you included in your last answer that you
7 have to deal with water, correct?

8 A. That's correct.

9 Q. Why?

10 A. Water is -- can be a hazard. Water can be a
11 hazard on the road. So the first, first thing we
12 look at is that, is the vehicle, the type of
13 (inaudible). That's a common, common issue that
14 you have on roadways. So we want to get the water
15 off the roads as quickly as possible. And once
16 the water is off the road, then we have to convey
17 that water safely to, to an outfall. An outfall
18 is typically defined as where that break in the
19 right-of-way is. So where we leave SC DOT
20 right-of-way, that's typically the end of that
21 outfall.

22 And it -- so secondly, with water we have to
23 worry about any -- it's safely conveyed.

24 So say, for instance, we have a stream
25 channel or a river. We want to make sure that

Auld - Direct by Mr. McCants

1 during storm events that that bridge, or however
2 you are conveying it, has enough capacity that
3 you're not worrying about the road overtop or the
4 bridge washing out or something along those lines.
5 And those are the two primary concerns with water
6 is traveling safety, safety of the traveling
7 public and then safety of the roadway.

8 Q. The first component of that safety, on the new
9 constructed road you are now creating an
10 impervious condition that previously would absorb
11 water. That's the first thing. Hard asphalt or
12 concrete, correct?

13 A. That's correct.

14 Q. The second component of that is, if you deal with
15 a stream or riverbed you have got to construct
16 safely above it or around it, correct?

17 A. That's correct.

18 Q. Most typical example, they have bridges crossing
19 the Mississippi River. That's a readily apparent
20 body of water, correct?

21 A. Correct.

22 Q. But what do you do with intermittent blue-line
23 streams that are not so apparent, you know. It's
24 apparent at some times, and some points you can
25 walk out there and it's as dry as a bone. Is that

Auld - Direct by Mr. McCants

1 correct?

2 A. That's correct. We still have to design for it
3 because during rain events, that's when it's going
4 to carry water. And we have to design for that
5 water that starts over here to make it through the
6 roadway and to continue on its path.

7 Q. And in addition, this other construction, it
8 creates impervious conditions that's going to
9 increase the amount of water that may be flowing
10 through an area, is that fair?

11 A. That's correct. Development in a basin, which is
12 happening everywhere, as you build up you have
13 more parking lots, you have more buildings, and
14 you have more runoff.

15 Q. As an engineer, what would happen -- let's talk
16 about probabilities. What could probably happen
17 if you didn't deal with that blue-line stream on
18 that topo map when you constructed the Palmetto
19 Parkway?

20 A. It would potentially overtop the roadway.

21 Q. And then what happens?

22 A. It would endanger the traveling public and wash
23 the road out.

24 Q. A road washout?

25 A. Yes, sir.

Auld - Direct by Mr. McCants

1 Q. And, tragically, we have seen these in the news
2 today with the events in Libya. I've seen it time
3 and time again, roadways may have not been
4 constructed correctly, literally falling down into
5 the water below. That's, that's the purpose of
6 proper engineering, isn't it?

7 A. That's correct. As a civil engineer we have an
8 obligation to protect the public.

9 Q. And based upon your review of the records and
10 documents, your discussions with DOT personnel,
11 others involved in the Palmetto Parkway, what is
12 your opinion within a reasonable degree of medical
13 certainty as to whether or not the Department of
14 Transportation properly designed and constructed
15 the parkway in relation to this intermittent
16 stream?

17 A. My experience and my opinion is it is properly
18 designed.

19 Q. All right.

20 MR. PLAYER: Judge, he said to a medical
21 certainty.

22 MR. MCCANTS: Engineering. Thank you, Mr. Player.
23 Madam Court Reporter, if you can clean me up I would
24 appreciate it.

25

Auld - Direct by Mr. McCants

1 BY MR. MCCANTS

2 Q. Within a reasonable degree of engineering
3 certainty.

4 A. Yes, sir.

5 Q. And you'll hear that phrase, again. Thank you,
6 Tucker. So we start from this basic proposition
7 that you think the project itself was properly
8 engineered and constructed. Is that a fair
9 statement?

10 A. That's fair.

11 Q. All right. Now, we then, kind of, get to the
12 issues in this case and the plaintiffs' complaint,
13 as you know, it is a result of the construction of
14 the parkway they have been suffering damages as a
15 result of water flowing across their property,
16 correct?

17 A. Okay.

18 Q. Is that generally what you understand is going on
19 in this case?

20 A. That is what I understand the case is about.

21 Q. All right. And you heard us talk a great deal
22 about the plans for a development known as
23 Chadwick and referencing the yellow line and
24 whatnot, correct?

25 A. Correct.

Auld - Direct by Mr. McCants

1 Q. Now, you have heard testimony, but I'm interested
2 in your opinion. What is this yellow line on
3 Exhibit Number 2, the Chadwick Development in
4 relation to the topo map?

5 A. The yellow line on the development plan is the
6 same channel that showed on the topographic map.

7 Q. If you had been the one designing Chadwick, would
8 you go and look at historical data before you
9 undertook to draw plans for Chadwick?

10 A. I would have an obligation to do that.

11 Q. A lawful obligation?

12 A. Yes, sir.

13 Q. And you can't venture back in time to dip into the
14 heads of the planners of Chadwick but, just based
15 upon your experience and your research in this
16 case, does it appear as though that someone did
17 refer to historical maps in drawing the plans for
18 Chadwick?

19 A. It does.

20 Q. Why do you say that?

21 A. Because the drainage channel, or the intermittent
22 stream that shows up on the topo map is also
23 mirrored in their development plan.

24 Q. You used the interesting word mirrored. It is, it
25 is a line which doesn't look like it was an

Auld - Direct by Mr. McCants

1 engineered line. It looks like it's a line that
2 is following something in history. Is that what
3 that is?

4 A. I would agree with that.

5 Q. Is there any question in your mind about that?

6 A. No, sir.

7 Q. All right. So, naturally, one looking at that
8 would say well, what did the planner or designer
9 look to, and how long has that line traversed that
10 property. And have you done that? Again, looking
11 at maps.

12 A. Okay.

13 Q. You have also looked at some aerial imaging, is
14 that correct?

15 A. That's correct.

16 Q. All right. Where are your actual photographs,
17 Mr. Auld? Do you have them with you on the
18 witness stand? I know we blew one up.

19 A. They're -- the ones I brought with me are in that
20 manila folder that's on the --

21 Q. Go grab it so we can --

22 A. -- I can.

23 Q. -- so we can look it.

24 (Whereupon an off-the-record discussion took
25 place among people within the courtroom.)

Auld - Direct by Mr. McCants

1 BY MR. MCCANTS

2 Q. All right. Mr. Auld, I'll hand you what I believe
3 is your best photograph with the exception of the
4 one we enlarged for Judge Pope. Let's walk
5 through this if we can, okay?

6 A. Okay. The first two would be the one that was
7 enlarged. Do you want to skip over?

8 Q. Let's skip over those for the time being. And
9 what I'm trying to do, let's go to the most recent
10 ones and get that.

11 A. Okay.

12 Q. Let me ask you some foundation. And you are going
13 to have to take that clip off if you want us to
14 get the Court to mark it, okay? And we want to
15 mark them as we go along showing the photographs.
16 All right. Let's look at the last one in the
17 back. And you have got labels on them, land cover
18 2010 10 5. Do you see that one?

19 A. Yes, sir.

20 Q. All right. Now first, let's get a foundation for
21 what we are doing here. Down there it says Google
22 Earth.

23 A. Right.

24 Q. Did you extract these or pull these images off
25 Google Earth?

Auld - Direct by Mr. McCants

1 A. That's correct.

2 Q. Yourself?

3 A. Myself, yes.

4 Q. And you heard me talking to Mr. Simono about the
5 reliability of Google Earth. Do you share his
6 thoughts in that regard?

7 A. I do. We use it frequently for design.

8 Q. We're getting reliable images from the satellites
9 that haven't been altered or doctored or anything
10 like that. Is that true?

11 A. That is my opinion.

12 Q. You feel comfortable with -- were all these
13 photographs pulled off Google Earth?

14 A. Yes.

15 Q. In your experience, and is it your opinion, they
16 are all reliable images?

17 A. That is my opinion.

18 MR. MCCANTS: All right. We'll mark this one
19 first, Madam Court Reporter. Mr. Tucker -- Mr. Player,
20 this will be a 2010 10 5.

21 (Whereupon an off-the-record discussion
22 occurred with the court reporter and attorney.)

23 (Whereupon an exhibit was marked.)

24 MR. PLAYER: Clarke?

25 MR. MCCANTS: Yes.

Auld - Direct by Mr. McCants

1 MR. PLAYER: Can I see the USGS for '64.

2 MR. MCCANTS: Yes.

3 MR. PLAYER: Thank you.

4 MR. MCCANTS: Can I keep going?

5 MR. PLAYER: Yes.

6 BY MR. MCCANTS

7 Q. All right. I'm going to hand you what the court
8 reporter has marked as Defendant's Exhibit
9 Number 11. Can you identify that for Judge Pope
10 and tell her what it depicts? In particular that
11 one has the Palmetto Parkway on it, correct?

12 A. That's correct.

13 Q. Depicted on it. So that?

14 A. This is 2010 imagery. It shows I-20 up here. And
15 you have Palmetto Parkway. This is the outfall
16 that we have been discussing. And this will be
17 DOT's property line. And as the, the intermittent
18 stream begins here and falls towards this outlet,
19 towards this direction before leaving the
20 property. And --

21 Q. All right. Then, let's take a look at the next
22 couple of images.

23 MR. MCCANTS: Madam Court Reporter, I would like
24 to mark these as 12 and 13. And, again, I think these
25 need (inaudible).

Auld - Direct by Mr. McCants

1 (Whereupon exhibits were marked.)

2 BY MR. MCCANTS

3 Q. Okay. And the next one would be 13. All right.
4 We'll do this, start looking at that one,
5 Mr. Auld. I'm going to hand you 13. So based
6 just upon my examination, 12 and 13 are the same
7 area as the one that's enlarged.

8 A. That's correct.

9 Q. All right. Tell the judge what we have got here
10 with Number 12 and 13. That's someone's swimming
11 pool, right?

12 A. Yes. Swimming pool. So, and we have 2007 there
13 which that's -- these are zoomed in off of the
14 image took out there.

15 Q. What is 2007?

16 A. I think that's 2007, where your hand is.

17 Q. This?

18 A. Yes.

19 Q. It says 2006 6 4.

20 A. 2006. Okay. That was supposed to be 2006 then.
21 I had a few of them floating around. So these
22 would have been the same time period as what that,
23 that image where your hand is. And these are down
24 --

25 Q. Give us just a minute.

Auld - Direct by Mr. McCants

1 A. -- okay.

2 Q. Where's the swimming pool on this?

3 A. It's all the way down here. So this is the
4 overview of the site.

5 Q. All right. Let me hand them back to you then.

6 A. Okay.

7 Q. These are a group.

8 A. That's correct.

9 Q. All right. That's a swimming pool there?

10 A. Yes, sir.

11 Q. All right.

12 (Whereupon an off-the-record discussion was
13 held between attorneys.)

14 MR. MCCANTS: If you just hold it up. There it
15 is. That was my error there, Your Honor. I recognize
16 that was the group for that one. Tucker, what you have
17 got is a group number. Your Honor, may I talk to
18 Mr. Tucker about organizing these?

19 (Whereupon, an off-the-record discussion was
20 held between attorneys.)

21 BY MR. MCCANTS

22 Q. All right. Let's walk through these and tell
23 Judge Pope what we are looking at.

24 A. Okay.

25 Q. 2006, is that correct?

Auld - Direct by Mr. McCants

1 A. That's correct, 2006 06 04.

2 Q. All right, now. Stop for a second. What's,
3 what's significant about 2006?

4 A. This is before SC DOT would have taken over
5 ownership of the acquired tract.

6 Q. Before they moved any dirt to construct the
7 Palmetto Parkway, correct?

8 A. Correct.

9 Q. And that shows an aerial image you believe is a
10 reliable image of the area before DOT began moving
11 dirt constructing the Palmetto Parkway, correct?

12 A. Correct.

13 Q. All right. Show the Judge -- show Judge Pope what
14 you have got.

15 A. So this is the same location that we see here
16 where the outfall is consistent. This is back in
17 2006. So this is the area where 520 was
18 constructed. And you can see where it was logged
19 through that stretch before DOT took over
20 possession of it. And so this would be the
21 condition of the tract before construction. And
22 what I'm showing with these is, as you zoom in you
23 can follow down, you can see the existing delta
24 pattern from the runoff where the creek is falling
25 through. You can also see the 72-inch pipes

Auld - Direct by Mr. McCants

1 there. Here it's close-up, you can see it a
2 little bit better how the erosion would be that's
3 just -- in that delta area, and the close-up of
4 the pipes.

5 Q. Where are the pipes?

6 A. Right here.

7 Q. Those are the concrete, 72-inch concrete pipes
8 that we've talked so much about here?

9 A. That's correct.

10 Q. Viewed from above?

11 A. Yes, sir.

12 Q. Those satellites can actually see those big pipes?

13 A. It's impressive what they can do these days.

14 Q. I really want to focus on this one, okay.

15 MR. MCCANTS: Madam Court Reporter, this is going
16 to be -- does this follow this one?

17 THE WITNESS: That is a close-up of that one.

18 MR. MCCANTS: This will be the next one.

19 (Whereupon multiple exhibits were marked.)

20 BY MR. MCCANTS

21 Q. All right. Mr. Auld, let's talk about 15 and 16.
22 I'm going to show you 15 first. I would like to
23 know what date that image is pulled from Google
24 Earth.

25 A. The date of the image is February 1, 1994.

Auld - Direct by Mr. McCants

1 Q. All right. That's 12 years before construction
2 began on the Palmetto Parkway, is that correct?

3 A. Yes, sir.

4 Q. All right. Tell Judge Pope what you have got.

5 A. This is the same location we looked at previously.
6 And so we see the outfall. This is the stream
7 channel. You can see it much more clearly here as
8 it goes down and crosses. This is -- if you look
9 at the development map over there, this road they
10 have cut in, they have shown. This is the
11 drainage easement through this stretch here. It's
12 highlighted in yellow. You can see the pipes they
13 have arranged along the roadway here for placement
14 right at this point where their proposed road
15 would cross over the inlet stream.

16 THE COURT: All right. Did you get all that,
17 Madam Court Reporter?

18 COURT REPORTER: No.

19 THE WITNESS: Are you having trouble hearing me?
20 Oh, I'm sorry. I'll speak up.

21 COURT REPORTER: (inaudible).

22 THE COURT: Okay, we will project louder.

23 COURT REPORTER: Thank you.

24 MR. MCCANTS: Mark this as the next one.

25 (Whereupon an exhibit was marked.)

Auld - Direct by Mr. McCants

1 BY MR. MCCANTS

2 Q. All right. We actually enlarged 15 a little bit
3 more and put it on a board. We marked this as
4 Number 17, okay. Now it was hard for me to hear
5 what you were telling Judge Pope, but I'm going to
6 ask you a few questions. That is what, this dark
7 area on Exhibit Number 17?

8 (Whereupon an exhibit was marked.)

9 A. Mathis Lake.

10 Q. Use the topo to show Judge Pope where Mathis Lake
11 is on that old topographic map.

12 A. This is Mathis Lake here.

13 Q. Now, again, outfall being what?

14 A. That is the point at the current SC DOT
15 right-of-way, where their property ends.

16 Q. Now, just generally with your finger, mark an
17 outline where the Palmetto Parkway is in relation
18 to the outfall on Exhibit Number 17.

19 A. The Palmetto Parkway would fall somewhere through
20 this stretch along here with the edge of the
21 right-of-way would be along where the outfall mark
22 is.

23 Q. When we're talking about the outfall, we're
24 talking about that pipe underneath the interstate
25 that's discharging water the plaintiffs are

Auld - Direct by Mr. McCants

1 complaining about, correct?

2 A. Well, the outfall is technically where that
3 channel leaves DOT right-of-way.

4 Q. All right. Fair enough. I'm not being precise.

5 A. Okay.

6 Q. And there's another mark here called riser.

7 A. That's correct.

8 Q. We're going to talk about it in a second, okay?

9 A. All right.

10 Q. But I am particularly interested in the
11 description of what this white-appearing line is
12 along that area on the aerial image taken, if they
13 were, in 1994.

14 A. That is the intermittent blue-line stream that's
15 shown on the 1946 topo map, that's also detailed
16 on their development plan in the yellow
17 highlighter.

18 Q. I will leave it to the Court, the factfinder, but
19 would you agree with me that it is readily visible
20 from a satellite in this image that's marked as
21 Number 17?

22 A. Yes, sir.

23 Q. That's not a road, is it?

24 A. No, it's not.

25 Q. Are roads depicted on Number 17?

Auld - Direct by Mr. McCants

1 A. They are.

2 Q. And based upon your research and your information,
3 what roads are those?

4 A. The roads depicted, we have I-20 up at the top and
5 then we have the proposed road that's shown on the
6 development plan.

7 Q. The Chadwick development which was never
8 completed?

9 A. That's correct.

10 Q. But roads graded. We don't believe they were
11 asphalted.

12 A. That's correct.

13 Q. They were graded, correct?

14 A. Correct.

15 Q. What, what does it tell you that the satellite
16 with a camera, how apparent or visible that
17 blue-line stream is on Number 17 is if it can be
18 captured by a satellite? What does that tell you?

19 A. It's a significant drainage channel.

20 Q. It's been there a long time.

21 A. Yes, sir.

22 Q. To the point that it's eroded ground, taken down
23 trees that would have obscured a view, is that
24 fair?

25 A. That's reasonable.

Auld - Direct by Mr. McCants

1 Q. For example, show her where the timber was that we
2 believe, and I think the evidence shows, was
3 removed by the landowners before construction of
4 the parkway began.

5 A. So where the outfall line is, you see the outfall
6 mark on both maps. And so the DOT right-of-way
7 will follow this curve, and that was what was
8 removed. And I -- so you are looking at the
9 curves like this where this would have been the
10 section that's logged.

11 Q. All right. So that stream has flowed through
12 there for many, many moons.

13 A. Yes.

14 Q. To the point where it has eroded ground, taken
15 down or eroded top cover, what they call it in the
16 rainforest when you have a trees -- canopy.

17 A. Canopy.

18 Q. I mean it's taken away the canopy that would block
19 a camera on a satellite or a plane trying to
20 record an image. Is that fair?

21 A. That's fair.

22 Q. That's a lot, isn't it?

23 A. It is.

24 Q. All right. So what is your opinion then, to a
25 reasonable degree of engineering certainty, as to

Auld - Direct by Mr. McCants

1 the existence of the presence of severe erosion
2 due to a stream? Its presence in relation to the
3 construction of the Palmetto Parkway.

4 A. The stream and any associated erosion with it has
5 been a long-standing situation on the property
6 that was not aggravated by the Palmetto Parkway
7 construction.

8 Q. And the degree of severity before construction
9 would have been -- how would you characterize it?
10 Slight, moderate, heavy or severe?

11 A. The erosion itself is -- the condition of it from
12 my experience is, when I walked the site, is
13 consistent with a, with that type of stream. With
14 an alluvial stream that's going to have
15 degradation of the channel just related to water
16 flowing through it. That, that's consistent.

17 So what we are seeing over time, that level
18 of erosion within that channel is, is to be
19 expected. I don't honestly see anything
20 particularly out of the ordinary with that
21 channel. It's consistent with other channels that
22 I've seen.

23 Q. Is it consistent with the level of movement of
24 earth and dirt and trees that are in Mr. Saunders'
25 appraisal?

Auld - Direct by Mr. McCants

1 A. I would agree with that.

2 Q. All right. And you have seen, for example on
3 Number 6, it's no longer there because,
4 apparently, it may have been in the area of
5 acquisition but you have seen the historical
6 pictures. How would you characterize what is
7 depicted on Exhibit Number 6, if I may ask you?

8 A. As a stream channel.

9 Q. I called it a gully, chasm, riverbed. They seemed
10 to argue with that, so it is a severe depression
11 in the earth caused by erosion?

12 A. Yes. That is why that is there is due to erosion.

13 Q. And what causes erosion?

14 A. The water flowing through that channel.

15 Q. All right. While we're on the subject of the
16 timber cut, if the landowners cut the timber off
17 that section as described by Mr. Giddens and
18 before we -- I say we, our state Department of
19 Transportation, before they did any work, did that
20 help or hurt things with regard to the stability
21 of the ground out there for purposes of erosion?

22 A. It would have increased runoff and the likelihood
23 of sediment movement on site.

24 Q. All right. And you pointed out the delta area, I
25 believe --

Auld - Direct by Mr. McCants

1 A. Yes, sir.

2 Q. -- that we have. Then let's move to the flow of
3 water. And I'm going to try and get through this
4 without displaying too much of my ignorance about
5 physical and scientific principles, but it, it
6 appears to me after listening to Mr. Simono, that
7 we have passed the issue in this case as to
8 whether or not the volume of water flowing onto
9 the plaintiffs' water (sic) is an issue. That
10 we're more focused on the speed or the velocity of
11 that water. Is that your understanding?

12 A. Yes, sir.

13 Q. So they don't at least, from their own expert's
14 testimony, they don't complain of the volume of
15 water whether it be a quart or a gallon, but it's
16 how fast that gallon of water is moving, correct?

17 A. Correct.

18 Q. All right. I want you to tell Judge Pope what you
19 have done to research that issue and what
20 conclusions you have come to with regard -- and
21 you can talk about the amount also, but we are
22 particularly interested in what the flow
23 characteristics are, okay? Preconstruction and
24 post-construction.

25 A. I reviewed the SC DOT design work in preparation

Auld - Direct by Mr. McCants

1 for coming here today. What I saw was that in
2 2013, as a result of what happened previously with
3 Auscuaga (sic)Lake Road -- Ascauga Lake Road, I'm
4 incorrect with my pronunciation sometimes. There
5 was a riser structure that was installed on the
6 upstream end of the pipe that is passing under
7 526(sic), which is what we identified here as a
8 riser.

9 Q. Would this help?

10 A. That might. Yes, sir.

11 Q. Can you come down here for a minute? Is that all
12 right, Judge, for him to come down? And, Judge,
13 we would have this reduced to a smaller size, a
14 manageable size if you request it. But I'd like
15 to go ahead and mark this one real quickly.

16 THE COURT: Certainly.

17 MR. MCCANTS: What are we up to next, Madam Court
18 Reporter?

19 COURT REPORTER: (inaudible).

20 MR. MCCANTS: What number are we up to next?

21 COURT REPORTER: Eighteen.

22 MR. MCCANTS: I'm sorry, I shouldn't ask. I'm just
23 going to hand it to you. Sorry about that. Okay, you
24 got it?

25 (Whereupon an exhibit was marked.)

Auld - Direct by Mr. McCants

1 BY MR. MCCANTS

2 Q. All right. Number 18. Mr. Auld, come up close so
3 the judge can hear you, and also speak loudly so
4 Mr. Player can hear you and his clients.

5 A. All right. In 2013 there was the flooding
6 incident on Ascauga Lake Road. As a result of
7 that the department installed what's called a
8 detention riser on the upstream of the 54-inch
9 pipe that passes under the access ramp for
10 I-526 -- I-520. The riser works as a detention
11 structure. And it turned the (unintelligible)
12 area within the loop, and it's not clearly shown
13 here but it will probably show up better in one of
14 these illustrations.

15 Q. That help?

16 A. It does. Thank you. So this, this
17 (unintelligible) area which is the area between
18 the ramps, all the ramps are higher than the
19 inside of it. So what they allow it to do is they
20 allow water to clog up in this area, which makes
21 it a detention basin. And so with the
22 installation of this detention basin in 2013, what
23 we now have is a reduction in peak discharge
24 that's leaving the SC DOT right-of-way. The --
25 for the 2-year storm we have -- before I-520

Auld - Direct by Mr. McCants

1 construction, this is before any of this was built
2 when I-20 was still there, we had 52 CFS that
3 would run off onto the plaintiffs' property.

4 Q. Talk about CFS. What is that?

5 A. That's cubic feet per second. So it's a
6 volumetric measure by time. So if you want to
7 think about soccer balls or basketballs or
8 whatever the case may be, flowing through a pipe.
9 And so say that ball is a square -- cubic foot.
10 So that's a measure of volume. And so you can
11 move X amount of balls through that pipe. It just
12 depends on how fast they are going.

13 So if you can -- 50 cubic feet per second,
14 that's -- you're getting 50 balls through there
15 per second. Fifty-two cubic feet per second,
16 you're getting 52 balls through there per second.
17 And it's just a volumetric measure per time.

18 And so preconstruction, before I-520 was
19 constructed, there were 52 CFS discharging onto
20 the plaintiffs' property. After construction of
21 the riser in 2013 that was reduced by two CFS down
22 to 50 CFS. So we're moving two fewer balls onto
23 their property, essentially. That's for a 2-year
24 storm.

25 Now I think it's been discussed here, but the

Auld - Direct by Mr. McCants

1 2-year storm is, on average you're going to have a
2 storm of that magnitude, that much water every
3 two years. You might have two of them back to
4 back, but on average you are going to have it
5 every two years. And they look at the long-term
6 trends and they see how many times that level of
7 rainfall occurs. And it occurs about every
8 two years, that becomes their 2-year storm.

9 The next event we looked at was a 10-year
10 event. So for that 10-year event we're seeing a
11 little bit better performance. We had 107 CFS
12 before construction. After construction, with
13 this 2013 riser, we decreased it 7 CFS. So now
14 they're only seeing 100 CFS discharged on their
15 property. So there's a net benefit.

16 We also looked at it for the 25-year storm.
17 So the 25-years -- 10-years your storms get more
18 intense. You have more water the less frequent
19 the event is. With a 10-year storm it happens, on
20 average, every 10 years. 25 on average happens
21 every 25 years. So we have reduced it from
22 158 CFS to 126 CFS leaving onto the plaintiffs'
23 property for a 25-year event. And that's with the
24 construction of this in 2013. So --

25 Q. Now pause a second. Is that the riser that I

Auld - Direct by Mr. McCants

1 discussed with Mr. Simino and whether or not he
2 considered it as far as any opinion?

3 A. Yes, it is.

4 Q. And you heard what he said, he said he didn't.

5 A. That's correct.

6 Q. Is that significant to you?

7 A. Stormwater detention is a basic part of stormwater
8 control. And it's quantity control. And it's
9 used every day on any type of development. Even
10 with the previous development for Chadwick we
11 have, a detention structure was going to be used
12 right here, which is a detention basin, which it
13 has a riser associated with that. This little
14 pond was designed to control the stormwater runoff
15 from their development. So they have had internal
16 drainage design. You have catch basins and piping
17 discharging into the, the blue-line stream.

18 But you also had -- some of it was routed
19 down into this little pond right here. And so
20 from this little pond then it stores water and
21 discharges it back into that same (inaudible),
22 that same blue-line stream. And so what they are
23 doing is controlling for the additional runoff by
24 detaining some of it in this little riser, or
25 little pond detail. But the bulk of the drainage

Auld - Direct by Mr. McCants

1 is coming from off-site, from north of I-20
2 falling under I-20 to 520, down through their
3 property, under their proposed road, and on out
4 towards Ascauga Lake.

5 Q. While I'm thinking about it, the Chadwick plan
6 even had a riser, holding device and --

7 A. That's correct. That was for detention of their
8 on-site runoff.

9 Q. Yeah.

10 A. And it didn't have any impact -- they weren't
11 trying to detain anything in the main drainage
12 swell, though. This is a large volume of water.
13 It takes something on the scale of what we've done
14 here in the interchange area to detain that large
15 volume of water. This, this was not an intent to
16 do anything with what was coming into their
17 property. It's strictly dealing with on-site
18 runoff.

19 Q. All right.

20 A. So back to the question of velocity which, I
21 think, is where we are going with this. So the
22 velocity that water flows at in a channel is
23 dependent on a few factors. You have the
24 friction, which I think Mr. Simono touched on
25 that. If you think about it you can have a

Auld - Direct by Mr. McCants

1 hardwood floor, you're going to slide across it
2 pretty easy if you're wearing socks. If you're on
3 a carpet, you kind of don't move too fast. Well,
4 the same thing with the runoff coefficient for
5 that pipe or channel.

6 Then you have the, the slope that something's
7 running at. And that's the grade, now, how steep
8 the hill is. And everything we do with storm
9 drainage -- well, I won't say everything but
10 99 percent of it is going to be driven by gravity.
11 So the steepness of that slope has a big impact on
12 how fast something moves. And if it's a -- so if
13 it's a flat slope, it's not going to move very
14 fast. Gets steeper, it goes faster and faster and
15 faster the steeper it gets. So that's the other
16 component.

17 The third component is the size of the
18 channel that you are running through. So if you
19 have a small channel it's got to, to move that
20 same volume of water, it's got to move a lot
21 faster. The bigger the channel, the slower that
22 water can move if you maintain the same slope,
23 same Mannings N value, same roughness. But as you
24 change some of those factors you can modify how it
25 flows and all.

Auld - Direct by Mr. McCants

1 But it's basically slope, roughness. And
2 channel cross-section. That's what determines how
3 much flow can be carried by gravity. And you can
4 carry it in a pipe, you can carry it in a ditch,
5 even a roadway. If look at -- if you're driving
6 in the city center where you have curb and gutter,
7 those gutters along the side, that's a channel.
8 So we design stuff the size to maintain how wide
9 that spreads out. That's based on slope, and all
10 of it works the same.

11 But what we are doing is we're moving a
12 certain volume of water at a certain rate, and
13 it's a function of how much water we are trying to
14 move, steepness, cross-section. So we are
15 putting, now, less water onto their property. So
16 we reduced one thing. We have changed the amount
17 of water that is going over to it.

18 We haven't changed the slope because that's
19 their property. We haven't changed the
20 cross-section because that's their channel. So
21 you have the slope, the cross-section that's on
22 their property. That dictates how that water
23 flows. Roughness, that's with that channel on
24 their property. That dictates how the water
25 flows. So we have no control over that because

Auld - Direct by Mr. McCants

1 that's all within the limits of their property and
2 none of that's been changed. That's constant.

3 What we have done and what we've done to
4 benefit them is, we have reduced the amount of
5 water that's actually going through there.

6 Q. How do you get there though? I mean, I understand
7 the gravity from a standpoint. I look at it green
8 is in comparison to red over time. How do you,
9 how do you find out what numbers to put there?
10 How do you get to that conclusion?

11 A. Well --

12 Q. Those conclusions.

13 A. -- we model the drainage basin. We look at the
14 total contributing area. We'll look at land cover
15 to see how much runs off, how much of it gets
16 absorbed. We'll look at land cover to see how
17 fast it runs off. If it's on pavement, it runs a
18 lot faster. So that gives you a lower time and
19 concentration.

20 So you have got your initial extractions,
21 your run-off, how much is absorbed, and size of
22 the drainage basin. The size of the drainage
23 basin is usually fairly constant, especially when
24 you're dealing with large ones like this. So
25 we'll then look at the imperviousness, how much

Auld - Direct by Mr. McCants

1 water we get in, and we'll look at our time and
2 concentration, and we'll decide -- see how much
3 water we have. We'll compare that to land cover
4 beforehand, what the time and concentration was,
5 how much water you had then. And we'll take those
6 two numbers and we'll see if the pre exceeds the
7 post or the post exceeds the pre.

8 In the instance with I-520, prior to this
9 riser structure there was a slight increase in
10 discharge post-development compared to
11 predevelopment. So they put more imperviousness
12 down. That end result was there was more water
13 running onto the plaintiffs' property.

14 The original study looked at the depth of
15 flow in that channel. There was a negligible
16 change. I think it was, it was a negligible
17 increase, around ten percent if I recall
18 correctly. I could be mistaken. I just want it
19 on record as that. But that wasn't controlled
20 for. After this Ascauga Lake Road incident, they
21 put this in. So now, at this point, they are
22 controlling for the additional runoff that is
23 coming through.

24 And so the way this is going to work is you
25 have this large basin. So they have looked at and

Auld - Direct by Mr. McCants

1 said, well, we have got this much more water
2 coming into it than we did before. And we have
3 got to hold this water. We have to detain it.
4 And so we're going to hold this water here and not
5 let it flow out off-site at any higher rate than
6 what it did before we built I-520.

7 And so the way they do that is before there
8 was just this 54-inch pipe that went under the
9 interstate ramp. And so there was nothing on the
10 end of it to limit how much water. So however
11 much water got to it, it would go right through it
12 on out onto plaintiffs' property. But now they
13 built this box on top of it, on the face of it.

14 So they basically stuck a plug, a box on the
15 end of it. And so nothing can get through that
16 box. So you are not getting any water through it.
17 So then what they do is they cut, they cut holes
18 in the box. And they will cut smaller holes than
19 the size of the big pipe.

20 Q. What is the box made of?

21 A. Concrete. I'm sorry. Yes. It's a permanent
22 concrete structure that is made out of reinforced
23 concrete, and it goes -- so you will have your
24 54-inch pipe, and they will construct it over the
25 upstream end of it. This side right here. And

Auld - Direct by Mr. McCants

1 they will -- so that's this box that goes on the
2 top of it. And they will put smaller holes in it.
3 They put a 24-inch hole coming into it. So
4 there's a 24-inch hole coming and a 54-inch hole
5 coming out. So all this 54-inch pipe would see is
6 a 24-inch amount of water. Because it's got the
7 smaller hole. And then on top of that they put
8 another box. And in that box there's another
9 24-inch hole. And the reason you do that is for
10 lower flow events. This is what's metering the
11 water through, this first lower 24-inch pipe. And
12 as it comes up, water will get high enough it will
13 start coming into this pipe, too, so you can get
14 more water through. Because you don't want to let
15 the water get so that it's a danger to the people
16 traveling on the interstate or risk of overtopping
17 any of those ramps.

18 And so you -- at the very top of it you have
19 another opening, that if the water gets up this
20 high, it can all go over the crest, drop in and
21 come back out. So that's the emergency overflow
22 with it. But the end result is they store the
23 water. They keep it in that basin and just meter
24 the amount that is able to flow out.

25 Kind of with a garden hose. You know you

Auld - Direct by Mr. McCants

1 have a nozzle on it. You can open all the way up
2 and it shoots out, or you can screw it down a
3 little bit tighter and you don't get as much water
4 out. The same idea.

5 Q. Riser devices, are they relatively new in
6 stormwater?

7 A. Well, they were using them here back in the
8 1980s.

9 Q. Yes. True. When I say recent, within the last
10 50-some-odd years.

11 A. Well, yeah. It's a response to the Clean Water
12 Act. A lot of --

13 Q. What year?

14 A. -- back in the --

15 Q. '60s?

16 A. -- '60s and '70s. And then, really it didn't
17 get implemented in South Carolina until the 1990s.
18 That's when DHEC first had their real regulations
19 come out. But prior to that some of the counties
20 had different standards.

21 Q. All right. Pause just a second. And obviously
22 with these changes and what you could and couldn't
23 do with water, we didn't install risers everywhere
24 immediately but -- and they have taken time to be
25 installed in various stormwater plans, but is --

Auld - Direct by Mr. McCants

1 if we ride down the road and see those huge square
2 concrete pads with a manhole in the middle of it,
3 there's obviously something below it, correct?

4 Are those typically riser devices that are doing
5 what you're talking about, controlling amounts of
6 water and depositing it in a certain fashion?

7 A. You will see a lot of them in subdivisions or in
8 large, like the large Walmart parking lot where
9 they come in and pave the whole thing. You will
10 have an area that's a pond basin, typically, with
11 new development. Or in subdivisions you might
12 have a pond in the middle of the subdivision or
13 back behind some of the houses. And that's what
14 would have that riser structure. That's to
15 control the amount of runoff from that new
16 development from all that new impervious surface.

17 Q. And it's an intriguing device, what you're saying.
18 Water comes in. It rises and falls but it's
19 discharged at a more controlled rate due to the
20 construction of the device. Is that correct?

