

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

John Hamilton Smith, Special Referee

Case No. 2010-CP-40-8943R
Appellate Case No. 2013-001067

Columbia Venture, LLC,

Appellant,

v.

Richland County,

Respondent.

REVISED RECORD ON APPEAL
VOLUME 4 OF 13
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REVISED RECORD ON APPEAL¹
TABLE OF CONTENTS

ORDERS

Page

Consent Order Granting Stay (May 2, 2005).....	1
Order Denying Defendant's Motion to Dismiss Pursuant to Rule 12(b)7, SCRCP (December 2, 2009)	4
Order Denying Defendant's Motion to Strike Pursuant to Rule 12(f), SCRCP (December 2, 2009)	10
Order Denying Defendant's Motion to Dismiss Pursuant to Rule 12(b)6, SCRCP (December 2, 2009)	14
Consent Order to Strike from Docket Pursuant to Rule 40(j) and Consent Scheduling Order (January 5, 2010)	26
Consent Order to Restore to the Docket Pursuant to Rule 40(j) and Agreement of the Parties (December 23, 2010)	29
Consent Order of Reference (May 22, 2012).....	31
Order Regarding Certain Discovery Motions (June 26, 2012).....	33
Order Granting Defendant Richland County's Motion for Protective Order (July 20, 2012)	38
Order Granting Partial Summary Judgment to Defendant on Physical Takings Claim, and Denying Partial Summary Judgment to Plaintiff on Physical Takings Claim (August 9, 2012).....	42
Order Denying Plaintiff's Motion to Reconsider, Alter, or Amend (September 4, 2012)	53
Order Granting in Part and Denying in Part Defendant's Motions for Partial Summary Judgment (September 11, 2012).....	54
Order Denying Plaintiff's Motion to Reconsider, Alter, or Amend (February 13, 2013)	100

¹ The Record on Appeal in its original form was served on Respondent Richland County on February 19, 2014. Pursuant to the Court's Orders of February 20, 2014, and March 3, 2014, the parties amended and revised their designations of matter to be included in the record on appeal. The Revised Record on Appeal contained herein is the product of those revised designations.

Order (Regulatory Taking) (March 19, 2013)	101
Order Denying Plaintiff's Motion to Reconsider, etc. (April 22, 2013)	175

PLEADINGS

Summons and Complaint (August 19, 2004).....	178
Amended and Supplemental Complaint (October 5, 2009).....	202
Notice of Motion and Motion of Defendant Richland County to Dismiss Pursuant to SCRCF Rule 12(b)(6) (October 9, 2009).....	250
Plaintiff's Memorandum of Law in Opposition to Defendant's Motions to Dismiss Pursuant to Rules 12(b)(6) and 12(b)(7), SCRCF and Motion to Strike Pursuant to Rule 12(f), SCRCF (October 21, 2009).....	254
Memorandum in Support of Defendant Richland County's Motion to Dismiss Pursuant to SCRCF Rule 12(b)(6) (October 22, 2009).....	279
Answer to Plaintiff's First Amended and Supplemental Complaint (December 8, 2009)	363
Notice of Motion and Motion of Defendant Richland County for Summary Judgment of Plaintiff's Due Process Claims (September 20, 2011).....	381
Notice of Motion and Motion of Defendant Richland County for Protective Order (October 31, 2011).....	383
Notice of Motion and Motion of Defendant Richland County for Summary Judgment on Claim of Physical Taking (March 14, 2012).....	438
Notice of Motion and Motion of Defendant Richland County for Summary Judgment on Claim of Regulatory Taking (March 14, 2012).....	440
Notice of Motion and Motion of Defendant Richland County for Summary Judgment on All Claims (March 14, 2012)	442
Columbia Venture, LLC's Notice of Motion and Motion for Partial Summary Judgment (March 15, 2012).....	444
Memorandum in Support of Motion of Defendant Richland County for Protective Order (June 11, 2012).....	447
Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment on its Physical Takings Claim (July 9, 2012)	459

Plaintiff's Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment (Physical Takings Claim) (July 16, 2012)	478
Plaintiff's Motion to Reconsider, Alter, or Amend (August 20, 2012)	491
Plaintiff Columbia Venture's Pre-Trial Brief (September 6, 2012)	505
Plaintiff Columbia Venture's Deposition Designation of Gregory Pearce (September 12, 2012)	534
Defendant Richland County's Objections to Deposition Designations of Gregory Pearce (September 14, 2012)	536
Plaintiff's Motion to Reconsider, Alter, or Amend (September 21, 2012)	540
Plaintiff's Proposed Order (February 4, 2013)	548
Defendant's Proposed Order (February 4, 2013)	694
Plaintiff's Memorandum in Response to Defendant's Proposed Order (March 8, 2013)	817
Defendant's Memorandum in Opposition to Plaintiff's Proposed Order (March 8, 2013)	902
Plaintiff's Motion to Reconsider, Alter, or Amend Order Entered March 19, 2013 (March 29, 2013)	957
Defendant's Memorandum in Opposition to Plaintiff's Motion to Reconsider Regulatory Takings Order (April 8, 2013)	968

TRANSCRIPTS

Dispositive Motions Hearing Transcript (July 18, 2012)	975
Trial Transcript, Volume I (September 10, 2012)	1153
Trial Transcript, Volume II (September 11, 2012)	1330
Trial Transcript, Volume III (September 12, 2012)	1389
Trial Transcript, Volume IV (September 13, 2012)	1503
Trial Transcript, Volume V (September 13, 2012)	1592
Trial Transcript, Volume VI (September 14, 2012)	1668

Trial Transcript, Volume VII (September 17, 2012)	1726
Trial Transcript, Volume VIII (September 18, 2012)	1897
Trial Transcript, Volume IX (September 19, 2012)	2047
Trial Transcript, Volume X (September 20, 2012)	2257
Trial Transcript, Volume XII (November 13, 2012)	2385
Trial Transcript, Volume XIII (November 14, 2012)	2508
Trial Transcript, Volume XIV (November 15, 2012)	2789
Trial Transcript, Volume XV (November 16, 2012)	2809
Trial Transcript, Volume XVI (December 20, 2012)	2929
Deposition Transcript of Gregory Pearce (as designated) (October 27, 2011)	2936
Deposition Transcript of J. Milton Pope (as designated) (August 24, 2011)	2956
Deposition Transcript of Herman Wilson Tillotson, Jr. (as designated) (March 12, 2012)	2973
Deposition Transcript of Douglas P. Wendel (as designated) (July 12, 2011)	2991
Deposition Transcript of Douglas P. Wendel (as designated) (October 25, 2011)	3006
Deposition Transcript of James E. Wiseman, III (as designated) (September 1, 2011)	3013

EXHIBITS

PLAINTIFF'S TRIAL EXHIBITS

Ex. 3	Flood Insurance Study for Richland County (July 17, 1995)	3034
Ex. 4	Chronology of Green Diamond Project (July 18, 2001)	3060
Ex. 8	D. Manning fax to McSwain (May 29, 1998)	3077
Ex. 10	Preliminary Flood Insurance Study for Richland County (June 5, 1998)	3085

Ex. 11	Summary of Meeting Minutes (July 8, 1998)	3108
Ex. 12	McSwain letter to Buckley (July 14, 1998).....	3115
Ex. 13	Buckley letter to McSwain (July 28, 1998).....	3117
Ex. 14	Tillotson letter to McSwain with annotations (December 11, 1998)	3119
Ex. 17	Holland letter Buckley with attachments (January 22, 1999)	3121
Ex. 18	Miller letter to Holland (January 26, 1999).....	3125
Ex. 20	Minutes of Richland County Council Development and Services Committee (January 26, 1999)	3126
Ex. 22	Livingston letter to Buckley (February 17, 1999).....	3130
Ex. 24	McSwain letter to Gregory (February 19, 1999).....	3132
Ex. 26	McSwain letter to Buckley (February 26, 1999).....	3133
Ex. 27	McSwain letter to Marquez with attachment (April 7, 1999)	3134
Ex. 31	Davison letter to McSwain with FEMA Floodplain Management Bulletin 1-98 attached (May 19, 1999)	3137
Ex. 32	County Administrator's Report of Council Actions Regular Session Meeting (September 7, 1999)	3146
Ex. 34	Richland County Council Meeting Minutes (December 7, 1999).....	3150
Ex. 47	Excerpts from Minutes of Richland County Planning Commission's Meeting (March 1, 2004).....	3162
Ex. 51	Richland County Council Minutes and Council Report re Encroachments in a Floodway (March 20, 2001 and February 9, 2001) ...	3173
Ex. 56	Reed letter to Wilson with attached excerpts from County ordinances (January 10, 2002).....	3181
Ex. 57	Loar letter to Reed (January 23, 2002).....	3188
Ex. 60	Brown memorandum to McSwain (October 16, 1998)	3189
Ex. 61	Order of Vacatur (November 18, 2005).....	3190

Ex. 62	Judgment in a Civil Case (November 18, 2005).....	3202
Ex. 67	Richland County Ordinance No. 009-06HR (February 21, 2006).....	3203
Ex. 81	Richland County Ordinance No. 114-06HR (December 5, 2006).....	3205
Ex. 108	Heathwood Hall gymnasium photograph (undated)	3206
Ex. 109	Heathwood Hall middle school photograph (undated)	3207
Ex. 110	Heathwood Hall chapel photograph (undated)	3208
Ex. 112	Archer memo to Richland County Council with attachments (February 4, 2001)	3209
Ex. 113	Taylor letter to Rogers with draft ordinance revisions attached (August 23, 2000)	3249
Ex. 114	Adams memorandum to Richland County Council and Holman letter to K. Smith (November 28, 2000)	3255
Ex. 117	Pearson memorandum to Taylor (March 29, 2001).....	3258
Ex. 118	Hester letter to Gregory with draft permit application attached (May 4, 1999).....	3259
Ex. 119	Greene letter to Hester (May 13, 1999)	3267
Ex. 120	Monthly Project Status Report by Lockwood Greene (July 2, 1999).....	3269
Ex. 123	Richland County Council Meeting Minutes (September 7, 1999)	3285
Ex. 125	Knudsen memorandum to Pearce with attachments (November 30, 1999)	3294
Ex. 127	S&ME letter to Holcombe (May 2, 1999)	3299
Ex. 133	Richland County Council Development and Services Committee Agenda Packet (December 20, 2005)	3309
Ex. 135	Richland County Council Meeting Minutes (January 3, 2006)	3315
Ex. 146	Chambers memorandum to McSwain and L. Smith (February 2, 1999)	3323
Ex. 147	Richland County Council Meeting Minutes (February 2, 1999)	3324

Ex. 150	Richland County Council Regular Session Agenda Packet (excerpts) (January 3, 2006)	3335
Ex. 157	Willoughby letter to Boyd (August 26, 2005)	3343
Ex. 162	Richland County Flood Insurance Rate Map (Panel 160) (January 19, 1994)	3345
Ex. 166	Richland County Council Proposed Action and Report (January 22, 1999)	3346
Ex. 169	Motion for Levee Matter (undated)	3354
Ex. 170	Newspaper article, <i>Richland asked to take Levees</i> (February 2, 1999)	3355
Ex. 183	Holman letter to Richland County Council with draft ordinance attached (March 16, 2001)	3358
Ex. 184	Ellerbe letter to K. Smith (March 20, 2001)	3361
Ex. 185	Adams letter to Taylor with draft ordinance attached (March 20, 2001)	3363
Ex. 186	Richland County Council Meeting Minutes (March 20, 2001)	3365
Ex. 190	Richland County Council Meeting Minutes (April 17, 2001)	3372
Ex. 191	Richland County Council Meeting Minutes (April 3, 2001)	3382
Ex. 195	George E. Knight, Jr. Report (May 21, 2010)	3389
Ex. 199	Columbia Venture Financial Statements for the year ended December 31, 2001 for the Period from February 17, 1999 (Date of Inception) to December 31, 2001 and Independent Auditors' Report (December 31, 2001)	3442
Ex. 203	Columbia Venture Financial Statements for the Period from February 17, 1999 (Date of Inception) to December 31, 1999 and Independent Auditors' Report (December 31, 1999).....	3455
Ex. 204	Appeal Resolution for Congaree River in Richland and Lexington Counties, South Carolina (September 26, 2000)	3464
Ex. 207	Tillotson letter to McSwain (December 11, 1998)	3499
Ex. 208	Tillotson letter to Gregory (February 17, 1999)	3501

Ex. 209	S&ME letter to Lockwood Greene (August 10, 1999)	3515
Ex. 211	S&ME Report of Geotechnical Exploration and cover letters (November 16, 1999)	3518
Ex. 216	Thomas F. Hartnett calculations (undated)	3551
Ex. 217	Levee photograph (2005)	3554
Ex. 218	Levee photograph (2005)	3555
Ex. 219	Levee photograph (2005)	3556
Ex. 220	Levee photograph (2005)	3557
Ex. 221	Levee photograph (2005)	3558
Ex. 222	Levee photograph (2005)	3559
Ex. 223	Levee photograph (2005)	3560
Ex. 224	Levee photograph (2005)	3561
Ex. 225	Property photo with boundary outline (undated)	3562
Ex. 229	Richland County Flood Insurance Rate Map (Panel 160) showing shaded floodway (January 19, 1994)	3567
Ex. 230	Richland County Ordinance No. 064-94HR (July 19, 1994)	3568
Ex. 231	Lexington County Flood Insurance Rate Map (Panel 285) (July 17, 1995)	3591
Ex. 233	Option Agreement and Addendum between B. Manning and Congaree Farms, LLC (July 16, 1997)	3592
Ex. 234	Lexington County Revised Preliminary Flood Insurance Rate Map (Panel 283) (February 12, 1998)	3614
Ex. 235	Lexington County Revised Preliminary Flood Insurance Study (February 12, 1998)	3615
Ex. 236	B. Manning letter to Richland County Council (May 26, 1998)	3624
Ex. 237	Richland County Revised Preliminary Flood Insurance Rate Map (Panel 160) showing shaded floodway (June 5, 1998)	3626

Ex. 238	Richland County Revised Preliminary Flood Insurance Rate Map (Panel 160) (June 5, 1998)	3627
Ex. 239	Newspaper article, <i>Floodway: Federal Agency Designates 5,300 Acres in Richland Co. as Flood Prone, Worrying Developers Along the Congaree River</i> (July 16, 1998)	3628
Ex. 246	Tillotson fax and letter to Holland	3632
Ex. 247	Tillotson letter to Gregory with attachments (January 21, 1999)	3635
Ex. 250a	Richland County Zoning Ordinance (full version) (January 31, 1999)	3638
Ex. 251	Q&A re levee acceptance (undated)	3665
Ex. 252	Faxed Q&A re levee acceptance (February 2, 1999)	3668
Ex. 254	The Columbia Project Prospective Economic Impact (Revised) (February 8, 1999)	3670
Ex. 255	Appraisal of 4,461 Acres by Jerry R. Adkins (February 8, 1999)	3685
Ex. 262	Agreement among Manning, Chapel Hill, and DAK, with Amendment (February 17, 1999)	3790
Ex. 264	Executive Summary of Preliminary Development Plan with various attachments (February 18, 1999)	3803
Ex. 266	Limited Warranty Deed from DAK, LLC to Columbia Venture, LLC (February 19, 1999)	3822
Ex. 268	General Warranty Deed from Burwell D. Manning, Jr. to Columbia Venture, LLC (February 19, 1999)	3826
Ex. 270	General Warranty Deed from Burwell D. Manning, Jr. and Eastern Corn and Grain Company, Inc. to Columbia Venture, LLC (February 19, 1999)	3828
Ex. 275	Reinstatement of and Amendment to Purchase and Sale Agreement and Purchase and Sale Agreement and various attachments (various)	3833
Ex. 283	Lexington County Revised Preliminary Flood Insurance Rate Map (Panel 283) (February 25, 1999)	3880

Ex. 285	Richland County Revised Preliminary Flood Insurance Rate Map showing shaded floodway (Panel 160) (February 25, 1999)	3881
Ex. 286	Richland County Revised Preliminary Flood Insurance Study (February 25, 1999)	3882
Ex. 287	Richland County Revised Preliminary Flood Insurance Rate Map (Panel 160) (February 25, 1999)	3900
Ex. 294	Embankment Evaluation Report on Levee Section 1 by S&ME (April 5, 1999)	3901
Ex. 299	Market Research Congaree Property Columbia, South Carolina by Haddow and Company (July, 1999)	3911
Ex. 301	Highest and Best Use Analysis 4,410.9 Acres Columbia, South Carolina by Haddow and Company (August, 1999)	3988
Ex. 302	Lexington County Revised Preliminary Flood Insurance Rate Map (Panel 283) (August 12, 1999)	4088
Ex. 303	Lexington County Revised Preliminary Flood Insurance Study (August 12, 1999)	4089
Ex. 304	Richland County Revised Preliminary Flood Insurance Rate Map showing shaded floodway (Panel 160) (August 12, 1999)	4105
Ex. 305	Richland County Revised Preliminary Flood Insurance Study (August 12, 1999)	4106
Ex. 306	Richland County Revised Preliminary Flood Insurance Rate Map (Panel 160) (August 12, 1999)	4122
Ex. 307	S&ME letter to Tillotson (September 7, 1999)	4123
Ex. 308	Monthly Project Status Report by Lockwood Greene (October 8, 1999)	4128
Ex. 311	McSwain letter to Armstrong with resolution attached (December 7, 1999)	4144
Ex. 314	Columbia Venture Master Plan Workbook (undated)	4148
Ex. 319	Preliminary Conceptual Land use Plan for the Columbia Venture Alternative B (March 22, 2000)	4167

Ex. 320	Preliminary Conceptual Land use Plan for the Columbia Venture Alternative A (March 22, 2000).....	4171
Ex. 323	Project Status Report from Lockwood Greene (April 12, 2000).....	4175
Ex. 326	Membership Unit Redemption Agreement and First Amendment to Membership Unit Redemption Agreement and Operating Agreement of Columbia Venture, LLC (various).....	4186
Ex. 334	Lexington County Revised Preliminary Flood Insurance Study (September 26, 2000).....	4187
Ex. 335	Lexington County Revised Preliminary Flood Insurance Rate Map (September 26, 2000).....	4199
Ex. 336	Richland County Revised Preliminary Flood Insurance Study (September 26, 2000).....	4200
Ex. 337	Richland County Revised Preliminary Flood Insurance Rate Map (Panel 160) (September 26, 2000)	4215
Ex. 338	Richland County Revised Preliminary Flood Insurance Rate Map showing shaded floodway (Panel 160) (September 26, 2000)	4216
Ex. 344	Columbia Venture, LLC Meeting Minutes (November 3, 2000)	4217
Ex. 345	Buckley letter to Wendel (November 22, 2000).....	4220
Ex. 346	Taylor email to Davison (December 4, 2000)	4222
Ex. 349	Columbia Venture Financial Statements for the year ended December 31, 2000 and the Period from February 17, 1999 (Date of Inception) to December 31, 2002 and Independent Auditors' Report (December 31, 2000)	4224
Ex. 350	K. Smith Notes (undated)	4237
Ex. 360	Draft Amended Ordinance (March 21, 2001).....	4239
Ex. 362	Lucas letter to L. Smith with draft ordinance attached (March 29, 2001)	4241
Ex. 369	Taylor memorandum to Brady (April 10, 2001).....	4246
Ex. 374	Richland County Ordinance No. 022-01HR (April 17, 2001).....	4249

Ex. 378	Lexington County Flood Insurance Rate Map (August 20, 2001).....	4277
Ex. 379	Lexington County Flood Insurance Study (August 20, 2001).....	4278
Ex. 381	Richland County Flood Insurance Rate Map (August 20, 2001).....	4294
Ex. 382	Richland County Flood Insurance Study (August 20, 2001).....	4295
Ex. 391	Richland County Flood Insurance Rate Map (Panel 160) (February 20, 2002)	4315
Ex. 394	Van Sant and Wingard Appraisal (November 6, 2002).....	4316
Ex. 396	Columbia Venture Financial Statements for the year ended December 31, 2002 and the Period from February 17, 1999 (Date of Inception) to December 31, 2002 and Independent Auditors' Report (December 31, 2002)	4688
Ex. 397	Newspaper article, <i>Green Diamond Lessons Learned</i> (January 13, 2003)	4701
Ex. 417	K. Smith email to Holman (September 15, 2004)	4704
Ex. 425	Wingard and Associates Appraisal (March 14, 2005).....	4705
Ex. 430	Boyd letter to Willoughby (June 10, 2005)	4818
Ex. 449	Richland County Ordinance No. 041-06HR (May 16, 2006).....	4821
Ex. 452	Richland County Ordinance No. 069-06HR (July 11, 2006).....	4823
Ex. 474	Newspaper article, <i>Building Our City - Green Diamond Project Revived</i> (November 30, 2007)	4825
Ex. 497	Environmental Siting Study by Rust Environment and Infrastructure (June 5, 1998).....	4828
Ex. 498	Draft option to purchase (undated)	4837
Ex. 499	Chart Depicting Acreage and Zoning Designation of Columbia Venture, LLC Property at Time of Purchase	4848
Ex. 500	Gregory memorandum to Columbia Venture, LLC File (February 8, 1999)	4849
Ex. 501	Closing Binder Index (February 19, 1999).....	4850

Ex. 502	Columbia Venture, LLC Kick off Members Meeting Agenda (March 10, 1999)	4856
Ex. 504	McSwain email to Marquez and Williams (March 22, 1999)	4858
Ex. 506	Columbia Venture, LLC Meeting Minutes (March 24, 2000).....	4859
Ex. 507	Columbia Venture, LLC Meeting Minutes (January 26, 2001).....	4861
Ex. 508	Columbia Venture, LLC Meeting Minutes (March 9, 2001).....	4864
Ex. 509	Columbia Venture, LLC Meeting Minutes (April 20, 2001).....	4869
Ex. 510	Columbia Venture, LLC Meeting Minutes (June 29, 2001).....	4872
Ex. 511	Columbia Venture, LLC Meeting Minutes (August 31, 2001).....	4875
Ex. 516	Heathwood Hall middle school photographs (undated).....	4880
Ex. 517	Heathwood Hall gymnasium photographs (undated)	4885
Ex. 518	Heathwood Hall athletic fields photograph (undated).....	4888
Ex. 520	Burwell Manning deed to City of Columbia (June 14, 1967).....	4889
Ex. 521	Columbia Venture ledger (January 19, 2001).....	4892
Ex. 523	Buckley letter to K. Smith, Jeffcoat, and Coble (October 10, 2000).....	4898
Ex. 527	Chronology of Activities Carried Out for Lockwood Greene International by S&ME re Improvement to Congaree Levees Sections I & II (September 13, 2012)	4905
Ex. 528	Preliminary Geotechnical Report Levee Section 1 (May 21, 1999).....	4909
Ex. 529	Cross-Section Map of Property (undated)	4925
Ex. 533	Summary Exhibit - Flood Insurance Study Table Comparison (various)	4926
Ex. 534	Curriculum Vitae of A. Carroll Barker, Sr.	4927
Ex. 535	Curriculum Vitae of Thomas F. Wingard	4937
Ex. 536	Curriculum Vitae of Thomas F. Hartnett	4941

Ex. 542	Lexington County Resolution and transmittal letter to FEMA (November 16, 2000).....	4944
Ex. 543	City of Cayce Resolution and transmittal letter to FEMA (December 5, 2000)	4946
Ex. 549	Miller fax and letter to Holland (January 26, 1999)	4948
Ex. 550	Wiseman letter to Scott with attachments (April 2, 2001).....	4950
Ex. 551	Newspaper article, <i>Floodway: Federal Agency Designates 5,300 Acres in Richland Co. as Flood-prone, Worrying Developers Along the Congaree River</i> (July 22, 1998)	4962
Ex. 553	Preliminary Master Plan for the Columbia Venture (July 14, 2000).....	4966
Ex. 554	Rogers letter to K. Smith (June 28, 2001)	4967
Ex. 555	Wiseman letter to Taylor (September 7, 2000).....	4970
Ex. 556	Wiseman letter to K. Smith (February 27, 2001).....	4971
Ex. 557	K. Smith letter to Coble and Ford (April 30, 2001).....	4973
Ex. 560	K. Smith email to Holman (September 23, 2004)	4975
Ex. 567	Wilkerson fax and letter to Buckley (February 15, 2001).....	4976
Ex. 572	Summary of Columbia Venture, LLC Purchase of Property & Development Costs (1999)	4979
Ex. 573	Summary of Columbia Venture, LLC Land and Developmental Costs 1999-2002 (2002).....	4980
Ex. 574	Columbia Venture, LLC Step-up In Basis (December 31, 2000).....	4981
Ex. 575	Columbia Venture, LLC Green Diamond Sale (December 31, 2000).....	4982
Ex. 576	The Green Diamond Levee Project by Gary R. Dyhouse, PE (December, 2000)	4983
Ex. 577	Taylor email to Holman with memorandum attached (January 23, 2001)	5039
Ex. 578	Taylor email to Holman with letter attached (January 23, 2001)	5041

Ex. 580	Columbia Venture, LLC memorandum to County/City/School District One Green Diamond Task Force (June 22, 2001)	5049
Ex. 581	The Simple Truth About Green Diamond (April 2001)	5058

DEFENDANT'S TRIAL EXHIBITS

Ex. 1	Wiseman Letter to K. Smith (April 2, 2001)	5082
Ex. 2	Tillotson Letter to Gregory (May 27, 1999)	5084
Ex. 3	Burroughs & Chapin Board of Directors Meeting Minutes (January 26, 1999)	5088
Ex. 4	Burroughs & Chapin Board of Directors Meeting Minutes (February 9, 1999)	5096
Ex. 5	Burroughs & Chapin Board of Directors Meeting Minutes, 9:30 a.m. (February 15, 1999)	5101
Ex. 7	Burroughs & Chapin Board of Directors Meeting Minutes (February 16, 1999)	5110
Ex. 9	Burroughs & Chapin Columbia Venture Exit Strategy Presentation (2001).....	5114
Ex. 10	Confidential Memorandum – Outline of Operating & Development Activities – Financing Plan for Columbia Venture, LLC (December 7, 2000)	5148
Ex. 11	Executive Briefing on Grassroots Campaign (2001).....	5153
Ex. 12	Hendrix memorandum to Nichols with attachment (March 27, 2003).....	5154
Ex. 13	Burroughs & Chapin Annual Stockholder Meeting Minutes (May 31, 2003).....	5167
Ex. 14	Whitehouse Plantation/Green Diamond Strategy Matrix (March 24, 2004)	5184
Ex. 15	S&ME handwritten notes (undated)	5185
Ex. 17	Congaree Property Development Scenario (May 20, 1998).....	5187
Ex. 18	Wingard and Van Sant letter to Cureton (April 19, 2002).....	5196

Ex. 19	Green Diamond Bond Proceeds for Infrastructure (undated)	5198
Ex. 20a	Richland County Council Development & Services Committee Agenda and Proposed Action (January 26, 1999)	5199
Ex. 21	Hartnett Arithmetic (2012)	5208
Ex. 31	County Personnel Form: Harry Reed (July 17, 1996)	5209
Ex. 34	Butters letter to Hester (April 15, 1999)	5210
Ex. 37	Tillotson letter to Davison with Technical Analysis attached (June 3, 1999).....	5213
Ex. 40	Miller letter to McSwain with proposed rule attached (September 1, 1999).....	5220
Ex. 44	Sandifer letter to Buckley with appeal materials attached (December 10, 1999)	5228
Ex. 45	Buckley letter to McSwain, Jeffcoat, and Rish (March 17, 2000).....	5229
Ex. 46	Columbia Venture Project Update Materials (March 27, 2000).....	5232
Ex. 48	Burroughs & Chapin Meeting Summary Notes (May 5, 2000).....	5260
Ex. 49	Columbia Venture Development Timeline (May 9, 2000).....	5263
Ex. 51	Taylor letter to Wiseman with NPDES Permit attached (June 22, 2000).....	5264
Ex. 53	K. Smith memorandum to Richland County Council (July 28, 2000).....	5265
Ex. 54	Columbia Venture Development: Richland County's Preliminary Approach (August 1, 2000).....	5266
Ex. 55	Columbia Venture's Key Activities/Follow-ups (First Draft) (August 11, 2000)	5267
Ex. 59	Buckley letter to K. Smith, Jeffcoat, and Coble (October 10, 2000).....	5269
Ex. 62	Wendel letter to Buckley (October 26, 2000).....	5276
Ex. 63	Taylor/Wiseman email chain with Winston & Strawn Legal Opinion attached (November 2, 2000).....	5280

Ex. 64	Galloway PowerPoint Presentation – Floodplain Management Into the 21 st Century: A Perspective on the State of the Nation (November 13, 2000).....	5312
Ex. 66	Taylor email to Wiseman (December 4, 2000).....	5358
Ex. 67	Wolfe letter to Richland County Development and Services Committee (January 2, 2001)	5360
Ex. 69	Taylor memorandum to Richland County Council (January 10, 2001)....	5367
Ex. 70	Wolfe and Brown memorandum to K. Smith (January 10, 2001)	5371
Ex. 72	Wiseman letter to Taylor (January 10, 2001)	5376
Ex. 73	Burroughs & Chapin Board of Directors Strategic Planning Retreat Minutes (January 19, 2001)	5378
Ex. 74	Buckley letter to Wilkerson (February 12, 2001)	5381
Ex. 76	Dooley letter to McSwain (March 26, 2001)	5386
Ex. 77	Holman letter to Wolfe (March 28, 2001)	5387
Ex. 79	The Simple Truth About Green Diamond (excerpts) (April 2, 2001)	5394
Ex. 81	Wiseman letter to Scott (April 2, 2001).....	5415
Ex. 82	Richland County Council Agenda with attachments (annotated) (April 17, 2001)	5418
Ex. 84	McArthur letter to Ardis with draft ordinance attached (May 15, 2001).....	5431
Ex. 85	Green Diamond Task Force Meeting Notes and Taylor email to Wiseman (May 2 and 24, 2001).....	5433
Ex. 87	Taylor letter to Dooley (June 20, 2001).....	5441
Ex. 88	Haynsworth Sinkler Boyd memorandum to Columbia Venture, LLC (June 22, 2001)	5444
Ex. 93	Buckley letter to McSwain (August 20, 2001)	5449
Ex. 99	Columbia Venture Analysis Notebook (August 2001).....	5453

Ex. 103	McCaleb letter to Gregory (December 19, 2001)	5496
Ex. 104	Wiseman fax to Gregory with Confidential Plan of Action attached (December 27, 2001)	5498
Ex. 105	Wendel letter to Columbia Venture members with various attachments (January 30, 2002)	5502
Ex. 106	Burroughs & Chapin Board of Directors Meeting Minutes (February 1, 2002)	5512
Ex. 108	Proposal for Construction of a Modified Linear Levee (March 12, 2002)	5517
Ex. 109	Roan letter to Gregory (May 14, 2002)	5519
Ex. 110	Kohler memorandum to Gregory (June 11, 2002).....	5522
Ex. 111	Gregory letter to Roan (June 28, 2001)	5525
Ex. 112	Columbia Venture Disclosure Memorandum to Van Tuyl (October 24, 2002).....	5529
Ex. 113	Wendel memorandum to Columbia Venture members (December 16, 2002)	5550
Ex. 128	Chart of Property Sold by Columbia Venture (December 20, 2012)	5553
Ex. 129	Richland County Flood Insurance Rate Map (Panel 70) (January 19, 1994)	5554
Ex. 130	Richland County Flood Insurance Rate Map Panel (Panel 70) (January 19, 1994)	5555
Ex. 131	Richland County Flood Insurance Rate Map Panel (November 4, 1981).....	5556
Ex. 133	Decision Matrix (August 20, 2000)	5557
Ex. 140	Agreement between Burwell Manning et al and Congaree Farms, LLC (June 25, 1997).....	5563
Ex. 141	Agreement among Burwell Manning, Chapel Hill, LLC, and DAK III, LLC (July, 998)	5582
Ex. 142	Brown memorandum to McSwain (October 16, 1998)	5588

Ex. 144	Columbia Venture Operating Agreement & Membership Unit Redemption Agreement (various).....	5589
Ex. 146	Saucier letter to McSwain (June 23, 1998).....	5593
Ex. 147	FEMA Community Status Book Report: South Carolina (September 7, 2012).....	5597
Ex. 151	Taylor memorandum to Richland County Council with correspondence attached (February 1, 2001).....	5598
Ex. 156	Purchase and Sale Agreement (November 13, 1998).....	5650
Ex. 157	Notice of Intent to Purchase (January 9, 1999).....	5664
Ex. 158	Burroughs & Chapin letter to B. Manning (February 11, 1999)	5667
Ex. 160	Information Provided to Richland County by Columbia Venture, LLC (January 5, 2001).....	5668

DEPOSITION DESIGNATION EXHIBITS

Deposition Exhibits of Gregory Pearce (October 27, 2011)

	Index to Gregory Pearce's Designated Deposition Exhibits: Cross-Referenced Locations in the Record on Appeal, if Applicable.....	5670
Ex. 148	Pearce/Wislinski email chain (December 21, 2005).....	5671
Ex. 173	Newspaper article, <i>\$1 Billion Plan for Congaree Myrtle Beach Developer Envisions 'City Within Reach' in Richland County</i> (February 21, 1999)	5673
Ex. 179	Newspaper article, <i>Burroughs & Chapin Won't Abandon Plan Company Hopes to Change Floodway Designation and Beef Up Levees to Build Massive Development</i> (October 7, 2000)	5675
Ex. 180	Taylor email to Barnhill, Wolfe, and Smith (October 25, 2000).....	5677
Ex. 187	Newspaper article, <i>Project Faces New Hurdle</i> (March 21, 2001).....	5679

Deposition Exhibits of J. Milton Pope (August 24, 2011)

	Index to J. Milton Pope's Designated Deposition Exhibits: Cross-Referenced Locations in the Record on Appeal, if Applicable.....	5681

Ex. 122 Newspaper article, <i>FEMA Clears Way for River Project</i> (August 20, 1999)	5682

Deposition Exhibits of Herman Wilson Tillotson, Jr. (March 12, 2012)

Index to Herman Wilson Tillotson, Jr.'s Designated Deposition Exhibits: Cross Referenced Locations in the Record on Appeal, if Applicable	5685

Deposition Exhibits of Douglas P. Wendel (July 12, 2011 & October 25, 2011)

Index to Douglas P. Wendel's Designated Deposition Exhibits: Cross-Referenced Locations in the Record on Appeal, if Applicable.....	5686

Ex. 42 Newspaper article, <i>Levee Work Expected to Be OK'd</i> (May 28, 1999).....	5687

Ex. 136 Handwritten Columbia Venture meeting notes (March 29, 1999)	5689

Ex. 238 Newspaper article, <i>Reducing Flood Area Won't Hurt Either Side of River, Developer Says</i> (May 21, 1999).....	5697

Deposition Exhibits of James E. Wiseman, III (September 1, 2011)

Index to James E. Wiseman, III's Designated Deposition Exhibits: Cross-Referenced Locations in the Record on Appeal, if Applicable.....	5700

Ex. 162 Draft Contract Negotiation Document on Columbia Project (June 15, 2000).....	5701

Ex. 171 Handwritten Columbia Venture Political Roundtable Notes (August 9, 2000)	5703

Ex. 172 Wolfe letter to Rogers with draft agreement attached (August 17, 2000)	5711

Ex. 180 Burroughs & Chapin Board of Directors Meeting (September 26, 2000).....	5718

Ex. 181 Wendel memorandum to Columbia Venture members (September 28, 2000).....	5725

Ex. 182 Public Statement – Weston Adams, Chairman – Congaree Task Force for Economic and Environmental Responsibility (October 26, 2000)	5727

Ex. 197 McSwain letter to Wiseman (February 16, 2001).....	5732

Ex. 198 Wiseman letter to McSwain (February 19, 2001).....	5733
Ex. 199 K. Smith letter to Wiseman (February 20, 2001).....	5734

OTHER MATERIALS AND DOCUMENTS

Index to Parties' Joint Submission of Case Documents to Judge Smith for Review (June 1, 2012)	5736
Appendix to Plaintiff Columbia Venture's Omnibus Memorandum in Opposition to Defendant's Various Motions for Summary Judgment (July 13, 2012)	5739
Appendix to Plaintiff's Motion to Reconsider, Alter, or Amend Order Entered March 19, 2013, of March 29, 2013, Item 9 (Richland County Regulations – Division 3 – Preservation of Council Actions, § 2-39 through § 2-48) (March 29, 2013).	6049
Index to Plaintiff's Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion to Reconsider, Alter, or Amend of April 15, 2013, Tab 3 (Certified Copy of Richland County Code of Ordinances (various)) (April 14, 2013)	6055

CERTIFICATE BY APPELLANT

Certificate by Appellant.....	6061

1 help us do it.

2 Q. Mr. Manning, didn't the county
3 ordinances that existed at the time this property
4 was sold and purchased require that the levees be
5 built to meet the 500-year flood -- withstand a
6 500-year flood -- plus 3 feet of freeboard?

7 A. It did. And Lockwood Greene, S&ME,
8 were all doing work to accomplish that.

9 Q. Mr. Manning, those are the
10 circumstances under which Columbia Venture
11 purchased the property, correct?

12 A. With full knowledge and with the
13 assistance of Richland County and that resolution.

14 Q. All anyone would have had to do to know
15 what the requirements were for FEMA certification
16 prior to the purchase would be to look at the FEMA
17 regulations, correct?

18 A. Yeah. And if you've got a letter from
19 FEMA that says you do these things and we can do
20 them, and you get a letter from the County that
21 says you can do these things and we can do them,
22 and the County says we'll do these things, it's
23 pretty simple.

24 Q. Mr. Manning, isn't it true that all
25 that had to be done to determine what the Richland

1 County requirements were prior to the purchase
2 would be read the storm ordinance and the zoning
3 ordinance?

4 A. I don't think there was anything in
5 that Stormwater Ordinance that says you cannot
6 upgrade these levees.

7 Q. Mr. Manning, my question was, that if
8 you wanted to know the requirements of Richland
9 County for upgrading levees prior to the purchase,
10 all anybody would have to do would be read the two
11 ordinances, correct?

12 A. I'm sure they did.

13 Q. So is the answer yes, you could look at
14 the ordinances?

15 A. You could look at the ordinance, but I
16 don't see anything in the ordinance that would
17 prohibit them from doing what they were ultimately
18 denied to do.

19 Q. Mr. Manning, had the Manning property,
20 which was sold on February the 19th, 1999, been
21 rezoned at that time to allow for this envisioned
22 multiuse development?

23 A. No, there was no rezoning on the
24 property. The County indicated that that could
25 take place at a later date, and Columbia Venture

1 was willing to do that, you know.

2 Q. Mr. Manning, my question is simple. As
3 of the closing --

4 A. I said no.

5 Q. -- had it been rezoned?

6 A. No, there has been no rezoning.

7 Q. Now, do you remember on Monday -- we
8 wrote it down, I hope you will remember -- we noted
9 that you said the last thing you want in the
10 development business is uncertainty.

11 A. Correct.

12 Q. And you would agree with me that
13 certainty is important for successful real estate
14 development?

15 A. It is.

16 Q. And that the developer who goes forward
17 with a program -- with a purchase -- without having
18 things tied down to a certainty, does so at a risk,
19 don't they?

20 A. And that's why you do your due
21 diligence. And you do --

22 Q. Is the --

23 A. I will answer --

24 Q. -- answer yes.

25 A. Yes, and that's precisely why you do

1 your due diligence. That issue was known, fully
2 investigated, and resolved when the County had the
3 unanimous resolution that said, you do this, we'll
4 do that. That took care of that issue.

5 Q. Well, we're going to talk about the
6 resolution.

7 A. Okay.

8 Q. I know you have your opinion about it,
9 but we'll get to that.

10 But the risk the developer takes when
11 he doesn't have things tied down to a certainty
12 before buying the property is that he may never put
13 all of the dots together, connect them, to do the
14 development, correct? That's the risk?

15 A. The risk can be from zero to 100
16 percent. It doesn't necessarily have to be one or
17 the other. So I don't know how you quantify that,
18 but there are things that you may give up in the
19 development process that you didn't intend on doing
20 and the project still be economically viable.

21 Q. Was the answer to the question yes?

22 A. Yes.

23 Q. Thank you.

24 Now, we talked about this a few minutes
25 ago, but I want to be sure. Prior to the purchase

1 of the property, there was no formal detailed plans
2 and specifications submitted to Richland County,
3 were there?

4 A. You mean a land plan?

5 Q. No. I'm talking about showing exactly
6 what would be built, where, when, the details, the
7 final plans, specifications, for the project.

8 A. There were no details. No. There were
9 no details provided to Richland County, such as
10 that, construction drawings for the levees. There
11 were some preliminary siting plans that were given
12 to Richland County in, I think, July 1988, and
13 there was discussions with, you know, various
14 members of council and the DS committee about the
15 development of the property.

16 Q. Mr. Manning, since the
17 closing -- between the closing in 2002 -- February
18 of 2002 -- to your knowledge, your personal
19 knowledge, were any completed detailed plans for
20 what this project was supposedly going to be ever
21 submitted to Richland County during that time
22 frame?

23 A. There were details -- yes, there were
24 detailed plans submitted to Richland County, and
25 permit applications.

1 Q. What permit applications are you
2 talking about?

3 A. The levee upgrades.

4 Q. All right. I'm talking about detailed
5 plans for the entire development.

6 During this time frame, were they ever
7 submitted?

8 A. I can't -- I can't answer the question
9 whether the conceptual plans were ever provided to
10 Richland County or not. But I will have to say
11 that, during the course from 1999 to 2002, you
12 know, there was a lot of things changing. And they
13 were changing in such a way that you couldn't
14 create a master plan, because why would you go
15 spend money on a development plan when the maps
16 kept changing?

17 Q. My question is simple.

18 During that time period, were any
19 detailed plans, showing exactly what was
20 planned -- the plans and specifications for the
21 project -- ever submitted to Richland County?

22 A. Not the development plan.

23 Q. Now, I want to talk to you about
24 Tee-To-Green, if I could, for a moment.

25 Mr. Manning, did I understand

1 necessary to do the proposed project could, in
2 fact, be obtained?

3 A. Correct.

4 Q. And if they were obtained, the
5 appraiser was telling Tee-To-Green that the project
6 had a 30-million-dollar value?

7 A. Correct.

8 Q. Now, isn't it true that it was the
9 uncertainty raised by the FEMA revised maps, and
10 the levee issue appraised as a result of that, that
11 killed the Tee-To-Green project?

12 A. There were a couple things that killed
13 the Tee-To-Green project from going forward. One,
14 they found information that, you know, was
15 obviously cause for alarm, which was the
16 information you just discussed about the FEMA maps.

17 Two, they were under a tight deadline,
18 time frame, to move forward with the project and
19 put up our earnest money because of the overall
20 time frame that we were dealing with on the
21 Congaree Farms issue, and they were unable to go
22 forward on that basis.

23 So they were told you need to put up
24 additional money, so on and so forth, and they
25 didn't have time to go through the due diligence

1 process to make all of that happen.

2 Q. It was -- but it was uncertainty about
3 what the outcome was going to be --

4 A. Sure.

5 Q. -- on the levees --

6 A. Absolutely.

7 Q. -- that ultimately caused them, for the
8 reasons you have described, to back out of the
9 deal?

10 A. Right.

11 Q. And uncertainty is what you were
12 talking about when you talked about certainty or
13 uncertainty being important in real estate
14 development?

15 A. And that's -- and uncertainty is very
16 important in my business, and I think -- and I was
17 talking about specifically the no-rise and
18 impediment language that went into the stormwater
19 erosion and control ordinance, which was a major,
20 major difference, if you had gone back in time from
21 what the County had been doing on how they handled
22 a no-rise person and impediment. An impediment
23 will almost kill any project, versus a no-rise.
24 And FEMA's basis was a no-rise.

25 Q. Mr. Manning, are you through?

1 A. No question? I mean, there are a lot
2 of questions, but, I mean, Mr. McSwain is basically
3 saying --

4 Q. -- there are a lot of issues that need
5 to be addressed.

6 MR. BECKER: Objection, that misstates
7 the evidence.

8 THE WITNESS: That's what he states,
9 that's correct.

10 BY MR. JOHNSON:

11 Q. Then, in the letter, in the third
12 paragraph, there's a reference to some consultants.
13 And it says:

14 The consultants readily acknowledge the
15 Richland County study was done because of the
16 potential impact for the actual requested study
17 area, which was Lexington County.

18 Correct?

19 A. That's what it says. Let me read what
20 it says before that.

21 Q. Sure.

22 A. Okay.

23 Q. To your knowledge, have you ever seen
24 an agreement from Lexington County agreeing that
25 Lexington County would allow additional flooding on

1 its side of the property if that occurred as a
2 result of raising the levees?

3 MR. BECKER: Objection, Your Honor,
4 relevance.

5 THE COURT: Overruled.

6 THE WITNESS: Do I answer the question
7 now?

8 MR. JOHNSON: Yeah, you do.

9 THE COURT: Yes, sir.

10 THE WITNESS: I have not seen an
11 agreement between Richland and Lexington County
12 dealing with floodway issues.

13 BY MR. JOHNSON:

14 Q. And in this letter, again, Mr. McSwain
15 affirms and confirms that, at that point in time,
16 the County, for permitting purposes, was going to
17 use the preliminary maps. I think that's in the
18 last paragraph, correct, sir?

19 A. I see that.

20 Q. Then I want to show you Plaintiff's
21 Exhibit Number 60. And this is a memo from Terry
22 Brown to Mr. McSwain, and it's dated October the
23 16th, 1998, correct?

24 A. Correct.

25 Q. And in the memo, Mr. Brown is

1 discussing the maps that were being used to make
2 flood determinations, correct?

3 A. Correct.

4 Q. And it states by:

5 By letter directive from FEMA, we are
6 required to use the proposed maps for flood
7 determinations and permitting purposes when they
8 are distributed. The maps are not used for
9 insurance purposes until they are approved.

10 Did I read that accurately?

11 A. You did.

12 Q. At the end of the letter, does he say
13 everything is contingent upon the Corps'
14 determination?

15 A. I read that. I see that.

16 Again, I can't answer why, then, the
17 County, in their resolution in May would have said,
18 You take these steps, and everything that you have
19 to do to meet 44 CFR can be achieved.

20 And FEMA had acknowledged it, and FEMA
21 said you can -- you don't have to; you can -- use
22 the best available information: Another map. You
23 can allow construction permits.

24 Why would they take all of these steps,
25 go through all of this political process, to come

1 back and delay the project? I mean, that was
2 clearly not the intent to start with.

3 They could have said, No, we're not
4 going to do what you need us to do. Why don't you
5 just wait until the maps are finished and
6 we'll -- at that point, Burroughs & Chapin would
7 have gone home.

8 Q. Mr. Manning, what I'm asking you is not
9 what your opinions of it are, but what was said in
10 the documents. So I want to go to the next
11 document.

12 MR. JOHNSON: Your Honor, I can't find
13 it. I will just ask him a question.

14 BY MR. JOHNSON:

15 Q. In November -- I believe it was
16 November the 13th, 1998 -- that's when
17 Burroughs & Chapin exercised the option to
18 purchase.

19 A. Yes, sir.

20 Q. And one of the contingencies in the
21 option to purchase was that the property had to be
22 rezoned to the satisfaction -- to permit a
23 development of housing, offices, multiuse purpose,
24 correct?

25 A. Correct.

1 Q. And if the property was not rezoned,
2 Burroughs & Chapin was not obligated to go forward
3 and could use that to get out of the deal?

4 A. That's what the contract says. And
5 most contracts will, you know, specify certain
6 things have to be met in order to close, yes.

7 Q. Contingencies.

8 A. And during that process from November
9 to the closing period, they got assurances that the
10 County would work with them on the development
11 agreement to create a vision for the property.

12 And so, you know, the zoning was not a
13 real issue here. I mean, but it is a condition of
14 the -- so, obviously, it met their test when they
15 had discussions with the County, what they would do
16 in the future, um, if they closed.

17 Q. Mr. Manning, it was a contingency that
18 gave them a get-out-of-jail-free card?

19 A. Sure.

20 Q. Now, then, the next document we
21 have -- I found 275 -- 207. I want to show you a
22 letter dated December 11th, 1998 from Lockwood
23 Greene to Cary McSwain.

24 You testified about that letter, didn't
25 you?

1 Q. Now, then we go to Plaintiff's Exhibit
2 166.

3 Do you remember this Richland County
4 proposed action --

5 A. I do.

6 Q. -- document that was put in by the
7 Plaintiff?

8 A. I do.

9 Q. And the author of the document was
10 referred to as Mr. Knudsen?

11 A. Correct.

12 Q. Are you aware -- I think his name is --

13 MS. TAYLOR: Knudsen.

14 THE WITNESS: Knudsen?

15 MS. TAYLOR: Knudsen.

16 BY MR. JOHNSON:

17 Q. Anyway --

18 A. Well, I need -- I owe an apology.

19 Q. So does Mr. Becker.

20 MR. BECKER: Please convey it to him
21 for me.

22 BY MR. JOHNSON:

23 Q. In this report, they discuss what is
24 going on with the levee system and FEMA, and they
25 come up with several alternatives, correct?

1 A. Uh-huh, correct.

2 Q. And the alternatives are, Do
3 nothing -- it has more, but that's basically the
4 first alternative.

5 Number two is: Authorize the
6 chairman's council or his designee to take the
7 first steps of acceptance of responsibility,
8 contingent upon engineering certification,
9 certification by the Corps of Engineers and
10 approval, and acceptance by FEMA.

11 And the third was: Defer action, which
12 would mean the County awaits whatever action FEMA
13 imposes on Richland County.

14 A. Right.

15 Q. And they recommended that the second
16 option be taken, correct?

17 A. That's correct. And if they had taken
18 one and three, Burroughs & Chapin would have gone
19 home.

20 Q. And then subsequent to that, that was
21 when there was a meeting with -- I think you said
22 you attended it -- Kit Smith attended it, Michael
23 Ey, a lawyer with the McNair Firm, attended it.
24 And who else? Was there someone else?

25 A. George Gregory, myself, Kit Smith, and

1 Mr. Ey.

2 Q. And at that meeting, there
3 was -- somebody typed or had typed a proposed
4 motion, correct?

5 A. The way I recall it was, Mr. Gregory
6 and myself scheduled a meeting with Ms. Smith -- I
7 can't remember who called the meeting -- in order
8 to address concerns that she might have about the
9 project. So we gave her a full review of the
10 project.

11 And during that meeting, she personally
12 drafted, along with George, the language that was
13 in -- ultimately in that resolution.

14 Q. Okay. So she and George and/or
15 Mr. Ey --

16 A. Correct.

17 Q. -- came up with a draft motion?

18 A. And, you know, during that meeting, I
19 mean, Mr. Gregory was making it clear that, you
20 know, time was of the essence, we had to move
21 forward. This project was not going to take place
22 unless we had those kinds of assurances.

23 Q. Okay. Now, then there was -- the next
24 document, I believe, in the chain, is the letter
25 from FEMA in response --

1 A. Wait, let me get Ms. Holland's letter.

2 Q. Next in the chain of documents is a
3 letter dated January 22nd, 1999 from Ms. Holland to
4 FEMA, correct?

5 A. Okay.

6 THE COURT: I'm sorry, what's the
7 number on that?

8 MR. JOHNSON: Oh, I'm sorry, it's
9 Exhibit 17, Your Honor.

10 THE COURT: 17, all right.

11 BY MR. JOHNSON:

12 Q. And it attaches the Lockwood Greene
13 letter of January 20th, 1999, correct?

14 A. That's correct.

15 Q. And she writes to FEMA that:

16 The attached letter is asking for
17 assurances that if the levee is upgraded to meet
18 the standards outlined in 44 CFR 65.10 (mapping of
19 areas protected by levee systems) that the levee
20 would be recognized by FEMA and FEMA would approve
21 a map revision submitted through the normal
22 process.

23 A. That's correct.

24 Q. Then FEMA responded to this letter to
25 her -- let me make this clear. Ms. Lisa Holland

1 worked for the Department of Natural Resources,
2 didn't she?

3 A. She did, but I believe that they are
4 the responsible party for mapping and oversee that
5 process for Richland County.

6 Q. Mr. Manning, she is the state
7 coordinator for flood mitigation for the flood
8 mitigation program. She works for the State?

9 A. She works for the State, but I think
10 there are joint development agreements where the
11 County relies on the State for the mapping process.

12 Just like right now, the re-mapping of
13 the Congaree River is being headed up by the
14 natural resources, but the County would have their
15 personnel involved in that process.

16 They --

17 Q. Mr. Manning, does Ms. Holland work for
18 Richland County? Is she an employee of the County,
19 to your knowledge?

20 A. She's not an employee of the County.

21 Q. Thank you.

22 Now, FEMA responded to her letter,
23 didn't they?

24 A. Correct.

25 Q. And they responded by a letter dated

1 January 26th, 1999, Plaintiff's Exhibit 18,
2 correct?

3 A. Correct.

4 Q. And in that letter, they basically say
5 that if Columbia Venture -- excuse me,
6 Burroughs & Chapin -- upgrades the levees in
7 accordance with the requirements of the FEMA
8 regulations and in accordance with the requirements
9 of any local governmental agencies, then FEMA will
10 approve the levees and certify the levees.

11 That's what it says?

12 A. That's what it says.

13 Q. In other words, if they do it and
14 follow the law -- that is, Burroughs & Chapin does
15 it and complies with the law -- FEMA will likewise
16 comply with the law and certify what's been done?

17 A. It makes no sense to me that Richland
18 County would go through the process when they
19 didn't intend for that process to take place.

20 Q. Mr. Manning, would you answer my
21 question?

22 A. I thought I -- okay.

23 Q. No, you gave me your opinion about what
24 was or should have been done.

25 A. Okay.

1 Q. My question was, What FEMA is really
2 saying is, if Burroughs & Chapin upgrades in
3 accordance with the law, we'll respond in
4 accordance with the law and certify the levees.

5 It's that simple; isn't it?

6 A. Do you want me to read what it says?

7 Q. If you need to.

8 MR. BECKER: That is the best evidence,
9 Your Honor.

10 THE WITNESS: It says: In the
11 aforementioned -- if the aforementioned levee is
12 upgraded to meet, in total, the applicable portions
13 of 44 CFR, Part 65.10, and the construction
14 necessary for it to meet said requirement is in
15 compliance with state and local floodplain
16 management requirements, then FEMA would revise the
17 applicable FIRM to remove the special flood hazard
18 designation and floodway.

19 And I think that was the intent of all
20 of the parties to do that.

21 BY MR. JOHNSON:

22 Q. That's what it said. Thank you.

23 Now, the next thing that happened,
24 according to the evidence presented yesterday and
25 the day before, is, the committee meeting took

1 A. Okay --

2 MR. BECKER: I believe Mr. Johnson's
3 questions are asking for a legal interpretation and
4 legal conclusions.

5 MR. JOHNSON: Well, I've been hearing
6 that all day.

7 THE COURT: I think it's just plain old
8 argument between the parties. I think that
9 contingency is something that's dependent upon
10 certain things being done.

11 MR. JOHNSON: Well, let me ask
12 this -- I'll move on, Your Honor.

13 BY MR. JOHNSON:

14 Q. The fourth contingency says: The
15 parties, including Richland County, the City of
16 Columbia, and the developers, resolved issues of
17 the performance and funding of the operation and
18 maintenance responsibility.

19 Did I read that correctly?

20 A. That's correct.

21 Q. And so one of the contingencies is that
22 those three groups would have to resolve and agree
23 upon how to handle that matter, correct?

24 A. Correct.

25 Q. Have you observed --

1 A. But, you know, if you look -- can I
2 make a comment to that? I mean, it only makes
3 sense that you would have that contingency in there
4 when the City of Columbia controls a large portion
5 of that levee, and that could be done -- that
6 wouldn't be a significant problem.

7 I mean, obviously we've looked at the
8 dollar amounts, we've looked at the tax benefits.
9 I mean, it would be something that would -- you
10 can't get to that step without the other step being
11 done.

12 Q. Mr. Manning, have you lived in Columbia
13 all of your life?

14 A. Yeah, I have.

15 Q. You have had an opportunity to observe
16 city government and county government?

17 A. Yeah, I have.

18 Q. Sometimes they agree and get along
19 fine. Sometimes, for no good reason, they don't
20 agree. Correct?

21 A. Correct.

22 Q. Are you clairvoyant?

23 A. No. I wish I had a crystal ball,
24 though.

25 Q. I do, too.

1 Are you able to predict with certainty
2 what action would be -- what agreement, if any,
3 would be reached between the County and the City on
4 any issue that would come up in the future?

5 A. Well, I'm sure that the division and
6 the responsibility and the funding for certain
7 parts of -- should I answer a yes or no or --

8 Q. If you would answer the question.

9 A. All right. Ask it one more --

10 Q. Are you able to predict with
11 certainty --

12 A. No, I'm not able to predict.

13 Q. Thank you.

14 MR. BECKER: Do you need to explain
15 your answer?

16 THE WITNESS: Well, you know --

17 MR. JOHNSON: Your Honor, I object to
18 counsel --

19 THE COURT: He can explain.

20 MR. JOHNSON: I mean, if he wants to.
21 I didn't cut him off.

22 THE WITNESS: Obviously, the County,
23 owning a large portion of the levee, they're going
24 to need to be required, or participate, in how to
25 maintain that levee. It's a total levee system.

1 You can't just piecemeal it together. And all
2 parts of it have to meet the requirements, and
3 that's why that was put in there, or they couldn't
4 require Columbia Venture to maintain their levee.

5 BY MR. JOHNSON:

6 Q. Mr. Manning --

7 THE COURT: Excuse me. It's already
8 after one o'clock, so we'll go ahead and break
9 until it's about five after one. Let's break
10 until, let's say, 2:15.

11 (The lunch recess was held.)

12 THE COURT: All right, then, if we're
13 ready, you may proceed.

14 BY MR. JOHNSON:

15 Q. Mr. Manning, before lunch we were
16 talking about the resolution that was adopted on
17 February the 2nd, 1999.

18 A. Okay.

19 Q. Do you remember that?

20 A. Yes, sir.

21 Q. All right. Have you ever seen a
22 written agreement, signed agreement, by Columbia
23 Venture and Burroughs & Chapin and Richland County
24 regarding the matters set forth in the resolution?

25 A. No, I have not.

1 and February the 19th?

2 A. I do know that Burroughs & Chapin was
3 continuing to solidify its investment group, i.e.,
4 the financing. And I know that Lockwood Greene was
5 continuing to do their analysis, as far as the
6 levee was concerned.

7 Q. What were they doing between the 17th
8 and the 19th, specifically, Mr. Manning?

9 A. You know, I can't say that they were
10 writing letters to Mr. Milton Pope, but, you know,
11 they were, all the way up to the day of the
12 closing, evaluating those -- the issues that were
13 out there.

14 Q. What I'm trying to find out is, do you
15 have any specific knowledge?

16 A. I do not have any written
17 documentation. No, sir, I don't.

18 Q. Do you have any -- did you observe them
19 do anything?

20 A. No, sir.

21 Q. Okay. Now, to your knowledge, did
22 anyone from Burroughs & Chapin, Columbia Venture,
23 Lockwood Greene, have any conversations with Ralph
24 Pearson regarding rise and no-rise issues,
25 no-impeding issues?

1 And what I'm trying to find out is,
2 were you present when any of those persons spoke to
3 Mr. Pearson?

4 A. No, I was not. But they did ask
5 me -- the people in the organization had asked
6 me -- I live in Richland County, I had done this
7 before. I mean, there was communications about
8 what my thoughts were of that issue.

9 You know, but they were doing their due
10 diligence themselves. I guess they would have had
11 to have had that conversation with Mr. Pearson, and
12 I did not see that happen, or I don't have any
13 record of it.

14 Q. Well, in terms of doing due diligence,
15 you would hope they would have that conversation,
16 wouldn't you, with the engineer, particularly since
17 you supposedly had alerted them to the problem?

