

22081

22081

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUN 23 2015
SC Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT
Honorable Shirley C. Robinson, Presiding Judge

Case No. 12 ALJ-07-0434-CC

Ken Bruning, Janet Bruning, David Feron, individually and as Trustee,
Mary Feron, individually and as Trustee, Sally Saegmuller Haley and
Terrell Page Haley, individually and as Co-Trustees, Martha James
and Don Haarmeyer, individually and as Co-Trustees, and
Pamela S. North.....Appellants,

v.

SCDHEC and Cat Island POA, c/o Gary Meyer..... Respondents.
In Re: Garfield Park, Phase 3

Case No. 12 ALJ-07-0436-CC

Cat Island POA, c/o Gary Meyer.....Petitioner,

v.

SCDHEC.....Respondent.
In Re: Garfield Park, Phase 3

RECORD ON APPEAL

VOLUME II

Nathan Michael Haber
1362 McMillian Ave, Suite 400
Charleston, SC 29405
843-953-0229

John E. North, Jr.
Regions Bank Bldg.
916 Bay Street, Ste. 100
Beaufort, SC 29902
843-379-0800

Mary Duncan Shahid
Angelica M. Colwell
PO Box 486
Charleston, SC 29402
843-720-1769

Stephen Peterson Groves, Sr.
205 King Street, Suite 400
Charleston, SC 29401
843-720-1725

INDEX

VOLUME I

ORDERS, PLEADINGS

DOCUMENT	PAGE
Final Order, July 23, 2014	1
Order Denying Motion for Summary Judgment, November 5, 2013	20
Order Denying Motion for Reconsideration, August 27, 2014	24
Request for Contested Case Hearing, October 5, 2012	26
Final Agency Decision, September 8, 2012	43
Petitioner Cat Island POA's Motion for Summary Judgment and Memorandum in Support Thereof, September 18, 2013	47
Petitioner Cat Island POA's Motion to Disqualify Petitioner's Counsel, January 7, 2014	300
Motion for Reconsideration of Final Order, August 1, 2014	316
Respondent South Carolina Department of Health and Environmental Control's Return to Petitioners' Motion for Reconsideration, August 18, 2014	353
Joint Proposed Order of Cat Island POA c/o Gary Meyer and South Carolina Department of Health and Environmental Control, March 27, 2014	415

VOLUME II
TRIAL TRANSCRIPT

DOCUMENT	PAGE
Opening Statements	483
Gary Meyer – Direct Examination - Petitioners	510
Gary Meyer – Cross-Examination - DHEC	537
Gary Meyer – Cross-Examination – Cat Island POA	541
Gary Meyer – Re-Direct Examination - Petitioners	561
Gary Meyer – Re-Cross Examination – DHEC	577
Gary Meyer – Re-Cross Examination – Cat Island POA	582
Richard Geer – Direct Examination – Petitioners	592
Richard Geer – Cross-Examination – DHEC	760
Richard Geer – Cross-Examination – Cat Island POA	801
Richard Geer – Re-Direct Examination – Petitioners	830
Pamela North – Direct Examination – Petitioners	850
Pamela North – Cross-Examination – Cat Island POA	883
Pamela North – Cross-Examination – DHEC	901
Pamela North – Re-Direct Examination – Petitioners	910
Pamela North – Re-Cross Examination – Cat Island POA	913
David Feron – Direct Examination – Petitioners	915
David Feron – Cross-Examination – DHEC	924
David Feron – Cross-Examination – Cat Island POA	927
David Feron – Re-Direct Examination – Petitioners	928

Sally Haley – Direct Examination – Petitioners	930

VOLUME III

TRIAL TRANSCRIPT, CONTINUED

DOCUMENT	PAGE
Sally Haley – Cross-Examination – DHEC	937
Sally Haley – Cross-Examination – Cat Island POA	940
Ken Bruning – Direct Examination – Petitioners	941
Ken Bruning – Cross-Examination – DHEC	945
Ken Bruning – Cross-Examination – Cat Island POA	946
Ryan Lytle – Direct Examination – Petitioners	949
Ryan Lytle – Cross-Examination – DHEC	1093
Ryan Lytle – Cross-Examination – Cat Island POA	1098
Ryan Lytle – Re-Direct Examination – Petitioners	1164
George Madlinger – Direct Examination – DHEC	1183
George Madlinger – Cross-Examination – Cat Island POA	1198
George Madlinger – Cross – Examination – Petitioners	1208
George Madlinger – Re-Direct Examination – DHEC	1227
George Madlinger – Re-Cross Examination – Petitioners	1239
Blair Williams – Direct Examination – DHEC	1243
Blair Williams – Cross-Examination – Petitioners	1270
Blair Williams – Redirect Examination – DHEC	1285
Christopher Moore – Direct Examination – Petitioners	1287

Christopher Moore – Cross-Examination – DHEC	1334
Christopher Moore – Cross-Examination – Cat Island POA	1348
Christopher Moore – Redirect Examination – Petitioners	1364
Petitioners' Exhibit 1	1383

VOLUME IV

DOCUMENT	PAGE
Petitioners' Exhibit 2	1436
Petitioners' Exhibit 3	1444
Petitioners' Exhibit 5	1487
Petitioners' Exhibit 6	1502
Petitioners' Exhibit 14	1510
Petitioners' Exhibit 15	1516
Petitioners' Exhibit 18	1520
Petitioners' Exhibit 19	1522
Petitioners' Exhibit 20	1567
Petitioners' Exhibit 22	1609
Petitioners' Exhibit 23	1617
Petitioners' Exhibit 24	1629
Petitioners' Exhibit 25	1633
Petitioners' Exhibit 26	1641
Petitioners' Exhibit 31	1646

Petitioners' Exhibit 33	1650
Petitioners' Exhibit 34	1657
Petitioners' Exhibit 36	1663
Petitioners Exhibit 37	1664
Petitioners' Exhibit 41	1674
Petitioners' Exhibit 44	1679
Petitioners' Exhibit 51	1680
Petitioners' Exhibit 63	1681
Petitioners' Exhibit 76	1689
Petitioners' Exhibit 82	1703
Cat Island POA Exhibit 2A	1707
Cat Island POA Exhibit 2B	1708
Cat Island POA Exhibit 2C	1709
Cat Island POA Exhibit 2D	1710
Cat Island POA Exhibit 2E	1711
Cat Island POA Exhibit 2F	1712
Cat Island POA Exhibit 7A	1713
Cat Island POA Exhibit 7B	1714
Cat Island POA Exhibit 7C	1715
Cat Island Exhibit 8	1716
Cat Island Exhibit 10	1722
Cat Island Exhibit 11	1753
Cat Island POA Exhibit 37	1762

Cat Island POA Exhibit 40	1824
Cat Island POA Exhibit 41	1828
Cat Island POA Exhibit 43	1837
DHEC Exhibit 1	1838
DHEC Exhibit 2	1859
DHEC Exhibit 3	1868
DHEC Exhibit 4	1872
DHEC Exhibit 5	1887
DHEC Exhibit 6	1889
DHEC Exhibit 7	1895
DHEC Exhibit 8	1897
Petitioners' Proposed Order	1899

VOLUME V

OVER-SIZE EXHIBITS SUBMITTED SEPARATELY

DOCUMENT	PAGE
Petitioners' Exhibit 52	1936
Petitioners' Exhibit 53	1937
Petitioners' Exhibit 55	1938
Petitioners' Exhibit 56	1944
Petitioners' Exhibit 58	1945
Petitioners' Exhibit 64	1946
Petitioners Exhibit 65	1953

Petitioners Exhibit 72	1961
Petitioners' Exhibit 73	1962
Petitioners Exhibit 84	1963
Cat Island POA Exhibit 1 – A,	1964
Cat Island POA Exhibit 1 - B	1965
Cat Island POA Exhibit 1 - C	1966

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION

Ken Bruning, Janet Bruning,)
David Feron, individually and as) Docket No.
Trustee, Mary Feron, individually) 12-ALJ-07-0434-CC
and as Trustee, Sally Saegmuller)
Haley, and Terrell Page Haley,)
individually and as Co-Trustees;)
Martha James and Don Haarmeyer,)
individually and as Co-Trustees;)
and Pamela North,)

Petitioners,)

v.)

South Carolina Department of)
Health and Environmental Control,)

and)

Cat Island POA, c/o Gary Meyer,)

Respondents.)

In Re: Garfield Park Phase 3.)
-----)

Cat Island POA, c/o Gary Meyer,)

Petitioner,)

v.)

South Carolina Department of)
Health and Environmental Control,)

Respondent.)

In Re: Garfield Park Phase 3.)
-----)

COPY

ADMINISTRATIVE HEARING



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

Day 1 - Tuesday, January 14, 2014
10:33 a.m. - 5:06 p.m.
Day 2 - Wednesday, January 15, 2014
9:22 a.m. - 5:10 p.m.
Day 3 - Thursday, January 16, 2014
9:12 a.m. - 4:10 p.m.
Day 4 - Friday, January 17, 2014
9:36 a.m. - 3:29 p.m.

The hearing before the Honorable Shirley C. Robinson was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 14th, 15th, 16th and 17th days of January, 2014 before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES

John E. North, Esquire

North and Black, P.C.
Regions Bank Building
915 Bay Street, Suite 100
Beaufort, South Carolina 29902
Attorney for the Petitioners

Nathan M. Haber, Esquire

South Carolina Department of Health
and Environmental Control
Ocean and Coastal Resources Management
1362 McMillian Avenue, Suite 400
Charleston, South Carolina 29405
Attorney for South Carolina Department
of Health and Environmental Control



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

Mary D. Shahid, Esquire
Angelica M. Colwell, Esquire
 Nexsen Pruet
 205 King Street, Suite 400
 Post Office Box 486
 Charleston, South Carolina 29402
 Attorney for Cat Island POA

Also Present:
 Teckla Henderson,
 Judicial Law Clerk for Judge Robinson

INDEX

	<u>PAGE</u>
OPENING STATEMENTS:	
MR. NORTH	14
MS. SHAHID	22
MR. HABER	32
GARY M. MEYER:	
MR. NORTH . . . DIRECT EXAMINATION	41
MR. HABER . . . CROSS EXAMINATION	68
MS. COLWELL . . CROSS EXAMINATION	72
MR. NORTH . . . REDIRECT EXAMINATION	92
MR. HABER . . . RECROSS EXAMINATION	108
MS. COLWELL . . RECROSS EXAMINATION	113
RICHARD GEER:	
MR. NORTH . . . DIRECT EXAMINATION	123
MR. HABER . . . CROSS EXAMINATION	291
MS. SHAHID . . CROSS EXAMINATION	332
MR. NORTH . . . REDIRECT EXAMINATION	361
PAMELA NORTH:	
MR. NORTH . . . DIRECT EXAMINATION	381
MS. COLWELL . . CROSS EXAMINATION	414
MR. HABER . . . CROSS EXAMINATION	432
MR. NORTH . . . REDIRECT EXAMINATION	441
MS. COLWELL . . RECROSS EXAMINATION	444
DAVID FERON:	
MR. NORTH . . . DIRECT EXAMINATION	446
MR. HABER . . . CROSS EXAMINATION	455
MS. COLWELL . . CROSS EXAMINATION	458
MR. NORTH . . . REDIRECT EXAMINATION	459



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

SALLY HALEY:

MR. NORTH . . .	DIRECT EXAMINATION	461
MR. HABER . . .	CROSS EXAMINATION	467
MS. COLWELL . .	CROSS EXAMINATION	470

KEN BRUNING:

MR. NORTH . . .	DIRECT EXAMINATION	471
MR. HABER . . .	CROSS EXAMINATION	475
MS. SHAHID . .	CROSS EXAMINATION	476

RYAN C. LYLE:

MR. NORTH . . .	DIRECT EXAMINATION	479
MR. HABER . . .	CROSS EXAMINATION	623
MS. SHAHID . .	CROSS EXAMINATION	628
MR. NORTH . . .	REDIRECT EXAMINATION	694

GEORGE MADLINGER:

MR. HABER . . .	DIRECT EXAMINATION	713
MS. SHAHID . .	CROSS EXAMINATION	728
MR. NORTH . . .	CROSS EXAMINATION	738
MR. HABER . . .	REDIRECT EXAMINATION	757
MR. NORTH . . .	RECROSS EXAMINATION	769

BLAIR WILLIAMS:

MR. HABER . . .	DIRECT EXAMINATION	773
MR. NORTH . . .	CROSS EXAMINATION	800
MR. HABER . . .	REDIRECT EXAMINATION	815

CHRISTOPHER MOORE:

MR. NORTH . . .	DIRECT EXAMINATION	817
MS. SHAHID . .	VOIR DIRE EXAMINATION	823
MR. NORTH . . .	CONTINUED DIRECT EXAMINATION	825
MR. HABER . . .	VOIR DIRE EXAMINATION	827
MR. NORTH . . .	CONTINUED DIRECT EXAMINATION	829
MR. HABER . . .	CROSS EXAMINATION	864
MS. SHAHID . .	CROSS EXAMINATION	878
MR. NORTH . . .	REDIRECT EXAMINATION	894

Certificate	912

EXHIBITS

(The original exhibits were retained by Judge Robinson.)

Petitioners Exhibit Number 1	39
(DHEC Board Submittal)	



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

Petitioners Exhibit Number 2	39
(Permit Approval & Coastal Consistency Determination)	
Petitioners Exhibit Number 3	39
(DHEC/OCRM Regulations - 72-300 et seq.)	
Petitioners Exhibit Number 5	39
(Photos - Property of Petitioners)	
Petitioners Exhibit Number 6	39
(Photos of Measurement - Outfall to Grates)	
Petitioners Exhibit Number 7	902
(Photos of dedicated freshwater wetlands)	
Petitioners Exhibit Number 8	39
(Photos of oyster beds)	
Petitioners Exhibit Number 11	902
(Photos of Tabby Park Lagoons with Earthen Dam)	
Petitioners Exhibit Number 12	39
(Photos of Oak Trees on dike)	
Petitioners Exhibit Number 13	39
(Obituary - Byrnal Haley)	
Petitioners Exhibit Number 14	39
(2006 Appraisal)	
Petitioners Exhibit Number 15	39
(2010 Appraisal)	
Petitioners Exhibit Number 16	39
(Title to Lake per Beaufort County)	
Petitioners Exhibit Number 17	566
(Table 2-3 of SC Coastal Zone Management Program - Beaufort County Requirements)	
Petitioners Exhibit Number 18	39
(Steve Andrews letter to Gary Meyer; dtd 8/12/10; RE: Recommending dike repair)	
Petitioners Exhibit Number 19	39
(SC Coastal Management Program Policies and Procedures)	
Petitioners Exhibit Number 20	39
(Geer emails with Petitioners)	
Petitioners Exhibit Number 21	39
(Petitioners Objections to request to OCRM)	
Petitioners Exhibit Number 22	39
(Filter Permit Approval and CCD)	



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

Petitioners Exhibit Number 23	39
(Request for DHEC Board Review)	
Petitioners Exhibit Number 24	39
(Board decision to review)	
Petitioners Exhibit Number 25	39
(Staff statement of position with photos)	
Petitioners Exhibit Number 26	39
(Summary of staff decision)	
Petitioners Exhibit Number 27	39
(Petitioners responses to staff decision)	
Petitioners Exhibit Number 28	39
(Coastal Zone Management Program; dtd 8/2/93)	
Petitioners Exhibit Number 29	39
(Reg. 61-69 - Designation of Waterways)	
Petitioners Exhibit Number 30	39
(Lyle letter to OCRM; dtd 12/3/10)	
Petitioners Exhibit Number 31	39
(3 OCRM Citations)	
Petitioners Exhibit Number 33	39
(Repair Authorizations)	
Petitioners Exhibit Number 34	904
(2004 G.P. Drainage Calculations)	
Petitioners Exhibit Number 35	39
(Lyle letter to Geer 2004)	
Petitioners Exhibit Number 36	39
(O'Quinn Bid)	
Petitioners Exhibit Number 37	905
(Wetland Preservation Covenants)	
Petitioners Exhibit Number 38	39
(Chris Moore Engineering Report)	
Petitioners Exhibit Number 39	39
(Petitioners Original Objections to permit)	
Petitioners Exhibit Number 40	39
(Lyle email)	
Petitioners Exhibit Number 41	39
(Lyle email to developer)	
Petitioners Exhibit Number 42	39
(Lyle letter to Geer)	
Petitioners Exhibit Number 43	39
(Aerial photo of Tabby Lagoon System)	
Petitioners Exhibit Number 44	39
(Plat of Rookery Subdivision)	
Petitioners Exhibit Number 45	39
(Photo of break in dike)	



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

Petitioners Exhibit Number 46	155
(Section ???)	
Petitioners Exhibit Number 48	39
(Photo of fountain in Tabby Park)	
Petitioners Exhibit Number 49	39
(Definition of detention structure & best management practices)	
Petitioners Exhibit Number 50	39
(Original demand of Petitioners to Meyer; dtd 6/9/10)	
Petitioners Exhibit Number 51	39
(Map of shellfish growing areas)	
Petitioners Exhibit Number 52	39
(Andrews survey with GIS overlay)	
Petitioners Exhibit Number 53	39
(David Youmans survey; dtd ???)	
Petitioners Exhibit Number 54	39
(Retrofit plans; dtd 7/22/10)	
Petitioners Exhibit Number 55	39
(Retrofit plans; dtd 6/9/11)	
Petitioners Exhibit Number 56	39
(Garfield Park Elevations)	
Petitioners Exhibit Number 57	39
(Plat of Rookery)	
Petitioners Exhibit Number 58	39
(Stoney Pond Plat -G tract; 2006)	
Petitioners Exhibit Number 59	39
(POA Maintenance and Repair Agreement)	
Petitioners Exhibit Number 60	39
(Plat of Garfield Park - Phase I)	
Petitioners Exhibit Number 61	39
(Lake elevations and contour lines)	
Petitioners Exhibit Number 62	39
(Map of lots on Cat Island)	
Petitioners Exhibit Number 63	39
(Photos of Mud Pit; dtd 1/10/14)	
Petitioners Exhibit Number 64	39
(Retro Plans; dtd 5/21/12 - final submittal)	
Petitioners Exhibit Number 65	39
(Garfield Park Plans - 2003 drainage plans)	
Petitioners Exhibit Number 66	39
(GIS Measurement to Shellfish Beds)	
Petitioners Exhibit Number 67	39
(Amanda Nodolf email to Gary Meyer; dtd 6/3/10; RE: Removing remnants of dike)	



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

Petitioners Exhibit Number 68	39
(Plat of Martha's lot; lot B4 & B3)	
Petitioners Exhibit Number 69	39
(Lyle letter to OCRM)	
Petitioners Exhibit Number 70	39
(2010 Drainage Design Calculations)	
Petitioners Exhibit Number 71	39
(Tabby Park Storm Water Calculations)	
Petitioners Exhibit Number 72	39
(Andrews & Burgess Measurements to Shellfish Beds)	
Petitioners Exhibit Number 73	39
(Andrews & Burgess Topo of G tract)	
Petitioners Exhibit Number 74	39
(Youmans' Lot 5A Site Evaluations)	
Petitioners Exhibit Number 75	39
(Rookery Drainage Plan)	
Petitioners Exhibit Number 76	39
(Deposition of Youmans; dtd 8/5/13)	
Petitioners Exhibit Number 77	587
(Photo of Well water to lagoons)	
Petitioners Exhibit Number 78	587
(Photo of Well water to lagoons)	
Petitioners Exhibit Number 79	587
(Photo of Earthen dam)	
Petitioners Exhibit Number 80	39
(Drainage Basin of Lake)	
Petitioners Exhibit Number 81	273
(Regulation 61-68, Water Classifications and Standards)	
Petitioners Exhibit Number 82	277
(Regulation 125.5, 122.62 and 122.63)	
Petitioners Exhibit Number 84	622
(Plan Plat)	
SCDHEC's Exhibit Number 1	123
(Permitting review documents for Garfield Park Phase 3 Drainage System Retrofit, File Number 07-04-04-04A)	
SCDHEC's Exhibit Number 2	123
(Documents RE: Beaufort County for Garfield Park Phase 3 Drainage System Retrofit, File Number SCR10N-463)	
SCDHEC's Exhibit Number 3	123
(Enforcement/compliance documents for Garfield Park Phase 3)	
SCDHEC's Exhibit Number 4	123
(Maintenance and Repair documents)	



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

SCDHEC's Exhibit Number 5	173
(Memo from Geordie Madlinger to Richard Geer; dtd 1/9/12; RE: Chowan Creek Partners Cat Island Detention Basin Restoration Response per request from Richard Geer)	
SCDHEC's Exhibit Number 6	123
(2011-2013 Photos)	
SCDHEC's Exhibit Number 7	440
(Real Estate advertisement for 2 Rush Street, Beaufort, SC)	
SCDHEC's Exhibit Number 8	123
(Aerial Photos of ???)	
Cat Island's Exhibit Number 1A-C	681
(Andrews & Burgess PATH exhibits)	
Cat Island's Exhibit Number 2A-F	122
(Aerial photos of Petitioners' properties)	
Cat Island's Exhibit Number 3	122
(Google earth photo of Cat Island and surrounding Islands)	
Cat Island's Exhibit Number 4	122
(Google earth phot of Cat Island)	
Cat Island's Exhibit Number 5A-C	117
(Photos of Cat Island Lake; dtd 7/31/13 & 8/30/12)	
Cat Island's Exhibit Number 6	92
(Plat of Cat Island)	
Cat Island's Exhibit Number 7A-C	122
(Shellfish Growing Areas 15, SC Shellfish Management Areas, Distant Island Creek S117)	
Cat Island's Exhibit Number 8	122
(Drainage Design Calculations from 4/5/04)	
Cat Island's Exhibit Number 9	122
(Letter from Ryan Lyle to Richard Geer; dtd 5/28/04)	
Cat Island's Exhibit Number 10	122
(Declaration of Covenants)	
Cat Island's Exhibit Number 11	568
(Letters from: Newkirk Environmental to Gary Meyer; dtd 1/23/08 and Debra King w/Corps to Newkirk Environmental; dtd 1/8/08)	
Cat Island's Exhibit Number 12	122
(Letter from Geordie Madlinger to O'Quinn and placard; dtd 2/18/10)	



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

Cat Island's Exhibit Number 13	122
(O'Quinn Proposal and Contract; dtd 4/8/10)	
Cat Island's Exhibit Number 14	122
(Email to Amanda Nodolf from Gary Meyer; dtd 6/3/10)	
Cat Island's Exhibit Number 17	122
(Letter from Ryan Lyle to Tess Rodgers at SCDHEC; dtd 8/17/10)	
Cat Island's Exhibit Number 18	122
(Emails and information from Jason Painter; RE: Curb Inlet Baskets and Grate Inlet Skimmer Boxes)	
Cat Island's Exhibit Number 19	122
(Letter from Geordie Madlinger to Gary Meyer and placard; dtd 9/3/10)	
Cat Island's Exhibit Number 22	122
(Letter to Ryan Lyle from Amanda Nodolf; dtd 12/3/10)	
Cat Island's Exhibit Number 23	122
(Letter from Sean Briggs to Gary Meyer; dtd 3/8/11)	
Cat Island's Exhibit Number 25	122
(Letter from Ryan Lyle to Richard Geer; dtd 6/9/11)	
Cat Island's Exhibit Number 26	122
(Email from John Guerry Taylor to Chris Moore; dtd 6/20/11)	
Cat Island's Exhibit Number 29	122
(Letter from Ryan Lyle to Richard Geer; dtd 11/21/11)	
Cat Island's Exhibit Number 31	122
(Email from John North to Richard Geer; dtd 12/15/11 with Richard Geer's handwritten notes; dtd 12/19/11)	
Cat Island's Exhibit Number 32	122
(Email from John North to Richard Geer; dtd 1/4/12)	
Cat Island's Exhibit Number 33	122
(Memo from Richard Geer to Geordie Madlinger; dtd 1/9/12)	
Cat Island's Exhibit Number 34	122
(Letters from Ryan Lyle to Richard Geer; dtd 3/9/12)	
Cat Island's Exhibit Number 35	122
(Letter from Ryan Lyle to Richard Geer; dtd 3/16/12)	



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

Cat Island's Exhibit Number 36	122
(Letters from Ryan Lyle to Richard Geer; dtd 5/10/12)	
Cat Island's Exhibit Number 37	122
(Drainage Design Calculations from 5/10/12)	
Cat Island's Exhibit Number 38	122
(Letter from Ryan Lyle to Richard Geer; dtd 5/21/12)	
Cat Island's Exhibit Number 39	122
(Charleston District, Corps of Engineers Public Notice; dtd 7/10/12)	
Cat Island's Exhibit Number 40	122
(SCCZMP Consistency Determination NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities, SCR100000 (2006 NPDES CGP))	
Cat Island's Exhibit Number 41	122
(SCDHEC Final Agency Decision; dtd 9/8/12)	
Cat Island's Exhibit Number 43	122
(Response to Subpoena)	
Cat Island's Exhibit Number 44	476
(Bruning photos)	

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 **THE COURT:** Okay. We've got two cases here. I
2 think they've consolidated these cases for
3 hearing purposes. I'm sorry. Because we
4 consolidated the two cases, it's gotten to be
5 a little convoluted, at least for me. Maybe
6 not for you all. But anyway, let's get
7 started. This is the case of the owners of
8 property located on Cat Island are appealing a
9 decision that was made by the Department
10 granting coverage under a general permit to Cat
11 Island POA care of Gary Meyer and that case is
12 Docket Number 12-ALJ-07-0434. The second case
13 is docket number 12-ALJ-07-0436. That case
14 originally was titled Cat Island POA care of
15 Gary Meyer as the Petitioner versus the South
16 Carolina Department of Health and Environmental
17 Control. In the first case -- I'm sorry -- the
18 South Carolina Department of Environmental
19 Control is also a Respondent in that case as
20 well. We've got John Lewis is representing the
21 Cat Island Property Owners.

22 **MR. LEWIS:** Yes, the Petitioners that are residents
23 along the lake in question.

24 **THE COURT:** Yes, the Petitioners, exactly. And
25 we've got Nathan Haber who is appearing on



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 behalf of DHEC.

2 **MR. HABER:** Yes, Your Honor.

3 **THE COURT:** Thank you. And Mary Shahid who is
4 appearing on behalf of Cat Island POA.

5 **MS. SHAHID:** And Angelica Colwell is co-counsel.

6 **THE COURT:** Okay. Ms. Colwell. Okay. Thank you.
7 Okay. We've addressed all of the -- there are
8 no outstanding motions in this case. We've
9 addressed the motions that were filed prior to
10 this hearing, which included a motion for
11 summary judgment that was filed on behalf of
12 the Cat Island POA. That matter has already
13 been addressed. No, I'm sorry. It was a
14 motion challenging the standing of the property
15 owners. It may have been for summary judgment.
16 Yeah, summary judgment. I'm sorry. We've had
17 a lot to handle with the holidays and
18 everything. And also a motion that was more
19 recently filed by Cat Island which sought to
20 remove Mr. North as the counsel for the
21 property owners and that motion was denied
22 during a telephone conference that I had with
23 the parties on last week. And if everyone is
24 ready and we don't have any other pre-hearing
25 matters to address, we can get started with



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 opening statements.

2 **MR. NORTH:** Thank you, Your Honor.

3 **THE COURT:** Beginning with Mr. North.

4 **OPENING STATEMENT BY MR. NORTH:**

5 **MR. NORTH:** Again, my name is John North. I'm
6 appearing here today with the Petitioners
7 seeking to see aside a stormwater permit that
8 was issued by DHEC. The stormwater retrofit
9 permit is on Cat Island. The developer of Cat
10 Island is Chowan Creek Partners, LLC and that
11 partnership also controls the Cat Island POA.
12 Gary Meyer is here today in court and he is the
13 managing partner of that partnership, the
14 developer. He's also the president of the POA.
15 The developer began development of Cat Island
16 in the 1980s. The development was done in
17 phases. One of the very first phases was
18 called the Rookery and that -- that phase of
19 the development involves platting lots around a
20 Cat Island lake and the lots were platted all
21 along the north side of the lake. The
22 Petitioners in this case represent all of the
23 residents of the lakefront lots that were
24 platted in the Rookery. In 2004 the developer
25 created a phase called Garfield Park. The



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 stormwater permit for that phase of the
2 development relied upon the lake to provide
3 stormwater treatment by detention. The dike
4 that formed the lake was used with its outfall
5 device to detain the stormwater and to slowly
6 release the stormwater over 24 hours as
7 required. In June of 2009 the dike was
8 breached. A hole developed in the dike and the
9 lake drained and from that time until now, over
10 four and a half years later, the stormwater of
11 Garfield Park and the stormwater of the lake's
12 entire drainage basin has been discharged
13 without treatment into the oyster beds and
14 critical areas of Chowan Creek. The developer
15 had the obligation to keep the stormwater
16 system of Garfield Park in good order and
17 repair. Despite that obligation, the developer
18 refused to allow access to the dike across the
19 developers own developed G tract that connected
20 to the dike. An attempt was made to fix the
21 dike with funds provided by the homeowners by
22 large. That fix could not be completed before
23 the high tide rolled in toward the end of the
24 day and washed away all of the fill that had
25 been placed as of that point. The contractor

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 insisted that a proper fix had to be done with
2 access from land in order to be able to get the
3 work done quickly enough and thoroughly enough
4 to be able to support the dike believe the high
5 tide came back in. The developer refused that
6 access through G tract. Instead of fixing the
7 existing storm system, the developer as the
8 controlling entity of the POA avoided the cost
9 of repairing the dike by having the POA seek an
10 alternative stormwater system for Garfield
11 Park. OCRM instead of ordering the repair,
12 which it had the power to do, entertained a
13 retrofit application and OCRM let the process
14 of that permitting drag on for three years.
15 All the while the homeowners were pleading with
16 OCRM to act to stop the -- the tidal waves
17 coming into the lakebed and -- and
18 demonstrating to OCRM the very many grounds
19 upon which the retrofit permit should be
20 denied. Now, the retrofit that was proposed
21 was to use inline filter baskets to treat the
22 stormwater park -- stormwater of Garfield Park
23 only. The proposal was to not treat any of the
24 other stormwater from the entire rest of the
25 drainage basin of the lake and to let that



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 stormwater simply flow out into Chowan Creek
2 untreated and to leave the dike open to tides.
3 After three years of no action, OCRM approved
4 the retrofit permit and certified that it was
5 consistent with the South Carolina Coastal Zone
6 Management Program. The homeowners appealed to
7 the DHEC board and the board affirmed the
8 issuance of the permit, but set aside the
9 coastal consistency determination that's
10 required for any permit within the coastal
11 zone, based upon a lack of proof as to the
12 distance between Garfield Park and the
13 shellfish beds of Chowan Creek and all of the
14 parties have asked this Court to review the
15 board action. The Petitioners will demonstrate
16 that the retrofit permit should be set aside on
17 many different grounds. Number one, OCRM
18 ignored the requirements of state statutes and
19 state regulations based upon the erroneous
20 factual assumption that the retrofit permit did
21 not affect the critical area. The critical
22 area by state statute includes all tidal areas.
23 The Petitioners will show that the retrofit
24 permit did affect the critical area because
25 number one, it added eight acres of the

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 detention pond mud bottom to the critical area
2 when it allowed the dike to remain unrepaired.
3 Number two, it allowed the entire drainage
4 basin of the lake to have its stormwater
5 discharge without any treatment when the
6 retrofit -- without the retrofit the entire
7 drainage basin was treated in accordance with
8 the -- with the regulations by the lake. And
9 number three, it required that the dike be
10 stabilized which involved securing those
11 portions of the dike that were exposed to tidal
12 flows, which by definition is work in the
13 critical area. Because the retrofit permit
14 ignored the regulations that are applicable to
15 discharges into the critical area, it must be
16 set aside. We will show that the retrofit
17 violates numerous additional regulations. When
18 the development is within one half mile of the
19 coastal zone, the regulations require a permit
20 pool of water to store and release the
21 stormwater over 24 hours by either retention of
22 detention. The lake did so. OCRM waived this
23 requirement and they also waived the stormwater
24 quantity controls. However, the regulations
25 are quite clear. You can only make those



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 waivers if, quote, the proposed project will
2 have no significant adverse impact on
3 downstream properties. This proposed project,
4 by leaving the dike unrepaired, resulted in
5 tidal encroachment on Petitioners land. OCRM's
6 position is that the harm to Petitioners is not
7 caused by stormwater and this is a stormwater
8 permit, and we will show that the regulations
9 talk about the impacts of the proposed project,
10 not whether or not you happen to be harmed by
11 stormwater as opposed to tidal surges. This
12 project -- we will further demonstrate that the
13 retrofit violates regs that have to do with
14 proximity to shellfish beds. OCRM ignored a
15 professional survey provided by the homeowners
16 that showed the distance between Garfield Park
17 and the oyster beds to be 700 feet. They
18 ignored rope measurements and photos of those
19 measurements provided by the homeowners and
20 they refused the homeowners offer to
21 independently accompany them to inspect the
22 means and manner by which the rope measurement
23 was taken. We will present the measurement of
24 the developer's engineer that finds that the
25 distance is actually five feet too far away for



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 this regulation to apply. They find that it's
2 1,005 feet, but they get that measurement by
3 starting to measure from a point that's 300
4 feet inside the boundary of Garfield Park and
5 they get that measurement by starting to
6 measure 300 feet upstream from the stormwater
7 Garfield Park outlet to the lake. Our evidence
8 will demonstrate that OCRM never analyzed the
9 extent to which the retrofit project could
10 affect the value and enjoyment of adjacent
11 homeowners. We will show that the South
12 Carolina Coastal Management Program requires
13 that analysis and precludes stormwater waivers
14 that -- where there are harmful results to
15 adjacent property owners. If this retrofit
16 permit is approved, the Petitioners will have
17 up to 18 inches of ocean water on their home
18 sites. They will have lost their lakefront
19 property that they purchased from the
20 developer. They now have a grotesque mud pit
21 and have lost all of the wildlife that
22 motivated them to buy those properties in the
23 very first place. One of our Petitioners has
24 appraisals that demonstrate value before and
25 after the dike breach that show a 190,000



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 decrease in the value of just his lot between
2 the time of the lake and what it is today.
3 There are six lots owned by the Petitioners, so
4 from our standpoint the adverse consequence to
5 the homeowners from allowing this retrofit is
6 a seven figure damage claim. We will show that
7 leaving the dike open results in the
8 destruction of freshwater wetlands. That is
9 barred by the regulations which we will present
10 to the Court. The Petitioners will present
11 their expert who will affirm that their factual
12 assertions are correct and they will -- this
13 expert will demonstrate the many flaws in the
14 manner in which the retrofit permit was handled
15 and the violations of the regulations that
16 result from any approval of it. Chowan Creek
17 is designated as a shellfish harvesting area.
18 The anti-degradation regulations in South
19 Carolina forbid any permit to lessen the
20 quality of such waters. Without the dike the
21 entire tidal basin other than Garfield Park
22 flows untreated into these protected waters and
23 degrades the water quality in violation of the
24 regulations. We will ask that the Court
25 approve -- we will ask that the approval of the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 retrofit by DHEC be reversed and that this
2 Court find that the coastal consistency
3 determination that is required as a condition
4 of any permit in the coastal zone cannot be
5 issued when the stormwater of the drainage
6 basin is not detained as required by the
7 regulations of the state. Thank you.

8 **THE COURT:** Thank you.

9 **MS. SHAHID:** Can I use the overhead?

10 **THE COURT:** Yes.

11 **OPENING STATEMENT BY MS. SHAHID:**

12 **MS. SHAHID:** Your Honor, we gave you a great deal of
13 background about this case in October and so I
14 will endeavor not to repeat myself. I think it
15 will all be borne out by the testimony and I
16 think you've heard opening statements long
17 enough to understand that many of the
18 statements made by Petitioners counsel as
19 disputed, are not stipulated facts or known
20 facts but are disputed fact. But this is a
21 Google Earth image of Garfield Park and Cat
22 Island and -- I need to get oriented. I'm
23 sorry, Your Honor. This darker area here is
24 the area in question and as this dike has been
25 in place probably since the '50s, this was



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 constructed we believe to be a duck pond of
2 sorts, called a managed tidal impoundment.
3 Where my finger is now is the approximate
4 location of the dam that separated the dike
5 from the river here, although there was a flat
6 gate and a -- what they call a flashboard riser
7 that allowed water to come into the area, to
8 the lake, and it is that dike that failed and
9 the Petitioners properties are surrounding the
10 dike. And it is that dike that initially upon
11 failure qualified for normal maintenance and
12 repair and my client, the developer, did
13 attempt to repair the dike and that attempt
14 failed, and my client began to consider other
15 options to repairing the dike. The end result
16 of that is that what was previously an
17 impounded water body artificially created is
18 now a natural tidal marsh connected directly to
19 the tidal creek. I think this is Chowan Creek
20 out here. And so that's -- that's the result
21 of the decision not to take any further means
22 to repair the dike. At some point in time,
23 repair of the dike was no longer an option.
24 The dike would have to be rebuilt and as we
25 argued in our motion for summary judgment



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 before the Court, that sort of changed the
2 landscape for the developer in that, instead of
3 qualifying with a letter from DHEC for
4 maintenance and repair, he would have to submit
5 applications to state and federal agencies and
6 get a permit to put the dike back in. This --
7 testimony from OCRM witnesses will be that what
8 was formerly the lake is now a tidally
9 influenced marsh and is critical area and that
10 OCRM's stormwater engineer will testify that
11 you can't take critical area and turn it into
12 a stormwater or detention basin. OCRM's other
13 witness, Geordie Madlinger, will testify
14 regarding the complexities of any alteration to
15 critical area, which is what this basin has
16 become, a tidal salt marsh. Petitioners like
17 to call it a mud hole but Your Honor will see
18 recent photographic evidence of it and you'll
19 see that it is revegetating and that during
20 every tidal cycle, it fills with water and then
21 water leaves and then it fills back up and then
22 the water leaves. So that's essentially a
23 summary of what we think are the critical
24 facts. There are certain legal standards that
25 apply here and I'll tell you, Your Honor, the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 critical area regulations do not apply here.
2 Mr. North has offered into evidence, at least
3 in the stack of exhibits that we've reviewed,
4 the critical area regulations 48-39-10, et seq.
5 Those apply to critical area permits. When we
6 attempted to repair the dike we were working in
7 an upland area. The earthen dam itself was not
8 critical area. It was an upland area. If it
9 was critical area and the attempt was made, we
10 did it under normal maintenance and repair, so
11 we didn't have to get a critical area permit.
12 If we were working inside the critical area
13 within that earthen dam, meaning that area that
14 regularly receives tidal flow, we were doing it
15 under normal maintenance and repair and didn't
16 need a critical area permit. The project
17 that's before you now from review is the
18 installation of water filters inside existing
19 stormwater pipes to provide infiltration of
20 stormwater to address water quality issues.
21 Those pipes are not located in the critical
22 area. Those pipes are located within the
23 upland of the development known as Garfield
24 Park underground, so for -- it's going to cause
25 a lot of confusion at the outset if Petitioners



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 insist to you that a whole body of regulations
2 is intended to apply to this activity that
3 doesn't apply. This was not a critical area
4 permit. It was a permit to redesign a
5 previously permitted stormwater system. All
6 work is being done in the uplands. If as a
7 result of this stormwater permit it has an
8 effect on critical area, you view that through
9 stormwater regs. There is no activity in the
10 critical area triggering the agency's critical
11 area regulations and that just needs to be
12 clear from the outset, Your Honor. And what is
13 happening as a result of the stormwater
14 filters? It would be called an enhancement of
15 critical area. We took an area that was
16 brackish at best because it was a lake that was
17 impounded that received stormwater flows but
18 had some input and output with the river,
19 brackish water at best, and because of not
20 being able to repair the dike it has now become
21 a critical area marsh. We're not hurting the
22 critical area. We have enhanced the critical
23 area by not re-impounding and letting this be
24 in its natural state. So I just think that
25 needs to be clear. Now, what regulations do



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 apply? You will hear from the DHEC witnesses
2 that the following requirements apply: The
3 first requirement is a coastal zone policy from
4 the '93 program refinements that is treated as
5 a regulation and is applied as a regulation.
6 And what that policy says is that for projects
7 that are in the coastal zone, for all projects
8 regardless of size which are located within one
9 half mile of a receiving water body in the
10 coastal zone, you have to store the first half
11 inch of runoff from the entire site. And then
12 it goes on to say storage may be accomplished
13 through retention, detention or infiltration
14 systems. Okay? Now what are we doing now?
15 We're putting in an infiltration system for
16 water quality. What did we do before when we
17 first built Garfield Park phase two? We
18 assumed instead of building a small detention
19 pond somewhere within the development, because
20 all we have to do is store the first flush, the
21 first half inch of runoff because that's the
22 most heavily polluted runoff, so instead of
23 finding a little half acre site, digging a hole
24 and putting it in there, we assumed through our
25 modeling that it could just go through the pond



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 and it will -- it will filter out, the
2 pollutants will filter out in the pond, and
3 that was okay with DHEC. It was treated as a
4 detention pond for the purpose of filtering out
5 pollutants. When the pond was lost as a result
6 of the breach of the dike, we now propose
7 infiltration, filters within the lines which is
8 completely consistent with the requirements.
9 We went from detention to infiltration, which
10 the policy allows but more importantly, Your
11 Honor, the other body of reg that governs is
12 72-300 and I'll just read you some of the
13 appropriate regulations. There's a definition
14 of detention structure. A permanent stormwater
15 management structure whose primary purpose is
16 to temporarily store runoff and release the
17 stored runoff at controlled rates. That's a
18 best -- I'll read you the definition of best
19 management practices. A wide range of
20 management procedures that have been
21 demonstrated to effectively control the quality
22 or quantity of stormwater. So a detention
23 structure, which is what we assume the pond was
24 doing, was a best management practice under 72-
25 300. Couple more applicable regs: Retention



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 structure. Petitioners are going to claim that
2 the pond should be a retention structure, which
3 means it should never release any water, never
4 release any water, because there's a regulation
5 that says you're within 1,000 feet of shellfish
6 beds, you have to retain. Retain means you
7 never let it go. Detain means you release it
8 slowly at a controlled rate. So there's a
9 regulatory definition of retention structure
10 which the pond never was. It never was
11 providing retention and it's silly now to come
12 back and say the pond -- that we had a
13 retention pond and it has to be a retention.
14 That water was released regularly out of that
15 pond. And then there's a regulatory definition
16 in 72-300 and I believe the specific cite is
17 302(b) that addresses waivers. This is
18 important because DHEC staff will testify that
19 they relied on 72-300 to authorize a waiver
20 here. When they saw that we couldn't provide
21 the detention anymore in the lake, they gave a
22 detention waiver for water quality. They said
23 you don't have to hold it. We're going to
24 waive it. You can just let it flow right into
25 that creek. They said but that lake was

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 performing two functions. It was holding water.
2 but it was also cleaning up the water and we
3 need another method to clean up the water.
4 You're not going to let it filter out in the
5 lake. It's not going to flood anybody. It
6 just flows right into that big creek and right
7 out into those tidal water bodies. It's not
8 going to damage anybody, but we need another
9 method to clean up the water so going back to
10 the program policy that says you can use
11 detention, retention or infiltration, and
12 looking at another critical reg in 72-305(b)
13 says these requirements -- and it's all the
14 requirements to treat water quality and water
15 quantity -- these requirements may be modified
16 on a case by case basis to address specific
17 stormwater quantity or quality problems.
18 Requests for waivers or variances from these
19 requirements will be made in accordance with
20 72-302. What we have, Your Honor, is a set of
21 regulations that give us the roadmap to address
22 a solution. We're using infiltration which the
23 program management document recognizes as a BMP
24 to treat water quality. We are getting a
25 waiver for detention, which is authorized and

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 will be justified when you hear the testimony
2 under these regs. One more regulation, Your
3 Honor, that is very important for me to
4 introduce you to is 72-305 -- and I believe
5 it's (d). I'm sorry 70-307(e)(3). Residential
6 subdivisions which were approved prior to the
7 effective date of these regulations are exempt
8 from these requirements. Development of new
9 phases of existing subdivisions which were not
10 previously approved shall comply with these
11 provisions. That's very important because much
12 of what's been developed out there predates
13 regulation. That would be before 1992 and --
14 and Mr. Richard Geer who will testify for DHEC
15 is very clear at what he looked at. He did not
16 look at the exempt development that surrounds
17 this development because there were no
18 requirements with that exempt development for
19 water quality or water quantity with their
20 discharge. Mr. North is going to work very
21 hard during this hearing, Your Honor, to make
22 the exempt development, the pre-1992
23 development, be a consideration and it simply
24 is not. This regulation makes clear that Mr.
25 Geer's treating of this matter was appropriate



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 and the only thing that you look at is the
2 regulated development and here, that's Garfield
3 Park phase two. And then when you look at it
4 in the context of all the other regs, the
5 retrofit or modification is appropriately
6 supported by the applicable regs. Not the
7 inapplicable regs, but the applicable regs.

8 Thank you, Your Honor.

9 **THE COURT:** Mr. Haber?

10 **OPENING STATEMENT BY MR. HABER:**

11 **MR. HABER:** Thank you, Your Honor. Good morning.
12 I'm not going to walk through the regs with
13 you. I think that throughout the presentation
14 of our witnesses, everything will get worked
15 out between the inconsistencies that have been
16 stated regarding these regulations. However,
17 the matter before this Court contains a lengthy
18 record. In fact, my client's permitting file
19 is probably the largest I've seen since I've
20 become counsel here. In that regard as a
21 public agency, one of my client's obligations
22 in the permitting review process is to elicit
23 comments regarding submitted applications.
24 Typically this is a formal process. When
25 comments are received, they are evaluated by



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 staff in that particular section, submitted to
2 other sections within the department or other
3 resource agencies for input in their areas of
4 expertise in order to obtain responses to those
5 comments. These comments are also sent out to
6 the applicant for specific responses as well.
7 I mention this because repeatedly this process
8 regarding this matter has been referred to by
9 the Petitioners, the homeowners along the lake,
10 as taking a long time and likely this Court
11 will hear the echo of this sentiment -- again
12 heard the echo of this sentiment in opening
13 statement of Petitioners. Such a sentiment is
14 misplaced upon my client. Throughout this
15 review process, Petitioners have continually
16 sent countless emails, summaries, reports, FOIA
17 requests, et cetera, to numerous people
18 throughout our department. Not to be
19 misunderstood, this is my client's obligation
20 to receive such comments and to evaluate these
21 comments. However, I simply would like to
22 relay to the Court any casting such blame upon
23 my client which Petitioners have done
24 throughout this process is unfair and misplaced
25 as each of these communications have to be

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 evaluated whether that be internally of
2 externally. To a brief summary of the facts,
3 in June of 2012 the Department issued two
4 decisions regarding the installation of water
5 quality filters located in Garfield Park Phase
6 3. One was a decision to grant coverage under
7 a general permit for stormwater discharges for
8 loss and small construction activities, and two
9 was a determination that the proposed project
10 is consistent with the South Carolina Coastal
11 Management Program document, essentially a
12 coastal zone consistency determination. In
13 August of 2012 the board held a final review
14 conference based upon a request made by John
15 North on behalf of some of the residents in the
16 vicinity of the site. After hearing the board
17 concluded to rescind the coastal zone
18 consistency determination. Section 13 of the
19 policies and procedures, which Ms. Shahid has
20 discussed with you, provides, quote, in
21 addition for those projects which are located
22 within 1,000 feet of shellfish beds, the first
23 one and one half inches of runoff from the
24 built-upon portion of the property must be
25 retained on site. The recision by the board of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the coastal zone consistency determination was
2 based upon a finding that no party presented
3 sufficient evidence to determine the exact
4 distance of this project to the shellfish beds.
5 The board noted the requestor's challenge
6 included numerous issues but the board found no
7 other compelling grounds to amend, modify or
8 rescind the staff decision. Many collateral
9 issues will be raised to this Court throughout
10 this proceeding and we've heard a few already.
11 A few things are important to remember. The
12 impoundment was created in the 1960s or 1970s.
13 Garfield Park Phase 3 utilized this detention
14 pond for their stormwater permit for the
15 development of the area. Garfield Park Phase
16 3 is the only subdivision permitted to use this
17 detention pond. The dike blew out. A repair
18 was attempted under a department maintenance
19 and repair acknowledge and the dike blew out
20 again. The developer submitted a permit
21 application for an alternative means to treat
22 the water quality issue. What is being
23 challenged is the stormwater permit, not a
24 critical area permit. Though because this
25 project is located within the eight coastal



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 counties, a coastal zone consistency
2 determination is also required. My client
3 adhered to the regulations, conducted a
4 thorough review of the issues presented by the
5 Petitioners. I would ask this Court after
6 consideration of the evidence to uphold the
7 final Agency decision which rescinded the
8 coastal zone consistency determination based on
9 the lack of sufficient evidence as to whether
10 this project is located outside the 1,000 feet,
11 allowing a review of the new information in
12 that regard, and finding that the multitude of
13 other arguments raised by Petitioners lack
14 merit for any modification or dismissal of the
15 Agency's determination. Thank you, Your Honor.

16 **MS. SHAHID:** Your Honor, I'm going to remove my
17 exhibit.

18 **THE COURT:** Mr. North, you can prepare to call your
19 first witness.

20 **MR. NORTH:** Yes, Your Honor, as a preliminary matter
21 I'd like to discuss with the Court if I could
22 the handling of exhibits. I've discussed it
23 with the court reporter already. I have four
24 notebooks full of exhibits. I've prepared a
25 set of those four notebooks, the originals, for



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the witness to look at and to ultimately become
2 part of the record in the case. I have an
3 extra set that I have available for the Court
4 if the Court wants to use that to thumb through
5 and look at the exhibits that the witnesses are
6 referring to. That extra set is just a
7 complete extra set so if the Court is inclined
8 to make notes or do whatever you want with that
9 set of exhibits, but I have them here in a box
10 available to you if you'd like me to present
11 them.

12 **THE COURT:** Yes.

13 **MR. NORTH:** I also have the originals over by the
14 witness stand and there's also a -- well, I
15 have a list that's accompanying those that
16 gives a schedule of what they are by number.

17 **MS. SHAHID:** Your Honor?

18 **THE COURT:** Yes.

19 **MS. SHAHID:** With regard to Petitioners Exhibits,
20 there's a whole group of them that are not
21 objected to and a very small group that are
22 objected to and I don't know how Petitioners
23 counsel feels about -- but I think it would
24 speed things up if we went ahead and noted what
25 we didn't object to so he doesn't have to go



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 through it in procedure with that.

2 **THE COURT:** Okay. You're going to use this?

3 **MR. NORTH:** Yes.

4 **THE COURT:** Okay.

5 **MS. SHAHID:** And I don't know that Mr. Haber and I
6 have the same objections and we haven't
7 combined our objections. Do you just want to
8 hear from each of us?

9 **THE COURT:** Yes.

10 **MS. SHAHID:** Number 4, Number 7, Number 9, 10, and
11 11, 17. And now I'm on the second page, Your
12 Honor. 32, 34, 37, and 47. That's it from us.
13 4, 7, 9, 10, 11, 17, 32, 34, 37 and 47.

14 **THE COURT:** Those are the ones that you have
15 objection to?

16 **MS. SHAHID:** Yes, ma'am.

17 **THE COURT:** Okay. Mr. Haber?

18 **MR. HABER:** Yes, Your Honor, in order to avoid being
19 completely repetitive, I think I got most of
20 Ms. Shahid's. Department would object to
21 portions -- well, sorry -- Number 12, Number 46
22 conditionally, Number 77, 78 and 79.

23 **THE COURT:** 77, 78 and 79?

24 **MR. HABER:** Yes, Your Honor.

25 **THE COURT:** And the rest of them, all the parties



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 have agreed and have no objections to those
2 exhibits?

3 **MR. HABER:** Correct, Your Honor, anything that ---

4 **THE COURT:** That you and Ms. Shahid did not ---

5 **MR. HABER:** Yes, Your Honor.

6 **THE COURT:** Okay. Very good.

7 **MR. NORTH:** Well, Your Honor, for the sake of
8 simplicity then, can we just consider all the
9 non-objected to exhibits offered and received
10 into evidence?

11 **THE COURT:** Is that agreeable to ---

12 **MS. SHAHID:** Yes, yes.

13 **MR. HABER:** Yes, Your Honor. Fine.

14 **THE COURT:** They're admitted.

15 (Petitioners Exhibit Numbers 1-3; 5, 6, 8, 13-16, 18-
16 31, 33, 35, 36, 38-45, 48-76, and 80 were admitted
17 into evidence.)

18 **MR. NORTH:** And with regard to those objections,
19 grounds weren't stated for the objections but
20 I would suggest that we simply deal with the
21 exhibits as they come up with the witness and
22 foundation is laid, and then the Court can rule
23 individually once a record is made if they so
24 choose.

25 **THE COURT:** And that's what we'll do.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 **MR. NORTH:** Okay. Thank you.

2 **MS. SHAHID:** And, Your Honor, DHEC and Cat Island
3 have much fewer exhibits than Mr. North and
4 would potentially want to use our exhibits on
5 cross-examination of the witnesses that Mr.
6 North is presenting. I don't know if he's
7 prepared at this time to speak to objections to
8 our exhibits or not.

9 **THE COURT:** Are you, Mr. North?

10 **MR. NORTH:** I am not. In my view until the witness
11 testifies about the exhibit and the foundation
12 is laid, it's hard to say for sure whether
13 there is an objection.

14 **THE COURT:** Okay. Well, we'll address it as we get
15 there. Okay.

16 **MR. NORTH:** Your Honor, I would call as our first
17 witness Gary Meyer.

18 **THE COURT:** Mr. Meyer, before taking your seat if
19 you'll raise your right hand and face the court
20 reporter, she'll swear you.

21 **GARY M. MEYER,** having been duly sworn, testifies as
22 follows:

23 **COURT REPORTER:** Please state and spell your name
24 for the record.

25 **THE WITNESS:** Gary Meyer -- M-E-Y-E-R.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

MR. MEYER - DIRECT EXAMINATION BY MR. NORTH:

Q: Could you please describe for me your employment after you got out of college?

A: My employment after college?

Q: Did you graduate from college?

A: Yes, I did.

Q: Okay. And after college describe your employment.

A: I worked for Corning Glassworks in upstate New York for about 12 years.

Q: When did you -- how long after you got out of college did you begin being involved in the development of Cat Island?

A: Purchased Cat Island in 1982.

Q: And how long after you got out of college was that?

A: Eighteen years.

Q: Is it fair to say that one of the first phases of development was the Rookery?

A: It was the second phase.

Q: Okay. Describe for the Court the various phases of the development in terms of portions of the island.

A: Well, we had several phases. We had the Point, the Rookery, Sheffield -- Sheffield Avenue,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Ravenswood, Wood Dale, the Hunters Ridge,
2 Garfield Park. That's kind of it.

3 Q: And do you have additional phases contemplated
4 in the future?

5 A: We have -- we have undeveloped tracts that are
6 in our plans.

7 Q: Okay. And that's how you would describe then
8 the totality of your development of the Cat
9 Island property?

10 A: Right.

11 Q: When your group acquired control of Cat Island,
12 tell me what improvements or work was done on
13 the dike that created Cat Island Lake.

14 A: My recollection, we didn't do anything other
15 than possibly replace one of the flashboard
16 boards that was in there.

17 Q: Okay. What work have you done on the dike
18 since your group purchased the property?

19 A: Other than that attempted repair, we haven't
20 done any.

21 Q: Okay. So you haven't had any involvement with
22 handling the dike or improving the dike or ---

23 A: No.

24 Q: --- doing anything to the dike?

25 A: No.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Did anybody ever go out and look at the dike?

2 A: Sure, we did. Yeah. We had complaints about
3 the lake being polluted, algae growing, from
4 the people that lived on -- on the lake, a lot
5 of complaints.

6 Q: Okay. Would algae form every summer when the
7 water heated up?

8 A: Depending on the -- on how the tides were
9 coming in, because the tides washed in and out
10 twice a day, but with low tides and limited
11 rainfall, it would be very -- it would be very
12 muddy.

13 Q: When you say with low tides, is it fair to say
14 that for tides that don't have a very high
15 range, that those wouldn't supply the salt
16 water ---

17 A: Wouldn't supply the salt water ---

18 Q: --- to the lake?

19 A: --- to the lake.

20 Q: It was only the higher tides that then brought
21 salt water into the lake?

22 A: The higher tides and rainfall that would
23 supplement the -- would be fresh water.

24 Q: Okay. So is it fair to say that the lake
25 retained all of the stormwater of its drainage



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 basin, and additionally at some of the higher
2 tides, salt water would come into the lake?

