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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2014-000582

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery. . . . . .Appellant,

v.

South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control, City of North Charleston, Charleston Water System, Associated Developers, Inc., Parkhill, LLC, ...Defendants,

Of which South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control, City of North Charleston, and Charleston Water System are . . . . . Respondents.

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INDEX

ORDERS

Order Granting Charleston Water System's Motion to Dismiss, filed February 18, 2014. 1

Order Granting DHEC's Motion for Summary Judgment, filed February 18, 2014 9

Order Granting City of North Charleston's Motion to Dismiss 14

Order Granting South Carolina Department of Transportation's Motion for Summary Judgment 24

PLEADINGS

Amended Summons and Complaint, October 24, 2012 32

SCDHEC's Answer to Amended Complaint, filed November 2, 2012 73

Charleston Water System's Answer to Amended Complaint, filed November 13, 2012 82

SCDOT's Answer to Amended Complaint, filed December 10, 2012 100

City of North Charleston's Answer to Amended Complaint, filed December 27, 2012 112

City of North Charleston's Motion to Dismiss, filed November 21, 2013 129

SCDOT's Motion for Summary Judgment, filed November 21, 2013 154

SCDHEC's Motion for Summary Judgment, filed November 25, 2013 158

Charleston Water System's Motion to Dismiss, filed December 6, 2013 163

TRANSCRIPTS

Deposition of Richard Geer with Exhibits 168

Transcript of January 7, 2014 Hearing 278

OTHER MATERIALS

Charleston Water System Memorandum in Support of Motion for Summary Judgment, filed January 2, 2014 307

City of North Charleston's Memorandum in Support of Its Motion to Dismiss, filed January 2, 2014 316

Appellant's Memorandum in Opposition to Defendant's Motions to Dismiss, filed January 6, 2014 358

SCDOT's Memorandum in Support of Summary Judgment, filed January 7, 2014 407

Notice of Appeal, filed March 19, 2014 416

Amended Notice of Appeal, filed April 4, 2014 451

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	C/A No. 12-CP-10-06922
Plaintiff,	)	
Versus	)	ORDER GRANTING CHARLESTON WATER SYSTEM'S MOTION TO DISMISS
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC,	)	
Defendants.	)	

FILED
2014 FEB 18 P 2:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing January 7, 2014 on Defendant Charleston Water System's (CWS)[1] Motion to Dismiss Pursuant to SCRCP Rule 12(c), or, in the alternative, Motion for Summary Judgment. Present in the court were the Plaintiff's counsel: Yancey A. McLeod, III, Esquire; Defendant Charleston Water System's counsel, G. Wade Cooper, Esquire, and Leslie S. Riley, Esquire; Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire; Andrew S. Halio, Esquire, counsel for South Carolina Department of Health and Environmental Control; and Jason A. Daigle, Esquire, counsel for South Carolina Department of Transportation.

As to the CWS, Plaintiff alleges four causes of action:

(1) Inverse Condemnation;
(2) Negligent and grossly negligent design, construction, and maintenance;
(3) Negligent and grossly negligent failure to manage storm water runoff; and,
(4) Trespass.

After reviewing the pleadings, the Motions to Dismiss, the Memoranda in support of the Motions and opposing the Motions, reviewing the pleadings, and considering the arguments of counsel, the Court hereby grants Defendant Charleston Water System's Motion to Dismiss based on the pleadings.[2]

[1] The legal name for CWS is the Commissioners of Public Works of the City of Charleston, which does business as CWS.

[2] The various governmental entity Defendants filed Motions for Dismissal Pursuant to SCRCP Rule 12(c) on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders of Dismissal for each separate Defendant.

pmp 1

I. THE PLAINTIFF'S CLAIMS FOR DAMAGES ARISING OUT OF ANY FLOODING EVENT PRIOR TO APRIL 8, 2008 ARE DISMISSED PURSUANT TO THE STATUTE OF LIMITATIONS.

Initially, based upon the pleadings, the Plaintiff's allegations asserting claims against Defendant Charleston Water System for the March 20, 2003, June 16, 2004 and July 22, 2005 flood events are time-barred pursuant to the statute of limitations. For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Sixth, Seventh, and Eighth causes of action (negligence and trespass) are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[3] For the Plaintiff's remaining claim for inverse condemnation (Fourth cause of action), a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[4] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[5] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333

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[3] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[4] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

[5] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

Pmp 2

S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[6]

Here, pursuant to S.C. Code Ann. § 15-78-110 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against CWS within two years after Plaintiff knew or should have known it had a claim. Further, for all non-tort claims, a three year statute of limitations applies pursuant to S.C. Code Ann. §15-3-530. It is self evident that the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when each flood occurred in 2003, 2004, 2005, 2008 and 2009. As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff failed to do so, and Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010.

As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003, 2004, and 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

II. THE PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF FOR ITS (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, AND (3) TRESPASS CAUSES OF ACTION AGAINST CHARLESTON WATER SYSTEM PURSUANT TO THE HAWKINS DECISION AND THE SOUTH CAROLINA TORT CLAIMS ACT.

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[6] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id. "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

pmm 3

1. NEGLIGENCE/GROSS NEGLIGENCE & SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act, which is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

(1) legislative, judicial, or quasi-judicial action or inaction;
(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

...

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

...

(7) a nuisance;

...

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

Code 1976 § 15-78-60.

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit the liability of the State. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Id.

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a governmental entity's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App.

pmD 4

2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[7] In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered to be inherently quasi-judicial, discretionary functions for which a governmental entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required

[7] More specifically, in Hawkins, a business owner brought an action against the City alleging that the City's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a governmental entity will not be held liable for damages allegedly resulting from the overall design, construction, or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by the governmental entity and which proximately causes damages to a person's property. The Hawkins decision controls in this case.

to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the *design and maintenance of* the drainage system at issue in the case. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language affords a governmental entity absolute immunity for design, construction, and maintenance decisions, and the Tort Claims Act immunity provisions (1), (2), (4), (5), (7), and (13) bar Plaintiff's present tort claims against Charleston Water System.

With regard to CWS, there is an additional statutory basis for dismissal on this basis. CWS is a statutorily-created Commissioners of Public Works pursuant to S.C. Code Ann. §5-31-210 *et seq*. Section 5-31-250 sets forth specific powers of any commissioners of public works as follows:

> The board of commissioners of public works of any city or town may purchase, build or contract for building any waterworks or electric light plant authorized under Article 7 of this chapter and may operate them and shall have full control and management of them. It may supply and furnish water to citizens of the city or town and also electric, gas or other light and may require payment of such rates, tolls and charges as it may establish for the use of water and light.

Given that CWS has only the powers invested in it by the Legislature as set forth above, CWS does not and cannot have control of any design, construction or maintenance of any drainage system, much less a drainage system located outside of the corporate limits of the City of Charleston.

Here, Plaintiff's Amended Complaint Paragraphs 5 - 52 and Fourth, Sixth, Seventh, and Eighth causes of action do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff alleges liability due to CWS' "incorrect design, construction, and maintenance" of its drainage system (Am. Comp. ¶ 20); its refusal "to lower the water level of the Goose Creek Reservoir to prevent upstream flooding" (Am. Comp. ¶ 85); its failure "to design, maintain, and operate the drainage system under its control to prevent or mitigate flooding resulting from even moderate rainfall" (Am. Comp. ¶ 98 (a)); its failure "to institute protocols and procedures by which the level of the Goose Creek Reservoir would be lowered in the event of significant rainfall resulting in potential for flooding" (Am. Comp. ¶98 (b)); and CWS' "failure or refusal to take appropriate steps to manage storm water runoff through its drainage basin terminating at the Goose Creek Reservoir" (Am. Comp. ¶ 105). As for the allegations regarding "the drainage system under [CWS'] control," it is clear from §5-31-250 that CWS does not have any control over storm water or drainage systems and therefore cannot fail to maintain such. With regard to the remaining allegations, they, at most, are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claims against Charleston Water System fail as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim against CWS also fails pursuant to the Hawkins decision. Hawkins argued that the City was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the City's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. *Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes.* The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the part of the Charleston Water System. Complaint Paragraphs 5 - 52, and 7-88 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. The allegations of the CWS' mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the CWS giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct (or lack thereof) absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the CWS' failure to mitigate upstream flooding by lowering the level of the downstream Goose Creek Reservoir proximately caused flooding on its premises. (Am. Comp. ¶¶ 85, 97, 98, 99, 101, 103, 105). However, pursuant to the Hawkins' court's ruling, the failure to act or to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the CWS' actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. *Id.*; *see also*, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim).

MD 7

3. TRESPASS

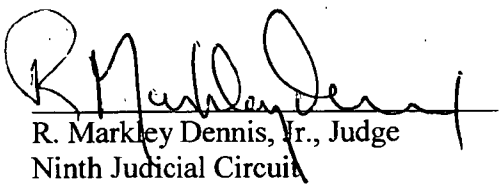
As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, for the same reasons outlined in the Hawkins decision and pursuant to the Tort Claims Act, the trespass claim allegations (¶¶ 108-111) in this case fail to set forth sufficient facts to constitute a claim for relief against this Defendant.

CONCLUSION

For the reasons stated herein, this Court hereby grants Defendant Charleston Water System's Motion to Dismiss Pursuant to SCRCP Rule 12(c) based on the South Carolina Tort Claims Act and the Hawkins decision.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

PMD 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No.: 12-CP-10-6922
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
Plaintiff,	)	**ORDER GRANTING DHEC'S MOTION FOR SUMMARY JUDGMENT**
vs.	)	
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC,	)	
Defendants.	)	

FILED
2014 FEB 18 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing on January 7, 2014 on Defendant South Carolina Health and Environmental Control's (DHEC) Motion for Summary Judgment. Present in the courtroom were the Plaintiff's counsel: Yancey A. McLeod, III, Esquire; Defendant Charleston Water System's counsel, G. Wade Cooper, Esquire, and Leslie S. Riley, Esquire; Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire; Andrew S. Halio, Esquire, counsel for DHEC; and Jason A. Daigle, Esquire, counsel for South Carolina Department of Transportation.

As to DHEC, Plaintiff alleges two causes of action: negligence/gross negligence and inverse condemnation. These causes of action arise out of DHEC's issuance of various land disturbance permits, which are alleged to have resulted in the flooding of the Plaintiff's property. After reviewing the pleadings, the motion, and the Plaintiff's opposing memorandum, and considering the arguments of counsel, the Court hereby grants DHEC's Motion for Summary Judgment for the reasons set forth below.[1]

1. SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act, which is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

[1] The various governmental entity Defendants filed separate motions on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders for each Defendant. In support of its motion for summary judgment, DHEC relies on all of the materials generated in the case, including the materials generated in discovery. The Court also notes that DHEC did not move on the basis of the statute of limitations, but had it done so, the result would have been the same as the Court's ruling with respect to the other governmental entities on that issue.

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

(1) legislative, judicial, or quasi-judicial action or inaction;
(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

...

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

...

(7) a nuisance;

...

(12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
(13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit the liability of the State. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Id.

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a governmental entity's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[2]

[2] More specifically, in Hawkins, a business owner brought an action against the City alleging that the City's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse

Pmp 2

In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered to be inherently quasi-judicial, discretionary functions for which a governmental entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found that a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the design and maintenance of the drainage system at issue in that case. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language

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condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a governmental entity will not be held liable for damages allegedly resulting from the overall design, construction, or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by the governmental entity and which proximately causes damages to a person's property. The Hawkins decision controls in this case.

affords a governmental entity absolute immunity for design, construction, and maintenance decisions. The rationale of Hawkins is also applicable to DHEC, which is alleged to have negligently reviewed, inspected and approved erroneous drainage plans, failed to mitigate flooding problems, and failed to supervise surface water drainage near the Plaintiff's property, all of which is precluded by the exceptions to waiver of immunity provisions in the Tort Claims Act cited above and by Hawkins. Additionally, S.C. Code § 15-78-60 (12) provides immunity to DHEC for the issuance of the permits, and Plaintiff was unable to provide any evidence that the permits at issue were issued in a grossly negligent manner. For these reasons, Plaintiff's negligence/gross negligence claims against DHEC fail as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim against DHEC also fails under Hawkins. Hawkins argued that the City was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the City's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

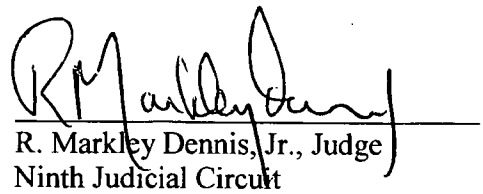
> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, Plaintiff has failed to allege or show any "affirmative, positive, aggressive act" on the part of DHEC in this case. The allegations setting forth the basis for the inverse condemnation claim against DHEC are found in Paragraphs 65 - 70 of the Amended Complaint. The mere allegation that DHEC issued permits without accounting for potential downstream flooding is insufficient to support a claim for inverse condemnation. No proof of an "affirmative, positive, aggressive act" on the part of DHEC has been presented to the Court. As such, Plaintiff's inverse condemnation claim against DHEC fails as a matter of law.

CONCLUSION

For the reasons stated herein, this Court hereby grants DHEC'S Motion for Summary Judgment.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

RMD 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No.: 12-CP-10-6922
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
	)	**ORDER GRANTING CITY OF NORTH CHARLESTON'S MOTION TO DISMISS**
Plaintiff,	)	
vs.	)	
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC,	)	
Defendants.	)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing on January 7, 2014 on Defendant City of North Charleston's Motion to Dismiss Pursuant to SCRCP Rule 12(c). Present in the court were the Plaintiff's counsel Yancey A. McLeod, III, Esquire, Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire, G. Wade Cooper, Esquire counsel for Charleston Water System, Andrew S. Halio, Esquire counsel for South Carolina Department of Health and Environmental Control, and Jason A. Daigle, Esquire counsel for South Carolina Department of Transportation.

After reviewing the pleadings, the Motions to Dismiss, the Memoranda in support of the Motions and opposing the Motions, reviewing the pleadings, and considering the arguments of counsel, the Court hereby grants Defendant City of North Charleston's Motion to Dismiss based on the pleadings.[1]

I. THE PLAINTIFF'S CLAIMS FOR DAMAGES ARISING OUT OF ANY FLOODING EVENT PRIOR TO APRIL 8, 2008 ARE DISMISSED PURSUANT TO THE STATUTE OF LIMITATIONS.

Initially, based upon the pleadings, the Plaintiff's allegations asserting claims against Defendant City of North Charleston for the March 20, 2003, June 16, 2004 and July 22, 2005 flood events are time-barred pursuant to the statute of limitations. For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Fifth, Eighth, and Twelfth

[1] The various governmental entity Defendants filed Motions for Dismissal Pursuant to SCRCP Rule 12(c) on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders of Dismissal for each separate Defendant.

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claims are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[2] For the Plaintiff's remaining Third claim for inverse condemnation, a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[3] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[4] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[5]

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[2] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[3] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

[4] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

[5] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id.

Here, pursuant to S.C. Code Ann. § 15-78-110 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against Defendant within two years after Plaintiff knew or should have known it had a claim. Further, pursuant to S.C. Code Ann. § 15-3-530 for all non-tort claims, a three year statute of limitations applies. It is self evident that the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when each flood occurred in 2003, 2004, 2005, 2008 and 2009. As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff failed to do so, and Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010.

As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003 – 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

II. THE PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF FOR ITS (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, (3) S.C. CODE ANN. § 5-31-450 VIOLATION, AND (4) TRESPASS CAUSES OF ACTION AGAINST DEFENDANT CITY OF NORTH CHARLESTON PURSUANT TO THE HAWKINS DECISION

1. SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a government is governed by the South Carolina Tort Claims Act. The Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

(1) legislative, judicial, or quasi-judicial action or inaction;
(2) administrative action or inaction of a legislative, judicial, or quasi-judicial

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"The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

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nature;

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

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

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

...

(7) a nuisance;

...

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

...

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

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.

Code 1976 § 15-78-60

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). When a governmental entity asserts various exceptions to the waiver of immunity under the state Tort Claims Act, the correct approach is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit liability. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999).

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a city's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[6] In Hawkins, Louie

[6] More specifically, in Hawkins, a business owner brought an action against the city alleging that the city's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse condemnation; (2)

RMD 4

Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the design and maintenance of the drainage system in the Laurel Creek Basin. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language affords

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city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a municipality will not be held liable for damages allegedly resulting from the overall design or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by a governmental agency which proximately causes damages to a person's property. The Hawkins decision controls in this case.

a governmental entity, such as a city, absolute immunity for design and maintenance decisions, and the Tort Claims Act immunity provisions (1), (2), (3-5), (7), (9), (13), and (20) bar Plaintiff's present tort claim.

Here, Amended Complaint Paragraphs 4 - 52 and 118 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff's allegations that the City of North Charleston's "failing and refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 118 (a)), "in failing and refusing to take steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 118 (b)), "in failing and refusing to ensure adequate drainage for implementation of a stormwater system" (Am. Comp. ¶ 118 (c)), "in negligently reviewing, inspecting, and approving ill conceived and factually erroneous drainage plans for construction upstream from the designated well-known flood areas" (Am. Comp. ¶ 118 (d)), "in failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Blvd." (Am. Comp. ¶ 118 (e)), "in failing and refusing to take any substantive steps to mitigate or prevent future flooding" (Am. Comp. ¶ 118 (f)), "in failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe shopping center area" (Am. Comp. ¶ 118 (g)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 118 (h)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claim fails as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim also fails pursuant to the Hawkins decision. Hawkins argued that the city was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the city's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency");

Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the part of the City of North Charleston. Complaint Paragraphs 4 - 52, and 72-74 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. The allegations of the City's mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the City of North Charleston giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the City's permitting of developments upstream from its location at Northwoods Pointe, along with its failure to remedy certain drainage defects, proximately caused flooding on its premises. (Am. Comp. ¶¶ 9, 10, 24, 30, 42-47). However, pursuant to the Hawkins' court's ruling, the City's actions in "allow[ing] the development of neighboring parcels of commercial property" which allegedly "added strain" to the existing upstream watershed, as well as its alleged failure to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the City's actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. Id.; see also, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim).

3. S.C. CODE § 5-31-450

S.C. Code Ann. § 5-31-450 reads in full:

"Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person."

In applying S.C. Code § 5-31-450, the Hawkins court held that liability does not exist under such section absent some affirmative act by the municipality which alters the course or increases the amount of storm water runoff onto private property:

> Applying this statute, our courts have held that liability does not obtain under section 5-31-450 absent some affirmative act by the municipality which alters the course or increases the amount of storm water runoff onto private property. See Brown v. Sch. Dist. of Greenville County, 251 S.C. 220, 225, 161 S.E.2d 815, 817 (1968) (holding that unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute). "The statute does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. By the same token, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off." Hall v. City of Greenville, 227 S.C. 375, 386, 88 S.E.2d 246, 251 (1955). "The statute does not make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Therefore, unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute." Taleff v. City of Greer, 284 S.C. 510, 512, 327 S.E.2d 363, 364 (Ct. App. 1985) (citations omitted). "Under this statute proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction." Hall, 227 S.C. 386, 88 S.E.2d 251. This section apodictically contemplates positive action by a municipality to render it liable for damages. Brown, 251 S.C. 225, 161 S.E.2d 817. (Emphasis added).

Initially, S.C. Code Ann. §5-31-450 requires a "demand from the owner of such private lands," not the tenant of the property owner. Here, the pleadings are deficient in alleging a cause of action pursuant to the statute because the Plaintiff does not allege that the land owner of the property (as opposed to the tenant) demanded the City of North Charleston to take any action. In addition, S.C. Code Ann. §5-31-450 creates a cause of action in favor of a landowner, not a tenant, and requires that a landowner plead and prove an overt act against a municipality. As S.C. Code Ann. §5-31-450 does not create a cause of action in favor of a tenant and otherwise requires a "demand from the owner of such private lands," Plaintiff's Complaint fails to allege facts to sufficiently set forth a cause of action against this Defendant pursuant to S.C. Code Ann. §5-31-450. Accordingly, the Plaintiff's §5-31-450 claim, as pled, does not set forth a claim for relief and such claim is dismissed.

As an alternate sustaining ground, however, similar to Hawkins, Plaintiff has failed to factually allege any "affirmative, positive, aggressive acts" of any damage resulting from the

municipality's works.[7] Complaint Paragraphs 4 – 52 and 90 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Based on Hawkins, the City of North Charleston's act in approving permits is not the type of "positive action" or "overt act" contemplated by the statute to render it liable. The allowance of construction upstream from an affected area or a municipality's failure to take steps to alleviate downstream flooding, as alleged by La-Z-Boy and by Hawkins in their Complaints, is not the type of acts which give rise to liability under § 5-31-450 or the other causes of actions alleged against the City of North Charleston.

Further, Plaintiff's allegations that the City of North Charleston's "failing and refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 90 (a)), "in failing and refusing to take steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 90 (b)), "in failing and refusing to ensure adequate drainage for implementation of a stormwater system" (Am. Comp. ¶ 90 (c)), "in reviewing, inspecting, and approving ill conceived and factually erroneous drainage plans for construction upstream from the designated well-known flood areas" (Am. Comp. ¶ 90 (d)), "in failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Blvd." (Am. Comp. ¶ 90 (e)), "in failing and refusing to take any substantive steps to mitigate or prevent future flooding" (Am. Comp. ¶ 90 (f)), "in failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe shopping center area" (Am. Comp. ¶ 90 (g)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 90 (h)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's § 5-13-450 claim fails as a matter of law.

4. TRESPASS

As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, for the same reasons outlined in the Hawkins decision and pursuant to the Tort Claims Act, the trespass claim allegations (¶¶ 108-111) in this case fail to set forth sufficient

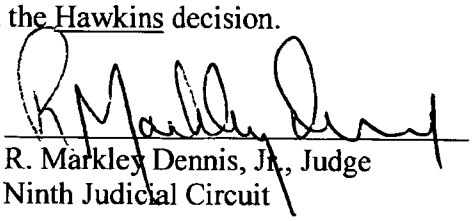
[7] The Hawkins court summarily dismissed that a city "improperly" allowing the development of neighboring parcels of commercial property which alters the elevation of an area and adds strain to the drainage pipes beyond their capacity amounts to an affirmative act. Similar to the analysis it applied to affirming the dismissal of Hawkins' inverse condemnation claim, the South Carolina Court of Appeals affirmed the trial court's dismissal of Hawkins' claim that the City violated § 5-31-450 on such grounds.

facts to constitute a claim for relief against this Defendant.

CONCLUSION

For the reasons stated herein, this Court hereby grants Defendant City of North Charleston's Motion to Dismiss Pursuant to SCRCP Rule 12(c) based on the South Carolina Tort Claims Act, S.C. Code Ann. ¶ 5-31-450, and the Hawkins decision.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

PMD 10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	C/A No. 12-CP-10-06922
Plaintiff,	)	
Versus	)	ORDER GRANTING SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION'S MOTION FOR SUMMARY JUDGMENT
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC,	)	
Defendants.	)	

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing January 7, 2014 on Defendant South Carolina Department of Transportation's (SCDOT) Motion for Summary Judgment pursuant to SCRCP Rule 12(b)(6), 12(c), and 56. Present in the court were the Plaintiff's counsel: Yancey A. McLeod, III, Esquire; Defendant Charleston Water System's counsel, G. Wade Cooper, Esquire, and Leslie S. Riley, Esquire; Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire; Andrew S. Halio, Esquire, counsel for South Carolina Department of Health and Environmental Control; and Jason A. Daigle, Esquire, counsel for South Carolina Department of Transportation.

As to SCDOT, Plaintiff alleges three causes of action:

(1) Inverse Condemnation;
(2) Trespass; and,
(2) Negligence/Gross Negligence.

After reviewing the pleadings, the Motion for Summary Judgment, the Memoranda in support of the Motions and opposing the Motions, reviewing the pleadings, and considering the arguments of counsel, the Court hereby grants Defendant South Carolina Department of Transportation's Motion for Summary Judgment based on the pleadings.[1]

[1] The various governmental entity Defendants filed Motions for Dismissal Pursuant to SCRCP Rule 12(c) on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders of Dismissal for each separate Defendant.

RMO 2/1

I. THE PLAINTIFF'S CLAIMS FOR DAMAGES ARISING OUT OF ANY FLOODING EVENT PRIOR TO APRIL 8, 2008 ARE DISMISSED PURSUANT TO THE STATUTE OF LIMITATIONS.

Initially, based upon the pleadings, the Plaintiff's allegations asserting claims against the SCDOT for the March 20, 2003, June 16, 2004 and July 22, 2005 flood events are time-barred pursuant to the statute of limitations. For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Eighth and Fourteenth causes of action (trespass and negligence/gross negligence) are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[2] For the Plaintiff's remaining claim for inverse condemnation (First cause of action), a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[3] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[4] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333

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[2] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[3] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

[4] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

RMD 9/12

S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[5]

Here, pursuant to S.C. Code Ann. § 15-78-110 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against the SCDOT within two years after Plaintiff knew or should have known it had a claim. Further, for all non-tort claims, a three year statute of limitations applies pursuant to S.C. Code Ann. §15-3-530. It is self evident that the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when each flood occurred in 2003, 2004, 2005, 2008 and 2009. As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff failed to do so, and Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010.

As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003, 2004, and 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

II. THE PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF FOR ITS (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, AND (3) TRESPASS CAUSES OF ACTION AGAINST THE SCDOT PURSUANT TO THE HAWKINS DECISION AND THE SOUTH CAROLINA TORT CLAIMS ACT.

1. NEGLIGENCE/GROSS NEGLIGENCE & SOUTH CAROLINA TORT CLAIMS ACT

[5] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id. "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

RMO 8/13

Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act, which is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

> S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.
>
> The governmental entity is not liable for a loss resulting from:
>
> (1) legislative, judicial, or quasi-judicial action or inaction;
> (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
>
> ...
>
> (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
> (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
>
> ...
>
> (7) a nuisance;
>
> ...
>
> (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
>
> Code 1976 § 15-78-60.

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit the liability of the State. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Id.

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a governmental entity's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[6]

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[6] More specifically, in Hawkins, a business owner brought an action against the City alleging that the City's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse

In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered to be inherently quasi-judicial, discretionary functions for which a governmental entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required *to build and maintain* an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the *design and maintenance of* the drainage system at issue in the case. Hawkins,

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condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a governmental entity will not be held liable for damages allegedly resulting from the overall design, construction, or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by the governmental entity and which proximately causes damages to a person's property. The Hawkins decision controls in this case.

358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language affords a governmental entity absolute immunity for design, construction, and maintenance decisions, and the Tort Claims Act immunity provisions (1), (2), (4), (5), (7), and (13) bar Plaintiff's present tort claims against the SCDOT.

Here, Plaintiff's Amended Complaint Paragraphs 2 - 52 and First, Eighth and Fourteenth causes of action do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff alleges liability due to SCDOT's "refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 126 (a)), "in refusing to take any steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 126 (b)), "in failing and refusing to ensure adequate drainage for implementation of a storm water system" (Am. Comp. ¶ 126 (c)), "in designing, constructing and maintaining the Highway 52 Connector improvements without providing for sufficient drainage of surface water from the highway" (Am. Comp. ¶ 126 (d)), "in refusing to take substantive steps tomitigate or prevent future flooding" (Am. Comp. ¶ 126 (e)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 126(f)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claim fails as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim against the SCDOT also fails pursuant to the Hawkins decision. Hawkins argued that the City was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the City's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. *Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes.* The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149,

427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the part of the SCDOT. Complaint Paragraphs 2 – 63 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. The allegations of the SCDOT's mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the SCDOT giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct (or lack thereof) absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the SCDOT's construction and installation of developments upstream from its location at Northwoods Pointe, along with its failure to remedy certain drainage defects, proximately caused flooding on its premises. (Am. Comp. ¶¶ 9 - 12, 16, 24, 29 – 34, 60). However, pursuant to the Hawkins' court's ruling, the failure to act or to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the SCDOT's actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. *Id.*; *see also*, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim).

3. TRESPASS

As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

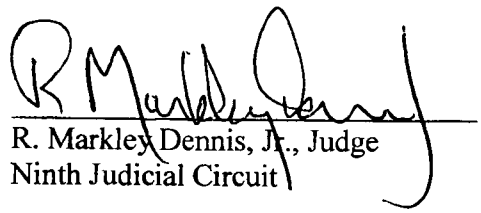
Here, for the same reasons outlined in the Hawkins decision and pursuant to the Tort Claims Act, the trespass claim allegations (¶¶ 108-111) in this case fail to set forth sufficient facts to constitute a claim for relief against this Defendant.

CONCLUSION

For the reasons stated herein, this Court hereby grants Defendant South Caolina Department of Transportation's Motion for Summary Judgment pursuant to SCRCP Rule 12(b)(6), 12(c), and 56 based on the South Carolina Tort Claims Act and the Hawkins decision.

RMO 9/7

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,)
Plaintiff(s))
)
vs.)
)
South Carolina Department of Transportation, et al)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 -CP - 10 - 6922

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Other:
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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

If Action is Judgment/Settlement do not complete

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** October 24, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

R000032

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NUMBER: 2012-CP-10-6922

FILED
2012 OCT 24 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TIPPERARY SALES d/b/a LA-Z-BOY FURNITURE GALLERY,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEM; ASSOCIATED DEVELOPERS, INC.; PARKHILL, LLC,

Defendants.

AMENDED SUMMONS

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to the Complaint on the subscriber, 92 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service, exclusive of the date of service. If you fail to answer the Complaint within this time, judgment by default will be rendered against you for the relief demanded in the Complaint.

LEATH, BOUCH, & SEEKINGS, LLP

By: _____

Michael S. Seekings
Yancey A. McLeod III (S.C. Bar No.: 80911)
92 Broad Street
Post Office Box 59

Charleston, South Carolina 29402
(843) 937-8811

Attorney for the Plaintiff

Charleston, South Carolina

Dated:_____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NUMBER: 2012-CP-10-6922

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TIPPERARY SALES d/b/a LA-Z-BOY FURNITURE GALLERY,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEM; ASSOCIATED DEVELOPERS, INC.; AND PARKHILL, LLC

Defendants.

AMENDED COMPLAINT
(Jury Trial Demanded)

NOW COMES Tipperary Sales d/b/a La-Z-Boy Furniture Gallery (hereinafter, La-Z-Boy) who complains as follows:

PARTIES

1. Tipperary Sales is a corporation organized pursuant to the laws of Georgia and having its principal place of business in Augusta, Georgia. Tipperary Sales operates La-Z-Boy Furniture Gallery locations in numerous locations including one located at 7671 Northwoods Boulevard in North Charleston in the Northwoods Pointe Shopping Center adjacent to Northwoods Mall. Tipperary Sales is authorized to do business in the State of South Carolina.

2. The South Carolina Department of Transportation (hereinafter "SCDOT") is a governmental subdivision of the State of South Carolina charged by law with the design,

construction, and maintenance of the State's highways, byways, and thoroughfares. Plaintiff brings its claims against SCDOT, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.*, and under common law.

3. The South Carolina Department of Health and Environmental Control (hereinafter "DHEC") is a governmental subdivision of the State of South Carolina, with regulatory powers set forth in S.C. CODE ANN. §48-10-70, *et seq.* DHEC has promulgated regulations regarding storm water runoff management to promote water quantity control. S.C. CODE ANN. REG. 72-100 through 72-445. Plaintiff brings its claims against DHEC, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. §15-78-10, *et seq.*, and under common law.

4. This City of North Charleston (hereinafter "North Charleston") is a municipal corporation and claims brought against it are brought, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. §15-78-10, *et seq.*, §5-31-450, and under common law. North Charleston is responsible for the maintenance and implementation of a storm water system in the City and for approving and inspecting drainage plans for construction in designated flood areas. Moreover, North Charleston is required to provide for sufficient drainage for surface water from any city street. S.C. CODE ANN. §5-31-450.

5. The Charleston Water System, f/k/a Charleston Commissioners of Public Works (hereinafter "CWS"), is, upon information and belief, a governmental subdivision that owns, operates, and maintains the Goose Creek Reservoir, and, upon information and belief, has responsibility for controlling the discharge of water from the Reservoir into the Cooper River. CWS is believed to have designed, built, maintained, owned and controlled the drainage system running from the Northwoods Mall and Northwoods Pointe Shopping Center area to the

Reservoir. Plaintiff brings its claims against CWS, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.*, and under common law.

6. Associated Developers, Inc. (hereinafter "Associated Developers") is a corporation organized and existing pursuant to the laws of the Commonwealth of Virginia. Associated Developers is authorized to conduct business in this State.

7. Parkhill, LLC (hereinafter "Parkhill") is a limited liability company organized pursuant to the laws of the State of South Carolina and is authorized to do business in this State.

FACTUAL BACKGROUND

8. Plaintiff La-Z-Boy has a leasehold interest in its store facilities at Northwoods Pointe Shopping Center in North Charleston. La-Z-Boy has leased the space since 2000. Prior to taking possession of the space, La-Z-Boy had no knowledge or information regarding any prior flooding events at the premises. La-Z-Boy upfitted the space for its business purposes and installed fixtures and various interior upgrades at its own expense.

9. Unbeknownst to La-Z-Boy, the Northwoods Mall area was prone to flooding. As is reflected in a 1980 E.M. Seabrook Jr., Inc. (hereinafter "Seabrook") study, the Northwoods Mall parking lot has had a long history of flooding. The Seabrook study noted that the flooding issues were discussed with SCDOT and with North Charleston. Seabrook also determined that flooding would take place upstream of the Highway 52 Connector in any 50-year storm due to the sizing of the pipes under the highways and downstream to two 84" pipes laying beneath the Northwoods Mall parking lot, which were and are grossly undersized and form a constriction point and obstruction to storm water drainage for the entire watershed. As such, as early as 1980, SCDOT and North Charleston knew that the facilities were inadequate to handle any heavy rainfall event.

10. The Seabrook study also revealed that more than 1,900 acres drained to the twin 84" pipes running beneath the Northwoods Mall parking lot - 900 acres more that any previous drainage calculation had projected. The Seabrook study put SCDOT and North Charleston on notice that the twin 84" pipes were even more of a choke point for the storm water drainage system than previously believed. Still, SCDOT did nothing, and, upon information and belief, made it clear to Seabrook that it intended to do nothing.

THE DRAINAGE BASIN NEAR AND AROUND THE LA-Z-BOY STORE

11. Immediately downstream from Parkhill Place subdivision, storm water is channeled through a box culvert beneath the Highway 52 Connector. The box culvert was installed by SCDOT. Upon information and belief, the box culvert is not sufficiently sized to handle upstream storm water runoff.

12. Just downstream from the box culvert are the twin 84" pipes, which are the intake point for the drainage system that runs below and through Northwoods Mall parking lot. SCDOT installed, owns, and maintains, the twin 84" pipes that are intended to carry storm water beneath the Northwoods Mall parking lot until they empty into an open ditch. The twin 84" pipes have *never* been adequate for managing storm water runoff since they were installed by SCDOT.

13. Upon information and belief, CWS owns and controls the open ditch running through the lower part of the Northwoods Mall parking lot.

14. The drainage basin then flows down an open ditch or streambed, believed to be owned and controlled by CWS, to its outflow terminus at the Goose Creek Reservoir, which itself is believed to be owned, controlled, managed, and operated by the CWS.

15. The outflow point at the Reservoir, which is under CWS' control, is actually at a higher elevation than the intake point for the entire drainage system at SCDOT's twin 84" pipes. As a

result, the entire drainage system remains approximately one-half full even during dry conditions. This lack of appropriate slope dramatically reduces the volume of water that can be carried by the entire drainage system, such that its capacity is substantially less than was intended.

16. Though SCDOT has repeatedly been warned of the inadequacy of its 84" pipes, and the attendant risks of severe flooding, SCDOT has refused to correct their inadequate facilities. In fact, the twin 84" pipes act as a dam, preventing the flow of storm water to the Goose Creek Reservoir.

17. In addition to the drainage from upstream of the Highway 52 Connector, storm water also flows down the road bed of Northwoods Boulevard from Ashley Phosphate Road. This storm water also flows to the intake of the drainage system at the twin 84" pipes.

18. When there is a heavy rainfall, the storm water runoff flows down from the Parkhill Place Subdivision and points upstream to the rear of the La-Z-Boy store as well as from Ashley Phosphate Road down Northwoods Boulevard to the front of the La-Z-Boy store. The entire flow of storm water, both from the front and rear of the building, is intended to enter SCDOT's 84" pipes and to flow down the CWS-owned watershed to the Goose Creek Reservoir. The La-Z-Boy store is situated at the low point of the entire watershed. As Defendant Earth Tech reported to SCDOT and to Davis & Floyd, the La-Z-Boy store is the lowest point in the area around the mall and shopping center, and the store will tend to flood before any other surrounding stores or the mall itself.

19. Instead of being channeled down the drainage watershed, the storm water runoff backs up at the constriction point at the opening of SCDOT' s twin 84" pipes.

20. Further, because of the incorrect design, construction and maintenance of the CWS drainage system, which is either flat or has negative drainage between the Northwoods Mall/Northwoods Pointe Shopping Center and the Goose Creek Reservoir, the entire drainage system is inadequate to the task of moving water away from the La-Z-Boy store and to the Reservoir.

IMPROVEMENT OF THE ASHLEY PHOSPHATE ROAD / HIGHWAY 52 CONNECTOR / 1-26 INTERCHANGE

21. In September, 2002, SCDOT began construction to improve the interchange at 1-26, Ashley Phosphate Road, and the Highway 52 Connector in North Charleston.

22. Upon information and belief, SCDOT conducted no significant analysis of the effect the planned improvement would have on downstream flooding, which SCDOT knew or should have known was a recurring problem.

23. On or about March 20, 2003, while construction was ongoing, there was a heavy rainfall that resulted in considerable flooding downstream from the interchange improvements with maximum effect at the La-Z-Boy store. As a result of the inundation, the La-Z-Boy store suffered damage to its fixtures, improvements, and loss of inventory. La-Z-Boy also suffered a loss of revenue because the store was forced to close for 6 days due to the flood and the clean-up, as well as the time required to restock ruined inventory.

24. After the deluge, various merchants in the Northwoods Mall and Northwoods Pointe Shopping Center, including La-Z-Boy, notified SCDOT, the City of North Charleston, the Charleston County Public Works Department, the North Charleston Public Works Department, the Charleston Commissioners of Public Works (now Charleston Water System), and complained about the extensive flooding and notified all governmental agencies of its concern over future flooding and insisted that the responsible government agencies immediately

investigate the cause of the flooding and take steps to remedy the problems causing the flooding that imperiled the livelihoods of the businesses affected by the torrent.

25. In response to its demand for investigation into the cause of the flooding, La-Z-Boy was informed that "extensive roadwork in the area coupled with extraordinary rainfall were the contributing factors" in the flooding that damaged the La-Z-Boy store and inventory. Upon information and belief, the only roadwork that could have exacerbated and increased the flooding was the Ashley Phosphate *I* 1-26 *I* Highway 52 Connector improvements being built by SCDOT.

26. Rather than accept any responsibility for the flood, SCDOT wrongly contended that the only source of the flood was runoff down Northwoods Boulevard from Ashley Phosphate Road to the front of the La-Z-Boy store. SCDOT contended that the flood waters traversed the parking lot and collected in a retention pond at the rear of the store after which it passed into SCDOT's drainage pipes, which SCDOT wrongly believed were adequate and operating properly.

27. Contrary to SCDOT's contention, the upstream watershed also extended uphill from SCDOT's expanded Highway 52 Connector through Parkhill Place Subdivision and other upstream commercial and residential developments, all of which drained directly to SCDOT's inadequate 84" pipes.

28. Additionally, all runoff from the added impervious acreage of the expanded highway and interchange likewise flowed to the twin 84" pipes located in SCDOT's right-of-way and within SCDOT's exclusive control.

29. SCDOT had long known that the 84" pipes were inadequate to the task of carrying away even a modest amount of storm water, yet SCDOT refused to make requisite improvements to the choke point in the drainage system at the mouth of the 84" pipes.

30. After the March 20, 2003, flood, La-Z-Boy notified the City of North Charleston of its concern with storm water management, and demanded that North Charleston take any necessary and appropriate steps to correct the condition and to prevent future flooding.

31. La-Z-Boy also contacted SCDOT's resident engineers on the I-26/Ashley Phosphate Road/Highway 52 Connector project, Davis & Floyd and Earth Tech, to notify them of the flooding problem and demanding that Davis & Floyd take such steps as were necessary to remedy the problem.

32. Davis & Floyd commissioned Earth Tech n/k/a AECOM, SCDOT's design engineers for the improvement project, to study the impact of the interchange improvements on downstream storm water management. Earth Tech concluded that the Highway 52 Connector improvements would add 13.7 acres of impermeable material directly adjacent to the choke point in SCDOT's right-of-way at the inadequate twin 84" pipes. In fact, Earth Tech notified SCDOT that "the double pipe system under the [North woods] Mall parking lot is not adequately sized to handle the flows that the upstream box culvert [under the Highway 52 Connector] can handle." Earth Tech determined that when the 84" pipes' capacity was exceeded, the water level seeks the low point- adjacent to the back of the La-Z-Boy store.

33. SCDOT ignored all warnings from merchants, their own engineers, and others affected by the flooding, and determined not to correct the cause of the flooding- the inadequacy of the twin 84" pipes lying within SCDOT's right-of-way.

34. The fears of the merchants in Northwoods Pointe Shopping Center were born out in July, 2005, when there was another flood. SCDOT was still constructing the improvements to the interchange and to the Highway 52 Connector at the time - yet SCDOT did nothing to remedy the inadequate drainage provided by the twin 84" pipes in its drainage right-of-way.

35. As a result of the July, 2005 flood, La-Z-Boy again suffered inundation of its premises, damage to its store, fixtures, and inventory, and loss of business.

RENOVATION OF STALL HIGH SCHOOL

36. In June 2002, construction began on the Stall High School renovation, a site with 43 acres of impermeable material. DHEC permitted the project without ever requiring accurate data that was available to it as to the obvious impacts of down-gradient properties, including North-Woods Mall.

THE DEVELOPMENT OF PARKHILL PLACE SUBDIVISION

37. Upon information and belief, in 2001 Centex Homes began development of 36.2 acres of land that became known as Phases 3, 4, and 5 of Parkhill Place subdivision.

38. Upon information and belief, in 2003, Centex added 21 additional acres of improved property and an additional 151 residential lots.

39. Parkhill Place Subdivision is just upstream from the choke point at SCDOT's 84" pipes and the La-Z-Boy store.

40. Upon information and belief, Associated Developers, and Parkhill, as developers, developed a residential subdivision in North Charleston known as Parkhill Place in the early 2003 began development of Phase 6 in which they transformed wooded property into 48 residential lots.

41. In 2004 Associated Developers, and Parkhill began developing the last phase of Parkhill Subdivision, known as Phase 6.

42. North Charleston and DHEC are and were the permitting agencies whose permits were necessary for the development of Parkhill Place Phases 3, 4, 5, and 6 (hereinafter "the Subdivision"), without which the Subdivision's construction could not have taken place. At all

times herein, North Charleston and DHEC were acting in a ministerial capacity with respect to the issuance of construction and other necessary permits.

43. Additionally, North Charleston was charged with the legal duty of maintaining the watershed and ensuring adequate drainage for implementation of a storm water system in the City and for approving and inspecting drainage plans for construction in designated flood areas. Moreover, North Charleston is required to provide for sufficient drainage for surface water from any city street.

44. The watershed flows directly to the box culverts running underneath the Highway 52 Connector and to constriction point at SCDOT's twin 84" pipes running beneath the Northwoods Mall parking lot.

45. The area of land that became the Subdivision, and the land downstream to and including the Northwoods Mall and Northwoods Pointe parcels, has an extensive history of severe and recurring flooding. This history of damaging flood events has been well-chronicled in reports generated for North Charleston by Davis & Floyd in 2007 (revised following the October, 2008 flood event); reports by Earth Tech in 2003; and a report by E.M. Seabrook, Inc., in 1980. These reports chronicled flooding dating back more than 30 years.

46. Associated Developers and Parkhill failed to conduct any examination into potential flooding, either within the Subdivision or downstream, although they had been involved in the Subdivision for many years and were, upon information and belief, on notice of the previous flooding problems.

47. The 2007 Davis & Floyd Report had been provided to North Charleston in January 2007, and the City had been on notice for years about the flooding in the Northwoods Mall and Northwoods Pointe area. Davis & Floyd recommended repairs and rebuilding of the Highway 52

culverts and the drainage system downstream in order to mitigate, lessen, and reduce the flooding in the Subdivision, at Northwoods Mall, and at the Northwoods Pointe Shopping Center.

48. In October, 2008, a heavy rain event took place and the flood envisioned and predicted, though wholly ignored by the defendants, took place and inundated the entire area, including Phase 6 of the Subdivision, the La-Z-Boy store, and the Northwoods Pointe Shopping Center.

49. The La-Z-Boy store was flooded to a depth of several feet; its inventory ruined just as the Christmas shopping season was beginning; the store fixtures and displays were destroyed; and, the store was forced to close for a significant period to effect repairs and to develop a plan to attempt to prevent additional flooding.

DHEC PERMITTING

50. DHEC and its Office of Ocean and Coastal Resource Management (hereinafter "OCRM") are charged with a statutory and regulatory obligation to ensure that storm water runoff will not have an adverse impact, including an increased risk of flooding. Upon information and belief, DHEC is responsible for managing South Carolina's storm water management program and for ensuring that developments obtaining DHEC storm water permits do not result in increased risk of flooding.

51. Upon information and belief, DHEC issued permits for construction and development immediately upstream in the watershed that ended at the constriction point at SCDOT's inadequate 84" pipes, numerous times between 2000, when La-Z-Boy first took up occupancy of its leasehold in the store, and 2009.

52. Upon information and belief, DHEC did no investigation into the adverse impact each of these developments would have on the existing flooding problems downstream.

FOR A FIRST CAUSE OF ACTION
(Inverse Condemnation)
[SCDOT]

53. Plaintiff incorporates by reference Paragraphs 1 through 52 above as if restated fully herein.

54. SCDOT caused the twin 84" pipes to be installed in its right of way adjacent to the current Northwoods Mall site. The 84" pipes were inadequate when installed and constitute a choke point for drainage of storm water flowing down the watershed from upstream of the Northwoods Mall/Northwoods Pointe Shopping Center site.

55. In 2002, SCDOT commenced work on the Ashley Phosphate *I* 1-26 *I* Highway 52 Connector interchange and the expansion and improvement of the Highway 52 Connector.

56. SCDOT's improvement project added considerably to the impermeable material immediately upstream from its inadequate 84" pipes. Virtually all water from the roadway will flow directly to the choke point at SCDOT's drainage pipes.

57. SCDOT was made aware of the inadequacy of its 84" pipes as early as 1980 and again after Earth Tech analyzed the drainage system in 2003, after complaints by La-Z-Boy and other merchants about downstream flooding.

58. By reason of SCDOT' s installation of inadequate and insufficient drainage and its addition of more than 13 acres of impermeable material immediately adjacent to and upstream from the La-Z-Boy store, La-Z-Boy has been deprived of its property and the value of its property has been greatly diminished. La-Z-Boy has been adversely impacted by continual and repeated flooding, resulting in total or partial loss of inventory; substantial damage to fixtures; and interruption of its business during the following flood and near flood events:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

59. SCDOT has steadfastly refused since 2003, when La-Z-Boy notified it of flooding damage to its store, to compensate La-Z-Boy for the deprivation of access and use of its property although compensation has been demanded.

60. SCDOT has also refused to remedy the drainage in its right of way, resulting in repeated flooding of the La-Z-Boy and deprivation of its use and access to its property.

61. The flooding, and attendant damage, constitutes a taking of La-Z-Boy's property for public use.

62. The reasonable value of La-Z-Boy's property has been diminished as a result of the repeated past floods, and for inevitable future floods in an amount to be determined at trial.

63. La-Z-Boy also demands reimbursement for its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action, and for such other and further relief as is just and proper.

FOR A SECOND CAUSE OF ACTION
(Inverse Condemnation)
[DHEC]

64. Plaintiff incorporates by reference Paragraphs 1 through 63 above as if restated fully herein.

65. DHEC is and was a permitting agency whose permits were necessary for the construction and development of numerous developments upstream from the La-Z-Boy store, including, but not limited to, Parkhill Place subdivision (all phases), Northwoods Townhomes, Stall High School, and Springhill Suites.

66. DHEC's issuance of permits to applicants whose permit applications failed to account for any potential flooding downstream from the respective sites constituted an affirmative and aggressive act by DHEC.

67. La-Z-Boy was deprived of the use of its property and store numerous times because of the following flooding and near flood events, the effects of which were magnified and made worse by DHEC's permitting upstream developments without any analysis of the adverse impact those developments would have on downstream property.

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

68. The flooding, and attendant damage, constitutes a taking of La-Z-Boy's property for public use.

69. The reasonable value of La-Z-Boy's property has been diminished as a result of the repeated past floods, and for inevitable future floods in an amount to be determined at trial.

70. La-Z-Boy also demands reimbursement for its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action, and for such other and further relief as is just and proper.

FOR A THIRD CAUSE OF ACTION
(Inverse Condemnation)
[City of North Charleston]

71. Plaintiff incorporates by reference Paragraphs 1 through 70 above as if restated fully herein.

72. North Charleston constructed or participated in the construction of the streets and roads surrounding Northwoods Mall and Northwoods Pointe Shopping Center, including Northwoods Boulevard, extending from Ashley Phosphate Road to the Mall and Shopping Center parking lots, and Northwoods Boulevard.