18 A. I alerted them to the problem, but also
19 FEMA was using the same standard. Ralph Pearson
20 had told me before that they were using that
21 standard.

22 Q. And my question in terms of the quality
23 and the due diligence performed --

24 A. I do not have any record of them
25 getting a letter from Mr. Pearson.

1 Q. To your knowledge, did
2 Burroughs & Chapin, Columbia Venture, Lockwood
3 Greene have any communications with Rust
4 Environmental who did the environmental study that
5 brought all of this out in the first place?

6 A. I do know that there was conversations,
7 but I can't speak directly to what was said. But I
8 do know they took a report and contacted those
9 people.

10 Q. Somebody told you they did?

11 A. I guess it's hearsay.

12 Q. I would say so.

13 Now, Columbia Venture was represented
14 at the closing by the McNair Firm, weren't they?

15 A. Could you repeat that.

16 Q. Was Columbia Venture represented by the
17 McNair Firm in the closing?

18 A. Yes, sir.

19 Q. And the McNair Firm is a fine law firm,
20 aren't they?

21 A. I believe so.

22 Q. And did any member of Columbia Venture
23 obtain an opinion from the McNair Firm, written
24 opinion, that said that based upon the information
25 they had in hand, it was somehow guaranteed that

1 they would be able to do the development?

2 A. I can't answer that.

3 Q. You have talked about the time
4 constraint, correct?

5 A. Correct.

6 Q. And the time constraint was the time
7 constraint on the part of the seller?

8 A. Correct.

9 Q. Correct?

10 A. Correct.

11 Q. And am I understanding correctly that
12 if the seller didn't pay off what was owed on the
13 property by a certain date, the seller would lose
14 the property?

15 A. That's correct. They would lose the
16 right to repurchase the entire property, they
17 wouldn't lose all of the property --

18 Q. Do you know, was there any --

19 A. -- or I wouldn't lose my property.

20 Q. Was there any communication by anyone
21 from Burroughs & Chapin or Columbia Venture about
22 purchasing the property out of foreclosure? In
23 other words --

24 A. Repeat that again. I'm not sure --

25 Q. Yeah.

1 Was there any discussion -- I mean, the
2 problem was the Manning family property.

3 A. Right.

4 Q. To your knowledge, was there any
5 communications between Columbia Venture and
6 Burroughs & Chapin about, Well, let's just let it
7 go into foreclosure, and we'll buy it out of
8 foreclosure when Manning loses it?

9 Were there any such --

10 A. I don't know whether they made any
11 contact or not, but I think it was clear that the
12 timeline was in place, it had to be adhered to, and
13 it was my impression, as the seller, that Congaree
14 Farms and Miles Loadholt weren't going to let it
15 go, because they had an opportunity. They wanted
16 to pursue the same thing.

17 Q. Mr. Manning, the deal changed from the
18 original deal; didn't it?

19 A. Explain that to me. I'm not sure I
20 understand.

21 Q. Well, originally, the purchaser was
22 going to pay 18 million dollars in cash to your
23 father?

24 A. That's correct.

25 Q. When the deal was renegotiated, the

1 language that requires joint County participation
2 in the mapping process, especially as it affects
3 impacted communities on one side of the river or
4 the other.

5 And from the very onset of Lockwood
6 Greene's analysis, they didn't feel like there was
7 going to be any impact on the other side of the
8 river.

9 Q. But don't you remember that Lockwood
10 Greene said the numbers could change, other people
11 may reach a completely different opinion, and they
12 put that in their letter?

13 A. We know the numbers changed. The maps
14 changed. Richland County could have elected not to
15 let that process go through, very early in the
16 game.

17 Q. Now, you had testified about knowing
18 about a levee that had protected an existing
19 industrial zone?

20 A. That's correct.

21 Q. And I think you said you went on the
22 Richland County online --

23 A. I think it's Richlandonline.com.

24 Q. And is that where you got your
25 information?

1 A. I went online -- onto the Richland
2 County website, went to the GIS mapping system.
3 There's overlays or things that you can add to the
4 aerial photograph, which I did, and FEMA maps come
5 up, or FEMA flood zones come up, and that's where I
6 got my information, other than my personal visual
7 inspection of the levee that basically showed it
8 being non -- you know, it wasn't maintained..

9 Q. And did you do anything further to
10 obtain that information, other than what you've
11 told me?

12 A. No, I did not.

13 Q. Isn't it true that when you go on the
14 online -- Richland online -- it pops up a
15 disclaimer?

16 MR. BECKER: Could we see this before
17 you submit it for the record?

18 MR. JOHNSON: Sure.

19 THE WITNESS: You know, I see a
20 disclaimer, and I guess that's the one on Richland
21 Online.

22 Does that materially impact what I told
23 you?

24 BY MR. JOHNSON:

25 Q. That's for the fact finder.

1 The disclaimer basically says:
2 Reasonable efforts have been made to ensure the
3 accuracy of the map, however, the information
4 presented should be used for general reference
5 only.

6 Richland County expressly disclaims any
7 responsibility for damages or liability that may
8 arise from the use of the information.

9 A. I understand that, but we all use that
10 website for information. And if you go to the same
11 thing on the property that's in question here
12 today, you know, they've pulled and highlighted
13 that those maps were in -- you know, changing and
14 were different than the maps that I referred to on
15 215 and I-20.

16 Q. Mr. Manning, what was the last
17 structure built on the -- when was the last
18 structure built on the Manning property? You have
19 talked about --

20 A. The Manning property, being Columbia
21 Venture property?

22 Q. Your property.

23 A. My property --

24 Q. Prior to your father selling it.

25 A. Prior to my father selling it. I guess

1 that would be selling it to Burroughs & Chapin.

2 Q. Before they sold it to Columbia
3 Venture?

4 A. Heathwood Hall would be the last
5 facility that would have been built on the
6 property.

7 Q. I think you talked about there being
8 farm structures?

9 A. Yeah, there were barns and a house and
10 an office. There was a grain facility.

11 Q. When were those built, the last one?

12 A. Probably 1972, '4, maybe.

13 Q. Okay. Mr. Manning, prior to the
14 Stormwater Ordinance being amended, Heathwood Hall
15 had a sizable investment out there, didn't they, in
16 structures?

17 A. Yes, they did.

18 Q. And the city wastewater treatment had a
19 sizable investment out there, did they not?

20 A. They did.

21 MR. JOHNSON: Thank you. Thank you,
22 Mr. Manning.

23 THE WITNESS: Thank you.

24 THE COURT: Let's see if he has any
25 redirect. Almost there.

1 attention, Your Honor, to -- on the second
2 page -- Mr. Knudsen's question down there at the
3 beginning of the -- after what appears to be the
4 first paragraph, he says:

5 My big questions at this time are
6 these: If the County, through its administrator,
7 requested a delay because it did not agree with the
8 floodway lines, now that it has been changed back
9 to essentially 1994 levels, how do we disagree with
10 that finding?

11 BY MR. BECKER:

12 Q. Mr. Manning, I would like you to please
13 take a look at Defendant's Exhibit 2. Um, do you
14 have that in front of you there? Let's just take a
15 look here at Defendant's Exhibit 2.

16 Mr. Johnson questioned you about this,
17 and I believe his point was whether or not this
18 represented a change in strategy of Columbia
19 Venture with respect to FEMA and the floodplain
20 mapping process.

21 Do you recall that?

22 A. I do.

23 Q. Do you recall that the date of Richland
24 County's letter denying Columbia Venture's permit
25 application to upgrade the Manning levees was May

1 13th --

2 MR. JOHNSON: Your Honor, I object to
3 the leading.

4 BY MR. BECKER:

5 Q. -- 1999?

6 A. Correct.

7 Q. And what is the date of this letter?

8 A. May 27th.

9 Q. Thank you.

10 Mr. Manning, Mr. Johnson asked you
11 whether or not it was reasonable to expect that
12 opposition would occur to the project.

13 A. I remember the question.

14 Q. You recall that?

15 A. Uh-huh.

16 Q. Before the purchase -- before the
17 property was purchased by Columbia Venture, was
18 there any indication from any source of public
19 opposition to the project?

20 MR. JOHNSON: Your Honor, unless
21 there's some foundation laid that it was known to
22 the public that the purchase was taking place, I
23 don't believe it would have any relevance.

24 THE COURT: I will overrule the
25 objection.

1 THE WITNESS: I knew of no objection,
2 and it was, you know, public knowledge at that
3 time, you know, going back into May, July, during
4 the summer of '98.

5 And as the broker, you know, we were
6 trying to get our hands around the problems that we
7 all know were there. And there was no public
8 opposition that I knew, nobody approached me to
9 express concern. And the County embraced the
10 project. They were doing what we asked them to
11 do --

12 MR. JOHNSON: Your Honor, object to
13 opinions.

14 THE WITNESS: -- in order to move this
15 project forward.

16 BY MR. BECKER:

17 Q. Mr. Johnson asked you, Mr. Manning,
18 whether the Manning levees have ever been upgraded
19 and certified to meet FEMA standards.

20 Do you recall that?

21 A. Yes, sir.

22 Q. And your answer was no?

23 A. That's correct.

24 Q. My question to you is, why?

25 A. We were denied.

1 MR. JOHNSON: Objection to it being an
2 opinion.

3 THE COURT: I'm sorry?

4 MR. JOHNSON: Opinion from a lay
5 witness.

6 THE COURT: Overruled.

7 Go ahead, sir.

8 THE WITNESS: We were denied the
9 opportunity to do that.

10 BY MR. BECKER:

11 Q. By who?

12 A. By Richland County.

13 THE COURT: The reason for that ruling
14 is that on cross-examination, Mr. Johnson went into
15 a lot of opinions, matters, in regard to the
16 witness.

17 BY MR. BECKER:

18 Q. Mr. Manning, I would like to ask you to
19 please take a look at Plaintiff's Exhibit 8.

20 Mr. Johnson asked you whether any
21 detailed land use plan was submitted to Richland
22 County prior to purchase.

23 Do you recall that?

24 A. I do.

25 Q. Plaintiff's Exhibit 8 is your letter to

1 Q. Now, Mr. Manning, between the time
2 Burroughs & Chapin became involved in
3 this -- looking at this project and the closing of
4 the sale, was there any public announcement of
5 the -- what the -- the deal that was being looked
6 at and the proposed development?

7 A. Was there any public announcement prior
8 to --

9 Q. The closing.

10 A. -- the closing. The only public
11 notification would have probably been the
12 discussions I had with the County in the public
13 hearings that took place during July of 1998,
14 which, you know, outlined that there was a very
15 large project out there that was being considered.

16 Q. What I'm talking about is, where
17 Columbia Venture would have put forward -- or
18 Burroughs & Chapin put out a dog-and-pony show that
19 shows, This is what we're doing, it's going to be
20 the greatest thing, yada yada, yada. Any such
21 announcement?

22 A. No, there was no announcement. I
23 wouldn't expect there to be one. I mean, obviously
24 you want to keep all of your negotiating issues
25 private, but there was notice that there was a

1 project pending. So public opposition should have
2 been made aware of, and the County was not feeling
3 the pressure of that opposition prior to
4 Burroughs & Chapin closing.

5 Q. Do you know of any environmental group
6 who ultimately became an opponent who had any
7 knowledge of your -- of this project prior to the
8 closing?

9 A. If you want to go back and pull the
10 record of that FEMA meeting that we had, I will bet
11 you there's going to be some people who were in
12 opposition to it at that meeting. Bring me the
13 people who registered at the meeting, and I promise
14 you, there's some in there.

15 Q. Which FEMA meeting are you referring
16 to? I will get it.

17 A. There's a meeting with FEMA.

18 Q. When?

19 A. In the summer of '98.

20 Q. Summer of '98. Before or after
21 Burroughs & Chapin got involved?

22 A. Before.

23 Q. Okay. I'm talking about announcement
24 of what the Burroughs & Chapin --

25 A. No, no, no. Okay. After the

1 Q. Now, here is the last question: Can
2 you tell me -- and what I want is your personal
3 knowledge, not your opinion, but what you saw, was
4 present for and participated in directly -- any
5 time that Richland County denied Columbia Venture
6 the opportunity to upgrade the levees?

7 A. You want my --

8 Q. I don't want your opinion. I don't
9 want your impression. I want to know any time that
10 you were present or participated in some event that
11 resulted in Columbia Venture --

12 A. I did not participate in the
13 submittals, and I wasn't in receipt of the denials,
14 but I was in the meetings that the things were
15 discussed about those applications and permits and
16 why they were denied.

17 Q. Can you point to me in the exhibits,
18 any application that was submitted relating to the
19 levees, other than the one application that was
20 returned because it was incomplete?

21 A. No, I cannot.

22 Q. Thank you.

23 A. But I don't believe it to be
24 incomplete.

25 Q. I know you have your subjective

1 gentleman named Doug Wendell, who has just recently
2 been named president and CEO of Burroughs & Chapin
3 Company.

4 Mr. Wendell approached me at a wedding
5 reception and asked me to come talk to him, go on
6 board with Burroughs & Chapin, work with them, he
7 needed some help.

8 Q. And what year was that, sir, when you
9 went to Burroughs & Chapin?

10 A. I want to say around 1995.

11 Q. What was your initial position with the
12 company?

13 A. Assistant to the president and CEO.

14 Q. What were your duties as assistant to
15 the president and CEO?

16 A. They were multiple. It was a very lean
17 organization, had only four or five people in the
18 most key decision-making positions, and we were
19 entertaining a lot of things. It was a very large
20 company that heretofore had mainly held property,
21 and they wanted to go on a very aggressive
22 expansion campaign. So we were entertaining a lot
23 of projects and doing things, so my duties were
24 numerous.

25 Q. All right. Now, what was your position

1 with the company in 1998?

2 A. I had become -- my title was now
3 general counsel and assistant to the president and
4 CEO.

5 Q. Okay. Now, can you tell us, in
6 general, what is the business of
7 Burroughs & Chapin?

8 A. Burroughs & Chapin is a very large
9 landholder in Horry County. Their business is
10 primarily that of development. They have numerous
11 types and sizes there. They range from
12 large-acreage projects in the thousands of acres,
13 to big-box retail, to restaurant development, to
14 mall development, to sites for Kmart's, things like
15 that.

16 It runs the gamut. Also, hotels and
17 entertainment venues, Broadway at the Beach, being
18 one that people in this room may be familiar with.

19 Q. Now, tell us when you first learned of
20 the -- and I call it the Green Diamond property,
21 you know what I'm talking about.

22 When did you first learn of the
23 opportunity to acquire the Green Diamond property,
24 and how did you learn about it?

25 A. Well, obviously, my first indication

1 would have been from Mr. Wendell. He would have
2 called me in and told me that he had received
3 communications from several people. A couple, for
4 example, were representatives from Lockwood Greene.

5 Another one was a gentleman named Bill
6 Sermon, who was a real estate broker, who happened
7 to be from the Pawleys-Litchfield area, so he was
8 familiar with Burroughs & Chapin. That's the first
9 way I would have heard of it.

10 Q. All right. Now, did Mr. Wendell ask
11 you to look into this opportunity?

12 A. He did.

13 Q. And you did, in fact, look into the
14 opportunity?

15 A. Yes. I had initial discussions with
16 representatives from Lockwood Greene and, in
17 particular, Bill Sermon.

18 I came to Columbia to meet the Mannings
19 and look at the property and view it, and so, from
20 that, went forward on trying to determine what if
21 any opportunities might be available and where
22 Burroughs & Chapin may fit in those opportunities.

23 Q. All right. Now, did you view this
24 property as something that should be pursued by
25 Burroughs & Chapin as an investment?

1 MR. LYDON: Object to the form,
2 leading.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, we did. There were
5 a number of reasons.

6 BY MR. GRIER:

7 Q. Why did you view that as an investment
8 opportunity for Burroughs & Chapin?

9 A. After having gone through some of the
10 details of what would be necessary in order to
11 acquire the property, you have heard previous
12 testimony as it related to the fact that the
13 property had been leveraged and things like that
14 beforehand.

15 Getting beyond that and price and those
16 types of things, what I saw and the reason that
17 made sense for Burroughs & Chapin to become
18 involved, were the opportunities.

19 First of all, we're talking about 4,500
20 acres within ten minutes of the State Capital.
21 We're talking about beautifully maintained
22 property, absolutely gorgeous farmland. We're
23 talking about a six-lane road, leading directly to
24 the front door.

25 You've got a major university, in

1 addition to the State Capital and the seat of
2 government close by. There was a major
3 international airport within five minutes, by
4 interstate. There was a private airport within
5 five minutes of the property.

6 There was a major interstate road
7 running through the middle of it. There was an
8 interchange off of that interstate. There was the
9 opportunity to place another interchange on the
10 property.

11 There was over two and a half miles of
12 riverfront that was beautiful riverfront property.

13 There were just a number of reasons why
14 it would be of interest to a developer such as
15 Burroughs & Chapin.

16 MR. GRIER: All right. Now, do we have
17 Plaintiff's Exhibit 264?

18 (PLF. EXH. 264, Confidentiality
19 Agreement and Executive Summary of Preliminary
20 Development Plan, dated February 18, 2012, was
21 presented.)

22 BY MR. GRIER:

23 Q. Mr. Gregory, you've been handed
24 Plaintiff's Exhibit 264.

25 Can you tell us what this is?

1 A. Give me a moment, I will review it.

2 Yes, sir, this is a series of documents
3 that were prepared and put together for purposes of
4 being able to determine potential partners to come
5 into the project with Burroughs & Chapin.

6 And it was also a very good summary of
7 the types of things that we saw and envisioned.

8 It also contains some financial
9 information on some preliminary basis to give an
10 opportunity of what may have been available by
11 developing the property.

12 Q. Now, if you look on the last page,
13 there's a fax transmittal. This document was faxed
14 to a Mr. Will Crawford on February 18th, 1999. But
15 my question is, do you know when this document
16 would have been prepared?

17 A. The package that the faxed transmittal
18 cover sheet is attached to would have been prepared
19 well ahead of that. This particular date on this
20 transmittal sheet is the day before the property
21 was closed on.

22 And McNair Law Firm, who the
23 transmittal is by, was providing legal services to
24 Burroughs & Chapin at the time on the closing. In
25 particular, the name Judith McGinnis, she was a

1 real estate specialist with McNair. And if my
2 recollection is correct, Mr. Will Crawford was a
3 gentleman who was employed by one of the subsequent
4 purchasers and investors in the project.

5 Q. Did you have any role in the
6 preparation of this document?

7 A. Yes, sir. I had an extensive role in
8 it. A lot of it, I drafted. A lot of it I had
9 given to me and put in an organized form.

10 Q. All right. Now, the first three pages
11 is a confidentiality agreement, and the page that
12 is McNair 2444 is something called a term sheet.
13 And if you would take a look at that page --

14 A. Yes, sir.

15 Q. -- it says there, Acreage, 4,600, plus
16 or minus. Gives the site lead developer as
17 Burroughs & Chapin Company.

18 A. Yes, sir.

19 Q. It says: There is a small opportunity
20 to get this large amount of acreage strategically
21 located in one parcel for development purposes.

22 Now, tell me why it says there is a
23 small opportunity to get this large acreage.

24 A. That is very simple. Mr. Burwell
25 Manning, who was the owner of the property, had

1 mortgaged a good deal of acreage within that,
2 several different places. There were loans
3 outstanding, things like that.

4 There were people -- actually, some of
5 his ownership was in the form of simply options to
6 buy back, once he had made some repayments and
7 things like that.

8 The property was going to go, a good
9 bit of it, to other people as of a time certain.
10 So if it was not purchased in a very timely
11 fashion, you would have never have been able to put
12 Humpty Dumpty back together again and have the
13 opportunity to have 4,500 acres under the control
14 of one developer.

15 Q. Now, it says in the next paragraph
16 there: What is being sought are investment
17 partners to come together with Burroughs & Chapin
18 Company in to develop this property as a
19 multiphase, multiuse project.

20 The intent is to have five members of a
21 team with 20 percent ownership. The cost of an
22 open 20 percent position is 6 million dollars.

23 Was that the plan at that time the
24 document was prepared?

25 A. Yes, sir. Again, it was very

1 preliminary, trying to look into the opportunities
2 there. The real interest we had was bringing a
3 group of people together that had various things
4 under their auspices that would lend itself to
5 developments of this type.

6 For example, we wanted somebody that
7 had heavy experience with apartments, because we
8 knew the university needed housing down the Bluff
9 Road area. And the proof is in the pudding over
10 the years since. There's literally thousands of
11 units of university housing that have now been
12 developed along the Bluff Road corridor outside of
13 this tract.

14 Q. Now, it says: Burroughs & Chapin
15 Company, Inc., will serve as the lead developer and
16 manage the project for a 5 percent fee of the
17 profits generated on the project, above and beyond
18 the initial investment of the development group.

19 Again, was that part of the proposal
20 that you were making to investors at that time?

21 A. Yes, it was. Burroughs & Chapin wanted
22 to be in position to be paid for their management
23 opportunity within the project.

24 Q. All right. Now, at the time that you
25 were looking at the property, what uses did you

1 think this property would be suitable for? What
2 uses did you think were suitable for this property?

3 A. There were many uses, as the Mannings,
4 in their attempt, to market the property prior to
5 making contact with Burroughs & Chapin, had had
6 some initial concepts and things done.

7 But we saw the opportunity for all
8 types of residential, from single-family homes with
9 acreage to more dense development with
10 condominiums, and then student apartments and
11 housing associated with the university.

12 With a tract this large, you had a
13 blank canvas and you had the ability to do some
14 significant planning and bring a lot of things
15 together.

16 In addition, research was a heavy
17 emphasis there. This property had the opportunity
18 to become the Research Triangle property in North
19 Carolina times ten. This property could hold
20 recreational -- tremendous recreational potential.
21 There were wetlands and things like that on it,
22 from nature hiking trails to golf courses to other
23 amenities.

24 There were all types of opportunities
25 to work with the university. That was very

1 exciting. The farmers market tract that we are
2 aware of now, that was the vision even back then.

3 I had a personal interest in working
4 with the university, and that gave me a lot of
5 energy for doing so. I'm a big fan of the
6 Gamecocks and saw a lot of opportunity for
7 improvements there, and this could have gone beyond
8 even the scope of this, with things that were
9 getting ready to develop at the time, such as a new
10 coliseum, a new baseball stadium. All of those
11 things were on the horizon for the university.

12 With this type of acreage, between
13 this, the farmers market, one of the adjacent
14 property owners, Bill Greg, there were just endless
15 opportunities with the university.

16 There were opportunities on many other
17 levels, again, with commercial. You've got an
18 interstate running through it. You would have the
19 normal things there, from hotels, conference
20 centers, C stations, restaurants. You've got
21 marinas.

22 Again, there were just multiple
23 opportunities. I won't bore you with that. But, I
24 mean, everybody has an idea. It was just a
25 tremendous blank canvas with a lot of opportunity.

1 Q. At that time, did Burroughs & Chapin
2 have any experience with developing, say,
3 large-scale real estate projects that would include
4 the uses that you thought were suitable for this
5 Green Diamond property?

6 A. Yes, sir, we did, almost across the
7 board.

8 Q. Could you elaborate on some of those.

9 A. I would be glad to. I mean, from
10 big-box retail to entertainment venues. We had
11 sites for restaurants, sites for convenience
12 stores, malls, all of those types of things.
13 Hotels. Burroughs & Chapin was doing all of that.

14 Q. All right. Now --

15 A. You know, also, Mr. Grier, we -- again,
16 in seeking certain partners, too, we wanted them to
17 be able to bring things to the table. For example,
18 one ultimate partner we had was Regent Partners out
19 of Atlanta. They had been instrumental in
20 developing a significant part of Buckhead, large
21 office towers, which we envisioned on this
22 property, and hotels and apartment complexes and
23 those types of things around Atlanta.

24 So they were significant players, but
25 those were the type and quality of players that we

1 sought to bring in.

2 Q. If you would, look at this document,
3 Plaintiff's Exhibit 264, on Page 2445.

4 MR. GRIER: And, Your Honor, if you
5 would just take a minute to read that executive
6 summary.

7 And, Mr. Gregory, if you would read it
8 also.

9 THE COURT: All right, I have read it.
10 BY MR. GRIER:

11 Q. All right. So now, Mr. Gregory, is
12 this executive summary consistent with the vision
13 that you had for the development of this property?

14 A. I think it is, yes, sir.

15 Q. Now, on the second page there on Page
16 2446, there's a problem area.

17 Do you see that?

18 A. Yes, sir, I do.

19 Q. It says: Some of this site along the
20 river will be in a 100-year flood area. We may
21 have to build up units, pack under, or fill as
22 required.

23 Early indications from engineers are
24 that a dike system along the river will work for
25 the site and allow the use of all lands on the

1 site, with a strong possibility of being able to
2 build flat.

3 Now, my question is, was that a problem
4 area that you were aware of at the time that you
5 prepared this document?

6 A. Yes, sir.

7 Q. All right. Now, I want to get into
8 that in just a minute. I think there's just some
9 due diligence issues in this document also.

10 But if we look on the next page,
11 estimated land use, executive summary -- again,
12 that's a little bit more detailed in terms of the
13 various usage for the acreage. It's got
14 commercial, office, education, residential
15 apartments, marina village, river access,
16 recreational parks, theme park, golf access, and
17 miscellaneous.

18 Now, it also says: Only developers
19 with outstanding track records will be considered
20 to participate in this project.

21 A. Again, at the time of creation of this
22 document, that's what we were trying to do, was
23 bring in people that had the ability to, not only
24 add to what Burroughs & Chapin and the type
25 developments we did, but to enhance and complement.

1 Q. Now, look at the next couple of pages.
2 There's financial numbers here, preliminary
3 analysis.

4 Do you see that?

5 A. Yes, sir. Are we on 448?

6 Q. Yes, 2448 and 2449.

7 Who prepared this preliminary financial
8 analysis?

9 A. Uh, I worked with a CPA named Ron
10 Hendrix out of Myrtle Beach to put this together.
11 We would have also had some help from our internal
12 staff that the financial group worked on pro
13 formas, but primarily Mr. Ron Hendrix.

14 Q. All right. Now, if you look on Page
15 2449 -- and this is based on a five-year
16 projection?

17 A. It appears to be, yes, sir.

18 Q. All right. And the last column down
19 there is, Cash flow before land costs?

20 A. Yes, sir.

21 Q. What is the number down -- what's the
22 five-year total down at the bottom?

23 A. Just shy of 108 million dollars.

24 Q. All right. And if we look on the
25 previous page, 2448, it has at the bottom there,

1 next to the bottom line, Profit after carrying
2 cost.

3 What's the five-year total there?

4 A. Just short of 90 million.

5 Q. Okay. Now, did you consider these
6 projections at the time to be conservative or
7 optimistic?

8 A. They were very conservative. We wanted
9 to, again, with purposes of showing this to other
10 people with a potential investment, we would not do
11 anything short of being extremely conservative with
12 those numbers.

13 Q. Okay. If we go to the next page, it
14 has, Columbia project due diligence.

15 Do you see that?

16 A. Yes, sir.

17 Q. All right. And under the first two
18 items, the first one is FEMA. And then dike
19 system.

20 MR. GRIER: And, Your Honor, if I could
21 give you a minute just to review those.

22 THE COURT: Yes, please.

23 All right, sir.

24 BY MR. GRIER:

25 Q. Now, Mr. Gregory, who was in charge of

1 the due diligence -- or who was involved, I guess
2 would be a better word, in pursuing this due
3 diligence?

4 A. Well, the way Burroughs & Chapin
5 worked, this was a team effort. As you can see,
6 there are a number of names listed throughout those
7 two pages, but we did it as a team.

8 Mr. Wendell appointed me as the -- as
9 sort of the project manager on it, the lead person,
10 to work with all of the interested parties and
11 gather information, bring it together, disseminate
12 it, and so forth.

13 Q. So it was a team effort?

14 A. Absolutely a team effort.

15 Q. Can you tell us who was on the team?

16 A. Yes, sir. Again, Burroughs & Chapin
17 ran very lean. You see a name mentioned in here,
18 Bill Pritchard. He was a development construction
19 vice president with the company. Terry Thompson
20 was an acquisitions and development guy with the
21 company, very high level.

22 Again, working with members of Lockwood
23 Greene, they were very integral, especially as it
24 related to the technical engineering aspects. Both
25 Lane Fowler and Wilson Tillotson were heavily

1 involved on the front end.

2 Q. What about Mr. Deas Manning?

3 A. Absolutely. We viewed Mr. Manning and
4 Mr. Manning's father, Burwell, as extremely
5 valuable assets, because no one knew the property
6 like they did. And they were very forthcoming with
7 information, and, again, considered to be very
8 integral on the front end.

9 Q. Now, in pursuing this due diligence for
10 various team members, did you communicate with one
11 another?

12 A. Yes, sir, we did.

13 Q. Okay. You would report to, say, other
14 members of the team, and they would report to you?

15 A. Yes, sir.

16 Q. And you say you were sort of the
17 project manager of the due diligence team?

18 A. I don't know that there was an official
19 title, but I would sort of categorize my activity
20 level at that point as such.

21 Q. Now, it says down here that
22 Burroughs & Chapin -- this is on the dike
23 system -- Burroughs & Chapin and George Gregory to
24 look at politics and having a municipality or
25 County accept responsibility of maintenance of the

1 levee system, tax incentives.

2 What was the issue there that this was
3 referring to?

4 A. Well, I had been advised by Lockwood
5 Greene that this was a necessary component that we
6 would need on the front end, because the FEMA
7 regulations required such.

8 Q. Okay. Now, just in general, what did
9 you -- you, the project leader here -- what was
10 your idea of what the overall due diligence should
11 be pursued, in terms of whether or not
12 Burroughs & Chapin would ultimately purchase this
13 property and make this investment?

14 A. Um, this project was a little bit
15 unique because of the already-mentioned difficulty
16 in being able to put all of the pieces together as
17 of the time certain. Very short time frame.

18 Number one, you know, sort of
19 a -- well, actually, there were several areas that
20 we would have to look at through due diligence.
21 Part of this and the purpose for this document in
22 going out, one, was to seek partners that would
23 make sense, and also spread some of the risk of the
24 development of this size and nature.

25 Number two, you've got your normal

1 purchase items in a real-estate transaction that
2 you go through, such as zoning, soils, wetlands,
3 all of those types of issues that you do in the
4 normal course of purchasing a piece of property.

5 You've got the uses of the property to
6 look at. Those types of things that will work for
7 the purpose for which you intend. And then the
8 thing that was unique about this one was the fact
9 that there was a levee system in place, protecting
10 the area which we intended to develop, and all of
11 the issues necessary to address there, relative to
12 that.

13 Again, as it can be seen in several
14 different places, we were looking for, you know,
15 even to be able to build up, just like pictures
16 that we saw earlier of Heathwood Hall and that sort
17 of thing.

18 Again, we're a coastal developer, so
19 building properties up is not unique or an unknown
20 thing to developers in Horry County -- or anywhere
21 along the coast, for that matter.

22 Q. Now, I want to come back to this due
23 diligence in just one second, but we -- there's a
24 reference down here to initial land plan?

25 A. Yes, sir.

1 Q. Larry Best has completed the suggestion
2 for improvement to be used as a guide for
3 interested parties and property. Clearly levee
4 station, I think it says, 1 --

5 A. It probably should have been "section."
6 It may have been a typo.

7 Q. -- will be where the first phase of
8 development will occur.

9 Now, who is Larry Best?

10 A. Larry Best is a land planner of -- who
11 is extremely well known in the Carolinas. He is a
12 principal in the land development firm LandDesign,
13 Inc. Their offices are located in Charlotte and
14 Southern Pines, North Carolina.

15 They had done work for
16 Burroughs & Chapin previously, so I was very
17 familiar with his work, and, having been familiar
18 with his work, was very much aware of work he had
19 done in the Raleigh, North Carolina area for NC
20 State University, with some very similar types of
21 projects and things working in conjunction with NC
22 State University.

23 And if I may, for a minute, elaborate
24 just a little bit on that. One of the things that
25 we saw when we were looking at this property was

1 the comparison between Columbia, South Carolina,
2 being a state capital of the South Carolina state,
3 and Raleigh, North Carolina, being the state
4 capital of the North Carolina state.

5 Both, in addition to being the seats of
6 government for their states, also had major
7 universities located downtown. They also had
8 fairgrounds, where their football stadium for those
9 universities was located. They also had an
10 interstate system running through the areas.

11 They were very, very similar in a lot
12 of those things, and I just looked at where the
13 City of Raleigh was, compared to where the City of
14 Columbia was, relative to development with very
15 similar things.

16 Another thing that made this site so
17 unique and appealing to Burroughs & Chapin was the
18 City of Columbia is one of the few places east of
19 Mississippi that has three rivers running through
20 it and three interstates running through downtown.
21 And a good bit of that had been largely undeveloped
22 and untapped.

23 Raleigh had done a wonderful job of
24 doing so, and if you look at Raleigh and where it
25 is now, you not only have the new coliseum next

1 door to the football stadium, you've got the
2 Research Triangle part, you've got this major
3 facility that NC State built out there, that is
4 sort of the tie-in between the university and the
5 research aspects out there.

6 You've got the center of commerce out
7 there. You've got the high-rise office buildings,
8 all of those types of things. And here was this
9 ability in Columbia, South Carolina, to not only
10 duplicate, but far exceed, what our neighbors to
11 the north had been able to do. A great
12 opportunity.

13 Q. Now, could you look through here and
14 point out for the judge where the Larry Best plan
15 is, preliminary, initial land plan, a page number.

16 A. Yes, sir. It looks like McNair 2455,
17 just above where it says CV McNair 2455. It's very
18 small on mine, but you can see LandDesign, Inc.'s
19 stamp on it.

20 Q. That's Larry Best?

21 A. That's Larry Best's company, yes, sir.
22 Again, he's a principal in that.

23 Q. Okay. Now, on the next page, 2451 --

24 A. Could I point out one thing on this,
25 Mr. Grier, if I may?

1 Q. Sure, sure, yes, sir.

2 A. Your Honor, if you could -- if you look
3 in the very top portion of that picture, you can
4 make out the diagram of Williams-Brice Stadium. If
5 you will look directly across from that, you will
6 see what is the farmer's market area. And if you
7 will notice, it is already planned to become major
8 parking for the university and things like that
9 with a spine road in the middle of it, not
10 dissimilar to what we have all seen in the paper
11 the last several days. This was our plan back in
12 1998.

13 Q. All right, sir, look at Page McNair
14 2451, Number 5, Appraisal. It says:

15 There is a full-blown detailed
16 appraisal of the property which will be updated and
17 signed off for our purposes, which values the
18 property undeveloped at 30 million.

19 Do you see that?

20 A. Yes, sir.

21 Q. Is that the so-called Adkins appraisal
22 that's been referred to?

23 A. I believe it is, yes.

24 MR. GRIER: Now, do we have that
25 exhibit, that Adkins appraisal? I think it's 255.

1 I think it's 255, already in evidence.

2 It's Plaintiff's Exhibit 255.

3 BY MR. GRIER:

4 Q. Now, is this the updated Adkins
5 appraisal that was made reference to in this
6 numbered paragraph Number 5?

7 A. Yes, sir. It says it was updated in
8 March '98.

9 Q. And what -- for what reason was it
10 updated?

11 A. Well, if there was an existing
12 appraisal that the Mannings had, there was no
13 reason to reinvent the wheel; we just needed to get
14 that one updated. We were assured that Mr. Adkins
15 was more than qualified to make a determination.

16 So again, with the time constraints to
17 use work that was already in place, just simply
18 made sense at the time, he was an MAI appraiser.

19 Q. All right. Now, was his
20 initial -- this appraisal dated February 8th, 1999,
21 is it an appraisal of the 4,461 acres?

22 A. That's what it says, yes, sir.

23 Q. Was his earlier appraisal for the full
24 4,461 acres?

25 A. No. It was for about 2,500 acres. He

1 just knew we were looking at the larger tract.
2 That was certainly one of the things that appealed
3 to me, that there was an appraisal in effect prior
4 for 2,500 acres at 30 million dollars. We knew
5 that once you go through the facts and things like
6 that.

7 And, subsequent, while there were
8 certain conditions and contingencies within this
9 one, we knew if we could remove those
10 contingencies, then you were looking at 4,500
11 acres, where 30 million had been relative to 2,500
12 acres and to be able to remove those contingencies,
13 then we were probably looking at something --

14 MR. LYDON: Your Honor, I'm going to
15 object if he's going to give his opinion on the
16 value of the property. If he's not --

17 THE WITNESS: That's one of the direct
18 considerations that we have.

19 THE COURT: I will overrule the
20 objection. He was intimately involved with it, and
21 he's not saying he was the land appraiser. He is
22 saying, as a developer, he felt they could make
23 that kind of money.

24 MR. LYDON: I didn't know if he was
25 going to give an opinion as to a value.

1 THE COURT: He's talking about
2 projected profits, projected value.

3 MR. LYDON: That's fine.

4 THE WITNESS: Really, all I was going
5 to say is, we knew that was certainly an extremely
6 low threshold number. There was added value with
7 the additional acres.

8 And with the removal of the
9 contingencies, then it clearly had to be
10 considerably more valuable than that.

11 And we knew with the ability, because
12 of the other factors, I have already enumerated the
13 property would have been worth considerably more.

14 BY MR. GRIER:

15 Q. I want to ask you, before we get into
16 the due diligence on the levee and the FEMA issues
17 and the Richland County ordinances and all of that,
18 I want to ask you about what type of due diligence
19 you would normally do, Burroughs & Chapin, for a
20 project like this. In general.

21 A. Well, do I have carte blanche as it
22 relates to the amount of time necessary? There are
23 no time constraints, things like that, or on this
24 particular one?

25 Q. Well, just sort of what you would

1 normally do.

2 A. Well, you would -- typically what you
3 would do is you look at the property and you
4 actually, physically, go on it and try to determine
5 if there's anything significant. For example,
6 wetlands is always an issue. You want to determine
7 what you think may be wetlands.

8 You go through, you do Phase 1
9 environmental process, which encompasses a number
10 of things that you have qualified environmental
11 engineering firms do.

12 You get wetlands determinations, or you
13 have somebody take a look at it and try to figure
14 out if wetlands are going to be an issue. You look
15 at zoning. There are just a multitude of issues
16 that you look at.

17 Q. Okay. Now, do you ever go talk to
18 local officials to discuss the plans you have for
19 the development of a piece of property?

20 A. Absolutely. We want the local
21 officials involved at the absolute outset of it.
22 We want them to understand the impact -- especially
23 one of this size -- we want them to understand the
24 impact and magnitude of a development of this size.

25 Our approach would be to put everything

1 on top of the table with them to work hand and
2 glove with them. We were going to need their help
3 in a multitude of areas.

4 One thing that really pleased us about
5 the project and the location is that we were
6 dealing with a very large sophisticated government
7 in the state capital of the state. They have
8 extremely qualified people. They're very
9 intelligent, they understand the types of issues.
10 Those are the types of things that we would like to
11 see that makes coming into an area easier.

12 Especially when there are difficult
13 problems that need to be addressed, we want people
14 that are capable of understanding those issues and
15 being able to be conversant about them. They have
16 full-blown services. They have their own
17 engineering departments. They have their own
18 planning department. They have extensive staff.
19 They have their own raft of lawyers.

20 They have extremely competitive races
21 to become council members here. It's a very
22 important thing.

23 So that's something that we viewed as
24 very positive on the front end, and we were looking
25 forward to working with.

1 Q. Okay. Now, have you ever, while you
2 were at Burroughs & Chapin, decided not to do a
3 project because local officials would not support
4 it?

5 A. Certainly. If the local officials were
6 not -- again, given the limited time constraints
7 that we had to be able to assemble the 4,500 acres,
8 if there was no appetite for it from the local
9 government here, we would not have been interested
10 in purchasing that property at all.

11 Q. All right. Under Dike System 2 here,
12 it has: Burroughs & Chapin, George Gregory, to
13 look at politics of having the municipality or
14 County to accept responsibility for the maintenance
15 of the levee system.

16 What was the issue there, Mr. Gregory?

17 A. Again, as previously testified to, that
18 was my understanding from Lockwood Greene, our
19 engineers, a requirement of the FEMA regulations
20 that we needed in order to proceed with an upgrade
21 of the levee.

22 Q. All right. Now, what did you do in
23 terms of carrying out or discharging this task that
24 had been assigned to you?

25 A. Well, it has me as the head on that. I

1 have had extensive experience working with councils
2 and city governments and county governments in
3 Horry County and otherwise. And so from that
4 perspective, that's why my name is there. But
5 again, it was a team effort.

6 We had a lot of people -- again, you've
7 got local people that were friends of the company
8 that we could ask questions and seek guidance from.
9 You had the Mannings, who were intimately familiar
10 with levee issues, and the county government here
11 and the principals involved. You had Lockwood
12 Greene and others.

13 So among the team group, we spoke to a
14 number of elected officials. I would dare say that
15 among the group, the entire council was covered at
16 some point and spoken to.

17 We certainly met with the county
18 administrator, high-level county staff, including
19 Ms. Taylor. We met with department heads, Knudsen
20 with planning, Pearce in engineering, all of those
21 types of things.

22 We would have met with city officials.
23 We would have met with the university. We would
24 have met with local politicians. We would have met
25 with the senator, whose project this would be in

1 his district.

2 We certainly, from a protocol
3 standpoint, wanted to give some special attention
4 to Councilman Scott. It was in her district. But
5 there was just an enormous amount of meetings and
6 discussions held with people.

7 Q. Did you personally meet with certain
8 members of the county council?

9 A. Yes, I did.

10 Q. And did you meet with Mr. Pearson, the
11 engineer, and his staff?

12 A. Yes, I would have done that with
13 Lockwood Greene, probably Wilson Tillotson, if I
14 can recollect correctly.

15 Q. Did you meet with Mr. -- I think you
16 said you met with -- you personally met with
17 Mr. McSwain?

18 A. Oh, yes, on numerous occasions.

19 Q. All right. Now, when you met with,
20 let's say, the members of council and these other
21 county officials -- and I think you said you met
22 with city officials?

23 A. Met with city officials, met with
24 university officials.

25 Q. How would you describe the project?

1 Would it be similar to what's contained
2 in this document that we've been looking at.

3 A. It would have been. Again, I had a
4 land plan. I would have probably rolled out one,
5 probably about the size of the one that's on the
6 board on the back of the wall. I would have taken
7 that with me. It just makes for good viewing and
8 interest and allows people to stand around a table
9 and ask questions. But that type of document would
10 have been important to have with me.

11 We had other ones similar to that, but
12 that's a very good example of the type of things
13 that we would take to these meetings. And, again,
14 our intent was just to lay everything on top of the
15 table. There were no secrets or anything else.

16 We wanted the help of the County. We
17 wanted the help of the local politicians. We
18 wanted the help of the City. We wanted the help of
19 the university. It was important that we have all
20 of that before we go into a deal of this size and
21 magnitude.

22 Q. Now, in your personal meetings with
23 members of council and council staff -- Mr. Pearce
24 and others that you have mentioned here -- what did
25 they say to you in terms of whether or not they

1 might be in favor of this project?

2 MR. LYDON: Your Honor, I'm going to
3 object to hearsay. Unless he's going to give us
4 specifics of who he talked to and when he met with
5 them and what the individual said, this sort of
6 generalization as to what the sense of these people
7 was, I think, is not appropriate.

8 THE COURT: Yes, sir. He is limited in
9 that question to persons with the Richland County
10 government, and not as a broader thing.

11 And what's important here, of course,
12 is our expectations. That's one of the key
13 factors. This gentleman was a primary player in
14 regard to the decision-making process. And what he
15 did, what the impressions that he got from the
16 County, even though they may be subjective, they're
17 subject to cross-examination. But they're
18 certainly relevant, and I overrule the objection.

19 THE WITNESS: To the person, everyone
20 we discussed it with, everyone that I personally
21 discussed it with, every report that I got back
22 from other people that discussed it with that I had
23 instructed to do so, was overly enthusiastic and
24 very receptive to the project. They wanted this
25 project to come.

1 They understood the impact of jobs.
2 They understood the impact of tax dollars. They
3 understood the impact it would have on the
4 university. They understood all of those things
5 very clearly and were very receptive to the idea
6 and the project.

7 BY MR. GRIER:

8 Q. Now, tell us a little bit about what
9 the role of -- what is Lockwood Greene, first of
10 all?

11 A. Lockwood Greene is an international
12 engineering and consulting firm. They are a South
13 Carolina-based company, I think out of the Upstate
14 Spartanburg area. But they have projects that they
15 have worked on internationally.

16 Q. All right. And they ultimately became
17 a partner in the venture?

18 A. They did. They were involved on the
19 front end because they had already been involved
20 with the Mannings and some of their discussions
21 with other potential developers prior to being
22 introduced to Burroughs & Chapin.

23 About the time, again, I think the
24 contacts were primarily initiated by Mr. Sermon,
25 who is a real estate broker down there. But he had

1 had knowledge of Lockwood Greene. But Lockwood
2 Greene, Lane Fowler, and Wilson Tillotson, in
3 particular, came in and met with Mr. Wendell, they
4 met with me, and they met with others, and they
5 obviously were going to serve a key role in the
6 thing. And we ultimately, through those
7 discussions, had particular ideas.

8 One, they would be great partners; two,
9 they were going to be extremely necessary because
10 of their experience with levees and engineering
11 problems. They were going to be inherent here.

12 The other thing that was very unique
13 about Lockwood Greene that made them extremely
14 relevant and important to us is, because, at the
15 time, with the research part and the technology
16 part that was going to be very integral to this and
17 extremely important to the future of the State of
18 South Carolina down the road, we met with the
19 developers of the Research Triangle Park in the
20 Raleigh area.

21 MR. LYDON: I'm going to object to any
22 conversations he had with the developers of the
23 Research Triangle Park in the Raleigh area.

24 THE COURT: I sustain that objection.

25 BY MR. GRIER:

1 Q. Now, as part of your team effort, did
2 you look at whether or not certified levees had
3 been successfully used in other municipalities?

4 A. Yes. Again, Lockwood Greene was far
5 more familiar with that, but I think they
6 themselves had been involved in projects that did
7 such.

8 Q. What did you conclude about the use of
9 these certified levees by other communities?

10 A. They had been successfully used in many
11 places across the country.

12 Q. Do you know whether they're used in
13 Augusta, Georgia?

14 A. They are used in Augusta, Georgia.

15 Q. What about Houston, Texas?

16 A. Yes, sir.

17 Q. Now, if you would, look at Plaintiff's
18 Exhibit 11.

19 Now; this is in evidence. It's been
20 discussed. This is a summary of meeting meetings,
21 July 8th, 1998, and it's -- I believe you were
22 present at the meeting, were you not?

23 A. I was.

24 Q. And what was your purpose in being
25 there?

1 A. We were just simply -- again, this was
2 extremely early in our preliminary process of even
3 considering this development, and we were simply
4 made aware of the meeting and attended for
5 informational purposes only.

6 Q. All right. In here, you understood,
7 did you not, that FEMA had proposed a Revised
8 Preliminary Flood Insurance Rate Map for the
9 County?

10 A. Yes, sir.

11 Q. And you understood that it had expanded
12 the floodway on the property to almost Bluff Road?

13 A. Yes, sir.

14 Q. All right. And in here it makes
15 reference to -- let me see -- it says under G on
16 page -- it looks like DEF 16, FEMA regulations, it
17 says:

18 If the revised floodway is finalized,
19 how would someone owning property now in the
20 floodway be able to build on that property?

21 FEMA regulations allow for no-rise
22 studies to be done for any particular development;
23 however, Richland County has adopted more stringent
24 regulations and doesn't allow development in the
25 floodway, unless a variance is obtained.

1 Now, let's talk about that particular
2 issue for a minute.

3 Was this an issue that you thought
4 needed to be addressed in the due diligence?

5 A. Yes, sir.

6 Q. Okay. And what was the issue as you
7 understood it?

8 A. Well, the primary one was the fact that
9 Richland County required a levee not to meet the
10 100-year flood level requirements. They wanted one
11 that met the 500-year flood level requirements,
12 plus a freeboard of 3 feet.

13 Q. Okay. And are you familiar with what's
14 been discussed here as the no-rise, versus
15 no-impepe issue?

16 A. Yes, I am.

17 Q. Is that an issue that you thought
18 needed to be addressed?

19 A. Yes, sir, and we did.

20 Q. What did you do to address that
21 particular issue in your due diligence?

22 A. We met with the appropriate county
23 officials, asked them directly what their
24 interpretation of their ordinance was. And the
25 information we received back was that the

1 interpretation and the way they viewed it was a
2 no-rise, similar to the way that FEMA interpreted
3 it.

4 MR. LYDON: Your Honor, if he will tell
5 us who he was meeting with, that would -- I think
6 the testimony would be admissible. But if he's
7 just giving generalizations that we cannot
8 cross-examine him on, I think it's improper.

9 THE COURT: If you can remember the
10 particular person with whom you spoke, then you
11 should give that name. If you don't remember the
12 person, but you remember that he was -- or that you
13 know he was employed by Richland County, you can
14 just state that.

15 THE WITNESS: Yes, sir. Your Honor, it
16 was 13 years ago, and as much as I would like to
17 think I could recall conversations verbatim, I
18 cannot do so. But I directly had
19 conversations -- I would have been with
20 representatives of Lockwood Greene -- for example,
21 Wilson Tillotson -- because they would have had a
22 more detailed understanding of these issues.

23 But we would have met with the county
24 administrator. The county administrator would have
25 directed us to Mr. Pearson, the head engineer. We

1 would have talked to several people like that to
2 make sure and understand that the County's
3 interpretation was such.

4 We were given the examples of where
5 that had been put in place by Richland County. I
6 can't recall specifically, but that is the way that
7 they had operated on the other issues before, when
8 that had come up.

9 THE COURT: All right, sir.

10 BY MR. GRIER:

11 Q. What about the issue of the 500-year
12 levees, how did you address that?

13 A. Oh, there wasn't anything to address.
14 We were more than happy to comply with that
15 requirement. From a development standpoint, one,
16 we viewed that as a bonus. It's a real simple
17 matter. If we're going to be putting that kind of
18 development behind it, we want to make sure that
19 development is safe.

20 And if we're going to do something that
21 is five times more protective -- or not five times,
22 that's probably inaccurate -- but is considerably
23 greater than the standards that FEMA, who is
24 supposedly more knowledgeable in that area than
25 anybody else requires, then we were more than happy

1 to do it.

2 It would almost even become a sales
3 point at some time to be able to give those types
4 of assurances to purchasers coming in and lessen
5 concerns about anybody that may wish to buy
6 property or be part of that development.

7 Q. Now, in the meeting minutes, under N,
8 it says:

9 Richland County representatives
10 indicated they are currently using preliminary maps
11 to widen the floodway for regulatory and permitting
12 purposes.

13 Now, was that an issue that you needed
14 to address?

15 A. Yes, sir.

16 Q. And how did you address that?

17 A. Again, if they were going to be
18 permitting things there, you know, to get a permit
19 based on a map that was showing floodway all the
20 way into the City of Columbia's industrial park, it
21 would have been extremely difficult. So we needed
22 to do things and address that in a manner that was
23 twofold.

24 One, we needed to do something that
25 would allow us to get permits, other than going

1 through that type of process. You know, again,
2 Richland County had the ability to -- they had
3 variances that were within their ordinance. We
4 could do that. We could simply have them change
5 the ordinance that they had. That would have been
6 something they could have done.

7 Or it would have been just simply
8 straightforward, they can agree to give us a
9 permit, at which time, these types of things would
10 be immaterial anyway, because we would have a levee
11 upgraded to a certified standard.

12 Q. Now, is it your understanding, if
13 you're in a -- if the levees are not in a floodway,
14 do you need to show a no-rise, or do you not need
15 to show a no-rise, if a levee is not in a floodway?

16 A. Not in a floodway, no, sir.

17 Q. Now, if the levees are in a floodway,
18 do you need to show a no-rise or not show a
19 no-rise? If the levees are in a floodway and you
20 want to add some dirt to them, do you need to show
21 a no-rise --

22 A. You would, yes, sir.

23 Q. -- putting that dirt on there --

24 A. You would, yes, sir.

25 Q. -- is going to cause a rise?

1 A. That's my understanding.

2 Q. And you say that -- I think you have
3 covered this, but you say the County -- your due
4 diligence from that, you concluded that the County
5 used a no-rise standard?

6 A. We did conclude that, yes, sir.

7 Q. Now, the levees at that time, as I
8 understand it, were they in the floodway or not on
9 the floodway on the effective map, the
10 1994 -- sometimes referred to as the 1994/'95 map?

11 A. The levees were not in the floodway on
12 the '94/'95 map, to my understanding.

13 Q. But they were in a floodway based on
14 this revised preliminary June 5th, I believe, 1998
15 map?

16 A. As was a tremendous portion of Richland
17 County.

18 Q. All right. Now, from the standpoint of
19 going forward with this project, what did you need
20 or what did you feel like you needed to get from
21 the County to get the County to agree to -- in
22 order to go forward?

23 A. Well, first of all, as it relates to
24 that preliminary FIRM that was so expansive, we
25 were encouraged by the fact that the County did not

1 like that map at all and were going to do
2 everything they could to get that changed. Most
3 people simply recognized it as being flawed.

4 MR. LYDON: Your Honor, I object as to
5 what most people say.

6 THE COURT: Sustained as to what most
7 people say.

8 THE WITNESS: People that were
9 knowledgeable, that were reporting directly to me
10 indicated to me --

11 MR. LYDON: Same objection, Your Honor.

12 THE COURT: If these were advisors,
13 like Lockwood Greene or other persons that he had
14 on board to provide him with information about his
15 due diligence, he can testify as to that
16 information.

17 THE WITNESS: Engineers and people that
18 were knowledgeable, that were reporting directly to
19 me on the matter, had indicated strongly that that
20 map had no chance of survival with any type of
21 serious review.

22 BY MR. GRIER:

23 Q. Going back to my question, though, what
24 did you conclude that you needed to obtain from the
25 County, in terms of an agreement from the County,

1 in order to go forward with the purchase of this
2 property and the investment that you had in mind
3 for this property?

4 A. Again, in meeting with team
5 members -- meeting with Lockwood Greene, in
6 particular, because of their expertise in this
7 area -- we felt like there were three very distinct
8 things that we needed in order to move forward,
9 given the shortened timeline that we had to close
10 on this property.

11 One was an understanding and agreement
12 with the County that we would upgrade those levees
13 to the standards that they set, the 500-year, plus
14 3 feet of freeboard, which inherently meant we were
15 going to get permits to upgrade it. They wanted us
16 to do that. They were very strong in their
17 indications there.

18 Number two, we wanted them, because of
19 the FEMA regulations, to assume responsibility or
20 other -- you know, for their portion of the levee.
21 Obviously, we wanted to work with the City on their
22 portion. The County officials wanted the City to
23 kick in their portion for the part of the levee
24 that the City maintained behind the wastewater
25 treatment plant.

1 There were also individuals, like Bill
2 Greg that owned the first piece of the levee up
3 there, and so we would want to contact Mr. Greg and
4 get his permission to work with us in upgrading the
5 levee.

6 But the maintenance and monitoring of
7 that levee and the assumption of the ongoing
8 maintenance of it was something that was required
9 by the regs that we wanted the local government to
10 assume responsibility for. That was number two.

11 And then, gosh, the third issue -- I'm
12 having trouble recalling what our third issue
13 was -- oh, we needed to have FEMA understand what
14 the plan was in our relationship with the County,
15 what we were asking the County to do.

16 We wanted FEMA to sign off on the plan
17 that we were working in conjunction with the County
18 on to upgrade those levees, and we wanted
19 assurances from FEMA that, once upgraded to the
20 500-year level, the Corps of Engineers, certified
21 level, that we could -- that all flood hazard
22 designations of any type and descriptions would be
23 eliminated from behind the levee, and that we could
24 build flat on the ground.

25 Q. Now, if you would, take a look at

1 Plaintiff's Exhibit 207, which is the December
2 11th, 1998 Wilson Tillotson letter to Cary McSwain.
3 That's in evidence and it's been discussed, and
4 it's got the proposed contents of the letter from
5 FEMA to Richland County.

6 And it refers to a meeting that took
7 place with Mr. McSwain on December -- it would have
8 been December the 10th. It says:

9 Thanks for meeting with us yesterday to
10 discuss the levee system at the Manning property.
11 I think the meeting was very informative and
12 productive. Attached is a list of bullets for
13 suggested letter to FEMA. I will call you later
14 today to discuss this. Thanks for all of your
15 help.

16 Were you present at that meeting with
17 Mr. Tillotson on December the 10th?

18 A. Yes, sir.

19 Q. And these items were discussed at that
20 meeting?

21 A. Yes, sir.

22 Q. And this is what you were looking for
23 the County to do?

24 A. Very close to it, yes, sir. And the
25 purpose of a letter to FEMA, again, was more than

1 just technical. It was to involve FEMA. It was to
2 make FEMA aware.

3 FEMA was very aware of the type of
4 development that was going to go on behind this.
5 FEMA was going to give us assurance that they
6 understood, one, the plan that we had with the
7 County to upgrade the levees; and two, that if done
8 and done to the standards required, that the flood
9 hazard designations would go away.

10 Q. Let me back up, just a minute.

11 That Revised Preliminary Flood
12 Insurance Rate Map that was dated June 5th,
13 2000 -- I mean, excuse me, 1998 -- do you know
14 whether the County had asked FEMA to withhold that
15 map for publication?

16 A. Yes, sir, they did.

17 Q. And did FEMA agree to do that?

18 A. Yes, sir, they did.

19 Q. So that map was never published by
20 FEMA?

21 A. Never.

22 Q. Now, let me get you directed to
23 Plaintiff's Exhibit 166, which is a Knudsen -- I
24 believe his name is -- report.

25 Have you got that in front of you, sir?

1 A. Yes, sir.

2 Q. Now, if you look on page DEF, last two
3 digits, 56 --

4 A. Yes, sir.

5 Q. -- do you see those alternatives?

6 A. Yes, sir, I do, under Section D.

7 Q. Yes, sir.

8 Would Alternative Number 1 have been
9 acceptable to Burroughs & Chapin to go forward with
10 the purchase and investment in this property?

11 THE COURT: Mr. Grier, I'm sorry, but I
12 missed the exhibit number.

13 MR. GRIER: I'm sorry.

14 THE COURT: Oh, no, you said it, I just
15 missed it.

16 MR. GRIER: It's 166.

17 THE COURT: Thank you.

18 MR. GRIER: It's the Knudsen -- I
19 believe his name is pronounced -- report.

20 THE COURT: Right, I just needed to get
21 the number.

22 Go ahead. Thank you.

23 MR. GRIER: Judge, we were on Page DEF,
24 last two digits, 56.

25 THE COURT: Okay, thank you.

1 MR. BECKER: Judge, we will bring you
2 an extra copy.

3 THE COURT: No, I've got it. Man, I've
4 got these things organized so well. I've got it in
5 my hand, thank you.

6 (Off-the-record discussion.)

7 BY MR. GRIER:

8 Q. We're on this Page DEF, last two
9 digits, 56, and my question under the alternatives,
10 which are Section D, Alternative Number 1:

11 Do nothing. Area will stay as is, and
12 expansion or development within the affected area
13 will be prohibited.

14 Is that an alternative that would have
15 been acceptable to Burroughs & Chapin to buy the
16 property and make this investment?

17 A. Absolutely not. We would not have
18 bought it.

19 Q. How about Number 3, Defer action. This
20 would mean the County awaits whatever action FEMA
21 imposed upon Richland County.

22 Would that option have been acceptable
23 to Burroughs & Chapin to buy the property and make
24 this investment?

25 A. It would not.

1 Q. All right. And you were looking for
2 Alternative Number 2: Authorize the council
3 chairman or its designee to begin the first step of
4 acceptance of responsibility and maintenance,
5 contingent upon engineering certification,
6 certification by the Corps of Engineers, and
7 approval and acceptance by FEMA?

8 A. Yes, sir. That's a very synthesized
9 version of a very well-understood plan, among the
10 County and the developers and FEMA.