3 A: Well, it wasn't just the higher tides. Even
4 medium tides. The water came in on a very
5 regular basis, but was limited by how high the
6 tide was.

7 Q: Okay. Now, on this -- this outfall device, you
8 talked about some boards. Describe for the
9 Court what that outfall device is and how it
10 was ---

11 A: Its called the flashboard riser and that was --
12 that was there when we -- when we purchased Cat
13 Island. It was done to control the water and
14 they had duck blinds in it and they used to
15 shoot ducks.

16 Q: Okay.

17 A: That was it.

18 Q: And do you recall that there were two or three
19 boards that you could insert into the riser?

20 A: I -- I believe there were three boards in that.
21 Right.

22 Q: Okay. And is it fair to say that you would
23 keep all three in the riser to maximize the
24 depth of the lake?

25 A: Fair to say that. Right.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. And once you had control of the
2 property, do you recall platting residential
3 lots in a subdivision that you called the
4 Rookery?

5 A: Right. Uh-huh.

6 Q: Why did you name it the Rookery?

7 A: Birds.

8 Q: The birds that populated the lake?

9 A: Right. Uh-huh.

10 Q: Did you sell those lots as lakefront lots?

11 A: Well, I don't think we made any -- you could go
12 and look at them and see what it was. I mean,
13 it was a lake, you know.

14 Q: Okay.

15 A: A tidal -- I mean, it was ---

16 Q: Is it fair to say you charged a higher price
17 for lakefront property than you did for other
18 properties?

19 A: I don't think that's fair. I think we charged
20 more money for marsh front property than we did
21 lakefront property. There was problem -- there
22 were problems with that lake as I already told
23 you.

24 Q: Well, tell me the problems.

25 A: We -- it was very low and muddy a lot of times.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 We had -- we had algae growing on there. We
2 had -- it would smell. We actually thought
3 about one time, you know, trying to auger it
4 and get rid of the dike.

5 Q: To do what? Auger the dike?

6 A: Alter -- yes, and make it a tidal marsh like it
7 is right now. We had a lot of complaints about
8 that lake.

9 Q: When the dike failed, describe for me your
10 recollection of the chronology of discussions
11 with homeowners on addressing the problem.

12 A: You said the chronology. Do you mean the time
13 and who called first and how did we find out?

14 Q: Yes, I mean, what happened after the lake --
15 the dike failed.

16 A: Well, we discussed what -- what we could do to
17 rebuild it. I mean, that was the general
18 feeling that people wanted it rebuilt.

19 Q: Do you recall getting funds from the homeowners
20 to pay for an attempt to repair the dike?

21 A: Yeah, you were involved very closely. You know
22 the situation.

23 Q: Okay. And do you recall refusing to allow
24 access to the dike through G tract?

25 A: Why would we give access through the G tract?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: My only question is do you recall taking that
2 position?

3 A: Absolutely.

4 Q: Okay. And do you recall that the attempt to
5 fix the dike was then done by a contractor who
6 tried to take dirt off of a floating barge?

7 A: I remember that.

8 Q: Okay. And do you recall that the dirt couldn't
9 get put into place before the tide came in and
10 washed it away?

11 A: I guess that's what happened.

12 Q: Do you recall -- was the contractor Duncan
13 O'Quinn?

14 A: Absolutely.

15 Q: And do you recall that he insisted after that
16 that if he was going to fix it properly, he had
17 to have access through G tract?

18 A: He had other access through Rush Street but why
19 he needed it through G tract, we could never
20 figure that out.

21 Q: Okay. Is it fair to say though that you have
22 consistently refused to allow anybody to have
23 access through G tract?

24 MR. HABER: Your Honor, can I just state an
25 objection on the record as to this line of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 questioning?

2 **THE COURT:** Yes.

3 **MR. HABER:** What is being challenged here is the
4 stormwater permit. As to the relevance of who
5 is accessing what as to how repairs are done,
6 I don't believe is relevant in this case. What
7 is being challenged is an alternative that was
8 presented by the applicant to be evaluated by
9 the Department. Access to how repair is done,
10 how repair was done, who did the repair, I
11 don't see has any relevance as to the
12 stormwater permit that is being challenged in
13 this Court.

14 **THE COURT:** Mr. North?

15 **MR. NORTH:** Your Honor, I think that unless we set
16 the factual setting for the dispute between the
17 parties, it will be very difficult to follow
18 the relevance and the issues having to do with
19 delays and interference with getting this
20 problem addressed, and I'm just trying to lay
21 some bare bones factual background.

22 **MR. HABER:** Your Honor, with all due respect, bare
23 bones factual background would begin at the
24 application process. It would have -- the
25 challenges between the Petitioners and this



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Department as to the issuance of the stormwater
2 permit. The factual backgrounds as to how
3 someone accessed a tract, how a dike was
4 attempted to be repaired, is of no relevance in
5 this matter.

6 **THE COURT:** And that may be the case, but I -- I'm
7 interested in this testimony and I will
8 determine how much weight is given to it.

9 **MR. HABER:** Thank you, Your Honor.

10 **THE COURT:** Mr. North, you can proceed.

11 **MR. NORTH:** Yes, thank you, Your Honor.

12 Q: Is it fair to say that Chowan Creek Partners,
13 the developer, has a deed to the lake and the
14 dike?

15 A: I think it's fair to say we have a deed,
16 although I doubt very seriously if we own the
17 lake. It's owned by the State of South
18 Carolina. We've had some other opinions on
19 that.

20 Q: Is it fair to say that to this day, your
21 partnership pays property tax on the lake ---

22 A: I think ---

23 Q: --- to Beaufort County?

24 A: --- I think we do. That doesn't mean you own
25 it.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Would you agree that the 2004 stormwater permit
2 for your development of Garfield Park relied
3 upon the lake to provide stormwater treatment
4 by detention?

5 A: It was Garfield Park Phase 3 in 2004.

6 Q: Correct. And Garfield Park phase one and two
7 were a year or two before?

8 A: Were before detention was required.

9 Q: Okay. But in any event, with regard to
10 Garfield Park Phase 3, you agree that the lake
11 and its outfall structure provided the
12 detention required by the regulation?

13 A: That's my understanding.

14 Q: Would you agree that the developer as the
15 permittee had a duty to maintain the dike and
16 the outfall device?

17 A: Or come up with an alternative, which we did.

18 Q: If the dike -- strike that. Next to you is a
19 box of documents. If you would take a look at
20 Exhibit 36, I'd appreciate it.

21 A: Exhibit 36?

22 MS. SHAHID: John, it would help us ---

23 THE WITNESS: How would I find that?

24 MS. SHAHID: --- if you know whether 36 is a
25 deposition exhibit or in the stack you handed



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 us today, because we've got two separate
2 stacks. Do you know?

3 MR. NORTH: I don't know.

4 MS. SHAHID: Okay.

5 THE WITNESS: How do I find 36?

6 MR. NORTH: Well, the exhibits are in order.
7 They're in four binders. I would suggest the
8 second binder from your left.

9 Q: Do you recognize Exhibit 36 as a true and
10 correct copy of a proposal that you got from
11 Duncan O'Quinn to repair the dike properly by
12 getting access through G tract after the first
13 attempt to repair failed?

14 A: Yes, I remember this.

15 Q: Okay. And if you would ---

16 A: This does not say G tract. The cut right-of-
17 way.

18 Q: Well, do you recall that that related to
19 included expenses for getting across G tract --
20 -

21 A: Right.

22 Q: --- and getting access for heavy equipment
23 through G tract to get to the dike?

24 A: Yeah, we questioned the wisdom of that. Why
25 was that required when you could have gone



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 right through Rush Street with about one-tenth
2 of the -- of the distance.

3 Q: Okay. Take a look if you would at Exhibit 18,
4 which is to your left here. Do you recognize
5 that as a true and correct copy of a letter
6 that you received from Steve Andrews, your
7 engineer, in connection with the development of
8 Cat Island?

9 A: Yes, I remember this.

10 Q: Do you remember the opinion of Mr. Andrews and
11 his firm and his recommendation to you was to
12 simply repair the dike as the cleanest, easiest
13 and most efficient option relative to
14 engineering and permitting?

15 A: Yeah, I remember this.

16 Q: Why did you not follow his instruction?

17 A: Because we disagreed with it.

18 Q: Pardon?

19 A: We disagreed with it.

20 Q: Who is we?

21 A: First all was a property owner issue and this
22 is saying you had to have access to parcel G
23 which has nothing to do with the property
24 owners. The place to go to that dike would
25 have been through Rush Street and I think



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 everybody knew that.

2 Q: Okay. And was that the reason you didn't
3 follow his recommendation?

4 A: Yes. Yes, exactly.

5 Q: Take a look in paragraph four, if you would.
6 Do you see where Mr. -- your engineer is saying
7 that re-establishing the pond provides two
8 windfalls. First, it will provide the required
9 stormwater management for the development of G
10 tract and provide fresh water as opposed to
11 marsh boundary along G tract. Do you see that?

12 A: Yeah, I see that.

13 Q: Okay.

14 A: That's incorrect.

15 Q: In what way?

16 A: Wouldn't provide any fresh water access
17 whatsoever. That's salt water. It was always
18 salt water.

19 Q: Okay. What's your basis for saying it was salt
20 water?

21 A: Marsh grass growing; has forever.

22 Q: You're saying that marsh grass prior to the
23 break in the dam ---

24 A: Yes.

25 Q: --- was growing ---



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Yes.

2 Q: --- and ---

3 A: Yes. No question about it.

4 Q: Do you have any proof ---

5 A: Yes.

6 Q: --- or evidence of such a claim?

7 A: Mr. Madlinger will be in here. When Mr. Feron
8 built his house, Mr. Madlinger came out, looked
9 and made him move his house back 50 feet
10 because of the -- being a critical area before
11 the dike broke.

12 Q: Are you saying that your engineer is wrong to
13 call the lake a freshwater lake?

14 A: I'm saying that is wrong. Exactly. It was a
15 saltwater lake.

16 Q: Are you aware that the U.S. Army Corps of
17 Engineers has done wetland determinations ---

18 A: Yes.

19 Q: --- of the lake?

20 A: Yes, I did and they were wrong.

21 **THE COURT:** Mr. North, Mr. Meyer, you're causing the
22 court reporter a little heartburn here.

23 **THE WITNESS:** Oh, am I ---

24 **THE COURT:** Y'all are talking at the same time. If
25 you will let him finish his question ---



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 THE WITNESS: Okay. I'm sorry.

2 THE COURT: --- and then you ---

3 THE WITNESS: All right. Very good.

4 THE COURT: --- answer. Thank you.

5 Q: Are you aware that the U.S. Army Corps of
6 Engineers has done a wetland determination of
7 the lake and has determined that all of the
8 wetlands surrounding the lake are freshwater
9 wetland?

10 MS. COLWELL: Objection, Your Honor. The basis of
11 the question is framed about what the Corps'
12 decision was, not -- they're not present at
13 this proceeding.

14 MR. NORTH: My question was simply whether he was
15 aware of it.

16 THE COURT: I'm going to allow it.

17 A: I think I'm aware that the Corps looked at the
18 area but they -- it was -- it was wrong. I
19 mean, the -- DHEC and OCRM people looked at it
20 many times. There was -- there was marsh grass
21 growing in that lake before the dike broke.

22 Q: Okay. Are you aware that algae cannot grow in
23 salt water?

24 A: In periods of time when it was very low you
25 could have algae on it.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Are you aware that big, tall 40-foot trees
2 don't grow on the edge of saltwater lagoons?

3 A: I'm not aware of that at all. They do all the
4 time.

5 Q: Are you aware that the entire perimeter of the
6 Cat Island lake was filled with freshwater
7 vegetation as opposed to saltwater vegetation?

8 A: I don't agree with that at all. I don't know
9 where you're getting your information.

10 Q: Are you aware that there are multiple documents
11 produced in this case by your engineers, all of
12 which show freshwater wetlands surrounding the
13 lake?

14 A: I'm not aware of that.

15 Q: Do you recall dedicating freshwater wetlands in
16 connection with the Garfield Park development?

17 A: Yes, I do.

18 Q: Why did you have to dedicate those freshwater
19 wetlands?

20 A: Because they were freshwater wetlands and we
21 had -- we developed Garfield Park. This is
22 above the lake, above the elevation; does not
23 influence this at all; nothing to do with it.
24 Just look at the plat.

25 Q: Why did you have to make the dedication in the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 first place?

2 A: Because that was part of the Garfield Park
3 development because we had freshwater wetland
4 in there.

5 Q: Well, you don't have to make a permanent
6 dedication any time there's freshwater
7 wetlands, do you?

8 A: I think you do now. I think -- you know, I'm
9 -- I don't exactly recall but that's what we
10 did.

11 Q: Do you recall as a part of the Garfield Park
12 development bulldozing freshwater wetlands and
13 then having conflicts with agencies about how
14 to rectify that situation?

15 **MR. HABER:** Your Honor, I'd just like to put on the
16 record a continuing objection to the line of
17 questioning. I understand the Court's
18 discretion. I'd just like to have it on
19 record.

20 **THE COURT:** Thank you.

21 **MR. HABER:** Thank you, Your Honor.

22 **THE COURT:** And your objection is noted.

23 Q: Do you recall that?

24 A: You know, I don't recall. I remember there was
25 some discussion on the freshwater wetland. It



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 was all approved. That's all I know.

2 Q: Do you remember getting in trouble for filling
3 in wetlands in Garfield Park?

4 A: No, I didn't get in trouble for filling
5 wetlands.

6 Q: Did you have any regulatory involvement with
7 either OCRM or the Corps of Engineers
8 concerning filling wetlands in Garfield Park?

9 A: We had -- we had it permitted. That's where
10 that freshwater wetland thing came from. It
11 was a ditch that we filled in. I remember
12 that, but it met all the requirements.

13 Q: In your view is a tidal marsh a more valuable
14 asset than a freshwater lake?

15 A: Absolutely.

16 Q: Do you remember having your engineers do a
17 preliminary layout for G tract?

18 A: Yes.

19 Q: A layout of lots?

20 A: Yes.

21 Q: Turn, if you would, to Exhibit 58.

22 A: Fifty-eight?

23 Q: Yes.

24 A: All right.

25 Q: Do you recall that as a site development plan



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 prepared by your engineers for you in 2006?

2 A: It was a preliminary thing that we looked at
3 right.

4 Q: Okay. And do you see -- along the north edge
5 of G tract which bounds the edge of the lake,
6 do you see four different delineated areas of
7 freshwater wetlands?

8 A: Yeah, that could be but that's above the level
9 of the lake. Yes, I see what you're talking
10 about.

11 Q: Are you ---

12 A: This is not fresh water right here. I know
13 that.

14 Q: Could you identify what you're pointing to
15 please?

16 A: The one right -- right on the -- on the creek.
17 That inlet from the creek, that is not -- that
18 is not fresh water. These are ones, I'm not
19 sure of. I know the -- that on the creek is
20 not fresh water.

21 Q: On Chowan Creek?

22 A: On Chowan Creek. Yes.

23 Q: And what is your basis for saying that?

24 A: Marsh grass is in it.

25 Q: Today, is in it or ---



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: You can go out there tomorrow and see it, if
2 you like.
3 Q: Well, I'm sure it is now ---
4 A: They ---
5 Q: --- after four a half years.
6 A: Well, it was before the dike broke.
7 **THE COURT:** Only one person can talk at a time.
8 **MR. NORTH:** I'm sorry, Your Honor.
9 Q: Who is Ryan Lyle?
10 A: Engineer for Andrews and Burgess.
11 Q: Okay. And he's one of your engineers?
12 A: He doesn't work for me. He works for Andrews
13 and Burgess. He's ---
14 Q: And is Andrews and Burgess your ---
15 A: He's --- he's done work on Cat Island, yes.
16 Q: In your view, does changing the Garfield Park
17 stormwater system from detention to inline
18 filters and allowing the lake to become tidal
19 enhance the value of G tract?
20 A: I think it does, yes. I think it also enhances
21 the value of the lots on -- in the Rookery.
22 Q: Take a look, if you would, at Exhibit 67.
23 A: Exhibit 67. All right.
24 Q: Do you recognize that as a letter ---
25 **MS. SHAHID:** I'm sorry, John. What are we looking



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 at now?

2 MR. NORTH: Sixty-seven.

3 A: A letter from a man Amanda Nodolf ---

4 Q: An email actually from a Amanda Nodolf ---

5 A: Yeah.

6 Q: --- to you on June 3rd of 2010?

7 A: Right.

8 Q: And do you recall discussing with her at that
9 time your desire to remove the dike and to
10 change the stormwater system for Garfield Park?

11 A: I don't remember. You're talking about
12 removing the dike. This is after it broke.

13 Q: Yes, removing the remnants of the dike.

14 A: There was some talk about that. Is that what
15 this is here? I guess we did, yeah.

16 Q: And do you recall being told at that time by
17 Amanda that you would have to meet the
18 heightened requirements for areas draining to
19 shellfish beds?

20 A: I guess that's what it says. I don't remember
21 that specifically.

22 Q: Who are the officers of the POA?

23 A: The officers of the -- I'm the president.

24 Q: Okay. Are there any other officers.

25 A: Gary Martin is the secretary. Nancy Meyers was



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 -- we've had various members at different
2 times.

3 Q: Is it fair to say that as of recent history
4 that you and your secretary are the only
5 officers of the POA?

6 A: I didn't -- never thought about it really. I
7 guess it's -- you can say that if you want.
8 We've had different officers.

9 Q: Okay. Do you recall testifying last summer
10 that your secretary and you were the only
11 officers and the secretary was not involved in
12 the decision to change the stormwater system
13 for Garfield Park?

14 A: I don't remember that but I ---

15 Q: Is that a fair statement?

16 A: That's correct. That's fair, I guess.

17 Q: Have you taken the position that the failure of
18 the dike was an act of God?

19 A: I didn't think about it that way.

20 Q: Have you taken that position?

21 A: What do you mean, act of God? I don't know ---

22 Q: That was my next question.

23 A: It was -- it was force majeure is what we call
24 it. We didn't have anything to do with it. We
25 don't know what happened.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Is it fair to say you are not contending it was
2 an act of God?

3 A: I don't know what you mean by act of God. Was
4 it a storm? Was it -- I don't know what
5 happened. It was a natural -- nobody destroyed
6 it that I know of.

7 Q: Take a look, if you would, at Exhibit 1 and
8 what's in Exhibit 1.

9 A: All right.

10 Q: Take a look within Exhibit 1 at page 21. Do
11 you recognize that as oaks along the edge of
12 the Cat Island lake?

13 A: What page was that?

14 Q: Twenty-one please.

15 A: Now, ask me that question again. Do I
16 recognize that as what?

17 Q: A photo of oak trees along the edge of the Cat
18 Island lake?

19 A: I couldn't say one way or another. There are
20 a lot of oak trees that look like that along
21 Cowen Creek too. So, I mean, that is not
22 distinctive. If you say it is, it could be but
23 I don't know.

24 Q: You're saying that there are trees like this
25 along the edge of Cowen Creek?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Absolutely. In front of my house.

2 Q: Without a 300-foot buffer of marsh?

3 A: Yes. Yes.

4 Q: Don't you have a 300-foot buffer of marsh
5 between your property line and Cowen Creek?

6 A: What it looks like. Looks like that and the
7 water up under the -- under my oak trees the
8 same way, whether there's marsh or not.

9 Q: Take a look at Exhibit 22. Do you recognize
10 that as trees that have now fallen over with
11 the saltwater tides coming into the lakebed
12 along G tract?

13 A: That's the picture you're talking about?

14 Q: Yes.

15 A: I don't recognize anything from there.

16 Q: Take a look, if you would, at Exhibit 29. Do
17 you recognize that as an aerial photo of the
18 Cat Island lake?

19 A: I don't recognize that.

20 Q: Exhibit 1, page 29. Sorry.

21 A: Looks like the shape of the lake. Is that an
22 aerial? I don't know. Is it aerial?

23 Q: Yes. Do you recognize that as a picture of the
24 Cat Island Lake?

25 A: Yeah, it -- yeah, I see that.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. And do you observe and agree that you
2 have large trees growing right up to the edge
3 of the water on the entire perimeter of the
4 lake?

5 A: I don't think you can tell anything from
6 looking at that. I mean, it looks like there
7 are trees around it. Yes.

8 Q: Well, as the owner of G tract, you have a whole
9 bunch of 40-foot trees right along the border
10 of that lake.

11 A: What's the point?

12 Q: That's not the issue. Please just answer the
13 question.

14 A: I know the trees are on G tract. Yeah. Could
15 be.

16 Q: And would you agree that you have 40-foot trees
17 growing right to the edge of the former
18 lakebed?

19 A: Yes, I -- we do.

20 Q: Now, take a look, if you would, at page 25 and
21 compare it to page 26, and do you find as a
22 home site that living at a home with a view as
23 depicted in page 25 would be preferable to one
24 depicted in page 26?

25 A: You've got high tide, low tide, or what? I



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 don't know. Yeah. Well, sure. There's water
2 there.

3 Q: Okay. So you would -- would you agree it's
4 more attractive and would be preferable to have
5 a home site with the water view?

6 A: As opposed to what? Where there's ---

7 Q: As opposed ---

8 A: Whether it's created ---

9 **THE COURT:** One ---

10 A: --- by a tidal ---

11 **THE COURT:** --- at a time.

12 Q: As opposed to what is depicted on page 26.

13 A: I can't tell from these pictures. I don't know
14 what you're trying to say.

15 Q: Do you recall testifying last summer that you
16 agreed that page 25 is more attractive ---

17 A: Okay.

18 Q: --- than 26?

19 A: Okay. Twenty-five is more attractive than 26.

20 Q: Okay. And do you recall testifying that most
21 buyers would like the view with the water?

22 A: Sure. I would, yeah.

23 Q: Would you agree then that your decision to
24 allow the Cat Island lake to stay drained
25 causes an adverse impact to the homeowners



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 along that lake?

2 A: Absolutely not. We went through that already.
3 Tidal marsh is more valuable. That lake did
4 not stay like that picture you gave me there.
5 You know that. It had algae in it a lot of
6 times. It was low. It would smell so let's
7 not -- I mean, this doesn't tell the story.

8 Q: Tell me about it getting low. Are you talking
9 about times when you didn't have very much
10 rainfall?

11 A: Rainfall or lower tides.

12 Q: So the entire are of the lake would get low?

13 A: Yes.

14 Q: Okay.

15 A: And algae ---

16 Q: If you had so much saltwater intrusion ---

17 A: Well, in the lower tides it didn't because you
18 had a -- you had a flashboard.

19 Q: Okay. Isn't it a fact that that flashboard was
20 at an elevation that was higher than the
21 average high tide in Beaufort County?

22 A: No, that's not true at all.

23 Q: Isn't it true that the only time salt water
24 would come in is when the tides were higher
25 than an average high tide?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: No, that's not true. I don't know where you're
2 getting -- I don't know where you get your
3 information.

4 MR. NORTH: I have no further questions at this
5 time.

6 THE COURT: Oh, no, Mr. Meyers.

7 THE WITNESS: I'm not finished? Okay.

8 THE COURT: You're not finished.

9 THE WITNESS: I'm not finished yet?

10 THE COURT: You're not.

11 MR. HABER: Good afternoon, Mr. Meyer. My name is
12 Nathan Haber. I represent the Department.

13 MR. MEYER - CROSS EXAMINATION BY MR. HABER:

14 Q: I believe we met during your deposition.

15 A: Yes, sir.

16 Q: I have a few questions for you. What year did
17 the dike blow out?

18 A: Four and a half year -- 2009, I believe.

19 Q: 2009. Do you remember when about in 2009?

20 A: I think it was in the summer. I can't remember
21 exactly. July. June/July.

22 Q: Mr. North referred you to his Exhibit 67. Do
23 you recall that? That was an email sent from
24 Amanda Nodolf to you?

25 A: Right.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: If you could ---
- 2 A: Let's see. What was that?
- 3 Q: Sixty-seven.
- 4 A: Sixty-seven. All right. All right. I have
- 5 it.
- 6 Q: Within that email, do you know whether or not
- 7 Ms. Nodolf at that point had made any
- 8 measurements as to whether or not the site was
- 9 within or outside of 1,000 feet of shellfish
- 10 beds?
- 11 A: I -- I don't think there was any discussion on
- 12 that at all so ---
- 13 Q: So you don't know whether or not ---
- 14 A: --- I don't know whether or not she had.
- 15 Q: Okay. Also within that same email, did Ms.
- 16 Nodolf also bring up perhaps the possibility of
- 17 detention waivers?
- 18 A: Yeah. It says there are some allowances for
- 19 detention -- detention due to draining
- 20 directly. Okay.
- 21 Q: I want to talk a little bit with you about your
- 22 experience and this would be, I guess, by way
- 23 of background when this first started, you were
- 24 dealing with OCRM.
- 25 A: Right.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: At that time Bureau of Water Coastal Division
2 was part of OCRM; is that correct?

3 A: Right. Right.

4 Q: Okay. Now, when I mention OCRM in this
5 perspective I'm dealing more with critical area
6 application, so this would be more towards your
7 conversations with, I believe, Georgie
8 Madlinger.

9 A: Right.

10 Q: Do you recall, I think, around -- maybe it was
11 in 2009 or 2010 speaking with the Department
12 and putting a request in for maintenance and
13 repair?

14 A: Right. We did that.

15 Q: Do you remember any of the conditions, and just
16 for the record it's under regulation 30-5(d),
17 which contains the Department's regulations and
18 evaluation of the maintenance and repair. Do
19 you remember any of the constraints that were
20 a part of that regulation?

21 A: I'm trying to recall. I really -- I really
22 don't. As far as timing, was that?

23 Q: I ---

24 A: It had to be done. I know there was a period
25 of time that would -- it had to be



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 accomplished.

2 Q: What I'm referring more to is the work that
3 would be allowed to be done. Let me start out
4 with this question.

5 A: Yeah.

6 Q: Was the dike in place prior to the creation of
7 the Coastal Tidelands and Wetlands Act, which
8 would have been, I think, around 1988 or '89?

9 A: Right.

10 Q: Okay.

11 A: It was in place.

12 Q: So the Department would consider that structure
13 to be a grandfathered structure?

14 A: I think it was because -- right. They knew it
15 was before that. Right.

16 Q: Okay. Was there also an allowance within those
17 regulations that would allow the water which
18 needed to be within the normal maintenance and
19 repair of that structure, that would allow you
20 to exceed a little bit of the scope of what
21 existed there previously?

22 A: We talked about that. I'm not sure how that --
23 but as I, kind of, recall, they said we could
24 do some different things. Yeah.

25 Q: Okay. And that -- but that would have been



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 required under Department approval. Would that
2 be correct?

3 A: Right. Right.

4 Q: Okay. Lastly, in Mr. North's Exhibit Number 1,
5 there are some pictures, and I don't know who
6 took these pictures or where they were taken.
7 Say, if I was out on the beach and I took a
8 picture of the sand up close, will that give a
9 full perspective of the ocean at the time?

10 A: Not exactly.

11 MR. HABER: No further questions, Your Honor.

12 MS. COLWELL: Is that clear enough?

13 THE WITNESS: I can see it. Sure. No, no problem.

14 **MR. MEYER - CROSS EXAMINATION BY MS. COLWELL:**

15 Q: Mr. Meyer, Mr. North asked you about some of
16 the background information regarding
17 development of Cat Island.

18 A: Right.

19 Q: This -- do you recognize this document that
20 I've placed on the ---

21 A: Right. That's ---

22 Q: --- Elmo?

23 A: Right.

24 Q: And what is that?

25 A: That's our master plan.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. And we are talking -- what is the permit
2 that is at issue today has to do with Garfield
3 Park Phase 3.

4 A: Right.

5 Q: But when you purchased the island in 1982, can
6 you explain where -- what you started with when
7 you purchased the island?

8 A: Well, when we purchased the island, the area of
9 Dolphin Point which I can't -- yeah, it's the
10 area -- yeah, that's -- that whole area, the
11 first 109 lots all the way around bordering on
12 Cat Island Creek and toward the back side of
13 the island, that was already in place.

14 Q: That was present at the time you purchased it?

15 A: Right. Right.

16 Q: And then what was developed after Dolphin Point
17 ---

18 A: The first ---

19 Q: --- when you started developing?

20 A: First development is way down at the end of the
21 lower part of the island, or lower part of that
22 map. It's called the Point and that was our
23 first development. Right up -- just move your
24 finger to the left a little bit there.

25 Q: Here?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: That's it. That's the Point right there. That
2 was our first development.

3 Q: Okay. And do you remember the approximate time
4 that that would have been ---

5 A: Probably '83 -- '83/'84.

6 Q: And then after Dolphin Point ---

7 A: Then we went to the Rookery over by the -- the
8 tidal pond over there, by the lake.

9 Q: That would be -- that's right there?

10 A: That's right. Yeah. Right there.

11 Q: And when Mr. North was questioning you, he
12 asked you about the name of the Rookery.

13 A: Right.

14 Q: And how you arrived at that.

15 A: Birds.

16 Q: The presence of birds?

17 A: Right.

18 Q: Did you have -- did you go through any sort of
19 agency -- any sort of approval or a process
20 with any agency to adopt the name the Rookery?

21 A: No.

22 Q: Is there any official meaning that you attach
23 to the term the Rookery through any state or
24 federal agency?

25 A: No, it was just a marketing thing, I guess. I



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 don't know.

2 Q: And it just referred to the presence of birds
3 there?

4 A: Right.

5 Q: After the Rookery, what did you develop after
6 that?

7 A: Then we went to the Sheffield Avenue to the
8 other side. We did that in three or four
9 different phases. We call it Sheffield Creek.
10 Go up Chowan Creek the other way. Yeah, up
11 that way. Right. We did that and then we went
12 over to Hunter's Ridge which is right as you
13 come on the island, on the left-hand side as
14 you come on. That's it. Right.

15 Q: And what was the time frame for that? Do you
16 recall?

17 A: Well, I don't -- it was -- that was well into
18 the probably late '90s, whatever.

19 Q: Do you recall if there were stormwater
20 detention requirements in place at the time you
21 developed Hunter's Ridge?

22 A: Well, yes, I can -- the Sheffield area did not
23 require detention. I believe the Hunter's
24 Ridge area was the first area we had to deal
25 with the detention requirements.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And then what area did development lead to
2 after that?

3 A: Then we went to -- I think we went to Wood Dale
4 and detention was required there, and then
5 Ravenswood, detention was required. And then
6 I guess that's -- that's it.

7 Q: I don't see Ravenswood on here but it may be
8 that this was ---

9 A: Yeah. Ravenswood is in the center of the golf
10 course on the ---

11 Q: Okay. And then after Ravenswood is when you
12 started working on Garfield Park?

13 A: Well, we had -- actually Garfield Park phase
14 one—and phase two was actually done before
15 Ravenswood. Then Phase 3 came back after that.

16 Q: Okay. And all of these developments were done
17 around what we are referring to -- what has
18 been colloquially referred to as Cat Island
19 lake, which is the impoundment at issue; is
20 that correct?

21 A: Are you talking about the pond? Yeah.

22 Q: Yes.

23 A: The lake. Right.

24 Q: And that lake was present at the time you
25 bought in 1982 ---



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Right.

2 Q: --- with the stormwater?

3 A: With the dike and the flashboard riser in it.
4 Right.

5 Q: Can you explain your understanding of how the
6 flashboard riser worked?

7 A: Well, it was to maintain a level in the lake.
8 In other words, we allow -- you'd allow salt
9 water to come in and fresh water to drain into
10 the lake and you would set a level with the
11 board so you'd always have water in the -- in
12 the lake.

13 Q: All right. So you've described the flashboard
14 riser as being comprised of three boards.

15 A: It had three boards to my recollection.

16 Q: Did the entire outfall structure also include
17 a pipe of any kind?

18 A: It had a pipe, an outfall pipe going out to
19 Chowan Creek. Right.

20 Q: Did that pipe have inflow and outflow?

21 A: Inflow and outflow. Right.

22 Q: Was there any control on that pipe as to
23 directional flow one way or the other?

24 A: To my knowledge there was not, no. There was
25 never a flap or whatever.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: To your knowledge is that pipe the avenue by
2 which the tidal water was allowed to come into
3 the lake?

4 A: Right. Right.

5 Q: And as the developer of this property, you
6 didn't do anything with that pipe?

7 A: No, no.

8 Q: Mr. North asked you about an inspection of the
9 outfall device, of the dike that was performed
10 at some point in the past. Do you recall that?

11 A: You say an inspection?

12 Q: Or -- well, an inspection when you went out to
13 look at the dike and ---

14 A: Yeah.

15 Q: --- the outfall device. Do you ---

16 A: We went out to look at it. This was before the
17 break, you mean, or after the ---

18 Q: I think his reference was to before the break.

19 A: Yeah, because we would get complaints about not
20 getting -- is there anything we can do to
21 enhance the water flow to get more -- more
22 water in the lake to get rid of the algae and
23 whatever. We looked at if you removed boards
24 and for a period of time let some more water
25 come in and then put the board back, but we



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 couldn't access it. There was -- you had to be
2 careful because it was down -- there was no
3 ladder or anything to get down there so it
4 wasn't practical to -- to alter that thing, but
5 we did look at it.

6 Q: I'm sorry. Who was present at that inspection?
7 Do you remember?

8 A: Oh, I think it was guys that worked for me,
9 probably maintenance guys, and I'm not sure
10 whether we had engineers look at that or not.
11 I don't think we did. I think we just looked
12 at the possibility of making it better.

13 Q: Now, regarding the repair of the dike that was
14 -- that was attempted, the conversation about
15 that it was made clear that it was initially
16 attempted off of a barge.

17 A: Right.

18 Q: And why was that? Why was there a barge
19 attempt made?

20 A: Well, because there wasn't land access to it to
21 get any of the equipment in without going
22 through marsh or wetlands. The only way to
23 come in would be through -- bring the equipment
24 in through -- with a barge.

25 Q: Well, there's been some conversation about



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 access to the dike through tract G?

2 A: Right.

3 Q: And why did you not want to have access through
4 tract G?

5 A: Well, we'd have had to build a road through G.
6 There was already a road, Rush Street, that was
7 right within probably 50/75 feet from the dike.
8 For some reason everybody thought access
9 through G would be the better way to go and I
10 think we know why that was. It's because Mr.
11 North lived in the -- right -- right next to
12 Rush Street.

13 Q: Let me show you what came from Mr. North's
14 exhibits. Petitioners Exhibit 1, page 29,
15 which you --

16 A: Okay.

17 Q: --- previously studied?

18 A: Yeah.

19 Q: And can you see that on there?

20 A: Right.

21 Q: And this street that's up to the left, what is
22 the label on that street?

23 A: That's Rush Street right there.

24 Q: And this area right here is the lake?

25 A: That's the lake.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: And this area right here ---
- 2 A: That's --- that's the dike.
- 3 Q: --- the breach in the dike.
- 4 A: Right.
- 5 Q: So this is the area that would have been
- 6 altered and accessed to get into ---
- 7 A: Right. Right.
- 8 Q: And whose house is this?
- 9 A: That's Mr. North. And you would note to go to
- 10 G you'd have to come all the way around and
- 11 build a road probably maybe even a mile.
- 12 Q: And it's your position, right, that even though
- 13 you have a deed to that dike, that you don't
- 14 own the dike?
- 15 A: I don't believe we do. We looked at that
- 16 because it impounded -- impounded marshes,
- 17 reverts to the state. That's what we were
- 18 told.
- 19 Q: And you don't have ownership of the lake
- 20 either?
- 21 A: Well, we -- we -- we have a deed that deeds
- 22 other things before that we really don't own.
- 23 I mean, it's -- we've got state situation on
- 24 the heirs property -- not heirs but actually
- 25 going way back to the settling of the -- unless



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 you had a specific deed from -- going way back
2 it -- they can't -- you can't get a deed from
3 somebody else.

4 Q: Do you have any understanding that the reason
5 that you don't own the lake is because that
6 property is below the level of mean high water?

7 A: That has a lot to do with it, exactly. It's
8 impounded marsh.

9 Q: And Mr. North asked you about paying taxes on
10 the lake. Do you recall that?

11 A: Right.

12 Q: What were the amounts of the taxes you paid?

13 A: A pittance. You know, hundreds -- a couple
14 hundred dollars maybe. That was it.

15 Q: Regarding repair of the outfall structure, did
16 you have any concerns about the stability of
17 repair?

18 A: Sure. Absolutely.

19 Q: Can you describe those?

20 A: Well, we didn't -- you know, it's like
21 anything. If it breaks once who says it's not
22 going to break again? Without knowing the
23 circumstances that caused the break, you know,
24 if you do it once -- our biggest concern was
25 what happens down the line if it breaks again



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 and how do you access it.

2 Q: And when you talk about access, would that
3 involve some sort of establishment of an
4 easement?

5 A: An easement either through G or through right
6 -- you know, there was an easement actually but
7 you still have to come across wetlands to do it
8 from Rush Street. To go across wetlands either
9 way.

10 Q: Let me talk to you a second about Exhibit 18,
11 Petitioners Exhibit that Mr. North spoke with
12 you about the repair. I think you also have it
13 up there, but this is the letter from Andrews
14 and Burgess.

15 A: Oh, right. Uh-huh.

16 Q: You look at the top of that. Can you read the
17 date on there?

18 A: It's August 12th but it doesn't have the year
19 on it. I don't know when.

20 Q: So we don't have a date on the top of this
21 letter. If you look at the second page of the
22 letter, do you recall receiving that?

23 A: Right.

24 Q: What is that?

25 A: Well, that was a budget to do -- to rebuild it



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 with access -- I guess that's the one with
2 access through G; right? I can't see the --
3 oh, I see it. That would modify existing storm
4 sewer. I'm not sure what that --

5 Q: Do you recall receiving an estimate prior to
6 the time of receiving this letter, or an
7 estimate from O'Quinn -- O'Quinn Marine
8 Contractors to repair the dike?

9 A: Yeah, we got something from O'Quinn too.

10 Q: Do you recall how this compares -- this budget
11 compares to the one from O'Quinn? Do you know
12 ---

13 A: I think this was more.

14 Q: Okay.

15 A: I think the -- the -- the decision here got in
16 -- the access to repair it was the issue. How
17 you would do that -- provide an easement and if
18 you couldn't access it by water, we were -- you
19 know, we had a -- we had a problem on how to
20 get there and how to get there on a continuing
21 basis for maintenance.

22 Q: And Exhibit 58 which is this big site plan that
23 Mr. North discussed with you about ---

24 A: Right.

25 Q: --- tract G. Were these preliminary plans?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Preliminary, right. We never accepted that.
2 I mean, we just were looking at what we might
3 do.

4 Q: The date on these plans is what?

5 A: '06. Right.

6 Q: And did you -- was there ever anything done
7 with these plans ---

8 A: No.

9 Q: --- to develop tract G?

10 A: No.

11 Q: So currently tract G is undeveloped?

12 A: Undeveloped. Right. We did some preliminary
13 -- we did tree and toe post surveys that are
14 still legitimate -- I mean, that we can use but
15 as far as site plans and whatever, we didn't go
16 any further with it.

17 Q: When Mr. North was asking you about the
18 dedicated wetlands that are actually --
19 actually are, I think, identified on Exhibit 58
20 up in the ---

21 A: Oh, you're talking about on the G tract?

22 Q: On the G tract.

23 A: Right.

24 Q: These wetlands, to your understanding did they
25 have anything to do at all with the lake?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Well, I don't -- I think they're there
2 regardless whether the dike is there or not.
3 I think the -- yeah. I think it's low land
4 that encroaches into -- into G which would be
5 wetlands.

6 Q: Is it correct that the -- the lake is an
7 approximate six-acre-in-size area?

8 A: 6.86 acres, I think it is.

9 Q: And these freshwater wetlands are as
10 illustrated not near the lake?

11 A: They're near the lake, right. But they
12 probably are not part of the 6.86 acres.
13 They're probably part of the G tract, which you
14 would have to deal with.

15 Q: They're not inside the lake?

16 A: Not inside the lake, no.

17 Q: Do you have Exhibit 67?

18 A: Fifty-seven?

19 Q: Sixty-seven.

20 **MS. COLWELL:** Your Honor, may I approach?

21 A: Do you want me to get that -- what was that?
22 Was that from Amanda Nodolf?

23 Q: Yes.

24 A: Yeah, okay.

25 Q: Can you read that?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Right.

2 Q: Can you read it out loud?

3 A: Yeah. It was good talking to you on the phone
4 today. As we discussed if you choose to remove
5 the dike you would need to submit for a
6 stormwater permit in order to show that the
7 development is still meeting the original
8 permit conditions and meeting the current
9 regulations, specifically regarding water
10 quality and to the extent practical detention
11 for the site draining to the impoundment.
12 Please note that this would need to meet our
13 heightened requirements for areas draining to
14 shellfish beds. There are some allowances for
15 detention due to draining directly to a
16 critical area/marsh that may be applicable to
17 the site and I'd be more than happy to discuss
18 various options with your engineer after
19 they've had some time to review the site. Have
20 a great weekend. Amanda.

21 Q: Do you -- when you read that is it your
22 understanding that Amanda is asking you to
23 submit for a permit?

24 A: Yeah, that we could do some different things.
25 Right. I mean, that's my understanding.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: And that there are stormwater requirements that
2 may be applicable that would require you to
3 submit ---

4 A: That's right. Correct

5 Q: Referring to Petitioners Exhibit 1, page 41,
6 that Mr. North showed you.

7 A: Right.

8 Q: He represented that this is a tree that's
9 growing on the edge of the lake.

10 A: Right.

11 Q: Do you see any water in this photograph?

12 A: No.

13 Q: When you would describe the edge of the lake,
14 would you describe it as being a gradual
15 incline toward the -- to the water from the
16 upland? Would you agree with that?

17 A: Yeah, it's a gradual -- yeah. There's not --
18 not a large drop-off.

19 Q: Would it be fair to say that these trees are --
20 would be growing in the upland portion of -- on
21 top -- away from the edge of the -- of the
22 lake?

23 A: Right. But, you know, there -- you're looking
24 at some erosion in here and this is not
25 uncommon. I mean, if you look at the perimeter



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 of the lake you're going to see that very
2 similar to what you would see even on the creek
3 and on the other side of the marsh. I mean,
4 that's just the way it looks.

5 Q: And when you talk about erosion, you're talking
6 about erosion that you might see ---

7 A: Yeah, on a regular basis.

8 Q: Do you recall being shown the picture of this
9 lake -- this is -- I believe this is a
10 photograph of the lakebed itself.

11 A: Right.

12 Q: And that this is the mud at the bottom of the
13 lake?

14 A: Right.

15 Q: Does this always look this way?

16 A: Doesn't look that way anymore.

17 Q: What do you mean?

18 A: Because we've got marsh grass that's growing in
19 to a great extent because it's been four --
20 over four years now and it was a tidal marsh
21 and now it's -- without the dike in there, the
22 marsh grass has grown in significantly.

23 Q: And with the marsh grass there, this area is
24 also affected by the tide?

25 A: Oh, absolutely.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: So this area doesn't look like this all the
2 time because there is water ---

3 A: No, you'll have water -- you'll have major
4 water in there, you know, for a good period of
5 time.

6 **THE COURT:** Mr. Meyer, in answer Ms. Colwell's
7 questions ---

8 **THE WITNESS:** Yes.

9 **THE COURT:** --- let her finish her complete question
10 ---

11 **THE WITNESS:** Okay. I'm sorry.

12 **THE COURT:** --- before answering. Thank you.

13 Q: Are the Petitioners suing you in any other
14 forum besides this one?

15 A: Yes, we have a suit in civil court that is
16 pending right now.

17 Q: And are they alleging property damage in that
18 -- in that case?

19 A: Property damage.

20 Q: Are they alleging loss of view in that case?

21 A: I believe that's part of it, yeah.

22 Q: Do you know any other allegations you can think
23 of?

24 A: Can't think offhand, but that's -- those are
25 the basic.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Are they suing you for loss of value in their
2 properties in that case?

3 A: Yes, they are. I might add on this, this suit
4 is against the partnership, not against the
5 POA, where this suit is POA because of the
6 water quality.

7 Q: The case pending in State Court is against the
8 partnership?

9 A: Partnership.

10 Q: And the partnership's name is Chowan Creek ---

11 A: Chowan Creek Partners. Right.

12 **MS. COLWELL:** Your Honor, if I can have a moment?

13 **THE COURT:** Yes.

14 Q: Mr. Meyer, one more time with regard to the
15 Petitioners Exhibit 18 which is the letter from
16 Mr. Andrews which is not clearly dated.

17 A: Right.

18 Q: Have you seen a later estimate regarding repair
19 to the dike that is much higher than what is
20 indicated here for replacement and for any
21 other associated repairs ever needed?

22 A: You say more recently?

23 Q: Yes.

24 A: Oh, absolutely, I mean, because of different
25 specifications that are required and it gets



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 into the hundreds of thousands of dollars.

2 **MS. COLWELL:** Your Honor, at this time I need to
3 move to have Cat Island's Exhibit Number 6
4 moved into evidence. It is the plat of Cat
5 Island.

6 **THE COURT:** Have you got the exhibit, Mr. North?

7 **MR. NORTH:** I have the exhibits but they don't have
8 tabs so let me see if I can go through the
9 physical ones.

10 **MS. COLWELL:** This is in the red well that was given
11 to you.

12 **MR. NORTH:** We have no objection to Number 6, Your
13 Honor.

14 **MR. HABER:** Not from the Department either, Your
15 Honor.

16 **THE COURT:** Thank you, Mr. Haber.

17 (Cat Island's Exhibit Number 6 was admitted into
18 evidence.)

19 **MS. COLWELL:** I don't have anything further.

20 **MR. MEYER - RE-DIRECT EXAMINATION BY MR. NORTH:**

21 Q: Mr. Meyer, let me clarify if I could how this
22 spillway works. You talked about three
23 different boards and depending on whether you
24 have one board, two board or three boards, does
25 that determine how much salt water can come



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 into the lake?

2 A: Determines how much comes in and how much goes
3 out ---

4 Q: Right.

5 A: --- both. Yes.

6 Q: So you're saying that in the summer when you
7 have the algae problems, you could remove one
8 or two boards and thereby have a bunch of ocean
9 water come in?

10 A: That's right.

11 Q: And it would raise the elevation by whatever
12 the height of those extra boards would be?

13 A: Right. You would get more water in if the tide
14 was ---

15 Q: If the tide was up there.

16 A: --- lower. If it was -- right.

17 Q: Okay. And you said there are three boards. Is
18 the total area that can be adjusted -- what
19 would you say that distance is? A foot or a
20 foot and a half?

21 A: Probably, like, three -- I think ---

22 Q: You're showing about a foot ---

23 A: --- it's about -- it's about -- each one would
24 be about -- each board, I think, would be -- I
25 think they're 12-inch boards and I think there



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 are three ---

2 Q: Weren't they -- weren't they two-by-six boards?

3 A: They might have -- I think they were. That
4 would be 18 inches then.

5 Q: Eighteen inches ---

6 A: Yeah. I think two-by-six ---

7 Q: --- the difference between the tide ---

8 **THE COURT:** Mr. North, let him complete his answer
9 before you ask your question.

10 **MR. NORTH:** And that time I did it really badly.
11 Sorry.

12 **THE WITNESS:** I'm bad too. Sorry.

13 Q: Okay. So in your view, there's about an 18-
14 foot variance that you can adjust?

15 A: Eighteen inch.

16 Q: Eighteen inch variance?

17 A: Yes.

18 Q: And other than during times when you're trying
19 to fight algae, I believe you testified that
20 all three boards would be kept in to maximize
21 the depth of the lake?

22 A: Well, let me -- let me clarify that. The
23 boards never really were able to be removed
24 because they were -- they would wedge in there
25 and you -- we attempted but were never



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 successful at removing them on a -- unless you
2 went down into it and got to the deal and could
3 forcibly remove them, so we -- we -- it was an
4 idea but we never did it.

5 Q: Was one of the problems with getting down in
6 there and trying to remove the boards the fact
7 that there were large alligators in that lake?

8 A: I don't think the problem was alligators. We
9 were worried about falling off, because you had
10 to go out on the -- it was -- didn't have
11 access.

12 Q: Okay. You do recall that there were large
13 alligators in the lake?

14 A: I believe there were some alligators. Right.
15 Yeah.

16 Q: Don't alligators reside in fresh water as
17 opposed to salt water?

18 A: They travel in both. They travel in salt water
19 to go ---

20 Q: You see a lot of alligators out in Chowan Creek
21 where the ocean ---

22 A: I do.

23 Q: --- waters are?

24 A: I do, yeah. They move around.

25 MR. HABER: Objection, Your Honor. It's speculative



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 and ocean waters is a blatant
2 mischaracterization of the water that exists in
3 the creeks on the site.

4 Q: Take a look, if you would, at Exhibit 56.

5 **THE COURT:** Let me -- before you proceed, Mr. North,
6 let me rule on his objection, and I am
7 overruling the objection.

8 **MR. NORTH:** Thank you, Your Honor.

9 Q: I'll tell you what. If it makes it faster and
10 easier, I can show you mine.

11 A: That'd be easier, yeah.

12 Q: Handing you Exhibit 56 and you'll notice in the
13 middle of the page at the very bottom you see
14 where -- first of all, is this a document
15 prepared by your engineers?

16 A: Right.

17 Q: Okay. You see at the bottom where they show
18 the spillway elevations that vary with a low
19 mark of 3.39 and a high mark of 4.66? So in
20 other words, about a foot and a half? Do you
21 see that?

22 A: I see that.

23 Q: Would you agree that that is consistent with
24 your understanding of how much of a variation
25 there is in that spillway?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 **MS. SHAHID:** Mr. North, would you mind helping us
2 with what you were referring to? We just got
3 out hands on the exhibit. Fifty-six?
- 4 **A:** I don't know whether that is the difference or
5 that's just a median number. I don't know. I
6 don't -- to answer your question, I don't know
7 whether that's what that means or not.
- 8 **Q:** Okay. Well, when your engineers say that the
9 top level of the spillway elevation is 4.66 and
10 that the low elevation could be 3.39, would you
11 at least agree that that's about a foot and a
12 half difference?
- 13 **A:** Right. I agree.
- 14 **Q:** Now, if you kept all three boards in and the
15 lake had an elevation of 4.66 and if the mean
16 high tide at that location is 4.1, would you
17 not agree that even on an average high tide no
18 salt water is coming into that lake?
- 19 **A:** Well, I can't agree with that because that
20 isn't what happened. If you were there, you
21 would see that and you live there.
- 22 **Q:** Are you aware of the complaints of the
23 homeowners that all of their freshwater
24 vegetation along the lake died when the salt
25 water started coming in?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: I'm aware of that accusation. We don't think
2 that's -- that happened at all.

3 Q: What's your basis for not thinking that
4 happened?

5 A: Because we walked over and looked at it.

6 Q: Looked at what?

7 A: Freshwater vegetation was above the -- above
8 that lake.

9 Q: Are you saying that the plaintiffs are mistaken
10 that their plants died along the edge of the
11 lake?

12 A: I think -- you know, I -- I -- I don't think
13 they -- if they died they didn't necessarily
14 die from the salt water. There's a lot of
15 things that'll kill plants.

16 Q: Take a look, if you would, at the screen. Do
17 you recognize that as the same area that you
18 testified to having changed dramatically in the
19 last four and a half years from the mud pit to
20 your marsh meadow?

21 A: I don't know where that is. I mean ---

22 Q: Well, do you recognize the same bird feeder in
23 the photo in the shot all the way across the
24 lake?

25 A: Is that where that -- that's at the end of Rush



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Street?
- 2 Q: Yeah.
- 3 A: Right. I see that.
- 4 Q: Is this little thing of marsh grass after four
5 and a half years what you're referring to as
6 your marsh meadow?
- 7 A: No, I'm going down the lake and it's moving
8 this way. If you take a picture of the down
9 side of the lake, you'll see what I'm talking
10 about.
- 11 Q: Right on the far end of the lake by the ---
- 12 A: And -- and moving fairly rapidly up the other
13 way. And if you look at these edges with all
14 the grass that's coming in. You've -- you've
15 take a picture of the worst part of the lake.
- 16 Q: Okay. Do you recognize that as a view of the
17 lake in the vicinity of the residence of Martha
18 James?
- 19 A: I don't recognize that as being in the -- could
20 be.
- 21 Q: Do you recognize this photo as a shot, a view
22 on down toward the dike from the property along
23 the north edge of the lake?
- 24 A: Don't recognize it.
- 25 Q: Do you see any marsh meadow in that photo?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: I don't have the photo. No, but I don't know
2 where that is.
- 3 Q: Okay. Now, take a look, if you would, this
4 photo. Is that the marsh meadow you're talking
5 about at the far end of the lake?
- 6 A: Well, that's part of it, yes.
- 7 Q: Okay.
- 8 A: Yes.
- 9 Q: And so I'll represent to you that this is a
10 photo taken from the residence of Sally Haley
11 who lives furthest away from the dike of
12 anybody, the closest to your marsh meadow of
13 anybody. Is this the marsh meadow that you're
14 referring to up by the golf course?
- 15 A: I -- I can walk over there from my house and I
16 see what's going on. You're taking pictures of
17 -- and it doesn't tell the whole story. That's
18 what I'm saying.
- 19 Q: Mr. Meyer, take a look at page 15 from Exhibit
20 1. Do you recognize that as an aerial photo of
21 the east end -- southeast end of the lake?
- 22 A: I'm not sure. Is that -- yes, I see it.
23 That's your house right there.
- 24 Q: That's correct.
- 25 A: Yeah. Okay. Right.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Do you see any marsh grass in that photo?

2 A: No, I don't. When was that taken?

3 Q: Well, it was obviously taken after the break in
4 the dike.

5 A: Right.

6 Q: And so even with the benefit of salt water, do
7 you see in that photo any marsh grass at all in
8 this alleged saltwater impoundment?

9 A: You don't see it in that area but if you come
10 back up the lake, you will see -- you'll see it
11 in the inlet that goes to the fresh water, so
12 there was salt water in there.

13 Q: You're talking about on G tract?

14 A: No, on the other side.

15 Q: Now, we looked at page 21 before of a picture,
16 and I believe you said that that represents a
17 tree that would be on upland; is that correct?

18 A: It's on the edge of the lake.

19 Q: On the edge of the lake and I believe you
20 testified that that tree is something that's on
21 upland. Do you see that the roots of that tree
22 on upland have now been eroded away?

23 A: I think they were always that way. I don't ---

24 Q: You think that ---

25 A: I don't know. How would I know?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: Would you agree that there has been erosion
2 with the higher tides and the flow of tides
3 along the lake?
- 4 A: No, I wouldn't agree with that.
- 5 Q: And what's your basis for that?
- 6 A: What's your basis for saying that it did erode?
- 7 Q: Well, I would suggest maybe this picture.
- 8 A: I don't ---
- 9 Q: Do you see any marsh grass in that picture?
- 10 A: No.
- 11 Q: If this was a saltwater impoundment wouldn't
12 you expect to see marsh grass growing along its
13 edge?
- 14 A: Certain areas had marsh grass in there.
- 15 Q: Take a look at page 36. Do you see any marsh
16 ground in that photograph?
- 17 A: No.
- 18 Q: And that shows all the way across the lake,
19 does it not?
- 20 A: I don't think that -- is that the bird feeder
21 there? That doesn't show across the lake.
22 Just one little section where it comes in
23 there.
- 24 Q: Do you see where that picture shoots all the
25 way across to the trees on G tract?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: No, I don't see across G tract.

2 Q: Sorry, I've got mine ...

3 A: Okay. There you go. I think you're going to
4 see marsh grass back on that other corner right
5 there.

6 Q: In this photo along that entire bank of G
7 tract, do you see any marsh grass?

8 A: I see -- it looks like marsh grass way over
9 straight through behind those leaves.

10 MR. NORTH: Can I ask for one of the other counsel
11 to show me how you zoom this down so the
12 picture fits the screen?