73. Northwoods Boulevard and the parking lots of Northwoods Mall are graded and improved as streets or thoroughfare suitable for public travel, and North Charleston has caused them to become the permanent and established grade. That grade results in storm water flowing and collecting directly to the front and rear of the La-Z-Boy store.

74. La-Z-Boy was deprived of the use of its property and store numerous times because of the following flooding and near flood events, the effects of which were magnified and made worse by North Charleston's affirmative act of constructing, maintaining, and operating streets and thoroughfares graded such that storm water flowed and collected directly in the front and rear of the La-Z-Boy store

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

75. The flooding, and attendant damage, constitutes a taking of La-Z-Boy's property for public use.

76. The reasonable value of La-Z-Boy's property has been diminished as a result of the repeated past floods, and for inevitable future floods in an amount to be determined at trial.

77. La-Z-Boy also demands reimbursement for its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action, and for such other and further relief as is just and proper.

FOR A FOURTH CAUSE OF ACTION
(Inverse Condemnation)
[Charleston Water System]

78. Plaintiff incorporates by reference Paragraphs 1 through 77 above as if restated fully herein.

79. The drainage system running from the Northwoods Mall site to its outflow at the Goose Creek Reservoir is controlled and maintained by the Charleston Water System f/k/a Commissioners of Public Works.

80. CWS also controls the level of the Goose Creek Reservoir and, as it is believed to have occurred in December, 2009, can lower the level of the reservoir to that the drainage system and watershed upstream to above Northwoods Mall and Northwoods Pointe Shopping Center will adequately and effectively drain during a torrential downpour.

81. Upon information and belief, CWS owns, controls, maintains, and operates the drainage watershed from the Northwoods Mall parking lot to the outflow at Goose Creek Reservoir. CWS's drainage system throughout is either flat or ascending from the Mall parking lot to the reservoir, the result of which is that, because CWS maintains the level of the Reservoir above the level of the drainage basin, the drainage watershed remains approximately half full and does not properly drain any storm water.

82. CWS' operation and maintenance of the Goose Creek Reservoir and its maintaining the level of the Reservoir above the level of the drainage watershed outflow resulted in the following floods and near flood events, the effects of which could have been nullified or abated had the Reservoir been lowered:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

83. As a direct and proximate result of CWS' affirmative and aggressive act of constructing, maintaining, and controlling a drainage system that is flat or ascending, rather than descending, La-Z-Boy has repeatedly been deprived of the use of its property and business.

84. Such deprivation of property constitutes a taking for public use.

85. As a direct and proximate result of CWS' affirmative act of refusing to lower the water level of Goose Creek Reservoir to prevent upstream flooding, La-Z-Boy has repeatedly been deprived of the use of its property and business.

86. CWS has been on notice for many years regarding the problems existing in its drainage watershed and the resulting flooding of the La-Z-Boy store and has failed and refused to correct its problems or to compensate La-Z-Boy for the loss of use of its property.

87. The reasonable value of La-Z-Boy's property has been diminished as a result of the repeated past floods, and for inevitable future floods in an amount to be determined at trial.

88. La-Z-Boy also demands reimbursement for its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action, and for such other and further relief as is just and proper.

FOR A FIFTH CAUSE OF ACTION
(Violation of S.C. CODE ANN. §5-31-450)
[City of North Charleston]

89. Plaintiff incorporates by reference Paragraphs 1 through 88 above as if restated fully herein.

90. The City of North Charleston has been and continues to violate S.C. Code Ann. §5-31-450 in the following:

a. In failing and refusing to ensure adequate and appropriate drainage from the Northwoods Mall site, when, as early as the E.M. Seabrook, Inc. drainage study in 1980, it was well known that the level of the Northwoods drainage system was *below* the mean water level of the outflow of the entire drainage system at the Goose Creek Reservoir.

b. In failing and refusing to take steps to remedy and correct the inadequate drainage from the entire Northwoods area, though on notice of the existing problem and future exacerbating factors of increased development and the addition of vast areas of impermeable material causing increased water flow to the low points of the watershed- at the front door and rear loading dock of the La-Z-Boy store.

c. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being placed on notice of the necessary remedial action as recently as the 2007 Davis &

Floyd Report, which set forth specific measures that could be taken to prevent further flooding.

d. In reviewing, inspecting, and approving ill-conceived and factually erroneous drainage plans for construction upstream from the designated and well-known flood areas in and around Northwoods Mall and Northwoods Pointe Shopping Center to account for increased drainage from Ashley Phosphate Road and the increased commercial development between Ashley Phosphate Road and the La-Z-Boy store and other merchants having businesses along Northwoods Boulevard.

e. In failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Boulevard, which surface drainage flows directly to the doors of the La-Z-Boy store.

f. In failing and refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.

g. In failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area and downstream to the discharge of the flood plain at the Goose Creek Reservoir.

h. In failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

91. As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of North Charleston, Plaintiffs have suffered property losses,

damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

92. La-Z-Boy will continue to suffer, flooding; damage to its -store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir.

FOR A SIXTH CAUSE OF ACTION
(Negligent and Grossly Negligent Design, Construction, and Maintenance)
[Charleston Water System]

93. Plaintiff incorporates by reference Paragraphs 1 through 92 above as if restated fully

94. CWS owns, controls, and is responsible for the maintenance of the drainage system running between the outflow of the inadequate 84" pipes in SCDOT's right of way and the mouth of the drainage system at the Goose Creek Reservoir.

95. CWS, therefore, owes adjoining property owners, businesses, and leaseholders a duty to maintain and operate the drainage system with reasonable care and to avoid flooding adjoining land, homes, and businesses.

96. The drainage system under CWS' control, was designed, constructed, and has been maintained such that water does not drain from the watershed in and around Northwoods Mall and Northwoods Pointe Shopping Center, but instead remains approximately half filled at all times because the level of the Goose Creek Reservoir is generally higher than the level of the drainage system.

97. Further, upon information and belief, CWS can manipulate the level of the Goose Creek Reservoir to prevent flooding of upstream properties by lowering the level of the Reservoir to allow water collected in the drainage system in and around Northwoods Mall and Northwoods Pointe Shopping Center to drain properly into the Reservoir.

98. CWS breached its duty to exercise reasonable care in the following particulars:

a. Failing to design, maintain, and operate the drainage system under its control to prevent or mitigate flooding resulting from even moderate rainfall;

b. Failing to institute protocols and procedures by which the level of the Goose Creek Reservoir would be lowered in the event of significant rainfall resulting in potential for flooding;

99. As a direct and proximate result of CWS' negligent and grossly negligent construction, maintenance and operation of the drainage watershed downstream from Northwoods Mall and Northwoods Pointe Subdivision, the La-Z-Boy store suffered considerable damage in the flood events of 2003, 2004, 2005, 2008, and 2009, including but not limited to, loss of inventory, damage to fixtures and improvements, business interruption and loss of sales.

FOR A SEVENTH CAUSE OF ACTION
(Negligent and Grossly Negligent Failure to Manage Storm Water Runoff)
[Charleston Water System]

100. Plaintiff incorporates by reference Paragraphs 1 through 99 above as if restated fully herein.

101. Upon information and belief, the level of the Goose Creek Reservoir is under the purview and control of the Charleston Water System and can be lowered when necessary to abate or prevent flooding upstream from the reservoir.

102. La-Z-Boy is informed and believes that the near-flood event on December 18-19, 2008, was avoided because CWS took appropriate steps to lower the water level of the Goose Creek Reservoir to permit storm water to drain from the Northwoods Mall area down the water course owned and maintained by CWS to its outflow at the Goose Creek Reservoir.

103. Though CWS had the ability to prevent upstream flooding during heavy rainfalls, it failed or refused to do so resulting in flooding in the Northwoods Mall/ Northwoods Pointe Shopping Center area during the following flood events:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. October 24, 2008;

e. July, 18 2009;

f. July 29, 2009;

104. The storm water runoff and management thereof is an abatable condition that has recurred and CWS's predecessor was on notice of the storm water management issues in the Northwoods Mall and Northwoods Pointe Shopping Center area as early as May, 2003, when La-

Z-Boy wrote to CWS's predecessor, as well as other private and governmental entities, alerting them to its concern regarding the March 20, 2003 flood event.

105. As a direct and proximate result of CWS's failure or refusal to take appropriate steps to manage storm water runoff through its drainage basin terminating at the Goose Creek Reservoir, La-Z-Boy suffered considerable damage in the flood events of 2003, 2004, 2005, 2008, and 2009, including but not limited to, loss of inventory, damage to fixtures and improvements, business interruption and loss of sales.

FOR AN EIGHTH CAUSE OF ACTION
(Trespass)
[SCDOT, City of North Charleston, CWS]
{South Carolina Tort Claims Act}

106. Plaintiff incorporates by reference Paragraphs 1 through 105 above as if restated fully herein.

107. La-Z-Boy is entitled to possession of its leasehold interest in the store and its fixtures and other improvements as well as to its inventory, equipment, and other property housed within the walls of the store.

108. SCDOT, North Charleston, and CWS separately intentionally and knowingly directed storm water runoff to La-Z-Boy's premises.

109. Such invasion of La-Z-Boy's interest was without permission.

110. As a direct and proximate result of the trespass by SCDOT, North Charleston, and CWS, La-Z-Boy has suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

111. Upon information and belief, SCOOT, North Charleston, and CWS knowingly, willfully, and wantonly permitted the intrusion on La-Z-Boy's premises and chattels.

112. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until SCDOT, North Charleston, and CWS take reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot.

FOR AN ELEVENTH CAUSE OF ACTION
(Negligent Design, Permitting, and Construction of Parkhill Phase 6)
[Associated Developers, Parkhill]

113. Plaintiff incorporates by reference Paragraphs 1 through 112 above as if restated fully herein.

114. The actions of the defendants as set forth above were negligent, reckless, willful, and wanton in the following particulars:

a. As to the Developer Defendants, Associated Developers, and Parkhill:

i. In removing forestation and in constructing and developing the homes, roads, driveways, and impermeable surfaces in a known flood plain in which

flood events were known to occur and which development would increase the downstream flooding problems, including those at Northwoods Pointe Shopping Center and, in particular, at the La-Z-Boy store;

ii. In failing or refusing to take any precautions to ascertain the suitability of the property in and around Phase 6 for development of additional homesites when they were on notice of the history of flooding and knew or should have known of the detrimental impact of new development on the existing downstream buildings;

iii. In failing to exercise due care;

115. As a direct and proximate result of the negligence, recklessness, willfulness, and wantonness of Parkhill and Associated Developers with respect to the design, permitting, and construction of Phase 6, La-Z-Boy has suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because offload events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

116. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store as a result of storm water runoff from Parkhill Place Phase 6.

FOR A TWELFTH CAUSE OF ACTION
(Negligence/Gross Negligence)
(City of North Charleston]
{South Carolina Tort Claim Act}

117. Plaintiff incorporates by reference Paragraphs 1 through 116 above as if restated fully herein.

118. The City of North Charleston has been and continues to be negligent, willful, wanton, and grossly negligent in the following:

a. In failing and refusing to ensure adequate and appropriate drainage from the Northwoods Mall site, when, as early as the E.M. Seabrook, Inc. drainage study in 1980, North Charleston knew the level of the Northwoods drainage system was *below* the mean water level of the outflow of the entire drainage system at the Goose Creek Reservoir.

b. In failing and refusing to take steps to remedy and correct the inadequate drainage from the entire Northwoods area, though on notice of the existing problem and future exacerbating factors of increased development and the addition of vast areas of impermeable material causing increased water flow to the low points of the watershed- at the front door and rear loading dock of the La-Z-Boy store.

c. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being placed on notice of the necessary remedial action as recently as the 2007 Davis &

Floyd Report, which set forth specific measures that could be taken to prevent further flooding.

d. In negligently reviewing, inspecting, and approving ill-conceived and factually erroneous drainage plans for construction upstream from the designated and well known flood areas in and around Northwoods Mall and Northwoods Pointe Shopping Center to account for increased drainage from Ashley Phosphate Road and the increased commercial development between Ashley Phosphate

e. In failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Boulevard, which surface drainage flows directly to the doors of the La-Z-Boy store.

f. In failing and refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.

g. In failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area and downstream to the discharge of the flood plain at the Goose Creek Reservoir.

h. In failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

119. As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of North Charleston, Plaintiffs have suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

120. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir.

FOR A THIRTEENTH CAUSE OF ACTION
(Negligence/ Gross Negligence)
[DHEC]
{South Carolina Tort Claim Act}

121. Plaintiff incorporates by reference Paragraphs 1 through 120 above as if restated fully herein.

122. DHEC has been and continues to be negligent, willful, wanton, and grossly negligent in the following:

a. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being on notice of severe and repeated flooding.

b. In negligently reviewing, inspecting, and approving ill-conceived and factually erroneous drainage plans for construction upstream from the designated and well known flood areas in and around Northwoods Mall and Northwoods Pointe Shopping Center.

c. In failing and refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.

d. In failing to properly supervise the surface water drainage in the Northwoods Mall and Northwoods Pointe Shopping Center area to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

123. As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of DHEC, Plaintiffs have suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

124. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir.

FOR A FOURTEENTH CAUSE OF ACTION
(Negligence/ Gross Negligence)
[SCDOT]
{South Carolina Tort Claim Act}

125. Plaintiff incorporates by reference Paragraphs 1 through 124 above as if restated fully herein.

126. SCDOT has been and continues to be negligent, willful, wanton, and grossly negligent in the following:

a. In refusing to ensure adequate and appropriate drainage from the Northwoods Mall site, when, as early as the E.M. Seabrook, Inc. drainage study in 1980, SCDOT knew that its twin 84" pipes were woefully inadequate to provide adequate drainage in the area surrounding Northwoods Mall and Northwoods Point Shopping Center.

b. In refusing to take any steps to remedy and correct the inadequate drainage from the entire Northwoods area, though on notice of the existing problem and future exacerbating factors of increased development and the addition of vast areas of

impermeable material causing increased water flow to the low points of the watershed- at the front door and rear loading dock of the La-Z-Boy store.

c. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being placed on notice of the necessary remedial action as recently as the 2007 Davis & Floyd Report, which set forth specific measures that could be taken to prevent further flooding.

d. In designing, constructing and maintaining the Highway 52 Connector improvements without providing for sufficient drainage of surface water from the highway, which surface drainage flows directly to the La-Z-Boy store, as is reflected in the Earth Tech study of 2003.

e. In refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.

f. In failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area, including its twin 84" pipes, to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

127. As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of SCDOT, Plaintiffs have suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

128. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir.

WHEREFORE, Plaintiff La-Z-Boy prays that judgment be entered in its favor and against the defendants as follows:

a. That That La-Z-Boy be awarded the diminution of the value of its leasehold, premises, improvements, equipment, and loss of business based upon the taking of its property for public use resulting from the following flood and near-flood events:

    1. March 20, 2003;

    2. June 16, 2004;

    3. July 22, 2005;

    4. July 16, 2008;

5. October 24, 2008;
6. April 2, 2009;
7. July 8, 2009;
8. July 29, 2009;
9. August 26, 2009;
10. October 28, 2009;
11. December 18-19, 2009;

b. That La-Z-Boy be awarded the value of all lost business and interruption of business operations sustained as a result of the taking of its property for public use during above-mentioned flood and near-flood events.

c. That La-Z-Boy be awarded its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action to recover for the inverse condemnation of its property.

d. That La-Z-Boy be compensated for its actual and consequential damages proximately resulting from North Charleston's violation of S.C. CODE ANN. §5-31-450 in each of the above mentioned flood and near-flood events.

e. That La-Z-Boy be awarded its actual and consequential damages directly and proximately resulting from Charleston Water System's improper design, construction, and maintenance of the drainage watershed flowing from Northwoods Mall to the Goose Creek Reservoir.

f. That La-Z-Boy be awarded its actual and consequential damages directly and proximately resulting from Charleston Water System's willful and knowing

failure or refusal to lower the level of the Goose Creek Reservoir during significant rainfall events.

g. That La-Z-Boy be awarded actual, compensatory, and punitive damages as a result of the intentional, willful, and wanton trespass to its property and chattels in reckless and knowing disregard of La-Z-Boy's rights in each of the abovementioned flood and near-flood events.

h. That La-Z-Boy be awarded actual, consequential, and punitive damages as a result of the negligence, gross negligence, willful, and wanton conduct of Parkhill, and Associated in the development of Parkhill Place Phases 3, 4, 5, and 6.

i. That La-Z-Boy be awarded actual and consequential damages proximately resulting from the negligence, gross negligence, and willful and wanton conduct of each of the governmental defendants, SCDOT, DHEC, CWS, and North Charleston.

j. That La-Z-Boy be awarded actual, consequential, and punitive damages proximately resulting from the negligence, gross negligence, and willful and wanton conduct of each of the non-governmental defendants.

l. That La-Z-Boy be awarded its costs, including reasonable attorney's fees, resulting from the defendants' wrongful conduct.

m. That La-Z-Boy be awarded such other and further relief as is just and proper.

LEATH, BOUCH, & SEEKINGS, LLP

By: _____

Michael S. Seekings
Yancey A. McLeod III (S.C. Bar No.: 80911)
92 Broad Street
Post Office Box 59
Charleston, South Carolina 29402
(843) 937-8811

Attorneys for the Plaintiff

Charleston, South Carolina

Dated: Oct 24, 2012

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 24 day of October, 2012

DAVID RAMSAY HOUSE
c 1740

LEATH, BOUCH & SEEKINGS, LLP

COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

October 24, 2012

VIA: Hand Delivery

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery v. South Carolina Department Of Transportation; South Carolina Department Of Health And Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; and Parkhill, LLC

Previous Case No.: 2010-CP-10-02921

Dear Ms. Armstrong:

Enclosed please find for filing Plaintiff's Amended Summons and Complaint for the above referenced case. Please file the original and return the clocked stamped copy to me via the bearer of this correspondence. Also enclosed, please find a filing fee check for $150.00.

Thank you and with best regards, I am

Yours very truly,

LEATH, BOUCH & SEEKINGS, LLP

Yancey A. McLeod III

Enclosures
cc:

M. Dawes Cooke, Jr., Esq.
Craig E. Burgess, Esq.
Hugh W. Buyck, Esq.
G. Wade Cooper, Esq.
Andrew S. Halio, Esq.
Duke R. Highfield, Esq.
Benjamin A. Traywick, Esq.
Roy P. Maybank, Esq.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2012-CP-10-6922
	)	
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
Plaintiff,	)	
	)	
v.	)	ANSWER TO AMENDED COMPLAINT
	)	(Jury Trial)
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC,	)	
	)	
Defendants,	)	
	)	

FILED
2012 NOV -2 AM 11: 21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The South Carolina Department of Health and Environmental Control (hereinafter "DHEC") answers the Amended Complaint as follows:

1. DHEC denies each and every allegation of the Amended Complaint not hereinafter admitted, modified, or qualified.

2. The allegations of Paragraph 1 are admitted upon information and belief.

3. The allegations of Paragraph 2 are admitted.

4. Answering Paragraph 3, DHEC admits that it is a governmental agency with regulatory powers as set forth in the Code of Laws and regulations. DHEC lacks sufficient information as to be able to form a belief as to the remaining allegations of Paragraph 3, and therefore denies the same and requires strict proof thereof.

5. The allegations of Paragraph 4 – 7 are admitted upon information and belief.

6. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 8 – 35, and therefore denies the same and requires strict proof thereof.

7. Answering Paragraph 36, DHEC admits the renovation but denies the remainder of the

HALIO & HALIO CHARLESTON SOUTH CAROLINA

paragraph.

8. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 37 – 41, and therefore denies the same and requires strict proof thereof.

9. Answering Paragraph 42, DHEC admits that it is a permitting agency whose permits are necessary for the development of subdivisions like Parkhill Place. The remainder of Paragraph 42 is denied.

10. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 43 – 49, and therefore denies the same and demands strict proof thereof.

11. The allegations of Paragraph 50 are denied.

12. The allegations of Paragraph 51 are admitted, with the exception of the phrase "SCDOT's inadequate 84" pipes, which is denied.

13. Answering Paragraph 52, DHEC did what it was supposed to do before issuing the permits.

14. Answering Paragraph 53, DHEC repeats Paragraphs 1 – 13 of its Answer as if fully set forth herein.

15. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 54 – 63, and therefore denies the same and requires strict proof thereof.

16. Answer Paragraph 64, DHEC repeats Paragraphs 1 – 15 of its Answer as if fully set forth herein.

17. The allegations of Paragraph 65 are admitted.

18. The allegations of Paragraph 66 – 70 are denied.

19. Answering Paragraph 71, DHEC repeats Paragraphs 1 – 18 of its Answer as if fully set

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forth herein.

20. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 72 – 77, and therefore denies the same and requires strict proof thereof.

21. Answering Paragraph 78, DHEC repeats Paragraphs 1 – 20 of its Answer as if fully set forth herein.

22. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 79 – 88, and therefore denies the same and requires strict proof thereof.

23. Answering Paragraph 89, DHEC repeats Paragraphs 1 – 22 of its Answer as if fully set forth herein.

24. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 90 – 92, and therefore denies the same and requires strict proof thereof.

25. Answering Paragraph 93, DHEC repeats Paragraphs 1 – 24 of its Answer as if fully set forth herein.

26. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 94 – 99, and therefore denies the same and requires strict proof thereof.

27. Answering Paragraph 100, DHEC repeats Paragraphs 1 – 26 of its Answer as if fully set forth herein.

28. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraph 101 – 105, and therefore denies the same and requires strict proof thereof.

29. Answering Paragraph 106, DHEC repeats Paragraphs 1 – 28 of its Answer as if fully set forth herein.

30. DHEC lacks sufficient information as to be able to form a belief as to the truth of the

HALIO & HALIO, CHARLESTON, SOUTH CAROLINA

allegations of Paragraphs 107 – 112, and therefore denies the same and requires strict proof thereof.

31. Answering Paragraph 113, DHEC repeats Paragraphs 1 – 30 of its Answer as if fully set forth herein.

32. The allegations of Paragraphs 114 – 116 are denied.

33. Answering Paragraph 117, DHEC repeats Paragraphs 1 – 32 of its Answer as if fully set forth herein.

34. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 118 – 120, and therefore denies the same and requires strict proof thereof.

35. Answering Paragraph 121, DHEC repeats Paragraphs 1 – 34 of its Answer as if fully set forth herein.

36. DHEC denies the allegations of Paragraphs 122 – 124.

37. Answering Paragraph 125, DHEC repeats Paragraphs 1 – 36 of its Answer as if fully set forth herein.

38. DHEC lacks sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 126 – 128, and therefore denies the same and requires strict proof thereof.

FOR A FURTHER DEFENSE

39. DHEC asserts sovereign immunity as a defense to this action.

FOR A FURTHER DEFENSE

40. DHEC asserts the limitation of liability provisions of S.C. Code § 15-78-120, including the limitation on actual damages and the prohibition against punitive damages. Further, as the

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South Carolina Tort Claims Act does not permit the recovery of attorney's fees, appraisal fees and engineering fees, and there are no other laws or contractual provisions permitting same, these claims should be dismissed.

FOR A FURTHER DEFENSE

41. Whatever damages were sustained by the Plaintiff, the same were due to and caused by and were the direct and proximate result of the Plaintiff's own negligence, recklessness, willfulness, and wantonness, as a result of which Plaintiff is either completely barred from recovery or Plaintiff's recovery should be reduces in proportion to the percentage of its negligence.

FOR A FURTHER DEFENSE

42. Plaintiff has failed to mitigate its damages.

FOR A FURTHER DEFENSE

43. Any damages incurred by the Plaintiff were due to and caused by and were the direct and proximate result of intervening or superseding negligence on the part of other parties over which DHEC has no control. The intervening and/or superseding negligence of these other parties relieves DHEC from any liability to the Plaintiff.

FOR A FURTHER DEFENSE

44. Plaintiff's claims are barred by the statute of limitations and/or statute of repose.

FOR A FURTHER DEFENSE

45. DHEC pleads S.C. Code §15-78-60(13) and all other applicable subdivisions of this section of the Tort Claims Act as a defense to this action.

FOR A FURTHER DEFENSE

46. The Amended Complaint fails to state facts sufficient to constitute a cause of action

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against DHEC and should be dismissed pursuant to Rule 12(b) (6), S.C.R.C.P.

FOR A FURTHER DEFENSE

47. Plaintiff's claims are barred in whole or in part by the economic loss rule.

FOR A FURTHER DEFENSE

48. Plaintiff's claims are barred by laches, waiver, and/or estoppel.

WHEREFORE, having fully answered the Amended Complaint, DHEC prays that it be dismissed with prejudice, together with the costs of this action.

HALIO AND HALIO
Attorneys for Defendant
South Carolina Department of Health and
Environmental Control

ANDREW S. HALIO
ELLIOTT T. HALIO
13 N. Adgers Wharf / Box 747
Charleston, SC 29402-0747
(843) 577-5200
haliolaw@bellsouth.net

_____, 2012
Charleston, South Carolina

HALIO & HALIO, CHARLESTON, SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2012-CP-10-6922
	)	
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
Plaintiff,	)	
	)	
v.	)	CERTIFICATE OF MAILING
	)	
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC,	)	
	)	
Defendants,	)	
	)	

FILED
2012 NOV -2 AM 11:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This is to certify that the office of Halio and Halio did this date serve the Defendant South Carolina Department of Health and Environmental Control's *Answer to Amended Complaint* upon the attorneys below listed by mailing a copy of the same to their offices, postage prepaid on this 1st day of November, 2012.

Counsel for Plaintiff:
Michael S. Seekings, Esquire
Leath, Bouch, & Seekings, LLP
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Charleston, SC 29402

Counsel for SCDOT
Roy P. Maybank, Esquire
Maybank Law Firm, LLC
P. O. Box 12579
Charleston, S.C. 29422

Counsel for SCDOT & Charleston Water System:
Hugh Wilcox Buyck, Esquire
G. Wade Cooper, Esquire
Buyck & Sanders, LLC
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Mt. Pleasant, SC 29464-2424

HALIO & HALIO, CHARLESTON, SOUTH CAROLINA

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Benjamin A. Traywick, Esquire
Post Office Box 993
Charleston, SC 29402

BY: _____
Sheila B. Giblin
Legal Secretary to Andrew S. Halio

HALIO & HALIO, CHARLESTON, SOUTH CAROLINA

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13 NORTH ADGERS WHARF
CHARLESTON, SC 29401
E-MAIL haliolaw@bellsouth.net

November 1, 2012

Hon. Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street
Suite 106
Charleston, SC 29401

Re: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery, vs. South Carolina Department of Transportation; et al.
Case NO.: 2012-CP-10-6922

Dear Mrs. Armstrong:

Enclosed please find an original and one copy of South Carolina Department of Health and Environmental Control's Answer to Amended Complaint in the above captioned case. Please file the original and return a clocked copy to us in the enclosed envelope.

By copy of this letter to counsel of record, I am serving each with a copy.

Sincerely yours,

Sheila B. Giblin

ASH/sbg
Enclosures
Cc: Counsel of record (w/enclosures)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	C/A No. 12-CP-10-6922
Plaintiff,	)	
Versus	)	**DEFENDANT CHARLESTON WATER SYSTEM'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC,	)	
Defendants.	)	

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2012 NOV 13 PM 1:57
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Defendant Charleston Water System (CWS) (hereinafter referred to as "this Defendant" or "Defendant"), by and through its undersigned counsel answering the Plaintiff's Amended Complaint (filed on 10/24/12) as follows:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation in the Plaintiff's Amended Complaint which is not hereinafter specifically admitted.

FOR A SECOND DEFENSE

2. Answering Paragraph 1 of Plaintiff's Amended Complaint, this Defendant admits, upon information and belief, that Tipperary Sales operates a La-Z-Boy Furniture Gallery at 7671 Northwoods Boulevard in North Charleston in Northwoods Pointe Shopping Center adjacent to Northwoods Mall; in further response, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in said paragraph.

3. Answering Paragraph 2 of Plaintiff's Amended Complaint, this Defendant admits, upon information and belief, that the South Carolina Department of Transportation is a governmental subdivision of the State of South Carolina charged with certain duties relating to

design, construction, and maintenance of public highways in the State of South Carolina; in further response, the remaining averments contained in said paragraph state or call for conclusions of law to which no response is required.

4. Answering Paragraph 3 of Plaintiff's Amended Complaint, this Defendant admits, upon information and belief, that the South Carolina Department of Health and Environmental Control has certain regulatory powers and functions as set forth in the South Carolina Code of Laws; in further response, this Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in said paragraph and/or the remaining averments contained in said paragraph state or call for conclusions of law to which no response is required.

5. Answering Paragraph 4 of Plaintiff's Amended Complaint, this Defendant admits, upon information and belief, that the City of North Charleston is a municipal corporation; in further response, this Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in said paragraph and/or the remaining averments contained in said paragraph state or call for conclusions of law to which no response is required.

6. Answering Paragraph 5 of Plaintiff's Amended Complaint, this Defendant admits that Charleston Water System was formerly known as Charleston Commissioners of Public Works. This Defendant further admits that CWS is a governmental subdivision of the State of South Carolina charged with certain duties related to the ownership, operation and maintenance of the Goose Creek Reservoir. This Defendant denies the allegations contained within the second sentence of Paragraph 5 of Plaintiff's Amended Complaint. The remaining averments contained in said paragraph state or call for conclusions of law to which no response is required.

7. Answering Paragraphs 6 and 7 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in said paragraphs.

8. Answering Paragraph 8 of Plaintiff's Amended Complaint, Defendant admits, upon information and belief, that Plaintiff operates a store facility at Northwoods Pointe Shopping Center in North Charleston; in further response, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in said paragraph.

9. Answering Paragraphs 9 and 10 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information at this time sufficient to form a belief as to the truth of the averments contained in said paragraphs, and therefore denies the same.

10. Answering Paragraphs 11 and 12 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information at this time sufficient to form a belief as to the truth of the averments contained in said paragraphs, and therefore denies the same.

11. Defendant denies the allegations contained within Paragraph 13 of Plaintiff's Amended Complaint.

12. Answering Paragraph 14 of Plaintiff's Amended Complaint, this Defendant admits that it owns and controls the drainage basin beginning on the opposite side of Rivers Avenue, across from Northwoods Mall, to its outflow terminus at the Goose Creek Reservoir, which Reservoir is owned, controlled and maintained by this Defendant. Any inconsistent and/or remaining allegations contained in Paragraph 14 are denied.

13. Answering Paragraphs 15, 16, 17, 18, and 19 of Plaintiff's Amended Complaint, Defendant states that it lacks sufficient information as to be able to form a belief as to the truth of the allegations contained within said paragraphs, and therefore denies the same and requires strict proof thereof.

14. Defendant denies the allegations contained within Paragraph 20 of Plaintiff's Amended Complaint.

15. This Defendant is without sufficient information as to be able to form a belief as to the truth of the allegations of Paragraphs 21, 22, and 23, and therefore denies the same and requires strict proof thereof.

16. Answering Paragraph 24 of Plaintiff's Amended Complaint, Defendant admits, upon information and belief, that complaints were made by Northwoods Mall area merchants following the heavy rainfall in 2003. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in said paragraph and would, therefore, deny the same.

17. Answering Paragraphs 25 – 47 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded.

18. Answering Paragraph 48 of Plaintiff's Amended Complaint, this Defendant denies that it envisioned, predicted and/or ignored the flood complained of in said paragraph. Defendant further denies any remaining allegations in said paragraph.

19. Answering Paragraphs 49 – 52 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded.

AS TO PLAINTIFF'S FIRST CAUSE OF ACTION
(Inverse Condemnation)
[SCDOT]

20. As to the allegations contained within Paragraph 53 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

21. Answering Paragraphs 54 – 63 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded. Further answering, the allegations contained within Paragraphs 54 – 63 are not directed towards this Defendant and, as such, no response is required. To the extent that the allegations contained in said paragraphs intend to infer liability upon this Defendant, those allegations are specifically denied.

AS TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Inverse Condemnation)
[DHEC]

22. As to the allegations contained within Paragraph 64 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

23. Answering Paragraphs 65 – 70 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded. Further answering, the allegations contained within Paragraphs 65 - 70 are not directed towards this Defendant and, as such, no response is required. To the extent that the allegations contained in said paragraphs intend to infer liability upon this Defendant, those allegations are specifically denied.

AS TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Inverse Condemnation)
[City of North Charleston]

24. As to the allegations contained within Paragraph 71 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

25. Answering Paragraphs 72 - 77 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded. Further answering, the allegations contained within Paragraphs 72 - 77 are not directed towards this Defendant and, as such, no response is required. To the extent that the allegations contained in said paragraphs intend to infer liability upon this Defendant, those allegations are specifically denied.

AS TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Inverse Condemnation)
[Charleston Water System]

26. As to the allegations contained within Paragraph 78 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

27. This Defendant denies the allegations contained within Paragraphs 79 – 88 of Plaintiff's Amended Complaint.

AS TO PLAINTIFF'S FIFTH CAUSE OF ACTION
(Violation of S.C. Code Ann. § 5-31-450)
[City of North Charleston]

28. As to the allegations contained within Paragraph 89 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

29. Answering Paragraphs 90 – 92 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded. Further answering, the allegations contained within Paragraphs 90 - 92 are not directed towards this Defendant and, as such, no response is required. To the extent that the allegations contained in said paragraphs intend to infer liability upon this Defendant, those allegations are specifically denied.

AS TO PLAINTIFF'S SIXTH CAUSE OF ACTION
(Negligent and Grossly Negligent Design, Construction, and Maintenance)
[Charleston Water System]

30. As to the allegations contained within Paragraph 93 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

31. This Defendant denies the allegations contained within Paragraphs 94 – 99 of Plaintiff's Amended Complaint.

AS TO PLAINTIFF'S SEVENTH CAUSE OF ACTION
(Negligent and Grossly Negligent Failure to manage Storm Water Runoff)
[Charleston Water System]

32. As to the allegations contained within Paragraph 100 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

33. Answering Paragraph 101 of Plaintiff's Amended Complaint, Defendant admits that the Goose Creek Reservoir is under the purview of the Charleston Water System. Defendant denies the remaining averments contained in Paragraph 101.

34. This Defendant denies the allegations contained within Paragraphs 102 – 105 of Plaintiff's Amended Complaint.

AS TO PLAINTIFF'S EIGHTH CAUSE OF ACTION
(Trespass)
[SCDOT, City of North Charleston, CWS]
{South Carolina Tort Claims Act}

35. As to the allegations contained within Paragraph 106 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

36. Answering Paragraph 107 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained therein.

37. This Defendant denies the allegations contained within Paragraphs 108 - 112 of Plaintiff's Amended Complaint.

AS TO PLAINTIFF'S NINTH CAUSE OF ACTION
{identified as "Eleventh Cause of Action"}
(Negligent Design, Permitting, and Construction of Parkhill Phase 6)
[Associated Developers, Parkhill]

38. As to the allegations contained within Paragraph 113 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

39. Answering Paragraphs 114 – 116 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded. Further answering, the allegations contained within Paragraphs 114 - 116 are not directed towards this Defendant and, as such, no response is required. To the extent that the allegations contained in said paragraphs intend to infer liability upon this Defendant, those allegations are specifically denied.

AS TO PLAINTIFF'S TENTH CAUSE OF ACTION
{identified as "Twelfth Cause of Action"}
(Negligence / Gross Negligence)
[City of North Charleston]
{South Carolina Tort Claims Act}

40. As to the allegations contained within Paragraph 117 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

41. Answering Paragraphs 118 – 120 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded. Further answering, the allegations contained within Paragraphs 118 - 120 are not directed towards this Defendant and, as such, no response is required. To the extent that the allegations contained in said paragraphs intend to infer liability upon this Defendant, those allegations are specifically denied.

AS TO PLAINTIFF'S ELEVENTH CAUSE OF ACTION
{identified as "Thirteenth Cause of Action"}
(Negligence / Gross Negligence)
[DHEC]
{South Carolina Tort Claims Act}

42. As to the allegations contained within Paragraph 121 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

43. Answering Paragraphs 122 - 124 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded. Further answering, the allegations contained within Paragraphs 122 - 124 are not directed towards this Defendant and, as such, no response is required. To the extent that the

allegations contained in said paragraphs intend to infer liability upon this Defendant, those allegations are specifically denied.

AS TO PLAINTIFF'S TWELFTH CAUSE OF ACTION
{identified as "Fourteenth Cause of Action"}
(Negligence / Gross Negligence)
[SCDOT]
{South Carolina Tort Claims Act}

44. As to the allegations contained within Paragraph 125 of Plaintiff's Amended Complaint, Defendant realleges and incorporates by reference all of responses in Paragraphs above as if fully repeated herein verbatim.

45. Answering Paragraphs 126 - 128 of Plaintiff's Amended Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and would, therefore, deny the same with strict proof thereof demanded. Further answering, the allegations contained within Paragraphs 126 - 128 are not directed towards this Defendant and, as such, no response is required. To the extent that the allegations contained in said paragraphs intend to infer liability upon this Defendant, those allegations are specifically denied.

46. Answering Plaintiff's prayer for relief (unnumbered), Defendant states, to the extent not already set forth above and below as affirmative defenses, that it is not liable whatsoever for Plaintiff's damages, if any, and therefore respectfully request that the Court deny Plaintiff's prayer for relief of this Defendant. Further answering, Defendant denies each and every allegation of the Amended Complaint not herein specifically admitted, modified, or explained and demands strict proof thereof.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:
(Failure to State a Claim)

47. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

48. That the Plaintiff's Complaint in its entirety fails to state a claim upon which relief may be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(No Proximate Cause)

49. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

50. That, even if this Defendant was negligent, as alleged in the Amended Complaint, which is specifically denied, the negligence of this Defendant was not the direct or proximate cause of any injury alleged by the Plaintiff and therefore this Defendants is not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Governmental Immunity/Tort Claims Act)

51. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

52. The provisions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, et seq., including all subparts, apply to this action. The Defendant is a governmental entity as defined by South Carolina Code Ann. § 15-78-30 and, as such, is immune from liability for any tort except as specifically waived by the South Carolina Tort Claims Act pursuant to South Carolina Code Ann. § 15-78-60, including all subparts. The South Carolina Tort Claims Act constitutes the exclusive remedy for any tort committed by the employee of the governmental entity who is acting within the scope of his or her employment. While the Defendant specifically denies that the Plaintiff is entitled to recover any damages whatsoever as set out in this Answer, the limitations on liability provided in South Carolina Code Ann. § 15-78-120 apply to this action. Accordingly, the Plaintiff is not entitled to recover any award for damages that exceeds the

limitation of liability set forth in S. C. Code Ann. § 15-78-120. Also, the Plaintiff is not entitled to recover punitive or exemplary damages or pre-judgment interest as set forth in S. C. Code Ann. § 15-78-120. Finally, the Defendant is not authorized to waive the State of South Carolina's sovereign immunity from suit for purposes of any claim by the Plaintiff which may be governed by the South Carolina Tort Claims Act. The Defendant has not intended to waive, and has not waived, the State of South Carolina's sovereign immunity.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THE DEFENDANTS ALLEGE:
(§15-78-60 - Tort Claims Act)

53. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

54. The Defendant is a governmental entity as defined by South Carolina Code Ann. § 15-78-30, and, as such, is immune from liability for any tort except as specifically waived by the South Carolina Tort Claims Act. The Plaintiff is not entitled to recovery against the Defendant pursuant to certain sub-sections of South Carolina Code Ann. § 15-78-60. The Defendants further reserve the right to plead as a bar to suit any applicable provision of § 15-78-60, including all subparts.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THE DEFENDANTS ALLEGE:
(§15-78-100 - Tort Claims Act)

55. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

56. The South Carolina Tort Claims Act does not provide for joint and several liability among governmental entities. The Defendant is a governmental entity of the State of South Carolina and thus is immune from any claim for joint and several liability.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Contributory Negligence)

57. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

58. Any injuries and damages sustained by the Plaintiff were due to and caused by, and were a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Plaintiff itself, which negligence, carelessness, recklessness, willfulness, and wantonness was greater than the negligence, carelessness, recklessness, willfulness, and wantonness of this Defendant, if any, which is specifically denied, contributing thereto as a proximate cause thereof, without which such would not have occurred or been sustained.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Comparative Negligence)

59. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

60. The injuries and damages, if any, sustained by the Plaintiff were due to and caused by and were the direct and proximate result of the Plaintiff's own negligence, carelessness, recklessness, willfulness, and wantonness and the recovery, if any, should be reduced in proportion to the amount of its negligence, carelessness, recklessness, willfulness, and wantonness.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Intervening and Superseding Acts)

61. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

62. If this Defendant acted or failed to act as alleged in the Amended Complaint, which is denied, there were separate or intervening and superseding acts or failure to act on the

part of persons, entities, or natural occurrences other than this Defendant, which were the sole proximate cause of Plaintiff's alleged injuries; therefore, Plaintiff cannot recover from this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Assumption of the Risk)

63. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

64. The Defendant alleges that the perils and dangers existing at the time of the Plaintiff's cause of action, if any, were known to the Plaintiff, who nevertheless conducted itself in such a manner so as to voluntarily assume all risks pertaining thereto.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Failure to Mitigate)

65. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

66. That the Plaintiff has failed to take reasonable actions to adequately mitigate its damages, if any, by not undertaking proper preventative or curative measures.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Laches/Waiver/Estoppel)

67. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

68. The claims against this Defendant are barred by the equitable doctrine of laches, waiver, and/or estoppel.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THE DEFENDANTS ALLEGE:
(Statute of Limitations)

69. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

70. The claims of the Plaintiff are barred by the South Carolina Tort Claims Act and/or the common law statute of limitations or statute of repose and further should be dismissed pursuant to SCRCP Rule 12(b) (4) and (5).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(State Law Immunity)

71. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

72. That at all times relevant to the allegations contained in the Complaint, the Defendant was acting according to and in compliance with specific laws, rules and regulations of the State of South Carolina, and is therefore immune from suit and pleads such statutory or regulatory authorization as a complete defense and bar to the within Amended Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Punitive Damages Unconstitutional)

73. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

74. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Failure to Join Indispensible Party)

75. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

76. That, upon information and belief, the Plaintiff has failed to name as a party to this action certain persons and/or entities who these Defendants believe are indispensible and needed for just adjudication of Plaintiff's claims.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Reasonableness and Good Faith)

77. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

78. That this Defendant acted reasonably and in good faith at all times material herein, based on the material facts and circumstances known by this Defendant. Accordingly, the Plaintiff is not entitled to recover any damages from this Defendant whatsoever.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THESE DEFENDANTS ALLEGE:
(Reservation and Non-Waiver)

79. Defendant realleges and incorporates by reference all of its responses in Paragraphs above as if fully repeated herein verbatim.

80. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Amended Complaint of the Plaintiff, Defendant prays that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

BUYCK & SANDERS LAW FIRM, LLC
757 Johnnie Dodds Blvd., Ste. 100
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
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Hugh W. Buyck (S.C. Bar # 66462)
G. Wade Cooper (S.C. Bar # 69692)

and

Leslie S. Riley, Esq.
Lucas C. Padgett, Jr. Esq.
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Attorneys for Defendant
Charleston Water System

November 9, 2012
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☒ emailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 9th day of November, 2012.

BUYCK & SANDERS, LLC

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Hugh W. Buyck
Darren K. Sanders
G. Wade Cooper

November 9, 2012

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Suite 106
Charleston, SC 29401

Re: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery v. South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC
C/A No. 12-CP-10-6922
BSLF File No. 10.73

Dear Ms. Armstrong:

Enclosed for filing please find an original and one copy of Defendant Charleston Water System's, Answer to Plaintiff's Amended Complaint in the above-referenced case. Please file the original and return a clocked-in copy in the enclosed self-addressed stamped envelope.

By copy of this letter, I am serving counsel with a copy of our Answer.

With kind regards,

Yours truly,

G. Wade Cooper

GWC:kts
Enclosure
cc: Elliott Halio, Esquire
Craig E. Burgess, Esquire
Roy Pearce Maybank, Esquire
Michael S. Seekings, Esq.
Duke R. Highfield, Esquire
Leslie S. Riley, Esquire
Lucas C. Padgett, Jr., Esquire

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF THE COMMON PLEAS CIVIL ACTION NO: 2~~010-CP-10-2921~~ 2012-CP-10-6922
TIPPERARY SALES D/B/A LA-Z-BOY FURNITURE GALLERY PLAINTIFFS,	)	
V.	)	ANSWER OF SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEM; DAVIS & FLOYD; AECOM F/K/A EARTH TECH; ASSOCIATED DEVELOPERS, INC.; PARKHILL, LLC; AND SEAMON, WHITESIDE & ASSOCIATES, INC. DEFENDANTS.	)	

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2012 DEC 10 PM 1:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This Defendant, South Carolina Department of Transportation ("this Defendant") by and through the undersigned attorneys, answers the Plaintiff's Amended Complaint and alleges and states as follows:

1. This Defendant denies all allegations contained in the Plaintiff's Amended Complaint which are not specifically admitted and demands strict proof thereof.

2. This Defendant lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint, and therefore denies the same and demands strict proof thereof.

3. Responding to Paragraph 2 of the Plaintiff's Amended Complaint this Defendant admits only that the SCDOT is a governmental subdivision of the

State of South Carolina. The remaining allegations contained in Paragraph 2 of the Plaintiff's Amended Complaint state conclusions of law to which no response is required.

4. This Defendant lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraphs 3, 4, 5, 6, 7, and 8 of the Plaintiff's Amended Complaint, and therefore denies the same and demands strict proof thereof.

5. This Defendant denies the allegations contained in Paragraphs 9, 10, 11, and 12 of the Plaintiff's Amended Complaint.

6. This Defendant lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraphs 13 and 14 of the Plaintiff's Amended Complaint, and therefore denies the same and demands strict proof thereof.

7. This Defendant denies the allegations contained in Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 of the Plaintiff's Amended Complaint.

8. This Defendant lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraphs 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, and 52 of the Plaintiff's Amended Complaint, and therefore denies the same and demands strict proof thereof.

9. In response the allegations contained in Paragraph 53, this Defendant reasserts and realleages those responses in Paragraphs 1 through 8 above.

10. This Defendant denies the allegations contained in Paragraphs 54, 55, 56, 57, 58, 59, 60, 61, 62, and 63 of the Plaintiff's Amended Complaint.

11. In response the allegations contained in Paragraph 64, this Defendant reasserts and realleages those responses in Paragraphs 1 through 10 above.

12. Paragraphs 65 through 70 contain allegations against parties other than this Defendant and therefore no response is required from this Defendant, to the extent a response is required from this Defendant the allegations are denied.

13. In response the allegations contained in Paragraph 71, this Defendant reasserts and realleages those responses in Paragraphs 1 through 12 above.

14. Paragraphs 72 through 77 contain allegations against parties other than this Defendant and therefore no response is required from this Defendant, to the extent a response is required from this Defendant the allegations are denied.

15. In response the allegations contained in Paragraph 78, this Defendant reasserts and realleages those responses in Paragraphs 1 through 14 above.

16. Paragraphs 79 through 88 contain allegations against parties other than this Defendant and therefore no response is required from this Defendant, to the extent a response is required from this Defendant the allegations are denied.

17. In response the allegations contained in Paragraph 89, this Defendant reasserts and realleages those responses in Paragraphs 1 through 16 above.

18. Paragraphs 90 through 92 contain allegations against parties other than this Defendant and therefore no response is required from this Defendant, to the extent a response is required from this Defendant the allegations are denied.

19. In response the allegations contained in Paragraph 93, this Defendant reasserts and realleages those responses in Paragraphs 1 through 18 above.

20. Paragraphs 94 through 99 contain allegations against parties other than this Defendant and therefore no response is required from this Defendant, to the extent a response is required from this Defendant the allegations are denied.

21. In response the allegations contained in Paragraph 100, this Defendant reasserts and realleages those responses in Paragraphs 1 through 20 above.

22. Paragraphs 101 through 105 contain allegations against parties other than this Defendant and therefore no response is required from this Defendant, to the extent a response is required from this Defendant the allegations are denied.

23. In response the allegations contained in Paragraph 106, this Defendant reasserts and realleages those responses in Paragraphs 1 through 22 above.

24. Paragraph 107 states a legal conclusion to which no response is required, to the extent a response is requires the allegations are denied.

25. This Defendant denies the allegations contained in Paragraphs 108, 109, 110, 111, and 112 of the Plaintiff's Amended Complaint.

26. In response the allegations contained in Paragraph 113, this Defendant reasserts and realleages those responses in Paragraphs 1 through 25 above.

27. Paragraphs 114 through 116 contain allegations against parties other than this Defendant and therefore no response is required from this Defendant, to

the extent a response is required from this Defendant the allegations are denied.

28. In response the allegations contained in Paragraph 117, this Defendant reasserts and realleages those responses in Paragraphs 1 through 27 above.

29. Paragraphs 118 through 120 contain allegations against parties other than this Defendant and therefore no response is required from this Defendant, to the extent a response is required from this Defendant the allegations are denied.

30. In response the allegations contained in Paragraph 121, this Defendant reasserts and realleages those responses in Paragraphs 1 through 29 above.

31. Paragraphs 122 through 124 contain allegations against parties other than this Defendant and therefore no response is required from this Defendant, to the extent a response is required from this Defendant the allegations are denied.

32. In response the allegations contained in Paragraph 125, this Defendant reasserts and realleages those responses in Paragraphs 1 through 31 above.

33. This Defendant denies the allegations contained in Paragraphs 126, 127, and 128 of the Plaintiff's Amended Complaint.