21 A. That's correct.

22 Q. All right. And that was put into place when?

23 A. This one was in 2013.

24 Q. All right. And you think that's important for
25 developing an opinion here from a hydrological and

Auld - Direct by Mr. McCants

1 civil engineering standpoint, right?

2 A. I do.

3 Q. And it is a lot of the foundation for your
4 opinion, is that fair?

5 A. It is. Yes, sir.

6 Q. All right. And based upon that, it is your
7 opinion within a reasonable degree of engineering
8 certainty that even the flow, the amount of water
9 may have slightly increased, the installation of
10 that riser in 2013 reduced it again. Is that
11 fair?

12 A. That's correct.

13 Q. And on top of that, reduced the speed or the
14 velocity of the water at the outfall point?

15 A. Well, you're moving less water so the speed is
16 probably going to go down a little bit, but it's
17 really the velocity through the reach is
18 determined by the slope of the ground, the
19 cross-section and the, and the roughness. None of
20 that has changed throughout the plaintiffs'
21 property. So that's been consistent since I-20 --
22 once 520 was constructed. None of that has been
23 changed. So those factors have not changed. The
24 only thing we can control is the amount of water
25 that we let out of this pipe here and that's been

Auld - Direct by Mr. McCants

1 reduced.

2 Q. I am going to put it in terms which I can
3 understand pretty simply. As a result of the
4 construction efforts, the installation of this
5 interesting intriguing riser device, Number 1: Is
6 more water coming off of this property onto the
7 plaintiffs' property now post-construction as
8 opposed to preconstruction?

9 A. No. There's less water now.

10 Q. Less water. Second question: Whatever water was
11 coming off of the Palmetto Parkway onto the
12 plaintiffs' property, it's speed or it's velocity,
13 what is the current speed or velocity in relation
14 to the preconstruction of the Palmetto Parkway?

15 A. Preconstruction of the Palmetto Parkway at that
16 point, I could not specifically answer that.

17 Q. Can you tell the judge, though, whether or not
18 it's coming faster off of there or slower?

19 A. It's -- so the discharge from this point to where
20 we get to their, their outfall, their property
21 line is very flat.

22 Q. Yes, sir.

23 A. And it has a lot of grass over the top of it.
24 Grass has a very high friction coefficient. In my
25 opinion, the water moving from the pipe to the

Auld - Direct by Mr. McCants

1 edge of the property will be going at a slower
2 rate than what it sees in the channel.

3 Q. You do a lot better than I say with that. And of
4 course, once it enters the plaintiffs' property
5 you don't have any control of it, do you?

6 A. That's correct.

7 Q. I mean that's their property.

8 A. That's correct.

9 Q. And their Chadwick plan anticipated the need for
10 devices, stormwater management would speak for
11 itself, correct?

12 A. Correct.

13 Q. And by the way, do you agree with everything that
14 was proposed as far as the Chadwick development?
15 Are you okay with that?

16 A. I don't see any obvious problems with it.

17 Q. All right.

18 MR. MCCANTS: Now one minute, Your Honor?

19 THE COURT: Yes.

20 BY MR. MCCANTS

21 Q. Mr. Auld, do you have anything else for the judge
22 in support of your opinions in this case?
23 Anything else you want to tell her to bolster or
24 support or add to your opinion?

25 A. No. I think I --

Auld - Cross by Mr. Player

1 Q. And have all of your opinions been, again, within
2 a reasonable degree of engineering certainty?

3 A. Yes.

4 MR. MCCANTS: Thank you. Thank you, Mr. Auld.
5 Mr. Player has some questions for you.

6 MR. PLAYER: Are you ready to proceed, Judge, or
7 you want --

8 THE COURT: Yes. You all need a break? Do you
9 need a break? All right. Mr. Player, we'll stand down
10 for about ten minutes.

11 MR. PLAYER: Okay.

12 THE COURT: And start back up again.

13 (WHEREUPON, the Court took a recess.)

14 THE COURT: Mr. Player.

15 MR. PLAYER: Yes, Your Honor. Thank you. Clarke
16 gave these to me in a certain order and then I switched
17 them.

18 CROSS EXAMINATION

19 BY MR. PLAYER

20 Q. All right. We're going to start with Defendant's
21 Exhibit 15. Okay?

22 A. All right.

23 Q. And you see there are these two lines, right? One
24 with the riser where the outlet pins are and then
25 there's one kind of parallel to it.

Auld - Cross by Mr. Player

1 A. Yes.

2 Q. And you agree that this is erosion, right?

3 A. I do.

4 Q. But you say this isn't?

5 A. That's correct.

6 Q. What visually do you see between those two lines
7 that indicates this is erosion and this isn't
8 erosion?

9 A. Well, I started with today's imagery in Google
10 Earth. Also looked -- transposed the topographic
11 maps over the top of it. This map, this -- what
12 you see here where this erosion is, is in the same
13 location as where the USGS map shows the
14 intermittent stream, and also matches over time as
15 you go through, and you can see it historically.
16 This is why I say this is the intermittent stream
17 because it matches up with where the intermittent
18 stream is shown on the USGS map, as well.

19 Q. And your testimony is that this has been going on
20 for a long time, right?

21 A. Yes, sir.

22 Q. So, and that's 1994. All right. 1994 was that
23 one and then we get to -- Clarke is trying to
24 confuse me.

25 MR. PLAYER: Did you put this one in?

Auld - Cross by Mr. Player

1 MR. MCCANTS: Let me see it a moment.

2 THE WITNESS: That was the second package of them,
3 I believe.

4 MR. PLAYER: Okay. All right. So we'll put this
5 in as Plaintiffs' 13. All right. You handed it to me.

6 (Whereupon an Exhibit was marked.)

7 MR. MCCANTS: Yeah, it was in the stack. In fact
8 it was 2006.

9 THE WITNESS: We had multiple copies up here.

10 MR. MCCANTS: Sorry?

11 THE WITNESS: We had multiple copies. So there
12 should potentially be one in that stack that should be
13 marked.

14 MR. MCCANTS: I don't think he's asking me whether
15 or not it's been marked. There's been (inaudible).

16 MR. PLAYER: She said no.

17 MR. MCCANTS: Okay. Well, mark it, yeah. That's
18 fine.

19 BY MR. PLAYER

20 Q. So this is 12 years later, right?

21 A. Correct.

22 Q. Where did it go?

23 A. It's right here. So, this is after the original
24 clearing was done for the development. So --

25 Q. I don't think that's correct. 1994?

Auld - Cross by Mr. Player

1 A. It was 1980s was what was on the --

2 Q. Oh. What development are you talking about?

3 A. I'm talking about the on-site development,
4 Chatham.

5 Q. Chadwick.

6 A. Chadwick, okay.

7 Q. Okay.

8 A. So you had work being done prior to this on-site,
9 which that would have destabilized anything that
10 was going on here. What we have here is when the
11 site is starting to regrow itself after that
12 development work was done and stopped.

13 Q. Okay.

14 A. So, as we move forward to here, we have a site
15 that's more stabilized after this development.
16 You can see this road here. See how it started to
17 even grow back in itself.

18 Q. Sure. You hadn't -- can you tell me what the
19 depth or any calculations with regards to erosion
20 from this picture?

21 A. No. But I can tell you that it's very obvious
22 that there is a channel there.

23 Q. Okay. But if there is an obvious channel here it
24 disappeared within 12 years, right?

25 A. Right.

Auld - Cross by Mr. Player

1 Q. Okay.

2 A. Because the truth of it, there's trees on top of
3 it. So you have canopy that's obscuring what's
4 there.

5 Q. Okay.

6 MR. PLAYER: Can I have this marked as Plaintiffs'
7 13?

8 COURT REPORTER: You have to move it in.

9 MR. PLAYER: Oh. I introduce that as
10 Plaintiffs' 13.

11 MR. MCCANTS: No objection.

12 THE COURT: All right. So moved.

13 (Exhibit entered into evidence.)

14 MR. PLAYER: I want to go through a couple of
15 things --

16 COURT REPORTER: One second.

17 MR. PLAYER: I'm sorry.

18 COURT REPORTER: It's okay. Okay.

19 BY MR. PLAYER

20 Q. I forgot where I was. Sorry. The riser. Your
21 calculations for your conclusion that they didn't
22 increase the amount of water or speed is based on
23 that riser being there, correct?

24 A. My analysis of that, yes. My opinion.

25 Q. So between 2009 and 2013 DOT was dumping too much

Auld - Cross by Mr. Player

1 water too fast there, correct?

2 A. There was a negligible increase. In looking at
3 the hydraulic reports it was not an excessive
4 amount of water. It would normally fall within
5 acceptable parameters of a negligible increase to
6 an outfall.

7 Q. I'm going to ask you about that. Did y'all say
8 that -- what is a negligible increase in flow?

9 A. It's kind of a rule of thumb, is 10 percent.

10 Q. Okay. 10 percent. So it only takes four
11 iterations to double the amount of water that is
12 being transferred with a 10 percent error, if it's
13 going the same direction every day, correct?

14 A. I'm not following you.

15 Q. All right. Say a hundred CFS. I increase it to
16 110. The next guy comes along and he raises it to
17 121. The next guy comes along and we're at 133.
18 Isn't that how that would work?

19 A. So who is the next guy? That's what I'm --

20 Q. Whoever is in charge of the discharge. And he
21 makes a development on the land that affects the
22 amount of water he's discharging, and he can
23 increase it 10 percent. That's going to get
24 exponentially huge as you go down the development
25 of the land, is it not?

Auld - Cross by Mr. Player

1 A. So you are saying where I-20 was built and then we
2 have 520 built and then somebody downstream from
3 there is going to increase it again and downstream
4 from there going to increase it again?

5 Q. No. I'm saying, I'm saying in general terms, you
6 have a 40-acre property. Somebody comes in and
7 uses 20 percent of it. It's going to increase
8 water flow for the neighboring property by
9 10 percent. And then somebody else buys it and
10 they change the footprint where they increase the
11 water. It doesn't take very long to double the
12 water, right? You're not keeping it stable if
13 you're allowing a 10 percent rate of error, right?

14 A. I'm don't know if it's rate of error, per se.
15 It's a change in discharge so I don't know if
16 there's an error involved with it.

17 Q. So -- okay. If the detention riser works because
18 they were sending a lot more water a lot faster
19 between 2009 and 2013, correct?

20 A. No. We have not established it was a lot more
21 water. There was some water.

22 Q. Okay. And what detention measures were in place
23 between 2009 and 2013?

24 A. There were none at that point.

25 Q. Okay. And, again, I want to make sure that we

Auld - Cross by Mr. Player

1 agree, this is the -- you called it a watershed
2 basin, this is the outfall. The watershed basin
3 was about 220 acres, correct?

4 A. That's what you -- the DOT analysis showed and
5 that's what your expert --

6 Q. Okay. So 220 acres of water has been sent to my
7 clients' property through CFS pipes with a Manning
8 coefficient of 012 -- .012, correct?

9 A. That's correct. The pipe where it's in is .012.
10 The channel that it's flowing from, over about
11 200 feet, would not have that same impact.

12 Q. Say that one more time.

13 A. So there's about 200 feet before, where the pipe
14 opens up and you start into a grass channel,
15 before it enters your clients' property. So that
16 would not have the same Mannings value as the
17 concrete pipe.

18 Q. If it was, if there was riprap down there what
19 would the --

20 A. The riprap is probably about a 035 and 04.

21 Q. Okay.

22 A. Grass would be higher than that.

23 Q. All right. But before that pipe was there that --
24 it definitely wasn't a 0.12 coefficient in
25 (inaudible), correct?

Auld - Cross by Mr. Player

1 A. Well, the pipe is a good ways from the outfall.
2 You're about 200 feet. So the flow along that
3 stretch from one of the pipe outlets to where you
4 get to the edge of the right-of-way, what's
5 happening in that channel is going to have more
6 impact on the velocity of the water than what's
7 happening in the pipe.

8 Q. I understand there's going to be a change from the
9 pipe to my clients' property. But my question is,
10 DOT changed the flow of water to make it
11 extreme -- much more rapid in terms of sending
12 this to the outfall of that pipe, right?

13 A. I don't necessarily agree, because what you have
14 starting up one side of I-20, you had an existing
15 48-inch pipe that conveyed water from the north
16 side of I-20 under I-20. And that pipe then
17 discharged into a channel that would eventually
18 make it onto your plaintiffs' property.

19 Q. Okay. And stop for just a second. I know what
20 you're saying. That's not predevelopment.

21 A. How so?

22 Q. Because you just said pipe.

23 A. Yes. It's predevelopment prior to the I-520
24 project.

25 Q. That -- that's your understanding of

Auld - Cross by Mr. Player

1 predevelopment?

2 A. That is the definition of predevelopment. It is
3 what occurs prior to your project. It doesn't
4 have anything to do with what's occurred in the
5 basin that you can't control. It's strictly to do
6 with what happens on your side. So I-20 was built
7 back, I believe, in the 1960s. Prior to that
8 there was development in the basin. I-20 was
9 constructed, there was a pipe put in. Prior to
10 I-20, you have the predevelopment and I-20 is
11 built. So that's post-development. But then that
12 becomes the existing condition.

13 Q. All right.

14 A. You can't, you have to only compare it to the
15 existing condition. So that's at the time of
16 design, at the time of construction. That's your
17 predevelopment. What happens in that watershed on
18 your site only, is what you can control.

19 Q. Okay. Well, DOT has controlled this for quite a
20 while, correct? And the developments that you
21 just mentioned were all DOT developments. So
22 under your analysis every time they put some other
23 type of structure out there for stormwater they
24 get 10 percent leeway.

25 A. No. That's not what I said.

Auld - Cross by Mr. Player

1 Q. You just said 10 percent, you can add 10 percent,
2 and that's negligible.

3 A. So back when I-20 was constructed, back in the
4 1960s, there were no stormwater regulations.

5 Q. Okay.

6 A. So the stormwater regulations came about with the
7 Clean Water Act. And DOT and SC DHEC, so SC DHEC
8 is the regulating authority. Water detention and
9 those requirements really came into being in the
10 early '90s. And so you started looking at pre
11 and past development discharges back at that time
12 period. It wasn't as much of a concern prior to
13 that. In 1960s it wasn't much of a concern.
14 There was nothing out there. It was just an
15 interstate being put in with a lot of wooded
16 areas. If you have a negligible increase in
17 discharge, it's not going to impact anybody and
18 that becomes your current existing condition.
19 Prior to when your -- when anybody was involved
20 with this tract of property.

21 Q. Okay. And then the next time they build
22 something, according to you, they are going
23 through the 10 percent increase they got on the
24 first development.

25 A. No. I'm saying there was no issue with

Auld - Cross by Mr. Player

1 development. So any town, Aiken, Columbia, any
2 town that you built back in the 1960s, that was
3 not a concern.

4 Q. I'm saying from the time that the Clean Water Act
5 regs came and from now, moving forward, you're
6 saying that you can add 10 percent for every
7 project that is developed on land. Every time you
8 do a new project your baseline is set back to the
9 10 percent you were able to flood to your neighbor
10 before?

11 A. No. What I said was that it's generally viewed as
12 a negligible increase. Whenever we have an
13 increase, typically, we will look at the impacts
14 to the channel. If the channel can still
15 accommodate whatever discharge you have, then it's
16 considered no impact. So it's, it's, there's no
17 hard-and-fast rule. You have to look at every
18 situation.

19 Q. But this is -- it's more of a logic question. If
20 the pre-development only goes back to this
21 development, and whoever developed on the property
22 previously and had to follow the Clean Water Act,
23 they got a 10 percent Mulligan. So you are not
24 going back to what was predevelopment. You now
25 have 10 percent more water as a matter of fact.

Auld - Cross by Mr. Player

1 So every time a new job is done, if you don't go
2 back to predevelopment, before all development,
3 it's going to increase 10 percent compounded every
4 single time there's a new project.

5 A. So who is this hypo individual? Is this a state
6 agency? Is this an individual? Who is doing the
7 development?

8 Q. The DOT.

9 A. So, DOT, okay. So every time -- you're saying
10 every time DOT stacks a road, so if we kept
11 building roads on down until we got to Ascauga
12 Lake, or we did any kind of project, that we're
13 allowed to incrementally increase 10 percent every
14 time.

15 Q. You said that.

16 A. I'm just trying to understand the question.

17 Q. Yes, sir.

18 A. Okay. So what we have to look at is what impact
19 there is on the receiving water body on the
20 downstream properties. It's not -- with, with DOT
21 you have to look and balance what it would cost to
22 do excessive detention design versus a negligible
23 increase. And so because of how they are
24 regulated, because they are a state agency, there
25 is -- you have that certain gray area of that 10

Auld - Cross by Mr. Player

1 percent that we look at, but if we have that
2 10 percent we're looking at what impacts it has on
3 that receiving channel.

4 So if there is an adverse impact on the
5 receiving channel, if we increase it, we get it up
6 out of its banks or have an adverse impact to it,
7 then we would look at detention. But if what we
8 are discharging is not going to have a measurable
9 negative impact, then it's allowed to proceed. So
10 I think at some point you're going to get to -- if
11 you keep adding them all together you are going to
12 have more of an adverse impact.

13 So you -- that's not going to continue on
14 forever that you can add 10 percent, 10 percent,
15 10 percent. At some point it's going to have a
16 measurable impact. But our goal would be to not
17 have a measurable impact.

18 Q. I'm certain. But if you're allowed to add 10
19 percent every time you do one of these post/pre,
20 and the pre is only going back to the last
21 development, you agree that eventually you're
22 going to get to a substantial water increase that
23 will affect (inaudible)?

24 A. Well, we're not really allowed -- it's not you are
25 allowed to do 10percent every time. That's not

Auld - Cross by Mr. Player

1 the rule. We have to look at what impact that's
2 going to have. So if we build -- if we wind a
3 roadway here, we have to look and see what that
4 additional pavement, what impact that is going to
5 have on the overall watershed. If -- when we look
6 at the overall impact, if it's a negligible
7 impact, if there's no adverse impact, then it's
8 permissible. But if there's an adverse impact, it
9 wouldn't be permissible.

10 Q. Okay. You talked about the historical data that
11 you considered in your opinion. Did you consider
12 the timeline of complaints to DOT about water in
13 this particular area?

14 A. So the first record I saw of complaints began
15 prior to the riser being placed there.

16 Q. Correct.

17 A. And --

18 Q. After 520 was developed, correct?

19 A. -- I believe it was already, it was under
20 construction. However, that case worked out. I'm
21 not -- I wasn't directly involved with that.

22 Q. Okay.

23 A. So I, were there -- you are asking if I followed
24 additional complaints after that. I'm not sure of
25 the exact timeline.

Auld - Cross by Mr. Player

1 Q. I'm asking about your timeline. When did the
2 complaints about water coming from the area of the
3 outfall, when did DOT begin receiving them, that
4 you are aware of?

5 A. Well, the only thing I'm aware of is the issue
6 down at Ascauga Lake Road.

7 Q. Okay. That was in 2010 after they had built the
8 parkway, right?

9 A. I believe so. That sounds right. I'll accept
10 your data. I'm not confident on that but I'll
11 accept that if that's what you want to say.

12 Q. And I want to ask you, looking at this video, do
13 you see any problem with it? (inaudible).

14 A. I mean, not specifically, no.

15 Q. Right there? The actual outfall directly at the
16 property line? That's okay? That's controlled?

17 A. I mean, I've got a creek that runs down the side
18 of my yard that looks worse than that sometimes.

19 Q. Is it a perennial creek?

20 A. It is a perennial creek that's fed by 24-inch
21 pipe.

22 Q. Is that safe for human travel?

23 A. Well, most people aren't out traipsing through
24 that in the rain, I would assume. I mean, I don't
25 know whether that's even a factor of design. As

Auld - Cross by Mr. Player

1 long as that's outside of the clear zone that's on
2 a controlled access highway. So that fence is
3 there to keep people from accessing that area.

4 Q. Well, Bobbie Usry just told you the fence don't
5 work. He went under it.

6 A. Yeah. I mean, we've got kids running across the
7 interstate, too. I mean you can't, you can't
8 really control what other people do. But the
9 design for that, that amount of water, I can't say
10 that that is specifically out of the ordinary.
11 It's all relative to the size of the drainage
12 basin.

13 Q. Okay. Isn't it your job as a designer to prevent
14 scour and erosion on a neighboring property?

15 A. If it's a natural waterway, which is what's on
16 your plaintiffs' property, you generally try not
17 to do any modifications to that natural waterway.

18 Q. And it's your testimony that that's not modifying
19 that channel?

20 A. This is on DOT property where this is going, what
21 you are showing me in, in DOT right-of-way.

22 Q. No. Let's go back. That, you can see the
23 fence --

24 A. Correct.

25 Q. -- that was put directly at the property line for

Auld - Cross by Mr. Player

1 my clients' property. When it gets to the rapids,
2 that's DOT, your right-of-way.

3 A. From my experiences when I was out on-site walking
4 up to 520, there is a steep incline from there to
5 get from your clients' property onto 520.

6 Q. Right there?

7 A. Right there along that whole stretch, so not just
8 where water is running off. It's controlled
9 through that outfall, that existing ephemeral
10 stream, or intermittent stream. But all through
11 that area it's a fairly steep drop-off. So you
12 would expect where you have a steep drop-off that
13 you are going to see something like that.

14 Q. And you don't know the condition of this property
15 or this drop-off before when? You went out there
16 in 2013 or 2018?

17 A. I have not been at the site prior to 2020.

18 Q. Okay. Does that water appear to cause scouring
19 and erosion?

20 A. At that point, but once it leaves this area -- so
21 running through the channel to get to the edge of
22 the property, so then it's dropping off. At that
23 point you have a drop. So I'm assuming it's
24 following the existing topography that was out
25 there. Once it enters your plaintiffs' property,

Auld - Cross by Mr. Player

1 how it flows is strictly dictated by, by the
2 existing channel on the property, cross-section of
3 it and (inaudible).

4 Q. So DOT can send 220 acres of water through pipes
5 and as long as it travels over grass for 300 feet
6 they are done with the impact.

7 A. DOT is not sending it there. That's where the
8 existing topography, how that site has always
9 been. That ephemeral stream has always been
10 there. So DOT is just providing a conveyance
11 through their roadway from waters originating off
12 of their site, through their site, and allowing it
13 to continue on the path it's always followed.

14 Q. Okay. When there was no pipes here, what was the
15 friction coefficient that would have applied to
16 the flow of water?

17 A. Where? At what point? Because, I mean, you have
18 had (unintelligible) so you have the entire
19 (unintelligible) on your clients' property so --
20 it's what's happening on that property is what,
21 that property is what controls the flow through
22 that property. But you have going from I-20 down
23 to 520, and then down to the, to the property line
24 that has impacts through that channel, but the
25 channel itself on the -- on your clients' property

Auld - Cross by Mr. Player

1 that's what controls that flow through their
2 property. So what, irrespective of what the end
3 value of the conveyance was through the acquired
4 tract and under I-20, that's not going to
5 dramatically impact what is happening on that
6 stretch through your clients' property.

7 Q. Okay. Now I want to make sure you understand the
8 video. You see the fence line. I want you to
9 explain how my clients' property can cause the
10 rapids to develop before it reaches their property
11 line.

12 A. Rapids. So there's riprap left, there's riprap
13 out there on site. And that's what we are calling
14 the rapids.

15 Q. I'm talking about what's in the picture right now.
16 Those rapids going underneath the fence. That's a
17 whitewater rapid. I don't know how else to
18 explain it. I mean that is roaring water. Let's
19 hear it.

20 (WHEREUPON, a video was played for the
21 Court.)

22 A. No. I can hear it and I understand what you're
23 saying, but relative to the drainage basin that's
24 flowing through there that's not extensive.

25 Q. So it's your testimony that that water has been

Auld - Cross by Mr. Player

1 flowing like that for hundreds of years?

2 A. That's what I've seen through my analysis.

3 Q. Through math?

4 A. No, through observation. I reviewed the DOT's
5 calculations. I reviewed your expert's testimony
6 and his calculations. Both of those agreed with
7 each other. He supported their results. I saw no
8 reason to do additional calculations.

9 I reviewed existing aerial photography. I
10 reviewed existing and historical aerial
11 photography, existing and historical topographic
12 maps. All that supports my conclusion.

13 Q. Did you -- have you ever seen water flow through
14 there?

15 A. You're showing me there.

16 Q. Personally?

17 A. When I was out on-site there was water in the
18 channel and ponding areas but I have not seen, I
19 have to look back at pictures. No, I have not
20 seen water flow through there personally.

21 Q. Okay. I'll ask if you have ever seen this before?
22 And it's a portion.

23 A. Okay.

24 Q. It is not easy to doubt. What are those?

25 A. This is the current SC DOT design manual.

Auld - Cross by Mr. Player

1 Q. Okay, well, maybe. It's 2009, is that --

2 A. It's still current.

3 Q. -- okay. I'm wanting to go to the, Page 48, Storm
4 Drain and Roadside Ditches. And according to
5 that, what kind of year, what year storm does DOT
6 have to design for?

7 A. The design requirement for that cross-line is a
8 50-year storm.

9 Q. Okay. Because it's between 50 and 400 acres,
10 correct?

11 A. No. It is because it is a cross-line on a primary
12 route.

13 Q. And that's my question. I didn't know if this was
14 a storm drain which depends on the area which is
15 below it. You're saying this is a cross pipe?

16 A. That's correct.

17 Q. Okay. So it is a 50-year discharge?

18 A. Yes.

19 Q. And then Page 50. Two, two, twelve, right?

20 A. Yes.

21 Q. Second bullet point. What -- read that out loud.

22 A. The drainage outfall that are natural water
23 courses, no modifications will be made to the
24 channel except as necessary to prevent scouring --
25 excuse me, or erosion to accommodate highway

Auld - Cross by Mr. Player

1 drainage structures or to provide positive
2 drainage.

3 Q. So earlier you talked about you don't make changes
4 to existing structures, but this says unless it's
5 causing scouring. And my question is, that amount
6 of water coming off that backout, that's scouring
7 the ground, right? That's causing erosion.

8 A. Well, it's channeled within the DOT's control, so
9 outside of their control, which on your clients'
10 property that would be outside the area of design
11 and construction.

12 Q. Okay. But the design is to send that much water
13 to that point?

14 A. It's sending -- generally in hydrology and
15 hydraulic design you try to maintain the existing
16 flow patterns, the existing routings in a
17 watershed area. So historically, if water has
18 been going in a particular direction we try to
19 keep it going in the same spot it has always gone.
20 We don't develop new outfalls. We keep everything
21 the same throughout a watershed as much as
22 possible on the direction and the routings of the
23 water.

24 Q. Would a detention pond on the property of DOT stop
25 that, the water moving at that speed directly onto

Auld - Cross by Mr. Player

1 my clients' property?

2 A. It depends on how big of a detention basin you
3 want to put in. I mean, you could put, you could
4 stop the water. I mean, it is always going to go
5 there. That is a blue-line intermittent stream so
6 you wouldn't want to choke off water to it because
7 that would actually be eliminating that stream.

8 Q. But a detention basin doesn't cut off water, it
9 only delays the transfer.

10 A. That's correct. And that's what -- I forget what
11 the exhibit was but that's what we put in the
12 interchange.

13 Q. The riser.

14 A. That is a detention basin.

15 Q. Correct. But the detention basin, once it becomes
16 full is not going to affect the velocity of the
17 water, correct?

18 A. Once it becomes full it's not going to -- so it
19 affects the volume of water.

20 Q. Correct. But --

21 A. Well, actually it's the peak discharge. What you
22 design for is your peak discharge.

23 Q. Correct.

24 A. Which is a cubic feet per second.

25 Q. They're giving you some leeway. That peak

Auld - Cross by Mr. Player

1 discharge is going to fill up in the riser and not
2 explode and flood everything, right?

3 A. Well, the peak -- so you look at the peak
4 discharge for the predevelopment, before your
5 project was built, and you look at your peak
6 discharge afterwards. If it is excessive after
7 development, then you would volume, volumetric
8 control.

9 Q. Okay. Introduce that as 14.

10 MR. MCCANTS: No objection.

11 THE COURT: So moved.

12 (Exhibit entered into evidence.)

13 MR. PLAYER: Three pages of the hydraulic design
14 services.

15 MR. MCCANTS: All right.

16 BY MR. PLAYER

17 Q. I asked David, I don't know if you saw it. Watch
18 this video and see if you agree with me that it
19 looks like water is flowing into an area but it's
20 not flowing out, which seems to indicate it's
21 going underground. Would you agree with that?

22 A. I think -- I don't know what's 10 feet away so
23 it's hard to say. I mean, I can't say --

24 Q. At that particular point does it appear that it's
25 going underground?

Auld - Cross by Mr. Player

1 A. I could not say that one way or the other.

2 Q. Okay.

3 MR. PLAYER: Give me just one second. You're in
4 luck. No further questions. So Clarke will be the one
5 that takes us past five.

6 THE COURT: Mr. McCants, any redirect, sir?

7 MR. MCCANTS: I don't think so, Your Honor.

8 THE COURT: All right. All right. Please watch
9 your step.

10 THE WITNESS: Thank you. Do y'all want these for
11 evidence?

12 MR. PLAYER: I think that one -- you put the one I
13 handed to you?

14 COURT REPORTER: I did.

15 MR. PLAYER: Judge, you can have this. It's
16 whatever number it is.

17 (Whereupon an off-the-record discussion was
18 held by court personnel.)

19 THE COURT: All right. Mr. McCants, any further
20 witnesses, sir?

21 MR. MCCANTS: I do not, Your Honor. That would be
22 the presentation of the defendant's case.

23 THE COURT: All right. Gentlemen, do you all have
24 any closing remarks or any motions to make?

25 MR. MCCANTS: Mr. Player and I have talked about

Saunders - Direct by Mr. McCants

1 DIRECT EXAMINATION

2 BY MR. MCCANTS

3 Q. State your full name for us please, sir.

4 A. Steward McPherson Saunders.

5 Q. Mr. Saunders, where do you live?

6 A. Mount Pleasant, South Carolina.

7 Q. How are you employed?

8 A. I'm a real estate appraiser.

9 Q. How long have you been a real estate appraiser?

10 A. For about 32 years.

11 Q. You were performing that position, that job, your
12 profession back in 2005, is that correct?

13 A. Yes, sir.

14 Q. And at that point in time you completed an
15 appraisal of the property that we are here in
16 court discussing, is that correct?

17 A. Yes, sir.

18 Q. All right. I'm not asking you to be qualified as
19 an expert in appraisal of properties as part of
20 this case, but I do want you to tell the judge a
21 little about what you do when it comes to
22 appraising real property, with a focus on
23 appraising property for the South Carolina
24 Department of Transportation back then and even
25 today, unless it hasn't changed. And I'm sure it

Saunders - Direct by Mr. McCants

1 has to some degree. Let's just talk about it in
2 general, okay, what you do to get to the
3 completion of an appraisal report.

4 A. Well, we, we get a first sheet -- right-of-way
5 agent contact sheet from DOT providing the contact
6 information for the property owners. So the first
7 thing that we do is -- or at least I do, is make
8 contact with the property owners and arrange a
9 date of inspection. And see if they want to be
10 present. And if they do make, make plans to, to
11 meet up with them. And then from there it's, it's
12 getting -- identifying the property, getting the
13 public information like deeds, zoning, utility
14 information, and at that point meeting with the
15 property owners and walking the subject property.
16 I always make a point to talk with the owners
17 about the history of the property, what their
18 intentions are presently. And, and then from
19 there I go into the, the actual valuation part of
20 the appraisal.

21 Q. Did you, as part of your contact with the
22 landowners in conjunction with this acquisition by
23 DOT, did you actually meet with any of them?

24 A. Yes.

25 Q. Who did you actually meet with? Do you recall?

Saunders - Direct by Mr. McCants

1 A. Yeah. I -- Mr. Conley, Mr. Leaver -- can I look
2 at my report?

3 Q. Absolutely. It's in evidence.

4 A. So, yeah. I met with, with Mr. Conley and
5 Mr. Leaver, Mr. Dozier, and Mr. Franke at the, at
6 the lobby of the hotel. That, that were -- they
7 made a point, I guess, to be there to meet me to
8 go to the property. Mr. Fischer was the other
9 partner. Mr. Fischer was out of town but he
10 called me after I had done the inspection, and he
11 said that was fine. I didn't need to go back out
12 and meet with him.

13 Q. That's Mr. Leroy Fischer who's been in court with
14 us, correct?

15 A. Yeah, yeah.

16 Q. Mr. Franke you're referencing, is that Mr. Bill
17 Franke's father, the father of the gentleman here
18 today?

19 A. Yes.

20 Q. All right. And I know it's been a while. You
21 probably can't remember all faces in that regard.
22 And everything you know is really in your report
23 with the exception of what you observed walking
24 the property, correct?

25 A. That's right.

Saunders - Direct by Mr. McCants

1 Q. Okay. Now, as part of the completion of your
2 appraisal process you actually traveled from Mount
3 Pleasant to the property where it is located near
4 North Augusta and walked it, correct?

5 A. That's right.

6 Q. What year was that?

7 A. That was 2005.

8 Q. Can you point to the month when you went there by
9 chance?

10 A. Yeah, it was July.

11 Q. Pretty warm?

12 A. Yes.

13 Q. All right. And I trust after you walked the
14 property, looked at whatever other information you
15 needed to look at, you prepared the appraisal
16 report. Is that correct?

17 A. That's correct.

18 Q. Is that the one you're holding in your hand?

19 A. Yes.

20 Q. Let's just identify it for the record. This one
21 is in evidence and it's Exhibit Number 9. All
22 right, sir. You with me?

23 A. Yes.

24 Q. What I want to do, then, is look at some of the
25 photographs in Exhibit 9 that you included as far

Saunders - Direct by Mr. McCants

1 as the appraisal report.

2 A. Yes, sir.

3 Q. And that -- kind of jumping around a little bit,
4 after you do the appraisal report you send it to
5 DOT, and they use it for purposes of calculating
6 the value of the property for purposes of
7 tendering it to the Court in the condemnation
8 action, is that correct?

9 A. Yes.

10 Q. All right. You, you have done this how many times
11 you reckon over 32 years, if you know?

12 A. Yeah, I think the thousands.

13 Q. Thousands, all right. You handle a lot of them.
14 Do the photographs and --

15 MR. MCCANTS: Your Honor, do you have one with the
16 color photographs preserved?

17 THE COURT: Mine is black and white.

18 MR. MCCANTS: All right. I know Number 9 has the
19 Court exhibits for your benefit, has color.

20 THE COURT: Yes.

21 MR. MCCANTS: If that will help you at some point.

22 BY MR. MCCANTS

23 Q. I want you to look at Page 6, Mr. Saunders, if you
24 would. And I want to ask this question very
25 generally. All the photographs that are in your

Saunders - Direct by Mr. McCants

1 report of the interior of this property, were they
2 all taken at the time you walked the property and
3 went through it in 2005, July of 2005?

4 A. Yes.

5 Q. So those photographs accurately portray, with you
6 using a camera, accurately portray the image that
7 you intended to preserve, is that correct?

8 A. Yes.

9 Q. All right. Now, let's, let's look at Page 6 for a
10 moment, if we can.

11 A. Okay.

12 Q. And as you know, you have been here. We have
13 blown up for purposes of the exhibit this Exhibit
14 Number 6. Looking at your appraisal report and
15 the photographs that you have in your report as
16 well as this Exhibit Number 6, does that kind of
17 refresh your memory with regard to what you
18 observed in July of 2005 out on this property?

19 A. Yes.

20 Q. What does, what does that photograph Number 6 on
21 Page 6 of your appraisal report depict?

22 A. Well, it's a drainage ditch.

23 Q. All right. And did the picture itself describe
24 that in your mind? Is that what you were
25 attempting to capture with your camera?

Saunders - Direct by Mr. McCants

1 A. Yes.

2 Q. How deep was this ditch, Mr. Saunders?

3 A. Well, it would be taller than me if I was standing
4 at the bottom of it.

5 Q. And when you say taller than you --

6 A. Higher.

7 Q. -- in particular -- if I can come around. The pen
8 is caught on the end. Hold that up. It would be
9 taller than you at a point where you were standing
10 where?