13 MS. SHAHID: See those two little buttons at the
14 top?

15 MR. NORTH: This?

16 MS. SHAHID: One will go out and one will go in. I
17 just don't know -- you have to look at the --
18 yeah.

19 MR. NORTH: Got it.

20 Q: In this picture from Sally Haley's house, do
21 you see any marsh grass?

22 A: When was that taken?

23 Q: Some time after the dike broke but after the
24 lake had been there for 50 years.

25 A: I don't see any right there.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: Okay. Wouldn't you expect marsh grass to be
2 there if this was a saltwater impoundment?
- 3 A: Not necessarily right at that one spot. You've
4 got to look at the whole lake.
- 5 Q: Okay. Well, here is a shot of the whole lake.
6 Do you see any marsh grass in that photo?
- 7 A: You don't -- you don't see the edges. There's
8 not going to be in the center because there was
9 water there.
- 10 Q: Well, if it was a saltwater impoundment why
11 wouldn't you have the -- the marsh grass?
- 12 A: Let me just say one, you should talk with Mr.
13 Madlinger and why he determined it was a
14 saltwater wetland before the dike broke.
- 15 Q: On page 29, that aerial photo of the lake, do
16 you see any evidence of marsh grass growing in
17 that lakebed?
- 18 A: You wouldn't see it from there. Come on.
- 19 Q: Would you see it today with an aerial photo
20 with the marsh grass up at the end by the golf
21 course?
- 22 A: You -- I don't know from that photo. I don't
23 know.
- 24 Q: On page 31 would you agree that in that picture
25 of the lake with all the wildlife, do you see



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 any marsh grass?

2 A: I don't see any marsh grass in that lake.

3 Q: Do you recall receiving more than one repair
4 permit from OCRM?

5 A: I think we had more than one.

6 Q: And is it fair to say that OCRM authorized you
7 to go ahead and fix the dike and it was up to
8 you then to decide whether or not to go ahead
9 and fix it?

10 A: We tried to fix it once.

11 Q: Okay.

12 A: Yes.

13 Q: After the first attempt failed, did you obtain
14 a long term, year-long repair permit from OCRM
15 authorizing you to repair the dike?

16 A: I don't remember that. We had -- we did have
17 a second permit. I don't know for how long.

18 Q: Do you remember being cited by OCRM for various
19 violations?

20 A: I don't remember that.

21 Q: Take a look if you would at Exhibit 31. I'll
22 use the screen if it makes it easier for you.

23 A: Yeah.

24 MS. SHAHID: Thirty-one?

25 MR. NORTH: Thirty-one.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: Well, first of all, why did it take so long for
2 this permit application to be submitted to
3 OCRM?
- 4 A: I think Mr. Haber had a good input on that,
5 didn't he? Because of all the complaints and
6 other things that were coming in from the
7 Petitioners, it took a long time. DHEC had to
8 deal with that.
- 9 Q: I'm not talking -- I'm talking about why did it
10 take so long for you as the developer to submit
11 the application?
- 12 A: Well, for what now? For the -- for the
13 filters?
- 14 Q: To do some repair or some replacement of
15 stormwater treatment for Garfield Park?
- 16 A: I don't know what so long means.
- 17 Q: Do you recognize or do you remember getting
18 Exhibit 31, page one, a letter to you in July
19 of 2010, more than a year after the dike broke,
20 demanding that you get an application submitted
21 within 60 days?
- 22 A: I can't read that but I -- I remember getting
23 that. Yes.
- 24 Q: Okay. Do you remember in December of 2010
25 getting a letter from OCRM citing you for being



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 in violation of various federal and state laws
2 and being in violation of the South Carolina
3 Stormwater Management and Reduction Act?

4 A: I mean, I don't really remember that but you
5 say that's ...

6 Q: Page three of Exhibit 31, do you remember
7 getting a certified letter from OCRM in March
8 2011 finding that OCRM had confirmed offsite
9 damages in the form of sediment deposition into
10 the tidal land's critical area?

11 A: I don't remember that one but I -- I mean, you
12 have it so ...

13 Q: Do you remember being told that your immediate
14 attention is required to stabilize the eroding
15 dike?

16 A: No, we were working with the engineers back and
17 forth on that already and I tried to -- I don't
18 -- I don't remember that one.

19 Q: Since the day that the dike failed in June of
20 2009, have you or anybody on your behalf done
21 any work or done any actual stabilization or
22 anything to the dike area or the lake?

23 A: The dike is stabilized.

24 Q: What is your basis for saying that?

25 A: Go -- go and look at it. There's grass being



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 on both edges, whatever. It's stabilized.
- 2 Q: At any point in time, did you do anything to
- 3 the dike to stabilize it?
- 4 A: No, we didn't. It stabilized naturally which
- 5 we thought might happen.
- 6 Q: Okay. How many years did it take for that to
- 7 occur?
- 8 A: It's probably been that way for about a year.
- 9 Q: So three and a half years, it finally
- 10 stabilized and quit eroding?
- 11 A: It really wasn't eroding. Now, it grew in and
- 12 it just -- it's stable.
- 13 **MR. NORTH:** No further questions.
- 14 **MR. HABER:** Your Honor, a few from the Department on
- 15 -- with the new information that was brought up
- 16 by Mr. North.
- 17 **THE COURT:** Okay.
- 18 **MR. HABER:** Thank you, Your Honor. Be very brief.
- 19 **MR. MEYER - RE-CROSS EXAMINATION BY MR. HABER:**
- 20 Q: Mr. Meyer, where is this site located? Is it
- 21 next to Chowan Creek?
- 22 A: Right.
- 23 Q: Is it not next to the beaches of the Atlantic
- 24 Ocean?
- 25 A: I would say it's Chowan Creek.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: So water that would be coming in, no salt water
2 would be water from that creek?

3 A: That would be salt water.

4 Q: Regards to Mr. North spoken with you regarding
5 maintenance and repair and you referred to that
6 as being a permit. Do you remember going under
7 a public notice review process during ---

8 A: Maintenance and ---

9 Q: --- maintenance and repair process?

10 A: I don't believe that was required.

11 Q: It likely wouldn't be required because
12 maintenance and ---

13 A: Maintenance ---

14 Q: --- was needed quick?

15 A: Right.

16 Q: Okay. Do you remember that being -- falling
17 under the exemptions to the permit under the
18 Department's regulations?

19 A: I kind of -- yes, I remember.

20 Q: Okay. Mr. North's Exhibit Number 31 that I
21 believe he had just gone over with you, first
22 was a letter written on July 6th of 2010 from
23 Amanda Nodolf. Does anywhere in there say that
24 you have to put the dike back?

25 A: I don't remember. We were -- we were



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 communicating back and forth with all the
2 people on that and I think she, I believe, was
3 in -- was she enforcement? Is that ---

4 Q: She was in the stormwater section.

5 A: Stormwater section and we were trying to work
6 together and I know we got some letters from
7 here but ---

8 Q: Let's look at that first letter, the July 6th.
9 Do you still have that in front of you?

10 A: No, I don't. That was -- he had it on the --
11 what is that?

12 Q: I wrote on this one and I don't want to give
13 you this one. It's Exhibit 31.

14 **THE COURT:** You want to put this one up on Elmo?

15 A: What is it?

16 **MR. HABER:** Thank you, Your Honor.

17 A: Thirty-one?

18 **MR. HABER:** May I approach?

19 **THE WITNESS:** Yeah. Thank you.

20 Q: That second paragraph ---

21 A: Yes.

22 Q: --- does that -- does that or does that not
23 direct you to submit a notice of intent?

24 A: Yes. Yes.

25 Q: And as to your understanding would that be



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 something that would be required under
2 stormwater permit?

3 A: Right.

4 Q: Not a critical area permit; correct?

5 A: Correct. Right.

6 Q: Thank you. The second one -- the second letter
7 that Mr. North went through was December the
8 6th of 2010, again written by Amanda.

9 A: I can get it.

10 **MS. SHAHID:** Here it is. Yes.

11 **MR. HABER:** If I may approach, Your Honor?

12 **THE COURT:** Yes.

13 Q: If you could, Mr. Meyer, read that second
14 paragraph for me. It begins with currently.

15 A: Currently with no water quality structure in
16 place, you are in violation of South Carolina
17 Stormwater Management and Sediment Reduction
18 Act and the South Carolina Stormwater and
19 Sediment Reduction regulations, R72-300.

20 Q: Okay. That's good. Within that Mr. North said
21 that you were currently in violation; is that
22 correct?

23 A: Right.

24 Q: Was the alternative to retrofit, was that
25 something that you were submitting in order to



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 cure that violation ---

2 A: Well ---

3 Q: --- as it pertained to water quality?

4 A: --- to -- to retrofit was what we were
5 submitting. Right.

6 Q: Okay. And then the next page would be a letter
7 written March 8th, 2011 that Mr. North also
8 went over with you. The bottom of that first
9 page is a letter written by Shawn Briggs dated
10 March 8th, 2011. That last paragraph, if you
11 could, summarize what that directs you to do.

12 A: Now, are you talking about the -- which page?

13 Q: The paragraph that begins also described above.

14 A: Also described above please prepare a separate
15 plan that either brings the project back into
16 compliance with the approved Stormwater
17 Management and Sediment Control Plan, or
18 proposed an appropriate alternate method of
19 treating the stormwater discharge by the
20 project.

21 Q: So that letter by Shawn Briggs directs you to
22 either come into compliance with the stormwater
23 permit as issued or to submit an alternative
24 treating method; is that correct?

25 A: We -- we -- right. And we submitted the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 alternative.

2 Q: You submitted an alternative?

3 A: Right.

4 **MR. HABER:** Thank you. No further questions, Your
5 Honor.

6 **THE COURT:** Thank you, Mr. Meyer.

7 **MS. COLWELL:** Your Honor, I have just a few more
8 questions.

9 **THE COURT:** If you could come back, Mr. Meyer.

10 **THE WITNESS:** Who, me?

11 **MS. COLWELL:** Yes, Mr. Meyer. Just based on the
12 cross examination.

13 **THE COURT:** Let's make it brief, Ms. Colwell.

14 **MS. COLWELL:** Yes.

15 **MR. MEYER - RE-CROSS EXAMINATION BY MS. COLWELL:**

16 Q: Mr. Meyer, do you recall your discussing the
17 appearance of the lake. Do you recall taking
18 some photos of the current appearance of the
19 impoundment?

20 A: Right.

21 **MS. COLWELL:** May I approach?

22 Q: Let me show you these photos. Take a look at
23 those.

24 A: Right. These are our pictures. Thank you.

25 Q: Do you recall taking those pictures for us ---



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Yes.

2 Q: --- and providing that?

3 A: Yes. Yes, I do.

4 MS. COLWELL: Your Honor, I'd move to admit these
5 into evidence as Petitioners (sic) Exhibit 5.

6 THE COURT: Mr. North?

7 MS. COLWELL: Your Honor, I also have a notebook, a
8 copy of our exhibits that were composed for you
9 if you'd like to -- I'm sorry. I should have
10 given that to you earlier.

11 MS. SHAHID: Five consists of three pages, Mr.
12 North.

13 MR. NORTH: Your Honor, before I respond on whether
14 I have an objection or not, I don't think
15 there's sufficient foundation with regard to
16 this -- however many photos are here -- 20, 30
17 photos, to know who took them, what they
18 depict, and I certainly have objections to
19 somebody suggesting that the photos on page two
20 represent the lake at half tide. No water at
21 all is in the lake until the very peak of the
22 tides, so I think we need to have some further
23 foundation from the witness.

24 MS. COLWELL: Your Honor, Mr. Meyer has reviewed the
25 exhibits that are proposed and testified that



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 he took these photographs and I can do some
2 additional questions for him to explain what --
3 where these were taken, what they depict, and
4 what -- the area from which the photographs
5 were taken.

6 **THE COURT:** Please do.

7 Q: Mr. Meyer, you looked at the photographs very
8 briefly.

9 A: Right.

10 Q: Explain to the Court where the reference on the
11 bottom of this, the sheet of photographs, the
12 first two.

13 A: That was taken August 30th, 2012.

14 Q: And where are these photographs taken?

15 A: Well, we -- we went around the lake taking them
16 from different areas and just to basically show
17 that the marsh grass is -- is becoming, you
18 know, a major part of the scape there.

19 Q: So these photographs are from different areas
20 ---

21 A: Different areas.

22 Q: The second page of Exhibit 5 has a date of
23 7/31/2013?

24 A: Right.

25 Q: Is that the date that the photographs were



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 taken?

2 A: Right.

3 Q: And what are these photographs?

4 A: Same thing, going around the lake taking -- you
5 can see the difference in the -- more and more
6 marsh grass growing there.

7 Q: So the -- I don't know if this that you're
8 looking at here, is the appearance of the marsh
9 grass?

10 A: Right.

11 Q: Do you recall what the tide -- is this at low
12 tide?

13 A: That looks pretty low tide. Right. I can't
14 remember exactly but that looks -- that looks
15 low.

16 Q: And I ask because we've got a third page of
17 photographs in Exhibit 5 that's the lake at
18 half tide?

19 A: Well, I say half tide. I don't know if we --
20 but there's some water in there. It's
21 obviously not low and it's not high. It's ---

22 Q: When you make a reference to some water, can
23 you -- are you talking about the presence of
24 the water ---

25 A: See the water in there? Right.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And in this picture down here, there also
2 appears to be some water?

3 A: Right.

4 Q: That's what you're characterizing as half tide?

5 A: Right.

6 Q: But in the interest of these photographs, all
7 of this is to depict the appearance of the
8 marsh grass?

9 A: Right.

10 Q: Is that what that is?

11 A: That's marsh grass. Absolutely.

12 Q: And that's what these photographs were provided
13 to us to show; is that correct?

14 A: That's correct.

15 MS. COLWELL: Your Honor, again I would move for
16 admission of these photographs into evidence.
17 Exhibit 5. Cat Island's Exhibit 5.

18 MR. NORTH: No objection, Your Honor.

19 THE COURT: Mr. Haber, no objection?

20 MR. HABER: No objection. Sorry.

21 THE COURT: They're admitted.

22 (Cat Island's Exhibit Number 5 was admitted into
23 evidence.)

24 MS. COLWELL: That's all I have. Your Honor, I
25 would also like to reserve the right to recall



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Mr. Meyer in our case in chief.

2 **THE COURT:** Okay. Mr. North, I'm assuming you're
3 wanting to question Mr. Meyer on the -- about
4 these photographs?

5 **MR. NORTH:** I don't think so, Your Honor. I -- I
6 think that the Court will be able, when you see
7 all of the photographs, to have a very good
8 feel for the condition of the lake.

9 **THE COURT:** Okay. Thank you, Mr. Meyer. Mr. North,
10 before you call your next witness, I'm calling
11 a one-hour break. We're right at the lunch
12 hour, so we'll take a one-hour break and we'll
13 reconvene at two o'clock.

14 **MR. NORTH:** Okay. And, Your Honor -- this can be
15 off the record.

16 (Lunch was taken from 12:55 p.m. to 2:07 p.m.)

17 **THE COURT:** Ready to begin?

18 **MR. NORTH:** Yes. First of all, as a preliminary
19 matter let me address the request to review
20 these exhibit lists and identify objections.
21 With regard to the POA, we're happy to
22 stipulate to foundation for Exhibit 1A through
23 C, but these are documents that have not been
24 the subject of deposition testimony and we
25 would need, before they're admitted into



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 evidence, to have somebody who is familiar with
2 them and can explain and justify the
3 information in them, testify. That may not be
4 a problem. I have a feeling that somebody from
5 Andrews and Burgess will be here later, but we
6 do stipulate to foundation. We have no
7 objections to Exhibits 2 through 10. With
8 regard to Exhibit 11, we would not have an
9 objection except the document is not complete
10 and we're in favor of having the entire exhibit
11 submitted, but there is a Andrews and Burgess
12 drawing that was enclosed with that.

13 **THE COURT:** What's that exhibit number again?

14 **MR. NORTH:** It's Exhibit 11 for the POA. It's a
15 letter dealing with the Corps of Engineers
16 fresh water determinations and they reviewed a
17 drawing of Andrews and Burgess and approved it
18 and verified it and we need to have that
19 drawing be with it. As long as that drawing is
20 available and in evidence, we have no objection
21 to Exhibit 11. Right now it's enclosed please
22 find, and then the most important part of it
23 isn't there.

24 **THE COURT:** Okay.

25 **MR. NORTH:** With regard to 12 through 17, no



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 objection. With regard to 18 through 27, no
2 objection. We do object to Exhibit 28. Those
3 are handwritten notes. There's no indication
4 of who the author is and without some
5 background information on that, we would not be
6 able to agree to its admission. We have no
7 objection to 29 through 33 and we have no
8 objection to 34 through 43. With regard to the
9 documents of OCRM, we have no objections to
10 their exhibits other than with regard to
11 Exhibit 7. Without some foundation we would
12 not be willing to agree to that exhibit.

13 **THE COURT:** Okay. And the ones that you have an
14 objection to, we'll address those as we get to
15 them.

16 **MS. SHAHID:** Should I move them in, Your Honor?

17 **THE COURT:** You can.

18 **MS. SHAHID:** Your Honor, at this time for Cat Island
19 POA, we move for admission Exhibits 2 through
20 10; 1 and 11 were objected to. We move for
21 admission Exhibits 12 through 14, 17 through
22 19, 22 and 23, 25, 26, 29, 31, 32 and 33, 34
23 through 41 and 43. And for the record, Your
24 Honor, the reason that I have more gaps than
25 just the objections voiced by Petitioners is



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 because I had withdrawn some exhibits and their
2 numbers still exist but they're not being
3 admitted. And the court reporter has the
4 exhibit list and it's made clear on the exhibit
5 list. I think the exhibit list in your
6 notebook is clear too as to what's been
7 withdrawn.

8 **THE COURT:** Okay.

9 **MR. NORTH:** Your Honor, if I could just ask for some
10 clarification. Are all of the exhibits other
11 than those objected to by the Petitioners or
12 withdrawn being offered?

13 **THE COURT:** Yes.

14 **MR. HABER:** Okay. And could you quickly give me the
15 numbers of the withdrawn exhibits?

16 **MS. SHAHID:** Okay. 15, 16, 20, 21, 24, 27, 30 and
17 42 and we actually put an exhibit list in your
18 red well that showed them as withdrawn. Are
19 you working off the exhibit list from the red
20 well folder?

21 **MR. NORTH:** No, I'm working off the exhibit list as
22 provided prior to trial.

23 **MR. HABER:** Your Honor, I apologize. Would you like
24 me to proceed?

25 **THE COURT:** Let's go ahead and get hers, Ms.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Shahid's entered and then we'll deal with
2 yours, Mr. Haber.

3 **MR. HABER:** Yes, ma'am.

4 **THE COURT:** Okay? Mr. North, you've got some
5 questions about the exhibits that Ms. Shahid is
6 moving ---

7 **MR. NORTH:** No, Your Honor.

8 **THE COURT:** Okay. The ones that the parties have
9 agreed on they're entered into evidence.

10 **(Cat Island's Exhibit Numbers 2-10, 12-14, 17-19, 22,**
11 **23, 25, 26, 29, 31-41, and 43 were admitted into**
12 **evidence.)**

13 **THE COURT:** Mr. Haber?

14 **MR. HABER:** Thank you, Your Honor. I apologize for
15 going out of turn. As to Department's Exhibits
16 1 through 6, the Department would move to have
17 those admitted. And also Number 8.

18 **MR. NORTH:** No objection.

19 **THE COURT:** One through 6 and Number 8.

20 **MR. HABER:** So that would leave out Number 7
21 provided foundation. The Department will have
22 that looked into to have that submitted into
23 evidence upon foundation established.

24 **THE COURT:** No objection from Cat Island?

25 **MS. SHAHID:** No objection, Your Honor.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 **THE COURT:** Okay. Thank you. One through 6 are
2 admitted. Oh, 1 through 6 and 8?

3 **MR. HABER:** Eight.

4 **(SCDHEC's Exhibit Numbers 1 - 6 and 8 were admitted**
5 **into evidence.)**

6 **THE COURT:** Thanks. Teckla. Okay. Mr. North, are
7 you ready to call your next witness?

8 **MR. NORTH:** Yes, Mr. Richard Geer please.

9 **THE COURT:** Mr. Geer, if you'll come forward to the
10 witness box and before you take your seat, if
11 you'll face the court reporter and raise your
12 right hand, she will swear you.

13 **RICHARD GEER,** having been duly sworn, testifies as
14 follows:

15 **COURT REPORTER:** Please state and spell your name
16 for the record.

17 **THE WITNESS:** My name is Richard Geer -- G-E-E-R.

18 **MR. GEER - EXAMINATION BY MR. NORTH:**

19 Q: Would you state your place of employment?

20 A: I work for DHEC, Department of Health and
21 Environmental Control.

22 Q: Is there a particular division to which you are
23 assigned?

24 A: It's the Bureau of Water, Coastal Stormwater
25 Permitting Section.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: How long have you been with that division?

2 A: With that division since April of 2012.

3 Q: Are you a licensed engineer?

4 A: No.

5 Q: What is your title within your professional
6 status as an employee of DHEC?

7 A: Engineer associate.

8 Q: What does that mean within your organization?

9 A: It means I'm an engineer associate. I mean,
10 it's a title.

11 Q: What ranks or designations are there above and
12 below engineer associate?

13 A: They're managers. There is an environmental
14 health managers, there's -- at DHEC there's
15 nurses and technicians and there's many, many
16 different titles.

17 Q: Okay. Is it fair to say that your job has
18 involved in reviewing stormwater applications
19 since you were first hired by DHEC?

20 A: Yes.

21 Q: And how long ago was that?

22 A: It was February of 1999.

23 Q: Is it fair to say that you've never been
24 involved in handling critical area matters?

25 A: Yes.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Are critical area matters handled by some other
2 group of people or some other division with
3 OCRM?

4 A: Yes, there's -- there is a critical area
5 permitting section at OCRM.

6 Q: Is that the only group of people or division
7 within OCRM that deals with critical area
8 matters?

9 A: I believe so.

10 Q: What is your level of understanding about the
11 South Carolina Coastal Zone Management Program?

12 A: As it relates to state -- coastal zone
13 consistency certification of state permits.

14 Q: Are you saying you're aware that the program
15 requires a certification?

16 A: Yes.

17 Q: Okay. Do you have any background or knowledge
18 about the particular other requirements of the
19 Coastal Zone Management Program?

20 A: I'm familiar with those policies that relate to
21 consistency certification for state permits.
22 Yes.

23 Q: For what?

24 A: State permits.

25 Q: Do you know the difference between mean high



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 tide and mean high high tide?

2 A: I understand that there is a difference and
3 that it -- it depends on the exact location
4 where you're trying to make that determination.
5 I mean, other than that, I know that mean high
6 high is higher than mean high.

7 Q: Okay. Is it fair to say that last summer when
8 your deposition was taken you didn't know the
9 difference between mean high tide and mean high
10 high tide or the correlation of those tides to
11 spring tides?

12 A: I don't -- I don't know the specifics about
13 them. I just know that there is a, you know,
14 the difference is that mean high high is higher
15 than mean high.

16 Q: Were you the person within DHEC who was
17 assigned to review and approve the Cat Island
18 POA application to retrofit the Garfield Park
19 storm sewer system?

20 A: Not initially but eventually, yes.

21 Q: And who did you take over from?

22 A: Amanda Nodolf was the project manager that
23 originally received the application, yes.

24 Q: And did she subsequently leave the
25 organization?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: She's no longer with DHEC, yes.
- 2 Q: Okay. And at the time she left, was the file
- 3 reassigned to you?
- 4 A: Yes.
- 5 Q: What is an NPDES permit?
- 6 A: It's a permit that regulates stormwater
- 7 discharges from various activities.
- 8 Q: What does NPDES stand for?
- 9 A: National pollution -- national -- I'm sorry.
- 10 National pollutant discharge elimination
- 11 system.
- 12 Q: Okay. And is that a federal permit
- 13 administered by DHEC?
- 14 A: Yes.
- 15 Q: Would you agree that in order to issue such a
- 16 permit, DHEC has to make a coastal zone
- 17 consistency certification for any project in
- 18 Beaufort County?
- 19 A: For a project application for that permit, yes,
- 20 it has to be determined to be consistent with
- 21 the Coastal Zone Management Program. Yes.
- 22 Q: How do you tell which stormwater permit
- 23 application has to have such a certification?
- 24 A: All permit applications have to have that. All
- 25 state permit applications in the coastal



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 counties has to have that determination before
2 it can be issued.

3 Q: If a project is located anywhere within a
4 coastal county, it has to have that
5 certification?

6 A: Yes. If it's a state permit, yes.

7 Q: Or a federal permit?

8 A: Well, yes.

9 Q: Do you recall in June of 2012 approving the
10 retrofit permit for the Cat Island POA?

11 A: I don't recall the exact date but yes, that
12 sounds about -- about right. Yes.

13 Q: Do you recall in your cover letter indicating
14 to the POA that certain activities have to be
15 taken into account because this project is part
16 of a larger common plan for development?

17 A: I don't recall the exact verbiage, no. I mean,
18 if you showed it to me I can ...

19 Q: Is it fair to say that Garfield Park Phase 3
20 was just one part of a large common
21 development?

22 A: Yes.

23 Q: Okay. Is it fair to say that under the
24 regulations there are more stringent
25 requirements for projects that are phases of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 larger developments?

2 A: There is different criteria depending on the
3 size of the project and the size of the larger
4 common plan, yes.

5 Q: Okay. Is it fair to say that if a project is
6 an isolated projected unrelated to any other
7 development and it's small in acreage, say less
8 than an acre or two, that you have less
9 stringent requirements?

10 A: There are different requirements and yes,
11 typically they are less stringent for smaller,
12 individual, isolated projects. Yes.

13 Q: Okay. Since Garfield Park is part of a larger
14 common plan of development, would you agree
15 that it has to comply with the most stringent
16 of the requirements that are applicable in the
17 coastal zone?

18 A: It depends on the size of the larger common
19 plan, the cumulative size of that larger common
20 plan, as well as how much of that larger common
21 plan is under construction at the same time.

22 Q: Would you agree that something the size of all
23 of Cat Island would be plenty big enough to be
24 at the top end of that spill?

25 A: Again, it depends on how much is under



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 construction at the same time for this
2 particular permit, so there are some criteria
3 that, you know, would be the most stringent,
4 but there's others that still wouldn't apply
5 because there would be -- because other phases
6 of the larger common plan are not currently
7 under construction at the same time.

8 Q: With regard to Garfield Park Phase 3, were
9 there any requirements that you approved on a
10 less stringent basis than is applicable to
11 larger development?

12 A: Again, it depends on the area of disturbance,
13 of the construction activity. What is the
14 ground that is being disturbed? There is one
15 particular criteria that -- for sediment
16 trapping efficiency for sites that have 10
17 acres -- excuse me -- 10 acres of disturbance
18 draining to one outfall at one time. So if the
19 larger common plan was two phases of -- just
20 hypothetically speaking, two phases of, you
21 know, five acres of disturbance, if those two
22 phases were going on concurrently then that
23 criteria might apply, but if they drain to the
24 same outfall and it's going to be 10 acres of
25 disturbance at one time.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: When you -- strike that. Were you the
2 individual who issued the coastal zone
3 consistency certification with regard to the
4 retrofit application?

5 A: Yes, I believe I did.

6 Q: Is that any longer part of your job
7 description?

8 A: No.

9 Q: When did that change?

10 A: April of -- I believe it was April 2012.

11 Q: How many coastal zone consistency
12 certifications have you ever issued?

13 A: I don't know. Several. Many.

14 Q: What did you do to determine whether or not the
15 retrofit application deserved that
16 certification?

17 A: I reviewed the applicable Coastal Zone
18 Management Program policies.

19 Q: The policies and procedures?

20 A: Uh-huh. Yes.

21 Q: Did you determine that there were no impacts to
22 the coastal zone?

23 A: Yes.

24 Q: In making that determination, did you discuss
25 that finding with any of the other DHEC



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 representatives?

2 A: There were several -- several individuals who
3 I discussed that -- that determination, that
4 were involved in that decision, yes.

5 Q: And who were they?

6 A: Well, there are other resource agencies, like
7 Department of Natural Resources, and I also
8 discussed it with other individuals in OCRM and
9 -- and my supervisor.

10 Q: And who's your supervisor?

11 A: Shannon Hicks.

12 Q: And other than Ms. Hicks, anybody else within
13 OCRM?

14 A: Well, yes. Blair Williams in the Wetlands
15 section. Geordie Madlinger who is also in the
16 Wetlands section.

17 Q: Did you also handle the permitting for Garfield
18 Park in its original stormwater permit in 2004?

19 A: I was involved with the Garfield Park Phase 3
20 permitting, yes.

21 Q: Were you the person that actually reviewed and
22 approved the application and issued the permit
23 in 2004?

24 A: Yes, for Garfield Park Phase 3. Yes.

25 Q: Okay. How was its stormwater treated in 2004?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: In 2004, as I recall, the -- the stormwater
2 quality and quantity control, I believe, was
3 addressed by the -- I know the quality control
4 was addressed by the existing stormwater
5 impoundment.

6 Q: By the lake?

7 A: Right.

8 Q: And by the dike with its outfall device?

9 A: Right.

10 Q: And explain to the Court how that treats the
11 quality of the stormwater.

12 A: Well, it was -- it -- it detained the water.
13 There's -- the water was impounded and -- and
14 the outflow was controlled by the outfall
15 structure.

16 Q: Is it fair to say that the quality is achieved
17 by allowing the stormwater to have sufficient
18 time that, say, for instance, 95 percent of its
19 sediment sinks to the bottom of the lake and
20 only the cleaner water ever leaves the lake?

21 A: It met the requirements of stormwater
22 management.

23 Q: Is it fair to say that a detention pond works
24 by allowing the stormwater to have time to have
25 pollutants and sediment settle and then have a



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 structure that allows the skimming of water off
2 the top?

3 A: That is one means of stormwater quality
4 treatment, yes.

5 Q: And that's called detention?

6 A: That is a function of -- one of the functions
7 of detention, yes.

8 Q: Okay. But when you talk about stormwater by
9 detention, is that typically how it works?
10 It's captured, held, and slowly released over
11 24 hours?

12 A: It's -- there's not a 24 -- I mean, when we're
13 talking about detention in general, there's no
14 -- there's not necessarily 24-hour -- when
15 you're talking about detention, definition of
16 detention is to store the water and have a
17 controlled release of that water.

18 Q: Okay. A controlled release comes from some
19 sort of outfall device?

20 A: Some kind of structure.

21 Q: A structure of some sort?

22 A: Yes.

23 Q: Okay. And don't the regs also require that a
24 proper detention pond release the water, or for
25 a 10-year event, be able to release it over a



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 24-hour period?

2 A: No.

3 Q: Where does the 14-hour period come into play?

4 A: There is a -- a design specification in the
5 regulations for a 24-hour release of the first
6 flush volume.

7 Q: Okay. So are you saying that to be a proper
8 detention pond, it needs to be able to store
9 the first half-inch of runoff and then release
10 that over a 24-hour period?

11 A: If the project meets -- if a project meets that
12 criteria of requiring that, then there is a --
13 there is a regulation that requires a 24-hour
14 release of that first flush.

15 Q: Okay. Now, what is -- is retention a different
16 type of stormwater treatment?

17 A: Retention is a different -- is a different type
18 of stormwater management, yes.

19 Q: Okay. Describe for the Court how retention
20 works.

21 A: Retention is the storage and the -- the storage
22 of stormwater runoff and the only way for that
23 -- that water to exit the system is either
24 through infiltration or evaporation.

25 Q: Okay. Where the water either settles down



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 through the bottom of the lakebed or
2 evaporates? Is that what you're saying?
- 3 A: Infiltrates into the ground or evaporates into
4 the air.
- 5 Q: Okay. And then describe for the Court how
6 stormwater treatment by infiltration works.
7 How is that different than retention?
- 8 A: It's -- infiltration is a form of retention.
- 9 Q: Okay. Is it fair to say that with
10 infiltration, the water simply gets filtered by
11 going down through the ground?
- 12 A: Yes.
- 13 Q: Now, are you familiar with Regulation 72-300?
- 14 A: Yes.
- 15 Q: And am I correct in assuming you're familiar
16 with some of the definitions that exist within
17 those regulations?
- 18 A: Yes.
- 19 Q: Would you agree with me that infiltration --
20 and I'm reading from the regulation so tell me
21 if you disagree -- infiltration means the
22 passage or movement of water through the soil
23 profile. Do you agree with that definition?
- 24 A: Yes.
- 25 Q: Okay. So if I understand you correctly, are



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 there certain types of stormwater treatment
2 where the water is captured and then it gets
3 cleaned by going down through the earth?

4 A: Yes.

5 Q: And is that what infiltration means?

6 A: Yes.

7 Q: Okay. Now, the retrofit application sought to
8 have inline filters installed in sewer inlets;
9 is that correct?

10 A: Yes.

11 Q: Would you agree that inserting inline filters
12 is completely different than treating
13 stormwater by infiltration?

14 A: I think that it provides a -- a means of
15 treatment just like infiltration does, but it
16 is a different mechanism.

17 Q: Would you agree that when the regulations talk
18 about treating stormwater within a half mile of
19 the coastal zone that there are only three
20 options and that is detention, retention and
21 infiltration?

22 A: I don't agree that those are the only options.

23 Q: Within the coastal zone?

24 A: There are other acceptable means depending on
25 the site.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. But at least you're familiar with the
2 regulation that does talk about those three
3 types of stormwater treatment?

4 A: The -- which -- which regulation are you
5 referring to?

6 Q: Tell you what. I'll get to it and hand you a
7 copy of it shortly here.

8 A: Okay.

9 Q: But from a regulatory standpoint, do you agree
10 that stormwater treatment by infiltration is a
11 different animal than inserting filters into a
12 storm sewer inlet?

13 A: It's -- it's -- it's an acceptable means of
14 water quality treatment, so in that sense it's
15 -- it's not a different animal. I mean, it is
16 a best management practice that has been
17 considered acceptable.

18 Q: I understand that both might arguably be a
19 means of treating stormwater. My point is
20 would you agree that inserting filters into a
21 storm sewer inlet is a different animal than
22 the infiltration treatment that's described in
23 the regs?

24 A: I'd say it's a different mechanism.

25 Q: Okay.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: I don't think it's a completely whole different
2 animal, so I disagree with you in that aspect.

3 Q: You do agree though that if a stormwater system
4 is by infiltration, it involves having the
5 stormwater sink down through the soils of the
6 earth?

7 A: Yes.

8 Q: You earlier mentioned that there were two types
9 of benefit from the lake with regard to the
10 stormwater treatment in Garfield Park. One,
11 you started talking about water quality. What
12 is the other?

13 A: Water quantity.

14 Q: Quantity control, is that it?

15 A: Quantity control, yes.

16 Q: And tell me how that works with regard to the
17 lake.

18 A: Well, with regard to the lake, it's -- it's
19 essentially the stormwater runoff is stored in
20 the lake and released at a controlled rate and
21 that rate is controlled to the pre-developed
22 rate.

23 Q: Okay. Is it fair to say then that during a 10-
24 year storm or a 25-year storm, something that
25 only is so severe that it only happens once



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 every 25 years, that the lake then absorbs all
2 that stormwater but then slowly released it so
3 that you don't have erosion issues?

4 A: It's -- the -- first of all the state does not
5 require in all projects a 25-year storm so we
6 look at the two and 10-year storm and the
7 requirement for the two and 10-year storm is
8 that the post-development discharge rate cannot
9 exceed the pre-development discharge rate.

10 Q: And what happens if it does?

11 A: Then the -- the -- well, there's -- there's --
12 there's two options. They -- the applicant
13 either has to change their development and
14 their stormwater management system in order to
15 meet that requirement, or they have to request
16 and justify a waiver from that requirement.

17 Q: Now, with regard to Garfield Park Phase 3, did
18 you grant such a waiver?

19 A: In 2004 I don't ---

20 Q: No, in 2012.

21 A: In 2012 I ---

22 Q: In 2004 you had the lake; is that correct?

23 A: Right.

24 Q: And didn't that meet all the requirements for
25 both quality control and quantity control?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: I believe so.

2 Q: Okay. So in your view in 2004 the stormwater
3 system that you approved met the regs; is that
4 correct?

5 A: Yes.

6 Q: Would you agree that detention is one of the
7 most common forms of stormwater treatment?

8 A: Yes.

9 Q: Would you agree that it's the gold standard in
10 Beaufort County for stormwater treatment? I'm
11 not saying others aren't allowable or may not
12 meet the regs. I'm saying isn't it the gold
13 standard?

14 MR. HABER: Objection, Your Honor, it's speculation.

15 MR. NORTH: I think after about 15 years of doing
16 nothing but stormwater he wouldn't be
17 speculating. He would know.

18 MR. HABER: As to whether or not something's a gold
19 standard in Beaufort County?

20 THE COURT: I agree. I mean, he can know if it's
21 one that's commonly used and if it's the
22 preferred one, but ---

23 MR. NORTH: That's a great question, Your Honor.

24 Q: Wouldn't you agree that detention is the
25 preferred method of handling stormwater



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 treatment?

2 A: I think it's a common method, yes.

3 Q: Now, would you agree that the Cat Island lake
4 stored the stormwater of not just Garfield Park
5 but an entire drainage basin?

6 A: Could you repeat that question?

7 Q: Yes. Would you agree that the Cat Island lake
8 stored the -- detained the stormwater of not
9 just Garfield Park but the entire drainage
10 basin of the lake?

11 A: It -- it did detain to a certain extent
12 everything that drained to it, yes.

13 Q: Okay. And would you agree that by detaining
14 all of the stormwater of the basin and not just
15 Garfield Park, that it provided stormwater
16 treatment that met the requirements of the regs
17 whether they had to apply or not by detention?

18 A: I cannot say that, no.

19 Q: Why?

20 A: Because the regulations did not apply to
21 projects that were built before a certain time
22 period, so I did not check those to see that
23 those projects met that requirement. Those
24 regulations did not apply to those projects
25 that were developed prior to the effective date



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 of the regulations so no, I cannot say that
2 that pond -- that impoundment, you know, met,
3 you know, met those requirements for those
4 projects.

5 Q: Would you agree that there were portions of the
6 lake's drainage basin that were developed prior
7 to the effective date of the regulations?

8 A: Yes.

9 Q: And would you agree that those that were
10 developed prior to 1991 did not have to meet
11 the stormwater requirements that have to be met
12 for projects after 1992?

13 A: Yes.

14 Q: Would you agree that within that drainage basin
15 there were only two phases of development that
16 were developed after 1992?

17 A: I don't -- I don't recall exactly how many
18 there were.

19 Q: Do you recall that Tabby Park was developed
20 after 1992?

21 A: Yes.

22 Q: And it was in the drainage basin, wasn't it?

23 A: Portions of it were, yes.

24 Q: And Garfield Park Phase 3 was in the drainage
25 basin, was it not?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Yes.

2 Q: Okay. And is it not fair to say that whether
3 the land in the drainage basin was developed
4 before or after 1992, all of it got detained by
5 the detention of the lake?

6 A: Yes, it was to some extent the area draining to
7 the former impoundment was detained by that
8 impoundment. Yes.

9 Q: Okay. So would it be fair to say that even the
10 areas that had been developed prior to 1992,
11 even though they didn't have to have stormwater
12 treatment, effectively had stormwater treatment
13 as good as Garfield Park?

14 A: I don't know that they effectively had
15 stormwater treatment. No, I do not know that.

16 Q: Why would the stormwater that flows from the
17 land next to Garfield Park not be getting the
18 same detention as Garfield Park?

19 A: I don't know the -- because I didn't have
20 calculations or any requirements to review them
21 by, so I do not -- I don't know that.

22 Q: I hope you're not misinterpreting my question.
23 I'm not suggesting that any regulation or
24 requirement applies to the areas that were
25 developed prior to 1992. I just want to know



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 if you will agree that even though they don't
2 have a requirement to have stormwater
3 treatment, because all of their stormwater
4 flowed to the detention basin, it got treated
5 just the same as Garfield Park.

6 A: It was detained, I can say, by the impoundment.
7 I can't say that it got the same treatment. I
8 don't know that without reviewing specifically
9 the -- the -- you know, the characteristics of
10 that -- those portions of the drainage basin,
11 which I -- you know, I didn't have supporting
12 calculations for nor did I require them.

13 Q: Let me hand you Exhibit 80. Do you recognize
14 that as an Andrews and Burgess drawing of the
15 drainage basin of the Cat Island lake?

16 A: Yes, that's what this appears to be.

17 Q: Okay. And you recognize that as actually the
18 submittal and the final draft from Andrews and
19 Burgess in 2012 that was part of the Garfield
20 Park Phase 3 stormwater retrofit application?

21 A: It looks like it could be.

22 Q: Okay. Tell me the significance of the orange
23 line, the dotted orange line.

24 A: That's the perimeter of the drainage basin.

25 Q: Okay. And would it be fair to say then that



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 anything inside that orange line drains to the
2 lake?

3 A: Yes.

4 Q: Okay. And then once it drains to the lake, is
5 it not detained there and subject to the same
6 effect of the outfall device skimming the water
7 off the top as the sediments and pollutants
8 deposit themselves in the lake?

9 A: Everything that drains to that -- to that lake
10 is controlled by that outfall structure, yes.

11 Q: So would it be fair to say that it would get --
12 all of the drainage basin got treated by the
13 detention provided by that lake?

14 A: It was treated to some extent due to the
15 detention in that pond, yes -- that
16 impoundment.

17 Q: Now, if your retrofit was approved, let's take
18 a look at Number 80 again. Out of that entire
19 drainage basin, you've had to take a rough
20 guess, would you agree that Garfield Park
21 represents maybe one-eighth of the drainage
22 basin?

23 A: Somewhere around there, yeah, I guess.

24 Q: Okay. And would you agree that if the retrofit
25 application is approved that the balance of the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 drainage basin would be allowed to simply flow
2 out the cut in the dike without detention?

3 A: No, I do not agree. There are other detention
4 ponds that portions of this basin drain to, so
5 ---

6 Q: Okay. You're referring, I assume, to Tabby
7 Park?

8 A: This -- referring to the -- kind of, the
9 northwest portion of this drainage area.

10 Q: Okay. Are you referring to the area with some
11 ponds that have some blue arrows in them?

12 A: Yes.

13 Q: Okay. Now, let's ignore that for a minute. Do
14 you see the club -- golf clubhouse area
15 adjacent to Garfield Park?

16 A: I don't know exactly what you're -- I'm not
17 sure which areas is the golf clubhouse.

18 Q: Okay. Would you agree that there is some golf
19 property, golf course property and clubhouse
20 property within the drainage basin?

21 A: Yeah, it appears to be. Yes.

22 Q: And would you agree that the entire subdivision
23 of the Rookery is in that drainage basin?

24 A: It looks to be. I'm not sure exactly the
25 extent of -- of the Rookery that might drain



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 directly into Chowan Creek to the east.

2 Q: And would you agree that all of G tract, the
3 land that is south of the lake, the undeveloped
4 portion, is all drains to the lake?

5 A: There is a large portion of undeveloped area on
6 the south side of -- of the former impoundment.
7 I don't know how -- you know, exactly how much
8 of it is considered G tract. It looks like it
9 includes some golf course area and what I think
10 is -- is most of the G tract. Does look like
11 some of the G tract does -- or a portion of
12 that area -- I assume it's the G tract -- does
13 drain directly east, you know, into -- directly
14 into Chowan Creek.

15 Q: Okay. You're talking about this little tiny
16 line between the shore line and the orange?

17 A: Well, there's that portion there. There's a
18 portion to the south of that dotted -- dotted
19 line.

20 Q: Okay. Okay. Well, limiting the question to
21 just the orange line, would you agree that
22 those areas that are within that drainage basin
23 that were developed prior to 1992 are -- would,
24 if your permit is approved, for the rest of
25 eternity flow untreated into the lakebed and



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 out to sea?

2 A: Could you repeat that? I'm not sure exactly
3 which portion you're talking about.

4 Q: Okay. I tell you what. Let's make it real
5 simple. Would you agree that the lots platted
6 in the Rookery prior to 1992, if your permit is
7 approved, would have their stormwater flow into
8 Chowan Creek without any stormwater treatment?

9 A: I'm not sure the exact boundary of the --
10 what's considered the Rookery, but I know there
11 are some lots along the -- the banks of this
12 former impoundment that do drain, you know,
13 into the -- the former impoundment directly.

14 Q: Okay. And would you agree if the permit is
15 approved, that the permit contemplates leaving
16 the dike unrepaired and letting the waters flow
17 out to Chowan Creek without that detention?

18 A: We don't have a -- there aren't any applicable
19 regulations, I mean, that address that because
20 they were developed before the effective date
21 of the stormwater regulations.

22 Q: Would you agree that if the retrofit permit is
23 approved, that the entire lakebed of the Cat
24 Island lake would become tidal and that tidal
25 area would be added to the critical zone in the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 area?

2 A: I don't know. That's not really part of my
3 purview. It makes sense that the tide will
4 flow in and flow out freely.

5 Q: How are you able to give a coastal consistency
6 determination if that is beyond your purview?

7 A: Because the policies that apply to state
8 coastal zone consistency certification of state
9 permits does not -- I mean, it doesn't -- they
10 don't pertain to -- I mean, they are specific
11 regulations in a regulatory division of OCRM
12 that would address any, you know, alteration of
13 critical area or saltwater marsh.

14 Q: Are you saying that there are other divisions
15 of OCRM that concern themselves with whether or
16 not there are impacts to the critical area?

17 A: If they're direct impacts, yes.

18 Q: Okay. But are those types of impacts beyond
19 your purview?

20 A: Yes.

21 Q: If the permit is allowed, would you agree that
22 the dike remains open and remains tidal
23 forever?

24 A: I'm sorry. Repeat the question.

25 Q: The retrofit permit seeks a change in the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 method of treating stormwater, does it not?

2 A: Yes.

3 Q: And does it not seek to abandon the Cat Island
4 lake as a detention pond and instead to allow
5 that Cat Island lake to become a tidal area?

6 A: The retrofit proposes an alternative water
7 quality treatment mechanism which meets the
8 state stormwater requirements.

9 Q: Yes. But doesn't the project contemplate
10 leaving the hole in the dike open, stabilizing
11 the dike and letting the lakebed become tidal?

12 A: Yes.

13 Q: Okay. That's part of the project, isn't it?

14 A: Yes.

15 Q: And would you agree that one of the
16 consequences of approving that project is that
17 the lakebed would become critical area?

18 A: I assume so. I -- I mean, that's not my --
19 it's not really -- I can't really testify to
20 that.

21 Q: Do you know what the definition of critical
22 area is?

23 A: I don't know the formal definition but just in
24 general it's saltwater marsh.

25 Q: Would you agree that it includes all tidal



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 areas?

2 A: That's not really -- it's not really my area of
3 expertise. Seems -- yeah, it sounds -- yeah,
4 tidal.

5 Q: So you don't know one way or not whether or not
6 it includes all tidal areas?

7 A: I mean, that sounds like a reasonable
8 definition of it.

9 Q: Tell me how much discretion you have, if any,
10 with regard to picking the type of stormwater
11 treatment that a development has.

12 A: I review what is -- is proposed by the
13 applicant. If it meets the requirements, I
14 approve it. I don't design or specify which
15 mechanism, you know, has to be used. As long
16 as it meets the requirements, you know, what is
17 proposed is up to the applicant and -- but it's
18 -- it does have to meet the requirements, but
19 as to what -- I mean, because there's several
20 mechanisms out there. We don't specify, you
21 know, what that is.

22 Q: In determining whether an applicant meets the
23 requirements, do you rely on representations
24 from the applicants' licensed engineers?

25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Is it fair to say that the stormwater
2 department relies heavily on -- on the outside
3 engineers, the licensed engineers, to do the
4 studies, do the analyses and determine whether
5 or not it meets the requirements?

6 A: Yes.

7 Q: Is it your belief that you have got to approve
8 whatever a developer proposed if it meets the
9 regulations?

10 A: If it meets the regulations, yes.

11 Q: Okay. Now, is that true even if we're talking
12 about a change to a previously approved permit?

13 A: Yes, if it's a proposed alternative, they can
14 modify the permit as long as that proposed
15 modification meets the requirements. Yes, they
16 can modify it or terminate the old permit and
17 apply for something different.

18 Q: What's your basis for believing that an
19 applicant has a right to change an approved
20 stormwater system?

21 A: I mean, the regulations allow for it.

22 Q: Do they specifically allow for it? What's the
23 source of your belief that a developer has a
24 right to come in and change the system?

25 A: There are -- I'd have to consult the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 regulations to tell you exactly which one it
2 is, but there are means for modifications to
3 permits.

4 Q: Okay. Are you referring to regulations that
5 talk about when permits can be modified?

6 A: I'm not -- I'm not sure what you're asking.

7 Q: Are you familiar with regulations that deal
8 with the circumstances in which issued permits
9 can be modified?

10 A: I know the regulations allow for it. I don't
11 ---

12 Q: How do you know that ---

13 A: --- recall ---

14 Q: --- though?

15 A: There's -- there's a regulation in 72-300 in
16 that -- that, you know, in that set of
17 regulations, I should say. Et seq whatever.

18 Q: Do you remember the homeowners submitting
19 objections and complaints and grounds for
20 denying the retrofit permit?

21 A: Yes.

22 Q: Do you remember being presented with a copy of
23 a state statute, Section 48-39-150?

24 A: That doesn't sound like a regulation that
25 pertains to stormwater management, which is



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 what I -- which is the -- you know, so it's
2 not a permit -- it's not a regulation that I
3 deal with.

4 Q: Okay.

5 A: Not one I'm familiar with.

6 Q: Do you remember taking the position that that
7 section does not relate to stormwater permits?

8 A: I mean, I don't recall.

9 Q: Is it your belief that that section does not
10 apply to stormwater permits?

11 A: I mean, if you -- if you show it to me, I'd
12 love to see it.

13 Q: If you take a look in these books, Exhibit 46
14 is a copy of the statute.

15 A: Okay. This looks like the Coastal Tidelands
16 and Wetlands Act. It's not the state
17 stormwater regulations or the NPDES
18 construction journal permit ---

19 Q: Okay.

20 A: --- so it's not something under my purview.

21 Q: Okay. Do you see on the first page under
22 Section J that critical area means any of the
23 following, and it includes tidelands?

24 A: I -- I see that it says that.

25 Q: Okay. And do you see above that under G that



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 tidelands means all areas which are at or below
2 mean high tide including mudflats and similar
3 areas?

4 A: Sure, I see that.

5 Q: Okay. Turn if you would to Section 48-39-80.

6 A: Is this still under Exhibit 46?

7 Q: Yes, it is.

8 A: Which section?

9 Q: 48-39-80. Do you see in the first sentence of
10 that section the language that directs DHEC to
11 develop the Coastal Management Program?

12 A: Where are you looking?

13 Q: The very first sentence of section 48-39-80.

14 A: I see that.

15 Q: Okay. And then if you turn the page to
16 subsection 7, do you see that DHEC is to
17 provide or to determine whether a proposed
18 activity of an applicant for a federal license
19 or permit complies with the state's Coastal
20 Zone Program?

21 A: That's what it looks like.

22 Q: Okay. Would you agree that the stormwater
23 permit is a federal license or permit that
24 requires its -- that it comply with the Coastal
25 Zone Program?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: It -- I don't deal with these regulations but
2 it -- it appears that what that is saying is
3 that a critical -- whatever permit is
4 associated with these regulations is what needs
5 to comply with the Coastal Zone Program.

6 Q: Take a look at subparagraph 11. Do you see the
7 directive there about reviewing all state and
8 federal permit applications in the Coastal
9 Zone?

10 A: I see that.

11 Q: Would you agree that all state and federal
12 permit applications would include a stormwater
13 permit?

14 A: The stormwater permit is a -- a state
15 application, yes.

16 Q: Okay. So would you agree that that section
17 applies to a stormwater permit?

18 A: I don't know. I don't deal with these
19 regulations so I can't really speak to that.

20 Q: Well, this is a state statute, not a
21 regulation.

22 A: It's not one that I deal with on a regular
23 basis, no.

24 Q: Is it fair to say you didn't deal with it at
25 all in the context of the retrofit application?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: Yeah.

2 Q: Take a look, if you would, at Section 48-39-
3 150. Is it fair to say that none of the
4 considerations that are listed there were
5 considered by you in the context of ruling upon
6 the appropriateness of the retrofit?

7 A: I mean, this is not -- you know, it's -- it's
8 not -- not something I deal with so, no.

9 Q: So these were not factors that you considered?

10 A: I considered the -- the state stormwater permit
11 and the Coastal Zone Management program
12 policies that applied to that state coastal
13 zone consistency, yes.

14 Q: Okay. But I'm talking about the factors that
15 are listed here, the 10 factors in Section 150.
16 Those were not considerations, were they, in
17 your analysis of the retrofit?

18 A: These are -- I mean, this is critical area
19 permitting stuff. I deal with stormwater
20 permitting and coastal zone consistency issues.

21 Q: If your stormwater permit affected the critical
22 area, would not you have to also consider the
23 issues that relate to critical area?

24 A: That would be a critical area permit. That's
25 handled by another division.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: So that would be somebody else?

2 A: Right.

3 Q: Okay. Now the -- you said you didn't consider
4 these 10 factors. You see that the 10th one is
5 the extent to which the proposed use could
6 affect the value and enjoyment of adjacent
7 owners?

8 A: It's -- I mean, this is what I've said before.
9 This is a critical area permit issues that ---

10 Q: Isn't it fair to say nobody ever asked for a
11 critical area permit?

12 A: I -- I mean, that's -- if -- if it required
13 one, they would have had to get one. I mean --
14 -

15 Q: Well, has the applicant, after four and a half
16 years, ever asked for one?

17 A: That's not my purview. I looked at the -- the
18 stormwater permit and the coastal zone
19 consistency issues and it, you know, that --
20 that critical area permit requirements -- I
21 mean, we -- I mean, I consulted with - with
22 that division of OCRM and, you know, the
23 applicant was aware that if it required a
24 critical area permit that, you know, that's
25 what, I mean, he would have to apply for. I



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 made -- you know, I made that clear during the
2 review process but, you know, as far as
3 reviewing it or processing the application,
4 that was not -- not part of my purview.

5 Q: Okay. If you'll flip back one page to Section
6 48-39-130, do you see under subsection © a
7 state statute that says that after 1977 no
8 person shall in any way alter any critical area
9 without first obtaining a permit?

10 A: That's what it looks like.

11 Q: Would you agree that changing the stormwater
12 system to leave the dike open alters the
13 critical area by adding eight acres of mudflat
14 bottom to the critical area?

15 A: I -- I mean, that's -- that's not my area of
16 expertise. It seems to me it would enhance it.
17 It only expands the critical area out there.
18 I -- you know, I -- that's not my ---

19 Q: Whether it enhances it or not, would you agree
20 it alters it?

21 A: I mean, that's not my call. No.

22 Q: Okay. Would you agree that -- well, was one of
23 your requirements for the retrofit that the
24 dike be stabilized?

25 A: Yes, I believe it was part of the permit. Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And was that because of the ongoing problem
2 with erosion of the dike from the tidal flows?

3 A: It would -- yes, it was supposed to help
4 stabilize the dike.

5 Q: Okay. Would all of -- how would you go about
6 stabilizing the dike?

7 A: Typically just smoothing out the slopes and
8 providing some kind of cover.

9 Q: Matting?

10 A: It could involve matting or vegetation.
11 There's ---

12 Q: Well, for the areas that are underneath the
13 water, what would be the technique?

14 A: Either one of those, vegetation or matting.

15 Q: Matting, riprap maybe?

16 A: Riprap could -- yeah. It's been used before.

17 Q: Okay. And would it be fair to say that the
18 areas that need to be stabilized are the areas
19 that are being exposed to the tidal currents?

20 A: It -- I mean, it could be areas that are
21 exposed to stormwater, rain, rainfall.

22 Q: Would it at least include though the areas that
23 are being exposed to the tidal currents?

24 A: The -- it could, yes.

25 Q: Wouldn't it have to?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 A: It -- it could be that the channel below the
2 high mark's already stabilized.
- 3 Q: Well, if it was already stabilized then why did
4 you make it a requirement of the permit that it
5 get stabilized?
- 6 A: Because stormwater could cause -- stormwater
7 itself could cause erosion. Just rainfall
8 droplets can cause erosion. Stormwater runoff
9 in, you know, flowing down the -- the slope
10 could -- could cause erosion.
- 11 Q: Okay. Would it be fair to say that the
12 stabilization of the dike was intended to
13 include areas above and below the water line to
14 stabilize the dike and prevent erosion, whether
15 by rainfall or tide?
- 16 A: I believe it did include some. I'm not sure.
17 I'd have to look at the plans again.
- 18 Q: Some what?
- 19 A: Some area below the ---
- 20 Q: Okay.
- 21 A: --- tide line.
- 22 Q: Well, would you agree that adding matting to
23 the dike underneath the water line alters the
24 critical area? It's work in the critical area?
- 25 A: It was along the dike -- I mean, that -- I'd



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 have to consult the -- excuse me -- OCRM
2 wetlands division to see, you know, if that
3 particular work would require a permit.