34. This Defendant denies the allegations contained in the WHEREFORE immediately following Paragraph 128.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Failure to State a Claim Pursuant to Rule 12(b)(6))

35. The allegations contained in the Plaintiff's Amended Complaint fail in their entirety to state a claim upon which relief may be granted against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Statute of Limitations)

36. The Plaintiff failed to file and serve the Amended Complaint in a timely manner and is therefore barred by the applicable statute of limitations.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(No Proximate Cause)

37. That, even if this Defendant was negligent, reckless, willful, and wanton, as alleged in the Plaintiff's Complaint, which is specifically denied, the actions or omissions of these Defendants were not the direct or proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Comparative Negligence)

38. Whatever injuries and damages, if any, that were sustained by the Plaintiff, were due to and caused by, and were the direct and proximate result of, the negligence of the Plaintiff, which negligence was greater than the negligence of this Defendant, if any, which is specifically denied, and the Plaintiff's recovery, if any, should be barred or reduced in proportion to the amount of such negligence.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Negligence of Third Parties)

39. That, upon information and belief, even if this Defendant was negligent in the manner described in the Plaintiff's Amended Complaint, which is specifically denied, whatever injuries and damages, if any, which may have been sustained by the Plaintiff was the direct and proximate result of the acts of third parties, for whose conduct this Defendant bears no responsibility, so as to bar the Plaintiff from recovery against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Failure to Mitigate Damages)

40. Whatever damages, if any, may have been sustained by the Plaintiff, which this Defendants specifically denies, said damages should be barred or reduced based on the Plaintiff's failure to mitigate such damages.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Punitive Damages Unconstitutional)

41. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Assumption of the Risk)

42. The perils and dangers existing at the time of Plaintiff's alleged injuries, if any, were known to Plaintiff, who nevertheless conducted himself in such a manner so as to voluntarily assume all risks pertaining thereto, so as to bar the Plaintiff from recovery against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Sovereign Immunity-Tort Claims Act)

43. This Defendant alleges that the Plaintiff's Amedned Complaint is barred or otherwise limited by the provisions of the South Carolina Tort Claims Act, and, specifically, by Section §15-78-60 (1), (2), (3) (4), (5), (6), (7), (8), (9), (10), (13), (15), (16), (20), and (25) of the Act.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Comparative/Contributory Negligence/Third Party Negligence)

44. This Defendant alleges that any injuries or damages alleged by the Plaintiff, if any, which this Defendant expressly denies, were due to and caused by the contributory, comparative and third party negligence, carelessness, willfulness, wantonness and recklessness of Plaintiff and or third person, in an amount exceeding fifty percent 50% of the total causal negligence, if any, in the same particulars as set forth below so as to bar Plaintiff's claims as to this Defendant. In the alternative this Defendant alleges that the injuries and damages alleged by the

Plaintiff, if any, which this Defendant expressly denies, were due to and caused by the comparative and/or third party negligence, carelessness, willfulness, wantonness and recklessness of the Plaintiff or some third party in an amount to be determined by the trier of fact, so as to reduce the claims of the Plaintiff proportionally, pursuant to South Carolina Law

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Sole, Intervening and Superseding Negligence of a Third-Party)

45. This Defendant alleges that the injuries and damages alleged by the Plaintiff, if any, which this Defendant expressly denies, were due to and caused by the negligence of a third-party or third-parties, which alone or concurring, supervening and/or intervening with the negligence, if any, of the Plaintiff; and/or unknown third parties so as to be the sole proximate cause of Plaintiff's alleged injuries and damages, if any, so as to bar Plaintiffs claims as to this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Determination of Proportional Liability)

46. This Defendant alleges that the injuries and damages alleged by the Plaintiff, if any, which this Defendant expressly denies, were due to and were the direct and proximate result of, at least partially if not solely, of the other individuals and/or companies involved in this incident, if any so existed, so as to entitle this Defendant to a determination of proportional liability as to any concurring negligence, if so found, pursuant to S.C. Code Ann. § 15-78-100.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Limitation of Remedies)

47. Any recovery by Plaintiff must be limited to the remedies allowed under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. § 15-78-120(a)(1) and (2) and S.C. Code Ann. § 15-78-120(b).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Public Duty Rule)

48. The causes of action fail to state a claim against this Defendant in that as a matter of law this Defendant violated no duty which it owed to the Plaintiff for which the Plaintiff is entitled to relief in the form of damages.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Economic Loss)

49. The Plaintiff's claims are barred by the economic loss rule.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Laches, Waiver, Estoppel)

50. The Plaintiff's claims are barred by laches, waiver and/or estoppel.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE THIS DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

51. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the applicable Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiff's Amedned Complaint and having asserted these affirmative defenses, this Defendant, prays that the Plaintiff's Amended Complaint be dismissed with prejudice and that it be awarded the costs of defending this matter.

MAYBANK LAW FIRM, LLC
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Roy P. Maybank (S.C. # #69643)
Jason A. Daigle (S.C. #73308)
Attorneys for SCDOT

Charleston, South Carolina
12/6, 2012

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ mailing, ☐ e-mailing, ☐facsimile, or ☐hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6 day of Dec, 2012

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December 6, 2012

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery v. South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc. and Parkhill, LLC
Case No: 2012-CP-10-6922
IRF Claim: 63443
MLF File: 102.035

Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of South Carolina Department of Transportation's Answer to the Plaintiff's Amended Complaint in the above-referenced case. Please file the original and return a file-stamped copy to me in the envelope provided.

Thank you in advance for your assistance, and if you should have any questions, please do not hesitate to contact me.

With kind regards, I am

Yours truly,

Jason A. Daigle

JAD/ead

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No.: 12-CP-10-6922

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
Plaintiff,	)	**CITY OF NORTH CHARLESTON'S ANSWER TO AMENDED COMPLAINT**
vs.	)	***(Jury Trial Demanded)***
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc. Parkhill LLC,	)	
Defendants.	)	

FILED
2012 DEC 27 AM 11:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant, City of North Charleston, hereby responds to the Plaintiff's Complaint, as follows:

FOR A FIRST DEFENSE

1. All allegations not admitted herein are denied.

FOR A SECOND DEFENSE

2. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraph 1, and therefore, denies same.

3. Defendant admits the allegations of paragraph 2 identifying the South Carolina Department of Transportation as a governmental entity. The remaining allegations call for a legal conclusion to which no response is required.

4. The allegations of paragraph 3 identifying DHEC as a governmental entity. The remaining allegations call for a legal conclusion to which no response is required.

5. Defendant admits the allegations of paragraph 4 identifying the City of North Charleston as a municipal corporation and that in this capacity it issues permits for the development and construction of subdivisions within the City of North Charleston that are in designated flood areas, which involve the review of drainage plans. The remaining allegations call for a legal conclusion to which no response is required.

6. Defendant admits the allegations of paragraph 5 identifying Charleston Water Systems as a governmental entity. Defendant is without sufficient knowledge or information to admit or deny the truth of the remaining allegations of paragraphs 5, and therefore, denies same.

7. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraphs 6 through 8, and therefore, denies same.

8. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraph 9 which pertain to La-Z-Boy's knowledge of the flooding of the Northwoods Mall area, and therefore, denies same. In response to the allegations regarding the Seabrook study, Defendant craves reference to that document, the terms of which speak for themselves. Defendant denies the remaining allegations of paragraph 9.

9. In response to the allegations of paragraph 10 regarding the Seabrook study, Defendant craves reference to that document, the terms of which speak for themselves. All other allegations are denied.

10. Defendant admits the allegations of paragraph 11 regarding the channeling of water from Parkhill Place. Defendant is without sufficient knowledge or information to admit or deny the truth of the remaining allegations of paragraph 11, and therefore, denies same.

11. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraph 12 which pertain to the adequacy of the twin 84" pipes to manage storm water runoff, and therefore, denies same. Defendant admits the remaining allegations of paragraph 12.

12. Defendants admit, upon information and belief, the allegations of paragraphs 13 through 20 regarding the direction flow of water through the various described systems. Defendant is without sufficient knowledge or information to admit or deny the truth of the remaining allegations of these paragraphs, and therefore, denies same.

13. Defendant admits, upon information and belief, the allegations of paragraph 21.

14. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraphs 22 through 23, and therefore, denies same.

15. Defendant admits only so much of the allegations of paragraph 24 which allege that the City of North Charleston received correspondence from La-Z-Boy following the March 2003 flood. Defendant craves references to that document in response to the remaining allegations of paragraph 24, the terms of which speak for themselves.

16. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraphs 25 through 29, and therefore, denies same.

17. Defendant admits only so much of the allegations of paragraph 30 which allege the City of North Charleston received correspondence from La-Z-Boy following the March 2003 flood. Defendant craves references to that document in response to the remaining allegations of paragraph 30, the terms of which speak form themselves.

18. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraphs 31 through 36, and therefore, denies same.

19. Defendant admits only so much of the allegations of paragraph 37 which allege that a residential subdivision in North Charleston known as Parkhill Place was developed in the early 2000's.

20. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraph 38, and therefore, denies same.

21. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraph 39 based on the vague and undefined term "choke point", and therefore, denies same.

22. Defendant admits, upon information and belief, the allegations of paragraphs 40 and 41.

23. In response to the allegations of paragraph 42, Defendant admits only that it is a municipality which, among other things, issues permits for construction of subdivisions within the City of North Charleston and that it issued a permit for the development of various phases of Parkhill Place. As for the allegation that the Defendant was acting in its ministerial capacity, that allegation calls for a legal conclusion to which no response is required.

24. The allegations of paragraph 43 call for a legal conclusion to which no response is required.

25. Defendant is without sufficient knowledge or information to admit or deny the truth of the allegations of paragraph 44 based on the vague and undefined term "constriction point", and therefore, denies same.

26. Defendant admits only so much of the allegations of paragraph 45 which allege that Northwoods Mall has a history of flooding. As for the remaining allegations of paragraph 45, which reference "well-chronicled reports", Defendant craves reference to those reports, the terms of which speak for themselves.

27. Defendant admits only so much of the allegations of paragraph 46 which allege that SWA submitted applications to obtain permits from Defendant. As for the remaining allegations of paragraph 46, Defendant is without sufficient knowledge or information to admit or deny these allegations as they pertain to the actions of other defendants, and therefore, denies same.

28. Defendant admits only so much of the allegations of paragraph 47 which allege the Davis and Floyd report was sent to it. As for the remaining allegations of paragraph 47, the Defendant craves reference to the Davis and Floyd report itself, the terms of which speak for themselves.

29. Defendant admits only so much of the allegations of paragraph 48 which allege that a rainstorm took place in North Charleston and that the subject Subdivision was flooded. Defendant is without sufficient knowledge or information to admit or deny the truth of the remaining allegations of paragraph 48, and therefore, denies same.

30. Defendant admits only so much of the allegations of paragraph 49 which allege that the La-Z-Boy store was flooded. Defendant is without sufficient knowledge or information to admit or deny the truth of the remaining allegations of paragraph 49, and therefore, denies same.

31. Defendants admits, upon information and belief, the allegations of paragraph 50 regarding DHEC's general responsibilities. The remaining allegations call for a legal conclusion to which no response is required.

32. Defendant admits only so much of the allegations of paragraph 51 which allege that DHEC issued permits for the construction and development of certain phases of Parkhill Place. Defendant is without sufficient knowledge or information to admit or deny the truth of the remaining allegations of paragraphs 51 and 52, and therefore, denies same.

FOR A THIRD DEFENSE
TO PLAINTIFF'S FIRST CAUSE OF ACTION
(Inverse Condemnation)
[SCDOT]

33. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

34. The allegations of paragraphs 54 through 63 pertain to the conduct of another Defendant to which no response is required. To the extent the allegations may be construed to allege that Defendant City of North Charleston engaged in any wrongful acts, they are denied.

FOR A FOURTH DEFENSE
TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Inverse Condemnation)
[DHEC]

35. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

36. The allegations of paragraphs 65 through 70 pertain to the conduct of another Defendant to which no response is required. To the extent the allegations may be construed to allege that Defendant City of North Charleston engaged in any wrongful acts, they are denied.

FOR A FIFTH DEFENSE
TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Inverse Condemnation)
[City of North Charleston]

37. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

38. Defendant denies the allegations of paragraphs 72 through 77.

FOR A SIXTH DEFENSE
TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Inverse Condemnation)
[Charleston Water Systems]

39. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

40. The allegations of paragraphs 79 through 88 pertain to the conduct of another Defendant to which no response is required. To the extent the allegations may be construed to allege that Defendant City of North Charleston engaged in any wrongful acts, they are denied.

FOR A SEVENTH DEFENSE
TO PLAINTIFF'S FIFTH CAUSE OF ACTION
(Violation of S.C. Code Ann 5-31-450)
[City of North Charleston]

41. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

42. Defendant denies the allegations of paragraphs 90 through 92.

FOR AN EIGHTH DEFENSE
TO PLAINTIFF'S SIXTH CAUSE OF ACTION
(Negligent and Grossly Negligent Design, Construction and Maintenance
[Charleston Water Systems])

43. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

44. The allegations of paragraphs 94 through 99 pertain to the conduct of another Defendant to which no response is required. To the extent the allegations may be construed to allege that Defendant City of North Charleston engaged in any wrongful acts, they are denied.

FOR NINTH DEFENSE
TO PLAINTIFF'S SEVENTH CAUSE OF ACTION
Negligent and Grossly Negligent failure to Manage Storm Water Runoff)
[Charleston Water System])

45. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

46. The allegations of paragraphs 101 through 105 pertain to the conduct of another Defendant to which no response is required. To the extent the allegations may be construed to allege that Defendant City of North Charleston engaged in any wrongful acts, they are denied.

FOR A TENTH DEFENSE
TO PLAINTIFF'S EIGHTH CAUSE OF ACTION
(Trespass)
[SDCOT, City of North Charleston, CWS]
{South Carolina Torts Claims Act}

47. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

48. Defendant denies the allegations of paragraphs 107 through 112 that specifically pertain to it.

FOR AN ELEVENTH DEFENSE
TO PLAINTIFF'S NINTH CAUSE OF ACTION
(Negligent Design, Supervision and Construction)
[Associated Developers, Parkhill]

49. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

50. The allegations of paragraphs 114 through 116 pertain to the conduct of other Defendants to which no response is required. To the extent the allegations may be construed to allege that Defendant City of North Charleston engaged in any wrongful acts, they are denied.

FOR AN TWELFTH DEFENSE
TO PLAINTIFF'S TENTH CAUSE OF ACTION
(Negligent Design, Permitting and Construction of Parkhill Place Phases 3, 4 and 5)
(Negligence / Gross Negligence)
[City of North Charleston]
{South Carolina Torts Claims Act}

51. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

52. Defendant denies the allegations of paragraphs 118 through 120.

FOR A THIRTEENTH DEFENSE
TO PLAINTIFF'S ELEVENTH CAUSE OF ACTION
(Negligence / Gross Negligence)
[DHEC]
{South Carolina Torts Claims Act}

53. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

54. The allegations of paragraphs 122 through 124 pertain to the conduct of another Defendant to which no response is required. To the extent the allegations may be construed to allege that Defendant City of North Charleston engaged in any wrongful acts, they are denied.

FOR A FOURTEENTH DEFENSE
TO PLAINTIFF'S TWELFTH CAUSE OF ACTION
(Negligence / Gross Negligence)
[SCDOT]
{South Carolina Torts Claims Act}

55. Defendant's foregoing responses are incorporated as is fully set forth verbatim herein.

56. The allegations of paragraphs 126 through 128 pertain to the conduct of another Defendant to which no response is required. To the extent the allegations may be construed to allege that Defendant City of North Charleston engaged in any wrongful acts, they are denied.

FOR A FIFTEENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Lack of Standing)

57. Plaintiff lacks standing to assert its claims against Defendants.

FOR A SIXTEENTH DEFENSE
AND BY WAY OF AFFIRMATIVE DEFENSE
(Failure to State Claim)

58. Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendant pursuant to SCRCP Rule 12(b)(6).

FOR A SEVENTEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Contributory Negligence)

59. Any injuries and damages sustained by the Plaintiffs were due to and caused by, and were a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Plaintiffs themselves, which negligence, carelessness, recklessness, willfulness, and wantonness was greater than the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, if any, which is specifically denied, contributing thereto as a proximate cause thereof, without which such would not have occurred or been sustained.

FOR AN EIGHTEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Comparative Negligence)

60. The injuries and damages, if any, sustained by the Plaintiffs were due to and caused by and were a direct and proximate result of the Plaintiff's own negligence, carelessness, recklessness, willfulness, and wantonness and the recovery, if any, should be reduced in proportion to the amount of his negligence, carelessness, recklessness, willfulness, and wantonness.

FOR A NINETEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Intervening and Superseding Acts)

61. If Defendant acted or failed to act as alleged in the Complaint, which is denied, there were separate or intervening and superseding acts or failure to act on the part of persons or entities other than Defendant, which were the sole proximate cause of Plaintiff's alleged injuries; therefore, Plaintiffs cannot recover from Defendant.

FOR A TWENTIETH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(South Carolina Tort Claims Act)

62. The South Carolina Tort Claims Act, S. C. Code § 15-78-10, *et seq.*, provides for immunity from liability and suit for any tort, except as waived by the Chapter, for the State and its political subdivisions. The Defendant is a political subdivision of the State of South Carolina, and thus, is entitled to the immunity provided for political subdivisions by the Tort Claims Act. The Defendant raises all exceptions listed in the Tort Claims Act including, but not limited to, § 15-78-60 (1-5), (7-10), (12-13), (15-16), and (20) as an affirmative defense.

FOR A TWENTIETH-FIRST DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(S. C. Code § 15-78-120)

63. The South Carolina Tort Claims Act, § 15-78-120, limits the recovery to $300,000 and prohibits the recovery of punitive damages against a governmental entity. The Defendant is a governmental entity of the State of South Carolina and thus is immune from any claim for punitive damages.

FOR A TWENTY-SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(S. C. Code § 15-78-100)

64. The South Carolina Tort Claims Act does not provide for joint and several liability among governmental entities. The Defendant is a governmental entity of the State of South Carolina and thus is immune from any claim for joint and several liability.

FOR A TWENTY-THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Reservation and Non-waiver)

65. The City reserves any additional and further defenses as may be revealed by additional information during the course and of discovery and investigation, as is consistent with the South Carolina Rules of Civil Procedure.

FOR A TWENTY-FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Statute of Limitations)

66. The claims of the Plaintiffs are barred by the South Carolina Tort Claims Act and/or the common law statute of limitations or statute of repose and further should be dismissed pursuant to SCRCP Rule 12(b) (4) and (5).

FOR A TWENTY-FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Laches and Unclean Hands)

67. The claims of the Plaintiffs are barred by equitable doctrines of laches, unclean hands, waiver and estoppel.

FOR A TWENTY-SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Punitive Damages)

68. The imposition of punitive damages on the basis of the facts giving rise to this lawsuit would represent the deprivation of liberty and property without due process of law, the imposition of excessive fines and deny the equal protection of the laws in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States and the comparable provisions of the Constitution of the State of South Carolina.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant City of North Charleston, hereby requests that this Court dismiss this matter, with costs, and judgment be entered for the Defendant, and for such other and further relief as this Court deems just and proper.

BARNWELL WHALEY PATTERSON & HELMS, LLC

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ATTORNEYS for City of North Charleston

Dec. 21, 2012

Charleston, South Carolina

12-CP-10-6922

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of December 2012, a true copy of the within instrument has been served on all counsel by mailing a copy via U.S. mail, properly addressed with sufficient postage affixed thereto as follows:

Michael S. Seekings, Esq.
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FILED
2012 DEC 27 AM 11:53
JULIE J. ARMSTRONG
CLERK OF COURT

Legal Assistant
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BARNWELL WHALEY
PATTERSON & HELMS LLC

Attorneys for businesses & professionals since 1938

Craig E. Burgess
cburgess@barnwell-whaley.com
Member of the South Carolina and Georgia Bar

December 21, 2012

Julie J. Armstrong
Charleston County Cerk of Court
100 Broad Street
Charleston, South Carolina 29401

RE: Tipperary Sales d/b/a La-Z-Boy Furniture v City of North Charleston, et al.
Case No.: 2012-CP-10-6922
BWPH File No.: 1.498

Dear Ms. Armstrong:

In reference to the above-captioned matter, enclosed please find an original and one (1) copy of Defendant, City of North Charleston, Answer to the Amended Complaint.

Please file the enclosed Answer and return one (1) clocked-in copy in the self-addressed stamped envelope.

By copy of this letter, I am serving counsel of record.

With kind regards, I remain

Very truly yours,

Craig

Craig E. Burgess

CEB/dw
Enclosures
cc: w/enclosures
Michael S. Seekings, Esq.
Roy P. Maybank, Esq.
E. Halio, Esq.
G. Wade Cooper
Leslie S. Riley, Esq.
Duke R. Highfield, Esq.

{Personal\FORM\00384666.DOC}

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288 Meeting St., Ste200, Charleston, SC 29401 Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708
www.barnwell-whaley.com
* Registered patent attorney

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE ☒ COURT OF COMMON PLEAS
FAMILY COURT

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,
☐ Plaintiff
v.
South Carolina Department of Transportation, et al.
☑ Defendant

CASE NO.: 2012-CP-10-6922

MOTION INFORMATION FORM AND COVER SHEET

name, S.C. Bar no. and address of plaintiff's attorney	name, S.C. Bar no. and address of defendant's attorney
Michael Seekings, Esq. Leath Bouch Crawford & Von Keller P.O. Box 59 Charleston, SC 29402 telephone: 937-8811 fax: 937-0606 e-mail: mseekings@leathbouchlaw.com	Phillip S. Ferderigos, S.C. Bar No. 16709 Barnwell Whaley Patterson & Helms, LLC PO Drawer H Charleston, SC 29402 telephone: 843-577-7700 fax: 843-577-7708 e-mail: pferderigos@barnwell-whaley.com

☑ MOTION HEARING REQUESTED (attach written motion and complete Sections I and III)
FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss Pursuant to SCRCP Rul 12(C)
Estimated Time Needed: .30 Court Reporter Needed: YES

SECTION II: Motion Type

☑ Written motion attached
Form Motion –
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Defendant — November 14, 2013 Date submitted

SECTION III: Motion Fee

☑ PAID – AMOUNT: $25.00

EXEMPT: (check reason)
Rule to Show Cause in Child or Spousal Support
Domestic Abuse or Abuse and Neglect
Indigent Status State Agency v. Indigent Party
Sexually Violent Predator Act Post-Conviction Relief
Motion for Stay in Bankruptcy
Motion for Publication Motion for Execution (Rule 69, SCRCP)
Proposed order submitted at request of the court; or
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
Other: Order of Protection (vacation)

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
Other:

JUDGE

CODE Date:

CLERK'S VERIFICATION

DATE FILED

Collected by:
(print name)
MOTION FEE COLLECTED:
CONTESTED – AMOUNT DUE:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No.: 12-CP-10-6922
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
Plaintiff,	)	CITY OF NORTH CHARLESTON'S MOTION TO DISMISS PURSUANT TO SCRCP RULE 12(C)
vs.	)	
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc. Parkhill, LLC,	)	
Defendants.	)	

FILED
2013 NOV 21 PM 2:12
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: MICHAEL S. SEEKINGS, ESQUIRE AND YANCEY A. McLEOD, III, ESQUIRE, COUNSEL FOR PLAINTIFF:

PLEASE TAKE NOTICE that on the tenth day after service of this Motion upon you, or as soon thereafter as counsel can be heard, the undersigned will move before a Judge of this Court in the Charleston County courthouse for a Motion to Dismiss Pursuant to SCRCP Rule 12 (c) based on the pleadings of the Plaintiff and this Defendant. This Motion is based on the grounds that the Plaintiff has failed to state a claim for relief pursuant to SCRCP Rule 12(c) based on the statute of limitations, the Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004) decision[1], S.C. Code Ann. § 5-31-450[2], and the South Carolina Tort Claims Act.

Pursuant to the South Carolina law outlined above, Defendant City of North Charleston is entitled to a judgment on the pleadings.

[1] Copy attached as Exhibit 1.
[2] Copy along with Notes of Decisions attached as Exhibit 2.

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: _____

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ATTORNEYS FOR CITY OF NORTH CHARLESTON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14TH day of NOVEMBER, 2013, a true copy of the foregoing Motion has been served on all counsel by mailing a copy via U.S. mail, properly addressed with sufficient postage affixed thereto as follows:

Michael S. Seekings, Esq.
Yancey A. McLeod III, Esq.
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ATTORNEYS FOR CHARLESTON WATER SYSTEM
and

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Lucas C. Padgett, Jr., Esq.
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FILED
2013 NOV 21 PM 2:12
JULIE J. ARMSTRONG
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West Reporter Image (PDF)

358 S.C. 280, 594 S.E.2d 557

Judges and Attorneys

Court of Appeals of South Carolina.
Louie D. HAWKINS, individually and d/b/a Servicemaster of Greenville, Servicemaster of Greenville, LLC, and Dixie P. Hawkins, Appellants,
v.
CITY OF GREENVILLE, Respondent.

No. 3764.
Submitted Feb. 11, 2004.
Decided March 22, 2004.

Background: Business owner brought action against the city alleging that city's improper and negligent design and maintenance of its drainage system caused his business to flood. The Circuit Court, Greenville County, Joseph J. Watson, J., granted summary judgment to city. Business owner appealed.

Holdings: The Court of Appeals, Anderson, J., held that:
(1) city's design and maintenance of drainage system did not constitute inverse condemnation;
(2) city was not liable under Tort Claims Act;
(3) city was not liable for trespass; and
(4) city was not liable for conversion.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.18 k. Drains and sewers. Most Cited Cases
(Formerly 148k2(3))

City's design and maintenance of drainage system did not constitute affirmative, positive, aggressive act on part of city as required to support business owner's claim for inverse condemnation claim when his business property near drainage system flooded during rainstorm; city's replacement of double-box culvert with large arched pipe and installation of riprap material along banks of creek near owner's business did not cause flooding of business, and business owner's own expert testified that installation of large arched pipe likely improved drainage situation in stormwater basin.

[2] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

An action for inverse condemnation is appropriate where the government takes private property for public use.

DEFENDANT'S EXHIBIT
tabbies
1

[3] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

"Inverse condemnation" is a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.

[4] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such formal proceedings.

[5] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

"Inverse condemnation" describes an action grounded, not on statutory condemnation power, but on the constitutional proscription against the taking or damaging of property for public use without just compensation.

[6] KeyCite Citing References for this Headnote

148 Eminent Domain
148III Proceedings to Take Property and Assess Compensation
148k175 Parties
148k176 k. Petitioner or complainant. Most Cited Cases

148 Eminent Domain KeyCite Citing References for this Headnote
148IV Remedies of Owners of Property; Inverse Condemnation
148k289 k. Parties, process, and appearance. Most Cited Cases

One basic difference between condemnation and inverse condemnation is that in condemnation proceedings, the governmental entity is the moving party, whereas, in inverse condemnation, the property owner is the moving party.

[7] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

Inverse condemnation is not based on tort, but on the constitutional prohibition of the taking of property without compensation.

[8] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

An inverse condemnation occurs when a government agency commits a taking of private property without exercising its formal powers of eminent domain.

[9] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

To establish an inverse condemnation, a plaintiff must show: (1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence.

[10] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

City's design and maintenance of drainage system was quasi-judicial function subject to governmental immunity under Tort Claims Act, and thus, city was not liable under act when business owner's property near drainage system flooded during rainstorm. Code 1976, § 15-78-10 et seq.

[11] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k742 Actions
268k742(5) k. Evidence. Most Cited Cases

Governmental entity asserting the Tort Claims Act as an affirmative defense bears the burden of establishing a limitation upon liability or an exception to the waiver of immunity. Code 1976, § 15-78-10 et seq.

[12] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k723 k. Nature and grounds of liability. Most Cited Cases

Tort Claims Act does not create a new substantive cause of action against a governmental entity. Code 1976, § 15-78-10 et seq.

[13] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k723 k. Nature and grounds of liability. Most Cited Cases

Plaintiff must present evidence of governmental entity's duty to act in order to recover under the Tort Claims Act. Code 1976, § 15-78-10 et seq.

[14] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k723 k. Nature and grounds of liability. Most Cited Cases

Tort Claims Act expressly preserves all existing common law immunities. Code 1976, § 15-78-10 et seq.

[15] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k723 k. Nature and grounds of liability. Most Cited Cases

Tort Claims Act is a limited waiver of governmental immunity. Code 1976, § 15-78-10 et seq.

[16] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k728 k. Discretionary powers and duties. Most Cited Cases

A finding of immunity under exceptions to waiver of immunity in the Tort Claims Act turns on whether the acts in question were discretionary rather than ministerial, and thus is contingent on proof that government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards. Code 1976, § 15-78-60.

[17] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k742 Actions
268k742(5) k. Evidence. Most Cited Cases

Governmental entity bears the burden of establishing discretionary immunity as an affirmative defense under the Tort Claims Act. Code 1976, § 15-78-10 et seq.

[18] KeyCite Citing References for this Headnote

268 Municipal Corporations

R000136

268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k840 k. Proximate cause of injury. Most Cited Cases

City was not liable, under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, when business owner's property flooded during rainstorm, where business owner failed to offer proof of any affirmative, positive acts which tended to show that actions of city caused flooding of his business property. Code 1976, § 5-31-450.

[19] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k827 Nature and Grounds of Liability
268k827(1) k. In general. Most Cited Cases

The statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Code 1976, § 5-31-450.

[20] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off. Code 1976, § 5-31-450.

[21] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k845 Actions for Injuries
268k845(3) k. Issues, proof, and variance. Most Cited Cases

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute. Code 1976, § 5-31-450.

[22] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction. Code 1976, § 5-31-450.

[23] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

City was not liable for trespass, when business owner's property flooded during rainstorm, for designing and maintaining municipal drainage system, where business owner failed to show any affirmative and intentional act necessary to sustain action for trespass.

[24] KeyCite Citing References for this Headnote

386 Trespass
386I Acts Constituting Trespass and Liability Therefor
386k1 k. Nature and elements of trespass in general. Most Cited Cases

"Trespass" is any intentional invasion of the plaintiff's interest in the exclusive possession of his property.

[25] KeyCite Citing References for this Headnote

386 Trespass
386I Acts Constituting Trespass and Liability Therefor
386k9 Trespass to Real Property
386k10 k. In general. Most Cited Cases

To constitute actionable trespass there must be an affirmative act, invasion of land must be intentional, and harm caused must be the direct result of that invasion.

[26] KeyCite Citing References for this Headnote

386 Trespass
386II Actions
386II(A) Right of Action and Defenses
386k20 Possession or Right of Possession of Plaintiff
386k20(1) k. Necessity and effect in general. Most Cited Cases

The gist of trespass is the injury to possession, and generally either actual or constructive possession is sufficient to maintain an action for trespass.

[27] KeyCite Citing References for this Headnote

386 Trespass
386I Acts Constituting Trespass and Liability Therefor
386k9 Trespass to Real Property
386k10 k. In general. Most Cited Cases

For a trespass action to lie, the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion.

[28] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

City was not liable for conversion, when business owner's property flooded during rainstorm, for designing and maintaining municipal drainage system; business owner provided no evidence that city seized, disposed, denied use, or wrongfully took control of any goods or personal chattels belonging to him or his business.

[29] KeyCite Citing References for this Headnote

97C Conversion and Civil Theft
97CI Acts Constituting and Liability Therefor
97Ck100 k. In general; nature,and elements. Most Cited Cases
(Formerly 389k1 Trover and Conversion)

"Conversion" is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights.

[30] KeyCite Citing References for this Headnote

97C Conversion and Civil Theft
97CI Acts Constituting and Liability Therefor
97Ck110 Detention of Property
97Ck111 k. In general. Most Cited Cases
(Formerly 389k7 Trover and Conversion)

97C Conversion and Civil Theft KeyCite Citing References for this Headnote
97CI Acts Constituting and Liability Therefor
97Ck115 k. Use or disposition of property. Most Cited Cases
(Formerly 389k10 Trover and Conversion)

Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property.

[31] KeyCite Citing References for this Headnote

97C Conversion and Civil Theft
97CI Acts Constituting and Liability Therefor
97Ck109 k. Taking of property. Most Cited Cases
(Formerly 389k5 Trover and Conversion)

97C Conversion and Civil Theft KeyCite Citing References for this Headnote
97CI Acts Constituting and Liability Therefor
97Ck110 Detention of Property

97Ck111 k. In general. Most Cited Cases
(Formerly 389k7 Trover and Conversion)

"Conversion" is a wrongful act which emanates by either a wrongful taking or wrongful detention.

[32] KeyCite Citing References for this Headnote

97C Conversion and Civil Theft
97CI Acts Constituting and Liability Therefor
97Ck103 Property Subject of Conversion or Theft
97Ck104 k. In general. Most Cited Cases
(Formerly 389k2 Trover and Conversion)

97C Conversion and Civil Theft KeyCite Citing References for this Headnote
97CII Actions
97CII(A) Right of Action and Defenses
97Ck120 k. In general; nature and scope of remedy. Most Cited Cases
(Formerly 389k13 Trover and Conversion)

A conversion action does not lie when alleging the exercise of dominion or control over real property.

***560 *285** Robert C. Childs, III, of Greenville, for Appellants.

W. Howard Boyd, Jr., Luanne L. Runge and Fred W. Suggs, III, all of Greenville, for Respondent.

ANDERSON, J.:
Louie D. Hawkins brought this action, claiming the city of Greenville ("City") improperly and negligently designed and maintained its municipal drainage system in the area where his business was located. He alleged the City's malfeasance caused his property to flood after a rainstorm in 1997. The trial court granted summary judgment in favor of the City on all of Hawkins' claims. We affirm.[FN1]

FN1. We decide this case without oral argument pursuant to Rule 215, SCACR.

FACTS/PROCEDURAL BACKGROUND

On July 24, 1997, Hawkins' business, Servicemaster of Greenville, was flooded during a heavy rainfall, causing substantial damage to the business and surrounding property. Hawkins blamed the City for the damage, arguing the flooding ***286** was caused by the City's neglect in designing and maintaining its stormwater drainage system. Accordingly, he brought the present action asserting various causes of action stemming from the City's alleged acts and failures to act.

I. The Servicemaster Property and Surrounding Drainage System

The Servicemaster property is located in a low-lying area on the east side of Greenville. This part of Greenville has been heavily developed with retail businesses and other large commercial developments.

The immediate area surrounding the Servicemaster property forms a 3.24-square-mile stormwater basin. Rainwater falling into the basin drains downhill into nearby Laurel Creek. Over the years, the City and private developers made several improvements to the drainage system in the basin. When Hawkins moved Servicemaster to its Haywood Road location, drainage around the property was handled primarily by two ninety-six-inch pipes installed in Laurel Creek to expand the creek's ability to effectively handle runoff in the area. After a severe storm in 1991 caused flooding in the area, the City installed an additional large, elliptical arched pipe in Laurel Creek to further increase the creek's stormwater capacity. In early July 1997, the City installed "riprap" along the banks of the creek to

stem erosion that had occurred. FN2

FN2. "Riprap" is an industry term for piles of loose stone or angular boulders built seaward of the shoreline to prevent erosion by waves or currents.

II. The 1991 Flood, Lawsuit and Settlement

A heavy rainstorm in July 1991 caused the Servicemaster property and surrounding area to flood. The Servicemaster property suffered substantial damage when the excess runoff flooded into the building, bringing mud and other debris. As in the present case, Hawkins brought suit against the City, claiming its actions caused the flooding. Hawkins specifically alleged the City was negligent "in failing to design" and "maintain a reasonably adequate surface water drainage system" and "in failing to properly supervise the surface water ***287** drainage system to ensure adequate flow of water during periods of inc[l]ement weather."

The case was settled in 1994. The City paid Hawkins $4,000 in exchange for a "full, complete and final release of all damages arising out of the design, construction, maintenance, and operation of the water drainage system on or adjacent to Bryland [sic] Drive." This release was executed in March 1994. It provides:

> [Servicemaster] does hereby release, relieve and forever acquit the City of Greenville, South Carolina, a municipal corporation, their agents, employees, officers, successors, and assigns from any and all liability arising out of or in any way connected with the water and mud damage to [Hawkins'] place of business located at 1 Byrdland Drive which occurred on or about July 30, 1991 and it is the intention in executing this Release to forever discharge the City of Greenville ****561** from any and all claims, demands, actions or causes of action which may exist, known or unknown, of any and all damages, past, present and future, in any way connected with or arising out of the aforesaid damages.
>
> ....
>
> It is acknowledged and understood that this is a full, complete and final release of all damages arising out of the design, construction, maintenance, and operation of the water drainage system on or adjacent to Bryland [sic] Drive, that no future or further payments will be paid as a result thereof and that the persons and corporations in whose favor this Release runs are herewith fully finally and forever discharged from any and all liability with respect to the aforementioned property.

III. The 1997 Flood and the Present Action

On July 24, 1997, a record amount of rain fell in and around Greenville in a short period of time.FN3 Stormwater draining into Laurel Creek overwhelmed the creek's capacity, causing water to flood onto the Servicemaster property and several nearby businesses.

FN3. Testimony was offered at the summary judgment hearing that the National Climatic Data Center recorded that 2.51 inches fell in Greenville during a one-hour period on July 24, 1997.

***288** In July 1999, Hawkins brought the present action against the City, alleging causes of action for: (1) inverse condemnation, (2) negligence in the City's design and maintenance of its stormwater drainage system, (3) violation of South Carolina Code section 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. Finding no genuine issue of material fact with respect to any of these claims, the trial court granted the City's motion for summary judgment.

STANDARD OF REVIEW

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law." Rule 56(c), SCRCP; *accord* Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001); Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct.App.1998); *see also* Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997) ("Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.").

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." McNair v. Rainsford, 330 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct.App.1998) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991); Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990)). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." Lanham v. Blue Cross & Blue Shield of South Carolina, Inc., 349 S.C. 356, 361-62, 563 S.E.2d 331, 333 (2002) (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)); *accord* Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." ***289** Lanham, 349 S.C. at 362, 563 S.E.2d at 333 (citing Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000)).

"All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." Hall v. Fedor, 349 S.C. 169, 173, 561 S.E.2d 654, 656 (Ct.App.2002) (citing Young v. South Carolina Dep't of Corr., 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999)). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Id.* at 173-74, 561 S.E.2d at 656. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly****562** deprived of a trial of the disputed factual issues." Murray v. Holnam, Inc., 344 S.C. 129, 138, 542 S.E.2d 743, 747 (Ct.App.2001) (citing Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing & Regulation, 337 S.C. 476, 523 S.E.2d 795 (1999)).

In reviewing the grant of a summary judgment motion, this court applies the same standard which governs the trial court: Summary judgment is proper when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *accord* Baughman, 306 S.C. at 114-15, 410 S.E.2d at 545; Murray, 344 S.C. at 138, 542 S.E.2d at 747 (citing Brockbank, 341 S.C. 372, 534 S.E.2d 688; Wells, 331 S.C. at 301, 501 S.E.2d at 749).

LAW/ANALYSIS

Hawkins contends genuine issues of fact exist for each of his claims that should have compelled the trial court to deny the City's motion for summary judgment. We disagree.

I. Inverse Condemnation

[1] Hawkins first argues the trial court erred in granting summary judgment to the City on his inverse condemnation claim, contending he was deprived of his full rights to the Servicemaster property without just compensation as a result of the City's design and maintenance of the drainage system. We disagree.

***290** [2] [3] [4] [5] [6] [7] An action for inverse condemnation is appropriate where the government takes private property for public use. Quality Towing Inc. v. City of Myrtle Beach, 340 S.C. 29, 38, 530 S.E.2d 369, 373 (2000). Inverse condemnation is a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency. Horry County v. Ins. Reserve Fund, 344 S.C. 493, 498, 544 S.E.2d 637, 640 (Ct.App.2001). While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such formal proceedings. Horry County, 344 S.C. at 498, 544 S.E.2d at 640. "The term 'inverse condemnation'

describes an action grounded, not on statutory condemnation power, but on the constitutional proscription against the taking or damaging of property for public use without just compensation." Vick v. South Carolina Dep't of Transp., 347 S.C. 470, 480, 556 S.E.2d 693, 698 (Ct.App.2001). "One basic difference between condemnation and inverse condemnation is that in condemnation proceedings, the governmental entity is the moving party, whereas, in inverse condemnation, the property owner is the moving party." South Carolina State Highway Dep't v. Moody, 267 S.C. 130, 136, 226 S.E.2d 423, 425 (1976) (quoting 27 Am. Jur. 2d Eminent Domain § 829 (1996)). The action is not based on tort, but on the constitutional prohibition of the taking of property without compensation. Horry County, 344 S.C. at 498, 544 S.E.2d at 640.

[8] [9] An inverse condemnation occurs when a government agency commits a taking of private property without exercising its formal powers of eminent domain. To establish an inverse condemnation, a plaintiff must show: "(1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence." Marietta Garage, Inc. v. South Carolina Dep't of Pub. Safety, 352 S.C. 95, 101, 572 S.E.2d 306, 308 (Ct.App.2002); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1992).

***291** In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the Servicemaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage ****563** pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. *See, e.g.*, Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency").

The only affirmative acts Hawkins cites as forming the basis of his inverse condemnation claim are the replacement of the double-box culvert with the large arched pipe in Laurel Creek in 1994 and the installation of the riprap material along the banks of the creek in 1997. The record contains no evidence that either of these acts caused the flooding of the Servicemaster property in 1997. Hawkins' own expert testified that the installation of the large arched pipe likely improved the drainage situation in the stormwater basin. Regarding the effect of the riprap material on drainage in the Laurel Creek basin, experts for both the City and Hawkins either offered no opinion on the impact of the riprap or opined that it was impossible to determine whether installing the riprap negatively or positively affected drainage.

Based on the lack of any evidence showing an affirmative, positive, aggressive act on the part of the City which would tend to prove the City's actions caused or precipitated the flooding of the Servicemaster property, we are compelled to ***292** affirm the trial court's grant of summary judgment on Hawkins' inverse condemnation claim.

II. Negligence

[10] Hawkins argues the trial court erred in finding his negligence claim against the City was barred under the South Carolina Tort Claims Act. S.C.Code Ann. §§ 15-78-10 to 15-78-200 (Supp.2003). We disagree.

[11] [12] [13] [14] [15] The Tort Claims Act governs all tort claims against governmental entities. Flateau v. Harrelson, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct.App.2003). It is the exclusive civil remedy available for any tort committed by a governmental entity or its

employees or agents. S.C.Code Ann § 15-78-70(b) (Supp.2003); *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 215, 544 S.E.2d 38, 49 (Ct.App.2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct.App.1998). The Tort Claims Act provides that the State, its agencies, political subdivisions, and other governmental entities are "liable for their torts in the same manner and to the same extent as a private individual under like circumstances," subject to certain limitations and exemptions provided in the Act. S.C.Code Ann. § 15-78-40 (Supp.2003). "Governmental entity" is defined by the act as "the State and its political subdivisions." S.C.Code Ann. § 15-78-30(d) (Supp.2002); *Flateau*, 355 S.C. at 204, 584 S.E.2d at 416. The provisions of the Act establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting liability of the State. S.C.Code Ann § 15-78-20(f) (Supp.2003); *Steinke v. South Carolina Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999); *Arthurs v. Aiken County*, 338 S.C. 253, 270, 525 S.E.2d 542, 551 (Ct.App.1999); *Staubes v. City of Folly Beach*, 331 S.C. 192, 205, 500 S.E.2d 160, 167 (Ct.App.1998). The governmental entity asserting the Act as an affirmative defense bears the burden of establishing a limitation upon liability or an exception to the waiver of immunity. *Strange v. South Carolina Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994); *Steinke*, 336 S.C. at 393, 520 S.E.2d at 152; *Arthurs*, 338 S.C. at 270, 525 S.E.2d at 551. The Act does not create a new substantive cause of ***293** action against a governmental entity. *Moore v. Florence Sch. Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994); ****564** *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 121, 542 S.E.2d 736, 739 (Ct.App.2001). The Plaintiff must present evidence of the governmental entity's duty to act in order to recover under the Act. *Arthurs*, 338 S.C. at 270, 525 S.E.2d at 551. The Tort Claims Act expressly preserves all existing common law immunities. *Williams v. Condon*, 347 S.C. 227, 246, 553 S.E.2d 496, 507 (Ct.App.2001). The Tort Claims Act is a limited waiver of governmental immunity. *Arthurs*, 338 S.C. at 270, 525 S.E.2d at 551. Section 15-78-60 sets out thirty-seven "exceptions" to this waiver of sovereign immunity. These exceptions significantly limit the tort liability of government entities.

Several of these exceptions bear directly upon the alleged acts and failures to act by the City with respect to the municipal drainage system. Specifically, under section 15-78-60, the City is not liable for a loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (3) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (4) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (5) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C.Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003).

[16] [17] For each of these specific provisions, the determination of immunity from tort liability turns on the question of whether the acts in question were discretionary rather than ministerial. A finding of immunity under the Act "is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards." ***294** *Wooten ex rel. Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999). "The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense." *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002).

Although our courts have not applied the Tort Claims Act to facts similar to those of the present case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable. *City of Tyler v. Likes*, 962 S.W.2d 489, 501 (Tex.1997). The court in *City of Tyler* opined:

The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

Id. We find a comparable degree of discretion was granted to the City in the present case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the City is immune from liability for negligence claims arising out of the design and maintenance of the drainage system in the Laurel Creek Basin.

III. Liability Under South Carolina Code Section 5-31-450

[18] Hawkins next appeals the trial court's grant of summary judgment as to his claim under ****565** South Carolina Code section 5-31-450. We find no error with the trial court's ruling.

Section 5-31-450 mandates:

***295** Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person.

[19] [20] [21] [22] Applying this statute, our courts have held that liability does not obtain under section 5-31-450 absent some affirmative act by the municipality which alters the course or increases the amount of stormwater runoff onto private property. *See Brown v. Sch. Dist. of Greenville County*, 251 S.C. 220, 225, 161 S.E.2d 815, 817 (1968) (holding that unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute). "The statute does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. By the same token, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off." *Hall v. City of Greenville*, 227 S.C. 375, 386, 88 S.E.2d 246, 251 (1955). "The statute does not make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Therefore, unless the landowner ***296** pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute." *Taleff v. City of Greer*, 284 S.C. 510, 512, 327 S.E.2d 363, 364 (Ct.App.1985) (citations omitted). "Under this statute proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction." *Hall*, 227 S.C. at 386, 88 S.E.2d at 251. This section apodictically contemplates positive action by a municipality to render it liable for damages. *Brown*, 251 S.C. at 225, 161 S.E.2d at 817.

Hawkins failed to offer proof of any affirmative, positive acts which would tend to show the actions

of the City caused the flooding of the Servicemaster property. We approve the trial court's finding that Hawkins' claim under section 5-31-450 fails.

IV. Trespass

[23] Hawkins appeals the trial court's grant of summary judgment as to his claim for trespass against real property. We find no error with the trial court's ruling.

[24] [25] [26] "[T]respass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property...." *Hedgepath v. Am. Tel. Tel. Co.*, 348 S.C. 340, 356, 559 S.E.2d 327, 337 (Ct.App.2001) (quoting *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 286, 543 S.E.2d 563, 566 (Ct.App.2001), *cert. denied* (citing *Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct.App.1993))). "To constitute actionable trespass, however, there must be an affirmative act, invasion of land must be intentional, ****566** and harm caused must be the direct result of that invasion." *Snow v. City of Columbia*, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct.App.1991); *accord Mack v. Edens*, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (Ct.App.1995). The gist of trespass is the injury to possession, and generally either actual or constructive possession is sufficient to maintain an action for trespass. ***297** *Macedonia Baptist Church v. City of Columbia*, 195 S.C. 59, 71, 10 S.E.2d 350, 355 (1940).

[27] For a trespass action to lie, "the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion." *Mack v. Edens*, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (Ct.App.1995). Hawkins argues the same acts that he claims warrant a finding of inverse condemnation also compel a finding of civil trespass. Hawkins did not offer proof that any action by the City caused the flooding of the Servicemaster property.

Having failed to show any affirmative and intentional act necessary to sustain an action for trespass, we hold the trial court properly granted summary judgment.

V. Conversion

[28] Hawkins next argues the trial court erred in granting summary judgment on his claim for conversion. We disagree.

[29] [30] [31] [32] "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Crane v. Citicorp Nat'l Servs., Inc.*, 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property." *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct.App.2003). Conversion is a wrongful act which emanates by either a wrongful taking or wrongful detention. *Id.* It is well settled that a conversion action does not lie when alleging the exercise of dominion or control over real property. *See* 18 Am. Jur. 2d *Conversion* § 7 (1998) (commenting that "an action for conversion ordinarily lies only for personal property which is tangible, or at least represented by or connected with something tangible" and "will not lie for such indefinite, intangible, and incorporeal species of property as a ... leasehold estate or interest"). Therefore, to the extent Hawkins' conversion claim pertains to the actions of the City with respect to real property, the claim clearly fails as a matter of law. Additionally, Hawkins provided no evidence that the City seized, disposed, denied use, or wrongfully took control of ***298** any goods or personal chattels belonging to him or his business.

We affirm the trial court's decision to grant summary judgment on Hawkins' conversion claim.

CONCLUSION

Finding no genuine issue of material fact with respect to any of Hawkins' causes of action, we conclude summary judgment in favor of the City was proper. The judgment of the trial court is therefore

AFFIRMED.

HEARN, C.J. and BEATTY, J., concur.