11 A. About where your thumb is.

12 Q. All right. And that's right in that area, general
13 area there?

14 A. Yes.

15 Q. Is that Georgia red clay over there? Do you
16 remember?

17 A. It's red clay. I guess it's, yeah.

18 Q. But if you were down in the bottom of that ditch,
19 that gully, that Georgia red clay edge would be
20 taller than you.

21 A. Yes.

22 Q. And how tall are you?

23 A. I'm 5'11".

24 Q. So it's at least 5'11" deep, correct?

25 A. Yes.

Saunders - Direct by Mr. McCants

1 Q. And it -- can you give the Court any estimate how
2 further high up is it past your 5'11" body?

3 A. No.

4 Q. All right. Is it more than a foot? Can you tell
5 us at all?

6 A. I don't know.

7 Q. But it's definitely -- you would be looking up if
8 you were there.

9 A. It would be taller than me.

10 Q. All right. Then look at Number 4. That again is
11 a picture you captured, and it's accurately
12 reflected in the photograph on Page 6?

13 A. Yes.

14 Q. And then there are several other photographs in
15 your report. I'm particularly interested on Page
16 8 (inaudible). That photograph was taken by you
17 on Page 8, Number 8?

18 A. Yes.

19 Q. And to the left of that the trees are bent into
20 the ground, is that correct?

21 A. Yes.

22 Q. You captured that image also?

23 A. Yes.

24 Q. And what was the purpose of taking these
25 photographs, Mr. Saunders?

Saunders - Cross by Mr. Player

1 A. Well, it's to show the, to show the interior of
2 the property and the physical condition.

3 Q. And you believe you fairly captured that as part
4 of the appraisal process you undertook in this
5 case?

6 A. Yes.

7 MR. MCCANTS: Thank you, Mr. Saunders. That's all
8 the questions I have at this time.

9 THE COURT: Cross-examine.

10 CROSS EXAMINATION

11 BY MR. PLAYER

12 Q. Afternoon, Mr. Saunders.

13 A. Hello.

14 MR. PLAYER: I promise I don't bite, Madison. I
15 had lunch so you are safe.

16 BY MR. PLAYER

17 Q. Can you tell me where on the property any of those
18 pictures were taken?

19 A. Yes. They, they were taken throughout the
20 property.

21 Q. But I mean, like, specifically Number 8 or
22 Number 6. Do you know where on the property that
23 was taken? I'm holding it up for you if that
24 helps.

25 A. Bear with me a second, please.

Saunders - Cross by Mr. Player

1 Q. Certainly.

2 A. Yes. So, so that Number 6 is, is my photograph 4.
3 So it says the rear of the property.

4 Q. Do you have a drawing that shows that in that
5 report?

6 A. Yeah.

7 Q. Where is that?

8 A. It's on Page 11.

9 Q. Okay. So the numbers on the property schedule on
10 Page 11 show where the pictures were taken?

11 A. Approximately.

12 Q. Okay. Now I want to ask you, do you know what
13 property was actually condemned?

14 A. Yes, sir.

15 Q. Okay. So is Number 6 in the area that was
16 actually taken by DOT and condemned?

17 A. My number 4 was, yes.

18 Q. Okay. But not Number 6?

19 A. You, you -- which one are you saying is Number 6?

20 Q. The number, right here.

21 A. Yes. Number 6 was in the acquisition.

22 Q. Okay. So that's not part of the property that
23 we're talking about today, is it?

24 A. It, it was, that is what they purchased.

25 Q. Sure.

Saunders - Redirect by Mr. McCants

1 A. Right.

2 Q. DOT.

3 A. Yes, sir.

4 Q. Okay. One more question.

5 A. Yes, sir.

6 Q. Maybe not. It's not there. I'm fairly certain
7 you are going to say you never saw this, but my
8 question is, did you ever see anything like that?

9 A. No.

10 Q. If you did would you have put it in your report?

11 A. Yes.

12 MR. PLAYER: No further questions.

13 MR. MCCANTS: Are you ready?

14 THE COURT: Yes.

15 REDIRECT EXAMINATION

16 BY MR. MCCANTS

17 Q. Number 4. Point to -- I meant to bring this up.
18 Point to Judge Pope where Number 4 was taken and
19 used in your map, if you would Mr. Saunders.

20 Yeah, Number 4. Show her where it was.

21 (witness indicating)

22 Q. Is it fair to say, Mr. Saunders, that's up -- and
23 you are pointing to Exhibit Number 2. That's up
24 in this area, this area that we've been talking
25 about, this drainage easement and whatnot. Is

Saunders - Redirect by Mr. McCants

1 that fair?

2 A. Yes.

3 Q. All right. Okay. Thank you.

4 MR. MCCANTS: That's all the questions I have.

5 THE COURT: All right. This witness may now be
6 excused. Please watch your step, sir. Investigator,
7 are you here for General Sessions? They actually moved
8 it to the other courtroom. I just didn't want you to
9 miss your --

10 UNKNOWN MALE: I appreciate that.

11 THE COURT: All right. Yes, sir. You're welcome
12 to come back if you want to. All right. Defense will
13 call its next witness, please.

14 MR. MCCANTS: Robert Giddens, please, Your Honor.

15 CLERK: Place your left hand on the Bible and
16 raise your right hand. Do you solemnly swear the
17 testimony you shall give the Court in this case will be
18 the truth, the whole truth, and nothing but the truth,
19 so help you God?

20 THE WITNESS: Yes, ma'am.

21 CLERK: Please have a seat on the stand and state
22 your full name for the Court.

23 THE WITNESS: Robert Vernon Giddens,
24 G-I-D-D-E-N-S.

25 COURT REPORTER: G-I-D-D-E-N-S?

1 seated state your full name for the Court.

2 THE WITNESS: My name is Leroy John Fischer,
3 Junior.

4 LEROY FISCHER, being first duly sworn, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PLAYER

8 Q. Mr. Fischer.

9 A. Yes, sir.

10 Q. How old are you?

11 A. Seventy-eight.

12 Q. What do you do for a living?

13 A. I was self-employed doing doors and windows.

14 Q. Okay. Do you have a TikTok franchise now where
15 you make videos for kids?

16 A. No.

17 Q. How long have you been involved with the ownership
18 of this property?

19 A. From the beginning, or very close. But I know
20 that I had to sign documents from Robert Leaver
21 when I bought into the property. I believe it was
22 July 17, 1986.

23 Q. So you have been there since the development plans
24 that Mr. McCants keeps pointing at and talking
25 about in this case, right? The ones for Chadwick?

Fischer - Direct by Mr. Player

1 A. Yes.

2 Q. Okay. What were the plans -- do you know who did
3 those plans?

4 A. I don't I think it's on the, it might be on that
5 (inaudible) or something.

6 Q. But did they do it at the behest of the owners of
7 the property?

8 A. It was done before I ever knew about them
9 acquiring somebody to do it or whatever. It was
10 done there from the beginning, that I know of.

11 Q. Okay. Were you ever involved in the negotiations
12 or trying to get that development up and running?

13 A. No. I mean I was aware of it and I knew that,
14 basically I think, there was 49 lots or something.
15 But actually there could have been 57, I think, up
16 front.

17 Q. Okay. And that initial footprint was used in that
18 plan that includes the 25 acres that the DOT
19 eventually condemned and paid for, correct?

20 A. Yes, sir.

21 Q. Okay. And since you were the only one there, do
22 you remember why Chadwick plans were abandoned?

23 A. Well, I believe it would have happened back in
24 January of '87 when the oil spill took place.

25 Q. Okay. And y'all had to go through certain

Fischer - Direct by Mr. Player

1 procedures and legal ramblings to --

2 A. Right. They had to put in monitor wells.

3 Q. Okay.

4 A. I think there were three monitor wells that they
5 had put in.

6 Q. And how long were those monitoring wells on the
7 property?

8 A. I am not real sure but someplace in the '90s I
9 believe.

10 Q. Okay. Someplace in the '90s they were removed?

11 A. No. They were capped.

12 Q. Okay.

13 A. They were still there. They put locks on them.

14 Q. But the capping occurred because they had -- what
15 did they tell you as to why they were capping
16 them?

17 A. That they didn't find no evidence of
18 contamination. That they give it a clean bill of
19 health.

20 Q. So this property has been given a clean bill of
21 health by the environmental authorities?

22 A. Yes.

23 Q. Okay. So after it gets a clean bill of health,
24 and the Chadwick plans were abandoned, what, what
25 happened? What were y'all doing with the property

Fischer - Direct by Mr. Player

1 say between the mid-'90s and the 2000s when DOT
2 started talking about (inaudible)?

3 A. I don't know exactly what all the issues that came
4 up, but I'm thinking once that fuel oil spill
5 occurred and the time lag between then and when we
6 got a clean bill of health, I'm thinking there
7 was -- different things were evolving and
8 everything. And doing -- due to the timeframe,
9 and I think it was, kind of, just put on the back
10 burner for whatever reasons. I guess due to the,
11 the situation.

12 Although they did have a clean bill of
13 health, but if they were selling property, I
14 believe, they would have to make it known to the
15 future buyers that there had been a contamination.

16 Q. Okay. When was the first time that you walked the
17 property, if you recall?

18 A. I don't know if I did in June of '86, but for sure
19 in June or July of '86.

20 Q. Okay.

21 A. Before they started doing any roadwork or
22 construction.

23 Q. Okay. And back then were there any large ravines
24 where water had carved a path through the property
25 that you were able to observe?

Fischer - Direct by Mr. Player

1 A. Absolutely not.

2 Q. Okay. So when you walked the property what was
3 it? Was it hilly? Was it flat?

4 A. Well, there is, there is a different elevation and
5 terrain, but from where the pathway for the water
6 coming from the north side of I-20, underneath
7 I-20 and onto our property, I mean, there was no
8 evidence of any dirt or anything. It was just
9 grassy, some weeds on the sides, but.

10 Q. Okay. And I'm going to turn my computer on. But
11 let's look at Defendant's Exhibit 1. Do you --
12 this was put in by Billy showing the highlighted
13 portion of the property. Is that accurate?

14 A. Yes.

15 Q. Okay. Now in '86, '87, when you went out there
16 the first time, was any of this roadway
17 construction and clearing of land there?

18 A. No.

19 Q. What was there?

20 A. It was just I-20 and the actual --

21 Q. And this is?

22 A. -- I-20 there.

23 Q. Right.

24 A. Yes.

25 Q. No. Wait a minute. I-20 is here at the top.

Fischer - Direct by Mr. Player

1 This is I-20. All of this was just trees,
2 grassland, correct?

3 A. Right.

4 Q. Okay. And during that time period there was a
5 natural course where you could see water drain
6 naturally through that area, wasn't there?

7 A. Yes. But I never really observed anything in the
8 rains. If there was a rain I didn't run over
9 there to look at the water because there wasn't
10 really a ditch there or anything. It was maybe a
11 detention in the ground area. You know like a --
12 but everything looked real natural.

13 Q. Okay. And when was the last time you were out at
14 the property in the last five years?

15 A. This year.

16 Q. Okay.

17 A. It was probably in spring. I don't know if it was
18 February or March or something. I went out there
19 a couple of times. One time with Billy and
20 observing the rainfall.

21 Q. Okay. And is there a difference in the condition
22 of the land now and the first time you saw it in
23 1987?

24 A. Yes. A lot in the area where the outfall 520
25 comes onto our property.

Fischer - Direct by Mr. Player

1 Q. Okay. And we're going to get pictures. Exhibit
2 Number 3. And ask if you recognize that.

3 A. I believe it's close to the outfall, but it's on
4 our property near the outfall.

5 Q. And these walls that seem to straddle -- and this
6 is Exhibit Number 3, Your Honor. Plaintiffs'
7 Exhibit 3. The walls that straddle it, were those
8 there in the '80s?

9 A. No, absolutely not.

10 Q. Okay. In your recollection, when did water issues
11 on the site become something to be concerned
12 about?

13 A. Well, I, I believe after the contamination and
14 then detour from the original plan of developing
15 the property. I didn't spend a lot of time out
16 there, but what I recollected was back in, like,
17 2010 or whatever, I think there was a meeting at
18 Hanson's property --

19 Q. Okay. Let's back up a little bit. And this gets
20 down into my next question. Mr. McCants talked
21 about what did you do to mitigate the property.
22 My question is, in your words what did you do to
23 try to stop this water from coming on your
24 property?

25 A. Well, if I went out there before we met at

Fischer - Direct by Mr. Player

1 Hanson's, you know, it might have been someplace
2 during the week or on a Saturday or something, if
3 I had time. And I used to live across the street
4 in Barclay Estates. And I'd just go over there
5 and observe because I'm kind of an outdoorsman.

6 Q. Okay.

7 A. And just observing, I never -- what I could see
8 where water has, you know, maybe cut a groove in
9 or something on the main road where they were
10 cutting in and everything.

11 Q. Okay. And you mentioned Hanson. Who are you
12 talking about when you say Hanson?

13 A. I'm believing it was the -- where the entrance to
14 Chadwick from Ascauga Lake Road. I believe he's
15 the homeowner on the right side of our property.

16 Q. Okay.

17 A. And we had met out there, I think it was Dozier
18 and Hugh Connelly. I'm not sure if Billy Franke
19 was there or not. I know a couple of them.

20 Q. Some members of C D F?

21 A. Yes, C D F and myself.

22 Q. And what did you meet at Hanson's property for?

23 A. They were -- had real concerns about the water
24 coming across our property by going across the
25 street and really interfering with the other

Fischer - Cross by Mr. McCants

1 homeowner's property.

2 Q. Okay. And was this just a meeting between the C D
3 F folks and Hanson, or was there anybody else
4 there?

5 A. There was a representative from the state of
6 South Carolina. I don't remember his name at the
7 time, he was there and we were trying to see about
8 doing something, or getting somebody involved to
9 rectify the problem. What would seem to be really
10 getting a lot of erosion.

11 Q. Okay.

12 A. Which I hadn't observed, you know, for years
13 because I hadn't been out there. Because I don't
14 remember exactly when, but it was 12 to 13 years
15 ago when I moved to the country.

16 Q. Okay. Were there any DOT reps at that meeting at
17 Hanson's house?

18 A. I don't recall.

19 Q. Okay. Do you recall any meetings with any reps
20 from DOT about the erosion and water issue?

21 A. I don't.

22 Q. Okay. So after that meeting at Hanson's house,
23 what happened next, anything?

24 A. Not a whole lot. I don't recall anything.

25 Q. Okay. But you have noticed a substantial amount

Fischer - Cross by Mr. McCants

1 of soil and other material from the property that
2 was there in '87 that's not there now, right?

3 A. Well, it's, it was, was not there. It's moved in
4 all other places and directions.

5 Q. Okay. So there is --

6 A. Soil is moving.

7 Q. -- excavation, right there, at the I-20 outfall?

8 A. Yes, sir.

9 MR. PLAYER: Okay. Beg one minute. I'm going to
10 turn you over to that shark, Clarke McCants. Please
11 answer any questions he has for you.

12 THE COURT: Cross.

13 CROSS EXAMINATION

14 BY MR. MCCANTS

15 Q. Afternoon, Mr. Fischer.

16 A. Good afternoon, sir.

17 Q. You were one of the original parties to the actual
18 condemnation of the 25-plus-or-minus acres up at
19 the top near the Palmetto Parkway on this
20 property, is that correct?

21 A. Yes.

22 Q. Do you remember an attorney named Keith Badcock?

23 A. I do not.

24 Q. Do you ever remember meeting with an attorney who
25 was representing all you folks as far as the

Fischer - Cross by Mr. McCants

1 original condemnation, that would have been
2 representing everybody?

3 A. I do not.

4 Q. All right. And you, you are listed as a party in
5 that case, a landowner with C D and F Interests,
6 LLC. Mr. Leaver, Robert Leaver --

7 A. Yes, sir.

8 Q. And Roy Fischer, that's you.

9 A. Yes, sir.

10 Q. You and I talked about it in the hall, it's Elroy
11 Fischer, isn't it?

12 A. Yes.

13 Q. I thank you for being here today, by the way,
14 Mr. Fischer.

15 A. You're welcome.

16 Q. And you had acquired your interest in this
17 property when exactly, if you could tell the
18 Court?

19 A. I believe I have a receipt from July 17, 1986,
20 from Robert Leaver for the amount of \$20,000.

21 Q. And what was the nature of the transaction between
22 you and Mr. Leaver?

23 A. I was just going to be an investor into getting
24 the development going, and then as he sold the
25 lots, to retrieve my amount of money that I had in

Fischer - Cross by Mr. McCants

1 there, and how much I was going to divide it, I'm
2 thinking, three ways as they sold the lots.

3 Q. You're talking about the Chadwick Development.

4 A. Yes.

5 Q. And you were in doors and windows at that time?
6 Is that what I understand?

7 A. I was. I was in doors and windows and
8 renovations, you know, remodeling, construction,
9 residential construction.

10 Q. I think I know what you mean when you say doors
11 and windows. But, kind of, expound on that.

12 A. Well, I --

13 Q. Selling doors and windows, installing or what?

14 A. -- I was doing, I was installing them but I wasn't
15 in the beginning. I was doing some before I got
16 to know Robert, I knew Robert's dad.

17 Q. Robert Leaver?

18 A. Yes. And I was working maintenance out at the
19 airport, Augusta. And Robert's dad worked out
20 there. And I was doing maintenance and I'd go
21 through buildings here and there and have to work
22 on some of the buildings. And then I got to know
23 Robert's dad or something, and that's how I got
24 involved with Robert, through his dad.

25 Q. I'm asking you these questions because I want to

Fischer - Cross by Mr. McCants

1 understand your background business-wise.

2 A. Right. And so after I was done working
3 maintenance out there, I kind of went back and I
4 started doing remodeling work. And putting in
5 some doors and windows in houses for the Window
6 Gallery. And I was doing -- before, before I got
7 into the doors and windows, I was doing housework.
8 You know, come in and build a deck on a new home
9 or do trim work. And trimming out houses. And
10 then I got into making, let's say, custom windows
11 for the Window Gallery. And they were selling
12 Anderson windows and I was building custom windows
13 for them.

14 Q. What was the name of your company?

15 A. It was Roy Fischer Constructors.

16 Q. Did you have a general contractor's license --

17 A. I did.

18 Q. -- for residential?

19 A. I did.

20 Q. All right. It just seems kind of a leap for me
21 from doors and windows-type business as I
22 understand it, and to participate in the
23 development --

24 A. Yeah, I --

25 Q. -- for residential purposes.

Fischer - Cross by Mr. McCants

1 A. I wasn't into, I wasn't into developing or
2 anything. I just went in there for, as an
3 investor. For Robert asked me -- for if I wanted
4 to invest in this project.

5 Q. That helps me understand your role there.

6 A. And that's -- yes.

7 Q. You knew the Leavers and they were going to
8 develop Chadwick --

9 A. Yes.

10 Q. -- and you saw a good opportunity.

11 A. I thought it was a good opportunity.

12 Q. How do you feel about that today, Mr. Fischer?

13 A. Well, this is like 35-plus years later. I'm still
14 here.

15 Q. Did you ever think -- you are doing great but you
16 didn't think you would be sitting there listening
17 to me ask you questions when you invested in
18 Chadwick, did you?

19 A. I sure did not.

20 Q. It's been a long journey, hasn't it?

21 A. It has been.

22 Q. All right. With that said, how involved were you
23 with planning and whatnot? What did you know
24 about Chadwick?

25 A. Only, I only knew the amount of lots that were

Fischer - Cross by Mr. McCants

1 there and the price that they were going to try to
2 sell the lots for, which I don't even recollect at
3 this time.

4 Q. You thought it was a good deal, obviously?

5 A. It did to me.

6 Q. You sound like a very good businessman. You know
7 what to stay near and what to stay away from.
8 This looked like a pretty deal, didn't it?

9 A. It did at the time.

10 Q. All right. This development plan for Chadwick,
11 did you ever see it before this particular case
12 came to be? In other words, back in the '80s,
13 did Mr. Leaver set it out in front of you and let
14 you look at it and tell you --

15 A. I did see that back in the '80s, that
16 development plan there, probably within months
17 after, or within a month or two after that I got
18 into it and told them I would invest.

19 Q. Gotcha. And at some point in the case you will
20 hear about and see what we call historical imagery
21 of this land, whether it be from Google Earth --
22 are you familiar with that, or other sources?

23 A. I -- a little bit.

24 Q. All right. Well, those satellites up in the air
25 and take pictures, and we're able to look back in

Fischer - Cross by Mr. McCants

1 time. It's fascinating to me but be that as it
2 may it went from bare land to the stages of the
3 development according to what we see from the sky
4 over time.

5 A. Yeah.

6 Q. So by the time you invested money in Chadwick, how
7 far along were they into the development, if you
8 could tell Judge Pope?

9 A. They had -- I was living right across the road in
10 Barclay Estates, and so I would go over there
11 periodically as soon as they got over there and
12 started cutting the roadways and cutting some
13 trees, and was watching the roadway progress. And
14 we were at the stage of everything was prepped.
15 They were getting ready to pave the streets and it
16 was winter time and this was in January when the
17 spill took place. And, I mean, we were right
18 there at it going to get in there with the paving
19 in early spring and the oil spill came and that
20 stopped it.

21 Q. Stopped everything.

22 A. Right then it did.

23 Q. And I was, was I correct that what happened at
24 Charter Terminal, maybe, it was early in the
25 morning? This is based on your knowledge.

Fischer - Cross by Mr. McCants

1 A. It was -- yes, very early in the morning. And I
2 can't really recollect if they said the valve was
3 accidentally left open or if the valve broke. I
4 was unclear that I ever got a true understanding
5 of that. I was thinking a valve broke but it
6 could have been left open, but it was, like, after
7 midnight. It was 1, 2, or 3 in the morning.
8 Something like that I believe.

9 Q. Well, I'm showing my age but I was involved in
10 that case way back when. And a couple of
11 employees lost their jobs over it.

12 A. Yeah.

13 Q. So I'm not saying they deliberately did anything.

14 A. Yeah, it wasn't intentional. Well, that's for
15 sure.

16 Q. Could have been --

17 A. I wouldn't think.

18 Q. -- failure to monitor the equipment or something,
19 but it was a bad spill wasn't it?

20 A. Yes.

21 Q. Nothing good about that.

22 A. No. It was 40,000 plus gallons --

23 Q. Yes, sir.

24 A. -- is the first estimate I got, and I'm thinking
25 it might have been higher. I don't know.

Fischer - Cross by Mr. McCants

1 Q. Do you remember being able to smell it and
2 everything today?

3 A. Not really.

4 Q. All right. Did you guys get any money from
5 Charter Terminal or their owners or whatnot as a
6 result of that spill?

7 A. There was monies but I don't ever recall -- I'm
8 thinking the lawyers were handling it. It was
9 Charles and Saleeby (ph) and I'm believing they
10 dealt with the Boardman's or whoever attorneys and
11 they were working out. And I'm thinking the only
12 monies we got is monies that we had put into it.

13 Q. But did Mr. Fischer receive any money?

14 A. I did not.

15 Q. Elroy Fischer.

16 A. No. If there was a check there it was for monies
17 that I had invested in. After -- at the bank when
18 the, when the oil spill occurred and the bank kind
19 of backed up a little bit, and they weren't going
20 to hold the note anymore or something, we were
21 having to pay payments.

22 Q. There was a mention of that. And so really
23 Chadwick was not completed maybe for two reasons:
24 The oil spill and any financing issues? Maybe the
25 bank got nervous and in light of what had

Fischer - Cross by Mr. McCants

1 happened. Is that accurate?

2 A. That is probably somewhat accurate. I'm believing
3 that it got worked out where the monies that, from
4 Charter Oil Terminal or whatever, was worked out
5 that they paid off the bank. That's to the best
6 of my recollection what happened. That they took
7 care of the note at the bank.

8 Q. Fair --

9 A. For the damages and we didn't have any mortgage
10 payment to pay.

11 Q. -- and you have heard the testimony that Chadwick
12 was well on its way, the oil spill came and a cold
13 night in January 1987 would stop the development.
14 But at one point the property was determined to be
15 clean.

16 A. Yes.

17 Q. And the monitoring wells that you referred to are
18 actually still out there today, aren't they?

19 A. I believe they are.

20 Q. And you know the last time anybody had to peek
21 inside of them to make sure everything was all
22 right, whether it be DHEC or the environmental
23 protection agency?

24 A. I don't have no dates, but every time that DHEC
25 went out there to take soil samples from the wells

Fischer - Cross by Mr. McCants

1 I was out there.

2 Q. And DHEC cleared it?

3 A. Yes. I think it was either two or three times
4 they went out there to take samples. And then
5 after, I don't remember how many years after the
6 last samples that they took, that we got the
7 letter of clear health.

8 Q. And, Mr. Fischer, I have not seen that but I
9 certainly believe you when you tell me the state
10 agencies cleared your property, okay.

11 A. Yes.

12 Q. I'm not challenging that at all. But one of the
13 points I want to address, at some point this
14 happened and the property is cleared, Charter
15 Terminal paid some monies. Did you have to
16 participate in that settlement negotiation and
17 ultimately sign any documents with respect to any
18 claims that were being made against Charter
19 Terminal; if you can recall?

20 A. I cannot recall. But I can recall that there was
21 a meeting, and I'm thinking they addressed the
22 payments to go through Saleeby's law firm to deal
23 with paying off the bank note and whatever monies
24 was assessed at that time.

25 Q. Is this the Saleeby firm in Florence, in that

Fischer - Cross by Mr. McCants

1 area? Do you know?

2 A. No. It was in Augusta, Saleeby.

3 Q. Nevermind. A different group. Okay.

4 A. No, I don't think so.

5 Q. Okay. Well, we don't know that.

6 A. There was a lot of different attorneys, I think,
7 through the years.

8 Q. And you are still not done with them, are you?

9 A. Yeah.

10 Q. All right. Now I want to make -- I heard a couple
11 things I'm not clear on with regard to when you
12 first walked the property, as we call it. Here
13 you are asked to invest in real property. Any
14 good businessman like you, before he does anything
15 is going to walk it, look at it, check the pins,
16 make sure that you're getting what you're buying,
17 okay?

18 A. Yes, sir.

19 Q. And you did that when you were first asked to
20 invest by Mr. Leaver.

21 A. I did.

22 Q. Is your testimony today, Mr. Fischer, that there
23 was no evidence of any water intrusion or erosion
24 on this property?

25 A. Yes, sir.

Fischer - Cross by Mr. McCants

1 Q. No evidence?

2 A. I didn't see evidence of where the spillway came
3 underneath I-20 from the north side coming down
4 the ditch from Charter Oil Terminal up that
5 direction, coming underneath. And where that
6 happened I seen it was grassy and there was some
7 weeds on the side but there was -- where it was
8 evident that there was a blue-line stream or
9 whatever, it was grass. There was no erosion.

10 Q. But there was evidence of a blue-line stream, as
11 you call it, which we have talked about?

12 A. I'm not -- now, now that I -- there was no
13 evidence of a blue-line stream. Now I'm not real
14 familiar with working with land and development.
15 But I'm thinking it was called an intermediate
16 (sic) stream. But there was no ditch, I mean,
17 there. Might have been a swell in the ground
18 where there was a ditch, but that there was no
19 ground showing. It was grass.

20 Q. All right. Well, that helps me understand your
21 testimony a little bit. Let's expound on it a
22 little bit, if I can. So there was evidence of
23 water traveling through the property when you
24 first looked at it. Can we agree on that?

25 A. Well, I can't -- there wasn't no evidence of the

Fischer - Cross by Mr. McCants

1 water because I didn't see it. And there was no
2 place where there was bare dirt showing in the
3 lowest portion from I-20 walking back to it. No
4 evidence of rushing water of any sort to erode the
5 grass system and allow bare dirt to show.

6 Q. Gotcha. Let me refine the question again. You
7 may not have seen any actual water flowing on the
8 property, that is, the liquid.

9 A. Right.

10 Q. But my question is, did you see any evidence that
11 water had come across that ground, that dirt?

12 A. No, sir.

13 Q. How about swell? You used the word swell. What
14 do you mean by that?

15 A. Yes, it was natural terrain there, I think that
16 was put there. It was just --

17 Q. All right. That's fine.

18 A. -- I mean it wouldn't have been I came there in
19 '86 and looked at the property and somebody just
20 put sod down. It was there for a long time and
21 there was no evidence of fresh dirt or any dirt
22 being moved. That's all I know about it.

23 Q. Well, you used the term intermittent blue-line
24 stream.

25 A. Well.

Fischer - Cross by Mr. McCants

1 Q. And you will hear engineers talk about that in
2 this case.

3 A. And that's the only, that's the only thing I know
4 about it is hearing other people talk about it. I
5 don't know anything about a --

6 Q. You're saying you saw a --

7 A. -- blue-line stream -- or a intermediate stream,
8 is what I hear mentioned, is something where water
9 only flows with the rainfall or something.

10 Q. But you're saying you saw no evidence of any
11 streambed, creek, or anything like what we've been
12 talking about, that is an intermittent blue-line
13 stream. Is that your testimony?

14 A. Yes. I have seen no evidence.

15 Q. All right. You have seen these pipes that we have
16 been talking about today?

17 A. Yes, sir.

18 Q. You see that Chadwick plan that I asked you about?

19 A. Yes, sir.

20 Q. Did you ask Mr. Leaver why we are paying for these
21 big pipes?

22 A. I did not.

23 Q. Why not?

24 A. I did not.

25 Q. Why not?

Fischer - Cross by Mr. McCants

1 A. Well, because they were building the roads and one
2 day the pipes were there. And it was on the
3 bottom of the hill.

4 Q. You saw them.

5 A. I saw them. I definitely saw them a lot of times.

6 Q. And they would have been brand new at the time,
7 correct?

8 A. Well, yes, sir.

9 Q. They don't look so brand-new anymore, do they?

10 A. No. They're still --

11 Q. People have been living in them. They have got
12 graffiti on them. I guess my point, you're a good
13 businessman who, I can tell, has been around and
14 understands things. You put money into something,
15 certainly, you and Mr. Leaver had some comments
16 about the nature of the terrain, what we're going
17 to do. And you see these huge, I characterize
18 them as huge reinforced concrete pipes that are
19 referenced on this plan and are there today.
20 Certainly you asked some questions about them.

21 A. I did not. I did not have questions for him. All
22 I know is the main -- what I call the main road
23 coming straight down from the north, I-20
24 direction, and coming down the hill down in the
25 bottom there was going to be a retention, or pond,

Fischer - Cross by Mr. McCants

1 down there. And I'm thinking they were going to
2 go under the road to the detention pond, or
3 retention pond.

4 Q. Why did you need a detention pond? Did you ask
5 that question?

6 A. Well, I'm -- most subdivisions have to have them.

7 Q. Why?

8 A. Well, to hold water.

9 Q. A lot of water in some cases, right?

10 A. Well, yes.

11 Q. I hope you understand I'm not beating on you, I'm
12 just -- if you're going to put money into a
13 development you want to maximize the economies of
14 the expenditures and whatnot. Don't waste money
15 and everything. But do you agree with me at least
16 whoever mapped Chadwick out anticipated the need
17 to put 72-inch reinforced concrete pipes down that
18 yellow line, the area of the easement? Do you
19 agree with me? You want to look at the plan
20 again?

21 A. I see, I see the plan. Not -- I don't necessarily
22 agree with you because there wasn't that amount of
23 pipe to go that distance.

24 Q. Well, we've heard testimony about this, but you've
25 heard me call that Note 13 which requires 72-inch

Fischer - Cross by Mr. McCants

1 reinforced concrete pipe at least down in that
2 area towards the bottom, correct?

3 A. I heard you talk about it, yes.

4 Q. Can I bring it up to you --

5 A. Yeah, you're fine --

6 Q. -- and let you look at it.

7 MR. MCCANTS: Your Honor, is it all right if I
8 come up and talk to him with this?

9 THE COURT: Yes.

10 BY MR. MCCANTS

11 Q. This is Exhibit Number 2, Mr. Fischer, that we've
12 marked. I believe it's Number 2. And I need your
13 pen, again, Madam Court Reporter. I keep leaving
14 my pen. Thank you, ma'am.

15 BY MR. MCCANTS

16 Q. And you said you saw this once before?

17 A. Yes.

18 Q. You don't dispute that? All right. And I'm going
19 to trust that if you looked at it you perhaps
20 looked at it enough, maybe, to try to understand.
21 Is that fair?

22 A. Yes.

23 Q. And that's I-20?

24 A. Yes.

25 Q. That's y'all's property. This is the area that we

Fischer - Cross by Mr. McCants

1 acquired for purposes of construction of the
2 Palmetto Parkway and whatnot. And you see that
3 says a drainage easement from I-20?

4 A. Yes, sir.

5 Q. And you see this yellow, it goes down through
6 Chadwick and it talks about an easement, talks
7 about the County whatnot. Then it talks about
8 drainage utility, correct?

9 A. Yes.

10 Q. Now any reasonable person understands that to mean
11 that that is designed to drain something which we
12 would believe to be water. Is that fair?

13 A. Yes.

14 Q. All right. And see how it ends down here and see
15 we've got these notes. It's D-11, D-14, Will
16 Badger helped me out, that is D-13, that note.
17 You with me?

18 A. Yep.

19 Q. D-12, if you look down here talks about D-13 is a
20 RCP culvert 70 inches in diameter --

21 A. 72.

22 Q. -- down here. D-13 --

23 A. Yes.

24 Q. -- D-13 note. D-13 is a RCP culvert 72-inch deep.

25 A. Yes.

Fischer - Cross by Mr. McCants

1 Q. So that tells me that 72-inch RCP, reinforced
2 concrete pipe, was to be installed in this area
3 down in here. Or perhaps even the entire length.
4 We don't know but it's enough pipe to recognize
5 that there is a lot of water coming in that area.
6 Don't you agree?

7 A. I don't.

8 Q. Why would you invest in those big pipes if you
9 didn't agree with your developer, whoever drafted
10 these plans, that there was a need for those
11 pipes?

12 A. How many pipes are there?

13 Q. Well, you tell me.

14 (inaudible crosstalk)

15 A. I'm thinking there was around six pipe. I
16 wasn't -- I didn't order the pipe or deliver the
17 pipe or --

18 Q. You paid for it.

19 A. -- well yes. It went, went on the bank's note but
20 it's --

21 Q. You paid for it, didn't you?

22 A. -- I understand that, yeah.

23 Q. You got it paid off through the Charter Terminal
24 spill but --

25 A. Yes, sir.

Fischer - Cross by Mr. McCants

1 Q. -- that was money out of your pocket initially,
2 all right?

3 A. I believe so.

4 Q. I'm not picking on you, I'm just asking. You
5 don't look to me to be the kind of man that's
6 going to spend money unless you have got a reason
7 to spend it. Is that a fair statement?

8 A. Yes, sir.

9 Q. So somebody invested heavily in protection against
10 water, Mr. Fischer. Will you, will you agree with
11 me on that?

12 A. Not necessarily. I'm still thinking it was to get
13 the water underneath the roadways. Because you
14 had a roadway here, and you have got a roadway
15 here to get to the -- probably had to get to the
16 detention pond.

17 Q. That's right. What water (inaudible),
18 Mr. Fischer?

19 A. Well, the land elevation between up here on the
20 hill and down here, there was a -- and so now you
21 have got all this flat area up in there which is
22 higher than the land down here. That had to go
23 someplace --

24 Q. All right.

25 A. -- when you build the lots and the roads.

Fischer - Cross by Mr. McCants

1 Q. And I think you and I can at least agree that
2 somebody had to deal with water, correct?

3 A. Exactly.

4 Q. You and I may disagree on the amount of water, but
5 whoever engineered this development, Chadwick, for
6 you guys who were investing a lot of money said
7 y'all have got to deal with water. Can we agree
8 on that?

9 A. Yes, sir.

10 Q. It's the amount of water I think you and I maybe
11 don't share the same perspective with regard to
12 that issue, that is the amount of water. But
13 wouldn't the amount of water perhaps,
14 Mr. Fischer -- isn't it true the amount of water
15 that's coming through that property is defined by
16 the size of those pipes?