4 Q: Okay. Take a look, if you would, at page eight
5 of that statute. Do you see the language about
6 the department holding a public hearing on any
7 application that has an effect on the critical
8 area prior to issuing a permit? That's if you
9 have a certain number of people requesting it,
10 but my point is the scope of this statute
11 applies to any application that has an effect
12 on a critical area. Do you see that?

13 A: I'm not -- which section are you looking at?

14 Q: The top of page eight.

15 A: At the very top?

16 Q: Yes.

17 A: I mean, that's the continuation of another
18 section but it does look like that there is a
19 sentence there that says department shall hold
20 a public hearing on any application.

21 Q: Okay. And any application would include a
22 stormwater permit application, wouldn't it?

23 A: Not if it didn't affect -- have an affect on
24 the critical area, no.

25 Q: Okay. But if it had any effect on the critical



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 area, then all of the requirements that you are
2 not part of your area of coverage have been
3 ignored; is that fair?

4 A: I -- could you repeat that question? I'm not
5 sure what you're asking.

6 Q: I don't want to repeat that question. It was
7 too poorly worded.

8 A: Okay.

9 Q: Do you have any information as to the
10 motivation of the developer to seek to change
11 the stormwater system of Garfield Park?

12 A: No.

13 Q: Was any justification provided to you with
14 regard to the reasons why a change was being
15 sought or justified?

16 A: I don't think so. I don't recall exactly
17 but...

18 Q: Okay. At least you didn't analyze the merits
19 of any rationale?

20 A: I didn't -- it wasn't part of the
21 consideration. Consideration was whether the
22 proposed alternative met the requirements of
23 the regulations.

24 Q: Did you take into account any of the Beaufort
25 County stormwater requirements?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: No.

2 Q: Are you aware that Beaufort County has its own
3 stormwater requirements?

4 A: I understand that they do, yes.

5 Q: Why would you not take those into account in
6 the process of deciding whether the retrofit
7 should be approved?

8 A: It's not part of my purview.

9 Q: You seem to have a pretty narrow purview there.

10 **MR. HABER:** Objection, Your Honor.

11 **MR. NORTH:** I agree. I support that objection.
12 Strike.

13 Q: If the applicant and OCRM do not take into
14 account any requirements of Beaufort County,
15 would not that just add to the four and a half
16 year delay that we've already experienced in
17 having the breach of the dike addressed?

18 A: That's the responsibility of the applicant.
19 It's not -- it's not part of -- I mean, I work
20 for the state. I review state requirements and
21 apply those. That's ...

22 Q: Would it be fair to say that the current permit
23 for Garfield Park is still the 2004 permit that
24 provides for detention by the lake?

25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And as a part of that permit, don't you have a
2 repair agreement with the developer that he'll
3 maintain that stormwater system in good working
4 order?

5 A: He's applied for an alternative, I mean, that's
6 -- that's what we're entertaining at this
7 point.

8 Q: Okay. So four and a half years after the
9 system quit working, what if anything has OCRM
10 done to get stormwater treated for that
11 development?

12 A: Well, we've received an application. We've
13 sent letters to require the applicant to -- to
14 -- to apply for either, you know, a change in
15 the system or to fix -- I mean, we've prompted
16 the applicant to, you know, to -- to address
17 the issue and we've reviewed, you know,
18 submittal -- many submittals from the applicant
19 and many comments from the public and -- and
20 we're going, you know, through, you know, the
21 regulatory framework to get -- get it resolved,
22 get it addressed.

23 Q: Would you agree that OCRM had the power, if it
24 chose, to simply order the developer to repair
25 the existing stormwater system?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: We have -- I mean, we have the ability to
2 process an application for an alternative, you
3 know, proposal.

4 Q: No, I understand that. That wasn't my
5 question. My question is do you not also have
6 the power, if you chose to exercise it, to
7 order the developer to fix the approved
8 stormwater system?

9 A: If -- if an acceptable alternative is proposed,
10 then we can accept that so that -- that's
11 what's under review here.

12 Q: My question is a yes or no. Do you have the
13 power, if you chose to exercise it, to order
14 the developer to fix the existing stormwater
15 system?

16 A: Not if he's got an acceptable alternative.

17 Q: And what's your basis for saying you don't have
18 that power?

19 A: Because there's an acceptable alternative on
20 the table that meets the state requirement.

21 Q: Do you recall testifying last summer that it
22 did not bother you at all that one of the
23 effects of approving the retrofit was that
24 large areas that were previously treated for
25 stormwater would forever discharge untreated?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: That -- what was the question about that?

2 Q: Do you recall testifying in your deposition
3 last summer that it did not bother you at all
4 that one effect of approving the retrofit was
5 that large areas that were previously treated
6 for stormwater would forever discharge
7 untreated?

8 A: Yes.

9 Q: Okay. I believe you testified that you do
10 agree that the retrofit application is governed
11 by the policies and procedures of the Coastal
12 Zone Management Program; is that correct?

13 A: It's -- it's one of the -- one of those, yes.

14 Q: And would you agree that this retrofit permit
15 cannot be issued unless it's in compliance with
16 that program?

17 A: Yes.

18 Q: Do you also agree that this retrofit permit is
19 governed by regulation 700 -- 72-300 et
20 sequence?

21 A: Yes.

22 Q: Is it also governed by the regulation 61-9?

23 A: Yes.

24 Q: Do you recall receiving a multitude of calls,
25 letters and emails from the Petitioners and



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 their counsel over the three years that this
2 matter was pending?

3 A: Yes.

4 Q: Is it fair to say that you were repeatedly
5 bugged and pressured to act and to consider
6 various reasons why the permit should not be
7 granted?

8 A: I recall several emails, several phone calls,
9 letters, submittals, yes.

10 Q: In your view if the developer decided he wanted
11 to just keep the old system and made
12 application to do that, would you feel that you
13 should approve that also?

14 A: Yes.

15 Q: So basically the developer can have whatever he
16 wants as long as it complies with the regs; is
17 that your view?

18 A: As long as we approve it, yes.

19 Q: And as long as it complies with the regs?

20 A: Which if it complies with the regulations and
21 he's made an application to us and we've
22 approved it, yes.

23 Q: Okay.

24 A: He can't just do ---

25 Q: Let me make sure I have the chronology right.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 He can have anything he wants as long as it
2 complies with the regs; is that right?

3 A: He has to submit an application for it and make
4 notification to us and then we would have to
5 review it and make sure it meets the
6 requirements, and then we would have to approve
7 it.

8 Q: Okay. And if it does meet the requirements you
9 will approve it?

10 A: Yes.

11 Q: Okay. Do you recall receiving complaints from
12 homeowners about tidal encroachment on their
13 homesites?

14 A: Yes.

15 Q: Do you recall taking the position that that was
16 not an adverse consequence caused by
17 stormwater?

18 A: Yes.

19 Q: Do you remember getting complaints about
20 vegetation being killed by salt water?

21 A: Vaguely, yes.

22 Q: Okay. And do you recall taking the position
23 that those consequences are not adverse to this
24 permit because they don't -- they are not
25 caused by stormwater?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Right.

2 Q: Okay. Is it fair to say though that those
3 consequences are caused by the project of
4 changing the stormwater system?

5 A: What's your question?

6 Q: Is it fair to say that the tidal encroachment,
7 although not resulting from stormwater, does
8 result from the project?

9 A: It -- I don't know that for sure. It could.

10 Q: As a part of the process of reviewing this
11 retrofit application, did you have the
12 developer's engineer determine if there were
13 adverse impacts on downstream properties?

14 A: Yes, from a stormwater perspective. Yes.

15 Q: And do you recall getting an analysis back
16 where the engineer calculated the elevation of
17 -- of the lake both with the dike in place and
18 without the dike in place?

19 A: Yes.

20 Q: And do you recall that he also did a
21 calculation having to do with the velocity of
22 the stormwater that goes out the cut?

23 A: Yes, I believe that was included.

24 Q: What difference, if any, does it make in that
25 calculation about the level of the tide at the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 time you take the measurement?

2 A: I mean, the -- the height of the tide certainly
3 affects the direction of the flow and the
4 velocity of the flow, yes.

5 Q: Do you recall what the height of the tide was
6 when the engineer made his calculations?

7 A: We required that he look at the mean high high
8 water.

9 Q: Okay. Now, am I correct in understanding that
10 you requested mean high high water with regard
11 to the elevation of your 10-year storm with and
12 without the dike in place?

13 A: The mean high high water was the worst case
14 scenario for the stormwater, you know, the --
15 the stormwater runoff analysis.

16 Q: Okay. And is it fair to say that even at a
17 high high tide, that if you had a 10-year storm
18 and all that rain comes down, it didn't lift
19 the elevation of the water one inch, did it?

20 A: I don't recall the exact numbers.

21 Q: Is it fair to say there was no consequence at
22 all from stormwater?

23 A: For which situation are you talking about?

24 Q: For the situation as far as the potential for
25 flooding from a 10-year storm.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Are you talking about with the dike in place or
2 without? I'm not sure which you're referring
3 to.

4 Q: With the dike having a big hole in it.

5 A: Then I believe I recall the analysis showed
6 that there was very little change in -- very
7 little effect of the stormwater on the water
8 level in the -- in the former impoundment at
9 mean high high tide.

10 Q: Okay. So even when the tide is way up and a
11 10-year rain is dumped on top of it, is it fair
12 to say it's gone about as fast as it comes
13 down?

14 A: I wouldn't say that it's -- I don't know that
15 it's gone as fast as it comes down. It's --
16 due to the high high tide it has very little
17 effect on the water level in the former
18 impoundment.

19 Q: Okay. And as you add water to the water level
20 in the impoundment, is it fair to say you're
21 just adding it to the ocean and there's no
22 measurable increase in height?

23 A: I guess you could put it that way.

24 Q: Now, but what about with regard to studying the
25 effects of erosion? Do you recall what tide



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 that analysis was done at?

2 A: I don't recall off the top of my head, no.

3 Q: Would it matter to you?

4 A: Yes.

5 Q: Okay. Why?

6 A: Because at a -- at a high tide, as we just
7 discussed, at mean high high tide, then it
8 would be -- you know, at that water level, it
9 would have, you know, little effect on the
10 water level which essentially means the water
11 is -- I mean, not necessarily stagnant but
12 still. It's not -- it doesn't have a high flow
13 rate which would be -- you know, which
14 determines the erosion rate.

15 Q: You're saying that with a -- with the 10-year
16 stormwaters just being added to the ocean there
17 is no zooming out of the cut. Is that what
18 you're saying?

19 A: Right.

20 Q: Okay. Are you aware that the only study that
21 was -- the only information provided to your
22 office in connection with erosion was a
23 measurement taken at high high tide?

24 A: I'd have to look -- look back in the file to --
25 to tell you that.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Do you remember Geordie Madlinger advising you
2 that his concern would be what would be the
3 erosion at low tide when there's no water in
4 the lakebed?

5 A: I don't recall. I'd have to check the file.

6 Q: Do you recall getting complaints from the
7 homeowners that during heavy rains it looked
8 like rapids out there?

9 A: I don't -- I don't recall that.

10 Q: Take a look, if you would, at Exhibit 28.

11 **THE COURT:** Mr. North.

12 **MR. NORTH:** Yes.

13 **THE COURT:** Let's take a 15-minute break.

14 **MR. NORTH:** No matter how much distress I might be
15 in, I'm not going to ask. It'll be up to the
16 Court to decide.

17 **(Off the record)**

18 Q: Mr. Geer, have you had an opportunity to take
19 a look at Exhibit 28?

20 A: I've seen it before. What should I be looking
21 at?

22 Q: Do you recognize that as a copy of the Coastal
23 Zone Program requirements?

24 A: It's some program refinements from '93, yes.

25 Q: Okay. And would you agree that those are



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 binding on OCRM and apply to the retrofit
2 permit?

3 A: There are policies in here that do, yes.

4 Q: Does not the entire document? Is it not all
5 binding?

6 A: Not all of it applies to this -- to this
7 stormwater ...

8 Q: Okay. So you're saying it's all binding but
9 some of it may not be applicable?

10 A: Right.

11 Q: Okay. Fair enough. Okay. Turn, if you would,
12 to page seven. Do you see at the bottom, the
13 bottom 35 percent of the page has a section A
14 stormwater runoff storage requirements?

15 A: Yes.

16 Q: Could you read that regulation to the -- well,
17 first of all, does that regulation apply to
18 this retrofit permit?

19 A: Yes, its policy does apply. Yes.

20 Q: Okay. Could you read that requirement?

21 A: The regulations of the Stormwater Management
22 and Sediment Reduction Act require that
23 permanent water quality ponds having a
24 permanent pool shall be designed to store and
25 release the first half inch of runoff from the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 site over a 24-hour period. The storage volume
2 shall be -- storage volume shall be designed to
3 accommodate at least one half inch of runoff
4 from the entire site. For all projects
5 regardless of size which are located within one
6 half mile of a receiving water body in the
7 coastal zone, this criteria shall be storage of
8 the first half inch of runoff from the entire
9 site or storage of the first one inch of runoff
10 from the built-upon portion of the property,
11 whichever is greater. Storage may be
12 accomplished through retention, detention or
13 infiltration systems as appropriate for the
14 specific site.

15 Q: Okay. Let me stop you right there for a
16 minute. Would you agree that the detention
17 provided by the lake met that requirement?

18 A: For the -- yes, to this point whatever had --
19 yes.

20 Q: Okay. And would you agree that inline filters
21 require a waiver?

22 A: I don't think they require a waiver, per se.

23 Q: Did you ---

24 A: I say they meet the requirements. Yes.

25 Q: Did you grant the waiver in connection with



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 this requirement?

2 A: No.

3 Q: How is it that your retrofit permit can be
4 approved without a waiver when it doesn't have
5 a permanent water quality pond?

6 A: Because it doesn't require a permanent water
7 quality pond because it meets the as-
8 appropriate for the site.

9 Q: Tell me how the retrofit permit stores the
10 first one half inch of runoff from the entire
11 site?

12 A: It doesn't store. It filters that half inch of
13 runoff.

14 Q: I understand it gets some form of stormwater
15 treatment, but I'm talking about the
16 requirements of this reg. Does not this reg
17 require that it be retained on site and stored?

18 A: It also allows for something that's appropriate
19 for the specific site.

20 Q: Okay. Where does it say that?

21 A: It's the last few words: appropriate for the
22 specific site.

23 Q: Does not it say storage may be accomplished
24 through one of three options as appropriate for
25 the specific site?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: It allows for something that's appropriate
2 specific for this site and so do other
3 regulations in 72-300.

4 Q: Okay. Now, this is very important. You're
5 saying that your interpretation of this
6 regulation is that the storage can be
7 accomplished through retention, detention,
8 filtration or some fourth option?

9 A: Yes, and that's laid out in -- in this 72-300
10 regulations in combination with this.

11 Q: Now, when you talk about appropriate for this
12 specific site, do you recall some issues that
13 have to do with that that deal with soil types?

14 A: This -- I'm not sure what you're asking there.

15 Q: When you decide whether or not stormwater
16 should be treated by retention, detention or
17 infiltration, isn't that part of the analysis,
18 the type of soil you're dealing with?

19 A: That could be involved in -- I mean, it would
20 be involved in an infiltration practice,
21 whether it be the soils are suitable for
22 infiltration.

23 Q: Okay.

24 A: Yeah. I mean, that's a possibility.

25 Q: Some soils just don't filter very well, do



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 they?

2 A: It's not necessarily that they don't filter
3 very well. It's that the -- they -- the water
4 can't pass through them so it doesn't flow. It
5 doesn't flow through the soil.

6 Q: Would clay be an example of that?

7 A: Clay would be a good example of that.

8 Q: And sand on the other hand would be a better
9 soil for infiltration, would it not?

10 A: Right.

11 Q: Okay. And is not the water table in the area
12 also a factor?

13 A: Water table would be a factor, yes.

14 Q: Okay. Is it fair to say that infiltration is
15 not appropriate where you have a high water
16 table?

17 A: It -- I mean, depends on how high of water
18 table you're talking about, but -- but yes, I
19 mean if the water table is above the bottom of
20 the infiltration practice, then it's not going
21 to infiltrate.

22 Q: It's not going to filter anything. It'll just
23 join the water supply of the water table, won't
24 it?

25 A: Well, not just that. It's -- it won't -- the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 water level won't ever -- it won't draw down,
2 so it will eventually fill up and overflow.

3 Q: Okay. Because it has nowhere to go?

4 A: Right.

5 Q: Okay. And are you familiar with the fact that
6 in coastal areas with high water tables,
7 infiltration is not a preferred or common
8 method of stormwater treatment?

9 A: It's -- I mean, it's -- I mean, you're -- to a
10 certain extent, yes.

11 Q: Okay. And do you know what type of soils are
12 present at the Cat Island lake location?

13 A: I'd have to look at the file to see what
14 specifically those soils are.

15 Q: Do you recall that they were soil types C and
16 D?

17 A: That sounds reasonable.

18 Q: Okay. And would you agree that soil types C
19 and D are most commonly resulting in detention
20 ponds because that's the kind of soil that
21 works well for a detention pond?

22 A: For -- for D I would say yes. C could go
23 either way.

24 Q: Okay. If you looked at the stormwater
25 calculations in connection with this project,



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 would it tell you what soil type we're dealing
2 with?

3 A: Yes.

4 Q: Okay. Are you talking about 2004 or 2010 or
5 '12? Would all of it show it?

6 A: Either one should show it, yes. Either.

7 Q: Is it fair to say that soil type D is not good
8 for infiltration?

9 A: Typically it's -- it's not good for
10 infiltration.

11 Q: Okay. But then again, we're not dealing with
12 that type of infiltration in this retrofit, are
13 we?

14 A: Right.

15 Q: Okay. I mean, just to be perfectly clear, an
16 inline filter is completely different than
17 stormwater treatment by infiltration where it
18 soaks down into the ground to clean it; is that
19 correct?

20 A: From a stormwater flow standpoint, yes.

21 Q: Okay.

22 A: I mean, it can still provide similar quality
23 treatment.

24 Q: Yes, I understand that every type of stormwater
25 treatment may arguably have some sort of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 benefit. I understand that.

2 **MR. HABER:** Objection. Let him finish the question.

3 **THE COURT:** Sustained.

4 Q: Take a look, if you would, at Exhibit 71. Take
5 a look at 34. That's the 2004 Garfield Park
6 drainage calculations. Do you see within that
7 document the soil types that we're dealing with
8 in this case?

9 A: Yeah, it says based on the soil survey of
10 Beaufort and Jasper Counties, the soils found
11 on the site are primarily Seabrook and Coosaw
12 which is classified as hydraulic groups C and
13 D respectively.

14 Q: Okay. So you would agree that would be good
15 soil for a detention pond; bad for infiltration
16 if somebody did that?

17 A: Sure.

18 Q: Okay. And take a look, if you would, at
19 section eight of that document while we're here
20 so we don't have to bounce back and forth. Do
21 you see where there's an analysis of the
22 trapping efficiency of the Cat Island lake in
23 -- while it's being used as a detention pond?

24 A: Yes.

25 Q: Do you see that the trapping efficiency --



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 first of all, trapping, does that have to do
2 with pollutants and sediment?

3 A: It has to do with sediment.

4 Q: Okay. And do you see that the trapping
5 efficiency is 94 percent?

6 A: I see that, yes.

7 Q: And the minimum required, do you see that as 80
8 percent?

9 A: I don't know that we required that on this.
10 I'd have to look at the application but I
11 believe it was less than 10 acres of
12 disturbance, so I don't think we required the
13 trapping efficiency. They may have submitted
14 it, but if it didn't meet the 10 acres of
15 disturbance threshold then it's not something
16 we required.

17 Q: Is it fair to say though that the inline
18 filters have nowhere near that effective
19 trapping of sediment?

20 MR. HABER: Objection, Your Honor, it's a leading
21 question.

22 THE COURT: Overruled.

23 A: I -- I'd have to look at the -- at the filter
24 specifications. I don't recall what those
25 numbers were off the top of my head.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. We'll get to that. Okay. Well, just
2 recall, if you can then, that the lake is 94
3 percent and we'll compare that shortly.

4 A: Okay.

5 Q: Now, getting back to that sentence where we got
6 off the track, storage may be accomplished
7 through retention, detention or infiltration
8 systems as appropriate for the site and what --
9 you're saying that as additional for the site,
10 opens the door for you to consider stormwater
11 treatment methods other than those three?

12 A: That in addition with the verbiage in the
13 regulations of 72-300.

14 Q: Okay. Well, let's stick with this for a minute
15 before we go there. Do you see after that
16 language that projects located within 1,000
17 feet of shellfish beds require a higher level
18 of runoff to be retained onsite.

19 A: Remind me exactly where you are again.

20 Q: Bottom of page seven of 28.

21 A: Twenty-eight. Okay. Sorry. All right. I'm
22 familiar with that.

23 Q: Okay. And would you agree that that is a
24 regulation that is binding on this particular
25 project?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: That is a policy of the Coastal Zone Management
2 Program that would apply to projects, you know,
3 with stormwater applications.

4 Q: Okay. In your work, do you accept the opinions
5 and representations of licensed engineers?

6 A: I -- I do consider them.

7 Q: Okay. If the licensed engineer of the
8 homeowners were to report to you that because
9 of the size of the Cat Island lake that it
10 effectively retained -- not just detained but
11 retained stormwaters, would you go along with
12 that?

13 A: No.

14 Q: Why?

15 A: Because I know there's a control structure that
16 allows discharge from the pond, direct
17 discharge, which makes it a detention pond
18 instead of a retention pond.

19 Q: Okay. Let's take a look, if you would, at
20 Exhibit 3. Do you recognize that as State
21 Regulation 72-300 et sequence?

22 A: Yes.

23 Q: And are those binding on this project?

24 A: Yes.

25 Q: Take a look, if you would, at page 10.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Okay.

2 Q: First of all, take a look, if you would, at
3 subsection C. Do you see language there that
4 gives the Department the right to grant a
5 variance of any requirement if there are
6 exceptional circumstances on the site such that
7 strict adherence would both (A) result in
8 unnecessary hardship and not fulfill the intent
9 of the regulations?

10 A: I see where it says something along those
11 lines.

12 Q: Is there any exceptional circumstance with
13 regard to the retrofit permit upon which you're
14 relying on this language for the right to grant
15 a variance?

16 A: No.

17 Q: Okay. Then let's take a look at subsection B.
18 Take a look at B(1). Do you see in that
19 section the conditions under which you can
20 grant a waiver for both quantity and quality
21 control?

22 A: Not for both, no, I -- I do not.

23 Q: Pardon?

24 A: I -- no.

25 Q: Is it your position that you did not grant a



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 waiver for quality control?

2 A: Yes.

3 Q: That you only granted a waiver for quantity
4 control?

5 A: Yes.

6 Q: Okay. You base that on the fact that you think
7 that Exhibit 28 gives you the right to add
8 additional types of stormwater treatment to
9 those that are appropriate in the coastal zone?

10 A: What's the question there? I'm sorry.

11 Q: Strike that. Okay. Take a look at subsection
12 B(2). Do you see there a description of when
13 a project can be -- get a waiver for water
14 quantity control?

15 A: Yes.

16 Q: And under (a) -- read (a) to the Court.

17 A: The proposed project will have no significant
18 adverse impacts on the receiving natural
19 waterway or downstream properties.

20 Q: Okay. Would you agree that you cannot properly
21 grant a waiver if there is a negative impact on
22 downstream properties?

23 A: I agree that if it will have no significant
24 adverse impact on the receiving natural
25 waterway or downstream properties as defined in



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 these regulations, then I -- that's the only
2 reason I would grant a waiver.

3 Q: Okay. And is it your belief that you had the
4 right to grant this waiver for stormwater
5 quantity control?

6 A: Yeah.

7 Q: Was it your position that the proposed project
8 didn't have any adverse impact on the
9 downstream properties because it didn't have
10 problems with stormwater?

11 A: Yes.

12 Q: Okay. And was it your view that problems from
13 tidal encroachment did not get covered by this
14 paragraph?

15 A: We considered the -- the stormwater -- the
16 effect of stormwater runoff in combination with
17 a mean high high water tidal event. To that
18 extent, we considered -- you know, the -- the
19 tidal cycle. Just the tide in itself coming
20 and going was not a consideration here.

21 Q: Okay. So you did make sure that the stormwater
22 even at high tide wouldn't harm the downstream
23 properties; is that fair?

24 A: Right.

25 Q: Okay. But you did not view as an adverse



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 impact the result of the tidal encroachment.

2 A: Correct.

3 Q: Okay. Would you agree that the wording of
4 subsection (2)(a) talks about adverse impacts
5 from the proposed project and not just from
6 stormwater?

7 A: What's the question there?

8 Q: Would you agree that subsection (2)(a) is
9 worded in terms of adverse impacts from the
10 proposed projects, not adverse impacts only
11 from stormwater?

12 A: No, because I read it in combination with (2),
13 the sentence right above that, in that it's
14 talking about a waiver or variance from
15 stormwater management for water quantity --
16 excuse me -- stormwater management for water
17 quantity control. I read that as one, you
18 know, as one instant -- one instance together,
19 (2) and (2)(a) as one applicable waiver.

20 Q: So you think that (2)(a) should be interpreted
21 to read the adverse impact has to result from
22 the stormwater?

23 A: Yes.

24 Q: Okay. Would you agree that the project
25 included more than just the filters for the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Garfield Park? It included the right to leave
2 the tidal basin -- the lakebed open and the
3 shore line exposed to tidal flows?

4 A: The review was based on whether or not the --
5 the applicable stormwater regulations were
6 being met, which were basically the
7 substituting the filters for the pond. That's
8 ---

9 Q: Was not one key component of this project
10 leaving the dike unrepaired and allowing the
11 lake to then become tidally influenced?

12 A: I mean, that's -- that's a result, sure.

13 Q: Okay. And would it not be fair to say that one
14 of the consequences of that result is adverse
15 impacts on downstream properties in the form of
16 tidal encroachment?

17 A: No.

18 Q: Why?

19 A: Because it -- because we looked at this from a
20 stormwater management perspective. That's --
21 that's what the applicable regulations here are
22 about.

23 Q: Is it your view that damage from tidal flows is
24 not in your purview?

25 A: Yes.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Take a look, if you would, at Exhibit 1 and
2 within Exhibit 1 ---

3 A: I'm not sure I have Exhibit 1. Is it -- should
4 it be in this?

5 **MR. NORTH:** No, it should be right there. You've
6 been deprived of your exhibit.

7 A: Here it is.

8 Q: Okay. Take a look, if you would, at page 35 of
9 Exhibit 1. Do you recognize that as a
10 stormwater management checklist for design
11 professionals?

12 A: Yes.

13 Q: Does that document set forth various
14 requirements of OCRM with regard to the
15 characteristics of a stormwater system?

16 A: It -- it sets forth a checklist for any
17 individual submitting an application, an
18 itemized -- a list of items that should be
19 submitted with -- with the application.

20 Q: Take a look, if you would, at page 38. Do you
21 see under paragraph 16 the requirement that the
22 trapping efficiency with regard to sediment
23 must be at least 80 percent for a 10-year storm
24 event?

25 A: I see that.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And that sediment traps can only be used in
2 drainage areas of less than five acres?

3 A: I see that.

4 Q: Would not these inline filters be a sediment
5 trap?

6 A: They -- they do trap sediment, yes.

7 Q: Okay. And isn't that Garfield Park even --
8 even that one little phase of the development,
9 isn't it seven or eight acres?

10 A: I'm not sure exactly how much disturbance that
11 -- that was, but I can say that the trapping
12 efficiency that you mentioned of 80 percent is
13 only required when there are 10 acres of
14 disturbance draining to one point and as I
15 recall, Garfield Park Phase 3, even when it was
16 being developed in 2004/2005, didn't disturb
17 more than 10 acres, as I recall. And when, you
18 know, when there is not -- when there isn't
19 land-disturbing activity or it's minimal, then
20 -- or it's less than 10 acres, that 80 percent
21 trapping efficiency is -- is not required so --
22 and the -- with regard to the sediment traps
23 being used for drainage areas of less than five
24 acres, that is also for a -- a -- considering
25 a certain method of a certain type of sediment



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 trap that is being used to trap sediment from
2 a disturbed condition, an exposed ground
3 condition. We don't have either one of those
4 situations here with the retrofit. Everything
5 is essentially stabilized. Sediment would not
6 be the real heavily -- heavy pollutant of
7 concern.

8 Q: What is your -- can you cite me any authority
9 for ignoring a requirement that sediment traps
10 only be used for drainage areas of less than
11 five acres?

12 A: It's not a regulatory requirement.

13 Q: Even though it's in your stormwater management
14 checklist for design professionals?

15 A: Right. It's a consideration for using certain
16 types of BMPs.

17 Q: Do you see a requirement that the -- that --
18 with trapping devices that they not overflow
19 the top of the spillway during a 10-year storm?

20 A: Where are you seeing that?

21 Q: The very last line of page 38.

22 A: I see that.

23 Q: Okay. Tell the Court what the problem is with
24 traps that then can simply be bypassed during
25 heavy rains.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: The sediments traps that are being referred to
2 here are a specific design of BMP that consists
3 of a -- either a small excavated area or a --
4 a channel that is -- is blocked by a -- a rock
5 dam and that rock allows a certain amount of
6 flow through it and that is controlling the
7 flow from that depressional area and that
8 slowing down of the flow allows the sediment
9 trap -- allows the sediment to fall out of
10 suspension. That is the type of sediment trap
11 that is being referred to here and the flow
12 through that rock allows, you know, a specific
13 sediment trapping efficiency to be calculated.
14 But as soon as that water level reaches the top
15 of that rock dam and starts spilling over the
16 top, that's when those efficiency calculations
17 can no longer be relied on and that's a
18 specific method of calculation and a specific
19 BMP that that's talking about. It's not
20 talking about inlet filters or just in general
21 sediment traps. It's talking about a specific
22 BMP that is -- is outlined in our BMP manual.

23 Q: Is your BMP manual something that you publish
24 online ---

25 A: Yes.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: --- for DHEC?

2 A: Yes.

3 Q: Okay. Take a look, if you would, at page 40.
4 Is that a copy of the trapping removal
5 efficiencies of the inline filters proposed for
6 the retrofit?

7 A: That's what it looks like.

8 Q: And what is the trapping efficiency with regard
9 to sediment?

10 A: Which -- which location are you looking at?

11 Q: Is sediment the same as total suspended solids?

12 A: Essentially. It's -- total suspended solids is
13 a measurement of sediment in -- in the water
14 column.

15 Q: Okay. Well, then take a look at page 41. Do
16 you see that the pollutant removal efficiency
17 with regard to solids is 74 percent for these
18 filters?

19 A: That's what that chart says, yes.

20 Q: And much lower percentages for other types of
21 contaminants?

22 A: They are lower.

23 Q: Okay. Would you agree that if the pond removes
24 94 percent of the sediment and these filters
25 only remove 74 percent when they are clean and



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 not clogged, that the pond would be a more
2 effective means of treating the quality of the
3 stormwater?

4 A: I would say with regard to sediment trapping,
5 that as those calculations indicate, 94 percent
6 is better than 74 percent. I agree.

7 Q: While we're on Exhibit 1 -- strike that. Would
8 you agree that the regulations prohibit any
9 stormwater to be discharged at a rate that can
10 cause erosion?

11 A: Yes.

12 Q: And is that rate determined typically to be
13 about five feet per second?

14 A: It depends on the receiving drainage way.

15 Q: What is a typical rate that is non-erosive?

16 A: Well, in a -- in a vegetated drainage way, then
17 five feet per second is -- is the -- typically
18 the limit, but if you have an armored drainage
19 way, like one lined with rock or concrete or
20 matting as you mentioned before, that flow rate
21 can be the limit.

22 Q: When you say vegetative, do you mean something
23 that's covered with grass?

24 A: Yes.

25 Q: Okay. What if it's just mud?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: If it's mud there's -- there's -- it would
2 probably be a little less than five, yeah,
3 depending on the soil type.

4 Q: Okay. Do you recall that the velocity
5 determined by the developer's engineer at the
6 high high tide was something just over three
7 and a half feet per second?

8 A: I don't recall the exact numbers, no.

9 Q: Would it be fair to say that if you did that
10 calculation with no water to hold back the 10-
11 year storm event, that the rate of discharge
12 would have been much greater than at the high
13 tide?

14 A: It would be -- it would be -- it depends on
15 where -- where you're measuring that. If
16 you're talking about at the absolute end of the
17 pipe, then there should be some kind of -- and
18 there typically is -- and most likely shown in
19 this permit, a -- some kind of energy
20 dissipating apron which reduces that velocity
21 down which would not be -- as you said, when
22 the tide is up and it's hitting the water, it's
23 not an issue, but when the tide is down that
24 energy dissipator would reduce that velocity to
25 something much less than that.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Did you require any energy dissipators
2 for Garfield Park?

3 A: I'm sure we did.

4 Q: Is it fair to say though that with regard to
5 the rest of the drainage basin, that there were
6 no energy dissipators?

7 A: I don't know.

8 Q: You imposed no requirements on the balance of
9 the drainage basin, did you?

10 A: We had -- there were no requirements to apply.

11 Q: Okay. But my point is, with Garfield Park you
12 found it -- tell me did you find it appropriate
13 and necessary to have energy dissipators so
14 that that stormwater as it discharged was
15 slowed down and didn't erode?

16 A: I believe they're in place for when we
17 originally approved it in 2004.

18 Q: Okay. And so they would still be in place?

19 A: Should be, yes.

20 Q: And those were required in 2004 to avoid
21 erosion.

22 A: Right.

23 Q: Okay. But my point is, with the lake gone and
24 you're no longer discharging into water, is it
25 fair to say that there's nothing, there's no



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 energy dissipator or anything else along the
2 edge of that lake, to slow down the rate of
3 flow, the rate of discharge or the amount of
4 erosion?

5 A: From Garfield Park Phase 3, I would disagree.

6 Q: I'm talking about the rest of the drainage
7 basin.

8 A: For the rest of the drainage basin, we have no
9 requirements that apply.

10 Q: I understand that but my point is, with the
11 lake, you don't have the problem; without the
12 lake you do; is that correct?

13 A: Sure.

14 Q: Okay. That's my point. Okay. Would you agree
15 that the ruts in the lakebed and outside the
16 dike have deepened over the last four and a
17 half years?

18 A: I don't know.

19 Q: Take a look, if you would, at Exhibit 19. Do
20 you recognize those as the policies and
21 procedures of the South Carolina Coastal
22 Management Program?

23 A: Hold on. Let me get there. This appears --
24 yes. That's what this appears to be.

25 Q: Okay. Take a look, if you would, at the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 preface on Roman IV, Roman numeral IV. Would
2 you agree that this document contains excerpts
3 of the actual program document and is approved
4 by the State Assembly and the federal
5 government?

6 A: Yeah, looks like it.

7 Q: And would you agree that this document contains
8 the goals, objectives and policies for staff
9 such as yourself to review development
10 activities in Beaufort county?

11 A: That's what it looks like.

12 Q: Take a look at Roman VI, the glossary.

13 A: Okay.

14 Q: Take a look at the definition of consistency
15 determination. Is that the coastal consistency
16 determination that you issue?

17 A: I don't -- no, this is referencing federal
18 activity, federal permit, federal funding.

19 Q: Is not your storm sewer permit a federal
20 permit?

21 A: It's a state permit.

22 Q: Is it not a federal permit that's administered
23 by DHEC?

24 A: Well, yeah, I mean, it was delegated to the
25 state so it is a ---



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: And the first word in its initials is national,
2 isn't it?
- 3 A: Yes.
- 4 Q: And it's a federal program?
- 5 A: It's -- yes, but it was delegated to the state.
- 6 Q: Understood. Are you suggesting that this
7 consistency determination definition isn't
8 applicable to your coastal consistency
9 determination?
- 10 A: Well, I'm saying that that definition is --
11 doesn't -- doesn't fit.
- 12 Q: In what way?
- 13 A: Because it references direct federal activity
14 and federal permit or license or federal
15 funding assistance -- or assistance.
- 16 Q: We'll come back to that topic, but would you
17 agree that this definition shows that the
18 determination of compliance with the coastal
19 management program means consistent to the
20 maximum extent possible? Do you see that
21 wording in the glossary that defines these
22 terms?
- 23 A: I see that wording on that page under that
24 definition, yes.
- 25 Q: Okay. Would you agree that when you reviewed



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the retrofit to see if it deserved a coastal
2 consistency determination, you did not
3 determine whether or not it was consistent to
4 the maximum extent possible?

5 A: I -- I considered the applicable policies of
6 this document prior to issuing the approval and
7 certification.

8 Q: Would you agree that in your work for the
9 retrofit, you personally did not analyze any
10 aspect of the impacts to the critical area and
11 expected others in some other department to
12 deal with those types of issues?

13 A: Yes.

14 Q: Take a look, if you would, at page Roman III-1.
15 I'm sorry. I mean III-3, if you would. The
16 guidelines for evaluation of all projects.

17 A: Okay.

18 Q: Do you see at the bottom of page Roman III-3?

19 A: Yes.

20 Q: The guidelines relate to permit applications in
21 the coastal zone?

22 A: Okay. Where -- where are you looking?

23 Q: I'm looking at the language under guidelines
24 for evaluation of all projects at the bottom of
25 Roman III-1.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: Right.

2 Q: And the fact that it relates to the review and
3 certification of permit applications in the
4 coastal zone. Would you agree that this
5 retrofit is one of those?

6 A: Yes.

7 Q: Would you agree then on the next page,
8 paragraph two requires that you consider the
9 extent to which the project will have adverse
10 impacts on the critical areas?

11 A: I see that.

12 Q: Okay. And under number six, do you see that
13 you're required to consider the extent to which
14 the project is in compliance with local zoning
15 or comprehensive plans?

16 A: Yes.

17 Q: Okay. Now, you've indicated that it's not in
18 your purview to worry about Beaufort County.
19 Would you agree that you failed in reviewing
20 this permit application to follow that
21 guideline?

22 A: No.

23 Q: Why?

24 A: Because the permit as -- as approved
25 specifically states that all state, federal,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 local applicable permits must be acquired prior
2 to doing work in those areas. I mean, that's
3 not the exact verbiage but along those lines
4 there is a condition of the permit that
5 specifically states that.

6 Q: Okay. So in your view, you would do whatever
7 you want with the permit. It would be up to
8 Beaufort County to start their process when
9 you're done?

10 A: Right. And -- essentially, yes.

11 Q: Would not that add an awful lot of delay to the
12 actual action on a retrofit?

13 A: It could. I mean ...

14 Q: Are you aware of any of the Beaufort County
15 requirements with regard to stormwater
16 treatment in the coastal zone?

17 A: No, not -- not really, not their specific
18 requirements.

19 Q: Take a look, if you would, at subsection 8. Do
20 you see the extent and significance of negative
21 impacts on geographic areas of particular
22 concern?

23 A: I see that.

24 Q: Were there any of those that came into play in
25 connection with the retrofit?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: No.

2 Q: Do you see that that paragraph also says that
3 applications that would significantly impact
4 such a geographic area of particular concern
5 will not be approved unless there are no
6 feasible alternatives or there's some
7 overriding public interest?

8 A: I see that.

9 Q: Take a look at page Roman III-5. Do you see
10 that in critical areas of coastal zone there
11 are a variety of considerations that must be
12 considered?

13 A: I see that.

14 Q: Okay. And it lists out 10 things which sound
15 similar to the statute that we looked at
16 earlier, including the effect on adjacent
17 owners and the -- the extent to which it could
18 cause erosion. Is it fair to say that your
19 analysis of the retrofit did not include any of
20 those considerations?

21 A: Well, that section says in critical areas of
22 the coastal zone.

23 Q: Yes.

24 A: This activity was not in the critical areas of
25 the ---



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Well, I guess that's one of the issues for the
2 Court. If this area does have an impact, if
3 this retrofit does have an impact on a critical
4 area, would you agree that all of those
5 considerations should have been taken into
6 account?

7 A: In -- in review of the critical area permit by
8 the OCRM wetlands section staff, yes.

9 Q: What aspect of the retrofit would you be trying
10 to pigeonhole into a critical area permit?

11 A: Whatever the -- I mean, whatever the critical
12 area staff deems would require a permit.

13 Q: Wouldn't they make that determination if
14 somebody filed an application for a permit?

15 A: They would but also we consulted with them on
16 a regular basis on this project to see what
17 would, you know, require -- require critical
18 area permit and if what was proposed would so,
19 I mean, we -- were in constant contact with the
20 OCRM wetlands section to see what would require
21 a permit and if -- and what -- what would
22 require a permit essentially, a critical area
23 permit.

24 Q: Are the oyster beds of Chowan Creek a geologic
25 area of particular concern?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 A: No.
- 2 Q: Are any shellfish harvesting waters in Beaufort
- 3 County a geographic area of particular concern?
- 4 A: In -- I believe in general, oyster -- shellfish
- 5 beds are a geographic area of particular
- 6 concern.
- 7 Q: In general?
- 8 A: Yeah.
- 9 Q: Would that include the shellfish beds of Chowan
- 10 Creek?
- 11 A: Sure.
- 12 Q: Okay. Well, if the Chowan Creek shellfish beds
- 13 are an area of geographic concern, then that
- 14 pulls into play page Roman III-4, applications
- 15 which would significantly impact such an area
- 16 will not be approved unless there is no
- 17 feasible alternative; is that not correct?
- 18 A: I'm sorry. Where are you referencing?
- 19 Q: Page Roman III-4.
- 20 A: And your question is?
- 21 Q: If the shellfish beds of Chowan Creek are a
- 22 geographic area of particular concern, is it
- 23 not correct that the policies and procedures of
- 24 your department preclude any application that
- 25 would significantly impact such an area unless



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 there is no feasible alternative?

2 A: We determined that it would not significantly
3 impact.

4 Q: Okay. Take a look, if you would, at Exhibit
5 29, and within Exhibit 29 turn to page three.
6 First of all, do you recognize this as
7 Regulation 61-69?

8 A: I see that.

9 Q: And would you agree that that regulation is
10 binding on this retrofit?

11 A: Sure. Yes.

12 Q: Okay. Take a look at page three. Do you see
13 the class abbreviations used in Regulation 61-
14 69?

15 A: Yes.

16 Q: Do you see shellfish harvesting waters
17 abbreviated to be SFH?

18 A: Yes.

19 Q: And on the next page, do you see the
20 abbreviation for Beaufort County?

21 A: I see that.

22 Q: And then finally on the page after that, do you
23 see a list of water bodies including Chowan
24 Creek?

25 A: Yes.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: Do you see that it's in the County of Beaufort
2 and it's a shellfish -- SFH ---
- 3 A: I ---
- 4 Q: --- which is shellfish harvesting waters?
- 5 A: I see that.
- 6 Q: And do you see that the entirety of the
7 tributary has that classification?
- 8 A: Yes.
- 9 Q: It said the entire stream tributary to Beaufort
10 River. Do you see that?
- 11 A: Yes.
- 12 Q: Take a look, if you would, at Exhibit 51.
- 13 A: Okay.
- 14 Q: The POA has a color copy of this as one of
15 their exhibits. It's easier to read, but
16 without getting in to that, do you recognize on
17 this exhibit the location of Cat Island?
- 18 A: (No response)
- 19 Q: If I pointed it out to you, would it assist?
- 20 A: I think I see it. Is it near that number 17?
- 21 Q: Exactly. The ---
- 22 A: Okay.
- 23 Q: --- tip of Cat Island is right near the 17.
- 24 A: Okay.
- 25 Q: Do you recognize that as Cat Island on that

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 map?

2 A: Looks like it.

3 Q: And do you see the word Chowan Creek right next
4 to it?

5 A: Yes.

6 Q: Do you see that the color coding for Chowan
7 Creek shows it to be an approved shellfish
8 harvesting classification?

9 A: It's hard to tell with this, but ---

10 Q: That's why we need to get the POA's better
11 copy. Hang on a second.

12 MS. SHAHID: 7A.

13 MR. NORTH: 7A?

14 MS. SHAHID: Or 7A, B, C

15 Q: I'm handing you what's been marked as Exhibit
16 7A by the POA. Is that easier to tell?

17 A: Yes.

18 Q: And would you agree then that Chowan Creek is
19 all listed there with a color coding as an
20 approved shellfish harvesting classification?

21 A: Yes.

22 Q: Thank you. Tell me your understanding of the
23 effect on this retrofit permit if the
24 development -- if the project is within 1,000
25 feet of shellfish beds.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: I'm sorry. What's the question?

2 Q: What effect, if any, would this retrofit suffer
3 if it was determined that shellfish beds were
4 within 1,000 feet of the development?

5 A: If the project -- Garfield Park Phase 3 were
6 located within 1,000 feet, then they would have
7 to retain the first inch and a half of runoff
8 on the site.

9 Q: Would you agree that that cannot be waived?

10 A: Yes.

11 Q: Okay. So if this project is within 1,000 feet,
12 you would agree that this permit has to be
13 reversed?

14 A: I -- I would -- well, I don't know I would use
15 the word reverse, but it would have to be
16 revisited to determine that.

17 Q: Would it have to be set aside?

18 A: I guess.

19 Q: Okay. Did you measure the distance to the
20 oyster beds of Chowan Creek as a part of your
21 analysis?

22 A: Yes.

23 Q: And did you determine that the distance was
24 about 1,040 feet?

25 A: Right around that, yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And how did you make your measurement?

2 A: I made the measurement from the limits of
3 disturbed area for the Garfield Park Phase 3
4 project along the drainage path to the known
5 shellfish bed location.

6 THE COURT: Mr. North ---

7 MR. NORTH: Yes.

8 THE COURT: --- you need to wrap this up in about
9 five minutes for the day.

10 MR. NORTH: Okay. No problem. Well, it's a problem
11 getting finished with him but I ---

12 THE COURT: Well ---

13 MR. NORTH: --- will be glad to quit talking any
14 time you want.

15 THE COURT: --- we can resume -- well, I'll tell you
16 what. Let's wrap it up now ---

17 MR. NORTH: Okay.

18 THE COURT: --- while we're taking a little breather
19 here. Let's wrap it up now.

20 MR. NORTH: Okay.

21 THE COURT: Is there a problem with starting at 9
22 a.m tomorrow as opposed to 10?

23 MS. SHAHID: Not -- not on our ---

24 MR. HABER: No, Your Honor.

25 THE COURT: Okay.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 MR. NORTH: We follow orders.

2 THE COURT: Okay.

3 MS. SHAHID: There is a witness unavailability I
4 want to make sure I put on the record and I
5 don't know that it's going to be a problem.

6 THE COURT: Okay.

7 MS. SHAHID: But if I could address that ---

8 THE COURT: Sure.

9 MS. SHAHID: --- very quickly? So Mr. North asked
10 if we would produce our witness Ryan Lyle in
11 lieu of having him to be subpoenaed and we
12 agreed to produce him today. And I think Mr.
13 North was getting ready and he realized that he
14 probably wasn't going to get to Mr. Lyle today
15 and so he's not here today. But I had told the
16 parties all along that Mr. Lyle is not
17 available on Wednesday. Once you set these
18 hearing dates, he immediately got back with me
19 and said there's no way I can do it Wednesday,
20 so he wouldn't be able to come until Thursday
21 and I -- and Mr. North is aware of that and he
22 didn't have a problem with putting up his
23 testimony on Thursday. But I'm just alerting
24 the Court to that, that if somehow early
25 tomorrow they conclude their presentation of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 their case, I think Nathan might be I the same
2 position I am. Based on our discussions we had
3 all of our witnesses coming in Thursday, not
4 tomorrow, and we might not be able to pick up
5 if he ends before five o'clock tomorrow.

6 **MR. HABER:** And along the same vein, Your Honor, I -
7 - the way things are progressing today we have,
8 I think, a multitude of witnesses tomorrow. I
9 don't anticipate it being a problem with these
10 witnesses not even -- the Department likely
11 won't be able to present its case until
12 sometime Thursday.

13 **THE COURT:** Okay.

14 **MR. NORTH:** I see no problem with any of that. I
15 can't imagine that Thursday would not work out
16 perfectly as far as timing goes.

17 **THE COURT:** Okay.

18 **MR. NORTH:** I do have one issue to bring up though.
19 We had one exhibit that was proposed and you
20 may recall that I objected because it wasn't
21 complete and it turns out that counsel doesn't
22 have the complete document in her records, but
23 it is a -- basically we're talking about this
24 issue of whether or not the lake is a salt
25 water or something or another, versus a fresh



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 water lake. And the Corps of Engineers
2 actually made that determination in 2008 based
3 upon a survey prepared by the developer's own
4 engineers. And they reviewed it, they analyzed
5 it, did what they do and made the
6 certification. I would like to have their
7 engineers produce that document on Thursday.
8 They can print it out of their computer and
9 pull it out and bring it with them so that we
10 have page three of this exhibit.

11 **MS. SHAHID:** It's not an incomplete exhibit, Your
12 Honor. The letter specifically states what its
13 enclosures are on the signature page of the
14 letter and it does not say it enclosed a copy
15 of that exhibit. So it's not an incomplete
16 exhibit. It is a complete exhibit if you look
17 at the signature page and I -- I was produced
18 the entire electronic file and produce that to
19 Mr. North and the next document behind that,
20 it's not clear to me that it is anything that's
21 referred to in that document. But I will tell
22 the Court that is a complete, not incomplete,
23 document.

24 **MR. NORTH:** What I would like to do is, delineate
25 than have a whole lot of time spent arguing



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 about alligators not living in salt water and
2 all the other millions of things that can go
3 on, here we have a U.S. Army Corps of Engineer
4 doing a certification of what is and what's
5 freshwater wetlands, what's saltwater marsh.
6 They delineate the whole thing based upon
7 surveys of this developer's engineer. All I
8 want to do is have them bring it out and we can
9 quit talking about stuff that makes no sense.
10 And I just want them to produce that document.
11 I think it would be very helpful for everybody.

12 **THE COURT:** And you're saying ---

13 **MS. SHAHID:** I mean, I've given him everything.
14 I've got the same thing he's got and we found
15 a document. I don't know if it is the
16 document. I will ask if the document that I
17 found is the correct document, but other than
18 that, I've given him everything and there's
19 nothing else I can produce.

20 **MR. NORTH:** I'm quite confident I have everything
21 she has. That's not what I'm asking. What I'm
22 asking is for this developer and his engineer
23 to produce that document and have them -- what
24 I'd like to do is have the Court order that if
25 it's available, that he shall bring it with



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 him.

2 **THE COURT:** Can you determine if it is available?

3 **MS. SHAHID:** I can try. The reason they're not
4 available tomorrow is they had something
5 pressing that they -- that those two engineers
6 that work together ---

7 **THE COURT:** Right. And I understand that.

8 **MS. SHAHID:** So I can try. I can certainly try.

9 **THE COURT:** Try.

10 **MS. SHAHID:** I will.

11 **THE COURT:** And then we'll revisit this tomorrow.
12 Okay. Thank you.

13 (There being nothing further, the hearing was
14 recessed at 5:06 p.m.)

15 **DAY 2 - WEDNESDAY, JANUARY 15, 2015:**

16 **THE COURT:** Okay, if everyone is ready, Mr. North?

17 **MR. NORTH:** Thank you, Your Honor.

18 **MR. GEER - CONTINUED DIRECT EXAMINATION BY MR. NORTH:**

19 Q: Mr. Geer, when you had your deposition taken
20 last summer, do you recall testifying that the
21 dike, even with the hole in it, still had some
22 impounding aspects and provides some detention?

23 A: I guess so, yeah.

24 Q: All right.

25 A: Vaguely.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And that's a fair statement, isn't it?

2 A: It -- the last time that I visited the site, it
3 -- it's -- it had some, you know, some
4 controlling aspects based on the width of the
5 breach in the dike.

6 Q: Okay. So, would it be fair to say that the
7 detention lake is still functioning to some
8 minor degree but certainly not up to the level
9 where it would detain stormwater for 24 hours?

10 A: I haven't done the calculations. It's a
11 possibility.

12 Q: Okay. A -- what is a possibility?

13 A: I mean, I don't -- what I mean is I don't know
14 how fast it would release, what volume.

15 Q: Okay.

16 A: I haven't done those ---

17 Q: But it's fair to say that it would detain, to
18 some degree, whether or not it would be
19 sufficient to meet the Regs, you can't say?

20 A: Correct.

21 Q: Okay. Do you recall testifying that allowing
22 the lake to become tidal would change the
23 nature of the vegetation and that would make
24 sense to you that it would transform from a
25 fresh water lagoon to a saltwater marsh?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: I -- if -- sure.

2 Q: Okay. Now yesterday, when we were reviewing
3 Exhibit 28, we had some discussion about
4 various types of stormwater treatment that for
5 locations within a half a mile of the coastal
6 zone, do you remember that?

7 A: Vaguely.

8 Q: And there was talk about detention, retention
9 or infiltration. Are you familiar with a
10 publication of OCRM called Best Management
11 Practices or BMPs?

12 A: I'm not sure which one you're talking about.
13 We have several.

14 Q: Well, I'm talking about the one that would
15 relate to various forms of stormwater
16 treatment.

17 A: If you have it, I'd like to see it to refresh
18 my memory. I don't know the specific one
19 you're talking about.

20 Q: Are there more than one of them for -- that
21 relate to stormwater?

22 A: Well, we've had several publications that
23 include best management practice - design
24 specifications or details or guidance so
25 there's -- I'm not sure which one you're



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 talking about, no.

2 Q: Well, the one I am referring to is the one
3 that's currently posted on the OCRM Web site
4 when you look for best management practices
5 relating to stormwater control.

6 A: So you're talking about the best management --
7 the BMP manual ---

8 Q: Yes.

9 A: --- on our ... I'm familiar with that.

10 Q: Okay. Do you recall that in that manual,
11 there's a section on page 142 that's entitled
12 Pre-fabricated Control Devices?

13 A: I -- I don't know the details of that section.

14 Q: But you recall that there is a separate section
15 somewhere within in the document that talks
16 about pre-fabricated control devices?

17 A: I don't know every section, no.

18 Q: Do you know what a pre-fabricated control
19 device is?

20 A: Yes. I have a general idea, yes.

21 Q: And you -- are you -- do you know that there
22 are three general categories of such devices?

23 A: There's -- for pre-fabricated devices, there
24 is, I mean, I don't know the specific ones that
25 are laid out in that manual off the top of my



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 head ---

2 Q: Okay.

3 A: --- but there are several different types.

4 Q: Would you agree that a catch basin insert is
5 one of the categories of pre-fabricated control
6 devices?

7 A: It's -- sure.

8 Q: Okay. And is a catch basin insert the type of
9 stormwater device that is proposed in the
10 retrofit application?

11 A: I catch basin insert is, yes.

12 Q: Okay. So you would agree then that that is a
13 pre-fabricated stormwater control device?

14 A: It is.

15 Q: Okay. And in that same portion of the manual,
16 you recall that they list for each category of
17 stormwater treatment type, various best
18 management practices that relate to the various
19 types of stormwater treatment?

20 A: If you could show me, that'd be great.

21 Q: Okay.

22 MR. NORTH: Your Honor, could I approach the
23 witness?

24 THE COURT: Yes.

25 MR. HABER: May I approach, Your Honor?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 THE COURT: Yes.

2 MR. NORTH: Appears to be on the computer screen.

3 Q: Okay. Now, let me take you back to the top.
4 Do you recognize this as the beginning of your
5 online -- or I'll let you control the screen if
6 you'd like but ---

7 A: Show me what you're talking about.

8 Q: Okay. Do you see in the table of contents of
9 the Best Manual Practice a category called
10 structural controls with various subcategories?

11 A: I see that.

12 Q: Okay. And do you see then that for five pages,
13 there's description of various best management
14 practices that deal with wet detention ponds?

15 A: I see that, yes.

16 Q: And you see then they have a -- the next
17 category is dry detention?

18 A: I see that.

19 Q: Okay. And then they skip down two or three
20 other types of treatment. You see where they
21 have infiltration trenches?

22 A: I see that.

23 Q: Okay. And then a couple categories down below
24 you see the pre-fabricated control devices?

25 A: I see that.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Now, that's at page 142, is it not?

2 A: That's what it looks like.

3 Q: Okay. We're gonna skip down to page 142 for
4 you. Okay, on 142, do you see the description
5 for pre-fabricated control devices?