S.C.App.,2004.
Hawkins v. City of Greenville
358 S.C. 280, 594 S.E.2d 557

Judges and Attorneys (Back to top)

Judges | Attorneys

Judges

- **Anderson, Hon. Ralph King Jr.**
State of South Carolina Circuit Court, 12th Circuit
Florence, South Carolina 29501
Litigation History Report | Judicial Reversal Report | Profiler

- **Beatty, Hon. Donald W.**
State of South Carolina Supreme Court
Columbia, South Carolina 29201
Litigation History Report | Judicial Reversal Report | Judicial Expert Challenge Report | Profiler

- **Hearn, Hon. Kaye G.**
State of South Carolina Supreme Court
Columbia, South Carolina 29201
Litigation History Report | Judicial Reversal Report | Judicial Expert Challenge Report | Profiler

- **Watson, Hon. Joseph J.**
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Code 1976 § **5-31-450**

Code of Laws of South Carolina 1976 Annotated Currentness
Title 5. Municipal Corporations (Refs & Annos)
Chapter 31. Electricity, Water, Natural Gas and Sewerage Systems
Article 5. Acquisition and Condemnation of Lands
§ 5-31-450. Drains for surface water.

Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person.

CREDIT(S)

HISTORY: 1962 Code § 59-224; 1952 Code § 59-224; 1942 Code § 7301; 1932 Code § 7301; Civ. C. '22 § 4449; Civ. C. '12 § 3026; 1902 (23) 1038; 1953 (48) 272.

LIBRARY REFERENCES

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Municipal Corporations ⚷829, 835.
Westlaw Key Number Searches: 148k31; 268k829; 268k835.
C.J.S. Eminent Domain § 44.
C.J.S. Municipal Corporations §§ 780, 790 to 791.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Actions § 27, Demand.

S.C. Jur. Adjoining Landowners § 6, Actions Brought Pursuant to Statute.

S.C. Jur. Adjoining Landowners § 10, Water Accumulation--Publicly Owned Adjoining Land.

S.C. Jur. Eminent Domain § 16, Municipalities.

NOTES OF DECISIONS

In general 1
Condemnation 4
Demand 2
Liability 3

1. In general

DEFENDANT'S EXHIBIT
2

Cited in Faust v Richland County, 117 SC 251, 109 SE 151 (1921). Triplett v Columbia, 111 SC 7, 96 SE 675 (1918).

Appellant's contention that a municipality had exclusive liability in an inverse condemnation case . would not be considered on appeal, where he did not raise such defense in his pleadings, but, rather, chose to answer the complaint on its merits. Watson v. Town of Pendleton (S.C. 1986) 289 S.C. 315, 345 S.E.2d 489.

The foundation of recovery under this section [Code 1962 § 59-224] is damage resulting from overt acts of the municipality, which it has failed to remedy after notice. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

Proof of negligence. Under this section [Code 1962 § 59-224] proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare, is not an essential ingredient of the cause of action in favor of an adjacent landowner, whose property has been damaged by surface water cast upon it as the result of such construction. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

Quoted in Belue v. City of Greenville (S.C. 1954) 226 S.C. 192, 84 S.E.2d 631.

Applied in Holliday v. City of Greenville (S.C. 1953) 224 S.C. 207, 78 S.E.2d 279.

2. Demand

The purpose of a demand is to notify the municipality, through its appropriate agency, of the damage done or threatened by surface water from its streets as the result of the construction of its street improvements, and of the need for more adequate drainage. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

It need not be in writing--This section [Code 1962 § 59-224] does not require that a demand be in writing, and does not specify the agency of the municipality to which it should be addressed. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

Sufficiency of demand is jury issue. Whether the action of affected property owners at a meeting with the city's board of health was sufficient demand upon the city for relief was, under the testimony, an issue for determination by the jury. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

3. Liability

This section [Code 1962 § 59-224] plainly contemplates positive action by a municipality to render it liable for damages. Hill v Greenville, 223 SC 392, 76 SE2d 294 (1953). Brown v School Dist., 251 SC 220, 161 SE2d 815 (1968).

For additional related cases, as to allegations of damage from surface water, see Columbia v Melton, 81 SC 356, 62 SE 245, 399 (1908). Macedonia Baptist Church v Columbia, 195 SC 59, 10 SE2d 350 (1940).

City was not liable, under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, when business owner's property flooded during rainstorm, where business owner failed to offer proof of any affirmative, positive acts which tended to show that actions of city caused flooding of his business property. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 840

The statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage does not purport to make the municipality an insurer of

the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 827(1)

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 835

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 835

City was not liable for trespass, when business owner's property flooded during rainstorm, for designing and maintaining municipal drainage system, where business owner failed to show any affirmative and intentional act necessary to sustain action for trespass. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 835

City was not liable for conversion, when business owner's property flooded during rainstorm, for designing and maintaining municipal drainage system; business owner provided no evidence that city seized, disposed, denied use, or wrongfully took control of any goods or personal chattels belonging to him or his business. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 835

The municipality is not an insurer of the landowner against damage from surface water under § **5-31-450**; it is only for such damage as results from the municipality's works that a landowner may recover. Therefore, unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute. Taleff v. City of Greer (S.C.App. 1985) 284 S.C. 510, 327 S.E.2d 363.

When cause of action complete. The cause of action of an adjacent landowner is complete if, after demand, the municipality has failed to provide, along or under the street on which the drainage work has been done, sufficient drainage to prevent the passage of the surface water from such street over the landowner's property. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

It does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246. Municipal Corporations 829

Diversion of surface water into inadequate watercourse. A municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

It creates no liability where the damage resulted from highway construction and improvement carried out by the State Highway Department years before annexation of the road and land in question to the city. Hill v. City of Greenville (S.C. 1953) 223 S.C. 392, 76 S.E.2d 294.

City is liable for injury caused by negligent construction of drain pipes. Mayrant v. City of Columbia (S.C. 1907) 77 S.C. 281, 57 S.E. 857.

4. Condemnation

City's design and maintenance of drainage system did not constitute affirmative, positive, aggressive act on part of city as required to support business owner's claim for inverse condemnation claim when his business property near drainage system flooded during rainstorm; city's replacement of double-box culvert with large arched pipe and installation of riprap material along banks of creek near owner's business did not cause flooding of business, and business owner's own expert testified that installation of large arched pipe likely improved drainage situation in stormwater basin. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Eminent Domain 2.18

Code 1976 § **5-31-450**, SC ST § **5-31-450**

Current through End of 2012 Reg. Sess.

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BARNWELL WHALEY
PATTERSON & HELMS LLC
75 YEARS 1938-2013
Attorneys for businesses & professionals since 1938

Phillip S. Ferderigos, Member
pferderigos@barnwell-whaley.com

November 14, 2013

The Honorable Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Tipperary Sales, d/b/a La-z-Boy Furniture Gallery v City of North Charleston, et al.
Case No. 2012-CP-10-6922
Our File No. 1.498

Dear Julie:

Enclosed please find an original and one copy of a City of North Charleston's Motion to Dismiss Pursuant to SCRCP Rule 12(c) in the above-referenced matter. Please file the original and return the clocked copy to us in the enclosed, self-addressed, stamped envelope. We have also enclosed a Motion and Order Information Cover Sheet, and our check in the amount of Twenty-Five and 00/100 ($25.00) Dollars for the filing fee.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Phillip S. Ferderigos

Enc.
Cc w/enc.: Michael S. Seekings, Esq.,Yancey McLeod, Esq.
G. Wade Cooper, Esq.
Roy P. Maybank, Esq.
Duke R. Highfield, Esq.
Leslie S. Riley, Esq.
Elliott Halio, Esq.

PSF/bbm

{Client Matter\000001\0498\CSP\00440396.DOC}

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield
William C. Helms, III·
* Registered patent attorney
· Retired
Ernest B. Lipscomb, III*
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288 Meeting Street, Suite 200, Charleston, SC 29401
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
TIPPERARY SALES D/B/A LA-Z-BOY FURNITURE GALLERY	)	CASE NO.: 2012-CP-10-6922
☐ Plaintiff(s),	)	**Notice of Motion and Motion for Summary Judgment**
Versus	)	
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEM; ASSOCIATED DEVELOPERS, INC.; PARKHILL, LLC;	)	
☒ Defendant(s).	)	

check box above indicating submitting party

Attorney for Plaintiffs:	Attorney for Defendant, SC Dept. of Transportation
Michael S. Seekings, Esquire Leath Bouch & Seekings, LLP 92 Broad Street P.O. Box 59 Charleston, SC 29404 Phone: (843) 937-8811	Roy P. Maybank, Esquire Maybank Law Firm, LLC P.O. Box 12579 Charleston, SC 29422 Phone: 843-766-8101 roy@maybanklaw.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 15 Minutes Court Reporter Needed: YES ☒/ NO ☐

SECTION II: MOTION/ORDER TYPE

☒ Written motion attached – Motion for Summary Judgment
☐ Form Motion/Order –
I hereby move for relief or action by the Court as set forth in the attached proposed motion.

Signature of Attorney for ☐ Plaintiff ☒ Defendant — Date submitted 11/19/2013

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.000
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
CODE: _____ DATE: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED–AMOUNT DUE: _____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF THE COMMON PLEAS CIVIL ACTION NO: 2012-CP-10-6922
TIPPERARY SALES D/B/A LA-Z-BOY FURNITURE GALLERY PLAINTIFFS,	)	
V.	)	DEFENDANT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATIONS'S MOTION FOR SUMMARY JUDGMENT
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEM; ASSOCIATED DEVELOPERS, INC.; PARKHILL, LLC; DEFENDANTS.	)	

FILED
2013 NOV 21 PM 2:10
JULIE J. ARMSTRONG
CLERK OF COURT

TO: MICHAEL S. SEEKINGS, ESQUIRE AND YANCY A. McLEOD, III, ESQUIRE, COUNSEL FOR THE PLAINTIFF

YOU PLEASE TAKE NOTICE that Defendant, the South Carolina Department of Transportation, (hereinafter "the Defendant"), by and through its undersigned attorneys, will move before this Court for Summary Judgment pursuant to South Carolina's Rule 12 (b)(6), 12 (c) and Rule 56 of the Rules of Civil Procedure. This Motion is based on the grounds that the Plaintiff has failed to state a claim upon which relief can be granted, Plaintiff's claim fails on the pleadings, and finally the Plaintiff failed to file the Complaint within the applicable statute of limitations pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10, *et. seq.*

This defendant reserves the right to supplement this motion with case law, statutory law and a memorandum at a later date.

MAYBANK LAW FIRM, LLC
531 Savannah Highway
P.O. Box 12579
Charleston, SC 29407
P: (843) 766-8101
F: (843) 766-8103
Email: Roy@maybanklawfirm.com

Roy P. Maybank (S.C. # #69643)
Jason A. Daigle (S.C. #73308)
Attorneys for SCDOT

Charleston, South Carolina
11/19, 2013

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by □ mailing, □ e-mailing, □facsimile, or □hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 19 day of Nov, 2013

MAYBANK LAW FIRM, LLC

ATTORNEYS AT LAW
Physical Address
531 Savannah Highway
Charleston, SC. 29407

Mailing Address
POST OFFICE BOX 12579
CHARLESTON, SC 29422

Roy P. Maybank
Amanda R. Maybank
Jason A. Daigle
Marshall A. Earhart

Phone: (843) 766-8101
Facsimile: (843) 766-8103

EMAIL:Roy@maybanklaw.com

November 19, 2013

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery v. South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc. and Parkhill, LLC
Case No: 2012-CP-10-6922
IRF Claim: 63443
MLF File: 102.035

Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of South Carolina Department of Transportation's Motion for Summary Judgment, along with the $25.00 filing fee, in the above-referenced case. Please file the original and return a file-stamped copy to me in the envelope provided.

Thank you in advance for your assistance, and if you should have any questions, please do not hesitate to contact me.

With kind regards, I am

Yours truly,

Roy P. Maybank

RPM/ead

\\MAINSERVER\Litigation Files\102-Insurance Reserve Fund\102.035 Tipperary Sales v. SCDOT\Correspondence\L-Clerk (MSJ).docx

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2012_-CP-10-6922
	)	
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery	)	**MOTION AND ORDER INFORMATION**
Plaintiff,	)	**FORM AND COVERSHEET**
vs.	)	
	)	
S. C. Department of Transportaion, et al.	)	
Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
Michael Seekings, Bar No. _____	Andrew S. Halio, Bar No. 2459
Address:	Address:
P. O. Box 59, Charleston, SC 29402	P. O. Box 747, Charleston, SC 29402-0747
Phone: (843) 937-8811 Fax (843) 937-0606	Phone: (843) 577-5200 Fax(843) 577-7468
E-mail: mseekings@leathbouchlaw.comOther: _	E-mail: haliolaw.com Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 10 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Andrew S. Halio — November 22, 2013
Signature of Attorney for ☐ Plaintiff /☒ Defendant — Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Tipperary Sales d/b/a La-Z-Boy Furniture Gallery, Plaintiff, v. South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC, Defendants,	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2012-CP-10-6922 MOTION FOR SUMMARY JUDGMENT

FILED
2013 NOV 25 PM 2:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: MICHAEL S. SEEKINGS, ESQUIRE AND YANCEY A. McLEOD, III, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

Pursuant to Rule 56, S.C.R.C.P., the Defendant, South Carolina Department of Health and Environmental Control (DHEC), moves the Court for an order granting summary judgment in its favor on the ground that there is no genuine issue of material fact and DHEC is entitled to judgment as a matter of law. This motion is based on the ground that there is no legal or factual basis for Plaintiff to maintain an action for inverse condemnation against DHEC absent evidence of an "affirmative, positive, aggressive" act on the part of DHEC causing or precipitating the flooding of the Plaintiff's property, of which there is no such evidence in this case. Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 577 (Ct. App. 2004). Furthermore, DHEC is immune from liability for negligence and gross negligence under the South Carolina Tort Claims Act, more specifically, S.C. Code § 15-78-60. This motion is based on the pleadings and discovery generated in the case to date.

HALIO & HALIO, CHARLESTON, SOUTH CAROLINA

HALIO AND HALIO
Attorneys for Defendant
South Carolina Department of Health and
Environmental Control

Andrews S. Halio
ANDREWS S. HALIO
13 N. Adgers Wharf / Box 747
Charleston, SC 29402-0747
(843) 577-5200
haliolaw@bellsouth.net

This 22 day of November, 2013
Charleston, South Carolina

CERTIFICATION

This is to certify that the undersigned attorneys did this date serve the *Motion for Summary Judgment* upon the attorneys below listed by mailing a copy of the same to their offices, postage prepaid on this 22nd day of November, 2013.

Counsel for Plaintiff:
Michael S. Seekings, Esquire
Leath, Bouch, & Seekings, LLP
P. O. Box 59
Charleston, SC 29402

Counsel for SCDOT
Roy P. Maybank, Esquire
Maybank Law Firm, LLC
P. O. Box 12579
Charleston, S.C. 29422

Counsel for SCDOT & Charleston Water System:
Hugh Wilcox Buyck, Esquire
G. Wade Cooper, Esquire
Buyck & Sanders, LLC
P. O. Box 2424
Mt. Pleasant, SC 29464-2424

HALIO & HALIO, CHARLESTON, SOUTH CAROLINA

Additional Counsel for Charleston Water System
Leslie S. Riley, Esquire
Lucas C. Padgett, Jr., Esquire
P. O. Box 1431
Charleston, S.C. 29402

Counsel for City of North Charleston
Phillip S. Ferderigos, Esquire
Barnwell Whaley Patterson & Helms, LLC
P. O. Drawer H
Charleston, SC 29402-0197

Counsel for Associated Developers, Inc.
and Parkhill, LLC
Duke R. Highfield, Esquire
Benjamin A. Traywick, Esquire
Post Office Box 993
Charleston, SC 29402

BY: Andrew S. Halio
Andrew S. Halio

HALIO & HALIO, CHARLESTON, SOUTH CAROLINA

LAW OFFICES
HALIO & HALIO
POST OFFICE BOX 747
CHARLESTON, SOUTH CAROLINA 29402-0747

ELLIOTT T. HALIO
ANDREW S. HALIO

(843) 577-5200
FAX (843) 577-7468

13 NORTH ADGERS WHARF
CHARLESTON, SC 29401
E-MAIL haliolaw@bellsouth.net

November 22, 2013

Hon. Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street
Suite 106
Charleston, SC 29401

Re: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery, vs. South Carolina Department of Transportation; et al.
Case NO.: 2012-CP-10-6922

Dear Mrs. Armstrong:

Enclosed please find an original and one copy of a Motion for Summary Judgment in the above captioned case, along with a motion slip and check for the filing fee. Please file the original and return a clocked copy to me in the enclosed envelope.

Thank you in advance for your time and attention.

Sincerely yours,

Andy

Andrew S. Halio

ASH/sbg
Enclosures
Cc: Counsel of record (w/enclosures)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,

☐ Plaintiff,

Versus

South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC.

☒ Defendants.

check box above indicating submitting party

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 12-CP-10-06922

DEFENDANT CHARLESTON WATER SYSTEM'S NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO SCRCP 12(C), OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

Plaintiff's attorney:	Defendants' attorney:
Yancey A. McLeod, III, Esquire Leath Bouch, Crawford & Von Keller 92 Broad Street P.O. Box 59 Charleston, SC 29404	G. Wade Cooper (S.C. Bar # 69692) Buyck Law Firm, LLC 757 Johnnie Dodds Blvd., Ste. 100 P.O. Box 2424 Mt. Pleasant, SC 29465-2424

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss
Estimated Time Needed: 15 Minutes
Court Reporter Needed: YES ☒/ NO ☐

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order –
I hereby move for relief or action by the court as set forth in the attached proposed order.

A. Wade Cooper
Signature of Attorney for ☐Plaintiffs/☒Defendants

12-5-13
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
CODE: _____ DATE: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED–AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	C/A No. 12-CP-10-06922
Plaintiff,	)	
Versus	)	CHARLESTON WATER SYSTEM'S MOTION TO DISMISS PURSUANT TO SCRCP 12(C), OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC,	)	
Defendants.	)	

FILED
2013 DEC -6 PM 2:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

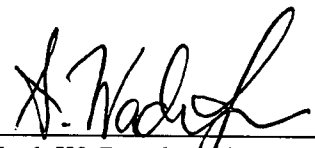
TO: YANCEY A. McLEOD, III, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendant Charleston Water System will move before the Circuit Court at the Charleston County Courthouse, at a time and place to be arranged with the Court and parties involved, for an Order dismissing this action with prejudice against this Defendant pursuant to Rule 12 (c) of the South Carolina Rules of Civil Procedure based upon the pleadings filed by the Plaintiff and this Defendant. This Motion is based on the grounds that Plaintiff has failed to state a claim for relief pursuant to Rule 12 (c) based on the applicable statute of limitations, the precedent set forth in *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), and the South Carolina Tort Claims Act, S.C. Code. Ann. §§15-78-10, *et seq.* Should matters outside the pleadings be presented to and not excluded by the Court, Defendant moves for summary judgment pursuant to SCRCP 56, as provided for under SCRCP 12 (c).

Pursuant to the South Carolina law outlined above, Defendant Charleston Water System is entitled to a judgment on the pleadings, or, in the alternative, summary judgment as a matter of law.

Respectfully submitted,

BUYCK, SANDERS & SIMMONS, LLC
757 Johnnie Dodds Blvd., Ste. 100
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 377-1403
Email: gwc@buyckfirm.com



Hugh W. Buyck (S.C. Bar # 66462)
G. Wade Cooper (S.C. Bar # 69692)

and

Leslie S. Riley, Esq.
Lucas C. Padgett, Jr. Esq.
McNair Law Firm, P.A.
Post Office Box 1431
Charleston, SC 29402
Telephone: (843) 723-7831
Facsimile: (843) 722-3227
Email: lriley@mcnair.net

Attorneys for Defendant
Charleston Water System

December 5, 2013
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of December, 2013, a true copy of the foregoing has been served on all counsel by mailing a copy via U.S. mail,

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FILED
2013 DEC -6 PM 2:56
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CLERK OF COURT

This 5th day of December, 2013.

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December 5, 2013

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Suite 106
Charleston, SC 29401

Re: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery v. South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC
C/A No. 12-CP-10-6922
BSLF File No. 10.73

Dear Ms. Armstrong:

Enclosed for filing please find an original and one copy of Defendant Charleston Water System's Motion to Dismiss Pursuant to SCRCP 12(C), or in the alternative, Motion for Summary Judgment in the above-referenced case. Please file the original and return a clocked-in copy in the enclosed self-addressed stamped envelope.

By copy of this letter, I am serving counsel with a copy of our Motion.

With kind regards,

Yours truly,

Wade

G. Wade Cooper

GWC:kts
Enclosure
cc: Elliott Halio, Esquire
Roy P. Maybank, Esquire
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STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
Case Number: 2012-CP-10-6922

TIPPERARY SALES d/b/a LA-Z-BOY FURNITURE GALLERY,
Plaintiffs,
-vs-
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEMS; ASSOCIATED DEVELOPERS, INC.; and PARKHILL, LLC,
Defendants.

THE DEPOSITION OF:

Richard V. Geer

DATE: Thursday, May the 23rd, 2013

TIME: 9:38 a.m.

LOCATION: Leath, Bouch & Seekings, LLP
92 Broad Street
Charleston, South Carolina 29401

REPORTER: **Kimberli S. Hogle**
Professional Court Reporter
and Notary Public
(843) 849-3007

INDEX TO EXAMINATIONS:

	Page
Examination By Mr. McLeod	4
Examination By Mr. Daigle	54
Examination By Mr. Wiseman	58
Examination By Mr. Burgess	60

INDEX TO EXHIBITS:

1. Parkhill Phase 1 Stormwater Permit Application. 13
2. Parkhill Place Drainage Analysis 16
3. Stormwater Management & Sediment Reduction Document 21
4. Parkhill Phase 2A & 2B Stormwater Permit Application 24
5. Parkhill Phases Stormwater Permit Application . 27
6. 5/15/01 Letter from DHEC to Centex 31
7. Parkhill Phase 6 Stormwater Permit Application. 37
8. Stormwater Permit Application for Stall High School Improvements 38
9. Northwoods Townhomes Stormwater Permit Application 41
10. Water Quality Design Consideration Document .. 44

A P P E A R A N C E S

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The deposition is taken pursuant to the South Carolina Rules of Civil Procedure for the purposes allowed therein, and the deponent was explained his right to read and sign the deposition and waived that right.

(Mr. Richard V. Geer, having been duly sworn, testified as follows:)

EXAMINATION BY MR. MCLEOD:

Q. Good morning, Mr. Geer. My name is Yancey McLeod. We just met a second ago. You've had your deposition taken before; correct?

A. Yes.

Q. Well, as you know, during this deposition, if you have any questions about any of my questions, if they're unclear or confusing, just ask me and I'll be happy to repeat them. If you ever need to take a break, just say so and we'll be happy to do so. Every once in a while, from time to time, somebody will object; you need to still answer my question and just direct any questions that you have to me.

A. Okay.

Q. Who do you work for?

A. I work for DHEC, State of South Carolina.

Q. What's your position there?

A. I'm an engineer associate.

Q. How long have you been at DHEC?
A. Since '99, so 15 years.
Q. Wow, that's fantastic. I guess let's start a little bit, I'm interested in just getting the general day-to-day description of your job, what it is that you do, your role in sort of coordinating permitting activity, whatnot.
A. Okay. What I do is I issue what's called land disturbance or stormwater permits. I mean, we review applications submitted by developers. It's for construction activity, and it's for pollution prevention during that activity and stormwater management long-term. So it's based on what was existing versus what they are proposing. So it's associated with some kind of development or redevelopment. You have to have a pollution prevention plan, which we review and approve according to the State Stormwater Regulations.
Q. Explain to me why that's even necessary. Why is it that important? I mean --
A. It's important from the standpoint of stormwater management going from a natural typically -- I'll use the example of development instead of redevelopment. Development, you're going from a natural wooded area and bringing in pavement and buildings and causing -- it's altering the drainage characteristics of the property. And

during that process, because it's bare soil and there's lots of ground disturbance and clearing and construction going on, there's a lot of potential for pollution to get into the stormwater runoff.
Q. When you say "pollution," you mean like a contractor's hot dog wrapper?
A. Well, sediment is the biggest focus.
Q. Right, from the bare ground.
A. From the bare ground. There are various pollutants that do typically attach to the sediment, but sediment itself is a pollutant, and so that is the big focus during construction. So, that's one of the big focuses of this permit is to prevent that pollution. Also, the permit addresses long-term stormwater management. Not only do you have these pollutants that will be introduced, or could be, but you have changes to the amount of stormwater runoff. When it rains, instead of hitting grass or trees and being soaked into the ground or used by the trees, it hits pavement and rooftop and it runs off onto the next property. So instead of infiltrating, it's running off, and so you've got that extra runoff that needs to be addressed.
Q. Okay, I understand. So there are several levels, and correct me if I'm wrong. There's one, you're clearing, which would increase the amount of water that goes downstream. But in addition, when you put concrete down,

that increases the velocity of the water?
A. Yes. It also reduces the amount of water, rainfall, that actually soaks into the ground, where it's either useable for water in wells or tree up-take, vegetation. You know, evapotranspiration.
Q. Okay. And the permitting, tell me the different permits that you issue.
A. That's the only one.
Q. Just the construction clearing permit?
A. Right.
Q. So you don't have any involvement with any kind of wetland permitting?
A. There are other divisions of agency that we coordinate with, you know, to make sure that, if they're proposing wetland impacts, that they acquire the appropriate permits from other sections of the agency or other agencies possibly.
Q. Help me understand that. What division would issue those permits, and how would you work with them in issuing those permits?
A. Well, there's a division of water quality that's with DHEC. There's also a section of OCRM that deals with the Coastal Zone Management Program, which has several policies associated with wetland impacts. OCRM actually has to certify that this stormwater permit, and, really, any

state permit in coastal counties, they have to certify that it's consistent with the Coastal Zone Management Program before anybody can issue a permit, state permit. So, not only the stormwater permit that I issue has to be certified consistent before I can approve it, but other state permits, like water and sewer permits, you know, anything in the coastal zone. So, OCRM has that component, and the permit can't be issued until it's certified by them. So, that is kind of a concurrent review by OCRM for that aspect.
Then, of course, the Corps of Engineers sometimes has jurisdiction over wetlands, and then there's the division of water quality with DHEC that also has some input on wetland permitting. And, you know, through the stormwater permit, we'll make sure that they're on the right track with those other permits and that that is being addressed, those wetland impacts.
Q. If, like, on a given project, if there are gonna be wetland impacts to the project, does that change your issuance of your clearing permit? In terms of, you mentioned earlier, long-term water quality, runoff control, if wetlands are disturbed, does that change how you decide when not to issue a permit at all?
A. Only to the extent of it may delay some review to wait for a certification from OCRM. Their review may take longer because they have to address that. And there

1 are, you know, aspects to making sure that what's submitted
2 to me for the stormwater permit is consistent with what
3 they're submitting to others for wetland permits so that I
4 don't end up approving a set of plans that shows five acres
5 of impacts where the wetland permit shows only three. You
6 know, just consistency aspects, that does measure into the
7 review.
8 Q. Okay, but the designs for a project that are
9 approved or disapproved or that are consistent with the
10 regulations, if wetlands are being impacted, does that
11 change the typical calculation for the amount of runoff as
12 opposed to no wetlands being impacted and just clearing?
13 A. Well, that is considered in the analysis of the
14 site. They consider things like the soil type, the
15 topography, the cover, all of which, you know, that
16 combination, defines whether there is a wetland there or
17 not. The consultants who submit the analysis for the
18 stormwater characteristics of the site, that will be
19 considered in there. It should be reflected, just in terms
20 of the type of soil, the type of vegetation, the type of
21 topography of the site, that weighs in, and it's considered
22 in the existing condition versus the post-developed
23 condition. So, they compare the two conditions, and those
24 conditions reflect the site conditions. So it would
25 consider -- if there's a wetland there, it will be indicated

1 by the soil type and the cover and the topography, and
2 exactly -- I mean, those characteristics will be considered
3 in the analysis for stormwater.
4 Q. Okay, fair enough. You're familiar with why
5 we're here. I mean, this case and other cases, there's
6 significant flooding problems at the Northwoods Mall and, in
7 general, the watershed of Northwoods Mall. Are you --
8 MR. DAIGLE: Object to the form.
9 MR. WISEMAN: Object to the form.
10 A. I'm aware of that now, because of this case,
11 that there's a flooding problem there, yes.
12 Q. When did you first become aware of that problem?
13 A. When I heard of this lawsuit.
14 Q. This particular lawsuit, other lawsuits?
15 A. This one.
16 Q. I'm gonna bounce back real quick to the general
17 structure of DHEC. Who is your supervisor?
18 A. Right now it's Shannon Hicks.
19 Q. And how many people are in your department in
20 Charleston?
21 A. Under Shannon's --
22 Q. Uh-huh.
23 A. Me and an administrative assistant, so there's
24 two.
25 Q. And you stated that you personally weren't aware

1 of the flooding until this lawsuit?
2 A. Right.
3 Q. How long has Ms. Hicks been at DHEC?
4 A. I'm not exactly sure. She started with DHEC
5 after I did.
6 Q. Okay, understood. Have you ever seen or read
7 this study?
8 A. Just a few days ago, actually. Andy showed it
9 to me. I have flipped through it. I haven't spent any time
10 really studying it.
11 Q. Is it fair to say that that report, which is the
12 1980 Seabrook report, is it fair to say it documents
13 flooding problems at the Northwoods Mall?
14 MR. WISEMAN: Object to the form.
15 MR. DAIGLE: Same objection.
16 A. It looks like it.
17 Q. Have you ever seen or read this report?
18 A. I'm not sure.
19 MR. DAIGLE: Can you identify those two
20 reports for us for the record?
21 MR. MCLEOD: And we can mark them as
22 exhibits, if you would like. The first report
23 is the 1980 Seabrook report. The second report
24 I believe is the 2007 Davis & Floyd report.
25 THE WITNESS: I don't think I've seen this

1 one before.
2 MR. HALIO: And that was the Davis & Floyd
3 that he indicated that he hadn't seen before.
4 MR. MCLEOD: Thank you.
5 BY MR. MCLEOD:
6 Q. Now, Mr. Geer, you stated that you've been with
7 DHEC in one form or fashion since 1999; correct?
8 A. Correct.
9 MR. BURGESS: What was that last question?
10 MR. MCLEOD: I asked Mr. Geer to confirm
11 that he's been with DHEC since 1999.
12 BY MR. MCLEOD:
13 Q. What I'm gonna hand you is a map of the area
14 with all of the projects that have been permitted in and
15 around the area.
16 A. Okay.
17 Q. What I would like to do now is kind of go
18 through some of those projects and the aspects of each one.
19 A. Okay.
20 Q. Are you familiar with the Parkhill development?
21 A. Somewhat.
22 Q. Most of the questions that I'm gonna have just
23 deal with the general structure of how things happen in
24 terms of the permitting, permits, and that sort of thing.
25 So explain to me what that document is, please.

A. That's an application for the stormwater permit, as I described earlier.

Q. Let's mark that one as an exhibit.

(PARKHILL PHASE 1 STORMWATER PERMIT APPLICATION MARKED EXHIBIT NO. 1 FOR I.D.)

MR. HALIO: Is that Parkhill? Is Exhibit 1 an application for Parkhill?

MR. MCLEOD: I believe that's an application for Phase 1.

BY MR. MCLEOD:

Q. So this would be the application that is submitted for when somebody wants to develop a piece of property; is that correct?

A. Yes.

Q. Is this the first, that's what gets the ball rolling kind of thing, or is there preliminary --

A. Yes, this is what gets the ball rolling. It should be included with the calculations and plans, and there is a review fee involved as well.

Q. So what happens after this is submitted, what in terms of your job?

A. It's reviewed for compliance with the State Stormwater Regulations.

Q. The application itself, or does this application come with other --

A. Well, the applications and the plans and the calculations.

Q. So at this point the plans had already been done?

A. Yes. The initial plans and calculations, yeah.

Q. Okay.

A. It all comes in together. It's not accepted unless there are plans and calculations that are included with the application.

Q. Oh, okay. And who typically does those plans?

A. A consulting engineer, typically, that is hired by the developer.

Q. So DHEC doesn't hire the engineer?

A. No.

Q. Does DHEC approve the engineers?

A. No. DHEC does require, you know, of certain size projects, certain state registered professionals to make the submittal.

Q. For certain projects?

A. Yes. Depending on project size, it's got to have design -- there's got to be structures designed, you know, to meet these requirements, so it requires a registered professional to do that design.

Q. What size are we talking about?

A. Two acres, typically. Anything disturbing more

than two acres would have to have a registered engineer, a professional engineer, or a landscape architect, or a Tier B land surveyor to actually sign off on the application and prepare the calculations and drawings.

Q. But DHEC doesn't hire them?

A. No.

Q. That would be the applicant that hires the engineer?

A. Right.

Q. Okay, understood. In your capacity in your job, do you have any -- I mean, we talked briefly earlier about the idea about impacting wetlands and that effect on the issuance of permits and construction permits. I was reading through the file that was produced. Explain to me what this would be. I just want to talk briefly about it.

A. This looks like a letter from the Corps of Engineers that indicates whether or not there are wetlands under the Corps' jurisdiction on the site, on a particular site.

Q. And so this letter is confirming that there are in fact jurisdictional wetlands?

A. Yes, on the property that's identified here. It's identified in the letter. I'm not sure exactly what property that is.

Q. Okay, understood. The reason I was asking is I

noticed that this other letter is from the same employee at the Corps of Engineers.

MR. HALIO: What's the question?

Q. And I was wondering if you had any idea -- I noticed in these letters that the one from 1989, which is in your hand, says that it's good for five years, and then the one from 1990 says it's good for three years. I didn't know if you had any idea why that would be.

A. I don't. These are Corps of Engineers letters, and I really can't say what the difference is. They both look like they could be a delineation -- you know, letters indicating there are wetlands on the site. I don't know. I can't speak for the Corps as to what those mean, what the difference are.

Q. Fair enough. I didn't really expect you to. I was just curious about that. This is, in my hands, a drainage analysis for Parkhill Place, North Charleston, South Carolina. I think the best thing to do is for us to go through all the Parkhill documents first, just for clarity. We can mark this as Exhibit 2.

(PARKHILL PLACE DRAINAGE ANALYSIS MARKED EXHIBIT NO. 2 FOR I.D.)

Q. It says that the post-development conditions will consist of single-family residential communities with 241 lots and six ponds, and that there is five fresh water

1 wetlands on the site, and four of them are gonna be
2 completely filled. I just wanted to talk a little bit about
3 the combination between the impacts to stormwater management
4 concerns that a project like this would have. And we've
5 already spoken briefly about that. How does your office
6 determine whether or not the stormwater impacts won't create
7 a problem for downstream?
8 A. We depend on the engineer or the consultant's
9 analysis of the site. That analysis will reflect the
10 pre-developed condition versus the post-developed condition,
11 so they analyze those two different conditions and compare
12 them. We look at the results of that analysis to see that
13 it meets the requirements.
14 Q. Okay. But how is it possible to prevent a
15 project like that from increasing downstream water concerns?
16 A. Well, the regulation requires that the discharge
17 rates cannot increase for two storm events. That's the two
18 and ten-year storm event, the discharge rates cannot
19 increase.
20 Q. So no net increase?
21 A. There are possibilities for waivers, but I don't
22 recall that ever being requested or entertained for this
23 particular project. But there are situations where somebody
24 could request a waiver or a variance from that, such as if
25 they're -- you know, in terms of this particular regulation,

1 the discharge rates not exceeding the pre-developed
2 condition, if it were discharged directly to, say, the
3 Charleston Harbor, it's tidally-influenced, there's not
4 gonna be flooding problems downstream other than high tide
5 or if Hugo comes back, you know.
6 Q. Well, I hope that doesn't happen.
7 A. Right, and that's a larger storm event than we
8 even look at. Anyway, an extreme example of when that would
9 be a pretty easy justification for a variance on that
10 particular requirement is if there was no downstream
11 impacts, that there was no request for that, you know, in
12 this project. Back to your question, yeah, for that two and
13 ten-year storm event, the discharge rates cannot increase.
14 And the way they handle that is typically
15 by putting in a pond that will store that increase in runoff
16 volume and release it slowly, so the rate of discharge is
17 not increased because it's built up in the pond and it's
18 released slowly out of the pond over several days instead of
19 right there during the storm event. And so they design that
20 pond specifically to hold that extra volume and release it
21 slowly. So all that extra rainfall, all that extra, I
22 should say, runoff that's hitting asphalt pavement, roof
23 top, instead of soaking into the ground, it's running off
24 quickly and they're catching it in a pond, and the pond
25 holds it and releases it slowly.

1 So they analyze the pre-developed condition
2 and see what those runoff rates are and say here's what my
3 runoff rates are pre-developed, I've got to design my pond
4 to at least at or below those rates for when after
5 construction is complete.
6 Q. Okay, I think I'm beginning to understand.
7 Putting in concrete, houses, increases the amount of water
8 that runs off; is that fair to say?
9 A. Yes.
10 Q. There's less soaking into the ground, more
11 runoff. And you're saying that the ponds that are installed
12 prevent increased runoff from going --
13 A. Yes. That's one of the popular or common, you
14 know, typical measures that's used to address this. It's
15 not the only one, but, I mean, there's infiltration
16 practices, there's depressional storage and other low impact
17 development possibilities. So, it's not limited to ponds,
18 but that's typically what most engineers -- that's mostly
19 what we see because it's pretty easy, I guess.
20 Q. This is why I always see ponds next to Lowe's
21 and Wal-Mart?
22 A. Yes.
23 Q. Is that what we're talking about?
24 A. Typically, yes.
25 Q. What happens if the applicant is wrong?

1 A. Well, we rely on what the applicant submits to
2 us and what his consultant -- I mean, we rely on what they
3 submit. They have to sign that application indicating that
4 they're -- I forget what the exact wording is -- but
5 essentially that they're representing the site and their
6 plans accurately, and we rely on that. That's what the
7 regulations say we've gotta do, and we're not designing it.
8 Q. So the regulations require you to rely on the
9 applicant's study or application -- what's the right word?
10 A. We just call it a submittal. A submittal
11 includes the applications, the calculations and the plans.
12 Q. Is it fair to say that applicants that submit
13 these land construction disturbing applications, they want
14 to develop the property?
15 A. I assume so; that's why they're submitting the
16 application, yes.
17 Q. There's a couple other things I want to talk
18 about. And this is all kind of new; I'm just learning about
19 the process, so forgive me if I ask stupid questions. So
20 this is my folder that -- we're still on the Parkhill
21 subdivision, and these are more documents that your office
22 produced. I wasn't sure what -- this particular document
23 that's titled "The Stormwater Management & Settlement
24 Reduction Permitting Coastal Zone Management Program
25 Consistency Determination," explain to me what that document

is.

A. We refer to that as kind of a decision document. It's kind of a checklist that we go through -- well, I should say that OCRM goes through in terms of, you know -- I guess it can be done during the review, but typically it's done at the stage where you're ready to issue the approval, and you go through and make sure that all these items have been addressed.

Q. Okay, we'll mark this as Exhibit 3.

(STORMWATER MANAGEMENT & SEDIMENT REDUCTION DOCUMENT MARKED EXHIBIT NO. 3 FOR I.D.)

Q. Again, a lot of this is from my own learning process. On the second page of Exhibit 3, "Does the project meet the Wetland Master Planning Policy?", I've never heard of that. What is that?

A. That's something that the section that I mentioned earlier of OCRM that considers the wetland policies of the Coastal Zone Management Program. As a stormwater plan reviewer, the reviewer, such as myself, would typically go to the project manager in that OCRM wetland section and essentially review the wetland impact plan to make sure it's consistent. Essentially, the OCRM wetland section project manager would review the plans themselves and tell me, the stormwater plan reviewer, that it is consistent with the policies of the Coastal Zone

Management Program in terms of wetland impacts.

Q. I guess that's where I'm a little confused. What does that mean? I mean, if they're filling in --

A. The Coastal --

Q. Excuse me. I mean, we saw earlier that the Parkhill -- I think Exhibit 2 says that four of the five wetlands are going to be completely filled in. So knowing that, what has to happen for it to be consistent with the policy?

A. The policy addresses -- I'm not as familiar with that policy, so I can't really speak to that particular policy in the Coastal Zone Management Program. In general, I can say that it's associated with protecting that coastal resource as a resource for wildlife and natural habitat. So that's what the Coastal Zone Management Program in general is looking at in terms of the wetland policies.

Now, for the State Stormwater Regulations, what I'm directly involved with, the only consideration for wetlands is from a standpoint of drainage characteristics. It has a function to store and allow water to infiltrate, similar to a pond in a way. I consult with the OCRM wetlands section staff in terms of the Coastal Management policies and their association with preserving that wetland as a coastal resource. I review the calculations in terms of is that wetland reflected in this analysis. I mean, is

it -- and I don't necessarily look at it specifically as a wetland, but it's a depression which will promote, you know, capture runoff and promote infiltration, and the vegetation will soak up -- I mean, it's got specific characteristics that affect stormwater runoff, and that's the difference there. I'm looking at it from a stormwater runoff standpoint; they're looking at it as a natural resource to protect.

Q. Okay, I understand, and that's what I thought. You are looking at things for stormwater runoff; whereas, another division under DHEC is looking at it for, you know, the impacts to the actual ecosystem, the wetland itself.

A. Right.

Q. And it just struck me as interesting that this project filled in completely the wetlands, and yet somehow it's still checked off on the policy. Would that have something to do with mitigation?

A. It may. I can't speak to that. That would require somebody from that wetlands section that's more familiar with those particular policies.

Q. So when you reviewed specific projects that have wetland impacts or any kind of impact, you do review the reports, the submittals?

A. I do review the calculations, yeah, the analyses of the stormwater characteristics of the site, yes.

Q. Let's mark this. This is another standard application form for disturbing more than two acres.

(PARKHILL PHASE 2A & 2B STORMWATER PERMIT APPLICATION MARKED EXHIBIT NO. 4 FOR I.D.)

MR. HALIO: Another application, which one is this?

MR. MCLEOD: Exhibit 4 is Parkhill Phase 2A and 2B, and this was June 14th, 2000.

BY MR. MCLEOD:

Q. Now, these applications for disturbing more than two acres, it appears that they've changed somewhat. Is that fair?

A. Yeah, they -- yes.

Q. Good answer. I noticed that Exhibit 1 was the original Parkhill Place Phase 1 application from 1998, so that was prior to your beginning work at DHEC. And then Exhibit 4 is a 2000 application and it's changed somewhat, and what I'm really interested in is this question in the 2000 form. It has the question of whether or not there's any flooding concerns in the general area. And do you agree that it's checked "no"?

A. Yes.

Q. And Exhibit 1 from '98, which is I think the same application, is changed and there's no question there for whether or not there's any flooding concerns in the

1 surrounding area?
2 A. Right.
3 Q. Do you know why that would have been added?
4 A. No.
5 Q. Do y'all ever have big meetings with everybody
6 that has your job around the state?
7 A. We do.
8 Q. How often does that happen?
9 A. I mean, it's varied quite a bit over the years.
10 Q. Are these more like sort of a get you up to
11 speed on the new up and coming ideas sort of thing, new
12 regulations? Are they learning, or is it just for --
13 A. Yeah. I mean, it's for learning, for keeping
14 consistency throughout the state, any new requirements,
15 program changes, you know, reorganizations, whatever.
16 Q. Do you have input in these changes? In your
17 capacity in your job, if you realize there's a problem and
18 we probably should be addressing this in our applications,
19 could you make a change to this application?
20 A. I haven't been -- I was not involved with these
21 back then, with those changes. I've had very little, just
22 kind of proofread kind of involvement with any of the
23 relatively new ones that we have updated. So, I mean, not
24 much, not any significant format changes. Just kind of read
25 through to see if there's anything we need to change or add.

1 But I've not been tasked, no, with developing or reworking
2 the whole application.
3 Q. I mean, if you had an idea of something that
4 maybe needed to be asked on the applications, you wouldn't
5 go to Ms. Hicks or somebody and say, hey, we should probably
6 start asking about this?
7 A. I could.
8 Q. And it would be Ms. Hicks that you would go to?
9 A. Yes.
10 Q. Would she have the authority to make a change on
11 the application?
12 A. She actually would coordinate with her
13 equivalent that's in the Columbia office. There's another
14 section that does the same permitting for the counties that
15 are outside the coastal zone. There's eight coastal
16 counties. Shannon, myself and this admin assistant now do
17 the stormwater permitting for those eight coastal counties,
18 and there's a section in Columbia that does it for the rest
19 of the state.
20 Q. Is it fair to say that between 1998 and 2000,
21 somebody at the Department of Health and Environmental
22 Control thought this application needed to start asking the
23 applicants whether or not there was flooding concerns in the
24 area?
25 A. I guess so.

1 Q. Okay. So, now, in 2000, we have a new question
2 on our application, "Are there any existing flooding
3 problems in the surrounding areas?" We'll mark this.
4 **(PARKHILL PHASES STORMWATER PERMIT APPLICATION**
5 **MARKED EXHIBIT NO. 5 FOR I.D.)**
6 Q. I've got here Exhibit No. 5. It's another one
7 of these applications for disturbing more than two acres.
8 This was from 2001 for the Parkhill phases -- this document
9 was produced by your office and there was apparently a
10 sticky note covering up the actual phases. But I believe
11 that this is for the rest of the phases, not including Phase
12 6. That same question appears on there again?
13 A. Yes.
14 Q. So whoever decided to add that question between
15 1998 and 2000 evidently thought it was important to leave it
16 there. And do you agree that it's marked "no"?
17 A. It's marked "no."
18 Q. So, so far the two applications with the
19 question on it from Parkhill, the applicant marked it "no";
20 is that correct?
21 A. Correct.
22 Q. Do you agree, now that you know, we looked at
23 the Seabrook study and the Davis & Floyd 2007 study, you
24 would agree that marking that "no" was wrong?
25 A. I don't -- I mean, I can't really -- don't

1 really have an opinion on that.
2 Q. So as you sit here today, your opinion is that
3 you don't have an opinion whether or not there's a flooding
4 problem downstream in the surrounding areas of Parkhill?
5 A. Yeah, pretty much.
6 Q. Okay, interesting. If I were to tell you
7 hypothetically there's a problem, catastrophic flooding
8 problem, in the surrounding areas, and it's just
9 hypothetical, would you agree that answering "no" on these
10 applications to the question whether or not there was
11 flooding problems in the surrounding area, is wrong?
12 MR. WISEMAN: Object to the form.
13 MR. BURGESS: Objection to the form of the
14 question.
15 A. That's in the opinion of the engineer that made
16 that submittal, so I can't speak for his opinion. It's not
17 my opinion.
18 Q. And you wouldn't review to check?
19 A. If he had marked yes there, then there might
20 have been different review aspects, but he marked "no" and
21 that's what we relied on.
22 Q. Okay, so you just rely on everything that's
23 there, take it as the truth?
24 A. Yeah.
25 Q. And you've stated earlier that that's what the

1 regulations require you to do?
2 A. Yeah.
3 Q. Okay, I understand. What happens when you
4 realize after the fact that the entire process was invalid,
5 was wrong?
6 A. I mean, we review applications, issue the
7 permit, do compliance inspections during construction and
8 make sure it's built according to what we approved. As long
9 as that's done, it's done.
10 Q. Okay, fair enough. So as long as everything is
11 done according to what the developer's plan is, then that's
12 it?
13 A. The plan is reviewed to meet the requirements of
14 the regulations. Once we find that it's done that, then we
15 issue the approval.
16 Q. What if the submittal, what if it was incorrect?
17 I mean, if it's incorrect, then the whole process going
18 forward is flawed.
19 MR. WISEMAN: Object to the form.
20 A. Well, that's the applicant's and his
21 consultant's design, and we have no liability for their
22 design. I mean, that's their representation to us, and as
23 long as it meets the requirements, that's all we can do.
24 We're not gonna design it for them.
25 Q. Fair enough. After the fact, it's been

1 designed, it's been built, hypothetically, again, since you
2 don't believe that there's a flooding problem --
3 MR. HALIO: Object to the form.
4 MR. BURGESS: Object to the form of the
5 question.
6 MR. WISEMAN: Same objection.
7 Q. Hypothetically, after the fact, you realize
8 everything is wrong, that there is serious flooding
9 problems; what happens then?
10 A. That is an issue that's between -- it's the
11 design engineer's issue. If he, you know, designed it
12 wrong, then that's -- you know, that's why we require a
13 professional engineer, or I should say a state registered
14 professional, to prepare the submittal, and we rely on them
15 and their preparations and that professional registration
16 and what goes with that.
17 Q. Have you ever -- is there any engineer
18 consulting firms that you don't like to work with because
19 you don't believe in their product?
20 A. There are engineering consultants that make the
21 process more difficult, yes, but I don't have any, I mean,
22 likes and dislikes. There are some that are easier to work
23 with than others.
24 Q. DHEC doesn't approve or get to choose who the
25 engineer is for a particular project?