11 Q. And the five -- or the six numbered
12 items under Discussion C, which starts on the
13 previous page, those correspond to the six bullet
14 items of Mr. Tillotson's letter to Mr. McSwain
15 dated December the 11th; did it not?

16 A. I believe so, yes, sir.

17 Q. You were at that meeting?

18 A. Yes, sir.

19 Q. Mr. Tillotson and Mr. McSwain.

20 A. Again, you've got to remember --

21 MR. LYDON: I'm going to object to the
22 witness just sort of volunteering information.

23 THE COURT: I'm not sure where he's
24 headed with it, so it might be in reference to
25 that -- explaining it.

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF RICHLAND

4

5 COLUMBIA VENTURE, LLC,

6 Plaintiff,

7 vs. CASE NO. 2010-CP-40-8943R

8 RICHLAND COUNTY,

9 Defendants.

10

11 TRIAL BEFORE SPECIAL REFEREE
HONORABLE JOHN HAMILTON SMITH

12 Volume 4

13

14 DATE: September 13, 2012

15

16 TIME: 10:03 A.M.

17

18 LOCATION: Richland County Judicial Center
1701 Main Street, Courtroom 3-F
Columbia, SC

19

20 REPORTED BY: WANDA K. CECIL
Certified Court Reporter

21

22 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 MR. JOHNSON: We've got an agreement.

2 THE COURT: You both agree then, I guess
3 I reluctantly will have to leave at one tomorrow, if
4 that's an agreement. All right then.

5 Mr. Grier, we return to you.

6 EXAMINATION

7 BY MR. GRIER:

8 Q. What do you need, George?

9 A. The documents that I had testified to
10 yesterday that I left here are no longer here. I
11 just wanted to make you aware of that.

12 MS. BLACK: Beth is getting them
13 organized as we speak, so she'll be able to hand you
14 stuff as we go.

15 THE WITNESS: Thank you.

16 BY MR. GRIER:

17 Q. Okay. When we adjourned yesterday, we
18 were talking about a meeting between you, Mike Ey of
19 McNair Firm and Kit Smith, Councilwoman Kit Smith
20 and Dave Manning. And I had asked you, prior to
21 that meeting, had you met with Councilwoman Kit
22 Smith?

23 A. Yes, I had.

24 Q. And why did you meet with Ms. Smith?

25 A. Well, little background on it. One of

1 the groups that I --

2 MR. LYDON: Objection. I'd ask that he
3 answer the question that's been asked and not
4 volunteer background and. . .

5 THE COURT: Well, he's asked why he met
6 him and he's starting to explain why he met with
7 her.

8 Go ahead, sir.

9 THE WITNESS: One of the key principals
10 obviously in the project that we had met with was
11 the University. I had asked the University of South
12 Carolina, in particular Lyles Glenn, who was the
13 assistant to the president at that time, who they
14 would recommend --

15 MR. LYDON: Your Honor, I'm going to
16 object. That's hearsay.

17 THE COURT: Yes. I sustain that
18 objection.

19 MR. GRIER: Your Honor, may I be heard
20 on this. Not every statement out of court is
21 hearsay and --

22 THE COURT: Sure.

23 MR. GRIER: -- on here why he met with
24 Ms. Smith. We are not offering this for truth of
25 the matter served.

1 THE COURT: All right. I don't know to
2 what extent he's going to go into opinions that this
3 individual gave, other than a recommendation that
4 this would be a good council person. If it's the
5 latter, that's fine. If it's goes beyond that, then
6 maybe there will be a problem.

7 MR. GRIER: Okay.

8 Q. You understand the Judge's ruling?

9 A. I think I do, Your Honor. Yes, sir.

10 Q. Okay. Go ahead.

11 A. Via a telephone conversation arranged by
12 Lyles Glenn to Ms. Smith, we spoke with her about
13 having a meeting to help Columbia Venture or
14 Burroughs & Chapin at this time with issues relating
15 to council in this project and she was advised as to
16 the things that we intended to do. And so based on
17 those kinds of things and those pre-updates, that's
18 what lead up to this meeting and why it was Ms.
19 Smith who was involved with this meeting with Mr. Ey
20 and Mr. Manning and myself.

21 Q. Okay. Your meeting with Ms. Smith, are
22 you saying it was over the phone or
23 person-to-person?

24 A. The initial conversation was over the
25 phone from Lyles Glenn's office. Then we met prior

1 to that to go over the plan and then we had a
2 meeting to memorialize what it is that Burroughs &
3 Chapin needed in the way of due diligence items with
4 the County.

5 Q. All right. Now, let me make sure I
6 understand this. You met face-to-face,
7 person-to-person with Ms. Smith and then you met
8 with Ms. Smith and Mike Ey and Dave Manning?

9 A. Yes. Mr. Ey arranged that meeting in
10 order for us to memorialize the things that we
11 needed as a due diligence item.

12 Q. All right. Now, I want to talk first
13 about the first meeting that you had with
14 Councilwoman Smith. Did you, in that meeting,
15 explain to her the vision that you had for
16 developing this property?

17 A. Yes.

18 Q. All right. Did you explain that it
19 would involve building Certified Electric?

20 A. Yes.

21 Q. All right. And based on what she said
22 to you, did she -- was she supportive or opposed or
23 what did she say to you in terms of whether she was
24 opposed to this project or in support of it?

25 A. She was in support of it.

1 Q. Okay. Now, then you had a meeting with
2 Ms. Smith at the McNair Firm with Mike Ey and Dave
3 Manning?

4 A. That's correct.

5 Q. All right. Now, I want to -- tell us
6 about that meeting as best you can recall, what was
7 said by you, by Mr. Ey, by Ms. Smith at that
8 meeting.

9 A. Again, not being able to recall
10 specifics from 13 years ago, my recollection is
11 there would have been discussion relating to the
12 project itself; but, again, the purpose of that
13 meeting was to memorialize the things. There were
14 certain items that she understood that Burroughs &
15 Chapin needed for their due diligence. The law firm
16 understood it. Mike Ey had arranged the meeting in
17 order for us to put on paper those things and have
18 the County put it in draft form so it could be later
19 put into a final form.

20 Q. All right. I want to hand you --
21 And, Your Honor, would direct your
22 attention to Plaintiff's Exhibit 169.

23 THE WITNESS: (Complying.) Yes, sir.

24 MR. GRIER: Wait for Your Honor to get a
25 copy.

1 THE COURT: I have it.

2 MR. GRIER: All right.

3 THE COURT: Thank you.

4 BY MR. GRIER:

5 Q. Now, did Ms. Smith ask you, on behalf of
6 Burroughs & Chapin, to agree to anything during the
7 course of this meeting?

8 A. Yes, she did.

9 Q. What did she ask you to agree to?

10 A. It's sort of a quid pro quo and a
11 request on behalf of the County and --

12 MR. LYDON: Your Honor, I object.
13 There's no indication that Mrs. Smith was meeting on
14 behalf of the County with these gentlemen. The
15 testimony is that the meeting was set up by Lyles
16 Glenn. There's no evidence that anybody else from
17 the County knew that she was meeting with these
18 folks. So to state that this was a request coming
19 from the County, I think, is a mischaracterization
20 of the meeting.

21 THE COURT: All right. In regard to
22 your answer, if you state she's representing the
23 County, you need the basis for your saying that. If
24 she's just speaking as an individual council person,
25 then state that.

1 THE WITNESS: Ms. Smith was there, had
2 taken an interest in the project, wanted to see it
3 done, and had been requested by the University to do
4 so. And on behalf of the County, it was my
5 understanding and my recollection, she was there and
6 actually in full negotiation mode on it. The
7 request that she made was quite significant. One,
8 it was that Burroughs & Chapin or the subsequent
9 developers invest at least 30 million dollars within
10 ten years of the adoption of this motion. It was a
11 quid pro quo that the County was seeking to extract
12 and later did in fact --

13 MR. LYDON: Objection, Your Honor.
14 There's no basis that she was there on behalf of the
15 County.

16 THE COURT: That's for cross
17 examination.

18 BY MR. GRIER:

19 Q. Go ahead, Mr. Gregory.

20 A. I think I've described what you asked
21 for in your question.

22 Q. Okay. Now, is this the first time you
23 had been asked to agree to these terms on behalf of
24 Burroughs & Chapin, to invest at least 30 million
25 dollars within a time period of ten years?

1 A. That's correct.

2 Q. That's the first time you'd been asked
3 to do that on behalf of Burroughs & Chapin?

4 A. My best recollection is that's correct.

5 Q. All right. Now, did you agree to do
6 that at that meeting?

7 A. Yes, we did.

8 Q. All right. Now, did you agree to the
9 other, one, two, three, four provisions in this
10 motion for levee matter?

11 A. Yes. Those are the four items that had
12 been determined through the team effort, in doing
13 due diligence, that were required in order for us to
14 be able to move forward with the project.

15 Q. All right. Now, let's look at Number 1.
16 Property owners upgrading levee system to meet FEMA
17 standards as contained in 44 CFR 65.10. Did you
18 agree to do that?

19 A. Yes, we did.

20 Q. Were you prepared to do that?

21 A. Yes, sir.

22 Q. All right. For property owners
23 preparing all required documentation, including
24 operation and maintenance plans as provided in
25 44 CFR 65.10. Did you agree to do that?

1 A. Yes, sir.

2 Q. Were you prepared to do that?

3 A. Yes, sir.

4 Q. Certification that the levee system as
5 upgraded meets FEMA standards. Now, how would you
6 go about doing that?

7 A. We would have gone about doing that
8 obviously through FEMA. The regulations specify
9 what is required to be a certified levee. There was
10 some subsequent communication with FEMA whereby we
11 had gotten confirmation that, if we meet certain
12 standards, that it could in fact be upgraded to a
13 certifiable level.

14 Q. All right. Was Burroughs & Chapin or
15 you on behalf of Burroughs & Chapin willing to
16 undertake that task?

17 A. Yes, we were.

18 Q. You agreed to do that?

19 A. We agreed to it. And we understood, Mr.
20 Grier, that that meant a 500-year, plus three feet
21 of free board levee upgrade.

22 Q. Now, Number 4, the parties, including
23 Richland County, the City of Columbia and the
24 developers resolving to the satisfaction of the
25 County the issues of performance and funding of the

1 operations and maintenance responsibility. What
2 was -- what did Ms. Smith say to you concerning this
3 particular issue?

4 A. Well, if you look up above, these four
5 things were contingencies that she laid out in order
6 for, you know, the acceptance of the operation and
7 maintenance responsibility for the levee system. So
8 the City of Columbia was included in Number 4
9 because they had an agreement to maintain a portion
10 of the levee, a substantial portion of the levee
11 behind their wastewater treatment facility.

12 Q. Now, Lockwood Greene had prepared or
13 prepared at some point -- well, I think they had
14 prepared it prior to your meeting here, an estimate
15 of what it would cost annually to maintain the
16 levees. Do you recall that?

17 A. Yes, sir.

18 Q. Do you recall the approximate amount of
19 that?

20 A. They had given us a range and their best
21 estimate within that range was approximately 12
22 million dollars.

23 Q. All right. Now, that's to build the
24 levees?

25 A. Just the levees.

1 Q. All right. I'm talking about
2 maintaining the levees on an annual basis.

3 A. On an annual basis, the maintenance
4 figure that they determined was approximately
5 \$175,000.

6 Q. All right. Now, was this an issue --
7 let me ask you this. Was this an issue that -- on
8 Number 4, this 170,000 or whatever it would take to
9 maintain the levees, was Burroughs & Chapin prepared
10 to undertake that responsibility or not undertake
11 that responsibility if that was required?

12 A. They would have been prepared to
13 undertake that responsibility. There just happened
14 to be so many different options from creating a
15 levee district to putting assessments on property
16 owners. There was just a multitude of ways that
17 that money could have been determined, but that was
18 not an issue whatsoever to Burroughs & Chapin.

19 Q. All right. Now, if you take a look at
20 Plaintiff's 147, and that is the minutes of the
21 Richland Council that occurred on February the 2nd,
22 1999.

23 A. (Complying.)

24 Q. Now, you see on the page DEF digits
25 12032?

1 A. Yes, sir.

2 Q. It said, Ms. Smith made a substitute
3 motion, seconded by Mr. Pearce, to accept
4 responsibility and local inspection of the -- and
5 enforcement of the levee system and, if required by
6 FEMA, to accept operation and maintenance
7 responsibility for the system contingent upon the
8 following. Those first one, two, three, four, those
9 were the -- are those the same items that you had
10 agreed to in your meeting with Ms. Smith and Mike Ey
11 earlier?

12 A. They appear to correspond with those.
13 Yes, sir.

14 Q. All right. And the fifth item there,
15 was that the term that you had agreed to in your
16 meeting with Ms. Smith and Mike Ey, to spend up to
17 30 million dollars over a period of ten years on
18 this project?

19 A. That was -- that was the request
20 Councilwoman Smith had of us, that we agreed to, and
21 the 30 million dollar investment -- at least 30
22 million dollars within a ten-year period.

23 Q. All right. And it said there at the
24 bottom, a discussion took place regarding the
25 acceptance of responsibility and maintenance of the

1 levee system and the effect on taxpayers. Mr. McKay
2 moved, seconded by Ms. Scott, who called the
3 question -- called for the question, was approved
4 unanimously. The vote in favor of the substitute
5 motion was unanimous.

6 A. That's what I see. Yes, sir.

7 Q. All right, sir. Now, let me hand you or
8 have handed to you Plaintiff's Exhibit 252.

9 A. (Complying.)

10 Q. All right. Now, do you recognize this
11 document?

12 A. Yes, sir.

13 Q. Did you have any role in preparing this
14 document?

15 A. I can't remember specifically, but I'm
16 comfortable in testifying that that's something that
17 the McNair Law Firm would have prepared and I
18 probably would have had to answer questions and
19 helped in the preparation of it. Yes, sir.

20 Q. All right. Now, is the information on
21 this document, what is the County asked to do, why
22 must the County do this, why must the County -- why
23 must the council act tonight, can't this problem be
24 solved with FEMA re-mapping, what is the projected
25 impact of the development of this property, is the

1 County being asked to approve any development on the
2 property, how is the County going to pay for the
3 operation and maintenance costs, if the County
4 accepts the operation and maintenance
5 responsibility, isn't the County also accepting
6 associated liability?

7 Had these, in your meetings with members
8 of council prior to February 2nd --

9 MR. LYDON: Your Honor, I object. I
10 don't think there's anything in the record that he
11 met with anybody other than Kit Smith prior to
12 February 2nd. He met with council --

13 MR. GRIER: I believe he's testified he
14 met with -- he personally met with a number of them.

15 THE COURT: I recall that he said that
16 he had met with a lot of different council persons.
17 I don't recall whether he said it was before this
18 council meeting or after. I don't know. You may
19 want to clarify that.

20 MR. GRIER: All right.

21 Q. Is it your testimony that prior to
22 February 2, 1999, in performing your due diligence
23 as part of the team, you actually personally met
24 with a number of members of council?

25 A. That's correct.

1 Q. I think you also said you met with Mr.
2 Pearson?

3 A. That's correct.

4 Q. And Mr. McSwain?

5 A. That's correct.

6 Q. All right. Now, in meeting with members
7 of council, did these questions or any of these
8 questions that are on this Exhibit 252, did they
9 come up?

10 A. Some of them certainly would have, yes,
11 sir. Also, there were issues that we knew to be
12 relevant. So in order to make sure that everyone
13 understood, these are sort of the key issues
14 regarding it, frequently asked questions and simple,
15 easy answers so everybody had everything, and the
16 key issues on top of the table prior to that vote.

17 Q. All right. And is it your understanding
18 that this document was faxed by the McNair Firm to
19 the County on February 2, 1999?

20 A. I'm not sure about that. It looks like
21 it was faxed from the McNair Law Firm.

22 Q. What's the date?

23 A. Sir?

24 Q. What's the date on it?

25 A. February 2, 1999.

1 Q. All right. It's got a DEF number on it.
2 Do you know --

3 A. That would be a defendant exhibit is my
4 understanding.

5 Q. That's an indication it came -- it was
6 produced by the defendant. Now, just to be clear,
7 Mr. Gregory, in your meetings personally with
8 members of council, the ones you met with, did you
9 explain the vision for the property?

10 A. Yes, sir, I would have.

11 Q. And would you have done it in a fashion
12 similar to what you did in the courtroom here?

13 A. Yes, sir.

14 Q. All right. And based on what was said
15 to you in those meetings --

16 MR. LYDON: Your Honor.

17 BY MR. GRIER:

18 Q. -- by council members --

19 MR. LYDON: Same objection. Which
20 council members and when?

21 THE COURT: Again, if you recall the
22 names of the council persons, you should give them
23 to us. If you don't, then just state that you don't
24 recall.

25 THE WITNESS: Council members that I can

1 specifically remember discussing this with were
2 Chairman Livingston, Bernice Scott, Buddy Meetze.
3 Again, it was a team effort in doing this. Even
4 though I had the major responsibility, there were
5 other people that were discussing this project,
6 including the Mannings and Mr. Wendell and others
7 also would be meeting with council members.

8 BY MR. GRIER:

9 Q. All right. First of all, I want to talk
10 about the ones that you met with personally. You
11 described the project, did you not?

12 A. Yes, sir.

13 Q. Similar in terms to what you did
14 yesterday?

15 A. Very much so, yes, sir.

16 Q. All right. And based on what -- the
17 members of council that you talked with personally,
18 were they supportive or opposed or neutral?

19 A. Extremely supportive.

20 Q. Sorry?

21 A. Extremely supportive.

22 Q. Now, as I understand, it was a team
23 effort and the team members would be reporting back
24 to you about their conversations with other members
25 of council?

1 A. That's correct.

2 Q. Based on those reports --

3 MR. LYDON: Your Honor, I want to object
4 to what other team members reported to him. I think
5 that's double hearsay.

6 THE COURT: Well, I would overrule the
7 objection. It's still -- again, the issue of what
8 were their thoughts, expectations going into it
9 and -- it's not whether or not the team members were
10 truthfully reporting it, it's what was the -- what
11 impact did it have on him as the primary person with
12 CB.

13 MR. LYDON: So do I understand -- I
14 understand your ruling, but that would mean it's not
15 being offered for the truth of the matter asserted
16 because --

17 THE COURT: Well, it's hearsay and so
18 the only way it can come in is if it's for the truth
19 asserted, they got to put the person on the stand.
20 If not, then it's for another purpose, which would
21 show the impact it had on him in regards to his
22 expectations.

23 MR. LYDON: Right.

24 THE COURT: But that's it.

25 MR. LYDON: Okay.

1 BY MR. GRIER:

2 Q. All right. Based on the reports that
3 you received from the other team members, was there
4 any opposition to this project from the members of
5 council?

6 A. No, sir.

7 Q. And was it supported by the members of
8 council?

9 A. Enthusiastically, sir.

10 MR. LYDON: Your Honor, he's now
11 characterizing the manner in which these
12 conversations were received from a council member to
13 the team member to him. I don't know how he can
14 know that it was enthusiastically --

15 THE COURT: Well, those are matters for
16 cross examination.

17 BY MR. GRIER:

18 Q. Now, if we could hand you Plaintiff's
19 Exhibit 247.

20 A. (Complying.)

21 Q. Okay. Now, this was a letter to you
22 from Lockwood Greene dated January 21, 1999 and it
23 includes some cost estimates for improving the
24 levee, does it not?

25 A. Yes, sir.

1 Q. And it's got -- looks like it ranges
2 from about nine and a half million all the way up to
3 14 million?

4 A. That's correct.

5 Q. All right. Now, were those numbers
6 acceptable to Burroughs & Chapin?

7 A. Yes, sir.

8 Q. You were prepared to spend that money to
9 fix these levees?

10 A. To a 500-year, plus three feet of free
11 broad level certified.

12 (PLF. EXH. 254, Economic Impact Report,
13 Bates Stamped CV010850 through 010864,
14 was marked for identification.)

15 BY MR. GRIER:

16 Q. All right. And if we hand you Plaintiff
17 Exhibit's 254.

18 A. (Complying.)

19 Q. Now, Mr. Gregory, can you tell us what
20 this is?

21 A. Appears to be an economic impact study
22 on the Columbia project.

23 Q. Do you know who prepared it?

24 A. Yes, sir. Mr. Ron Hendrix, CPA, with
25 Rabon, Hendrix, King & Godbald at the time.

1 Q. Okay. Now, this is dated January 30,
2 1999. Is this a report that was prepared by Mr.
3 Hendrix and then submitted to you and the other
4 members of the Burroughs & Chapin team, the due
5 diligence team?

6 A. Yes, sir.

7 Q. All right. Now, Mr. Gregory, you've got
8 a master's degree in accounting and I don't, maybe
9 you can help me with this. What is the kind of
10 bottom line on this document here? What does it
11 show you in terms of sort of the bottom line impact
12 of this proposed project?

13 A. Are you talking about in -- just in
14 terms of dollars? Are you talking about other
15 things included to get to those dollars? It's got a
16 lot of information to it. It's got a summary of
17 square footage as it relates to the types of
18 projects anticipated going in there.

19 Invested dollars of almost a billion,
20 922,000,000 to be exact. It has gross annual
21 revenues of three billion dollars. Construction
22 jobs created, 300 a year. On-site jobs, over 3,000.
23 New jobs, around 65,000 a year. Off-site jobs, 1750
24 projected at 36 million a year. Admissions tax
25 revenue of well over a million a year. Sales tax

1 revenue of 151 million a year. And property taxes
2 revenue in excess of 15 million a year.

3 Then it goes into some greater detail,
4 upwards of a 12-year projection. It's broken out by
5 types of development, hotel sites, special-end
6 restaurant, commercial, retail, housing, condos, et
7 cetera. It goes through and it provides acreages.
8 It's very, very detailed. Even though it's
9 preliminary, it's exceptionally detailed and very
10 conservatively prepared. I actually worked with Mr.
11 Hendrix some in preparation of this, so I know the
12 instructions and the actual numbers were very
13 conservative as put together; but it talks about
14 costs. It talks about sales, various things like
15 that.

16 Is there a more particularized question?

17 Q. Well, in terms of -- look at the page
18 that's CV 10863, if you would.

19 A. (Complying.)

20 Q. And I'm kind of interested in what it
21 shows in terms of your investment expectations.

22 A. Yes, sir.

23 Q. It's got a line down there, profit after
24 overhead. What is that -- what is that number?

25 It's a 12-year total, is that what --

1 A. Yes, sir. Just shy of 100 million
2 dollars.

3 Q. Okay. Now, let's move to another topic
4 and that would be what steps that you or your team
5 took to ascertain whether FEMA would agree to remove
6 the floodplain or floodway designation from the
7 property if Burroughs & Chapin physically improved
8 the levees to certifiable standards and that the
9 County agreed to accept the inspection and
10 maintenance of those.

11 What steps did you take to determine --
12 to address that issue, you and your team?

13 A. Well, Lockwood Greene having the
14 expertise and being the engineers were the primary
15 ones, Wilson Tillotson in particular. Had Mr.
16 Tillotson meet with Cary McSwain to request that the
17 County send a letter to FEMA outlining the things
18 that we needed for FEMA to address in order to give
19 us the assurances in that area you've asked about.

20 Q. All right. And we looked at that letter
21 yesterday and I want to hand you, I believe it's
22 exhibit -- Plaintiff's Exhibit 246.

23 A. (Complying.)

24 Q. Okay. Now, this is the letter from Mr.
25 Tillotson to Lisa Holland, the State Coordinator for

1 the National Flood Insurance Program in South
2 Carolina. And you've seen this letter before?

3 A. Yes, sir.

4 Q. And it was discussed by Mr. Manning and
5 Mr. Becker. It says in the first paragraph there,
6 Lockwood Greene is representing the property owners
7 of the Manning property adjacent to the Congaree
8 River in the Lower Richland County. As you are aware
9 this property is within the area of being proposed
10 as a floodway by the preliminary June 5, 1998 flood
11 insurance rate maps. We have had several meetings
12 with Richland County and the City of Columbia and
13 have been asked to represent them as well as any --
14 as well in any clarifications of FEMA regulations,
15 particularly 44 CFR 65.10.

16 Now, why was -- if you know, why was Mr.
17 Tillotson writing this letter instead of Mr.
18 McSwain?

19 A. Mr. Tillotson had requested and given
20 Mr. McSwain the outline of what we would like to see
21 back in a letter from Richland County and it was
22 suggested by Mr. McSwain that the letter go from Mr.
23 Tillotson, not only on the property owners' behalf,
24 but on the County and the City, since the City was
25 involved with the levee, too, and have it as a

1 matter of protocol go through the top state official
2 that was responsible in the flood mapping area to be
3 the one to make the request to FEMA. Again, just
4 simply following legitimate protocol there.

5 Q. Okay. Now, I want to hand you Exhibit
6 17, Plaintiff's Exhibit 17.

7 A. (Complying.)

8 Q. Okay. Now, on the first page of this
9 exhibit, it's a letter from Ms. Holland to Michael
10 Buckley of FEMA dated January 22, 1999 and she
11 forwards Mr. Tillotson's letter, does she not?

12 A. Yes, she does.

13 Q. All right. And in her third paragraph,
14 she says, we apologize for the short notice;
15 however, we need an answer by Tuesday, January 26,
16 1999 because the potential buyers want assurances
17 prior to the purchase. A fax response would be
18 appreciated. So she was -- that was in fact the
19 case? You were looking for a response before you
20 were going to buy this property?

21 A. Yes, sir.

22 Q. Now, if you look at the last page, it
23 was -- does this appear to fax to Mr. Matt Miller of
24 FEMA?

25 A. It does.

1 Q. It says, second page of original letter
2 did not go through. Sorry. Should go with original
3 fax. Is that what it says?

4 A. Yeah.

5 Q. Okay.

6 A. Yes, sir.

7 Q. Then it was faxed to Mr. Miller?

8 A. It was.

9 Q. Now, let's take a look at Mr. Miller's
10 letter and that's Trial Exhibit 18.

11 A. (Complying.)

12 Q. Now, this is the letter from Mr. Miller
13 back to Ms. Holland; is it not?

14 A. Yes, sir.

15 Q. And was Burroughs & Chapin provided with
16 a copy of this letter?

17 A. Yes, sir.

18 Q. At or near the time it was written?

19 A. Yes, sir.

20 Q. All right. I want to ask you about the
21 second paragraph there. It says, if the
22 aforementioned levee is upgraded to meet the
23 total -- meet in total, excuse me, the applicable
24 provisions of 44 CFR Part 65.10 and the construction
25 necessary for it to meet said requirements is in

1 compliance with state and local floodplain
2 management requirements, then FEMA would revise the
3 applicable FIRM to remove the special flood hazard
4 area designation in the floodway. Now, he says the
5 required -- he says, and that the construction
6 necessary to meet the said requirement is in
7 compliance with state and local floodplain
8 management requirements.

9 I want to ask you about that. Was that
10 a problem that and your team, your due diligence
11 team addressed?

12 A. Yes, sir.

13 Q. All right. And how did you do that?

14 A. Well, again, what it's saying there is
15 that there are local requirements, they have to be
16 met also. That was the 500-year level, plus three
17 feet of free board, which we were readily -- ready
18 to accept and go with.

19 Q. Okay. Now, it said -- let me go to the
20 next sentence there. It says, as you are aware,
21 should the structural modifications necessary to
22 bring the levee into compliance with 44 CFR 65.10
23 result in any increase in the base flood elevations
24 as a result of construction within existing
25 regulatory floodway of the Congaree River, the

1 requirements of 44 CFR 65.12 would have to be met.
2 In addition, any change in the configuration of the
3 floodway as a result of the levee modification would
4 have to be done with the approval of the impacted
5 communities.

6 Now, was that a problem or an issue that
7 you and your team addressed?

8 A. Yes, sir, it was.

9 Q. All right. And how did you address that
10 issue?

11 A. I asked Lockwood Greene in their
12 professional opinion to tell me whether or not that
13 was problematic or was it -- were we able to go
14 through the intended process based on this letter.

15 Q. Okay. Now, I want to hand you
16 Plaintiff's Exhibit 208.

17 A. (Complying.)

18 Q. All right, sir. Now, have you got that
19 in front of you, Mr. Gregory?

20 A. I do.

21 Q. All right. Now, this is a fax to you on
22 February 18, 1999 and it's a letter behind it dated
23 February 17, 1999 from Mr. Tillotson. See that?

24 A. Yes, sir.

25 Q. All right. And he lists some bullet

1 points there, length of time required to obtain
2 wetlands regulation permits, review of time by
3 agencies including FEMA, preliminary status of soils
4 and topographic survey information on which to base
5 the preliminary design use for estimates. He says,
6 other than the uncertainties noted above, we have
7 discovered no barriers that will prevent us from
8 removing the property within the existing levees of
9 the special flood hazard area or floodway; is
10 that --

11 A. That's correct.

12 Q. Now, had you discussed with Mr.
13 Tillotson -- and he's a professional engineer, is he
14 not?

15 A. That's correct.

16 Q. Had you discussed with him his opinion
17 concerning Mr. Miller's letter and whether or not
18 that was -- those problems, that would not pose a
19 problem or an issue for the venture in going forward
20 with the purchase of the property?

21 MR. LYDON: Your Honor, I object to him
22 telling us what Mr. Tillotson's opinion is. I
23 don't -- I mean, Mr. Tillotson has been deposed in
24 this case and, you know, he's the one -- best one to
25 testify about what his opinions are and whether he's

1 qualified to give opinions; but I don't think it's
2 appropriate for this witness to say what Mr.
3 Tillotson's opinions are without us having him
4 brought up here to cross examine Mr. Tillotson on
5 that issue.

6 THE COURT: I think he is -- I think the
7 question was what his impression of what Mr.
8 Tillotson's opinion was. With that, I will overrule
9 the objection.

10 THE WITNESS: Would you repeat the
11 question, please?

12 BY MR. GRIER:

13 Q. Yes. What was Mr. Tillotson's opinion,
14 professional -- okay. Yeah.

15 What was your impression of Mr.
16 Tillotson's professional opinion as to whether the
17 issues that were raised in Mr. Miller's letter, that
18 we had just went over, whether that was a problem
19 that would keep you from going forward with the
20 purchase of the property?

21 A. My impression of that was that the
22 issues that were in the Matt Miller letter had been
23 satisfied to -- answered satisfactorily to Lockwood
24 Greene and, in their opinion, they presented no
25 problem from us moving forward on the project and

1 upgrading those levees.

2 Q. Okay. And if you look on Page CV 2275,
3 he discusses, does he not, the FEMA flood area use?

4 A. That's correct.

5 Q. And then following up on the next two
6 pages, 2265 -- or the next page, excuse me, 2276.
7 2276, he talks about the floodway modifications?

8 A. Yes, sir.

9 MR. GRIER: All right. And, Your Honor,
10 I'll just give you a minute, you and Mr. Gregory, to
11 review the -- or read the floodway modification.

12 THE COURT: All right, sir.

13 THE WITNESS: (Complying.)

14 THE COURT: All right, sir.

15 BY MR. GRIER:

16 Q. All right. Mr. Gregory, is this
17 consistent with the professional opinion that Mr.
18 Tillotson had given you concerning the issues raised
19 in Mr. Miller's letter?

20 A. It is. In addition to that, as to the
21 current status on 2275, the confirmation by FEMA is
22 specifically enumerated on there. So it's very
23 clear that it did include those things sent by Mr.
24 Miller in his letter.

25 Q. And you're referring to -- on 2275, is

1 that the paragraph that says current status?

2 A. Yes, sir. One of the elements under
3 current status, down near the bottom, the
4 reclassification process has been confirmed by FEMA
5 in writing through the State Board or the National
6 Flood Insurance Program.

7 Q. All right, sir. All right. Now, I want
8 to move to another topic, Mr. Gregory. Yes. This
9 is Plaintiff's Exhibit 24.

10 A. (Complying.)

11 Q. All right. Now, can you -- this is a
12 letter from Mr. McSwain to you, re: non-binding
13 memorandum of understanding. Can you describe for
14 us the circumstances that led up to Mr. McSwain
15 writing you this letter?

16 A. Yes, sir. Mr. McSwain and I had very
17 detailed conversations regarding entering into a
18 development agreement with Richland County on behalf
19 of the landowners. This is something that is very
20 typical of a large scale development like this. You
21 can't go into a large scale development like this
22 with the number of years and everything with
23 specified zoning and those types of things in place.
24 You typically will do what is called a planned unit
25 development, typically called a PUD. That protects

1 both the developer and the County.

2 It allows the County to maintain a good
3 bit of control over the types of projects and where
4 they are and things like that. And as a result of
5 that, the County happened to be going through what
6 it called its visioning process. They were doing
7 their comprehensive land plan as required. And what
8 they simply wanted to do was have assurance from
9 Burroughs & Chapin that we would certainly work with
10 them and try to adhere to their comprehensive land
11 use plan and their visioning. And we certainly
12 agreed that we would do that.

13 In addition, you know, we had been
14 talking about zoning through the PUD, various tax
15 incentive vehicles, such as a multi-county business
16 park and other things like that. Again, if you note
17 the date is -- date of closing, since he had made
18 that request for us to do it at the last minute, I
19 just simply said, why don't we put it in writing and
20 just simply do it and that's what it was.

21 Q. Now, you were asking -- it's a
22 non-binding memorandum of understanding, but you --
23 he was asking you to agree to some things and you
24 were asking him to agree to some things?

25 A. Yes, sir. There was a clear quid pro

1 quo here. He wanted us to do that. He had not had
2 a chance to discuss it with his counsel and that's
3 really the reason for the non-binding part is he
4 just -- he just -- he wanted us to agree --

5 MR. LYDON: Your Honor, I'm going to
6 object to him saying why Mr. McSwain put the
7 non-binding --

8 THE COURT: Yes. You have to clarify as
9 to whether that's just your impression or whether
10 Mr. McSwain told you that.

11 BY MR. GRIER:

12 Q. Go ahead.

13 A. He asked me if it could be non-binding
14 because he had not had a chance to have it approved
15 by counsel and I told him I'd be happy to do so.

16 Q. All right. But he was asking you to
17 agree to some things and you were asking him to
18 agree to some things?

19 A. Yes, sir. No questions. These were
20 things on part of us, like the -- we had already
21 been discussing in great detail, you know, the fact
22 that we were going to do a development agreement,
23 have a PUD for the zoning and implement certain tax
24 incentive vehicles. That had been discussed prior.
25 It was just simply part of the memorialization of

1 the fact that he wanted us to agree in writing to
2 the visioning process. It was just simply a last
3 minute document that further bolstered the due
4 diligence file for both parties.

5 Q. All right. Now, the next to the last
6 paragraph, is that what you were asking him to agree
7 to? The County is aware of and agrees to work with
8 the development group on issues that are critical to
9 the proposed development, such as zoning, tax
10 incentive vehicles and a multi-county business park?

11 A. Yes, sir. They -- we'd had those
12 discussions and they agreed to do it. They were
13 clearly aware of it. We were going to have it.
14 Again, in projects of this size and type, a PUD is
15 the vehicle that the County would use to monitor it
16 and zone it. Again, things over a 10 to 12-year
17 period of time with a development like this, things
18 change. There may be other things that may be
19 better options in Year 8 than you envision in Year
20 1, adding too that the County would like to see you
21 have and would be good for the project.

22 So if you've already got something
23 zoned, it's a way to go back. You go in front of
24 the council and they give you permission to make a
25 change to your document. It works well for both

1 parties and it gives the County some semblance of
2 control with the document and what ultimately goes
3 on the property and it also allows the developer to
4 have some flexibility in such a large project over
5 this period of time.

6 Q. Now, Mr. Gregory, this letter says it's
7 a non-binding memorandum of understanding. What
8 was -- you personally for Burroughs & Chapin, what
9 did you understand your, if any, obligation was
10 under this non-binding memorandum of understanding?

11 A. From Burroughs & Chapin's viewpoint, our
12 obligation was to work with the County in their
13 comprehensive land plan and their visioning process,
14 work closely with them once you get into the details
15 and the development of the project. We had every
16 intention -- I mean, there's documentation
17 everywhere where we wanted to work with the County,
18 be a good corporate citizen. We put everything on
19 top of the table beforehand. We wanted to have a
20 project that not only Columbia Venture ultimately
21 would be proud of, but the citizens of Richland
22 County, the City of Columbia.

23 Q. Well, I mean, did you view that you had
24 any obligation at all?

25 A. Yes, sir, I did. Our obligation was

1 to -- was to -- we had agreed to work with the
2 County on -- in cooperating and having our ultimate
3 projects on there being in compliance with their
4 visioning process. I mean, this was a clear intent
5 of good faith and fair dealing, just like I viewed
6 the resolution the same way. I mean, we were
7 agreeing to do these things and yes. Would we have
8 done it? Yes. Were we obligated to do it? Of
9 course.

10 Q. All right. Now, you closed on the
11 property, I believe, on the 19th of February; is
12 that correct?

13 A. I believe that's correct.
14 (PLF. EXH. 500, Memo to Columbia Venture
15 From George T. Gregory, Bates Stamped
16 CVMcNair002528, was marked for
17 identification.)

18 MR. GRIER: All right. Now, I want to
19 show you -- if I can hand you Plaintiff's Trial
20 Exhibit 500.

21 THE WITNESS: (Complying.)

22 THE COURT: Thank you.

23 BY MR. GRIER:

24 Q. All right, Mr. Gregory. Can you tell us
25 what this is?

1 A. Just looks like an internal memorandum
2 that I created to the file. I just simply wanted to
3 document a telephone conversation I had with the
4 mayor of Columbia, the Honorable Bob Coble.

5 MR. LYDON: Your Honor, I want to object
6 to this document. It's what Mr. Gregory says that
7 the mayor told him, which I think is clearly hearsay
8 and I don't know how that possibly comes into
9 evidence. He's saying that the mayor told him the
10 City would cooperate fully in all aspects, allow the
11 proposed development. I mean, if the mayor told him
12 that, let's bring him here and see if he told him
13 that; but I don't think that's --

14 THE COURT: All right. What's your
15 position on that?

16 MR. GRIER: Let me ask a couple of
17 questions, if I might?

18 THE COURT: All right.

19 BY MR. GRIER:

20 Q. What was your purpose in -- you had this
21 telephone call. What was your purpose in dictating
22 this memorandum?

23 A. We had had discussion --

24 Q. First of all, just the purpose. What
25 was the purpose in dictating this memorandum after

1 your telephone call?

2 A. To document what he said to me.

3 Q. All right. And did you maintain a copy
4 of this in the business records of the company?

5 A. Yes, sir.

6 Q. To document that, maintained in the
7 ordinary course of business?

8 A. Yes, sir.

9 MR. GRIER: Okay. We would offer it,
10 Your Honor.

11 THE COURT: I'll sustain the objection.

12 MR. LYDON: Thank you, Your Honor.

13 (PLF. EXH. 299, Market Research Congaree
14 Property, Bates Stamped CV005002 through
15 005078, was marked for identification.)

16 (PLF. EXH. 301, Document Bates Stamped
17 CV003865 through 003964, was marked for
18 identification.)

19 BY MR. GRIER:

20 Q. All right. Let me hand you Plaintiff's
21 Exhibit 299 and Plaintiff's Exhibit 301.

22 THE COURT: Thank you.

23 MR. LYDON: Your Honor, without
24 objection.

25 (PLF. EXH. 299 in evidence.)

1 (PLF. EXH. 301 in evidence.)

2 BY MR. GRIER:

3 Q. All right. I'm going to simply get you
4 to sort of tell us what this is. The first one,
5 Plaintiff's Trial Exhibit 299, is the Market
6 Research Congaree Property, Columbia, South
7 Carolina, prepared for Burroughs & Chapin Company by
8 Haddow & Company. What is Haddow & Company?

9 A. Haddow & Company is a research and real
10 estate consultant based in Atlanta, Georgia.
11 They're extremely well known, highly recommended to
12 us. One of our partners in Columbia Venture,
13 regional partners out of Atlanta, highly recommended
14 them to us. What we wanted to do with them, Mr.
15 Grier, was to get a very good, clear indication,
16 from somebody that had no preconceived notions of
17 Richland County and the City of Columbia, to verify
18 land uses and things like that so we could put our
19 property to its highest and best use.

20 Q. Now, look at Trial Exhibit 301 and
21 that's another report by Haddow & Company and that
22 specifically addresses the highest and best use of
23 the property, does it not?

24 A. Yes, sir.

25 Q. Okay. So the purpose of that was to

1 address that specific topic, highest and best use?

2 A. Yes, sir.

3 Q. All right. Let's go back to the closing
4 that occurred on February 19th and let me hand you
5 Trial Exhibit 22.

6 A. (Complying.)

7 Q. And this is the letter from Paul
8 Livingston, chair of Richland County Council, to
9 Michael Buckley of FEMA. Did you -- I say you, did
10 Burroughs & Chapin have a copy of this letter prior
11 to closing?

12 A. I can't say for sure, but it's likely
13 that we did.

14 Q. Okay. And you had the letter from Mr.
15 Miller of FEMA?

16 A. Yes, sir.

17 Q. And you had Mr. Tillotson's letter to
18 you dealing with the FEMA issues?

19 A. Yes, sir.

20 Q. You had a resolution of council?

21 A. That's correct.

22 Q. Dated February 2, 1999?

23 A. Yes, sir.

24 Q. And, of course, you had Mr. Tillotson's
25 letter to Ms. Holland and --

1 A. That's correct.

2 Q. -- Mr. Miller's response back?

3 A. That's correct.

4 Q. You had done -- your due diligence team
5 had done all the due diligence that you described
6 here in the courtroom?

7 A. Yes, sir.

8 Q. And based on all of that, you went ahead
9 and brought the property?

10 A. That's correct.

11 Q. Now, were you aware, you know, that on
12 February 25, 1999, after you closed, that FEMA came
13 out with another revised preliminary flood chart,
14 rate map and flood insurance code?

15 A. Yes, sir, I was aware of that.

16 Q. All right. Did the County ask FEMA to
17 withhold publication of that map?

18 A. Yes, sir.

19 (PLF. EXH. 326, Document Bates Stamped
20 CVMcNair000919 through 001007, was
21 marked for identification.)

22 MR. GRIER: Now, before I move on to
23 another topic, let me just do this. Hand you
24 Plaintiff's Exhibit 326.

25 THE WITNESS: (Complying.)

1 MR. GRIER: Any objection to this?

2 MR. LYDON: Just one second.

3 MR. GRIER: Okay.

4 MR. LYDON: What page are you referring
5 to?

6 MR. GRIER: This is Exhibit 326.

7 MR. LYDON: Yours is one page and mine
8 is about 60 pages.

9 MR. GRIER: I just got one page.

10 (Off-the-record conference.)

11 MR. GRIER: Bates number is 98 -- oh,
12 it's already in evidence? Okay.

13 MR. LYDON: That page is in.

14 BY MR. GRIER:

15 Q. Okay. This is a page from --
16 Tommy, what exhibit is that?

17 Q. It's a page from Trial Exhibit 326.
18 It's already in evidence. I assume it's --

19 MR. LYDON: That document is already in
20 evidence.

21 MR. GRIER: Okay.

22 MR. LYDON: So we're putting the whole
23 document in now?

24 MR. GRIER: No. I'll tell you what I'll
25 do. Get me the whole document and I'll show him the

1 page that I'm talking about. How about that?

2 MR. LYDON: Yeah.

3 MR. GRIER: All right, Your Honor.

4 We're looking at 326.

5 (Off-the-record conference.)

6 MR. GRIER: Okay. It is not in
7 evidence. We would offer the whole thing in.

8 MR. LYDON: All right. Just a second.
9 Your Honor, I have no objection to this.

10 MR. GRIER: Okay. Thank you.

11 (PLF. EXH. 326 in evidence.)

12 BY MR. GRIER:

13 Q. All right. I want to refer you to Page
14 McNair000998.

15 A. What was the last three digits?

16 Q. 998.

17 A. All right. I have it.

18 Q. Okay. Now, are these the initial
19 members of Columbia Venture?

20 A. That's what it appears to be, yes, sir.

21 Q. All right. And can you tell us what
22 know how, experience, financial resources that the
23 various members had in terms of the ability to
24 develop this property?

25 A. The first member is Burroughs & Chapin

1 Company and I think we've gone through a right heavy
2 summary of that. I'll just be very brief there.
3 Large scale land developer located in Myrtle Beach.
4 Vast experience in a multitude of real estate type
5 developments from big box retail to malls to hotels
6 to restaurants to office buildings to residential
7 areas, all inclusive.

8 Q. How many states, sir?

9 A. Excuse me?

10 Q. How many states other than South
11 Carolina?

12 A. At the time, my understanding is they
13 were only in South Carolina.

14 Q. Okay. Okay. Go ahead.

15 A. The second one on there is an LLC name I
16 believe that represented Dr. Wade Nichols. Dr.
17 Nichols is a very well-renowned oral surgeon,
18 orthodontist in the Myrtle Beach area. Ron Hendrix
19 is his CPA. Ron Hendrix inquired as to whether --

20 MR. LYDON: Your Honor, I object to what
21 Ron Hendrix --

22 THE COURT: Yes. I sustain.

23 THE WITNESS: Dr. Nichols is a member
24 through Ron Hendrix. That's it. I'm just trying to
25 describe who is on this list to the best of my

1 knowledge. There was an LLC name there that I can't
2 tell you what the initials stand for.

3 The next one on here is an LLC called
4 Fort Carson Family Housing. Fort Carson Family
5 Housing, LLC is the LLC that regional partners out
6 of Atlanta used to invest in Columbia Venture. Fort
7 Carson Family Housing, LLC was the LLC that they had
8 had set up out in Colorado where they had done a lot
9 of student housing and very similar type projects
10 that we envisioned here, at Colorado State
11 University.

12 The next one on the list is Lockwood
13 Greene Engineers. We've had a lot of discussion
14 already. Obviously, they're an international
15 engineering firm that brought an awful lot to the
16 table relative to the issues that we had here. One
17 of the things they bring from a unique standpoint
18 that you wouldn't normally think about relative to
19 this project was within our research park area.
20 They had been involved in projects whereby they were
21 creating what were known as smart buildings at the
22 time, office buildings.

23 That was one of the major drawbacks that
24 existed at that time in the Research Triangle Park
25 was the fact that those office buildings were

1 located very close to each other and a major issue
2 at the time with research parks, because of the
3 number of high tech companies issuing IPOs, it was
4 sort of a race to Wall Street at that time, if you
5 recall, Your Honor. And it was a matter of a lot of
6 espionage type things, picking up secrets. Lockwood
7 Greene had worked closely and had the experience and
8 expertise in being able to help construct smart
9 buildings to decrease that, which would have been a
10 major selling point within our research piece of the
11 development.

12 Green Diamond, LLC is the next member
13 there. And I believe that is the -- Mr. Manning's
14 LLC that he entered into the project with. We were
15 very happy for Mr. Manning to continue. It was
16 important for him. He had had a life-long legacy on
17 this property. He knew it. He understood it. He
18 wanted to stay on it. He wanted to stay involved.
19 We were happy to have him. And it also provided, in
20 addition to his knowledge of the property, provided
21 somebody to be on site on a daily basis to be able
22 to monitor and maintain.

23 The last group on here is Carolina First
24 Corporation. Obviously, one of your major issues
25 with a project this size is financing and things

1 like that. They were very familiar with this and
2 were going to be involved on a very heavy level, not
3 only with financing for the development end of it;
4 but financing for -- from the users' standpoint.
5 They would have been a headline representative of
6 the project from the financing standpoint for future
7 development.

8 Q. Okay. Now, if I could, I want to hand
9 you Plaintiff's Exhibit 118.

10 A. (Complying.)

11 Q. All right. Have you got that, Mr.
12 Gregory?

13 A. Yes, sir, I do.

14 Q. All right. I want to go to the second
15 page. The first page is a fax, where it was faxed.
16 There's a Lockwood Greene, Mark Hester, P.E. to you
17 letter dated May 4, 1999?

18 A. That's correct.

19 Q. Now, this is -- this is in evidence.
20 There is referred to as the permit application.
21 It's submitted to the County. First of all, let me
22 ask you first. Lockwood Greene, you were the
23 project manager at this time?

24 A. That's a good description of it. Yes.
25 I was coordinating it on behalf of the managing

1 member of Burroughs & Chapin.

2 Q. Okay. Would Lockwood Greene be
3 submitting reports to you?

4 A. Yes, sir, they would.

5 Q. Okay. Now, this particular letter of
6 permit, can you tell us, did you personally deliver
7 this permit --

8 A. I did.

9 Q. -- to the County?

10 A. I did.

11 Q. You did? Okay. And to whom did you
12 deliver it to?

13 A. The engineering department located out
14 on -- near the Northwoods Industrial Park area. I
15 cannot recall the address or the name of the road,
16 but it's the County Complex there in that area on
17 the northeast side of town, I believe.

18 Q. Okay. Now, what was the permit? What
19 was the purpose of the permit?

20 A. The purpose of this permit was to begin
21 the process of upgrading the levee system. We
22 wanted to -- there were some areas of the levee,
23 especially in some of the critical areas, where the
24 levee had sort of begun to sag and had a little bit
25 of erosion and things like that. So we wanted to go

1 back in -- I think I'd previously described it to
2 being sort of like a barbwire fence that had been
3 pushed down a little bit. So it was -- it was a
4 request to not only do some needed maintenance, but
5 it was to bring it back to its original form and
6 status. It would have required some increase in
7 height and some widening.

8 Q. All right. Now, I'm going to hand you
9 Plaintiff's Exhibit 119.

10 A. (Complying.)

11 Q. And 119 is a letter from Mark Hester to
12 Mr. Gordon Green, assistant county engineer, and it
13 denies the permit, does it not, sir?

14 A. Yes, it does.

15 Q. All right. And you're aware of this
16 letter at the time --

17 MR. LYDON: Objection, Your Honor. That
18 doesn't deny the permit. It simply asks for more
19 information. I think the letter speaks for itself
20 and I object to Mr. Gregory's characterization of
21 the letter otherwise.

22 THE COURT: Well, it's a letter
23 returning the application; right?

24 MR. LYDON: Right.

25 MR. GRIER: All right. I stand

1 corrected.

2 Q. It's a letter returning the application.
3 You were aware of this letter at the time it was
4 written?

5 A. I was.

6 Q. All right. Now, it says -- okay. It
7 says, in response to sediment and erosion control
8 plans and permit application prepared by Lockwood
9 Greene dated April 1999 and submitted May 6, 1999,
10 please be advised that the permit to upgrade the
11 above referenced levee cannot be issued until a
12 complete set of plans and specifications are
13 provided. And then it says, for example, 100-year
14 flood information, levee cross sections and levee
15 soils analysis. The aforementioned plans therefore
16 are disapproved until additional information is
17 received.

18 Now, during that period of time S&ME --
19 you know who S&ME is, do you not?

20 A. Yes, sir. They're an engineering and
21 consulting company with expertise in soils analysis.

22 Q. Is that what's called geotechnical
23 engineering?

24 A. Yes.

25 Q. Had they been doing work on the levees

1 pursuant to proposals that you had solicited from
2 S&ME?

3 A. Yes, sir.

4 Q. So they were doing this geotechnical
5 work at the time?

6 A. Yes, sir, they were.

7 Q. Okay. And how far along were they when
8 this permit was submitted?

9 A. My best recollection is they were a good
10 ways through their process. As a matter of fact,
11 they had sent Lockwood Greene, I think somewhere
12 around May 2nd, their letter regarding the soils
13 within the levees --

14 Q. Now, let me --

15 A. -- and embankment.

16 Q. -- direct your attention to Plaintiff
17 Exhibit 120, Plaintiff's Trial Exhibit 120.

18 A. (Complying.)

19 Q. Now, this is a --

20 Wait on the Judge to get it.

21 THE COURT: Okay. Thank you.

22 BY MR. GRIER:

23 Q. All right, sir. Now, this is a monthly
24 project status report from Lockwood Greene, July 2,
25 1999. Would this project report -- project status

1 report, would these reports be furnished you as the
2 project superintendent or whatever -- I think you
3 said you were the project manager?

4 A. I would have had a copy. Yes, sir.

5 Q. Now, look on Page CV012919.

6 A. (Complying.)

7 Q. You on that page, sir?

8 A. Yes, sir.

9 Q. All right. Now, look under -- it's
10 1.2.11, second paragraph down there. It says,
11 subsequently these maps, plans and specifications
12 were submitted by LG to Richland County to perform
13 this work. Now, does that refer to the permit that
14 you actually delivered to the --

15 A. Yes, sir.

16 Q. It does?

17 A. Yes, sir.

18 Q. Now, it says, Richland County denied
19 approval of the permit application for this work and
20 I want to ask you about this last sentence. This
21 has since been requested again with no approval as
22 of 6/30/99?

23 A. It was my understanding that the permit
24 was resubmitted.

25 Q. And was it ever approved to your

1 knowledge?

2 A. Not to my knowledge.

3 MR. GRIER: Okay. Your Honor, this
4 would be probably a good time to take our break.

5 THE COURT: Yes, it is time. We'll go
6 ahead and take a recess of about ten minutes then.

7 MR. GRIER: All right, sir.

8 (A recess transpired.)

9 BY MR. GRIER:

10 Q. Now, Mr. Gregory, you are aware that on
11 August the 12th, 1999, FEMA issued another revised
12 preliminary flood insurance rate map and floodway
13 for the State?

14 A. I am.

15 Q. All right. And are you aware that FEMA
16 actually went through the publication process for
17 that map?

18 A. Yes, sir, I am.

19 Q. Okay. And that particular map placed a
20 floodway at the landward toe of the levees?

21 A. That's correct.

22 MR. GRIER: Now, Your Honor, I would
23 direct the Court's attention to Trial Exhibit 4,
24 Plaintiff's Trial Exhibit 4.

25 Got it?

1 THE COURT: I have it. Yes, sir.

2 MR. GRIER: All right. And I want to
3 direct the Court's attention to the bottom entry on
4 the first page, about May 1999. I'll just give the
5 Court --

6 Q. And, Mr. Gregory, do you have a copy?

7 A. I do.

8 Q. Okay.

9 Give you a minute to look at that.

10 Okay?

11 THE COURT: Yes, sir.

12 (PLF. EXH. 32, County Administrator's
13 Report of Council Actions, September 7,
14 1999, was marked for identification.)

15 BY MR. GRIER:

16 Q. Now, would direct your attention to
17 Exhibit 32, Plaintiff's Exhibit 32.

18 A. (Complying.)

19 MR. GRIER: All right. Now, this is the
20 County Administrator's report of council action,
21 regular session meeting, September 7, 1999. This
22 apparently is not in evidence.

23 MR. LYDON: No objection, Your Honor.

24 (PLF. EXH. 32 in evidence.)

25 BY MR. GRIER:

1 Q. All right. Now, Mr. Gregory, as I
2 stated, this is the county administrator's report of
3 council actions, regular sessions meeting, September
4 7, 1999, at 6 p.m. And I want to go to the second
5 page, which is DEF, last three digits, 403. Do you
6 see that?

7 A. I do.

8 Q. Do you see the report of the county
9 administrator?

10 A. I do.

11 Q. All right. Under B, this is hard to
12 read because it was highlighted and it doesn't
13 reproduce too well; but I believe it says, Congaree
14 levees. The county administrator briefed council on
15 FEMA's -- I'm trying read it here because I can't
16 see it up there.

17 A. Looks like approval process.

18 Q. Approval process of the proposed flood
19 maps. Am I reading that right? FEMA estimates that
20 the new maps should be finalized by Spring of 2000;
21 is that right?

22 A. That's correct.

23 Q. All right. In the meantime, FEMA
24 advised that the County use 1995 maps. Is that what
25 that says?

1 A. Yes, sir.

2 Q. Okay. Now, I want to keep that there.

3 I want to come back to that in a minute. Now, I
4 want to direct your attention to Plaintiff's Trial
5 Exhibit 125. And I believe this one is in evidence.

6 MR. JOHNSON: What was the number?

7 MR. GRIER: 125. Does he have that one?
8 Do we have one for him?

9 Do you have that one? Okay. There you
10 go, Mr. Gregory.

11 Q. Now, if you would look at the last
12 paragraph on the first page of this document. And
13 it says, the second sentence there, the last FIRM
14 maps within Richland County were dated January 11,
15 1994. These were and are still the maps that the
16 County enforces flood regulations from. Okay? You
17 see that?

18 A. I do.

19 Q. Now, are you familiar with that
20 particular map that was dated January 11, 1994?

21 A. I am.

22 Q. And that was the effective map in the
23 County at that time?

24 A. At that time and for several years.

25 Q. Okay. Now, the floodway on that map.

1 Were the levees within the floodway on that map?

2 A. They were not.

3 Q. Okay. Now, going back to Exhibit --
4 Plaintiff's Exhibit 32, where we were reading about
5 Mr. McSwain's briefing of the council. It's got --
6 where we left off, it says, the county administrator
7 stated that under the '95 maps, the County can't
8 issue a permit for Burroughs & Chapin to maintain
9 the levees. I believe I'm reading that right.

10 A. Appears to be correct.

11 Q. Okay. Now, at that time, did you need a
12 permit to either improve the levees or to maintain
13 the levees?

14 A. Both.

15 Q. Okay.

16 A. Especially to improve it though. I
17 mean, the maintaining of it, just simply from a
18 grass cutting perspective doesn't do us any good. I
19 mean, we needed to move forward with the project.

20 Q. In order to make this bigger or taller,
21 what did you need?

22 A. We needed a permit.

23 Q. To do what, improve them?

24 A. Improve those levees, yes, sir.

25 Q. Now, the '94 -- it's sometimes referred

1 to as the '94, '95 map. The map is actually
2 dated -- the actual map itself is dated in January
3 according to Mr. Neutson, I believe it is, January
4 11, 1994; is that correct?

5 A. Yes, sir. That's what he said in his
6 letter.

7 Q. And the flood insurance study that went
8 along with that map was revised sometime in July of
9 1995?

10 A. That's my recollection.

11 Q. So sometimes it's referred to as the '94
12 map and sometimes the '95 map?

13 A. Same map that had been -- that was in
14 place at that time. They're both the same.

15 Q. Now, the map that came out on August the
16 12th, 1999, I believe this is a copy of it up here.
17 (Indicating.) It shows the floodway running along
18 the landward toe of the levees. You see that?

19 A. I do.

20 Q. Now, was that map -- was that map
21 acceptable to Burroughs & Chapin or, excuse me,
22 Columbia Venture at that time and your engineers?

23 A. Yes. I was advised through our FEMA
24 consultants and our engineers, Lockwood Greene, that
25 that map was satisfactory to allow Columbia Venture

1 to do what it needed to do with the property.

2 Q. Okay. So that's not a map that you
3 would appeal, would you?

4 A. No, sir. No reason to.

5 Q. All right. Now, did the County appeal
6 that map?

7 A. Yes, they did.

8 Q. All right. We have that appeal
9 resolution?

10 (Off-the-record conference.)

11 BY MR. GRIER:

12 Q. Mr. Gregory, were you -- isn't that in
13 evidence?

14 MS. BLACK: Yes, it is. Let me find it.

15 BY MR. GRIER:

16 Q. While we're looking for that Mr. --

17 (Off-the-record conference.)

18 BY MR. GRIER:

19 Q. Okay. I want to direct your attention
20 to Plaintiff's Exhibit 311. I think this is in
21 evidence.

22 MR. BECKER: Yes, it is.

23 MR. GRIER: Do you have the minutes?

24 Can I get a copy?

25 (PLF. EXH. 34, Richland County Council,

1 Regular Session, December 7, 1999, was
2 marked for identification.)

3 MR. GRIER: I don't think Exhibit 34 is
4 in, so we need to take a look at that. That's the
5 Richland County Council, regular session, December
6 7, 1999.

7 MR. LYDON: Just one second, Your Honor.
8 No objection.

9 (PLF. EXH. 34 in evidence.)

10 BY MR. GRIER:

11 Q. Okay. All right. Now, Exhibit 34 is
12 the minutes of the council on December the 7th,
13 1999. If you look on Page DEF, last three digits,
14 430, under FEMA, you were actually there that night,
15 weren't you?