6 A: I see that.

7 Q: Okay. Do you see the language under your best
8 management practices that where pre-fabricated
9 control devices are not able to meet the 80
10 percent TSS removal goal alone, they can
11 provide excellent pre-treatment in a series of
12 water quality control BMPs or inlet to
13 permanent pool detention basins or stormwater
14 wetlands?

15 A: I see that.

16 Q: Okay. And would you agree that these
17 particular catch basin inserts do not meet the
18 80 percent TSS removal goal?

19 A: I recall that, yes.

20 Q: Okay. And do you see the three separate
21 categories of such devices?

22 A: I see that.

23 Q: And one is catch basin inserts, number two is
24 separation devices, and number three are
25 filtration devices?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Yes.

2 Q: Now, with the catch basin inserts proposed in
3 the retrofit, would you agree that those fall
4 under the category of catch basin inserts that
5 are pre-fabricated control devices?

6 A: Yes.

7 Q: Okay. And they are not in any way, shape or
8 form a method of treating stormwater by
9 infiltration, are they?

10 A: No.

11 Q: Okay. Would you agree that anybody that argues
12 that the stormwater of the retrofit application
13 is treatment by infiltration would be just
14 plain wrong?

15 A: It's not infiltration, no.

16 Q: Okay. So you would agree that anybody that
17 makes that argument is wrong?

18 A: I'm saying that that device is no an
19 infiltration device.

20 Q: Okay, thank you. And you recall that the
21 infiltration was one of the types of treatment
22 allowed in areas within a half mile of the
23 coastal zone?

24 A: It's one of the options, yes.

25 Q: And in that regulation, would you agree that



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 nowhere was there a listing for a pre-
2 fabricated control device for a catch basin
3 insert?

4 A: It did not specifically mention a catch basin
5 insert.

6 Q: Thank you. Okay, when we left off yesterday,
7 I believe the end of your questioning involved
8 your agreement that if the Court were to
9 determine that -- well, strike that. Let's
10 take a look at our regulation again. Let's
11 take a look, if we can, Exhibit 28, do you have
12 that handy?

13 A: Yes.

14 Q: And if you'd turn to page 7, you see at the
15 bottom of that regulation a requirement that if
16 the project -- if the project is located within
17 1,000 feet of shellfish beds, then one and a
18 half inches of runoff have to be retained on
19 site.

20 A: I see that.

21 Q: And I believe -- would you agree that you
22 testified yesterday that that requirement
23 cannot be waived?

24 A: Yes.

25 Q: And if, in fact, this project is within 1,000



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 feet of shellfish beds, you agree that the
2 permit that you issued would have to be set
3 aside?

4 A: I agree that it would either have to be
5 revisited or reapplied for.

6 Q: What do you mean revisited?

7 A: To address the issue.

8 Q: Would you agree that any stormwater permit for
9 a project within 1,000 feet of shellfish beds
10 is required, as a component of that stormwater
11 system, to retain one and a half inches of
12 stormwater on site?

13 A: What's -- what's the question?

14 Q: Would you agree that any stormwater system for
15 Garfield Park, if Garfield Park is within 1,000
16 feet of shellfish beds, any stormwater system
17 that meets the Regs would have to retain one
18 and a half inches of runoff on site?

19 A: As it says, projects within a thousand feet of
20 shellfish beds must retain the first inch and
21 a half of runoff on the site.

22 Q: Okay. And would you agree that the retrofit
23 permit does not meet that requirement?

24 A: Correct.

25 Q: Now, tell the Court what you did to measure the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 distance between Garfield Park and shellfish
2 beds?

3 A: I used aerial photographs to measure the
4 distance along the drainage paths from the
5 limits of disturbance of the Garfield Park
6 Phase 3 project out to the known location of
7 shellfish beds.

8 Q: Okay. And when you say you measured along the
9 drainage path ---

10 A: Correct.

11 Q: --- would you agree that the ordinance, or the
12 regulation, does not speak in terms of the
13 distance along the drainage path, just the
14 distance from the project to the shellfish
15 beds, would you agree with that?

16 A: The Regulations do not specifically say the
17 drainage path but the Regulations pertain to
18 stormwater runoff so therefore, the drainage
19 path is -- would be applicable.

20 Q: Is that a conclusion that you made as a
21 reasonable way to interpret it?

22 A: That's the Agency's determination, yes.

23 **MR. NORTH:** Your Honor, excuse me, but I'm having
24 difficulty locating an exhibit that was
25 produced yesterday that is a photograph that



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 shows the manner in which Mr. Geer measured
2 that distance. Can you tell me what exhibit
3 number ---

4 **MS. SHAHID:** It's in the package from DHEC, it's the
5 last two pages.

6 **MR. HABER:** It's Department Exhibit 8.

7 **MS. SHAHID:** You can use this one if you want.

8 **MR. NORTH:** Let me see if I can just use ...

9 Q: Mr. Geer, I'm handing you what has been marked
10 as Department Exhibit 8. Is that the document
11 that depicts the manner in which you measured
12 the distance to the shellfish beds?

13 A: Yes, that's what it looks like.

14 Q: Okay. And what was the starting point for your
15 measurement?

16 A: The starting ---

17 **THE COURT:** Mr. North, could you put that document
18 on the screen ---

19 **MR. NORTH:** Absolutely.

20 **THE COURT:** --- so we can all take a look at it?

21 **MR. HABER:** Your Honor, if I may, I have a copy of
22 exhibits for the court which this is included,
23 if you would like.

24 **THE COURT:** Yeah, yeah, I would like to have it but
25 I still want him to put it on this ---



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 MR. HABER: Would you like it now, Your Honor?

2 THE COURT: Yes.

3 MR. HABER: May I approach.

4 THE COURT: Yes.

5 MR. HABER: I apologize, I didn't get the chance ...

6 Thank you, Your Honor.

7 Q: Mr. Geer, can you see the document on your
8 screen?

9 A: I can. There's a little bit on the top that's
10 cut off.

11 Q: Okay, I'll back it out a little bit. Is that
12 better?

13 A: Yes.

14 Q: Okay. Now, where did you begin your
15 measurement?

16 A: At the edge of what was indicated as the limits
17 of the Garfield Park Phase 3 project.

18 Q: Okay. You did not start your measurement from
19 the actual outfall of the pipe then at that
20 time, is that correct?

21 A: At the outfall of the pipe was at the limits of
22 the ---

23 MR. HABER: Your Honor ...

24 A: --- of the project, of the Phase 3 -- Garfield
25 Park Phase 3 project ---



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. So are you saying that you measured from
2 the actual cement pipe that collects the
3 stormwater and discharges it to the lake?

4 A: At -- as it was indicated for Garfield Park
5 Phase 3, it's, I mean, that -- the end of the
6 pipe was the limit of that project.

7 Q: Okay. And then you measured that along this
8 curving route out to the shellfish beds, is
9 that correct?

10 A: That's correct.

11 Q: Okay. Now, would you agree that at high tide,
12 the water wouldn't necessarily be following
13 such a rounded, curving path?

14 A: It -- can you -- it depends on the tide. It
15 definitely depends on the tide as to how the,
16 you know, how the water flows. At, you know,
17 at the actual peak of high tide, nothing is
18 really moving in any direction, I mean, it's --
19 it, I mean, we're, I mean, we are talking about
20 instantaneous at high tide then there's not
21 gonna be much water movement at all ---

22 Q: Okay. But ---

23 A: --- but at the flow is pulling out, it's gonna
24 follow the path of least resistance, which is
25 the channel, which is why the channel's there



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 so ...

2 Q: Well, my point is, when the -- let's say you're
3 at high tide and then shortly after high tide,
4 the tide starts to flow back out, does it not?

5 A: It does.

6 Q: And if that entire lake is full of water, ---

7 A: Yes.

8 Q: --- do you have some basis to think that the
9 water in that lake is all gonna somehow follow
10 that snake-like, winding path?

11 A: The stormwater that would be leaving Garfield
12 Park Phase 3 site would be following that
13 channel, yes.

14 Q: So all of it would somehow just go right into
15 that little ditch and go on out?

16 A: Yes.

17 Q: Even the water that may be a couple of feet
18 higher than that trench ---

19 A: Yes.

20 Q: --- you're saying would somehow go back and
21 follow that trench?

22 A: I'm not sure what you're asking. What -- if
23 we're talking about the water that's leaving
24 the Garfield Park Phase 3 site through that
25 pipe that you mentioned, it's going to be in



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 that channel and it's gonna remain in that
2 channel as it flows out.

3 Q: Okay. What happens to the flow of the water
4 once the level of the water is higher than the
5 upper reaches of whatever channel has been cut
6 into that lakebed?

7 A: What's in the area of the channel will stay,
8 you know, as it's flowing out, will stay in the
9 area.

10 Q: Okay. And the excess water that's above the
11 elevation of that channel, would not it just
12 flow directly to the outlet ---

13 A: Even if it's -- even if it's vertically above
14 that channel it's gonna stay in the -- in the
15 area of the channel.

16 Q: Okay. Do you see the house in -- adjacent to
17 the lake that's closest to Chowan Creek?

18 A: Yes.

19 Q: Are you saying that the water that would fill
20 that lake is then going to go back and follow
21 that channel the whole length of it?

22 A: I'm not -- I'm not saying that. I'm not saying
23 that that water that's in front of that house
24 is gonna flow away from the outfall back to the
25 starting point of this yellow line, no, that's



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 not what I'm saying.

2 Q: What was our measurement after following that
3 circuitous route?

4 A: About 1,040 feet.

5 Q: Okay. So it's 40 feet too far to fail this
6 requirement, is that right?

7 A: Yes.

8 Q: Okay. Do you recall that Amanda Nodolf who
9 handled the fire -- or file prior to you had
10 advised the developer that he would have to
11 meet the heightened requirements that apply to
12 shellfish beds?

13 A: I -- I vaguely recall that she might have
14 mentioned that in an email to him.

15 Q: Do you recall the DHEC Board findings that your
16 measurement had failed to take into account the
17 path of drainage at higher tides?

18 A: I do recall that.

19 Q: Okay. And on that basis, did they set aside
20 your coastal consistency determination?

21 A: Yes.

22 Q: Would you agree that if you don't follow that
23 circuitous route that the distance of -- not
24 just the distance from Garfield Park to the
25 oyster beds, but even the distance of some



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 water flow would be less than a thousand feet?

2 A: I can agree that as the -- as the crow flies,
3 it may be within a thousand feet. I don't
4 know, I haven't measured that, but as the
5 stormwater drains, which is what we're talking
6 about, it's not within a thousand feet.

7 Q: You recall the homeowners providing to you,
8 prior to the issuance of this permit, a survey
9 from a licensed engineer in Beaufort County?

10 A: I recall you all submitting some measurements.
11 I'm not sure exactly -- I don't recall exactly
12 who did what.

13 Q: I'm handing you what's been marked as Exhibit
14 53. Do you recall being provided this
15 document, which is a survey of David Youmans'?

16 A: It looks familiar.

17 Q: And do you agree that this survey shows two
18 different measurements, one from a concrete
19 pipe on Sheridan Street and another one from
20 one of the lots in The Rookery Subdivision?

21 A: It looks like it.

22 Q: Okay. And would you agree that according to
23 this measurement, one distance is 700 feet and
24 the other is about 776?

25 A: Now, where does it say that?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Well, if the -- either the -- if you add up the
2 segments of the first measurement, you have 153
3 plus 153 plus 190, which is just about a little
4 less than 500 feet, and then an additional 200
5 feet from the dike out to the oysters. You see
6 that?

7 A: Okay, yeah.

8 Q: So you would agree that if you added up all
9 those segments, you'd be right in the area,
10 just a little bit short of 700 feet?

11 A: That's what it looks like.

12 Q: Okay. And would you agree that Garfield Park
13 actually has a second concrete pipe outlet?

14 A: I believe that's from The Rookery as you said,
15 the ... It looks like the closest point is the
16 discharge from Garfield Park Phase, I mean,
17 which is the discharge, excuse me, the
18 discharge part from Garfield Park Phase 3 is
19 this outlet over here.

20 Q: What does RCP stand for?

21 A: Reinforced concrete pipe.

22 Q: Okay. On what basis did you ignore the
23 measurements of the professional survey?

24 A: Because they did not accurately reflect the path
25 of storm runoff.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Now that the DHEC Board has set aside
2 the coastal consistency determination and
3 criticized the failure to take into account the
4 direction of the water flow at higher tides, is
5 it the position of OCRM at this point that the
6 correct measurement should take into account
7 the direction of the flow at higher tides?

8 A: I have taken into account the direction of flow
9 at higher tides.

10 Q: Okay. And would you agree, as you sit here,
11 that that would be the appropriate way to
12 measure the distance?

13 A: I agree that considering the tides would be an
14 appropriate way to measure it, and the drainage
15 path of the stormwater runoff.

16 Q: Yeah, okay. Take a look, if you would, at
17 Exhibit 52. Do you recognize that as a
18 measurement of distance prepared by the
19 developer's engineers in -- last revised in
20 2013?

21 MS. SHAHID: Is that the one you objected to? Or is
22 that ...

23 MR. NORTH: That I objected to?

24 MS. SHAHID: You initially objected to some of our
25 ...



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 **MR. NORTH:** No, no ---
2 **MS. SHAHID:** This is different ---
3 **MR. NORTH:** This is different, yes.
4 **MS. SHAHID:** This is the later one.
5 **MR. NORTH:** Yes.
6 **MS. SHAHID:** Okay. Okay, thank you.
7 A: What is your question? I'm sorry.
8 Q: If you look up at the Sheridan Road
9 intersection, do you see a point where the
10 concrete pipe is shown on the drawing?
11 A: I see a pipe shown on the drawing.
12 Q: Okay. Now, let me get the -- you've got behind
13 you here the original exhibits. In your
14 deposition, do you remember initialing the
15 point from which you started your measurement?
16 A: I don't recall that.
17 **MR. NORTH:** Can you pull Exhibit 52 from your book?
18 Q: Do you see your initials on that page?
19 A: I see that.
20 Q: Okay. And is that next to something that I
21 believe depicts the end of a concrete pipe?
22 A: Looks like it, yes.
23 Q: Okay. And is that the -- where your initials
24 are, is that point from which you started your
25 measurements?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: That was -- yes, it was right around there,
2 yes.

3 Q: Okay. And do you see also on this drawing a
4 couple of storm sewer inlets up on Sheridan
5 Road?

6 A: I see that.

7 Q: Okay. And do you see that they then run down
8 between the property lines of Lot B4 and B3?

9 A: I see that.

10 Q: And do you see then that the outfall -- the
11 concrete pipe that then feeds those drains into
12 the lake?

13 A: I see that.

14 MR. NORTH: Your Honor, I'd like to put a little
15 piece of this on the screen for you, if I
16 could.

17 THE COURT: Okay.

18 Q: Mr. Geer, on the screen, do you see your
19 initials in blue ink?

20 A: I see that.

21 Q: Okay. And is that the concrete pipe leading
22 into the lake that you started your measurement
23 from?

24 A: Yes.

25 Q: Okay. Take a look, if you would, at Exhibit



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 72.
- 2 A: So, are we finished with 52?
- 3 Q: Yes. Do you agree this is a drawing done by
- 4 the developer's engineers last revised last
- 5 August, shortly before the August scheduled
- 6 trial in this matter?
- 7 A: That's what it looks like.
- 8 Q: Okay. And do you see the various measurements
- 9 that they've made that show both the circular
- 10 measurement, as well as a more direct
- 11 measurement with a arcing curve of water flow
- 12 through the basin of the lakebed?
- 13 A: I see what looks like three or four
- 14 measurements on here.
- 15 Q: Okay. Well let's look at each one of them, if
- 16 we could. First of all, let's go out to the
- 17 oyster beds. Do you see an indication where it
- 18 says high tide measurement?
- 19 A: I see that.
- 20 Q: And do you see how that high tide measurement
- 21 is some amount of distance toward the water,
- 22 away from the white that's marked on the map?
- 23 A: I -- yeah, it looks -- I see -- I think I see
- 24 what you're talking about.
- 25 Q: Would you agree that the white would indicate



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 dead oyster shells?

2 A: I'm not absolutely sure that that's, you know,
3 the full extent of them. I mean, I can't tell
4 what's covered by water there or exposed, I
5 mean, I don't know for sure that ... I mean,
6 there are some lighter areas there that could
7 be oysters under water. I'm not absolutely
8 positive there.

9 Q: Okay. Would you agree that there is a
10 possibility that that measurement went a little
11 bit further than it needed to before it hit the
12 oyster beds?

13 A: It could have. I'm not sure.

14 Q: Okay. And in terms of point of reference, I
15 represent to you that the floating dock
16 immediately to the northeast of that is 40 feet
17 long. Now ---

18 A: Okay.

19 Q: --- take a look, if you would, and you see that
20 it is superimposed on this drawing, the survey
21 prepared by David Youmans. You see the dotted
22 lines running from both the 15 inch concrete
23 pipe as well as the 24 inch concrete pipe?

24 A: I see the dotted lines, sure.

25 Q: Okay. And do you see that in order to -- and



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 you see that at the high tide measurement, the
2 developer's engineer found 105 feet. Or -- I'm
3 sorry, 1,005 feet.

4 A: I see a label on here that says high tide
5 measurement 1,005 feet, yes.

6 Q: Okay. Would you agree that this measurement
7 then for along the path they're showing would
8 be five feet too far to call into play the
9 applicable regulation?

10 A: I agree that 1,005 feet is five feet too far to
11 call in that regulation.

12 Q: Okay. Now, you -- and notice that I agree, I
13 would suspect that they made a pretty wider
14 arc, much wider arc in getting to the dike than
15 the measurement of the surveyor, would you
16 agree with that?

17 A: It's a -- it's a different path there too, I
18 mean, there's four different paths on here.
19 I'm not sure which one you're comparing it to.

20 Q: Okay. Now, if you were to take into account --
21 well, first of all, if we have Garfield Park's
22 storm inlets draining down between Lots B4 and
23 B3 and discharging into the lake, and its path
24 is almost a straight line toward the dike, what
25 would be your basis, if any, for arguing that



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the measurement is not, at the most, 776 feet?

2 A: I followed the path from the discharge from
3 Garfield Park Phase 3 to the shellfish beds.

4 Q: Okay.

5 A: It's what I measured.

6 Q: If it is determined by the Court that these
7 inlet locations on Sheridan Road drain
8 stormwater from Garfield Park and discharge it
9 down that pipe and it exits that 15 inch
10 concrete pipe into the lake, would you agree
11 that if that is part of the Garfield Park
12 stormwater, that that discharge point is less
13 than a thousand feet from the oyster beds?

14 A: I don't know. I haven't measured that. It's
15 -- as I understand it, that's not Garfield
16 Park, that Rookery drainage. The Garfield Park
17 -- Garfield Park Phase 3 drains to the -- to
18 the other pipe that we were talking about
19 earlier.

20 Q: And my question is, let's assume for a minute
21 that we're able to establish that the water
22 coming from the clubhouse, golf course, and all
23 lots along that road all flow down to those
24 inlets and then drain right down into the lake.
25 If we can establish that, would you then agree



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 that the distance from that Garfield Park
2 outlet to the oyster beds would be less than a
3 thousand feet?

4 A: I -- no, I can't agree to that.

5 Q: Why?

6 A: Because I haven't -- I haven't measured that.
7 That's not what I understand the drainage from
8 Garfield Park Phase 3 -- that's not the area
9 that we're talking about.

10 Q: Okay. But my question asked you to assume that
11 we are able to establish that Garfield Park
12 does, in fact, drain down that way. If we do
13 establish that, would you then agree that that
14 discharge point is less than a thousand feet to
15 the oyster beds?

16 A: I would have to measure it along the drainage
17 path and see.

18 Q: Would not the professional surveyor's
19 measurement be sufficient for you?

20 A: It -- not if it doesn't follow the drainage
21 path, no.

22 Q: I thought we just agreed that we should take
23 into account the drainage path at a high tide.

24 A: That's correct. I would -- I would do that ---

25 Q: And do you see that the measurement from that



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 15 inch concrete pipe just happens to almost
2 identically follow the curved path that runs
3 down the middle of the lake?

4 A: I don't see that, no. To me, that straight
5 line does not look like the drainage path at
6 high tide. Stormwater that would be coming out
7 of that pipe.

8 Q: So are -- is it your view that if you actually
9 move that over a little bit to actually hook up
10 with the drainage path, that you would add 25
11 percent more distance to the measurement?

12 A: I'd have to take a look at aerial photographs
13 and do the measurement along the drainage paths
14 considering tidal flow to be sure.

15 Q: Okay. Now, let's go back to the developer's
16 engineer's measurement of 1,005 feet, and let's
17 ignore for a minute, let's assume that he
18 didn't go further out into the ocean than he
19 needed to to hit oysters. Would -- tell me
20 what the measurement -- and you see how he's
21 got the whole route measured periodically
22 throughout the route?

23 A: I see he's got its -- some -- it's some
24 segments, I mean, all these lines have segments
25 of measurements.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. So it shows at any point in time where
2 those numbers are what the measurement is as of
3 that location, does it not?

4 A: Well, it shows the distance from the point
5 before it. It's not accumulative ---

6 Q: From the start point?

7 A: Well, some of these have stations and some of
8 them have segmented distances.

9 Q: Okay. Well, do you see where the measurement
10 starts up on Clark Street with a zero?

11 A: I see that.

12 Q: Okay. And then it goes down one lot and takes
13 a slight curve along the path of the storm
14 sewer, and it gets up to 50 feet. Do you see
15 that?

16 A: I see that.

17 Q: Okay. And then it just keeps going and
18 increases until it gets down to your 24 inch
19 concrete outlet. Do you see that?

20 A: I see that.

21 Q: Do you see that the measurement at your
22 concrete outlet almost 300 feet at that point
23 in time?

24 A: Repeat the question please.

25 Q: Do you see that the measurement of the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 developer's engineer is almost to the point of
2 300 feet at the point in time he gets to your
3 stormwater outlet?

4 A: I see that.

5 Q: Okay. And if you subtracted that 300 feet from
6 his measurement, would not his measurement be
7 almost identical to the professional surveyor's
8 measurement?

9 A: I haven't -- I haven't made that comparison,
10 no.

11 Q: Okay. Well, let's do it right now. You have
12 1,005 feet. Can you tell us what 300 less than
13 that would be?

14 A: That'd be 705.

15 Q: Okay. And the surveyor came up with about 700,
16 didn't he?

17 A: Is that what he came up with? Where is it?

18 Q: That's on the other exhibit. I'd be happy to
19 give it back to you if you'd like.

20 A: Okay. If you say so.

21 Q: Okay. You'll accept my word for the surveyor
22 having a measurement of just under 700 feet?

23 A: If -- sure.

24 Q: Now, you've previously testified that in your
25 opinion, the appropriate start point for the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 measurement would be the stormwater outfall of
2 Garfield Park, is that correct?

3 A: Yes.

4 Q: Okay. Well, if you were to accept the
5 measurements of the developer's own engineer,
6 would you not agree then that you should ignore
7 the first 300 feet of his measurement and you
8 would end up with 705 feet as the measurement
9 to the oyster beds?

10 A: I don't know that he actually hit the edge of
11 the oyster beds. I based my survey -- my --
12 I'm sorry, not my survey, my measurements from
13 the outfall of the Garfield Park Phase 3, as I
14 said, along the drainage path, considering
15 tidal influence, to the point where shellfish
16 beds are indicated by the data that's provided
17 to OCRM by the Department of Natural Resources
18 on shellfish bed locations. So, that's how I
19 determined where the shellfish beds are. I
20 don't know that, you know, that this point
21 where the engineer ends his measurement is that
22 location. It looks like it may be in the
23 general vicinity, but I measured from the
24 outfall of Garfield Park to the location of
25 shellfish beds as indicated by DNR data



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 provided to OCRM.

2 Q: Okay.

3 MR. NORTH: Could I ask opposing counsel to tell me
4 the exhibit number of their exhibit that shows
5 the information from DNR as to the location of
6 shellfish beds?

7 MS. SHAHID: It's part of their 8.

8 MR. HABER: It's the same exhibit ---

9 MR. NORTH: Part of 8?

10 MS. SHAHID: Second page of 8.

11 MR. NORTH: Okay.

12 MS. SHAHID: It's the yellow areas.

13 Q: I'm handing you again what's been marked as
14 Exhibit 8. Do you see on the second page of
15 that exhibit -- strike that.

16 MR. NORTH: Let me move it over to the screen. Our
17 screen is not picking up the yellow print on
18 this very well so if the Court would allow, may
19 I, well, first present it to the witness but
20 then I will let the Court look at the exhibit.

21 THE COURT: That's fine.

22 Q: On page 2 of Exhibit 8, do you see indications
23 of yellow areas along the coastline?

24 A: I see that.

25 Q: And is that supposed to indicate where the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Department of Natural Resources says there are
2 shellfish beds?

3 A: Yes.

4 Q: Okay. And would you agree that those areas go
5 all the way up to the areas of white and are
6 immediately outside the dike in question in
7 this case?

8 A: There's some overlap with some areas of white,
9 sure.

10 Q: Okay, so overlap with areas of white. So it
11 could even be closer ---

12 A: Uh-huh (affirmative response).

13 Q: --- than the areas on the map that show the
14 white?

15 A: I wouldn't say that it's closer. Those are two
16 different aerial photographs, you know, from
17 different time periods, but I just don't think
18 the area of white shown on either one of these
19 maps is a reliable location. We rely on what
20 DNR provides us so ---

21 Q: Okay.

22 A: --- that's why we rely on that.

23 Q: Well, do you see that the oyster beds that are
24 closest to the break in the dike, actually the
25 yellow overlaps the white?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: I see on that aerial photograph, it does
2 overlap some of the white.

3 Q: And when you -- and that's the white that is
4 immediately adjacent to the -- to the north of
5 the low tide measurement, is it not?

6 A: I -- I mean, this is two different aerial
7 photographs. I don't know that I could really
8 compare them.

9 Q: Okay.

10 A: I mean, this is an infrared aerial photograph
11 ---

12 Q: Would you agree, at least, that the Department
13 of Natural Resources has verified the existence
14 of oysters all up and down that entire area
15 right at the shoreline of Chowan Creek?

16 A: Yes.

17 Q: Okay.

18 MR. NORTH: Oh, you have one?

19 THE COURT: I have one, yes.

20 MR. NORTH: Oh, I'm sorry. Okay, thank you.

21 Q: Do you recall being told by the petitioners
22 that they had actually measured the route
23 through the -- on the area outside the dike
24 that curves around to determine that the
25 measurement, even at low tide, of the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 outflowing water?

2 A: Vaguely.

3 Q: Okay. And do you recall being offered the
4 opportunity to have anybody from the Department
5 go out and verify what had been done and what
6 the measurements were between the break in the
7 dike and the oyster beds?

8 A: I don't recall.

9 Q: You don't recall being offered the opportunity
10 to have somebody verify that if they so choose?

11 A: I -- I'm not denying that it happened. I just
12 don't recall the incident.

13 Q: Would you agree on Exhibit 72 that a
14 measurement that starts in the middle of
15 Garfield Park, up on Clark Street, is not the
16 appropriate place to start your measurement?

17 A: I would -- I don't think the middle of Garfield
18 Park is the appropriate place to start the
19 measurement, no.

20 Q: Okay. And you would agree, I assume, that if
21 the Court is to determine the distance from the
22 development to the oyster beds, starting in the
23 middle of the development would not be the best
24 choice?

25 A: No, I would start at the edge.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Now, you testified that you often rely
2 on the representations of licensed engineers,
3 is that correct?

4 A: Yes.

5 Q: Okay. If Exhibit 72 is a document and a
6 measurement prepared by the licensed
7 professional engineers of the developer, is
8 there some reason you would not accept this
9 document as a measurement to the oyster beds?

10 MR. HABER: Objection, Your Honor. This exhibit was
11 created after the permanent decision was made.

12 THE COURT: If the document was created after the
13 decision was made, are you asking him now to --

14 -

15 MR. NORTH: Well ---

16 THE COURT: He couldn't have considered it. He
17 couldn't have considered it was not created
18 yet.

19 MR. NORTH: Oh no, I'm not suggesting he did
20 consider it, but I am suggesting that the
21 permit was issued by him, it is still up in the
22 air because of dependency of this proceeding.
23 And as we sit here today, the permit is not
24 finally issued. So, this is additional
25 information submitted to him in August of last



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 year and available now while the permit is
2 still not final. And I'm wondering whether or
3 not he, as the OCRM representative, would not
4 be willing to rely on the measurements of the
5 developer's engineer.

6 **MR. HABER:** Your Honor, I simply -- a quick response
7 is that one, it -- to understand the scope of
8 the Court as to what -- when this document was
9 created; two, this document wasn't provided to
10 create -- created for Richard Geer or his
11 review. This document was created I believe
12 after -- one day after depositions were created
13 -- were taken down at Beaufort so it wasn't
14 created for the permit review. This appeal was
15 already proceeding. It wasn't under department
16 review at that time.

17 **MR. NORTH:** Your Honor, I can make everything a lot
18 easier. Why don't I just withdraw the
19 question. It's overkill, I don't need it.

20 **MR. HABER:** Thank you, Your Honor.

21 Q: In your review of the retrofit application, did
22 you analyze at all the extent to which the
23 project could affect the habitats of Wood
24 Stork?

25 A: I consulted with the -- our contact with the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Department of Natural Resources on those -- on
2 endangered and threatened species.

3 Q: Do you recall that the GIS information received
4 from the Department of Natural Resources showed
5 a waterbird colony on G tract?

6 A: Yes.

7 Q: Did you take that into account in your
8 analysis?

9 A: I did.

10 Q: And approved the permit anyway?

11 A: I consulted with DNR, which is our resource
12 agency with regard to threatened and endangered
13 species, and made that decision based on their
14 response.

15 Q: Do you recall a discussion with that division
16 about whether or not G tract could be home to
17 Wood Storks or other waterbirds?

18 A: I discussed it based on the project that was
19 under review. I would -- I'm not sure what
20 your question is.

21 Q: Okay. And were you not told by the homeowners
22 and -- that Wood Storks inhabited the lake and
23 had their nests in all the trees surrounding
24 the lake and ... and that not restoring the
25 lake would be injurious to the habitat of the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 lake?

2 A: I vaguely recall some comments along that line.

3 Q: Okay.

4 A: I do.

5 Q: And what effect, if any, did that have on your
6 analysis?

7 A: I -- it was considered and was, you know, part
8 of the reason why I consulted with the
9 Department of Natural Resources, and also
10 because that, I mean, but I also communicated
11 with the Department of Natural Resources
12 because it's what I do when a question is
13 arised (sic) with any permit.

14 Q: At any point in your review of this retrofit
15 project, did you analyze the extent in which
16 the project could cause damage to the value and
17 enjoyment of the adjacent property owners?

18 A: We analyzed the effect of stormwater runoff on,
19 you know, as a result of this project.

20 Q: Okay. Is it fair to say that you limited your
21 consideration of adverse consequences to those
22 only resulting from stormwater and not from any
23 other attribute of the project?

24 A: In -- as -- along with the policies, the
25 applicable policies of the Coastal Zone



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Management Program, yes, and stormwater.

2 Q: Do you recall complaints of the homeowners
3 about the tidal waters encroaching on
4 freshwater wetlands?

5 A: I recall -- vaguely recall a comment or two on
6 that.

7 Q: Okay. And do you recall that some of the
8 freshwater wetlands that were complained about
9 were actually dedicated wetlands that the
10 developer had permanently and forever dedicated
11 as freshwater wetlands?

12 A: Sure.

13 Q: Okay. And what was your view in terms of
14 whether or not that those dedicated wetlands
15 were negatively impacted?

16 A: I consulted with our wetlands -- with the OCRM
17 Wetlands Section with regard to that, and they
18 consulted with the US Army Corp of Engineers.
19 And I relied on their communication with regard
20 ...

21 Q: Okay. And did your Wetlands staff report to
22 you that they had not observed any tidal waters
23 entering the dedicated freshwater wetland?

24 A: What's the question?

25 Q: Did your Wetlands staff report to you that they



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 had not observed any saltwater entering the
2 dedicated -- the dedicated freshwater wetland?

3 A: I don't recall exactly what they -- I don't
4 recall exactly how or what they reported to me,
5 other than it was not an issue with this
6 project.

7 Q: They just told you not to worry about it?

8 A: Well, there is specific e-mails and
9 correspondence in the file. I just don't
10 recall specifically what the verbiage was.

11 Q: Do you recall the other division of OCRM taking
12 the position that the tidal waters would return
13 the freshwater wetlands to their natural state
14 and would not be considered an impact.

15 A: That's sound about right.

16 Q: Okay. And you remember testifying to that last
17 summer?

18 A: Vaguely.

19 Q: Okay. Take a look, if you would, at Exhibit
20 19. Which is your policies and procedures for
21 the Coastal Management Program. And within
22 Exhibit 19, turn to Roman III-6. Do you see
23 there policies that have to do with residential
24 development?

25 A: Not yet. I'm sorry, what page did you say?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: Roman III-6.
- 2 A: Okay. And the question?
- 3 Q: Okay. Now, that section has to do with
- 4 residential development, does it not?
- 5 A: Okay.
- 6 Q: And do you see on the first line that it
- 7 relates to policies in the coastal zone and the
- 8 review by OCRM of both state and federal
- 9 permits?
- 10 A: I see that.
- 11 Q: Okay. Do you see under subsection B, the
- 12 requirement that development which would
- 13 permanently alter freshwater wetlands will be
- 14 prohibited unless no feasible alternatives
- 15 exist?
- 16 A: I see that.
- 17 Q: Would you agree that allowing the freshwater
- 18 wetlands involved in this case to be inundated
- 19 with saltwater and returned to their natural
- 20 state as suggested by your staff violates this
- 21 regulation?
- 22 A: No. I mean, that's why I corresponded with our
- 23 Wetlands Section to get their determination and
- 24 they -- they indicated it was not an issue.
- 25 Q: Okay. Now, as you read subparagraph B, would



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 not you agree that it is an issue, that it
2 specifically bars the permanent alteration of
3 freshwater wetlands unless no feasible
4 alternative exists?

5 A: That's a call that I -- that's why I correspond
6 with our Wetlands Section because they are the
7 ones that can make this call, and I rely on
8 them.

9 Q: Okay. So they said it was okay and you went
10 along with it?

11 A: Yes.

12 Q: Okay. Do you have any information or knowledge
13 as to some basis that would somehow undo this
14 state regulation?

15 MR. HABER: Objection, Your Honor. This is treated
16 as a regulation. It's from the policies and
17 procedures section of the program document.

18 THE COURT: Okay. Rephrase.

19 MR. NORTH: I couldn't hear exactly what he said.
20 You did agree it ---

21 MR. HABER: Un ---

22 MR. NORTH: --- it's treated as a regulation.

23 MR. HABER: Under the spectra decision, it's
24 treated. However, what you're reading from is
25 the policy section of the program document as



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 a whole this is the policies and procedures.

2 MR. NORTH: Okay.

3 MR. HABER: Officially a state regulation.

4 MR. NORTH: Okay. Even though it has the same
5 effect?

6 MR. HABER: I -- I'm ---

7 MR. NORTH: Okay.

8 Q: Do you see under subsection B the language that
9 these marshes are a valuable habitat for
10 wildlife and plant species and serve as
11 hydrologic buffers providing for absorption of
12 stormwater runoff and aquifer recharge; and
13 therefore, their destruction for residential
14 purposes must be avoided whenever possible?

15 A: I see that.

16 Q: Would you not agree that the lake, as
17 originally permitted in 2004, handled all of
18 those stormwater surges and kept them from
19 simply washing out to sea and providing a
20 buffer between development and the coastal zone
21 critical area?

22 A: What's -- what -- could you rephrase that
23 question?

24 Q: Yes. Would you agree that the lake, as it was
25 originally permitted and operated in 2004,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 operated as just such a buffer, collecting all
2 the stormwater and being a buffer between the
3 development of Garfield Park and the critical
4 area of Chowan Creek?

5 A: We did not permit a lake in 2004.

6 Q: You permitted a stormwater system that sent all
7 of the stormwater to a detention basin which
8 was the lake, is that right?

9 A: Yes.

10 Q: And did not that lake act as the very type of
11 buffer that's described in subsection B of this
12 document that acts like a regulation?

13 A: It acted like a detention system.

14 Q: And a buffer?

15 A: I mean, sure, it's a buffer between ...

16 Q: Would you agree then that by altering those
17 freshwater wetlands, you have violated the
18 language of this particular section?

19 A: No.

20 Q: Take a look at subsection C. Do you see the
21 language that says the inclusion of buffers
22 must be incorporated whenever possible to
23 absorb water surges?

24 A: I see that.

25 Q: Okay. And would you agree that the lake, while



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 it functioned as the detention basin, absorbed
2 water surges?

3 A: Well, not exactly. I mean, according to the
4 calculations that the engineer submitted, there
5 was actually more of a surge in the lake in the
6 former impoundment with the dike in place for
7 the stormwater than without the dike in place.

8 Q: Yes, there would be more water in the lake
9 during a 10-year event than with the dike open
10 to the open ocean, is that right?

11 A: That's correct.

12 Q: Okay. But would not then that establish
13 exactly what I'm saying, which is that the lake
14 absorbed all that freshwater outflow and then
15 slowly released it in accordance with the
16 Regs.?

17 A: That's what a detention pond does, ---

18 Q: Okay.

19 A: --- so yes.

20 Q: Take a look at subsection D. You see where it
21 says where appropriate, particularly adjacent
22 to a critical area, drainage plans and
23 construction measures for residential
24 development shall be designed so as to control
25 erosion and sedimentation, water quality



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 degradation, and other negative impacts on
2 adjacent water and wetlands. And then they
3 give examples that include catchment ponds
4 rather than direct stormwater discharge. Would
5 you agree that the retrofit does the exact
6 opposite of what's described in subsection D?

7 A: I disagree.

8 Q: Take a look, if you would, at Roman III-63.
9 Well, wait, let's hit -- let's hit 59 for a
10 minute first.

11 A: 59 what?

12 Q: Roman III-59. If you go to 58 actually, it
13 talked about wetlands outside the critical
14 areas. Would you agree that the dedicated
15 wetlands or any freshwater wetlands that are
16 established that connect the Cat Island Lake
17 would fall within this category?

18 A: I'm not -- I can't -- I'm not one to make the
19 decision on whether or not something is
20 wetlands or not.

21 Q: Okay, I understand.

22 A: That's the purview of our -- of the OCRM
23 Wetlands Section.

24 Q: Okay. So you're saying dealing with any of
25 these wetland or freshwater wetlands or



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 altering them is -- that's not your purview?

2 A: What I'm saying is I communicated with our
3 Wetlands Sections on numerous occasion and --
4 to let, you know, them make these decisions.

5 Q: Okay. Take a look at Roman III-59. Do you see
6 at the very last paragraph on that page, the
7 policy of OCRM that project proposals which
8 would require significant permanent alteration
9 of a productive freshwater marsh will not be
10 approved unless no feasible alternative exists,
11 or there's some overriding public interest?

12 A: I see that.

13 Q: Would you agree that there was no overriding
14 public interest in connection with the retrofit
15 application?

16 A: I can't -- I didn't make that -- that decision,
17 that was something that came from our Wetlands
18 Section so you'd have to ask them that.

19 Q: Take a look at Roman III-63, if you would. You
20 see at the top, that golf course construction
21 and maintenance practices result in the
22 potential for significant negative impacts from
23 the runoff of sediments, pesticides, herbicides
24 and other pollutants. And for this reason,
25 when golf courses are constructed adjacent to



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 receiving water bodies, then there's a whole
2 list of things that are required?

3 A: I see that.

4 Q: Okay. Now, there was a golf course immediately
5 adjacent to the Cat Island Lake, isn't there?

6 A: I wouldn't consider it immediately adjacent.

7 Q: Well, maybe not touching but you could throw a
8 baseball to it, couldn't you?

9 A: I don't know.

10 Q: Okay. On the very west end of the lake, there
11 are some wetlands, aren't there?

12 A: I don't -- I don't know what exactly is
13 wetlands in that area ---

14 Q: Okay.

15 A: --- and what isn't.

16 Q: Well, there's trees, aren't there?

17 A: There's a forested area, yes.

18 Q: Okay. And just immediate -- and you and I
19 walked through that forested area, didn't we?

20 A: Yes.

21 Q: Okay. And doesn't it connect to a golf course
22 lagoon?

23 A: There is a spillway, as I recall it, a spillway
24 from the -- from a golf course lagoon that's a
25 vegetated swale that leads into a low area and



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 through the woods and eventually into the --
2 into the upper reaches of the former
3 impoundment.

4 Q: Okay. And do you recall looking at the golf
5 course lagoons that feed into the Cat Island
6 Lake?

7 A: I do.

8 Q: Okay. So is it fair to say that right there in
9 that area there is a golf course?

10 A: There is a golf course in that area, yes.

11 Q: And is it your understanding that that golf
12 course was developed prior to the effective
13 date of the Regulations?

14 A: That's what I understand, yes.

15 Q: And that it does not have to meet the
16 requirements that set forth in Roman III-63,
17 does it?

18 A: That's correct.

19 Q: But even though it didn't have to, would you
20 agree that the runoff from that golf course was
21 detained in the Cat Island Lake under the
22 existing stormwater permit that had the lake as
23 the detention pond for the entire drainage
24 basin?

25 A: Could you rephrase that question because I'm



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 not sure I understand what you're saying.

2 Q: Let me give you an exhibit. Let's take a look
3 again at Exhibit 80. Do you recognize that as
4 the submission from the developer's engineers
5 that establish the drainage basin of the lake?

6 A: I see that.

7 Q: Okay. And do you see the blue arrows that run
8 through three different lagoons?

9 A: I see that.

10 Q: And are those the lagoons that people have been
11 referring to as the golf course lagoons?

12 A: They -- they look like golf course lagoons,
13 yes.

14 Q: And would you agree that between the lagoon
15 closest to the lake and the second lagoon,
16 there is a fairway for a golf course?

17 A: That's what it looks like, sure, yeah.

18 Q: And do you recall that on the lagoon furthest
19 away from the lake there is a tee box, a
20 driving tee box on one side and a fairway on
21 the other?

22 A: Based on the contours, it kind of looks that
23 way. I don't recall the, you know, the exact
24 -- yeah, golf course configuration ---

25 Q: Okay.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: --- the area.

2 Q: And would you agree that all of those fairways
3 drain into the golf course lagoons?

4 A: Those are included in the drainage area to the
5 former impoundment, yes.

6 Q: And then they drain directly into the Cat
7 Island Lake, don't they?

8 A: They -- not directly, but they do drain to the
9 former impoundment, yes.

10 Q: Okay. And without the retrofit, all of that
11 stormwater gets detained and treated by the Cat
12 Island Lake, doesn't it?

13 A: I don't know to what extent it gets treated, it
14 does get detained in the -- did get detained --

15 -

16 Q: Okay.

17 A: --- in the former impoundment.

18 Q: And it got treated as well as the runoff from
19 Garfield Park, didn't it?

20 **MS. SHAHID:** Your Honor, this is identical to a
21 line of questioning that we went through for
22 several minutes yesterday. These questions
23 have been asked and answered. The questions
24 about treatment have been asked and answered,
25 and he's hammering the witness again because he



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 hasn't gotten the answer he wanted. But I
2 think that he's -- this is very repetitive of
3 what we went through yesterday and I object.

4 **MR. NORTH:** Your Honor, the angle I'm coming from
5 is to establish that even though the golf
6 course on Cat Island does not have to meet
7 stormwater requirements, without the permit,
8 all of this stormwater got the same level of
9 treatment as Garfield Park. With the retrofit
10 approved, it just flows for the rest of
11 eternity with zero treatment.

12 **MS. SHAHID:** And that's not consistent with the
13 witness' responses yesterday. It went -- that
14 he responded clearly yesterday that when he
15 could not answer with regard to effective
16 treatment or treatment without information on
17 these exempt projects. And I -- I just -- I
18 think he's -- I just feel like we have a lot of
19 valuable time and we're just going back to an
20 area that we exhausted yesterday. I don't
21 think it's appropriate to keep asking the same
22 questions.

23 **THE COURT:** I'm going to allow him to continue with
24 his questioning, but I would ask that you limit

25 ---



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 MR. HABER: Yes, and Your Honor ---

2 THE COURT: --- the amount of time you spend on
3 this.

4 MR. NORTH: I agree.

5 MR. HABER: I apologize. After ruling on that
6 objection, I'd also like to have an objection
7 on the record that what is the challenge here
8 is a retrofit permit for Garfield Park Phase 3.
9 As to whether or not treatment was provided by
10 any areas that would predate our Regulations,
11 again, is looking to simply have this
12 reimpoundment reimpounded, which is outside of
13 the scope of what this retrofit is.

14 THE COURT: Okay, thank you. It's on the record ---

15 MR. HABER: Thank you, Your Honor.

16 MR. NORTH: Thank you, Your Honor.

17 THE COURT: --- go ahead with the questioning.

18 Q: Final question on this, would you agree that
19 these pollutants and other things that the
20 Regulations are so concerned about will forever
21 flow into that lakebed and out to Chowan Creek
22 without stormwater treatment if this retrofit
23 permit is approved?

24 A: I don't know that that's the case ---

25 Q: Why not?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: I don't have the information on, you know, that
2 would identify what those pollutants are, what
3 the, you know, the runoff characteristics of
4 those areas, the development details. I just
5 -- I don't have the information to review so I
6 can't say that.

7 Q: Would you at least agree that if there were
8 pollutants from these golf course properties,
9 they would flow to the lake and out to Chowan
10 Creek?

11 A: I don't know that they wouldn't be trapped in
12 the golf course lagoons there. They -- as
13 these blue lines indicate, the runoff from
14 those areas are going through existing lagoons.

15 Q: Do you recall with regard to Tabby Park that
16 there is along the street a storm sewer inlet
17 that connects to a pipe and crosses the fairway
18 and discharges directly into the Cat Island
19 Lake?

20 A: I don't recall that it directs -- directly
21 discharges into the Cat Island Lake.

22 Q: What's your understanding of where it
23 discharges?

24 A: I -- what I understand is it discharges in the
25 woods adjacent to the -- adjacent to the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 fairway.

2 Q: The woods between the fairway and the lake?

3 A: Yes, there -- that it drains through the woods
4 ---

5 Q: And then runs on the ground through the woods?

6 A: It's on the ground, yes.

7 Q: Okay. So, your understanding is the storm
8 sewer inlet pipes it underneath the fairway,
9 but then it just runs along the ground into the
10 lake?

11 A: That's what I understand.

12 Q: Okay. And what treatment does that get?

13 A: Well, the -- it -- the vegetation and the
14 ground cover provides filtration. It's like
15 the buffers you were talking about earlier ---

16 Q: Okay. Is that one of the three things that are
17 allowed for stormwater treatment in the coastal
18 zone, within one half mile of the coastal zone?

19 A: It's a -- it is a treatment mechanism, sure.

20 Q: My question is, is that one of the treatment
21 mechanisms specifically authorized by
22 regulation for treatment within one half mile
23 of the coastal zone?

24 A: It depends on the project which ...

25 Q: Take a look, if you would, at Exhibit 81. Do



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 you recognize that as Regulation 61-68?

2 A: I see that.

3 Q: Okay. Is that regulation, or those
4 regulations, applicable to this retrofit
5 permit?

6 A: Sure, in a way.

7 Q: Pardon?

8 A: Yes.

9 Q: Okay. Take a look, if you would, at page 12.
10 You see the regulation that says existing water
11 uses and the level of water quality necessary
12 to protect these existing uses shall be
13 maintained and protected regardless of the
14 water classification and consistent with the
15 policies below?

16 A: I see that.

17 Q: Do you see that?

18 A: I see that.

19 Q: And it's called the antidegradation rule, is
20 that right?

21 A: I see that.

22 Q: Would it be fair to say that a -- that a
23 project is not supposed to have a result that
24 it lowers the quality of the water?

25 A: I'm sorry, what -- what's the question?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Would you agree that this regulation would
2 preclude a project that has the result of
3 degrading the quality of the waters?

4 A: Yeah, I'd say so.

5 Q: Okay. Would you agree that when this project
6 contemplates taking the drainage basin of the
7 Cat Island Lake that is not Garfield Park and
8 allows the areas that were developed prior to
9 the effective date to be discharged without any
10 treatment, would you agree that that degrades
11 the water that fed into Chowan Creek from the
12 entire drainage basin?

13 A: I don't know that it's -- that this
14 development, I mean, it appears that it has
15 some kind of treatment. But I ---

16 Q: You talking about Garfield Park?

17 A: It's -- I don't know that there's not adequate
18 treatment for the rest of the drainage area.
19 I don't see any -- any indication that there is
20 not adequate treatment already out there.

21 Q: You agree, don't you, that within the drainage
22 basin, there are areas that were developed
23 prior to the effective date of the Regulations?

24 A: Yes.

25 Q: And under this project, those areas that used



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 to feed into the detention pond of the Cat
2 Island Lake will forever discharge without that
3 detention?

4 A: There are no, I mean, there are areas that --
5 the areas that are draining to the former
6 impoundment are not gonna be detained by the
7 impoundment.

8 Q: Okay. And would not taking away that detaining
9 -- that detainment degrade the quality of the
10 water that comes from the entire drainage basin
11 into Chowan Creek?

12 MR. HABER: Objection, Your Honor. I think about
13 three times this witness has testified over the
14 last two days to this exact answer. It's
15 clearly on the record that there was enough
16 information in order to do this. I don't --
17 we've been down this road, we've been with this
18 witness for almost a full day now between two
19 and a half days. I respectfully request the
20 Court to encourage Mr. North to condense his
21 questioning. This has already been covered.

22 THE COURT: I ---

23 MR. NORTH: I agree that -- I agree the topic is
24 very similar, but I'm taking that particular
25 factual setting and applying it to a series of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 regulations, each of which is being violated by
2 this project. It's my only purpose.

3 **THE COURT:** Okay, but please condense your
4 questioning.

5 **MR. NORTH:** I will.

6 **MR. HABER:** Thank you, Your Honor.

7 Q: Take a look, if you would, at Exhibit 82. Do
8 you recognize that as Regulation 122.62?

9 A: I see that this is Section 122.62, yes.

10 Q: Okay. And are all those regulations binding on
11 OCRM and this retrofit?

12 A: Yes.

13 Q: Okay. Do you see that 122.62 deals with the
14 circumstances in which issued permits can be
15 modified or revoked or reissued?

16 A: Yes.

17 Q: Okay. And do you see that there are limited
18 circumstances in which that can occur?

19 A: Yeah, I see that there, I mean, it lists, you
20 know, ---

21 Q: Okay.

22 A: --- circumstances.

23 Q: Okay. And to speed things along, I won't argue
24 with the witness about what he is relying --
25 well, let me ask you quickly, are you aware of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 any specific provision with the three
2 regulations that are set forth there that would
3 be a basis for allowing this retro -- this --
4 the original stormwater permit to be set aside
5 and the retrofit change to take place?

6 A: I'm not sure I understand your question but, I
7 mean, it appears to allow for the modification
8 that was requested.

9 Q: You're saying that this regulation does?

10 A: Uh-huh (affirmative response).

11 Q: Could you tell me which of the circumstances
12 that they list in these regulations you would
13 rely on to say that there was some ability to
14 modify the original stormwater permit?

15 A: Well, I haven't read through all three of --
16 all these, you know, in detail, but, I mean, it
17 says under the, you know, that subsection A
18 that, you know, when the Department receives
19 any information, you know, or receives a
20 request for modification, you know, I mean, it
21 indicates ---

22 Q: This says -- determines whether or not one or
23 more of the causes listed in paragraphs (d) and
24 (e) exist, is that correct?

25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Can you tell me any of the causes in (d)
2 and (e) that you contend exist with regard to
3 the original Cat Island stormwater permit?

4 A: I mean, I -- it, I mean, it appears to me that,
5 you know, item (1) is right off the bat, causes
6 item -- under (d) item alteration, there are
7 material and substantial alterations or
8 additions to the permitted facility or activity
9 after permit issuance which justify the
10 application of permit conditions that are
11 different or absent in the existing permit.

12 Q: Take a look, if you would, at -- take a look at
13 Exhibit 38, if you would. Do you recognize
14 that as a -- the report submitted to you by the
15 engineer retained -- the licensed engineer
16 retained by the property owners to address
17 their concerns?

18 A: That's what it looks like.

19 Q: Okay. When you got that report, did you send
20 it to the developer's engineer and ask them to
21 let you know if there were any concerns arising
22 from the contents of that report?

23 A: I did send this to the applicant's consultant
24 and ask them to consider in their, you know,
25 current and future submittals.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Did you rely on the developer's engineer
2 to go through that report and make sure that
3 the final submittal addressed whatever concerns
4 were legitimate in the at report?

5 A: I didn't rely on the engineer to do that. I
6 went through the report myself and with other
7 OCRM staff to, you know, address, you know, to
8 consider each of the items that were indicated.
9 I also, as I said, I sent it, you know, to the
10 applicant's engineer to consider in their
11 submittals so we would not have to revisit
12 them, you know, at a later date.

13 Q: Okay. Take a look, if you would, at Exhibit 1.

14 A: And we're through with 38 now?

15 Q: Within Exhibit 1, take a look at for -- page 40
16 and 41. Would you agree that those are the
17 removal efficiencies for the proposed basket
18 inserts?

19 A: That's what it looks like.

20 Q: Okay. Take a look at page 42. You remember
21 taking a tour of the golf course lagoons and
22 the Tabby Park neighborhood?

23 A: Yes.

24 Q: Okay. You recognize that as one of the streets
25 in Tabby Park that simply drains directly into



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 one of the golf course lagoons?

2 A: That's what it looks like.

3 Q: Okay. Now, take a look at page 43. Do you
4 recognize large pipes that connect the various
5 lagoons that -- the three golf course lagoons?

6 A: I see -- yeah, I see the pipes under the water
7 there. I can't -- don't recall which lagoons
8 that -- those pipes actually connected but, I
9 mean, it -- they appear to connect to
10 something.

11 Q: Okay.

12 A: From ---

13 Q: And you would -- you would agree, I take it,
14 that Tabby Park is one of the phases of
15 development that actually was developed after
16 the effective date of the Regs and has to have
17 stormwater treatment?

18 A: Yes.

19 Q: And if the lake doesn't provide that treatment,
20 some other aspect of treatment has to be in
21 place, does it not?

22 A: Yes.

23 Q: Okay. Now, do you recall going through all
24 three of the golf course lagoons and looking at
25 the pipes that connect all three underground?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Yes.

2 Q: Okay. And would you agree that when you have
3 open pipes connecting the lakes underground,
4 that the elevation of all three will stay
5 exactly the same?

6 A: No. Not at all times, no.

7 Q: Why not?

8 A: Because there could be more flow into one pond
9 before, you know, during a storm event and
10 because that pond's, you know, because those
11 pipes are controlling the flow from one pond to
12 the other, that it may take, you know, longer
13 for one pond to drain down to the other level.

14 Q: Okay. Well, is it fair to say we're talking
15 about a couple of 36 inch diameter pipes
16 connecting these things?

17 A: I don't -- I don't know what the size of these
18 pipes are ---

19 Q: Would it be fair to say they were pretty big
20 pipes?

21 A: These look like pretty big pipes here.

22 Q: Okay. And would it be fair to say that even if
23 there was some incremental difference in
24 timing, that very quickly the levels of all
25 three ponds would equalize because they're



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 connected with those pipes?

2 A: Eventually they would equalize without any
3 inflow, yes, but the pipes will control the
4 flow between each pond and provide detention in
5 each pond individually. And based on the size
6 of those pipes, you know, there's, you know,
7 different detention ponds in -- different
8 detention times, I should say, between each of
9 those ponds. So, without inflow, eventually
10 they will equalize, but they -- each detain
11 water because of those pipes.

12 Q: Okay. Would you agree that if these three
13 detention ponds don't function as a detention
14 basin, that Tabby Park would need to have some
15 other form of stormwater treatment?

16 A: Yes.

17 Q: Okay. So then the issue is, do they function
18 as a detention pond, is that a fair statement?

19 A: Yes.

20 Q: Okay. And a detention pond is supposed to do
21 what?

22 A: Detain.

23 Q: Detain and slowly release over a 24 hour
24 period?

25 A: It doesn't necessarily -- it, I mean, it



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 depends on what, you know, which requirements
2 you're talking about. Detention in general
3 does not have to be 24 hours ---

4 Q: I'm ---

5 A: --- but the requirements of the, you know --
6 you know, the -- of certain types of ponds, you
7 know, according to the Regulations, do indicate
8 that water quality treatment should be provided
9 to release that -- a certain volume over 24
10 hours. That is not, you know, a general
11 detention requirement. The 24 hours is
12 specific to that, you know, design criteria.