1 A. No, we have no involvement in that.
2 Q. Explain to me what this letter is. I've seen
3 lots of those in the file.
4 A. That's the approval letter. Once we've reviewed
5 it and found that it meets the regulations, then we issue
6 this approval letter and that allows them to proceed with
7 the activity, development, from the state's standpoint.
8 Q. So that happens before the development even
9 starts?
10 A. Right.
11 Q. The construction?
12 A. Right.
13 Q. Oh, I see, okay. Let's mark this.
14 **(5/15/01 LETTER FROM DHEC TO CENTEX HOMES MARKED**
15 **EXHIBIT NO. 6 FOR I.D.)**
16 Q. Exhibit 6 is the letter that gives the
17 applicant, the developer, the go-ahead to begin
18 construction?
19 A. Yes.
20 Q. I've highlighted this paragraph on page 2. I'm
21 curious about what exactly that means.
22 A. It means that if they're not following the
23 approved plans or site conditions, you know, indicate that
24 the plans need to be revised, then -- I mean, basically just
25 if there are compliance issues, then we may take enforcement

1 action, if they're not following those approved plans.
2 Q. So specific problems that might arise in taking
3 necessary steps to ensure compliance -- are these permits
4 ongoing?
5 A. No. They're closed out when the construction
6 activity is finished.
7 Q. Okay. Part of the problems that might arise
8 take place after the development is through; correct? For
9 example, the long-term maintenance of these detention ponds,
10 is that part of this application?
11 A. That is something that is not -- the maintenance
12 responsibility becomes -- it's the responsibility of the
13 property owner to maintain these approved stormwater
14 management structures. If they are not being maintained,
15 then we can use that condition, I guess, you know, to bring
16 about or to encourage them to do maintenance. The
17 structures themselves, I mean, it would require a new permit
18 to remove those structures, you know, if that was somebody's
19 plan or idea, so it would require a new permit to do that
20 work. I mean, because that would open up a new
21 noncompliance issue.
22 Q. Okay. I've got a couple of letters here,
23 emails, that I believe were sent to you.
24 MR. BURGESS: Can we take a five-minute
25 break? I need to feed my meter.

1 MR. MCLEOD: Sure.
2 (The deposition recessed briefly.)
3 BY MR. MCLEOD:
4 Q. I've tried to separate these files according to
5 the project. We've probably already have talked briefly
6 about what I want to talk to about these letters. Explain
7 to me what these emails that I handed you are.
8 A. They look like emails from the developer or one
9 of their representatives, definitely to me. Just briefly
10 reading them, they look like a response to compliance
11 inspections that I or somebody from our office did during
12 the construction activity to make sure that they were
13 following their pollution prevention plan and following the
14 approved plans.
15 Q. Okay, so this is typical kind of back and forth
16 that you have with your day-to-day work?
17 A. Yes.
18 Q. So you would go visit a site and tell them this
19 is what you're doing wrong, this is what you're doing right,
20 and then they would respond accordingly and tell you how
21 they're gonna fix the problems?
22 A. Yes.
23 Q. This document here would be -- it's a report
24 that you generate?
25 A. Yes. That would be an inspection report from

1 when I visited the site to do a compliance inspection.
2 Q. Really, what I'm getting at here, these emails,
3 and we can -- we don't even need to make them exhibits, I
4 don't think. When you go to check out and inspect a
5 property, and these two emails talk about sediment going in
6 the wrong place and the need for more silting fence. If a
7 given project takes a year to do, and throughout that year
8 there's sediment problems that, albeit, you try to correct
9 them while they're happening, how does that affect the
10 project overall in terms of stormwater runoff and downstream
11 effects? Why is sediment a problem?
12 A. Sediment is the big focus during construction to
13 keep sediment from running off site. Sediment itself is a
14 pollutant when it's discharged into receiving waters or
15 surface waters.
16 Q. Why?
17 A. Because it suffocates or it hinders wildlife
18 living in receiving waters.
19 Q. So if there is a sediment problem, the developer
20 hasn't done a good enough job grassing roads, or what have
21 you, that sediment all ends up downstream or in the sediment
22 ponds -- or the ponds that we were talking about earlier?
23 A. Well, there are what's called BMPs, best
24 management practices, different devices or structures that
25 are designed for during construction to trap that sediment

1 and keep it from running off site. If that is a pond that's
2 designed to trap that sediment, then that's what it's gonna
3 do. The sediment is gonna run off the upper portions of the
4 site that they're building on and end up in the pond, and
5 the pond is gonna trap it and keep it from getting off the
6 site, so the pond should be on the site. I mean, ponds are
7 one means during construction for sediment trapping, the
8 silt fence is another BMP, and there's many more. It's
9 understood that sediment is gonna be moved around on the
10 site. I mean, that's what they're doing, they're building
11 up road beds and building pads, and so there's sediment
12 that's gonna be moved around and it's gonna be loose on
13 site. As long as it stays on site, it's fine. They need to
14 maintain these BMPs that were shown on the plans that we
15 approved because they were designed for that activity.
16 Q. Okay, I understand. Could a serious sediment
17 problem affect the overall plan in terms of water quality?
18 If there was a serious problem, let's say a heavy downpour
19 at a horrible point in time during construction, and
20 sediment got even on site into one of these detention ponds
21 that we talked about, is that gonna affect the overall
22 calculations, if you will, of the downstream effect?
23 A. Well, you know, hypothetically, it would. But
24 the design of the site, the pollution prevention plan, is
25 for during this construction activity when this material is

1 loose on the site, so that pond will be designed to catch
2 that sediment, and so it will be designed to have a trapping
3 area, a capacity for that sediment.
4 Q. Okay, so that's factored in to the design of the
5 pond?
6 A. Yes. It is factored in to the design, but also
7 factored into that is maintenance of that during the
8 construction activity. During that activity is when the
9 sediment is gonna be, you know, loosest and most erosive and
10 end up in the pond. And so, typically they will have a
11 marker indicating that when the sediment gets to this level,
12 you clean it out and make room for more sediment, and you
13 dispose of that sediment properly. And at the end of
14 construction, make sure that that level is appropriate for
15 post-construction use of that pond. So the ponds are often
16 designed for two scenarios; one, during construction, and
17 then converted to a post-construction, project is finished,
18 you know. Part of the activity is that conversion, but
19 everything else is built out upstream, the houses are built,
20 roads are in, yards and grass, the site is stable, and so
21 sediment is no longer an issue. Then that pond is converted
22 to its post-development use, which is typically for
23 quantity, stormwater runoff control, you know.
24 Q. Okay, that makes sense. What you're saying is
25 that it's actually good for the sediment to hit that pond

1 because then it's not going downstream?
2 A. Exactly.
3 Q. Okay, understood. Okay, here is the final
4 application for the disturbing activities in Parkhill for
5 Phase 6, which we should mark as an exhibit.
6 **(PARKHILL PHASE 6 STORMWATER PERMIT APPLICATION**
7 **MARKED EXHIBIT NO. 7 FOR I.D.)**
8 Q. Is it fair to say that famous question is on
9 that application?
10 A. Yes.
11 Q. And the question is whether or not there's any
12 flooding problems downstream. Once again, the answer is
13 "no"?
14 A. The answer is "no".
15 Q. Mr. Geer, obviously what I'm doing is going
16 through all the projects that are in this area. Now, I
17 brought the map that we have, if you want to look at it, and
18 everybody can look at it, I just thought it would be easier.
19 Are you familiar with this area?
20 A. Somewhat.
21 Q. When all of these activities were being
22 permitted, you actually go to the site and inspect them?
23 A. Somebody does. I mean, at this time there was
24 more than just two of us in the section. And I think there
25 were -- I know I visited some of these sites for compliance

1 inspections. There may have been other inspectors that
2 visited them or permitted them.
3 Q. Sure. I thought this would make it easier for
4 us to kind of view what this whole thing is about, what
5 we're talking about here today. And I'll just tell you that
6 this is the Parkhill subdivision, and this is another
7 subdivision that was developed and permitted that I believe
8 is referred to as Northwoods, this is I-26, and then over
9 here is Stall High School. The drainage for this area all
10 ends up here, coming under this 52 Connector, and eventually
11 goes under the mall and to the Goose Creek Reservoir. And
12 so, for what it's worth, just so you can kind of see what
13 we're talking about.
14 A. Okay.
15 Q. So, I want to talk a little bit about the Stall
16 High School project. And we've already been over some of
17 this but it won't take long, I apologize. This is the
18 application for the Stall High School improvements that were
19 done.
20 A. Okay.
21 Q. Let's mark this as Exhibit 8.
22 **(STORMWATER PERMIT APPLICATION FOR STALL HIGH**
23 **SCHOOL IMPROVEMENTS MARKED EXHIBIT NO. 8 FOR**
24 **I.D.)**
25 Q. The Stall High School/Alice Birney Middle School

1 project, I suppose they did some additions or
2 reconstruction. And the famous question is on there again?
3 A. Yes.
4 Q. It's checked "no", isn't it?
5 A. Checked "no".
6 Q. We've got a lot of projects in this area that
7 the applicants are claiming that there's no flooding
8 problems in the area.
9 MR. WISEMAN: Object to the form.
10 Q. I want to go back over one more time your
11 understanding about the issues that are happening at the
12 Northwoods Mall. Would you agree that the Northwoods Mall
13 floods?
14 A. It looks like it does, yes. I don't deny that,
15 no.
16 Q. Now that we know the Northwoods Mall floods,
17 what happens? You said earlier that the regulations tell
18 you everything to do. What happens once we know that
19 downstream there's a flooding problem?
20 A. I'm not sure what the question is.
21 Q. What is DHEC's responsibility?
22 A. DHEC has issued the permits. What was approved,
23 you know, in those permits was followed, and the permits are
24 complete. So, at this point there's nothing that -- there
25 is no -- I mean, I'm not aware of any recourse that DHEC has

1 unless somebody applies to the agency to do more work, add a
2 pond or whatever. They can apply and say, look, we need to
3 fix a problem, here's our application, here's the work we
4 need to do. And we'll check that in accordance with, you
5 know.
6 Q. So until somebody comes to you, DHEC doesn't
7 have any responsibility to correct a problem that exists?
8 A. I'm not aware of any.
9 Q. Have you been in any conversation with anybody
10 you work with about the Northwoods flooding?
11 A. I've been in conversation with my supervisor
12 Shannon, just in general, you know, talking about the
13 permitting that we did, the review we did, the approvals we
14 issued.
15 Q. Tell me about that conversation.
16 A. Well, just that we relied on what the engineer
17 submitted to us. And based on that information, it met the
18 requirements of the regulations, so we issued the approval
19 and didn't find any, you know, indication that we should
20 have done otherwise at the time. We weren't aware of a
21 flooding problem at the time that we processed the permit.
22 Q. So there was no conversation about maybe we
23 should be doing something different than we do now?
24 A. No, we haven't had that conversation.
25 Q. No talk about how to fix it?

1 A. No.
2 MR. WISEMAN: Object to the form.
3 MR. BURGESS: Object to the form of the
4 question.
5 MR. HALIO: That's a "no."
6 Q. This is another application for land disturbing
7 activities.
8 A. All right.
9 Q. This is for the development that's adjacent to
10 the Parkhill subdivision referred to as the Northwoods
11 subdivision.
12 A. Okay.
13 Q. Let's mark this as an exhibit.
14 **(NORTHWOODS TOWNHOMES STORMWATER PERMIT**
15 **APPLICATION MARKED EXHIBIT NO. 9 FOR I.D.)**
16 Q. Now, this was from 2001. Once again, our magic
17 question is on there, does any flooding exist. Would you
18 agree that it's checked no?
19 A. I agree.
20 Q. Now, at this point, we have the Stall High
21 School, this Northwoods subdivision, and three Parkhill
22 applications that were submitted for approval and they all,
23 with the exception of one, say "no" to the question, "Are
24 there any existing flooding problems;" is that correct?
25 A. Right, yes.

1 Q. And the reason why one of them doesn't have the
2 check "no" is because the question is not even on the
3 application.
4 A. Right.
5 Q. So at some point somebody from DHEC thought it
6 was important to ask that question; correct?
7 A. I guess so.
8 Q. And your explanation is that you read that on an
9 application and just take it for the truth?
10 A. Could you ask that again?
11 Q. Do you ever do your own research to determine
12 whether or not there's any flooding problems?
13 A. No. Not unless we're aware of a flooding
14 problem do we question that.
15 Q. And you weren't aware that there was a flooding
16 problem, so you didn't question it?
17 A. Right.
18 Q. But now, and we just discussed this, because
19 everything is done, there's no application in front of you,
20 there's nothing that DHEC can do?
21 A. Not that I'm aware of.
22 Q. Do you know who is responsible?
23 A. Who is responsible?
24 Q. For fixing the problem.
25 A. No.

1 Q. Do you have an opinion?
2 A. No.
3 Q. Does Ms. Hicks have an opinion? When y'all
4 discussed this problem, this situation, did y'all talk about
5 a remedy, what was gonna be done?
6 A. No.
7 Q. Have you ever talked to Ms. Hicks about
8 protocol, what you should do when you discover that the
9 information on these applications is wrong, incorrect?
10 A. I don't recall having that conversation, no.
11 Q. Do you know what to do if the information on
12 these applications is wrong?
13 A. If I'm aware that the information is wrong
14 during the application review process, I will question the
15 engineer consultant or applicant, or both of them, to
16 confirm their submittal, or aspects of it.
17 Q. Okay. Is there ever a situation -- how do you
18 know if the information is wrong?
19 A. If it doesn't make sense, I will question the
20 consultant to provide, you know, supporting documentation or
21 calculations. If there's a reason to believe that it's
22 incorrect or there's not enough information, I can certainly
23 ask the consultant for more information, yes, during that
24 review process.
25 Q. So when you review the submittals, you're just

1 looking -- you're reviewing them for something that doesn't
2 make sense?
3 MR. HALIO: Object to the form.
4 Q. What are you looking for when you review the
5 submittals?
6 A. I'm looking to see that they've represented the
7 pre-developed condition and compare that to the
8 post-developed condition. And based on the information that
9 they send in to me, it's gotta be consistent between the
10 items in the submittal.
11 Q. Okay, I understand. This was produced from your
12 office and I hadn't necessarily seen something quite like
13 this before, so I want to ask you about it. This document
14 is from the Northwoods development.
15 A. And what's your question?
16 Q. What is this document? This is part of a
17 submittal to you, or where did this come from?
18 A. Yes, this is part of a submittal. It's part of
19 the calculations.
20 Q. Okay, let's mark this as Exhibit 10.
21 **(WATER QUALITY DESIGN CONSIDERATIONS DOCUMENT**
22 **MARKED EXHIBIT NO. 10 FOR I.D.)**
23 Q. What I'm interested in about this document is it
24 refers to regulations, and it says, "For all projects,
25 regardless of the size, which are located within one-half

1 mile of a receiving water body in the coastal zone," and it
2 goes through the criteria that must be there. And then just
3 below this, it says, "This project," and then it lists A, B,
4 C and D, and it describes the characteristics of this
5 particular proposed development, the Northwoods Townhomes.
6 And C says, "Is not within one-half mile of a receiving
7 water body." I hadn't seen that in any of the other
8 developments, or maybe I just skipped over it. Is that an
9 important consideration?
10 A. It is in terms of calculating this particular
11 water quality design. Yeah, I mean, it's an important
12 criteria in terms of this particular calculation.
13 Q. Meaning this particular development?
14 A. Well, this would apply to any development. This
15 is just one of the aspects of the calculations, though.
16 There is essentially three big aspects to this permit. One
17 is the quantity control of stormwater runoff, which, as we
18 discussed earlier, the discharge rates cannot exceed the
19 pre-development levels, that's one, that's quantity control.
20 Two is during construction, quality
21 control. That's the pollution prevention plan that I
22 mentioned that involves best management practices, keep
23 sediment and our pollutants on site. Sediment is the big
24 one, but, of course, runoff from treated lumber and paint
25 and concrete wash-out, all that stuff has gotta be addressed

1 the construction activity. So that's two, water quality
2 during construction.
3 Then the third thing is post-construction
4 water quality treatment. That's permanent long-term water
5 quality treatment. The ponds that are designed to provide
6 that quantity control, the pre versus post discharge rates,
7 must also be designed to trap what's called the first flush
8 volume and release it over -- it traps that volume after,
9 and it's considering the built-out condition, and it doesn't
10 apply until after the site is built out.
11 Q. Okay.
12 A. But it kind of goes back to converting that
13 during-construction sediment trap into a permanent
14 post-construction pond that addresses the quantity control
15 and this calculation, the quality control. That long-term
16 quality control, that third aspect of the permit that I'm
17 talking about is capture of the first flush volume and
18 release over a 24-hour period. This, within a half mile,
19 getting back to your question, within a half mile of a
20 receiving water body determines what that first flush volume
21 is. If it's not within a half mile, it's based on whether
22 it's a wet or a dry pond. If it's within a half mile, then
23 it's the higher volume based on the impervious area or the
24 total site.
25 Q. So the closer it is to a water body, the more

1 important it is -- you need to have more trapping ability?
2 A. In a sense. That volume that's treated is
3 greater. We call it a heightened water quality requirement
4 based on the fact that it's within a half mile.
5 Q. Did you check to see if this project was within
6 a half mile?
7 A. I don't recall.
8 Q. Would somebody have?
9 A. I mean, it's part of the review, so I assume so.
10 Q. Okay, so you would -- I mean, that would be one
11 of those things that perhaps didn't make sense with the
12 application?
13 MR. HALIO: Object to the form.
14 A. If it wasn't consistent with that?
15 Q. We talked earlier about, you know, all of these
16 applications are checked "no" when there's no flooding
17 problems.
18 A. Right.
19 Q. And this is why I'm asking you about this,
20 because I don't see anywhere on this application, and
21 correct me if I'm wrong, that there's -- do you have to
22 state if you're within a half mile somewhere on the
23 application?
24 A. Yeah. They should indicate that somewhere. I
25 don't know if it's -- and this might be indication enough

1 here, if that's the only place.
2 Q. Okay.
3 A. The application we have now, which has been
4 updated since then, does ask for that distance specifically
5 up front on the application.
6 Q. Okay, I understand. I mean, that's kind of what
7 I was getting at, because that appeared to me to be a pretty
8 important criteria that the regulations apparently require
9 but I didn't see it on here. But that has since been
10 amended to add to the application. Okay, I understand.
11 Just like the other question, "Are there any existing
12 flooding problems," and we discussed that earlier.
13 A. Uh-huh.
14 Q. So when you review applications and they say,
15 well, we're not within a half mile of the receiving water
16 body, that's something that you would go back and check to
17 make sure?
18 A. Yes.
19 Q. Okay. This regulation that talks about this
20 half mile between the receiving water body, this was 2001.
21 Is it still the same, is that still the criteria?
22 A. Yes.
23 Q. And, to your knowledge, since you've been at
24 DHEC, this was in place at least from 2001 forward?
25 A. (Nodded affirmatively.)

Q. And, more importantly, how would this project have changed if this applicant had said it was within a half mile? I know we talked about that briefly. But if you were to discover when you're reviewing the application that, wait, it is within a half mile, what would happen then?

A. I would make a comment to the consultant and say, based on what you've submitted, it looks like this project may be within a half mile, confirm the distance to the nearest receiving water body.

Q. And so they would have to go back and change their entire development plan?

A. It may affect that, yes.

Q. Based on the calculations of the amount of increased runoff?

A. Based on whatever that aspect, you know, whatever is related to that aspect of the calculations. It may be that they can do a simple control structure change, and it may change one or two little things on the plans and they just send in new calculations here, it could be that simple. And it may be more difficult, and they may consider that they have to redesign the whole thing, you know.

Q. It just depends on the project?

A. Right.

Q. Have you ever denied permits?

A. I don't recall a project being denied. Somebody

used the term "They die a slow death." We'll issue comments and never receive a response, and we'll follow up and they'll say, well, we've withdrawn that application. So I've seen projects that -- and it may be for other reasons, may be financial. But, we issue comments and maybe they decide, well, I can't do this because of the comments, or maybe they have just found another piece of property that they would prefer to work with. I don't know. I don't recall ever issuing a denial, but I have seen plenty of projects where they just don't go anywhere, they withdraw their applications.

Q. We talked about when you go meet with all the other folks around the state. Have you ever heard of anybody else denying a permit based on downstream concerns?

A. Not that I recall.

Q. One of the projects that we haven't talked about, and apparently you guys weren't able to find the documents, is the expansion of the Highway 52 Connector. This was a project I guess that began down here and, correct me if I'm wrong, counsel, but it expanded the road and increased runoff, and so I wanted to talk to you briefly about your job when it comes to projects like this. Is it the same? I mean, would you have to give these folks a permit if they disturb -- the Department of Transportation, if they had a road project that came up, how are you

involved with Department of Transportation jobs?

A. I'm not.

Q. At all?

A. Huh-uh. I mean, the procedure has changed relatively recently, certainly since this time and not necessarily because of it. It was not something that we were involved with.

Q. So they don't even have to go through all of this stuff when they do --

A. They have their own regulations and permitting process. It's not something we were involved with at that time.

Q. Your department?

A. My department, right.

Q. Would DHEC be involved in something like this?

A. The Columbia office I think would have issued an NPDES permit for that, I think. I'm not really sure. I can't really speak to that. There were different state stormwater regulations for DOT at the time when that occurred.

Q. You mentioned the NPDES permit?

A. Uh-huh.

Q. What is that?

A. It's National Pollutant Discharge Elimination System.

Q. Explain a little bit more about that. I've seen that in a lot of these --

A. It's a federal permit that EPA has delegated to the State of South Carolina to implement in South Carolina. Its focus is strictly on pollution prevention during construction, and it has a lot of overlap with the state stormwater regulations. And because of that, in 2006, the two were combined in the State of South Carolina, so there's one permit issued for those two. The standards of the state stormwater regulations still apply but through the NPDES permit for construction activity.

Q. Okay.

A. At the time that all this -- before 2006, at the time of this permitting, it was separate. The DHEC Columbia office would issue coverage based on an application and the state stormwater permit approval by us.

Q. Okay.

A. Because there's so much overlap, it was kind of an administrative process. But for DOT, they had their own state stormwater regulations to comply with, which I was not involved with.

Q. Okay, I understand. I want to get back real quickly to -- and I'm just about to finish up here. Do the regulations -- and I know I've touched on this, but I want to make sure I understand. Do the regulations have any

1 requirements for after-the-fact inspection or -- what I'm
2 getting at is, I want to know what DHEC's responsibility is.
3 And when I say "responsibility," I mean after the fact, we
4 shouldn't have approved these permits as the information was
5 given to us. Whose responsibility is it to fix it once you
6 realize a problem has occurred?
7 MR. HALIO: Object to the form.
8 Q. If, in fact, there has been a problem that
9 occurred.
10 MR. BURGESS: Object to the form.
11 A. The only long-term mention in the regulations is
12 in terms of maintenance. Maintaining, you know, ensuring
13 that the structures are maintained as approved.
14 Q. Do you have an opinion about who is responsible
15 for correcting a problem once it's discovered that it exists
16 in terms of this situation, the flooding at Northwoods Mall?
17 A. Not really, no.
18 Q. And DHEC doesn't have any responsibility at all
19 to go back and look at how permits were granted and if --
20 for example, now that we know there's downstream flooding
21 problems, could you go back and require larger catch ponds?
22 A. I don't know that we could. I don't know that
23 answer.
24 Q. Even in a situation where the application had
25 false information?

1 A. I mean, we reviewed and approved it and it was
2 built. I'm not aware of anything that we can do at this
3 point.
4 Q. So it's DHEC's position that if a project is
5 approved as the application and the developer claims that
6 these conditions are as such, you approve the application
7 according to that and it turns out that the information was
8 wrong, therefore, there's ineffective stormwater management,
9 you couldn't go back and require an increase in --
10 A. I don't know a means of doing that, and I don't
11 know, you know, who would be the one for the agency to
12 enforce it on.
13 Q. Who owns the catch ponds?
14 A. I mean, I would have to look and see. I don't
15 know.
16 Q. Every project is different?
17 A. Right.
18 Q. Could any of these developments have been
19 developed without DHEC's approval of the projects, of the
20 applications?
21 A. I mean, they shouldn't have, no.
22 MR. MCLEOD: Okay, I'm done. Thank you.
23 **EXAMINATION BY MR. DAIGLE:**
24 Q. Mr. Geer, my name is Jason Daigle. I represent
25 the SCDOT. Did DHEC have any involvement with the SCDOT

1 concerning the documents and the permitting that Mr. McLeod
2 asked you about?
3 A. I'm not aware of it. We couldn't find any
4 records.
5 Q. Typically in a project like this, would DHEC and
6 SCDOT have interacted?
7 A. Not at that time, no. Not at the time of this.
8 Q. If the DOT was putting in roads or other
9 culverts, or whatever it is they put in, would DHEC have
10 been involved with SCDOT in that situation?
11 A. I don't think so, not at the time.
12 Q. When you say "at the time," what time are you
13 talking about here?
14 A. I'm talking about before 2006, you know, when
15 the NPDES program combined with the state stormwater
16 program, at that point. It was shortly after that that the
17 MS4 program started. But before that, the DOT had their
18 state stormwater regulations and it was not something -- no,
19 there was no interaction.
20 Q. So there was no coordination between SCDOT and
21 DHEC prior to 2006 is what you're saying?
22 A. Right.
23 Q. Okay. Let's assume, for the sake of my next
24 several questions, that there is a flooding problem in the
25 Northwoods area.

1 A. Okay.
2 Q. Do you know whose fault that is?
3 A. I have no idea.
4 Q. Do you know if anybody else at DHEC knows whose
5 fault it is?
6 A. I don't think so. I mean, I don't know of
7 anybody else that has -- I mean, I don't know everybody
8 else's opinion of it.
9 Q. That was a bad question. What I should have
10 asked is, is there someone else at DHEC with more knowledge
11 of that than you?
12 A. I don't think so. I don't know everything.
13 But, yeah, I mean, the immediate people I work with don't
14 seem to have any idea of what the cause of the flooding
15 problem is.
16 Q. That was my next question. Do you know what's
17 causing the flooding?
18 A. No.
19 Q. Do you know of anyone else at DHEC who knows
20 what's causing the flooding?
21 A. Not that I'm aware of.
22 Q. Do you know of anything that the SCDOT did to
23 cause any flooding?
24 A. No.
25 Q. Does anybody at DHEC know?

R000181

A. Not that I'm aware of.
Q. The Parkhill Place development that we're talking about, that's a subdivision that's developed by a private developer; correct?
A. Yes.
Q. Do you know who that developer is?
A. I think it was Associated Developers, or something like that. I mean, I would have to look. Sometimes the company names change, and obviously there's several phases of it. I think it was Associated Developers, but I would have to look.
Q. What about Stall High School, do you know who developed that?
A. That would be the school district. I believe it was Charleston County School District.
Q. That would have been Charleston County, not the City of North Charleston, do you know? Or does it matter?
A. I don't know. I mean, it matters in terms of, if we have noncompliance issues, who we go to. But right now I'm pretty sure Charleston County School District was the applicant for that, but I would have to check.
Q. Do you know if SCDOT would have been involved in the development of the Parkhill Place or Stall High School?
A. I mean, other than maybe an encroachment permit or something for access, but, I mean, I don't know.

Q. You said you didn't know about any flooding issues at the Northwoods Mall until this lawsuit was filed; correct?
A. Correct.
Q. Have you gone back and looked at any DHEC records to see if DHEC has any records of flooding prior to this lawsuit?
A. I looked in the files that were, you know, mentioned to see if there was any mention of previous flooding. We asked around, some of the staff that, you know, might have been involved with stormwater and might have been at DHEC at the time, and nobody indicated or produced any study or mentioned that they thought they were aware of the problem.
Q. What about complaints to DHEC from owners or occupants of the buildings in and around Northwoods?
A. I'm not aware of any. I couldn't find any.
MR. DAIGLE: That's all the questions I've got. Thanks.

EXAMINATION BY MR. WISEMAN:

Q. Sir, my name is Jeff Wiseman. I represent Associated Developers, Inc., and Parkhill, LLC. I just have a couple of questions for you. Do you know who my clients are?
A. I think your clients are the ones that developed

Parkhill.
Q. Do you know who Seamon, Whiteside & Associates is?
A. I know they're a local engineering firm that do a fair amount of work.
Q. Do you have any opinions of Seamon Whiteside, what kind of work they do?
A. No. I mean, I don't have a problem with their work.
Q. Do you have any information to suggest that Associated Developers, Inc., or Parkhill, LLC, knew about these flooding issues prior to this development?
A. I don't know. I mean, I don't see any indication in our files.
Q. Do you have engineers that work at your department?
A. My supervisor Shannon Hicks is a South Carolina Registered Professional Engineer.
Q. And if you need to have an evaluation as to flood recommendations, it's reasonable to hire engineers?
A. I'm not sure how that would work. I guess we could hire a consulting firm.
Q. Like Seamon Whiteside?
A. We would have to go through some process. I don't know, I really don't know the procedure for that.

Q. Are you aware of your department ever engaging a consulting firm like Seamon Whiteside?
A. OCRM has put on retainer structural engineering firms to evaluate beachfront structures, so that's how I know there's a process, and it's a lengthy process to determine, you know, the best firm to have on for the job, you know.
MR. WISEMAN: That's all the questions I have. Thank you.

EXAMINATION BY MR. BURGESS:

Q. Mr. Geer, my name is Craig Burgess. I represent the City of North Charleston in this case. Do you have any opinions about the city's role in this?
A. Huh-uh, no.
MR. BURGESS: That's all I have. Thank you.
MS. RILEY: I don't have any questions.
MR. HALIO: I don't have any questions.
MR. MCLEOD: Thank you, Mr. Geer. I don't have any more questions for you.
(The deposition concluded at 11:46 a.m.)

* * *

R000182

1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF CHARLESTON)
4
5
6 I, Kimberli S. Hogle, Notary Public, certify
7 that I did have Richard V. Geer, to appear before me at 9:38
8 a.m. on Thursday, May the 23rd, 2013, in the Law Offices of
9 Leath, Bouch & Seekings, LLP, 92 Broad Street, Charleston,
10 South Carolina; that the witness was duly sworn and
11 cautioned to tell the truth, the whole truth and nothing but
12 the truth; that the foregoing pages constitute a true and
13 accurate transcript of his testimony given at that time and
14 place.
15 I further certify that I am not of counsel or
16 kin to any of the parties to this cause of action, nor am I
17 interested in any manner in its outcome.
18 IN WITNESS WHEREOF I have hereunto set my
19 hand and seal this the 6th day of June, 2013.
20
21 Notary Public for South Carolina.
22 My Commission Expires October 2, 2022.
23
24
25

R000183

1

1 3:12, 3:12, 13:4, 13:5, 13:6, 13:9, 24:14, 24:15, 24:23
10 3:23, 44:20, 44:22
100 2:11
11:46 60:21
13 2:15, 3:12
14th 24:8
15 5:2
16 3:13
1980 11:12, 11:23
1989 16:5
1990 16:7
1998 24:15, 26:20, 27:15
1999 12:7, 12:11

2

2 3:13, 16:20, 16:22, 22:6, 31:20, 61:22
2000 24:8, 24:17, 24:19, 26:20, 27:1, 27:15
2001 27:8, 41:16, 48:20, 48:24
2006 52:7, 52:13, 55:14, 55:21
2007 11:24, 27:23
2012-CP-10-6922 1:2
2013 1:17, 61:8, 61:19
2022 61:22
21 3:15
23rd 1:17, 61:8
24 3:16
24-hour 46:18
241 16:25
25 2:22
27 3:17
29401 1:20, 2:5, 2:12, 2:15, 2:22
29407 2:8
29492 2:19
2A 3:16, 24:3, 24:7
2B 3:16, 24:3, 24:8

3

3 3:14, 21:9, 21:11, 21:13
31 3:18
37 3:19
38 3:21

4

4 3:5, 3:16, 24:4, 24:7, 24:17
400 2:11, 2:22
41 3:22
44 3:23

5

5 3:17, 27:5, 27:6
5/15/01 3:18, 31:14
52 38:10, 50:18
531 2:8
54 3:6
58 3:7

6

6 3:18, 3:19, 27:12, 31:15, 31:16, 37:5, 37:6
60 3:8
6th 61:19

7

7 3:19, 37:7

8

8 3:20, 38:21, 38:23
843 1:22
849-3007 1:22
885 2:18

9

9 3:22, 41:15
92 1:19, 2:4, 61:9
98 24:23
99 5:2
9:38 1:18, 61:7

A

a.m 1:18, 60:21, 61:8
ability 47:1
able 50:17
accepted 14:7
access 57:25
accordance 40:4
according 5:16, 29:8, 29:11, 33:4, 54:7
accordingly 33:20
accurate 61:13
accurately 20:6
acquire 7:15
acres 9:4, 14:25, 15:1, 24:2, 24:11, 27:7
action 32:1, 61:16
activities 37:4, 37:21, 41:7
activity 5:6, 5:11, 5:12, 31:7, 32:6, 33:12, 35:15, 35:25, 36:8, 36:8, 36:18, 46:1, 52:11
actual 23:12, 27:10
add 25:25, 27:14, 40:1, 48:10
added 25:3
addition 6:25
additions 39:1
address 8:25, 19:14
addressed 6:21, 8:16, 21:8, 45:25
addresses 6:14, 22:10, 46:14
addressing 25:18
Adgers 2:15
adjacent 41:9
admin 26:16
administrative 10:23, 52:19
affect 23:5, 34:9, 35:17, 35:21, 49:12
affirmatively 48:25
after-the-fact 53:1
agencies 7:16
agency 7:13, 7:16, 40:1, 54:11
agree 24:20, 27:16, 27:22, 27:24, 28:9, 39:12, 41:18, 41:19
albeit 34:8
allow 22:20
allowed 4:3
allows 31:6
already 14:3, 17:5, 33:5, 38:16
altering 5:25
amended 48:10
amount 6:16, 6:24, 7:2, 9:11, 19:7, 49:13, 59:5
analyses 23:24
analysis 3:13, 9:13, 9:17, 10:3, 16:17, 16:21, 17:9, 17:9, 17:12, 22:25
analyze 17:11, 19:1
ANDREW 2:14
Andy 11:8
answering 28:9
Anyway 18:8
apologize 38:17
apparently 27:9, 48:8, 50:17
appear 61:7
appeared 48:7
appears 24:11, 27:12
applicant 15:7, 19:25, 20:1, 27:19, 31:17, 43:15, 49:2, 57:21
applicant's 20:9, 29:20
applicants 20:12, 26:23, 39:7
application 3:12, 3:16, 3:17, 3:19, 3:20, 3:22, 13:1, 13:4, 13:7, 13:9, 13:11, 13:24, 13:24, 14:9, 15:3, 20:3, 20:9, 20:16, 24:2, 24:4, 24:5, 24:15, 24:17, 24:24, 25:19, 26:2, 26:11, 26:22, 27:2, 27:4, 32:10, 37:4, 37:6, 37:9, 38:18, 38:22, 40:3, 41:6, 41:15, 42:3, 42:9, 42:19, 43:14, 47:12, 47:20, 47:23, 48:3, 48:5, 48:10, 49:4, 50:3, 52:15, 53:24, 54:5, 54:6
applications 5:10, 14:1, 20:11, 20:13, 24:10, 25:18, 26:4, 27:7, 27:18, 28:10, 29:6, 41:22, 43:9, 43:12, 47:16, 48:14, 50:11, 54:20
applies 40:1
apply 40:2, 45:14, 46:10, 52:10
appropriate 7:15, 36:14
approval 21:6, 29:15, 31:4, 31:6, 40:18, 41:22, 52:16, 54:19
approvals 40:13
approve 5:16, 8:5, 14:15, 30:24, 54:6
approved 9:9, 29:8, 31:23, 32:1, 32:13, 33:14, 35:15, 39:22, 53:4, 53:13, 54:1, 54:5
approving 9:4
architect 15:2
areas 27:3, 28:4, 28:8
arise 32:2, 32:7
asking 15:25, 26:6, 26:22, 47:19
aspect 8:9, 46:16, 49:15, 49:16
aspects 9:1, 9:6, 12:18, 28:20, 43:16, 45:15, 45:16
asphalt 18:22
assistant 10:23, 26:16
associate 4:25
associated 1:11, 2:21, 5:14, 7:24, 22:13, 57:7, 57:10, 58:22, 59:11
Associates 59:2
association 22:23
assume 20:15, 47:9, 55:23
attach 6:10
authority 26:10

B

bad 56:9
ball 13:15, 13:17
bare 6:1, 6:8, 6:9
Barnwell 2:17
basically 31:24
beachfront 60:4
become 10:12
becomes 32:12
beds 35:11
begin 31:17
beginning 19:6, 24:16
best 16:18, 34:23, 45:22, 60:6
biggest 6:7
Birney 38:25
bit 5:4, 17:2, 25:9, 38:15, 52:1
BMP 35:8
BMPs 34:23, 35:14
body 45:1, 45:7, 46:20, 46:25, 48:16, 48:20, 49:9
Bouch 1:19, 2:3, 61:9
bounce 10:16
break 4:16, 32:25
briefly 15:11, 15:15, 17:5, 33:2, 33:5, 33:9, 49:3, 50:21
bring 32:15
bringing 5:24
Broad 1:19, 2:4, 61:9
brought 37:17
building 35:4, 35:10, 35:11
buildings 5:24, 58:16
built 18:17, 29:8, 30:1, 36:19, 36:19, 46:10, 54:2
built-out 46:9
Burgess 2:18, 3:8, 12:9, 28:13, 30:4, 32:24, 41:3, 53:10, 60:10, 60:11, 60:15

C

C-E-R-T-I-F-I-C- 61:2
calculating 45:10
calculation 9:11, 45:12, 46:15
calculations 13:18, 14:2, 14:5, 14:8, 15:4, 20:11, 22:24, 23:24, 35:22, 43:21, 44:19, 45:15, 49:13, 49:16, 49:19
Calhoun 2:11, 2:22
can't 8:8, 16:10, 16:13, 22:11, 23:18, 27:25, 28:16, 50:6, 51:18
cannot 17:17, 17:18, 18:13, 45:18
capacity 15:10, 25:17, 36:3
capture 23:3, 46:17
Carolina 1:1, 1:8, 1:9, 1:20, 2:5, 2:8, 2:12, 2:15, 2:19, 2:22, 4:2, 4:23, 16:18, 52:4, 52:4, 52:8, 59:17, 61:1, 61:10, 61:21
case 1:2, 10:5, 10:10, 60:12
cases 10:5
catastrophic 28:7
catch 36:1, 53:21, 54:13
catching 18:24
cause 56:14, 56:23, 61:16
causing 5:24, 56:17, 56:20
cautioned 61:11
Centex 3:18, 31:14
certain 14:16, 14:17, 14:19
certainly 43:22, 51:5
certification 8:24
certified 8:4, 8:8
certify 7:25, 8:1, 61:6, 61:15
change 8:18, 8:21, 9:11, 25:19, 25:25, 26:10, 49:10, 49:17, 49:18, 57:9
changed 24:11, 24:17, 24:24, 49:2, 51:4
changes 6:16, 25:15, 25:16, 25:21, 25:24
characteristics 5:25, 9:18, 10:2, 22:19, 23:4, 23:25, 45:4
Charleston 1:2, 1:10, 1:10, 1:20, 2:5, 2:7, 2:8, 2:11, 2:12, 2:15, 2:18, 2:19, 2:22, 10:20, 16:17, 18:3, 57:15, 57:16, 57:17, 57:20, 60:12, 61:3, 61:9
check 28:18, 34:4, 40:4, 42:2, 47:5, 48:16, 57:21
checked 23:16, 24:21, 39:4, 39:5, 41:18, 47:16
checklist 21:3
choose 30:24
CIRCUIT 1:2
City 1:10, 2:18, 57:17, 60:12
city's 60:13
Civil 4:2
claiming 39:7
claims 54:5
clarity 16:20
clean 36:12
clearing 6:2, 6:24, 7:9, 8:19, 9:12
Clement 2:21
clients 58:23, 58:25
closed 32:5
closer 46:25
coastal 7:23, 8:1, 8:2, 8:7, 20:24, 21:18, 21:25, 22:4, 22:12, 22:13, 22:15, 22:22, 22:24, 26:15, 26:15, 26:17, 45:1
Columbia 26:13, 26:18, 51:16, 52:14
combination 9:16, 17:3
combined 52:8, 55:15
comes 14:7, 18:5, 40:6, 50:22
coming 25:11, 38:10
comment 49:6
comments 50:1, 50:5, 50:6
Commission 61:22
common 1:1, 19:13
communities 16:24
company 57:9
compare 9:23, 17:11, 44:7
complaints 58:15
complete 19:5, 39:24
completely 17:2, 22:7, 23:15
compliance 13:22, 29:7, 31:25, 32:3, 33:10, 34:1, 37:25
comply 52:20
component 8:7
concerning 55:1
concerns 17:4, 17:15, 24:20, 24:25, 26:23, 50:14
concluded 60:21
concrete 6:25, 19:7, 45:25
concurrent 8:9
condition 9:22, 9:23, 17:10, 17:10, 18:2, 19:1, 32:15, 44:7, 44:8, 46:9
conditions 9:23, 9:24, 9:24, 16:23, 17:11, 31:23, 54:6
confirm 12:10, 43:16, 49:8
confirming 15:20
confused 22:2
confusing 4:15
Connector 38:10, 50:18
consider 9:14, 9:25, 49:20
consideration 3:23, 22:18, 45:9
CONSIDERATIONS 44:21
considered 9:13, 9:19, 9:21, 10:2
considering 46:9
considers 21:17
consist 16:24
consistency 9:6, 20:25, 25:14
consistent 8:2, 8:5, 9:2, 9:9, 21:22, 21:25, 22:8, 44:9, 47:14
constitute 61:12
construction 5:10, 6:2, 6:12, 7:9, 15:13, 19:5, 20:13, 29:7, 31:11, 31:18, 32:5, 33:12, 34:12, 34:25, 35:7, 35:19, 35:25, 36:8, 36:14, 36:16, 45:20, 46:1, 46:2, 52:6, 52:11
consult 22:21
consultant 20:2, 43:15, 43:20, 43:23, 49:6
consultant's 17:8, 29:21
consultants 9:17, 30:20
consulting 14:11, 30:18, 59:22, 60:2
contractor's 6:6
control 1:10, 8:20, 26:22, 36:23, 45:17, 45:19, 45:21, 46:6, 46:14, 46:15, 46:16, 49:17
conversation 40:9, 40:11, 40:15, 40:22, 40:24, 43:10
conversion 36:18
converted 36:17, 36:21
converting 46:12
coordinate 7:14, 26:12
coordinating 5:6
coordination 55:20
Corps 8:10, 15:16, 15:18, 16:2, 16:9, 16:13
correct 4:11, 6:23, 12:7, 12:8, 13:13, 27:20, 27:21, 32:8, 34:8, 40:7, 41:24, 42:6, 47:21, 50:19, 57:4, 58:3, 58:4
correcting 53:15
couldn't 54:9, 55:3, 58:17
counsel 50:20, 61:15
counties 8:1, 26:14, 26:16, 26:17
County 1:2, 57:15, 57:16, 57:20, 61:3
couple 20:17, 32:22, 58:23
course 8:10, 45:24
Court 1:1, 1:21
cover 9:15, 10:1
coverage 52:15
covering 27:10
Craig 2:18, 60:11
create 17:6
Creek 38:11
criteria 45:2, 45:12, 48:8, 48:21
culverts 55:9
curious 16:16, 31:21

D

d/b/a 1:4
Daigle 2:7, 3:6, 10:8, 11:15, 11:19, 54:23, 54:24, 58:18
DATE 1:17
Davis 11:24, 12:2, 27:23
day-to-day 5:5, 33:16
deal 12:23
deals 7:22
death 50:1
decide 8:21, 50:6
decided 27:14
decision 21:2
Defendant 2:7, 2:10, 2:14, 2:17, 2:21
Defendants 1:13
defines 9:16
definitely 33:9
delay 8:23
delegated 52:3
delineation 16:11
denial 50:9
denied 49:24, 49:25
deny 39:14
denying 50:14
department 1:8, 1:9, 10:19, 26:21, 50:24, 51:1, 51:13, 51:14, 59:16, 60:1
depend 17:8
Depending 14:20
deponent 4:3
deposition 1:7,

R000184

4:1, 4:5, 4:11, 4:13, 33:2, 60:21
depression 23:2
depressional 19:16
described 13:2
describes 45:4
description 5:5
design 3:23, 14:21, 14:23, 18:19, 19:3, 29:21, 29:22, 29:24, 30:11, 35:24, 36:4, 36:6, 44:21, 45:11
designed 14:21, 30:1, 30:11, 34:25, 35:2, 35:15, 36:1, 36:2, 36:16, 46:5, 46:7
designing 20:7
designs 9:8
detention 32:9, 35:20
Determination 20:25
determine 17:6, 42:11, 60:6
determines 46:20
develop 13:12, 20:14
developed 38:7, 54:19, 57:3, 57:13, 58:25
developer 14:12, 31:17, 33:8, 34:19, 54:5, 57:4, 57:6
developer's 29:11
developers 1:11, 2:21, 5:10, 57:7, 57:10, 58:22, 59:11
developing 26:1
development 5:14, 5:22, 5:23, 12:20, 19:17, 31:7, 31:8, 32:8, 41:9, 44:14, 45:5, 45:13, 45:14, 49:11, 57:2, 57:23, 59:12
developments 45:8, 54:18
devices 34:24
DHEC 2:14, 3:18, 4:23, 5:1, 7:22, 8:12, 10:17, 11:3, 11:4, 12:7, 12:11, 14:13, 14:15, 14:16, 15:5, 23:11, 24:16, 30:24, 31:14, 39:22, 39:25, 40:6, 42:5, 42:20, 48:24, 51:15, 52:14, 53:18, 54:25, 55:5, 55:9, 55:21, 56:4, 56:10, 56:19, 56:25, 58:5, 58:6, 58:12, 58:15
DHEC's 39:21, 53:2, 54:4, 54:19
die 50:1
difference 16:10, 16:14, 23:5
difficult 30:21, 49:20
direct 4:19
directly 18:2, 22:18
disapproved 9:9
discharge 17:16, 17:18, 18:1, 18:13, 18:16, 45:18, 46:6, 51:24
discharged 18:2, 34:14
discover 43:8, 49:4
discovered 53:15
discussed 42:18, 43:4, 45:18, 48:12
dislikes 30:22
dispose 36:13
distance 48:4, 49:8
district 57:14, 57:15, 57:20
disturb 50:24
disturbance 5:9, 6:2
disturbed 8:21
disturbing 14:25, 20:13, 24:2, 24:10, 27:7, 37:4, 41:6
division 7:18, 7:21, 8:12, 23:11
divisions 7:13
document 3:15, 3:23, 12:25, 20:22, 20:25, 21:2, 21:11, 27:8, 33:23, 44:13, 44:16, 44:21, 44:23
documentation 43:20
documents 11:12, 16:19, 20:21, 50:18, 55:1
dog 6:6
DOT 51:19, 52:19, 55:8, 55:17
downpour 35:18
downstream 6:25, 17:7, 17:15, 18:4, 18:10, 28:4, 34:10, 34:21, 35:22, 37:1, 37:12, 39:19, 50:14, 53:20
drainage 3:13, 5:25, 16:17, 16:21, 22:19, 38:9
drawings 15:4
Drive 2:18
dry 46:22
duly 4:6, 61:10
during-construct 46:13

E

earlier 8:20, 13:2, 15:11, 21:17, 22:5, 28:25, 34:22, 39:17, 45:18, 47:15, 48:12
easier 30:22, 37:18, 38:3
easy 18:9, 19:19
ecosystem 23:12
effect 15:12, 35:22
effects 34:11
eight 26:15, 26:17
either 7:4
Elimination 51:24
else's 56:8
emails 32:23, 33:7, 33:8, 34:2, 34:5
employee 16:1
encourage 32:16
encroachment 57:24
ends 34:21, 38:10
enforce 54:12
enforcement 31:25
engaging 60:1
engineer 4:25, 14:11, 14:13, 15:1, 15:2, 15:8, 17:8, 28:15, 30:13, 30:17, 30:25, 40:16, 43:15, 59:18
engineer's 30:11
engineering 30:20, 59:4, 60:3
engineers 8:10, 14:15, 15:17, 16:2, 16:9, 19:18, 59:15, 59:20
ensure 32:3
ensuring 53:12
entertained 17:22
entire 29:4, 49:11
Environmental 1:9, 26:21
EPA 52:3
equivalent 26:13
erosive 36:9
ESQUIRE 2:3, 2:4, 2:7, 2:11, 2:14, 2:18, 2:21
essentially 20:5, 21:21, 21:22, 45:16
evaluate 60:4
evaluation 59:19
evapotranspirati 7:5
event 17:18, 18:7, 18:13, 18:19
events 17:17
eventually 38:10
everybody 25:5, 37:18, 56:7
everything 28:22, 29:10, 30:8, 36:19, 39:18, 42:19, 56:12
evidently 27:15
exact 20:4
exactly 10:2, 11:4, 15:23, 31:21, 37:2
Examination 3:5, 3:6, 3:7, 3:8, 4:8, 54:23, 58:20, 60:10
EXAMINATIONS 3:2
example 5:22, 18:8, 32:9, 53:20
exceed 45:18
exceeding 18:1
exception 41:23
Excuse 22:5
exhibit 13:3, 13:5, 13:6, 16:20, 16:21, 21:9, 21:11, 21:13, 22:6, 24:4, 24:7, 24:14, 24:17, 24:23, 27:5, 27:6, 31:15, 31:16, 37:5, 37:7, 38:21, 38:23, 41:13, 41:15, 44:20, 44:22
exhibits 3:11, 11:22, 34:3
exist 41:17
existing 5:13, 9:22, 27:2, 41:24, 48:11
exists 40:7, 53:15
expanded 50:20
expansion 50:18
expect 16:15
Expires 61:22
explain 5:18, 12:25, 15:14, 20:25, 31:2, 33:6, 52:1
explained 4:4
explanation 42:8
extent 8:23
extra 6:21, 18:20, 18:21, 18:21
extreme 18:8