17 MR. PLAYER: That calls for speculation of an
18 expert.

19 MR. MCCANTS: I'll rephrase.

20 THE COURT: All right.

21 BY MR. MCCANTS

22 Q. Mr. Fischer, we talked about your experience in
23 business, what you did, how you invested in
24 Chadwick. It looked like a good deal to you.
25 What you did was you looked at the plans and

Fischer - Cross by Mr. McCants

1 whatnot. You and I have reached the point in our
2 discussion where you agreed that the person who
3 put these plans together said, Chadwick and your
4 representatives, you have got to deal with water.
5 So you and I kind of don't share the same view
6 about how much water. And I'm asking you, isn't
7 it true that the amount of water that you had to
8 deal with can easily be defined by the investment
9 in those 72-inch pipes?

10 A. Not necessarily. Because you're talking how many
11 acres of land there, 69.3 acres of land and you're
12 paving these big roads going around there. And
13 all the lots and the driveways, and that's a hill
14 on one side of the property, and the other side of
15 the property the elevation is much lower. And so
16 the water is coming from the top side of the
17 property to the bottom side of the property.

18 Q. Have you seen the pipe, the concrete --

19 A. I have.

20 Q. -- at the outfall?

21 A. I have.

22 Q. How many inches in diameter is it?

23 A. I believe, according to Billy Franke -- I didn't
24 measure personally. I think he said one was
25 24 inches and one was 54 inches.

Fischer - Cross by Mr. McCants

1 Q. That's correct. That's 72 inches worth of pipe?

2 A. Yes.

3 Q. And 24-inch is less than half of that.

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. My question to you, can we agree that we can
8 define the amount of water that a person is
9 dealing with based upon the diameter of the pipe
10 we're using?

11 MR. PLAYER: One, once again, this is calling for
12 expert testimony. Calls for speculation. He -- the
13 amount of water can't be defined by the size of the
14 pipe that was never used and just, apparently,
15 mentioned in a plan.

16 THE COURT: All right. Mr. McCants.

17 MR. MCCANTS: I'm not asking his opinion. This is
18 more based on his lay experience in getting involved.
19 And the simple question is whether or not the size of
20 the device, pipe, what have you, to use to control
21 something like water can be defined -- that can be
22 defined by the size of the device that you're using.
23 That doesn't really require expert testimony. It just
24 seems a common sense approach. The lesser amount of
25 water, the smaller the pipe. The more water, the

Fischer - Cross by Mr. McCants

1 larger the pipe. And that's all I'm asking Mr. Fischer
2 to perhaps agree with me with regard on that issue.

3 THE COURT: All right. I'll allow that question.

4 BY MR. MCCANTS

5 Q. Mr. Fischer, let me try again, okay?

6 A. Okay.

7 Q. Isn't it fair to define the amount of water you
8 need to control by the size of the device you need
9 to control -- that is the size of the pipe?
10 That's not unreasonable is it? Be fair with me,
11 Mr. Fischer.

12 A. There's, there's one thing if you're a land
13 developer and you have done subdivisions before,
14 you're not going to put a pipe in that's half the
15 size of what you need. You would rather go twice
16 the size so you would have room to grow.

17 Q. I'll make a deal with you. At least the fella
18 that y'all had hired to design Chadwick for you
19 thought you needed 72 inches of pipe. Will you
20 agree with that? That's true?

21 A. Not necessarily, because I'm thinking it could
22 have been a 24-inch pipe would have been
23 sufficient but he says, well, we -- let's get a
24 48-inch pipe. Well, they didn't have any so he
25 said, well, we better take the 72.

Fischer - Cross by Mr. McCants

1 Q. Oh, come on. We can find some 48-inch pipe
2 instead --

3 A. Well, I --

4 Q. -- of going up to 72-inch. That would be a waste.

5 A. -- well, when they came in there they came in with
6 the equipment and just --

7 Q. Y'all's engineer thought you needed 72-inch pipe,
8 didn't he?

9 A. -- well, I -- he might have. I don't know that
10 but I -- because I never really talked to him.

11 Q. Well, once you got building did you ever ask
12 Mr. Leaver why we paid for 72-inch pipe when we
13 could have used 42? Did you?

14 A. I did not.

15 Q. Okay. Let's leave that alone. Let's get down to
16 the condemnation. And I do want to talk to you
17 about that. We all know the condemnation case was
18 filed in 2005. Trust me on that. That's in the
19 paperwork that we have, okay?

20 A. Okay.

21 Q. And tell me again, did you actually -- y'all
22 retained a lawyer, Keith Badcock, of Columbia, you
23 as landowners. Are you aware of that?

24 A. I'm not sure of the law firm.

25 Q. All right. And you don't remember meeting with

Fischer - Cross by Mr. McCants

1 any attorneys to discuss the condemnation case,
2 the ins and outs of value and all that?

3 A. I don't recall, sir.

4 Q. Do you remember that the Department of
5 Transportation tendered into the court the
6 acquisition, that is we placed money into the
7 court to start the condemnation process? Do you
8 remember that at all?

9 A. I don't.

10 Q. Do you remember any amount that was tendered to
11 the court? Well, I'll tell you it was
12 approximately \$378,000, I believe. You don't
13 remember that?

14 A. I don't but I know it's on the paper.

15 Q. Yes, sir. Fair enough. You do remember, however,
16 that, ultimately, you as a landowner with the
17 other landowners agreed to settle the condemnation
18 case for the total sum of \$504,500 -- \$560. Do
19 you remember that?

20 A. Yes.

21 Q. That rings a bell, doesn't it?

22 A. Yes.

23 Q. How much did the attorney charge you out of that,
24 do you remember?

25 A. I don't.

Fischer - Cross by Mr. McCants

1 Q. You don't remember if he was on an hourly basis or
2 contingency?

3 A. I don't, sir.

4 Q. Tell me again, do you remember how much money you
5 actually received from the condemnation case?

6 A. I believe it was \$179,000 and change.

7 Q. That is went to Leroy Fischer personally?

8 A. Yes.

9 Q. Is that correct?

10 A. Yes.

11 Q. Did you reinvest that money into the Chadwick
12 concept?

13 A. I did not.

14 Q. May I ask why you did not?

15 A. Because I don't think it ever -- the subject never
16 came up.

17 Q. You have heard the testimony discussion by that
18 time all the original owners involved in Chadwick,
19 because of the spill and time, were kind of
20 dispersed, okay?

21 A. Yes.

22 Q. And you agree with me the current landowners, that
23 is you with Mr. Badger's interest, Mr. Franke's
24 interest, and the other interests, y'all aren't
25 interested in developing this property anymore,

Fischer - Cross by Mr. McCants

1 are you?

2 A. Nobody has brought that up to me, no.

3 Q. All right. But do you understand the law means
4 that you have got a duty to mitigate your damages
5 and to try and reduce what your claim is as part
6 of this case? Do you understand that?

7 A. Not really.

8 Q. All right. Well, let me help you. It's not a
9 complex term. When you claim that you have been
10 hurt by somebody the law says that you have to try
11 to reduce your damages, how you have been hurt.
12 Does that make sense?

13 A. Yes.

14 Q. But you haven't done any of that, have you?

15 A. I have not personally, no.

16 Q. All right. I'm going to trust, because you got
17 some money out of the Charter Terminal settlement,
18 that when Mr. Badcock or whoever was representing
19 you presented the papers to you to receive your
20 170,000 plus or minus funds -- how much was it?
21 How much did you get from the condemnation? Rough
22 idea.

23 A. Is that -- are you talking about the money from
24 Charter Oil Terminal?

25 Q. I'm going to pause. I'm moving too fast and I

Fischer - Cross by Mr. McCants

1 don't mean to do that. I want to take the time and
2 make sure you understand the question. You got
3 money as a result of the Charter Terminal oil
4 spill, correct?

5 A. No, sir.

6 Q. Well, it was reinvested in the bank situation?

7 A. Yeah. But the bank got it. I don't know what
8 the -- there was, there was several payments after
9 the oil spill that the bank wanted to keep the
10 account to have monies coming in to pay off the
11 note. And we were making some note payments.

12 Q. Gotcha.

13 A. Individually, Robert Leaver, Sherman Hemstreet,
14 LLC, and me myself.

15 Q. All right.

16 A. And we were making payments, and the settlement
17 from that condemnation, any settlement was only
18 for the payments that I was making on behalf of
19 trying to keep the note afloat.

20 Q. Well, again, how much did you receive out of the
21 condemnation settlement? Let me clarify this.
22 This is important. Out of the \$504,000 and change
23 that y'all, you fellas, received for the
24 condemnation case, how much did --

25 A. From Charter Oil Terminal?

Fischer - Cross by Mr. McCants

1 Q. -- no, sir. That's two different things. Follow
2 with me.

3 A. You are talking about the 25-acres?

4 Q. Let's pause a second. Charter Terminal happened
5 in '87.

6 A. Yes.

7 Q. Period of time, the property is clean. Charter
8 Terminal is settling for the damage. I think you
9 indicated to us whatever money came from Charter
10 Terminal went to pay the bank.

11 A. Exactly.

12 Q. Satisfy a mortgage.

13 A. That's right. To satisfy that mortgage and any
14 payments that we had made in a short period of
15 time, when the bank was requesting monies.

16 Q. Got it. Let's stop there. The condemnation
17 action was filed in 2006. It was settled, we
18 believe, within a year or year and a half. We
19 believe Mr. Badcock represented all the
20 landowners. Very capable eminent domain lawyer
21 from Columbia. And it was settled for a total of
22 \$504,920. I'm trying to keep the numbers
23 straight. My question to you, \$504,560, that's
24 the total amount that DOT paid you folks as
25 landowners for the acquisition of the 25 acres --

Fischer - Cross by Mr. McCants

1 A. Yes.

2 Q. -- at the top of the property. You agree with me
3 about that?

4 A. Yes.

5 Q. How much of that did Mr. Fischer, you, receive?

6 A. \$179,000 and I don't, I don't remember.

7 Q. Not an insignificant amount of money, do you
8 agree?

9 A. Yes, sir.

10 Q. All right. When we talked about having what you
11 did, you didn't reimbursement into Chadwick
12 because that (inaudible) fallen by the wayside.
13 All right. Well, in any (inaudible) y'all
14 received this money. Now I'm going to trust that
15 the lawyer sat down with you and said, here's your
16 check. As part of receiving that check you have
17 got to sign some documents, correct? Let me show
18 it to you. It's got your name misspelled because
19 they only called you Roy.

20 A. I know.

21 Q. Your full name is Leroy, but that is your
22 signature. Is that correct?

23 A. Yes, sir.

24 MR. MCCANTS: For the record this is Exhibit
25 Number 1, I think, Madam Court Reporter and --

Fischer - Cross by Mr. McCants

1 THE COURT: It is. Yes, sir.

2 MR. MCCANTS: It would have been on one of those
3 page three of threes that you pointed out earlier,
4 Judge. And it is the one --

5 MR. PLAYER: (inaudible).

6 BY MR. MCCANTS

7 Q. Thank you. 1, 2, 3, 4, 5, 6 pages, your
8 signature, Roy Fischer -- Leroy Fischer appears
9 there.

10 A. Yes, sir. Leroy.

11 Q. Mr. Fischer, I'm going to trust that before you
12 signed, you read this document. Is that a true
13 statement?

14 A. Yes, sir. Probably did. I would think I did.

15 Q. In business. Had signed at least one other claim
16 in the past. You want to make sure you know what
17 you're doing before you accept that money. Fair?
18 And did you have to ask any -- I know it's been a
19 while. I know it's been a while. But if you can
20 tell the Court, did you understand all of the
21 document that you signed and everything that was
22 written there?

23 A. I believe I did.

24 Q. You remember having to ask anybody about it, ask
25 any questions?

Fischer - Cross by Mr. McCants

1 A. I don't recall.

2 Q. Did anybody make you sign it?

3 A. No.

4 Q. All right, now. The plain language of the
5 agreement, and I read this before, says in
6 exchange for \$504,560 of which you received that
7 \$170-plus-change amount, you agreed to release the
8 state of South Carolina, the South Carolina
9 Department of Transportation from any and all
10 claims, demands, damages, actions and causes of
11 action, and suits at law or in equity of
12 whatsoever kind or nature arisen, arising or to
13 arise, from or because of any matter related to
14 the construction of Palmetto Parkway (Bobby Jones
15 Expressway) I-520 in Aiken, South Carolina. I'll
16 let you read that, but will you trust me that I've
17 read it accurately?

18 A. I trust you.

19 Q. There's a lot of legalese in there isn't it?

20 A. There is.

21 Q. What do you understand it to mean?

22 A. I understand it to mean that we're not going to
23 hold you liable for anything on the 25 acres that
24 we sold to DOT.

25 Q. All right.

Fischer - Cross by Mr. McCants

1 A. That was your land.

2 Q. Well, it doesn't say 25 acres in there. It says
3 anything arising or to arise because of any matter
4 relating to the construction of the Palmetto
5 Parkway in Aiken, South Carolina. I want you to
6 read that if you would. Because that doesn't talk
7 about 25-acres. It talks about an exchange worth
8 a half million dollars that you, when you signed
9 that document, said anything related to the
10 Palmetto Parkway is released.

11 A. All right. I see what you've got outlined there,
12 but you can't say that you paid me money -- I
13 received monies for 25 acres but you can come and
14 do anything you want on my property.

15 Q. I'm not suggesting that's what it says. I'm
16 suggesting that language in that release says in
17 exchange for \$504,000 you landowners are saying
18 whatever is related to construction of the
19 Palmetto Parkway is released.

20 A. Not on our property. On your property, yes.

21 Q. Well, when someone pays money, like Charter
22 Terminal, to the bank, granted because they caused
23 some damage or caused problems, don't you think
24 it's reasonable that person who is causing the
25 issue wants to be released from any claims from

Fischer - Cross by Mr. McCants

1 the person they are paying the money to? That's
2 not unreasonable, is it?

3 A. I don't believe so.

4 Q. All right. Here's the reason I want to get into
5 that. We are talking about what you saw on the
6 property before the condemnation case was filed.
7 Have you seen the pictures that I had shown
8 everybody else that were taken in 2005 when DOT
9 had the property appraised? Have you seen those?

10 A. I kind of -- you're talking about the three
11 photos?

12 Q. Yeah. Let me spend a little time with you on
13 those, if I can. And we just have some
14 differences in interpretation of those
15 photographs, I believe. Are you able to see these
16 photographs from here, Mr. Fischer? Or you want
17 to come up here?

18 A. I can see them if you hold them up, I think.

19 Q. Can you see that?

20 A. Yes, sir.

21 Q. All right. Let me ask you about Exhibit Number 6,
22 this photograph. And what I will tell you that
23 is, that is a photograph under the appraisal that
24 was done by a man named Steward Saunders in 2005
25 in order to calculate the value of the property

Fischer - Cross by Mr. McCants

1 that SC DOT was acquiring. That they went -- that
2 he went into your property and looked at it in
3 2005. I want you to trust me that that's true for
4 the time being. Okay, Mr. Fischer?

5 A. Okay.

6 Q. My question, does Exhibit Number 6, in your mind,
7 show significant erosion to the ground in the area
8 where this photograph was taken?

9 A. Can you, can you bring that photo over here?

10 Q. Take whatever time you want to to look at it.

11 A. It's kind of hard to determine exactly what's
12 going on there.

13 Q. Do you not believe that that is the bottom of some
14 area of the ground, and that is a wall of, as
15 Mr. Badger called it, Georgia red clay?

16 A. Yes.

17 Q. Does it look like, then, that there is some type
18 of bed down below that big wall of Georgia red
19 clay where water has run through that land?

20 A. The water looks like it is going from here over
21 there, and it don't look like it's touching
22 anything over here. Because if you dig out a
23 road, dig a roadway or something, a lot of times
24 they do have a, a side bank --

25 Q. Well, y'all didn't dig roads that deep, did you?

Fischer - Cross by Mr. McCants

1 A. -- and they just left it. No, we didn't. I don't
2 recall doing anything.

3 Q. Well, Mr. Saunders will testify. I'm just asking
4 you and giving you a chance --

5 A. I'm just.

6 Q. Do you not agree that photograph shows at least
7 erosion across the dirt area?

8 A. The dirt area is there but that looks like this
9 portion here, whether it's some sand or silt
10 going -- it's not even going over there.

11 Q. Okay. Then let's talk about Exhibit Number 8.
12 Does that show erosion to the ground due to the
13 flow of water?

14 A. It does.

15 Q. How would you characterize the degree of that
16 erosion?

17 A. I can't tell, but it looks like there's some -- a
18 ditch that formed a side of a -- and I believe
19 that's near the top of the hill, but maybe not all
20 the way to the top. And there's, so there's water
21 coming from the top of the hill down that side,
22 but that's from 1986 when they cut the roads in
23 there and they didn't do anything til what, 2005.

24 Q. Well, this picture was taken in 2005.

25 A. Yeah.

Fischer - Cross by Mr. McCants

1 Q. I haven't established that yet but (inaudible). I
2 believe that the evidence is going to show that,
3 but let's peer harder into these pictures and see.
4 Look at that photograph. You see these channels
5 where water is obviously --

6 A. Yes.

7 Q. -- eroded the ground. And you see it's going up
8 at an incline, but you see that area right in
9 there? Does that not look like water has eroded,
10 again, a significant bank of Georgia red clay?

11 A. It does --

12 (inaudible crosstalk).

13 Q. -- it's not going to move as quick as --

14 A. Right.

15 Q. -- topsoil or sand, correct?

16 A. Right. But you're talking about 20 years where
17 all the vegetation was removed and left off.

18 Q. That part is fine but the point is in 2005, is
19 that not evidence of severe water intrusion and
20 erosion across your property?

21 A. It's coming from the top of the hill and the water
22 has got to go to the lowest point.

23 Q. I understand that.

24 A. And then 20 years with no maintenance.

25 Q. I didn't ask where the water came from.

Fischer - Cross by Mr. McCants

1 A. Yeah.

2 Q. I'm asking is this not evidence of severe
3 erosion --

4 A. Well, it's evidence that, yeah, water has flowed
5 and caused damage for sure.

6 Q. Can you use the word severe?

7 A. In 20 years, not necessarily.

8 Q. How would you -- what level of degree would you
9 attach to that? Moderate, insignificant?

10 A. I would say moderate.

11 Q. Moderate. Not severe?

12 A. Not severe, not in 20 years.

13 Q. But enough water that it commands control of it,
14 correct? Do you agree with that?

15 A. Yes.

16 Q. Do you see that one? This is the last one,
17 Mr. Fischer. I promise you I'm getting close.

18 A. Okay.

19 Q. Number 7. That erosion is so bad it's knocked
20 down trees.

21 A. Bring it here.

22 Q. You agree?

23 A. There's, there are trees that are laying down.
24 There is.

25 Q. They don't look like they were cut.

Fischer - Cross by Mr. McCants

1 A. No.

2 Q. That ain't timber being cut is it?

3 A. No.

4 Q. Those are scrub pines that have been knocked over

5 somehow?

6 A. Yeah, scrub, yeah.

7 Q. You have walked through woods a lot in your life.

8 Do you hunt (inaudible)?

9 A. I do.

10 Q. You still hunting?

11 A. I am.

12 Q. What do you shoot these days, deer?

13 A. Yeah.

14 Q. You get out in the woods and hunt deer?

15 A. Yeah. I do.

16 Q. So you have seen what I'm talking about over the

17 years, haven't you?

18 A. Yes.

19 Q. And this looks like a typical interior woodland

20 area that had severe erosion by water over the

21 years from wherever the water is coming from.

22 Would you agree with me on that?

23 A. Not necessarily because you are talking about very

24 small trees and erosion can start when the, once

25 the vegetation is gone. That's when erosion

Fischer - Cross by Mr. McCants

1 starts. When it went from having structure to not
2 having anything.

3 Q. All right. I saw that's not as severe as some of
4 the other ones but I don't think that that's
5 slight. Let's you and I agree on a term to
6 characterize this degree of erosion. How would
7 you characterize this?

8 A. I would say it would be -- my term would be less
9 than moderate.

10 Q. All right. How many deer have you shot this year,
11 by the way?

12 A. It's too warm.

13 Q. All right. Let me ask you finally, if I can, at
14 the time you signed the release to receive the
15 money from the condemnation action and you got
16 \$170,000 and some change, you were familiar with
17 the interior condition of your property, weren't
18 you?

19 A. Yes.

20 Q. So you knew about all this?

21 A. Yes.

22 Q. And you accepted the money that the state paid you
23 knowing about the condition of the interior of
24 your property, is that fair?

25 A. Yes.

Fischer - Redirect by Mr. Player

1 Q. All right, sir. Do you recall, Mr. Fischer -- I
2 haven't asked about it just yet but I'm going to
3 ask you. Do you recall if the timber was cut off
4 the front end of that property before the
5 condemnation action was filed? Do you remember?

6 A. I'm thinking it could have been but I wasn't
7 directly involved with it. But I believe it could
8 have been.

9 Q. And I, I tell you, I'll tell you, Mr. Fischer,
10 we've got the documents --

11 A. Yeah.

12 Q. -- that we will share with, we'll share with the
13 Court. Y'all have seen them. You don't have any
14 reason to doubt that's clear-cutting timber at the
15 top of the property before the DOT acquired that
16 25-acre? You don't have any reason to dispute
17 that?

18 A. No, I don't have any reason to dispute that.

19 Q. All right. Because you guys wanted the value of
20 that timber before the construction, correct?

21 A. I believe, I believe it was brought to my
22 attention and that's what I remember. But I never
23 went out there seeing it clear-cut or anything.

24 Q. Based on your experience with traipsing through
25 the woods and hunting deer over the years, what

Fischer - Redirect by Mr. Player

1 does a clear-cut do to the remaining property for
2 purposes of erosion control?

3 A. It don't help it any in the beginning.

4 Q. That's exactly the term I would use. It doesn't
5 help anything, correct?

6 A. In the beginning.

7 Q. But if it grows back up, that's fine.

8 A. Yeah. Well, you will get weeds and all the
9 under-stuff coming up within a year.

10 Q. Takes a long time for that to happen though,
11 doesn't it?

12 A. Well, within a year or something. It really --
13 with the sun shining it --

14 Q. With sunshine. I gotcha. Hold on just one
15 second, Mr. Fischer.

16 MR. MCCANTS: Mr. Fischer, thank you for being
17 patient with me. That's all I have, Your Honor.

18 THE COURT: All right. Redirect?

19 MR. PLAYER: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. PLAYER

22 Q. Mr. Fischer?

23 A. Yes.

24 Q. The 25-acres they took, what did they put there?

25 A. I think --

Fischer - Redirect by Mr. Player

1 Q. An interstate, right?

2 A. Yes.

3 Q. Can trees grow on an interstate?

4 A. No.

5 Q. Okay. Another question. Do you know what an
6 easement is?

7 A. I believe I do.

8 Q. What do you believe an easement is?

9 A. An easement gives you the right to access
10 property -- land easement gives you the right to
11 access property that you don't have access to --

12 Q. All right.

13 A. -- if you need to. If you can't find no other --

14 Q. If you have an easement, you are there at the
15 pleasure of the owner, correct?

16 A. -- yes, sir.

17 Q. Does the owner build infrastructure to take care
18 of your water when you have an easement on the
19 property?

20 A. No. No.

21 Q. So is there any reason to believe that these
22 72-inch pipes you bought to take care of DOT's
23 water.

24 A. No.

25 Q. If they only need an easement to send something

Fischer - Redirect by Mr. Player

1 across your land, so all this water, if it's an
2 easement --

3 MR. MCCANTS: Your Honor.

4

5 BY MR. PLAYER

6 Q. -- it's DOT's water, right?

7 A. Yes.

8 THE COURT: What's the objection?

9 MR. MCCANTS: I try to hold back because I know
10 this is not a jury. And I know you want to move along,
11 but Mr. Player's testifying at this point, I believe,
12 in leading Mr. Fischer during redirect.

13 MR. PLAYER: Okay.

14 MR. MCCANTS: I try to be very --

15 MR. PLAYER: No. I, I completely agree. I'll
16 change my question.

17 THE COURT: All right. So if you will rephrase.

18 BY MR. PLAYER

19 Q. Have you ever been in a situation where you have
20 paid to maintain or construct an easement for
21 somebody that you're giving them an easement?

22 A. No.

23 Q. Okay. There was one more. And you talked about
24 down here at the bottom that there was going to be
25 a detention pond, right?

Fischer - Redirect by Mr. Player

1 A. Yes, sir.

2 Q. When they're -- we're getting into engineering
3 stuff. So I'll save it for later. You ready to
4 go home? Me, too. As long as he'll be quiet.

5 MR. PLAYER: No further questions, Your Honor.

6 THE COURT: Recross.

7 MR. MCCANTS: You'll be glad to hear, no further
8 questions.

9 THE COURT: All right. This witness can be
10 excused. Please watch your step, sir.

11 All right, Mr. Player, so you're going to call
12 your expert witness first thing in the morning?

13 MR. PLAYER: And that will be our final witness.

14 THE COURT: All right. So we will, we'll adjourn
15 for the evening. And I will -- we will reconvene at
16 9:30 and go ahead and get started into the expert
17 testimony.

18 MR. PLAYER: Yes, ma'am.

19 THE COURT: And then hear any motions if
20 necessary. And if necessary, we'll also hear
21 Defendant's case, okay?

22 MR. MCCANTS: Thank you, Judge.

23 THE COURT: Okay. Y'all have a good rest of the
24 evening. See you tomorrow morning.

25 END OF DAY 1 OF TRANSCRIPT OF RECORD

Franke - Direct by Mr. Player

1 determine whether or not there's been an inverse taking
2 before we get to the issue if that occurred, what
3 amount of compensation they are entitled to for that
4 acquisition. If that makes sense.

5 I think I've laid out our position, Your Honor.
6 We'll have some testimony on all those issues. And if
7 I can't answer your questions for you now, I look
8 forward to working with everyone on this case.

9 THE COURT: All right. Very good. Thank you
10 both, gentlemen.

11 MR. PLAYER: Thank you, Your Honor.

12 THE COURT: Mr. Player.

13 MR. PLAYER: Yes, Your Honor. The plaintiff would
14 call Billy Franke to the stand.

15 THE COURT: All right.

16 THE WITNESS: Is the stand here or --

17 MR. PLAYER: Up there where the microphone is.

18 THE COURT: You've got to go up here.

19 THE WITNESS: Okay.

20 THE COURT: Come here first. She's got to swear
21 you in.

22 THE WITNESS: Oh. I don't do this everyday.

23 THE COURT: It's okay.

24 CLERK: Please place your left hand on the Bible
25 and raise your right hand. Do you solemnly swear the

Franke - Direct by Mr. Player

1 testimony you shall give the Court in this case shall
2 be the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE WITNESS: I do.

5 CLERK: Okay. Please take a seat in the witness
6 stand right here. And state your full name for the
7 Court reporter.

8 THE WITNESS: My name is William Frederick Franke,
9 III. I live at 165 Macklin (ph) Lane in North Augusta,
10 South Carolina.

11 COURT REPORTER: Spell your last name, please.

12 THE WITNESS: F-R-A-N-K-E.

13 WILLIAM FREDERICK FRANKE, being first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. PLAYER

17 Q. Billy, what do you do for a living?

18 A. I'm in the real estate business, is what I'm
19 currently doing. I've got a very well-traveled
20 career doing a lot of different things. All over
21 the state of South Carolina, Tennessee, born in
22 Augusta, educated in forestry management in
23 Alabama. But I'm a third-generation businessman
24 doing what I do. And I've had some of the best
25 teachers. And even though I'm professionally not

Franke - Direct by Mr. Player

1 qualified in many things, I know a lot about many
2 different issues that I've been taught over the
3 years, and I've seen and experienced.

4 Q. Why are you here? What's your relationship to the
5 property that we're discussing today in this case?

6 A. My father was a part of a company called Sherman
7 and Hemstreet, which still exists today, at the
8 time and when we bought this property. I don't
9 have my dates in front of me. I was around,
10 probably at school when this project started. But
11 I was very familiar with the property and the
12 location. And I followed it ever since then as
13 far as what has happened over the years with the
14 property.

15 We are getting a lot of water dumped on us.
16 It's kind of, like, you know, I even pulled a
17 mapping program a couple of nights ago because I
18 just got my curiosity, but the basin of this water
19 is probably in excess of 140 acres worth of water
20 on a very impervious surface out in the
21 interstate. It goes down to one, like,
22 (inaudible) traps and goes down to one pipe --

23 Q. Okay, okay. Let's --

24 A. I'm sorry.

25 Q. You are jumping ahead a little bit.

Franke - Direct by Mr. Player

1 A. Okay. Sorry, sir.

2 Q. Do you have an ownership interest in this
3 property?

4 A. Yes, I do.

5 Q. How did you obtain it?

6 A. I inherited it through my father.

7 Q. Okay. And do you recall the year that that
8 occurred?

9 A. October the 13th, 2007.

10 Q. 2007. What percentage of ownership do you have
11 personally in the property?

12 A. I do not have record of it here, but it's around,
13 me personally, maybe seven or eight percent.

14 Q. Okay. Did you go out to the property and observe
15 it when you obtained your ownership?

16 A. And before.

17 Q. And before. And what did you see when you went
18 out and inspected the property?

19 A. Well, early on it was all very wooded. The roads
20 had been cut in for our development at the time.
21 And, I mean, the history of it, learned the
22 history of the property which Mr. McCants kind of
23 stated some of the issues a little while ago. So
24 I was very well aware of what had happened over
25 the period of time before my ownership, leading up

Franke - Direct by Mr. Player

1 until today.

2 Q. Were you able to observe the area that
3 (inaudible). Let the judge see what we're talking
4 about. I think Clarke's got a much prettier
5 picture and bigger, but this is what we've got.
6 Can you look at that and tell me what that is?

7 A. That is a picture of our property showing the
8 location.

9 Q. What exactly does that show you is the boundaries
10 of your property? The highlighted portion?

11 A. The highlighted portion. Yes.

12 Q. Okay. What is the pin that says 520 outfall?

13 A. That's the location where the water is being
14 directed onto our property from the interchange.

15 Q. Okay. And we'll get to pictures and videos of
16 that.

17 MR. PLAYER: And this will be Plaintiffs' 1. If
18 you'll hand that to Her Honor.

19 THE COURT: Any objection?

20 MR. MCCANTS: No objection.

21 (Whereupon P-1 was entered into evidence.)

22 BY MR. PLAYER

23 Q. And you talked about development plans that were
24 in place, or at least in contemplation, when you
25 first gained your acquisition of the property.

Franke - Direct by Mr. Player

1 What were those plans for?

2 A. A residential subdivision.

3 Q. A residential subdivision. Now Clarke has shown
4 us a picture of pipes. And you've seen these
5 pipes, correct?

6 A. Yes, sir.

7 Q. How long have they been out there?

8 A. They have been out there since my first
9 familiarity with the property after the
10 development had started.

11 Q. Okay. Do you have any idea what they were for?

12 A. No, sir. I have no idea.

13 Q. Okay. Did you see any stormwater plans or
14 hydrology studies on this development when you
15 first got your interest in the property back in
16 2007?

17 A. No, sir. I don't know if there are any or ever
18 were any.

19 Q. So when did the -- there was a gas spill. When
20 did that occur?

21 A. I do have notes in my file folder there. I could
22 give you exact figures if you would like them from
23 that, but I certainly don't have it in memory.

24 Q. Just in general.

25 A. Early '80s.

Franke - Direct by Mr. Player

1 Q. Okay.

2 A. We bought the property, I believe, in '79 and
3 started development not too far after that.

4 Q. Okay. So in '07 what was the status of the
5 development plans for a residential subdivision?
6 Were they in operation? Did you have bids out?

7 A. Well, by that time, because of the spill, we
8 stopped the development on the property. The base
9 was put down on the roads so the roads were ready
10 to be paved. And that's just from the appearance
11 that I have today of what's there now.

12 And needless to say, I -- from what I
13 understand, we had a mortgage on the property.
14 And I think because of the contamination they
15 walked away from it. And we got the property
16 unencumbered. And I think in '96, I think, is
17 when we finally got the letter of no further
18 action from the EPD or DHEC, which at that point
19 we were free and clear. And by then the
20 development that we had started on, because of the
21 washing, and part of it is not related to this,
22 but just overall washing in the area and the
23 overgrowth of the trees, there really wasn't a
24 development anymore.

25 Q. Okay. At some point did you have an issue with

Franke - Direct by Mr. Player

1 the amount of water that you felt was being dumped
2 onto your property (inaudible)? When was the
3 first time that came up?

4 A. December 2010. My father, of course, was deceased
5 at that time. He died in '07. We met with the
6 gentleman that I mentioned to you earlier with
7 DOT, I believe at the property. Up on the down
8 ramp going from 520 on the Palmetto Parkway onto
9 I-20 East where the outlet is, and told him my
10 concerns about it. And this was in 2010. And --

11 Q. What did you tell him? What were your concerns?

12 A. My concerns were it was washing our property
13 pretty excessively.

14 Q. Okay.

15 A. Lots of water was coming through there and we were
16 concerned about it because it was hurting our
17 property.

18 Q. Okay. So you actually saw this area where the
19 outfall was dumping on the border of your
20 property?

21 A. Yes.

22 Q. In 2010?

23 A. Yes.

24 Q. Is there more or less of your property now than
25 there was in 2010?

Franke - Direct by Mr. Player

1 A. Oh, absolutely less.

2 Q. Okay. Why is that?

3 A. The washing of the water. The water has washed
4 away our ground, undermined our trees, and,
5 basically in my opinion, because of the full
6 disclosure that I'm required to make as far as a
7 real estate broker, it affects the property and it
8 has to be disclosed to anybody who wants to buy
9 it. So basically it's been unsellable.

10 Q. Have you tried to sell it?

11 A. Oh, yes.

12 Q. How long would you say, not maybe specifically on
13 the market, but how many years have you been
14 trying to sell the property?

15 A. Probably 15 or 16. And, of course, when I really
16 got started with it we were going through that bad
17 time in 2000-2008. And then, of course, the DOT
18 did their project and the water came on us, so
19 it's kind of affected us since 2007. I guess,
20 partly because of the economy, and then with the
21 situation with the stormwater.

22 Q. So what happened? What did DOT do when you voiced
23 your concerns in 2010?

24 A. At that meeting they said that they would -- I
25 believe the correct word -- I'm not an engineer,

Franke - Direct by Mr. Player

1 but they would put some kind of concrete weir
2 there. Like, they would put some rocks across the
3 front on their property right where their property
4 joins our property to -- at the time I thought it
5 was going to be like a retention pond, but I guess
6 it's strictly hindsight now, it's, basically, they
7 were putting it there to slow down the water --
8 the speed of the water. And, of course, within a
9 matter of a couple of storms it was so strong it
10 blew the rocks out and it's totally wide-open now.

11 Q. Okay. And according to your observations how long
12 has it been like that?

13 A. Since 2010.

14 Q. What did you do to investigate the stormwater
15 system over there at the 520 outfall?

16 A. I tried to -- too much information, but to make me
17 feel good about how I look at things I try to
18 check everything out very thoroughly to, kind of,
19 come up with my own opinion regardless of whether
20 an engineer or attorney or whoever tells me.
21 Because I like to get a feel for it myself. But I
22 tracked where all of those pipes went to, and the
23 model weir traps which -- where the water comes
24 from the ground into those pipes goes.

25 And in that area, the 130 acres or so,

Franke - Direct by Mr. Player

1 there's, like, 11 weir traps that at some point
2 all go into this one big pipe where, before we
3 sold our property to DOT, there was a 24-inch pipe
4 which came all the way from the other side of
5 I-20. I think it was called Laurel Lake Road
6 where the Charter Terminal is, which is the same
7 pipe that all the contamination went through. But
8 there was a 24-inch pipe. I don't think it picked
9 up any water from the interstate. It just
10 strictly diverted it from a ditch on the other
11 side of the interstate. And now we have a 24-inch
12 pipe and a 52-inch pipe.