13 Q: And that design criteria of 24 hours is what
14 applies if you're within a half a mile of the
15 coastal zone, isn't it?

16 A: It depends on the size of the project. The 72-
17 300 et seq. Regulations are what specify the 24
18 hour release of that water quality volume.

19 Q: Well, doesn't also the Coastal Consistency
20 Policies and Procedures have that requirement?

21 A: They reference that, but they do not
22 necessarily require the 24 hour.

23 Q: Well, would it be fair to say that Tabby Park
24 needs to have some stormwater system that will
25 hold and detain for 24 hours because it's



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 within a half a mile of the coastal zone?

2 A: It's fair to say that it requires some form of
3 treatment, water quality treatment, because the
4 Stormwater Regulations were in effect when it
5 was developed.

6 Q: Okay. And would you agree, though, the other
7 part of that question, that because it's within
8 a half a mile of the coastal zone, it has to be
9 able to hold at least an inch of runoff from
10 the entire space and slowly release it over a
11 24 hour period.

12 MR. HABER: Your Honor, objection. This is the
13 third time he's asked the witness the same
14 question. He provided an answer every time and
15 ---

16 MR. NORTH: This is the very first question that
17 has anything to do with Tabby Park ---

18 MR. HABER: Your Honor ---

19 MR. NORTH: --- establishing that this development,
20 which I am telling the Court where we're going,
21 it does not have a -- it relied on the lake for
22 detention.

23 MR. HABER: Your Honor, he's asking the question as
24 to whether or not these detention ponds have to
25 retain and release over a 24 hour period now



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 for the third time in a row because he hasn't
2 received an answer he's satisfied with.

3 **THE COURT:** We covered that ground. I -- we really
4 do need to move this matter ---

5 **MR. NORTH:** Okay.

6 **THE COURT:** --- this along and ---

7 **MR. NORTH:** Very well.

8 **THE COURT:** Yeah. So I do need you to limit your
9 questions ---

10 **MR. NORTH:** Okay.

11 **THE COURT:** --- to asking and once you receive an
12 answer, let's move on. And I -- he has
13 answered the question.

14 **MR. HABER:** Okay. Thank you, Your Honor.

15 Q: Look, if you would, at page 46. Do you see a
16 picture there of the -- of the detention -- not
17 the retention -- of the golf course lagoon
18 closest to the lake?

19 A: I'm not -- I'm not sure -- okay. Maybe, I
20 mean, that's not a very good photograph, but I
21 -- can you point to what ...

22 Q: Well, your copy is atrocious, I must say.

23 A: All right.

24 Q: I'm surprised you'd have any idea what that is.
25 Take a look at that copy.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: Okay.
- 2 Q: Now, do you recognize the golf course lagoon
3 closest to the lake?
- 4 A: This looks like the fairway. That looks like
5 the lagoon.
- 6 Q: Right.
- 7 A: This looks like the former impoundment.
- 8 Q: Right. And that's consistent with what you and
9 I saw when we walked the area?
- 10 A: Looks like it, yes.
- 11 Q: Okay. And do you remember walking through
12 these trees and seeing that the water basically
13 just overflowed the banks of the lagoon and
14 went in a ditch and underneath the road through
15 a pipe and into the lake?
- 16 A: Yes.
- 17 Q: Okay. And is it fair to say that in none of
18 those golf course lagoons is there a detention
19 structure, a man-made detention structure that
20 would control the release of stormwaters?
- 21 A: I disagree. In every one of those ponds, there
22 is a control structure.
- 23 Q: And what is that? Can you point to a picture
24 of it? I'm talking about a man-made thing.
- 25 A: There -- the -- well, one of them is the pipes



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 that you just indicated. So there's the pipes,
2 pipes themselves, individual pipes can be
3 control structures. Flashboard risers, as was
4 mentioned yesterday, are control structures.
5 Earthen spillways, such as you were just point
6 out in this photo, an earthen spillway is, you
7 know, designed of a certain width with, you
8 know, vegetative or matting or rock cover can
9 be a control structure, it's a controlled
10 outflow from a -- from a pond, and that
11 provides detention.

12 Q: Tell me about this earthen spillway ---

13 A: Uh-huh (affirmative response).

14 Q: --- are you saying that one exists with one of
15 these -- one or more of these golf course
16 lagoons?

17 A: That's exactly what I'm saying. This one we
18 were just pointing at, and you say it overflows
19 the banks, well, it's not. It's spilling
20 through a vegetated spillway that, in fact, the
21 vegetation on the spillway would provide
22 further filtration, even after the detention
23 treatment.

24 Q: Okay. Would you agree that there's nothing
25 about the edge of that pond that's man-made,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 it's just the way the wetlands filter and feed
2 into the lake.

3 A: I disagree. I think the edge of that pond was
4 intentionally constructed so that it was a
5 vegetated spillway from that pond to allow for
6 controlled release of stormwater runoff from
7 that pond.

8 Q: Take a look, if you would, at page 47. Do you
9 recognize that as the flow of water from the
10 golf course lagoons to the pond -- to the lake?

11 A: It looks familiar, looks about ---

12 Q: Do you remember seeing in one of the golf
13 course lagoons, a fountain and pumps that were
14 -- that were pumping water out of a well as a
15 part of the golf course irrigation system?

16 A: I don't really recall that. I do recall it,
17 you know, being mentioned before but I don't
18 recall seeing it when we were out there but, I
19 mean, that was a while ago.

20 Q: Okay. Do you remember though that there was a
21 constant flow of water from the golf course
22 lagoons into the lake?

23 A: There -- yes, there was some flow in this -- in
24 this ditch here. I'm -- I don't recall if
25 there was flow from that last golf course



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 lagoon, but I do recall seeing in some of the
2 ditches that we -- they were flowing into the
3 former impoundment.

4 Q: Okay. And have you been advised that there is
5 a well that gives a 24 hour flow of water into
6 the golf course lagoons as a part of the golf
7 course irrigation system?

8 A: I vaguely recall comments that might have
9 mentioned that.

10 Q: Okay.

11 **THE COURT:** Mr. North, I'm going to call a 10 minute
12 break.

13 **MR. NORTH:** Okay.

14 **A short break was taken)**

15 **THE COURT:** Mr. North, are you ready to continue?

16 **MR. NORTH:** I have no further questions for this
17 witness, Your Honor.

18 **THE COURT:** Okay.

19 **MR. HABER:** Your Honor ---

20 **THE COURT:** Mr. Haber?

21 **MR. HABER:** Court's discretion, I can begin with
22 this witness. It'll probably go -- I
23 anticipate it going pretty quick, but it would
24 probably push us past the regular lunch break.

25 **THE COURT:** Let's go ahead.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

MR. GEER - CROSS-EXAMINATION BY MR. HABER:

Q: Good afternoon, Mr. Geer.

A: Hello.

Q: I think we might still be morning at this point. A few questions. How long have you worked for the Department?

A: Be 15 years in February.

Q: And during that time, the 15 years -- 14 years -- 15 years minus a month, has most of your job involved stormwater permits?

A: Yes.

Q: And have those been stormwater permits in the coastal zone?

A: For the majority of it, yes.

Q: Okay. About how many -- how many -- roughly how many permits in coastal zone consistency determinations do you think you've made in your almost 15 years of the time -- your time at the Department?

A: I don't -- I don't know, maybe a hundreds maybe ---

Q: Hundred? Okay. In dealing with those hundreds of permits, is it uncommon for treated stormwater to go into a critical area?

A: Yes.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 Q: It's -- it is uncommon?
- 2 A: It's common.
- 3 Q: It's common?
- 4 A: I'm sorry, it's common.
- 5 Q: So is that -- the whole line of questioning
- 6 yesterday, it's -- this permit's really not an
- 7 uncommon situation, there's a treatment of
- 8 stormwater and that would flow out to critical
- 9 area after it's treated?
- 10 A: That's correct.
- 11 Q: And that happens many times throughout the
- 12 coastal zone?
- 13 A: Yes.
- 14 Q: Okay. Now, Mr. North had discussed with you a
- 15 BMP manual that he said was provided on the
- 16 Department's website. Is that manual codified
- 17 as a regulation in any form?
- 18 A: No.
- 19 Q: Do you understand this BMP manual to simply be
- 20 provided to interested persons for ease
- 21 providing them information?
- 22 A: Yes.
- 23 Q: Now, do you have Petitioners exhibits with you?
- 24 A: Yes.
- 25 Q: If you could look at number -- I believe it's



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 number 46. It's either 46 is the Coastal
2 Tidelands and Wetlands Act.

3 A: Okay.

4 Q: Now, within there, Mr. North had walked you
5 through a couple of those statutes. Do you
6 remember discussing Statute 48-39-80? It
7 should be included in that document if you want
8 to refresh your memory.

9 A: Yes.

10 Q: And that section is titled the development of
11 a coastal zone management program, is that
12 correct?

13 A: Yes.

14 Q: Okay. I believe then, if you could, you
15 mentioned a section (B) within there. If you
16 could, just read me that introductory sentence.
17 Actually, let's start with -- just read that
18 first sentence after (B).

19 A: In devising the management program the
20 department shall consider all lands and waters
21 in the coastal zone for planning purposes.

22 Q: Okay. And then you guys discussed number (11)
23 as well. What does number (11) provide? I
24 think it should be -- well, you might have it
25 within your copy.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: (11) indicates develop a system whereby the
2 Department shall have the authority to review
3 all state and federal permit applications in
4 the coastal zone, and to certify that these do
5 not contravene the management plan.

6 Q: Now, this statute is a requirement by the
7 General Assembly to develop a coastal program,
8 is that correct?

9 A: As I understand it.

10 Q: And that would be the Title. Now, do you
11 believe this mandate by the General Assembly to
12 develop such a system was a creation of a
13 program management document which refinements
14 containing specific stormwater guidelines?

15 A: That sounds right.

16 Q: Now, under the same statute, under section (D),
17 that'd be 48-39-80(D) as in dog, the statute
18 provides in developing the program, the
19 Department shall, and then what does (D) say?

20 A: Consider the planning and review of existing
21 water quality standards and classifications in
22 the coastal zone.

23 Q: So is it possible that in creating this full
24 program, as mandated by the General Assembly,
25 they also required in the creation of this



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 program to consider water quality standards
2 elsewhere in the state that has been applied,
3 or would be applied?

4 A: I think so, yes ---

5 Q: And likely, it would be required to be updated
6 as new regulations would be promulgated under
7 different statutes that regard to stormwater?

8 A: Right.

9 Q: Okay.

10 **MR. HABER:** Beg the court's indulgence, Your Honor.

11 Q: Now, let's look in the policies and procedures,
12 which I believe you have as Petitioners Exhibit
13 19, I believe.

14 A: Okay.

15 Q: I believe in that document -- I'm attempting to
16 find it for your ease -- likely there's
17 stormwater management guidelines.

18 A: Yes.

19 Q: I believe it's located on Petitioners document
20 as Roman Numeral III-60.

21 A: Okay.

22 Q: Now, these guidelines, are they to apply to
23 stormwater permits that are located within the
24 coastal zone?

25 A: Yes.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Do they have heightened requirements than would
2 be required under, say, 72-300?

3 A: Yes.

4 Q: And these requirements would not be applied if
5 the same permit was to be considered and
6 evaluated, say in Greenville or somewhere
7 outside of the coastal zone?

8 A: That's correct.

9 Q: Did you consider and apply these heightened
10 restrictions that are contained within the
11 policies and procedures of this program
12 document?

13 A: I did for this project, yeah.

14 Q: Now, you had testified that this -- you did not
15 believe this project was considered to be
16 altering the critical area, is that correct?

17 A: Correct.

18 Q: However, if this project did alter the critical
19 area, such as riprap being placed, say to
20 stabilize the former -- the former dike, and it
21 was determined that that altered the critical
22 area. Is there anywhere within your permit or
23 consistency determination that would require
24 the applicant to obtain the critical area
25 permit before conducting that work?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: I -- yes, that's a condition of the Department
2 approval.
3 Q: Now, I'm gonna move to 72-300, okay?
4 A: Okay.
5 Q: What is 72-300?
6 A: 72-300 is the State stormwater regulations.
7 Q: So, if a standard that was located in 72-300 is
8 inconsistent with the policies and procedures
9 of the program document, the heightened -- the
10 heightened restrictions of the program
11 document, would you apply the restrictions set
12 forth in the program document? And if --
13 sorry, caveat -- if the permit was to occur in
14 the coastal zone.
15 A: If the permit was to occur in the coastal zone
16 -- I'm sorry, could you ask that again?
17 Q: Sure, I apologize. If there is a standard ---
18 A: Uh-huh (affirmative response).
19 Q: --- that's located in 72-300, right?
20 A: Right.
21 Q: And it was inconsistent with the stormwater
22 management guidelines in -- for the coastal
23 zone, within the policies and procedures of the
24 program documents, you would apply the
25 heightened guidelines, is that correct?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: I would apply the more restrictive ones.
- 2 Q: Okay.
- 3 A: Right.
- 4 Q: That's right, maybe restrictive would be ---
- 5 A: Right.
- 6 Q: --- better than heightened.
- 7 A: Right.
- 8 Q: Bad word, I apologize. Now, let's walk to 72-
- 9 300 just a little bit. 72-301, do you have a
- 10 copy of 72-301?
- 11 A: Um ---
- 12 Q: I'm not sure if it was an exhibit or you happen
- 13 to have ---
- 14 **MR. NORTH:** Exhibit 3.
- 15 **MR. HABER:** Exhibit 3.
- 16 Q: It'd be Petitioners Exhibit 3.
- 17 A: All right.
- 18 Q: What is 72-301?
- 19 A: 72-301 is the definitions section of ...
- 20 Q: Okay. Does it contain a definition of
- 21 detention structure?
- 22 A: It does.
- 23 Q: And would that be located under 72-301.11?
- 24 A: Yes.
- 25 Q: And please read that definition for me.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: It says detention structure means a permanent
2 stormwater management structure whose primary
3 permis (ph) is -- purpose is to temporarily
4 store stormwater runoff and release the stored
5 runoff at controlled rates.

6 Q: Okay. Now, does it also contain a definition
7 for retention structure?

8 A: It does.

9 Q: Would that be located at 72-301.35?

10 A: Yes.

11 Q: Could you please read me that definition?

12 A: Retention structure means a permanent structure
13 whose primary permis (ph) -- purpose is to
14 permanently store a given volume of stormwater
15 runoff. Release of the given volume is by
16 infiltration and/or evaporation.

17 Q: Okay. Now, let's talk a bit about these two
18 definitions. This former impoundment had an
19 outflow device, is that correct?

20 A: That's correct.

21 Q: Would it permanently store a given volume of
22 stormwater runoff with release of that given
23 volume by infiltration and/or evaporation?

24 A: No.

25 Q: All right. Let me -- let me first ask you, how



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 -- if this contains a given volume, how is
2 given volume determined? Because I think that
3 is imperative likely in the analysis. So, how
4 would you determine given volume?

5 A: Well, that would -- depends on what you're
6 evaluating.

7 Q: Okay.

8 A: If you're evaluating a storm event and trying
9 to meet a quantity control requirement, then
10 that volume would be whatever storm event
11 you're evaluating.

12 Q: Okay.

13 A: The excess runoff from that storm event. On
14 that, given volume could also refer to meaning
15 a water quality treatment volume, which would
16 be just your generic, you know, half inch of
17 runoff from, you know, that water -- that first
18 flush water quality treatment volume.

19 Q: And let me ask you this: was that
20 determination of the given volume, which would
21 be required to determine whether or not it is
22 retention, was that ever analyzed for this
23 former impound?

24 A: Yes.

25 Q: Was that the given volume that would be needed



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 to determine whether or not it would retain,
2 would that have been analyzed, say for Tabby
3 Park in -- as to the former impoundment, or the
4 area known as The Rookery for that former
5 impoundment? Did you ever analyze what the
6 given volume would need to be ---

7 A: Uh-huh (affirmative response).

8 Q: --- whether that would be met?

9 A: Not with regard to retention.

10 Q: Okay. But you did analyze it for something
11 else?

12 A: Right.

13 Q: But it was never analyzed as for retention?

14 A: As for retention.

15 Q: To determine whether or not it would meet that
16 given volume?

17 A: Right.

18 Q: To evaporate it, okay.

19 A: Right.

20 Q: In fact, earlier in your testimony with Mr.
21 North, you testified that the soil of the
22 lakebed and the surrounding areas would likely
23 not be the type that would be suitable for
24 infiltration, is that correct?

25 A: That's correct.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: So, I'll ask you, just to simply this, was this
2 former impoundment ever considered a retention
3 structure?

4 A: No.

5 Q: Now 72-302, that's entitled Exemptions, Waivers
6 and Variances of the Law, is that correct?

7 A: Yes.

8 Q: Did you apply this section?

9 A: Yes.

10 Q: Did you determine that a waiver was
11 appropriate?

12 A: Yes.

13 Q: Did you apply 72-302B?

14 A: A portion of it, yes.

15 Q: Okay. Now, let's look at 72-307C. Or hold on
16 a minute. In particular, 72 -- yeah, 72-307 ©
17 as in cat.

18 A: Okay.

19 Q: Now, that section provides the appropriate plan
20 approval agency may modify the following items
21 for specific project, type or project, is that
22 correct? It'd be the second sentence in
23 subsections -- the first part of subsection C.

24 A: Okay.

25 Q: Now, under that same section that allows for



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 modification, does it also provide for
2 requirements of water control in number (5)?
3 So that'd be 702 -- 72-307C(5).

4 A: Yes.

5 Q: And under that same section, 72-307(c)(5)(g)
6 provide about the heightened restrictions for
7 the coastal zone?

8 A: Yes.

9 Q: And let's flip over to the definition section
10 again, 72-301, this will be 40. Does that
11 provide a definition of stormwater management?

12 A: Right.

13 Q: Is there a definition of qualitative control in
14 that regard?

15 A: Yes.

16 Q: And could you read that for me?

17 A: It starts with stormwater means, for
18 qualitative control, a system of vegetative,
19 structural, or other measures that reduce or
20 eliminate pollutants that might otherwise be
21 carried by stormwater runoff.

22 Q: So the definition of qualitative control for
23 stormwater management also says other measures,
24 is that correct?

25 A: Yes.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Now, is there also a definition within this
2 section of best management practices?

3 A: Yes.

4 Q: Would that be 72-301.5?

5 A: Yes.

6 Q: Could you please read me that definition?

7 A: Best management practices means a wide range of
8 management procedures, schedules of activities,
9 prohibitions on practices and other management
10 practices which have been demonstrated to
11 effectively control the quality and/or quantity
12 of stormwater runoff and which are compatible
13 with the planned land use.

14 Q: So is it correct to say that best management
15 practices contains a wide range of management
16 procedures?

17 A: Yes.

18 Q: Now, let's take that and go back to 72-302B,
19 and that was the detention waiver, is that
20 correct?

21 A: Yes.

22 Q: Now, that section says you may grant a waiver
23 if a waiver request is submitted by the
24 applicant containing descriptions, drawings,
25 any other information that's necessary to



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 evaluate the proposed land disturbing activity,
2 is that correct?

3 A: Yes.

4 Q: First, did the applicant request a waiver?

5 A: Yes.

6 Q: Did the applicant provide you the required
7 information for your review?

8 A: Yes.

9 Q: Now, there are two types of waivers, is that
10 correct?

11 A: Uh ---

12 Q: One for quality and one for quantity?

13 A: In this section, yes.

14 Q: Okay. And which did you feel that it was
15 appropriate for this project?

16 A: Well, the request for quantity control and ...

17 Q: Okay. What's the difference between quantity
18 and quality?

19 A: Quantity relates to the discharge rates from
20 the site. Quantity is -- the requirement is
21 that the two or 10-year storm events, the
22 discharge rates cannot exceed the pre-
23 development discharge rates. Now, for quality,
24 we're talking quality treatment. That would be
25 -- is, you know, is -- I read a minute the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 qualitative control.

2 Q: All right. So, would it be safe to say that
3 you're looking at one, the amount of, in
4 quantity, the amount of the stormwater?

5 A: Right.

6 Q: And under quality, you're looking for the
7 quality of the treatment?

8 A: The reduction of pollutants, right.

9 Q: Thank you. So the quantity waiver was in
10 regard to the stormwater?

11 A: Correct.

12 Q: Now, Mr. North spoke about alleged vegetation
13 dying. Does stormwater naturally have a high
14 degree of salinity?

15 A: Not naturally, no.

16 Q: He also spoke about tides. Does stormwater
17 usually have tidal encroachments all by itself?

18 A: I'm not sure what you mean by encroachments.

19 Q: You talked about the tide encroaching into this
20 lake.

21 A: Right.

22 Q: And that affecting your determination on a
23 detention waiver. What I'm asking you is when
24 stormwater is running off, does that naturally
25 have an effect of the tide, anywhere. Just --



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 say you're doing a detention waiver in Columbia
2 somewhere, is that gonna be affected by tide,
3 is it gonna have tide by itself?

4 A: Not in Columbia, no.

5 Q: So the requirements for a quantity waiver in
6 section B(2) provides either a -- either -- an
7 either/or situation. Did you evaluate (a) and
8 (b) in this section?

9 A: Just -- no, just 2(a).

10 Q: So, 2(a). And if ---

11 A: Right.

12 Q: --- met 2(a), since it was an either/or
13 situation, then in your determination, a
14 detention waiver could be granted, is that
15 correct?

16 A: That's correct.

17 Q: And what did you determine, that it should be
18 granted?

19 A: That it should be granted, yes.

20 Q: In fact, on number -- on B(3), if you didn't
21 make a decision on this within 10 working days,
22 the Regulations say that there would be an
23 automatic approval of this waiver, is that
24 correct?

25 A: That's correct.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: Now, 72-307 provides for specific design
2 criteria. I'll wait for you to get there
3 before I ask you some questions.
- 4 A: All right. All right.
- 5 Q: Now, does this regulation provide specific
6 requirements for water quality issues?
- 7 A: It ---
- 8 Q: I think we went through this a little bit
9 already.
- 10 A: It does -- it does address, you know, design
11 criteria for certain stormwater management
12 structures ---
- 13 Q: Okay.
- 14 A: --- in terms of ---
- 15 Q: We had discussed the 72-307C(5)(g) provides
16 that all activities within eight coastal
17 counties, additional water quality requirements
18 may be imposed, is that correct?
- 19 A: That's correct.
- 20 Q: If there's any guidelines in -- or any conflict
21 then with the guidelines will apply?
- 22 A: That's right.
- 23 Q: Okay. Now, we mentioned these guidelines
24 earlier in your testimony, but let -- let's go
25 through these guidelines in the policies and



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 procedures section. Do you have that back out
2 in front of you?

3 A: Yes.

4 Q: First, did you coordinate with Critical Area
5 staff on some of the issues raised by the
6 petitioners, that was either out of your
7 purview or your area of expertise?

8 A: Yes.

9 Q: And in fact, you had testified earlier that Mr.
10 North asked you to come out, and you did and
11 you walked around with the petitioners to
12 evaluate their concerns further, is that
13 correct?

14 A: Yes.

15 Q: Now, these guidelines provide that for all
16 projects, regardless of size, which are located
17 half a mile of a receiving water body, and I
18 believe this was gone through at length during
19 Mr. North's direct exam of you. Now -- but the
20 guidelines continue after the requirements of
21 the first one-half inch of runoff for -- from
22 the entire site, or stored to the first one-
23 half runoff into runoff in the bilge pump
24 portion. The guidelines continue and say
25 storage may be accomplished through retention,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 detention, or infiltration systems as
2 appropriate for the specific site, is that
3 correct?

4 A: Yes.

5 Q: Do you see that in there?

6 A: I do.

7 Q: Now, did you apply this?

8 A: Yes.

9 Q: And it says may. Do you consider the word may
10 discretionary, say, instead of the word must,
11 which would not be discretionary?

12 A: Yes.

13 Q: Okay. So, it could be detention, retention,
14 infiltration or another type of BMP that could
15 provide storage?

16 A: Correct.

17 Q: Okay. Now, do you think that storage
18 guidelines is focusing on water quality in the
19 coastal zone?

20 A: These storage guidelines, yes.

21 Q: Okay. And as we discussed previously in your
22 testimony with me that the control, you have
23 other measures and things like that that could
24 be incorporated, is that correct?

25 A: That's correct.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: Okay. Now, let's also look at 72-305. I think
2 this is rather interesting. 72-305B(3). And
3 let me know when you are there.
- 4 A: You said B(3)?
- 5 Q: Correct.
- 6 A: Okay.
- 7 Q: Could you read for the Court what (3) provides?
- 8 A: (3) indicates for land -- land disturbing
9 activities disturbing more than five acres, the
10 requirements of 72-305 and 72-307 will apply.
11 However, the use of measures other than ponds
12 to achieve water quality improvement are
13 recommended on sites containing less than 10
14 acres -- less than 10 disturbed acres.
- 15 Q: Let me ask you this: is Garfield Park Phase 3
16 less than three acres?
- 17 A: Not less than three ---
- 18 Q: I'm sorry. Less than 10 acres?
- 19 A: Less than 10, yes.
- 20 Q: Now, this says if it's less than 10 acres, the
21 use of measures other than ponds to achieve
22 water quality, which we're focusing, right, as
23 you testified to, that that's what those
24 requirements focus with?
- 25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Achieve water quality are recommended by these
2 regulations, something other than ponds ---

3 A: Yes.

4 Q: --- is that correct?

5 A: That's correct.

6 Q: So Garfield Park Phase 3 is less than 10 acres?

7 A: Yes.

8 Q: So these regulations suggested the use of the
9 measures, other than ponds, to achieve water
10 quality improvement are recommended on sites
11 such as this that would be less than 10 acres?

12 A: Yes.

13 Q: And this regulation also states water quality
14 improvement, correct?

15 A: Yes.

16 Q: So, we talked about the word may, and you felt
17 that it was discretionary and -- now, the next
18 sentence within these guidelines, detain the
19 word -- or it contains in addition, those
20 projects located within 1,000 feet of shellfish
21 beds, the first one and one-half inches of
22 runoff must be retained on site.

23 A: Correct.

24 Q: Now, that's not very discretionary, is it?

25 A: No.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And I believe you testified with Mr. North,
2 there's not much discretion involved with that,
3 correct?

4 A: Correct.

5 Q: So there's two things I want to focus on in
6 this one sentence. One is the word retention,
7 okay? In your view, did this former
8 impoundment ever retain?

9 A: No.

10 Q: So, if it never retained and it only detained,
11 if it was determined that this project was
12 located within a thousand feet of a shellfish
13 bed in 2004, under the original permit, the
14 former impoundment wouldn't be suitable, is
15 that correct?

16 A: That's correct.

17 Q: If the Court determines now that the distance
18 is less than a thousand feet, a detention pond
19 would not be suitable at all, is that correct?

20 A: That's correct.

21 Q: Because the guideline says retain. And we
22 discussed there's no difference between detain
23 -- a detention structure and a retention
24 structure, is that correct?

25 A: That's correct.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Now, the second part of the sentence I'd like
2 to focus on is on the phrase on site. Is this
3 former impoundment, in your mind, located on
4 site of Garfield Park Phase 3?

5 A: No.

6 Q: But the guideline said it has to be retained on
7 site. So if the Court found it was located
8 within a thousand feet, could they utilize the
9 former impoundment?

10 A: No.

11 Q: You know, let's even assume, arguendo, that
12 somehow they can get a critical area permit to
13 fill in this area from the state and from the
14 federal government, okay? Assuming that they
15 can make this a retention structure, somehow,
16 it's still not on site, is that correct?

17 A: That's correct.

18 Q: So fixing the dike, even assuming somehow it
19 could be a retention structure, it wouldn't fix
20 the thousand foot issue, would it?

21 A: That's correct.

22 Q: In fact, you had testified with Mr. North that
23 the measurement regarding the thousand feet
24 would start at the edge of Garfield Park Phase
25 3. Is that because that's where the edge of it



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 is is on site?

2 A: That's correct.

3 Q: So retention will be required within the
4 boundaries of Garfield Park Phase 3, and you
5 testified the property boundary ends where you
6 put your initials on that map, is that correct?

7 A: That's correct.

8 Q: So a retention would need to be inside of that
9 small area, isn't that correct?

10 A: That's correct.

11 Q: Now, Mr. North asked you about the other areas
12 surrounding the impoundment, do you recall
13 that? He spoke about Tabby Park, the area
14 called The Rookery, area called G tract ---

15 A: Right.

16 Q: --- do you recall that?

17 A: Right.

18 Q: He asked you whether certain areas were having
19 sufficient water quality treatment and you
20 couldn't provide a concrete answer. Is that
21 because you'd use some type of drainage
22 treatment volume to determine the water quality
23 treatment?

24 A: That's correct.

25 Q: Were you provided any of that?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: No.

2 Q: Was that ever around for The Rookery, which is
3 that -- which I believe was established prior
4 to the Regulations.

5 A: I don't think so.

6 Q: They put it -- in all, you haven't analyzed
7 that to provide an answer ---

8 A: Right.

9 Q: --- is that correct?

10 A: Right.

11 Q: Now, Petitioners Exhibit 80, which I believe
12 you might have and I might have a black and
13 white copy of ...

14 MR. HABER: Court's indulgence, Your Honor.

15 MR. NORTH: Do you want to use my copy?

16 MR. HABER: I got it right here.

17 MR. HABER: Your Honor, I'm gonna put it on the
18 screen.

19 THE COURT: Okay.

20 MR. HABER: Okay.

21 Q: Now, you were discussing this area up here. I
22 assume this is the area that's been referred as
23 Tabby Park?

24 A: Yes.

25 Q: Zoom out if you need to get your bound --



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 boundaries.

2 A: Okay. I ---

3 Q: Do you need me to?

4 A: No, I -- I can see what you're ...

5 Q: Okay. Now, you testified that there's pipes
6 that are connecting these ponds, is that
7 correct?

8 A: That's correct.

9 Q: And then they're somehow connected over to this
10 pond?

11 A: That's correct.

12 Q: And then it goes down here through a vegetative
13 buffer, essentially? I think you referred to
14 it maybe -- can't remember what you referred it
15 to, a natural ...

16 A: Well, there is an earthen spillway ---

17 Q: Earthen spillway.

18 A: --- from that last pond that leads into the
19 woods.

20 Q: And that would be located around here, is that
21 correct?

22 A: That's correct.

23 Q: Sorry. Now, you said detention, retention,
24 infiltration and some other measures; however,
25 detention's one of them. Now, in your mind,



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 would the piping that connects these ponds that
2 then flows out where you had discussed to the
3 earthen spillway, is that a form of detention?

4 A: Yes.

5 Q: Do pipes control the amount of water that goes
6 through things?

7 A: Yes.

8 Q: Much like a straw would control the amount of
9 water that's going into your mouth from cup,
10 would that make sense?

11 A: Correct.

12 Q: Now, you also talked about an area called G
13 tract. Do you recall that?

14 A: Yes.

15 Q: Now ...

16 **MR. HABER:** I tried, Your Honor. I apologize.

17 Q: Would G tract be located down here?

18 A: As I understand it, that's -- yeah, that's the
19 area of it.

20 Q: Okay. And that abuts this former impoundment,
21 is that correct?

22 A: That -- correct.

23 Q: Now, are you aware of any development on G
24 tract?

25 A: I'm not aware of any, no.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Now, why would -- why would you need a
2 stormwater treatment for an area that's
3 undeveloped?

4 A: There's no requirement, I mean ---

5 Q: If it's undeveloped -- there's no asphalt, is
6 that correct?

7 A: That's correct.

8 Q: There's no impermeable surfaces theoretically,
9 is that correct?

10 A: Correct.

11 Q: Now, there's also a subdivision that's been
12 referred as The Rookery, do you recall that?

13 A: Yes.

14 Q: What -- to your knowledge, was this area
15 developed or created prior to the stormwater
16 regulations?

17 A: It -- The Rookery was developed, as I
18 understand it, before the effective date of the
19 Regulations.

20 Q: In your mind, can the Department force someone
21 to spend money to have treatment that has
22 existed prior to the Regulations?

23 A: The Department does not have that authority,
24 no.

25 Q: However, would a marsh still provide some type



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 of water treatment, as a vegetative buffer?

2 A: Yes.

3 Q: I'm gonna walk you through some of the exhibits
4 that's been admitted by the Department.

5 MR. HABER: And, Your Honor, I believe you have a
6 copy. And if I may approach the witness to
7 provide a copy ---

8 THE COURT: Yes.

9 MR. HABER: --- of my exhibits. And I believe, for
10 the Court's record, that 1 through --
11 Department's exhibits are labeled 1 through 8,
12 all but 7 have been admitted to the Court. 7
13 is waiting on a foundation.

14 Q: If you could, just -- we're gonna walk through
15 these just a little bit. If you could, look at
16 Department's Exhibit Number 1. Let me know
17 when you have that.

18 A: All right.

19 Q: What is that first document?

20 A: That's the coverage letter for the Garfield
21 Park Phase 3 drainage system retrofit.

22 Q: Okay. And did you issue this, did you write
23 this letter?

24 A: Yes.

25 Q: Is that your signature on the last page?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: Yes.
- 2 Q: If you could, look at that second page of this
- 3 document and read me one, two -- the first
- 4 sentence of -- I guess we'll call it the third
- 5 paragraph from the bottom. It starts with you
- 6 are responsible.
- 7 A: You are responsible for obtaining any other
- 8 federal, state or local permit that may be
- 9 required for this project.
- 10 Q: Okay. Now, let's keep going through these
- 11 exhibits. I have Department's Bates label
- 12 number 5. Under Bates stamp 5, what is that?
- 13 If it's easier, they're stapled together if you
- 14 have them in your binder.
- 15 A: Okay. That's a memorandum to me from Georgie
- 16 Madlinger.
- 17 Q: Is that Bates label number 5, Exhibit 1. Bates
- 18 stamp would be at the bottom.
- 19 A: Oh, it's -- okay, I'm sorry. We're still
- 20 looking at Exhibit 1. I'm sorry ---
- 21 Q: Now, that's ---
- 22 A: --- I was going through Exhibit 5.
- 23 Q: It's been a long day.
- 24 A: All right. Page ...
- 25 Q: Page 5 of Exhibit 1.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: Okay. All right, I see ---
- 2 Q: See that, 005 on the bottom?
- 3 A: Yes, I see that now.
- 4 Q: Would ---
- 5 A: Sorry. That is the coastal zone consistency
- 6 certification for the Garfield Park Phase 3
- 7 drainage system retrofit.
- 8 Q: If you could, read me what is labeled as
- 9 section E, what's that say on that?
- 10 A: No critical areas as determined by OCRM shall
- 11 be disturbed or altered without authorization
- 12 by the Department.
- 13 Q: Okay. Let's keep walking through this a little
- 14 bit. What is -- let's go to what's been Bates
- 15 stamped as 009. Could you identify that
- 16 document for me?
- 17 A: That is the consistency determination.
- 18 Q: And did you create this document?
- 19 A: Yes.
- 20 Q: Okay. Let's first look at the summary of
- 21 public and Agency comments.
- 22 A: Okay.
- 23 Q: I see first, there's comments by a Perrin
- 24 Dargan with Hagood and Kerr, representing
- 25 Kenneth Bruning, do you see that?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: Yes.
- 2 Q: Then there's another one from John North or
- 3 Pamela Black, with North and Black, that
- 4 inquired the -- May of '10, 6 of '10, 11 of
- 5 '10. There's also 3 of '11, 6 of '11, 12 of
- 6 '11, 1 of '12, 3 of '12, 3 of '12, and 10 of
- 7 '10. Do you see that?
- 8 A: Yes, mentions those dates.
- 9 Q: And then there's also -- after that is another
- 10 paragraph that says Chris Moore with Jon Guerri
- 11 Taylor and Associates?
- 12 A: I see that.
- 13 Q: Now likely, those three sections are all
- 14 comments that were submitted in response to
- 15 this permit application, would that be correct?
- 16 A: That's correct.
- 17 Q: Did you consider these comments when evaluating
- 18 this permit?
- 19 A: Yes.
- 20 Q: If you needed to go to other resource agencies
- 21 to obtain information regarding some of the
- 22 comments that potentially could have been
- 23 received, that should have been analyzed based
- 24 on the comments received, did you do that?
- 25 A: I did.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Did you then take in those comments and analyze
2 them in making your permitting decision?

3 A: I did.

4 Q: Did you also send comments -- some of these
5 comments to the Critical Area staff for matters
6 that would be more within their area of
7 expertise?

8 A: I did.

9 Q: Did you also send some of these comments back
10 out to the applicant for evaluation and a
11 response based on those comments?

12 A: I did.

13 Q: So would it be safe to say you thoroughly
14 evaluated all of these comments that came
15 before you?

16 A: I did.

17 Q: And that was all done prior to making a
18 decision on this permit, is that correct?

19 A: Yes, that's correct.

20 Q: Okay. Let's look at the next paragraph. The
21 next paragraph references Susan Davis. Who
22 does Susan Davis work for?

23 A: The Department of Natural Resources.

24 Q: Okay. And why did you reach out to Susan
25 Davis?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: She is the -- our -- the OCRM's normal contact
2 for anything regarding endangered or threatened
3 species.

4 Q: Okay. And the notes that you have here, is
5 that based on something you received from her?

6 A: Yes.

7 Q: Okay. And then Debbie King is on the next
8 paragraph?

9 A: Yes.

10 Q: Is that correct?

11 A: Yes.

12 Q: And who is she with?

13 A: She's with the U.S. Army Corp of Engineers.

14 Q: And are those notes based on response from
15 Debbie King from comments that were received
16 from the petitioners?

17 A: Yes, these -- those -- her comments came
18 through our Wetlands Section, but I was copied
19 on them and, I mean, it was kind of a
20 communication between myself, the Wetlands
21 Section, you know, and the Corp of Engineers.

22 Q: Okay. And not to be repetitive, I think these
23 comments speak for themselves and, in fact,
24 later in Department's exhibits, there -- those
25 e-mails that contain the same. So, I won't



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 spend much time on it. But you did coordinate
2 with those outside agencies in regards to those
3 issues, is that correct?

4 A: I did.

5 Q: Okay. Now, there's a paragraph A under C -- SC
6 -- it's section 5, SCCZMP?

7 A: Yes.

8 Q: Okay. Under A, what is underlined there, what
9 does that say?

10 A: Alteration of critical area will require a
11 permit from OCRM prior to work in that area.

12 Q: Prior to work in that area, is that correct?

13 A: Yes.

14 Q: Okay. Now, on the next page, under E ---

15 A: Yes.

16 Q: --- it says is a critical area permit required?

17 A: Yes.

18 Q: Can you tell me what it says underlined in
19 there?

20 A: Yes, plans show alteration of critical area for
21 the stabilization of the dike, which will
22 require permit authorization prior to work
23 being initiated in that area.

24 Q: So, it's alteration critical area for the
25 stabilization of the dike, so that has to be --



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the permit has to be submitted prior to work
2 beginning, is that correct?

3 A: That's correct.

4 Q: Let's -- section 11 at the bottom of that page,
5 is that where you provided analysis of the
6 detention waiver?

7 A: Yes.

8 MR. HABER: And this isn't an exhibit, so I'm not
9 going to go through all of this verbatim, Your
10 Honor, just in terms of time. But it is
11 contained -- that analysis is contained within
12 the exhibit already admitted.

13 Q: Department Exhibit Number 2, we're gonna start
14 with the back of this exhibit, okay? And the
15 back of this exhibit contains a letter written
16 from John North to Dan Ahern on June the 10th,
17 2011. Do you see that?

18 A: Yes.

19 Q: Do you recall this letter at all?

20 A: Not the details. I do recall reviewing it.

21 Q: As to the best of your recollection, would you
22 -- could you concede that it contains a lot of
23 the same comments that were provided to the
24 Department; however, these were directed to
25 Beaufort County?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: Yes.
- 2 Q: Okay. Now, the next -- I guess it's preceding
3 on this exhibit -- this would be -- was Bates
4 stamped page 23.
- 5 A: Okay.
- 6 Q: Does that contain an e-mail correspondence
7 between you and Mr. North?
- 8 A: Yes.
- 9 Q: If you could, read me the sentence in your e-
10 mail. And I won't go through this ad nauseam,
11 it's in exhibits, but -- beginning with OCRM
12 does not consider, if you could just read that
13 sentence for me, please.
- 14 A: Says OCRM does not consider Beaufort County's
15 ordinances pertinent at this time.
- 16 Q: Sorry, I didn't see that period. We'll do the
17 next sentence as well.
- 18 A: OCRM's decision will be based on the
19 applicant's, parentheses, and his
20 consultant's, end parentheses, submittals and
21 responses to Department comments.
- 22 Q: Okay. And now, let's look at what's
23 Department's Bates stamped 22 on that same
24 exhibit.
- 25 A: Okay.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: And is this a letter from Beaufort County,
2 specifically Daniel Ahern, to you?
- 3 A: Yes.
- 4 Q: Was this letter received after June 10th, 2011?
- 5 A: After June 10th, 2011, yes.
- 6 Q: Yes. And that was the day John North had sent
7 a letter to Beaufort County, is that correct?
- 8 A: Yes.
- 9 Q: And in response after that, Beaufort County --
10 the same person, Mr. Ahern from Beaufort
11 County, wrote you a letter, is that correct?
- 12 A: That's correct.
- 13 Q: And what does Beaufort County say in that --
14 read just that first, what is it, two
15 sentences, three sentences?
- 16 A: It says Beaufort County Stormwater Utility is
17 requesting that action be taken to resolve this
18 permit. The current situation does not meet
19 Beaufort County stormwater requirements. We do
20 not have a recommended alternative, but the
21 current situation, parentheses, no approval --
22 no approved alternative, end parentheses, has
23 untreated stormwater discharges to our -- has
24 untreated stormwater discharging to our
25 County's waterways.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: So, they don't have a recommended alternative,
2 is that what they state?

3 A: Yes.

4 Q: And -- but something -- some type of
5 alternative needs to be evaluated, is that
6 correct?

7 A: That's what they're indicating, yes.

8 Q: Retrofit and inline filters an alternative ---

9 A: You ---

10 Q: --- to having untreated stormwater flowing out?

11 A: Yes.

12 Q: In fact, in Regulation 72-300C, it deals with
13 the Commission, which is -- includes the
14 Department, intends to delegate some of these
15 provisions, right, to local governments? Do
16 you recall any of that?

17 A: There is -- there is -- 72-300 does outline a
18 delegation ---

19 Q: In fact, in 72-301, defines delegations as
20 well. To you knowledge, has Beaufort County
21 ever requested to be delegated? Or is Beaufort
22 County delegated?

23 A: It's not delegated. I don't know if they've
24 ever requested it though.

25 Q: But it's not delegated, is that correct?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: That's correct.

2 Q: One last exhibit, you went over a little bit
3 already with Mr. North, that'll be Department's
4 Number 8. Do you recognize those as some
5 aerials that you and Mr. North walked through
6 a little bit?

7 A: Yes.

8 Q: Okay. Now, this first measurement in this
9 first picture, was that done for -- just to
10 provide an example to the Board to show them
11 during their summary, the request for review?

12 A: Yes.

13 Q: Okay. Now, this second one, on which John
14 North spent a long time on your testimony
15 regarding where the location of this GIS data
16 is from DNR, do you remember that?

17 A: This ---

18 Q: I'll zoom in a little bit if you need. There's
19 some yellow ...

20 A: Yes.

21 Q: And he said there might be shellfish located
22 closer and it might be an offset, do you recall
23 that?

24 A: Yes.

25 Q: Now, do you remember creating this document at



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 the request of Mr. North, overlaying
2 everything, after your deposition?

3 A: Yes.

4 Q: Did your deposition occur after the permitting
5 decision and after the Board made a decision on
6 this?

7 A: Yes.

8 Q: Thank you.

9 MR. HABER: There's no further questions, Your
10 Honor.

11 Q: Thank you, Mr. Geer.

12 MS. SHAHID: That's all right. Your fine.

13 MR. GEER - CROSS-EXAMINATION BY MS. SHAHID:

14 Q: Aside from this particular project, are you
15 familiar with these inline filters as a BMP,
16 did you know about them before this project?

17 A: I did.

18 Q: Have you seen them used before?

19 A: I have seen them used before.

20 Q: And have they been used in an application -- or
21 have they been used to treat water quality
22 before?

23 A: Yes.

24 Q: Okay. And in this particular instance, we're
25 not just doing one inline filter, are we,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 aren't we putting several in?

2 A: Yes.

3 Q: Okay. I don't remember the exact number. Do
4 you?

5 A: Not off the top of my head.

6 Q: All right. And is it true that we're putting
7 them in curb inlet baskets?

8 A: There's some that are curb inlets, I think, and
9 some that are grade inlets ---

10 Q: Okay. And what is a curb inlet and what is a
11 grade inlet?

12 A: A curb inlet is on the -- typically on the side
13 on the curb of a road and it's incorporated
14 into the curb and it's pretty -- usually pretty
15 low profile. A grade inlet is something that
16 just sits flush with the ground. It could be
17 in the middle of a street or it could be in the
18 middle of a -- of a yard or grassed area, but
19 it's flat.

20 Q: But suffice it to say, it's not just one
21 filter, it's several filters?

22 A: Right, right.

23 Q: And we use curb inlets and grade inlets because
24 that gives us access to the stormwater line,
25 the pipe that's carrying the stormwater herein



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 collecting the stormwater?

2 A: That's correct, it's where the stormwater is
3 entering the system, or leaving the surface.

4 Q: Okay. So, if we're putting it in a curb inlet,
5 or a curb basket, that's -- that opening in the
6 street where the stormwater is flowing in?

7 A: That's correct.

8 Q: It'll hit the filter first then hit the pipe?

9 A: Before it goes downstream, correct.

10 Q: Okay. And the filter will help filter out
11 pollutants to address water quality?

12 A: Correct.

13 Q: And that's your understanding of how the filter
14 works?

15 A: Yes.

16 Q: And you've seen it used before in other
17 applications?

18 A: I've seen it in other applications. I haven't
19 seen, you know, a storm event, you know, in
20 operation I guess I should say.

21 Q: Okay. And if a filter were to get clogged, the
22 way you understand the plan, it's accessible to
23 a maintenance worker to be removed and
24 repaired?

25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Because it's right under the curb inlet basket
2 for the other -- the other grate in the middle
3 of the road?

4 A: Correct.

5 Q: I don't know the correct term for it but ...

6 A: Correct. And it's -- they are typically
7 manufactured to be easily maintained -- very
8 accessible, easily cleaned and replaced.

9 Q: Okay. And maintenance of BMPs is not unique to
10 curb inlet baskets, right? All BMPs are gonna
11 require maintenance for continued efficiency?

12 A: Correct.

13 Q: Okay. Every BMP that's incorporated in a
14 stormwater plan is not gonna function forever
15 without some attention to maintenance ---

16 A: Correct.

17 Q: --- or repair work?

18 A: Correct.

19 Q: Okay. And you address that by requiring the
20 developer, with a POA or whatever entity is
21 responsible for the stormwater system, to sign
22 a contract with you saying we're gonna address
23 maintenance, right?

24 A: For the permanent structures, for the
25 structures that will be in place long term,



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 yes, correct.

2 Q: Would that also include these inline filters?

3 A: Correct.

4 Q: Okay.

5 A: Yes.

6 Q: And you enforce that contract through your
7 enforcement authority, right, it's a permit
8 condition, right?

9 A: Right.

10 Q: Right. And you're no stranger to getting calls
11 from people in neighborhoods saying this pond
12 has got to be dredged out or we're having
13 flooding, there's something wrong with this
14 pipe? That happens, right?

15 A: It does.

16 Q: You get -- you're -- you are alerted to that
17 event?

18 A: That's correct.

19 Q: All right. And your action is to pull up the
20 stormwater permit to see who's responsible and
21 send them a warning letter?

22 A: That's correct.

23 Q: And that system seems to work?

24 A: Yes.

25 Q: Okay. And I have to confess that I'm the one



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 that caused a lot of confusion with the first
2 words out of my mouth when I looked at the
3 program refinements, and I said that inline
4 water quality filters were infiltration and I'm
5 incorrect, right?

6 A: Correct.

7 Q: But the point is, if you look at the program
8 refinements, as your counsel pointed out, the
9 actual sentence is storage may be accomplished
10 through retention, detention or infiltration
11 systems as appropriate for the specific site.
12 You do not read that section to bind you to
13 just those three solutions, right?

14 A: That's correct.

15 Q: In fact, you believe you have the discretion
16 because of the lack of mandatory language in
17 that particular refinement to look at a variety
18 of BMPs in this situation?

19 A: That's correct, and in addition to the other
20 items in other regulations saying.

21 Q: Okay. Now, the Cat Island Lake, that was never
22 -- a construction detention pond, right?

23 A: It, as I understand it, it was constructed as
24 a -- as a duck pond.

25 Q: And today, you would not permit a land



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 developer to take a tidal salt marsh area and
2 convert it to a detention pond, right?

3 A: That's correct.

4 Q: In fact, typically, if a detention pond is
5 being dug, it's being dug in uplands, right?

6 A: That's correct.

7 Q: Wouldn't you agree that when this impoundment
8 was constructed, it eliminated a natural tidal
9 area and converted it to an artificial
10 freshwater area?

11 A: I think that's -- I think that's likely, just
12 I don't know that as an absolute fact.

13 Q: Well -- okay. Let's assume that that is what
14 happened ---

15 A: Okay.

16 Q: --- because this area is adjacent to a tidal
17 creek, would naturally have a salt marsh
18 abutting that tidal creek. So let's just
19 assume for the sake of argument, they took a
20 natural tidal area, converted it into a fresh
21 water area for wildlife management. What's
22 going on now, if that's true, is simply
23 restoration of the natural area?

24 A: That's correct.

25 Q: Removing an artificial situation and restoring



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the natural area?

2 A: Yes.

3 Q: Correct? The impoundment failed in 2009?

4 A: As I understand it, yes.

5 Q: Isn't it true that by 2010, my client was
6 submitting permit applications to address the
7 water quality issues with these inline filters?

8 A: I don't recall the exact date that that -- that
9 those applications were ---

10 Q: I think that in your exhibits, it -- let me
11 just look real quick. I'm gonna show you the
12 notice of intent, or application form, that is
13 part of, I believe, DHEC Exhibit 1.

14 A: Okay, I see.

15 Q: And that date?

16 A: Yes, public notice start date is October 1st of
17 2010.

18 Q: Okay.

19 A: Yes.

20 Q: So, within approximately a year, Mr. Meyer was
21 moving forward to address this situation, which
22 is described as -- by Mr. North as untreated
23 water quality ---

24 A: That's ---

25 Q: --- correct?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: That's correct.

2 Q: He hired engineers, he had consultants on
3 board, he provided stormwater calcs, he
4 presented you a fully documented stormwater
5 application, correct?

6 A: Yes.

7 Q: He did everything the Department asked him to
8 do, right?

9 A: He did.

10 Q: And we sit here in 2014 without those filters
11 installed because it took you some time to go
12 through the application process, right?

13 A: That's correct.

14 Q: And part of what consumed your time was the
15 multiple comments that were received and
16 addressed from the petitioners and their
17 counsel, correct?

18 A: That's part of it, yes.

19 Q: And you would -- would you say that's a
20 substantial part of what consumed your time?

21 A: I think that's a fair statement, yes.

22 Q: Okay. And part of what consumed -- and part of
23 the delay is also attributable to the fact that
24 once the permit was issued, it was challenged,
25 right?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: That's correct.

2 Q: And a challenged permit is not a final Agency
3 action, right?

4 A: Correct.

5 Q: Nobody can go out there and put those filters
6 in until we conclude this challenge, right?

7 A: That's correct.

8 Q: Okay. But that's no action taken by Mr. Meyer,
9 correct?

10 A: That's ---

11 Q: Other than applying for a permit that they
12 don't like?

13 A: As -- I don't know if there are other
14 influences, but that's -- as I understand it,
15 yeah.

16 Q: It's not your opinion that Mr. Meyer has drug
17 (sic) his feet or unduly delayed this situation
18 of addressing four years of untreated
19 stormwater to describe what Mr. North -- as Mr.
20 North describes?

21 A: I don't -- I don't think so, I mean, I don't
22 know that for a fact.

23 Q: In the meantime, you've got the creek which is
24 classified as SFH, shellfish harvesting waters,
25 61-9, which is in evidence, establishes certain



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 water quality standards for SFH, and I don't
2 remember the exhibit number but it's actually
3 the last page of 61-9, it's one of Mr. North's
4 exhibits. Let's see if I held on to it. It's
5 not 61-9 -- I'm sorry. 61-68, which is Exhibit
6 81, the last page establishes -- and I'll put
7 it up here. Water quality standards for
8 shellfish harvesting water. You're familiar
9 with how 61-68 talks about classifications of
10 water and then establishes standards for those
11 waters?

12 A: Yes.

13 Q: Okay. Now, has anybody provided the Department
14 any evidence in the past four years that any of
15 these standards have been violated?

16 A: I have not seen any evidence presented to that.

17 Q: Nobody has provided you a water quality sample
18 that has been analyzed, or any data to indicate
19 any violation of these standards?

20 A: That's correct.

21 Q: Okay. And typically, for there to be evidence
22 of a violation of water quality standards, you
23 would need a water quality sample, right?

24 A: Yes.

25 Q: And -- and an analysis of that sample?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: That's correct.

2 Q: So the petitioners claim the water has been
3 degraded, but you've seen no evidence to
4 support that?

5 A: I've not seen evidence to support that, no.

6 Q: Okay. And shellfish beds, that's a pretty
7 important resource for the Department of
8 Natural Resources, right?

9 A: It is and not just for the Department of
10 Natural Resources, for the citizens of the
11 state.

12 Q: Okay. But DNR has some shellfish leases and
13 shellfish managed areas, is that right or is
14 that done through DHEC?

15 A: That's ---

16 Q: I may be confusing ---

17 A: I -- we -- DNR is in charge of that, yes.

18 Q: Okay. And to date, you've had no communication
19 from DNR that this passage of time has -- or
20 the current conditions have changed the
21 classification of the water body or negatively
22 affected the shellfish?

23 A: That's correct.

24 Q: Those shellfish resources? Okay. Mr. North
25 talked to you about a survey that was present



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 at the Board hearing done by David Youmans, the
2 surveyor. Are you familiar with that? It's
3 marked as Exhibit 53.

4 A: Yes.

5 Q: Now, you're aware we took Mr. Youmans'
6 deposition?

7 A: Yes.

8 Q: And that deposition has been admitted into
9 evidence. I'm not sure the exhibit number.
10 That's his. 76. Exhibit 76 is Mr. Youmans'
11 deposition. Now, did you do your measurements
12 from aerial photography?

13 A: I did.

14 Q: Okay. And you can do that using what tools?

15 A: Well, the Department has in their GIS system
16 aerial photographs of -- from various years and
17 -- I can't remember the most -- the most recent
18 year, but our -- the OCRM GIS database has
19 several aerial photographs available. I also
20 used Google Earth ---

21 Q: Okay.

22 A: --- to kind of back that up.

23 Q: And they're measuring tools that are available?

24 Okay.

25 A: Right.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: Now, are you aware that what Mr. Youmans did is
2 he actually put a surveyable point on the
3 upland, a surveyable point on the center of the
4 dike and a point on the oyster bed. Does that
5 sound familiar?
- 6 A: I ---
- 7 Q: He established recoverable points.
- 8 A: I don't -- I don't recall -- I didn't have any
9 ---
- 10 Q: Okay, all right. You're not ---
- 11 A: --- information.
- 12 Q: --- familiar with his deposition?
- 13 A: No, I was not present ---
- 14 Q: All right.
- 15 A: --- at his deposition, no.
- 16 Q: Can you turn to page -- my pages aren't
17 numbered. We're on Exhibit, what is it, 76?
- 18 **MS. COLWELL:** Uh-huh (affirmative response).
- 19 Q: Whoops. Well, they should be numbered. Nine,
20 10, 11 ... here we go, 14.
- 21 A: Okay.
- 22 Q: Okay? And if you'll look at line 9 and if you
23 could, read, and I'll submit to you this is Mr.
24 Youmans' response, line 9 through 12.
- 25 A: Okay.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Read out loud, if you don't mind.

2 A: The lines that we show on the plat, the 153
3 feet, the 153 feet and the 190 feet came from
4 an aerial showing how -- generally how the
5 water flows.