F

factored 36:4, 36:6, 36:7
fair 10:4, 11:11, 11:12, 16:15, 19:8, 20:12, 24:12, 26:20, 29:10, 29:25, 37:8, 59:5
false 53:25
familiar 10:4, 12:20, 22:10, 23:20, 37:19
famous 37:8, 39:2
fantastic 5:3
fashion 12:7
fault 56:2, 56:5
federal 52:3
fee 13:19
feed 32:25
fence 34:6, 35:8
file 15:14, 31:3
filed 58:2
files 33:4, 58:8, 59:14
filled 17:2, 22:7, 23:15
filling 22:3
final 37:3
financial 50:5
fine 35:13
finish 52:23
finished 32:6, 36:17
firm 2:7, 2:10, 59:4, 59:22, 60:2, 60:6
firms 30:18, 60:4
five 9:4, 16:6, 16:25, 22:6
five-minute 32:24
fix 33:21, 40:3, 40:25, 53:5
fixing 42:24
flawed 29:18
flipped 11:9
flood 59:20
flooding 10:6, 10:11, 11:1, 11:13, 18:4, 24:20, 24:25, 26:23, 27:2, 28:3, 28:7, 28:11, 30:2, 30:8, 37:12, 39:7, 39:19, 40:10, 40:21, 41:17, 41:24, 42:12, 42:13, 42:15, 47:16, 48:12, 53:16, 53:20, 55:24, 56:14, 56:17, 56:20, 56:23, 58:1, 58:6, 58:10, 59:12
floods 39:13, 39:16
Floyd 11:24, 12:2, 27:23
flush 46:7, 46:17, 46:20
focus 6:7, 6:11, 34:12, 52:5
focuses 6:12
folder 20:20
folks 50:13, 50:23
follow 50:2
followed 39:23
follows 4:7
foregoing 61:12
forget 20:4
forgive 20:19
format 25:24
forth 33:15
forward 29:18, 48:24
fresh 16:25
front 42:19, 48:5
function 22:20
FURNITURE 1:4

G

GALLERY 1:5
Geer 1:8, 4:6, 4:9, 12:6, 12:10, 37:15, 54:24, 60:11, 60:19, 61:7
general 5:4, 10:7, 10:16, 12:23, 22:12, 22:15, 24:20, 40:12
generate 33:24
gets 13:15, 13:17, 36:11
given 8:17, 34:7, 53:5, 61:13
gives 31:16
go-ahead 31:17
goes 6:24, 21:4, 30:16, 38:11, 45:2, 46:12
gone 58:5
gonna 8:17, 10:16, 12:13, 12:22, 17:1, 18:4, 29:24, 33:21, 35:2, 35:3, 35:5, 35:9, 35:12, 35:12, 35:21, 36:9, 43:5
Goose 38:11
gotta 20:7, 44:9, 45:25
granted 53:19
grass 6:17, 36:20
grassing 34:20
greater 47:3
ground 6:2, 6:8, 6:9, 6:18, 7:3, 18:23, 19:10
guess 5:3, 19:19, 21:5, 22:2, 26:25, 32:15, 42:7, 50:19, 59:21
guys 50:17

H

habitat 22:14
hadn't 12:3, 44:12, 45:7
half 46:18, 46:19, 46:21, 46:22, 47:4, 47:6, 47:22, 48:15, 48:20, 49:2, 49:5, 49:8
Halio 2:14, 2:14, 2:14, 12:2, 13:6, 16:3, 24:5, 30:3, 41:5, 44:3, 47:13, 53:7, 60:18
handed 33:7
handle 18:14
hands 16:16
happen 12:23, 18:6, 22:8, 25:8, 49:5
happening 34:9, 39:11
happens 13:20, 19:25, 29:3, 30:9, 31:8, 39:17, 39:18
happy 4:15, 4:17
Harbor 18:3
hasn't 34:20
haven't 11:9, 25:20, 40:24, 50:16
having 4:6, 43:10
he's 12:11
Health 1:9, 26:21
heard 10:13, 21:14, 50:13
heavy 35:18
heightened 47:3
Helms 2:17
here's 19:2, 40:3, 40:3
hereunto 61:18
hey 26:5
Hicks 10:18, 11:3, 26:5, 26:8, 43:3, 43:7, 59:17
higher 46:23
highlighted 31:20
Highway 2:8, 50:18
hinders 34:17
hire 14:13, 15:5, 59:20, 59:22
hired 14:11
hires 15:7
hit 36:25
hits 6:18
hitting 6:17, 18:22
Hogle 1:21, 61:6
hold 18:20
holds 18:25
HOMES 31:14
hope 18:6
horrible 35:19
hot 6:6
houses 19:7, 36:19
Hugo 18:5
Huh-uh 51:4, 60:14
hypothetical 28:9
hypothetically 28:7, 30:1, 30:7, 35:23

I

I-26 38:8
I.D 13:5, 16:22, 21:11, 24:4, 27:5, 31:15, 37:7, 38:24, 41:15, 44:22
idea 15:12, 16:4, 16:8, 26:3, 32:19, 56:3, 56:14
ideas 25:11
identified 15:22, 15:23
identify 11:19
III 2:3
immediate 56:13
impact 19:16, 21:21, 23:22
impacted 9:10, 9:12
impacting 15:12
impacts 7:15, 7:24, 8:16, 8:18, 9:5, 17:3, 17:6, 18:11, 22:1, 23:12, 23:22
impervious 46:23
implement 52:4
importantly 49:1
improvements 3:21, 38:18, 38:23
included 13:18, 14:8
includes 20:11
including 27:11
incorrect 29:16, 29:17, 43:9, 43:22
increase 6:24, 17:17, 17:19, 17:20, 18:13, 18:15, 54:9
increased 18:17, 19:12, 49:14, 50:21
increases 7:1, 19:7
increasing 17:15
INDEX 3:2, 3:11
indicate 31:23, 47:24
indicated 9:25, 12:3, 58:12
indicates 15:17
indicating 16:12, 20:3, 36:11
indication 40:19, 47:25, 59:14
ineffective 54:8
infiltrate 22:20
infiltrating 6:20
infiltration 19:15, 23:3
information 40:17, 43:9, 43:11, 43:13, 43:18, 43:22, 43:23, 44:8, 53:4, 53:25, 54:7, 59:10
initial 14:5
input 8:13, 25:16
inspect 34:4, 37:22
inspection 33:25, 34:1, 53:1
inspections 29:7, 33:11, 38:1
inspectors 38:1
installed 19:11
instead 5:22, 6:17, 6:20, 18:18, 18:23
interacted 55:6
interaction 55:19
interested 5:4, 24:18, 44:23, 61:17
interesting 23:14, 28:6
introduced 6:15
invalid 29:4
involved 13:19, 22:18, 25:20, 51:1, 51:7, 51:11, 51:15, 52:21, 55:10, 57:22, 58:11
involvement 7:11, 25:22, 31:1, 54:25
involves 45:22
Island 2:18
isn't 39:4
issuance 8:19, 15:13
issue 5:8, 7:7, 7:19, 8:3, 8:4, 8:22, 21:6, 29:6, 29:15, 30:10, 30:11, 31:5, 32:21, 36:21, 50:1, 50:5, 52:15
issued 8:8, 39:22, 40:14, 40:18, 51:16, 52:9
issues 31:25, 39:11, 57:19, 58:2, 59:12
issuing 7:20, 50:9
items 21:7, 44:10
itself 6:11, 13:24, 23:12, 34:13

J

Jason 2:7, 54:24
Jeff 58:21
JEFFREY 2:21
job 5:5, 13:21, 15:10, 25:6, 25:17, 34:20, 50:22, 60:6
jobs 51:1
JUDICIAL 1:2
June 24:8, 61:19
jurisdiction 8:11, 15:18
jurisdictional 15:21
justification 18:9

K

keeping 25:13
Kimberli 1:21, 61:6
kin 61:16
knowing 22:7
knowledge 48:23, 56:10
knows 56:4, 56:19

L

LA-Z-BOY 1:4
landscape 15:2
larger 18:7, 53:21
Law 2:7, 2:10, 61:8
lawsuit 10:13, 10:14, 11:1, 58:2, 58:7
lawsuits 10:14
learning 20:18, 21:12, 25:12, 25:13
least 19:4, 48:24
Leath 1:19, 2:3, 61:9
leave 27:15
lengthy 60:5
LESLIE 2:11
let's 5:3, 13:3, 24:1, 31:13, 35:18,

R000185

38:21, 41:13, 44:20, 55:23
letter 3:18, 15:16, 15:20, 15:23, 16:1, 31:2, 31:4, 31:6, 31:14, 31:16
letters 16:5, 16:9, 16:11, 32:22, 33:6
level 36:11, 36:14
levels 6:23, 45:19
liability 29:21
likes 30:22
limited 19:17
lists 45:3
living 34:18
LLC 1:12, 2:7, 58:22, 59:11
LLP 1:19, 2:21, 61:9
local 59:4
located 44:25
LOCATION 1:19
long-term 5:12, 6:14, 8:20, 32:9, 46:4, 46:15, 53:11
longer 8:25, 36:21
looking 22:16, 23:6, 23:7, 23:10, 23:11, 44:1, 44:4, 44:6
looks 11:16, 15:16, 39:14, 49:7
loose 35:12, 36:1
loosest 36:9
lots 6:1, 16:25, 31:3
low 19:16
Lowe's 19:20
lumber 45:24

M

magic 41:16
maintain 32:13, 35:14
maintained 32:14, 53:13
Maintaining 53:12
maintenance 32:9, 32:11, 32:16, 36:7, 53:12
makes 36:24
making 9:1
mall 10:6, 10:7, 11:13, 38:11, 39:12, 39:12, 39:16, 53:16, 58:2
management 3:14, 5:12, 5:21, 6:14, 7:23, 8:2, 17:3, 20:23, 20:24, 21:10, 21:18, 22:1, 22:12, 22:15, 22:22, 32:14, 34:24, 45:22, 54:8
manager 21:20, 21:23
manner 61:17
map 12:13, 37:17
mark 11:21, 13:3, 16:20, 21:9, 24:1, 27:3, 31:13, 37:5, 38:21, 41:13, 44:20
marked 13:5, 16:21, 21:11, 24:4, 27:5, 27:16, 27:17, 27:19, 28:19, 28:20, 31:14, 37:7, 38:23, 41:15, 44:22
marker 36:11
marking 27:24
Master 21:14
material 35:25
matter 57:17
matters 57:18
Maybank 2:7
maybe 26:4, 40:22, 45:8, 50:5, 50:7, 57:24
McLeod 2:3, 3:5, 4:8, 4:10, 11:21, 12:4, 12:5, 12:10, 12:12, 13:8, 13:10, 24:7, 24:9, 33:1, 33:3, 54:22, 55:1, 60:19
McNair 2:10
Meaning 45:13
means 31:21, 31:22, 35:7, 54:10
measure 9:6
measures 19:14
meet 14:22, 21:14, 29:13, 50:12
meetings 25:5
meets 17:13, 29:23, 31:5
mention 53:11, 58:9
mentioned 8:20, 21:17, 45:22, 51:21, 58:9, 58:13
met 4:10, 40:17
meter 32:25
MICHAEL 2:4
Middle 38:25
mile 45:1, 45:6, 46:18, 46:19, 46:21, 46:22, 47:4, 47:6, 47:22, 48:15, 48:20, 49:3, 49:5, 49:8
mitigation 23:17
morning 4:9
mostly 19:18
moved 35:9, 35:12
MS4 55:17
myself 21:19, 26:16

N

names 57:9
National 51:24
natural 5:21, 5:23, 22:14, 23:7
nearest 49:9
necessarily 23:1, 44:12, 51:6
necessary 5:18, 32:3
needed 26:4, 26:22
needs 6:21
net 17:20
NINTH 1:2
nobody 58:12
Nodded 48:25
noncompliance 32:21, 57:19
nor 61:16
North 1:10, 2:15, 16:17, 57:17, 60:12
Northwoods 3:22, 10:6, 10:7, 11:13, 38:8, 39:12, 39:12, 39:16, 40:10, 41:10, 41:14, 41:21, 44:14, 45:5, 53:16, 55:25, 58:2, 58:16
Notary 1:22, 61:6, 61:21
note 27:10
nothing 39:24, 42:20, 61:11
noticed 16:1, 16:5, 24:14
NPDES 51:17, 51:21, 52:10, 55:15

O

object 4:18, 10:8, 10:9, 11:14, 28:12, 29:19, 30:3, 30:4, 39:9, 41:2, 41:3, 44:3, 47:13, 53:7, 53:10
objection 11:15, 28:13, 30:6
obviously 37:15, 57:9
occupants 58:16
occurred 51:20, 53:6, 53:9
OCRM 7:22, 7:24, 8:7, 8:9, 8:24, 21:4, 21:17, 21:20, 21:22, 22:21, 60:3
October 61:22
office 17:5, 20:21, 26:13, 27:9, 33:11, 44:12, 51:16, 52:15
Offices 61:8
one-half 44:25, 45:6
ones 25:23, 58:25
ongoing 32:4
onto 6:19
open 32:20
opinion 28:1, 28:2, 28:3, 28:15, 28:16, 28:17, 43:1, 43:3, 53:14, 56:8
opinions 59:6, 60:13
opposed 9:12
original 24:15
others 9:3, 30:23
otherwise 40:20
outcome 61:17
outside 26:15
overall 34:10, 35:17, 35:21
overlap 52:6, 52:18
owner 32:13
owners 58:15
owns 54:13

P

P.A 2:10
pads 35:11
pages 61:12
paint 45:24
paragraph 31:20
Park 2:18
Parkhill 1:12, 3:12, 3:13, 3:16, 3:17, 3:19, 12:20, 13:4, 13:6, 13:7, 16:17, 16:19, 16:21, 20:20, 22:6, 24:3, 24:7, 24:15, 27:4, 27:8, 27:19, 28:4, 37:4, 37:6, 38:6, 41:10, 41:21, 57:2, 57:23, 58:22, 59:1, 59:11
particular 10:14, 15:18, 17:23, 17:25, 18:10, 20:22, 22:11, 23:20, 30:25, 45:5, 45:10, 45:12, 45:13
parties 61:16
Patterson 2:17
pavement 5:24, 6:19, 18:22
perhaps 47:11
period 46:18
permanent 46:4, 46:13
permit 3:12, 3:16, 3:17, 3:19, 3:20, 3:22, 6:13, 6:13, 7:9, 7:25, 8:1, 8:3, 8:3, 8:4, 8:7, 8:14, 8:19, 8:22, 9:2, 9:5, 13:1, 13:4, 24:3, 27:4, 29:7, 32:17, 32:19, 37:6, 38:22, 40:21, 41:14, 45:16, 46:16, 50:14, 50:24, 51:17, 51:21, 52:3, 52:9, 52:11, 52:16, 57:24
permits 5:9, 7:7, 7:16, 7:19, 7:20, 8:5, 8:6, 8:15, 9:3, 12:24, 15:13, 15:13, 32:3, 39:22, 39:23, 39:23, 49:24, 53:4, 53:19
permitted 12:14, 37:22, 38:2, 38:7
permitting 5:6, 7:6, 7:12, 8:13, 12:24, 20:24, 26:14, 26:17, 40:13, 51:10, 52:14, 55:1
personally 10:25
Phase 3:12, 3:16, 3:19, 13:4, 13:9, 24:3, 24:7, 24:15, 27:11, 37:5, 37:6
phases 3:17, 27:4, 27:8, 27:10, 27:11, 57:10
piece 13:12, 50:7
Plaintiffs 1:6, 2:3
plan 5:16, 21:19, 21:22, 21:24, 29:11, 29:13, 32:19, 33:13, 35:17, 35:24, 45:21, 49:11
Planning 21:14
plans 9:4, 13:18, 14:1, 14:3, 14:5, 14:8, 14:10, 20:6, 20:11, 21:23, 31:23, 31:24, 32:1, 33:14, 35:14, 49:18
PLEAS 1:1
please 12:25
plenty 50:9
point 14:3, 35:19, 39:24, 41:20, 42:5, 54:3, 55:16
policies 7:24, 21:18, 21:25, 22:16, 22:23, 23:20
policy 21:14, 22:9, 22:10, 22:11, 22:12, 23:16
pollutant 6:11, 34:14, 51:24
pollutants 6:10, 6:15, 45:23
pollution 5:11, 5:15, 6:3, 6:5, 6:13, 33:13, 35:24, 45:21, 52:5
pond 18:15, 18:17, 18:18, 18:20, 18:24, 18:24, 19:3, 22:21, 35:1, 35:4, 35:5, 35:6, 36:1, 36:5, 36:10, 36:15, 36:21, 36:25, 40:2, 46:14, 46:22
ponds 16:25, 19:11, 19:17, 19:20, 32:9, 34:22, 34:22, 35:6, 35:20, 36:15, 46:5, 53:21, 54:13
popular 19:13
portions 35:3
position 4:24, 54:4
possibilities 17:21, 19:17
possible 17:14
possibly 7:17
post 46:6
post-constructio 36:15, 36:17, 46:3, 46:14
post-developed 9:22, 17:10, 44:8
post-development 16:23, 36:22
potential 6:3
practices 19:16, 34:24, 45:22
pre 46:6
pre-developed 17:10, 18:1, 19:1, 19:3, 44:7
pre-development 45:19
prefer 50:8
preliminary 13:16
preparations 30:15
prepare 15:4, 30:14
preserving 22:23
prevent 6:13, 17:14, 19:12
prevention 5:11, 5:15, 33:13, 35:24, 45:21, 52:5
previous 58:9
prior 24:16, 55:21, 58:6, 59:12
private 57:4
probably 25:18, 26:5, 33:5
problem 10:11, 10:12, 17:7, 25:17, 28:4, 28:7, 28:8, 30:2, 34:11, 34:19, 35:17, 35:18, 39:19, 40:3, 40:7, 40:21, 42:14, 42:16, 42:24, 43:4, 53:6, 53:8, 53:15, 55:24, 56:15, 58:14, 59:8
problems 10:6, 11:13, 18:4, 27:3, 28:11, 30:9, 32:2, 32:7, 33:21, 34:8, 37:12, 39:8, 41:24, 42:12, 47:17, 48:12, 53:21
procedure 4:2, 51:4, 59:25
proceed 31:6
process 6:1, 20:19, 21:13, 29:4, 29:17, 30:21, 43:14, 43:24, 51:11, 52:19, 59:24, 60:5, 60:5
processed 40:21
produced 15:14, 20:22, 27:9, 44:11, 58:13
product 30:19
professional 1:21, 14:23, 15:2, 30:13, 30:14, 30:15, 59:18
professionals 14:17
program 7:23, 8:2, 20:24, 21:18, 22:1, 22:12, 22:15, 25:15, 55:15, 55:16, 55:17
project 8:17, 8:18, 9:8, 14:20, 17:4, 17:15, 17:23, 18:12, 21:13, 21:20, 21:23, 23:15, 30:25, 33:5, 34:7, 34:10, 36:17, 38:16, 39:1, 45:3, 47:5, 49:1, 49:8, 49:22, 49:25, 50:19, 50:25, 54:4, 54:16, 55:5
projects 12:14, 12:18, 14:17, 14:19, 23:21, 37:16, 39:6, 44:24, 50:4, 50:10, 50:16, 50:22, 54:19
promote 23:2, 23:3
proofread 25:22
properly 36:13
property 5:25, 6:19, 13:13, 15:22, 15:24, 20:14, 32:13, 34:5, 50:7
proposed 45:5
proposing 5:13, 7:15
protect 23:8
protecting 22:13
protocol 43:8
provide 43:20, 46:5
Public 1:22, 61:6, 61:21
purposes 4:3
pursuant 4:1
putting 18:15, 19:7, 55:8

Q

quality 3:23, 7:21, 8:12, 8:20, 35:17, 44:21, 45:11, 45:20, 46:1, 46:4, 46:5, 46:15, 46:16, 47:3
quantity 36:23, 45:17, 45:19, 46:6, 46:14
quick 10:16
quickly 18:24, 52:23
quite 25:9, 44:12

R

rainfall 7:3, 18:21
rains 6:17
rate 18:16
rates 17:17, 17:18, 18:1, 18:13, 19:2, 19:3, 19:4, 45:18, 46:6
reading 15:13, 33:10
ready 21:6
real 10:16, 52:22
realize 25:17, 29:4, 30:7, 53:6
really 7:25, 11:10, 16:10, 16:15, 22:11, 24:18, 27:25, 28:1, 34:2, 51:17, 51:18, 53:17, 59:25
reason 15:25, 42:1, 43:21
reasonable 59:20
reasons 50:4
receive 50:2
receiving 34:14, 34:18, 45:1, 45:6, 46:20, 48:15, 48:20, 49:9
recently 51:5
recessed 33:2
recommendations 59:20
reconstruction 39:2
record 11:20
records 55:4, 58:6, 58:6
recourse 39:25
redesign 49:21
redevelopment 5:15, 5:22
reduces 7:2
Reduction 3:14, 20:24, 21:10
refer 21:2
referred 38:8, 41:10
refers 44:24
reflect 9:24, 17:9
reflected 9:19, 22:25
regardless 44:25
registered 14:17, 14:23, 15:1, 30:13, 59:18
registration 30:15
regulation 17:16, 17:25, 48:19
regulations 5:17, 9:10, 13:23, 20:7, 20:8, 22:17, 25:12, 29:1, 29:14, 31:5, 39:17, 40:18, 44:24, 48:8, 51:10, 51:19, 52:7, 52:10, 52:20, 52:24, 52:25, 53:11, 55:18
related 49:16
relatively 25:23, 51:5
release 18:16, 18:20, 46:8, 46:18
released 18:18
releases 18:25
relied 28:21, 40:16
rely 20:1, 20:2, 20:6, 20:8, 28:22, 30:14
remedy 43:5
remove 32:18
reorganizations 25:15
repeat 4:16
report 11:11, 11:12, 11:17, 11:22, 11:23, 11:23, 11:24, 33:23, 33:25
Reporter 1:21, 1:21
reports 11:20, 23:23
represent 54:24, 58:21, 60:11
representation 29:22
representatives 33:9
represented 44:6
representing 20:5
request 17:24, 18:11
requested 17:22
require 14:16, 20:8, 23:19, 29:1, 30:12, 32:17, 32:19, 48:8, 53:21, 54:9
requirement 18:10, 47:3
requirements 14:22, 17:13, 25:14, 29:13, 29:23, 40:18, 53:1
requires 14:22, 17:16
research 42:11
Reservoir 38:11
residential 16:24
resource 22:14, 22:14, 22:24, 23:7
respond 33:20
response 33:10, 50:2
responsibility 32:12, 32:12, 39:21, 40:7, 53:2, 53:3, 53:5, 53:18
responsible 42:22, 53:14
rest 26:18, 27:11
results 17:12
retainer 60:3

R000186

review 5:9, 5:16, 8:9, 8:23, 8:24, 9:7, 13:19, 21:5, 21:21, 21:23, 22:24, 23:22, 23:24, 28:18, 28:20, 29:6, 40:13, 43:14, 43:24, 43:25, 44:4, 47:9, 48:14
reviewed 13:22, 23:21, 29:13, 31:4, 54:1
reviewer 21:19, 21:19, 21:24
reviewing 44:1, 49:4
revised 31:24
reworking 26:1
Richard 1:8, 4:6, 61:7
RILEY 2:11, 60:17
Rivers 2:21
road 35:11, 50:20, 50:25
roads 34:20, 36:20, 55:8
role 5:6, 60:13
rolling 13:16, 13:17
roof 18:22
rooftop 6:19
room 36:12
Rules 4:2
run 35:3
running 6:20, 18:23, 34:13, 35:1
runoff 6:4, 6:16, 6:21, 8:20, 9:11, 18:15, 18:22, 19:2, 19:3, 19:11, 19:12, 23:3, 23:5, 23:6, 23:10, 34:10, 36:23, 45:17, 45:24, 49:14, 50:21
runs 6:19, 19:8

S

sake 55:23
Savannah 2:8
saying 19:11, 36:24, 55:21
says 16:6, 16:7, 16:23, 22:6, 44:24, 45:3, 45:6
SC 2:14
SCDOT 2:7, 54:25, 54:25, 55:6, 55:10, 55:20, 56:22, 57:22
scenarios 36:16
School/alice 38:25
Seabrook 11:12, 11:23, 27:23
seal 61:19
Seamon 59:2, 59:6, 59:23, 60:2
section 7:22, 21:16, 21:21, 21:23, 22:22, 23:19, 26:14, 26:18, 37:24
sections 7:16
sediment 3:14, 6:7, 6:10, 6:11, 21:10, 34:5, 34:8, 34:11, 34:12, 34:13, 34:13, 34:19, 34:21, 34:21, 34:25, 35:2, 35:3, 35:7, 35:9, 35:11, 35:16, 35:20, 36:2, 36:3, 36:9, 36:11, 36:12, 36:13, 36:21, 36:25, 45:23, 45:23, 46:13
Seekings 1:19, 2:3, 2:4, 61:9
seem 56:14
send 44:9, 49:19
sense 36:24, 43:19, 44:2, 47:2, 47:11
sent 32:23
separate 33:4, 52:14
serious 30:8, 35:16, 35:18
Settlement 20:23
several 6:22, 7:23, 18:18, 55:24, 57:10
sewer 8:6
Shannon 10:18, 26:16, 40:12, 59:17
Shannon's 10:21
shortly 55:16
shouldn't 53:4, 54:21
showed 11:8
shown 35:14
shows 9:4, 9:5
sign 4:4, 15:3, 20:3
significant 10:6, 25:24
silt 35:8
silting 34:6
similar 22:21
simple 49:17, 49:20
single-family 16:24
sit 28:2
site 9:14, 9:18, 9:21, 9:24, 15:18, 15:19, 16:12, 17:1, 17:9, 20:5, 23:25, 31:23, 33:18, 34:1, 34:13, 35:1, 35:4, 35:6, 35:6, 35:10, 35:13, 35:20, 35:24, 36:1, 36:20, 37:22, 45:23, 46:10, 46:24
sites 37:25
situation 43:4, 43:17, 53:16, 53:24, 55:10
situations 17:23
six 16:25
size 14:17, 14:20, 14:24, 44:25
skipped 45:8
slow 50:1
slowly 18:16, 18:18, 18:21, 18:25
soak 23:4
soaked 6:18
soaking 18:23, 19:10
soaks 7:3
soil 6:1, 9:14, 9:20, 10:1
somebody 4:18, 13:12, 17:23, 23:19, 26:5, 26:21, 33:11, 37:23, 40:1, 40:6, 42:5, 47:8, 49:25
somebody's 32:18
somehow 23:15
someone 56:10
somewhat 12:21, 24:11, 24:17, 37:20
somewhere 47:22, 47:24
sort 5:6, 12:24, 25:10, 25:11
South 1:1, 1:8, 1:8, 1:20, 2:5, 2:8, 2:12, 2:15, 2:19, 2:22, 4:2, 4:23, 16:18, 52:4, 52:4, 52:8, 59:17, 61:1, 61:10, 61:21
speak 16:13, 22:11, 23:18, 28:16, 51:18
specific 23:4, 23:21, 32:2
specifically 18:20, 23:1, 48:4
speed 25:11
spent 11:9
spoken 17:5
stable 36:20
staff 22:22, 58:10
stage 21:6
Stall 3:20, 38:9, 38:15, 38:18, 38:22, 38:25, 41:20, 57:12, 57:23
standard 24:1
standards 52:9
standpoint 5:20, 22:19, 23:7, 31:7
start 5:3, 26:6, 26:22
started 11:4, 55:17
starts 31:9
state 1:1, 4:23, 5:16, 8:1, 8:3, 8:5, 13:22, 14:17, 22:17, 25:6, 25:14, 26:19, 30:13, 47:22, 50:13, 51:18, 52:4, 52:6, 52:8, 52:9, 52:16, 52:20, 55:15, 55:18, 61:1
state's 31:7
stated 10:25, 12:6, 28:25
stays 35:13
steps 32:3
sticky 27:10
storage 19:16
store 18:15, 22:20
storm 17:17, 17:18, 18:7, 18:13, 18:19
stormwater 3:12, 3:14, 3:16, 3:17, 3:19, 3:20, 3:22, 5:9, 5:12, 5:17, 5:20, 6:4, 6:14, 6:16, 7:25, 8:4, 8:14, 9:2, 9:18, 10:3, 13:1, 13:4, 13:23, 17:3, 17:6, 20:23, 21:10, 21:19, 21:24, 22:17, 23:5, 23:6, 23:10, 23:25, 24:3, 26:17, 27:4, 32:13, 34:10, 36:23, 37:6, 38:22, 41:14, 45:17, 51:19, 52:7, 52:10, 52:16, 52:20, 54:8, 55:15, 55:18, 58:11
Street 1:19, 2:4, 2:11, 2:22, 61:9
strictly 52:5
struck 23:14
structural 60:3
structure 10:17, 12:23, 49:17
structures 14:21, 32:14, 32:17, 32:18, 34:24, 53:13, 60:4
studying 11:10
stuff 45:25, 51:9
stupid 20:19
subdivision 20:21, 38:6, 38:7, 41:10, 41:11, 41:21, 57:3
submit 9:17, 20:3, 20:12
submits 20:1
submittal 14:18, 20:10, 20:10, 28:16, 29:16, 30:14, 43:16, 44:10, 44:17, 44:18
submittals 23:23, 43:25, 44:5
submitted 5:10, 9:1, 13:12, 13:20, 40:17, 41:22, 49:7
submitting 9:3, 20:15
suffocates 34:17
suggest 59:10
Suite 2:11, 2:22
supervisor 10:17, 40:11, 59:17
supporting 43:20
suppose 39:1
surface 34:15
surrounding 25:1, 27:3, 28:4, 28:8, 28:11
surveyor 15:3
sworn 4:6, 61:10
System 51:25
SYSTEMS 1:11, 2:8, 2:11

T

taken 4:1, 4:11
takes 34:7
taking 32:2
talks 48:19
tasked 26:1
ten-year 17:18, 18:13
term 50:1
terms 8:19, 9:19, 12:24, 13:21, 17:25, 21:4, 22:1, 22:16, 22:22, 22:24, 34:10, 35:17, 45:10, 45:12, 53:12, 53:16, 57:18
testified 4:7
testimony 61:13
Thank 12:4, 54:22, 60:9, 60:15, 60:19
Thanks 58:19
themselves 21:24, 32:17
there's 6:1, 6:3, 6:23, 7:21, 7:22, 8:11, 9:25, 10:5, 10:11, 10:23, 14:21, 18:3, 19:10, 19:15, 19:16, 20:17, 24:19, 24:24, 24:25, 25:17, 25:25, 26:13, 26:15, 26:18, 28:3, 28:7, 30:2, 34:8, 35:8, 35:11, 37:11, 39:7, 39:19, 39:24, 42:12, 42:19, 42:20, 43:21, 43:22, 47:16, 47:21, 52:8, 52:18, 53:20, 54:8, 57:9, 60:5
therefore 54:8
therein 4:3
they'll 50:3
they're 4:14, 7:14, 8:14, 9:3, 17:25, 18:24, 20:4, 20:5, 20:15, 22:3, 23:7, 31:22, 32:1, 32:5, 33:21, 34:9, 35:4, 35:10, 35:10, 59:4
they've 24:11, 44:6
thing 12:24, 13:16, 16:18, 25:11, 38:4, 46:3, 49:21
third 46:3, 46:16
though 45:15
throughout 25:14, 34:7
Thursday 1:17, 61:8
tidally-influenc 18:3
tide 18:4
Tier 15:2
TIPPERARY 1:4
titled 20:23
today 28:2, 38:5
top 18:23
topography 9:15, 9:21, 10:1
total 46:24
touched 52:24
Townhomes 3:22, 41:14, 45:5
track 8:15
transcript 61:13
Transportation 1:8, 50:24, 51:1
trap 34:25, 35:2, 35:5, 46:7, 46:13
trapping 35:7, 36:2, 47:1
traps 46:8
treated 45:24, 47:2
treatment 46:4, 46:5
tree 7:4
trees 6:17, 6:18
tried 33:4
true 61:12
truth 28:23, 42:9, 61:11, 61:11, 61:12
turns 54:7
type 9:14, 9:20, 9:20, 9:20, 10:1
typical 9:11, 19:14, 33:15
typically 5:21, 6:10, 14:10, 14:11, 14:25, 18:14, 19:18, 19:24, 21:5, 21:20, 36:10, 36:22, 55:5

U

Uh-huh 10:22, 48:13, 51:22
unclear 4:15
understand 6:22, 7:18, 19:6, 23:9, 29:3, 35:16, 44:11, 48:6, 48:10, 52:22, 52:25
understanding 39:11
understood 11:6, 15:10, 15:25, 35:9, 37:3
unless 14:8, 40:1, 42:13
up-take 7:4
updated 25:23, 48:4
upper 35:3
upstream 36:19
useable 7:4

V

variance 17:24, 18:9
varied 25:9
various 6:9
vegetation 7:5, 9:20, 23:3
velocity 7:1
versus 5:13, 9:22, 17:10, 46:6
view 38:4
visit 33:18
visited 34:1, 37:25, 38:2
volume 18:16, 18:20, 46:8, 46:8, 46:17, 46:20, 46:23, 47:2

W

wait 8:24, 49:5
waived 4:5
waiver 17:24
waivers 17:21
Wal-Mart 19:21
wanted 17:2, 50:21
wants 13:12
wash-out 45:25
waters 34:14, 34:15, 34:18
watershed 10:7
we'll 4:17, 8:14, 21:9, 27:3, 40:4, 50:1, 50:2
we're 10:5, 19:23, 20:7, 20:20, 29:24, 38:5, 38:13, 42:13, 48:15, 57:2
we've 17:4, 20:7, 31:4, 33:5, 38:16, 39:6, 50:3
weighs 9:21
wells 7:4
weren't 10:25, 40:20, 42:15, 50:17
wet 46:22
wetland 7:12, 7:15, 7:24, 8:13, 8:16, 8:18, 9:3, 9:5, 9:16, 9:25, 21:14, 21:17, 21:21, 21:21, 21:23, 22:1, 22:16, 22:23, 22:25, 23:2, 23:12, 23:22
wetlands 8:11, 8:21, 9:10, 9:12, 15:12, 15:17, 15:21, 16:12, 17:1, 22:7, 22:19, 22:22, 23:15, 23:19
Whaley 2:17
Wharf 2:15
what's 4:24, 5:8, 9:1, 16:3, 20:9, 34:23, 44:15, 46:7, 56:16, 56:20
whatever 25:15, 40:2, 49:15, 49:16, 55:9
whatnot 5:7
whereas 23:10
WHEREOF 61:18
whether 9:16, 15:17, 17:6, 24:19, 24:25, 26:23, 28:3, 28:10, 37:11, 42:12, 46:21
Whiteside 59:2, 59:6, 59:23, 60:2
whoever 27:14
whole 26:2, 29:17, 38:4, 49:21, 61:11
whose 53:5, 56:2, 56:4
wildlife 22:14, 34:17
Wiseman 2:21, 3:7, 10:9, 11:14, 28:12, 29:19, 30:6, 39:9, 41:2, 58:20, 58:21, 60:8
withdraw 50:10
withdrawn 50:3
within 44:25, 45:6, 46:18, 46:19, 46:21, 46:22, 47:4, 47:5, 47:22, 48:15, 49:2, 49:5, 49:8
witness 11:25, 61:10, 61:18
won't 17:6, 38:17
wondering 16:4
wooded 5:23
wording 20:4
worth 38:12
wouldn't 26:4, 28:18
Wow 5:3
wrapper 6:6
wrong 6:23, 19:25, 27:24, 28:11, 29:5, 30:8, 30:12, 33:19, 34:6, 43:9, 43:12, 43:13, 43:18, 47:21, 50:20, 54:8

Y

y'all 25:5, 43:3, 43:4
Yancey 2:3, 4:9
yards 36:20
yeah 14:5, 18:12, 23:24, 24:13, 25:13, 28:5, 28:24, 29:2, 45:11, 47:24, 56:13
yet 23:15
Young 2:21

Z

zone 7:23, 8:2, 8:7, 20:24, 21:18, 21:25, 22:12, 22:15, 26:15, 45:1

R000187

South Carolina
DHEC
Department of Health and Environmental Control

STORMWATER MANAGEMENT
SOUTH CAROLINA DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL
STANDARD APPLICATION FORM FOR CONSTRUCTION SITES
DISTURBING MORE THAN 2 ACRES
(See Reverse for Instructions)

Submission of this application constitutes notice that the party identified in Section 2 of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with construction activity in the State of South Carolina. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit.
ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

Section 1

19-98-11.3 29542 RECEIVED 11-5-98

DATE 10-13-98

1. FACILITY NAME OR PROJECT NAME Parkhill Place - Phase I
   COUNTY Charleston CITY/TOWN City of North Charleston
   LOCATION (also shown on location map) Northern quadrant of intersection of I-26 & Hwy. 52 connector
   LATITUDE 32°56'57"N LONGITUDE 80°03'27" W
   TAX MAP # 484-00-00-015 USGS QUADNAME Ladson, SC

2. NEAREST RECEIVING WATERBODY Goose Creek Reservior
   DISTANCE TO NEAREST RECEIVING WATERBODY 5800' ±
   ULTIMATE RECEIVING WATERBODY Cooper River

Section 2

3. PROPERTY OWNER OF RECORD Northwoods Limited Partnership
   ADDRESS 130 Deliessine Road, Cayce, SC 29033
   PHONE NO.: (DAY) c/o 763-1166 (NIGHT) _____ (MOBILE) _____

4. PERSON FINANCIALLY RESPONSIBLE FOR THE LAND DISTURBING ACTIVITY
   (if different than above) Mr. Lewis Kolb
   ADDRESS 221 Hickory Meadow Road, Lexington, SC 29072
   PHONE NO.: (DAY) c/o 763-1166 (NIGHT) _____ (MOBILE) _____

5. AGENT OR CONTACT PERSON (if applicable) Ron Felkel/John Lester - Hoffman Lester Associates, Inc.
   ADDRESS 29 Leinbach Drive, Bldg. A-2, Charleston, SC 29407
   PHONE NO.: (DAY) 763-1166 (NIGHT) _____ (MOBILE) _____

6. ENGINEER, TECHNICAL REPRESENTATIVE OR FIRM Hoffman Lester Associates, Inc.
   ADDRESS 29 Leinbach Drive, Bldg. A-2, Charleston, SC 29407
   PHONE NO.: (DAY) 763-1166 (NIGHT) _____ (MOBILE) _____

7. CONTRACTOR OR OPERATOR (if known) _____
   ADDRESS _____
   PHONE NO.: (DAY) _____ (NIGHT) _____ (MOBILE) _____

Section 3

8. SIZE, TOTAL (acres) 10.27 ac. SURFACE AREA OF LAND DISTURBANCE (acres) 10.27 ac.

9. SIC CODE 1521 (SIC code only required if site disturbs 5 acres or more)

   IS THE SITE LOCATED ON INDIAN LANDS? (If site disturbs 5 or more acres) NO

10. TYPE OF PROJECT & FEES (please circle the type of activity)

    a. Federal - State (Local) - School (EXEMPT FROM FEES)

    b. Industrial - Commercial - (Residential) ($50 per disturbed acre, max. $1,000 per project)

    (In addition a $75 NPDES administration fee will be required on all Projects disturbing 5 acres or more)

    TOTAL FEE $ 588.00

EXHIBIT 1 4/5/23/13 R000188

PENGAD 800-631-6989

DHEC 2206 (5/95)

11. START DATE 1 Jan 99 COMPLETION DATE 1 Sept 99

12. ARE THERE ANY FRESHWATER WETLANDS LOCATED ON THE PROPERTY? YES

IF YES, HAVE THE WETLANDS BEEN DELINEATED? YES

Section 4

CERTIFICATION

13. I HEREBY CERTIFY THAT ALL LAND DISTURBING CONSTRUCTION AND ASSOCIATED ACTIVITY PERTAINING TO THIS SITE SHAL BE ACCOMPLISHED PURSUANT TO AND IN KEEPING WITH THE TERMS AND CONDITIONS OF THE APPROVED PLANS. I ALSO CERTIFY THAT A RESPONSIBLE PERSON WILL BE ASSIGNED TO THE PROJECT FOR DAY-TO-DAY CONTROL. I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHERED AND EVALUATED THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.

Lewis Kolb, President
PRINTED NAME
OWNER/PERSON FINANCIALLY RESPONSIBLE

Lewis Kolb, Pres.
OWNER/PERSON FINANCIALLY RESPONSIBLE

14. I HEREBY GRANT AUTHORIZATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND/OR THE LOCAL IMPLEMENTING AGENCY THE RIGHT OF ACCESS TO THE SITE AT ALL TIMES FOR THE PURPOSE OF ON SITE INSPECTIONS DURING THE COURSE OF CONSTRUCTION AND TO PERFORM MAINTENANCE INSPECTIONS FOLLOWING THE COMPLETION OF THE LAND DISTURBING ACTIVITY.

Lewis Kolb, Pres.
PRINTED NAME
OWNER/PERSON FINANCIALLY RESPONSIBLE

Lewis Kolb
OWNER/PERSON FINANCIALLY RESPONSIBLE

15. DESIGNER CERTIFICATION - FIVE COPIES OF THE PLANS, ALL SPECIFICATIONS AND SUPPORTING CALCULATIONS, FORMS, AND REPORTS ARE HEREWITH SUBMITTED AND MADE A PART OF THIS APPLICATION. I HAVE PLACED MY SIGNATURE AND SEAL ON THE DESIGN DOCUMENTS SUBMITTED SIGNIFYING THAT I ACCEPT RESPONSIBILITY FOR THE DESIGN OF THE SYSTEM. FURTHER, I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE DESIGN IS CONSISTENT WITH THE REQUIREMENTS OF TITLE 48, CHAPTER 14 OF THE CODE OF LAWS OF SC, 1976 AS AMENDED, AND PURSUANT REGULATION 72-300.

John Slaster
SIGNATURE

S.C. REGISTRATION NUMBER

ENGINEER ✓
TIER B, LAND SURVEYOR ✓
LANDSCAPE ARCHITECT

R000189

DRAINAGE ANALYSIS

FOR

PARKHILL PLACE

NORTH CHARLESTON, SOUTH CAROLINA

July 18, 2000
(Revised December 10, 2001)

Prepared By:

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SUITE 100
MT. PLEASANT, SC 29464-7849

843/884-1667

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER
No. 11893
STUART D. WHITESIDE

EXHIBIT
2
KH 5/29/12

Phase 2

TABLE OF CONTENTS

I. INTRODUCTION
-Overall Layout Plan
-USGS Map

II. PRE-DEVELOPMENT CONDITIONS
-Predevelopment Plan
-Hydrograph Input Parameters

III. POST DEVELOPMENT CONDITIONS
-Post Development Plan
-Hydrograph and Routing Calculations

IV. DISCHARGE VELOCITIES

V. ABSTRACT
-Soils Plans
-Time of Concentration Calcs.

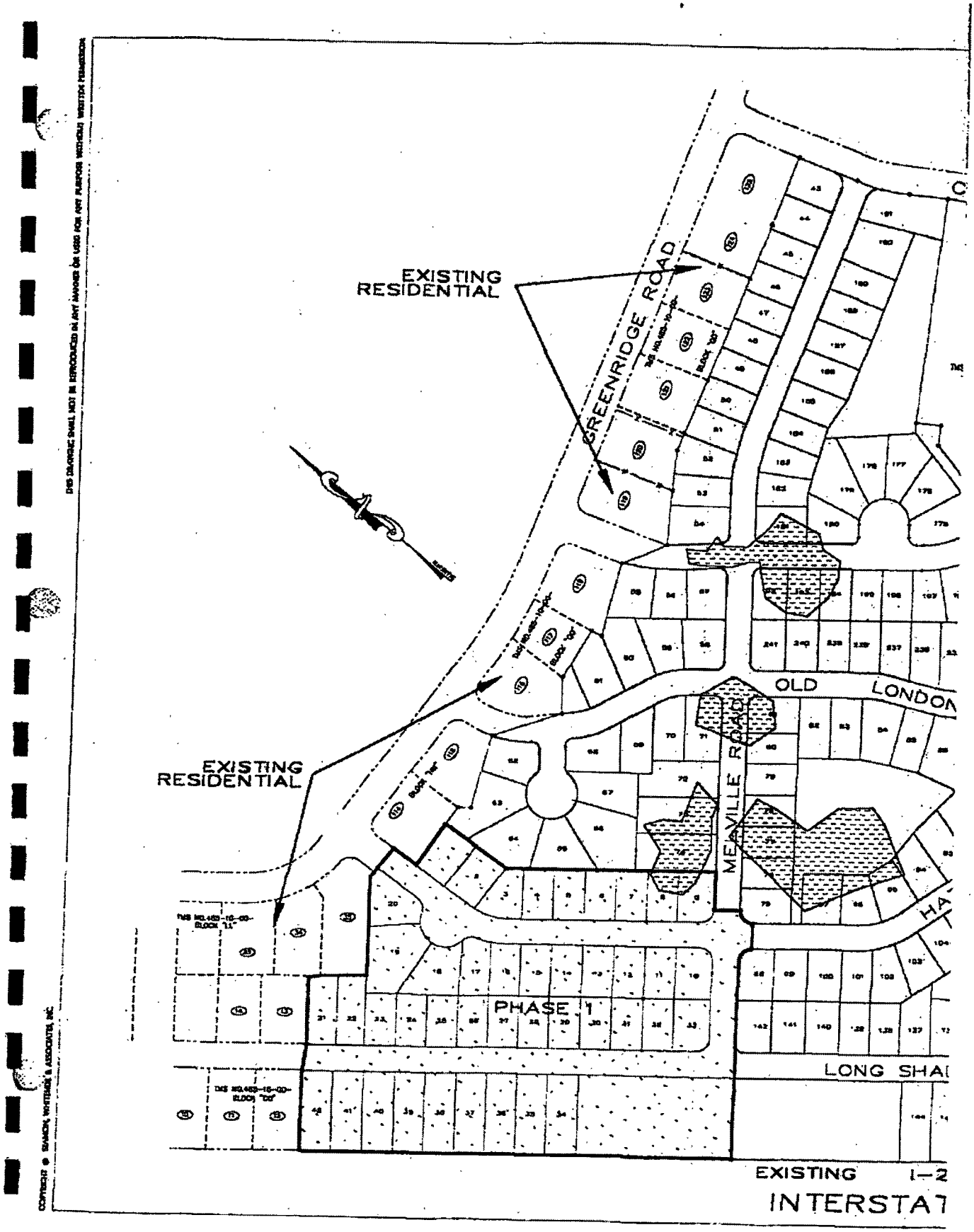
I. INTRODUCTION

This drainage analysis provides a comprehensive study of the interconnected drainage system of the Parkhill Place Phase 1 drainage basin and the proposed remaining Parkhill Place drainage basins.

Parkhill Place Phase 1 is a single-family residential community, which consists of 34 lots and a pond. The pond discharges to the existing ditch located along interstate I-26. For the purpose of this study, the Phase 1 drainage basin and system will reference construction documents prepared by Hoffman Lester Associates, Inc. and re-modeled by Seamon, Whiteside and Associates.

The remaining phases at Parkhill Place will also be a single family residential community consisting of 241 lots and 6 ponds (Note: The pond used in Phase 1 will be expanded to accommodate Phase 2 basin *runoff.*

In this report we will compare the peak pre development storm water runoff and the peak post development storm water runoff, for Parkhill Place Phases 1,2A,2B and remaining defined property.