16 A. Yes, sir.

17 Q. It refers to you down here on that
18 page and the following page, but was this the
19 meeting where the County actually voted to adopt the
20 resolution?

21 A. I believe it is.

22 Q. And the resolution would be part of
23 Exhibit 311?

24 A. Yes, sir.

25 Q. And the letter that's attached to the

1 resolution by Mr. McSwain dated -- let's see. Does
2 it have a date on it? Okay. So Mr. Becker points
3 out to me that Mr. McSwain didn't date the letter,
4 but the resolution is certified as of -- adopted on
5 December 7, '99 and certified on December 13, '99.
6 See that?

7 A. Yes, sir, I do.

8 Q. Now, on the December 13th, that was the
9 last day of the appeal period, was it not?

10 A. I can't recall. It may have been. I do
11 not remember specifically the date on the last day
12 of the appeal period.

13 Q. Okay. Now, on the last day of the
14 appeal period, were you in the county
15 administrator's office?

16 A. I was.

17 Q. And what was your purpose of being
18 there?

19 A. My purpose of being there was, one, I
20 wanted to determine if in fact anybody had appealed
21 the map, to try to get a feel for who did appeal it,
22 if any, and then any other information I could
23 gather at the time relevant to that.

24 Q. All right. Now, the information that
25 Mr. McSwain transmitted to FEMA in terms of the

1 document he had collected, did you review those?

2 A. I did not personally review the
3 documents, no, sir.

4 Q. Did any of your engineers or consultants
5 review them?

6 A. Subsequently, they looked through the
7 appeals.

8 Q. Okay. Now, what was -- what was your
9 reaction to the fact that the County had appealed
10 this map that your engineers and consultants said
11 was favorable to the project?

12 A. Could you repeat that?

13 Q. Yeah. What was your reaction to the
14 fact that the County had appealed this map, the map
15 dated August 12, 1999 that your engineers had said
16 was favorable to the project going forward?

17 A. Well, my reaction was bewilderment.
18 Again, when we had started this process back in the
19 Summer of '98, Richland County very much wanted to
20 get the floodway off of the property behind the
21 levee. Now, they had it. Now, they were appealing
22 it. Essentially, they were appealing their on map
23 at that time. And, again, bewilderment on our part
24 because it would have been sufficient for us to move
25 forward with the project.

1 Q. Now, on April -- excuse me, on September
2 26, 2000, FEMA issued something called an appeal
3 resolution and another revised preliminary flood
4 insurance rate map and flood insurance study. Are
5 you familiar with that?

6 A. Yes, sir.

7 MR. GRIER: Do we have the appeal
8 resolution?

9 (PLF. EXH. 204, Appeal Resolution for
10 Congaree River, September 26, 2000, was
11 marked for identification.)

12 MR. LYDON: No objection.

13 MR. GRIER: Okay. Thank you, sir.

14 (PLF. EXH. 204 in evidence.)

15 BY MR. GRIER:

16 Q. All right. Now, is this the -- you got
17 the appeal resolution. This is the appeal
18 resolution that went along with the revised
19 preliminary flood insurance study, flood insurance
20 rate map dated September 26, 2000?

21 A. That's correct.

22 Q. This is the technical document that
23 supported the new map?

24 A. Appears to be so, yes, sir.

25 Q. Okay. Now, what did -- what did

1 Columbia Venture ask FEMA to do with respect to this
2 particular revised preliminary flood insurance rate
3 map and flood insurance study that was issued on
4 September 26, 2000?

5 A. They asked to be an appellant to appeal
6 it.

7 Q. Okay. And what did FEMA decide, sir?

8 A. Well, they were very reluctant at first;
9 but eventually they allowed Columbia Venture to
10 appeal the map.

11 (PLF. EXH. 345, FEMA Letter to Douglas
12 Wendel, Dated November 22, 2000, Bates
13 Stamped FEMA-001-000943 and 000944, was
14 marked for identification.)

15 BY MR. GRIER:

16 Q. Okay. And I want to hand you
17 Plaintiff's Exhibit 345.

18 A. (Complying.)

19 Q. Is this the letter from FEMA that agreed
20 to -- it says under the circumstances of this
21 complex re-mapping effort, we agree to consider
22 Columbia Venture an appellant at this time?

23 A. It does.

24 Q. Okay. And it's dated November 22, 2000?

25 A. Yes, sir.

1 Q. All right.

2 MR. LYDON: No objection.

3 MR. GRIER: No objection? Okay.

4 (PLF. EXH. 345 in evidence.)

5 BY MR. GRIER:

6 Q. Now, after FEMA agreed to consider
7 Columbia Venture an appellant at that time, were you
8 involved in the appeal that Columbia Venture took
9 with FEMA to the September 26, 2000 revised
10 preliminary flood insurance rate map, flood
11 insurance study?

12 A. Yes, sir, I was.

13 Q. All right. And tell us what you did in
14 terms of pursuing the administrative appeal with
15 FEMA of the September 26, 2000 flood insurance
16 preliminary -- revised preliminary flood insurance
17 rate map and flood insurance study?

18 A. The scientific evidence contained in the
19 detail appeal resolution that we just looked at was
20 based on a different scientific modeling than
21 heretofore had been used in the process. Prior to
22 this, one-dimensional modeling, which is commonly
23 referred to as HEC 2 analyses had been used. In
24 this particular one, a two-dimensional model had
25 been used.

1 So in order to properly appeal a map in
2 which new or a different level of science had been
3 applied to, it was incumbent upon us to find a very,
4 very best expert available in order to do an
5 evaluation of the new map and to be able to help us
6 in our preparation to prepare a proper appeal to
7 FEMA. We had been greatly concerned before because,
8 in reviewing the appeals that had been submitted by
9 Richland County and that they had received, we had
10 noted that none of those contained the hydraulic --
11 and the hydrologic and hydrology that is required
12 under the FEMA process.

13 If you recall, Mr. Grier, in the
14 document that you had me previously look at, when I
15 had made a statement to Richland County, it was that
16 the hydrology and hydrologics had to be in place in
17 order to submit a map and that was my purpose for
18 being at that County Council meeting was to impart
19 that on the record. What Richland County in fact
20 submitted, none of those, to my knowledge based on
21 inquiry of engineers and consultants in the FEMA
22 area, met those requirements.

23 FEMA ultimately identified three
24 appellants in the process, Dr. Grego, who had
25 submitted what would be characterized as probably a

1 statistical analysis. You had D&R, who had
2 submitted some paperwork. They were landowners on
3 the Lexington County side and then the McNair Law
4 Firm, through Debbie Holland, who I understand has
5 recently been deceased. Very fine person. But we
6 no longer -- since McNair had been an appellant, we
7 were -- that was pretty much at the time I had gone
8 to Mr. Boyd to ask Haynsworth Sinkler Boyd to now
9 represent Columbia Venture in the appeal process.
10 And he helped in the letter and the submission to
11 FEMA to have us be given status as an appellant.

12 We had no reason to be an appellant on
13 the other map. It suited our purposes. We
14 disagreed totally with this September 2000 map and
15 vigorously wanted to look at the science that caused
16 it to come about. And we found an expert by the
17 name of Doug Hamilton, who is with a company called
18 Exponent. They are world renowned. They have
19 various expertises in modeling, in two-dimensional
20 modeling.

21 They happen to be the ones that
22 officially prepare a lot of the earthquake scenarios
23 in the State of California and things like. But
24 they've done 2-D modeling all over the world.
25 They're leading -- a leader in that area. And our

1 FEMA consultant, Mr. Martin Becker and Lockwood
2 Greene and myself, we met with Mr. Hamilton and
3 asked him to help us prepare scientific evidence to
4 be able to properly appeal the FEMA map.

5 Q. Now, Mr. Gregory, what was the issue as
6 you understood it that you were contesting on this
7 map that represented the change from the map that
8 was dated August 12, '99 to the map that was dated
9 September 26, 2000? What was the issue with respect
10 to how the map -- how FEMA changed the map from
11 August 12, '99 to September 26, 2000?

12 A. I assume you're asking me about the
13 practical result and the difference in the maps as
14 opposed to science that changed it?

15 Q. No, sir. I'm asking you about the
16 technical flow area.

17 A. The map that came out in September 26th
18 showed effective flow behind that levee on the
19 property of Columbia Venture.

20 Q. All right. What about the previous map?

21 A. The previous map showed no effective
22 flow, ineffective flow behind the levee.

23 Q. Not an area of conveyance, FEMA speak?

24 A. Yes, sir.

25 Q. Okay. So as I understand it, to go from

1 an area of no conveyance to conveyance, FEMA used
2 those two-dimensional models?

3 A. That's correct.

4 Q. All right. And you went and hired
5 two-dimensional models?

6 A. Sir?

7 Q. Exponent is --

8 A. They're one of the leading experts in
9 being able to understand and prepare two-dimensional
10 models.

11 Q. Okay. And did you submit -- did
12 Exponent prepare models that were submitted to FEMA?

13 A. That's correct.

14 Q. And what did these models show with
15 respect to whether the area behind the levee was --

16 MR. LYDON: Your Honor, I'm going to
17 object to him testifying to what the models prepared
18 by another expert showed. I think that's beyond his
19 level of expertise and he said he relied on these
20 engineers to do these studies and to do this work.
21 And I think the engineers would be the ones to
22 present that.

23 THE COURT: I overrule the objection.
24 I'll allow him to give his opinion as to what it
25 showed.

1 BY MR. GRIER:

2 Q. Go ahead.

3 A. Could you repeat the question, please?

4 Q. Yeah. What did the modeling, the
5 two-dimensional modeling -- as I understand what you
6 said, you said the one-dimensional modeling had been
7 used before and then FEMA used this two-dimensional
8 modeling to conclude that the area behind the levees
9 was an area of effective flow rather than an area of
10 ineffective flow?

11 A. That's correct.

12 Q. All right. Now, what -- the
13 two-dimensional modeling that was prepared by
14 Exponent that you submitted to FEMA in support of
15 your appeal, what did it show about the area behind
16 the levee?

17 A. Well, the Exponent model was one that
18 was far more detailed than the one that FEMA had
19 used in order to prepare this map. Far more data
20 points, far more topographical notations on it,
21 elevations, things like that. And the result of
22 their two-dimensional modeling using the latest
23 scientific technology available showed no effective
24 flow, ineffective flow behind the levees.

25 Q. Okay. How confident were you and

1 Columbia Venture based on this scientific and
2 technical information you submitted in support of
3 your appeal? How confident were you that you
4 would -- that you could convince FEMA to remove the
5 flood levee behind the levee?

6 A. We were extremely confident in that
7 two-dimensional model that had been prepared by
8 Exponent and the scientific evidence we were going
9 to put forth to FEMA. In addition to Exponent and
10 Mr. Hamilton's efforts, we also sought the services
11 of Dr. Zundel from Brigham Young University. He is
12 the creator of the software used to do the
13 two-dimensional modeling. In addition, he also
14 teaches FEMA's employees on how to use the
15 two-dimensional modeling. We had him review the
16 results of Mr. Hamilton and Exponent's
17 two-dimensional model and he strongly agreed --

18 MR. LYDON: Your Honor --

19 THE WITNESS: -- that that was more
20 accurate.

21 THE COURT: I think he's sufficiently
22 characterized it.

23 MR. LYDON: Thank you.

24 BY MR. GRIER:

25 Q. Now, while this appeal was going on with

1 FEMA, this administrative appeal, in the Fall of
2 2000, did you become aware that the County was
3 revisiting its stormwater ordinance and the county
4 engineer's interpretation of the word that ought to
5 be in their ordinance?

6 A. I was.

7 Q. And what was your understand of the
8 issue that was being considered at that time?

9 A. They were looking at amending their
10 current ordinance, which had been heretofore been
11 interpreted as a no rise on the no impede. They
12 wanted to change that to a no build. In addition,
13 there was the option for variances to occur under
14 the current ordinance and they wanted to change --
15 remove any variance from the proposed amendment to
16 their ordinance.

17 Q. Okay. And what did the -- what was your
18 understanding of what council ultimately did with
19 respect to that ordinance?

20 A. My understanding is that they removed
21 the variance and that they had language to interpret
22 no impede as a no build.

23 Q. Okay. And what was your understanding
24 with respect to your adjacent landowners, Heathwood
25 Hall and the Wastewater Treatment Plant?

1 A. But for exceptions they carved out for
2 those two, they could not have done any building
3 whatsoever thereafter.

4 Q. Okay. Now, did that -- did you
5 understand that ordinance also provided that you
6 could not make your levees any wider or taller?

7 A. I think that was the intended result of
8 the ordinance changes.

9 Q. Now, was -- at that time -- let me back
10 up a little bit. When you were -- prior to your
11 purchase on February the 19th, 1999, as a result of
12 your due diligence and your team's due diligence,
13 did you become aware prior to purchase of any
14 opposition, public opposition to this project?

15 A. Was not aware of any prior to purchase.

16 Q. Okay. Now, after purchase, did
17 opposition to the project arise?

18 A. Yes, it did.

19 Q. All right. And essentially when did
20 that opposition start to become serious?

21 A. I would say it started getting serious
22 somewhere around the beginning of Summer.

23 Q. Okay.

24 A. Was the serious opposition.

25 Q. 1999?

1 A. Yes, sir.

2 Q. And were you aware that an organization
3 called the Southern Environmental Law Center was
4 involved in that opposition?

5 A. We later became aware of that, yes, sir.

6 Q. Okay. And, at that time, that was a
7 public interest kind of law firm out of Chapel Hill,
8 North Carolina?

9 A. That's my understanding.

10 Q. And they were represented by a lawyer
11 named Bland Holman from Chapel Hill?

12 A. I met Mr. Holman on several occasions,
13 yes.

14 Q. And the Congaree Task Force, there's
15 been mention of that. Was that formed at or near
16 this process -- after 1999 to oppose this project?

17 A. Yeah. Well, it was well after the
18 purchase; but they were formed in order to, as I
19 understood it, to oppose this project.

20 Q. Okay. And that was -- you're
21 familiar -- you know Weston Adams, do you not?

22 A. I do.

23 Q. Was he a law school classmate?

24 A. He was.

25 Q. And he and his brother, Robert Adams,

1 were involved in that Congaree Task Force?

2 A. That's my understanding.

3 Q. Opposed to the project?

4 A. Yes, sir.

5 Q. And when the stormwater ordinance was
6 being revisited by the County, were they lobbying to
7 get the County to change --

8 MR. LYDON: I'm going to -- I've let him
9 go a little bit, sort of laid the groundwork. I
10 think he's leading the witness on this.

11 THE COURT: Yes. I'll sustain the
12 objection.

13 BY MR. GRIER:

14 Q. Was it your understanding that there was
15 a lobbying effort that was -- let me ask you this.

16 Was it your understanding that there was
17 a -- there was or was not a lobbying effort being
18 made by opponents of the project in 2001?

19 A. Oh, there were vigorous lobby efforts
20 going on at the time.

21 Q. Who was involved in that effort?

22 A. You had multiple environmental groups,
23 but the lead on -- as it relates to the change of
24 the ordinance was Weston Adams and Bland Holman.

25 Q. Now, I assume -- how would you

1 characterize, Mr. Gregory, the intensity of the
2 lobby effort that started, I think you said, in the
3 Summer of 1999?

4 A. Oh, it's snowballed. It became, at its
5 peak, absolute vicious. I mean, there was multiple
6 defamation going on and it expanded far beyond just
7 this project in Columbia. The same groups were
8 attacking projects of Burroughs & Chapin in Myrtle
9 Beach and we had other things going on that started
10 to be heavily opposed by some of the same people.

11 Q. All right. Now, going back prior to
12 purchase, I think you said you -- during your due
13 diligence, you hadn't uncovered any opposition,
14 public opposition to this project. Was there
15 anything about the project itself or the land itself
16 that you thought at that time was going to lead to
17 this kind of opposition?

18 A. Not that I thought, no, sir.

19 Q. Did the land itself -- I mean, was this
20 project an environmental issue so far as you were
21 concerned?

22 A. No, sir, it was not. As a matter of
23 fact, it was very friendly to the environment from
24 our perspective. Not only were there multiple
25 nature trails and green areas and preserved areas

1 and wetlands that were going to be preserved and a
2 multitude like that. A massive and major
3 environmental good this would do is this represented
4 the opportunity for Richland County and the City of
5 the Columbia to address an infield area near the
6 capital in the City in order to prevent a major
7 environmental concern throughout -- you know,
8 regularly known throughout the environmental
9 communities of urban sprawl.

10 And, in fact, what has occurred in
11 Richland County is a lot of massive urban sprawl.
12 And the people to the south side of town, a lot of
13 minority communities and things as a result have
14 been exceedingly underserved in the ability to have
15 the types of benefits and things that this project
16 would have brought to them.

17 Q. All right, sir. Now, let me ask you
18 about -- who is Edward D. Stone?

19 A. Edward Stone and Associates is a
20 world-renowned land planning company. They are
21 headliners, frequent headliners at major
22 international land planning conventions and things
23 like that. They teach classes; but they are very
24 well known, very well respected. They're out of
25 Florida.

1 Q. Now, Edward D. Stone, did they prepare
2 this concept map or plan back -- preliminary master
3 plan?

4 A. Yes, sir, that's my understanding.

5 Q. And do you have any idea of how much
6 money Columbia Venture paid Edward D. Stone to
7 prepare this plan?

8 A. It was significant. I cannot recall a
9 specific amount.

10 Q. Now, I had previously asked you about
11 the two Haddow reports, the market research report,
12 which was Plaintiff's Exhibit 299, and the highest
13 and best report, which was Plaintiff's Exhibit 301.
14 Do you have any idea what these reports would have
15 cost Columbia Venture?

16 A. I cannot tell you the specific cost of
17 those reports. It was significant.

18 Q. Now, on August the 20th, 2001, FEMA came
19 out with a final determination and in effect
20 confirmed substantially the map, the revised
21 preliminary flood insurance rate map that that been
22 proposed on September 26, 2000, and in effect
23 finally determined that the floodway would be moved
24 to the -- over a mile from the river on the map that
25 accompanied the letter of final determination and

1 rejected your scientific and technical information?

2 A. Yes, sir.

3 Q. What was your reaction to that letter of
4 final determination, sir?

5 A. It's time for us to switch gears. Our
6 project as we had envisioned it was absolutely
7 stopped dead as a doornail. It was time for us to
8 start looking at exit strategies for this property.

9 Q. All right. Now, that map became
10 effective six months later on February 20, 2002?

11 A. Yes, sir.

12 Q. All right. And on that date, on the
13 effective flood maps of Richland County, what
14 happened to the floodway on the Columbia Venture
15 property?

16 A. A good portion of the property on
17 Columbia Venture's acquisition was now in the
18 floodway.

19 Q. All right. Did it move from where it
20 had previously been on the river side toe of the
21 levee?

22 A. In '94, it was on the river side toe of
23 the levee. In '99, it was on the landward side of
24 the toe of the levee. And then in 2002, when it was
25 finalized, it became floodway throughout a greater

1 portion of the property.

2 Q. So moved -- on that date it moved from
3 the --

4 A. Levee to miles inward.

5 Q. Okay. Now, you say at that point, your
6 vision for the property was no longer doable?

7 A. Once that final map became effective, we
8 had to start looking at exit strategies. There was
9 no other option at that point.

10 Q. All right. And was one of the exit
11 strategies that you considered a conservation
12 easement?

13 A. It was.

14 (Off-the-record conference.)

15 (PLF. EXH. 394, Van Sant & Wingard
16 Appraisal, Bates Stamped CV006287
17 through 006753, was marked for
18 identification.)

19 BY MR. GRIER:

20 Q. You've been handed Plaintiff's Trial
21 Exhibit 394?

22 A. Yes, sir.

23 Q. Is that the -- this is the Van Sant &
24 Wingard appraisal?

25 A. That's what it says on the outside.

1 Without reading it, I'm going to take it for what it
2 says.

3 Q. Okay. Now, are you familiar with this
4 appraisal?

5 A. I was integrally involved in helping the
6 appraisers get this thing done, providing them
7 information. Yes, sir.

8 Q. Okay. Approximately how much did this
9 appraisal cost? Are you aware of that?

10 A. Yes, sir, I am aware of the cost of this
11 one. It was in the neighborhood of a quarter of a
12 million dollars.

13 Q. This appraisal cost a quarter of a
14 million dollars?

15 A. Quarter of a million dollars.

16 Q. All right. And this appraisal was
17 prepared as part of your conservation easement
18 strategy?

19 A. Yes, sir. It only made sense, if the
20 environmental groups did not want to see a project
21 there, what better way to do it than put it in an
22 easement in perpetuity to remain undeveloped.

23 Q. All right. Now, explain to us, if you
24 would, how this conservation easement works in terms
25 of an exit strategy?

1 Your Honor, is that this value is about as precise
2 as you can of the expectations of the developers.

3 THE COURT: Well, if it's based on
4 the -- if it's coming in for the purpose of showing
5 the economic impact on -- you know, the extent of
6 the economic impact, it would be admissible for
7 that; but you're still going to and I assume you
8 will have someone who will be testifying so they can
9 cross examine him.

10 MR. GRIER: Mr. Wingard will be here --

11 THE COURT: All right.

12 MR. GRIER: -- as one of the appraisers,
13 but I was getting him to lay the foundation for it.

14 THE COURT: Right. And you can do that.
15 He's the one that commissioned it. He did it for a
16 purpose and he can explain that.

17 MR. GRIER: Okay.

18 Q. All right. Now, if you would, when you
19 do a conservation easement, what is the developer or
20 the owner of property giving up?

21 A. They are giving up their expected return
22 on what it was they were going to be able to do with
23 that property.

24 Q. All right. And this appraisal is an
25 attempt to put a value on that, giving up that what

1 they were going to do on the property?

2 A. It was. And you do it for the purpose
3 of then putting this property in a perpetual, in
4 memorium, in perpetuity where it cannot be
5 developed.

6 Q. All right. And that's all I have with
7 this exhibit at this time.

8 MR. LYDON: It is in evidence or not?

9 MR. GRIER: Mr. Wingard is going to be
10 here to testify.

11 THE COURT: If he's going to be here to
12 testify, I'll admit it then.

13 MR. GRIER: Okay.

14 BY MR. GRIER:

15 Q. Mr. Gregory, just to complete the circle
16 here. Did Columbia Venture note a judicial appeal
17 of FEMA's final determination, which was dated
18 August the 20th, 2001?

19 A. Yes, sir.

20 Q. All right. When did you leave the
21 employment of Burroughs & Chapin, sir?

22 A. At the end of 2004.

23 MR. GRIER: Okay. Your Honor, I want to
24 revisit Plaintiff's Trial Exhibit 500 that you
25 sustained an objection on as a business record and I

1 want to see if I can get it in under effect on cure.

2 Q. And, Mr. Gregory, you have this Trial
3 Exhibit 500? This was the memorandum you wrote of
4 the telephone conversation you had with Bob Coble on
5 February 8, 1999.

6 A. It's in this stack somewhere, if you'll
7 give me a moment.

8 Q. Here's another copy.

9 A. All right. Thank you.

10 Q. Now, did you in fact have a telephone
11 conversation with Mayor Bob Coble on February 8,
12 1999?

13 A. Yes, sir.

14 Q. And what affect did that conversation
15 have on you, sir, in terms of going forward with
16 this project?

17 A. It helped with the aspects of due
18 diligence that I knew the City of Columbia --

19 MR. LYDON: Your Honor, we would object
20 to him saying that he knew the City of Columbia was
21 going to do was based on a conversation with Mr.
22 Coble. Your Honor, he -- I think it's pretty clear
23 to me that he could not testify that I talked to
24 Mayor Coble on the telephone at 10:30 on February
25 25th and Mayor Coble told that the City would

1 cooperate fully in all aspects of allowing our
2 proposed development group to enter and upgrade the
3 dykes as necessary.

4 The fact that he then writes it down and
5 puts it in a memo does not somehow make it
6 admissible. So the fact that he couldn't testify to
7 that conversation because it's hearsay, I mean, this
8 is now -- you know, you can't write it down and make
9 it somehow admissible.

10 THE COURT: Well, if the -- if it
11 specifically refers to the City of Columbia owning a
12 portion of the dyke then I -- that's the levee
13 system?

14 THE WITNESS: Yes, sir.

15 THE COURT: Just a different designation
16 of it. If that was done as part of the due process,
17 regardless of whether they have a reasonable
18 expectation they could do with something with the
19 levees, I would assume that they would have to get
20 permission of the City to deal with that particular
21 portion owned by the City. I don't know that.
22 What's it --

23 THE WITNESS: It certainly was to the
24 City's benefit. We talked specifically about that.

25 THE COURT: I'm sorry. Was Columbia

1 Venture intending to upgrade the portion owned by
2 the City as well?

3 THE WITNESS: Well, some of the
4 questions that were raised, if you recall, Your
5 Honor, and part of the change in the resolution that
6 Kit Smith's amendment did was to also include the
7 City as part of that, because the City was
8 responsible for maintenance there. And I think that
9 that was the 174 and change cost of the yearly
10 maintenance and monitoring of the levee. And I
11 think her interest was having the City be
12 responsible for its portion of that.

13 THE COURT: I do recall the City being
14 part of that resolution.

15 THE WITNESS: Yes, sir. And that --

16 THE COURT: All right. I'm going to
17 allow it.

18 MR. GRIER: Okay.

19 MR. LYDON: Just for the record, it's
20 being allowed for the truth of the matter asserted
21 or his state of mind?

22 THE COURT: State of mind.

23 MR. GRIER: All right.

24 (PLF. EXH. 500 in evidence.)

25 BY MR. GRIER:

1 Q. That's what I want. I think you were
2 responding to that. What was the effect of the
3 conversations with Mayor Coble on your state of mind
4 in terms of going forward with the transaction?

5 A. It gave me assurance that we could go
6 forward as it relate to those matters.

7 Q. Okay. I want to hand you now
8 Plaintiff's Exhibit 203, 349, 199, and 396. Can you
9 tell us was these are?

10 A. Appears to be financial records,
11 auditor's reports.

12 MR. GRIER: Okay. We would offer these.

13 MR. LYDON: Your Honor, I'm going to
14 object. He didn't prepare these. These were
15 prepared by -- not prepared by him. They were not
16 prepared by anybody in Columbia Venture. They were
17 prepared by an independent auditor and it's clearly
18 hearsay. And they're putting these things in to
19 show numbers and dollars and calculations and
20 investment and all that, then we're entitled to
21 cross examine the people that prepared the documents
22 and so I object to these coming in through this
23 witness.

24 BY MR. GRIER:

25 Q. Let me ask you, just to follow up on

1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND
3
4 Columbia Venture, LLC,
5 Plaintiff,
6 vs. CASE NO. 2010-CV-40-8943R
7 Richland County,
8 Defendants.
9

10 PROCEEDINGS: TRIAL - VOLUME V

11 BEFORE: THE HONORABLE JOHN HAMILTON SMITH

12 DATE: September 13, 2012

13 TIME: 2:19 p.m.

14 LOCATION: Richland County Judicial Center
15 1701 Main Street
16 Columbia, SC

17 REPORTED BY: Susan M. Valsecchi, CRR
18 Registered Professional Reporter
19

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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23 (843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 Q. But not as to the project as a whole?

2 A. Not as to the project as a whole.

3 Q. The special projects that you did prior
4 to 1998, did any of those involve development
5 related to levee systems?

6 A. It did not.

7 Q. Did any of those projects involve your
8 dealing with FEMA?

9 A. Did not.

10 Q. So the Columbia Venture project was the
11 first project that you were manager on and was the
12 first time that you had any involvement with the
13 project involving levees, and it was the first time
14 you would have been involved with the project
15 involving FEMA. Is that correct?

16 A. That is correct.

17 Q. Um, prior to this project, had
18 Burroughs & Chapin done any projects outside of
19 Horry and Georgetown Counties?

20 A. Certainly none to this magnitude.

21 Q. Okay. So nobody at Burroughs & Chapin
22 really had any experience dealing with county
23 government, municipal government, whatever, outside
24 of Horry County and Georgetown County at that time?

25 A. Didn't have any involvement dealing

1 of unanticipated issues. Is that correct?

2 A. It could.

3 Q. It could?

4 A. I cannot recall it having done so.

5 Q. Okay. You mentioned that -- getting to
6 this project -- when did you first get involved
7 with it?

8 A. It would have been in the summer of
9 '98, maybe late spring, but probably early summer
10 of '98, to the best of my recollection.

11 Q. Okay. And did Burroughs & Chapin hire
12 lobbyists and a public relations firm to help them
13 try to put this project together?

14 A. Not to put it together.

15 Q. To do what, then?

16 A. Lobbyists -- there were lobbyists and
17 consultants hired -- for the most part, their
18 involvement was after closing on the project, to
19 help combat some of the negative press and
20 publicity that we were receiving afterwards and
21 things like that.

22 Q. Okay. Prior to closing, which I
23 believe was February the 19th, 1999, did
24 Burroughs & Chapin have any lobbyists helping with
25 the project?

1 A. I can't recall. We may have touched
2 base with some consulting firms and things like
3 that. Again, it was a team effort to try to
4 understand the pulse of the community. So there
5 may have been some of those types of activities
6 going on, but I can't recall specifically when and
7 who, Mr. Lydon.

8 Q. How about Jim Fields, was he hired by
9 Burroughs & Chapin?

10 A. Jim Fields had already been hired by
11 Burroughs & Chapin. I mean, he was with McNair and
12 was part of various activities. We had used
13 Mr. Fields before.

14 Q. And -- go ahead. I'm sorry, I didn't
15 mean to cut you off.

16 A. As far as involvement with purchasing
17 this property, McNair was certainly involved; I
18 don't know to what extent Mr. Fields may have been
19 as it relates to the purchase of this property.

20 Q. Was Mr. Fields at the meeting where the
21 resolution was passed?

22 A. I cannot remember whether Mr. Fields
23 was there or not. I know that McNair Law Firm was
24 there -- or are you talking about the night of July
25 '98, FEMA --

1 Q. No, I'm talking about February of 1999
2 when the resolution was adopted. Was Jim Fields at
3 that?

4 A. He may well have been at that meeting,
5 yes.

6 Q. And that was before purchase?

7 A. Yeah. And, again, just like the same
8 way, as you know, the way McNair is set up, Mike Ey
9 is also in that legislative group, and he had been
10 involved in the meetings with Ms. Smith and passing
11 resolutions. That was something that the McNair
12 firm would do in the normal course of that
13 department's activity.

14 So those would have been things that we
15 would have potentially used him for. So if he was
16 there, it would not have been out of the ordinary.

17 Q. Is Mike Ey in McNair's legislative
18 group or real estate group?

19 A. He's in their legislative group.

20 Q. So you had him working for you as a
21 lobbyist from pretty much the get-go, I believe, is
22 your testimony.

23 A. Well, again, he wasn't doing lobby
24 work. What he did was simply help organize a
25 meeting, where we sat down to memorialize an

1 agreement on points that had been determined by
2 people other than lobbyists.

3 You know, again, Judith McGinnis was
4 working on the real estate side of it, and others.
5 But it was primarily the engineers and those types
6 of people that had determined the necessity for the
7 items that resulted from that meeting and the
8 subsequent resolution.

9 Q. Now, you said he wasn't doing lobbying,
10 but he set up -- according to your testimony, I
11 believe he set up a meeting with Kit Smith?

12 A. That's correct.

13 Q. And he presented what
14 Burroughs & Chapin wanted the County to do?

15 A. He did.

16 Q. And so that's lobbying, right?

17 A. Well, it's a stretch of it, but if you
18 want to call it that, that's fine.

19 Q. Okay. What about Don Fowler. Who is
20 Don Fowler?

21 A. Don Fowler is a consultant in Columbia.

22 Q. Was he retained by Burroughs & Chapin
23 prior to purchase of the property?

24 A. I can't recall when he was retained,
25 but he was on board at some point.

1 Q. And when you say he's a consultant,
2 he's not like an engineering consultant?

3 A. No, no.

4 Q. He's a public relations lobbyist
5 consultant?

6 A. He is, yes.

7 Q. So Jim Fields, Mike Ey, Don Fowler.
8 Anybody else that Burroughs & Chapin
9 had retained or had engaged in connection with the
10 Columbia Venture project prior to purchase?

11 A. Not that I recall. When people were
12 engaged, I can't recall the dates and things like
13 that.

14 Q. All right. Now, what lawyers did you
15 have? I realize that McNair was the law firm for
16 Burroughs & Chapin on lots of matters, but what
17 lawyers did you have engaged from McNair, or any
18 other firm, related to the Columbia Venture project
19 prior to Burgess?

20 A. The lawyers within McNair would have
21 been -- John Foster made some contributions. He
22 happened to additionally be a landowner in the
23 area, so his expertise there and expertise as far
24 as tax incentives and that sort of thing, we used.

25 You indicate, Mr. Fields potentially

1 was on the curve ahead of -- he may have been
2 there.

3 Mr. Ey, Judith McGinnis, on the real
4 estate side. I can't remember specifically
5 where -- oh, there were some people in the area
6 putting together documents for Columbia Venture,
7 such as operating agreements and things like that.
8 I can't recall who may have done it, but we would
9 have certainly used them to do that.

10 Q. Was Rick Silver hired as a public
11 relations lobbyist?

12 A. He was.

13 Q. When was he hired?

14 A. I do not know.

15 Q. So you don't know if he was hired
16 before purchase?

17 A. I can't recall specifically, Mr. Lydon.

18 Q. And what firm is he with?

19 A. At the time it was known as Chernoff
20 Silver.

21 Q. Do you know how much he was paid in
22 connection with his work that relates to Columbia
23 Venture?

24 A. I do not know.

25 Q. Do you know how much Chernoff Silver

1 billed Columbia Venture for its work?

2 A. It was quite a lot, but I cannot tell
3 you the specific number.

4 Q. Do you think it was more or less than
5 half a million dollars?

6 A. I do not know. I would not venture a
7 guess, just like I can't recall what we paid for
8 some reports by other consultants.

9 Q. So prior to purchasing the property,
10 Burroughs & Chapin had several lawyers, several
11 lobbyists, public relations firms put together to
12 try to get done what needed to be done at the
13 governmental level; is that correct?

14 A. Yes, but let me explain a little bit.

15 For example, when you say public
16 relations people and lawyers, none were necessarily
17 doing lobbying.

18 You used the one that I think is a very
19 stretched example of calling it lobbying work, when
20 he just attends a meeting and helps draft a
21 document.

22 You know, somebody like -- if, in fact,
23 they were hired beforehand, which I cannot
24 remember, somebody like a Don Fowler would have
25 been hired at that time to do nothing more than

1 simply make introductions to key people, for
2 example, like Mayor Coble or somebody like that.
3 Those are the type things, prior to closing, that I
4 would recall being the case.

5 Q. All of these meetings that you had,
6 that the team had, with Richland County officials,
7 county council folks, did any of these people
8 attend those meetings?

9 A. They very well could have. I cannot
10 remember.

11 Q. So what was Mr. Silver hired to do?

12 A. They're a public relations firm. There
13 were probably a number of duties that they had, but
14 the biggest use of their firm was to try to help
15 with the public relations side of it after
16 purchase.

17 Because once the negative
18 publicity -- the environmentalists and other
19 things, State newspaper articles, things like
20 that -- once that wrapped up, we had to make some
21 concerted efforts just to try to stay above water,
22 given the level of viciousness and the voracity and
23 the volume of the negative publicity.

24 Q. Prior to closing, did Mr. Silver help
25 introduce you guys to local government people and

1 people that you felt you needed to meet?

2 A. Mr. Lydon may have. I cannot recall
3 specifically. I told you, I cannot remember when
4 he was hired.

5 Q. Okay.

6 A. I just told you the primary use that I
7 personally remember Mr. Silver being involved with.

8 Q. Right.

9 Prior to closing, was there any public
10 announcement of the project or presentation to the
11 public in general, or anybody else, to let them
12 know what you guys were getting ready -- or wanted
13 to do at this property?

14 A. I can't recall specifically, but we had
15 met with a number of community leaders -- again,
16 the university, council people. You know, the word
17 was certainly out. There was no secret about us
18 doing it.

19 I mean, we were putting everything on
20 the table to the appropriate council people, city
21 people, you know, potential other important
22 players, such as the university.

23 Q. But that's the people that you guys
24 selected. It wasn't for the public in general,
25 correct?

1 A. Not to the best of my knowledge.

2 Q. Okay. Plaintiff's Exhibit 264 -- I'm
3 hoping it's -- what is Exhibit 264, Mr. Gregory?

4 A. It looks like a number of documents
5 that were put together to be used to approach
6 potential purchasers for the project, investors.

7 Q. Investors?

8 A. Investors.

9 Q. So those materials were used to try to
10 solicit investment in the property. Is that right?

11 A. Yes, sir, among other things. Bits and
12 pieces of it could be used for other purposes.

13 Q. And it's got a pretty detailed summary
14 of the vision that you had for the project, doesn't
15 it?

16 A. Yes, it does.

17 Q. And you went through yesterday golf
18 courses and retail and hotels and marina and all of
19 that sort of stuff, right?

20 A. Yes, sir.

21 Q. And the first two pages, single-spaced,
22 are a confidentiality agreement, right?

23 A. Actually, it's the first three.

24 Q. The first three pages were a
25 confidentiality agreement?

1 A. Yes, sir.

2 Q. Did anybody that you gave that document
3 to have to agree to that confidentiality agreement?

4 A. Well, again, these are separate
5 documents that were put together in one -- one
6 cover sheet that was sent out. If you recall,
7 there was testimony to the fact this was sent out
8 by the McNair firm to an employee of a potential
9 investor --

10 Q. Right.

11 A. -- and the different information that
12 he had wanted. As it relates to the
13 confidentiality agreement. What that was for was
14 basically as it relates to the term sheet,
15 financial information, things like that.

16 Q. That's not what it says, though, is it,
17 confidentiality agreement? It's all confidential,
18 right?

19 A. It says, All information
20 concerning -- which is furnished to you.

21 Q. Right.

22 A. Yes, sir.

23 Q. That's the document that your lawyer
24 has put in evidence, right, as one single exhibit?

25 A. It was put into evidence, and I

1 testified that it was a number of different
2 documents that were put together. I would use
3 pieces of it as a prospectus to go out and solicit
4 investors. Other pieces of it could be used for
5 other reasons, but, yes, you know -- again, what
6 you're trying to protect on that is the ability to
7 buy the property, who the seller is, things like
8 that, terms, those types of things.

9 Q. And you -- that's a good point. I
10 meant to bring that up.

11 You didn't have to worry about somebody
12 going out and taking this project out from under
13 you, because you guys had an option and you had the
14 property locked up if you wanted to buy it, didn't
15 you?

16 A. I'm just trying to recall.

17 Q. Okay.

18 A. I think you are correct on that. And,
19 again, the nature of this was -- if your purpose is
20 to say in any way it was to prevent people
21 from -- from doing anything other than disclosing
22 price and things like that, I think that is
23 probably more the use for it.

24 I'm not necessarily sure that the
25 confidentiality agreement was even necessarily

1 given to all of the people we talked to.

2 Q. You don't know one way or the other
3 whether it was or wasn't; do you?

4 A. I --

5 Q. It was presented to the Court as a
6 single exhibit. Is that correct?

7 A. Well, it was a single exhibit based on
8 the facts and the way it went out. But the
9 information in it is the type used where we would
10 go out and solicit people. And we would have used
11 the term sheet and the confidentiality agreement on
12 the solicitation piece of it.

13 As far as using any pieces of it that
14 may have been similar to things to give an
15 impression and outline the types of things that
16 would be involved in the project -- for example,
17 the university, we would not have been soliciting
18 them to be an investor -- we would have used a
19 multitude of things there to show what the project
20 was about, some of which may have been included in
21 this type of information that we may have used
22 otherwise with people.

23 But, again, there was a difference in
24 the fact that, again, primarily it was the
25 financial information, term sheets, those types of

1 things.

2 We're certainly not going to be showing
3 the university a prospectus on what we thought we
4 could make of the project. We would be showing
5 them land plans and things like that. So there
6 would be differences, Mr. Lydon, clearly.

7 Q. Just so we're clear, you said some of
8 which may have been shown to the university. But
9 you don't know exactly what you showed the
10 university; do you?

11 A. Oh, no, I can't tell you what I
12 specifically showed every person. But what I will
13 tell you is, every person got a very clear vision
14 of what we wanted to do on the property.

15 Q. And yesterday when you were going
16 through that document, you explained that -- all
17 the benefits to the location of this property.

18 I think you discussed, a beautiful
19 piece of property, six-lane highway, major
20 university, international airport, two and a half
21 miles of river. All of that is in that document,
22 right?

23 A. Some of it is. I wouldn't say that all
24 of it is.

25 Q. Okay. And that document, again,

1 is -- I mean, it was a -- I don't know whether you
2 call it a marketing piece or a solicitation piece
3 or a prospectus or what -- but it was to solicit
4 investors in the project, right?

5 A. As sent out, via this cover sheet to
6 the person it was sent to, it would have been both
7 as to that and informational in purpose.

8 Q. Now, prior to compiling that document,
9 did Burroughs & Chapin have any studies done in
10 terms of need for student housing in that part of
11 town, need for hotels in that part of town, desire
12 for golf course in that part of town?

13 A. That would have been based on
14 discussions we had. For example, I had personal
15 knowledge beforehand, the university desperately
16 needed a golf course in that area. We've got --

17 Q. Well --

18 MR. LYDON: Objection --

19 THE WITNESS: You asked me a question.

20 MR. LYDON: I don't object to him
21 answering my question. I do object to him
22 answering and using hearsay, what somebody from the
23 university may have told him.

24 THE COURT: Well, that's sort of
25 opening the door. I think you can answer that.

1 Go ahead, you can answer.

2 THE WITNESS: Thank you, Your Honor.

3 For example, Mr. Lydon, I knew the
4 university desperately needed the housing. I knew
5 they needed the golf course, from discussions with
6 them, things they would like to do. The interest
7 in the research park, the need for that, all of
8 those things, that was not something that we would
9 have needed somebody.

10 A lot of that stuff we had those people
11 do was to verify and understand the percentages and
12 the types of things that would go in there.

13 The university, as you will recall, at
14 the time -- and still do -- has a university golf
15 course that's located, you know, 15, 20 miles away
16 from campus out on the north side of town up in
17 Blythewood. And that's a distinct disadvantage
18 they have in having to drive that kind of mileage
19 to get to it to be able to practice. That's part
20 of the reason you saw, even just some little
21 hitting holes out behind what used to be The Roost
22 out there. I know you're familiar with that.

23 BY MR. LYDON:

24 Q. Right, I am.

25 My question was, did Burroughs & Chapin.

1 have any studies done by anybody with expertise in
2 that area as to whether those things were
3 necessary, viable, profitable, for that part of
4 Richland County?

5 A. Again, we had one of the finest land
6 planners there was put together an initial land
7 plan based on the things that we thought could be
8 done on that project.

9 Q. When was that?

10 A. It included a multitude of the things
11 that we discussed yesterday, and that land plan
12 happened to be in this document you're asking me
13 about.

14 Q. That was your plan, though.

15 My question was, had anybody determined
16 whether it was economically feasible? Had you had
17 a study done on the economic feasibility of doing
18 this project at the time that that Exhibit 264 was
19 prepared and submitted?

20 A. We had a very good idea, Mr. Lydon.
21 The answer to your question is, did we have
22 specific studies done showing that? The answer is
23 no.

24 But, if I may explain, the experience
25 of the company and the people that we talked to,

1 those are issues that developed well ahead of
2 buying the property.

3 But for our understanding that those
4 things were required and necessary and we had the
5 ability to do it, we would have never come up with
6 a land plan if we were able to do it, because
7 you've got to give a land planner certain
8 information and priority.

9 So those types of things were known
10 ahead of time. The studies that you're referencing
11 ultimately confirmed what it is we had determined
12 on the front end, prior to purchase.

13 Q. And those were done after purchase,
14 though?

15 A. Those were done after the purchase, but
16 they confirmed what we had strong indications
17 could, in fact, be done. And a lot of it, as we
18 discussed yesterday, has subsequently been proved
19 out. Not only in a study, in reality.

20 Q. How many single-family residences were
21 planned for the project in this time period, late
22 1998?

23 A. I don't know. I would have to go back
24 and look at the detail of that, Mr. Lydon. I can
25 look at the documents you've handed me and see if I

1 can make a determination from that.

2 Q. Well, do you know whether or not
3 anybody had done studies, whether there was a
4 demand to warrant that -- building however many
5 houses it was -- before you purchased the property?

6 A. Burroughs & Chapin, you know, being in
7 the development business, would naturally
8 understand the economic climate for housing
9 demands, not only along the coast, but regionally;
10 you keep up with those types of things. You see
11 which MSA areas are projected to do well.

12 This was an MSA area that was just
13 steady as a door -- you know, just rocked along
14 because of all of the things that were already
15 here, such as the seat of government, such as the
16 university, such as Fort Jackson, things like that,
17 so...

18 Q. Is there anything in that document that
19 says how many houses were projected?

20 A. If you would allow me the time to
21 look --

22 Q. Sure.

23 A. -- I would be glad to see if there's
24 anything in this document that would give me an
25 indication.

1 For example, just with student housing,
2 within this report, in just a several-year period,
3 looks like well over 2 or 300 acres would have been
4 designated for that.

5 Residential gated in year 3, would have
6 been 200 acres for that.

7 But, again, this was a long build-out.
8 Those were just some of the preliminary things that
9 we would look at and trying to do so on a very
10 conservative basis.

11 Q. So 200 acres, how many houses would
12 that be?

13 A. Probably 4 or 500.

14 Q. Okay. And you said gated?

15 A. Gated. Now, that would be very high
16 end, at that point. But, again, this ran the gamut
17 from rental property up to very high end.

18 Q. So 4 or 500 houses in a gated area at
19 what price range?

20 A. Again, with very conservative numbers,
21 looking at an average sales price of a lot of
22 \$50,000.

23 Q. And you've got to build a house on top
24 of that?

25 A. No, we would probably sell the lots to

1 a developer, and then you would have a house
2 builder build the homes.

3 Q. Okay. But to sell a lot to the
4 developer, there's got to be a demand for those
5 houses, right?

6 A. And, again, based on our estimates at
7 the time, that was a very conservative demand for
8 it.

9 Q. And then your estimates, just to be
10 clear, these are just sort of Burroughs & Chapin's
11 opinions or observations. They're not based on any
12 studies or reports or anything that you've engaged
13 anybody to do prior to purchase?

14 A. Not in the type of detail that would
15 ultimately go out there, but it was certainly based
16 on industry knowledge. And it was based on
17 inquiries made within the community.

18 Q. Isn't that something you would want to
19 know before you spend 18 million dollars?

20 A. Again, you're buying a piece of
21 property, with an appraisal of 30, for 18. We knew
22 that was very conservative. The build-out on this
23 would have gone well beyond the 30 million dollars.
24 18 was a great deal based on the information we
25 had.

1 Q. Prior to closing, did
2 Burroughs & Chapin have any agreements, written
3 agreements, with Richland County, concerning golf
4 courses, parking for football games, student
5 housing, research development project, anything
6 like that?

7 A. All of those things are -- within the
8 project, we would not ask Richland County to be a
9 partner in the things that would go in the
10 development; no, sir.

11 Q. But you didn't have any
12 agreement -- any written agreements -- with the
13 university to do any of those things?

14 A. Nor did we anticipate them doing it.
15 What we had a written agreement with
16 Richland County to do, was allow us to upgrade
17 those levees to a certifiable level, so then we
18 could go and do the normal things developers do
19 behind it.

20 Q. I'm trying to understand what
21 agreements you had in place, written agreements, to
22 implement this vision prior to spending 18 million
23 dollars on this property.

24 A. Your question was, Did we have an
25 agreement with the university to do parking, your

1 question was, Did we have an agreement with the
2 County to build a golf course. No, we did not.

3 Q. Not the County, with the University of
4 South Carolina.

5 A. Well, your question was the County, if
6 I recall correctly.

7 Did we have an agreement with the
8 University of South Carolina to build a golf
9 course? No, we did not.

10 Q. How about student housing?

11 A. No, we had no agreements with anybody
12 that would do it. We would go out and do that. We
13 couldn't make an agreement with somebody until that
14 levee got developed. There's no way we could
15 fulfill a contract like that until that levee had
16 been upgraded, Mr. Lydon.

17 Q. How about a Non-binding Memorandum of
18 Understanding, could you have done that with the
19 university to get yourself some level of assurance?

20 A. Could have. I didn't need to. We
21 understood their process. We worked very
22 closely -- Dr. McGee, if you recall, was the
23 athletic director then, and we discussed a
24 multitude of opportunities and felt very certain
25 and confident they would have been there. And, in

1 fact, some of those, as you've mentioned, have
2 happened.

3 Q. How about hotels, did you have any
4 agreements with any hotel developers to build
5 hotels on this property?

6 A. We were already in the hotel business,
7 had a lot of contacts there, Mr. Lydon. Regent
8 Partners, who was one of the people that came in
9 also in the same position where they had developed
10 hotels, had a lot of contacts in the hotel
11 business. We didn't envision that being any
12 particular problem at all.

13 Q. I'm not -- I'm certainly not contesting
14 that or disputing the fact that Burroughs & Chapin
15 has lots of contacts in the real estate business
16 and lots of experience in the real estate business.

17 What I'm trying to do is figure out
18 what agreements you had to do any of this prior to
19 purchase, even if it was just a Memorandum of
20 Understanding, anything you had in writing prior to
21 closing that would give any indication that this
22 vision was going to happen, other than just
23 Burroughs & Chapin's experience and enthusiasm for
24 the project.

25 A. No. Had we sold any acreage on the

1 property, had we promised any, had we done anything
2 like that? No. Until that levee got upgraded, we
3 certainly weren't in position to do that. I mean,
4 if you're --

5 Q. You were talking to --

6 A. You're suggesting -- yeah, we were
7 trying to get ideas of what may work out there, but
8 if you're suggesting we should have entered
9 contracts and had agreements for people to build
10 things prior to this, that's just insanity.

11 Q. I'm just trying to understand whether
12 you had any commitments from anybody that were
13 going to do anything on that property.

14 A. I have already answered that to be no,
15 but there's a reason for it.

16 Q. Has the university, in fact, built a
17 baseball stadium since then?

18 A. Yes, they have, a beautiful baseball
19 stadium. We certainly identified at that time
20 their need for one. They subsequently did, in
21 fact, spend billions of dollars to build one.

22 Q. And it's almost adjacent to campus.
23 It's, what, within half a mile to campus? Much
24 closer than you would have proposed -- that this
25 property would have been, correct?

1 A. Mr. Lydon, I doubt anybody from
2 campus -- maybe except somebody on the extreme end
3 where some of the fraternity and sorority houses
4 are -- would walk to the stadium. It's a
5 considerable distance from campus. It's all the
6 way down at the end of Blossom Street on the river.
7 You have to cross beyond Huger to get to it.

8 Q. It's less than a half mile to campus,
9 isn't it?

10 A. It's less than a half mile; but the
11 intent of the other is for the very same reason;
12 there are some students that walk to the football
13 stadium. What we had envisioned back then was the
14 opportunity to take a coliseum, a baseball stadium,
15 athletic facilities, the Dodie Center, all of which
16 are dispersed and in different places right now,
17 and you don't have a campus area for the sports
18 activities. And that's what we had envisioned
19 then.

20 Q. A campus area two and a half miles from
21 the campus?

22 A. Yes, as opposed --

23 Q. And --

24 A. If I may finish. As opposed to ones
25 that are spread out equally as far where people

1 don't walk to them.

2 Q. How about a research facility, are you
3 aware of whether the university has -- now has a
4 research facility downtown or on the campus?

5 A. They have certainly made efforts to do
6 so. I can't speak to the efficiency of it or how
7 well it's doing and things like that.

8 What I can tell you is, relating to
9 research facilities, as it relates to our vision on
10 the front end and what the university at one point
11 had to say about it, I was asked to meet one day
12 with Dr. Sorensen, the president of the university,
13 to describe to him our vision for the research park
14 and those types of things.

15 His charge, from his board of
16 directors, was to try to create something in the
17 high-tech area and do some research things. And
18 the university was struggling mightily to get it
19 off the ground and get it going.

20 I did, in fact, travel to Columbia,
21 make that presentation to Dr. Sorenson, and I will
22 never forget his reaction, Mr. Lydon, after I had
23 done so.

24 He leaned back in his chair, did his
25 hands just like that, and said: My God, you guys

1 have silver-plattered the future of Columbia.

2 That's the truth.

3 Q. Do you know -- prior to purchase, prior
4 to the closing, did Burroughs & Chapin have any
5 sort of exit strategy, what it would do if -- for
6 whatever reason, whether it was levees or the
7 economy or lack of interest, or whatever, if it
8 couldn't do this? Did it have an exit strategy of
9 what it was going to do?

10 A. Good developers always have plan Bs and
11 things like that. Again, just based on the raw
12 land, as is, we had a 30-million-dollar appraisal.

13 One of the first exit strategies we
14 would have had prior to purchase, which was your
15 question, would have been not to purchase it, had
16 we not gotten the assurances from Richland County
17 that we could move forward on the project in the
18 manner that we had agreed to and envisioned between
19 the parties.

20 Q. Obviously, an exit strategy was, you
21 could just walk away, then.

22 A. We could have. And that would have
23 been what we would have done, but for the promises
24 made by Richland County that subsequently they
25 reneged on.

1 Q. But did you have an exit strategy for
2 what you would do after you bought the property, if
3 you couldn't develop it?

4 A. We had initial exit strategies of
5 not -- you know, again, you don't fully develop
6 them out, but you start listing things you may be
7 able to do with it, things that would go from as
8 simple as having -- creating set-asides for
9 wetlands credits in the wetlands areas and things
10 like that, mitigation banks, those types of things.

11 You would have certainly been able to
12 do other things, like parcel off corners for, you
13 know, development, people want to put a C station,
14 gas station, things like that. You would have had
15 the ability to sell pieces of it for other
16 developments. You have hunt clubs, things like
17 that. There would have been just a number of
18 things that we had potentially discussed.
19 None -- you know, you don't flush them out until
20 you need to.

21 Q. Right.

22 But you had discussed various options
23 for getting rid of the property?

24 A. As any good developer would.

25 Q. Would those exit strategies have -- I'm

1 sorry, you --

2 A. I'm listening, Mr. Lydon.

3 Q. You okay?

4 A. I'm sorry, no, I was just getting a sip
5 of Diet Coke.

6 Q. That's fine. I saw you looking at your
7 watch and taking a sip.

8 A. That's all. It's getting closer to
9 break time, and I'm beginning to get a little
10 tired, but I'm fine. Let's continue.

11 Q. Thank you.

12 Would the exit strategies have resulted
13 in Columbia Venture making a profit on this piece
14 of property?

15 A. Again, those strategies weren't -- had
16 not been fleshed out to that point. Keep in mind,
17 at that time, where your question originally to me
18 was, prior to purchase.

19 Again, the land value, as was, is 30
20 million dollars; we're paying 18 for it. So one
21 strategy is just to put 12 million in the bank and
22 go home.

23 Q. Okay. Were you in the courtroom for
24 Mr. Manning's testimony Monday, Tuesday, Wednesday?

25 A. For his testimony or before?

1 Q. During his testimony.

2 A. I think I was, yes, sir.

3 Q. And he talked about the need for
4 certainty when you're doing a real estate
5 development. Do you remember that?

6 A. I do.

7 Q. Would you agree that certainty is very
8 important for a real estate developer before they
9 make a large investment?

10 A. The short answer to your question is
11 yes, but if I may add to that, obviously there are
12 certain degrees of certainty. And for that
13 reason -- and I appreciate you bringing that up.

14 I mean, that is absolutely why we went
15 to the people that control the project and
16 the -- and our ability to bring it off, which was
17 Richland County and their cooperation, the City of
18 Columbia and others, and that's precisely why we
19 put our vision on the top of the table with them,
20 fully discussed it with them. They understood the
21 necessity we had in that resolution that was
22 signed. Everybody understood the ramifications of
23 everybody keeping their word and following through.

24 It was just as simple, straightforward,
25 good faith, fair dealing as you could possibly

1 have. It was critical to us. And that was one of
2 the things we used to remove the uncertainty, and
3 there were quite a few uncertainties that could
4 have been going on with this project.

5 But, in fact, that would have
6 eliminated them all had they kept -- done what they
7 had agreed to do.

8 Q. So it is your testimony that at the
9 time Burroughs & Chapin bought this property, all
10 uncertainties had been eliminated?

11 A. I can't tell you that all of them were.
12 There are things that you may not be aware of at
13 the time. But the thing that became the
14 uncertainty was certainly dealt with on the front
15 end prior to closing.

16 Q. I understand that there can be problems
17 that come up after the fact that you weren't aware
18 of. And I probably just asked a bad question, so
19 let me try again.

20 Is it your testimony that all of the
21 uncertainties that Burroughs & Chapin were aware of
22 had been resolved prior to closing?

23 A. I would not say that all of them -- the
24 primary one that we had to deal with -- there were
25 three of them. It was the ability to work with

1 Richland County and then have us upgrade that levee
2 to a certifiable standard, it was for them to
3 accept responsibility for maintenance of the levee,
4 and it was for FEMA to understand what it was
5 Richland County and Burroughs & Chapin were
6 agreeing to do; and that if we did those things,
7 then, in fact, our interpretation of the
8 regulations was that all flood hazard designations
9 of any type would then, in fact, be removed from
10 that property and we could build flat on the
11 ground.

12 Q. And that was your interpretation, you
13 said?

14 A. It wasn't just my interpretation.
15 Everybody understood that.

16 Q. You mentioned earlier -- yesterday, I
17 guess it was -- yeah, yesterday -- you described
18 Richland County government as being large,
19 sophisticated, and knowledgeable, didn't you?

20 A. Yes, sir, they are.

21 Q. Okay. And would you agree with me that
22 the responsibility of the folks that run Richland
23 County and who are elected to represent it is to
24 the citizens of Richland County? That's their
25 first priority, correct? That's their only

1 priority?

2 A. Their responsibility is -- again, I'm a
3 taxpayer in Richland County myself, personally.
4 Their responsibility is not only to the citizens of
5 Richland County, but to all -- also to all of those
6 people whom they do business with and encounter and
7 do things like that.

8 We came in very good faith to Richland
9 County, and I think, at a bare minimum, you know,
10 we had a right to believe that they would be
11 truthful and fair in their dealings with us, as we
12 were with them.

13 I do not think that's an unreasonable
14 thing to assume from one of the seats of government
15 in the state capital in the center of the state.

16 Q. Are you saying they were not truthful
17 with Burroughs & Chapin?

18 A. I'm saying that they did not follow
19 through on the things they agreed to do with
20 Burroughs & Chapin.

21 Q. I understand that fact, but your
22 comment was that they weren't truthful with
23 Burroughs & Chapin, and I want to try and make sure
24 I'm clear on that.

25 A. Well, it just simply stands to reason,

1 Mr. Lydon, if they say they're going to do X and
2 they don't, then that is inherently untrue.

3 Q. Do you have any reason to believe that
4 at the time that resolution was passed, they did
5 not intend to do it?

6 A. No. My understanding was they did, in
7 fact, intend to do it, wanted to do it, welcomed us
8 there, and -- but for the actions they took, we
9 would have never purchased the property.

10 They, certainly, based on their actions
11 and their welcoming attitude at the time, their
12 response to our questions, there was certainly
13 inducement through that process that certainly
14 caused us to be part of the closing on the project.

15 Q. You indicated that, I think, other than
16 the meeting with Ms. Smith -- and I may be wrong
17 about this -- but other than the meeting with
18 Ms. Smith, you couldn't remember any specific
19 meetings with other people, but just that it
20 was -- you were received enthusiastically?