13 And as Mr. McCants was talking about the size
14 of the pipes out there, the pipes they have got up
15 there now is a 24-inch and a 52-inch pipe. So if
16 you have got a 52-inch pipe, basically the size of
17 something you can walk through, common sense just
18 tells me that we've got an issue. Because all
19 these pipes are being geared toward that one
20 location and dumping this water in this one
21 direction.

22 Q. Look at that document that I put up on the board
23 and see if you can tell me what that is.

24 A. That's my drawings of -- approximate drawings,
25 un-engineered (sic) obviously, but my drawings

Franke - Direct by Mr. Player

1 based on aerial photograph, observations, and
2 tracing the pipes to see where these weir traps
3 are located, and where the directional water was
4 coming from before it gets to our property through
5 the interchange.

6 Q. And did you actually go in the pipes and do this?

7 A. I did.

8 Q. Okay. What is at the very top corner and -- we'll
9 do this -- sorry. We will offer this as
10 Plaintiffs' Exhibit 2, if I can talk.

11 THE COURT: (inaudible)?

12 MR. PLAYER: Yes, ma'am.

13 THE COURT: All right. Any objection,

14 Mr. McCants?

15 MR. MCCANTS: No objection.

16 THE COURT: All right.

17 (Whereupon P-2 was entered into evidence.)

18 BY MR. PLAYER

19 Q. What does the -- look at the building in the very
20 top left-hand corner. Is that Walmart?

21 A. That is a retention pond from Walmart, two
22 retention ponds. One on -- yes.

23 MR. PLAYER: Your Honor --

24 THE COURT: Walmart is where? I'm sorry.

25 MR. PLAYER: And I think he's -- he's looking at

Franke - Direct by Mr. Player

1 the green, and I'll point it out.

2 THE WITNESS: The white building is Walmart.

3 BY MR. PLAYER

4 Q. These are the ponds for that building in the
5 corner?

6 A. Yes.

7 Q. Okay. And you have pipes that seem to come from
8 the Walmart retention pond that eventually get to
9 the 520 outfall. Do you know what those are?

10 A. You're talking about the retention/detention ponds
11 or --

12 Q. Right. The pipes coming from the detention pond.

13 A. Yes, yes.

14 Q. What is that?

15 A. The pipe coming from the retention pond is a pipe.

16 Q. Do you know what those pipes are for?

17 A. To move water.

18 Q. And what has to occur before those pipes are
19 accessed by water? Do you know?

20 A. Those ponds have to fill up.

21 Q. They have to fill up. So when Walmart gets too
22 much water, DOT's design was to send it to you?

23 A. And, of course, concrete pipes are impervious
24 which means there's no opportunity for the water
25 to be slowed down, and it just picks up speed the

Franke - Direct by Mr. Player

1 further it goes through the pipes.

2 Q. Okay. And just look at the TV here, it's a little
3 bit easier. Do you know what this building is
4 right here where these pipes do this almost
5 90 degree angle?

6 A. Kauffman Tire. Or it used to be Kauffman Tire.

7 Q. Okay.

8 A. And you have all that impervious surface where
9 Charter Terminal is located, too.

10 Q. Okay. And all these are pipes, right? This is
11 not dirt that the water is traveling through. You
12 actually crawled through pipes, right?

13 A. I did not get all through, I did not go through
14 all those pipes. No, sir.

15 Q. But the ones that you did were concrete pipes?

16 A. Yes.

17 Q. Okay.

18 A. And to clarify, I didn't crawl, I walked.

19 Q. Okay. Were the pipes big enough for that?

20 A. Yes.

21 Q. Okay. How many times have you been out to --
22 we'll start with this. See if you recognize
23 what's in this video.

24 (WHEREUPON, a video was played for the
25 Court.)

Franke - Direct by Mr. Player

1 BY MR. PLAYER

2 Q. Do you know what that is?

3 A. Yes, sir.

4 Q. What is it?

5 A. It's the two outfall structures coming from the
6 Department of Transportation. Of course, it looks
7 like that now because all of the vegetation is
8 grown all over it now. Yes.

9 Q. Have you seen that much water come out of those
10 pipes before?

11 A. I've seen more.

12 Q. Now, see there in that picture, I'm going to pause
13 it. In the background of the video, what is that
14 treeline right there?

15 A. That's our property line, and that's where the
16 weir was placed by DOT.

17 Q. Are you saying weir?

18 A. I don't know if that -- it's a rock structure.
19 It's just loose rocks but I could not physically,
20 probably, lift any one of the rocks. So they are
21 very, very heavy rocks. And they were placed
22 across that, I assume, to slow the water down.

23 Q. And is this the same location?

24 A. Yes, sir.

25 Q. And, again, that treeline that comes in when the

Franke - Direct by Mr. Player

1 camera pans to the right is your property,
2 correct?

3 A. Yes, sir. If you go back to that treeline you can
4 see where the water is going down a big waterfall.
5 Right there.

6 Q. I see. Right here, correct?

7 A. Yep.

8 Q. All right.

9 A. And that was level property, I think, when DOT
10 finished. Or not level. It's got to, to go
11 downhill, but --

12 Q. I'm going to let y'all hear this one.

13 (WHEREUPON, a video was played for the
14 Court.)

15 MR. PLAYER: And you can laugh at the fat man that
16 fell down in the dirt. Here we go.

17 BY MR. PLAYER

18 Q. My question to you, Billy, is what is that right
19 there? Is that a fence?

20 A. That's the water going underneath the fence. Of
21 course, when the fence was put up it would have
22 been at ground level, you would think.

23 Q. This is the water going directly into your
24 property, right?

25 A. Yes, sir.

Franke - Direct by Mr. Player

1 Q. That fence is actually your property?

2 A. Yes.

3 THE COURT: Where's the fence? I'm sorry,
4 Mr. Player.

5 MR. PLAYER: Yes. For some reason you tell
6 everybody you're in trial for two days they decide to
7 call you while you're giving testimony. So my watch is
8 going nuts.

9 THE COURT: That is fine. My watch has gone nuts,
10 too.

11 THE WITNESS: There are the rocks, pretty heavy
12 rocks.

13 BY MR. PLAYER

14 Q. At the top corner, Your Honor, that wire fence
15 back in their property line, and we have various
16 videos we haven't entered into evidence yet. That
17 was in 2014, right?

18 A. Yes.

19 Q. Has something -- have you had a similar incident
20 of that in the last month?

21 A. Yes.

22 Q. Hang on. When did you take this video?

23 (WHEREUPON, a video was played for the
24 Court.)

25 BY MR. PLAYER

Franke - Direct by Mr. Player

1 Q. Where is that?

2 A. It's on my property.

3 Q. This is on the other side of the fence?

4 A. Yes.

5 Q. Okay. All right. Okay. Where is that?

6 A. It's on my property, probably 50, 75 feet below
7 that -- our property line.

8 Q. Was all of this earth eroded and gone when you
9 looked at it in 2010?

10 A. No. Not to that point, but --

11 Q. And the holes. What about the holes, holes there?

12 A. From watching, I don't really know. I hadn't -- I
13 didn't observe any --

14 (WHEREUPON, a video was played for the
15 Court.)

16 Q. And the trees. You see the trees that have fallen
17 into the gap or are leaning?

18 A. Right.

19 Q. Did you do anything to knock those trees down?

20 A. No, sir. That's from the washing.

21 Q. When you observed it, was there any soil in that
22 root structures?

23 A. Back in 2010, yes.

24 Q. But not now?

25 A. Right.

Franke - Direct by Mr. Player

1 Q. Okay. Well --

2 MR. PLAYER: Clarke?

3 MR. MCCANTS: Yes.

4 MR. PLAYER: I'm going to submit this, too.

5 MR. MCCANTS: No objection.

6 BY MR. PLAYER

7 Q. Will you tell me what this picture is?

8 A. That's a picture of our property.

9 Q. Okay.

10 A. This is downstream from the outfall, about
11 150 feet probably.

12 Q. My main question is on this, these, what appears
13 to be walls. Is this, like, down in that ditch,
14 this picture?

15 A. Yeah. It's like a mini Grand Canyon.

16 Q. And has that gotten progressively worse?

17 A. Absolutely.

18 Q. Okay.

19 THE COURT: All right. This is Plaintiffs' 3?

20 MR. PLAYER: Yes, ma'am.

21 THE COURT: Any objection?

22 MR. MCCANTS: No objection, Your Honor.

23 (Whereupon P-3 was entered into evidence.)

24 MR. PLAYER: Pass that picture to the judge. I'm
25 going to have you look at this one.

Franke - Direct by Mr. Player

1 THE WITNESS: Exhibit 4?

2 MR. PLAYER: Yes.

3 THE WITNESS: Exhibit 4.

4 THE COURT: Objection to 4?

5 MR. MCCANTS: No objection.

6 (Whereupon P-4 was entered into evidence.)

7 MR. PLAYER: All right. In this one I'm going to
8 point out -- May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. PLAYER

11 Q. This right here. What is -- and it's evidence,
12 Your Honor, everybody. This is this tree right
13 here. I'm asking him about the root structure of
14 that tree and what it looks like today. Is that
15 an accurate picture of what the root structure of
16 that rather large tree looks like today?

17 A. I believe it is the same tree. You can tell from
18 the leaves on the ground that this was at least a
19 year ago or further.

20 Q. Okay. And there's no soil in that root system.

21 A. No. There's no leaves on the ground. There's no
22 foliage on the ground. It's all dirt.

23 Q. That has just been washed away by water.

24 A. No. There's no foliage on the ground anywhere.

25 Q. Okay.

Franke - Direct by Mr. Player

1 MR. PLAYER: That's 4. This will be next. Hand
2 that to the Judge.

3 THE COURT: This is 5?

4 THE WITNESS: Yes.

5 MR. PLAYER: Yes.

6 THE COURT: Any objection?

7 MR. MCCANTS: No objection.

8 (Whereupon P-5 was entered into evidence.)

9 BY MR. PLAYER

10 Q. You see the tree and it's kind of crossing
11 everything?

12 A. Yes.

13 Q. Do trees normally grow sideways?

14 A. I'm in -- my background is in forestry management,
15 and I can tell you from a professional standpoint
16 that they do not.

17 Q. So why is that tree on its side?

18 A. It's lost, it's lost its base. It's been washed
19 out. It's been eroded.

20 Q. Okay. And you see the path, it looks to be like a
21 stream. Where does that lead to? Back to the
22 outfall?

23 A. Yes.

24 Q. Okay. Do you know how far away from the outfall
25 that is?

Franke - Direct by Mr. Player

1 A. I would say that's probably seven, eight
2 hundred feet.

3 Q. Okay. So 700 feet from the border of your
4 property and it's still washing trees over?

5 A. Yes.

6 Q. Okay. You got your ownership interest in 2007. I
7 just lost the question. We'll come back to it.
8 How have -- well, in 2007 didn't y'all have these
9 types of water issues on the property?

10 A. No, sir.

11 Q. And you said the first time you addressed DOT was
12 in 2010. That's the same year they finished 520,
13 correct?

14 A. I'm not sure exactly when it was opened for
15 operation, but I know we met in December of 2010
16 and it was there then.

17 Q. Okay. Well, in your opinion as the landowner, why
18 are you getting -- what is the cause of all this
19 water?

20 MR. MCCANTS: Your Honor, for the record, I
21 object. Just -- that's asking him for an opinion that
22 I think is reserved for an expert in this type of case.

23 MR. PLAYER: But I think since he owns the
24 property he can give those opinions because it will not
25 carry any emphasis of special training or expertise.

Franke - Direct by Mr. Player

1 But I think there was observations when he walked
2 through the pipes. I think he can have an opinion
3 about, you know, where the water is coming from. I
4 think the video is pretty obvious.

5 THE COURT: All right. Mr. McCants, your
6 objection is noted for the record. I am going to allow
7 this testimony, but I'll also note for the record that
8 Mr. Franke is not an expert -- an engineering expert,
9 but I will allow his opinion.

10 MR. PLAYER: I will make it less expertise.

11 BY MR. PLAYER

12 Q. From your observation, the water that's doing
13 damage to your property is coming from where?

14 A. If I can back up and say that I've got a lot of
15 experience. I'm not a professional engineer. I'm
16 not a professional attorney, but I've been in the
17 development business for a lot of years and been
18 around it. And I'm very familiar with a lot of
19 regulations that are in effect, even though I
20 couldn't cite the exact regulation or where you
21 would find it. But this is due to an increase in
22 impervious surface, and this speed of the size of
23 the pipes and the volume of water.

24 It's kind of like a 140-acre swimming pool
25 that has got one little outlet in it, and it's

Franke - Direct by Mr. Player

1 going right out that outlet. So, you know, a
2 swimming pool, if you can imagine something that
3 hard and that big taking in that kind of water and
4 then releasing it, that's going to cause this.

5 Q. Okay. Is that saying it's the DOT's water?

6 A. It's God's water until it lands on DOT's land.

7 Q. Okay. How has this water problem affected your
8 ability to use the property to its fullest in
9 investing?

10 A. This -- our property has got a very good zoning,
11 which I'm not sure was picked up on in any of the
12 appraisals, early appraisals. But it's got a high
13 density residential, commercial zoning, which
14 means it affects the use of the property as far as
15 what you can do with it.

16 And at this point, the use that's in mind for
17 this property is not attainable because this water
18 cuts through our property from the northwest
19 corner all the way through to, pretty much, the
20 southeast corner of our property. It transverses
21 it. It doesn't run parallel. Doesn't cross it at
22 one spot. It goes like a slant straight -- an
23 angle through our property.

24 Basically, it's like if you have to cross a
25 river to get to two-thirds of your property in the

Franke - Direct by Mr. Player

1 back, it would be very costly to deal with the
2 water and be able to develop the back two-thirds
3 of the property because of this situation. So
4 that affects the usage. And as a real estate
5 broker, like I said, anybody that comes along
6 that's interested in this property, I'm inclined
7 to have to disclose it to them.

8 Q. Okay. Let's look at the video from 2019. Do you
9 know what the area in that video is showing?

10 A. Yes, sir.

11 Q. What is that channel?

12 A. That's the water coming from the outfall right as
13 it comes into our property.

14 Q. And there appears to be a lot of riprap there. Do
15 you know how that got there?

16 A. There was always riprap through that basin, but
17 after our meeting with DOT, and at some point they
18 added a bunch of rock. And you can actually tell
19 the size of those rocks are much larger than
20 what's in the basin before you get to that rock
21 area that you're looking at.

22 So those rocks were placed in there, based
23 upon my opinion, I'm not an engineer, but
24 considering a lot of those rocks are probably 50,
25 60, 70 pounds, I don't know -- they're too heavy

Franke - Cross by Mr. McCants

1 for me to lift, were installed to slow the water
2 down. And as you can see, the water has actually
3 broken through those rocks and pushed the rocks
4 downstream.

5 Q. And just one last thing. This right here. This
6 bush (inaudible) fence to your property?

7 A. I can't really tell but --

8 Q. Okay.

9 A. That's an approximate location of where it would
10 be, yes.

11 Q. Okay. And you mentioned -- you know where that
12 picture is taken?

13 A. Yes, sir. That's just in our property. Those
14 rocks came from that, that outfall structure.

15 Q. So did you put these bricks of concrete and rock
16 on your property where water is coming out?

17 A. No, sir.

18 Q. The water flowed there.

19 A. Right. The property has been untouched as far as
20 we are concerned since that oil spill clean --
21 after the oil spill was cleaned up. There's been
22 nothing in there to disturb the ground or do
23 anything to that property. It's woods. And woods
24 actually create a natural way of slowing water
25 down as well, but when you don't have trees just,

Franke - Cross by Mr. McCants

1 like, impervious surface at the interchange it's
2 going to cause the volume and speed of it to
3 increase.

4 Q. Okay. What -- I think I'm done with him, Judge.
5 Answer any questions Clarke has for you.

6 THE COURT: Cross?

7 MR. MCCANTS: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. MCCANTS

10 Q. Good morning, Mr. Franke.

11 A. Good morning, sir.

12 Q. Nice to see you again.

13 A. Likewise.

14 Q. Thank you. I need your help, and perhaps the
15 judge needs some assistance from us to, kind of,
16 outline who the parties are in this case. So I
17 want to talk about the plaintiffs, so to speak.
18 Before I do that, I listened, of course, to your
19 testimony. You don't disagree that some amount of
20 water in varying amounts and speed have flowed
21 across your property for years? You don't
22 disagree with --

23 A. I disagree with that.

24 Q. You do disagree?

25 A. No, no. I went out there two weeks ago, Saturday

Franke - Cross by Mr. McCants

1 morning I believe. And there was no movement of
2 any water in that area between the outfall and my
3 property. There was some water there because it
4 had rained the previous night. There was no
5 movement of water in there. I came back at 3 or 4
6 in the afternoon and very similar to some of these
7 videos you saw. So they may call it an
8 intermittent stream, but a stream to me is defined
9 as a continuous flow of water. And intermediate
10 (sic) means it's not.

11 And this intermediate stream, I believe, at
12 one point went all up through DOT. And I'm pretty
13 sure that you had to get permits before you change
14 or alter an intermediate stream, or are supposed
15 to get permits from the Corps of Engineers before
16 you increase the water flow and speed, as well.
17 And I don't know if any of that was done, but that
18 ditch was dry on Saturday morning and it was like
19 that on Saturday afternoon. Not dry, no moving
20 water.

21 Q. Let me rephrase my question. I was looking more
22 in general terms and an abstract concept
23 historically. And I appreciate the fact -- how
24 old are you now, Mr. Franke?

25 A. I am 63.

Franke - Cross by Mr. McCants

- 1 Q. You and I are about the same age or whatnot.
2 Bless our hearts. But in any event -- and your
3 daddy owned the property. We'll talk about that a
4 little bit. But you, you have listened to this
5 case. You're obviously very intelligent and vast
6 background and whatnot. I'm asking historically,
7 is there any question in your mind, not
8 necessarily from an intermittent standpoint, but
9 that it has -- water in some degree, in some
10 volume traveled through this property for many,
11 many years?
- 12 A. I have never seen it travel through the property
13 at all. I probably relate it to the storm events
14 and the fact it's woods. It -- although the water
15 is going to collect there, and some will come down
16 this area, but any volume there would be very,
17 very minimal, almost negligible. Just like
18 looking at the (inaudible) on these pictures. I
19 mean, there would be leaves. There was never any
20 indication of water movement.
- 21 Q. Fair enough. And that's based upon your personal
22 knowledge?
- 23 A. And observation.
- 24 Q. You've seen it?
- 25 A. And observation. Yes, sir.

Franke - Cross by Mr. McCants

1 Q. All right. With that in mind, when was the first
2 time you set foot on this property, walked it and
3 inspected it? And let's look at the age issue
4 here, okay? Because you and I are about the same
5 age. Your father passed in 2007. You testified
6 that's when he and others acquired the property.
7 But when was the first time that William Franklin,
8 III walked this property?

9 A. Probably around 2000.

10 Q. 2000. Certainly before your father passed away?

11 A. Yes.

12 Q. And what would have been the reason you walked
13 this property in 2000?

14 A. Because he told me this was something that we
15 owned and that I should look at and be familiar
16 with it. And I did so. And I could certainly see
17 where the old undeveloped, uncompleted development
18 was. And this was before DOT did their project.

19 Q. I understand. And an additional question, DOT
20 began the process of condemnation and construction
21 mid-2000s. So your testimony is, I walked the
22 property. My father owned it. He said it was
23 something we owned so naturally you went and took
24 a look at it, correct? You have to say yes.

25 A. Yes, sir.

Franke - Cross by Mr. McCants

1 Q. You're doing fine. All right. I'm going to
2 (inaudible). I do want to talk about the parties
3 but I want to ask this question --

4 A. Okay.

5 Q. -- while it's fresh on my mind. All right. And
6 you have seen, of course, the pleadings in this
7 case. You and Mr. Player, I imagine, have worked
8 very close together in arranging and putting this
9 case together. One of the landowners, or
10 plaintiffs in this case is C D and F Interest,
11 LLC, a Limited Liability Corporation --

12 A. Yes, sir.

13 Q. -- in South Carolina, is that correct?

14 A. Yes, sir.

15 Q. Are you part of that LLC?

16 A. Yes, sir.

17 Q. Did you inherit your father's share?

18 A. Yes. And my sister.

19 Q. Who is your sister?

20 A. Catherine Franke Smith.

21 Q. And who else is a member of C D and F Interest,
22 LLC?

23 A. D. Hugh Conley. He passed away probably nine or
24 ten months ago. And his son David Conley, Junior
25 is now in charge of his estate.

Franke - Cross by Mr. McCants

1 Q. All right. Which is pending?

2 A. Yes.

3 Q. Well, for the record we may have -- that's an LLC
4 interest, correct?

5 MR. PLAYER: Yes.

6 MR. MCCANTS: All right. So that's not
7 (inaudible).

8 MR. PLAYER: And if you want me -- we can just go
9 ahead and concede that C D and F are bound by that
10 release, I will.

11 MR. MCCANTS: Okay. And I appreciate that but I'm
12 more interested in who the players, if I can use that
13 term --

14 MR. PLAYER: Yes.

15 MR. MCCANTS: -- or members of the LLC.

16 THE WITNESS: The estate at this point has not
17 replaced Mr. Conley in the LLC. My sister and I have.
18 BY MR. MCCANTS

19 Q. Understood. Any other members of the LLC have an
20 interest in C D and F Interest, LLC?

21 A. William Lane Dozier. And he's probably around 90,
22 lives in Blythe, Georgia. He would have been here
23 but he's got failing health.

24 Q. Very sorry. (inaudible) so he's not here today.

25 A. Right.

Franke - Cross by Mr. McCants

1 Q. And anybody else with C D and F?

2 A. No.

3 Q. And Roy Fischer, Elroy D. Fischer, Jr. Should
4 have led with him first, and I apologize. Is he
5 with us today?

6 A. Yes.

7 Q. That's Mr. Fischer. Good morning, Mr. Fischer.

8 MR. FISCHER: Good morning.

9 BY MR. MCCANTS

10 Q. Okay. Howard Lumber Company. They are a
11 plaintiff in the case. Howard Lumber Company.
12 Explain that to Judge Pope.

13 A. I never mean to give too much information but it's
14 always been a learning process for me.

15 Q. If you don't know that's fine. I'm asking because
16 you seem to be a spokesperson.

17 A. One of our, one of our original partners, a guy
18 named Robert Leaver -- and I don't know the
19 details of his situation, but at some point we had
20 tax liens filed against us. And he had liens with
21 the lumber company and with the lighting company.
22 And the lumber company and lighting company
23 foreclosed on his interest about the time that the
24 condemnation was taking place.

25 It didn't go to condemnation but -- and they

Franke - Cross by Mr. McCants

1 ended up going through foreclosure. And what I
2 found interesting is the fact that even though I'm
3 not the one in default, the other owners are part
4 of the foreclosure proceedings. So we went over
5 there and sat in the courtroom, I believe with
6 Judge Early, as that was going on years ago. And
7 that was one of the first instances we had with
8 the property.

9 Q. All right. Just a second. Not to interrupt you.
10 You mentioned that, and we're going to put
11 documents in, but before Judge Early was involved,
12 and I believe that was part of the condemnation
13 process issuing an order approving it, there was
14 also an issue with regard to interests foreclosed
15 that was handled by the late Judge Bob Smoak. I'm
16 asking do you remember that at all?

17 A. I don't remember that name, no.

18 Q. All right. Clearly we're diving too deep into
19 that. And finally Mr. Robert E. Pentecost Trust.

20 A. That's the lighting company that foreclosed on
21 their interest due to default liens, default
22 payments.

23 Q. We've got a lot of documents in this case. I got
24 at least two or three boxes, most of which are not
25 here. I imagine you've got a lot of documents,

Franke - Cross by Mr. McCants

1 too. Is that fair?

2 A. I don't have enough.

3 Q. All right. Based upon your review and
4 investigation of the facts of this case and
5 preparing for trial, have you reviewed what we
6 call the condemnation package following the
7 acquisition, the condemnation in 2006? Have you
8 reviewed that at all?

9 A. I'm sure I've seen it before, yes.

10 Q. How familiar are you with eminent domain and
11 condemnation? Given your experience with land,
12 you've been involved in instances where the
13 government needed to acquire land for a public
14 purpose?

15 A. Yes.

16 Q. So when you and I talk about that, you feel like
17 you --

18 A. If there's something I can't answer, I'll let you
19 know.

20 Q. Fair enough. You are aware, of course, that the
21 DOT, on behalf of the state, filed a condemnation
22 case in 2006 against certain individuals who owned
23 this land, and it was settled. Do you agree with
24 that?

25 A. Yes.

Franke - Cross by Mr. McCants

1 Q. Did you know Keith Badcock, the attorney I
2 referred to earlier?

3 A. No, sir.

4 Q. You have never spoken with him or anything?

5 A. Not that I'm aware of, no.

6 Q. Are you aware he represented the landowners in the
7 condemnation action in 2006?

8 A. No, sir.

9 Q. So you're not aware of any investigation or
10 discovery he and others undertook as part of that
11 condemnation action. Is that fair?

12 A. That's fair. Yes, sir.

13 Q. You're not aware of any --

14 A. I'm not aware of any. All I know is we had an
15 outside appraiser that came in to help us with it.
16 Marshall Vann, MAI appraiser, that helped us with
17 it.

18 Q. Do you remember the initial amount that was, what
19 we call, tendered into the Court as part of the
20 condemnation case?

21 A. I don't know if we were going to discuss dollar
22 amounts at this point, but it was very low in my
23 opinion.

24 Q. But you kind of anticipated my question. Bear
25 with me. I thought I had that condemnation

Franke - Cross by Mr. McCants

1 package in front of me, Your Honor.

2 MR. PLAYER: Are you talking about the release?

3 MR. MCCANTS: Not the release. Well, yeah the
4 release includes like (inaudible).

5 MR. PLAYER: Okay.

6 MR. MCCANTS: Thank you, Judge.

7 BY MR. MCCANTS

8 Q. I forgot. As part of the documents, we're going
9 to look at the original condemnation action which
10 was filed, and the parties are listed there, was
11 for 25.238 acres. We may talk about that more,
12 but from the standpoint of compensation,
13 initially, the number I see, Mr. Franke, that was
14 tendered into the court by DOT to acquire a
15 portion of y'all's property was \$378,570. Does
16 that ring a bell at all?

17 A. No, sir.

18 Q. All right. You characterized that as low. I
19 appreciate that.

20 A. Well, if I'm able to say something. Is that okay?

21 Q. Yes.

22 A. Okay. I looked at the appraisal information that
23 Tucker handed me a minute ago. And I've got a
24 question as far as what was the use of those
25 properties that were used as comparables to come

Franke - Cross by Mr. McCants

1 up with that appraisal. I could not see that
2 anywhere in the appraisal.

3 And typically an appraisal, a full-blown
4 appraisal will show the comparables, where they
5 are located, pictures, how much they sold for, the
6 dates they sold for and there's none of that in
7 there.

8 Q. Fair. And for your information I may have made
9 reference to this, Steward Saunders, who is an
10 appraiser, he's from the Charleston/Mount Pleasant
11 area. He will testify as part of this case. I
12 will tell you he did the appraisal for DOT back in
13 the mid-2000s before the condemnation was filed.

14 A. Right.

15 Q. He walked the property.

16 A. Okay.

17 Q. So those are his numbers, to help you understand
18 that. But my point is that's the amount, the
19 \$378,000 I referenced, which was tendered into the
20 court by DOT as part of the condemnation case.

21 A. And I can't go back in time and question that, so
22 it is what it is.

23 Q. My good friend, the Court's good friend, Jim
24 Bailey, handled that for DOT at the time.

25 A. Is he a MAI appraiser?

Franke - Cross by Mr. McCants

1 Q. No. He's an attorney.

2 A. Okay. Thank you.

3 Q. He represented DOT.

4 A. No, the appraiser that did this. Is he an MAI
5 appraiser?

6 Q. Mr. Saunders? Yes.

7 A. He is an MAI?

8 Q. I believe so.

9 A. And he's from outside, he's from outside the area.

10 Q. He's from South Carolina, and I believe he's a
11 certified appraiser with all the credentials
12 necessary.

13 A. Okay.

14 Q. But, you know, you raised the issue. And this is
15 what I want to talk about. You don't dispute,
16 eventually, the condemnation case was settled and
17 fully resolved for the sum of \$504,560?

18 A. I don't disagree.

19 Q. All right. So between what was placed in the
20 court and what it was settled for was a good bit
21 different, but you understand that that was a
22 product of Mr. Badcock representing the
23 landowners, negotiating and investigating to get
24 up to that higher amount?

25 A. Yes. That's the way the process works.

Franke - Cross by Mr. McCants

1 Q. All right. And then, of course, we know it was
2 settled. Now let's talk about that if we can.
3 Now I have -- all right. You are finished with
4 this? This will be Defendant's Exhibit Number 1,
5 Your Honor.

6 THE COURT: Without objection.

7 MR. MCCANTS: It would help to staple the
8 document. Someone scan and whatnot. Perhaps Charlie
9 can put a staple in that for me.

10 THE COURT: Sure. You'll have to check with my
11 clerk in my courtroom.

12 MR. MCCANTS: This is Defendant's Exhibit
13 Number 1. And I will leave it up to you as to how to
14 fix the pages, secure it so they don't get mixed up.
15 But I'll put a clip on it for you. All right. Can we
16 mark that? I want the Judge to look at that, and I've
17 got extra copies. Mr. Franke, let me give you a copy.
18 May I approach, Your Honor?

19 (Whereupon, D-1 was marked for
20 identification.)

21 THE COURT: Yes.

22 BY MR. MCCANTS

23 Q. All right. Mr. Franke, if you would look at
24 Exhibit Number 1.

25 A. Okay. I have looked at it.

Franke - Cross by Mr. McCants

1 Q. As much of the pages as you can. I'm going to
2 walk you through it, too, by the way. Have you
3 looked at that?

4 A. I've seen it before, yes. But not today. So what
5 kind of questions do you have?

6 Q. I'll be there shortly. Bear with me one moment.
7 Can you hand this to the judge? All right. Let's
8 walk through this package, if we can. We will
9 walk through the names again, and I just want to
10 understand from your perspective who they are. Of
11 course, the first page of the document is titled
12 Release, is that correct?

13 A. Yes, sir.

14 Q. Page two, or three, if you will look at that at
15 the bottom, the release. In the third full
16 paragraph where it says, now for know all mean by
17 these present -- I want you to look at the last
18 portion of that paragraph and I'm going to read
19 most of it, but basically paraphrasing the first
20 portion of the paragraph it says, DOT is going to
21 pay the sum of \$504,560 to the undersigned. And
22 we're going to walk through the undersigned in a
23 second. But you see towards the bottom of that
24 paragraph it says, and particularly the SC DOT
25 from any and all claims, demands, damages,

Franke - Cross by Mr. McCants

1 actions, causes of actions -- cause of actions,
2 suits at law, or in equity of whatsoever kind or
3 nature arisen, arising or to rise from, or because
4 of any matter relating to the construction of the
5 Palmetto Parkway, Bobby Jones Expressway, in Aiken
6 County, South Carolina. See that?

7 A. Yes, sir.

8 Q. And that's the plain language where you agree that
9 serves as a release by the landowners against DOT
10 as I described for the sum of \$504,560. Do you
11 agree with that?

12 MR. PLAYER: Objection. Calls for a legal
13 conclusion.

14 THE COURT: All right. I'll sustain that
15 objection.

16 MR. MCCANTS: I'm sorry?

17 THE COURT: You want to give him your objection
18 again?

19 MR. PLAYER: The objection was you're asking him
20 for a legal conclusion.

21 MR. MCCANTS: I'm asking him for his lay
22 interpretation of the plain language based upon his
23 experience as a businessman, land developer and other
24 things over time.

25 THE COURT: All right. If you will just sort of

Franke - Cross by Mr. McCants

1 rephrase your question to include why you're asking him
2 that Mr. McCants.

3 MR. MCCANTS: Sure.

4 BY MR. MCCANTS

5 Q. Mr. Franke, as part of your experience as a
6 businessman and otherwise, have you been involved
7 in claims, lawsuits, instances where someone may
8 have given another person money, and they have
9 been required to execute a release? Are you
10 familiar with that concept?

11 A. I've got some property where River Watch Parkway
12 was built, and part of the agreement was that they
13 could not have access to River Watch Parkway in
14 the future, so I'm very aware from that
15 standpoint. From this standpoint the, you know,
16 in the future, I mean, I don't really have an
17 opinion or know exactly how the law works. I'm
18 not an attorney.

19 Q. Will you agree that the plain language of that
20 document indicates, though, that an exchange of
21 over half a million dollars to these landowners in
22 the condemnation action were releasing claims as I
23 read to you? Will you agree to that?

24 A. I don't think you get released from future claims
25 where things change and things happen.

Franke - Cross by Mr. McCants

1 Q. Fair enough. And I think that's for the Court to
2 decide based on evidence in the case, okay. Thank
3 you. Turn the page if you would. Let's walk
4 through the names, if we can. Page three of three
5 of the release, which up at the top, was executed
6 January 31, 2007. Mary Leaver signed that page,
7 correct?

8 A. Yes.

9 Q. And these releases are signed in various parts on
10 separate places. And again Mary Leaver was the
11 personal representative of Claude Leaver, and
12 served to release Mr. Leaver's interest in the
13 condemnation funds. Is that fair?

14 A. Yes.

15 Q. Next page. Page three of three, you are going to
16 have to help me a little bit with this one. I see
17 where C D and F Interest, LLC landowner on behalf
18 or through certain individuals executed, or fixed,
19 their signatures. Who is the first signature
20 there if you can tell me? Looks like Connelly
21 or -- do you recognize that name?

22 A. Somebody signed on C D and F's interest?

23 Q. Excuse me, Page 3 of 3. This page right here.
24 And you see right underneath C D and F Interest?

25 A. That looks like Robert D Leaver.

Franke - Cross by Mr. McCants

1 Q. What is the first?

2 THE COURT: There are several three of threes --
3 pages marked three of three.

4 MR. MCCANTS: It's marked three of three at the
5 bottom.

6 THE COURT: Right. There's several and that's
7 what's confusing.

8 MR. MCCANTS: Oh, I -- I'm having one of those
9 early mornings.

10 THE COURT: That's okay. So, in the presence of
11 Angela Holloway. Is that the page that you are
12 referencing?

13 MR. MCCANTS: Yes. I'm sorry, Judge. I apologize
14 on the numbering of these pages. May I approach
15 Mr. Franke?

16 THE COURT: Yes.

17 BY MR. MCCANTS

18 Q. I need help with those signatures that are
19 highlighted on that page?

20 A. That's my father, William Dozier, and Hugh
21 Connelly. My father and Mr. Dozier are both
22 deceased. Angela Holloway was a lady who worked
23 for Sherman Hemstreet at the time.

24 Q. Fair enough. That's your father's signature on
25 there?

Franke - Cross by Mr. McCants

1 A. Yes, it is.

2 Q. And to your knowledge are those all the
3 representatives or members of C D and F Interest,
4 LLC?

5 A. That's the members, but I can't swear that that's
6 their signatures.

7 Q. Fair enough. You don't have any reason to doubt
8 that those are their signatures when they executed
9 this agreement, do you?

10 A. Well, considering we got paid for the land, I
11 would hope that's their signatures.

12 Q. All right. The next page. And, again, at the
13 bottom, three of three, but there's a signature
14 above Robert D. Leaver. That's where he signed
15 it, correct?

16 A. Yes.

17 Q. And, again, explain his interest in the land back
18 in the mid-2000s at the time of the condemnation
19 action.

20 A. My memory is a little fuzzy but at some point --
21 okay, okay. It's coming back to me. Mary Leaver
22 is Robert's mother. And to prevent -- it's too
23 much information, but I think in order for them,
24 the lighting company and the lumber company, to be
25 able to foreclose, he took out a loan with his

Franke - Cross by Mr. McCants

1 mother so she would have the first position on the
2 lien to where they could not approach her.