EXISTING RESIDENTIAL
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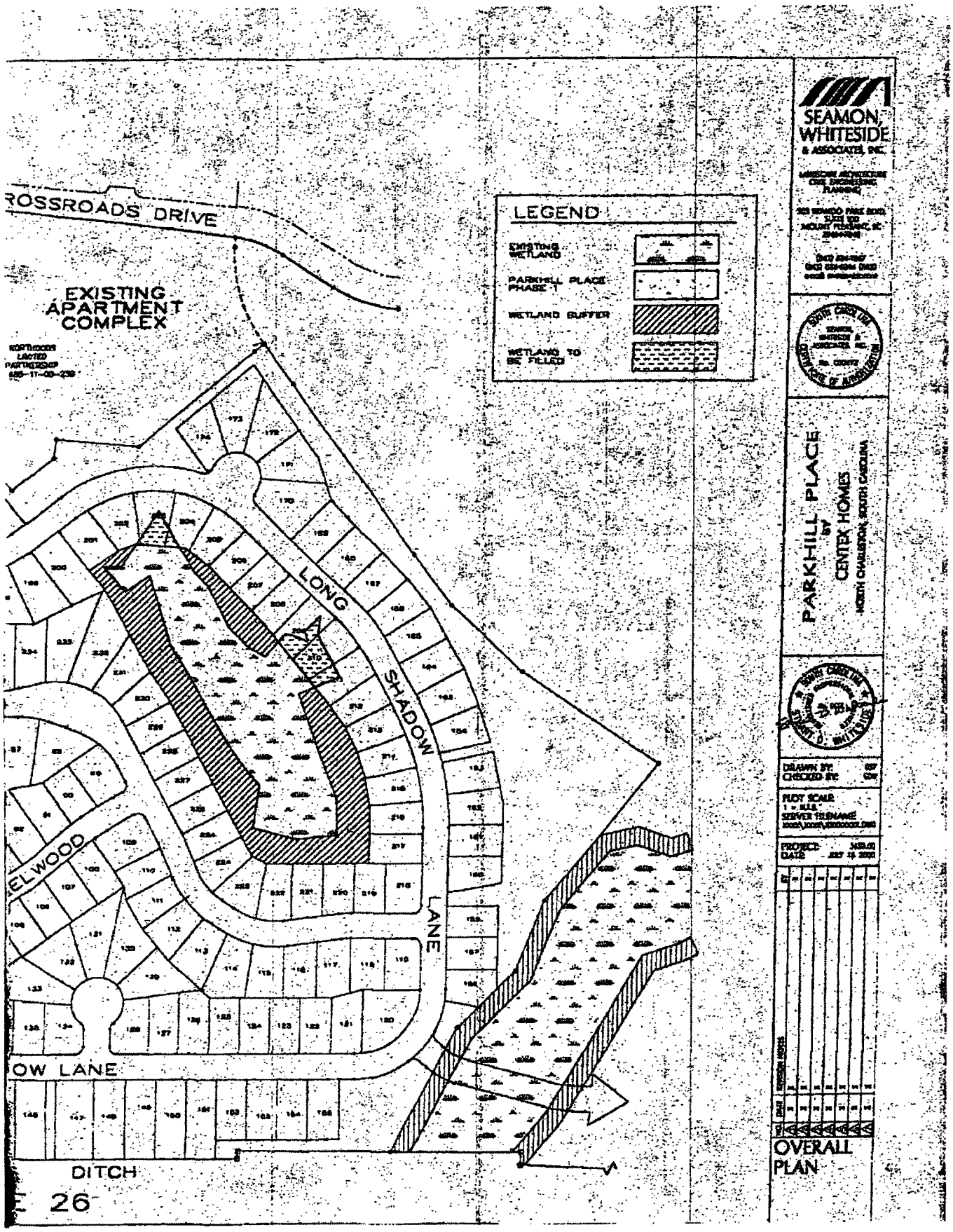
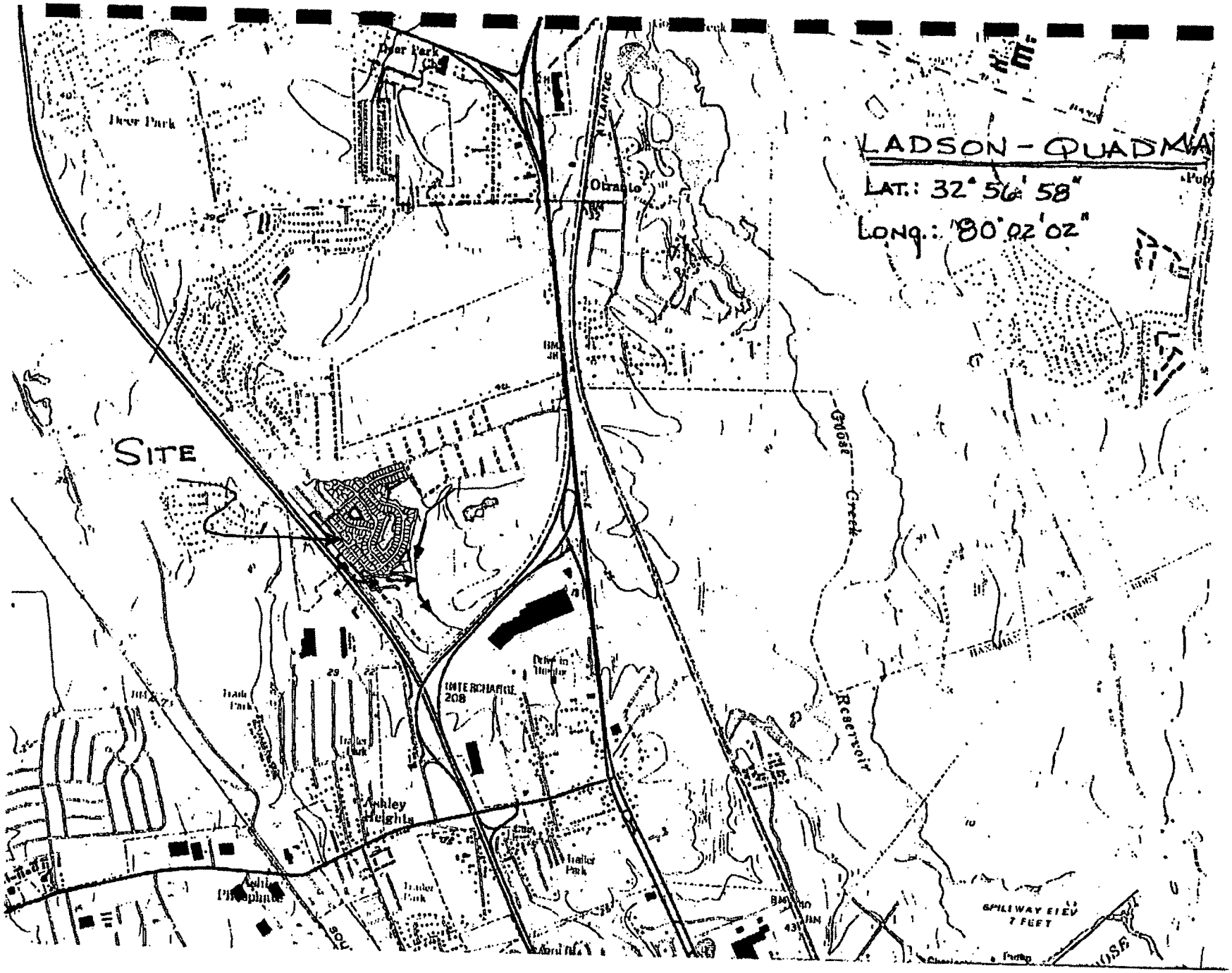
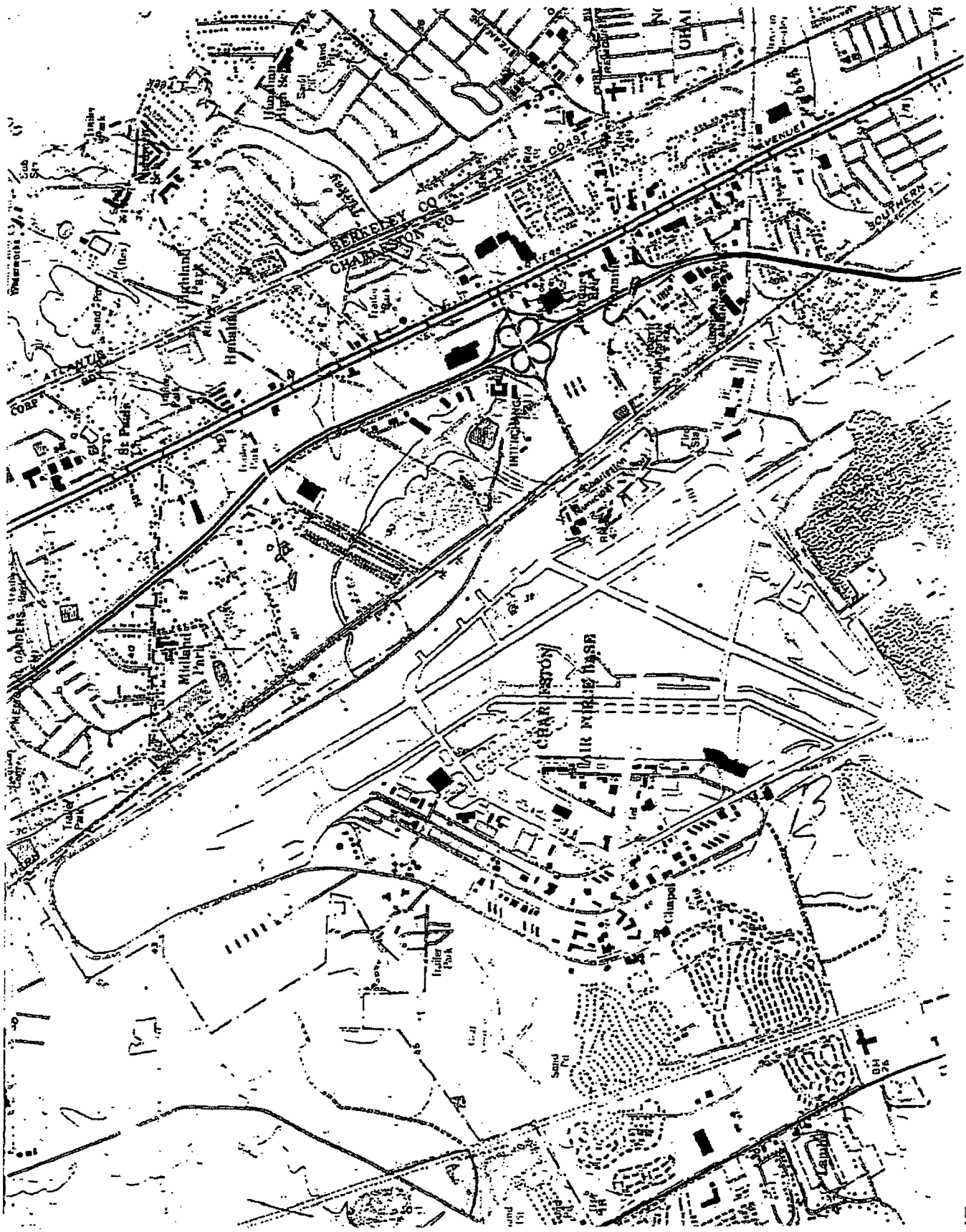
EXISTING RESIDENTIAL
OLD LONDON
MEADVILLE ROAD
PHASE 1
LONG SHA
EXISTING
INTERSTAT


ROSSROADS DRIVE
EXISTING APARTMENT COMPLEX
LEGEND
EXISTING WETLAND
PARKHILL PLACE PHASE 1
WETLAND BUFFER
WETLAND TO BE FILLED
LONG SHADOW LANE
EL WOOD
OW LANE
DITCH
26
SEAMON, WHITESIDE & ASSOCIATES, INC.
PARKHILL PLACE
by
CENTEX HOMES
NORTH CHARLESTON, SOUTH CAROLINA
DRAWN BY:
CHECKED BY:
PLOT SCALE
1 = 50.0
SERVER FILENAME
PROJECT:
DATE:
OVERALL PLAN

R000194


LADSON - QUADMAP
LAT.: 32° 56' 58"
LONG.: 80° 02' 02"
SITE
Deer Park
Deer Park Golf
Otranto
ATLANTIC
Ashley Heights
Ashley Phosphate
INTERCHANGE 208
Drive-in Theatre
Trailer Park
Ghost Creek
Reservoir
SPILLWAY ELEV 7 FEET

R000195


BERKELEY CO
CHARLESTON CO
COAST
SOUTHERN
ATLANTIC
CORP
INTERCHANGE
Highland Park
Highland Park
Mitchell Park
Mitchell Park
Trailer Park
Trailer Park
Trailer Park
Sand Pit
Chapel
Cemetery
Landing

II. PRE-DEVELOPMENT CONDITIONS

The entire site is predominately a wooded site that drains to on-site freshwater wetlands and eventually into a ditch system that begins upstream at the Southeast end of the property and continues along Interstate 26 at the South portion of the property (see Pre-develpoment Plan).

The total pre-development area used to calculate pre-development runoff is 74.15 acres, refer to the "Pre-development Plan" following in this report for a plan of the area. Of the 74.15 acre pre-development basin, 66.27 acres include the limits of proposed development known as Parkhill Place or "on-site". A portion of the Parkhill Place (Phase 1) development has been constructed, however this report will include this area in the pre-development calculations. The offsite acreage in the pre-developed basin is 7.88 acres (1.08 Ac from an adjacent apartment complex at the SE end of the site and 6.80 Ac from the existing residential community along Greenridge Rd.) The pre-development basin (74.15 Ac) is to include the entire built upon property and the total peak pre-development runoff rate for this area as listed below:

SCS parameters for pre-development conditions

1. Soils:

   Ref. USDA "Soil Survey, Charleston County, South Carolina".
   S&ME Report of Preliminary Geotechnical Exploration, January 20, 2000

   The soil characteristics for this area suggest that it predominantly consists of the Hockley, Scranton, Wadlamaw, Wagram and Yonges variety. This soil is described as fine, sandy/loamy.

2. SCS Parameters:

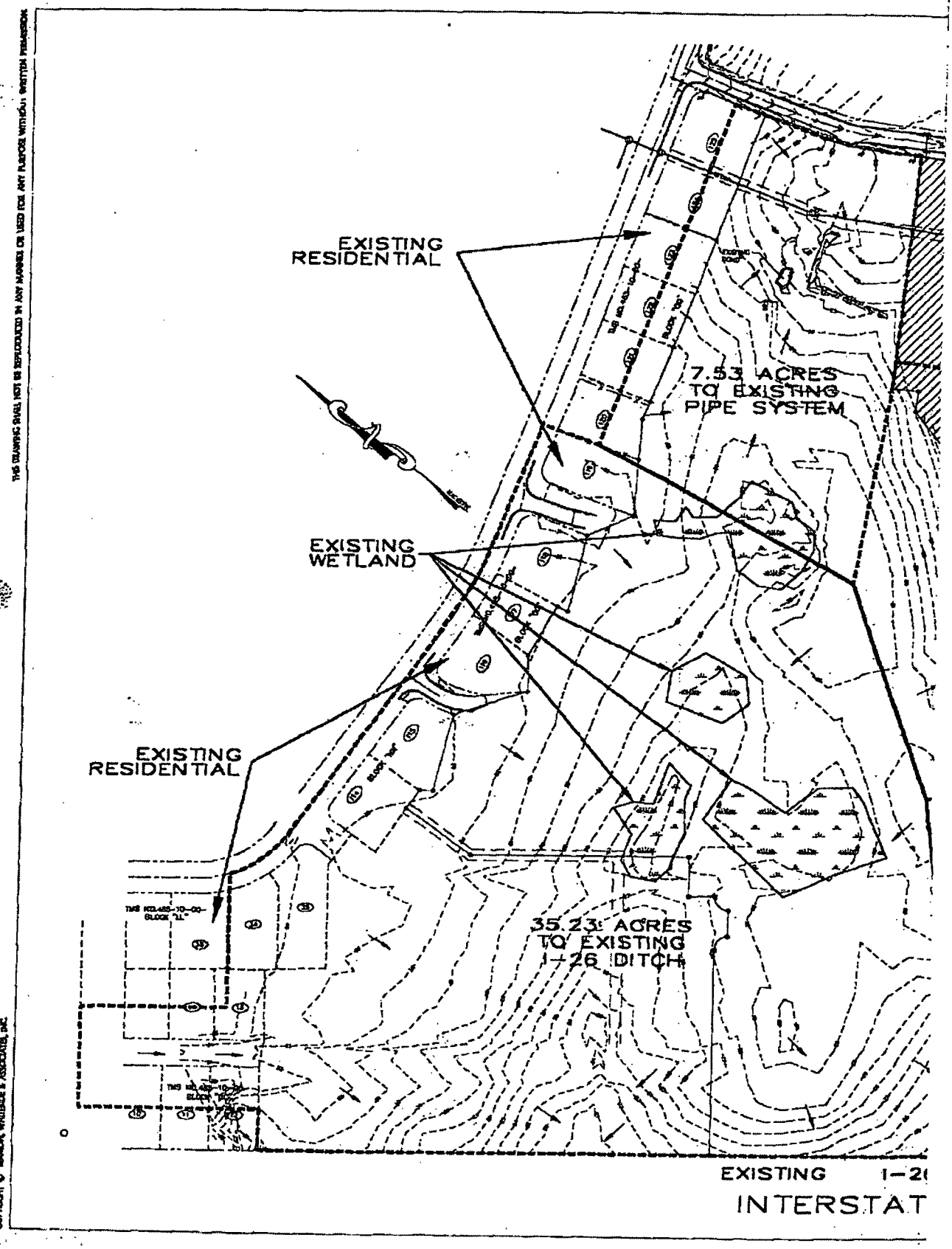
   See attached Curve Number Calculations

Predevelopment Conditions

Storm Event (years) in CFS

Storm Event (years)	Total Peak Runoff (cfs)
2	41.12
10	84.40
25	113.32
50	138.41
100	179.39

Refer to the "Pre-development Plan" and the hydrograph input parameters following for additional information.



THIS DRAWING SHALL NOT BE REPRODUCED IN ANY MANNER OR USED FOR ANY PURPOSE WITHOUT WRITTEN PERMISSION.
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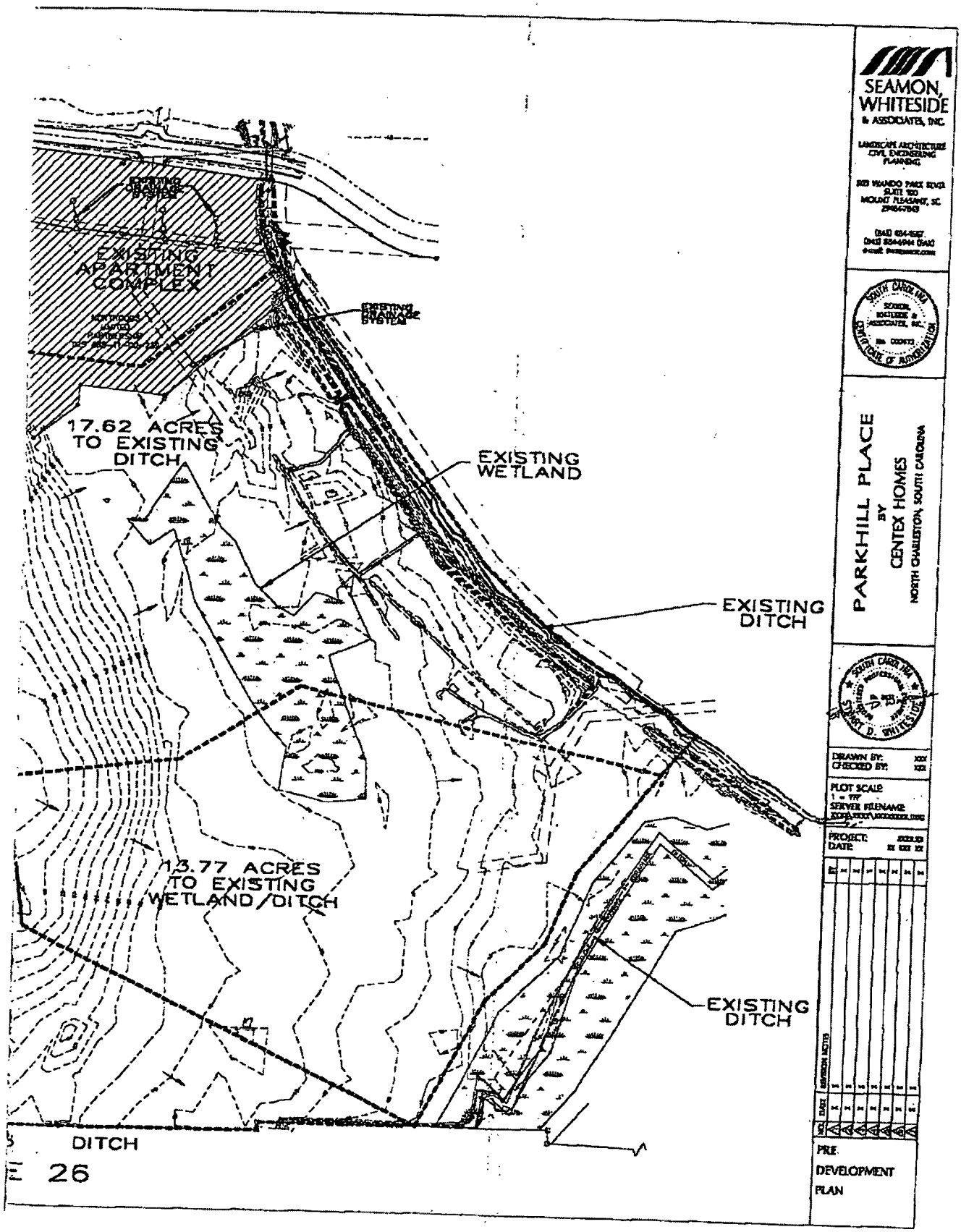
EXISTING APARTMENT COMPLEX
17.62 ACRES TO EXISTING DITCH
EXISTING WETLAND
EXISTING DITCH
13.77 ACRES TO EXISTING WETLAND/DITCH
EXISTING DITCH
DITCH
E 26
SEAMON, WHITESIDE & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE CIVIL ENGINEERING PLANNING
PARKHILL PLACE
BY
CENTEX HOMES
NORTH CHARLESTON, SOUTH CAROLINA
DRAWN BY:
CHECKED BY:
PLOT SCALE
1 = 777'
SERVER FILENAME
PROJECT:
DATE:
PRE DEVELOPMENT PLAN

Curve Number Calculations
for
PARKHILL PLACE
Pre Development Conditions

SOIL GROUP DATA

Name	Type	HSG
Hockley (HoA)	Hockley loamy fine sand	C
Wadlamaw (Wa)	Wadmalaw fine loamy sand	D
Wagram (WgB)	Wagram loamy fine sand	A
Yonges (Yo)	Yonges loamy fine sand	D
Scranton (Sf)	Scranton loamy fine sand	A

Drainage Basin Pre-development to I-26 ditch AREA = 35.23AC.

Description	HSG	CN	A(ac.)	C x A
Woods-Fair Condition	D	79	7.58	598.82
Woods-Fair Condition	A	36	20.4	734.4
Wetland		100	2.09	209
1/4 lots	A	61	3.01	183.61
1/4 lots	D	87	2.15	187.05
			35.23	1912.88

Composite Curve Number= 54

Drainage Basin Wetland/Ditch AREA = 13.77AC.

Description	HSG	CN	A(ac.)	C x A
Wetland		100	0.72	72
Woods-Fair Condition	A	36	1.04	37.44
Woods-Fair Condition	C	73	4.16	303.68
Woods-Fair Condition	D	79	7.85	620.15
			13.77	1033.27

Composite Curve Number= 75

Drainage Basin Ditch AREA = 17.62AC.

Description	HSG	CN	A(ac.)	C x A
Wetland		100	1.62	162
Woods-Fair Condition	A	36	2.35	84.6
Woods-Fair Condition	C	73	0.08	5.84
Woods-Fair Condition	D	79	13.57	1072.03
			17.62	1324.47

Composite Curve Number= 75

Drainage Basin Ex.Pipe AREA = 7.53 AC.

Description	HSG	CN	A(ac.)	C x A
Wetland		100	0.26	26
Woods-Fair Condition	A	36	2.19	78.84
Woods-Fair Condition	D	79	5.08	401.32
			7.53	506.16

Composite Curve Number= 67

Advanced Interconnected Channel & Pond Routing (ICPR Ver 2.11) [1]
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PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (PRE DEVELOPMENT)
8/8/00

********** Basin Results Comparisons **********

Simulation Name	Time Max (hrs)	Flow Max (cfs)	Runoff Volume (in)	Runoff Volume (cf)
*** Basin Name: PRE1				
2-YEAR	12.74	7.09	0.73	83841
10-YEAR	12.84	21.52	1.78	228285
25-YEAR	12.84	32.25	2.54	324892
50-YEAR	12.84	41.86	3.22	412059
100-YEAR	12.84	54.27	4.09	523045
*** Basin Name: PRE2				
2-YEAR	12.51	12.15	2.13	108448
10-YEAR	12.51	22.12	3.80	189844
25-YEAR	12.51	28.37	4.86	243071
50-YEAR	12.51	33.84	5.77	288442
100-YEAR	12.51	40.02	6.88	343852
*** Basin Name: PRE3				
2-YEAR	12.48	17.23	2.13	138253
10-YEAR	12.48	31.16	3.80	243082
25-YEAR	12.48	39.88	4.88	311082
50-YEAR	12.48	47.20	5.77	369145
100-YEAR	12.48	58.07	6.88	440057
*** Basin Name: PRE4				
2-YEAR	12.53	4.85	1.53	41842
10-YEAR	12.53	8.80	2.89	81764
25-YEAR	12.53	12.84	3.88	108178
50-YEAR	12.53	16.82	4.80	131088
100-YEAR	12.53	19.03	5.83	158418
*** Basin Name: PRE5				
2-YEAR	12.51	27.70	2.13	242653
10-YEAR	12.51	50.43	3.80	432988
25-YEAR	12.51	64.88	4.86	554102
50-YEAR	12.51	78.89	5.77	657529
100-YEAR	12.51	91.23	6.88	783842

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PARKHILL PLACE PHASE 2

********** Input Report **********

--------Class: Basin--------

Basin: PRE1 Node: I2SDITCH Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 8.4
Area(ac): 35.23 Concentration Time(min): 47
Curve #: 54 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO I-28 DITCH

--------Class: Basin--------

Basin: PRE2 Node: WETLAND Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 8.4
Area(ac): 13.77 Concentration Time(min): 42
Curve #: 75 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO DITCH/WETLAND

--------Class: Basin--------

Basin: PRE3 Node: DITCH Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 8.4
Area(ac): 17.82 Concentration Time(min): 38
Curve #: 75 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO DITCH

--------Class: Basin--------

Basin: PRE4 Node: EXPIPE Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 8.4
Area(ac): 7.63 Concentration Time(min): 40
Curve #: 87 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO EXISTING PIPE

```
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PARKHILL PLACE PHASE 2


********** Input Report ***********************************************************
--------Class: Basin-----------------------------------------------------------
Basin: PRE5        Node: DITCH2      Status: On Site     Type: SCS Unit Hydr
Group: BASE
    Unit Hydrograph: UH323                    Peak Factor: 323
      Rainfall File: SCSIII            Storm Duration(hrs): 24
Rainfall Amount(in): 5.4
           Area(ac): 31.39        Concentration Time(min): 42
            Curve #: 75                    Lag Time(hrs): 0
            DCIA(%): 0

          RUNOFF DIRECTLY TO DITCH

--------Class: Simulation------------------------------------------------------
 R:\3439\CDOC\ADICPR\PRE\2-YEAR
 Execution: Hydrology
   Header: PARKHILL PLACE PHASE 2
           MULTIPLE STORM EVENTS (PRE DEVELOPMENT)
           8/8/00
--------HYDRAULICS----------------------------HYDROLOGY-------------------
      Max Delta Z (ft): 0.2
        Delta Z Factor: 0.02          Override Defaults: Yes
    Time Step Optimizer: 5              Storm Dur(hrs): 24
Drop Structure Optimizer: 5            Rain Amount(in): 4.6
    Sim Start Time(hrs): 0               Rainfall File: SCSIII
     Sim End Time(hrs): 30
    Min Calc Time(sec): 0.2
    Max Calc Time(sec): 60
      To Hour:   Pinc(min):                To Hour:   Pinc(min):
      8          30                        30         5
      10         15
      17         15
      20         30
      30         30
---------GROUP SELECTIONS-----------------------------------------------------
+ BASE     [ NO RUN ]
```

Advanced Interconnected Channel & Pond Routing [ICPR Ver 2.11] [3]
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PARKHILL PLACE PHASE 2

```
********** Input Report ***********************************************************
--------Class: Simulation-----------------------------------------------------------
R:\3439\CDOC\ADICPR\PRE\10-YEAR
Execution: Hydrology
   Header: PARKHILL PLACE PHASE 2
           MULTIPLE STORM EVENTS (PRE DEVELOPMENT)
           8/8/00
---------HYDRAULICS----------------------------HYDROLOGY-------------------
        Max Delta Z (ft): 0.2
          Delta Z Factor: 0.02          Override Defaults: Yes
     Time Step Optimizer: 5                Storm Dur(hrs): 24
Drop Structure Optimizer: 5               Rain Amount(in): 8.8
     Sim Start Time(hrs): 0                 Rainfall File: SCSIII
       Sim End Time(hrs): 30
      Min Calc Time(sec): 0.2
      Max Calc Time(sec): 60
        To Hour:   Plnc(min):                 To Hour:   Plnc(min):
        8          30                         30         5
        10         15
        17         15
        20         30
        30         30
---------GROUP SELECTIONS-----------------------------------------------------------
+ BASE     [ NO RUN ]
--------Class: Simulation-----------------------------------------------------------
R:\3439\CDOC\ADICPR\PRE\25-YEAR
Execution: Hydrology
   Header: PARKHILL PLACE PHASE 2
           MULTIPLE STORM EVENTS (PRE DEVELOPMENT)
           8/8/00
---------HYDRAULICS----------------------------HYDROLOGY-------------------
        Max Delta Z (ft): 0.2
          Delta Z Factor: 0.02          Override Defaults: Yes
     Time Step Optimizer: 5                Storm Dur(hrs): 24
Drop Structure Optimizer: 5               Rain Amount(in): 7.8
     Sim Start Time(hrs): 0                 Rainfall File: SCSIII
       Sim End Time(hrs): 30
      Min Calc Time(sec): 0.2
      Max Calc Time(sec): 60
        To Hour:   Plnc(min):                 To Hour:   Plnc(min):
        8          30                         30         5
        10         15
        17         15
        20         30
        30         30
---------GROUP SELECTIONS-----------------------------------------------------------
+ BASE     [ NO RUN ]
```

Advanced Interconnected Channel & Pond Routing (ICPR Ver 2.11) [4]
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PARKHILL PLACE PHASE 2

********** Input Report **********

--------Class: Simulation--------

R:\3439\CDOC\ADICPR\PRE\50-YEAR
Execution: Hydrology
Header: PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (PRE DEVELOPMENT)
8/9/00

---------HYDRAULICS----------HYDROLOGY----------

Max Delta Z (ft): 0.2
Delta Z Factor: 0.02
Time Step Optimizer: 5
Drop Structure Optimizer: 5
Sim Start Time(hrs): 0
Sim End Time(hrs): 30
Min Calc Time(sec): 0.2
Max Calc Time(sec): 60

Override Defaults: Yes
Storm Dur(hrs): 24
Rain Amount(in): 6.8
Rainfall File: SCSIII

To Hour:	PInc(min):
8	30
10	15
17	15
20	30
30	30

To Hour:	PInc(min):
30	5

---------GROUP SELECTIONS----------

+ BASE [NO RUN]

--------Class: Simulation--------

R:\3439\CDOC\ADICPR\PRE\100-YEAR
Execution: Hydrology
Header: PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (PRE DEVELOPMENT)
8/9/00

---------HYDRAULICS----------HYDROLOGY----------

Max Delta Z (ft): 0.2
Delta Z Factor: 0.02
Time Step Optimizer: 5
Drop Structure Optimizer: 5
Sim Start Time(hrs): 0
Sim End Time(hrs): 30
Min Calc Time(sec): 0.2
Max Calc Time(sec): 60

Override Defaults: Yes
Storm Dur(hrs): 24
Rain Amount(in): 10
Rainfall File: SCSIII

To Hour:	PInc(min):
8	30
10	15
17	15
20	30
30	30

To Hour:	PInc(min):
30	5

---------GROUP SELECTIONS----------

+ BASE [NO RUN]

III. POST-DEVELOPMENT CONDITIONS

The proposed post development conditions consist of a single-family residential community consisting of 241 lots and 6 ponds. Of the five freshwater wetlands on-site, four are to be completely filled (see Corp Permit) and the remaining wetland is to only be partially disturbed.

Routed Runoff and Detention

Pond #1Basin

Phase 1 of Parkhill Place has been constructed and consists of 43 single-family lots. The built-out phase 1 included a pond which is proposed to be expanded to facilitate post development runoff from both Phases 1 & 2 (8 lots). The soil groups included in this basin are Scranton, Wagram and Yonges (see "Soils Plan"). *Pond #1 will discharge into an existing ditch which runs along Interstate 26.*

Total Basin size:	**19.75 Ac**
Off-site runoff area:	**3.62 Ac**
On-site runoff area:	**16.13 Ac**
Wetlands to be filled:	**0.30 Ac**
Composite Curve #:	**77**

Pond #2 Basin

Pond #2 will detain 12 acres of runoff and discharge through a routed system into Pond #1. The soil groups included in this basin are Scranton, Wagram and Yonges (see "Soils Plan"). Offsite runoff from an existing residential commuity along Greenridge Rd will also be detained.

Total Basin size:	**12.00 Ac**
Off-site runoff area:	**2.25 Ac**
On-site runoff area:	**9.75 Ac**
Wetlands to be filled:	**1.63 Ac**
Composite Curve #:	**86**

Pond #3 Basin

Pond #3 will detain 7.41 acres of runoff and discharge into an existing 48" CMP drainage pipe system. The soil groups included in this basin are Scranton, Wagram and Yonges (see "Soils Plan"). Offsite runoff from an existing residential community along Greenridge Rd will also be detained.

Total Basin size:	**7.41 Ac**
Off-site runoff area:	**0.81 Ac**
On-site runoff area:	**6.60 Ac**
Wetlands to be filled:	**0.19 Ac**
Composite Curve #:	**88**

Pond #4 Basin

Pond #4 will detain 12.51 acres of runoff and discharge into an existing ditch which runs along the SE portion of the property. Pond #4 is interconnected with Pond #5 via dual 24" equalizer pipes. The soil groups included in this basin are Hockley, Wadmalaw, Wagram and Yonges (see "Soils Plan"). Offsite

runoff from an existing apartment complex on Crossroads Drive will be detained by Pond #4. Portions of an existing 2.38 acre wetland will be filled as shown on "Post Development Plan".

Total Basin size: **12.31 Ac**
Off-site runoff area: **0.52 Ac**
On-site runoff area: **11.79 Ac**
Wetlands to be filled: **0.24 Ac**
Composite Curve #: **94**

Pond #5 Basin

Pond #5 will detain 11.06 acres of on-site runoff. Pond #5 is interconnected with Pond #4 with dual 24" equalizer pipes. Pond #4 eventually discharges into an existing ditch which runs along the SE property line. The soil groups included in this basin are Hockley, Wadmalaw, Wagram and Yonges (see "Soils Plan").

Total Basin size: **11.06 Ac**
Off-site runoff area: **0.00 Ac**
On-site runoff area: **11.06 Ac**
Wetlands to be filled: **0.00 Ac**
Composite Curve #: **90**

Pond #6 Basin

Pond #6 will detain 6.19 acres of on-site runoff. Pond #6 discharges into an existing SCDOT ditch which eventually combines with the ditch that runs along Interstate 26. The soil groups included in this basin are Hockley, Wadmalaw, Wagram and Yonges (see "Soils Plan").

Total Basin size: **6.19 Ac**
Off-site runoff area: **0.00 Ac**
On-site runoff area: **6.19 Ac**
Wetlands to be filled: **0.00 Ac**
Composite Curve #: **87**

Un-routed Runoff

Of the 74.14 acre drainage basin, 4.30 acres of runoff will flow un-routed to the existing ditch at the SE portion of the property and the ditch that runs along Interstate 26. At the NE end of the property, 0.92 acres of runoff will flow to Greenridge Road and be routed through an existing drainage system which eventually discharges into the ditch referenced above.

SCS Parameters:
See attached Curve Number Calculations

Sum of runoff rates include outlet discharges from Ponds 1,3,4 & 6, as well as un-routed runoff to ditch and Greenridge Rd.

Summary of Runoff Rates

Storm Event (yrs)	Peak Pond Discharge & Unrouted Runoff to Ditch (CFS)	Pre-Development Peak Runoff (CFS)
2	36.09	41.12
10	74.17	84.40
25	92.80	113.32
50	107.36	138.41
100	125.69	179.39

As shown above, the post development runoff rates at or below pre-development for all storm events.

Refer to the "Post Development Plan" and the hydrograph and routing calculations following for additional calculations.

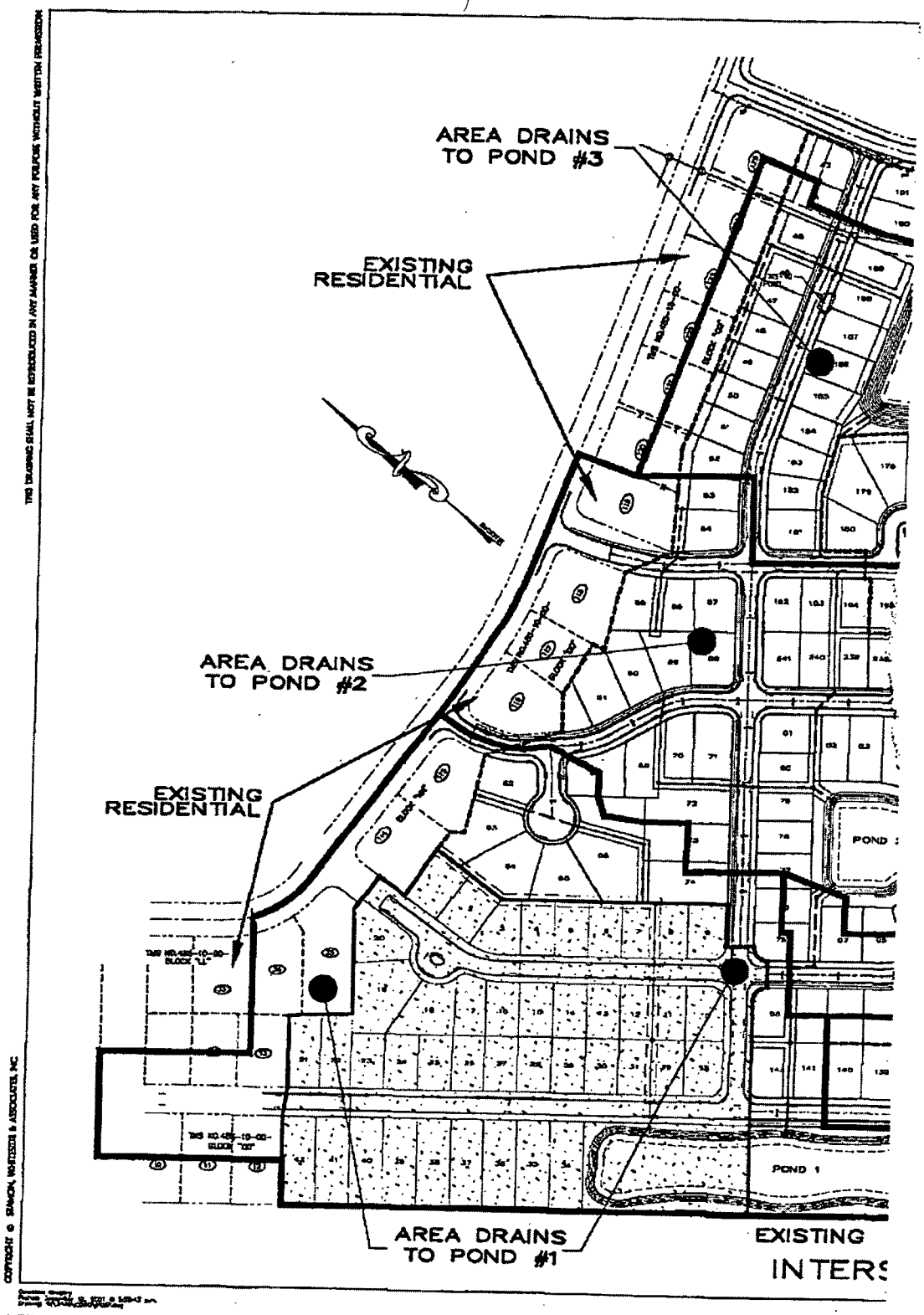
Summary of Pond Stage

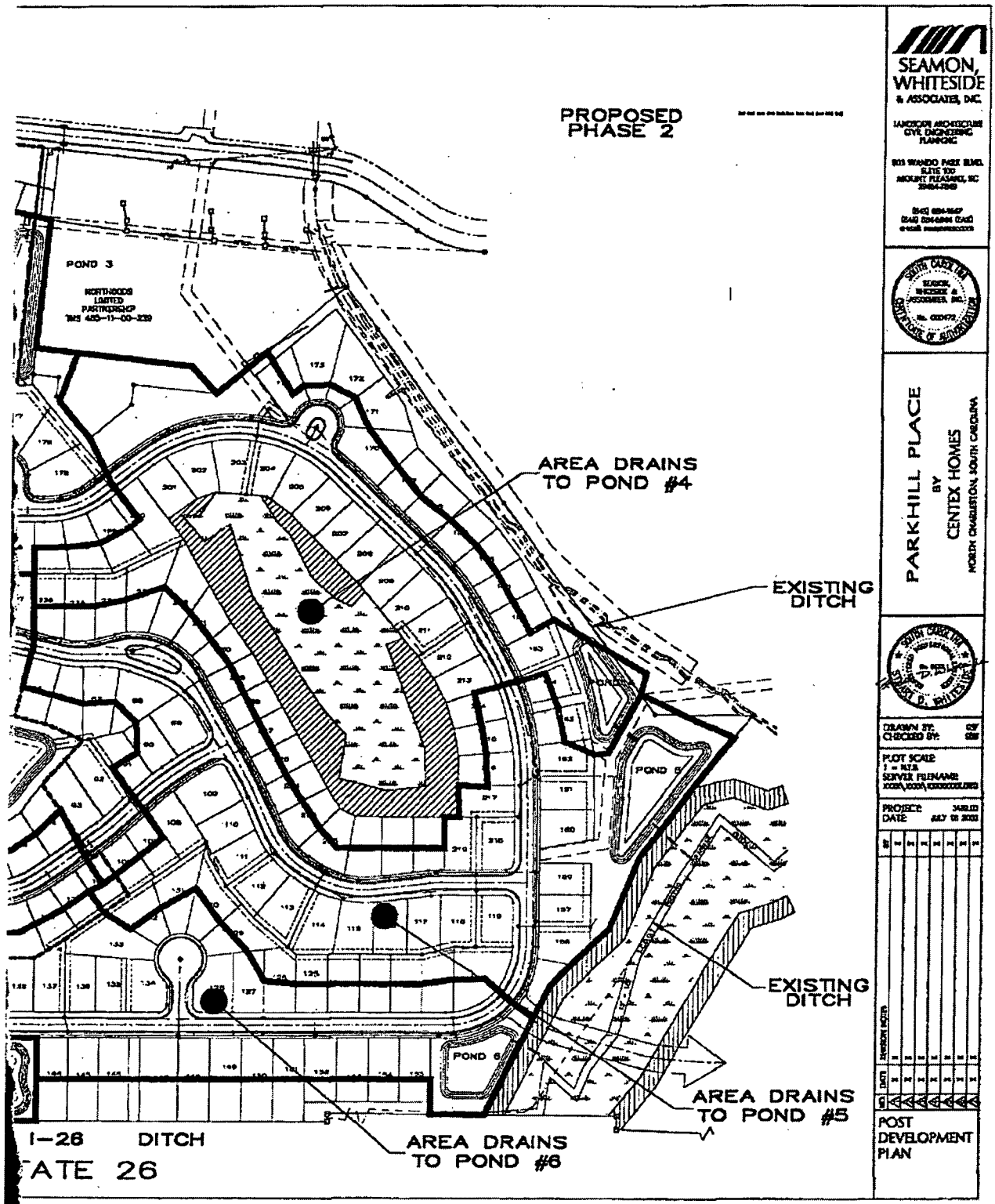
Storm Event (yrs)	Allowable Peak Stage Pond 1 (MSL)	Peak Stage Pond 1 (MSL)	Allowable Peak Stage Pond 2 (MSL)	Peak Stage Pond 2 (MSL)	Allowable Peak Stage Pond 3 (MSL)	Peak Stage Pond 3 (MSL)	Allowable Peak Stage Pond 4 (MSL)	Peak Stage Pond 4 (MSL)
2	24.00	21.86	28.00	25.82	23.00	21.82	14.00	12.82
10	24.00	22.72	28.00	26.56	23.00	22.46	14.00	13.40

Summary of Pond Stage

Storm Event (yrs)	Allowable Peak Stage Pond 5 (MSL)	Peak Stage Pond 5 (MSL)	Allowable Peak Stage Pond 6 (MSL)	Peak Stage Pond 6 (MSL)
2	14.00	12.71	15.00	13.33
10	14.00	13.48	15.00	13.84

Refer to the "Post Development Plan" and the hydrograph and routing calculations following for additional calculations.