21 A. No. I specifically -- I can't recall
22 times and dates, Mr. Lydon, 13 years after the
23 fact --

24 Q. Understood.

25 A. -- but, certainly, prior to meeting

1 with Ms. Smith, I would have met -- I met
2 with -- not would have met -- I met with
3 Mr. Livingston, for example, as a protocol. He is
4 chairman of the council. I would have met with
5 Ms. Scott. I did meet with Ms. Scott. Ms. Scott,
6 it was in her district. I met with others like
7 that ahead of time.

8 But, again, we tried to do it in a very
9 relaxed, normal on-top-of-the-table manner, and I
10 don't know what more I can tell you about that.

11 Q. Did you understand all along, though,
12 that the enthusiasm for the project was based on
13 these folks' belief that this was going to be a
14 good thing for Richland County?

15 A. They told us it would be a good thing
16 for Richland County.

17 Q. And if it turned out, for whatever
18 reason, not to be a good thing for Richland County,
19 then maybe they wouldn't be so enthusiastic. Would
20 you agree with that?

21 A. I can't speak for them.

22 Q. Well, let me ask you this: When you
23 take a -- how many times have you taken projects to
24 local government folks to say, Hey, here's a
25 development we want to do?

1 A. I can't tell you the specific number,
2 but many.

3 Q. Many. And aren't those public
4 officials generally enthusiastic about it when you
5 make your initial presentation?

6 A. The word you used is generally. In
7 those times they aren't, they aren't afraid to tell
8 us, either.

9 Q. But you're bringing it to them,
10 initially, in the best light. I mean, you're
11 bringing it to them with all of the good stuff,
12 and, you know, you're not talking about problems,
13 you're not talking about concerns, you're talking
14 about, Here is all of the good things about it; and
15 that's generally well received by local government
16 officials, isn't it?

17 A. No, we want to bring up problems on the
18 front end, too. A lot of the projects that
19 Burroughs & Chapin would bring up would be well
20 received, though, Mr. Lydon, because of the
21 development history they had and the quality
22 projects they had produced.

23 Q. Let me ask you about the meetings that
24 you had with Ralph Pearson prior to closing.

25 A. Yes, sir.

1 Q. How many times did you meet with
2 Mr. Pearson?

3 A. I can't tell you the number. Some may
4 have been in conjunction with meetings with other
5 staff members all at one time. I mean, I can
6 remember times we were in a conference room there
7 with a number of officials. I can't specifically
8 tell you, you know -- but, again, you know, so the
9 specific number, I can't tell you.

10 Q. How many one-on-one meetings did you
11 have with Mr. Pearson? And when I say one-on-one,
12 I didn't mean that -- how many meetings did you and
13 other members of your team have with Mr. Pearson by
14 himself?

15 A. I can't recall the number. At least
16 one.

17 Q. Okay. And who was there at that
18 meeting?

19 A. Mr. Tillotson would have been there, I
20 mean, you know, to be able to speak engineering
21 terms, things like that.

22 Q. So you and Mr. Tillotson met with
23 Mr. Pearson?

24 A. That's my recollection.

25 Q. Where was that meeting?

1 A. At Richland County, the main office.

2 But that was not one what I would have gone out to
3 the county -- county building for.

4 Q. Right.

5 What was discussed at that meeting?

6 A. I can't recall. I mean, just various
7 engineering things, specifically. Again, you know,
8 what I can recall, Mr. Lydon, one of the key issues
9 here has been the interpretation by the County as
10 it relates to some of their ordinances, and we
11 would have asked a number of people that, including
12 the county administrator and other department
13 heads.

14 Q. Okay. How about Mr. McSwain, how many
15 times did you meet with Mr. McSwain, you and one of
16 your team members?

17 A. Numerous times. I mean, in double
18 digit numbers. I can't tell you precisely.

19 Q. And is that part of a bigger group, or
20 just with him one-on-one?

21 A. Usually in a several-people-type group,
22 but a lot of times he would summon -- had other
23 people in to talk and things like that. Even
24 Ms. Taylor attended some of those.

25 Q. And those were prior to closing?

1 A. Both prior to and after.

2 Q. How about meetings with the planning
3 department staff?

4 A. Similar as to the answers I have given
5 for the others. It would have been similar,
6 Mr. Lydon. You know, part of a larger group at
7 times with the administrator, some before closing,
8 some after.

9 Q. Okay. Are you aware that it's -- did
10 you discuss with the planning department how they
11 interpreted the E and P language of the ordinance?

12 A. Well, frankly, Mr. Tillotson would have
13 been the primary one discussing that, but I do have
14 knowledge that we had discussed it with enough
15 people to understand that was Richland County's
16 position on that.

17 Q. Well, you discussed it with
18 Mr. Pearson, the county engineer, or did you?

19 A. Mr. Tillotson would. I have already
20 testified to that.

21 Q. So you were not part of that
22 conversation?

23 A. I was with him. But again, you asked
24 me what I asked him, you know.

25 Q. And did you get the same interpretation

1 when you met with the planning department staff?

2 A. We got a consistent interpretation from
3 Richland County officials.

4 Q. The engineering department and the
5 planning department gave you the same answer with
6 respect to the interpretation of the ordinance?

7 A. As did the administrator.

8 Mr. Lydon, if I may continue, it stands
9 to reason that had we not received the same one,
10 that issue would have been ferreted out to the very
11 end. Prior to closing, we would not have closed if
12 there was an issue with that as it relates to the
13 County.

14 They understood -- again, I cannot be
15 more clear on that -- Richland County -- and when I
16 say that, I'm inclusive, with department heads,
17 council, administrator, everybody we talked
18 to -- everybody clearly understood what the
19 resolution meant, what our questions were relating
20 to, how do they interpret their ordinances and
21 otherwise. But for those things, we would have
22 never closed.

23 Q. Okay. Well, we'll get to the
24 resolution.

25 Tell me about your meeting with Kit

1 Smith. What was said at that meeting, the very
2 first meeting you had with her, before the meeting
3 at the McNair Law Firm?

4 A. That was a telephone conversation with
5 Lyles Glenn and just introduce, I'm so-and-so, I'm
6 coming here on behalf of Burroughs & Chapin.

7 I knew who Ms. Smith's husband was, he
8 was the dean of the business school, if you'll
9 recall, and I knew who she was. As a matter of
10 fact, our parents were friends. As a matter of
11 fact, subsequent to my father's passing, uh, Kit
12 Smith's mother sent my brother and I an extremely
13 nice condolence letter. So I sort of knew who she
14 was.

15 But it was an introduction to say, This
16 is who I am, where I am. I'm coming in, we need
17 your help. The university wants us to sit down and
18 talk with you and get your help and describe the
19 project to you that we want to bring to town.

20 Q. Was she the first council member that
21 you talked to?

22 A. No. The first one I would have done,
23 again, out of protocol, would have been
24 Mr. Livingston.

25 Q. Where did you meet with him?

1 A. Uh, I can't specifically recall.

2 Q. Who was present at that meeting?

3 A. I met with him on several times. So as
4 far as the very first one, I can't remember.
5 Probably Mr. Wendel, if I had to give you my best
6 faith effort on an answer, Mr. Lydon.

7 Q. Okay. And Ms. Bernice Scott, did you
8 meet with her before or after you met with Kit
9 Smith?

10 A. I can't tell you the exact time I met
11 with them.

12 Q. Can you tell me anything specific that
13 Mr. Livingston said to you in the meeting when you
14 presented the project to him?

15 A. After 13 years, I can't quote him,
16 Mr. Lydon --

17 Q. Okay.

18 A. -- but I can give you my best
19 impression of what I recall him saying. Again, it
20 was general in nature. He was enthusiastic about
21 it. He thought it was a wonderful idea. He
22 understood the impact it could have on Richland
23 County and the positives that it would bring.

24 Q. Did he express any concerns?

25 A. Did not.

1 Q. How about Kit Smith, do you
2 remember -- I'm not sure if Mr. Grier has an
3 objection.

4 MR. GRIER: No, it's not an objection.
5 I don't mean to interrupt you, I was just wondering
6 if you need a break.

7 THE COURT: It is time for one, so
8 let's go ahead and take a recess, ten minutes or
9 so.

10 THE WITNESS: Thank you, sir.

11 (A brief recess was held.)

12 THE COURT: All right. You may
13 proceed, Mr. Lydon.

14 BY MR. LYDON:

15 Q. Mr. Gregory, I think you testified that
16 you first became aware of this property sometime in
17 the summer of 1998. Is that correct?

18 A. To the best of my recollection.

19 Q. And Plaintiff's Exhibit 11 is up there
20 in front of you. It's the minutes of a meeting
21 that FEMA held here in Columbia, South Carolina.

22 A. Yes, sir.

23 Q. And were you present at that meeting?

24 A. I was.

25 Q. Okay. How did you come to be present

1 at that meeting?

2 A. I can't remember specifically how it
3 was that I became present at that meeting. I
4 traveled up. I know Bill Pritchard was with me
5 from Burroughs & Chapin, and we met Wilson
6 Tillotson and maybe others from Lockwood Greene.
7 But there were three, four, five of us there.

8 Q. Okay.

9 A. Again, we were just sort of there for
10 informational purposes. We were told there was a
11 meeting, just checking it out.

12 Q. All right. And that was on July the
13 8th, 1998?

14 A. To the best of my recollection.

15 Q. Okay. Was that the first time that you
16 knew that there was a proposed, revised map that
17 had all of the Manning property in the floodway?

18 A. The first time I knew, yes.

19 Q. So when you showed up in that meeting,
20 you didn't know anything about the floodway issue?

21 A. I don't think I personally did. It's
22 the first time I had seen it. I mean, they were
23 going to show it to Lexington County, Richland
24 County. I mean, there was discussion before the
25 meeting that that's what they were going to do.

1 Q. Okay.

2 A. But --

3 Q. But were you aware of what was in the
4 map or what was going to be in the map before the
5 meeting?

6 A. I had a good idea. But just until I
7 saw it, I had no way of knowing otherwise.

8 Q. Had you seen the Rust report prior to
9 that meeting?

10 A. There's no way I can tell you whether I
11 had seen that report prior to that meeting or not.

12 Q. When did you first see that report?

13 A. I can't tell you when I first -- if I
14 knew when I first saw it, I would have been able to
15 answer the previous question.

16 Q. How did you come to get that report?

17 A. I am confident that it would have been
18 from information that the Mannings provided to us.
19 When they did so, I can't tell you.

20 Q. Okay. Did you read the report when you
21 got it?

22 A. I may have at the time.

23 Q. Okay. Turn with me to Page 4 of the
24 report.

25 A. All right. Is that --

1 don't know the reason for their pulling out.

2 Q. I didn't ask you if you knew the
3 reason -- maybe I did -- so let me rephrase the
4 question.

5 Did you become aware that after
6 receiving this report, they pulled out of their
7 plan, or withdrew from their option to purchase
8 this property?

9 A. I knew they pulled out. I did not know
10 if it was before or after or as a result of this
11 report.

12 Q. Okay. And Exhibit 236 is up there.
13 Can you identify that for me?

14 A. I don't have a 236. There it is, I'm
15 sorry. Put the other one on top of it, I'm sorry.

16 Q. No problem.
17 236 is a letter that Mr. Manning wrote
18 to Richland County, I believe. Is that correct?

19 A. Yeah, that's what it appears to be,
20 yes, sir.

21 Q. And it pertains to the proposed revised
22 flood map that was going to be issued by FEMA,
23 didn't it?

24 A. I will have to read it to determine
25 that.

1 Q. Okay, go ahead.

2 A. All right. I have scanned it quickly.

3 Q. Did the Mannings provide you with a
4 copy of that letter as a part of due diligence?

5 A. They probably did. I can't recall it
6 specifically, but they probably did.

7 Q. Does that look like something that they
8 would give you?

9 A. It looks like something they may have,
10 yes.

11 Q. Okay. And so at the time you attended
12 this meeting on July 8th, 1998, the FEMA meeting to
13 discuss the new map, had you seen the Rust report?
14 Had you seen the letter that Mr. Manning gave you?

15 A. I cannot recall that, Mr. Lydon.

16 Q. Would you agree with me that both of
17 those documents predate the July 8, 1998 meeting?

18 A. Yes, I do.

19 Q. Now, were there a lot of people at that
20 meeting?

21 A. Yes. Mr. Lydon, I can almost remember,
22 we were sitting at a very long conference table,
23 literally rectangular in shape. We were down near
24 the end closest to the projection screen where
25 Hayes, Seay Mattern & Mattern, the engineers that

1 were there to present the map, had their projector
2 set up.

3 We were some of the last ones in, so we
4 got to sort of sit up front, so to speak. If
5 you're late to church, you know what I mean.

6 Q. Okay.

7 A. The FEMA executives were down on the
8 far end on one side of the table. Richland County
9 folks were then next in line, and then sort of us.
10 And on the other side of the table were Lexington
11 County folks, affected landowners, such as
12 Blanchard, represented by members of the McNair
13 firm and others.

14 But, I mean, I can almost remember
15 where people were sitting. I don't know why, but I
16 just -- you know, when you sit an afternoon in a
17 meeting like that, just some of those funny things
18 sort of stick in your memory.

19 Q. Okay. Turn with me over to Page 2 of
20 that document.

21 A. Which one are we talking about now?

22 Q. 11.

23 A. The summary of the meeting minutes?

24 Q. Yes, Plaintiff's 11.

25 A. What page, please?

1 Q. Right, sure.

2 A. But, no, I was not an expert in those
3 areas.

4 Q. That wasn't my question, were you an
5 expert.

6 My question was, Did you know anything
7 about upgrading the levees or where the criteria
8 were or anything like that?

9 A. I would have known that it would have
10 been in those areas. Again, you've got to
11 remember, we met Lockwood Greene to go to that
12 meeting prior to, and we would have had some
13 discussion then, and I would have already had some
14 pre-discussion with Wilson Tillotson.

15 And remember, he and Lane Fowler were
16 the two primary people from early on, when we first
17 ever were introduced to the project, that we had
18 discussions with. And they sort of filled me in on
19 those types of things so, yes.

20 Q. Look at me on the next page, letter G.

21 A. Yes, sir.

22 Q. It says: If the revised floodway is
23 finalized, how would someone with property now in
24 the floodway be able to build on their property?

25 Do you know who asked that question?

1 A. Do not.

2 Q. Was it somebody involved in the Manning
3 property?

4 A. Not to my knowledge. That doesn't mean
5 it couldn't be. My answer to your question is, I
6 don't know who asked it.

7 Q. Okay. And it says: FEMA regulations
8 allow for no-rise studies to be done for any
9 particular development. However, Richland County
10 has adopted more stringent regulations and doesn't
11 allow any development in the floodway, unless a
12 variance is obtained.

13 Is that the first time that you became
14 aware that Richland County had more stringent
15 regulations than FEMA?

16 A. I was aware that that was stated at the
17 meeting. It probably wasn't the first time. I
18 probably knew about that in discussions with
19 Mr. Tillotson prior to --

20 Q. Was that a concern?

21 A. Not at that time, no, sir.

22 Q. Okay.

23 A. Those are things that we certainly
24 addressed and were aware of.

25 Q. Okay.

1 A. But your question was, was it a concern
2 at that time. Until we ferreted it out and fleshed
3 it out, I didn't know whether it should be a
4 concern or not.

5 Q. Okay. And then the following page,
6 Page 4, letter N?

7 A. Yes, sir.

8 Q. Do you see where it says, Richland
9 County representatives indicated that they are
10 currently using the preliminary maps, with the
11 widened floodway, for regulatory and permitting
12 purposes?

13 A. I do.

14 Q. Do you remember that being discussed at
15 the meeting?

16 A. I remember that being said, yes.

17 Q. Okay. So --

18 A. Let me further enumerate on that,
19 though, Mr. Lydon. You're taking certain things
20 that are black and white that are listed as minutes
21 in a meeting and things like that.

22 There were a lot of people there that
23 looked at the map when they put it on the projector
24 screen and it showed the floodway all the way over
25 in the City of Columbia's industrial park.

1 There was a lot of chuckling and
2 laughter at the meeting. It was not a map by a lot
3 of people in that room that were taking it overly
4 seriously.

5 Obviously, Richland County was there
6 strongly objecting to it, and others, too.

7 So while this is, you know, FEMA
8 black-and-white notes from the meeting, the tone of
9 the meeting was that that map had significant and
10 serious problems, and it was a long way from being
11 what would be a definitive map in the long run.

12 Q. But it was -- does it say that anywhere
13 in the minutes --

14 A. No, no.

15 Q. -- that people were laughing or they
16 thought it was a joke?

17 A. It does not. And I have before been to
18 meetings with FEMA where I have disagreed with
19 their minutes as it relates to it. They're very
20 sanitized black-and-white meeting minutes. Of
21 course it doesn't say that. I'm testifying. I was
22 there, though, and you asked me a question about
23 it. That's all.

24 Q. Do you disagree with the things that we
25 have just talked about, that those things were

1 discussed at that meeting?

2 A. No, I do not.

3 Q. And Mr. Manning, obviously, didn't
4 think it was a joke, because he wrote a letter as
5 soon as he found out about the map to Richland
6 County expressing his concerns, didn't he?

7 A. Well, I would have to look back at the
8 date of Mr. Manning's letter. Actually,
9 Mr. Manning's letter predates this meeting.

10 Q. So he had concerns even before the FEMA
11 meeting?

12 A. Yes, as -- once he had learned that it
13 may be. That was -- again, you know, you asked me
14 if he took the meeting [sic] as being less than
15 complete at the time. Everybody knew there was
16 going to be a different map. That's the feeling I
17 had walking out of there.

18 Q. That's a feeling you had?

19 A. I'm giving you my impression that I had
20 after this meeting, that there would be a different
21 map than that one.

22 Q. Is there anything in these minutes that
23 says --

24 A. There's nothing in the minutes that are
25 going to say that.

1 Q. Okay. In fact, the minutes
2 specifically say that Richland County
3 representatives indicated they are currently using
4 the preliminary maps with the widened floodway for
5 regulatory and permitting purposes. Is that
6 correct?

7 A. Yes, sir, and I do say that, and I
8 agree with you. But --

9 Q. So --

10 A. But --

11 Q. -- as of -- go ahead.

12 A. Your question was, based on that
13 meeting, did Mr. Manning think it was a joke? No.
14 Prior to, he had sent that letter, so he had no
15 availability of how that meeting may have gone or
16 been conducted or otherwise.

17 Q. My question was, did Mr. Manning
18 have -- were his concerns about the proposed map
19 serious enough for him to write a letter to
20 Richland County expressing those concerns in May of
21 1998?

22 A. It would certainly appear to be that
23 way. I can't speak for Mr. Manning's thoughts.

24 Q. And so as of July the 8th, 1998,
25 Burroughs & Chapin knew that there was a proposed

1 revised floodplain that put almost all of the
2 Manning property in a floodway. Is that correct?

3 A. That would be correct.

4 Q. And they knew that if somebody wanted
5 to upgrade the levees, they were going to have to
6 do it in accordance with FEMA standards. Is that
7 correct?

8 A. Certainly did.

9 Q. And they knew that if the revised
10 floodway was finalized, that they would have to
11 comply -- or that Richland County had stringent
12 regulations and did not allow development in a
13 floodway?

14 A. Well, again, I don't -- you've got a
15 question and an answer there, and I don't know who
16 provided the question or the answer or as to
17 whether or not that was accurate. That's just what
18 was published. That's what was asked and answered.

19 Q. I want to know what Burroughs & Chapin
20 understood when it left that meeting on July the
21 8th, 1998.

22 A. We didn't understand a whole lot, other
23 than there was a map that most people disagreed
24 with and probably would not stay in place, and
25 ultimately it did not. That's what we understood.

1 That's what I understood, walking out of that
2 meeting.

3 Q. So you weren't concerned about the fact
4 that --

5 A. Yes, Mr. Lydon, we were concerned to
6 the extent we would have to address those issues.

7 Q. Okay.

8 A. We were aware of them. But ultimately,
9 as a result of that meeting, those did not have to
10 be addressed. That map was never published.

11 Q. Well, was there a map published after
12 that, in February 1999?

13 A. No.

14 Q. No?

15 A. I think it was '98, is what you're
16 referring to. You may want to check the date.

17 Q. I'm talking about --

18 A. Was it '99?

19 Q. I'm talking about after July -- the
20 meeting we're talking about was July of 1998?

21 A. And that map was never published.

22 Q. Okay. Was there a subsequent map
23 published?

24 A. There were several subsequent maps
25 published.

1 Q. How about in February of 1999?

2 A. There was a Revised Preliminary FIRM.
3 Whether or not it was published, I can't answer. I
4 don't think it was.

5 Q. And did that revised map put a
6 significant portion of the floodway in --

7 A. Are we talking about an unpublished
8 map?

9 Q. I think it's already in evidence.

10 MR. BECKER: Yeah, all of the FEMA
11 flood maps and flood insurance studies are in
12 evidence.

13 THE WITNESS: You presented it to me as
14 a published map. I don't think it was, Mr. Lydon.

15 BY MR. LYDON:

16 Q. 288, Mr. Gregory, I think is the
17 document we're talking about.

18 A. Are you telling me that it is a
19 published map?

20 Q. No, I'm just asking you -- you said you
21 left the impression -- you left that meeting with
22 the impression that there would be another map
23 presented.

24 A. I would have bet on it after that
25 meeting, yes, sir.

1 A. That's correct.

2 Q. Third contingency or criteria was: A
3 commitment is obtained from FEMA to take the
4 property out of the floodway classification upon
5 dike improvements and an ongoing maintenance
6 agreement.

7 A. Yes, sir, consistent with what we did,
8 in fact, get from Richland County and FEMA.

9 Q. You didn't have it on this date,
10 though, did you?

11 A. Not at that date. It was a contingency
12 to move forward. We had recognized it at that
13 point in formulating what had to be done.

14 Q. And then the last criteria: That an
15 agreement can be negotiated with Richland County to
16 assume the maintenance of the dike system, to
17 ensure proper zoning can be achieved to implement a
18 mixed-use project, and obtain assurance that
19 Richland County will be receptive to a development
20 agreement, which would include some infrastructure
21 funding via incremental tax growth grants.

22 A. All of which was discussed and done
23 with Richland County, subsequently, you know, to
24 the board's satisfaction.

25 Q. Are you saying all of these were

1 met -- all of these criteria were met?

2 A. We addressed that fourth bullet point
3 to the extent that the board became satisfied with
4 what we had done. Again, we discussed zoning. You
5 cannot do zoning specifically on 4,500 acres.

6 For example, you may have a commercial
7 building, you may have a residential project. They
8 may be in complete different areas, five years down
9 the road, on it. That's why you just don't do
10 zoning: This piece is commercial, this piece is
11 residential. That's why you do a PUD.

12 Richland County had agreed to do a
13 development agreement and we would have a PUD and
14 zoning would be done as we go.

15 Q. Um, that's why you do a PUD, but you
16 didn't do a PUD before the closing of this
17 transaction, did you?

18 A. No, because nobody knew where anything
19 was going to be. But we had agreed to do one, and
20 that was the way it was going to be handled. And
21 that was clearly understood by all of the parties.

22 Q. Is there anything in writing to that
23 effect, or is that just based on conversations?

24 A. Well, if you recall, that was in the
25 Memorandum of Understanding.

1 who made the decision to terminate the deal on
2 February 11th? Did you make that decision?

3 A. I would not have made that decision.
4 That would have been made by Mr. Wendel -- and you
5 would have to ask him -- more than likely, with
6 some conversation with key board members, if not
7 the whole board.

8 Q. Okay. Were you part of that meeting or
9 conversation when the decision was made --

10 A. Not that I --

11 Q. Let me finish.

12 A. -- not that I recall, Mr. Lydon.

13 Q. Let me just finish the question for the
14 record.

15 A. I'm sorry. I apologize.

16 Q. Were you part of the meeting on
17 Thursday, February the 11th, when the decision was
18 made to terminate the purchase agreement?

19 A. I can't specifically recall. I would
20 have been asked, obviously, to draft the letter and
21 send it, which I did.

22 Q. What happened the next day, February
23 12th -- Friday, February 12th, 1999? Anything
24 related to this property?

25 A. There would have been continued ongoing

1 efforts. Again, as I said, buttoning down
2 investors, buttoning down positions within the
3 investment, buttoning down amounts and shares were
4 all being continually discussed up until closing.

5 Q. Did you do anything on February 12th
6 with respect to the FEMA issues?

7 A. I very well could have. I just simply
8 can't recall 13 years later. If I had something in
9 front of me to refresh my memory, maybe I could
10 better answer your question, if you had an intent.

11 Q. I don't know. I'm just trying to -- I
12 just know the deal was off because you didn't have
13 the investors and you weren't satisfied with the
14 FEMA issues as of February 11th, 1999.

15 A. That's correct.

16 Q. At that time, who were the investors
17 that had committed to the project?

18 A. I can't tell you specifically who the
19 ones were that were committed at that time. I
20 can't -- I just can't recall that. I mean, you're
21 asking me to go back to a day certain, and I -- I
22 don't know.

23 Q. Who were the ones that you were having
24 problems with?

25 A. Well, as you've seen, Carolina First

1 was still gathering information as recently from
2 the exhibit you referred me to earlier. They were
3 faxing information as late as the day prior to
4 closing, finishing and probably completing their
5 due diligence files.

6 Also, Regent Partners -- I mean,
7 everybody was just getting buttoned down at that
8 point. By that, I mean, finalizing their plans and
9 decisions relating to that. I can't --

10 Q. I'm not -- your testimony was that you
11 had problems with investors as of February 11th, I
12 believe, and I'm just trying to figure out which
13 investors you had problems with.

14 A. It may not have been those. It may
15 have been others that were not on the final list
16 that we were discussing that may have backed out,
17 and things like that. I can't specifically
18 remember. That's what I'm telling you. But it
19 was --

20 Q. So as of a day or two before the
21 scheduled closing, you didn't have all of your
22 investors lined up?

23 A. What I do remember, Mr. Lydon, is I'm
24 going on very little sleep at that time, and we
25 were working 20 hours a day to try to pull this

1 project together, and Mr. Wendel and I were in
2 Columbia up until the last minutes, finalizing the
3 investors, their positions, their shares, their
4 contributions, who they were, everything, up until
5 the last minute.

6 Q. Okay. But you couldn't get it done to
7 your satisfaction on February 11th, and so you sent
8 the termination letter, right?

9 A. We've established that at least five
10 times.

11 Q. Okay. And then --

12 MR. GRIER: No objection.

13 MR. LYDON: I'm sorry?

14 MR. GRIER: No objection.

15 MR. LYDON: Okay, thank you.

16 (DFT. EXH. 5, minutes of
17 Burroughs & Chapin telephone board meeting,
18 February 15, 1999, was presented.)

19 BY MR. LYDON:

20 Q. Mr. Gregory, you've been handed what's
21 been marked as Defendant's Exhibit 5.

22 Have you seen that document before?

23 A. Um, I believe so. It says I
24 participated.

25 Q. Okay. And this purports to be the

1 was a legal opinion of Nexsen Pruet related to the
2 Jordan easement documents, which is Number 35.

3 Do you see what I'm talking about?

4 A. Yes, sir. If I recollect, Cherokee
5 Construction Company was an adjacent landowner, and
6 I think the Jordans were the people that owned
7 Cherokee, if I remember. I may be wrong on that,
8 but that's just what popped in my head. But I may
9 be wrong. I can't remember.

10 Q. Are there any other legal opinions that
11 were part of the closing documents, according
12 to -- I know you can't remember them all -- but
13 according to this index?

14 A. If you're representing to me there are
15 none there, I will take your word for it.

16 Q. Okay. Is there a legal opinion that
17 explains the rights granted to Columbia Venture by
18 the Richland County February 2nd, resolution?

19 A. No, sir.

20 Q. Is there a legal opinion concerning the
21 impact of Richland County Stormwater Ordinance,
22 vis-a-vis, upgrading the levees?

23 A. No, sir.

24 Q. Is there a legal opinion on what the
25 no-impece language of the Stormwater Ordinance

1 means?

2 A. No, sir.

3 Q. Is there a legal opinion as to what the
4 Richland County standard for levees was?

5 A. No, sir.

6 Q. Do you know what the
7 standard -- Richland County standard was at the
8 time of closing?

9 A. 500-year level, plus 3 feet of
10 freeboard.

11 Q. In fact, there are only -- out of all
12 of these documents, there's only three that relate
13 to FEMA matters, is that correct, under Number 42?

14 A. Well, I would like to finish, if you're
15 through listing your legal opinions that were
16 non-existent in this.

17 As to those that you enumerated, we
18 did, in fact, have engineering opinions from a
19 world-class engineering firm as it related to those
20 issues.

21 That was part of our -- part of the
22 letter -- Lockwood Greene had sent us a
23 letter -- all of those types of issues that were
24 being considered. And that was one where they gave
25 us an opinion and said there were no barriers in

1 order to be able to upgrade the levee. But no
2 legal opinions. I'm not too sure there are that
3 many levee lawyers in the state.

4 Q. The letter you're referring to from the
5 engineering firm, is that Letter A under Item 42,
6 letter from Lockwood Greene, dated February 17,
7 1999?

8 A. Yes, sir. In fact, there was an
9 opinion as to those issues in this closing package.

10 MR. GRIER: What page are you on?

11 THE WITNESS: Item 42.

12 MR. GRIER: What was the page number?

13 THE WITNESS: 723.

14 BY MR. LYDON:

15 Q. Mr. Gregory, I'm handing you what's
16 previously marked as Plaintiff's Trial Exhibit 208.

17 A. Yes, sir.

18 Q. Is that the opinion letter that you
19 were referring to that -- that letter from Lockwood
20 Greene dated February 17th, 1999?

21 A. Yes, sir.

22 Q. Look with me, if you will, down here
23 where it says: We have estimated a cost range and
24 completion date range for the upgrade and
25 re-mapping activities.

1 Do you see where I'm talking about?

2 A. No, sir. If you could tell me again, I
3 apologize.

4 Q. Oh, Sure. It's the cover letter that's
5 addressed to you. It says: Dear George.

6 A. Oh, yes.

7 Q. Are you with me?

8 A. I am.

9 Q. And it talks -- read the paragraph or
10 the sentence that starts -- or the paragraph that
11 starts, We have estimated the cost range.

12 A. We have estimated a cost range and the
13 completion date range for the upgrade and the
14 re-mapping activities. The primary reasons for
15 variations in estimated cost and time are: Length
16 of time required to obtain wetlands regulation
17 permits; review times by agencies, including FEMA;
18 preliminary status of soils and topographic survey
19 information on which to base a preliminary design
20 used for estimates.

21 Q. Okay. So at this time of the closing,
22 all you had was a preliminary status on the soils
23 and topographic survey information. Is that right?

24 A. That's what this letter says, but your
25 question previous to that was to give me a list of

1 information relative to upgrading that levee, such
2 as FEMA information, Code of Federal Regulation
3 information, Richland County ordinances, and those
4 types of things that relate directly to levee
5 upgrade.

6 And what I'm reading says, other than
7 the uncertainties noted above, we have discovered
8 no barriers that would prevent us from removing the
9 property within the existing levees from the
10 special flood hazard area or the floodway.

11 Q. But there were uncertainties?

12 A. Those uncertainties, Mr. Lydon,
13 clearly, only as to time, not as to the -- as to
14 any uncertainty as it related to being able to
15 remove -- to upgrade that levee and remove it from
16 the floodway.

17 Q. But my point is, at the time of
18 closing, according to your engineer, there were
19 uncertainties.

20 A. And those uncertainties were not of
21 significance. They only dealt with timing issues,
22 not any uncertainties relative to our ability to
23 upgrade those levees and do so in a manner that
24 would cause the property behind it that we were
25 purchasing to have all flood hazard designations of

1 any type or style removed, and we would be able to
2 build and develop on that ground, flat.

3 Q. Turn with me, if you will, to Page
4 2275. I think it's the next page.

5 A. Yes, sir.

6 Q. And it's got the summary prepared by
7 Lockwood Greene, correct?

8 A. Yes, sir.

9 Q. In Number 3, cost to upgrade the levee
10 system is approximately 12 million dollars.

11 A. That's correct.

12 Q. All right. Over on the next page where
13 it says cost estimate --

14 A. Yes, sir.

15 Q. -- will you read that for me.

16 A. Cost estimate: We have performed a
17 preliminary evaluation of the levee system and
18 developed a preliminary plan for the upgrade based
19 on the levee system conforming to the FEMA
20 requirements for protection from the 1 percent
21 probability occurrence, in parentheses, the
22 100-year flood, flood elevations for the Congaree
23 River.

24 Q. So the estimate that you had from
25 Lockwood Greene was to upgrade it to -- to upgrade

1 the levees to a 100-year flood standard, not the
2 Richland County 500-year, plus 3 feet of freeboard?

3 A. I do not know that's correct. I know
4 that is a draft document that you've got there.

5 Q. Well, this is the document that your
6 lawyers put into evidence. Is that correct?

7 A. It is.

8 Q. Okay. So do you know what the cost
9 estimate was for upgrading the levees to the
10 Richland County higher standard?

11 A. It would not have -- they gave a broad
12 range up to 14 million. Again, the difference,
13 Mr. Lydon, is not a five-times-higher levee,
14 because it's 500-year. It's just a few feet more
15 and larger. Obviously there would be a significant
16 expense, if, in fact, that's the case.

17 But at no point, I can assure you, had
18 we ever planned to do anything less than the
19 500-year level, plus 3 feet of freeboard.

20 Q. Are you aware of any documents prior to
21 closing that show a cost estimate for upgrading the
22 levees to the Richland County standard of 500-year
23 flood, plus 3 feet of freeboard?

24 A. I'm confident that those documents
25 exist. I do not have one in this document that you

1 specifically asked me about. I do not see that.

2 Q. Okay. And this is the document that
3 was the opinion that --

4 A. No, sir. This --

5 Q. Let me finish.

6 A. -- document was not the opinion,
7 Mr. Lydon. The opinion was the one page.

8 Q. So is it your testimony that the rest
9 of this document has nothing to do with the
10 opinion?

11 A. If you look at the cover sheet,
12 Mr. Lydon, on the fax transmittal --

13 Q. Yes.

14 A. -- that's an internal fax to me from
15 Sherry Petenziono. She was an administrative
16 assistant in our executive offices, and she just
17 faxed me a number of documents that I would have
18 asked for.

19 The opinion letter that Lockwood Greene
20 sent me is on Page 274, 2274.

21 Q. And that was what -- that was the
22 opinion that Burroughs & Chapin/Columbia Venture
23 relied on to close this transaction?

24 A. It could not have been clearer.

25 Q. And just -- I don't think there's any

1 question about this, but Lockwood Greene was not an
2 independent third party providing an opinion, were
3 they? They were actually an investor in the
4 transaction. Isn't that correct?

5 A. Originally they were an independent
6 third party when they first started formulating the
7 investigation. They subsequently became a partner,
8 and the intent, during part of the process, before
9 they were a partner, would be to become a partner.
10 And again, we were negotiating at what level they
11 would come in, and for what.

12 But, yes, there was a transition from
13 them being a third-party independent person.

14 Down to the day of the closing, they
15 were, in fact, a partner of Columbia Venture, but
16 that doesn't mean that their ability to opine on
17 those matters changed because of that status.

18 Q. But they had a financial interest in
19 this transaction closing; didn't they?

20 A. Yes, they did.

21 Q. And they weren't putting any money into
22 it; were they?

23 A. They had already expended thousands and
24 thousands and thousands of dollars to get to that
25 point; yes, sir.

1 Q. They had put engineering services in?

2 A. You know --

3 Q. Did they bring a check to the closing?

4 A. They didn't bring a check to the
5 closing, but they certainly put value into the
6 closing.

7 Q. I'm not arguing that, but they had an
8 interest in this thing going forward, because they
9 were going to get a piece of the action if it
10 closed, without putting any cash into the deal?

11 A. Correct, but to the extent that being
12 able to do that was to provide the opinion.

13 MR. LYDON: My co-counsel have asked me
14 if we can call it a day and start fresh in the
15 morning.

16 THE COURT: Yes, that's fine. We'll go
17 ahead then and recess now and start again in the
18 morning at ten o'clock.

19 (Court was adjourned at 5:20 p.m.)
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3

4

Columbia Venture, LLC,

5

Plaintiff,

6

vs.

CASE NO. 2010-CV-40-8943R

7

Richland County,

8

Defendants.

9

10

PROCEEDINGS: TRIAL - VOLUME VI

11

12

BEFORE: THE HONORABLE JOHN HAMILTON SMITH

13

DATE: September 14, 2012

14

TIME: 10:02 a.m.

15

LOCATION: Richland County Judicial Center

16

1701 Main Street

Columbia, SC

17

REPORTED BY: Susan M. Valsecchi, CRR
Registered Professional Reporter

18

19

20

A. WILLIAM ROBERTS, JR., & ASSOCIATES

21

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Greenville, SC

Charlotte, NC

25

(803) 731-5224

(864) 234-7030

(704) 573-3919

1 THE COURT: All right. Anything before
2 we get underway with Mr. -- Mr. Lydon, had you
3 finished your examination yesterday?

4 MR. LYDON: No, Your Honor, I had not.

5 THE COURT: That's fine. All right,
6 then, if not, Mr. Lydon, you may proceed, then.

7 MR. LYDON: Thank you, Your Honor.

8 GEORGE T. GREGORY, III
9 being previously duly sworn, testified as follows:

10 CROSS-EXAMINATION (CONTINUED)

11 BY MR. LYDON:

12 Q. Good morning, Mr. Gregory.

13 A. Good morning, Mr. Lydon.

14 Q. When we finished yesterday, we were
15 looking at Plaintiff's Exhibit 208. And I hope I
16 have got the exhibits in the right order today.

17 And what we were looking at was -- I
18 think over on the third page, there's a cost
19 estimate.

20 Do you see that?

21 A. I do.

22 Q. Okay. And this cost estimate from
23 Lockwood Greene states that: We have performed a
24 preliminary evaluation of the levee system and
25 developed a preliminary plan for upgrades based on

1 the levee system conforming to the FEMA
2 requirements for protection from a 1-percent
3 probability occurrence, 100-year flood, flood
4 elevations in the Congaree River.

5 Is that what it says?

6 A. It does.

7 Q. So the cost estimates in here were
8 based on a 100-year flood, despite the fact that
9 you indicated you knew and you wanted the Richland
10 County more stringent standards of 500-year, plus 3
11 feet of freeboard.

12 Is that correct?

13 A. The simple answer is yes, but if I may
14 explain further.

15 I will testify that at no time did we
16 intend to do anything less than a 500-year, plus 3
17 feet of freeboard. This was not a document that I
18 prepared. And, again, this was -- I can assure you
19 that was the intent and the discussions with the
20 County.

21 Q. But you've indicated that -- I mean,
22 that Lockwood Greene was the engineering firm, and
23 they were responsible for figuring out how it was
24 going to be upgraded and how could it be and how
25 much it was going to cost and all of that sort of

1 stuff, right?

2 A. That's correct.

3 Q. That wasn't your decision?

4 A. No, it was not. But, again, I'm just
5 telling you what the team decision was.

6 Q. Well, wasn't Lockwood Greene part of
7 the team?

8 A. Yes, sir, they were.

9 Q. And from their document, they're still
10 looking at a 100-year flood; aren't they?

11 A. Yeah, again, this was extremely
12 preliminary and probably something they had
13 prepared fairly early on.

14 Q. I believe it's dated February 16th,
15 1999, isn't it?

16 A. Yes, it is.

17 Q. Three days before the closing?

18 A. Yes.

19 Q. All right. Look with me at Exhibit
20 247, which was previously entered into evidence.

21 A. Yes, sir.

22 Q. And I realize that it's important for
23 you to have the document, me to have the document,
24 and the judge to have the document, so I'll make
25 sure he's got it.

1 MR. LYDON: 247, Your Honor.

2 THE COURT: All right. Why don't you
3 go ahead.

4 BY MR. LYDON:

5 Q. Mr. Gregory, what is this document?

6 A. It appears to be a cover letter,
7 advising me of their estimates for levee upgrade,
8 and it says their survey data is incomplete at that
9 point.

10 Q. And this would be January 21st of 1999?

11 A. That's correct. That's the date the
12 letter is dated.

13 Q. About 20 days before the February 11
14 closing date that you were looking at at that
15 point, right?

16 A. I'll accept your math, yes, sir.

17 Q. And look over at the estimate itself.
18 Do you see where it says Congaree properties, up at
19 the top?

20 A. I do, at the top, yes.

21 Q. And then right under it, it says:
22 Levee system preliminary to upgrade to FEMA
23 standards.

24 Doesn't it?

25 A. It does.

1 Q. And is there anywhere in here where it
2 talks about upgrading to either the Richland County
3 standards or to a 500-year, plus 3 feet of
4 freeboard standards?

5 A. Not that I can see.

6 Q. Okay. And look at Exhibit 503,
7 Plaintiff's Exhibit 503, kickoff meeting notes.

8 A. I don't think I have 503. It's down
9 under here.

10 Q. Okay. It's out of order. It was in
11 the stack though, right?

12 A. It was in the stack, thank you.

13 Q. 503, I believe you testified earlier,
14 that this was notes from the kickoff meeting in
15 Columbia Venture, right?

16 A. That's what it appears to be. These
17 would not have been the final ones. These are just
18 handwritten notes.

19 Q. And they're dated up in the top
20 right-hand corner, March the 10th, 1999?

21 A. That's what it appears.

22 Q. Okay. And over on the second page, see
23 about two-thirds of the way down, there's a -- some
24 notes that are circled?

25 A. Yes.

1 Q. And it says, 3/24/99, preliminary
2 meeting with FEMA. Upgrade of levee system to
3 1-percent occurrence, 100-year flood.

4 Is that right?

5 A. That's what it appears to say.

6 Q. So even as of May the 10th, 1999, about
7 three weeks after the closing, you're still talking
8 about upgrading to the 100-year flood level, not
9 the 500-year, plus 3 standard. Isn't that correct?

10 A. These are not my notes, so I can't tell
11 you what -- what this person may have been thinking
12 as it relates to that.

13 Q. Okay. But you indicated earlier that
14 from day one you wanted the 500-year standard, that
15 was really important to the project, and it would
16 be a selling point for the project, and that was --

17 A. That's correct. And that hasn't
18 changed, Mr. Lydon.

19 Q. But there's no document that we have so
20 far -- and now we're up through March 10th, 1999,
21 after the closing -- that indicates anybody else,
22 or any of your engineers, was looking at the
23 500-year standard. I mean, that was what needed to
24 be done in order to upgrade the levees; wasn't it?

25 A. I understand.

1 Q. Okay. All right. Let's look at
2 Plaintiff's Exhibit 307.

3 Can you identify that document for me?

4 A. It looks like a letter from the soils
5 engineering firm, S&ME, to Mr. Wilson Tillotson of
6 Lockwood Greene.

7 Q. Okay. And what is the subject?

8 A. The subject says: Re-evaluation of
9 seepage and stability for Levee Segments 1 and 2
10 for the 500-year Richland County, South Carolina
11 S&ME proposal.

12 Q. And it says, at the bottom of that
13 page, the last two sentences:

14 We understand from Mr. Mark Hester that
15 re-evaluation of the levees for a 500-year flood
16 event will require design for a flood level
17 approximately 4 feet higher than previous.

18 A. It does. But that clearly indicates
19 the fact that they had now understood we were going
20 to have to do that, which I had understood from day
21 one and had been discussing that with Lockwood
22 Greene.

23 Q. But it looks like your engineers didn't
24 understand that until September 7th, 1999.

25 A. This is when S&ME had done preliminary

1 work for the Mannings prior to. And so when they
2 got involved, getting ready to do the soil borings,
3 everybody got on the same page by this time, and
4 that it was going to be -- you know, meet all
5 requirements, both those of FEMA and the more
6 stringent ones of Richland County.

7 And, again, that was never a problem,
8 even because, Mr. Lydon, the estimate on the other
9 was 12 million. If it had gone to 30 million, they
10 would have still updated the levees based on the
11 opportunity behind them to be able to build flat.

12 Q. The point is, at the time of closing,
13 February 1999, everybody was not on the same page,
14 and there's nothing to indicate that any of your
15 engineers or anybody else had done any cost
16 estimates or done any analysis to determine what
17 was going to need to be done to upgrade those
18 levees to Richland County standards.

19 A. Mr. Lydon, at all points and all times,
20 we would have had to do whatever was required by
21 the law. So in doing -- at any point, we're not
22 going to do less than what the law required.

23 Q. I agree; but the point is, you didn't
24 know what the law required at the time of
25 closing --

1 A. Yes.

2 Q. -- according to the documents that are
3 in evidence.

4 A. Some people did, some people apparently
5 did not, but everybody got on board with that and
6 that was never an issue, never a problem, never
7 anything that was not going to be done.

8 Q. And the people who didn't know were
9 your engineers, according to the documents?

10 A. Some of them maybe, yes.

11 MR. BECKER: I think this may already
12 be in evidence, Tommy.

13 MR. LYDON: It's probably easier to put
14 it in again than it is to find it.

15 MR. BECKER: I can tell you what it is,
16 just to avoid a lot of duplication. It is
17 Plaintiff's 515.

18 MR. LYDON: Okay.

19 (DFT. EXH. 8, S&ME letter from Lessley
20 and Sammons to Crowder at Lockwood Greene, was
21 presented.)

22 BY MR. LYDON:

23 Q. You can look at the one we've handed
24 you. We won't -- well, we'll just leave it in,
25 that way we keep our numbering in order. It's only

1 a couple pages.

2 A. Is this an extra one not in the stack
3 that you originally gave me?

4 Q. It's the one we just handed to you with
5 Defendant's Exhibit 8, then.

6 A. So you want --

7 MR. LYDON: Let's just leave it in. I
8 don't think the three pages is going to make a
9 difference.

10 BY MR. LYDON:

11 Q. Can you identify that for me,
12 Mr. Gregory?

13 A. It appears to be a letter from the
14 soils engineer, S&ME, to a gentleman with Lockwood
15 Greene Engineers.

16 Q. Okay. And the date of the letter?

17 A. The date is February 22, 2000.

18 Q. All right. And read that first
19 paragraph.

20 A. From our telephone conversation of
21 February 16, we understand you want us to re-issue
22 our geotechnical report for the levee system using
23 revised flood and crest profiles. The levee will
24 now be required to withstand the 100-year flood,
25 with the levee crest elevation being that given by

1 the 500-year flood elevation.

2 Q. So on February 22nd, we've got -- of
3 2000, more than a year after the purchase of the
4 property -- we've got an indication that S&ME is
5 going to re-issue their report so that it will
6 comply with the minimum Richland County
7 requirements?

8 A. Without having read the balance of the
9 letter based on that initial paragraph, that would
10 be true, yes.

11 Q. So their initial geotechnical report
12 for the levee system was based on a 100-year flood?

13 A. And as we had seen from their previous
14 letter, they were going to do it at the 500-year
15 level.

16 Q. All right. And Plaintiff's Exhibit
17 323?

18 A. Yes, sir.

19 Q. All right. Turn with me to -- tell me
20 what it is.

21 A. If you would give me a moment to look
22 at it.

23 Q. Okay.

24 A. It appears to be a project status
25 report to Columbia Venture from Lockwood Greene.

1 Q. All right. And the date on that?

2 A. April 12, 2000.

3 Q. Okay. Look with me at -- I will give
4 you Bates numbers, it's a little
5 easier -- CV001032.

6 Well, I guess I need to put what the
7 heading is. Over on Page CV001030, what is Section
8 1.2 of this document?

9 A. Work accomplished October through
10 March. And it says: Based on 500-year design
11 elevations, plus 3 feet of freeboard, just under
12 that.

13 Q. It does. And then what does the last
14 sentence say?

15 A. The last sentence where?

16 Q. Under that little paragraph you were
17 reading.

18 A. A decision has been made to design the
19 levee based on the 100-year BFE, plus 4 feet of
20 freeboard.

21 Q. Do you know if that's the same as
22 500-year flood, plus 3 feet of freeboard?

23 A. I do not.

24 Q. But it doesn't say that -- but for some
25 reason, a decision was made to do something other

1 than 500-year, plus 3 feet of freeboard, according
2 to this document?

3 A. And it may well have been an
4 improvement to that, in excess of.

5 Q. Mr. Gregory, I'm going to ask you some
6 questions about Plaintiff's Exhibit 18.

7 A. Yes, sir.

8 Q. What is that document?

9 THE COURT: I'm sorry, what was the
10 exhibit number, please?

11 MR. LYDON: 18.

12 THE COURT: 18.

13 BY MR. LYDON:

14 Q. I'm sorry. What was that document?

15 A. If you recall, Wilson Tillotson,
16 through the State Coordinator of the Flood
17 Mitigation Program normal protocol steps, Ms. Lisa
18 Holland, as directed by Cary McSwain, on behalf of
19 the County and the city, we had asked for certain
20 information from FEMA through -- we had sent that
21 to -- I think originally it went to Mr. Michael
22 Buckley, and this is the reply back from
23 Mr. Matthew B. Miller, who is their professional
24 engineer and their chief hazard study person.

25 Q. Go ahead, I'm sorry.

1 A. I'm sorry, I had finished.

2 Q. And was this part of the closing
3 documents at the sale of the -- at the transaction,
4 closing of the transaction?

5 A. This satisfied one of the three major
6 criteria that we needed prior to closing.

7 Q. And when you talk about three major
8 criteria, you're talking about the criteria
9 established by the Burroughs & Chapin board that we
10 went through in the minutes yesterday?

11 A. I'm talking about the criteria we
12 ultimately needed for closing, which was, we needed
13 to get a letter of resolution -- we needed to have
14 something, an agreement, in writing, from the
15 County that they were, in fact, going to accept
16 responsibility for the maintenance of the levee.

17 We also wanted a clear understanding
18 that they were asking us and wanted us to upgrade
19 that levee so that we could do the type of
20 development that has been previously described.

21 And the third thing we needed was
22 concurrence from FEMA, they understood what it was
23 they were doing, and that if and when that levee
24 was upgraded, that all flood hazard designations of
25 any type would go away, and we could build flat on

1 the ground.

2 Q. And that was also one of the criteria
3 that the Burroughs & Chapin board had established
4 for going forward?

5 A. If I remember correctly, yes, sir.

6 Q. You believe it was a commitment
7 obtained from FEMA to take the property out of the
8 floodway classification upon dike improvements and
9 an ongoing maintenance agreement; is that what this
10 was for?

11 A. I think I've described what it was for.

12 Q. Okay. Now, this letter is not really
13 an agreement to do anything other than to follow
14 the law. Would you agree with that?

15 A. Nor would we have done anything but
16 that.

17 Q. It's not giving any special rights or
18 opportunities or deals or consideration to
19 Burroughs & Chapin or Columbia Venture?

20 A. No, but it is a confirmation that if we
21 take certain actions, then the special flood hazard
22 designation in the floodway would be removed. That
23 was what we saw.

24 Q. All right. And then look down at the
25 middle of the second paragraph where it says:

1 As you're aware, should the structural
2 modifications necessary to bring the levee into
3 compliance result in any increase in base flood
4 elevations as a result of construction within the
5 existing regulatory floodway, the requirements of
6 CFR part 65.12 would also have to be met.

7 Do you see that?

8 A. I do.

9 Q. And is that, again, just a statement of
10 what the federal regulation is with respect to
11 levees and upgrades and that sort of thing?

12 A. It would appear so.

13 Q. And in order to bring the levee -- in
14 order to fulfill this, to move forward with this
15 FEMA standard, the levees were going to have to be
16 upgraded to Richland County standards, 500-year,
17 plus 3 feet of freeboard, right?

18 A. Yes.

19 Q. And when you got this letter on January
20 26th, 1999, had anybody done any studies about
21 whether that could be done or not?

22 A. They were going to be done.

23 Q. Had anybody done any studies as to
24 whether doing it would increase the base flood
25 elevations?

1 A. Yes, there had been some mapping,
2 whereby, previously, FEMA had done levee intact on
3 the Richland County side in order to be
4 conservative on the Lexington County side, and that
5 showed no rise in the base flood elevation.

6 But that was -- and I'm not an
7 engineer, you're not an engineer; so if you're
8 asking me a technical question, I'm not giving you
9 a technical answer, I'm giving you a layperson's
10 understanding of that particular thing.

11 What was important to me was that I got
12 an opinion from my engineers that this letter
13 provided no impediments to us moving forward and
14 being able to upgrade that levee.

15 Q. Had your engineers ever been involved
16 in upgrading levees and the development behind the
17 levee system?

18 A. Lockwood Greene?

19 Q. Yeah.

20 A. It's my understanding they had been,
21 but I cannot give you a specific example.

22 Q. Had Wilson Tillotson ever been involved
23 with that?

24 A. I can't answer that. You would have to
25 ask him. I don't know.

1 Q. Okay. Do you know whether, between
2 January 26th, 1999 and the closing on February
3 19th, 1999, Wilson Tillotson or Lockwood Greene did
4 anything to determine whether the structural
5 modifications necessary to bring the levees into
6 compliance with the federal regulations would
7 result in an increase in base flood elevations?

8 A. To specifically answer your question, I
9 do not know. Again, what I had relied on was the
10 fact that this letter provided no impediments to us
11 being able to do it. So it stands to reason, they
12 were comfortable that we would be able to move
13 forward and do that.

14 Q. But every document that we just went
15 through that's dated the closing date or before
16 talks about a 100-year level, not a 500-year level.

17 Isn't that correct?

18 A. Understood.

19 Q. So you don't know whether anybody had
20 done anything to determine what was going to have
21 to be done in order to comply with the FEMA
22 requirements?

23 A. The FEMA requirements, at all times,
24 were going to be complied with, Mr. Lydon.

25 Q. Mr. Gregory, look with me at

1 But as a lawyer, would you agree with
2 me that a resolution is nothing more than an
3 expression of opinion or will of a governing body
4 and is merely their expression of opinion as to
5 some given matter and that a resolution does not
6 bind the enacting body to any particular course of
7 action?

8 A. I would agree with your latter
9 statement. The prior portion of your statement, I
10 would disagree with.

11 This can't be characterized as just
12 some simple expression. This is more than just an
13 expression. This is a clear well-discussed
14 understanding between the parties.

15 But I do agree with the latter part of
16 your statement.

17 Q. Which was that the resolution does not
18 bind the enacting body to any particular course of
19 action?

20 A. No. This was a good-faith,
21 fair-dealing issue, Mr. Lydon, where both parties
22 had agreed, both parties understood the
23 ramifications of what this document meant, and both
24 parties proceeded forward in unanimity on the
25 intent.

1 Q. Are you saying it was something other
2 than a resolution?

3 A. No, sir; I didn't say that.

4 Q. Okay.

5 A. I told you what it was.

6 Q. Okay. Now, not only is a resolution
7 merely an expression of the governing body's
8 opinion and is non-binding, this resolution had a
9 bunch of contingencies to go with it, didn't it?

10 A. Yes, sir. As Judge Smith referred to
11 them the other day, they were absolute
12 requirements.

13 Q. Okay.

14 A. That's the way both parties viewed
15 them.

16 Q. So you had an expression of the
17 County's opinion that it was not bound to go
18 forward with and --

19 A. No, sir, I did not have any opinions
20 that the County was not bound to anything.

21 Q. Well, did you understand -- you've
22 dealt with county government before?

23 A. I just simply listened to what you
24 asked me. You may want to rephrase it differently.
25 That's all.

1 Q. You've dealt with county government
2 quite a bit in your work at Burroughs & Chapin?

3 A. Yes, sir, I have. That's correct.

4 Q. And you understand the difference
5 between a resolution and an ordinance, don't you?

6 A. I've already agreed with you on that.

7 Q. You understand the difference between a
8 resolution and a contract, then?

9 A. Understand.

10 Q. And this was not a contract?

11 A. No, sir; it was not.

12 Q. It was not an ordinance?

13 A. No, sir.

14 Q. It was simply a resolution that had
15 five contingencies.

16 A. That's correct.

17 Q. Mr. Gregory, if you would look at
18 Exhibit 118, please.

19 A. All right, sir.

20 Q. Can you identify this for me?

21 A. This appears to be a letter to me from
22 Mark Hester with Lockwood Greene requesting that I
23 sign and drop this initial permit to work on the
24 levees to the county, which I did.

25 Q. Okay. And this one is not -- this was

1 A. Not that I can recall.

2 Q. Okay.

3 A. Again, Mr. Lydon, I made the effort to
4 go out there and ask -- didn't get it -- and I
5 asked Lockwood Greene to get the thing resubmitted.

6 Q. Okay. And then on -- when you got the
7 status report that said, as of June 30, 1999, you
8 hadn't gotten approved, what did you do to follow
9 up then?

10 A. Well, there were a number of things
11 that were going on. Obviously, we would ask the
12 County what's going on.

13 Q. Did you ask the County what was going
14 on?

15 A. I'm confident that we did. Can I point
16 to something specifically to tell you that? No,
17 sir.

18 Q. And --

19 A. You've got to understand the other
20 things that are going on at the time, Mr. Lydon.
21 You know, by then, we have got, you know, some
22 serious suspicions and reservations that they're
23 not going to approve any permit, because
24 they -- they being the County -- had apparently
25 switched in what they had intended to do

1 originally.

2 If you recall, there's been testimony
3 to Mr. Knudsen's letter, whereby the County had
4 three options:

5 One was to do nothing, which was
6 unacceptable, prior to closing for
7 Burroughs & Chapin.

8 Number two was to do those things, to
9 get those three requirements fulfilled, acceptance
10 of maintenance by the County on the levee. Number
11 two was an acceptable option to Burroughs & Chapin
12 prior to closing.

13 And the third option was to wait on
14 resolution of the FEMA maps.

15 And by this time, my best recollection
16 is, we were beginning to have suspicions that the
17 County had gone to Number three.

18 There were newspaper articles prior to
19 the end of June. There were quotes in the paper by
20 the county engineer, saying that they were going to
21 wait on FEMA and those types of things. So all of
22 this was going on simultaneously.

23 Q. But my question is, did you take any
24 action yourself on or about July 2nd, 1999 when you
25 were advised by Lockwood Greene that the permit had

1 been resubmitted, but that you hadn't received your
2 response?

3 A. Not that I can recall, Mr. Lydon.

4 Q. And your testimony was that there was a
5 belief -- or a concern, maybe -- that Richland
6 County wasn't going to approve any permits?

7 A. There was certainly that concern at
8 that time.

9 Q. But if they didn't have a permit, there
10 wasn't any way they could issue -- if they didn't
11 have a permit application, then there was no way
12 they could issue a permit, was there?

13 A. If they didn't have one, there wouldn't
14 have been, that's correct.

15 Q. Okay.

16 MR. LYDON: Judge, could we go off the
17 record for just one second?

18 THE COURT: Yes.

19 MR. GRIER: No objection.

20 (A brief recess was held.)

21 MR. LYDON: Your Honor, just for the
22 record, Exhibits 9, 10, and 11 were documents
23 that -- were Columbia Venture documents, and we
24 weren't sure we had any other witnesses we would be
25 able to get them into evidence through, other than

1 take your word for it, yes, sir.

2 Q. It wasn't until the February 9th, 1999
3 board meeting, just two days before the scheduled
4 closing, that Burroughs & Chapin agreed to
5 contribute 3 million dollars towards the purchase
6 price, right?

7 A. The other investors ran a hard bargain;
8 yes, sir.

9 Q. And even with that 3-million-dollar
10 purchase price, you didn't have the
11 investors -- the 3-million-dollar
12 contribution -- you didn't have the --

13 A. It certainly wasn't a complete list at
14 that time. But others that were on board felt like
15 it was important that Burroughs & Chapin
16 contribute, which they ultimately agreed to do.

17 Q. On February 9th?

18 A. If that date was the day, I will take
19 your word for it.

20 Q. And the closing was supposed to be
21 February 11th?

22 A. Initially.

23 Q. But you couldn't get your investors
24 together. Even after Burroughs & Chapin agreed to
25 put in the 3 million dollars, you still had

1 investors that weren't committed to the deal?

2 A. As I testified yesterday, Mr. Lydon,
3 the investor group, the percentages of ownership
4 and the capital contributions were all in question
5 right up until the day of closing.