3 So she had to sign off even though it had
4 been past, I think, 25 years, which is the statute
5 of limitations on mortgages. Even though that had
6 passed, I guess, just to make sure everything was
7 acceptable and up to date, that they had her sign
8 off on it as well.

9 Q. Thank you. Turn the page if you would. The next
10 page is another document with the caption of the
11 condemnation case. But as you will see it
12 includes a lot of folks down at the bottom
13 including Howard Lumber Company and Lighting
14 Galleries. You talked about that. But the first
15 page of that release appears to me to be
16 handwritten and dated the 11th day of June, 2007.
17 Do you see that?

18 A. Yes.

19 Q. All right. Maybe I can get back to using page
20 numbers, Your Honor. That is not a page number
21 but the next page has a two down at the bottom.
22 Do you see that? And then I want you to turn to
23 the next page to the three, if you would. And
24 there are signatures for Robert Pentecost on
25 behalf of Lighting Galleries, Inc. and Mr. Badger

Franke - Cross by Mr. McCants

1 who is with us today, I believe, on --

2 A. It's Mr. Badger's father.

3 Q. Excuse me. Excuse me. That's his father.

4 A. Yes.

5 Q. Will Badger's father signing for Howard Lumber
6 Company, is that correct?

7 A. Yes.

8 Q. All right. And I think you had explained to the
9 Court who is who and what their interest is. And
10 we're going to talk about that in just a second.
11 And I will tell you, I don't think we need to go
12 into the rest of these documents yet.

13 MR. MCCANTS: But I will tell the Court that for
14 purposes of completeness I've enclosed all of the
15 documents that serve as a release and a final order as
16 to that original 2006 condemnation case where
17 Mr. Bailey represented the DOT. You will see an order
18 from Judge Early. I even included the form sheet for
19 Your Honor's information and benefit. If you look at
20 the last few pages, and I do want to ask you about
21 this, Mr. Franke, if I could.

22 BY MR. MCCANTS

23 Q. The last two pages that start on pieces of paper
24 where the documents are to the side or, not --
25 they are rotated, Mr. Franke. If you would try to

Franke - Cross by Mr. McCants

1 go to those documents. They would have been the
2 last 1, 2 --

3 A. There's quite a few pages that are turned
4 sideways, landscape instead of --

5 Q. -- 3, 4, 5, 6. You see these documents here,
6 though?

7 A. Come show me where they are please, or either let
8 me look at your exhibit.

9 Q. That page right there.

10 A. Yes, sir.

11 MR. MCCANTS: Your Honor, I know what happens
12 sometimes with trials, especially non-jury, we often
13 approach witnesses without asking the Court. I want
14 you to know I'm aware that I should ask you but I trust
15 you'll --

16 THE COURT: That's okay. He asked you to approach
17 and that's fine.

18 MR. MCCANTS: Thank you, Judge.

19 BY MR. MCCANTS

20 Q. All right. Mr. Franke, you see that document.

21 The most important thing about that document, see
22 in the middle where the handwritten word amended
23 appears. Do you see that? Right there below the
24 typed words, condemnation notice, and tender
25 payment jury trial --

Franke - Cross by Mr. McCants

1 A. Amended, yes. Yes.

2 Q. All right. And if you look up above where it says
3 amount of determination. There's that
4 number \$504,560, which was paid to the landowners.
5 Do you see that?

6 A. Yes.

7 MR. MCCANTS: All right. Judge, for your
8 information, whenever we have these condemnation cases
9 and over time, maybe, the parties shift a little bit.
10 There are issues with regard to payment and release.
11 We have to go back and amend the original condemnation
12 notice. So that's why that's there. And that's
13 Defendant's Exhibit Number 1. And I understand there's
14 no objection. Is that correct, Turner? And I move
15 that into evidence, Your Honor.

16 THE COURT: So moved.

17 (Whereupon D-1 was entered into evidence.)

18 BY MR. MCCANTS

19 Q. All right. We were going to talk about this
20 later. Mr. Franke, but the fact is the owners of
21 this property, even back in the mid-2000s, as part
22 of the condemnation case, were not one intact
23 group. There were various entities, various
24 people that had various interests in this real
25 property. Is that fair?

Franke - Cross by Mr. McCants

1 A. Yes, sir.

2 Q. And that would have been in 2007 when they
3 executed that release. If I were to ask you back
4 then if you knew, and of course your father passed
5 in what year, in 2007?

6 A. Yes.

7 Q. Wasn't it in 2007?

8 A. Yes.

9 Q. What month though?

10 A. October.

11 Q. All right. So this was executed by him the
12 previous June, is that correct?

13 A. Yes.

14 Q. And were you familiar with all these individuals
15 as far as the LLC back during that time?

16 A. You talking about the C D and F, LLC members?

17 Q. Yeah. Or any of the other landowners that we just
18 walked through.

19 A. I was familiar, I was familiar with all --

20 Q. Sir?

21 A. I was familiar with everybody.

22 Q. All right. So were y'all meeting together to
23 discuss developing this property, or were you
24 meeting to discuss --

25 A. No. I was, I was not part of the development or

Franke - Cross by Mr. McCants

1 the discussions of the development. I came in
2 after the development was shut down because of the
3 spill.

4 Q. Now as far as this case, I understand you contend
5 that the actions of DOT with the water that you
6 described as what, kind of, rendered unmarketable?
7 This property that we're talking about today, or
8 to some degree, or to what degree have we
9 destroyed the property from your standpoint?

10 A. Well, marketability is somewhat based on opinion
11 as far as the highest and best use of the
12 property.

13 Q. Would you explain that term to Judge Pope because
14 that's a technical term that tells me you
15 understand it. What does that mean if you would?
16 High and best use.

17 A. Highest and best use is what would allow it to
18 be -- if you are building a 100' high skyscraper
19 in New York City, and it's a piece of property
20 that's by itself, sitting in the middle of the
21 city, and you certainly wouldn't grow corn on it.
22 You would build a tall skyscraper building on it.
23 And in our case the highest and best use of our
24 property, after this development started the
25 zoning was changed. I don't know exactly the date

Franke - Cross by Mr. McCants

1 and time it was changed, but it was changed to a
2 commercial, high density, residential. I believe
3 25 units per acre, which is pretty strong. That
4 means that you can have more people living there,
5 more people using it, more revenue being generated
6 from it based on a commercial designation. You
7 could put professional buildings there if you want
8 to. A wide gamut of different uses that would all
9 generate a lot of income. And because it would
10 generate a lot of income, it would mean it would
11 be a higher value of the property based on what
12 you can do with it.

13 Q. And highest and best use is dependent upon a
14 number of factors with regard to what -- I'll say
15 it this way, the county, the city, or even federal
16 government allow you to do with it. It's affected
17 by zoning. It's affected by land use regulations.
18 And, for example, if zoning doesn't allow a gas
19 station in a residential subdivision, someone
20 appraising property in that subdivision couldn't
21 say the highest and best use is a gas station. Is
22 that fair?

23 A. Yes, sir, correct. And you can't appraise a
24 property based on future use or what you expect of
25 it. It needs to be based on what the current use

Franke - Cross by Mr. McCants

1 is -- or not current use, the current potential
2 use, meaning it already has everything there to be
3 developed, and that would be how it would be
4 appraised and the valuation would be done.

5 Q. Fair enough. And you heard us earlier talking to
6 the judge. We're really not here to talk about
7 value. But we're exploring that concept because
8 of what had happened on that land in years past.
9 Okay? You with me on that?

10 A. Yes.

11 Q. So that tells me you understand the appraisal
12 process, which, to a large degree, which helps me.
13 Let's talk about the development of this property
14 back in the mid-'80s, as you talked about it.
15 And of course your father was involved in that,
16 and the other folks that owned the property,
17 correct?

18 A. Yes, sir.

19 Q. All right. When was -- all right. You already
20 told me that. The first time you actually walked
21 the property would have been about the
22 2000-timeframe, is that correct?

23 A. Yes.

24 Q. But you gained a lot of information and knowledge
25 about this based upon your research and

Franke - Cross by Mr. McCants

1 investigation and, of course, talking with your
2 father. Is that fair?

3 A. More so personal than my father.

4 Q. I understand.

5 A. I knew the history of the property before actually
6 ever setting foot on it.

7 Q. Excellent. You have seen, for example, the
8 document that's affixed to this poster board on
9 the easel, is that correct?

10 A. Yes.

11 Q. Because you produced it to me. Do you recall
12 that?

13 A. Yes.

14 Q. Through Tucker, through Mr. Player.

15 A. Yes.

16 MR. MCCANTS: That's going to be Defendant's
17 Exhibit Number 2, Your Honor. Can I go ahead and mark
18 it? What was Number 1? Have I lost track already?

19 COURT REPORTER: The release was Number 1.

20 MR. MCCANTS: The release package is Number 1, I
21 thought.

22 THE COURT: The release is Number 1.

23 MR. MCCANTS: Have I put something else in?

24 COURT REPORTER: You did.

25 MR. PLAYER: I think he put 1 in twice.

Franke - Cross by Mr. McCants

1 MR. MCCANTS: I may have done it twice. It's
2 still morning. Defendant's Exhibit 1 is what I'm
3 calling the release package. And I moved it into
4 evidence. And this would be Defendant's Exhibit
5 Number 2. Is it correct you don't have any objection
6 to it?

7 MR. PLAYER: Well, I do but not a legal one.

8 THE COURT: So that will be Defendant's 2.

9 MR. MCCANTS: Yes, ma'am.

10 THE COURT: Madam Court Reporter, I believe he
11 submitted one and then one from an exhibit. They're
12 the same documents. This will be Defendant's 2 without
13 objection.

14 (Whereupon D-2 was entered into evidence.)

15 MR. MCCANTS: I did it twice. Let's put a sticker
16 on that. Judge, I appreciate I'm putting a rather
17 large object into evidence. I know Charlee's (ph)
18 thrilled that she may have to store this at the end of
19 the trial. If someone will help me remember, I can
20 substitute smaller versions of that exhibit for your
21 benefit.

22 THE COURT: Very well.

23 BY MR. MCCANTS

24 Q. Mr. Franke, let's talk about the development. The
25 development was called Chadwick, is that correct?

Franke - Cross by Mr. McCants

1 A. Yes, sir.

2 Q. And you are aware, of course, this development was
3 undertaken back in the mid-1980s?

4 A. Yeah. Early '80s I believe.

5 Q. This, this Chadwick development plan for example,
6 it has the revisions listed there and we're
7 talking about a 1986 timeframe, correct?

8 A. Okay, okay.

9 Q. And the gentlemen, Dudley and Associates, they
10 were engineers and consultants in Aiken and
11 Augusta who drew up this development plan for your
12 father and the other property owners, is that
13 correct?

14 A. Yes.

15 Q. Do you know that group?

16 A. No, I do not.

17 Q. Heard anything bad about them?

18 A. No, sir.

19 Q. Obviously your father trusted them and whatnot,
20 correct?

21 A. Yes.

22 Q. You being in land development, you don't just get
23 a plan like this immediately. It takes some time
24 to do it and also a lot of expense. Do you agree
25 with that?

Franke - Cross by Mr. McCants

1 A. It has to be approved before you start
2 construction.

3 Q. Fair. And I'm going to ask you about, too,
4 because I'm particularly interested in your
5 knowledge of what was required for approval and
6 everything. But in any event, that was the
7 development plan on Exhibit Number 1, what they
8 were going to do with the property involved in
9 this case, correct?

10 A. Yes.

11 Q. In fact, if you look at arrows, or look at the
12 documents I showed you, it has a somewhat
13 irregular shape to it, as you can tell. All
14 right. It's not a rectangle or a square. Do you
15 agree with that?

16 A. Yes, sir.

17 Q. Now let's talk about the oil spill for a second.
18 The Charter Terminal spill as everyone around here
19 knows it. Tell Judge Pope what Charter Terminal
20 is.

21 A. Without too many details, there's a pipeline which
22 runs across the United States which belongs to, I
23 think Southern Pipeline. Is that correct,
24 Mr. McCants?

25 Q. It could very well be. I don't know.

Franke - Cross by Mr. McCants

1 A. Colonial, Colonial Pipeline was the name of it.
2 And the Boardman family, who were very active in
3 Augusta and, well, still are, but are not in the
4 petroleum business anymore, owned an interest in
5 it, the Charter Terminal. And it's where gas
6 could get piped from oil refineries all the way
7 across the East Coast. Some of the ones they were
8 trying to get done recently between Canada and our
9 country, I don't know the details. It was shut
10 down. But anyway, it managed -- allows fuel to go
11 across the country at a cheaper and safer way.

12 And along that pipeline they will have
13 locations where they will store the gas, petroleum
14 products in the large tanks. And trucks come in
15 and out of the facility to fill up and deliver it
16 to the gas stations. And what happened -- I do
17 have details in my folder --

18 Q. Pause just one second.

19 A. Yes.

20 Q. And I commend you. I like that description.

21 That's just what I would say. These are storage
22 tanks for fuel oil pumped around the country,
23 where it is stored and where the big tanker trucks
24 that we see on the interstate can go to get the
25 gas, and take it to Parkers, and take it to the

Franke - Cross by Mr. McCants

1 BPs and other stores. Is that correct?

2 A. Yes.

3 Q. If you've got that exhibit (inaudible) could you
4 call that up for me, if you would?

5 MR. PLAYER: Yeah.

6 MR. MCCANTS: And it had Charter Terminal on it.

7 MR. PLAYER: Yeah, it did. And it's 2.

8 MR. MCCANTS: I appreciate you may know all of
9 this. I'm just trying to get -- to put it on the
10 record.

11 THE COURT: I know a bit from my work with the
12 city.

13 THE WITNESS: Judge, would it be acceptable for me
14 to get my file folder so I can give some details? And
15 look at my notes?

16 MR. MCCANTS: I'm fine with that.

17 MR. PLAYER: That's fine with me.

18 THE COURT: No objection. We'll allow you to.

19 THE WITNESS: Can I step down and get it?

20 THE COURT: Yes. Please watch your step right
21 here.

22 THE WITNESS: Yes, ma'am. I cut my grass
23 yesterday so I'm a little sore.

24 THE COURT: We've had a tremendous amount of falls
25 right there so we always caution people.

Franke - Cross by Mr. McCants

1 THE WITNESS: Tucker, if you want to admit this
2 you are more than welcome to. It's up to you. I don't
3 know. You may not want it. It's just my notes.

4 MR. PLAYER: Yes. It is that one.

5 MR. MCCANTS: Yes. Very good. Thank you.

6 MR. PLAYER: Yeah. It's just his, it's his
7 analysis of the ownership.

8 MR. MCCANTS: Okay. That may be helpful. We can
9 look at it at the break and then put them up with
10 Judge Pope's help.

11 MR. PLAYER: Yeah.

12 BY MR. MCCANTS

13 Q. All right. We've got Plaintiffs' Exhibit Number 1
14 on the screen, Mr. Franke. We're talking about
15 Charter Terminal and where it's located. Charter
16 Terminal exists through, for that piece of
17 property with those round objects in it, correct?
18 And those are huge, massive, fuel oil storage
19 tanks. Is that correct?

20 A. Yes.

21 Q. A lot of gas, a lot of diesel fuel is stored on
22 that property, correct?

23 A. Yes, sir.

24 Q. And it joins I-20, and I alluded to it earlier,
25 correct?

Franke - Cross by Mr. McCants

1 A. Yes.

2 Q. Y'all's property is down here, as you discussed.

3 A. Yes.

4 Q. Down where that yellow line is.

5 MR. MCCANTS: And for the record, Judge, I'm
6 pointing at the arrows, but it's the lowest part of the
7 document that is before you. Charter Terminal is --
8 that's the property where all the round objects appear
9 on the photograph from above.

10 BY MR. MCCANTS

11 Q. And you agree those are storage tanks of fuel oil?
12 Now what happened -- I remember this in some
13 degree. But correct me if I'm wrong based on your
14 knowledge. But there was an issue with a valve
15 left open in the early morning at Charter
16 Terminal. But the end result was a lot of gas, a
17 lot of fuel flowed from that storage facility
18 across the interstate, either on the asphalt or
19 through whatever pipes were buried, and it flowed
20 onto y'all's property. Is that correct?

21 A. Yes.

22 Q. Seriously contaminating it, correct?

23 A. It contaminated enough to warrant the EPD to get
24 involved with it. Now whether you consider it
25 serious or not that's a matter of opinion, what

Franke - Cross by Mr. McCants

1 level you are talking about. And I have no idea
2 exactly how much it was contaminated, how deep it
3 was, the area that was covered, the area that was
4 dug out. I was not aware of any of that.

5 Q. You mentioned digging out some soil and whatnot.
6 I've done research. It was on the EPA Superfund
7 site for a long time, wasn't it?

8 A. Yes. I believe so.

9 Q. Yeah. And what do you understand the EPA
10 Superfund --

11 A. I know it never was a brown field.

12 Q. Never was a what?

13 A. Never was a brown field.

14 Q. Okay. Explain that.

15 A. I believe a brown field is where it's permanently
16 put on a list to help people be able to borrow
17 money on the property and redevelopment it so that
18 it's, like, it can never really ever be 100%
19 resolved. But it's accepted and it's protected by
20 the pennies that come out of the gallon of gas
21 that you buy, and the fund that is used to help
22 support that, I believe.

23 Q. Excellent. Thank you for that because you've
24 educated me a little bit. I knew of the concept.
25 It's temporarily affected versus permanent. They

Franke - Cross by Mr. McCants

1 cleaned this property up for y'all, correct?
2 Charter Terminal?

3 A. The owners of Charter Terminal did, yes.

4 Q. Was there an exchange of money between Charter
5 Terminal and the landowners to the best of your
6 knowledge, Mr. Franke? Because I cannot find any
7 lawsuit documents.

8 A. I don't think there was any money involved. I
9 think they just came on the property and cleaned
10 it up.

11 Q. You're not familiar with a lawsuit that was filed
12 in federal court regarding damages against Charter
13 Terminal?

14 A. No.

15 Q. You're not familiar with that at all?

16 A. No. Not at all.

17 Q. Fair enough. Let's move on then. But the
18 development, Chadwick, was delayed because of this
19 oil spill, is that correct?

20 A. Permanently delayed, yes.

21 Q. Yeah. Otherwise what you're seeing, Defendant's
22 Exhibit Number 2, this plan would be there today,
23 correct? But for the oil spill.

24 A. Well, whether it would be there or not is
25 irrelevant because it wasn't and there's no way to

Franke - Cross by Mr. McCants

1 know whether it would of or not.

2 Q. Well, a lot of money was put into the development
3 of Chadwick. Do you agree?

4 A. Well, I'm sorry, but, again, it depends upon what
5 a lot of money is, and I don't know the -- it was
6 not completed. So a lot was not put into it at
7 that point.

8 Q. Well, and we all agree it wasn't completed because
9 it's not out there today, but you agree with me
10 that it was stalled back in --

11 A. That's correct.

12 Q. -- the mid-1980s because of the Charter Terminal
13 oil spill?

14 A. That's correct.

15 Q. And the spill occurred, of course, after this plan
16 was put together that's Exhibit Number 2, correct?

17 A. Yes.

18 Q. All right. And would you mind coming down with me
19 and let's --

20 MR. MCCANTS: Is that okay with you, Your Honor?

21 THE COURT: Yes.

22 MR. MCCANTS: I hate for you to have to identify
23 things from a distance, Mr. Franke. Can you come down
24 and point to some of these areas for me? Is this all
25 right, Your Honor?

Franke - Cross by Mr. McCants

1 THE COURT: Yes.

2 BY MR. MCCANTS

3 Q. All right. Let's look at the development plan for
4 Chadwick. We get Chadwick out of this because
5 it's labeled Chadwick in the lower right-hand
6 corner. We've highlighted the letter and numbers
7 I-20 along the right side of this plan. That
8 would be Interstate 20, correct? You have to say
9 yes for the Court reporter.

10 A. Yes.

11 Q. And that tells us that y'all's property borders
12 I-20, correct?

13 A. That is correct.

14 Q. You see up here where the words drainage easement
15 from I-20 are printed --

16 A. Yes, sir.

17 Q. -- on the plan that was prepared for your father
18 and others --

19 A. Yes.

20 Q. -- correct?

21 A. Yes.

22 Q. And Mr. Auld here, he's going to testify. He's an
23 engineer that will testify on our behalf. He's
24 highlighted that easement as it crosses your
25 property and your dad's property, and it talks

Franke - Cross by Mr. McCants

1 about a county easement there. But in any event,
2 will you agree with me that the highlighted lines
3 on Exhibit Number 2 were recognized by the fellas
4 that put together this development plan as a
5 drainage easement? Do you agree with that?

6 A. Yes, sir.

7 Q. All right. Now, down below on this document, we
8 haven't highlighted this, but it talks about
9 notes, D-13 and some other ones. But I'm
10 particularly interested in D-13 down here at the
11 bottom, Mr. Franke. And it says, handwritten D-13
12 note, and below it says, D-13 is an RCP culvert
13 72 inches deep. Do you see that?

14 A. Yeah.

15 Q. Based on your experience, what does that mean?

16 A. I guess RCP is reinforced concrete pipe, is a
17 guess.

18 Q. I agree with you. And we'll have testimony
19 establishing that, but that's what I understand it
20 to be. But it talks about 72-inch concrete pipes.
21 Do you agree?

22 A. Yes.

23 Q. All right. And you told Judge Pope you have
24 walked this property and you have seen those pipes
25 --

Franke - Cross by Mr. McCants

1 A. Yes, sir.

2 Q. -- correct?

3 A. Yes, sir.

4 Q. And in fact, we have got pictures of them here.

5 MR. MCCANTS: Your Honor, we will mark these 3, 4
6 and 5, I believe.

7 THE COURT: Without objection?

8 MR. PLAYER: Without objection, Your Honor.

9 THE COURT: All right.

10 (Whereupon D-3 was entered into evidence.)

11 (Whereupon D-4 was entered into evidence.)

12 (Whereupon D-5 was entered into evidence.)

13 BY MR. MCCANTS

14 Q. All right. Mr. Franke, we've marked these
15 photographs as Exhibits 3, 4 and 5.

16 A. Do you want me to hold them?

17 Q. I got it. All right. You don't disagree that
18 these are enlarged photographs of the 72-inch
19 reinforced concrete pipe that were identified on
20 Exhibit Number 2 of the development plan? Is that
21 fair?

22 A. There's no way I can necessarily tie those into
23 what's supposed to be on the plan and put into
24 place, no.

25 Q. We agree --

Franke - Cross by Mr. McCants

1 A. I don't know where those pipes came from.

2 Q. -- all right. Fair enough. We'll talk about
3 that. Are they still out there?

4 A. Yes.

5 Q. All the pipes that are depicted on Exhibits 3, 4
6 and 5?

7 A. Yes, sir.

8 Q. And the photographs speak for themselves. But
9 would you agree with me that these are big
10 concrete pipes?

11 A. Yes.

12 Q. And if they're 72 inches, somebody even put some
13 graffiti in that one. See there? Maybe
14 somebody's been sleeping in the pipe. That's a
15 lot of pipe, don't you agree? Anyway, what I
16 tried to do for perspective in this case, Judge,
17 this is a wood pole that I've got, and I measured
18 it. Do you have any reason to disagree with me,
19 Mr. Franke, that that is 72 inches?

20 A. No, sir. I remember.

21 Q. I'm six-four. It's about four inches below me.
22 But those are big pipes, correct?

23 A. They are.

24 Q. They carry a lot of water.

25 A. Yes, sir.

Franke - Cross by Mr. McCants

1 Q. And someone bought these pipes back in the
2 mid-'80s intending to use them as part of this
3 Chadwick Development plan. Do you agree with
4 that?

5 A. I don't know for sure. No, sir.

6 Q. Is it reasonable to trust that?

7 A. I believe it's an assumption, but to know that
8 they were bought to use on this project, I have no
9 idea.

10 Q. Would you believe --

11 A. Of course, it's on the plan so you would tend to
12 believe it was to be used for that property.

13 Q. The plan certainly makes reference to concrete
14 pipes being installed in Chadwick that had this
15 diameter marked by the height of this pole,
16 correct?

17 A. Yes. But you don't know how deep of a ditch it
18 was going in. Or how much dirt was going to be
19 put over the top of it. It may have been cheaper
20 to have a higher pipe based on where it was going
21 and the elevation of the road. I don't know. So
22 it may not be related to volume, it may be
23 economics.

24 Q. Based on your experience as a land developer
25 though, do you agree that that size pipe that's

Franke - Cross by Mr. McCants

1 laying out there even today is designed to carry a
2 lot of water somewhere.

3 A. Just like the one that's up from the DOT.

4 Q. Well, that one up at DOT is --

5 A. It's a lot newer and it's installed.

6 Q. And that's the 54-inch that you talked about?

7 A. Yes.

8 Q. And we certainly will have some testimony on that
9 from an engineering standpoint, but I'm really
10 asking, Mr. Franke -- and if you want to take a
11 seat, that's fine.

12 A. All right.

13 Q. I don't mean to make you stand up that long. I'll
14 move on. But the point I'm making from a lay
15 standpoint is someone back in the day in the
16 mid-1980s recognized, as part of this
17 development plan for Chadwick, that there was an
18 easement up at the top from I-20. And whether or
19 not it was a state or local easement, that
20 easement traveled through, traveled down the path
21 through Chadwick to this point here. Do you agree
22 with that?

23 A. Yes. With some comments, if you don't mind.

24 Q. Absolutely.

25 A. Okay. First of all, that's a plan that was

Franke - Cross by Mr. McCants

1 approved, but it's not a recorded plat so it never
2 was, in fact, put in place and it's not, in fact,
3 an easement. That's my opinion. Also, it's my
4 opinion, too, that engineering styles and all
5 could have been different back in that timeframe.
6 I would like to have -- I'm not an engineer, I'd
7 need an engineer to ask, but hydrology studies, to
8 see what the volume of water was going through
9 there before. Normally, these days, I'm thinking
10 you turn one in when you do a development. One
11 was not turned in there.

12 That might have been a less expensive pipe to
13 buy because it was available and they put it in
14 there because engineering and development was done
15 a little differently then than it was today.

16 Q. And to a large degree we are speculating all that
17 because you --

18 A. We're speculating it all, yes.

19 Q. -- all right. You weren't around back in the day,
20 the mid-80s, doing this project, correct? Your
21 dad was.

22 A. But I'm familiar with how engineering has changed
23 over the years. And what may have been done then
24 is not necessarily done now.

25 Q. Got it.

Franke - Cross by Mr. McCants

1 A. And what's required now is tenfold what was
2 required back in that time.

3 Q. All right.

4 MR. MCCANTS: Well, Your Honor, I -- that is
5 entering into the opinion area that I discussed early,
6 so I respectfully move to strike that answer.

7 BY MR. MCCANTS

8 Q. I'm focusing on what you can say from the
9 standpoint of your personal experience in
10 developing the land. And you develop residential
11 and commercial property?

12 A. I've never, ever developed anything personally,
13 myself, where I was actually involved in the doing
14 of it. But I've been around it having been
15 involved in projects that were built from the
16 planning stage on up to the completion.

17 Q. All right. And down at the bottom of this yellow
18 line on the Chadwick Development proposal, it
19 makes reference to another note D-11. And if you
20 look up in the top left-hand portion of this
21 development plan you will see reference to a
22 riser. It is a 24-inch vertical riser. Do you
23 understand what a vertical riser is?

24 A. Yes.

25 Q. What is a vertical riser, for the Court's benefit?

Franke - Cross by Mr. McCants

1 A. It's a pipe that comes up from the bottom to the
2 top, I guess, to form some sort of retention pond,
3 I believe, but I'm not really sure the definition.

4 Q. What it is, is it sits in a retention or a
5 detention pond. I don't think it -- I don't know
6 if it applies to both of them because there's a
7 difference between retention and detention, but it
8 serves as a spillway type apparatus. In other
9 words, where water fills up in the pond and then
10 it falls into the riser to be distributed
11 elsewhere. Is that your basic understanding?

12 A. Yes.

13 Q. And what it's designed to do more than anything
14 else, would you agree, is to allow water to flow
15 into a basin or a pond. And that riser allows
16 that water to sit there and, ultimately, slows it
17 down to be deposited elsewhere. That's what that
18 riser is for. Is that fair?

19 A. Yes.

20 Q. And that's a 24-inch riser, correct?

21 A. Yes.

22 Q. All right. And finally, with regard to the plans,
23 have you seen the label for the emergency
24 spillway?

25 A. No, sir.

Franke - Cross by Mr. McCants

1 Q. Well, it's on there. From a lay standpoint, based
2 upon your experience in developing property,
3 what's an emergency spillway?

4 A. I have no idea other than a runaround on a dam for
5 a pond in the country maybe. If the water got too
6 deep it would allow it to cross the dam, I guess.
7 I don't know.

8 Q. Your lay understanding and mine is the same. It's
9 designed to become operable in the case of an
10 emergency. And that's when a lot of water flows
11 into a pond and needs to be distributed. Would
12 you agree with my lay characterization of that?

13 A. Yes.

14 Q. Why would the county or the state require an
15 emergency spillway, a riser and all this
16 stormwater equipment installed? Why would the
17 developer go to that expense, Mr. Franke?

18 A. That's, that's a very good question. And to
19 answer it, something that just crossed my mind.
20 If -- and this project has not been developed, and
21 never was completed, if it would have been fully
22 developed, you would have had rooftops, you would
23 have had concrete driveways, basketball facilities
24 in front of somebody's house, walkways going up to
25 the house, all sorts of impervious service (sic),

Franke - Cross by Mr. McCants

1 which would increase the water flow if it was
2 developed. And that's why you need to have these
3 structures in place to protect from future water.
4 Not current water, but future water once -- and
5 I'll say this again, once it is developed. It was
6 not developed. It's not there. Do you agree?

7 Q. Yeah. Everybody agrees with that.

8 A. Okay.

9 Q. The only thing that's left of Chadwick is those
10 concrete pipes out there on your property.

11 A. Well, there are base material on the roads that
12 are still there. Have you walked the property?

13 Q. Excuse me. Yes, I have.

14 A. Okay.

15 Q. I'm glad you point that out. I mean, enough was
16 invested in this property that roads were built.
17 And that's one of the first things you do in a
18 development, correct?

19 A. Yes. And that water has washed out strong base
20 material in those former roads, too. I mean, it's
21 so strong it dug down to 12 inches of rock.

22 Q. All right. But, again, the developer, engineer,
23 whomever recognized the easement at the top-off of
24 I-20 going down through the middle of Chadwick to
25 be deposited in a pond, which had a riser and an

Franke - Cross by Mr. McCants

1 emergency spillway. Will you agree with that
2 shown on these plans?

3 A. I will agree it was proposed. But it was never
4 put in, so it would be irrelevant.

5 Q. You have mentioned that these plans were never
6 stamped approved by the county. What was your
7 understanding of whether or not that was required
8 back in the mid-'80s? Do you know? Aiken
9 County, or the city of North Augusta?

10 A. I don't know for sure in the '80s.

11 Q. How about DHEC? Did DHEC have to get involved and
12 approve anything to your knowledge?

13 A. No, I don't -- I do not know.

14 Q. Now you produced Exhibit Number 2, the document,
15 to us after I asked Tucker if he had it. Tucker
16 Player. Do you have any other documents dealing
17 with any DHEC or county approval of the company,
18 any plans or ideas for the development?

19 A. I don't have any studies, anything done related to
20 that project other than what you -- something
21 somebody let you have there.

22 Q. Let's shift gears, move along. I read your
23 deposition, and Mr. Nance took it. And Mr. Nance
24 is with us this morning. He wanted to come over
25 and say hello or whatnot.

Franke - Cross by Mr. McCants

1 He talked to you about a timber cutting on
2 this property. Did I understand your deposition
3 testimony to be, Mr. Franke, that the timber was
4 cut on the area that DOT acquired for the Parkway,
5 DOT had it cut before the condemnation case?

6 A. I'm not aware of telling him that. My memory is
7 bad and I don't really have any knowledge --

8 Q. That's okay.

9 A. -- of what happened to the money and what timber
10 was cut where. I've never seen anything
11 specifically related to that.

12 Q. All right. We've got some old documents dealing
13 with the timber cut. What I can tell you is that
14 I believe those documents say that before the
15 condemnation case was filed, or maybe after it was
16 filed but before it was settled, the landowners
17 wanted to remove timber off that property. And it
18 was removed before we began construction.

19 A. Okay.

20 Q. Does that sound reasonable?

21 A. That I can't say, that it sounds reasonable or
22 not, but it sounds like anybody, typically, would
23 do that. You would try to get everything you can
24 for it --

25 Q. Absolutely --

Franke - Cross by Mr. McCants

1 A. -- right?

2 Q. -- you want to get as much timber off that
3 property as you can before the acquisition because
4 you sold -- somebody sold the timber, correct?

5 A. Yes.

6 Q. For money, obviously.

7 A. Based on what you're telling me, yes.

8 Q. And I'm happy to share those documents with you.
9 We can look at that a little bit later. Well,
10 based on your experience, you agree with me that
11 the removal of the trees would affect how water
12 flows and how water is absorbed into land as
13 stormwater occurs, the rainfall occurs. Do you
14 agree?

15 A. It's going to affect it somewhat. To what degree,
16 it's really hard to say. It would pretty much be
17 negligible because a lot of the limbs and that
18 kind of thing would be left behind. And any kind
19 of major land disturbing -- disturbance would
20 require a silt fence and a permit to do that, so
21 if the land is not disturbed, it shouldn't really
22 overly cause more issues. But there's got a good
23 canopy out there now, and covered with foliage all
24 over the ground. So you are getting very little
25 runoff into this basin.

Franke - Cross by Mr. McCants

1 Q. Fair enough.

2 MR. MCCANTS: I'm getting close, Your Honor. I
3 know we're moving along in the morning.

4 BY MR. MCCANTS

5 Q. Then let's talk about present day. As you
6 testified Chadwick was never developed. This plan
7 for this resident community was never completed,
8 correct?

9 A. Yes.

10 Q. What have you folks done as landowners, what have
11 y'all done to try and develop the property since
12 then? I think I know the answer but I have got to
13 ask you.

14 A. Not a thing.

15 Q. Why?

16 A. Well, our direction changed as far as the
17 partnerships were concerned from then to now. So
18 our interest was pretty much to sell instead of
19 completing the development. Had the spill on it
20 that involved it and put it on hold for a while.
21 My father and one of his partners are both
22 deceased now. My father's estate has been
23 completed. One of the partner's deceased estate
24 has not been completed yet. It's still in his
25 estate. Just a lot of different, varying reasons

Franke - Cross by Mr. McCants

1 why it changed. But contamination and then DOT
2 coming through and condemning part of it certainly
3 changed the complexity of it.

4 And then you have the stormwater coming
5 through there which, based on the current highest
6 and best use, we would not do a residential
7 subdivision there at this point. I don't know
8 when that would have changed or the dates it would
9 have changed. But we were not interested in
10 developing it.

11 Q. I think you answered what I believe, and I want to
12 summarize it. When I asked you why Chadwick was
13 not developed, number 1 it was stalled for a
14 significant period of time after the Charter
15 Terminal oil spill. You agree with that, correct?

16 A. Yes, sir.

17 Q. By the time that property was cleaned up your
18 father, respectfully, he had passed on and -- or
19 shortly before, but the main point is and this is
20 why I want to talk about the landowners. All the
21 landowners, the people that own this property,
22 kind of took a different direction.

23 A. They got older.

24 Q. Right. All of us do. And maybe the group that
25 had started Chadwick, because of the oil spill,

Franke - Cross by Mr. McCants

1 because of the delay, said we're not going to put
2 any more money into a residential development
3 there. Is that fair?

4 A. Yes.

5 Q. And that's before 2006, before DOT had to acquire
6 this land for the Palmetto Parkway. Do you agree?
7 You want me --

8 A. Yes.

9 Q. -- to state the question another way?

10 A. Yes, I agree.

11 Q. You agree with that?

12 A. Yes.

13 Q. So the decision not to develop Chadwick because of
14 the reasons you discussed occurred before DOT ever
15 touched that 25 acres to acquire it for purposes
16 of improving the interstate. Do you agree?