6 Q: Okay. Mr. Youmans measured these lines on the
7 plat, and I'll show them to you as best I can
8 with this oversized exhibit. The 153 feet from
9 the pipe to this point and then 190 feet, which
10 hopefully is showing up, from this point to the
11 dike.

12 A: Okay.

13 Q: He measured those using an aerial photo. And
14 that -- you also measured using an aerial
15 photo?

16 A: That's correct.

17 Q: So, same kind of measurement, right?

18 A: Right.

19 Q: Same method of measurement. Now, are you aware
20 that Mr. Youmans was not on site the day of the
21 survey to inspect the flow of waters, he just
22 sent his crew, did you know that?

23 A: That's what I understand.

24 Q: Okay. And could you turn to page 17 of the
25 deposition?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Okay.

2 Q: And we'll go back to the survey, and what we're
3 talking about here is a path that Mr. Youmans
4 projected as a high tide measurement as up to
5 -- of the flow of water. And we asked Mr.
6 Youmans in his deposition, which is in
7 evidence, what method did you use for that high
8 tide measurement, and if you could read for me
9 the response, line 12, page 17.

10 A: Line 12 of page 17 of that depositions says we
11 do that using our own judgment.

12 Q: Okay. So you've got a surveyor that prepared
13 a survey, that projected what he thought was a
14 high tide line, when he acknowledges in his
15 deposition that he did not go out there to look
16 at the flow of water and the methodology he
17 describes is his own judgment. Do you find
18 that to be an acceptable methodology for
19 measuring a thousand feet?

20 A: I don't think so.

21 Q: Okay. Let me ask you one more thing about Mr.
22 Youmans' testimony. I just need to find it
23 real quick. Turn to page 30, if you don't
24 mind. And the -- and I'm on line 8, the
25 question, and what opportunity did you have to



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 observe the flow of water and what you've got
2 labeled as, "old pond." Line 11, what did Mr.
3 Youmans respond?

4 A: I did not observe the flow of water.

5 Q: Okay. And one more thing if I can find it.
6 Nothing else on that. Now I've got one more
7 area I want to talk to you about and then I'm
8 happy to tell you I'll be done. And that is,
9 I'm gonna show you what is in evidence as
10 Petitioners 38. See if you've got a copy of
11 it. This is a letter with some exhibits that
12 was provided to you by John Guerry Taylor.

13 A: Okay.

14 Q: I would give you mine but I've got notes on
15 mine. If you -- if you're able to pull one
16 out.

17 A: I've got it right here.

18 Q: You got it?

19 A: Yes.

20 Q: You remember receiving this comment letter from
21 Jon Guerry -- well, from -- I believe it was
22 from an engineer in Jon Guerry Taylor's office?

23 A: Yes.

24 Q: Mr. Moore?

25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And you reviewed this letter and looked at each
2 of these concerns?

3 A: I did.

4 Q: You did not simply delegate this to Mr. Meyer's
5 engineer to handle, correct?

6 A: No, I did not delegate ---

7 Q: All right.

8 A: --- completely to them, no.

9 Q: And I have what I marked as 28, but it was a
10 document objected to, but it is simply some
11 handwritten notes that I believe you took.
12 Would that be helpful to you in refreshing your
13 memory to respond to questions about this
14 document, or do you not need them?

15 A: Sure, it'd be helpful.

16 Q: Okay. I'm gonna hand you what's been marked
17 but it's not in evidence, it's 28, for your
18 reference. Will you verify for me that those
19 are handwritten notes in your handwriting?

20 A: These are handwritten notes in my handwriting,
21 yes.

22 Q: Okay. And was that done as you were reviewing
23 this comment letter, which is Exhibit 38,
24 prepared by the petitioners expert?

25 A: Yes.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Okay. And I don't -- it's a long letter and
2 I'm just gonna try to shortcut it a little bit
3 by summarizing each argument. But it looks
4 like argument number one, and I don't know if
5 I -- I should call it argument or comment but,
6 suffice it to say, Mr. -- let's see who signed
7 this letter. Mr. Chris Moore had several
8 negative comments about the permit application,
9 right?

10 A: Right.

11 Q: Okay. So, comment number one appears to be, to
12 summarize it, that it looks like the engineers
13 may have used two different sets of values, one
14 and two -- one set of values in 2004 when they
15 were trying to get the development permitted
16 initially, and then a second set in 2010 when
17 they were trying to get a retrofit. And does
18 that seem to be an accurate summary ---

19 A: Yes.

20 Q: --- that comment? What did you do to determine
21 whether that was a valid comment?

22 A: I look -- I took a look at all the calculations
23 that they had submitted and I evaluated to see
24 what the differences were and whether they were
25 appropriate.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. And what did you conclude?

2 A: I concluded that the calculations that we
3 received and based our decisions on were
4 applicable, appropriate calculations.

5 Q: Okay. Did you -- did you see the
6 inconsistencies that are referenced in this
7 statement?

8 A: I -- I vaguely recalling -- recall having
9 trouble, I mean, not finding some -- I wasn't
10 able to find -- and it's -- this has been a
11 while ago so I'm having trouble remembering at
12 all, but I think that I wasn't able to find all
13 the discrepancies that he was referencing but
14 ---

15 Q: He says the report shows no increase in flow
16 from pre to post develop in 2010.

17 A: They, I mean, that is -- my notes indicate here
18 there's -- I've got 2010 calculations that show
19 an increase in flow.

20 Q: So based on your review, Mr. Moore was wrong in
21 that statement?

22 A: Yeah, I just -- I just couldn't find what he
23 was talking about in that -- in some aspects of
24 that comment.

25 Q: Okay. We have a big discussion here about



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Tabby Park and I'll try to summarize it. Tell
2 me if it's an inaccurate summary. But
3 basically, again this issue that somehow Tabby
4 Park relies on the lake, does that seem -- does
5 that ring a bell with you, is number two?

6 A: Yes.

7 Q: On Exhibit 34 -- 38, I'm sorry. What did you
8 do? What did you look at and what did you
9 conclude with regard to this negative comment?

10 A: I looked at the file that we had for Tabby
11 Park, when that application was received,
12 reviewed and approved and ---

13 Q: Okay. So Mr. Moore says on the bottom
14 paragraph, the second page of the letter, he
15 says this leads to the conclusion that any
16 stormwater calculations done for the Cat Island
17 detention basin must also include the portion
18 of Tabby Park Subdivision as it is clearly
19 dependent on the Cat Island Detention Basin for
20 treatment of the stormwater. But Tabby Park
21 was permitted and you looked at the file. Was
22 there anything in the file to indicate that the
23 developer of Tabby Park was assuming or relying
24 on the lake for detention?

25 A: There was not indication.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Did Tabby Park satisfy the standards --
2 stormwater requirements in the Regulations
3 without relying on Cat Island Lake?

4 A: Yes, they did.

5 Q: All right. Is it correct that number three on
6 the third page of the letter submitted by Mr.
7 Moore addresses potential maintenance problems?

8 A: Yes.

9 Q: Okay. And maintenance is not unique to inline
10 filters, right?

11 A: Right.

12 Q: You can have maintenance problems with any BMP,
13 right?

14 A: Correct.

15 Q: You would agree with me that the potential for
16 maintenance problems is not a basis to deny a
17 permit, right?

18 A: Correct.

19 Q: Okay. How about number four? It talks about
20 how the inline filter is not a good way to
21 address water quality. Is there assumption in
22 number four that you've got to store the first
23 inch and a half of runoff?

24 A: I mean, it -- I'm just trying to refresh my
25 memory on this. It, I mean, it looks like item



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 -- yeah, item four is talking about the water
2 quality ---

3 Q: Okay.

4 A: --- treatment.

5 Q: But is the conclusion that the retrofit system
6 poorly addresses the water quality issue, isn't
7 that related to another conclusion that they've
8 got to store the first inch and a half?

9 A: Right, correct. And it's ---

10 Q: Okay. And is that inaccurate conclusion?

11 A: That's inaccurate ---

12 Q: Okay. They don't have to store the first inch
13 and a half, right?

14 A: Right.

15 Q: Just the first half inch?

16 A: Well, that -- the first half inch would be if
17 that's -- that's a criteria for a structure
18 with a permanent ---

19 Q: Okay.

20 A: --- but it's not that type of structure so it
21 would be, you know, a filtering mechanism for
22 water quality treatment ---

23 Q: Okay.

24 A: --- instead of a storage and 24 hour release.

25 Q: Okay. Okay. So I am -- privy to our Exhibit



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 25, which I believe is in evidence, which is a
2 response letter from Andrews and Burgess to
3 you, and I'll show it to you in just a minute.
4 I know you don't have a copy of our exhibits up
5 there. But the particular comment that they
6 were responding to was a comment on your part:
7 verify the proposed catch basin inserts are
8 appropriate for this development; also verify
9 they are sized to treat the applicable first
10 flush water quality volume which is 1.5 inches
11 of runoff from the site.

12 A: Uh-huh (affirmative response).

13 Q: Do you remember asking that question and the
14 response in Exhibit 25?

15 A: I do.

16 Q: Okay. And what information were you given by
17 Mr. Lyle at Andrews and Burgess that satisfied
18 you in that regard?

19 A: Well, he showed that the -- if I remember
20 correctly, I believe he showed that the -- that
21 the volume that was treated, not necessarily
22 stored ---

23 Q: Okay.

24 A: --- by those structures were -- would be
25 filtered. So that volume, that -- it -- it's



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 -- it'd be -- it's kind of a complicated
2 calculation, but it would be the -- they would
3 look at the storm event that would generate
4 that volume, that one and a half inches of
5 runoff volume. And that storm event would have
6 to pass through that filter without overtopping
7 it.

8 Q: Okay.

9 A: That means that that volume would be treated by
10 -- it wouldn't be stored and released, but it
11 would be filtered before it would -- because
12 these systems are designed with an overflow to
13 prevent backup.

14 Q: Okay.

15 A: And so, it would have to be sized in order to
16 treat that volume before it would overflow.

17 Q: Okay. And did he provide you -- a --
18 sufficient technical basis in Cat Island
19 Exhibit 25 to satisfy any concerns you may have
20 had in that regard?

21 A: Yes.

22 Q: Okay. If you look at paragraph number five
23 addresses a thousand feet and -- do you see
24 that?

25 A: Yes.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Mr. Moore's letter. You've had occasions other
2 than this occasion to consider whether or not
3 a development is within a thousand feet of
4 shellfish beds, right?

5 A: Yes.

6 Q: And this methodology that you described to the
7 Court where you look for the evidence of a
8 channel, as to you that is an indication of the
9 drainage path. You've applied that elsewhere,
10 right?

11 A: Yes.

12 Q: Okay. The -- a channel that seems to occur at
13 the location of the outfall tells you that the
14 stormwater has created that channel running
15 through that outfall, right?

16 A: Right.

17 Q: So that's the path of stormwater, right?

18 A: Right.

19 Q: Okay. And you've applied multiple times in the
20 past?

21 A: Yes.

22 Q: I know you don't want to quantify how many
23 times ---

24 A: Right.

25 Q: --- but when you're approving residential



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 development in or near tidal waters, you've got
2 to look and see whether the thousand foot rule
3 is triggered, right?

4 A: Yes, yes.

5 Q: That's something you're very familiar with,
6 right?

7 A: Right.

8 Q: It's not a hard determination to make, is it?

9 A: No.

10 Q: Shouldn't be a hard determination to make,
11 right?

12 A: Right.

13 Q: I'm gonna skip some of these others cause I
14 think your testimony is pretty clear on many of
15 these others, but I'm gonna ask you to look at
16 number nine.

17 A: Of Chris Moore's letter?

18 Q: Yeah. This has to do with attenuation and
19 whether or not in its natural state, with no
20 impoundment, there's erosion. Is this a
21 concern for you in -- with regard to stormwater
22 permit?

23 A: At the actual pipe discharge which is -- come
24 up earlier in my testimony, the -- there -- at
25 the pipe discharge, there should be -- and this



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 is typical of just about all pipe discharges,
2 an energy dissipator that, you know, does, just
3 as the name implies, it removes the energy of
4 the water flowing out of the pipe and therefore
5 reduces the velocity.

6 Q: Uh-huh (affirmative response).

7 A: Which would reduce the erosive power of that
8 discharge. So -- and I see here in my notes
9 that it says, you know, energy dissipators at
10 the pipe outfalls for Garfield Park are
11 proposed.

12 Q: Okay.

13 A: So ---

14 Q: All right. And the energy dissipator acts to
15 sort of attenuate the discharge?

16 A: Right.

17 Q: All right.

18 A: Right.

19 Q: And finally, I'm gonna show you what's in
20 evidence as DHEC Exhibit 6, which I represent
21 to you is a photograph taken by Geordie
22 Madlinger of the Cat Island Lake on the date
23 shown, September 5th, 2013. Have you seen this
24 -- these photographs before?

25 A: I have.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. And have you inspected the lake before,
2 have you been out there before?

3 A: I've been out there several -- well, a few
4 times and ---

5 Q: Okay. Is this fairly representative of what
6 the scenery is out there, looks out there?

7 A: I have not been out there recently. My trips
8 out there were earlier on -- in the process ---

9 Q: Is this different from what you'd normally
10 seen?

11 A: It's different from what I remember when I
12 first went out there.

13 Q: How is it different?

14 A: There's a lot more grass out there.

15 Q: Okay. And by grass you mean the marsh grass
16 that's in the forefront of the picture?

17 A: Yes, and in the back of the picture.

18 Q: Okay, all right. Thank you.

19 **MS. SHAHID:** If I could just consult for a minute.
20 No further questions.

21 **THE COURT:** Mr. North, I know you're going to have
22 some questions on ---

23 **MR. NORTH:** Yes.

24 **THE COURT:** --- redirect. And before we get into
25 that, let's take an hour for lunch and



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 reconvene at two o'clock.

2 (Lunch break was taken from 12:53 p.m. to 2:06
3 p.m.)

4 THE COURT: Okay. If everyone is ready, we'll
5 start.

6 MR. NORTH: Thank you, Your Honor.

7 MR. GEER - REDIRECT EXAMINATION BY MR. NORTH:

8 Q: Mr. Geer, do you have in front of you the
9 Department's Exhibit Number 1?

10 A: I do.

11 Q: Please turn to page five and six, if you would.
12 I believe you testified that that is the
13 Coastal Consistency Determination that you
14 issued in connection with the retrofit permit,
15 is that correct?

16 A: That's correct.

17 Q: Okay. Is it fair to say that page, you know,
18 six -- five and six is basically a form letter
19 that's used to issue the certificates by the
20 Department?

21 A: This is the format of the letter. Excuse me.
22 Depending on the project, there may be some
23 conditions that change or ---

24 Q: So it's possible to add something different,
25 but, for instance, subparagraph G talks about



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 artifacts and animal bones and mortar materials
2 ---
3 A: Correct.
4 Q: --- that sort of information is in all of the
5 certifications as part of the form, isn't it?
6 A: It could be altered to fit the specific
7 project, but in general, that's a common
8 condition. That item is usually a common
9 condition.
10 Q: Is it fair to say then that other than for some
11 other specialized situation, for the most
12 part, these Coastal Consistency Determinations
13 that you issue involve plugging in the
14 identifying information for a project and the
15 date and then using a Department form to advise
16 the applicant of the various limitations?
17 A: I'm not sure I understand your question. I
18 mean, these -- these conditions can change
19 depending on the project.
20 Q: Yes, I understand that.
21 A: Okay.
22 Q: Okay. But there are no conditions in this
23 particular certification, are there, that are
24 particular to this particular retrofit?
25 A: All these conditions are -- apply to this



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 retrofit project.

2 Q: Wouldn't all of those conditions apply to every
3 single coastal consistency determination that
4 you do?

5 A: They could be changed for other projects.

6 Q: Okay. Take a look, if you would, at
7 subparagraph D on the first page, page five of
8 the exhibit.

9 A: Okay.

10 Q: Do you see where it says that this coastal zone
11 consistency certification is not intended to
12 authorize any direct or indirect impasse to
13 freshwater wetlands. Any unauthorized direct
14 or indirect impasse to freshwater wetlands
15 shall be considered a violation of this
16 certification and/or subject to enforcement and
17 possibly fines. Do you see that?

18 A: Yes.

19 Q: And is that an accurate statement of the rules
20 and regulations that would apply to this
21 consistency determination?

22 A: It's -- it's a condition of the certification,
23 so, yes, it applies.

24 Q: Okay. You testified that the best management
25 practices, a publication of DHEC, is -- is not



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 codified. Do you remember that?

2 A: The BMP manual that the Department offers is
3 not codified, right.

4 Q: Codified, meaning it's not a state statute?

5 A: Right.

6 Q: Okay. But does it not reference many of the
7 applicable state regulations and the policies
8 and procedures of the coastal zone within that
9 publication?

10 A: If -- it references some of the policies and
11 regulations, yes, not to be ---

12 Q: Okay. Would it be fair to say that even though
13 it may not be codified, at least the contents
14 of it are correct?

15 A: They provide guidance for certain, you know,
16 BMPs, and that -- the guidance and design, you
17 know, criteria of where it's applicable is a
18 tool for the consultants to use when they
19 submit applications.

20 Q: Is it fair to say that the BMP of DHEC
21 accurately sets forth the requirements of DHEC
22 with regard to the best management practices?

23 A: Did you see DMP? The BMP ---

24 Q: Best -- best management practices, BMP.

25 A: The BMP is a -- a guidance document for



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 consultants to use.

2 Q: Okay. And are the contents of that document
3 accurate?

4 A: The contents -- yeah.

5 Q: Okay. Thank you. Take a look, if you would,
6 at Exhibit 3 and within Exhibit 3, page 23.

7 A: Exhibit -- your exhibits?

8 Q: Yes, Petitioners Exhibit 3. Have you reached
9 that yet?

10 A: Yes, Exhibit 3, which page?

11 Q: Page 23.

12 A: Okay.

13 Q: In your -- in your examination you talked about
14 certain types of things can detain versus
15 detain and release over 24 hours. Directing
16 your attention to subparagraph D, can you read
17 that regulation to the Court?

18 A: Paragraph D says, permanent water quality ponds
19 having a permanent pool shall be designed to
20 store and release the first half inch of runoff
21 from the site over a 24 hour period.

22 Q: Okay. You testified that if a development is
23 less than 10 acres, then something other than
24 detention ponds are recommended, do you recall
25 that?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: Yes.

2 Q: And what was the source of that statement or
3 the authority for that proposition?

4 A: 72-305(b)(3) says land disturbing activities
5 disturbing more than five acres, the
6 requirements of 72-305 and 72-307 will apply.
7 However, the use of measures other than ponds
8 to achieve water quality improvement are
9 recommended on sites containing less than 10 --
10 10 disturbed acres.

11 Q: Okay. First of all, none of that would apply
12 to water quantity control, would it?

13 A: Right.

14 Q: And isn't it a fact that when a development is
15 a part of a larger plan of development, that
16 its size is considered in the context of the
17 larger plan of development and not simply some
18 individual phase of that development?

19 A: It is.

20 Q: Okay. And on the first page of the Department
21 Exhibit 1, did you not note that because this
22 project is part of a larger common plan of
23 development, you made that observation and
24 finding?

25 A: Yes, it is part of a larger common plan.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Now, this -- even if we were to assume
2 that this suggestion that something other than
3 ponds are recommended for things less than 10
4 acres, would you agree that that is something
5 in the general regulations that is not
6 specifically geared toward projects within a
7 half a mile of the coastal zone?

8 A: I'm not sure what you're -- what you're asking
9 me.

10 Q: Isn't it correct that projects within one-half
11 mile of the coastal zone have higher
12 requirements than those set forth in the
13 regulation 72-300?

14 A: For those projects within a half mile, there is
15 a heightened water quality requirement.

16 Q: And would that heightened water quality
17 requirement override the general regulation in
18 Section 72-305 or whatever you said?

19 A: In 72-305, that is a -- 72-305(b)(3), as I
20 indicated, that is a recommendation that uses
21 measures other than ponds to achieve water
22 quality.

23 Q: Okay. You testified that there's no need for
24 storm water -- or there's no requirement for
25 storm water treatment in areas that are not



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 developed, do you remember that?

2 A: Correct.

3 Q: Well, whether there's a state requirement or
4 not, would you agree that undeveloped areas
5 still have runoff and that runoff still can
6 have sediment?

7 A: It depends on the soil type, the natural
8 vegetative cover, the -- there are a lot of
9 characteristics to the site that could affect
10 whether or not there is storm water runoff and
11 whether or not there is erosion. So I can't
12 say across the board that there will be from
13 undeveloped sites, no.

14 Q: Okay.

15 A: I can't say that.

16 Q: Well, let's take for instance an undeveloped
17 site such as G tract made up of soil types C
18 and B, would you agree that in a 10-year storm
19 event, that the runoff from that site would
20 have some degree of sediment?

21 A: I don't know that it would.

22 Q: Why not?

23 A: I -- I don't know that it would. It could, but
24 I do not know for a fact that it would have
25 sediment and runoff, no, I don't know that.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: You testified that the Department cannot force
2 treatment of an area that was developed prior
3 to the effective date of the act.

4 A: Correct.

5 Q: And you noted that the marsh -- a marsh could
6 provide some level of treatment, do you
7 remember that?

8 A: Yes, marsh can provide -- I mean, marsh will
9 naturally improve water quality. There's
10 nothing -- I mean, we can't rely on it to meet,
11 you know, state requirements because --

12 Q: That was my next question. I want you to
13 confirm that you do not use marsh or freshwater
14 wetlands or any kind of wetlands as a -- as a
15 component of your storm water treatment, is
16 that right?

17 A: Not for water quality treatment, that's
18 correct.

19 Q: Okay. You testified about the fact that
20 there's some attachments to Department Exhibit
21 1 that contain information from the Department
22 of Natural Resources that they have no record
23 of where wood storks, do you remember that?

24 A: What -- what are you referring to when you say
25 --



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Well, take a look. It's Department Exhibit 1,
2 page 10.

3 A: Okay.

4 Q: Do you know a conversation in March of 2011
5 with a representative of the Department of
6 Natural -- Natural Resources indicating they
7 had no records of bald eagles or wood storks
8 nesting in the area, do you remember that?

9 A: Yes, that was an e-mail.

10 Q: Okay. And the e-mail's also part of this,
11 isn't it?

12 A: It's -- it's -- I don't know if it's in this
13 particular exhibit.

14 Q: Look at page 14.

15 A: Okay.

16 Q: Is that the information that you obtained from
17 the Department of Natural Resources?

18 A: That's some of it, yes.

19 Q: Okay. And that indicates that their records
20 have shown no bald eagle or wood storking --
21 wood stork nesting areas, is that right?

22 A: That's correct.

23 Q: Okay. Now, the fact that they don't have a
24 record of it doesn't mean that it isn't true,
25 does it?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: We rely on the information provided by the
2 Department of Natural Resources for these types
3 of inquiries, so.

4 Q: Do you rely on that even when you're presented
5 with photographs of wood storks nesting around
6 the lake?

7 A: Yes, I mean, we -- we included any information
8 up to the point where I, you know, sent this --
9 the e-mail to -- the first e-mail to Ms. Davis,
10 you know, any comments that y'all had
11 indicated, I passed that kind of information on
12 and, you know, but this is the, you know, the
13 agency -- the resource agency we rely on to
14 make decisions about endangered and threatened
15 species, so.

16 Q: Do you notice in this e-mail that they do have
17 a record of a waiting bird colony that was last
18 observed in 1995, but they don't keep up with
19 their monitoring or their surveys, do you see
20 that?

21 A: I see that.

22 Q: And do you also see the observation that
23 breaching and completely draining the
24 impoundment will definitely have an impact on
25 rookery at the present?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: I see that.

2 Q: And that we would only be concerned if the
3 birds were actually nesting, do you see that?

4 A: I see that.

5 Q: Now, if you rely on the Department of Natural
6 Resources and they tell you that they would be
7 concerned if there are birds nesting along that
8 lake and you have photographs from the
9 homeowners of birds, including wood storks,
10 nesting along the lake, can you explain to the
11 Court why you would ignore that consideration
12 in ruling on this permit?

13 **MR. HABER:** Objection, Your Honor, I don't think
14 it's been proven that any photographs provided
15 by petitioners have any evidences of wood
16 storks nesting as opposed to foraging.

17 **MR. NORTH:** Your Honor, Exhibit Number 1 is full of
18 those pictures. We can go through them in
19 detail. Those were all presented. In fact,
20 they were even presented to the DHEC board as
21 a part of Exhibit 1, which was our
22 presentation to DHEC.

23 **MR. HABER:** Small response, Your Honor, there's a
24 difference between nesting and forging and I
25 don't believe that it's been proven these



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 pictures depict these animals nesting in the
2 area. Simply my point.

3 **THE COURT:** I'm going to allow him to continue with
4 his questioning.

5 **MR. HABER:** Thank you.

6 **THE COURT:** So, therefore, the objection's
7 overruled.

8 Q: Would it be fair to say that despite having the
9 information from the Department of Natural
10 Resources and reports from the homeowners of
11 nesting wood storks and other colonial birds in
12 the lake area, you ignored that aspect of the
13 application?

14 A: I corresponded with the agency that we
15 typically correspond with with regard to these
16 factors and they indicated that there was not
17 -- not an issue. No longer an issue.

18 Q: Are you talking about the wetlands group?

19 A: No, I'm talking about Susan Davis with
20 Department of Natural Resources. And this --
21 this is not the end of that correspondence.

22 Q: Did she at some point in time change the
23 opinion that she expresses on page 14 that she
24 would be concerned if the birds were actually
25 nesting?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: She responded to this -- this e-mail and
2 indicated -- I don't remember exactly what --
3 what her indication -- basically indicated
4 there should be no further impact.

5 Q: You testified that Beaufort County is not
6 delegated. Could you explain to the Court what
7 you're referring to and maybe give a little
8 more detail about that?

9 A: The state storm water regulations, the 72-300,
10 et. seq., allow local governments to apply for
11 delegation to implement the state storm water
12 regulations, to implement 72-300 at the local
13 level. They could apply for that -- apply to
14 the Department for that and, you know, the
15 Department would review their application and
16 determine if they were able, capable of doing
17 such. And if they were, they would be approved
18 to do that and then that local agency could,
19 you know, implement the -- those regulations in
20 their -- within their jurisdiction.

21 Q: Okay. As it currently stands, though, is it
22 fair to say OCRM has its rules and regulations
23 and Beaufort County has theirs and both
24 governmental entities exercise those
25 ordinances, regulations, and rules?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Correct.

2 Q: You were asked about the delay in the
3 processing of this application. Is it fair to
4 say that your department is required to act on
5 a completed permit within 90 days? A completed
6 permit application.

7 A: Within 90 days?

8 Q: Yes, of the application being complete.

9 A: I'm not aware of such a requirement, no.

10 Q: Okay. Is it fair to say that with regard to a
11 failed dike, that no application was made for
12 any sort of action for any sort of retrofit
13 until 14 months after the dike failed?

14 A: I don't -- I don't know the exact date of the
15 -- the -- the failure and I don't recall that
16 the time it took to call back.

17 Q: Well, actually, it's 16 months. I thought you
18 testified that the first submittal of anything
19 came in October of 2010.

20 A: I -- I could tell you that we received the --
21 the -- the application, the NOI, on October --
22 looks like October 1st of 2010.

23 Q: Do you recall that Amanda Nodolf got that NOI
24 after having to send a letter citing violations
25 of various acts and demanding that an NOI be



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 delivered within 60 days?

2 A: I know that Amanda, you know, had some
3 correspondence in effort to try and bring this
4 project into compliance. I don't recall
5 exactly what or how many or when she sent.

6 Q: Do you recall that there were letters in the
7 file from hr to the developer or the
8 developer's engineers where she had to put
9 demands on time frames to get information that
10 had been promised?

11 A: I believe -- yeah, I recall that there were.
12 Was one of those?

13 Q: Yeah, is it fair to say that the final
14 submittal of everything that you needed in
15 order to issue this retrofit permit in June of
16 2012 was not received by you and some of it not
17 until May of 2012?

18 A: I'm not sure exactly when the last piece of the
19 application package came in. I'd have to look
20 at the file to ---

21 Q: Would it be fair to say, you know, that even
22 more fairness. Would it be fair to say that
23 the last of it would have come in within 60
24 days before you finally acted?

25 A: Yes, it would have been ---



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay.

2 A: --- shortly before.

3 Q: So if I understand you correctly, all of the
4 materials you needed to issue the retrofit took
5 almost three years to get presented to you?

6 A: That sounds -- sounds about right, too.

7 Q: You talked about the fact that nobody had
8 submitted a water sample that showed any
9 degradation. You're not suggesting, are you,
10 the fact that nobody brought a sample in some
11 how suggests that the water wasn't degraded by
12 the change in the storm water systems, are you?

13 A: I'm sorry, what's the question?

14 Q: Well, you were asked some questions about the
15 fact that nobody had submitted any samples of
16 water for testing and I'm just -- I want you to
17 confirm that you're not suggesting, are you,
18 that water is not degraded just because
19 somebody didn't happen to bring in a bottle
20 with a sample?

21 A: I'm -- I'm not saying that -- I mean, all I'm
22 saying is that we didn't receive -- you know,
23 we haven't seen a sample or any testing done
24 that has, you know, indicated that there's
25 degradation in the waterway, but I'm not saying



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 ---

2 Q: One way or the other?

3 A: Right.

4 Q: Okay. And you were asked whether or not you
5 had any information from the Department of
6 Natural Resources that shellfish were
7 negatively impacted. You don't have any
8 information one way or another whether
9 shellfish were negatively impacted, do you?

10 A: Correct.

11 Q: Take a look, if you would, at Exhibit 19 and
12 within Exhibit 19 is page III-60. Exhibit 19.

13 **MR. HABER:** Yours or theirs?

14 **MR. NORTH:** Yes, I'm sorry, Petitioners Exhibit 19.

15 A: What page?

16 Q: III-60. Do you recall testifying with regard
17 to storm water runoff requirements within a
18 half a mile of the coastal zone that the use of
19 the word may in a sentence in your view gave
20 you options to consider various types of
21 treatment for storm water?

22 A: Yes..

23 Q: Okay. And that sentence says storage may be
24 accomplished through retention, detention or
25 infiltration systems as appropriate for the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 specific site.

2 A: Correct.

3 Q: Now, would you look at the sentence before
4 that, does not the sentence before that tie in
5 and those two sentences work together where the
6 first sentence requires it says shall be
7 stored? A certain amount of runoff shall be
8 stored from the entire site. Do you see that?

9 A: I see ---

10 Q: Let me read it for you.

11 A: Okay.

12 Q: It says for all projects, regardless of size,
13 which are located within one-half mile of a
14 receiving body in a coastal zone, this criteria
15 shall be storage. Shall be storage ---

16 A: Okay.

17 Q: --- of the first one-half inch of runoff from
18 the entire site or storage of the first inch of
19 runoff from the built upon portion of the
20 property, whichever is greater.

21 A: I see that.

22 Q: That storage that is required may be
23 accomplished through retention, detention, or
24 infiltration as appropriate for the site. Do
25 you -- reading those two sentences together,



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 are you still suggesting to the Court that some
2 how a filter basket in a storm sewer inlet
3 would have anything to do with the requirements
4 in that section?

5 A: Yes.

6 Q: And what's your basis for that?

7 A: These -- these very policies here and the
8 regulations that are included in 72-300.

9 Q: Are not these storm water guidelines for the
10 area within half a mile of the coastal zone the
11 enhanced requirements that would override
12 whatever the general requirements are in 72-
13 300?

14 A: The -- they do apply to the site.

15 Q: And would you not agree that a storm sewer
16 permit in Beaufort County cannot be issued at
17 all unless it complies with Exhibit 19, which
18 is the Coastal Consistency Management Program?

19 A: It does have to comply.

20 Q: And if it doesn't comply with this paragraph,
21 it doesn't comply, does it?

22 A: We found that it did comply.

23 Q: I know you did, that's why we're here.

24 MR. NORTH: I have no further questions.

25 MR. HABER: Objection, Your Honor, to the last



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 statement.

2 **THE COURT:** Sustained.

3 **MR. HABER:** Thank you.

4 **THE COURT:** Mr. Haber, anything further of this
5 witness?

6 **MR. HABER:** No, Your Honor.

7 **THE COURT:** Thank you. Be seated. Mr. North, are
8 you prepared to call your next witness?

9 **MR. NORTH:** I am. I would call Pamela North.

10 **THE COURT:** Mrs. North, I think you know the drill.
11 Face the court reporter ---

12 **MRS. NORTH:** I think so.

13 **THE COURT:** --- before you take your seat. Raise
14 your right hand to be sworn.

15 **PAMELA NORTH,** being duly sworn, testifies as follows:

16 **COURT REPORTER:** State your name for the record.

17 **THE WITNESS:** Pamela North.

18 **MRS. NORTH - DIRECT EXAMINATION BY MR. NORTH:**

19 Q: Please state your name for the record. Oh, you
20 just did.

21 A: I did already, but I'll do it again.

22 Q: I have a better question. Please tell me what
23 you did with your witness outline.

24 A: I don't know.

25 **MR. NORTH:** Should I call my next witness, Your



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Honor?

2 Q: Could you tell the Court a little bit about
3 your background, your education, where you
4 live?

5 A: I live at 2 Rush Street in Beaufort, which is
6 in the rookery. I'm trained as a lawyer. I
7 graduated from law school in 1977 and practiced
8 actively until five or six years ago.

9 Q: Okay. Is it fair to say that you are
10 effectively my boss?

11 A: Not any more.

12 Q: How -- where is your property in relation to
13 the other petitioners and the dike?

14 A: Our property is the closest to the dike. We
15 have frontage on Cowen Creek and also along the
16 lake. The Brunings live next to us, but not on
17 the lake itself. Then around the corner are
18 the Feron's two blocks, and then Martha James
19 and Don's lot, and then Sally Haley's lot.

20 Q: Okay. Why did you buy that lot?

21 A: At the time we had a boat that required a deep
22 water dock and we looked all through Beaufort
23 and Charleston for a deep water property that
24 would accommodate it and that particular lot,
25 because of its shape and where it was



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 positioned, was the one we agreed that we
2 wanted. It had an old house on it that needed
3 a big remodel, but the property itself was
4 unique. It was out on a point; it had almost
5 450 feet of frontage on water whether you count
6 Cowen Creek or the lake. It looked straight
7 out to Port Royal Sound. The way the original
8 house was oriented, the -- you saw essentially
9 no neighbors. Your view was out the waterway
10 and across this beautiful lake to undeveloped
11 property.

12 Q: You have an open view of the Atlantic Ocean?

13 A: Yeah, on clear days you can see the waves.

14 Q: And on a non-clear day, I mean, you can look
15 out and see Hilton Head, can't you?

16 A: Yeah, you can.

17 Q: Hilton Head Island?

18 A: Yes, you can.

19 Q: Before you selected that property, do you
20 remember driving up and down every inlet,
21 river, creek, bay and sound between Charleston
22 and south -- all the way through south of
23 Savannah?

24 A: I can't testify that we drove every road, but
25 we surely drove a lot of roads.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: You spent months looking at every possible area
2 for a home site?

3 A: Yes.

4 Q: Tell the Court why this home site was so unique
5 to you.

6 A: You know, we started looking for deep water, so
7 that was on our -- our criteria, but the -- the
8 lake truly was magical. It had all of these
9 nesting and wading birds and, you know, just
10 the setting with this pristine water all along
11 one side of the house and on the other side of
12 the house deep water was just -- we saw nothing
13 like it anywhere.

14 Q: How far was your screen porch from the lake?

15 A: Well, our house is elevated up about 14 feet.
16 It's only one floor, but it's elevated 14 feet
17 and on the lake side, the closest point is
18 about five feet from -- from what used to be
19 the level of the water in the lake.

20 Q: Okay. Now, you're referring to the area that's
21 the screen porch?

22 A: Yes.

23 Q: Okay. Would it be fair to say that before the
24 break in the dike, the vast majority of all
25 time spent in the house was on the screen



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 porch?

2 A: Absolutely.

3 MS. COLWELL: Objection, Your Honor, he's leading
4 the witness.

5 THE COURT: It is somewhat leading, but I'm going
6 to allow it.

7 Q: Now, from that vantage point, were you able to
8 see wood storks?

9 A: From the vantage point of the screen porch?

10 Q: Yes. Well, from -- let's back up. From the
11 vantage point of anywhere looking toward the
12 lake.

13 A: Yes, along the lake side there is my office;
14 there is a room that has the screen porch off
15 of it and then there's the back deck. From any
16 of those areas, you could stare right down at
17 the wood storks wading and feeding and you
18 could see ---

19 Q: Would you be looking straight down at them?

20 A: Just about, but they use that entire lake to
21 fish and do what wood storks do, and you could
22 see them in the trees across -- across the way
23 on G tract.

24 Q: Did you see a multitude of wood stork nests
25 throughout that area?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 **MS. COLWELL:** Objection, Your Honor, continuing to
2 lead his witness.

3 **THE COURT:** Yes, please rephrase that question.

4 **MR. NORTH:** Okay.

5 **Q:** Tell me about wood stork nesting around the
6 lake?

7 **A:** I saw wood storks sitting in nests through some
8 binoculars, at least it appeared to me to be
9 nests. I think Sally Haley, who will testify
10 later, can speak to that subject more
11 accurately since she was closer and she's a
12 bird watcher.

13 **Q:** Do you remember seeing wood storks bringing
14 food to females sitting on nests?

15 **A:** That's what it appeared to me.

16 **Q:** Do you remember anything about egrets or ibis
17 or any of the other types of colonial birds?

18 **A:** Yes, they were all through the lake and they
19 all appeared to have nests up on G tract.
20 There were always baby ibis and herons
21 wandering around. The lake was full of bird
22 life.

23 **Q:** Whatever other kind of wildlife?

24 **A:** Alligators; we saw an otter; I even saw a rosy
25 spoonbill once; there were turtles. As I said,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Sally can speak to this. I think she took a --
2 kept a list of everything.

3 Q: When you remodeled the house, what did you do
4 with regard to windows along that south side of
5 the house?

6 A: We installed -- there were a few small windows.
7 The screened porch wasn't every open. We
8 changed the configuration of that house and
9 installed a bank of windows so that view was
10 available.

11 Q: So that you could maximize the view of the
12 lake?

13 A: Yes.

14 Q: When you bought your house, did you get a copy
15 of a plat that showed the lake at that
16 location?

17 A: Actually, I think our deed incorporated a plat
18 on which the -- it was described lake.

19 Q: What about social use of the house as it
20 relates to the lake or the failure of the
21 dike?

22 A: Oh, all of our -- all of our kids, we have
23 numerous, love the house. All of our time was
24 spent on the screened porch; we had heaters
25 installed so we could use it during the cold



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 weather. I mean the view was, of all places in
2 the house, the most interesting and the most
3 compelling for everyone.

4 Q: Okay. Tell us about your daughter's wedding.

5 A: Our daughter wanted to get married at home and
6 so we said fine, sure. She loved the setting
7 and loved the house, so we started planning the
8 wedding. The dike broke, but we were assured
9 that it would be fixed before her actual
10 wedding, but, of course, it was not. So all of
11 the guests arrived to a view of a huge mudflat.
12 You know, we oriented the wedding toward -- you
13 know, toward the dock and away from the
14 mudflat, but it was an afternoon wedding.
15 There it was.

16 Q: Did all the guests have to come up the driveway
17 and pass the mud pit to get to the house?

18 A: Yes.

19 Q: Did you have any discussions with anybody from
20 OCRM the first year or two after the dike
21 failed?

22 A: Yes.

23 Q: Tell me about that.

24 A: We knew Geordie Madlinger from dealing with
25 dock permits I think because we put a boat lift



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 on our dock and we needed a permit and that
2 sort of thing, so when nothing was happening as
3 far as repair of the dike or anything, we
4 called him and said come and look at this.
5 What can be done? And he said ---

6 **MR. HABER:** Objection, Your Honor, hearsay.

7 **THE COURT:** Sustained.

8 **MR. NORTH:** All right. Your Honor, I think the
9 response will be an admission against interest
10 that would not be hearsay. I'll tell you what,
11 I'll withdraw the question if we can get
12 assurances that Mr. Madlinger will be here on
13 Thursday as noticed.

14 **MR. HABER:** Your Honor, I'm not sure, on the
15 record, if Mr. Madlinger will be here on
16 Thursday or Friday.

17 **MR. NORTH:** Well, what about here for the case.

18 **MR. HABER:** Again, he will be in front of me for my
19 case in chief.

20 **MR. NORTH:** Okay. Then that's fine. As long as --

21 -

22 **MR. HABER:** Which you'll be (inaudible).

23 **MR. NORTH:** We don't need to bicker about it.
24 We'll just wait for Mr. Madlinger.

25 **MR. HABER:** That'd be fine, Your Honor.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Tell me your view of the present appearance of
2 the lakebed.

3 A: Since the dike failed, there's been some growth
4 of marsh grass, mostly up where the water comes
5 in from the golf course. Unfortunately, it's
6 not where our view is. If you look out our
7 deck or off our screen porch and you look
8 across at G tract, it's essentially a mudflat.
9 I think there's a little chunk of marsh grass
10 in the middle. It's a big rutted mudflat.

11 Q: Does it look a lot better when the tide comes
12 in?

13 A: If it's a full tide it looks almost like it
14 used to, but it doesn't last very long.

15 Q: And when it does come in, do you have the same
16 wildlife that you had when the water was there
17 all the time?

18 A: No, no wildlife.

19 Q: As of today, are there any bird nests around
20 the lake?

21 A: I haven't seen any.

22 Q: Do you see any birds in the trees?

23 A: On occasion, there might be an ibis or two, but
24 certainly I haven't seen any wood storks there;
25 I haven't seen any herons around, basically not



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 much.

2 Q: Do you have Exhibit 1 handy?

3 A: Yes, I have it in this book.

4 Q: Okay. If you could flip to Exhibit 1, I would
5 appreciate it.

6 A: All right.

7 Q: Let's go in chronological order. Let's go to
8 page seven, if you could.

9 A: It looks like it's been renumbered from six to
10 seven, so you'll have to tell me what I'm
11 supposed to be looking at.

12 Q: Is it a picture of the area outside of the
13 dike?

14 A: Yeah, the Google Earth?

15 Q: Yes.

16 A: Yes, I have it.

17 Q: Okay. Do you recall measuring the distance
18 between the breach in the dike and the oyster
19 bed by following the circuitous route outside
20 of the dike?

21 A: Yes.

22 Q: Tell me what you did to accomplish that.

23 A: Got in a kayak with a bunch of tomato stakes
24 that are very tall; kayaked in to the breach of
25 the dike in that circuitous route; stuck the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 tomato stakes into the ground along the route
2 until the first chunk of oysters and took a
3 pink string and tied it to each of the tomato
4 stakes so the pink string and the tomato stakes
5 followed the circuitous route.

6 Q: And in doing that, take a look at page eight,
7 is that a picture of oysters in the marsh grass
8 outside of the dike?

9 A: Yes.

10 Q: And are those oysters far inside of the area on
11 page seven where the white appears?

12 A: Oh, yes.

13 Q: Okay. Is it fair to say that there are oysters
14 between the dike and the white area depicted on
15 page seven?

16 A: Yes.

17 Q: And is page eight a picture of some of those
18 oysters?

19 A: Yes.

20 Q: Okay. Take a look at page nine, is that the
21 result of your string project?

22 A: Yeah, that's part of it.

23 Q: Okay.

24 A: It's not the entire string project, but that's
25 what it looked like.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Was an effort made to plant the stakes
2 in the middle of the channel?

3 A: Yes.

4 Q: Okay. I notice that there is some tidal water
5 there, but it doesn't -- hasn't yet entered the
6 lakebed, is that right?

7 A: Could you rephrase that question?

8 Q: Yes. I notice that there's tidal water showing
9 in the picture, but not at a high enough
10 elevation to actually be covering the lakebed
11 ---

12 A: That's correct.

13 Q: Do you see that?

14 A: Yes, that's correct.

15 Q: Okay. Is it fair to say that the lakebed is not
16 covered until the tide is quite high?

17 **MS. COLWELL:** Your Honor, I'd like to object again
18 to the -- the leading nature of the question
19 and also to the fact that Mr. North is coming
20 dangerously close to testifying himself through
21 his witness, in which case we'll need renew our
22 motion to disqualify him.

23 **THE COURT:** Mr. North, you are coming very close --

24 -

25 **MR. NORTH:** Okay. I'll ---



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 THE COURT: --- to testifying. I am sustaining.

2 MS. COLWELL: Thank you, Your Honor,

3 Q: Do you have a rough idea of the tidal range in
4 Beaufort County?

5 A: Eight feet, I believe.

6 Q: Roughly?

7 A: Roughly.

8 Q: Okay. How often during the day would there
9 actually be water covering the lakebed?

10 A: That I can see or would there be?

11 Q: That -- well, either. I mean, when the tide,
12 you know ---

13 A: You know, about upper tide there would be water
14 covering the lakebed, but unless it's a very
15 high tide, it doesn't cover the entire surface,
16 what used to be the lake.

17 Q: How long does it last?

18 A: About 45 minutes.

19 Q: Okay. Is it then gone?

20 A: Well, then it's moving out.

21 Q: Okay.

22 A: It's not instantly gone, but it's moving away.

23 Q: Is the rest of the day then just the mud pit?

24 A: Oh, sometimes there's a trickle of water
25 through it; sometimes there's, you know, an



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 inch or two on part of it; it just depends on
2 the tidal cycle and that ---

3 Q: There's always a flow of water, isn't there?

4 A: Yeah, from up by the golf course there's always
5 a little trickle.

6 Q: Okay. Take a look at page ten, is that an
7 additional depiction of the markers down the
8 channel?

9 A: Yes.

10 Q: And tell us about 11.

11 A: Well, that's the -- that's the last of the
12 stakes and there -- there are oysters that you
13 can see right adjacent to the stake in the mark
14 grass.

15 Q: And tell us about the efforts to plant the last
16 stake.

17 A: It was very difficult because it was in a big
18 clump of oysters. It wasn't like in mud or
19 anything like that.

20 Q: Did you then measure your pink rope?

21 A: Yes.

22 Q: And what was the measurement?

23 A: Right about 350 feet, maybe a little bit less.

24 Q: Okay. Take a look at page 13, if you would.
25 Is that -- what is that a picture of?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: My copy is so bad I can't tell what it is.
2 Q: Okay.
3 A: It looks to -- it looks to be -- if I hold it
4 away, I believe it's a view across from our
5 house across the mud lake bottom to G tract.
6 Q: Tell you what, let me substitute a copy for
7 you.
8 **MR. NORTH:** Worthless.
9 A: Yeah.
10 Q: Okay. Can you see that one better?
11 **THE COURT:** What page?
12 **MR. NORTH:** Twelve.
13 A: Twelve.
14 **THE COURT:** Twelve.
15 A: I'm sorry, I'd like to be able to tell you what
16 this is, but I can't.
17 Q: Okay. Take a look at page 13, if you would,
18 what is that?
19 A: That's a close-up of what the mud looks like.
20 Q: Do you see an oyster in that picture?
21 A: I believe there is one in the middle of the
22 picture.
23 Q: Take a look at page 15, if you would.
24 A: Yes, I have it..
25 Q: Is that your house depicted, the roof of your



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 house?

2 A: Yes.

3 Q: At the time of that photo, do you see that it
4 was copyrighted in 2012 by Google?

5 A: Yes, I see that.

6 Q: Can you see any marsh grass?

7 A: In the lakebed?

8 Q: Yes.

9 A: No.

10 Q: Take a look at -- and that was three years
11 after the break, is that correct?

12 A: The break was in June of 2009.

13 Q: Okay. Take a look at page 16. What does that
14 depict?

15 A: I have it. That's after the failure of the
16 dike and that is water, you know, over our yard
17 boundaries at a high tide.

18 Q: Take a look at page 17 and tell me what that
19 depicts.

20 A: That was a photograph taken at night because it
21 was a high tide at that particular time, so it
22 was taken with a flash light and the darker
23 area to the right of the sort of orangey part
24 is -- is the level of the water at that time
25 and the side of my house is right there with an



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 irrigation spigot standing.

2 Q: How far from the house was the tidal water?

3 A: About three feet.

4 Q: Take a look at page 18 and what is that a
5 picture of?

6 A: Again, my copy is terrible. I can't -- Oh, on
7 the lower right-hand side of the photograph are
8 the curved -- is the curved stairway going up
9 to my front porch and the -- the areas between
10 that and the -- the two palm trees there have
11 water on them.

12 Q: On -- at the time that photo was taken, were
13 you able to walk to the back of the house
14 around that side of the house?

15 A: No.

16 Q: Was the water up to these bushes?

17 A: It was up to the bushes and to the corner of
18 the stairway.

19 Q: Take a look, if you would, at page 18. I tell
20 you what, let's skip 18. I think these next
21 few photos are so poor that it's difficult to
22 deal with them. We have some better daytime
23 pictures. Take a look, if you would, at page
24 20, what does that depict?

25 A: Page 20 or page 21?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: 20.

2 A: Again, that's dark. The photo is -- I can't
3 tell you what it is. I believe this is the
4 area across the lake on G tract. We kayaked
5 over there to see what was happening. It's
6 right by the breach of the dike.

7 Q: Did you observe trees that were being submerged
8 by the tidal waters?

9 A: Yes.

10 Q: Take a look, if you would, at page 21.

11 A: I have it.

12 Q: Did you observe that tree and it's roots in
13 that condition?

14 A: Yeah, that was on -- that was on G tract and it
15 appeared that the tidal waters had undermined
16 the -- the roots of that tree.

17 Q: Take a look, if you would, at page 22. What
18 does that depict?

19 A: Well, on the bottom right corner is the back of
20 the kayak and this is on G tract in a little
21 inlet area where the tidal water is now going
22 and there are a bunch of downed trees.

23 Q: Trees that have fallen over and died from the
24 change in conditions?

25 A: I don't know whether they died because of the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 change in conditions, but they're certainly
2 dead.

3 Q: Take a look, if you would, at page 23. Have
4 you observed ruts in the lakebed of the lake
5 from the flow of tidal waters?

6 A: Yes.

7 Q: Are the ruts today much deeper than those
8 depicted on page 23?

9 A: It's hard for me to say. There -- it's still
10 rutted, but I don't know by comparison whether
11 they're deeper or -- or the same.

12 Q: What does 24 depict?

13 A: Twenty-four, again, is a photograph from my
14 front porch. You can see the stairway coming
15 up and it is a view from the front of the house
16 across the lake with water in it.

17 Q: Is that what the lake looks like when it's full
18 of water?

19 A: Yeah.

20 Q: Take a look, if you would, at page 25.

21 A: Yes, I have it.

22 Q: And what is that a view of?

23 A: It's the same thing, that's what the lake looks
24 like when there's water in it.

25 Q: Okay.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: It's taken from our back deck because our bird
2 feeder is up in the top right.

3 Q: Okay. So that's the view from your back deck
4 looking down the lake?

5 A: Yes.

6 Q: Now, was that photo taken before or after the
7 break in the dike?

8 A: I believe this was taken after the break in the
9 dike, but I don't see any marsh grass. It
10 hasn't -- hasn't grown. There are no birds in
11 the trees, so that suggests to me that it was
12 after the break in the dike.

13 Q: Okay. Take a look, if you would, at page 26.

14 A: I have it.

15 Q: Is that your view now for the vast majority of
16 the day from that same deck?

17 A: Yeah, that's our bird feeder, again, and that's
18 -- that's the view.

19 Q: Do you find that view disgusting and
20 distasteful?

21 **MS. COLWELL:** Objection, Your Honor.

22 **THE COURT:** Sustained.

23 Q: How do you find that view?

24 A: Ugly.

25 Q: What is the lake called by the people who



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 reside around it?

2 A: The lake.

3 Q: After the break in the dike what's it called?

4 A: The mud pit.

5 Q: Take a look, if you would, at page 27, what is
6 that?

7 A: That is -- that appears to be the view from
8 Sally Haley's back yard.

9 Q: And what is 28?

10 A: That is a view from either the James backyard,
11 the Feron backyard, or the Haley backyard
12 looking out toward the dike.

13 Q: Take a look, if you would, at Exhibit 30, what
14 is that? Or page 30, I'm sorry.

15 A: A close-up of the mud.

16 Q: Have you noticed anything after the break in
17 the dike having to do with insects?

18 A: Yes, we have had tons more mosquitos than we
19 ever had before.

20 Q: Take a look, if you would, at page 31.

21 A: Yes.

22 Q: What is that?

23 A: That's what the lake looked like before the dam
24 broke with all the birds.

25 Q: And what is 32?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: That's a close-up of the birds up in the trees
2 across on G tract before the dike broke.

3 Q: What is 33?

4 A: These photographs, I believe, were taken by
5 Sally Haley or Martha James and they accurately
6 depict wood storks and other wading birds in
7 the lake before the dike broke.

8 Q: Take a look at the photo that's closest to the
9 number 33 on that page. Do you see two wood
10 storks in that picture?

11 A: I see one wood stork, but I don't see very
12 well.

13 Q: Can I give you a better copy?

14 A: Yes.

15 Q: No, closest to 31.

16 A: Oh, that -- that one. Oh, yes, in that -- I
17 had the wrong photo. Yeah, there are two wood
18 storks in that picture.

19 Q: And is the one on the left -- what does it
20 appear to be doing?

21 A: That appears to be nesting based on what I can
22 see.

23 Q: Take a look at page 34.

24 A: Yes.

25 Q: What do those four photos depict?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: Wood storks.

2 Q: And are those all around the lake?

3 A: This looks like the lake to me and I have
4 observed wood storks in the lake many times.

5 Q: Take a look, if you would, at page 48. No,
6 strike that. Save that for a different
7 witness. Take a look, if you would, at Exhibit
8 6.

9 A: Six. I have it.

10 Q: Okay. At some point did you take some
11 measurements of distances in the vicinity of
12 Garfield Park?

13 A: Yes.

14 Q: Tell the court what you did.

15 A: You asked us to get some photographs, by us, I
16 mean me and Martha James, that showed the
17 distance between the storm water inlets for
18 Garfield Park and the concrete pipe outlet
19 where they fed into and went into a part of the
20 former lake.

21 Q: Okay. What does the first page of that exhibit
22 depict?

23 A: That's where the -- the pipe feeds into.

24 Q: Feeds into the lake?

25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. And is the next page the same thing, but
2 a close-up?

3 A: Yes.

4 Q: And does it show the end of the tape measure?

5 MS. COLWELL: Objection, Your Honor, leading.

6 THE COURT: Sustained.

7 Q: Do you -- tell the Court what you did with the
8 tape measure that's depicted in these pictures.

9 A: We put the tape measure on the pipe. Martha
10 held it at one end and in the next photograph,
11 you can see her standing on it on the pipe; you
12 can see the tape measure to the storm water
13 inlet. On the following picture, you show --
14 what's depicted is the distance.

15 Q: And what did you measure the distance to be?

16 A: 40 feet. And on the next photograph, we are
17 measuring from an inlet further away to the
18 same outfall pipe and on the next photograph it
19 shows that that distance is 76 feet. The next
20 photograph simply shows the inlet.

21 Q: The inlet and you -- and the reflective water
22 inside of it?

23 A: Yes.

24 Q: Take a look, if you would, at Exhibit Seven.

25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. Do you see the first page looking toward
2 the lake?

3 A: I see the first page looking toward the lake,
4 yes.

5 Q: And is that from Sheridan Street?

6 A: I believe it is.

7 Q: What does the next page indicate?

8 A: I'm sorry, I can't identify that one.

9 Q: I tell you what, skip two pages ahead. Do you
10 see a picture of a whole bunch of trees?

11 A: Yes, the last -- the last photo in this
12 exhibit.

13 Q: Yes.

14 A: Yeah. Where was that taken?

15 A: That -- that's the part that is the dedicated
16 wetlands I believe, which is if you're looking
17 toward our house and Cowen Creek, it's to the
18 left.

19 Q: Okay. And go one page before that, what does
20 that show? Does that also show a portion of
21 the dedicated wetlands?