6 Q. And was the difficulty in getting
7 investors confirmed due to the speculative, risky
8 nature of this project?

9 A. No. I think the short notice is
10 the -- would have been as big a contributing factor
11 as anything.

12 Q. Okay. And that was noticed -- that
13 wasn't the deadline that was created by Richland
14 County, was it?

15 A. No, it wasn't. It was a deadline
16 created because of the situation the previous
17 landowner was in.

18 Q. And you knew that situation when you
19 got in the deal?

20 A. That was the only opportunity available
21 to be able to put all 4,500 acres together, to make
22 it appealing and viable.

23 Q. And so you knew from day one that you
24 had -- I believe your testimony was -- a small
25 window of opportunity to put this together?

1 A. That's correct.

2 Q. And despite the fact that it was going
3 to be the next -- a Research Triangle Park-type
4 facility, buying property at significantly less
5 than fair market value, you struggled up
6 until -- actually, you didn't have investors in
7 line at the time of the initial closing date of
8 February 11th?

9 A. That's correct.

10 Q. And you terminated it?

11 A. We did.

12 Q. And then you were able to cobble it
13 back together. And I think, as you testified,
14 right up until the last day, you finally got it all
15 put together?

16 A. That's correct. And you've got to
17 understand -- I think you're conversant enough
18 with how corporations work and things like
19 that -- they've got board of directors meetings
20 going on, they're having to get people together.

21 You saw how many telephone
22 conversations and board meetings it took just
23 within Burroughs & Chapin, and you've got to
24 understand other investors, too, some to equal
25 extents, some to lesser extents. We're going

1 through the same processes.

2 Q. But 3 million dollars was not a lot of
3 money for the type of investors we're talking about
4 in this project?

5 A. No, it wasn't. It was
6 just negotiation.

7 Q. And a chance to make 100 million
8 dollars, right?

9 A. I understand. It's just negotiations,
10 Mr. Lydon. Not untypical.

11 Q. Why weren't people beating down the
12 door to do this deal, if they were going to put in
13 3 million dollars into a project that was going to
14 make a 100-million-dollar profit?

15 A. I can't answer that question,
16 Mr. Lydon. All I can tell you is, by the time we
17 got involved, there was a very short window to put
18 a lot of things together.

19 Q. And, therefore, a lot of uncertainty?

20 A. There were some uncertainties. We
21 eliminated a lot of it. But there are always
22 uncertainties. There will be uncertainties with
23 you walking to your car today.

24 Q. That sounds for sure, particularly
25 without my glasses.

1 MR. LYDON: No objection?

2 MR. GRIER: No objection.

3 MR. LYDON: Thank you.

4 (DFT. EXH. 13, Burroughs & Chapin
5 annual stockholder meeting minutes, May 31, 2003,
6 was presented.)

7 BY MR. LYDON:

8 Q. Mr. Gregory, you've been handed
9 Defendant's Exhibit 13.

10 Can you identify that document for me?

11 A. It says that it's the
12 Burroughs & Chapin Company minutes for their annual
13 stockholder meeting at -- held on May 31, 2003.

14 Q. Were you still general counsel for
15 Burroughs & Chapin in May of 2003?

16 A. I was.

17 Q. And who presided over this stockholder
18 meeting?

19 A. Well, Mr. Wendel, president and CEO,
20 would have.

21 Q. Okay. Turn with me to Page 7, which is
22 Bates Number B and C 020483.

23 A. All right.

24 Q. And just read that page to yourself.
25 You don't need to read it out loud.

1 MR. GRIER: What page?

2 MR. LYDON: Page 7, Bates Number

3 020483.

4 MR. GRIER: 483?

5 MR. LYDON: Yeah.

6 THE WITNESS: All right. I have had a
7 chance to glance through that page.

8 BY MR. LYDON:

9 Q. And would you agree that this is the
10 summary that Mr. Wendel presented to the
11 shareholders in May of 2003 explaining the
12 obstacles that were encountered by
13 Burroughs & Chapin in connection with the Columbia
14 Venture project?

15 A. Yes.

16 Q. And the first sentence of the summary
17 states that: Burroughs & Chapin decided to go
18 forward with this transaction only after it got an
19 agreement from FEMA that FEMA would change its
20 floodplain and floodway maps to allow upgrading of
21 the levees; doesn't it?

22 A. That's what it says.

23 Q. And then if you go down to the next
24 paragraph, it says that FEMA changed its position
25 as a result of an appeal by the South Carolina

1 Department of Natural Resources and protests from
2 numerous antagonistic -- oh, excuse me -- numerous
3 antigrowth environmental groups?

4 A. They were antagonistic too, Mr. Lydon.

5 Q. Okay. I lost my glasses.

6 But is that what it says?

7 A. It does.

8 Q. And is there anything in this summary
9 presentation that Mr. Wendel, president and CEO of
10 Burroughs & Chapin, made to the shareholders in May
11 of 2003 that indicates any problems or anything
12 that Richland County did or should have done
13 differently that affected the project?

14 A. No. The DNR appeal was through
15 Richland County. The appeal was from Richland
16 County.

17 Q. I understand that's your position, and
18 there's documents that say to the contrary.

19 My question is, when Mr. Wendel made
20 this presentation to the stockholders, the
21 shareholders at Burroughs & Chapin, did he indicate
22 any problems, issues, concerns, created by Richland
23 County in connection with Columbia Venture?

24 A. No. But, again, this is just a
25 summary. Again, you know, you see in there where

1 we're clearly going through an exit plan in an
2 orderly and community-sensitive manner.

3 You know, this document did not
4 accurately portray, as you call it, the
5 antagonistic nature of it and things like that.
6 It's just a very simple straightforward --

7 Q. I'm sorry, you said didn't accurately
8 portray?

9 A. It is softened up considerably for
10 shareholders to read; yes, sir.

11 Q. But it doesn't say anything about
12 Richland County pro --

13 A. Not specifically; no, sir.

14 Q. And then in an effort to put a positive
15 spin on the Columbia Venture, Mr. Wendel says that
16 this was a valuable learning experience, correct?

17 A. It does.

18 Q. And Mr. Wendel says there were three
19 major lessons learned in the Columbia Venture
20 project; doesn't he?

21 A. He does.

22 Q. And the first one is: Where there is a
23 questionable environmental issue associated with
24 any major project outside our immediate area, the
25 project should not be pursued.

1 A. Appears to be.

2 Q. All right, sir. Now, as I understand
3 your testimony on direct and cross-examination, you
4 were asked some questions about whether it was
5 Columbia Venture's intent to construct a 500-year
6 levee with 3 feet of freeboard, versus a 100-year
7 levee. Do you recall that?

8 A. Could you repeat the question, please.

9 Q. Yes, sir.

10 You were asked some questions, were you
11 not, about whether it was the intention of Columbia
12 Venture to construct a levee up to 500-year -- to a
13 500-year flood standard, plus 3 feet of
14 freeboard --

15 A. That's correct.

16 Q. -- versus the 100-year?

17 A. Yes, sir.

18 Q. Now, the FEMA no-rise standard, is that
19 based on a 100-year flood or a 500-year flood?

20 A. The FEMA no-rise standard would be
21 based on a 100-year flood.

22 Q. So if you built a levee to a 500-year
23 flood level, plus 3 feet of freeboard to show a
24 no-rise to FEMA, you would base it on a 100-year
25 flood. Is that correct?

1 A. That stands to reason.

2 Q. Now, you were asked about the February
3 2nd, 1999 resolution passed by the county council,
4 and you were asked some questions about resolutions
5 and ordinances and contracts.

6 Do you recall that?

7 A. Yes, sir; I do.

8 Q. Now, you see resolutions, do you not,
9 from a local government, like a county government,
10 from time to time, like September the 14th, 2013
11 will be Secretary Appreciation Day. You see
12 resolutions like that, do you not?

13 A. Yes, sir, we do.

14 Q. This resolution was not in that
15 category; was it?

16 A. No, sir, it was not.

17 Q. Now, Mr. Lydon asked you about whether
18 the resolution was a contract. Do you recall that?

19 A. I do.

20 Q. Do you remember from law school the
21 distinction between a bilateral contract and a
22 unilateral contract?

23 A. Yes, sir, I do, one-sided versus
24 two-sided, parties.

25 Q. All right. And if I offer an

1 award -- a \$100 award -- for someone who finds and
2 returns my lost dog, and they return the dog, is
3 that a bilateral contract or a unilateral contract?

4 A. That's bilateral. You would then have⁵
5 to give them money.

6 Q. Well, it's a unilateral contract, is it
7 not?

8 A. I'm sorry. I apologize. Could you
9 repeat it again?

10 Q. Yeah. A bilateral contract is where
11 one of the contracts --

12 MR. LYDON: Your Honor, I'm not sure
13 what the relevance of all of this is. Mr. Gregory
14 has stated on cross-examination it was not a
15 contract, so I'm not sure why we're having --

16 THE COURT: He can go back into that
17 area.

18 Unilateral is where one person -- one
19 side is bound by the contract. The finder of the
20 dog wasn't bound. But when he showed back up, the
21 person that offered the reward was bound to follow
22 through with that.

23 MR. GRIER: Yes, Your Honor, but --

24 THE COURT: Now, if I'm wrong, don't
25 tell me that.

1 MR. GRIER: Do you remember the old

2 Carlill versus the Carbolic Smoke Ball case --

3 THE COURT: I remember exactly.

4 MR. GRIER: -- where, if he took the
5 Carbolic Smoke Ball and you got a cold, they would
6 pay you \$100. Mr. Carlill took the Carbolic Smoke
7 Ball and got a cold, and then they didn't want to
8 pay him the \$100. That's a unilateral contract.

9 BY MR. GRIER:

10 Q. If I offer a reward for the return of
11 my lost dog for \$100, and somebody brings him back,
12 I owe them \$100; don't I?

13 A. You do.

14 Q. Now, isn't this analogous to that? If
15 you improve these levees, I'll take the maintenance
16 of them, I will accept the maintenance of them.
17 Isn't that analogous to that?

18 A. Yes, sir.

19 Q. All right. Let me get Defendant's
20 Exhibit 13. Do you have Defendant's Exhibit 13?

21 A. I do.

22 Q. All right. You were asked some -- turn
23 to that page you were asked questions about.

24 That's BandC20483.

25 Do you see that?

1 A. I do.

2 Q. All right, sir, now, this was a
3 retrospective review; was it not?

4 A. Yes, it was.

5 Q. This was looking back on what had
6 happened?

7 A. That's correct.

8 Q. Hard lessons well learned?

9 A. Correct.

10 Q. Now, going back in time, though, at the
11 time you had closed the transaction February
12 17th -- 19th -- February 19th, 1999 -- based on
13 your due diligence that you had performed and all
14 of the people you had talked to, were you expecting
15 that this project would be well received, or
16 opposed?

17 MR. LYDON: Leading, Your Honor,
18 objection.

19 THE COURT: I will overrule it. I'm
20 sorry. You don't need to restate it. It was
21 leading.

22 But go ahead.

23 THE WITNESS: The project was well
24 received at the time.

25 BY MR. GRIER:

1 Q. And that's what you were expecting?

2 A. Yes, sir.

3 MR. GRIER: Thank you.

4 RECROSS-EXAMINATION

5 BY MR. LYDON:

6 Q. Um, just a couple of quick questions,

7 Mr. Gregory.

8 Plaintiff's Exhibit 521, the ledger --

9 A. Yes, sir.

10 Q. -- I want to make sure I understand
11 what this is.

12 This is a ledger of expenses incurred
13 by Columbia Venture. Is that correct?

14 A. It appears to be; yes, sir.

15 Q. And Columbia Venture was formed on
16 February 17th, 1999, correct?

17 A. I believe that's correct, Mr. Lydon.

18 Q. Okay. So any expenses -- so the
19 lobbyists and lawyers and PR firms that were hired
20 prior to February 17th, 1999 would have been hired
21 by Burroughs & Chapin. Is that correct?

22 A. That's correct.

23 Q. So all this shows us is what Columbia
24 Venture spent on legal fees, lobbyists, and the
25 like, after February 17th, 1999?

1 Boyd, Re: Levees, dated August 26, 2005, was
2 presented.)

3 MR. GRIER: I'm going to move on, Your
4 Honor, to another topic.

5 BY MR. GRIER:

6 Q. Mr. Hughes, you were involved, were you
7 not, as the manager of the project in the judicial
8 appeal of FEMA's final letter of determination?

9 A. Yes, sir.

10 Q. All right. And do you recall that
11 Judge Margaret Seymour issued an Order of
12 Vacatur --

13 MR. JOHNSON: Objection, Your Honor.

14 BY MR. GRIER:

15 Q. -- on November the 18th, 2005?

16 MR. JOHNSON: I'm sorry, I didn't mean
17 to cut him off.

18 Objection, relevance.

19 MR. GRIER: Your Honor, what I'm
20 getting ready to get into now -- and I will explain
21 the relevance of what I'm doing -- Judge Seymour,
22 on November the 18th, 2005, vacated the 2001
23 floodway and base flood elevations, and she
24 reinstated the 1995 base flood elevations in a
25 floodway.

1 At that time, the levees were no longer
2 in a floodway under the effective map. She
3 reinstated the 1994/1995 map. At that time, the
4 County considered a series of moratoria.

5 Now, the first moratorium that I want
6 to submit to the Court came out of the Development
7 and Services Committee of the county. This was in
8 December of 2005 after Judge Seymour's order.

9 That moratorium had a provision in it
10 that would have allowed levees to be improved. It
11 said there will be a moratorium on any
12 development -- any permits in the -- any
13 land-disturbance permits or any other permits -- in
14 the Congaree River floodplain, except any levees
15 that can be maintained to be -- to a certified
16 level.

17 In other words, as this moratorium came
18 out of the Development and Services Committee and
19 went to the council, it had a provision in there
20 that would have allowed these levees to be
21 certified to FEMA's standards -- or the Corps of
22 Engineers' standards.

23 That went before the entire council.
24 There was a debate on it. The majority of the
25 council eliminated that amendment from the

1 moratorium.

2 And so what you have, Your Honor, you
3 have a door that opens that would have allowed
4 these -- allowed the County to -- these levees to
5 be improved.

6 And what they did is eliminate that
7 door, shut the door. And that's the purpose of
8 this, Your Honor.

9 MR. JOHNSON: Your Honor, that is, I
10 think, now, four years after the taking. Totally
11 different circumstances existing at that time. And
12 this door he's talking about that opened, shut very
13 quickly by -- was shut very quickly by the Fourth
14 Circuit, and it has nothing to do -- it proves
15 nothing about the County's -- about their
16 reasonable investment-backed expectations.

17 I mean, there's been no testimony that
18 people expected there to be a lawsuit, and Margaret
19 Seymour was going to reverse and reinstate earlier
20 maps. It doesn't apply to that. That doesn't show
21 the character of government action prior to the
22 take. That's where -- during that period of time.

23 I mean, it's got nothing to do with
24 what the circumstances were at the time the alleged
25 taking occurred.

1 As you will remember, we had a hearing
2 before you, and counsel stood up and stipulated
3 that the date of take was February 20th, 2002.

4 So we would urge that this is
5 irrelevant evidence and ask that the Court exclude
6 it.

7 I mean, if we did something this week,
8 would it come into evidence in this case, ten years
9 after the fact.

10 THE COURT: It seems to me -- and of
11 course, I'm familiar with Ms. Seymour's rulings and
12 the Fourth Circuit and the moratoria that were put
13 in from other motions that have been heard on the
14 due process issues.

15 It seems to me that, by this point in
16 time, that any reasonable expectations that
17 Columbia Venture had or anything Columbia Venture
18 virtually could do at that point was foreclosed by
19 the County's actions. I mean, it was clear that
20 they weren't going to allow anything, period.

21 However -- and that's my opinion. So
22 the relevance after -- of this particular matter, I
23 really don't -- in the context of the regulatory
24 taking, the Penn Central issues, as opposed to the
25 subject of due process issues, I'm having a problem

1 grasping that.

2 MR. GRIER: Let me -- and, Your Honor,
3 it's not our point here to argue about the
4 reasonableness of what was done. It's just to
5 present what was done in terms of factually what
6 happened.

7 Judge Seymour set aside the 2001 flood
8 maps and reinstated the 1994/'95 maps. Now, under
9 those maps, these levees were no longer in a
10 regulatory floodway. This is a three-year period,
11 2005 to 2008, when these levees were not in a
12 regulatory floodway.

13 So they're not subject to the county
14 ordinances dealing with the levee in a regulatory
15 floodway.

16 Now, all I want to do -- and I'm not
17 debating the reasonableness or whether they had a
18 good idea to do it or whether it was a due process
19 violation or anything. All I want to establish is
20 the facts. And all I want to do is put in the
21 judge's order, the judge's judgment, the three
22 moratoria.

23 I do want to have the -- and I'm not
24 going to belabor it -- but the ordinance, the first
25 one that went from Development and Services to the

1 council, and they took out the amendment that would
2 have allowed the levees to be certified, and then
3 passed three moratorium and then another statute.

4 That's all I want to do. I don't want
5 to talk about the reasonableness of it or anything
6 like that.

7 But I do think that there's another
8 issue here besides just the reasonable investment
9 expectation, and that is the conduct of the
10 government and the extent --

11 THE COURT: I know that you have raised
12 that issue about whether or not, in essence, bad
13 faith -- because it is mentioned in a couple of
14 cases --

15 MR. GRIER: Yes, sir.

16 THE COURT: -- whether or not that
17 might be relevant.

18 Again, my inclination is that it is
19 irrelevant, but I'm not going to -- I don't want to
20 foreclose you from making a full record, so I'm
21 going to allow you to go ahead and do it.

22 MR. GRIER: All right. Thank you, sir.

23 BY MR. GRIER:

24 Q. Mr. Hughes, I'm going to move very
25 quickly through this.

1 MR. JOHNSON: Your Honor, could these
2 go in as exhibits, rather than --

3 MR. GRIER: I believe His Honor said
4 you were going to let me do it.

5 THE COURT: I am going to let you do
6 it.

7 MR. JOHNSON: I thought what he asked
8 was, he just wanted to put the facts in.

9 THE COURT: I think he can go ahead and
10 put them in as exhibits, because he needs to -- and
11 I feel that he should be able to make his record.

12 Although, as I said, as far as the fact
13 finder is concerned, I am not inclined to consider
14 that as being relevant in regards as part of the
15 regulatory aspects of it. So you can mark them as
16 exhibits.

17 MR. GRIER: All right, sir.

18 (PLF. EXH. 61, Order of Vacatur, dated
19 November 18, 2005, was presented.)

20 (PLF. EXH. 62, Judgment in a civil
21 case, dated November 18, 2005, was presented.)

22 BY MR. GRIER:

23 Q. Mr. Hughes, I want to hand to you -- or
24 have handed to you -- Plaintiff's Exhibit 61 and
25 62.

1 Okay. Have you got those in front of
2 you?

3 A. Yes.

4 Q. 61 is an Order of Vacatur by Judge
5 Seymour?

6 A. Yes, sir.

7 Q. And 62 is the Order of Judgment in a
8 civil case?

9 A. Yes, sir.

10 Q. All right, sir. If we could hand you
11 Plaintiff's Exhibit 133, 150, 135.

12 (PLF. EXH. 133, Richland County Council
13 Development and Services Committee Agenda Packet,
14 dated December 20, 2005, was presented.)

15 (PLF. EXH. 150, Richland County Council
16 Regular Session, dated January 3, 2006, was
17 presented.)

18 (PLF. EXH. 135, Richland County Council
19 Meeting Minutes, dated January 3, 2006, was
20 presented.)

21 BY MR. GRIER:

22 Q. Mr. Hughes, do you have those exhibits
23 in front of you?

24 A. Yes, sir.

25 Q. 133 is the Development and Services

1 Committee meeting on December the 20th, 2005?

2 A. Yes, sir.

3 Q. And attached to that is a moratorium
4 that was considered at the meeting?

5 A. Correct, yes, sir.

6 Q. And 150 is the Richland County Council
7 regular session, January 3rd, 2006. Is that
8 correct?

9 A. Yes, sir, that's correct.

10 Q. And attached to that is the moratorium
11 that came from the Development and Services
12 Committee with a -- the moratorium with the
13 amendments inserted in it that were added by the
14 Development and Services Committee?

15 A. Yes, sir; that's correct.

16 Q. And if you look at 332, do you see the
17 underlined language down at the bottom there?

18 A. Yes, sir.

19 Q. It says: Provided, however, this
20 moratorium does not apply to permits, application
21 for maintenance of existing structures, levees, or
22 buildings, or to bring existing levees into
23 compliance with Richland County ordinances and/or
24 U.S. Corps of Engineers' standards?

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

1 Q. All right. And then Plaintiff's
2 Exhibit 135 is the minutes of the Richland County
3 Council, January 3rd, 2006.

4 Do you see that?

5 A. Yes, sir, I see it. I'm sorry.

6 Q. And do you see that on Bates Number
7 DEF-12152 there's a report from the Development and
8 Services Committee?

9 A. Correct.

10 Q. And you have an item there, Emergency
11 ordinance establishing a temporary moratorium and
12 approval of floodplain management permits --

13 A. Yes, sir.

14 Q. -- for development or construction
15 within a portion of the Congaree River floodplain.

16 And Mr. Montgomery made a substitute
17 motion, seconded by Ms. Hutchinson, to adopt the
18 ordinance, striking the amendments noted in the
19 proposed ordinance. A discussion took place. The
20 motion failed.

21 Now, this was a motion to pass the
22 ordinance as an emergency ordinance, and it needed
23 two-thirds. And it didn't pass; did it?

24 A. That's correct.

25 Q. And then Ms. Smith made a substitute

1 motion, seconded by Mr. McEachern, to give first
2 reading approval to an ordinance with the committee
3 amendment stricken. A discussion took place.

4 Ms. Scott made a substitute motion,
5 seconded by Ms. Dickerson, to send the proposed
6 ordinance back to the D&S committee.

7 That failed; did it not?

8 A. That's correct.

9 Q. And then the vote in favor of
10 Ms. Smith's substitute motion passed; did it not?

11 A. It did.

12 Q. And so the ordinance would have been
13 passed without the amendment. They would have
14 allowed the certification of the levee?

15 A. It was passed, the ordinance, without
16 the amendment, yes.

17 Q. I want to hand you
18 exhibits -- Plaintiff's 449, 452, and 81.

19 (PLF. EXH. 449, Ordinance extending the
20 moratorium on either the approval or denial of
21 floodplain management permits for development or
22 construction within a portion of the Congaree River
23 floodplain, dated May 16, 2006, was presented.)

24 (PLF. EXH. 452, Ordinance extending the
25 moratorium on either the approval or denial of

1 floodplain management permits for development or
2 construction within a portion of the Congaree River
3 floodplain, dated July 11, 2006, was presented.)

4 (PLF. EXH. 81, Ordinance amending the
5 Richland County Code of Ordinances... so as to
6 adopt the 1995 Base Flood Elevations along the
7 Congaree River, dated December 5, 2006, was
8 presented.)

9 BY MR. GRIER:

10 Q. Now, 449 is an ordinance extending the
11 moratorium?

12 A. Yes, sir.

13 Q. And 452 is also an ordinance extending
14 the moratorium?

15 A. Yes, sir.

16 Q. And Plaintiff's 81 is an ordinance that
17 was passed on December 5th, 2006?

18 A. Yes, sir.

19 MR. GRIER: Okay. Now I'm going to
20 move to another topic.

21 THE COURT: All right, sir.

22 MR. GRIER: Your Honor, just one
23 moment. I left out one of the ordinances,
24 Plaintiff's Exhibit 67. If we could get that, and
25 that is the --

1 (PLF. EXH. 67, Ordinance establishing a
2 temporary moratorium on approval of floodplain
3 management permits for development or construction
4 within a portion of the Congaree floodplain, was
5 presented.)

6 BY MR. GRIER:

7 Q. I believe this is the first temporary
8 moratorium, is it not, sir?

9 A. Yes, sir.

10 Q. Okay. Now, Mr. Hughes, I want to hand
11 you Plaintiff's Trial Exhibit Number 3.

12 If you would, I want you to turn to the
13 floodway data table for the Congaree River.

14 MR. GRIER: Your Honor, it's -- these
15 things aren't numbered, but it's the first one
16 after the -- it's the first one after the wording
17 here in the text. This is it right here.

18 MR. JOHNSON: Is there a page we're
19 looking at?

20 MR. GRIER: Would you bring yours up,
21 too.

22 BY MR. GRIER:

23 Q. Have you got that page in front of you?

24 A. I've got it.

25 Q. And then I want to hand you another

1 was issued, according to the NFIP regulations, it
2 says:

3 A community may use its Effective FIRM
4 for floodplain management purposes. Is that
5 correct?

6 A. That's what it says.

7 Q. Now, Mr. Hughes, you were involved,
8 were you not, in the litigation, the judicial
9 appeal of FEMA's final determination, were you not,
10 sir?

11 A. Yes, sir.

12 Q. And after Judge Seymour vacated the
13 2001 Flood Insurance Maps, you were involved in a
14 mediation with FEMA and the intervenors in that
15 case, were you not?

16 A. Yes, sir.

17 Q. And eventually, you annexed -- Columbia
18 Venture annexed into the City of Cayce, did you
19 not, sir?

20 A. Yes, sir, we did.

21 Q. And when was that, sir?

22 MR. JOHNSON: Your Honor, I object to
23 the relevance.

24 THE COURT: Yes, sir. What's the
25 relevance of what they did later on?

1 MR. GRIER: Your Honor, it just kind of
2 completes the story. I mean, it really just kind
3 of completes the circle.

4 THE COURT: It's not going to be long?

5 MR. GRIER: No.

6 THE COURT: All right, sir.

7 BY MR. GRIER:

8 Q. Now, you annexed into Cayce in 2007,
9 end of 2007?

10 A. Yeah, I would have said 2008, but it
11 was the very end of a year.

12 Q. And once you annexed into Cayce, did
13 you do anything further in terms of preparing a
14 permit?

15 A. Yes, sir, we --

16 MR. JOHNSON: Objection, relevance, the
17 story isn't over yet. If we're going to tell it --

18 THE COURT: I think we've gotten so far
19 out on a timeline, that I sustain the objection.

20 MR. GRIER: All right. If I may just
21 offer one other exhibit, Your Honor, to complete
22 the circle here.

23 BY MR. GRIER:

24 Q. The Fourth Circuit reversed Judge
25 Seymour, did it not?

1 A. Had they pursued this, they would have
2 failed.

3 Q. Had they initially -- had they bought
4 the property and then said it isn't going to work,
5 Richland County are horrible people, they're not
6 going to let us do anything, and they simply
7 implemented a strategy such as you devised, they
8 could have made a net probable return -- Columbia
9 Venture could -- of 48 million dollars. That's
10 what this document says?

11 A. That -- if you thought they had no
12 investment-backed expectation and they just bought
13 it to flip it as a speculator, they would have
14 expected 48 million dollars; yes, sir.

15 The day they bought it, I think a
16 speculator could have expected 48 million, if they
17 brought no expertise other than money.

18 That would have been a probable -- a
19 kind of projection you could make.

20 MR. JOHNSON: Thank you. That's all I
21 have.

22 Your Honor, I told you, short.

23 THE COURT: Relatively.

24 REDIRECT EXAMINATION

25 BY MR. GRIER:

1 Q. This exhibit, Defendant's Exhibit 14,
2 you say this wouldn't have worked?

3 A. No, sir. Richland County prevented
4 even this from happening.

5 Q. You've got, Probabilities of success
6 here. You've got, Win lawsuit, 50 percent.

7 I'm looking at the first thing here.

8 A. Yes, sir.

9 Q. You've got, Conservation easement,
10 55 -- probability of success, 55 percent.

11 Wetlands mitigation. That's something
12 you tried; was it not?

13 A. Yes, sir, that was a great idea to make
14 some money, I thought.

15 Q. And that was only a 70 percent -- that
16 was a 70-percent chance?

17 A. That's why it made it a great idea.

18 Q. Did it work?

19 A. No, sir, it was precluded.

20 Q. And why was it precluded?

21 A. Because wetlands had to have little
22 impoundments to hold the water, and that would have
23 impeded the flow under the new definition, and we
24 couldn't do it.

25 Q. What about the wastewater treatment?

1 What was that, sir, 80 percent success?

2 A. The idea there, we could have saved, we
3 believed -- I still believe we could have saved the
4 Richland County sewer rate payers millions of
5 dollars a year by tertiary treatment of their
6 wastewater in a constructive wetlands bank, like is
7 done in Orlando and Augusta. We couldn't do that
8 either.

9 Q. Why not?

10 A. It took small levees. We weren't
11 allowed to impede the flow of water.

12 Q. So all of this 48 million dollars was
13 contingent on all of these contingencies you've got
14 in the probabilities of success?

15 A. This is a speculator sheet. We call it
16 a Monte Carlo simulation, because it's the
17 gambling, how do you handicap your odds here.

18 Q. And is it your testimony, that land,
19 when you came in and took it over, was not worth 48
20 million dollars?

21 A. That land wasn't.

22 MR. JOHNSON: Objection, Your Honor.

23 MR. GRIER: I think this goes to what
24 this is.

25 THE WITNESS: I would say it the other

1 way. My contract --

2 MR. JOHNSON: Your Honor --

3 THE COURT: I overrule the objection.

4 Go ahead.

5 THE WITNESS: In my opinion, the
6 property was worth about 10 or 11 million dollars
7 when we started. The contract said, if I could get
8 it up to 34 -- which is what they thought they had
9 in it at the time -- I could have the profit beyond
10 that. So I thought it was worth it, and they
11 thought it was significantly worth -- worth
12 significantly less, or they would not have let me
13 have a contract saying they would pay my expenses
14 to get it up to 34, and then I could have the
15 profit above it. So they were desperate.

16 BY MR. GRIER:

17 Q. You said you thought it was about 10 or
18 11?

19 A. 10 or 11, a third of where we started.

20 MR. GRIER: Thank you, sir.

21 MR. JOHNSON: Nothing further.

22 THE COURT: All right. You may step
23 down, sir. Thank you.

24 Anything further, then, for this week?

25 MR. GRIER: I think that's it for

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4
5 Columbia Venture, LLC,
6 Plaintiff,
7 vs. CASE NO. 2010-CV-40-8943R
8 Richland County,
9 Defendants.

10 PROCEEDINGS: TRIAL - VOLUME VII
11 (Pages 1100 through 1362)
12 BEFORE: THE HONORABLE JOHN HAMILTON SMITH
13 DATE: September 17, 2012
14 TIME: 9:59 a.m.
15 LOCATION: Richland County Judicial Center
16 1701 Main Street
17 Columbia, SC
18 REPORTED BY: Susan M. Valsecchi, CRR
19 Registered Professional Reporter
20

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

23 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376
24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 MR. GRIER: No.

2 THE COURT: You may call him as the
3 first witness.

4 MR. BECKER: Your Honor, the Plaintiff
5 calls John Lessley.

6 THE COURT: Mr. Lessley, if you would
7 come around, please, and walk over to the witness
8 box next to the court reporter. Put your left hand
9 on the Bible for me, please, and then raise your
10 right hand.

11 Do you swear the testimony you will
12 give in this matter will be the truth and nothing
13 but the truth, so help you God?

14 THE WITNESS: I do, sir.

15 THE COURT: Please have a seat and then
16 please state your full name for the court reporter.

17 THE WITNESS: John C. Lessley,
18 L-e-s-s-l-e-y.

19 JOHN C. LESSLEY

20 being first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BECKER:

23 Q. Thank you, Mr. Lessley.

24 If you wouldn't mind, either moving
25 that microphone a little bit closer to you and

1 trying to speak into that so everyone in the
2 courtroom can hear you okay.

3 Can you hear me okay?

4 A. Yes, sir.

5 Q. All right. Mr. Lessley, are you a
6 professional engineer?

7 A. Yes, sir.

8 Q. Are you employed with S&ME,
9 Incorporated?

10 A. Yes, sir.

11 Q. Is your title vice president, slash,
12 technical principal?

13 A. Yes, sir.

14 Q. All right. What kind of engineering
15 does S&ME perform?

16 A. It performs geotechnical engineering,
17 civil engineering, environmental engineering. It
18 does air and water permitting and environmental
19 studies.

20 Q. All right. Could you just briefly tell
21 me what your educational background is.

22 A. I have a bachelor of science degree in
23 mining engineering from Virginia Tech in 1979. I
24 have a master's degree in rock mechanics from
25 Virginia Tech in 1982, and I have 44 hours towards

1 my Ph.D. at Georgia Tech.

2 Q. Thank you.

3 You are a licensed professional
4 engineer in South Carolina?

5 A. Yes, sir.

6 Q. Is that license in good standing?

7 A. Yes, sir.

8 Q. Do you have any other licenses granted
9 by South Carolina or any other state?

10 A. I am a professional engineer in West
11 Virginia, Maryland, Virginia, Delaware, and in
12 Florida, in addition to South Carolina.

13 Q. Thank you.

14 How long have you been employed with
15 S&ME?

16 A. Since 1996.

17 Q. And what is -- do you have a particular
18 specialty in engineering, the engineering field?

19 A. It would be geotechnical engineering.

20 Q. If you could explain for the Court,
21 what is geotechnical engineering?

22 A. It's engineering of soils and rock, for
23 design of foundations, dams, levees, roadways.

24 Q. Thank you.

25 In approximately March of 1999, was

1 S&ME engaged by Lockwood Greene engineers to
2 perform work on the levees on the Columbia Venture
3 property located on the banks of the Congaree River
4 near Columbia, South Carolina?

5 A. Yes, sir, we were.

6 Q. When were you first approached to
7 perform work for Lockwood Greene International, and
8 what were you asked to do?

9 A. We were approached on March 10th, 1999,
10 to perform geotechnical studies on Levee Section I.
11 The approach came through our president who then
12 forwarded that request to the Columbia office. And
13 so on March 10th, we visited the Lockwood Greene
14 offices and discussed what they required.

15 What they required was an expedited
16 geotechnical exploration of Levee Section I and a
17 report.

18 Q. Why was the request expedited?

19 A. I don't know -- or I didn't know at the
20 time. But they gave us a statement that they were
21 under --

22 MR. LYDON: Your Honor, I'm going to
23 object to him saying what somebody at Lockwood
24 Greene told him, as hearsay.

25 THE COURT: Well, he can refer to what

1 his conversations were in regard to what he
2 understood the scope of the work to be. But
3 further than that, particularly this particular
4 question, I will sustain the objection.

5 MR. BECKER: Did you mean sustain or
6 overrule, Your Honor?

7 THE COURT: Why did you have to ask
8 that? I sustain the objection as to why Lockwood
9 Greene wanted it to be expedited.

10 MR. BECKER: Okay, all right.

11 BY MR. BECKER:

12 Q. You did perform the work on an
13 expedited basis, though. Is that correct?

14 A. Yes, sir.

15 Q. Okay. Mr. Lessley, would you tell me,
16 did you assemble a group of engineers that would do
17 the work that was requested by Lockwood Greene to
18 be done?

19 A. Yes, sir.

20 Q. Who were the members of that team of
21 engineers?

22 A. Well, there was myself, there was
23 Dr. Dan Marks of our Asheville office, who was
24 S&ME's lead dam engineer. And Ron Calsing, who was
25 the president of S&ME, also was going to remain

1 involved in the project in an advisory and review
2 capacity.

3 We had several staff under me,
4 under -- various names were John Bale, who was
5 another engineer in our office, here in Columbia.
6 And we brought a young engineer, whose name I don't
7 recollect at this point, from Charleston to assist
8 as well.

9 Q. Did any members of the team have
10 previous work experience on levees?

11 A. Well, I did not, but Dan Marks had
12 considerable experience with dams and levees.

13 Q. How about Mr. Calsing?

14 A. I don't know specifically what his
15 experience was, other than he did used to work at
16 Lockwood Greene and knew the people on their design
17 team.

18 Q. All right. But you say Mr. Marks had
19 had previous experience --

20 A. Yes.

21 Q. -- with levee design and construction?

22 A. Yes.

23 Q. All right. Mr. Lessley, I would like
24 to hand you what's been marked as Plaintiff's Trial
25 Exhibit 527.

1 (PLF. EXH. 527, Chronology of
2 Activities Carried Out for Lockwood Greene
3 International by S&ME, Re: Improvement to Congaree
4 Levees Sections I & II, was presented.)

5 MR. BECKER: Let me give the opposing
6 counsel just a moment to review it to see if they
7 have any objection.

8 MR. LYDON: Your Honor, could we find
9 out if this was produced during discovery, not that
10 that's going to ultimately determine our position,
11 but it doesn't have a Bates number on it.

12 MR. BECKER: Your Honor, this was not
13 produced during discovery. It was only prepared by
14 Mr. Lessley last week.

15 It is nothing more than a summary of
16 the activities that his firm performed from
17 inception through November 16th, 1999.
18 Mr. Lessley's here and he can certainly be
19 cross-examined about it. We will -- during the
20 direct examination, it would be our intent to have
21 him walk through, in some detail, and point out the
22 major deliverables of S&ME to Lockwood Greene
23 during the levee design process and things of that
24 nature.

25 It's purely a summary of activities he

1 performed -- or S&ME performed -- on behalf of
2 Lockwood Greene during the relevant time period.

3 THE COURT: All right, sir.

4 MR. LYDON: Your Honor, I would object.

5 I don't think you can -- I mean, the witness can
6 testify and the Court can take notice of what he
7 testifies to and evaluate it and determine it, but
8 I don't think you get to then put testimony into a
9 summary and put it in an exhibit and make it part
10 of the record.

11 I don't think it complies with the
12 summary rule 1006, which -- yeah, contents of
13 voluminous writings can be presented in the form of
14 a chart, summary or calculation, but there's
15 nothing about a summary of a witness testimony
16 being presented.

17 And, likewise, it says that the
18 originals -- or examination of the underlying
19 information must be made available.

20 So I have never seen a situation where
21 you just -- where the witness writes up a summary
22 of his testimony and presents it as evidence to the
23 Court. So I'm going to object.

24 THE COURT: All right, sir, I have
25 reviewed it and it appears to me to be simply a

1 chronology of events. And with very few, if any,
2 opinions given about what was actually done, so I
3 overrule your objection.

4 MR. BECKER: Thank you, Your Honor.

5 BY MR. BECKER:

6 Q. Mr. Lessley, do you have Plaintiff's
7 Exhibit 527 in front of you?

8 A. Yes, sir.

9 Q. Did you prepare this document?

10 A. Yes, I did, Your Honor.

11 Q. Did you prepare it on or about the date
12 it is dated, which is September 13th, 2012?

13 A. Yes.

14 Q. Is it a chronology of the activities
15 carried out for Lockwood Greene International by
16 S&ME regarding planned improvements to the Congaree
17 River, Levee Sections I and II on Columbia
18 Venture's property?

19 A. Yes, as best as I can recollect.

20 Q. It is?

21 A. Yes, sir.

22 Q. Did you prepare it based on your review
23 of S&ME's file related to this project?

24 A. Yes.

25 Q. If you would, please, Mr. Lessley,

1 point out for us what were the major deliverables
2 that were provided by S&ME to Lockwood Greene that
3 are listed on the report.

4 MR. LYDON: Your Honor, if I might, I
5 understand your ruling on the summary objection,
6 but as I indicated earlier, and Mr. Becker
7 confirmed, this document was not produced to us
8 during discovery, and if we could have just about
9 five minutes to read through it.

10 THE COURT: Yes, sir, you can take the
11 time before he answers that question.

12 MR. BECKER: Not a problem.

13 (A brief recess was held.)

14 MR. BECKER: Would the court reporter
15 read back the question.

16 THE COURT REPORTER: "If you would,
17 please, Mr. Lessley, point out for us what were the
18 major deliverables that were provided by S&ME to
19 Lockwood Greene that are listed on the report."

20 THE WITNESS: Thank you.

21 What we discussed with Lockwood Greene
22 on March 10th was a two-phase exploration of Levee
23 Section I. The first phase was a physical
24 walk-over of the levees to assess their condition
25 and to note locations of substandard levee or

1 penetrations, pipes that needed maintenance, and
2 that sort of thing.

3 The second phase was, then, the actual
4 drilling and sampling of the levee to determine
5 what types of materials were in the levee and in
6 the foundation.

7 Our submittal for the first phase of
8 the report was made on April 5th. That was the
9 embankment and valuation report. While that was
10 being prepared, we were proceeding with drilling
11 and sampling.

12 And on May 2nd, we made a preliminary
13 report of our findings, I guess that was just on
14 the sections facing the river, and what we had
15 determined from the borings and the laboratory
16 testing and the analysis that we had done during
17 April and the early part of May, and what the
18 probable type of improvement would have to be on
19 those sections of levee.

20 On May 21st, we submitted a formal
21 report of the Levee Section I. That was a large
22 document that was 250 to 300 pages long.

23 Then, during April, we were asked to
24 then undertake exploration of Levee Section II, and
25 immediately after completing the May 2nd letter, we

1 began Levee Section II. And the report of Levee
2 Section II was generated on August 10th, 1999 under
3 a different project number.

4 Both Levee I -- and, actually, the
5 August 10th report was -- both Levee I and
6 Levee II were done for the 100-year flood.

7 About a month later, we were asked to
8 submit a proposal for re-evaluating the levees for
9 the 500-year flood. We were authorized to do that
10 on October 12th, and that report was submitted on
11 November 16th, 1999.

12 In the meantime, on September 13th, we
13 had submitted a plan for quality control for
14 construction of the levees to Lockwood Greene,
15 which was a Corps of Engineers' requirement for
16 construction of the levee.

17 BY MR. BECKER:

18 Q. Thank you.

19 Let's begin with taking a look at
20 Plaintiff's Exhibit 294, which is already in
21 evidence.

22 Mr. Lessley, is this the report that
23 was produced by S&ME on April 5th, 1999?

24 A. Yes, sir.

25 Q. And it documents the findings of the

1 Phase I inspection?

2 A. Yes.

3 Q. If you would, turn to Pages 6 and 7 and
4 just discuss the recommendations that were made,
5 the three recommendations that were made there at
6 that time.

7 A. All right. There were three
8 recommendations. The first recommendation was to
9 establish the maximum floodwater elevations for the
10 100-year return frequency storm event for Levee
11 Section I.

12 Establish the design crest elevations
13 for Levee Section I embankments based on the
14 desired protection and water elevations, plus a
15 standard freeboard height. And this is in
16 accordance with the Corps of Engineers'
17 requirements.

18 And then three was to continue with the
19 Phase II investigation, which was the drilling and
20 sampling of the levees themselves to develop
21 analysis parameters for design of the remedial
22 repairs and modifications and improvements to Levee
23 Section I.

24 Q. All right. Let me ask you, regarding
25 Recommendation Number 1, the 100-year return

1 frequency storm event, what are the standards, the
2 FEMA standards, that are contained in 44 CFR 65.10?

3 A. Well, at that time, they referenced the
4 Corps of Engineers' standards, which was a 100-year
5 flood.

6 Q. Is that what you were referring to in
7 Recommendation Number 1 there?

8 A. Yes.

9 Q. Okay. So the FEMA, slash, Army Corps
10 of Engineers' standards --

11 A. Yes.

12 Q. -- for the 100-year flood?

13 Initially, did you design your work
14 product for Lockwood Greene to that standard?

15 A. Yes.

16 Q. Now, I would like to also hand you what
17 we have marked as Plaintiff's Exhibit 127. I don't
18 believe this is in evidence, but I will have you
19 identify it.

20 Oh, excuse me, it is in evidence. It's
21 Plaintiff's Exhibit 127.

22 Do you have that, Mr. Lessley?

23 A. Yes, sir.

24 Q. Is this a document that you prepared
25 for Lockwood Greene?

1 A. Yes, sir.

2 Q. Did you deliver it to Lockwood Greene
3 on or about May 2nd, 1999?

4 A. I believe so.

5 Q. All right. The first paragraph of the
6 report addressed to Mr. Holcombe, the project
7 manager at Lockwood Greene, says:

8 In accordance with contractual
9 agreements established on March 24, 1999, S&ME,
10 Inc., has completed the Phase I inspection and
11 subsurface exploration of levee segments comprising
12 the Congaree River Levee Section I of the
13 Burroughs & Chapin development project in Richland
14 County, near Cayce, South Carolina.

15 Is that correct?

16 A. Yes, sir.

17 Q. Read that third paragraph on the first
18 page there.

19 A. This report presents an overall
20 evaluation of the existing Congaree
21 levee -- Congaree River -- Levee Section I relative
22 to potential flood protection and impact upon flood
23 routing on the associated reach of the Congaree
24 River.

25 As you requested, we have concentrated

1 on evaluating reaches facing the Congaree River.
2 This report does not address the intermediate levee
3 forming the south margin of the Levee 1 region.

4 Q. Let me ask you about some of the
5 terminology you have used there, Mr. Lessley. What
6 is a reach?

7 A. A reach is a section of levee that has
8 a similar cross section and similar subsurface
9 conditions. It is really just for the convenience
10 of design.

11 Q. All right. So is it, then, a portion
12 of the levee system?

13 A. A portion of a levee system, yes.

14 Q. Okay. Approximately how long is an
15 average reach?

16 A. The reaches that we used generally
17 comprise several of the cross sections, which would
18 make them a thousand feet, or 1,500 feet long each.

19 Q. Okay. And this particular report was
20 focused on the reaches of Levee Section I facing
21 the Congaree River. Is that right?

22 A. That's correct.

23 Q. If you know, approximately how many
24 feet would that be?

25 A. I don't really recollect. Maybe about

1 10,000 feet.

2 Q. 10,000 feet in length?

3 A. In length, yeah.

4 Q. Do you know approximately how many
5 acres of levee that would comprise?

6 A. Acres of levee, I don't know.

7 Q. Okay. Could you make that calculation?

8 A. You mean actual area covered by the
9 levee or the area protected by the levee?

10 Q. Actual area covered by the levee.

11 A. I probably need a calculator or
12 something.

13 Q. Okay. All right. I may come back and
14 ask you to do that. And we'll get you a
15 calculator.

16 If you would, turn to Page 3 and read
17 that first paragraph under Phase II, Subsurface
18 Exploration.

19 A. Along the crest of the levee, we have
20 performed 43 borings to an average depth of 30
21 feet. There are an additional 8 borings performed
22 by Bunnell & Lammons to similar depths, making the
23 total soil test boring effort 51 borings, totaling
24 1,700 linear feet.

25 Borings were typically advanced all the

1 way through the levee fill and into the underlying
2 natural soil, to a depth equal to the levee height.

3 Q. And then read that following paragraph.

4 A. As part of our drilling operation, we
5 obtained 300 samples of the levee soils and 215
6 samples of the bearing soils. A professional
7 engineer evaluated each sample in the field and
8 again in the laboratory and assigned a soil
9 classification to each sample based on the Unified
10 Classification System.

11 Q. Does that describe what is sometimes
12 called a soils analysis?

13 A. Not -- not entirely, no. But it's a
14 good part of it.

15 Q. Okay. What additional work would have
16 been required to complete a soils analysis at this
17 point in time?

18 A. Well, in addition to this work -- and I
19 think it's on the next page -- we did laboratory
20 classification tests of representative samples out
21 of the total population, and I think it tabulates
22 them in the second paragraph on page -- Page 4, I
23 guess.

24 Laboratory classification tests include
25 mechanical sieve analysis to determine the grain

1 size distribution of the soils. It would include a
2 plasticity index test to determine whether it's
3 clay or silt, soil.

4 It would include triaxial tests to
5 determine the shear strength properties of the soil
6 that you could use in a stability analysis of the
7 levee.

8 And there are other tests that could be
9 performed, depending on the engineering problem
10 that was being addressed.

11 Q. Were, then, soils analyses completed by
12 May 2nd, 1999, the date of this report?

13 A. All but a few. That's probably the
14 main reason we didn't get the report out until May
15 21st, was that there were a few straggler tests
16 that were still coming in.

17 Q. I see, okay.

18 A. But we had six out of the eight
19 triaxial tests complete, and nearly all of the
20 classification tests complete.

21 Q. Take a look at the section called
22 Stability of existing levee, down at the bottom.

23 It says on the first sentence there:
24 On the basis of visual observation of the levee
25 profiles provided by Surveying and Mapping, Inc.,

1 and the boring data, the levee facing the river
2 north of I-77 was divided into six separate reaches
3 or segments.

4 Do you see that?

5 A. Yes.

6 Q. Who was Surveying and Mapping, Inc.?

7 A. They were a surveying firm that was
8 retained by Lockwood Greene.

9 Q. And what sorts of work were they doing?

10 A. Uh, they were producing cross sections
11 of the levee, and I believe they were producing a
12 topographic map of the entire area --

13 Q. All right.

14 A. -- using aerial photography.

15 Q. Were you provided levee cross sections
16 in order to -- by Surveying and Mapping, Inc., in
17 order to do your work?

18 A. Uh, I think they came indirectly from
19 them through Lockwood Greene to us.

20 Q. Okay. So you were relying on levee
21 cross sections providing it by Surveying and
22 Mapping, Inc.?

23 A. Correct.

24 Q. It also says that the levee facing the
25 river north of I-77 was divided into six separate

1 reaches or segments. Is that correct?

2 A. Yes.

3 Q. Does that change in any way your
4 earlier estimate that it was -- that section of
5 Levee Section I was approximately 10,000 feet?

6 A. Well, I don't recollect. There
7 was -- actually, the reaches are tabulated on the
8 table on the next page.

9 Q. Uh-huh.

10 A. The stationing is from zero to 98,
11 north of the wastewater treatment plant. So that's
12 9,800 feet. And there is Reach Number 7, which is
13 south of the water treatment plant to I-77, was
14 about 900 feet more. So that's 10,700 or so.

15 Q. So right at it?

16 A. Yeah.

17 Q. Okay. I would like to ask you just to
18 look on the summary page. It's Page 7. Read that
19 first paragraph and just comment on it, if you
20 would, please.

21 A. The first paragraph under the heading
22 of Summary?

23 Q. Under Summary, correct.

24 A. The U.S. Army Corps of Engineers
25 manual, Design and Construction of Levees -- and

1 this is the March 1978 edition -- Section 6
2 describes the methods of analysis and minimum
3 factors of safety required for the steady seepage
4 for full flood conditions, which they call Case IV
5 in the manual.

6 Our preliminary analyses indicate about
7 25 percent of the river levee would, with
8 maintenance and clearing of vegetation, provide a
9 significant factor of safety (approximately 1.4)
10 against sliding failure under the 100-year flood
11 elevations provided by Lockwood Greene on May 1st.

12 Q. All right. Let me just ask you, then,
13 about part of what you have said there.

14 I note from your chronology that one of
15 the first things you did in the -- in performing
16 this work was to obtain a copy of the U.S. Army
17 Corps of Engineers design manual. Is that correct?

18 A. Yes.

19 Q. How did you go about doing that?

20 A. It's available for download to the
21 public on their website --

22 Q. All right.

23 A. -- publications to headquarters, U.S.
24 Army Corps of Engineers.

25 Q. Okay. You also say that: A

1 significant portion of the levee would, with
2 maintenance and clearing of vegetation, provide a
3 significant factor of safety against sliding
4 failure under the 100-year flood elevations
5 provided by Lockwood Greene on May 1.

6 The 100-year flood elevation, where do
7 you obtain those?

8 A. I got those from Lockwood Greene.

9 Q. Do you know where they obtained them?

10 A. I believe that they calculated them
11 themselves.

12 Q. How about the -- are they part of the
13 Flood Insurance Rate Maps published by FEMA?

14 A. I don't know.

15 Q. How about the 500-year flood
16 elevations, what is involved in -- if you
17 know -- obtaining the 500-year flood elevations?

18 A. Lockwood Greene calculated those using
19 the entire watershed for the river going by this
20 section, using the HEC-2 model.

21 Q. Okay.

22 A. But I'm not familiar with how that
23 computer program is employed.

24 Q. Okay. But you do -- you do recall that
25 the 500-year flood elevations had to be calculated

1 separately by Lockwood Greene?

2 A. Yes.

3 Q. If you would, just skip down to the
4 last paragraph of the summary and read that for us,
5 please, the last paragraph on Page 7.

6 A. The materials comprising the levees are
7 in themselves adequate for use in the construction
8 of a stable levee. Control of the seepage profile
9 near the inside face of the levee will be key in
10 providing an adequate factor of safety against
11 failure under the design flood stage.

12 Our final report will address these
13 issues in more detail.

14 Q. All right. Could you comment upon that
15 first sentence. What -- could you elaborate on
16 that, please, The materials comprising the levees
17 are in themselves adequate for use in the
18 construction of a stable levee.

19 A. Well, the materials were not unsuitable
20 for use in the levee, if the levee was properly
21 designed and constructed.

22 Q. Okay. Thank you. That's all I have on
23 that document.

24 Now, Mr. Lessley, if you would,
25 describe generally how a -- how you or a

1 contractor, construction company, would go about
2 improving the levees to the required design
3 standards.

4 A. Well, we provided the cross section
5 that was necessary to provide the required
6 stability factor, section by section, along the
7 levee.

8 Q. Would that be reach by reach?

9 A. Reach by reach.

10 Q. Okay.

11 A. And Lockwood Greene would produce a
12 grading plan based on those that would show where
13 different portions of the levee would have to be
14 reshaped or where there would need to be a
15 stability berm on the inside toe of the levee.

16 We specified the materials that would
17 be required for that inside bolster. All of the
18 vegetation on the levees would have to be cleared
19 off. Trees would have to be pulled out, and the
20 stump root balls would have to be taken out, and
21 the cavity that was left from those would have to
22 be filled in.

23 The sections that had to be raised and
24 the sections that needed the bolster would be just
25 an ordinary grading operation. There were sections

1 where the riverside portion of the levee was too
2 steep and it would have to be cut back.

3 Sections where there were penetrations
4 of the levee, for the most part, would have to be
5 wholly undercut and the penetration of the pipe
6 replaced because the -- a lot of those pipes were
7 precast concrete segmental pipes, and the pipes had
8 been eroded or had separated near the outlet.

9 So we deemed it necessary to just
10 totally replace all of them.

11 Q. I think I heard you mention that there
12 were some sections of the riverside of Levee
13 Section I that were too steep, and they would have
14 to be changed somehow.

15 How would they be changed?

16 A. The constraint that we were under at
17 this stage was that the toe of the existing levee
18 was considered to be the boundary of the floodway.
19 We could not make the levee go any closer to the
20 river than it already was. All the improvement
21 would have to be made coming back from the toe of
22 the existing levee into the protected area.

23 There are places on the existing levee
24 that have -- on the outside of the levee facing the
25 river, as steep as 1.6 to 1, and maybe even a few

1 places where it's steeper than that. That's not
2 stable under one of the Corps' criteria, which is
3 the rapid draw-down from full-flood stage, and
4 really, the minimum -- the steepest slope that
5 really would provide required factor safety in that
6 case was a 2 to 1.

7 So areas that were oversteepened would
8 have to be cut back to a 2 to 1, and the
9 cross -- the actual center line of the levee would
10 then be displaced into the protected area by 4, 6,
11 10 feet, whatever is necessary, to provide that
12 2-to-1 slope on the outside.

13 Q. Let me make sure I understand that.
14 Does that mean that, in general, the center line of
15 the levee would have been moving away from the
16 floodway boundary?

17 A. Yes.

18 Q. And does that mean that, in general,
19 levee material would have been taken away from the
20 floodway boundary and moved farther toward the land
21 side?

22 A. Yes, sir, that's correct.

23 Q. Okay. Now, would a contractor work
24 on -- would they commence work on all of Levee
25 Section I all at once, or would they do it in

1 stages, reach by reach?

2 MR. LYDON: Your Honor, I'm going to
3 object. I didn't have any objection, so to speak,
4 to his explaining the documents that were already
5 in evidence.

6 THE COURT: Yes, sir, he is leading.

7 MR. LYDON: He's leading, and I'm not
8 sure of the relevance of this as it relates to the
9 three Penn Central factors that we're trying to
10 evaluate in this case.

11 He's now getting into, you know, how
12 levee construction would be done and the methods
13 and that sort of stuff, and I don't see how that's
14 relevant to what we're here about. And --

15 THE COURT: I overrule the objection.
16 Go ahead.

17 BY MR. BECKER:

18 Q. Just with reference to how levee
19 construction would proceed, Mr. Lessley, would it
20 be done all at once, or would it be done reach by
21 reach?

22 A. I don't know specifically. I would
23 have thought that it would have been done reach by
24 reach.

25 Q. I would like to hand you what's been

1 marked as Plaintiff's Trial Exhibit --

2 MR. BECKER: Is the exhibit number --

3 (Off-the-record discussion.)

4 (PLF. EXH. 528, Preliminary

5 Geotechnical Report, Levee Section I, Columbia, SC,

6 was presented.)

7 BY MR. BECKER:

8 Q. Mr. Lessley, this has been marked as
9 Plaintiff's Trial Exhibit 528.

10 Do you recognize this document?

11 A. Yes, sir.

12 Q. Describe it for us, please. What is
13 it?

14 A. This is the formal geotechnical
15 exploration report being provided to Lockwood
16 Greene on May 21st, 1999 for Levee Section I.

17 Q. All right. Was this report -- or just,
18 if you don't mind, if you could just take us
19 through the table of contents so that we understand
20 the full scope of what's included in this report.

21 The table of contents begins on what I
22 believe is the --

23 A. Yep.

24 Q. Do you have that?

25 A. I have that.

1 MR. BECKER: Do you have that table of
2 contents, Your Honor?

3 THE COURT: Yes, I do.

4 THE WITNESS: Okay. This is more or
5 less our typical large report format. Chapter 1 is
6 the introduction, and it discusses how we were
7 engaged and also includes some limitation language
8 to our scope.

9 Section 2 -- or Chapter 2 -- is a
10 general discussion of the physiographic and
11 geologic setting of the site.

12 Chapter 3 discusses a little bit about
13 the location and general description of the levee,
14 the history of the construction as we knew it at
15 the time.

16 It discusses some of the cross sections
17 we've been provided and also discusses the flood
18 elevations we were provided by Lockwood Greene.

19 Chapter 4 discusses the scope of our
20 investigation, the visual inspection, the boring
21 and sampling, and examination and archiving of the
22 recovered samples.

23 Chapter 5 discusses the laboratory
24 testing, the grain size plasticity, the compaction
25 tests that were run on the soils, and the in-place

1 shear strength of the soils.

2 Chapter 6, then, kind of moves into the
3 stability analysis and describes the findings of
4 the exploration in terms of the materials that were
5 in the levee.

6 And then Chapter 7 discusses the
7 methods of engineering analysis that were
8 performed, how the steady state seepage profile of
9 the water through the levee at full flood was
10 determined, how the stability analysis was run.
11 And we also addressed levee settlements in some
12 locations where additional fill had to be provided.

13 Then Chapter 8 had specific
14 recommendations by reach and by profile.

15 And then Chapter 9 contains some
16 general recommendations for specific elements of
17 the work, like clearing and grubbing, fill
18 placement, compaction, pipe penetration, subdrains
19 and filters, slope protection, and maintenance and
20 inspection.

21 And then we had a list of tables, a
22 list of figures, and the boring logs, the
23 laboratory data, and some photographs.

24 BY MR. BECKER:

25 Q. All right. Just in particular,

1 regarding Chapter 8, it says:

2 Recommended final cross sections.

3 What would that be? What is a
4 recommended final cross section? If you could
5 elaborate on that for a minute.

6 A. Well, starting from the existing cross
7 section, we began by calculating the
8 stability -- or actually calculating the full-flood
9 seepage profile through the levee under
10 a -- assuming that the flood was a steady-state
11 condition -- that means that it remained at the
12 flood elevation forever -- at some point, the
13 groundwater -- the water profile through the levee
14 would just become at a steady-state level, which is
15 a -- it's a theoretical boundary, rather than a
16 time-dependent boundary, because, you know, the
17 flood would actually only last a couple of days,
18 not forever.

19 And then using the steady-state seepage
20 flood level in the levee, we would calculate the
21 stability of the levee using the Swedish methods of
22 slices, as specified in the Corps of Engineers
23 manual, using a computer program called PCSTABL,
24 which calculates the stability of slopes using the
25 method of slices.