17 A. Yes.

18 Q. All right. Kind of the technical way lawyers look
19 at that and whatnot, Mr. Nance asked you these
20 questions in the deposition. You, you folks have
21 done nothing, respectfully, done nothing to
22 mitigate what you believe were your damages since
23 DOT did what it did to improve Palmetto Parkway.
24 Is that fair?

25 A. No.

Franke - Cross by Mr. McCants

1 Q. It's not true?

2 A. No.

3 Q. What have you done to mitigate your damages?

4 A. We had a mitigation hearing at some point, but DOT
5 offered us a figure --

6 Q. Hold on. Understand my, my question. Not
7 mediate, mitigate. The term mitigate, you
8 understand what I mean?

9 A. You mean fix the problem ourselves.

10 Q. Well, try to fix it. Try to do something to
11 lessen your damages. And I won't, I won't keep
12 you up there too long, but when Mr. Nance asked
13 you what have you done to mitigate your damages if
14 anything, your answer was nothing. Do you
15 remember that?

16 A. Well, I do not remember that. But if you are
17 referring to the fact could I build a brick wall
18 and try to keep the water from coming on my
19 property, I think that's illegal to do that and
20 it's wrong. It's unethical for us to do that to
21 keep the water from washing on us like it's doing.

22 Q. I think --

23 A. It would be a nice alternative, but it's just not
24 feasible.

25 MR. MCCANTS: May I approach, Your Honor?

Franke - Cross by Mr. McCants

1 THE COURT: Yes.

2 BY MR. MCCANTS

3 Q. Let me focus on my question. At your deposition,
4 Mr. Nance said, and I'll show it to you, I marked
5 it. Question at Line 13, if you would,
6 Mr. Franke. Would you read Mr. Nance's question
7 for the Court?

8 A. Yeah. I mean, that's what you have here, yes.

9 Q. Read it for the Court though. That's what I need
10 you to do.

11 A. What have you done to mitigate your damages, if
12 anything? Nothing, was my reply.

13 Q. That was your testimony --

14 A. Yes.

15 Q. -- at that time, is that correct?

16 A. Yes.

17 Q. All right. You're not planning to use those pipes
18 at some point? They're still good. I'm serious.
19 They are just sitting out there. The reinforced
20 concrete pipes. Nobody's carried them off. You
21 folks planning on developing this property?

22 A. No.

23 Q. Using those pipes?

24 A. No.

25 Q. Why are the pipes still there?

Franke - Redirect by Mr. Player

1 A. The pipes were still there because the contractor
2 that brought them in there that was doing the work
3 abandoned them, and left them there, and never
4 completed the job. He never completed the job
5 because of the spill that was done on the
6 property. And the houses were never built, too,
7 which would create more water flow needing those
8 pipes.

9 Q. And all this is in light of the fact that back in
10 2006 and 7, you don't disagree that the owners of
11 that property received over a half million dollars
12 for the 25 acres that the state acquired to build
13 and improve the Palmetto Parkway? You don't
14 disagree with that?

15 A. No, I don't.

16 Q. All right. Thank you, Mr. Franke. I appreciate
17 your patience with me.

18 MR. MCCANTS: Can I have one second, Your Honor?

19 THE COURT: All right. Any redirect?

20 MR. PLAYER: Yes, Your Honor. Briefly.

21 THE COURT: All right, Mr. Player.

22 REDIRECT EXAMINATION

23 BY MR. PLAYER

24 Q. We'll go back with Defendant's Exhibit 1. If this
25 is the condemnation where they -- it's right here.

Franke - Redirect by Mr. Player

1 The condemnation where they bought 25 acres from
2 you, correct?

3 A. Yes.

4 Q. Did they give you anything for the land that you
5 continued to own?

6 A. No.

7 Q. Did you tell them, you can dump all the water in
8 the world you want to on us, in that document?

9 A. No.

10 Q. Does it make sense that they only pay for the
11 25 acres and you agree to allow them to destroy
12 the other 140, or other however many it was?

13 A. No. And if they did so that would basically be
14 condemnation. They are using my property and have
15 the ability to use it, and I'm not getting paid
16 for it.

17 Q. But my main question is, was the, other than the
18 25 acres that they filed the action and brought
19 into the jurisdiction of the Court, was there ever
20 anything relating to the rest of the property that
21 you maintain ownership (inaudible)?

22 A. No.

23 Q. I'm with you. I have no idea what they think you
24 can do to mitigate these problems, but I have a
25 very simple question for you as a realtor.

Franke - Redirect by Mr. Player

1 THE COURT: Mr. Player, that TV has automatically
2 --

3 MR. PLAYER: Yeah, I guess I'll go over here
4 somewhere.

5 (WHEREUPON, a video was played for the
6 Court.)

7 BY MR. PLAYER

8 Q. Can you sell property that is owned by somebody
9 when you know that amount of water is flowing in
10 an area where a (inaudible) would be deficient.

11 A. I could, but I could possibly have further
12 litigation against me for not being honest and
13 truthful about the situation that's going on. It
14 would cost me actions against me in the future for
15 not letting them know about it.

16 Q. Would you try and cross that waterway with that
17 amount of flow?

18 A. No.

19 Q. And then we got to this picture. That is actually
20 your property line. Is there any doubt in your
21 mind whether or not that water is causing damage
22 to your property at that location?

23 A. No.

24 Q. And this is 2014.

25 A. Do you have the information from two weeks ago,

Franke - Redirect by Mr. Player

1 the --

2 Q. That's where we're going.

3 A. -- okay.

4 Q. Now you look what happened in '14 and what you
5 have now. Has DOT done anything to mitigate your
6 damages?

7 A. Unh-uh.

8 Q. All right. I think you made the point and I'll
9 make it again with David. What is there now where
10 all of that development is in that plan?

11 A. It's woods and very, very --

12 Q. Dense foliage?

13 A. -- it's pretty heavy. I mean if it was cut over
14 you would never know it today.

15 Q. So if this plan was to be implemented what would
16 be there? How -- would it be the same dirt and
17 trees to absorb the water. Or would it be covered
18 with impervious surfaces like you said?

19 MR. MCCANTS: Your Honor, I object to that.

20 That's speculative given his prior testimony. And he's
21 talking about what may happen in the future, which was
22 any issue attached to the water. That's speculative.
23 I think that's getting into that opinion we talked
24 about earlier, also. Now I --

25 THE WITNESS: Can I say something?

Franke - Redirect by Mr. Player

1 MR. MCCANTS: Hold on.

2 BY MR. PLAYER

3 Q. My question is, if that property is developed,
4 correct?

5 A. No.

6 Q. If that plan --

7 A. Oh, if it was developed, yes.

8 Q. And there would be roads, right?

9 A. Yes.

10 Q. And so those roads would be covered by asphalt,
11 right?

12 A. Yes.

13 Q. Well, water doesn't go into asphalt does it?

14 A. No.

15 Q. And these are house lots, right?

16 A. Yes.

17 Q. House lots. You don't develop property and not
18 build houses, right?

19 A. Right.

20 Q. Does the water go through the roof when it hits
21 the roof?

22 A. No.

23 Q. So as a person in real estate, what do the owners
24 do when they disturb the land and eliminate
25 pervious surfaces?

Franke - Redirect by Mr. Player

1 A. You have got to account for the water.

2 Q. You have to account for it, and do what else?

3 A. Slow it down, retain it. Not dump -- you are not
4 allowed to dump water on anybody else more so --
5 how do I word this?

6 Q. Well, you shouldn't --

7 A. You cannot, you cannot increase the amount of
8 water going on your neighbor more afterwards than
9 what you had before the development was put in
10 place.

11 Q. -- so --

12 A. When the water gets released onto my property from
13 a neighbor who has developed his, it cannot
14 increase whatsoever the flow or the velocity from
15 what it was like before the development was put
16 in.

17 Q. -- okay. And my -- here's the simple question.
18 Do you deny that water has flowed along that same
19 basic line that they call a blue-line stream since
20 20 years ago? Are we denying that -- are we
21 saying that we never got water?

22 A. No.

23 Q. What do we say? What do we think happened? Our
24 water increased or decreased?

25 A. No, the water increased.

Franke - Redirect by Mr. Player

1 Q. Okay. So in this situation it would be an entire
2 development of the property. It would not be
3 (inaudible), right? So that would do what to the
4 water that you're producing as the owner of that
5 property -- of that development?

6 A. It would increase, and then it would have made me
7 obligated to try to control it when it goes off my
8 property onto my neighbor's.

9 Q. You might have to get bigger pipes, right?
10 Because now you don't have to deal just with DOT
11 water, you have to deal with all the increased
12 water you created in the development, correct?

13 A. Yes.

14 MR. MCCANTS: Objection, Your Honor. Based on
15 what I said before. That's speculation. That is
16 definitely in need of an expert in hydrology.

17 THE COURT: All right. Let me address your first
18 objection, which I did not. That -- your first
19 objection was sustained. However, Mr. Player did
20 rephrase his question to my satisfaction, and so we
21 heard testimony in a different way.

22 With regards to this objection, I am going to
23 sustain that, Mr. Player, with regards to the question
24 on the basis of the size of the pipes and --

25 MR. PLAYER: Okay.

Franke - Redirect by Mr. Player

1 THE COURT: -- so we've sustained both of those
2 objections.

3 MR. PLAYER: Thank you, Your Honor.

4 BY MR. PLAYER

5 Q. You want to talk about this for another minute?

6 MR. MCCANTS: Can I see it?

7 (Whereupon, an off the record discussion was
8 held between attorneys.)

9 BY MR. PLAYER

10 Q. Is there anything else you want to say?

11 MR. MCCANTS: Your Honor, that's kind of open
12 ended. I -- we usually try to have a question.

13 MR. PLAYER: What was the basis?

14 THE COURT: That is very open ended.

15 THE WITNESS: Can I tell you what to ask me?

16 MR. PLAYER: Sure.

17 THE WITNESS: Let me think a minute.

18 MR. PLAYER: No. No, I mean.

19 BY MR. PLAYER

20 Q. All right. My question is that the question about
21 mitigation, can you think of any way that you
22 could have stopped the damage that this water was
23 causing to your property that would be legal?

24 A. It could be mitigated, yes.

25 Q. How?

Franke - Redirect by Mr. Player

- 1 A. By me putting in a very large retention facility
2 or some kind of thing on my property to take care
3 of somebody else's problem. I was talking a
4 little out of line when I talked about putting a
5 wall at the property. I mean that's a little
6 facetious but from an engineering standpoint you
7 could put in facilities -- that's really an
8 engineering question. But I -- with the amount of
9 water, I don't see how any facility is going to be
10 able to handle all that water. I really don't in
11 my history. I don't see how it can be handled. I
12 don't think it can be mitigated. (inaudible).
- 13 Q. We were talking about --
- 14 A. I mean the area that this water is coming off of
15 impervious surface, being directed at one point
16 like a gun to somebody's head, right at that one
17 point.
- 18 Q. -- all right. We'll go back to (inaudible). This
19 is the overhead with your drawing of the pipes,
20 right?
- 21 A. Yes.
- 22 Q. We talked about where the oil people are, right?
- 23 A. Right.
- 24 Q. And one night they left the valve open and caused
25 you so many problems that you had to shut down

Franke - Redirect by Mr. Player

1 development. But I want you to explain to the
2 Court what these orange lines are. Is that DOT
3 pipe? Is it?

4 A. Are you talking about the yellow lines?

5 Q. Right. The big lines --

6 A. Okay. Well.

7 Q. -- from the front of the (inaudible).

8 A. Okay. The yellow line running parallel from
9 Charter, that's a ditch.

10 Q. Right.

11 A. I don't think it's pipe. That's a ditch.
12 Everything else is piped.

13 Q. All right. So --

14 A. But that ditch goes in -- from Charter goes into
15 that point which is where the 24-inch pipe that
16 just went from that ditch across I-20 to our
17 property, not any weir traps anywhere along the
18 way, that's where that petroleum went down and
19 flowed onto our property through that 24-inch
20 pipe.

21 Q. And if tomorrow there is a spill here and it goes
22 in the ditch, where is it going? To your
23 property, right?

24 A. Yeah.

25 Q. Well --

Franke - Recross by Mr. McCants

1 MR. MCCANTS: Again, Your Honor, that's
2 speculative, what they have in the future. You're
3 getting into spilled oil and where it's going to go.

4 THE WITNESS: I appreciate that point.

5 MR. PLAYER: It's a hypo. I mean if this is where
6 you send your stormwater, there's an oil leak, it's
7 going to be in the stormwater.

8 MR. MCCANTS: But you asked a question what if
9 Charter Terminal has another big spill, where is the
10 oil going. He doesn't know. Calls for speculation.

11 THE COURT: All right.

12 MR. PLAYER: Well, if oil is on the ground and
13 rains comes, it's going to wash it into the stormwater
14 system.

15 THE COURT: So I think that -- I think to address
16 Mr. McCants' objection, I think that is speculative. I
17 want to sustain that and just strike the answer.

18 MR. PLAYER: Okay. I think I'm done with him.

19 MR. MCCANTS: Recross, Your Honor.

20 THE COURT: Yes, recross.

21 MR. MCCANTS: Leave that on the screen for just a
22 second.

23 RE-CROSS EXAMINATION

24 BY MR. MCCANTS

25 Q. Mr. Franke, you told Judge Pope the first time you

Franke - Recross by Mr. McCants

1 walked the property was in 2000, correct?

2 A. Approximately.

3 Q. Approximately. So it's fair to say that you can't
4 tell her with any degree of reliability or
5 certainty what type of water volume/velocity
6 flowed through your property prior to 2000, is
7 that correct?

8 A. I had walked that whole drainage basin before.
9 There was no evidence of any erosion or any
10 problems before y'all condemned the property.

11 Q. Prior to 2000?

12 A. After 2000. Between 2000 and the condemnation --
13 I went in there on 2000 and there was no evidence
14 of any washing or anything going on on our
15 property in that location.

16 Q. All right. Between -- and this is going to be an
17 important date. We're going to bring this out.
18 Between 2000 and 2005, that's when Mr. Saunders
19 walked the property to do his appraisals for the
20 condemnation. Are you saying all that happened
21 between 2000 and 2005 or when the construction
22 occurred? Is that what you're saying?

23 A. What happened between those dates?

24 Q. All the damage due to the water.

25 A. No, I never said that.

Franke - Recross by Mr. McCants

1 Q. Well, follow with me for a second. Before 2000
2 you never walked the property, correct?

3 A. There was no sign of --

4 Q. Hold on. Hold on. That's a simple question.
5 Before 2000 you never inspected, walked the
6 property, correct?

7 A. Correct.

8 Q. You did so in 2000. Your testimony is you saw no
9 evidence of water erosion or anything of that
10 nature. Is that what you're telling us?

11 A. Yes, sir.

12 Q. All right. Well, I know I'm on recross when I
13 lose focus. Mr. Saunders is going to come in the
14 courtroom and take an oath at some point and --

15 MR. MCCANTS: Can I go and mark these, Your Honor?

16 I told you I was going to be brief and I'm sorry.

17 We've kind of opened back up here.

18 MR. PLAYER: No objection.

19 THE WITNESS: Can I say something?

20 THE COURT: Without objection.

21 THE WITNESS: Could I say something with where
22 you're possibly heading with this?

23 MR. MCCANTS: Hold one second. Let the court
24 reporter mark these exhibits if you would.

25 BY MR. MCCANTS

Franke - Recross by Mr. McCants

1 Q. All right. Mr. Franke, again, the timeframe I
2 want to focus on, you first walked the property in
3 2000. You agree you don't know what kind of water
4 flowed through there in size and volume before
5 2000, correct? You just don't know.

6 A. Down that drainage basin, yes, I do know. Well, I
7 mean not before 2000.

8 Q. Not before 2000.

9 A. Right.

10 Q. But your testimony is when you saw it in 2000
11 there was no erosion in the lands in that area, is
12 that correct?

13 A. Yes, there were.

14 Q. There was?

15 A. Yes.

16 Q. How much erosion was it? Because I understood you
17 to say there wasn't any damage due to water.

18 A. I've been talking the whole time about the basin
19 where the water is coming from DOT --

20 Q. Yes, sir.

21 A. -- the roadways from where we did the development,
22 there was some washing and erosion going on with
23 those but it had stopped. It's not occurring now
24 but it's already there. It's history and it has
25 got foliage and trees back over it again.

Franke - Recross by Mr. McCants

1 Q. And what I can tell you is, I think the testimony
2 is going to be that these photographs that I'm
3 getting ready to show you were taken in 2005, five
4 years after you first walked the property. And
5 they were taken by Stuart Saunders, the appraiser.

6 MR. MCCANTS: And they are in without objection,
7 is that correct?

8 MR. PLAYER: Hmm?

9 MR. MCCANTS: They are in without objection, these
10 boards?

11 MR. PLAYER: Yes, sir.

12 BY MR. MCCANTS

13 Q. This is a photograph of your property. It's
14 marked Number 6. And again, what I'm going to
15 tell the Court is that Mr. Saunders, I believe,
16 will testify that these were taken in 2005. Do
17 you see that?

18 A. Yes.

19 Q. Do you see that erosion?

20 A. Yes. I don't know when that was taken, or I don't
21 know who --

22 Q. Let me again tell you, I think the testimony will
23 be that this photograph was taken in 2005, five
24 years after you first walked the property,
25 correct?

Franke - Recross by Mr. McCants

1 A. Yes.

2 Q. All right. Will you agree with me, Bill, that
3 this shows significant erosion to the property?

4 A. Past erosion, yes. But you've got foliage growing
5 all in those ditches right now.

6 Q. Fair.

7 A. In that picture you have foliage growing
8 everywhere. It looks like whatever had caused
9 that event or was there --

10 Q. Do you agree with me --

11 A. -- was historical. It's not current.

12 Q. -- do you agree with me this photograph marked as
13 Exhibit Number 6 shows significant erosion to your
14 property?

15 A. I don't know if it's my property or somebody
16 else's property.

17 Q. Mr. Saunders --

18 A. I can't actually identify where it is. I wasn't
19 there with Mr. Saunders. I have no idea. But
20 looking at it now there is a lot of foliage that
21 has grown in those areas indicating --

22 Q. -- and the question I have is do you agree this
23 photograph shows significant erosion to whatever
24 property this picture depicts?

25 A. -- past historical erosion, yes.

Franke - Recross by Mr. McCants

1 Q. Past, but significant erosion at the time the
2 photograph was taken, correct?

3 A. Significant past erosion at the time the
4 photograph was taken.

5 Q. Another photograph, Number 7. Would you agree
6 with me this photograph, we're not going to get
7 into whose property it is because I've got
8 testimony on that.

9 A. I know whose property that is. I know right where
10 that is.

11 Q. Whose is this?

12 A. That is our property and it's where one of the
13 roadways was built. There's a steep hill going up
14 on one of the roads, and naturally it's going to
15 erode if it was left undeveloped and unattended
16 for years.

17 Q. Trees falling, water erosion, moving dirt, et
18 cetera. You agree with that?

19 A. Yeah, because it was unstable because the road had
20 been graded, and we put base material in there.
21 It was unstable.

22 Q. The same thing with Number 8.

23 A. That's -- yeah, that's where the road used to be
24 --

25 Q. Number 8, that photograph.

Franke - Recross by Mr. McCants

1 A. -- until it got paved.

2 Q. Well, if it's --

3 A. It's got nothing to do with the basin that DOT
4 water is coming through. And this problem is
5 stopped. It's not there. It's not ongoing. It
6 hasn't been ongoing for years.

7 Q. -- well, Mr. Franke, those photographs were taken
8 before DOT did any work. These photographs -- if
9 they were taken in 2005 you would agree with me
10 that's before DOT touched the dirt out there to
11 build the Palmetto Parkway? Do you agree?

12 A. Yes, but what you don't understand is the fact
13 that DOT is undermining it as we're speaking
14 today, and has been since they put in the roadway.
15 This has ceased because natural foliage has grown
16 over and there's no more issues going on to cause
17 it to keep continue. And it's because there was a
18 roadway where it was disturbed. Our road -- that
19 basin was undisturbed. In fact, foliage had grown
20 back from the spill and everything. There is no
21 way in the world that that should have been washed
22 out.

23 Q. But the developer back in '86 anticipated a lot of
24 water coming through that property along that blue
25 line that starts at I-20, and that's why they

Franke - Recross by Mr. McCants

1 bought those pipes. Do you agree with that?

2 A. They bought the pipes for future development when
3 it was built to handle the impervious surfaces and
4 the excessive water that would be caused by that.
5 That's why the pipes were there. Not because of
6 anticipation of DOT. Until you show me hydrology
7 reports and information to indicate otherwise, I
8 don't, I don't go with that.

9 Q. Well, and but, but really that's speculation on
10 your part. I'm not --

11 A. Well --

12 Q. -- and that's just what you believe?

13 A. I'm sorry. When we were developing this did we
14 know the DOT was going to build an interchange?
15 No. We had no idea they were going to be buying
16 property from us and building an interchange, so
17 what would we even worry about that?

18 Q. Well, you say they, you weren't involved in that.
19 Do you agree?

20 A. I've got a little common sense.

21 Q. And I --

22 A. I've got a lot of common sense.

23 Q. It appears to me you do and I appreciate that.
24 But the fact is you were not involved with the
25 development of Chadwick back in the mid-'80s, do

Franke - Recross by Mr. McCants

1 you agree?

2 A. I agree.

3 Q. You didn't work with the engineer or the planners.
4 Do you agree?

5 A. Right. I agree.

6 Q. And this Court, who has judicial and common sense
7 too, can conclude from this plat that somebody
8 spent a lot of money anticipating a lot of water
9 was coming through Chadwick, in whatever form,
10 houses, trees, but water that was going to flow
11 from I-20. Do you agree?

12 (inaudible crosstalk).

13 THE WITNESS: You use the word --

14 MR. MCCANTS: You have got to stop just a second.
15 Let him --

16 THE COURT: I didn't hear an objection.

17 MR. PLAYER: Objection. Calls for speculation.

18 MR. MCCANTS: I'll withdraw the question, Your
19 Honor.

20 THE COURT: Thank you.

21 BY MR. MCCANTS

22 Q. Mr. Franke, one more question. When I asked you
23 before you indicated you hadn't done anything to
24 mitigate any damage that you and the other
25 landowners had sustained. Now you are saying you

Franke - Recross by Mr. McCants

1 could do some things to mitigate it, correct? Do
2 you agree with me that was your testimony in
3 response to Mr. Player's questions? That's yes or
4 no.

5 A. Anything is possible.

6 Q. All right. But you haven't done anything to
7 mitigate anything, any damages to date. Do you
8 agree with that?

9 A. No.

10 Q. All right. That's your testimony?

11 A. No.

12 Q. Have not done anything?

13 A. Have not done anything to mitigate damages.

14 MR. MCCANTS: All right. Thank you, again. I
15 appreciate your patience. Thank you, Your Honor.

16 THE COURT: All right. Redirect.

17 MR. PLAYER: Your Honor, just one thing just to
18 clarify specifically what he just discussed with
19 Mr. Franke. Just to make sure you understand where
20 those pictures are and where our claims lie.

21 THE COURT: All right.

22 MR. PLAYER: If you'll just give me leeway.

23 THE COURT: Hold on. Mr. McCants, is there any
24 objection to sort of a third direct?

25 MR. MCCANTS: I beg your pardon. I was texting my

Franke - Re-Redirect by Mr. Player

1 expert a question, Your Honor.

2 MR. PLAYER: I just wanted him to be able to say
3 where these are in relation to the property because I
4 think that's where --

5 MR. MCCANTS: Sure. That will be very helpful.

6 MR. PLAYER: Okay. All right. We'll do this in a
7 twofold. All right.

8 THE WITNESS: Can I talk to my counsel a second?

9 MR. PLAYER: No. It's against the rules.

10 THE COURT: Unfortunately, no.

11 THE WITNESS: I don't know the rules. I'm sorry.

12 RE-REDIRECT EXAMINATION

13 BY MR. PLAYER

14 Q. All right. This is the outfall -- and for some
15 reason (inaudible). All right. On this you see
16 this purple/blue line? Do you recognize what that
17 blue line is on the picture?

18 A. That's where the water is crossing our property.

19 Q. Okay. So we go to Number 3, the interior view.
20 Where is this and where is this erosion running?

21 A. If you look at the area to the right about middle
22 of the property you see a little yellowish
23 white-ish -- go down. No, no, no, down -- oh, oh,
24 oh. Go up to the right. Right there.

25 Q. That?

Franke - Re-Redirect by Mr. Player

1 A. That's the roadway that was cut in. It's away
2 from that drainage basin and that's where the
3 erosion is happening.

4 Q. That light area is actually this area of dirt
5 that's in the picture.

6 A. Yes.

7 Q. And the channel doesn't run back here right? It
8 runs back toward I-20, correct?

9 A. It runs from I-20 towards us.

10 Q. Okay.

11 A. But it does not connect with that area at all.

12 Q. This water is not coming from this outfall.

13 A. No.

14 MR. MCCANTS: Your Honor, I just don't think he
15 knows. There's no accommodation for it unless he's
16 been out there and he's seen the water coming from the
17 sky. If he's suggesting that it's not coming from a
18 roadway, wants to say it's coming from the sky directly
19 down and causing that degree of erosion, that's pure
20 speculation. He doesn't have the personal knowledge to
21 testify (inaudible).

22 THE WITNESS: I do.

23 MR. PLAYER: It, it the line goes -- you can see
24 the line on the picture. All I'm trying to establish
25 is this erosion is -- because I've been there. I know

Franke - Re-Redirect by Mr. Player

1 where this is.

2 MR. MCCANTS: I still have an objection to him
3 saying that photograph depicts property somewhere on
4 what's on the screen, Judge.

5 THE COURT: His objection is to the source of the
6 erosion.

7 MR. MCCANTS: That's right.

8 BY MR. PLAYER

9 Q. Okay. Well, where does the channel of erosion
10 lead back to from your personal observations?

11 A. It comes from my property, across my property from
12 rainfall down an old road which you can see from
13 the development plan. And I can point out exactly
14 where it is because I know exactly where it is
15 because I've looked at it thousands of times. I
16 can tell you exactly where it is on that map right
17 there because you can tell by the topo lines where
18 the grade starts going uphill, and you can tell
19 exactly that's where it's going uphill. And you
20 can tell exactly, it's not in that basin.

21 Q. Okay. Maybe this is easier. You see how the
22 channel is running kind of this way on the
23 picture. Where is the outfall we're complaining
24 about? Is it here or here? Or is it here, is it
25 to the sides?

Franke - Re-Redirect by Mr. Player

1 A. It's way up above your left shoulder, your right
2 shoulder.

3 Q. Over here?

4 A. Yeah.

5 Q. Does it connect to this channel?

6 A. No.

7 Q. Okay. And again, this is ten thousand years of
8 erosion. Well, you said from the beginning of
9 time some water has been flowing through there,
10 so.

11 MR. MCCANTS: Objection. That's not his
12 testimony.

13 THE COURT: And I'll sustain. We'll move on.

14 BY MR. PLAYER

15 Q. Do you know where these are in relation?

16 A. That's another, that's another picture from that
17 same area.

18 Q. Okay. The same area as the one that --

19 A. Yes. Yes.

20 Q. Exhibit 8.

21 A. Yes.

22 THE COURT: Six?

23 BY MR. PLAYER

24 Q. This picture.

25 A. I'm really not sure where that is.

Franke - Re-Redirect by Mr. Player

1 Q. Do you know if this -- do you recognize this as
2 anywhere close to the outfall?

3 MR. MCCANTS: Your Honor, he's already said he
4 doesn't know.

5 THE WITNESS: I really don't know for sure where
6 that is.

7 MR. PLAYER: Okay.

8 THE COURT: It's asked and answered.

9 MR. PLAYER: Okay.

10 THE WITNESS: I know where the first two are
11 beyond a shadow of a doubt. No question.

12 BY MR. PLAYER

13 Q. And they are over here, right?

14 A. Yes.

15 MR. PLAYER: Okay. No further questions, Your
16 Honor.

17 THE COURT: All right, very good. Thank you
18 gentlemen.

19 MR. MCCANTS: One more?

20 THE COURT: I'll allow a follow-up.

21 BY MR. MCCANTS

22 Q. All right. You don't know where Number 6 is.

23 That's the property. Is that correct, Mr. Franke?

24 A. I don't know where on our property that would be,
25 no, sir.

Franke - Re-Redirect by Mr. Player

1 Q. But you agree with me that looks like a mini Grand
2 Canyon? Don't you agree? That's the time to use
3 one of the phrases you used?

4 A. That would -- let me rephrase it. It's a mini,
5 mini, mini, mini Grand Canyon compared to the mini
6 Grand Canyon of the outfall.

7 Q. That wasn't my question.

8 A. Well, I'm just answering it. No, it's not a mini
9 Grand Canyon.

10 Q. It's not?

11 A. No.

12 Q. Do you agree with me that Number 6 is serious
13 erosion to land?

14 A. Not currently, no.

15 Q. I didn't ask that.

16 A. No.

17 Q. Does the picture depict serious erosion?

18 A. No.

19 Q. You don't think that's -- that does?

20 A. No. It's not happening, so no. It's not ongoing.

21 Q. I didn't ask that question. I'm just asking the
22 moment in time when someone took a camera and
23 captured this image on Number 6, will you agree
24 with me it shows significant erosion at that
25 point?

Franke - Re-Redirect by Mr. Player

1 A. Yes.

2 MR. MCCANTS: All right. That's all I have, Your
3 Honor.

4 THE WITNESS: Can you tell me where --
5 I'm sorry.

6 MR. MCCANTS: I don't know. We'll have to wait on
7 Mr. Saunders.

8 THE COURT: All right. All right.

9 MR. MCCANTS: Thank you, Your Honor, for your
10 patience.

11 THE COURT: No, thank you. Mr. Franke, at this
12 time -- it is Franke for Frank?

13 THE WITNESS: Franke, yes, ma'am.

14 THE COURT: Mr. Franke, you are excused at this
15 time. Again, please watch your step going down right
16 here.

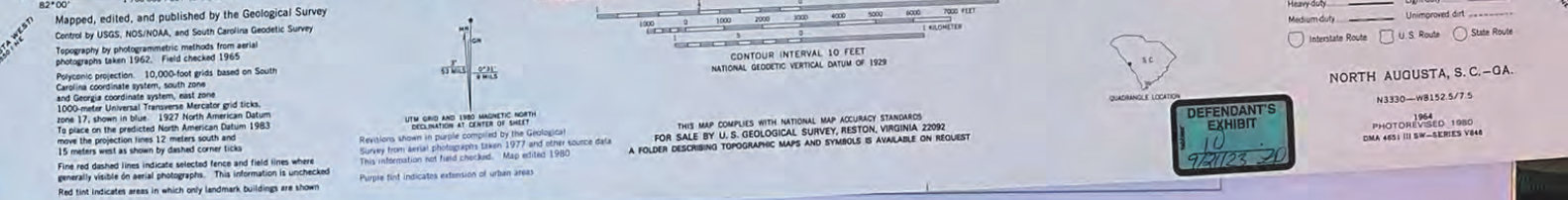
17 THE WITNESS: All right. Thank you, Your Honor.

18 THE COURT: Thank you, sir.

19 MR. PLAYER: So much for my plan.

20 THE COURT: So you have how many more? May I have
21 a number?

22 MR. PLAYER: I have three witnesses. Two will be
23 relatively short. They're just going to be, kind of,
24 establishing a foundation for pictures and their
25 observations when they first came on the property.



N3330—W8152.5/7.5
1964
PHOTOREVISED 1980
DMA 4651 III SW—SERIES V84

DEFENDANT'S
EXHIBIT
10
9/21/23 20

SOUTH CAROLINA DEPARTMENT of TRANSPORTATION**STANDARD APPRAISAL****Identification & Description**

1-	File: 2.140B Project: SIB-SB02(002)	Rd./Rt.: Palmetto Parkway Pin: 27912	Tract #: 77 County: Aiken
2-	From Station: 448+00	To Station: 464+00, Right of I-520 Flyover Ramp A	Sheet: 4B, 4M, 29, 45, 46, 47 & 59
3 a-	Owner: CD&F Interest, LLC c/o Sherman and Hemstreet, LLC		Telephone: 800-622-8334 ext. 201 D. Hugh Connolly, 803-663-3697 or 803-663-8998 - Elroi "Roy" Fischer, 704-962-0051 or 803-831-9714- Robert D. Lever
	Owner Address: Enterprise Mill, 1450 Greene Street, Suite 150, Augusta, South Carolina 30901		
	Tract Location: North side of Ascauga Lake Road, east of Highway 25, North Augusta, Aiken County, S.C.		
b-	Mortgages and Addresses: 1) Mortgage from Robert D. Lever and Carolyn G. Lever to Claude M. Lever 2) Mortgage from Robert D. Lever to Howard Lumber Company and Lighting Galleries, Inc. d/b/a Augusta Lighting and Design Center		
	Recorded - Book: 1) 1047 2) 1059	Page: 1) 112 2) 135	Date: 1) 5/13/88 - R 2) 7/11/88 - R
			Amount: 1) \$25,700 2) \$80,388.81
c-	Lessees & Addresses: N/A		
	Terms of Leases: N/A		

A) Before:	68.223 Acres			Tax Map: 10-20-01-001
B) After:	42.985 Acres			Plat: Book 16, Page 121
C) Acquired:	25.238 Acres			Width of R/W: Varies; refer to sketch

5-	Tabulation of sales: (At least 5 years; if more than 5 years, last sale)					
	From	To	Date	Consideration	Book	Page
	Robert D. Lever (1/3 interest)	Roy Fischer	09/11/86 - D 03/17/88 - R	\$20,000	1029	66
	S. Allan Stocks	Sherman & Hemstreet, Inc. (1/3 interest) and Robert D. Lever (2/3 interest)	6/27/86 - D 7/10/86 - R	\$140,000	938	276

6-	PURPOSE OF THE APPRAISAL: To estimate the difference in the market value of this property caused by the acquisition of the right-of-way for the proposed construction of this project. This is a complete appraisal, summary report as described by USPAP Standard 2-2B. Property Rights Appraised: Fee simple

7-	Present Use: Undeveloped	Zoning: PD, Planned Development

8-	Highest and Best Use Before: Residential/Mixed-use/Speculation
	Highest and Best Use After: Same

9-	Utilities: ☒ Elect. ☐ Gas ☐ Well ☒ Pub. Water ☐ Septic Tank ☒ Pub. Sewer ☐ Other
9-a	Assessed Value: Market Value-\$32,000, Agricultural Value - \$700 Taxes: \$74.97, based on agricultural value

DEFENDANT'S EXHIBIT

tabbies

9

9/21/23 20

Original -R/W
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1

Prepared by: **Stuart M. Saunders, MAI**
File No.: **2.140B**
Tract No.: **77**

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 July 1, 2005. The appraiser was accompanied by nobody. (Required by Sec. 301(2) of Uniform Act.) Explain: (Why not accompanied, relation of representative, items discussed, etc.) All the property owners were contacted by telephone prior to the inspection. Mr. Connolly and Mr. Lever returned my calls and agreed to meet with me on July 1, 2005 at 1:00 pm. Mr. Connolly indicated that he would try and bring two of his Sherman and Hemstreet partners, William L. Dozier and W.F. Franke, Jr., to the meeting as well. Mr. Elroi Fischer was out of town at the time but returned my call later on July 8th and said another meeting for him only was not necessary. I met with Mr. Connolly, Mr. Lever, Mr. Dozier and Mr. Franke at the lobby of the Sleep Inn motel on the project on the afternoon of July 1, 2005. We reviewed the plans at this time and discussed the history of the property. According to the owners, the rear of the subject property was contaminated with 62,000 gallons of diesel fuel in January 1987. The fuel leaked from a property across Interstate 20 near the subject. The owners have provided me with a copy of a letter from South Carolina DHEC dated July 9, 1996 stating the subject property has been cleaned and is now free of contamination. A copy of this letter is reproduced within the following two pages. The owners were primarily concerned with the effect the proposed flyover ramps would have on the potential future residential development of the tract. After the meeting, Mr. Lever and I drove to the subject and walked the entire tract. Pictures were taken at this time. The meeting lasted a total of approximately 2 hours from start to finish. It went well. There were no problems.