22 A: I don't know. I can't identify it.

23 Q: Have you observed salt water tidal flows in the
24 dedicated wetlands?

25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: Have you observed a large number of dead trees
2 in the dedicated wetland?
- 3 A: Yes.
- 4 Q: Did you observe a change in the health and life
5 of those trees after the dike broke?
- 6 A: They appeared to die.
- 7 Q: Take a look, if you would, at Exhibit 8.
- 8 A: Eight?
- 9 Q: Yes. Can you identify those photos?
- 10 A: Well, they're clearly oyster beds, but the
11 photograph is -- is not good enough for me to
12 orient to exactly where they are.
- 13 Q: Can I give you some better photos? Try these.
- 14 A: Well, this is along Cowen Creek, I believe.
- 15 MS. COLWELL: I'm sorry, John, what's she looking
16 at?
- 17 MR. NORTH: She's looking at Exhibit 8.
- 18 MS. COLWELL: I've got 8.
- 19 MR. NORTH: We're on the same one. Yes, the page -
20 - page one of Exhibit 8.
- 21 Q: That's Cowen Creek?
- 22 A: Yes, I believe so.
- 23 Q: And you see the dike in the background?
- 24 A: Vaguely, barely.
- 25 Q: Well, do you remember going out and taking



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 photos of the oysters in the vicinity of the
2 dike?

3 A: Yes.

4 Q: And are these those photos?

5 A: Yes, I can see now the overhanging trees over
6 the -- over the part of the dike that isn't
7 breached.

8 Q: Do you see in that picture any dead oysters?

9 A: The white ones I believe are dead.

10 Q: And the ones adjacent are not dead?

11 A: That's my understanding.

12 Q: Okay.

13 **THE COURT:** Now, which picture is she looking at?

14 **MR. NORTH:** The second one of page eight, that
15 should be this one right here.

16 Q: The third page, is that again the oysters?

17 A: Yes.

18 Q: Now, in that third page, do you see the outfall
19 of the trench that you measured?

20 A: Which -- third picture?

21 Q: That one.

22 A: Yes.

23 Q: Okay. Do you see the oysters that you observed
24 along the sides of the trench that lead up to
25 the break in the dike?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: Yes, absolutely.
- 2 Q: Are the balance of the pictures in Exhibit 8
- 3 just pictures of the oysters that are adjacent
- 4 to the dike?
- 5 A: Yes, the view is from -- from basically the
- 6 waters right out -- right adjacent to our house
- 7 looking toward the west and the -- the greenery
- 8 is -- is marsh grass and the big trees, I
- 9 believe, are on G tract.
- 10 Q: Okay. Now, the last page of Exhibit 8 ---
- 11 A: Uh-huh (affirmative response).
- 12 Q: --- can you tell me what that shows?
- 13 A: This shows oysters growing in the marsh grass.
- 14 Q: Okay. And is it your testimony that in the
- 15 marsh grass behind your house even before you
- 16 get to the oyster beds, the oysters are also
- 17 growing in the marsh grass?
- 18 A: Yes, they are.
- 19 **MS. COLWELL:** Objection.
- 20 Q: Can you tell me what crustaceans, if any, might
- 21 be found in the marsh grass?
- 22 A: Crustaceans are crabs, I believe.
- 23 Q: Okay. Well ---
- 24 A: Bi-valves ---
- 25 Q: --- shellfish.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: Shellfish, oysters are in there; crabs are in
2 there; little crabs.
- 3 Q: Take a look, if you would, at Exhibit 9.
- 4 A: I have it.
- 5 Q: Can you tell me what that is a picture of?
- 6 A: That is a picture of what it looks like when it
7 rains about two blocks from my house. Garfield
8 Park is to the left in that photo.
- 9 Q: What is to the right?
- 10 A: To the right is the golf clubhouse.
- 11 Q: Okay. What direction does the water flow at
12 that location?
- 13 A: Down -- down the road, I believe.
- 14 Q: That's all right, there's a couple different
15 directions. You see the traffic -- the street
16 sign there?
- 17 A: Yes.
- 18 Q: Okay. The water -- there's the main pool of
19 water adjacent to the car. What direction does
20 it flow after it hits that location?
- 21 A: I don't know for sure.
- 22 Q: Take a look at page two.
- 23 A: Of that exhibit?
- 24 Q: Yes.
- 25 A: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Did you observe water flowing from the street
2 in that picture?

3 A: Yes.

4 Q: Okay. What direction is it flowing?

5 A: It appears to be flowing toward the lake.

6 Q: What about the third page?

7 A: I believe it depicts just a different view.
8 There's the stop sign at the top of the page.

9 Q: Now, go back to that first page if you could.
10 Do you see the stream of water coming down the
11 middle of Waveland Avenue?

12 A: Yes.

13 Q: Is there a ridge or a top of a hill by the
14 entrance to the golf clubhouse?

15 A: I don't know for sure, but it appears to be
16 that way, otherwise the water would be all
17 spread out.

18 Q: Do you believe that your home site is worth
19 less money today adjacent to a mud pit than
20 adjacent to what you purchased, the lake?

21 A: Yes.

22 Q: Do you have any way to quantify the decrease in
23 value?

24 A: Not in particular dollars. I've never asked
25 for or received an appraisal after the break in



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the dike. Common sense tells you that with a
2 view of the mud, the house is worth less than
3 a view of the water.

4 Q: Without regard to the financial aspects of it,
5 is it fair to say that the aesthetic value to
6 you and your enjoyment of the house has
7 lessened?

8 A: It's non-existent at this point.

9 Q: Tell me about plants -- freshwater plants that
10 had a misfortune recently.

11 A: After -- well, at the time when we finished the
12 remodel of the house, we spent a good deal of
13 time landscaping everything and between the
14 driveway and the edge of the lake we planted a
15 big stand of bog iris and camellias and azaleas
16 and then some holly trees and grass in front
17 and that sort of thing. After the dike broke,
18 all of it died, including the ground cover that
19 was there. We tried to replant a couple of
20 things and it just didn't take, so now it's
21 nothing. It's just a big blank area where --
22 with mulch.

23 MR. NORTH: I have no further questions.

24 THE COURT: I think now is a good time to take a 10
25 minute break before we go into this witness'



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 cross.

2 (A break was taken from 3:24 p.m. until 3:46 p.m.)

3 MR. NORTH: Your Honor, can I do one thing before
4 we start the cross-examination?

5 THE COURT: Yes.

6 MR. NORTH: One exhibit that I forgot to mention
7 was Exhibit 63. It's already marked by me as
8 being in evidence, but it might be convenient
9 from a foundational standpoint to just point
10 out that that exhibit is a variety of
11 photographs taken from the residences of the
12 various petitioners last Friday to show the
13 condition of the mud pit. I don't need to go
14 through it with the witness if you don't wish,
15 but I just want to make sure that the other
16 side is aware that it's in evidence and if they
17 want to question about it, they're free to do
18 so. Or if the Court wishes to see the
19 condition of the mud pit as of last Friday,
20 these are the photos that show it.

21 THE COURT: That's Exhibit 63.

22 MR. NORTH: Sixty-three, yes.

23 THE COURT: Thank you. And that wasn't one that
24 was objected to and it's been admitted?

25 MR. NORTH: Yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 THE COURT: Whose going first, Ms. Colwell?

2 MR. HABER: Yes, Your Honor.

3 THE COURT: You are.

4 MR. HABER: Ms. Colwell's going to go first.

5 MRS. NORTH - CROSS EXAMINATION BY MS. COLWELL:

6 Q: Good afternoon, Mrs. North.

7 A: Hi.

8 Q: Your -- Mr. North asked you a few questions
9 about when you purchased your property.

10 A: Yes.

11 Q: And is that fair to say that that happened in
12 2001?

13 A: That's correct.

14 Q: Did you pay about \$740,000 for your property?

15 A: Yes.

16 Q: And you said that you had a boat at the time
17 and mentioned that you were looking for deep
18 water property?

19 A: Yes.

20 Q: It's a fairly large boat, then?

21 A: Yes.

22 Q: So that was a large motivator in seeking out
23 this particular property with the access to the
24 deep water on the ocean side?

25 A: Well, not necessarily. It wasn't a fishing



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 boat, so the access to get in and out to the
2 ocean and back to the dock wasn't really the
3 motivator. We just needed deep enough water
4 that the boat could get in and a big enough
5 dock that would hold it.

6 Q: Okay. So you would then use the boat out on
7 the ocean side of the house?

8 A: We rarely did. It was a huge motor yacht. It
9 was for sale at the time.

10 Q: Okay. But that's -- you didn't mention that
11 you had a smaller boat that you used on the
12 lake at any time?

13 A: Oh, yes, we have a runabout.

14 Q: You do, but you've never used that boat on the
15 lake, is that right?

16 A: On the lake?

17 Q: Yes.

18 A: No.

19 Q: And you recall giving me a deposition back in
20 August in this case ---

21 A: Yes.

22 Q: --- and at that time you testified that you
23 really didn't use the lake for anything?

24 A: As far as what do you mean?

25 Q: Fishing. Do you fish on it?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: No.

2 Q: You testified you didn't fish.

3 A: No.

4 Q: And you don't swim on the lake either?

5 A: No.

6 Q: Mr. North asked you several questions about
7 birds that used to be that you observed off of
8 the back of your house and around the lake, do
9 you recall that?

10 A: Yes.

11 Q: It sounds to me like your testimony is that
12 there are -- there are less birds around the
13 lake at this point after the dike break, is
14 that correct?

15 A: There are virtually none, in my opinion.

16 Q: But would you agree that the lake as it is now,
17 after the dike break, is converting back to a
18 tidal marsh, isn't that right?

19 A: I don't know whether it will ever convert to a
20 tidal marsh. It's -- it's tidal in nature, but
21 it's some marsh grass and mudflats. I don't
22 know if you call that a tidal marsh or if you
23 call it mudflats and a little marsh grass.

24 Q: Okay.

25 A: But it's definitely tidal in nature.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And so it's fair to say it's tidal in nature;
2 it's also still a natural environment, isn't
3 that correct?

4 A: Yes.

5 Q: So that's an environment that can support birds
6 and other types of wildlife?

7 A: Not freshwater birds; not birds that are
8 accustomed to a freshwater environment.

9 Q: It can support other types of wildlife in
10 addition to birds?

11 A: I haven't seen any.

12 Q: Well, I think your husband asked you about
13 crustaceans being present on the lake and there
14 were some photographs in your testimony that
15 showed some pictures of wildlife that are along
16 the lake.

17 A: Oysters, you mean?

18 Q: Yes.

19 A: Yes.

20 Q: To your knowledge, there's no action being
21 taken by anyone to stop any type of wildlife or
22 any -- any type of birds from using the area
23 that used to be Cat Island Lake presently?

24 A: You mean a person or an entity trying to stop
25 the wildlife from coming in?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Correct.

2 A: No, to my knowledge, there is no person or
3 entity doing that.

4 Q: Mr. North showed you several pictures in
5 Exhibit 1, one of which is on page eight, I
6 believe.

7 A: Uh-huh (affirmative response).

8 Q: And I think that you testified that this is a
9 photograph of some oysters in the grass.

10 A: Yes. In the marsh grass.

11 Q: In the marsh grass?

12 A: Uh-huh (affirmative response).

13 Q: There's been some discussion -- actually a lot
14 of discussion in this case thus far about the
15 policies and procedures of the coastal
16 management program document, it's Petitioners
17 Exhibit 19, that are applicable.

18 A: Uh-huh (affirmative response).

19 Q: Do you have that?

20 A: Do I need to keep Exhibit 1 out also?

21 Q: No.

22 A: Okay. I have Exhibit 19.

23 Q: Okay. And if you look at page III-60, under
24 XIII, which applies -- or which refers to the
25 storm water management guidelines.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Wait a second, I'm completely lost. Page what?
2 Q: III-60.
3 A: Sixty. III-60, is that the page number?
4 Q: Yes.
5 A: Yes, I have it.
6 Q: Okay. The top of the page at XIII and it
7 refers to storm water management guidelines.
8 A: Yes.
9 Q: And under that you'll see subparagraph (a),
10 which is the storm water runoff storage
11 requirements.
12 A: Yes.
13 Q: All right. And you've been here for all the
14 testimony and this has been a subject of a lot
15 of discussion.
16 A: Yes.
17 Q: If you look toward the end of -- under
18 paragraph (a), that first paragraph ---
19 A: Uh-huh (affirmative response).
20 Q: --- and the final sentence of that, can you
21 read that for me?
22 A: The one that begins in addition?
23 Q: Correct.
24 A: In addition, for those projects which are
25 located within \$1,000 feet of shellfish beds,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the first one and one-half inches of runoff
2 from the build upon portion of the property
3 must be retained onsite.

4 Q: So this policy then the subject of it is the
5 1000 feet measurement to shellfish beds,
6 correct?

7 A: Yes.

8 Q: And you would agree that a few oysters in the
9 marsh may not be what is considered a shellfish
10 bed or shellfish beds, plural, as referenced in
11 this regulation?

12 A: I don't know the precise definition of a
13 shellfish bed.

14 Q: Well, regardless of what that definition might
15 be as it's worded in the regulation, what this
16 regulation pertains to is 1000 feet of
17 shellfish beds, correct?

18 A: That's correct.

19 Q: Okay. So we're actually talking about more
20 than one oyster?

21 A: Yes.

22 Q: If you could, behind you, pull out Petitioners
23 Exhibit 53.

24 A: Okay. Okay. I have it.

25 Q: Okay. Do you have a pen up there?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Yes.

2 Q: Mr. North asked you a series of questions
3 regarding photographs of encroachment of tidal
4 waters that are pictured in Exhibit 1, the
5 first of which is one of the nine photos ---

6 A: Yes.

7 Q: --- that was taken, I think it's on page 17 of
8 Exhibit 1.

9 A: Uh-huh (affirmative response).

10 Q: If you could, would you mark on Exhibit 53,
11 this is a -- Petitioners Exhibit 53 is entitled
12 as built survey prepared for John North. And
13 does this portion of it depict your residence?

14 A: Yes, although -- yes, it does.

15 Q: Okay. Can you mark for me where the picture --
16 where the encroachment that is in the picture
17 on page 17?

18 A: Well, may I make a correction on the as built
19 survey? It doesn't really depict accurately
20 the staircase to the front and that sort of
21 thing, but I think for purposes of your
22 question, that's not really relevant.

23 Q: Okay. Can you mark on this in whatever area it
24 is around the house that the encroaching waters
25 are contained in a picture on page 17 of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Exhibit 1?

2 A: I have to -- there were several pictures and I
3 want to make sure I get it right.

4 **THE COURT:** Mrs. North, you can actually mark on
5 the screen.

6 A: Oh, I can?

7 **THE COURT:** Uh-huh (affirmative response).

8 A: All right. Well, I would ---

9 **THE COURT:** Use your hand to do that.

10 A: Okay. I will do that. Tell me which picture
11 you want?

12 Q: Page 17, it's the 9th photograph. On one of
13 the night photographs, I believe.

14 A: Okay. That one is about right here.

15 Q: I think you have to use your finger. Were you
16 using your finger?

17 A: Oh, I have to use my finger.

18 **THE COURT:** Yeah, it's a touch screen.

19 A: Oh, I'm sorry. Oh, no, that's not -- Okay.
20 Now, it's doing something weird. Undo?

21 Q: Yeah.

22 A: Okay. I'm pressing undo. It's not undoing.

23 Q: Well, I think you touch it on the screen.

24 A: Okay. No. It's just -- this is not
25 cooperating.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. There we go. I did it.

2 A: Okay. You did it. All right. I will touch
3 it. Right -- no, it's still not working my
4 finger. See the corner, that corner, that's
5 where.

6 Q: The corner of -- are you referring to the
7 corner of your house?

8 A: Yes. That -- it's right in that -- undo it
9 again will you, please? Right there. And I
10 don't know what scale this is, but let's just
11 say it's right -- right at that corner of the
12 house.

13 MS. SHAHID: Your Honor, if she could circle it on a
14 paper, I could put it -- then put it up on this
15 projector if that's okay. Circle on the paper.

16 A: On this exhibit you want me to circle it?

17 Q: Uh-huh (affirmative response).

18 A: And, you know, that's not to scale or anything.
19 That's just a general look.

20 Q: Okay. So in response to my question then
21 you've identified this corner of the property
22 or this corner of the house as being -- as
23 depicting or as being the location of what's
24 depicted on the photograph on 17?

25 A: Yes, generally, yes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Could you please do the same thing for the
2 photograph that's on page 18?

3 A: Well, now, this is -- this is where the
4 inaccuracy of the -- of the as built survey is
5 going to come into play because it doesn't show
6 the stairway moving up, but it's generally in
7 this location.

8 Q: And for the record, in response to my question
9 regarding depiction of the encroachment as
10 pictured on page 17, actually that was page 19
11 of Petitioners Exhibit 1, you circled this, is
12 that correct?

13 A: I'm sorry, if it's 19 you're talking about no,
14 that's not -- what I circled second was 18.

15 Q: Was 18?

16 A: Uh-huh (affirmative response).

17 Q: Okay.

18 A: Nineteen is further toward -- if you want the
19 next photograph, it's further toward the front
20 of the yard.

21 Q: Okay. Would you circle where 19 would be on
22 here then too? Maybe if we -- it might be also
23 helpful to mark them with the page number, I
24 don't know. Trying to keep track.

25 A: Okay. Right in there.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay.

2 A: And as I said that's not to scale and not
3 related to all the lines on the thing, it's
4 just the general area.

5 Q: All right. So this would be the circle located
6 in what's depicted on page 19 of Petitioners
7 Exhibit 1?

8 A: No, on page 18.

9 Q: Okay. So the circle that's on the corner of
10 the house is page 17; the circle that comes
11 next is near to where it says lot five near ---

12 A: Yeah, that's 18.

13 Q: --- the southern corner of the house is 18.

14 A: And that's 19.

15 Q: And the circle that is near where it says tidal
16 water intrusion depicts the next photograph on
17 page 19?

18 A: Right.

19 Q: And it's not shown on this survey, but is this
20 area roughly along where the driveway running
21 from ---

22 A: Yes.

23 Q: --- Rush Street to your house?

24 A: Well, it's not the public driveway, it's the
25 driveway once you're on our property to our



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 house.

2 Q: Right, it's your driveway?

3 A: Yeah.

4 Q: I just want to make sure that was this. All

5 right. My co-counsel reminding me that there

6 is another photograph on page 16.

7 A: Is that the one you're looking for?

8 Q: Yes, with the fence.

9 A: Okay. The fence is roughly ---

10 Q: It's okay if you touch that, you can ---

11 A: Okay. The fence is roughly up here, so it

12 would be about right there.

13 Q: Okay.

14 A: You want me to mark it there? Okay.

15 Q: And is that fence pictured in that photograph,

16 does that run to close off the end of your

17 driveway across your property?

18 A: Yes, it does.

19 Q: You're currently living at 2 Rush Street at

20 this time, is that correct?

21 A: Yes.

22 Q: But you and Mr. North have listed 2 Rush Street

23 for sale?

24 A: Yes, we have.

25 Q: Is the list price of your house \$1.55 million?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 A: Yes.
- 2 Q: Is that an increase in the amount or in the
3 value from when you purchased the house?
- 4 A: Oh, yes, we purchased it the mid 700s.
- 5 Q: And so that real estate listing you've done
6 with Lowcountry Real Estate, is that right?
- 7 A: Yes, that's correct.
- 8 Q: And on November 18, 2013, late last year, you
9 signed a disclosure form ---
- 10 A: Yes.
- 11 Q: --- with your realtor, Mr. Dukes?
- 12 A: Yes.
- 13 Q: And is that form is in evidence as Cat Island
14 43?
- 15 A: I don't know whether it is or it isn't. If you
16 say it is, it is.
- 17 Q: Yeah, I'm saying it is.
- 18 A: Okay.
- 19 Q: Do you recognize it? This is Petitioners --
20 Cat Island 43?
- 21 A: Yes.
- 22 Q: Do you recognize that form?
- 23 A: Yes, I do.
- 24 Q: Is this your signature at the bottom of the
25 form?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Yes, it is.

2 Q: And you agree with me that this is a
3 residential data form, also known as a
4 disclosure form?

5 A: Yes.

6 Q: And the purpose of this form is to disclose
7 characteristics about the property for
8 potential purchasers of the property?

9 A: Yes.

10 Q: On page -- actually, it's -- the copy in the
11 record is Bates Lowcountry Real Estate 15.
12 There's a series of questions or a checklist of
13 different ---

14 A: I see that.

15 Q: --- assets?

16 A: Yes.

17 Q: And on number 19 in response to the question of
18 whether you're aware of any problems caused by
19 fire, smoke, or water to the property during
20 your ownership, you checked no.

21 A: That's correct.

22 Q: And in response to number 20 asking whether
23 you're aware of any drainage, soil stability,
24 atmosphere or underground problems affecting
25 the property, you checked no.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: That's correct.

2 Q: And in response to 21 in which it's asked
3 whether you're aware of any erosion or erosion
4 control affecting the property, you checked no.

5 A: That's correct.

6 Q: And number 22 which inquires as to whether
7 you're aware of any flood hazard, wetlands, or
8 flood hazard designations affecting the
9 property, you also checked no.

10 A: That's correct.

11 Q: And, again, those are your initials on the
12 bottom of that page?

13 A: Yes.

14 Q: And your signature on the end of the page?

15 A: Yes.

16 Q: If you had any doubt in your mind as to whether
17 the answer to that question should be no or yes
18 on the last page of the disclosure, which is
19 Bates stamped Lowcountry Real Estate document
20 18, do you see that there's a section where you
21 could have attached an explanation or any
22 additional document that you felt could have
23 been needed to explain the reasoning behind
24 your disclosure?

25 A: I think that reads explain any yes statements.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Right, so if you had checked anything yes, if
2 there was any changes, if you had any doubt
3 about what the answer to those questions should
4 have been, then you could have -- there's an
5 opportunity to explain. This document gives
6 you an opportunity to explain that answer, is
7 that right?

8 A: No, it gives me an opportunity to explain any
9 yes answers.

10 Q: Right. Are you a plaintiff in a lawsuit filed
11 against the POA or against the developer,
12 Chowan Creek Partners, in any other forum?

13 A: Yes, in circuit court.

14 Q: Yes, and that's the circuit court in Beaufort
15 County?

16 A: Yes.

17 Q: And are you aware of the pleadings -- the
18 Complaint that's been filed in that case?

19 A: Yes.

20 Q: And aren't you seeking restoration of the dike

21 ---

22 A: No, we're ---

23 Q: --- as a relief in that case?

24 A: No, we're seeking damages.

25 Q: In addition to damages, aren't you seeking a



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 restoration of the dike?

2 A: I don't believe so. I think our last amended
3 Complaint simply sought damages.

4 Q: Let me read to you the wherefore of the Amended
5 Complaint. Better yet, the Amended Complaint
6 in that action, I'll show it to you.

7 A: Okay.

8 Q: And just read -- I'm sorry, strike that.

9 A: It's damages.

10 Q: Damages and you're also looking for a
11 restoration of the dike by way of declaring an
12 existence of easements for continued use and
13 enjoyment of the lake, is that correct?

14 A: We're asking that the deed by which we took our
15 property created a right to the continued use
16 and enjoyment of the lake, which has been
17 deprived and we're entitled to damages. That's
18 the basis for our claim for damages.

19 Q: Right. And by way of the wherefore clause,
20 which states plaintiffs pray that the Court may
21 enter an Order declaring the existence of
22 easements and a dedication in their favor for
23 the continued use and enjoyment of the lake.

24 A: Yes, without that -- without that, we wouldn't
25 be -- well.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: When we were talking earlier about your real
2 estate listing ---

3 A: Yes.

4 Q: --- isn't it true that you are advertising your
5 house for sale on the internet as being located
6 on the frontage of a beautiful tidal marsh?

7 A: I'm not advertising my house.

8 Q: You're using -- you listed your house with a
9 real estate ---

10 A: Yes.

11 Q: --- agent?

12 A: Yes.

13 Q: And that agent does have a listing on the
14 internet?

15 A: I haven't looked. If you say he does, he does.

16 Q: You haven't -- you're not aware of any real
17 estate listing?

18 A: I'm aware of the listing. I'm not aware of
19 what he's doing to publicize it.

20 Q: I don't have anything further.

21 **MR. HABER:** Your Honor, I just have a couple
22 questions. It shouldn't take too long.

23 **MRS. NORTH - CROSS EXAMINATION BY MR. HABER:**

24 Q: Good afternoon, Mrs. North.

25 A: Hi.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 Q: I'm Nathan Haber. We met at your deposition.
- 2 A: We did.
- 3 Q: I just have a couple questions. In your
- 4 testimony with Mr. North, you testified one of
- 5 the niceties, I'll put it, of this property
- 6 that you purchased on 2 Rush Street, is that
- 7 correct, was that there was no neighbors; you
- 8 couldn't see neighbors?
- 9 A: Not that we couldn't see our neighbors, not
- 10 that there weren't any.
- 11 Q: Right, but you couldn't see them ---
- 12 A: Right.
- 13 Q: --- sorry, that it was secluded?
- 14 A: Right.
- 15 Q: Is that still true?
- 16 A: When you are inside our house, unless you are
- 17 very careful and walk down and look to the
- 18 left, you can see Brunings' dock, but not their
- 19 house. In some windows, you can see the
- 20 vegetation between our house and Bruning's,
- 21 but, essentially, we see no neighbors.
- 22 Q: But, I guess what I'm getting at is nothing
- 23 about this issue before the Court today has
- 24 affected that aspect of your property, is that
- 25 true?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: No, that's correct.
- 2 Q: You had mentioned your daughter's wedding out
3 at ---
- 4 A: Yes.
- 5 Q: For clarity sake, did OCRM grant -- authorize
6 maintenance or repair to allow those dikes to
7 be done?
- 8 A: Yes, two of them.
- 9 Q: Okay. So any of that fault wouldn't be the
10 fault of the Department you would be placing
11 that on, would you?
- 12 A: No, other than I -- I believed that because the
13 developer was in violation of his maintenance
14 agreement, that the Department should have
15 taken action to pursue a remedy in that forum.
- 16 Q: When was -- when was the wedding?
- 17 A: The wedding was in October of 2012.
- 18 Q: Now, do you still have ---
- 19 A: Wait a minute, '11.
- 20 Q: 2011?
- 21 A: 2011, uh-huh (affirmative response).
- 22 Q: Okay. Do you still have deep water by your
23 dock?
- 24 A: Yes.
- 25 Q: So nothing about this permit ---

**CREEL COURT REPORTING, INC.**1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: No.

2 Q: --- that's being challenged. Can you still see
3 Hilton Head on a clear day?

4 A: Yes, you can.

5 Q: Now, you had gone over some pictures with Mr.
6 North and you had gone over them again with Ms.
7 Colwell, that was part of Petitioners Exhibit
8 Number 1.

9 A: Yes.

10 Q: Could you explain to me what that packet was
11 that you were reading from that is labeled
12 Exhibit 1 of Petitioners?

13 A: That was the presentation to the Board when we
14 had our Board review of the grant and the
15 permit, which we asked for review.

16 Q: So would it be -- would it be fair to say that
17 those pictures were taken prior to even
18 reviewing the Board?

19 A: Yes.

20 Q: Now, you had testified with Ms. Colwell that
21 your property is being listed by Lowcountry
22 Real Estate, is that correct?

23 A: That's correct.

24 Q: And your real estate agent is whom?

25 A: Edward Dukes.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And you had said during that testimony with Ms.
2 Colwell that you had never looked at the
3 listing of your property, is that correct?

4 A: No, I've -- I've seen the listing. I thought
5 her question was pointed to what was on the
6 internet and I don't know what's on the
7 internet.

8 Q: So your curiosity to see what pictures that
9 Lowcountry Real Estate would have and you've
10 never felt inclined to look on the website?

11 A: No, I looked at those. I looked at the
12 photographs that he took.

13 Q: Okay. Have you seen any descriptions that he
14 has had regarding your property?

15 A: Well, Ms. Colwell said that he describes it as
16 on a beautiful tidal marsh.

17 Q: And this is your real estate agent?

18 A: Yes.

19 Q: Did you have any awareness that he was
20 advertising it as such?

21 A: No, I did not.

22 Q: So you're testifying today that you've never --
23 you never knew it was being advertised ---

24 A: Oh, after -- after the listing agreement was
25 made and I don't remember when I became aware



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 of it, perhaps when Ms. Colwell or whoever
2 subpoenaed the documents from Lowcountry and I
3 looked at it at that point.

4 Q: Okay. And to be clear, I'm talking about the
5 description on the listing.

6 A: Yes, so am I.

7 Q: So you have noticed ---

8 MR. NORTH: Could I interrupt for a minute?

9 MR. HABER: Sure.

10 MR. NORTH: Did you mean to say the description on
11 the listing or the description on some
12 advertising? I think we should differentiate
13 the listing agreement, which was signed day
14 one, versus any marketing materials. If we
15 could draw that distinction in the questions
16 and answers, that would be helpful.

17 MR. HABER: Sure, I will clarify, Your Honor, that
18 I'm referring to marketing materials that is
19 used to sell your property.

20 A: Yes.

21 Q: And I can go back down that line of questioning
22 if ---

23 A: No, I understood. I understood that
24 distinction.

25 Q: Okay. Thank you. So you testified that you



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 are aware of the description of the property --

2 -

3 A: Yeah.

4 Q: --- how it is being marketed?

5 A: Yes.

6 Q: And if I understand the time line correct,
7 those documents were subpoenaed around the
8 middle of December, does that sound about
9 right?

10 A: I don't really recall.

11 Q: Okay. Your agent -- your real estate agent is
12 advertising the property, your property ---

13 A: Yes.

14 Q: --- you have knowledge that he is advertising
15 it as such. Have you done anything to cure
16 that?

17 A: If his opinion is it's a beautiful tidal marsh,
18 I'm happy with that. I would prefer that
19 description to on an ugly mudbog.

20 **MR. HABER:** Your Honor, I'd request to -- actually
21 hold on. Is there a stack of Department
22 exhibits ---

23 A: Yes, there is.

24 Q: If you could look at Department Exhibit Number
25 7, please.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Uh-huh (affirmative response). They must not
2 be in order because I don't ---

3 MR. HABER: If I may approach, Your Honor, I have a
4 copy to save time.

5 THE COURT: Yes, okay.

6 Q: Mrs. North ---

7 A: Here.

8 Q: Thank you.

9 A: Uh-huh (affirmative response).

10 Q: I've handed you a document labeled Department's
11 Exhibit Number 7.

12 A: Uh-huh (affirmative response).

13 Q: Have you ever met Mr. Dukes?

14 A: Yes.

15 Q: Is that a picture of Mr. Dukes?

16 A: That's a picture of Mr. Dukes.

17 Q: Okay. And is this -- this large picture up-
18 front a picture inside of your house?

19 A: Yes, it is.

20 Q: It's labeled as 2 Rush Street, Beaufort, South
21 Carolina?

22 A: Yes.

23 Q: Is this a listing for your house by Lowcountry
24 Real Estate by Edward Dukes?

25 A: It is not a listing, it is an advertisement.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Is it an advertisement by Mr. Dukes?

2 A: Yes, it is.

3 MR. HABER: At this point, Your Honor, I'd like to
4 move Department Exhibit Number 7 into evidence.
5 I think the only thing that was lacking was
6 foundation.

7 THE COURT: Mr. North?

8 MR. NORTH: For what it's worth, no objection.

9 (SCDHEC's Exhibit Number 7 was admitted into
10 evidence.)

11 Q: I have just one more question, Mrs. North.
12 During your testimony with Mr. North, you had
13 testified that, and you can correct me if I'm
14 misquoting you, that common sense would tell
15 you that it's worth less now than it would have
16 been before?

17 A: Yes.

18 Q: You purchased your house for \$740,000, is that
19 correct, in 2001?

20 A: It was in the mid 700's. If you say it's 740,
21 I would agree with that.

22 Q: Okay. And today it is being -- the asking
23 price of that same property is at \$1.55
24 million?

25 A: Yes, it is.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Thank you. No further questions, Your Honor.

2 MR. NORTH: I have one thing.

3 MRS. NORTH - REDIRECT EXAMINATION BY MR. NORTH:

4 Q: Is it your view that the lakefront view and
5 amenities when you purchased is far more
6 valuable to you personally and economically
7 than any marsh view, whether it's a beautiful
8 marsh view or an ugly marsh view?

9 A: Yes.

10 Q: With regard to this disclosure statement, if
11 you take a look at the page that's Bates
12 stamped number 15 ---

13 A: I don't have it here. If someone can provide
14 it to me.

15 Q: Your -- I guess that would be Exhibit -- I'm
16 handing you the disclosure statement with the
17 Bates stamp of number 15, do you see that?

18 A: Yes.

19 Q: Okay. Can you tell me what the heading of that
20 section of the disclosure statement says?

21 A: What section?

22 Q: The section -- section five.

23 A: All right.

24 Q: The one that has the four disclosures that you
25 were questioned about.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: Yes. The heading is the zoning laws,
2 restrictive covenants, building codes and other
3 land use restrictions affecting the real
4 property, any encroachments of the real
5 property from or to adjacent real property, and
6 notice from a governmental agency affecting
7 this real property. Apply this question below
8 and the three answer choices to the numbered
9 issues 15 through 23 on this disclosure.
- 10 Q: Is it your view and opinion that the
11 disclosures asked for below are to relate to
12 the topic and subject matter of section five of
13 that disclosure statement?
- 14 A: When I read it, that's how I interpreted it.
- 15 Q: Okay. Now, you do claim that tidal waters
16 encroach on your lot, is that correct?
- 17 A: I do.
- 18 Q: Is that an encroachment of the real property
19 from or two adjacent real estate?
- 20 A: No, it's water.
- 21 Q: When you describe problems or lack of problems
22 from fire, smoke or water, tell me your
23 thinking on that topic.
- 24 A: I interpreted that as to the house, fire, smoke
25 or water.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Water damage to the house?

2 A: To the house.

3 Q: Has the tidal coming and going, although it may
4 have encroached, has it actually damaged the
5 land other than killing plants?

6 A: No.

7 Q: Tell me your thinking with regard to this
8 question 20.

9 A: Question 20 was drainage, soil stability,
10 atmosphere or underground problems affecting
11 the property.

12 Q: Have you ever claimed that the tidal movement
13 in the lakebed has caused erosion to your lot?

14 A: No.

15 Q: Have you observed erosion in other locations
16 around the perimeter of the lake?

17 A: Yes, and in the lake.

18 Q: Okay. Tell me your thinking with regard to 21.

19 A: Again, I'm interpreting this in -- by using the
20 number V question and erosion or erosion
21 control affecting the property did not seem to
22 apply.

23 Q: And, again, have you experienced any erosion to
24 your lot?

25 A: No, not to my lot.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Okay. And 22, what was your thinking on 22?

2 A: We don't have any notice from a government or
3 zoning laws or anything like that that identify
4 flood hazards, wetlands, or flood hazard
5 designations. None of those apply.

6 Q: Again, is it your view that that disclosure
7 topic is to be read in the context of the
8 heading that asks that the heading be applied
9 below to those questions?

10 A: That's how I interpreted it when I signed it.

11 Q: Do you believe that there's any inconsistency
12 at all between your disclosure statement and
13 the positions that you've taken in any
14 litigation?

15 A: No.

16 Q: I have no further questions.

17 **MRS. NORTH - RECROSS EXAMINATION BY MS. COLWELL:**

18 Q: Mrs. North ---

19 A: Uh-huh (affirmative response).

20 Q: --- the lake is real property that's adjacent
21 to your property, isn't it?

22 A: Yes. Well, the lakebed.

23 Q: I'm going to show you on the screen another
24 portion of Lowcountry Real Estate Bates stamp
25 Lowcountry Real Estate 10, which is a page from



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the Exclusive Right to Sell Agreement and the
2 Listing Agreement.

3 A: Yes.

4 Q: But I believe that you'll find that -- are
5 these your initials right there on the bottom
6 of the page?

7 A: Yes.

8 Q: And do you see in paragraph number nine, which
9 the paragraph states and owner warrants that
10 the owner has reviewed and completed the
11 seller's property disclosure statement as
12 required by South Carolina Code of Laws, as
13 amended, Section 27-50-10, et. seq. Attached
14 to and made a part of this agreement and all
15 such information is accurate to the best of the
16 owner's knowledge.

17 A: Yes.

18 Q: And that pertains to the -- actually, that
19 relates back to the first sentence which states
20 owner warrants that to the owner's knowledge
21 there are no material defects, hidden or
22 obvious, in or on the property which have not
23 been disclosed to the broker in writing.

24 A: Yes.

25 Q: And you saw this before you signed that



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 disclosure statement?

2 A: Yes.

3 Q: I have nothing further.

4 **MR. HABER:** Nothing from the Department, Your
5 Honor.

6 **THE COURT:** Okay. Thank you, Mrs. North.

7 **MRS. NORTH:** Okay. This exhibit is not complete. I
8 don't know what happened to the front page of
9 it.

10 **THE COURT:** Mr. North, who do you intend to call as
11 your next witness?

12 **MR. NORTH:** Yes, I'd like to call David Feron.

13 **DAVID FERON,** being duly sworn, testifies as follows:

14 **COURT REPORTER:** State your name for the record.

15 **THE WITNESS:** David Feron. F-E-R-O-N.

16 **MR. FERON - DIRECT EXAMINATION BY MR. NORTH:**

17 Q: Are you one of the petitioners in this action?

18 A: Yes.

19 Q: And you -- do you own or have you purchased
20 lake-front property in the Rookery subdivision
21 on Cat island?

22 A: Yes.

23 Q: Tell me about your property and when you
24 purchased it.

25 A: I purchased it in 1988, purchased two pieces.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 I swapped -- later on I sold one and bought the
2 one next to me, so I really still have two
3 pieces on the lake, just that I bought before.
4 And we bought it because at the same time we
5 bought another piece on Dolphin Point, which
6 was on the creek, but what we wanted to do was
7 to have a fishing place and a place that we
8 could really enjoy living in. So originally we
9 were going to build a house some place right
10 here and on the -- on the lake really. But we
11 -- we got -- my wife had seen another house out
12 on St. Helena which she liked very much and it
13 happened to come on the market at the same time
14 that I retired. So we bought that because it
15 had deep water and a creek and a dock and all
16 those things that go with the fishing. And so
17 we kept this because we felt that we'd want to
18 move here some time after -- after I couldn't
19 go fishing any more. Unfortunately, that
20 happened more quickly than I wanted, but that's
21 what we did. But we still kept these two
22 pieces because they were special.

23 Q: And in what way were they special to you?

24 A: I mean, you just had a -- I'll tell you how
25 special they were. My next door neighbor out



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 on St. Helena who used to be fishing and he's
2 a fellow from Georgia, and he said I was crazy
3 to move. And he came and looked out that back
4 door at the view and he said I can see why you
5 moved. It was beautiful. It was -- it was --
6 I don't want to say magical. That sounds too
7 trite, but it really was a wonderful view.

8 Q: And did you observe all forms of wildlife in
9 the lake?

10 A: I did and I even saw the big alligators kill
11 the -- eat the little alligators out there. I
12 saw all the birds that -- I cannot identify all
13 the birds, but I saw, you know, birds all over
14 and right in our back yard there used to be, I
15 mean, ten -- about ten birds at night that used
16 to perch up in there. You could hear them
17 arguing with each other and actually -- one of
18 them would come down and push the other guy
19 over, but it was just a really nice place. And
20 also, there were turtles and there were lots of
21 raccoons and things like that.

22 Q: For the sake of brevity, were you present and
23 listening to the testimony of Pamela North?

24 A: Yes.

25 Q: Did you agree with her testimony and her



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 observations of the lake?

2 A: Yes.

3 Q: If you were asked the same questions, would you
4 have the same answers?

5 A: Yes.

6 Q: Have you had two appraisals done on your
7 property, one before the dike break and one
8 after?

9 A: Yes.

10 Q: And have copies of those appraisals been made
11 available to counsel?

12 A: Yes.

13 Q: Okay. And in those appraisals, was the value
14 of your house -- the improvements to the
15 property almost identical?

16 A: They were identical.

17 Q: And do you remember the difference in value of
18 just the lot itself?

19 A: \$190,000.

20 Q: Okay. And was it worth \$190,000 less after the
21 dike break?

22 A: Yes.

23 Q: In the first appraisal, was the lot valued as
24 lakefront property?

25 A: Yes, it specifically said the lagoon and the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 lake -- you know, it was specifically aligned
2 in the appraisal.
3 Q: Okay. And did the appraiser who did that
4 appraisal come out and visit the house ---
5 A: Yes.
6 Q: --- and see the -- the magical lagoon?
7 A: Yes.
8 Q: Okay. And with the second appraisal, did that
9 appraiser also come out?
10 A: Yes.
11 Q: And did he see what you're currently living on?
12 A: Yes.
13 Q: And what was the -- do you remember the value
14 of the lot in his opinion?
15 A: It went down to \$598,000.
16 Q: For the entire house and lot?
17 A: Right, but the house value was still the same
18 as the first assessment, the improvements.
19 Q: And the difference in the lot value was
20 \$190,000?
21 A: (Nods head affirmatively).
22 Q: Now, you have two lots, is that correct?
23 A: Yes.
24 Q: And is it your assumption and belief that the
25 value of both of them would have gone down by



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 about the same amount?

2 A: Yes, I would think, yes, definitely.

3 Q: Since the lake is no longer there, have you
4 done anything about your view?

5 A: Yes, we have left the back yard, except for a
6 small portion natural, but we had trimmed
7 everything down so that from the back screen
8 porch where -- and behind it you could see the
9 water at all times, even the palm tree, I cut
10 it down to the center piece. And we could see
11 the whole -- from our view, we could see the
12 lake in front of us, not much to the right, but
13 out to the dike and the -- the Coosaw River,
14 they call it.

15 Q: Are you able to see the lake now?

16 A: I can see the mud; I can't ---

17 Q: Okay.

18 A: At high tide -- very high tide you can see it.

19 Q: Have you let your vegetation grow to try and
20 block some of that view?

21 A: I let it all grow back up again and trimmed it
22 off on the top, but I can't see the water. I
23 can see out to the river looking out this way.
24 We left that so we could at least see the
25 river, but that's all.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 Q: When you say the river, you mean Cowen Creek?
- 2 A: Cowen Creek, yes, sir.
- 3 Q: Okay. Have you had plant life on your property
- 4 die?
- 5 A: Yes.
- 6 Q: Is it fair to say everything along the water's
- 7 edge died shortly after the dike broke?
- 8 A: I don't think everything died, but there was
- 9 quite a few things that died when the water
- 10 came -- the tidal water came in -- the marsh --
- 11 or the river water, I guess.
- 12 Q: Do you have any large trees that are dying or
- 13 dead?
- 14 A: On the vacant piece of land, yes. There's two
- 15 trees that are dead and one that looks like
- 16 it's dying. And then there's some palm trees
- 17 also that look like -- at least one is dead.
- 18 Q: And has all that changed after the dike broke
- 19 and the salt water started coming in?
- 20 A: As far as I know, yes. I mean, I don't check
- 21 those all the time, but certainly they weren't
- 22 when we first moved back or built the house.
- 23 Q: Okay. Have you observed what portion of the
- 24 day there might be any water in the lakebed?
- 25 A: I would say if you're asking me how much of the

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 water you can see at what time, you can see
2 water in the lakebed at a high tide it goes out
3 very quickly, just because of the lake is
4 higher than the river. It goes out very
5 quickly, but it stays in maybe, oh, I can see
6 it for maybe an hour.

7 Q: Okay. And the rest of the day it's the mud
8 pit?

9 A: Yes.

10 Q: When the water does come in for an hour, what
11 is the status of the wildlife that used to be
12 there?

13 A: I see no wildlife any more.

14 Q: I'm handing you Exhibit 63 and directing your
15 attention to page five of the exhibit,
16 photograph five. Is that the view from your
17 property toward the break in the dike?

18 A: Is this five?

19 Q: Yes, that's the page I'm referring to.

20 A: Yes, yes. Yes.

21 Q: Okay. And is that how that looks today or as
22 of last Friday anyway?

23 A: Yes.

24 MS. SHAHID: What number was that?

25 MR. NORTH: It's Exhibit 63, 5th photograph. Page



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 six if you count the cover page.

2 Q: Are you familiar with the water flows of storm
3 water that run down Sheridan Street?

4 A: Sheridon Road, yes.

5 Q: Is that the road that connects your house to
6 the golf clubhouse?

7 A: No, it's Lakeview. As I go -- I have a bike --
8 I ride a bike over to the exercise room and
9 that goes down Sheridan and over Lakeview and
10 up to the clubhouse. And when I come out of it
11 to go back home, I can just pump the bike and
12 I coast all the way down -- down to Lakeview
13 and down Lakeview and then to Sheridan to the
14 left about just to the left and then it ---

15 Q: Do you ever take your bike from the clubhouse
16 down -- down Waveland Street, down toward
17 Martha's house?

18 A: Yes, that's what I mean when I come -- I'm
19 sorry. I come out of the clubhouse where the
20 workout room is; you come out onto Waveland.

21 Q: Okay.

22 A: And then you go down Waveland and I coast down
23 from that workout room I coast all the way down
24 to the -- where the drainage is right there
25 around the corner.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: When you say the drainage, are you talking
2 about the two inlets by Martha's house?

3 A: Yes.

4 Q: Okay. So when you come out of the driveway of
5 the clubhouse on Waveland and you're coasting
6 down that hill, is that Garfield Park on the
7 left side ---

8 A: Yes.

9 Q: --- and the golf clubhouse no the right side?

10 A: Yes.

11 Q: And that road then you just coast down to
12 Martha's house and then turn left to go to your
13 house?

14 A: Yes, yes.

15 Q: Okay. And at the bottom of that hill in front
16 of Martha's house are there two drain inlets at
17 Garfield Park?

18 A: Yes.

19 Q: I have no further questions.

20 MR. HABER: Your Honor, if the Court would like, I
21 have probably three questions.

22 THE COURT: Sure.

23 MR. FERON - CROSS EXAMINATION BY MR. HABER:

24 Q: Hi, Mr. Feron. I'm Nathan Haber with the
25 Department and we met in Beaufort at your



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 deposition. I'll be quick for you. Mr. North
2 had asked you about dead trees on your
3 property. Do you remember during your
4 deposition you testified that you didn't know
5 that -- whether this situation caused those
6 trees to die?

7 A: Well, now, I was talking about the deposition
8 -- I think I was talking about where we live,
9 not the lot.

10 Q: Okay.

11 A: But ---

12 MR. HABER: Might I approach, Your Honor?

13 THE COURT: Yes.

14 Q: Mr. Feron, this is your deposition. If you
15 could see on page 20, if you could read the
16 question on line 19 through line 20.

17 A: Well, on the other piece of property there's
18 dead trees now, but I'm not sure that that --
19 this caused it, you know.

20 Q: Okay. Sure, and that could be the lot -- which
21 property were you referencing?

22 A: That was the lot, yes.

23 Q: Okay. Do you also recall in your deposition we
24 talked, you enjoy fishing, and we -- during
25 your deposition, you said once the dike blew



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 out, you had saw somebody come in, I believe,
2 with a skiff ---

3 A: No, that wasn't the -- that was before the --
4 yeah, I did see. You mean, a guy came in with
5 a fly rod?

6 Q: Right, the fly rod, I think you said he was on
7 a skiff.

8 A: Yes.

9 Q: Okay. And he came in once that dike blew out?

10 A: Yes.

11 Q: He wouldn't be able to get in with the dike in
12 place?

13 A: No. It was -- I'm sorry, it was high -- very
14 high tide. That's why he got in.

15 Q: Sure. But there was somebody in the former
16 impoundment since it blew out fishing, is that
17 correct?

18 A: Yes.

19 Q: Okay. Do you remember stating in your
20 deposition that your opposition is only the
21 replacement of the pond?

22 A: Yes, I mean, if -- I don't oppose the inline
23 filters except for the fact that it took away
24 what we had and so I really don't -- I don't
25 like it and don't know how much longer I can

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 take it.

2 Q: I understand. Thank you.

3 MR. HABER: No further questions, Your Honor.

4 MS. COLWELL: I just have a few, Your Honor.

5 MR. FERON - CROSS EXAMINATION BY MS. COLWELL:

6 Q: Mr. Feron, Mr. North asked you about a couple
7 of appraisals that you have done to your
8 property and those appraisals were done in 2006
9 and in 2010, isn't that right?

10 A: And I think it was 2007 and 2010.

11 Q: Well, let me show you what I have marked as
12 Exhibit ---

13 A: You may be right. I thought it was 2007.

14 Q: --- marked as Exhibit 14, Petitioners Exhibit
15 14. Right there. Read that date for me.

16 A: You're right.

17 Q: Can you read that for me?

18 A: Eight -- August 11, 2006.

19 Q: Okay. So in essence you have an appraisal from
20 before the recession -- economic recession when
21 the real estate market bottom dropped out and
22 after -- when the recovery started -- I'm
23 sorry, you have an appraisal in 2006 from
24 before the recession with the real estate
25 market bottom dropped out, and then one after



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 in 2010, isn't that right?

2 A: That's right.

3 Q: And let me just ask you, you talked about Mr.
4 Haber asked you about someone that you saw
5 fishing on the lake. You never used the lake
6 for anything -- any kind of recreational ---

7 A: No, I tried fishing several times, but I didn't
8 catch anything and -- you couldn't catch
9 anything until you went down really where --
10 near where the water comes in, that's where
11 most of the fish were.

12 Q: All right. So the ---

13 A: I didn't catch any.

14 Q: I'm sorry, and you didn't do any kind of bow
15 and arrow or swimming on the lake, right?

16 A: No.

17 Q: So the complaint that you have here is really
18 about loss of view of the lake?

19 A: Yes, really.

20 Q: Nothing further.

21 **MR. FERON - REDIRECT EXAMINATION BY MR. NORTH:**

22 Q: One quick follow-up, Mr. Feron. In the
23 appraisal, whether it was taken before some
24 alleged unproved recession or what the
25 consequences of that are, will you agree that



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the valuation of your home and all the
2 improvements stayed exactly the same both
3 before and after?

4 A: Yes, they both were exactly the same, so the
5 only thing that could have gone down was the
6 property.

7 Q: Right. And -- but my point is after some
8 alleged recession took place, the house was
9 still valued at the same level?

10 A: That's right.

11 Q: I have no further questions.

12 THE COURT: Thank you, Mr. Feron.

13 MR. FERON: Thank you.

14 THE COURT: We're at 5:00.

15 MR. NORTH: Pardon?

16 THE COURT: We're very close to 5:00. Who's your
17 next witness? Is it going to be a lengthy
18 witness?

19 MR. NORTH: Let me ask a quick question here.

20 THE COURT: Yes.

21 MR. NORTH: Your Honor, I have a short witness that
22 we could squeeze in.

23 THE COURT: Okay.

24 MR. NORTH: Yes, she's very short. For the record,
25 Sally Haley.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 THE COURT: If you'll face the court reporter,
2 she'll swear you in.

3 SALLY HALEY, being duly sworn, testifies as follows:

4 COURT REPORTER: State your name for the record.

5 THE WITNESS: Sally Haley.

6 MS. HALEY - EXAMINATION BY MR. NORTH:

7 Q: Can you tell the Court about the property that
8 you purchased on the Cat Island lake? When you
9 purchased it.

10 A: When I purchased it was 1994 and it was a pond.
11 We always called it a pond, so pond, lake,
12 front lot.

13 Q: And you purchased that with your husband?

14 A: Yes.

15 Q: And have resided there ever since?

16 A: Yes.

17 Q: You've heard the testimony of Pamela North?

18 A: I have.

19 Q: And you've heard David's testimony?

20 A: Yes.

21 Q: And if you were asked the same questions, would
22 you have the same answers?

23 A: I would.

24 Q: I would like you to tell the Court in your own
25 words why you believe this lake was so unique



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 and so special to you?

2 A: Well, first of all, it was an absolutely
3 gorgeous view. It had more birds than I could
4 ever imagine seeing in one place in my life.
5 I mean, you know, everything from Anhingas to,
6 you know, wood storks, wood ducks, you know,
7 just a whole, you know, everything imaginable.
8 We had otters; I saw two minks, obviously not
9 in the water, water's edge. But it was just --
10 it was a place we had hoped to find our whole
11 lives and did.

12 Q: Did you often observe deer coming down and
13 drinking from the water?

14 A: Yes, I mean, they were -- they would walk
15 through the water.

16 Q: Okay. Tell me what background you have with
17 regard to wildlife and nature matters.

18 A: I've taken a lot of courses from the University
19 just for retirees about wildlife and birds and
20 I joined the National Wildlife Federation and
21 my house was designated a wildlife habitat in
22 part because of the pond.

23 Q: Because of the what?

24 A: Pond.

25 Q: Okay.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: The lake. And was that designation by the
2 South Carolina Department of Natural Resources?
- 3 A: It was by the national -- it was National
4 Wildlife Federation.
- 5 Q: Okay. And do you have a sign in your backyard
6 from the Department of Natural Resources of
7 South Carolina?
- 8 A: No, it's from the National ---
- 9 Q: Okay.
- 10 A: --- Wildlife Federation.
- 11 Q: Okay. So you have two signs, one's ---
- 12 A: Oh, the one in the backyard is just an
13 alligator warning because at one point the lot
14 next to us was for sale and I happened to see
15 some people wading out into the water one day
16 who were visiting the lot and I thought, you
17 know, this is not good because there are
18 alligators out there in the water. And so I
19 went out to caution them and then I thought
20 well, I'll just put this sign up because people
21 were coming to view the lot next door.
- 22 Q: Okay. Can you tell the Court the various types
23 of birds that you've observed in the lake?
- 24 A: I've seen anhingas and comerants and great
25 blues and little blues and green backs and



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 tri-colors and ibis and egrets and wood storks
2 and wood ducks, buffleheads, mergansers, a lot
3 of the birds that I saw were migratory birds
4 that would just come through in the wintertime.
5 We wouldn't see them in summer. We had wood
6 ducks raise babies on the pond, the ones that
7 the alligators didn't eat. And -- pelicans
8 would come in in the wintertime when it was
9 really cold.

10 Q: Did you keep a journal of all your
11 observations?

12 A: I did, for many years, because it was just so
13 unusual and, you know, nothing I had ever seen
14 before and it just -- it kept me entertained
15 for hours.

16 Q: Okay. What about your husband, was it
17 important to him?

18 A: It was very important to him.

19 Q: Did he ask that it be noted in his obituary?

20 A: I don't know that he asked, but he would have
21 liked that.

22 Q: Have you ever taught a naturalist course?

23 A: No, not really.

24 Q: Tell me your impression of the lake -- the
25 lakebed as it appears to you today?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Well, it's like everybody else, it's a big mud
2 hole. And the only difference between my mud
3 hole and everybody else's mud hole is because
4 I'm at the far end, I get -- when the tide
5 comes in and then goes out, I'm left with
6 Styrofoam coolers, foam bumpers from boats,
7 building lumber, bottles, cans, any -- you
8 know, anything that floats in on the tide gets
9 stuck in my backyard.

10 Q: Okay. I'm going to hand you Exhibit 63 and
11 directing your attention to the last two pages
12 of that exhibit. Do you recognize those as
13 photos from your backyard?

14 A: I do.

15 Q: Okay. And do you see our lovely marsh meadow
16 off in the distance?

17 A: Far away.

18 Q: Okay. But is ---

19 A: Right now, though, it looks like just weeds
20 because it's all, you know, brown and ---

21 Q: It's all brown?

22 A: Yeah, yucky looking.

23 Q: But in terms of your view out of your house,
24 does that second to the last page give a good
25 depiction of what it looks like?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

RECEIVED

JUN 23 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT
Honorable Shirley C. Robinson, Presiding Judge

Case No. 12 ALJ-07-0434-CC

Ken Bruning, Janet Bruning, David Feron, individually and as Trustee,
Mary Feron, individually and as Trustee, Sally Saegmuller Haley and
Terrell Page Haley, individually and as Co-Trustees, Martha James
and Don Haarmeyer, individually and as Co-Trustees, and
Pamela S. North.....Appellants,

v.

SCDHEC and Cat Island POA, c/o Gary Meyer.....
Respondents.

Case No. 12 ALJ-07-0436-CC

In Re: Garfield Park, Phase 3

Cat Island POA, c/o Gary Meyer.....Petitioner,

v.

SCDHEC.....Respondent.

PROOF OF SERVICE

John E. North, Jr., # 06570
North & Black, P.C.
916 Bay Street, Suite 100
Beaufort, SC 29902
(843) 379-0800 (tel)
(843) 379-0900 (fax)
Attorney for Appellants

The undersigned hereby certifies that the Appellants' Brief, Appellants' Reply Brief and the Record on Appeal were served upon the attorney for Cat Island POA, Mary Shahid, P.O. Box 486, Charleston, SC 29402 and the attorney for DHEC, Nathan Haber, 1362 McMillan Avenue, Suite 400, Charleston, SC 29405 by United States Mail, postage prepaid on the 22 day of June, 2015.

John E. Fortt