1 If that was less than 1.4, then we
2 would reshape the levee to provide the required
3 factor safety. And that reshaped levee, then,
4 would become the final levee.

5 Q. Thank you.

6 A. Now, there were four different cases we
7 had to analyze for under the Corps of Engineers
8 manual. And the steady seepage from full flood, as
9 I recall, was generally the one that governed all
10 the stability analyses.

11 Q. Okay. Thank you.

12 Was this upgrade plan then designed to
13 the FEMA standards set forth in 44 CFR 65.10?

14 A. Yes, sir.

15 Q. And is the FEMA standard set forth -- I
16 think we've already said this, but just in case we
17 haven't, or you haven't -- is the FEMA standard set
18 forth in 44 CFR 65.10 a design standard for the
19 100-year flood event?

20 A. It actually references the Corps of
21 Engineers manual, which is a 100-year flood event.

22 Q. So did this report include levee cross
23 sections and elevations?

24 A. Yes.

25 Q. Did it include soils analysis?

1 A. Yes.

2 Q. And was it designed to the U.S. Army
3 Corps of Engineers' standards?

4 A. Yes, sir.

5 Q. Thank you.

6 All right. After this was produced,
7 did you have any further discussion with Lockwood
8 Greene about changing to a 500-year design
9 standard?

10 A. While we were producing this document,
11 we were asked to look at Levee Section II. And we
12 produced a -- and that was still for the 100-year
13 flood.

14 About a month after we produced the
15 report for the -- for both Levee Section I and II,
16 for the 100-year flood, we were asked to submit a
17 proposal to upgrade this report to address the
18 500-year flood, and we submitted a proposal for
19 that. And then they asked us to revise the
20 proposal to make that report a stand-alone report,
21 rather than just a modification to the April 10th
22 report.

23 We were authorized to do that on
24 October 12th, and we completed that report on
25 November 16th, 1999.

1 Q. Okay. All right. We'll get to that
2 before we're through, but when did you
3 first -- when were you first approached about
4 changing the design standard from a 100-year to a
5 500-year?

6 A. I'm not sure of the exact date, but the
7 proposal we gave to revise the August 10th report
8 was September 7th.

9 Q. Okay. Let me ask you just briefly,
10 what are the major differences, in laymen's terms,
11 in terms of designing a levee to withstand a
12 100-year flood, versus a 500-year flood?

13 MR. LYDON: Your Honor, I object. I
14 think we've gone from him being a fact witness to
15 turning into an expert witness, and he's not been
16 identified as an expert witness in this case.

17 THE COURT: Well, I don't --

18 MR. LYDON: I'm not saying he's not an
19 expert. Don't get me wrong, I think he's probably
20 definitely an expert, but he has not been
21 identified as an expert in this case, and I think
22 that limits his testimony to the facts and events
23 that occurred when he was directly involved with
24 this, and the reports that he prepared.

25 Now we're moving into him explaining

1 the difference between constructing or evaluating a
2 100-year levee versus a 500-year levee.

3 THE COURT: Well, as I understand, an
4 expert witness is someone who is being asked to
5 give an opinion in regard to one of the issues that
6 has to be decided by the fact finder that is beyond
7 the scope of the fact finder's knowledge. That's
8 not -- as I understand it -- the purpose for which
9 this is offered. It's whatever effort would be
10 involved or whatever method would be involved.

11 MR. LYDON: I think when the witness is
12 asked to give scientific or expert explanation in
13 order to assist a layperson in evaluating a
14 situation, that that constitutes expert testimony,
15 regardless of whether or not it's given in the form
16 of an opinion.

17 THE COURT: I think everything he has
18 said is expert testimony so far. It's all beyond
19 me. But I think, as far as the purpose for which
20 this is offered, I would overrule the objection.

21 BY MR. BECKER:

22 Q. So if you could, Mr. Lessley, please
23 just explain generally, in layman's terms, what are
24 the major differences in terms of what you would do
25 and what the final result might be in terms of

1 designing to the 500-year standard, versus the
2 100-year standard.

3 A. At this location, the 500-year flood,
4 when we were asked to prepare our proposal, wasn't
5 given to us. We were told to assume it was 4 feet
6 higher than the 100-year flood.

7 But the -- in terms of our design, it
8 meant that a much larger portion of the levee
9 actually had to be raised in elevation, and it
10 greatly increased the volume of material that had
11 to be added to the levee, probably by 30 to 50
12 percent, to provide the required factor of safety
13 that the Corps wanted to see on the levee.

14 Q. And so, at the beginning, you say you
15 were just -- was this before Lockwood Greene had
16 been able to calculate the 500-year flood elevation
17 using the HEC-2 model you described?

18 A. Yes.

19 Q. Okay. If you know, how much time and
20 effort had been involved in calculating a 500-year
21 flood event from those models?

22 A. You mean the HEC model or --

23 Q. Yes.

24 A. I don't know that.

25 Q. Okay.

1 A. But we were provided the final
2 elevations in October.

3 Q. For the 500-year flood?

4 A. For the 500, yes.

5 Q. All right. Now, do you perform in
6 general the same geotechnical work for a 100-year
7 and a 500-year levee design?

8 A. Yes. Actually, we didn't do much more
9 field work, we simply did more -- revised our
10 analysis.

11 Q. Okay. So that part of it, the soil
12 borings, the soil analysis, all of that, none of
13 that changes for the 500-year flood design?

14 A. No, it didn't change.

15 Q. All right. I would like you to take a
16 look at Plaintiff's 209. This is already in
17 evidence.

18 Mr. Lessley, I believe you noted that
19 this was one of the major deliverables during the
20 process. Is that correct?

21 A. Yes, sir.

22 Q. If you could, just describe for us what
23 was this deliverable and why was it considered a
24 significant one throughout the process?

25 A. Well, as we proceeded into exploration

1 of Levee Section I, Lockwood Greene requested that
2 we produce a proposal for exploring Levee Section
3 II, which is south of the intermediate levee, south
4 I-77. It's probably a longer reach in total
5 footage of levee, and we started work on it
6 immediately after finishing Levee Section I.

7 In a sense, this report is
8 really -- the Levee Section I report just expanded
9 to include Levee Section II. It's still using the
10 same statistical flood recurrence level. Probably
11 the difference between Levee Section II and Levee
12 Section I is that much of Levee Section II was
13 below the 100-year flood crest, whereas Levee
14 Section I, a good part of it, was above.

15 Q. Okay. Thank you.

16 Anything else noteworthy about this
17 deliverable, this report?

18 A. Well, we did a substantial amount of
19 additional exploration and lab testing that all
20 supplemented the information that we got from Levee
21 Section I.

22 Q. Okay. Thank you.

23 Let's move on, then. I would like to
24 ask you to look, please, at Plaintiff's Exhibit
25 307, which is also already in evidence.

1 Do you have Plaintiff's 307,
2 Mr. Lessley?

3 A. Yes, sir.

4 Q. And is this a letter that you prepared
5 and sent to Mr. Wilson Tillotson on September 7th,
6 1999?

7 A. Yes.

8 Q. Would you please read the first
9 paragraph of the letter.

10 A. We appreciate working with Lockwood
11 Greene on the geotechnical exploration at the
12 referenced site. As requested via e-mail by
13 Carroll Walker, we have prepared an estimated cost
14 for updating our geotechnical evaluation of Levee
15 Segments 1 and 2 to a 500-year flood event from the
16 100-year flood event called for by the U.S. Army
17 Corps of Engineers.

18 Q. All right. And then, if you would,
19 read the first paragraph.

20 A. Using the Corps of Engineers'
21 Guidelines For Levee Design and Construction, we
22 performed an exploration that included soil test
23 borings, borrow pit backhoe excavations, laboratory
24 testing of soil samples and engineering analyses
25 and design of the levees. This was reported to you

1 under our letter dated August 10th, 1999.

2 We understand from Mr. Mark Hester that
3 re-evaluation of the levees for a 500-year flood
4 event will require design for a flood level
5 approximately 4 feet higher than previous. In
6 portions of Levee Section II, this will mean a net
7 head of almost 30 feet.

8 Q. All right. What do you mean there, A
9 net head of almost 30 feet? What does that mean?

10 A. Net head would be the difference in
11 elevation between the floodwater on the outside of
12 the levee and the ground surface on the inside of
13 the levee.

14 Q. Okay. I'm not sure I followed that.
15 Could you repeat that one more time.

16 A. The net head is the difference in the
17 water surface in the full flood event on the
18 outside of the levee and the ground surface on the
19 inside of the levee at the same time. That's the
20 net head.

21 Q. So is that the width or the height?

22 A. That's the height of the -- the
23 hydrostatic difference, the height of the water
24 above the water in the protected area, versus the
25 water in the flooded area.

1 Q. I see, okay.

2 Now, as of September 7th, 1999, do you
3 know if Mr. Hester had calculated -- had actually
4 calculated the 500-year flood levels using the
5 HEC-2 model?

6 A. No, he had not.

7 Q. He had not as of that time?

8 A. As of that time.

9 Q. But he was -- they were asking you to
10 assume that that would be the final result of that
11 analysis?

12 A. Yeah, 4 feet.

13 Q. Okay. 4 feet higher than a 100-year
14 design standard. Is that right?

15 A. Yeah. We already had the 100-year
16 flood level, so he said, Just add 4 feet.

17 Q. All right. So you were being asked to
18 assume that the 500-year flood level would be the
19 100-year flood level, plus 4 feet?

20 A. 4 feet.

21 Q. Over on the second page of that
22 document, again, it notes:

23 As before, we have made the assumption
24 that time is of the essence to complete our work.

25 In that third paragraph.

1 A. Yes.

2 Q. Is that what your instructions were --

3 A. Yes, sir.

4 Q. -- to move expeditiously?

5 A. Yes.

6 Q. All right. Mr. Lessley, let me ask you
7 to please look at Exhibit 211, which is also
8 already in evidence.

9 Mr. Lessley, this is already in
10 evidence. Can you identify this document?

11 A. This was the report that we submitted
12 to Lockwood Greene on November 16th, 1999,
13 addressing the 500-year flood for Levee Sections I
14 and II.

15 Q. All right. I failed to ask you, when
16 we were looking back at the letter that you wrote
17 to Mr. Tillotson regarding the change to the
18 500-year design standard, what was the reason for
19 making that change to the 500-year design standard?

20 A. Uh, it was the requirement of Richland
21 County for construction in a floodplain area to be
22 500-year, plus 3 feet.

23 Q. Of freeboard?

24 A. Of freeboard.

25 Q. So is that the design standard that you

1 were using from that point forward?

2 A. Yes.

3 Q. Okay. And is this Exhibit 211, the
4 report dated 11/16/99, the end result of what you
5 were authorized to do based on your September 7,
6 '99 letter?

7 A. Correct, yes, sir.

8 Q. Mr. Lessley, the version we've
9 introduced in evidence is 65 pages long. It does
10 not include all of the tables and figures that are
11 listed after Page 65 in the table of contents. But
12 the -- were those -- were those documents included
13 with your final report?

14 A. Yes, it was a very thick document.

15 Q. Do you have the original of this report
16 in your file there?

17 A. No.

18 Q. You do not?

19 A. No, not here. Is that what you meant?

20 Q. Yes. I thought you had the original of
21 this report.

22 A. No, the one I have is the May 21st
23 report.

24 Q. Excuse me, okay.

25 But all of those figures and tables and

1 drawings, et cetera, were attached to the original
2 of this report, correct?

3 A. Correct. I mean, it's essentially the
4 same as the August 10th and May 21st reports in
5 organization and content, except that the levee
6 sections are now slightly different, to reflect the
7 higher flood elevation.

8 Q. Okay. And was this Plaintiff's Exhibit
9 211, the report dated November 16, '99 -- was it
10 provided to Lockwood Greene on or about November
11 16th, 1999?

12 A. Yes, yes.

13 Q. If you would look at the first page of
14 the report -- actually, I guess, it's the first
15 page after the cover page -- and read that first
16 sentence -- first paragraph, excuse me.

17 A. Are you talking about the -- after the
18 table of contents?

19 Q. No, sir. Just after, Dear sir. The
20 first paragraph.

21 A. Dear sir, S&ME, Inc., has completed the
22 authorized investigation of Levee Section I and
23 Section II of the proposed approximately 5,000-acre
24 Congaree Venture, LLC, project in Richland County,
25 three miles south of Columbia, South Carolina.

1 The purpose of the investigation was to
2 evaluate existing agricultural land protection
3 levees to determine required remediation,
4 rehabilitation, and modification design per USACE
5 standards and the requirement by Richland County
6 that the levees withstand the 500-year recurrence
7 flood level.

8 Q. And then if you would, read, please,
9 the paragraph -- the last paragraph -- well, the
10 first sentence of the last paragraph on the next
11 page. It begins, The recommended remedial
12 rehabilitation, et cetera.

13 Do you see that?

14 A. Uh --

15 Q. Right under, The attached summary table
16 indicates...

17 A. The recommended remedial,
18 rehabilitation, and modifications design and
19 construction measures for the levee are relatively
20 minor when considering upgrade of the existing
21 levee system from protection of agricultural land
22 to protection of residential/commercial
23 development. The change in category from low level
24 of protection to high level of protection structure
25 is of such significance that recommended design and

1 construction details for remediation,
2 rehabilitation, and modifications are warranted.

3 Q. I would like you to just comment upon
4 or elaborate, when you say: The recommended
5 remedial, rehabilitation, and modifications design
6 and construction measures for the levee are
7 relatively minor when considering upgrade of the
8 existing levee system from protection of
9 agricultural land to protection of
10 residential/commercial development.

11 What did you mean there when you said
12 they're relatively minor?

13 A. Well, for most of the project, the
14 improvements are relatively minor. I mean, it's
15 basically reshaping the inside face, reshaping the
16 outside face.

17 There isn't -- there weren't any real
18 sections where you had to relocate the levee to
19 avoid certain areas or abandon large sections of
20 one of the levee areas to be able to protect the
21 rest of them.

22 Q. Okay.

23 A. I mean, it's basically upgrading the
24 existing levee, rather than building a whole new
25 levee somewhere else.

1 Q. All right.

2 Now, as set forth in Plaintiff's
3 Exhibit 211, your November 16, '99 Geotechnical
4 Exploration Report, was this levee upgrade designed
5 to the 500-year flood, plus 3 feet of freeboard as
6 required by Richland County?

7 A. Yes, sir.

8 Q. Were the design plans prepared to the
9 U.S. Army Corps of Engineers' standards?

10 A. They exceeded U.S. Army Corps of
11 Engineers' standards in terms of the crest height,
12 but the stability factors were the same as the
13 Corps of Engineers'.

14 Q. Did the plans include appropriate levee
15 cross sections and elevations?

16 A. What we provided to Lockwood Greene
17 included that, yes.

18 Q. All right. Did the plans include soils
19 analysis results?

20 A. Yes, sir.

21 Q. Um, what further work, if any, would
22 Lockwood Greene have needed to complete in order to
23 complete all of the plans and specifications for
24 the levee upgrade?

25 A. Well, I would assume that they would

1 have needed the grading plans for the actual
2 rehabilitation work based on our cross sections.
3 They would have needed to get the permit
4 and -- which I presume would have meant that they
5 would have also had to have had a wetlands survey
6 done. They would have needed to have a maintenance
7 and operation plan to give to the Corps.

8 We had put together a quality control
9 document for construction of the levees which was
10 also a Corps' requirement, so that had already been
11 met.

12 Q. All right. Anything else?

13 A. I don't know what else.

14 Q. Okay. Was Lockwood Greene capable of
15 doing that work, do you know, the additional work?

16 A. I believe that they were.

17 MR. BECKER: Yeah, all right. I think
18 that's all I have, Mr. Lessley. Let me just...

19 THE COURT: We could use a break.
20 Let's take 15 minutes. You may step down.

21 (A brief recess was held.)

22 THE COURT: All right, then, Mr. Lydon,
23 you may proceed, sir.

24 MR. LYDON: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 not?

2 A. I have -- like I said, I have never
3 seen this article before. But no one from FEMA
4 contacted me about their opinion of the levees, and
5 no one at the Corps expressed any opinion to me
6 about the current levees.

7 THE COURT: Okay. I will sustain the
8 objection. I have not read the exhibit.

9 BY MR. LYDON:

10 Q. Do you know whether FEMA ever
11 characterized the levees as being unengineered?

12 A. Like I said before, FEMA has never
13 communicated to me, directly, on these levees.

14 Q. Would it be correct to say that S&ME
15 found that there was no known design or
16 construction records or drawings that indicated the
17 methods of the construction of the Manning levees,
18 or whether there was engineering control during
19 construction?

20 A. I would agree with that.

21 MR. LYDON: All right. That's all the
22 questions I've got. Thank you.

23 REDIRECT EXAMINATION

24 BY MR. BECKER:

25 Q. Mr. Lessley, the question Mr. Lydon

1 just asked you, There were no known plans, did that
2 matter in terms of the scope of the work that you
3 were doing, to design a set of specifications and
4 plans for levees that would meet the required
5 governmental standards?

6 A. Well, we weren't -- I mean, there's no
7 argument that the levees that were there did not
8 meet the government standards; but, on the other
9 hand, the levees that are referred to in that
10 article didn't meet them either, and, in fact, they
11 were in worse condition than these, because they're
12 the ones that breached, and, yet, Ken Humphries and
13 the City were able to improve theirs.

14 We were doing the same thing. We were
15 engineering a design that would bring the levees
16 into compliance with government requirements.

17 Q. Based on the soil borings and the soils
18 analyses that were conducted under your
19 supervision, were the soils suitable for completion
20 of a proper levee that could be certified?

21 A. The short answer is yes.

22 Q. And based on Plaintiff's Exhibit 211,
23 your final report of November 16, 1999, was it
24 physically possible to improve the levees to the
25 500-year design standard of Richland County?

1 A. Yes.

2 MR. BECKER: That's all I have.

3 RECROSS-EXAMINATION

4 BY MR. LYDON:

5 Q. Mr. Lessley, you said that based on
6 the -- that your November 1999 report determined
7 that it was physically possible to upgrade the
8 levees to the 500-year design standards. Is that
9 correct?

10 A. That's correct.

11 Q. Do you know, was that the first time
12 that determination had ever been made with respect
13 to the Manning levees?

14 A. To the 500-year flood?

15 Q. Yes.

16 A. I don't know who else would have said
17 it. That's the first time we had submitted a
18 report.

19 Q. And are you aware of any other reports
20 that evaluated whether it was physically
21 possible --

22 A. I'm not aware of any --

23 Q. -- prior to November of 1999?

24 A. -- prior to November.

25 MR. LYDON: Thank you. That's all the

1 THE COURT: Okay.

2 MR. GRIER: Your Honor, this is
3 Mr. Carroll Barker.

4 THE COURT: All right. Please have a
5 seat and then state your full name for the court
6 reporter, please.

7 THE WITNESS: My full name is Alan
8 Carroll Barker, Sr.

9 A. CARROLL BARKER, SR.

10 being first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. GRIER:

13 Q. Mr. Barker, where do you reside, sir?

14 A. 206 West Passage, Columbia, 29212.

15 Q. And by whom are you employed?

16 A. Genesis Consulting Group.

17 Q. All right. Now, you have prepared an
18 expert report, and I believe you submitted a
19 curriculum vitae as part of that report?

20 A. I did.

21 Q. We will hand that to you and the Court
22 and Defendant's counsel.

23 (PLF. EXH. 534, Curriculum Vitae of A.
24 Carroll Barker, Sr., was presented.)

25 BY MR. GRIER:

1 Q. All right. Do you have that in front
2 of you now, sir?

3 A. I do.

4 Q. What is Genesis Consulting Group?

5 A. It's a civil engineering consulting
6 firm.

7 Q. And what type of engineering services
8 does Genesis Consulting Group offer, sir?

9 A. We provide site engineering, water and
10 sewer design, water resources and hydrology and
11 hydraulics.

12 Q. All right, sir. Now, if you look at
13 your resumé or curriculum vitae, there's a blue box
14 over here on the right, and up there in red, you've
15 got 30 years of experience. Under that, you've got
16 your education and you have a BS in civil
17 engineering, University of South Carolina, 1982.
18 Is that correct?

19 A. That's correct.

20 Q. Now, over in the text it says: Over
21 his career, he has gained extensive hands-on
22 experience in hydraulic -- hydrologic system
23 engineering and design.

24 Mr. Barker's specific areas of
25 expertise include project management, stormwater

1 management, BMP design, floodplain analysis/design,
2 hydrologic analysis, and computer modeling.

3 Also, it says: Other specialties
4 include reservoir operational modeling, dam break
5 and flood forecasting modeling, probable maximum
6 precipitation computation, watershed management,
7 drainage/culvert design, and coastal flooding, and
8 hurricane storm surge modeling.

9 Does that describe your areas of
10 specialty or expertise within the engineering
11 sciences, sir?

12 A. It does.

13 Q. And going back to the blue column
14 there, we see your specialized training. You've
15 got HEC-5, Reservoir Hydropower and Flood Control
16 Operations, University of California, 1990.

17 What does HEC mean?

18 A. That's The Hydrologic Engineering
19 Center for the Corps of Engineers.

20 Q. All right. And there's been reference
21 to the HEC-2. What is HEC-2?

22 A. The HEC-2 is a hydraulic model used by
23 FEMA.

24 Q. Are you familiar with that model?

25 A. I am.

1 Q. And are you capable of setting them up
2 and running those kind of models?

3 A. I am.

4 Q. All right, sir. Now, look down, it
5 says -- it's got your professional registrations
6 and affiliations, and then there's technical
7 specialties:

8 Floodplain analysis and management;
9 FEMA Flood Insurance Studies and Analysis;
10 reservoir operational modeling; dam break and flood
11 forecasting modeling; probable maximum
12 precipitation computation; stormwater management;
13 watershed management; drainage/culvert design;
14 coastal flooding and hurricane storm surge model.

15 Again, are those your areas of
16 technical specialization?

17 A. It is. They are.

18 Q. All right. And then you have your
19 employment history, and I want to ask you
20 about -- you've got the U.S. Geological Survey; you
21 were there from 1983 to 1988.

22 What is the U.S. Geological Survey,
23 sir?

24 A. It's a federal agency that specializes
25 in water resources, and they were the pre-eminent

1 national group that does gauging station analysis
2 and water science field.

3 Q. All right, sir, now, you -- what did
4 you do for the U.S. Geological Survey?

5 A. I did hydrologic studies and gauging
6 station analyses. I did some low-flow analysis for
7 them. I was a hydrologist for them.

8 Q. All right. Now, you've got -- you went
9 to Post, Buckley, Schuh & Jernigan, Inc., Columbia,
10 South Carolina, 1988 to 1991.

11 What is Post, Buckley, Schuh &
12 Jernigan, Inc.?

13 A. It's a civil engineering firm.

14 Q. What did you do for them?

15 A. Water resources and hydrology and
16 hydraulic analysis.

17 Q. You went to Wilbur Smith Associates in
18 Columbia, South Carolina, 1991 to 1994.

19 What is Wilbur Smith and Associates?

20 A. Civil engineering firm.

21 Q. And what did you do for Wilbur Smith
22 and Associates?

23 A. Water resources, hydrology and
24 hydraulics and flood insurance studies.

25 Q. And then you went to Piedmont, Olsen,

1 Hensley in Chattanooga, Tennessee, 1994 to 1996.

2 What is Piedmont, Olsen and Hensley?

3 A. That is a civil engineering firm.

4 Q. What did you do for them?

5 A. Water resources, hydrology, and
6 hydraulic flood insurance studies.

7 Q. You were back at Wilbur Smith in 1996
8 to 2006.

9 What did you for Wilbur Smith during
10 those years?

11 A. I was vice president and director of a
12 group, water resource and hydrology, and was
13 involved in flood -- well, not in this -- this time
14 period wasn't any flood insurance study, but
15 hydrology and hydraulics.

16 Q. And then you went to Genesis Consulting
17 Group, 2006 to the present.

18 At present, what is your position with
19 Genesis?

20 A. I'm co-founder and part-owner of the
21 firm, one of the owners.

22 Q. And what type of work have you done
23 with Genesis since you've been there since 2006?

24 A. Water resources-type work, hydrology
25 and hydraulics.

1 Q. Now, you've got -- looking, again, on
2 the left side of the page here, you've got some
3 entries with a little red box behind each one.
4 What are these that you've got listed here by these
5 red boxes?

6 A. These are pertinent projects that I
7 have worked on in the past that would relate to
8 hydrology and hydraulics and HEC-2 modeling.

9 Q. Have you ever done actual FEMA studies,
10 Flood Insurance Studies for FEMA?

11 A. I have.

12 Q. All right, sir, if you would, if you
13 could show us on these red boxes -- if you could go
14 to -- identify where you have actually done a Flood
15 Insurance Study for FEMA, starting with the oldest
16 to the most recent.

17 A. Okay. All right. On the bottom of
18 Page 9, we'll work up.

19 Q. Okay. What page are you on now?

20 A. Page 9.

21 Q. Well, I still have -- I didn't get the
22 right copy. I still have the one with the blank.

23 Give me another one.

24 MR. GRIER: Your Honor, can I stand up
25 here and look at his?

1 MR. JOHNSON: Yours goes to Page 10.

2 That's what you've got?

3 MR. GRIER: His does, mine didn't.

4 Mine only went to page --

5 MR. JOHNSON: We're supposed to have
6 through 10, right there?

7 THE WITNESS: No. I think what
8 happened is it just skipped. They put in a blank
9 on the page.

10 THE COURT: I've got 1 through 10.

11 MR. JOHNSON: I've got 1 through 10.

12 MR. GRIER: Mine went through 7.

13 MR. JOHNSON: Okay. The witness had a
14 problem.

15 THE WITNESS: So I guess we need to use
16 this one, then, the 1 through 10.

17 BY MR. GRIER:

18 Q. That's what we need, 1 through 10. And
19 this is --

20 A. All right. The bottom of Page 9, the
21 first shaded red dot going up the page is Flood
22 Insurance Study for Darlington and Chesterfield
23 Counties in South Carolina for FEMA Region IV.

24 Q. Tell us what FEMA Region IV is.

25 A. A FEMA Region IV is the Southeastern

1 region of the FEMA program.

2 Q. All right. And tell us what you did in
3 that -- for that project.

4 A. For that project, I used the HEC-2,
5 HEC-2 model for hydraulics and used HEC-1 for
6 hydrology, and developed hydrology and came up with
7 a Q for that.

8 Q. Whoa, whoa, whoa.

9 A. Okay.

10 Q. What is a Q? You've got to explain
11 that.

12 A. All right. The water resources field
13 is kind of separated in three fields. You have
14 hydrology, hydraulics, and then you've got another
15 subset -- or another set called water
16 resources -- I mean, water quality. I'm sorry.

17 Q. Go ahead.

18 A. And so hydrology is the field that
19 determines the amount of flow going down the river.
20 That's called hydrology. There are different ways
21 to do that. You can use a rainfall runoff model,
22 you can use statistical methods, from a gauging
23 station, information that is collected to determine
24 how much flow, and you can determine the
25 1-percent-annual-chance flood for that. That's the

1 standard that FEMA uses.

2 Q. Wait a minute. Is that the so-called
3 base flood?

4 A. That's the base flood.

5 Q. Is that also like the 100-year flood?

6 A. It's the 100-year flood that's used
7 synonymous -- as a synonym with that.

8 Q. You said Q. Is that the same thing as
9 the volume of that flood?

10 A. It's the volumetric flow rate. It's
11 considered -- the letter Q is the amount of flow.
12 Also, you can use the word discharge for that. So
13 those are used interchangeably when we talk about
14 the amount of water going down a stretch of river.

15 Q. All right. Go ahead and tell us what
16 you did.

17 A. Okay. You developed -- what you do
18 first is you develop the amount of flow that's
19 going through, that's the hydrology. Then you use
20 the HEC-2 model, which is the hydraulic model, and
21 it uses cross-sectional information -- and we'll
22 discuss that in a minute -- but you use the HEC-2
23 to determine what the water surface elevation will
24 be, based on that 100-year flow going down the
25 river.

1 Q. So that's what you did for this study,
2 you used -- HEC-1, what is that?

3 A. That is a hydrology model. It
4 determines Q, too. That's the rainfall. That
5 would be a rainfall runoff model that determines
6 the amount of rainfall that falls out of the sky
7 and falls on the ground and how much runs off and
8 creates the 100-year flood.

9 Q. And then the HEC-2, that's the
10 hydraulic model that determines the elevations?

11 A. That's right. That's called the
12 hydraulic model.

13 Q. All right. Go ahead. Did you have
14 anything else to say about that particular study?

15 A. Well, part of it is, when you do this,
16 you determine the water surface elevations and you
17 create a map that FEMA uses. You actually
18 delineate -- you draw the boundary of the flood and
19 the floodway on these maps for this particular
20 reach, or study.

21 Q. What's the next one you did where you
22 would have been working for FEMA doing one of these
23 Flood Insurance Studies?

24 A. As a FEMA contractor, the Flood
25 Insurance Study for Blount County, Alabama for FEMA

1 Region IV, again, doing the same type study; but in
2 this case, for hydrology, we use the USGS frequency
3 equations. Those are developed from flood gauging
4 stations.

5 So that's how you determine the Q for
6 this one, and then also using the HEC-2 for
7 hydraulics to determine the water surface
8 elevation, and then the subsequent mapping that's
9 associated with that.

10 Q. Okay. And the next study that you did
11 for FEMA?

12 A. For FEMA would be the Flood Insurance
13 Study -- I'm skipping to Lexington -- that was done
14 as a sub-consultant for the Corps of Engineers in
15 the Charleston district.

16 Q. Wait a minute, though.

17 Is that the same type of study you
18 would have been doing for FEMA, but you were just
19 doing it for the Army Corps of Engineers?

20 A. Doing it for the Army Corps, the same
21 type study, HEC-2 work to determine -- the one for
22 Lexington County was just determining -- just
23 coming up with a preliminary model for them, and I
24 gave it to them and then they ran it themselves.

25 Q. All right, sir.

1 A. Okay. The next one is the Flood
2 Insurance Study for Pasco County, Florida, and that
3 was actually as a FEMA contractor, consultant, and
4 that was a countywide Flood Insurance Study using
5 also HEC-2 modeling for that.

6 The hydrology was already developed by
7 someone else for that, so we did not have to do
8 that, the amount of Q.

9 Q. The next one is Flood Insurance Study
10 for Cobb County, Georgia for Region IV, again, a
11 direct contractor for them. I assisted doing the
12 HEC-2 modeling for that, coming up with flood
13 mapping for that, too, and submitted that to FEMA.

14 A. Okay.

15 At the top of the page, 9, is the
16 Berkeley County Flood Insurance Study for Region
17 IV. That was a direct -- this is when I was at
18 Wilbur Smith Associates. But we did -- in this
19 case, I recall the mileage, it was 42 miles of
20 streams through Berkeley County, and 14 different
21 stream segments and used HEC-1 to determine the
22 hydrology for that, and then HEC-2 for the
23 hydraulic modeling and the mapping associated with
24 that.

25 Q. All right, sir, go ahead.

1 A. Okay. Horry County would be the
2 next-to-the-last one on Page 8, Horry County Flood
3 Insurance Study for FEMA, that was a direct -- as a
4 direct consultant for FEMA. Did the hydrology and
5 hydraulics of mapping.

6 This one, we used the USGS, again, the
7 regional frequency equations for hydrology, and the
8 HEC-2 for hydraulics on the Waccamaw River and some
9 tributaries to that.

10 The next one is the Charleston County
11 Flood Insurance Study for FEMA as a direct
12 consultant. I did the hydrology and hydraulics and
13 floodplain mapping associated with the 100-year and
14 floodway for that, too.

15 And then while I was at Piedmont,
16 Olsen, Hensley in Chattanooga, if you look at the
17 top of Page 8, it's the FEMA Flood Insurance Study
18 for Hamilton County, Tennessee. This was the first
19 Flood Insurance Study that was not done by the TVA.

20 I was selected to do that for them as a
21 first private consultant in the State of Tennessee,
22 and the same type studies using HEC-1 to determine
23 the hydrology, the amount of flow, and HEC-2 for
24 the hydraulic modeling and the associated mapping
25 with that project.

1 And I believe that is the last Flood
2 Insurance Study that was done for FEMA.

3 Q. Okay. Did you cover this one?

4 A. That was not for -- that was for
5 consulting, a private client.

6 Q. All right. Now, have you done any
7 hydraulic or hydrologic modeling for the Congaree
8 River in South Carolina?

9 A. Yes, I have.

10 Q. All right. Could you go over those for
11 me.

12 A. Uh, if we go to -- I guess those are
13 more recent, so if we look at Page 1, the first
14 project was completed this year. I did a no-impact
15 certification. I did the study for the no-impact
16 certification for pedestrian bridges over the
17 Congaree Creek, but they were located in the
18 floodplain of the Congaree River.

19 And I used the Richland County model
20 and the Lexington County model to do that, the
21 HEC-2 models.

22 Another project is the -- I did the
23 flood frequency analysis for the Congaree River
24 last year, which I conducted a flood frequency
25 analysis for a private client, and I used the USGS

1 method. It's called the Maintenance of Variance
2 Extension. It is a correlation -- correlative
3 technique, using gauging station information for
4 that. It's listed twice, for some reason.

5 The Congaree River -- let's see.

6 If we go to Page 5, the fourth bullet
7 down, a rain levee for the City of Columbia
8 wastewater treatment plant in Richland County, I
9 was project principal on that and that was
10 a -- looking at the City -- the City was looking at
11 putting rain levees just around their wastewater
12 treatment plant and also including Heathwood Hall
13 school in that rain levee, just circling that
14 immediate area. And we looked and did some
15 analysis using HEC-2 on that to determine the
16 benefits for doing that.

17 Q. Was that rain levee ever constructed?

18 A. No, it was not.

19 Q. If we go down, the next bullet that is
20 shaded, on that same Page 5, Hydrologic analysis
21 for the proposed island crossings over the Congaree
22 River, these were low-level bridges that the River
23 Alliance was considering constructing. During
24 higher flows, they just get submerged and the water
25 goes over them, so these would be right on the

1 river, but cross over rocks.

2 MR. JOHNSON: Which one is that?

3 THE WITNESS: The middle of Page 5.

4 It's the seventh bullet down.

5 BY MR. GRIER:

6 Q. Okay, go ahead.

7 A. Okay. I looked at the gauging station
8 information and had some, what we call, crest stage
9 gauges installed and determined the statistical
10 correlation between the Saluda River and the
11 Congaree River to determine the flood levels.

12 And then from that information, I
13 determined what level -- water surface level --
14 that the bridges would stay dry for 80 percent of
15 the time.

16 Q. All right.

17 A. I don't know if there are any other
18 Congaree River --

19 Q. Let me ask you about the one on -- I
20 guess maybe this Saluda River, I guess. But on the
21 bottom of Page 8, it's got floodplain analysis for
22 Saluda River at proposed Riverbanks Zoo bridge,
23 Riverbanks Zoo commission, Columbia, South
24 Carolina?

25 A. Yes.

1 Q. Could you tell us about that one.

2 A. Yep. Wilbur Smith won the contract to
3 design and build the Zoo bridge, the pedestrian
4 bridge, that connects the zoo to the Botanical
5 Gardens. And as part of that, I had to show the
6 no-impact, no-rise on the Saluda River for that
7 bridge.

8 We had a piling in the middle of a
9 floodway, but I had to -- there were four entities
10 I had submitted that to. That was West Columbia,
11 Lexington County, City of Columbia, and Richland
12 County.

13 I sent the report to all four of those
14 entities, showing that there was a no-rise in the
15 base flood elevation or floodway, if we put this
16 bridge in.

17 Q. Now, let's go back to the first page
18 there, the no-impact certification for pedestrian
19 bridges in the Congaree River floodplain, City of
20 Cayce, 2012.

21 You're familiar -- let me ask you, are
22 you familiar with the FEMA Flood Insurance Studies
23 and Flood Insurance Rate Maps for Richland and
24 Lexington Counties, going back to 1994, 1998, 1999,
25 2000, 2001, 2002.

1 A. Yes, I am.

2 Q. Are you familiar with those?

3 A. I am.

4 Q. And in the Richland and Lexington
5 County Flood Insurance Studies, say, from starting
6 in '98, I believe there was one on June 5th, '98
7 for Richland County. I think there was a previous
8 one in '98 for Lexington County. Is that correct?

9 A. Yeah, I believe that's correct.

10 Q. And I think there's one, February 25th,
11 1999. There was something called a Revised
12 Preliminary Flood Insurance Study and Flood
13 Insurance Rate Map. You're familiar with that one?

14 A. Yes.

15 Q. And I believe there was another Revised
16 Preliminary Flood Insurance Study
17 dated August 12th, 1999 for Richland and Lexington
18 Counties. Is that correct?

19 A. Yes.

20 Q. And another one in September 26th, 2000
21 for a Revised Preliminary Flood Insurance Study and
22 Flood Insurance Rate Map for Richland and Lexington
23 County. Are you familiar with that one?

24 A. I am.

25 Q. And I think there was a letter of final

1 determination in a Flood Insurance Study and Flood
2 Insurance Rate Map for Richland and Lexington
3 Counties on August 20th, 2001. Are you familiar
4 with those?

5 A. Yes.

6 Q. Now, in those Flood Insurance Studies,
7 going from '98 to 2001, and then later, I think,
8 2001, final determination became effective six
9 months later, is that correct, February 20th, 2002?
10 Are you familiar with that one?

11 A. Yes, I am.

12 Q. And in all of those studies, did the
13 FEMA contractor use something called a Richland
14 model and a Lexington model?

15 A. That's correct.

16 Q. Can you explain to the judge what's
17 meant by the Richland model and the Lexington
18 model?

19 A. Yes. The Richland model was a HEC-2
20 model that assumed the levees failed when you run
21 the model, and the floodplain goes all the way
22 across the river, on both Lexington and Richland
23 side.

24 The Lexington model is a separate model
25 that uses the same data and information, just some

1 of the coefficients are changed. But it assumes
2 the levees hold on the Congaree, and it -- so from
3 the -- from the center line of the levee all the
4 way through a strip of Richland County to the
5 center line of the river and then on to Lexington
6 County, that showed just that portion of the river.

7 On the Richland County side of the
8 levee there was no flow there. They showed -- they
9 blocked it. They blocked the flow just to show the
10 results of, if the levee is held, what would be the
11 water surface elevation.

12 Q. Okay. So let me make sure I understand
13 it. Is it the same model, they just refer to it as
14 the Richland model or Lexington model, depending on
15 how they code it at the levees?

16 A. That's correct. But there's two
17 different digital models. It's not all in one
18 model that you run at one time. You have to run
19 them separately. There are two separate models.

20 Q. And the so-called Lexington model
21 doesn't allow flow to go behind the levees. Is
22 that right?

23 A. That's correct.

24 Q. Is that correct?

25 A. Yeah.

1 Q. And the Richland model would allow the
2 water to flow on either side of the levee, both
3 sides of the levee?

4 A. That's correct.

5 Q. Now, look at this no-impact
6 certification for the pedestrian bridges, Congaree
7 River floodplain, Cayce, South Carolina, 2012.

8 Did you, in connection with that, have
9 to run the so-called Lexington model and the
10 Richland model to determine whether or not there
11 was going to be an impact or hydraulic rise as a
12 result of those bridges?

13 A. I did.

14 Q. All right. And tell the judge just
15 generally how you would do that.

16 A. You would take --

17 MR. JOHNSON: Your Honor, I object on
18 relevance. You're talking about pedestrian
19 bridges, not levees, not in the same area. Unless
20 there's something that ties the two together, I
21 would object on the grounds that it's irrelevant.

22 THE COURT: I will overrule the
23 objection.

24 BY MR. GRIER:

25 Q. Go ahead.

1 THE COURT: Yes, sir.

2 EXAMINATION (VOIR DIRE)

3 BY MR. JOHNSON:

4 Q. Mr. Barker, I was looking at your
5 resumé. Maybe I missed it or maybe it's not on
6 here, but are you a licensed professional engineer?

7 A. I am not.

8 Q. And do you have -- at Genesis, do you
9 have a licensed professional engineer on staff, as
10 an employee?

11 A. Yes.

12 Q. And so you do your work, and if it
13 requires some certification from a licensed
14 professional engineer, I gather you don't give the
15 certification, but you have your partner or your
16 associate who does?

17 A. That's correct.

18 Q. And how many people are employed -- how
19 many engineers are employed at Genesis Consulting
20 Group?

21 A. Uh, let's see, four licensed.

22 Q. Four licensed.

23 And then how many like yourself,
24 unlicensed?

25 A. Uh, probably just me.

1 Q. And do you have any other employees?

2 A. We do, yeah. We have CAD technicians
3 that do the drawings on the computer for us.

4 Q. Approximately how many people?

5 A. Ten.

6 Q. Ten all together?

7 A. Uh-huh.

8 Q. And I noticed from your employment
9 history, you -- this venture -- you changed jobs
10 five or six, seven times over the years?

11 A. Oh, yeah.

12 Q. Now, on all of these projects you
13 talked about working on for FEMA, did those
14 require, at the end of the day, a certification or
15 a signoff by a licensed professional engineer?

16 A. It did not.

17 Q. Were you the principal, on each of the
18 projects, responsible for the project?

19 A. I was not on all of them, no. In my
20 early years, I was just the -- called project
21 engineer, where I worked on the projects and helped
22 do the modeling, but I have been project manager on
23 some.

24 Q. Tell me the projects where you have
25 been the principal yourself.

1 A. On which projects?

2 Q. The ones you X'd, or the ones you said
3 were FEMA?

4 A. Oh, the FEMA-related?

5 Q. Yeah.

6 A. I would say the Horry County --

7 Q. When was that?

8 A. That was 1993.

9 Q. What page are we on?

10 A. Page 8.

11 Q. All right.

12 A. -- and the Hamilton County one at the
13 top of the page.

14 Q. Okay. Who were you employed with when
15 you were doing those projects?

16 A. Wilbur Smith and Piedmont, Olsen
17 Hensley.

18 Q. Did you have anybody at Wilbur Smith
19 overseeing what you were doing on the projects?

20 A. For the -- for the Horry County, we had
21 other people working with us, yes.

22 Q. Are you the person who signed off on
23 everything, or was that somebody else?

24 A. Um, I mean, for the Horry County, I
25 think I was the lead -- I would say, the lead

1 person. I didn't do the contract administration,
2 if that's what you're implying.

3 Q. At the end of the -- at some point, I
4 assume, you end up with a study?

5 A. That's right, a study and mapping.

6 Q. It says done by -- certified by
7 whoever?

8 A. Yeah, that's correct.

9 Q. Who was it certified by?

10 A. Well, I don't think it was ever -- it
11 wasn't certified. It was just a correspondence to
12 FEMA or --

13 Q. Okay.

14 A. Okay.

15 Q. How about the other one in Tennessee?

16 A. The Tennessee, I was the project
17 manager on that.

18 Q. Okay. Any others that you've been the
19 number one guy?

20 A. No.

21 Q. Now, you were asked about modeling. On
22 each one of these projects that you've worked on,
23 were the requirements of FEMA that you actually do
24 the modeling?

25 A. I don't understand your question.

1 Could you rephrase.

2 Q. Well, you described this bridge on the
3 creek off the Congaree River --

4 A. Yes.

5 Q. -- pedestrian bridge, and you talked
6 about doing modeling.

7 A. Yes.

8 Q. To do that work, did you have to do the
9 actual modeling programs?

10 A. Oh, yeah.

11 Q. You or someone --

12 A. Me. No, I did. I did.

13 Q. You did them?

14 A. Yes.

15 Q. So you actually did the modeling?

16 A. I actually did the modeling.

17 Q. And so it wasn't a matter of whoever
18 you contracted with is saying, tell us your
19 opinion. To do the work, you had to do the
20 modeling; is that correct?

21 A. Yeah, to do the work, you have to do
22 the modeling.

23 Q. And on each of these projects you have
24 talked about working on for FEMA, if it required
25 modeling to get the right answer, you had to go

1 through the process and do the modeling, correct?

2 A. Yes.

3 Q. Now, the beauty of doing the modeling
4 is, you have a record of what you've actually put
5 into the program, you have the results printed out,
6 and if somebody wanted to come along and check your
7 work, they could check it; couldn't they?

8 A. That's correct.

9 Q. And it wouldn't be a matter of a
10 naked -- I say a naked opinion -- an unsupported
11 opinion, in those cases, and the requirements of
12 the job were that you do the actual modeling to
13 make sure you do it right and get the correct
14 answer, correct?

15 A. That's correct.

16 Q. You've done no modeling in this case,
17 have you, specific to this case?

18 A. No, I have not.

19 Q. You have -- there's no way for us -- I
20 understand you have an opinion, but there's no
21 modeling we can look at to see whether -- or an
22 expert on our side could look at to determine
23 whether you've got the right answer or the wrong
24 answer, would they? That's correct, isn't it?

25 A. You don't have anybody on your side,

1 you say?

2 Q. No, sir. We don't have any modeling,
3 any hard data, for your opinion?

4 A. No, that's right.

5 Q. And you have -- and the only way we
6 could determine whether your opinion is correct or
7 not, would be to have you do the modeling and then
8 check it, right? Otherwise, we've just got to
9 accept what you tell us?

10 A. Well, I would say that FEMA accepted
11 the models and the mapping we did and printed them
12 and used them. So, I mean, I -- are you talking
13 about on this particular --

14 Q. Yes. I'm right, correct?

15 A. Yes.

16 MR. JOHNSON: Your Honor, that's my
17 voir dire, in terms of him being able to express an
18 opinion.

19 THE COURT: Mr. Grier?

20 EXAMINATION (VOIR DIRE)

21 BY MR. GRIER:

22 Q. Now, just to respond to Mr. Pope's
23 questions, Mr. Pope could hire his own expert to do
24 modeling, if he wanted to verify your opinion,
25 could he not?

1 This would be sort of a cross section
2 of a floodplain?

3 A. It is. It's a typical cross section of
4 a floodplain.

5 Q. Okay. And if you would, show the judge
6 how that cross section would be sort of the -- the
7 information from that cross section would be coded
8 into the hydraulic model. That's the one we've
9 been calling the HEC-2 model. How would that --
10 (Off-the-record discussion following a
11 brief interruption.)

12 BY MR. GRIER:

13 Q. If you would, show us how that cross
14 section would be coded into the HEC-2 or HEC-2
15 model.

16 A. This bottom line represents ground
17 topography from a cross section across Richland and
18 Lexington County. The orientation is looking
19 downstream. So you're standing in the river. This
20 is like you're cutting a slice through the
21 floodplain. This represents ground elevations that
22 would be surveyed or taken from LiDAR mapping.

23 Q. What is LiDAR mapping?

24 A. LiDAR mapping is just topographic
25 mapping, digital mapping now, that is used

1 for -- for design.

2 Q. All right. This is not actually the
3 Congaree River. This is -- you're just saying that
4 if you were doing the Congaree River study, that
5 one of these would be cross sections?

6 A. This would be the cross section. This
7 would be the Richland County side, this would be
8 the Lexington County side. This is the channel of
9 the Congaree River.

10 Q. Okay.

11 A. And these represent ground elevations
12 along the cross section, either survey or on
13 mapping.

14 Q. All right. Now, show the Court, if you
15 would, the so-called volume of the base flood that
16 you referred to as a Q, or the discharge.

17 A. From line -- from Point A to the line
18 going all the way to Point B, that area below that,
19 even in the shaded area, would be at this cross
20 section, the volume of water.

21 And this would represent the 1-percent
22 annual chance flood of the 100-year flood
23 elevation, or the base flood elevation is Line AB.

24 Q. You say that FEMA uses hydrologic
25 models to determine that volume of the base flood

1 first?

2 A. Yes.

3 Q. Then they use the hydraulic model to
4 figure out what the water surface elevation is
5 going to be?

6 A. Right. This is pertaining to the
7 hydraulic model, not the hydrology. The hydrology
8 has already been done. The amount of water is
9 determined to be in this area here at this cross
10 section.

11 MR. JOHNSON: Is this our river?

12 MR. GRIER: No, it's not. I pointed
13 that out.

14 MR. JOHNSON: I must have missed it.

15 THE COURT: May I ask you this,
16 Mr. Barker?

17 THE WITNESS: Yes.

18 THE COURT: That first line you
19 testified, that A to B, is that -- that's what you
20 said was a base flood elevation. Now, that
21 means -- is that what would be the normal flow of
22 the river?

23 THE WITNESS: No, sir, that would be
24 the 100-year flood.

25 THE COURT: Okay. That is the 100-year

1 flood.

2 THE WITNESS: That is the 100-year
3 flood.

4 THE COURT: Okay. Thank you.

5 BY MR. GRIER:

6 Q. Now, if you would, show us the floodway
7 and the floodway elevation on this diagram.

8 A. The floodway is represented by Lines
9 CD, from here to here. So it's that portion of the
10 river.

11 Q. All right. Now, how is that
12 determined?

13 A. The model determines that by
14 encroaching or filling in the cross section from
15 right and left -- and what it does, it produces a
16 rise of no more than 1 foot above the base flood
17 elevation. And that is the criteria for FEMA, for
18 the floodway, no more than 1 foot.

19 Q. If a community wanted to, say, have a
20 more expansive floodway than that area from C to D,
21 but at the same time be consistent with the
22 hydrology and the hydraulics of the FEMA approach,
23 how would they do it?

24 A. This would be lowered below the 1 foot.
25 It could go all the way here, and you could have

1 your floodway equal to your base flood elevation,
2 if you wanted to do that.

3 Q. What if you wanted something less or
4 something not quite that expansive?

5 A. You would just bring these lines out
6 here, drop that elevation below 1 to, say, a half a
7 foot, and it could come out a little bit further.

8 (PLF. EXH. 529, Cross Section Map, was
9 marked for identification.)

10 BY MR. GRIER:

11 Q. All right. Now, let me show you Trial
12 Exhibit 529 and see if we can distribute that and
13 get that up on the screen, and if you could tell us
14 what that is.

15 A. This is a -- what we call a plan view,
16 looking down from a helicopter, and the blue lines
17 represent cross sections, which I just showed you
18 across the floodplain.

19 THE COURT: I'm sorry to interrupt you.
20 Let's go back to that last slide.

21 MR. GRIER: The other slide?

22 THE COURT: Yeah.

23 MR. GRIER: Let's go back to the other
24 slide.

25 THE COURT: Just treat me like a child.

1 I understand that A to B would be -- that's the
2 100-year level. That's the base flood elevation,
3 correct?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. Now, those shaded
6 areas on each side, what are those shaded areas?

7 THE WITNESS: That would represent
8 maximum development that could occur, and it
9 represents -- they have got a terminology used
10 there as fill, which is dirt, so you could
11 encroach -- you could fill all the way to that
12 line, on either side, and you would have no more
13 than a 1-foot rise on that line, and that's the
14 criteria for FEMA. So that means you can't have
15 more than a 1-foot rise.

16 So that's filling in on either side,
17 you can say houses, or just bring in dirt, and you
18 fill to those two -- those shaded areas -- the
19 model determines that, and that's no more than a
20 1-foot surcharge.

21 THE COURT: Okay. So you could, as you
22 say, fill in, whatever hypothetically, and if the
23 line doesn't go up more than 1 foot over the BSE,
24 then that's permissible?

25 THE WITNESS: That is.

1 THE COURT: Okay. Thank you very much.

2 BY MR. GRIER:

3 Q. All right. Now, before we go off that
4 slide a minute, the ground surface, that cross
5 section --

6 A. Uh-huh.

7 Q. -- when you do the hydraulic model,
8 would you say those elevations are actually coded
9 in the cross section of the model?

10 A. They are.

11 Q. All right. And then you have a cross
12 section, or a cross section just running down the
13 river in the model?

14 A. This would be a cross section, and
15 behind it would be another one, be another one,
16 that represents the bowl, or the basin.

17 Q. All right. Could you -- do you see
18 that line at the top where it's floodway fringe,
19 floodway, floodway fringe on both sides?

20 A. Uh-huh.

21 Q. Would you tell the judge what the
22 significance of that is.

23 A. The floodway fringe allows for fill and
24 development in this part of the floodplain without
25 any permitting, typically. We have that.

1 We have this area here that we can -- I
2 say typically. There are ordinances that do now
3 require you to do some analysis, even if you put
4 fill in the, you know, floodway fill -- I mean, in
5 the floodway fringe. But that's considered the
6 floodway fringe, that line. This is the floodway.

7 And the floodway was developed
8 initially to show where the most severe velocities
9 would occur. As you squeeze in that cross section,
10 velocities become faster. You have your faster
11 velocity, speed of the water, in the floodway.

12 Q. All right. Now, you are familiar
13 with -- in working on these Flood Insurance
14 Studies, have you become familiar with the National
15 Flood Insurance Program regulations and guidance?

16 A. Correct.

17 Q. All right. Now, under the National
18 Flood Insurance Program regulations, can you build
19 anything in the floodway area?

20 A. Yes, you can.

21 Q. All right. Explain that, if you would.

22 A. You can build --

23 MR. JOHNSON: Your Honor, I'm concerned
24 that we're moving away completely from the areas
25 that are in his report and the areas that you say

1 he could testify to.

2 I mean, the two areas was whether
3 structural improvements would not have caused a
4 rise in the base flood levels, and FEMA was wrong.
5 I mean, that's what --

6 THE COURT: Well, I will overrule the
7 objection.

8 Go ahead, sir.

9 THE WITNESS: You can make improvements
10 and put a bridge pier -- if you wanted to put a
11 bridge across the river, you can have a pier going
12 down and a bridge going across, if you can show a
13 no-impact. And a no-impact means no rise in the
14 base flood or the floodway.

15 BY MR. GRIER:

16 Q. And could you put improvements like
17 buildings and all, if you can show that no-rise in
18 the floodway?

19 A. If you can show a no-rise, you can put
20 it, but you cannot put a finished floor elevation
21 below this line.

22 Q. Now, let's go to this next exhibit,
23 529.

24 Can you tell us what that is?

25 Put that on the screen.

1 A. Okay, this is a plan view. This would
2 be, as I stated earlier, from a helicopter view or
3 airplane, looking down on the project. The river
4 is flowing in this direction.

5 Q. This is actually the Congaree River.

6 A. This is the actual USGS topographic
7 map, and this shows the Congaree River. This is
8 Richland County. There's I-77 there. And then
9 this is Lexington County.

10 Q. All right. And those various cross
11 sections on there, where do those come from? Where
12 were those taken from?

13 A. These were taken from the ground, but
14 this is actually a line drawn on the ground -- on
15 this topo map -- and elevations and length along
16 this line were taken at various locations, ground
17 elevations.

18 Q. Well, those cross sections, are those
19 the same cross sections that are coded into the
20 HEC-2 model that FEMA used to map the Richland and
21 Lexington County floodplains?

22 A. They are.

23 Q. Are those actually coming from the
24 hydraulic model itself?

25 A. Yeah. Well, the hydraulic is developed

1 from these.

2 Q. Okay.

3 A. This is your actual ground data that
4 you use. You take these cross sections, and
5 they're represented in the model.

6 Q. All right. Now, I want to refer you to
7 Plaintiff's Exhibit 18, which is the letter from
8 Mr. Miller with FEMA, dated January 26th, 1999, to
9 Lisa Holland. It says:

10 If the aforementioned levee is upgraded
11 to meet, in total, the applicable portions of 44
12 CFR part 65.10, and the construction necessary for
13 it to meet the said requirement is in compliance
14 with state and local floodplain management
15 requirements, then FEMA would revise the applicable
16 FIRM to remove the special flood hazard area
17 designation and floodway.

18 It says: As you are aware, should the
19 structural modifications necessary to bring the
20 levee into compliance with 44 CFR 65.10 result in
21 any increase in the base flood elevations as a
22 result of construction within the existing
23 regulatory floodway of the Congaree River, the
24 requirements of 44 CFR 65 .12 would also have to be
25 met.

1 Now, in addition, any change in the
2 configuration of the floodway as a result of the
3 levee modifications will have to be done with the
4 approval of the impacted communities.

5 Now, do you have an opinion whether, at
6 the time Columbia Venture bought the property,
7 which was February the 19th, 1999, whether physical
8 improvements could have been made to the levees
9 sufficient to certify them under 44 CFR 65.10, and
10 whether those structural improvements would have
11 caused a rise in the base flood levels or a
12 reconfiguration of the flood level?

13 MR. JOHNSON: Objection, same
14 objection.

15 THE COURT: All right. I will overrule
16 the objection.

17 BY MR. GRIER:

18 Q. Do you have an opinion on it?

19 A. The levees could have been upgraded to
20 meet 44 part 65.10 without a rise, in my opinion.

21 Q. All right. Now, I want you to explain
22 your opinion for the Court -- and would it be
23 helpful to sort of draw it on this to give the
24 Court an explanation?

25 A. Yes.

1 Q. I'm going to draw a typical cross
2 section with the levee, not to scale.

3 If you would write Lexington on the
4 Lexington side and Richland on the Richland side.

5 Okay. And tell us what this is.

6 A. Okay. If you recall the schematic that
7 we showed earlier about the -- the floodplain
8 schematic and cross-sectional view -- this is the
9 same concept.

10 Ground elevation here, going on the
11 Richland County, then you have the levee feature,
12 then a little strip of land before it goes to the
13 Congaree River. It goes up, and then this is
14 Lexington County, and this represents going to
15 higher ground.

16 Q. All right, now, what would be
17 the distance -- you say that's not to scale, right?

18 A. Not to scale.

19 Q. Right.

20 Now, what would be -- why don't you put
21 an A and a B on Richland side, up there by the --

22 A. Up here?

23 Q. No, right here, like that diagram did,
24 sort of A and a B.

25 A. Okay, right there.

1 Q. What would be the actual distance of
2 the cross section between A and B in the model?

3 A. It's nearly 5 miles across.

4 Q. 5 miles across.

5 A. 5 miles across.

6 Q. All right. Now, explain to the judge,
7 if you would, how FEMA actually -- in the 1998 and
8 the two models in 1999 and the one in 2000 -- how
9 they actually computed the base flood elevations
10 and floodway from both sides of the river, if you
11 would.

12 A. Okay. The hydrology has already been
13 computed. We will assume that. And so now we're
14 talking about the HEC-2 model, and these cross
15 sections that we represented earlier on the green
16 map with the cross sections across, this is a
17 representative cross section.

18 Q. So you have a cross section going all
19 the way down the river?

20 A. Yeah, all the way this way.

21 We're looking into the flow of the
22 river with a drop of water.

23 What FEMA did, first they
24 created -- and I don't know if they created
25 Richland or Lexington first -- but let's say they

1 created the Lexington model first.

2 That's a separate digital model. And
3 what they did was, they blocked the flow on the
4 Richland County side at the levee. And so you've
5 got the flow going in this direction with the
6 Richland County side blocked. They assume the
7 levee's held.

8 Q. All right. So there's no flow going on
9 the other side of that levee?

10 A. No flow in this.

11 Q. All the flow is on the right side of
12 that levee.

13 A. Yeah, this is the levee. So it would
14 be on this side only. And that assumes that the
15 levee holds, and that's supposed to be the most
16 conservative number for the Lexington County side.

17 Q. And that would give you a base flood
18 elevation for Lexington.

19 A. Base flood elevation only for
20 Lexington.

21 Q. Okay. All right.

22 A. That's the Lexington model.

23 The Richland model assumes that the
24 levee failed. And what you have is, you just
25 ignore that feature and so you have water on both

1 sides.

2 Q. The same volume, but it's going on both
3 sides?

4 A. The same volume, it's going on both
5 sides. It would be a little bit lower than the
6 Lexington BFE, but it would be across the entire
7 floodplain.

8 Q. Okay.

9 A. So you have those two models.
10 Those are the two models you have to
11 use to determine if you have a no-rise.

12 Q. All right. Now, and why is it that
13 you, in your opinion -- and by the way, your
14 opinion, is it based to a reasonable degree of
15 certainty?