___ Original -R/W
 ___ Copy - Agent
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Prepared by: Stuart M. Saunders, MAI
 File No.: 2.140B
 Tract No.: 77

JUL-01-2005 15:26

SHERMAN AND HENSTREET

796 722 7285 P. 02



Commissioner: Douglas E. Bryant

Board: John H. Burris, Chairman
William M. Kutt, Jr., MD, Vice Chairman
Roger Leake, Jr., Secretary

Promoting Health. Protecting the Environment

Richard E. Jabbar, DDS
Cynthia C. Mosteller
Brian K. Smith
Rodney L. Grundy

July 9, 1996

DHEC
CLERK'S OFFICE
1/11/96

D. Hugh Connolly
Sherman and Hemstreet, Inc.
123 Eighth Street
Augusta, Georgia 30901

Re: Charter Bulk Terminal
Diesel Fuel Release
GWPD ID# A-02-AA-13343
Aiken County

Dear Mr. Connolly:

As requested, the Ground-Water Protection Division (GWPD) has reviewed South Carolina Department of Health and Environmental Control (SCDHEC) files for the referenced site. Additionally, you and your associate, W. F. Frank, Jr., met with Tim Mettlen, Bowen Woodruff, and me at the subject property on June 19, 1996. The following is provided as a result of the file review and meeting.

According to the SCDHEC Spill Report, 62,000 gallons of diesel fuel was released through a separated transfer hose on January 12, 1987. The fuel flowed across the parking lot, down a drainage ditch adjacent to I-20, under I-20 through a culvert, and onto a relatively low area of the uppermost portion of the subject property. Although this property was undergoing development at the time of the spill, construction activities were halted and have not resumed.

Emergency response activities commenced within hours. Free standing product was removed using vacuum trucks and impacted soils were excavated and removed to be stockpiled at the Charter Terminal. A total of 25,000 cubic yards of contaminated soil was removed from both the north side of I-20 and the subject property and replaced with clean fill. The impacted soil was later disposed at the Allendale County landfill.

A hydrogeologic assessment was initiated in January of 1988 at the subject property to determine whether the spill had impacted ground water. The assessment report submitted in June of 1988 indicated no impact to soil or ground water remained at the subject property as a result of the spill.

During our site visit it was noted that rain had washed some of the clean backfill from the excavated area, exposing portions of the sides of the excavation. No residual

recycled paper

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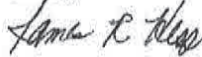
Prepared by: Stuart M. Saunders, MAI
File No.: 2.140B
Tract No.: 77

Mr. D. H. Connolly
Page 2
July 8, 1996

petroleum was observed. The monitoring wells installed during the 1988 hydrogeologic investigation were still in place at the time of the visit.

Based on the foregoing, SCDHEC will require no further action at the subject property as a result of the Charter Terminal spill. As you have no plans to obtain samples from the monitoring wells onsite, it is recommended that they be properly abandoned. If you have any questions, feel free to contact me at (803)734-5329.

Sincerely,



James R. Hess, P.G., Manager
Assessment and Development Section
Ground-Water Protection Division
Bureau of Drinking Water Protection

JRH/jrh

cc: Tim Mettlen, Lower Savannah District EQC

___ Original -R/W
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4

Prepared by: Stuart M. Saunders, MAI
File No.: 2.140B
Tract No.: 77

SUBJECT PHOTOGRAPHS

Taken By: Stuart M. Saunders, MAI
Date: 07/1/2005



1. Front view of subject from across Ascauga Lake Road



2. Easterly view of subject's frontage on Ascauga Lake Road

___ Original -R/W
___ Copy - Agent
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SUBJECT PHOTOGRAPHS

Taken By: Stuart M. Saunders, MAI
Date: 07/1/2005



3. Interior view



4. Drainage ditch

___ Original -R/W
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File No.: 2.140B
Tract No.: 77

SUBJECT PHOTOGRAPHS

Taken By: Stuart M. Saunders, MAI
Date: 07/1/2005



5. Easterly view near rear property line



6. Interior view of acquisition

Original -R/W
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File No.: 2.140B
Tract No.: 77

SUBJECT PHOTOGRAPHS

Taken By: Stuart M. Saunders, MAI
Date: 07/1/2005



7. Proposed outer boundary for new right of way line



8 – Interior view

Original -R/W
Copy – Agent
Copy – FHWA

8

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File No.: 2.140B
Tract No.: 77

SUBJECT PHOTOGRAPHS

Taken By: Stuart M. Saunders, MAI
Date: 07/1/2005



9 – Interior view

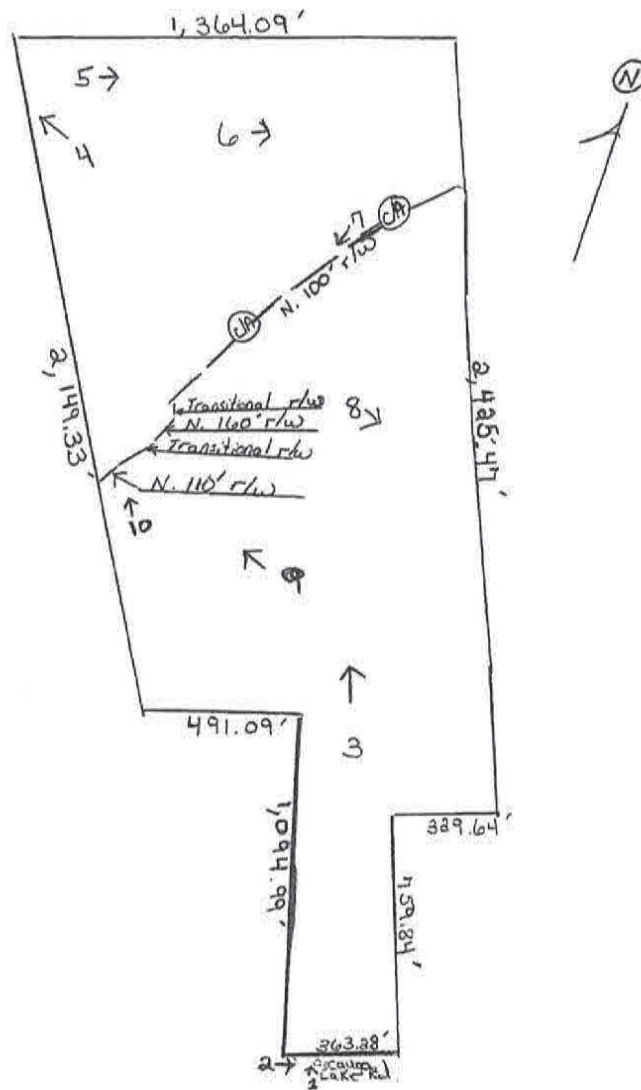


10- Interior view

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

Prepared by: Stuart M. Saunders, MAI
File No.: 2.140B
Tract No.: 77

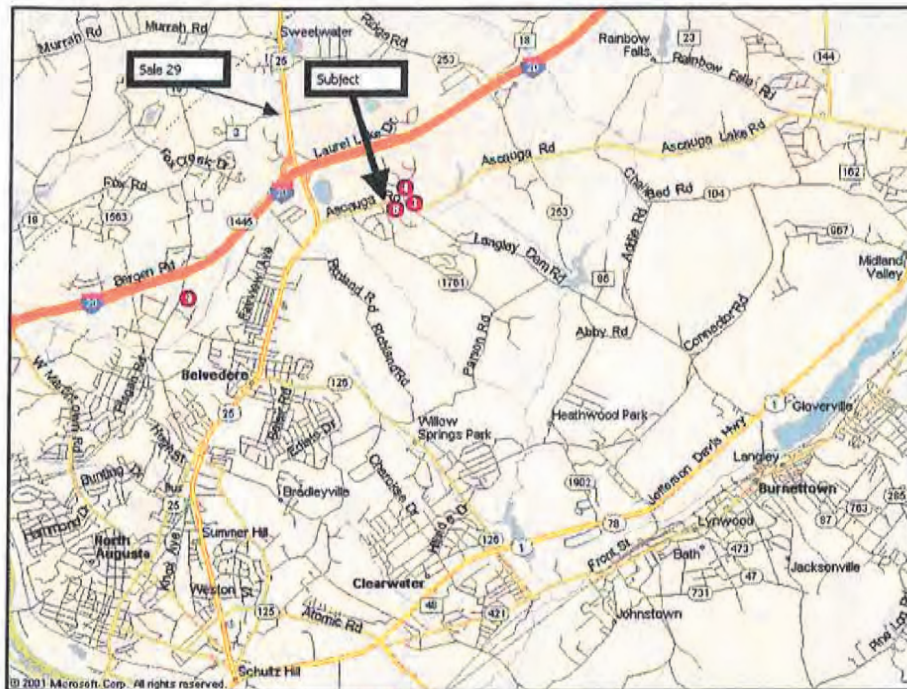
Property Sketch



Before Size:	68.223 acres
After Size:	<u>42.985 acres</u>
Acquired:	25.238 acres

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

Land Sales Map



Original -R/W
Copy - Agent
Copy - FHWA

12

Prepared by: Stuart M. Saunders, MAI
File No.: 2140B
Tract No.: 77

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PARAGRAPH 11. ZONING AND HEALTH REQUIREMENTS:

The subject property is zoned PD or Planned Development by the City of North Augusta. According to the city zoning ordinance, "the purpose of the Planned Development District is to encourage flexibility in the development of land in order to promote its appropriate use; to improve the design, character and quality of new development; to facilitate the provision of streets and utilities; and to preserve the natural and scenic features of open space."

In regard to potential future development, "any use proposed by the developer and considered by the Planning Commission as being compatible to other nearby uses within and beyond the District may be permitted in such district, upon approval by the Planning Commission and City Council." The owners of the subject have yet to submit a development plan for the subject tract. However, the City Planner, Mr. Scott Sterling, AICP, has indicated to me that some type of mixed use development consisting of multi-family, single-family and commercial uses would not be an unreasonable request at this time.

The subject property is a legal conforming use in that it is greater than 5 acres and is under one form of ownership.

Real Estate Taxes

Real estate in Aiken County is appraised at 100% of its market value, and property other than owner occupied single-family residential property, and some vacant land tracts, is assessed at 6%. Aiken County identifies the subject property by New Tax Map Number 010-20-01-001. The Aiken County Assessor's Office currently has assigned the subject property a market value of \$32,000 and an agricultural value of \$700. Real estate taxes for 2004 were based on the agricultural value and were reflected at \$74.97. A reassessment is currently scheduled for 2006.

PARAGRAPH 12. HIGHEST AND BEST USE (BEFORE):

The highest and best use of the land is defined as:

*"the reasonably probable and legal use of vacant land or improved property which is physically possible, appropriately supported, financially feasible and that results in the highest value."*¹

Analysis of Vacant Land:

*"among all reasonable, alternative uses, the use that yields the highest present land value after payments are made for labor, capital and coordination is generally regarded as the highest and best use of the land as though vacant."*²

Highest and Best Use

The subject is zoned PD or Planned Development by the City of North Augusta. The property owners have not yet submitted a plan for development of the subject to the City Planning Department for approval. However, any use they propose, and that is considered compatible to the area by the Planning Department, would be permitted so long as the plan was also approved by the Planning Commission and City Council. Considering surrounding property uses at this time, it is my opinion that some sort of mixed-use development consisting of multi-family, single-family and some commercial uses could likely be approved for the subject at this time. I am unaware of any other public or private restrictions that would restrict development of the subject property.

The subject property contains a total of 68.223 acres and has an irregular but functional shape. The subject appears to be comprised entirely of high land. In regard to utilities, public water and sewer are available. The subject property is mostly wooded and has a level topography. Drainage appears to be adequate. The rear of the subject has 1,365' of frontage on Interstate 20, while the front of the property has 363' of frontage and access on Ascauga Lake Road. Though contaminated with diesel fuel at one time, the subject now appears to

¹. The Appraisal of Real Estate
The American Institute of Real Estate Appraisers
10th Edition, page 275.

² The Appraisal of Real Estate
The American Institute of Real Estate Appraisers
10th Edition, page 45.

be free of any environmental contamination. The reader is invited to refer to the letter from DHEC reproduced on pages 2 and 3 of this report. Physically, the subject property is well suited for both residential and commercial development.

The subject property is located in a sparsely developed area, approximately 1 mile from the intersection of Ascauga Lake Road and Highway 25. It is bounded by large undeveloped tracts on both the west and east. The approximately 65-acre tract adjacent to the east has been assembled and is approved by the City of North Augusta for residential single-family/multi-family development.

In my opinion, the highest and best use of the subject property before the acquisition is either for residential development or some type of mixed-use development including both residential and commercial uses. Furthermore, the highest and best use of the subject may be to continue to hold the property as a vacant tract until market forces more clearly define its maximally productive use. This is called speculation and is an interim use until the highest and best use of the property can be realized.

PARAGRAPH 13. DESCRIPTION OF THE REALTY:

Site

General Description

The subject property is located with frontage along Ascauga Lake Road about a mile east of its intersection with U.S. Highway 25. It is located inside the city limits of North Augusta in Aiken County, South Carolina outside of a moderately developed residential, light industrial, commercial area. It is surrounded by undeveloped tracts of land and residential single-family properties. It has an irregular but functional shape and contains a total of 68.223 gross acres. The subject is generally level and mostly wooded. It is described in more detail below.

Roads and Utilities

The subject property has approximately 1,365' of frontage on Interstate 20 and approximately 363' of frontage and access on Ascauga Lake Road. Ascauga Lake Road has two-lanes in front of the subject and handles a light to moderate amount of traffic.

Public water is immediately available to the subject property. It is my understanding that the City of North Augusta plans on extending a public sewer line down past the subject in the near future.

Easements and Restrictions

Other than the city zoning ordinance, I am unaware of any other public or private restrictions that would limit the development of the subject and adversely its value.

Topography, Vegetation, and Drainage

The subject property is mostly wooded and level. Drainage appears to be adequate, and the property appears to be entirely comprised of developable highland.

Functional Adequacy

The subject property is considered to have adequate physical utility for possible future development.

Improvements

The subject is undeveloped.

PARAGRAPH 14. VALUATION BEFORE THE ACQUISITION:

The Sales Comparison Approach is used to arrive at an opinion of value for the subject property.

A. Cost Approach

N/A

B. Sales Comparison Approach

Five (5) land sales have been selected for comparison to the subject land. They are identified as Land Sales 3, 4, 8, 9 and 29 within the project Sales Brochure. All of the sales are located close to the subject in the North Augusta area. In fact, Sales 3, 4 and 8 are located east of and adjacent to the subject.

An adjustment grid is located on the following page. The sales received upward adjustments for market conditions or time as well as zoning, topography and utilities. Downward adjustments for location and size were also in order. The adjustments are discussed below.

Market Conditions

An upward market conditions adjustment of 8% per year or .67% per month was given to the sales. The adjustment is supported in the project Sales Brochure.

Location

Sale 29 is located across Interstate 20 next to a developing residential subdivision and closer to commercial development than the subject. This location is considered to be superior to the subject. Match pair analysis of Land Sales 21, 22, 24 and 28 with Land Sales 16, 19 and 26 was used to help support a downward location adjustment. Percentage differences from -13% to -67% were indicated by the sales. Considering the location of Sale 29 in comparison to the subject, a minus adjustment toward the middle of the range at 35% is selected.

Zoning

The subject property is zoned Planned Unit Development, which permits possible commercial development of the tract if recommended by the North Augusta Planning Department and approved by the Planning Commission and Town Council. Insufficient market data was available from which to abstract this adjustment directly through paired analysis of the sales. Instead, properties adjacent to the subject and the area in general were considered in making this adjustment.

The area immediately surrounding the subject is sparsely developed, and with other land in the area available for development, it is unlikely an intensive commercial use for the subject tract would be financially feasible at the present time. Furthermore, my conversation with the City Planner leads me to believe it would be difficult to get an intensive commercial use approved for the subject property considering surrounding residential uses. Considering these factors, a modest upward zoning adjustment of 25% is given to Sales 3, 4 and 8 since they are zoned for residential development only.

This adjustment is further supported by Land Sale 9 which has a multi-family and commercial zoning classification and sold for only \$10,000 per acre, a price which is very similar to Sales 3, 4 and 8 with residential zoning classifications.

Frontage

A frontage adjustment was not applied.

Size

Smaller size properties tend to sell for less on a price per unit basis than their larger size counterparts, all other elements of comparison being equal. Considering this, Sales 4, 8 and 29 are given downward adjustments of 10%.

Shape

A shape adjustment was not applied.

Topography

Because some of Sale 9 is located below the grade of Five Notch Road, it is given an upward topography adjustment of 15%.

Easements

Easement adjustments are not applied.

Utilities

Sale 3 was purchased before it was known that public sewer would be extended to the site. An upward adjustment of 10% is applied to this sale because the subject will have access to both public water and sewer.

The adjusted sales are reflected at \$9,291, \$13,657, \$12,678, \$12,579 and \$21,701 per acre. Because some of the subject's best developable land is being acquired, a reconciled price per acre toward the middle of the range is selected. At \$15,000 per acre, the market value of the subject land is shown below at \$1,023,345.

68.223 Acres @ \$15,000/Acre = \$1,023,345

Land Sales Adjustment Grid					
Comparable Sale	3	4	8	9	29
Sale Date	May-02	Mar-03	Nov-03	Apr-04	Dec-03
Size - Acres	38.98	20.00	4.00	37.58	24.14
Price/Acre	\$5,500	\$10,000	\$9,750	\$10,000	\$35,000
Adjustments					
Property Rights	0%	0%	0%	0%	0%
Sub-Total	\$5,500	\$10,000	\$9,750	\$10,000	\$35,000
Financing Terms	0%	0%	0%	0%	0%
Sub-Total	\$5,500	\$10,000	\$9,750	\$10,000	\$35,000
Conditions of Sale	0%	0%	0%	0%	0%
Sub-Total	\$5,500	\$10,000	\$9,750	\$10,000	\$35,000
Market Conditions	25.13%	18.76%	13.07%	9.38%	12.73%
Sub-Total	\$6,882	\$11,876	\$11,024	\$10,938	\$39,456
Location	0%	0%	0%	0%	-35%
Zoning	25%	25%	25%	0%	0%
Frontage	0%	0%	0%	0%	0%
Size	0%	-10%	-10%	0%	-10%
Shape	0%	0%	0%	0%	0%
Topography	0%	0%	0%	15%	0%
Easements	0%	0%	0%	0%	0%
Utilities	10%	0%	0%	0%	0%
Sub-Total Adjustment	35%	15%	15%	15%	-45%
Indicated Value	\$9,291	\$13,657	\$12,678	\$12,579	\$21,701

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C. Income Capitalization Approach

N/A

PARAGRAPH 15. RESOLUTION OF BEFORE VALUE AND VALUE OPINIONS:

The Sales Comparison Approach was used to arrive at an opinion of value for the subject property. Five comparable land sales were chosen for this analysis. The sales provide a reliable indication of value for the subject, and the Sales Comparison Approach would be heavily weighted by a potential purchaser. The "as is" market value for the subject property is opined to be **\$1,023,345**.

PARAGRAPH 16. DESCRIPTION OF THE ACQUISITION:

The acquisition crosses the rear of the property and generally has a triangular shape. It is mostly wooded, generally level and is unimproved. It has a length of approximately 1,400' and a depth that ranges from approximately 450' to 1,350'. The new right of way varies from being transitional to 160' from the center line of Flyover Ramp A.

PARAGRAPH 17. DESCRIPTION OF THE REMAINDER:

The remainder will contain 42.985 acres. It will have frontage along Interstate 20 as well as two new flyover ramps. Ramp A is closest to the rear property line. The ramp will vary from being level to below the grade of property. It will cross the entire rear of the property providing access to Interstate 20 for traffic traveling toward Columbia. The other ramp runs to the middle of the property where it turns and crosses over the Interstate. This ramp will be about 50' above the grade of the subject property at its highest point adjacent to the Interstate.

The property owners are concerned that the flyover ramp will have an adverse effect upon the value of the remainder in that it will create additional noise and be unsightly. However, I do not concur with this opinion and do not believe there are any damages to the remainder. If anything, I believe construction of the project will serve to hasten development of the area.

PARAGRAPH 18. HIGHEST AND BEST USE (AFTER):

The highest and best use of the subject remains the same as before the acquisition.

PARAGRAPH 19. VALUE AFTER THE ACQUISITION:

The per unit value of the remainder remains the same as before the acquisition. At \$15,000 per acre, the value of the subject is shown below at \$644,775.

$$42.985 \text{ Acres} @ \$15,000/\text{acre} = \$644,775$$

PARAGRAPH 20. RESOLUTION OF AFTER VALUE AND VALUE OPINION:

The Sales Comparison Approach was used to arrive at an opinion of value for the subject property after the acquisition. The market value "as is" of the subject property is rounded and opined to be **\$644,775**.

PARAGRAPH 21. UNECONOMIC REMAINDER:

There are no uneconomic remainders.

22	Final Estimate of Value	Before (para. 14)	After (para. 19)	Difference
	Indicated Value by Sales Comparison Approach	\$1,023,345	\$644,775	\$378,570
	Indicated value by Cost Approach	N/A	N/A	N/A
	Indicated Value by Income Capitalization Approach	N/A	N/A	N/A

23	Distribution of Values	Before (para. 15)	After (para. 20)	Difference
	Land Value	\$1,023,345	\$644,775	\$378,570
	Improvement Value	\$0	\$0	\$0
	Other - Site Improvements	\$0	\$0	\$0
	TOTAL	\$1,023,345	\$644,775	\$378,570

24.	Recommended Distribution of Difference				
Right of Way Acquired:					
Land:	25.238 Acres	@	\$15,000 Acre	=	\$378,570
Site Improvements:	N/A				\$0
Buildings:	N/A				\$0
Total for Acquisition					\$378,570
Damages (if any to remainder) Explain: N/A					
Total Damages					\$0
Benefits (if any to remainder) Explain:					
Subtract Total Benefits					\$0
Total value of part acquired, plus damages, less benefits (should equal total difference above)					\$378,570

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 is.....	\$1,023,345
	II.	Having considered all applicable approaches, it is my opinion that the indicated value of the remainder after the acquisition is.....	\$644,775
	III.	The difference between the indicated value of the property before the acquisition, and the indicated value of the remainder, after the acquisition is.....	\$378,570

26. Based on this report, the fair market rental for this property is N/A per month.

Date: July 12, 2005		Appraisal made as of: July 1, 2005
		Stuart M. Saunders, MAI South Carolina Certified General Appraiser #1405

ASSUMPTIONS AND LIMITING CONDITIONS

The legal description, furnished by public records 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 or 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.

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, Page 140, 3rd Edition)

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, Page 171, 3rd Edition)

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, Page 171, 3rd Edition)

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, Page 171, 3rd Edition)

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 303-306, 11th edition)

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 79, 11th 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, Page 222, 3rd Edition)

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, Page 318, 3rd Edition)

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 a 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)

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 public and/or private funds.

That such appraisal has been made in conformity with the appropriate State and Federal laws regulations, policies and procedures applicable to that 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 preparing this appraisal 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 or representatives of the State of South Carolina and I will not do so until so authorized by 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 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 within 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 **July 1, 2005** is **\$378,570** based upon my independent appraisal and the exercise of my professional judgment.

Date: July 12, 2005

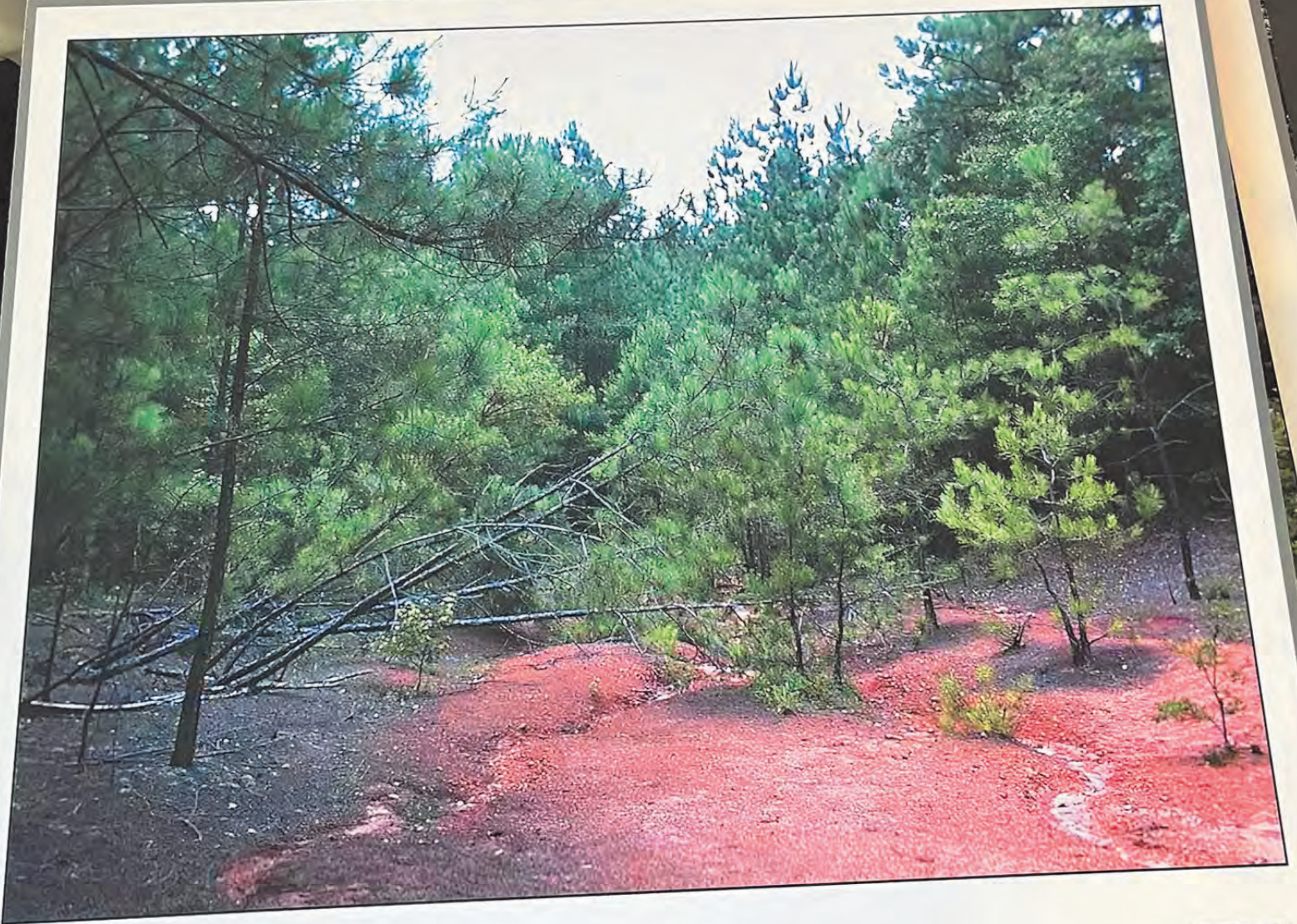
Stuart M. Saunders, MAI
S.C. Certified General Appraiser No. 1405

___ Original -R/W
___ Copy - Agent
___ Copy - FHWA



4. Drainage ditch





8 – Interior view

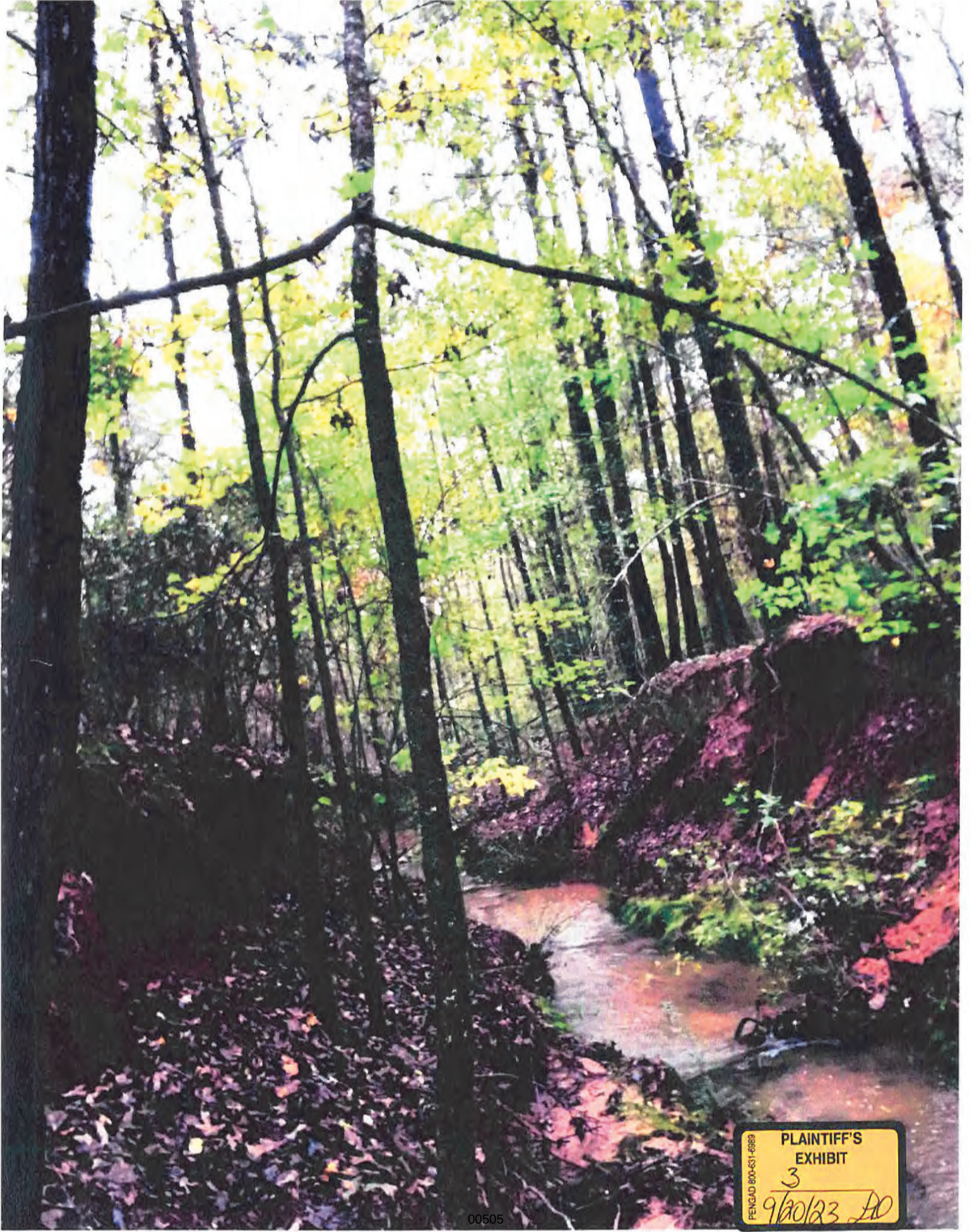
DEFENDANT'S
EXHIBIT
7/10/13



3. Interior view







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EXHIBIT
3
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PENGAD 800-631-6886
PLAINTIFF'S
EXHIBIT
4
9/20/23 L9



PENGAD 800-831-4989
PLAINTIFF'S
EXHIBIT
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9/20/23 JAO



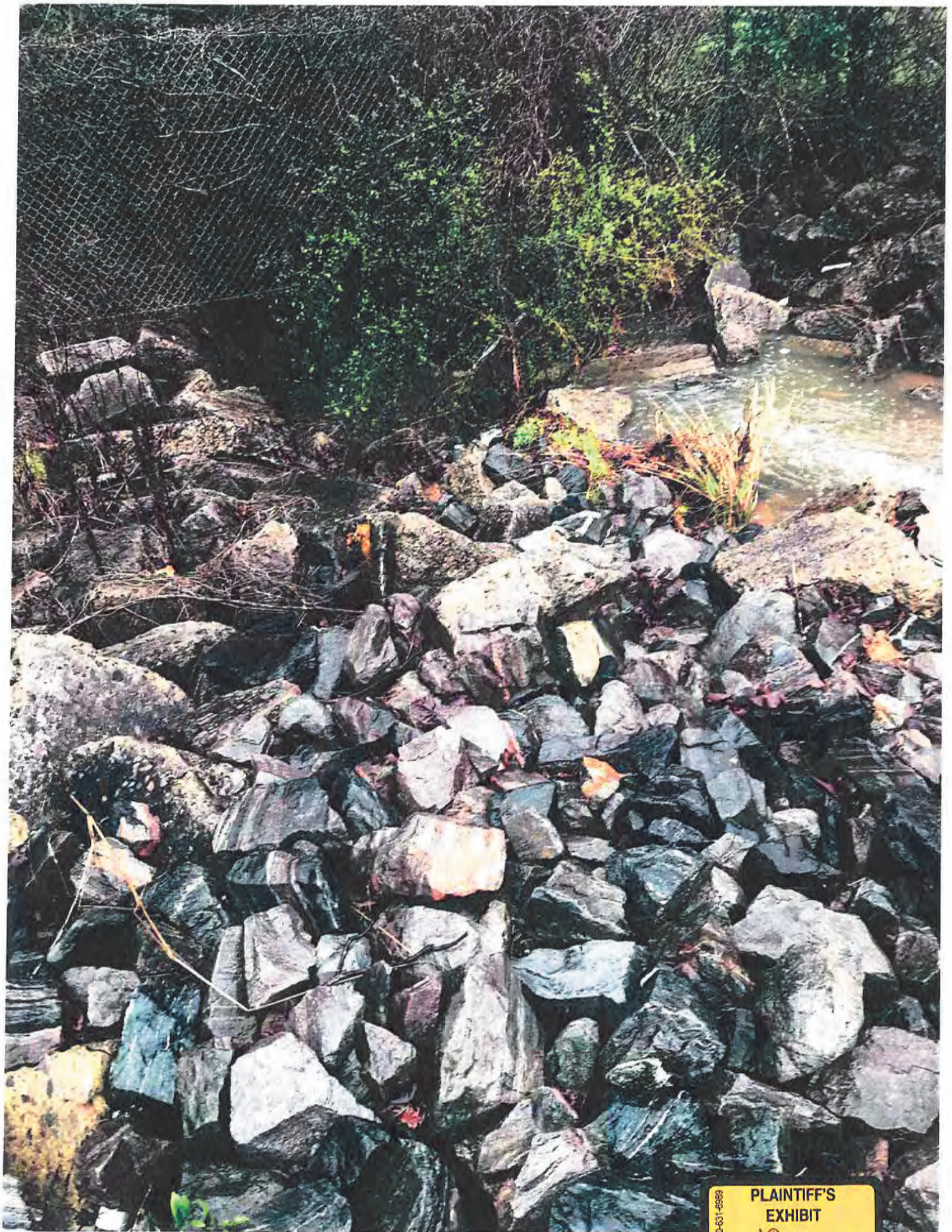
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SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: March 26, 2025

MCCANTS & MCCANTS

s/ Clarke W. McCants, III

Clarke W. McCants, III

Clarke W. McCants, IV

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May 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

C/A No. 2018CP0202797
Appellate Case No. 2024-000079

Elroy D. Fischer, Jr., CD&F Interests, LLC, Howard Lumber Company, and the
Robert E. Pentecost Trust, Respondents,

vs.

South Carolina Department of Transportation, Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Record on Appeal on Counsel for the Respondents by electronic mail to the e-mail address of record with AIS at tucker@playerlawfirm.com, on March 27, 2025.

McCANTS & McCANTS

s/ Clarke W. McCants, IV

Clarke W. McCants, IV

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Attorney for Appellant

Dated: March 27, 2025