16 A. It is.

17 Q. Why is it, in your opinion, you could
18 make physical improvements to that levee without
19 causing a rise over in Lexington or Richland, or
20 the floodway, as you've described it?

21 A. Again, this is not to scale, so if you
22 had it to scale, this thing would run to the wall.
23 The cross section would be significantly long in
24 comparison to essentially what I have drawn here.

25 So with that in mind, what you would do

1 is add fill, and you could put it on both sides.

2 And you would put it sufficiently enough to

3 structurally improve the levee to FEMA

4 certification.

5 Q. Okay. And that would represent a

6 change in the model?

7 A. It would. And, again, you're looking

8 at a 5-mile floodplain, and we're talking 25 or 30

9 feet high, just for the levee. So the amount of

10 fill compared to the vast floodplain would not make

11 any difference.

12 Q. Okay. So you're saying you could add

13 that fill and it wouldn't --

14 A. -- would not make a rise in either

15 model.

16 Q. Okay. Now, you heard Mr. Lessley

17 testify, didn't you --

18 A. I did.

19 Q. -- as to what improvements he would

20 make to the -- or should be made to the levee in

21 order to certify them as 500-year levees?

22 A. Right.

23 Q. Would that make a difference, in your

24 opinion?

25 A. No, it would not.

1 Q. It would not.

2 Well, 500-year, plus 3 feet, I think he
3 said.

4 A. That's right.

5 Q. Would that make a difference, in your
6 opinion?

7 A. No, it would not make any difference.

8 Q. Again, that's because of the wide width
9 of the floodplain?

10 A. Yes. And there are other things you
11 can do. Not only that, but on the inside face of
12 the levee along the levee -- I said the inside
13 face -- the face to the river -- you would want to
14 make improvements. You could take out trees. You
15 would put some armor on the face to make sure
16 erosion doesn't happen. It would increase the
17 velocity, because you would get water out faster.
18 And that can also drop the elevation.

19 Q. All right. Now, if you did all of that
20 and could show that no-rise, in your opinion, would
21 FEMA remove the floodway designation here and the
22 floodplain designation on the Richland side?

23 MR. JOHNSON: Objection, Your Honor.

24 THE COURT: Yes, sir, he's leading.

25 THE WITNESS: You could --

1 MR. JOHNSON: Your Honor, can we get
2 another question?

3 THE COURT: Rephrase the question.

4 BY MR. GRIER:

5 Q. In your opinion, if you made the
6 structural improvements and showed us a no-rise on
7 Lexington and Richland in the floodway, as
8 Mr. Miller said in his letter, would FEMA remove
9 the floodplain and the floodway designation from
10 behind the area protected by the levee?

11 MR. JOHNSON: Your Honor, I object.
12 There's no way this witness can predict what FEMA
13 is going to do. We've seen FEMA bounce all around.

14 THE COURT: Yes, sir, I sustain the
15 objection as to what FEMA would do.

16 I think he can say maybe what they
17 should do, but not what they would do.

18 MR. GRIER: All right, sir.

19 BY MR. GRIER:

20 Q. What should FEMA do -- if you could do
21 what you said -- you know, make these physical
22 improvements to the levee and show a no-rise in
23 Lexington and Richland as a result of that -- what
24 should FEMA do?

25 A. FEMA should remove this from --

1 Q.. Remove what?

2 A. This area. Remove this area from the
3 mapping.

4 Q. You mean remove the floodway and the
5 floodplain from the map?

6 A. That's correct.

7 Q. And that's based on a reasonable degree
8 of certainty, in your opinion?

9 A. It is.

10 MR. GRIER: Your Honor, one of the
11 things I wanted to do with this witness -- that's
12 essentially his opinion, but I wanted him, if the
13 Court would allow it, to have him put these maps
14 out on a table here, to put them out and just show
15 the Court the different landmarks on the various
16 maps, the BFEs, and the cross section lines of the
17 flood maps themselves.

18 Having been in this case from the
19 start, it was very difficult for me to understand
20 these maps. I thought this would be --

21 THE COURT: That would be fine.

22 MR. GRIER: All right. Let's get this
23 table.

24 THE COURT: Once you've got it spread
25 out, I'll come down.

1 BY MR. GRIER:

2 Q. All right. Mr. Barker, if you would
3 come down here a minute.

4 MR. GRIER: And Your Honor, if you want
5 to step down, we can go through these.

6 This is kind of hard to read, but this
7 is the Plaintiff's Trial Exhibit 62 [sic].

8 THE COURT: 162.

9 MR. GRIER: 162, excuse me, Your Honor.

10 BY MR. GRIER:

11 Q. This is the January 19th, '94 Flood
12 Insurance Rate Map --

13 A. For Richland County.

14 Q. -- for Richland County.

15 Now, can you show on here the -- where
16 the floodway is, and do you see any of the cross
17 sections?

18 A. Here is the cross section, if you can
19 faintly pick it out here. You can make out the
20 hatched floodway, if you look close enough. Clear
21 as mud.

22 MR. JOHNSON: I'm just watching.

23 BY MR. GRIER:

24 Q. All right. Where is the 1995
25 Lexington?

1 THE COURT: Now, did you ask him about
2 floodway or floodplain when you asked him the
3 questions?

4 MR. GRIER: I was asking
5 about the -- show him about where the floodway is
6 and where the floodplain is.

7 THE WITNESS: You have to look very
8 closely, but this dark line represents the center
9 line of the river. That's the river edge in
10 Lexington.

11 There's the --

12 THE COURT: Oh, I see.

13 THE WITNESS: And the levee is on the
14 outside of the floodway here. That's the floodway.
15 The levee line there is the river line. And so, in
16 this map, the floodway was on the inside -- at the
17 inside toe and on the Lexington side.

18 BY MR. GRIER:

19 Q. All right. Well, this was -- this
20 shows the small, with the shaded -- if you can show
21 the judge the floodway and the floodplain on that
22 one.

23 A. The green represents the floodway. The
24 gray on this side represents the floodplain.
25 That's the floodplain fringe and that's the

1 floodway. Now, just on the -- just in Richland
2 County.

3 Again, that's the center line of the
4 river. This is the Lexington bank of the river.

5 MR. JOHNSON: Which map is this?

6 MR. GRIER: This would be the '94 map.
7 This would be the --

8 This is kind of the starting point
9 right here, Your Honor.

10 MR. JOHNSON: And that's the next one?

11 MR. GRIER: No, that's the small
12 version. It's the same thing, but you can just see
13 it better.

14 MR. JOHNSON: Oh, okay.

15 (PLF. EXH. 231, Lexington Map 285, was
16 marked for identification.)

17 (PLF. EXH. 283, 2/25/1999 Revised
18 Preliminary FIRM Lexington County Map 283, was
19 presented.)

20 BY MR. GRIER:

21 Q. Now, this is Plaintiff's Trial Exhibit
22 231, and this is the July 17th, 1995.

23 Now, this is the other side of the
24 river, which is the Lexington side?

25 A. Right.

1 Q. Now, can you show the judge on here the
2 different -- you can see this one a lot better. If
3 you can show him the BFE, the cross sections, the
4 floodway, and the floodplain.

5 A. Okay. The hatched line represents the
6 floodway. And so if you take this hatched area to
7 the center line and then added it to this hatched
8 line, that's your total floodway right here, from
9 there to there, even though it's a different scale,
10 but it comes all the way to the inside toe of the
11 levee.

12 Q. Show him the BFEs and the --

13 A. All right. The cross sections are the
14 ones that I showed you -- the schematic of the
15 cross sections -- these are labeled here, in the
16 alphabet. And those have to be actually surveyed
17 by a surveyor, or have it to that standard, if they
18 actually have a letter beside them.

19 There are other cross sections in here
20 that are copied that you put in the model just to
21 make it run smoother that are represented by this,
22 or you can have F, if that's a survey, or one
23 similar to it that's copied.

24 So the more cross sections that are
25 shown -- but they can only show the ones that are

1 actually surveyed, the ground surface and the cross
2 sections going all the way across.

3 Your BFE is represented -- the BFE is
4 the little squiggly line that goes all the way
5 across. And as you can see, the BFE goes all the
6 way to the floodplain edge. The floodway is inside
7 that.

8 Your floodway could actually be -- like
9 we talked about earlier, it could be all the way to
10 the edge, if you wanted it more restrictive.

11 Q. Now, are you familiar with this
12 subdivision in here?

13 A. Riverland Park?

14 Q. Riverland Park Estates?

15 MR. GRIER: Okay. This is that little
16 highway -- that little road there is kind of a
17 landmark, Your Honor, that you can see in the
18 different maps as they progress.

19 BY MR. GRIER:

20 Q. Now, this particular Richland County
21 map, what is this, the floodway zone here?

22 A. It's the AE zone.

23 Q. That's the AE?

24 A. Yes.

25 Q. And it has a floodway designation.

1 All right. Now, let's look at the '98
2 Richland --

3 THE COURT: Are all AEs floodways, or
4 they don't have to be floodways or --

5 THE WITNESS: Well, the AE just
6 represents -- that represents a floodplain.

7 THE COURT: That's what I thought,
8 okay. So that doesn't mean floodway?

9 THE WITNESS: No, sir.

10 THE COURT: I have a house in AE. All
11 of the sudden I felt panicky.

12 THE WITNESS: You must be on Gills
13 Creek.

14 THE COURT: No, I'm down in Charleston.

15 BY MR. GRIER:

16 Q. Does this cross section -- like you
17 were looking at F a while ago, right here, this F,
18 does it go across to the Richland side?

19 A. It goes right here and then it
20 would --

21 Q. Okay. So you can line these two up by
22 the --

23 A. Yes, we do that often.

24 Q. Okay. Now, this is the June 5 '98 map,
25 Revised Preliminary Flood Insurance Rate Map, I

1 believe it's called.

2 Could you point out there the floodway
3 and the floodplain and the --

4 A. All right. If you notice, the
5 floodplain is expanded here, so you've got
6 more -- a larger floodway. So your floodway is
7 still the hatched area, but it's moved out. This
8 represents your floodplain fringe. So that's the
9 100-year edge of the BFE to the floodway. So it's
10 only moved in just that little bit.

11 Q. Okay. Now, this is the other side of
12 the river.

13 A. You can see how different it is on that
14 side.

15 (PLF. EXH. 234, 2/12/98 FIRM Lexington
16 County map panel 283, was presented.)

17 BY MR. GRIER:

18 Q. This is 2/12/98, Trial Exhibit 234.
19 This would be the Lexington side and, actually, it
20 predated this one; did it not?

21 A. That's right.

22 Q. Okay. Now, if you could maybe point
23 out to the Judge how the floodway changed in
24 Lexington when it changed in Richland, and show
25 that landmark again. Let's see, right there.

1 A. You can see the floodway moved and now
2 it encompasses this floodway. This is the --

3 THE COURT: All right. So the floodway
4 expanded on both sides of the Congaree, not just
5 on --

6 THE WITNESS: Well, this is the older
7 map. It was here, and they moved it. This is the
8 later map.

9 THE COURT: So they took that
10 subdivision out?

11 THE WITNESS: They took that out.

12 THE COURT: Wait a minute. So this is
13 the --

14 MR. GRIER: This is '98.

15 THE COURT: All right. This is '98.

16 MR. GRIER: And this is '95.

17 THE COURT: And it was in --

18 MR. GRIER: This was in the floodway.
19 You can see that landmark.

20 THE WITNESS: The '95. And now they
21 have moved that out.

22 THE COURT: All right. The '95, it was
23 in the floodway.

24 THE WITNESS: Yes, sir.

25 THE COURT: And then in '98 --

1 THE WITNESS: -- it was removed.

2 THE COURT: But then on the Richland
3 side, it expanded.

4 THE WITNESS: It expanded.

5 BY MR. GRIER:

6 Q. Okay. Let's go to February. Okay.

7 This is the February 25, 1999 Richland
8 Revised Preliminary FIRM -- that's Plaintiff's
9 Exhibit 287 -- and show the judge the floodway on
10 that one, and the floodplain.

11 A. The floodway here, you can see the
12 hatch stops right here and follows this line here.
13 So this was the -- that's it there. That's the
14 same -- it's just a little bit more pronounced. So
15 it was out here and then it moved back.

16 Q. This would be the corresponding, on the
17 same date, Lexington County map.

18 Now, the -- both of these are dated the
19 same day, February 25th '99.

20 Did the floodway in the -- when the
21 floodway moved in over here in Richland, did it
22 change any in Lexington?

23 A. The floodway did not materially change.
24 It's right on top of what the other one was.

25 Q. Mr. Barker, have you verified that by

1 looking at the actual floodway data papers for
2 these Flood Insurance Studies?

3 A. I have. I have.

4 MR. JOHNSON: When you said it did not
5 materially change, where did it change?

6 THE WITNESS: Well, it only
7 changed -- if you look in the Floodway Data Table,
8 it may change 100 feet someplace, and there could
9 be a cross section here, so it would, you know,
10 move from there to there.

11 (PLF. EXH. 235, Flood Insurance Study
12 for Lexington County dated 2/12/98, was presented.)

13 BY MR. GRIER:

14 Q. This is the Flood Insurance Study for
15 Lexington, which is Plaintiff's Exhibit 235, for
16 February 12th, '98. Is that right?

17 A. Yes.

18 Q. And this would be the Flood Insurance
19 Study for Lexington as of 2/25/99.

20 If you could, show the judge the
21 floodway tables in here and how they relate to the
22 map. This is the 2/25/99 for Lexington, which
23 corresponds with this map.

24 A. This is the Floodway Data Table. These
25 would be your cross sections, A, B, C, and so

1 forth. And then this is the distance from a point
2 downstream. I think this is from the county line.
3 Yes. With the county line.

4 So I think these -- cross section A is
5 located here. If you go all the way down to the
6 county line of Calhoun County, that's the distance
7 in feet from that county line, all the up to this
8 cross section. It's just the distance.

9 Let me take that back. This is feet
10 above the mouth where it comes into the
11 water -- I'm sorry. The other maps have that.

12 So those are the locations of A, B, and
13 C. This is going upstream. Going down, and it's
14 going upstream, it's going this way. So that's the
15 distance.

16 Then this is your floodway width. This
17 is Lexington County, so there's your total width of
18 floodway and then there's your Lexington County
19 portion of it, 6,100 --

20 THE COURT: Oh, I see the hatch.

21 THE WITNESS: Yes, sir.

22 So that's your total all the way
23 across, and then this would be your floodway, just
24 in Lexington County. And that goes through -- all
25 the way down. So that shows you your different

1 floodway widths.

2 And then this would be -- this is the
3 same time frame, I think, in Lexington.

4 No, this is a different one, I'm sorry.

5 BY MR. GRIER:

6 Q. Which one --

7 A. These are both Lexington. This is the
8 one you showed me earlier. This is the February
9 12th, '98.

10 Q. Are we looking at February, Richland?

11 A. Yes.

12 Q. That's Plaintiff's Exhibit 286.

13 A. In here it shows the difference, in
14 Richland County, 9,100, still the total, and you
15 have only got 3,000. So it shows the width, not
16 only on the maps, but actual measurements.

17 And that's the floodway -- this data is
18 really taken from the model. It shows the floodway
19 width.

20 These three columns point out the
21 floodway, floodway width, cross section area in
22 square feet. And then this is the mean velocity in
23 the floodway, where you can see you have 13.9 feet
24 per second. It's moving fairly fast.

25 Q. And then your base flood elevations are

1 over --

2 A. Yes. Here is your regulatory base
3 flood elevation. Regulatory means there could be
4 some backwater effect that's taken into account.

5 Q. Explain that, if you would.

6 A. If you've got two streams coming
7 together, they create a backwater effect, and this
8 is the backwater effect from the water backing up
9 when two sources of water meet.

10 So that -- with that -- this column
11 says, without floodway. If you run the model and
12 ignore that other stream coming in, you just take
13 away that amount of flow and you run it, and that
14 gives you your -- that gives you your base flood
15 elevation without any backwater.

16 It is kind of technical, but it's done
17 just to show what -- I guess what the difference in
18 the backwater would be. And then this is your with
19 floodway. This is the actual floodway elevation.

20 Q. What's that column on the end there?

21 A. The column on the end is the increase.
22 Take that, subtract that, it gives you .8. And
23 that's your base flood elevation and your floodway.
24 And it can't go above 1, but it can be less. When
25 you do the --

1 THE COURT: Explain to me this: You
2 talked about the -- if you had a confluence of
3 two --

4 THE WITNESS: Two streams.

5 THE COURT: Why do they call it without
6 floodway? Why do they call it that?

7 THE WITNESS: They just call it that.

8 THE COURT: They just do. I thought
9 that might be the case. Okay.

10 (PLF. EXH. 302, 8/12/1999 Revised
11 Preliminary FIRM Lexington County Map 283, was
12 presented.)

13 (PLF. EXH. 303, Lexington County
14 Revised Preliminary FIS, was marked for
15 identification.)

16 BY MR. GRIER:

17 Q. Now, this is the August 12th, '99 FIRM
18 for Richland. That's Plaintiff's 306.

19 This was the corresponding Revised
20 Preliminary FIRM, August 12th, '99 for Lexington,
21 which is 302.

22 This is the Richland map.

23 If you would, show the judge how the
24 floodway moved here.

25 A. Okay. The floodway moved into the

1 landward toe of the levee. The levee is within the
2 floodway here, and it represents that hatched -- I
3 see floodway still is there. This is your
4 floodplain fringe.

5 Q. The cross sections -- so A starts down
6 here and goes up to A, B, C, D, E?

7 A. That's correct.

8 Q. Now, tell the judge which cross
9 sections actually transect the levee itself.

10 A. The furthest one is Cross Section E.
11 This is the last cross section upstream, coming
12 from Columbia, where the water is flowing this way.
13 This is the -- E is the furthestmost upstream point,
14 and Cross Section A is the downstream point.

15 So all of this is inclusive. This is
16 I-77 here. So there's your Section I, right there.

17 Q. Do you see cross section F on here? We
18 saw it over in Lexington.

19 A. It's right here.

20 Q. Okay. Now, where does the levee stop?
21 Can you point the levee out?

22 A. It stops right here.

23 Q. Now, this would be the -- 302 would be
24 the Lexington August 12, 1999 map. And do you see
25 the -- when the floodway in Lexington moved in

1 again, did it change?

2 A. It did not change over here. You can
3 see the road -- the little corner of the road that
4 we pointed out earlier -- this falls right on top.

5 Q. Okay. And this would -- Trial Exhibit
6 303 would be the Lexington County Flood Insurance
7 Study that goes with this map?

8 A. That's correct.

9 Q. This would be the Richland Revised
10 Preliminary Flood Insurance Rate Map that was done
11 on September the 26th, 2000.

12 And if you would, point out to the
13 judge how the floodway changed.

14 A. If you can see, the floodway moved back
15 out, Cross Section F, E.

16 Q. All right. Now, let's look at
17 Plaintiff's Exhibit 335, which would be the
18 September 26th, 2000 Lexington County map.

19 And show the judge how the floodway
20 changed in Lexington when it came back -- when it
21 went back out --

22 A. When it went back out, it --

23 Q. -- when it moved out.

24 A. -- was about -- as you can look real
25 closely, you can see that it just nicked that

1 corner. Before, it went just around there.

2 So that's -- I don't know if that was a
3 mapping error, or this is, you know, something that
4 shows in the floodplain. But this is essentially
5 the same floodway in Lexington that we've seen.

6 (PLF. EXH. 334, Lexington County
7 Revised Preliminary FIS, dated September 26, 2000,
8 was presented.)

9 (PLF. EXH. 335, Lexington County FIRM,
10 dated September 26, 2000, was presented.)

11 BY MR. GRIER:

12 Q. All right. This is Plaintiff's Trial
13 Exhibit 334, which would be the Lexington County
14 Flood Insurance Study that goes with this map,
15 Plaintiff's Exhibit 335.

16 A. Yes.

17 Q. If we could -- this would be the Trial
18 Exhibit 381; this would be the Richland County map
19 that was associated with the Letter of Final
20 Determination by FEMA.

21 If you can point out on this one the
22 base flood elevations and the floodway and --

23 A. The base flood elevations are those
24 squiggly lines. Here are your cross sections.
25 Again, the survey Cross Section C. And here's

1 the -- this is the levee, this little line, you've
2 got a caption with it. And then this is the top
3 bank of the Congaree River here. And so, again,
4 that's just the center line over -- this is the
5 county line there.

6 (PLF. EXH. 378, Lexington map 283, was
7 presented.)

8 (PLF. EXH. 379, Lexington County FIS,
9 dated August 20, 2001, was presented.)

10 BY MR. GRIER:

11 Q. Okay. And this would be the Lexington
12 County August 20th, 2001 map that's associated with
13 the Letter of Final Determination. That's
14 Plaintiff's Exhibit 378.

15 And Plaintiff's Exhibit 379 is the
16 Flood Insurance Study that goes along with this
17 map.

18 Did the floodways materially change
19 from September 26th, 2000, on either of these maps?
20 Or were they substantially changed materially on
21 either of these maps?

22 A. No.

23 Q. So it essentially stayed the same?

24 A. Yes.

25 MR. GRIER: And I think that takes us

1 to the final determination, Judge.

2 THE COURT: Okay, thank you.

3 (PLF. EXH. 533, Summary Exhibit - Flood
4 Insurance Study Table Comparison, was presented.)

5 BY MR. GRIER:

6 Q. Now, I want to show you a summary
7 document that's marked 533, Plaintiff's Exhibit
8 533. If we could distribute those.

9 This is a summary of the -- what we,
10 looked at the other day with Mr. Hughes. It comes
11 right out of Plaintiff's Exhibit 3 right here.
12 This was that Floodway Data Table from Plaintiff's
13 Exhibit 3.

14 And this is the Floodway Data Table
15 from Plaintiff's Exhibit 305, which is the August
16 12th, '99 Flood Insurance Study.

17 And this is the Floodway Data Table
18 from Plaintiff's Exhibit 336, which is that
19 September 26th, 2000 Flood Insurance Study.

20 MR. JOHNSON: Was this presented in
21 discovery?

22 MR. GRIER: No, this was a composite of
23 the Flood Insurance Studies. The purpose of
24 this --

25 BY MR. GRIER:

1 A. Yeah, there's 2001, there's 2000, '99,
2 February '98.

3 Q. Let me just ask a general question to
4 start with. Each time FEMA does one of these maps
5 and they hire a guy like you, or either do it
6 in-house and they go through and do the actual
7 modeling --

8 A. Yes.

9 Q. -- so they put data into the computer
10 program and it spits out an answer. And based upon
11 what it spits out and they put in, they print them
12 out?

13 A. Right. It goes to review. You know,
14 they have --

15 Q. People look at it and --

16 A. -- sure --

17 Q. -- smooth it over.

18 But each one of these would have
19 had -- would have had the modeling done, whereas
20 you have not done the modeling of this question
21 yourself. Is that a yes?

22 A. Yes.

23 Q. All right. Now, the 1995 map, which is
24 162, at that time, am I correct that the floodway
25 did not cover the Manning property; it was the toe

1 of the outside --

2 A. Or inside of the river.

3 Q. -- inside of the river on that side.

4 A. Uh-huh.

5 Q. So at some point, FEMA had done that
6 study and come to that conclusion.

7 Have you reviewed that to form an
8 opinion as to whether you think they got it right
9 or screwed it up?

10 A. Um, this was an effective map at the
11 time, so the data that they had and the methods
12 that they used at the time, this was a correct map.

13 Q. So you're okay with that one?

14 A. Yeah.

15 Q. All right. Now, we move up to June
16 5th, 1998, Exhibit 238.

17 And on this map, they put the majority
18 of the Manning property in the floodway, correct?

19 A. Correct.

20 Q. All right. Is it your position that
21 FEMA got it right or got it wrong there?

22 A. They got it wrong.

23 Q. Okay. So you think that they were
24 wrong?

25 A. Yes.

1 opinion, it wouldn't affect it, FEMA wouldn't
2 accept your opinion without testing, modeling,
3 computer, all of that that would go with it; would
4 they?

5 A. That's correct.

6 Q. They wouldn't make a decision about
7 what to do with the maps or not to do with the
8 maps, simply on an opinion from a consultant such
9 as yourself?

10 A. But I do have -- FEMA typically does
11 not -- has not -- put a floodway on the outside toe
12 of the levee, the landward toe of the levee. That
13 is -- that's standard policy by them. They did it
14 in this case. They only do it if they think the
15 levee is insignificant.

16 In this case, they thought it was
17 significant enough to say it held, and the
18 Lexington model was constructed.

19 Q. Let me ask you this: Let's just assume
20 for a moment that Mr. Barker is right and FEMA was
21 wrong every time they published the map, and
22 they're wrong in this last map and it was just a
23 big mistake.

24 Would you agree with me that whatever
25 happened regarding these maps were decisions made

1 by FEMA?

2 A. They were made with the community's
3 knowledge. The community has more --

4 Q. Hold on --

5 MR. GRIER: Judge, he was answering the
6 question.

7 MR. JOHNSON: I object. He wasn't
8 answering the question.

9 MR. GRIER: He was.

10 MR. JOHNSON: No, he wasn't.

11 THE COURT: If you would listen to the
12 question. And if you can answer it with a yes or
13 no, fine. If you need to explain it after that,
14 then you can.

15 THE WITNESS: Yes, sir.

16 BY MR. JOHNSON:

17 Q. The decisions to issue these maps were
18 decisions by FEMA, correct?

19 A. Yes.

20 Q. You were going to tell me counties have
21 input, or communities have input?

22 A. They do, they do.

23 Q. But the final decision is FEMA's
24 decision, not the County, not the community. It's
25 FEMA, right?

1 A. No, that's not correct.

2 Q. FEMA doesn't have the final? Subject
3 to appeals, that is.

4 A. If there hasn't been a Letter of Final
5 Determination, then you can -- you should be able
6 to do -- based on the effective map.

7 Q. You're not hearing my question.

8 A. Okay.

9 Q. My question is, FEMA is the final
10 decision-maker, subject to appeals, as to what maps
11 are published?

12 A. Yeah, I agree with that overall point.

13 Q. Now, your report that you -- or your
14 opinions in this case related only to
15 certification, that the Manning levees could
16 be -- improvements could be made sufficient to
17 certify them according to 44 CFR 65.10, and that
18 such structural improvements have not -- would not
19 have caused the rise in the base flood levels or
20 the reconfiguration of the floodway.

21 That was your opinion. But then you
22 had some opinions about FEMA being wrong, correct?

23 A. Yes.

24 Q. Your report doesn't mention in any way,
25 shape or form Richland County's more stringent

1 standard of the 500-year flood, plus 3 feet of
2 freeboard; does it?

3 A. It does not.

4 Q. And just as if you have done no
5 modelings for your opinions that you did express,
6 you've done no modelings to determine the effect of
7 the Richland County ordinance and its more
8 stringent -- its more stringent requirements; is
9 that correct?

10 A. Uh-huh.

11 Q. Now, isn't it also correct that, as to
12 your core opinion -- that being that changes could
13 be made to the levees, certifying that it wouldn't
14 raise the base flood elevations -- that, in part,
15 depends upon which flood map you're using; doesn't
16 it?

17 A. No, it does not.

18 Q. Isn't it a fact that you -- that if you
19 use the 2000 or 2001 flood map, then making that
20 opinion becomes more difficult?

21 A. It's only more difficult because you
22 have two models to deal with, Lexington and
23 Richland.

24 Q. And isn't it correct that, although you
25 had expressed your opinion in your report to a

1 reasonable degree of certainty, that you've said
2 that it's only possible that it would not affect
3 the base flood elevations if you use the later two
4 maps?

5 A. Would you repeat that, please.

6 Q. Yes.

7 In your report, you said those were
8 your opinions to a reasonable degree of certainty,
9 correct?

10 A. Correct.

11 Q. Have you not made the statement -- also
12 made the statement -- that if you're referring to
13 the 2000 and 2001 maps, that question becomes more
14 difficult and you can only say that it's possible
15 that the BFEs would not be breached.

16 A. That is not my statement. That's
17 not -- you could still do both models with no-rise,
18 because it --

19 Q. I want to show you -- I don't have your
20 original deposition.

21 Do you recall being deposed?

22 A. Yes, sir.

23 Q. You gave an oath to tell the truth, the
24 same one you have given here today, same
25 everything?

1 A. Uh-huh.

2 Q. I want to turn to your deposition.

3 MR. JOHNSON: Have y'all got it?

4 MR. GRIER: What page are you on?

5 MR. JOHNSON: Let's see. Let's start

6 with Page 22, Line 21 and read, if you would, the

7 question and answer out loud through 23, Line 22.

8 Q. Okay.

9 A. Start here?

10 Q. Yeah, if you would.

11 A. "Now, going back to the process for
12 certifying the levees in your Opinion Number 1, we
13 had talked earlier about varying flood maps during
14 this time period.

15 "Would your opinion change -- your
16 opinion --"

17 I think something is cut off, maybe.

18 "Your opinion --"

19 That doesn't make sense.

20 Your opinion preliminary --

21 Q. Yeah, I think what it is, I think Line
22 25 is cut off. Hold on.

23 A. Okay.

24 MR. JOHNSON: Sorry, Your Honor.

25 Your Honor, could we take our afternoon

1 break?

2 THE COURT: It's time. We'll take a
3 few minutes. We'll start back, say, at four
4 o'clock.

5 (A brief recess was held.)

6 MR. JOHNSON: Your Honor, we'll go
7 ahead.

8 THE COURT: Okay, fine.

9 MR. JOHNSON: Since we're just going to
10 go ahead and read.

11 THE COURT: That will be fine.

12 BY MR. JOHNSON:

13 Q. Now, we've got the document here. And
14 I'm going to hand you your deposition. I'll tell
15 you what, let's see if we can do this together.

16 Why don't I read the question, if I can
17 see it, and you read the answer.

18 A. Okay.

19 Q. Beginning on Page 22, Line 21:

20 "Going back to the process for
21 certifying the levees, in your Opinion Number 1, we
22 talked earlier about varying flood maps during the
23 time period.

24 "Would your opinion change, your
25 Opinion Number 1 change, under any of the maps that

1 were preliminarily revised on the final map that
2 was promulgated by FEMA on August 20th, 2001?"

3 Your answer? It starts with --

4 A. Okay. Sorry, okay.

5 "The 2001, we knew -- we knew would not
6 do that."

7 Q. "Could you explain the basis?"

8 A. "Yeah, just because the 2001 -- well, I
9 say -- let me -- the 2001 would have been difficult
10 to do because of the base flood elevation in
11 Lexington is higher than the floodway in Lexington
12 County, which, in my opinion, is just not correct."

13 Q. "How is that different from the map,
14 the preliminary revised map in July 1998?"

15 A. "Well, you didn't have that."

16 Q. "Didn't have what exactly?"

17 A. "You didn't have the floodway below the
18 base flood elevations."

19 Q. "And what about the February 25th, 1999
20 Preliminary Revised Flood Map?"

21 A. "Yeah, I think '99, I forgot. I'm not
22 sure about '99. I would have to take a look at the
23 map again. But I know the 2001 would have been
24 more difficult because the floodway was below the
25 base flood elevation, which I have never seen

1 before and --"

2 Q. "Can you explain in layman's terms why
3 it would be difficult to accomplish -- and I guess
4 let me make that more clear.

5 "Why would it be more difficult to
6 accomplish the certification of the levee under
7 that final map?"

8 A. "You would have to -- you would have to
9 show in the analysis -- if you restudy it, you
10 would show -- you would have to show the analysis,
11 that the base, your floodway, has always -- has to
12 be above the base flood elevation, because you're
13 squeezing water in and it rises. So that's -- in
14 laymen's terms, that's what that means."

15 Q. "Could you be -- could you be even more
16 laymen's terms?"

17 A. "Yeah, yeah. The Flood Insurance
18 Studies and FEMA analysis, in normal circumstances,
19 require you to determine the base
20 flood -- determine what the base flood elevation
21 is. That's the 100-year elevation without any
22 encroachments.

23 "The floodway allows you to encroach to
24 a certain point where there's no more than a 1-foot
25 rise above the base flood elevation.

1 "I have never seen where there is a
2 floodway below the base flood elevation."

3 Q. "So what's the practical import of
4 that?

5 A. "In -- "

6 Q. "I mean -- "

7 A. "In regards to what?"

8 Q. "Certification of this levee under 44
9 CFR 65.10."

10 A. "It would have been more difficult to
11 do."

12 Q. "And is that because you're not able to
13 establish that the levee certification would not
14 create a rise in the base flood elevation?"

15 A. "Say that again."

16 Q. "Is it more difficult because a no-rise
17 certification could not be accomplished?"

18 A. "Yeah, it would be more difficult to
19 do -- to do that -- from a technical standpoint."

20 Q. "Now, could Columbia Venture achieve
21 certification of its levees under this map, in
22 spite of an increase in base flood -- in the base
23 flood elevation?"

24 A. "Possibly."

25 Q. Thank you.

1 Mr. Barker, do you know what the flow
2 would be down the Congaree -- what the rate of flow
3 would be down the Congaree River during a 100-year
4 flood?

5 A. Do I know what it would be?

6 Q. Yes.

7 A. Yes.

8 Q. Can you tell me?

9 A. 232,000 cubic feet per second.

10 Q. Say that again and slow it down.

11 A. 232,000 cubic feet per second.

12 Q. All right. And the 500-year flood?

13 A. I didn't compute the 500-year for that.

14 Q. It would be more?

15 A. It would be more.

16 MR. JOHNSON: Thank you.

17 THE COURT: Mr. Grier?

18 REDIRECT EXAMINATION

19 BY MR. GRIER:

20 Q. Mr. Barker, let me revisit
21 Exhibit -- Plaintiff's Trial Exhibit 31 that you
22 were asked about, and you were asked to read.

23 Have you got that in front of you?

24 A. Yes.

25 Q. And you were asked to read -- this is

1 the letter to Cary McSwain from Mr. Todd Davison
2 dated May 19th, 1999.

3 And you were asked to read that
4 paragraph that says:

5 In the meantime, FEMA considers the
6 February 25, 1999 Revised Preliminary FIS and FIRM
7 to be the best available data.

8 Do you see that?

9 A. Yes.

10 Q. Do you recall reading that?

11 A. Yes.

12 Q. Now, under the -- the February 25th,
13 1999 Revised Preliminary FIS, were the base flood
14 elevations shown in that study higher or lower than
15 the effective 1994, 1995 Flood Insurance Study?

16 A. Higher.

17 Q. They were higher?

18 A. (Nodding.)

19 Q. So on the FEMA guidance, you would use
20 the higher BFEs, would you not, at that time --

21 A. Correct.

22 Q. -- which would be May 19th, 1999?

23 A. Yeah.

24 Q. Okay. And what about the June 5, 1998
25 Revised Preliminary Flood Insurance Study; were the

1 base flood elevations in that study higher or lower
2 than the effective base flood elevations in the
3 1994/1995 study?

4 A. Higher.

5 Q. They were higher.

6 So under the FEMA guidance as of -- I
7 guess before February 25th, 1999 -- you would use
8 those higher BFEs in that July 5, 1999 Revised
9 Preliminary Flood Insurance Study, rather than the
10 effective map. Is that correct?

11 A. That is correct.

12 Q. Okay. But after August 12, 1999, the
13 revised -- the base flood elevations in that
14 Revised Preliminary Study were actually lower than
15 the effective BFEs in the 1994/1995 Flood Insurance
16 Study.

17 A. They were lower.

18 Q. So you would use the effective, rather
19 than the revised preliminary --

20 MR. JOHNSON: Objection, Your Honor.
21 This is his opinion, I guess, that we're getting
22 at, not what FEMA should do.

23 THE COURT: Well, I think that the
24 cross-examination has opened the door for that.

25 BY MR. GRIER:

1 Q. So after August 12, 1999, when the base
2 flood elevation and the revised preliminary were
3 lower than the effective, under FEMA guidance, you
4 should use the effective base flood elevations in
5 the 1994/1995 study, rather than the revised
6 preliminary base flood elevations. Is that
7 correct?

8 A. That is correct.

9 Q. Now, Mr. Johnson read some of your
10 deposition here.

11 Everything he read, that was dealing
12 with the 2002 -- February 2002 -- Flood Insurance
13 Study, the effective Flood Insurance Study and
14 Flood Insurance Rate Map that became effective on
15 February 20th, 2002?

16 A. Yes.

17 Q. Is that right?

18 A. Yes, sir.

19 Q. Now, the opinions that you've expressed
20 today -- and I will recognize in your report, you
21 gave sort of two opinions that we've talked about
22 today, the first two.

23 A. Yeah, I can explain that.

24 Q. Okay, go ahead.

25 A. Um, it was my first deposition ever,

1 first time ever in court, for anything, so I was a
2 little nervous at the time.

3 What I was getting confused was the
4 no-rise certification, the no-rise study, and the
5 LOMAR study -- CLOMAR, I called it -- but LOMAR.

6 Those are two different processes to
7 get the maps revised and get the floodway and the
8 floodplain moved, so I just kind of confused that.

9 It's more difficult because it's more
10 work. More work to do but --

11 Q. For the LOMAR?

12 A. For the LOMAR, there's a little more
13 work to do.

14 But my opinion, as far as for any of
15 the mapping, to do any type of improvements to
16 structurally make the levee sound, to be certified,
17 that stays the same, could have gotten a no-rise.

18 Q. In your opinion, based on all of these
19 maps that we talked about today, you assume, do you
20 not -- or you accept -- let me put it that
21 way -- the BFEs, with floodway, regulatory, without
22 floodway, you accept those as a given, and you base
23 your opinion on those.

24 A. Right.

25 Q. You're not -- in order to give your

1 opinion, you weren't challenging any of these BFES
2 or --

3 A. I wasn't challenging them.

4 Q. So your opinion is based on accepting
5 what these various Flood Insurance Studies actually
6 show as BFES. Is that correct?

7 A. That is correct.

8 Q. But I guess it is your opinion that
9 FEMA did some things wrong when they did their
10 Flood Insurance Studies --

11 A. They did.

12 Q. -- that we talked about here?

13 A. They did.

14 Q. Okay. Now, you mentioned -- have you
15 recently done a hydrologic study of the Congaree
16 River?

17 A. I have.

18 Q. All right. Have you submitted that to
19 FEMA?

20 A. I have submitted it to FEMA.

21 MR. JOHNSON: This is not a reply.

22 THE COURT: Yes, sir, that's not in
23 response to cross-examination.

24 MR. GRIER: Okay. I thought he had
25 gone into what FEMA was doing now.

1 Thank you.

2 MR. JOHNSON: Just one.

3 THE COURT: Go ahead.

4 RECROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q. Mr. Barker, are you aware that if FEMA
7 does get it wrong, there's an appellate process for
8 an aggrieved party to challenge the decisions of
9 FEMA?

10 A. That's only been lately. That wasn't
11 at the time of this. There was no appeal -- no
12 separate committee, third-party mediation, that you
13 could go to.

14 If they said the map was this, and the
15 community agreed, that was it. There was no
16 process. They had the final word.

17 Q. You're not aware that in this very
18 case, maps were issued and there was an
19 administrative appeal that resulted in the maps
20 being revised, and there was an administrative
21 appeal? And then there was an appeal or a filing
22 in the federal court?

23 A. Yes, sir. I was -- I thought you were
24 talking about a separate -- there is a separate
25 appeal process now, third-party mediation, outside

1 of either the government or the Plaintiff in the
2 case, where if you do -- if you do apply for an
3 appeal, and they reject it, you can go now to a
4 third party of technical experts that review it.
5 And that was -- that was done to stop some of the
6 stuff that FEMA was doing.

7 I mean, it was overstepping of power,
8 in my opinion, that you had no process. If the
9 community said that's what they wanted and FEMA
10 issued the maps, you could appeal, you could go to
11 court, but it wasn't a third-party group of
12 technical experts that could come together and
13 decide if what FEMA did was correct.

14 Q. You like the new system better than the
15 old system.

16 A. It seems cheaper.

17 MR. JOHNSON: Good.

18 THE COURT: All right. You may step
19 down, then, sir. Thank you.

20 MR. BECKER: Your Honor, the Plaintiff
21 calls Ralph Pearson.

22 THE COURT: All right, Mr. Pearson, if
23 you would come around, please, and walk over to the
24 witness box next to the court reporter. Put your
25 left hand on the Bible for me, please, and then

1 raise your right hand.

2 Do you swear the testimony you will
3 give in this matter will be the truth and nothing
4 but the truth, so help you God?

5 THE WITNESS: I do, sir.

6 THE COURT: All right, sir, please have
7 a seat and then state your full name for the court
8 reporter.

9 THE WITNESS: I'm Ralph B. Pearson.

10 RALPH B. PEARSON

11 being first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BECKER:

14 Q. Good afternoon, Mr. Pearson.

15 A. Good afternoon.

16 Q. How are you this afternoon?

17 A. Well, I'm reasonably well, thank you.

18 Q. Thank you for being here with us today.

19 As you know, I'm James Becker, and I'm
20 one of the attorneys for the Plaintiff, and I'll be
21 questioning you today.

22 A. Okay.

23 Q. I understand that from 1974 to 2006,
24 you were employed in the county engineer's office
25 of Richland County, South Carolina. Is that

1 correct?

2 A. That's correct, yes.

3 Q. When were you promoted to the position
4 of county engineer?

5 A. I would say probably about '76.

6 Q. Okay. So from then about 1976 to 2006.
7 Did you retire in 2006?

8 A. I retired -- well, I guess you would
9 say that my last day was the last day of '05.

10 Q. Okay. So during that period of time,
11 you were the official county engineer. Is that
12 right?

13 A. Correct.

14 Q. Even though you had worked in the
15 county engineer's office prior to that time --

16 A. Correct.

17 Q. -- prior to being promoted to county
18 engineer?

19 A. Right, yes.

20 Q. Now, during part of your employment
21 with Richland County, was Mr. Cary McSwain the
22 county administrator?

23 A. Yes.

24 Q. Do you recall when he left employment
25 as the county administrator?

1 ordinance.

2 Do you see where it says, Section IV,
3 effective date, shall be enforced from and after
4 July 19, 1994?

5 A. Yes, sir.

6 Q. All right. Now, I want to go over just
7 three sections in the ordinance. The first one is
8 Section 8-21 entitled, Variances and Exceptions.
9 And that's on Page 589.

10 It's also got 3819 up at the top, upper
11 right-hand corner. Do you see that page?

12 A. I see it, yes.

13 Q. Do you see Section 8-21, Variances and
14 Exceptions, at the bottom?

15 A. Yes, sir.

16 Q. Were you ever called upon, as county
17 engineer or assisting the county planning
18 commission, to grant variances or exceptions to any
19 of the provisions of this Stormwater Management
20 Ordinance?

21 A. I don't recall a single instance where
22 I was called on to do that.

23 Q. Okay. Now, you do -- do you recognize
24 this as the Stormwater Management Ordinance that
25 was in effect at that time? You're familiar with

1 this document?

2 A. I'm familiar with the document, yes.

3 Q. Okay. All right. I would like to look
4 at Section 8-62(h) on Page 3830 up at the top.

5 A. 62 --

6 Q. Yeah, it's just above Section 8-63.

7 A. Okay, got it.

8 Q. And it's Section (h). Do you see that?

9 A. Yes, sir.

10 Q. Read that for us, if you would.

11 A. No levees, dikes, fill materials,
12 structures or obstructions that will impede the
13 free flow of water during times of flood will be
14 permitted in the regulatory floodway.

15 Q. All right. And I take it you're
16 familiar with that language, as well?

17 A. Yes.

18 Q. And at various times as county
19 engineer, you were called upon to interpret and
20 apply the language of that provision in the
21 ordinance. Is that correct?

22 A. Yes.

23 Q. Also, please read Section (i), right
24 below it, Subsection (i).

25 A. All applicable regulations of the

1 National Flood Insurance Program are incorporated
2 by reference herein.

3 Q. All right, sir. And are you generally
4 familiar with the regulations of the National Flood
5 Insurance Program?

6 A. Yes.

7 Q. Now, beginning in, say, January, 1994,
8 would you have had the responsibility for issuing
9 certain permits under this ordinance?

10 A. Yes. What we issued was an approval
11 letter to the planning department, saying we have
12 reviewed the plans and they were acceptable.

13 Q. All right. Now, in general terms, if I
14 wanted to disturb the land in Richland County and I
15 didn't meet any of the exceptions that are listed
16 in this ordinance, then would I need some type of
17 permit?

18 A. Say that again.

19 Q. If I wanted to disturb the land in
20 Richland County and I didn't meet some of the
21 exceptions in this ordinance -- like I'm a farmer
22 or something like that -- would I need a permit in
23 order to disturb the land in Richland County?

24 A. Yes.

25 Q. All right. And what would you call

1 that permit? Was it a land-disturbance permit?

2 A. Yeah, it's called a land-disturbance
3 permit now.

4 Q. And would that require, also, a certain
5 type of plan that I would have to submit that would
6 talk about erosion, drainage, those types of
7 things?

8 A. Yeah. Our part in that process is we
9 would review plans submitted by the developer for
10 any roads that were involved, storm drainage,
11 sediment/erosion control, flood protection.

12 Q. Okay. Now, I'm going to show
13 you -- I'm not offering this into evidence, but
14 this is -- I want to show you part of 44 CFR 60.3.

15 MR. BECKER: Your Honor, if it's okay,
16 I'll just read, rather than ask Mr. Pearson to do
17 it.

18 THE COURT: All right, sir.

19 BY MR. BECKER:

20 Q. I will read to you, Mr. Pearson -- in
21 fact, I will show it to you while I read it out
22 loud for the court reporter -- the provisions that
23 I'm going to be referring to.

24 And, again, this was reviewed with you
25 in your deposition. But Subsection D says the

1 following:

2 When the Federal Insurance
3 Administrator has provided a notice of final base
4 flood elevations within Zones A1-30 and/or AE on
5 the community's FIRM and, if appropriate, has
6 designated AO Zones, AH zones, A99 zones, and A
7 zones on the community's FIRM and has provided data
8 from which the community shall designate its
9 regulatory floodway, the community shall -- and
10 then we go to Subsection 3 under there -- prohibit
11 encroachments, including fill, new construction,
12 substantial improvements, and other development
13 within the adopted regulatory floodway, unless it
14 has been demonstrated through hydrologic and
15 hydraulic analyses performed in accordance with
16 standard engineering practice, that the proposed
17 encroachment would not result in any increase in
18 flood levels within the community during the
19 occurrence of the base flood discharge.

20 Now, did I read that correctly?

21 A. Yes.

22 Q. All right, thank you.

23 MR. BECKER: Your Honor, would you like
24 this? I have printed it off of Casemaker.

25 THE COURT: Yes, I will take a quick

1 look at it. Yes, sir. Thank you.

2 MR. BECKER: That way, you don't have
3 to look that up.

4 BY MR. BECKER:

5 Q. Now, that Subsection 3 language that I
6 just read, Mr. Pearson, is that what the engineers
7 typically refer to as the FEMA no-rise standard?

8 A. Yes.

9 Q. And does it mean that the community has
10 to prohibit --

11 MR. JOHNSON: Your Honor, I object to
12 the leading.

13 THE COURT: Yes, sir, I sustain the
14 objection.

15 BY MR. BECKER:

16 Q. What does that mean in terms of what
17 the community would do?

18 A. In our development process and review
19 of plans and all, we would look to ensure that the
20 developer had -- if he's encroaching on a
21 regulatory floodway, that he's provided the
22 necessary calculations to demonstrate there would
23 be no rise as a result of this development in the
24 100-year flood.

25 Q. Okay. So if you could place items or

1 fill material in the regulatory floodway, if,
2 through engineering calculations, you demonstrate a
3 no-rise, is that it?

4 MR. JOHNSON: Your Honor, I object.
5 Counsel is testifying -- leading.

6 THE COURT: I overrule that.
7 Go ahead, sir.

8 BY MR. BECKER:

9 Q. All right. Now, please look back at
10 Plaintiff's Exhibit 230, and let's look back at
11 that Subsection (h) and Section 62 on Page 3830, up
12 in the upper right-hand corner.

13 A. Subsection (h)?

14 Q. Yes, sir.

15 A. Okay.

16 Q. Was it the interpretation -- or your
17 interpretation, as the county engineer -- that in,
18 say, 1994, this language, Subsection (h) in the
19 county Stormwater Management Ordinance, was
20 essentially a no-rise standard?

21 A. That was our position, yes.

22 Q. Was it your position, that if you could
23 demonstrate a no-rise, then you weren't impeding
24 the free flow of water?

25 A. That was our position, yes.

1 FEMA Flood Insurance Rate Maps?

2 A. Somewhat, yes.

3 Q. Okay. Now, we have established what
4 your department's interpretation of the no-impe
5 language was.

6 Was there ever a time when the
7 county's -- county attorney's office -- instructed
8 you to interpret the language of Subsection (h) --
9 the no-impe language -- in a different way?

10 A. I'm not sure I understand what you're
11 asking me.

12 Q. All right. You've just testified that
13 your -- it was your office's practice to interpret
14 the no-impe language in Section 8-62, Subsection
15 (h) of the 1994 Stormwater Management Ordinance, in
16 accordance with the no-rise standard in the FEMA
17 regulations. Is that correct?

18 A. Correct.

19 Q. Did there come a time when the county
20 attorney instructed -- Larry Smith, the county
21 attorney, Larry Smith -- instructed you and your
22 office to interpret that language in Section
23 8-62(h) of the '94 Stormwater Management Ordinance
24 in a different way?

25 A. Yes.

1 Q. All right. Can you remember, as best
2 you can tell me, what you recall about that
3 conversation?

4 MR. JOHNSON: Can we get a date, Your
5 Honor?

6 BY MR. BECKER:

7 Q. Do you recall when the conversation
8 was?

9 A. I don't recall when it was, but I
10 recall the conversation.

11 Q. All right. Describe as best for
12 me -- what was the substance of that conversation?

13 A. I was advised that we can't -- that
14 we're not entitled to make the interpretation, that
15 no -- that an improvement would not impede the free
16 flow of water, if you could demonstrate there's no
17 rise.

18 Q. All right.

19 A. Impediment -- just what it says,
20 impede.

21 Q. All right. So he said you can't -- you
22 can't use the no-rise calculation anymore. If
23 something will impede water, then it can't go in
24 the floodway?

25 A. Correct.

1 Q. After you had that conversation with
2 Mr. Smith, was it your view and your department's
3 interpretation that a no-impepe -- as opposed to a
4 no-rise -- was essentially a no-build standard?

5 A. Essentially, yeah.

6 Q. Now, in your view, is the no-rise
7 standard -- is that an engineering standard?

8 A. Yeah, I would have considered it so.

9 Q. Okay. But a no-impepe standard is not
10 an engineering standard; is it?

11 A. I wouldn't think so. It's more like a
12 language standard.

13 Q. You can't calculate whether something
14 impedes the free flow of water; it just does,
15 right?

16 A. Right.

17 Q. Any solid substance would impede the
18 free flow of water --

19 MR. JOHNSON: Your Honor, I object to
20 the leading.

21 THE COURT: Yes, you are leading.

22 BY MR. BECKER:

23 Q. Would a flag pole impede the free flow
24 of water?

25 A. To some minimal amount, yes.

1 Q. What about a fence post?

2 A. Sure.

3 Q. Would virtually anything that is solid
4 impede the free flow of water?

5 A. I would think so, yes.

6 Q. Mr. Pearson, I would like you to please
7 look next at Plaintiff's Exhibit 118.

8 Do you have that in front of you?

9 A. Yes.

10 Q. You can disregard that first page,
11 Mr. Pearson. It was just a transmittal letter that
12 occurred at a later time.

13 I would like you to look, beginning on
14 the second page of that exhibit, which is the
15 letter from Mr. Mark Hester of Lockwood Greene to
16 Mr. George Gregory.

17 Do you see that?

18 A. Yes.

19 Q. And it says: Enclosed is the erosion
20 and sediment control permit application for sites
21 disturbing more than two acres. Please sign the
22 form and forward two copies to Mr. Gordon Greene at
23 Richland County. I have enclosed a draft letter
24 that may be used to submit the permit application
25 to Mr. Greene.

1 Do you see that?

2 A. Yes.

3 Q. Now, who is Mr. Gordon Greene?

4 MR. JOHNSON: Your Honor, I object to
5 the witness being questioned about this letter,
6 unless he saw it and has some firsthand knowledge
7 about it.

8 THE COURT: If he has knowledge of it,
9 he can testify to it. Right now he's just asking
10 who Mr. Greene is, so that's another premature
11 objection.

12 BY MR. BECKER:

13 Q. Who is Mr. Greene?

14 A. Gordon Greene worked for me as my
15 assistant county engineer, and he was the guy that
16 actually physically reviewed virtually all of the
17 plans that were submitted to us.

18 Q. All right. Now, look at the attachment
19 that begins with the next page. Do you see that?

20 A. Yes.

21 Q. Is this an application for a
22 land-disturbance permit?

23 A. Yes.

24 Q. And it's on the DHEC form. But did
25 your office use this form for land-disturbance

1 permit applications in April of 1999?

2 A. It really wasn't part of our permit or
3 plan review process, except that after adoption of
4 the State Stormwater Management and Sediment
5 Reduction Act, they required this, and we merely
6 forwarded it on to DHEC.

7 Q. You would forward this -- your office
8 would forward this form and the attachments to
9 DHEC?

10 A. Yes.

11 Q. Okay. You wouldn't keep them in your
12 office?

13 A. We would keep a copy in our files.

14 Q. You would keep a copy in your file?

15 A. Sure.

16 Q. All right. Now, this application is
17 dated April 15th, 1999. Do you see that?

18 A. Yes.

19 Q. And the facility or project name is
20 Columbia Venture. Do you see that?

21 A. Yes, sir.

22 Q. Do you recall what Columbia Venture
23 was?

24 A. Yes.

25 Q. What is your understanding of who

1 Columbia Venture was?

2 A. Well, it was a group that was
3 developing the property on the Congaree River,
4 south of Columbia, formerly owned by Burwell
5 Manning.

6 Q. Okay. And do you see here that the
7 nearest receiving water body -- on Line 2 -- is the
8 Congaree River -- on Line 2 of that application?

9 A. Yes.

10 Q. And the distance to that water body is
11 200 feet, plus or minus?

12 A. Yes.

13 Q. Under Section 3 on Line 8, the size is
14 listed as 67 acres, and the surface area of land
15 disturbance is listed as 32 acres?

16 A. I see that.

17 Q. Yes. The SIC codes are listed on Line
18 10 as 1794 and 1629. And if you look on the next
19 page, they are shown over in the right-hand column.
20 And down toward the middle of the page it says:

21 SIC codes are only required if site
22 disturbs 5 or more acres. And then the codes for
23 1629 are heavy construction NEC.

24 Do you know what that means?

25 A. Well, I know what heavy construction

1 means and excavation work.

2 Q. All right. So those are the two SIC
3 codes that are associated with this permit
4 application?

5 A. According to this, yeah.

6 Q. Look at the top. It says -- the top of
7 the next page, the start date is May 24, 1999, and
8 the completion date is October 1, '99.

9 A. I see that.

10 Q. All right. And then under Section 13
11 it says: Are there any freshwater wetlands located
12 on the property?

13 It says: Yes.

14 And then: If, yes, have the wetlands
15 been delineated? See attached letter from Charlie
16 Crosby, USACO.

17 Do you see that?

18 A. Yes.

19 Q. Do you know who Mr. Crosby is?

20 A. No, sir.

21 Q. Do you know what USACO stands for?

22 A. No, I don't.

23 Q. Do you know what USACOE stands for?

24 A. Yes.

25 Q. What is it?

1 A. U.S. Army Corps of Engineers.

2 Q. Okay. And on the next page, there's a
3 proposed transmittal letter for Mr. Gregory to send
4 that to Mr. Greene.

5 Do you see that, the very next page in
6 the exhibit?

7 A. Yeah, the letter to Mr. Greene?

8 Q. Yes.

9 A. Yes.

10 Q. All right. Do you recall reviewing
11 this application in the county engineer's office?

12 A. I didn't review it myself, but I
13 remember discussing it with Gordon Greene.

14 Q. All right. What was your conversation
15 about it with Mr. Greene?

16 A. Well, essentially that the application
17 was incomplete, it was not a comprehensive plan for
18 levee improvements.

19 Q. All right. What would have been a
20 comprehensive land for levee improvements?

21 A. Well, we would look for the 500-year
22 flood elevation profile and profile of the top of
23 the levee and cross sections and how the
24 geotechnical work would be accomplished and
25 specifications on the fill, the interior drainage.

1 Q. Let me ask you to look next, then, at
2 Plaintiff's 119.

3 Do you recall anything else about your
4 conversation with Mr. Greene about this particular
5 permit application that we've just reviewed?

6 A. Only that his intent was to disapprove
7 it.

8 Q. Okay. And, again, the reason being, it
9 was incomplete?

10 A. Correct.

11 Q. Okay. Now, Exhibit 119 is a letter
12 from Mr. Greene to Mark Hester, who was the
13 professional engineer who signed the permit
14 application. Is that correct?

15 A. Yes.

16 Q. Do you know Mr. Hester?

17 A. No.

18 Q. And at the time, Mr. Greene was an
19 assistant county engineer working under your
20 supervision?

21 A. Yes.

22 Q. There were other people who were copied
23 on this letter from Mr. Greene back to Mr. Hester,
24 dated May 13th, '99, and they included Cary McSwain
25 and Harry Reed.

1 Was it normal to copy Mr. McSwain on
2 letters disapproving a permit application?

3 A. Just on a routine project, no.

4 Q. On a routine project, you would not
5 copy Mr. McSwain?

6 A. Correct.

7 Q. Do you know why Mr. McSwain was copied
8 on this particular permit denial?

9 A. Probably because of the size and the
10 significance of this development.

11 Q. All right. Now, was it normal practice
12 to copy Mr. Harry Reed, the flood coordinator?

13 A. Not unless the project involved
14 floodplain determination and flood elevations and
15 such.

16 Q. All right. Now, who was Jim Barker?

17 A. Jim was a hydrologist that worked for
18 us at one time.

19 Q. Was he on the staff of Richland County?

20 A. Yes.

21 Q. Now, in his first sentence of the
22 letter, back on the first page, to Mr. Hester,
23 Mr. Greene says:

24 In response to the sediment and erosion
25 control plans and permit application prepared by

1 Lockwood Greene, dated April 1999 and submitted May
2 6th, '99, please be advised that a permit to
3 upgrade the above-referenced levee cannot be issued
4 until a complete set of plans and specifications
5 are provided.

6 Did I read that correctly?

7 A. Yes.

8 Q. Now, he refers to sediment and erosion
9 control plans and permit application; does he not?

10 A. Yes.

11 Q. So had he received, in fact, sediment
12 and erosion control plans along with the permit
13 application?

14 A. It appears so, yeah.

15 Q. And he refers to it -- he refers to the
16 application as one to upgrade levees. Is that
17 correct?

18 A. Yes.

19 Q. He does not refer to the
20 application -- Mr. Greene -- Mr. Greene refers to
21 the application as one to upgrade the levees. Is
22 that right?

23 A. Yes.

24 Q. And Mr. Greene does not refer to the
25 application as one to simply maintain the levees,

1 does he?

2 A. Correct.

3 Q. And as you have referenced earlier in
4 this letter, he, in effect, denies the permit
5 application as we previously looked at?

6 A. That's correct.

7 Q. Okay. Do you recall discussing this
8 particular permit application for Mr. Greene's
9 denial letter with anyone else?

10 A. No, not right offhand.

11 Q. Now, under -- under your -- in your
12 office, did you require -- in April of 1999, May of
13 1999, did you -- did your office -- would it have
14 required a permit to simply do maintenance work on
15 the levee?

16 A. We took the position just to do
17 maintenance work along the lines of just maybe
18 removing some growth or filling in some erosion and
19 that sort of thing. It wouldn't even require a
20 permit.

21 Q. All right. Now, Mr. Greene's letter,
22 in the second sentence, it says -- after he says
23 that, The permit cannot be issued until a complete
24 set of plans and specifications are provided, in
25 the next sentence he says, For example, 100-year