AREA DRAINS
TO POND #3
EXISTING
RESIDENTIAL
AREA DRAINS
TO POND #2
EXISTING
RESIDENTIAL
POND 1
AREA DRAINS
TO POND #1
EXISTING
INTERS


PROPOSED PHASE 2
POND 3
NORTHWOODS LIMITED PARTNERSHIP
AREA DRAINS TO POND #4
EXISTING DITCH
POND 5
EXISTING DITCH
POND 6
AREA DRAINS TO POND #5
AREA DRAINS TO POND #6
I-26 DITCH
ATE 26
SEAMON, WHITESIDE & ASSOCIATES, INC.
PARKHILL PLACE
BY
CENTEX HOMES
NORTH CHARLESTON, SOUTH CAROLINA
DRAWN BY:
CHECKED BY:
PLOT SCALE
1 = N.T.S.
SERVER FILENAME
PROJECT
DATE
POST DEVELOPMENT PLAN

R000210

Curve Number Calculations
for
PARKHILL PLACE

Post Development Conditions

SOIL GROUP DATA

Name	Type	HSG
Hockley (HoA)	Hockley loamy fine sand	C
Wadlamaw (Wd)	Wadmalaw fine loamy sand	D
Wagram (WgB)	Wagram loamy fine sand	A
Yonges (Yo)	Yonges loamy fine sand	D
Scranton (Sf)	Scranton loamy fine sand	A

Drainage Basin **Post Development-Pond 1** **AREA = 17.41AC.**

Description	HSG	CN	A(ac.)	C x A
1/8 lots	D	92	0.52	47.84
1/8 lots	A	77	11	847
1/4 lots	A	61	2.91	177.51
1/4 lots	D	87	2.15	187.05
Pond		100	0.83	83
			17.41	1342.4

Composite Curve Number= 77

Drainage Basin **Post Development-Pond 2** **AREA = 12.00AC.**

Description	HSG	CN	A(ac.)	C x A
1/8 lots	D	92	4.58	421.36
1/8 lots	A	77	4.34	334.18
1/4 lots	A	61	0.1	6.1
1/4 lots	D	87	2.16	187.92
Pond		100	0.82	82
			12	1031.56

Composite Curve Number= 86

Drainage Basin **Post Development-Pond 3** **AREA = 8.34AC.**

Description	HSG	CN	A(ac.)	C x A
1/8 lots	D	92	5.29	486.68
1/8 lots	A	77	2.63	202.51
Pond		100	0.42	42
			8.34	731.19

Composite Curve Number= 88

Drainage Basin **Post Development-Pond 4** **AREA = 12.31 AC.**

Description	HSG	CN	A(ac.)	C x A
1/8 lots	A	77	0.41	31.57
1/8 lots	C	90	0.52	46.8
1/8 lots	D	92	7.07	650.44
Pond		100	0.32	32
Wetland		100	3.98	398
			12.3	1158.81

Composite Curve Number= 94

Drainage Basin **Post Development-Pond 5** **AREA = 11.06 AC.**

Description	HSG	CN	A(ac.)	C x A
1/8 lots	A	77	1.51	116.27
1/8 lots	C	90	2.4	216
1/8 lots	D	92	6.35	584.2
Pond		100	0.8	80
			11.06	996.47

Composite Curve Number= 90

Drainage Basin **Post Development-Pond 6** **AREA = 6.54 AC.**

Description	HSG	CN	A(ac.)	C x A
1/8 lots	A	77	2.41	185.57
1/8 lots	C	90	0.6	54
1/8 lots	D	92	3.2	294.4
Pond		100	0.33	33
			6.54	566.97

Composite Curve Number= 87

Drainage Basin **Post Development-Box** **AREA = 1.51 AC.**

Description	HSG	CN	A(ac.)	C x A
1/8 lots	A	77	1.37	105.49
1/8 lots	D	92	0.14	12.88
			1.51	118.37

Composite Curve Number= 78

Drainage Basin **Post Development-Direct to I-26 Ditch** **AREA = 1.78 AC.**

Description	HSG	CN	A(ac.)	C x A
Woods & Grass Fair Cond	A	43	0.38	16.34
Woods & Grass Fair Cond	D	82	1.4	114.8
			1.78	131.14

Composite Curve Number= 74

Drainage Basin **Post Development-Runoff to Ditch** **AREA = 3.18 AC.**

Description	HSG	CN	A(ac.)	C x A
Paved Apt. complex	D	98	0.46	45.08
Woods & Grass Fair Conc	D	82	2.72	223.04
			3.18	268.12

Composite Curve Number= **84**

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PARKHILL PLACE-PHASE 2

********** Input Report **********

--------Class: Node--------

Name: BOX Base Flow(cfs): 0 Init Stage(ft): 24.75
Group: BASE Length(ft): 0 Warn Stage(ft): 28
Comment: CURB INLETS BETWEEN PONDS #1 & #2

Stage(ft)	Area(ac)	[Manhole, Flat Floor]
24.75	0.001	
24.76	0.002	

--------Class: Node--------

Name: DITCH Base Flow(cfs): 0 Init Stage(ft): 8
Group: BASE Length(ft): 0 Warn Stage(ft): 11
Comment: DITCH RECEIVING OUTFALL

Time(hrs)	Stage(ft)
0	8
12	10.88
24	8

--------Class: Node--------

Name: POND1 Base Flow(cfs): 0 Init Stage(ft): 19.3
Group: BASE Length(ft): 0 Warn Stage(ft): 24
Comment: POND1

Stage(ft)	Area(ac)
19.3	1.32
20	1.39
21	1.48
22	1.58
23	1.67
24	1.77

--------Class: Node--------

Name: POND2 Base Flow(cfs): 0 Init Stage(ft): 24
Group: BASE Length(ft): 0 Warn Stage(ft): 28
Comment: POND2

Stage(ft)	Area(ac)
24	0.57
26	0.63
26	0.68
27	0.75
28	0.82

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PARKHILL PLACE-PHASE 2

********** Input Report **********

--------Class: Node--------

Name: POND3 Base Flow(cfs): 0 Init Stage(ft): 20
Group: BASE Length(ft): 0 Warn Stage(ft): 23
Comment: POND3

Stage(ft)	Area(ac)
20	0.39
21	0.45
22	0.51
23	0.57

--------Class: Node--------

Name: POND4 Base Flow(cfs): 0 Init Stage(ft): 10.5
Group: BASE Length(ft): 0 Warn Stage(ft): 14
Comment: POND4

Stage(ft)	Area(ac)
10.5	0.18
11	0.18
12	0.22
13	0.27
14	0.31

--------Class: Node--------

Name: POND5 Base Flow(cfs): 0 Init Stage(ft): 10.5
Group: BASE Length(ft): 0 Warn Stage(ft): 14
Comment: POND5

Stage(ft)	Area(ac)
10.5	0.42
11	0.45
12	0.51
13	0.57
14	0.64

--------Class: Node--------

Name: POND6 Base Flow(cfs): 0 Init Stage(ft): 12
Group: BASE Length(ft): 0 Warn Stage(ft): 15
Comment: POND6

Stage(ft)	Area(ac)
12	0.21
13	0.25
14	0.29
15	0.33

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PARKHILL PLACE-PHASE 2

********** Input Report **********

--------Class: Basin--------

Basin: POST1 Node: POND1 Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 8.4
Area(ac): 18.24 Concentration Time(min): 18
Curve #: 77 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO POND #1

--------Class: Basin--------

Basin: POST2 Node: POND2 Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 8.4
Area(ac): 12 Concentration Time(min): 24
Curve #: 88 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO POND #2

--------Class: Basin--------

Basin: POST3 Node: POND3 Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 8.4
Area(ac): 7.41 Concentration Time(min): 24
Curve #: 88 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO POND #3

--------Class: Basin--------

Basin: POST4 Node: POND4 Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 8.4
Area(ac): 12.51 Concentration Time(min): 40
Curve #: 88 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO POND #4

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PARKHILL PLACE-PHASE 2

********** Input Report **********

--------Class: Basin--------

Basin: POST5 Node: POND5 Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 6.4
Area(ac): 11.08 Concentration Time(min): 40
Curve #: 80 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO WETLAND, POND #5

--------Class: Basin--------

Basin: POST6 Node: POND6 Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 6.4
Area(ac): 6.19 Concentration Time(min): 27
Curve #: 87 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO POND 6

--------Class: Basin--------

Basin: POST7 Node: BOX Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 6.4
Area(ac): 1.51 Concentration Time(min): 15
Curve #: 78 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO CURB INLET

--------Class: Basin--------

Basin: POST8 Node: DITCH Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 6.4
Area(ac): 1.3 Concentration Time(min): 15
Curve #: 74 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO I-26 DITCH

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PARKHILL PLACE-PHASE 2

********** Input Report **********

--------Class: Basin--------

Basin: POST9 Node: DITCH Status: On Site Type: SCS Unit Hydr
Group: BASE
Unit Hydrograph: UH323 Peak Factor: 323
Rainfall File: SCSIII Storm Duration(hrs): 24
Rainfall Amount(in): 6.4
Area(ac): 2.53 Concentration Time(min): 15
Curve #: 84 Lag Time(hrs): 0
DCIA(%): 0

RUNOFF TO DITCH

--------Class: Pipe--------

Name: PIPE2 From Node: BOX Length(ft): 283
Group: BASE To Node: POND1 Count: 1

	UPSTREAM	DOWNSTREAM		
			Equation:	Average K
Geometry:	Circular	Circular	Flow:	Both
Span(in):	30	30	Entrance Loss Coef:	0.25
Rise(in):	30	30	Exit Loss Coef:	0.25
Invert(ft):	22.47	18.3	Bend Loss Coef:	0
Manning's N:	0.013	0.013	Outlet Cntrl Spec:	Use dn or tw
Top Clip(in):	0	0	Inlet Cntrl Spec:	Use dn
Bottom Clip(in):	0	0	Stabilizer Option:	None

Upstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

Downstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

EQUALIZER PIPE CONNECTING CURB INLETS TO POND #1

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PARKHILL PLACE-PHASE 2

********** Input Report **********

--------Class: Pipe--------

Name: PIPE5 From Node: POND4 Length(ft): 142
Group: BASE To Node: DITCH Count: 2

	UPSTREAM	DOWNSTREAM		
			Equation:	Average K
Geometry:	Circular	Circular	Flow:	Both
Span(in):	24	24	Entrance Loss Coef:	0.25
Rise(in):	24	24	Exit Loss Coef:	0.25
Invert(ft):	10.5	10.3	Bend Loss Coef:	0
Manning's N:	0.013	0.013	Outlet Cntrl Spec:	Use dn or tw
Top Clip(in):	0	0	Inlet Cntrl Spec:	Use dn
Bottom Clip(in):	0	0	Stabilizer Option:	None

Upstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

Downstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

EQUALIZER PIPE CONNECTING POND3 & POND1

--------Class: Pipe--------

Name: PIPE6 From Node: POND5 Length(ft): 48
Group: BASE To Node: POND4 Count: 2

	UPSTREAM	DOWNSTREAM		
			Equation:	Average K
Geometry:	Circular	Circular	Flow:	Both
Span(in):	30	30	Entrance Loss Coef:	0.25
Rise(in):	30	30	Exit Loss Coef:	0.25
Invert(ft):	10	10	Bend Loss Coef:	0
Manning's N:	0.013	0.013	Outlet Cntrl Spec:	Use dn or tw
Top Clip(in):	0	0	Inlet Cntrl Spec:	Use dn
Bottom Clip(in):	0	0	Stabilizer Option:	None

Upstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

Downstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

OUTLET PIPE FOR POND #5 TO WETLAND

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PARKHILL PLACE-PHASE 2

********** Input Report **********
--------Class: Pipe--------

Name: PIPE7 From Node: POND5 Length(ft): 42
Group: BASE To Node: DITCH Count: 1

	UPSTREAM	DOWNSTREAM		
			Equation:	Average K
Geometry:	Circular	Circular	Flow:	Both
Span(in):	24	24	Entrance Loss Coef:	0.25
Rise(in):	24	24	Exit Loss Coef:	0.25
Invert(ft):	12	11.88	Bend Loss Coef:	0
Manning's N:	0.013	0.013	Outlet Cntrl Spec:	Use dn or tw
Top Clip(in):	0	0	Inlet Cntrl Spec:	Use dn
Bottom Clip(in):	0	0	Stabilizer Option:	None

Upstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

Downstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

EQUALIZER PIPE CONNECTING POND3 & POND1

--------Class: Drop Structure--------

Name: DRSTRUC1 From Node: POND1 Length(ft): 80
Group: BASE To Node: DITCH Count: 1

Outlet Cntrl Spec: Use dn or tw Inlet Cntrl Spec: Use dn
Upstream Geometry: Circular Downstream Geometry: Circular

	UPSTREAM	DOWNSTREAM
Span(in):	42	42
Rise(in):	42	42
Invert(ft):	19.3	18.84
Manning's N:	0.012	0.012
Top Clip(in):	0	0
Bottom Clip(in):	0	0

Entrance Loss Coef: 0.5 Flow: Both
Exit Loss Coef: 0 Equation: Aver Conveyance

Upstream FHWA Inlet Edge Description:
Circular CMP: Headwall 2 1
Downstream FHWA Inlet Edge Description:
Circular CMP: Projecting 2 3

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PARKHILL PLACE-PHASE 2

********** Input Report **********

*** Weir 1 of 2 for Drop Structure DRSTRUC1 *** [TABLE]

Count: 1 Bottom Clip(in): 0
Type: Mavis Top Clip(in): 0
Flow: Both Weir Discharge Coef: 3.2
Geometry: Rectangular Orifice Discharge Coef: 0.6

Span(in): 2 Invert(ft): 18.3
Rise(in): 24 Control Elev(ft): 999

*** Weir 2 of 2 for Drop Structure DRSTRUC1 *** [TABLE]

Count: 1 Bottom Clip(in): 0
Type: Mavis Top Clip(in): 0
Flow: Both Weir Discharge Coef: 3.2
Geometry: Rectangular Orifice Discharge Coef: 0.6

Span(in): 42 Invert(ft): 21.3
Rise(in): 12 Control Elev(ft): 24

--------Class: Drop Structure----------

Name: DRSTRUCZ From Node: POND2 Length(ft): 230
Group: BASE To Node: BOX Count: 1

Outlet Cntrl Spec: Use dn or tw Inlet Cntrl Spec: Use dn
Upstream Geometry: Circular Downstream Geometry: Circular

	UPSTREAM	DOWNSTREAM
Span(in):	30	30
Rise(in):	30	30
Invert(ft):	24	22.47
Manning's N:	0.012	0.012
Top Clip(in):	0	0
Bottom Clip(in):	0	0

Entrance Loss Coef: 0.6 Flow: Both
Exit Loss Coef: 0 Equation: Aver Conveyance

Upstream FHWA Inlet Edge Description:
Circular CMP: Headwall 2 1
Downstream FHWA Inlet Edge Description:
Circular CMP: Projecting 2 3

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PARKHILL PLACE-PHASE 2

********** Input Report **********

*** Weir 1 of 2 for Drop Structure DRSTRUC2 *** [TABLE]

Count: 1 Bottom Clip(in): 0
Type: Mavis Top Clip(in): 0
Flow: Both Weir Discharge Coef: 3.2
Geometry: Rectangular Orifice Discharge Coef: 0.6

Span(in): 18 Invert(ft): 24
Rise(in): 12 Control Elev(ft): 898

*** Weir 2 of 2 for Drop Structure DRSTRUC2 *** [TABLE]

Count: 1 Bottom Clip(in): 0
Type: Mavis Top Clip(in): 0
Flow: Both Weir Discharge Coef: 3.2
Geometry: Rectangular Orifice Discharge Coef: 0.6

Span(in): 28 Invert(ft): 25
Rise(in): 24 Control Elev(ft): 28

--------Class: Drop Structure----------

Name: DRSTRUC3 From Node: POND3 Length(ft): 30
Group: BASE To Node: DITCH Count: 1

Outlet Cntrl Spec: Use dn or tw Inlet Cntrl Spec: Use dn
Upstream Geometry: Circular Downstream Geometry: Circular

	UPSTREAM	DOWNSTREAM
Span(in):	24	24
Rise(in):	24	24
Invert(ft):	20	15.83
Manning's N:	0.012	0.012
Top Clip(in):	0	0
Bottom Clip(in):	0	0

Entrance Loss Coef: 0.5 Flow: Both
Exit Loss Coef: 0 Equation: Aver Conveyance

Upstream FHWA Inlet Edge Description:
Circular CMP: Headwall 2 1
Downstream FHWA Inlet Edge Description:
Circular CMP: Projecting 2 3

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PARKHILL PLACE-PHASE 2

********** Input Report **********

*** Weir 1 of 2 for Drop Structure DRSTRUC3 *** [TABLE]

Count: 1
Type: Mavis
Flow: Both
Geometry: Rectangular
Bottom Clip(in): 0
Top Clip(in): 0
Weir Discharge Coef: 3.2
Orifice Discharge Coef: 0.6

Span(in): 6
Rise(in): 18
Invert(ft): 20
Control Elev(ft): 999

*** Weir 2 of 2 for Drop Structure DRSTRUC3 *** [TABLE]

Count: 1
Type: Mavis
Flow: Both
Geometry: Rectangular
Bottom Clip(in): 0
Top Clip(in): 0
Weir Discharge Coef: 3.2
Orifice Discharge Coef: 0.6

Span(in): 24
Rise(in): 18
Invert(ft): 21.5
Control Elev(ft): 23

--------Class: Simulation--------

N:\3438\CDOC\ADICPR\POST\2-YEAR
Execution: Both
Header: PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (POST DEVELOPMENT)
8/8/00 REVISED 11/7/01

---------HYDRAULICS----------HYDROLOGY----------

Max Delta Z (ft): 0.2
Delta Z Factor: 0.02
Time Step Optimizer: 5
Drop Structure Optimizer: 5
Sim Start Time(hrs): 0
Sim End Time(hrs): 30
Min Calc Time(sec): 0.2
Max Calc Time(sec): 60

Override Defaults: Yes
Storm Dur(hrs): 24
Rain Amount(in): 4.8
Rainfall File: SCSIII

To Hour:	PInc(min):
8	30
10	15
17	15
20	30
30	30

To Hour:	PInc(min):
30	5

---------GROUP SELECTIONS----------

+ BASE [12/10/01]

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PARKHILL PLACE-PHASE 2

********** Input Report **********

--------Class: Simulation----------

R:\3438\CDOC\ADICPR\POST\10-YEAR
Execution: Both
Header: PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (POST DEVELOPMENT)
6/9/00 REVISED 11/7/01

---------HYDRAULICS----------HYDROLOGY----------

Max Delta Z (ft): 0.2
Delta Z Factor: 0.02
Time Step Optimizer: 5
Drop Structure Optimizer: 5
Sim Start Time(hrs): 0
Sim End Time(hrs): 30
Min Calc Time(sec): 0.2
Max Calc Time(sec): 60

Override Defaults: Yes
Storm Dur(hrs): 24
Rain Amount(in): 6.8
Rainfall File: SCSIII

To Hour:	Pinc(min):	To Hour:	Pinc(min):
8	30	30	5
10	15		
17	15		
20	30		
30	30		

---------GROUP SELECTIONS----------

+ BASE [12/10/01]

--------Class: Simulation----------

R:\3438\CDOC\ADICPR\POST\25-YEAR
Execution: Both
Header: PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (POST DEVELOPMENT)
6/9/00 REVISED 11/7/01

---------HYDRAULICS----------HYDROLOGY----------

Max Delta Z (ft): 0.2
Delta Z Factor: 0.02
Time Step Optimizer: 5
Drop Structure Optimizer: 5
Sim Start Time(hrs): 0
Sim End Time(hrs): 30
Min Calc Time(sec): 0.2
Max Calc Time(sec): 60

Override Defaults: Yes
Storm Dur(hrs): 24
Rain Amount(in): 7.6
Rainfall File: SCSIII

To Hour:	Pinc(min):	To Hour:	Pinc(min):
8	30	30	5
10	15		
17	15		
20	30		
30	30		

---------GROUP SELECTIONS----------

+ BASE [12/10/01]

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PARKHILL PLACE-PHASE 2

********** Input Report **********

--------Class: Simulation--------

R:\3438\CDOC\ADICPR\POST\50-YEAR
Execution: Both
Header: PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (POST DEVELOPMENT)
8/8/00 REVISED 11/7/01

---------HYDRAULICS----------HYDROLOGY----------

Max Delta Z (ft): 0.2
Delta Z Factor: 0.02
Time Step Optimizer: 5
Drop Structure Optimizer: 5
Sim Start Time(hrs): 0
Sim End Time(hrs): 30
Min Calc Time(sec): 0.2
Max Calc Time(sec): 60

Override Defaults: Yes
Storm Dur(hrs): 24
Rain Amount(in): 8.8
Rainfall File: SCSIII

To Hour:	Pipe(min):
8	30
10	15
17	15
20	30
30	30

To Hour:	Pipe(min):
30	5

---------GROUP SELECTIONS----------

+ BASE [12/10/01]

--------Class: Simulation--------

R:\3438\CDOC\ADICPR\POST\100-YEAR
Execution: Both
Header: PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (POST DEVELOPMENT)
8/8/00 REVISED 11/7/01

---------HYDRAULICS----------HYDROLOGY----------

Max Delta Z (ft): 0.2
Delta Z Factor: 0.02
Time Step Optimizer: 5
Drop Structure Optimizer: 5
Sim Start Time(hrs): 0
Sim End Time(hrs): 30
Min Calc Time(sec): 0.2
Max Calc Time(sec): 60

Override Defaults: Yes
Storm Dur(hrs): 24
Rain Amount(in): 10
Rainfall File: SCSIII

To Hour:	Pipe(min):
8	30
10	15
17	15
20	30
30	30

To Hour:	Pipe(min):
30	5

---------GROUP SELECTIONS----------

+ BASE [12/10/01]

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PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (POST DEVELOPMENT)
6/9/00 REVISED 11/7/01

********** Node Maximum Comparisons **********

(Time units - hours)

Sim Name	Max Time Conditions	Max Stage (ft)	Warning Stage (ft)	Max Delta Stage (ft)	Max Surface Area (sf)	Max Time Inflow	Max Inflow (cfs)	Max Time Outflow	Max Outflow (cfs)
*** Node Name: BOX		Group: BASE							
2-YEAR	0.00	24.75	28.00	-0.0130	351.61	12.67	8.87	0.00	19.93
10-YEAR	0.00	24.75	28.00	-0.0130	351.61	12.70	18.13	0.00	19.93
25-YEAR	12.88	24.79	28.00	-0.0130	350.34	12.71	23.75	12.39	38.76
50-YEAR	13.07	25.49	28.00	-0.0130	3286.51	12.58	30.32	12.27	38.83
100-YEAR	13.28	26.02	28.00	-0.0130	5611.74	12.39	32.65	12.18	37.91
*** Node Name: DITCH		Group: BASE							
2-YEAR	12.00	10.88	11.00	-0.0028	314.43	12.98	38.09	0.00	0.00
10-YEAR	12.00	10.88	11.00	-0.0028	323.33	12.88	74.17	0.00	0.00
25-YEAR	12.00	10.88	11.00	-0.0028	314.68	12.88	92.80	0.00	0.00
50-YEAR	12.00	10.88	11.00	-0.0028	300.71	12.78	107.38	0.00	0.00
100-YEAR	12.00	10.88	11.00	-0.0028	272.68	12.67	125.69	0.00	0.00
*** Node Name: POND1		Group: BASE							
2-YEAR	15.10	21.68	24.00	0.0035	68512.73	12.33	34.42	15.10	8.68
10-YEAR	13.84	22.72	24.00	0.0040	71999.39	12.33	61.57	13.84	18.23
25-YEAR	13.69	23.42	24.00	0.0040	74585.33	12.39	83.85	13.69	23.69
50-YEAR	13.73	24.08	24.00	0.0040	77439.27	12.28	107.74	13.73	27.45
100-YEAR	13.82	24.68	24.00	0.0040	80002.66	12.25	118.50	13.92	30.66
*** Node Name: POND2		Group: BASE							
2-YEAR	12.68	25.82	26.00	0.0040	29560.88	12.33	20.99	12.68	8.21
10-YEAR	12.83	26.58	26.00	0.0038	31530.13	12.33	33.28	12.84	17.38
25-YEAR	12.81	26.95	26.00	0.0035	32530.81	12.33	40.61	12.81	21.68
50-YEAR	12.80	27.22	26.00	0.0033	33339.23	12.33	46.71	12.60	26.89
100-YEAR	12.95	27.79	26.00	0.0035	35083.54	12.33	54.00	12.38	28.32
*** Node Name: POND3		Group: BASE							
2-YEAR	13.05	21.82	23.00	0.0038	21752.31	12.33	13.98	13.05	5.47
10-YEAR	12.88	22.48	23.00	0.0037	23414.97	12.33	21.25	12.88	10.33
25-YEAR	12.84	22.80	23.00	0.0033	24312.58	12.33	25.77	12.84	13.17
50-YEAR	12.82	23.08	23.00	0.0030	25027.89	12.33	28.51	12.82	15.48
100-YEAR	12.82	23.38	23.00	0.0030	25811.87	12.33	33.99	12.87	21.49
*** Node Name: POND4		Group: BASE							
2-YEAR	13.08	12.89	14.00	0.0038	11103.73	12.58	22.66	13.08	20.84
10-YEAR	12.88	13.40	14.00	0.0040	12475.44	12.88	38.93	12.88	35.15
25-YEAR	12.87	13.85	14.00	0.0039	13252.02	12.87	44.41	12.87	41.87
50-YEAR	12.99	14.23	14.00	0.0037	13917.59	12.65	50.15	12.99	46.53
100-YEAR	13.02	14.89	14.00	0.0038	14731.26	12.58	56.72	13.02	51.88
*** Node Name: POND5		Group: BASE							
2-YEAR	13.07	12.71	14.00	0.0037	24090.08	12.50	18.42	13.20	10.27
10-YEAR	12.98	13.48	14.00	0.0039	26283.98	12.50	25.10	13.18	17.31
25-YEAR	13.00	13.95	14.00	0.0035	27731.27	12.50	30.28	13.28	20.58

50-YEAR	13.02	14.38	14.00	0.0038	28970.98	12.60	34.55	13.32	23.04

Advanced Interconnected Channel & Pond Routing (ICPR Ver 2.11) [2]
Copyright 1995, Streamline Technologies, Inc.

PARKHILL PLACE PHASE 2
MULTIPLE STORM EVENTS (POST DEVELOPMENT)
8/9/00 REVISED 11/7/01

********** Node Maximum Comparisons **********

(Time units - hours)

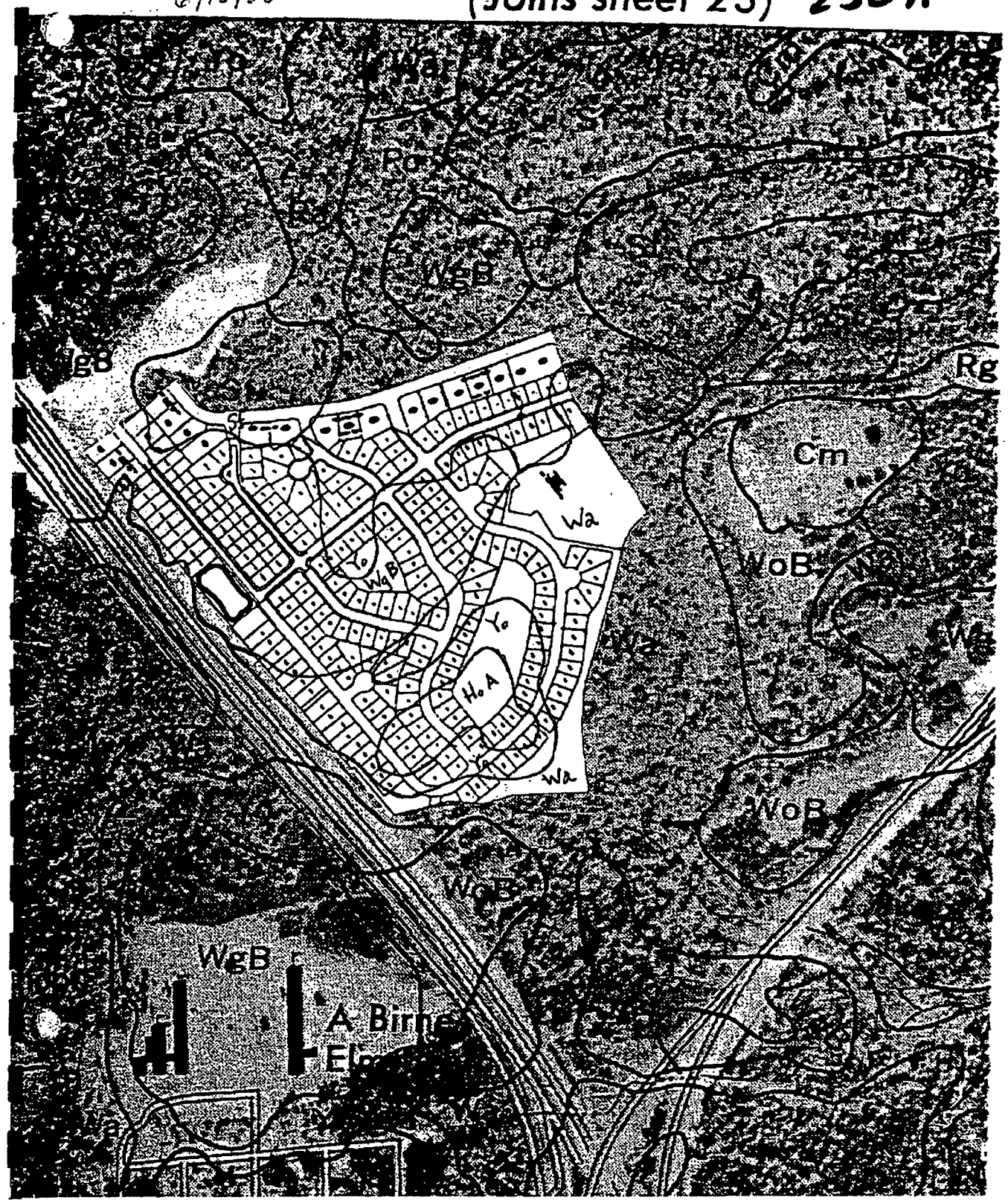
Sim Name	Max Time Conditions	Max Stage (ft)	Warning Stage (ft)	Max Delta Stage (ft)	Max Surface Area (sf)	Max Time Inflow	Max Inflow (cfs)	Max Time Outflow	Max Outflow (cfs)
100-YEAR	13.05	14.85	14.00	-0.0038	30485.88	12.50	38.87	13.38	25.77
*** Node Name: PONDS		Group: BASE							
2-YEAR	12.84	13.33	15.00	0.0035	11511.30	12.42	10.63	12.84	7.85
10-YEAR	12.84	13.84	15.00	0.0032	12361.88	12.42	18.48	12.84	12.27
25-YEAR	12.88	14.21	15.00	0.0030	13005.43	12.42	20.03	12.88	14.39
50-YEAR	12.81	14.39	15.00	-0.0033	13317.59	12.33	23.00	12.81	17.85
100-YEAR	12.59	14.80	15.00	-0.0040	13878.01	12.33	28.55	12.59	21.15

IV. DISCHARGE VELOCITIES (10 Year storm)

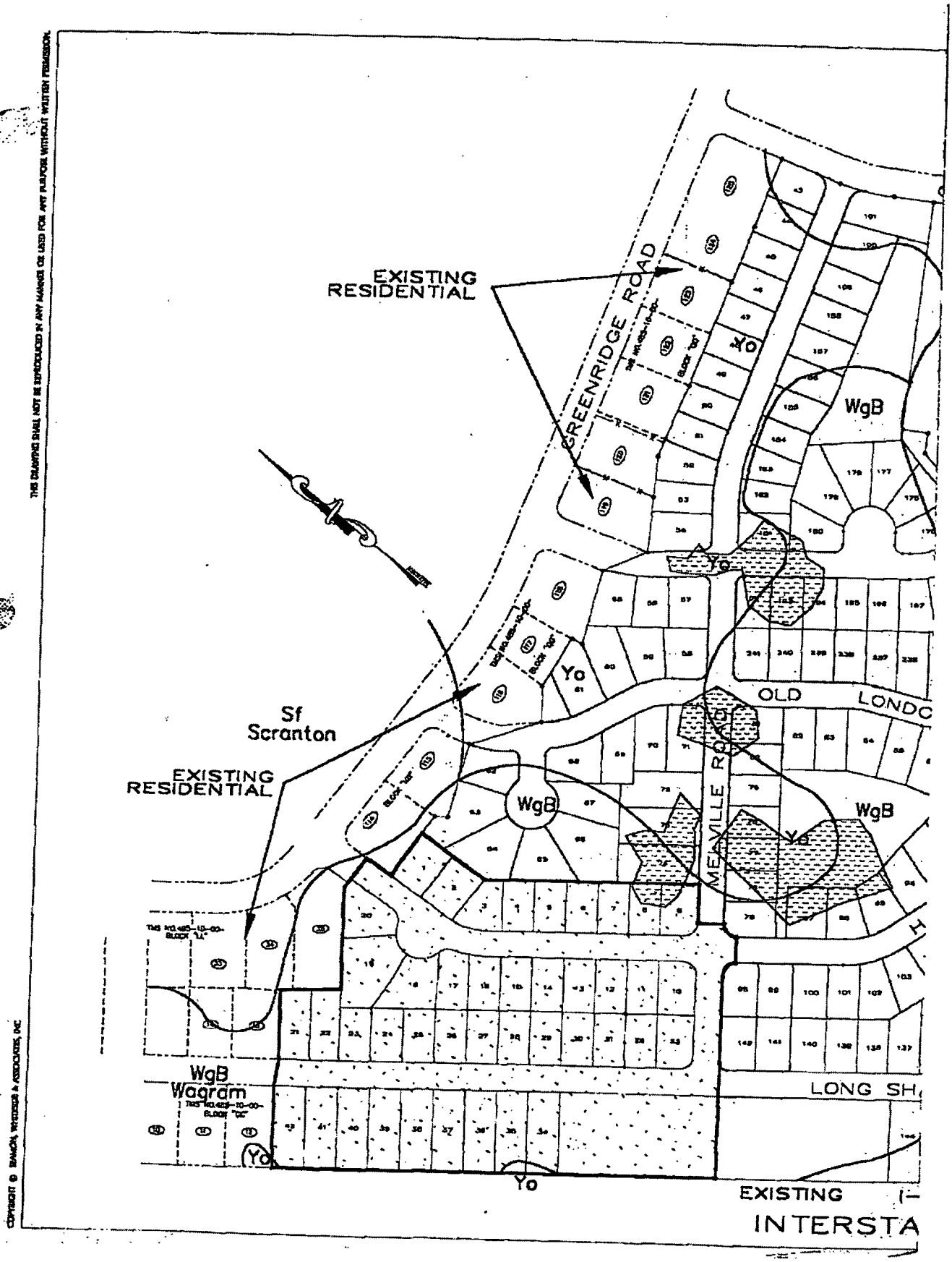
Pond 1 = 42" pipes (18.23 CFS) = 1.89 ft./sec.
Pond 3 = 24" pipe (10.33 CFS) = 3.29 ft./sec.
Pond 4 = Dual 24" pipe (35.15 CFS) = 5.60 ft./sec.
Pond 6 = 24" pipe (12.27 CFS) = 3.91 ft./sec.

OLINA — SHEET NUMBER 27

6/10/00 (Joins sheet 23) 250%



R000230



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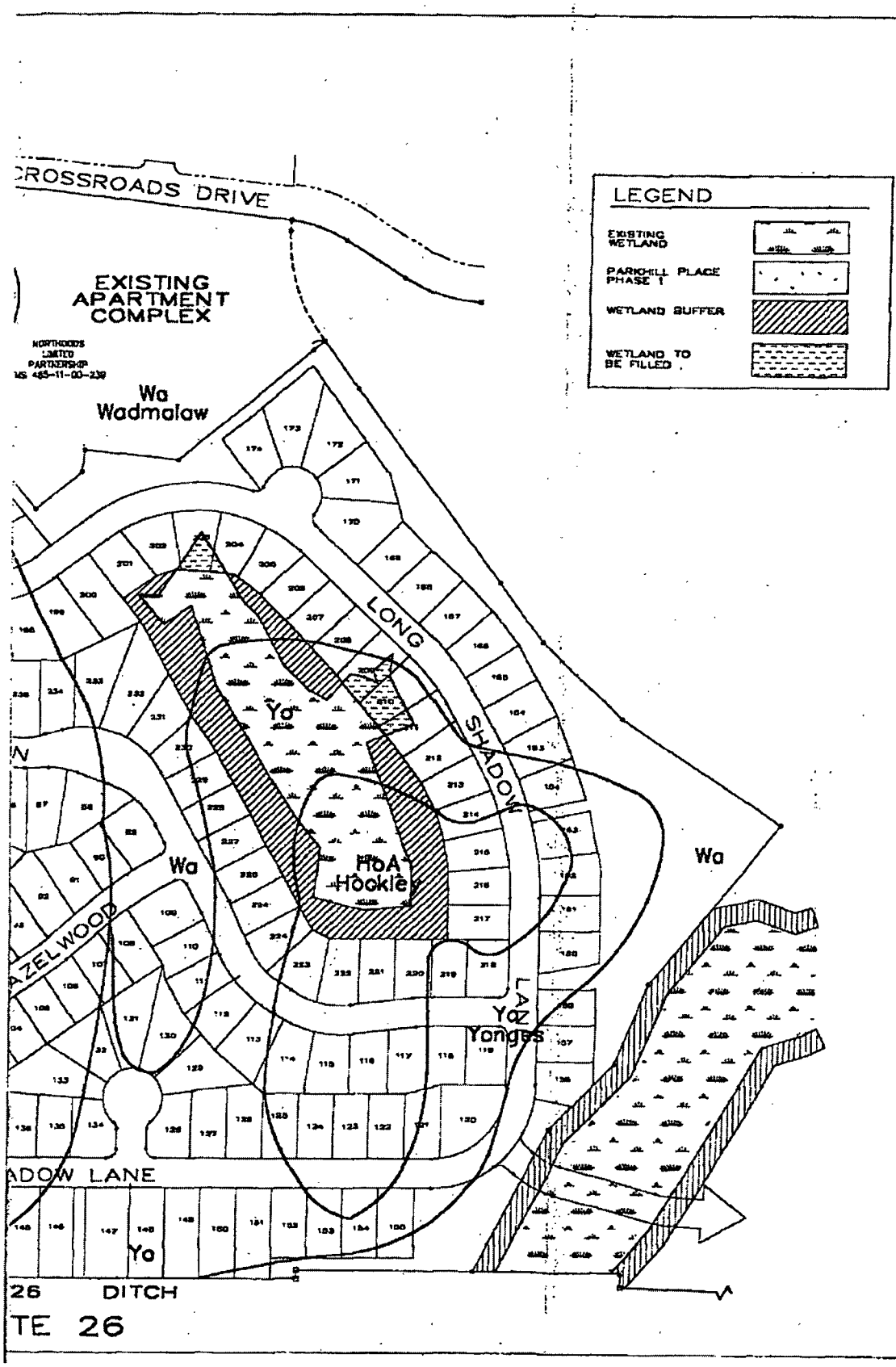

SEAMON, WHITESIDE & ASSOCIATES, INC.

LANDSCAPE ARCHITECTURE
CIVIL ENGINEERING
PLANNING

703 WANDO PARK BLVD.
SUITE 100
MOUNT PLEASANT, SC

PARKHILL PLACE
BY
CENTEX HOMES
NORTH CHARLESTON, SOUTH CAROLINA

DRAWN BY:
CHECKED BY:

PLOT SCALE:
1 = N/S.
SERVER FILENAME:

PROJECT:
DATE: JULY 18 2000

SOILS PLAN

R000232

PARKHILL PLACE-PHASE II
NORTH CHARLESTON

3439
07/17/2000
GF

TIME OF CONCENTRATION

Mannings Roughness Coefficient

Dense growth	0.4 to 0.5	Sparse Veget	0.05 to 0.13
Pasture	0.3 to 0.4	Bare clay	0.1 to 0.15
Lawns	0.2 to 0.3	Conc.-asph.	0.05 to 0.1
Bluegrass sod	0.1 to 0.2	Wood light	0.4
Prairie grass	0.05 to 0.13	Woods dense	0.8

Charleston Rainfall /10 min.

2 year storm	5.35
5 year storm	6.01
10 year storm	6.54
25 year storm	7.35
50 year storm	8.00

Predevelopment Tc = 0.93 {[L^0.6 * N^0.6] / [I^0.4 * s^0.3]}
Runoff to I-26 Drainage Ditch

Tc = 0.93 {[L^0.6 * N^0.6] / [I^0.4 * s^0.3]} Kinematic Wave/Sheet Flow			Tc = (L/3600V) *60 Shallow Concentrated Flow			Tc = L/(60*V) Ditch/Swale		
Tc 1			*Tc 2*			*Tc 3*		
length	300	L	length	900	L	length	0	L
Mannings	0.5	N	velocity	1.25	V		60	
rainfall	6.64	I					1.25	V
slope	0.01	s						
Tc 1 =	35.31		Tc 2 =	12.00		Tc 3 =	0.00	

Total time of concentration = 47.31

Predevelopment Tc = 0.93 {[L^0.6 * N^0.6] / [I^0.4 * s^0.3]}
Runoff to Wetland/Ditch

Tc = 0.93 {[L^0.6 * N^0.6] / [I^0.4 * s^0.3]} Kinematic Wave/Sheet Flow			Tc = (L/3600V) *60 Shallow Concentrated Flow			Tc = L/(60*V) Ditch/Swale		
Tc 1			*Tc 2*			*Tc 3*		
length	300	L	length	700	L	length	0	L
Mannings	0.6	N	velocity	1.25	V		60	
rainfall	6.54	I					1.25	V
slope	0.018	s						
Tc 1 =	33.02		Tc 2 =	9.33		Tc 3 =	0.00	

Total time of concentration = 42.36

Predevelopment Runoff to Ditch — Tc = 0.93 {[L^0.6 * N^0.6] / [I^0.4 * s^0.3]}

Tc = 0.93 {[L^0.6 * N^0.6] / [I^0.4 * s^0.3]} Kinematic Wave/Sheet Flow			Tc = (L/3600V) *60 Shallow Concentrated Flow			Tc = L/(60*V) Ditch/Swale		
Tc 1			*Tc 2*			*Tc 3*		
length	300	L	length	200	L	length	0	L
Mannings	0.6	N	velocity	1.25	V		60	
rainfall	6.54	I					1.25	V
slope	0.018	s						
Tc 1 =	33.02		Tc 2 =	2.67		Tc 3 =	0.00	

Total time of concentration = 35.69

Predevelopment Runoff to Pipe — Tc = 0.93 {[L^0.6 * N^0.6] / [I^0.4 * s^0.3]}

Tc = 0.93 {[L^0.6 * N^0.6] / [I^0.4 * s^0.3]} Kinematic Wave/Sheet Flow			Tc = (L/3600V) *60 Shallow Concentrated Flow			Tc = L/(60*V) Ditch/Swale		
Tc 1			*Tc 2*			*Tc 3*		
length	300	L	length	350	L	length	0	L
Mannings	0.6	N	velocity	1.25	V		60	
rainfall	6.54	I					1.25	V
slope	0.015	s						
Tc 1 =	34.88		Tc 2 =	4.67		Tc 3 =	0.00	

Total time of concentration = 39.55

Post Developoment Pond #1

Tc = 0.93 {[L^0.6 * N^0.6] / [I^0.4 * s^0.3]} Kinematic Wave/ground			Tc = L/(60*V) Ditch/Swale			Tc = (L/2)/60 Pipe/Curb		
Tc 1			*Tc 2*			*Tc 3*		
length	74	L	length	0	L	length	850	L
Mannings	0.3	N		60			2	
rainfall	6.54	I		1.25	V		60	
slope	0.01	s						
Tc 1 =	11.22		Tc 2 =	0.00		Tc 3 =	7.08	

Total time of concentration = 18.31

Post Developoment Pond #2

Tc = 0.93 ([L^0.6 * N^0.6] / [i^0.4 * s^0.3]) Kinematic Wave/ground			Tc = L/(60*V) Ditch/Swale			Tc = (L/2)/60 Pipe/Curb		
Tc 1			***Tc 2***			***Tc 3***		
length	62	L	length	0	L	length	883	L
Mannings	0.3	N		60			2	
rainfall	6.54	i		1.25	V		60	
slope	0.01	s						
Tc 1 =	10.09		Tc 2 =	0.00		Tc 3 =	7.36	

Total time of concentration = **17.45**

Post Developoment Basin Pond #3

Tc = 0.93 ([L^0.6 * N^0.6] / [i^0.4 * s^0.3]) Kinematic Wave/ground			Tc = L/(60*V) Ditch/Swale			Tc = (L/2)/60 Pipe/Curb		
Tc 1			***Tc 2***			***Tc 3***		
length	193	L	length	0	L	length	504	L
Mannings	0.3	N		60			2	
rainfall	6.54	i		1.25	V		60	
slope	0.01	s						
Tc 1 =	19.95		Tc 2 =	0.00		Tc 3 =	4.20	

Total time of concentration = **24.15**

Post Developoment Pond #4

Tc = 0.93 ([L^0.6 * N^0.6] / [i^0.4 * s^0.3]) Kinematic Wave/ground			Tc = L/(60*V) Ditch/Swale			Tc = (L/2)/60 Pipe/Curb		
Tc 1			***Tc 2***			***Tc 3***		
length	255	L	length	0	L	length	0	L
Mannings	0.8	N		60			2	
rainfall	6.54	i		1.25	V		60	
slope	0.004	s						
Tc 1 =	55.90		Tc 2 =	0.00		Tc 3 =	0.00	

Total time of concentration = **55.90**

Post Developoment Pond #5

Tc = 0.93 [[L^0.6 * N^0.6] / [i^0.4 * s^0.3]] Kinematic Wave/ground			Tc = L/(60*V) Ditch/Swale			Tc = (L/2)/60 Pipe/Curb		
Tc 1			***Tc 2***			***Tc 3***		
length	84	L	length	0	L	length	1586	L
Mannings	0.3	N		60			2	
rainfall	6.54	i		1.25	V		60	
slope	0.005	s						
Tc 1 =	14.91		Tc 2 =	0.00		Tc 3 =	13.22	

Total time of concentration = **28.12**

Post Developoment Pond #6

Tc = 0.93 [[L^0.6 * N^0.6] / [i^0.4 * s^0.3]] Kinematic Wave/ground			Tc = L/(60*V) Ditch/Swale			Tc = (L/2)/60 Pipe/Curb		
Tc 1			***Tc 2***			***Tc 3***		
length	160	L	length	0	L	length	1025	L
Mannings	0.3	N		60			2	
rainfall	6.54	i		1.25	V		60	
slope	0.009	s						
Tc 1 =	18.40		Tc 2 =	0.00		Tc 3 =	8.54	

Total time of concentration = **26.94**

D H E C
PROMOTE PROTECT PROSPER
S.C. Department of Health and Environmental Control

Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 747-4323 Fax (843) 744-8772

Permit #10-01-0125 Coast ID # 5326

STORMWATER MANAGEMENT AND SEDIMENT REDUCTION SITE INSPECTION REPORT

DATE/TIME : 6/27/02 1115
PROJECT NAME : PARKHILL PLACE
COUNTY : CHARLESTON **WEATHER :** OVERCAST
INSPECTED BY: Richard V. Geer **FOLLOW-UP:** ☐ Yes ☑ No
Type of Inspection: ☐ Initiation of Construction ☑ During Construction/Compliance ☐ Final

CHECK ONE OR MORE:

1. DOES THIS SITE HAVE NPDES COVERAGE? ☑ YES ☐ NO
2. ARE THE APPROVED PLANS ONSITE? ☐ YES ☐ NO
3. ARE NPDES INSPECTION AND MAINTENANCE REPORTS COMPLETE ? ☐ YES ☐ NO ☐ N/A
4. INSTALLATION OF STORMWATER DEVICES (PONDS, SWALES, ETC.)? ☑ YES ☐ NO
   A.) PROPER INSTALLATION OF STORMWATER MANAGEMENT DEVICES? ☑ YES ☐ NO
   B.) PROPER MAINTENANCE OF STORMWATER MANAGEMENT DEVICES? ☑ YES ☐ NO
5. INSTALLATION OF SEDIMENT CONTROL (SILT FENCE, CHECK DAMS, ETC.)? ☐ YES ☑ NO
   A.) PROPER INSTALLATION OF SEDIMENT CONTROL DEVICES? ☐ YES ☑ NO
   B.) PROPER MAINTENANCE OF SEDIMENT CONTROL DEVICES? ☐ YES ☑ NO
6. DISTURBED AREA STABILIZED? ☐ YES ☑ NO (NPDES definition of 70% vegetative cover/acre)
   IF YES, BY WHAT METHOD _____
7. OFFSITE IMPACT TO: ☑ NONE ☐ WETLAND ☐ STREAM/WATERBODY/CRITICAL AREA
   ☐ ROW ☐ ADJOINING PROPERTY OWNER ☐ OTHER _____

COMMENTS: SILT FENCE IN NEED OF MAINTENENCE IN MANY AREAS, CONSTRUCTION EXITS NOT INSTALLED OR MAINTAINED IN SOME PLACES, STREET CLEANING & INLET PROTECTION MAINTENENCE NECESSARY IN EARLIER PHASES, POND BANKS NEED STABILIZATION

VIOLATIONS CITED: _____

CORRECTIVE ACTIONS: MAINTAIN SILT FENCE, CONSTRUCTION EXITS, INLET PROTECTION & CLEAN STREETS. GRASS POND BANKS ASAP.

TIME ALLOWED FOR CORRECTIVE ACTION: 2 WEEKS

ENFORCEMENT ACTION: _____

ENGINEER/FIRM: SEAMON WHITESIDE CONTRACTOR: _____

REPRESENTATIVES PRESENT: T. HUNTER PHOTOS TAKEN: Yes or (No)

OCRM PROJECT MANAGER: Richard Geer

Stormwater Management & Sediment Reduction Permitting and Coastal Zone Management Program Consistency Determination Bureau of Ocean and Coastal Resource Management - SCDHEC

Project Name: _____

Consistency Determination:

A. Project Consistent with: ✓ SCCMP ✓ S.C. Stormwater Management Act
B. Project Consistent with: ___ SCCMP ___ S. C. Stormwater Management Act after revisions
C. Project inconsistent with: ___ SCCMP ___ S.C. Stormwater Management Act

I. Brief Project Description and Purpose:
residential subdivision

II. Brief Description of Stormwater Management & Sediment Reduction System(s):
detention ponds, rip rap, silt fence

III. Summary of Public and Agency Comments (if none, so indicate):

A. (Commentor) (Date of comment) (Comment summary)

IV. Stormwater and Sediment Reduction Assessment:

A. Does the project meet the minimum requirements of the S.C. Stormwater Management & Sediment Reduction Act (if no, explain why not)? yes

B. Does this project require NPDES general permit coverage? yes

C. Is a Stormwater Master Plan required & if so has one been submitted? yes

V. Coastal Zone Management Assessment

A. Does the project impact any SCCMP-defined resources, including GAPC's (if so describe)? no

EXHIBIT 3 KHS/23/18

B. Does the project meet Wetland Master Planning Policy (explain)? yes

C. Is a dock master plan required (if so, why)? no

D. Is a critical area permit required (if so, describe)? no

VI. Conclusions (Describe how coastal resource impacts, if any, are being addressed. If the project is inconsistent with coastal zone management policy, list (A) specific policies, (B) specific reason project is inconsistent, (C) project modifications for bringing the project into consistency):

VII. Plan Review by: Brett White (name) 8/28/0 (date)

VIII. Approved by: Brett White (name) 8/28/0 (date)

IX. Notes:

4984

P/N 10-00-02 S/D 7-31-00

D H E C

PROMOTE PROTECT PROSPER

STANDARD APPLICATION FORM FOR CONSTRUCTION SITES
DISTURBING MORE THAN 2 ACRES
SOUTH CAROLINA DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL
STORMWATER MANAGEMENT
(See Reverse for Instructions)

Submission of this application constitutes notice that the party identified in Section 2 of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with construction activity in the State of South Carolina. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit.

ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

Section 1

DATE: 14 JUNE 2000

1. FACILITY NAME OR PROJECT NAME: PARK HILL PLACE PHASE 2A & 2B
   COUNTY: CHARLESTON CITY/TOWN: NORTH CHARLESTON
   LOCATION (also shown on location map): GREENRIDGE ROAD
   LATITUDE: 32°56'58" LONGITUDE: 80°02'02"
   TAX MAP #: 484-00-00-079 USGS QUADNAME: LADSON

2. NEAREST RECEIVING WATERBODY: EXISTING DITCH @ S END OF PROPERTY
   DISTANCE TO NEAREST RECEIVING WATERBODY: 50'
   NEXT KNOWN RECEIVING WATERBODY: GOOSE CREEK RESERVOIR

Section 2

3. PROPERTY OWNER OF RECORD: CENTEX HOMES
   ADDRESS: 2430 MAIL DRIVE, SUITE 150, N. CHARLESTON, SC 29406
   PHONE (DAY): 740-7270 (NIGHT): (FAX):

4. PERSON FINANCIALLY RESPONSIBLE FOR THE LAND DISTURBING ACTIVITY: SAME AS ABOVE
   (if different than above)
   ADDRESS: (NIGHT): (FAX):
   PHONE (DAY):

5. AGENT OR CONTACT PERSON (if applicable): N/A
   ADDRESS:
   PHONE (DAY): (FAX): (MOBILE):

6. ENGINEER, TECHNICAL REPRESENTATIVE OR FIRM: SEAMON, WHITESIDE + ASSOCIATES, INC.
   ADDRESS: 508 WANDO PARK BLVD #100, MT. PLEASANT, SC 29464
   PHONE (DAY): 884-1667 (FAX): 884-6944 (MOBILE):

7. CONTRACTOR OR OPERATOR (if known): N/A
   ADDRESS:
   PHONE (DAY): (NIGHT): (MOBILE):

Section 3

8. SIZE, TOTAL (acres): 74.14 SURFACE AREA OF LAND DISTURBANCE (acres): 20

9. IS THIS PART OF A LARGER COMMON PLAN FOR DEVELOPMENT OR SALE? ~~NO~~ YES
   IF YES, WHAT IS THE STATE PERMIT NUMBER? ~~N/A~~ SC [illegible]
   WHAT IS THE NPDES PERMIT NUMBER (if applicable)? N/A
   HAS A NOTICE OF TERMINATION BEEN SUBMITTED? N/A

10. SIC CODE: 1521 (SIC code only required if site disturbs 5 acres or more)
    IS THE SITE LOCATED ON INDIAN LANDS? (if site disturbs 5 or more acres) NO

11. TYPE OF PROJECT & FEES (please circle the type of activity):
    a. Federal - State - Local - School (Exempt from STATE fees, NPDES fee may apply):
    b. Industrial - Commercial - Residential - Part of a Larger Common Plan for Development or Sale ($50 per disturbed acre, max. $1,000 state fee per project): $1,000
    (In addition a $125 NPDES administration fee will be required on all Projects disturbing 5 acres or more)

    TOTAL FEE: $ 1,125.00

JUN 18 2000
DHEC-OCRM
CHARLESTON OFFICE

DHEC 3206 (07/1998)

EXHIBIT 4
R000240
KH 5/23/13

PENGAD 800-631-6989

12. START DATE: Augus 20 COMPLETION DATE: MARCH '01

13. ARE THERE ANY FRESHWATER WETLANDS LOCATED ON THE PROPERTY? YES

IF YES, HAVE THE WETLANDS BEEN DELINEATED? YES

ARE ANY WETLANDS BEING IMPACTED BY THIS PROJECT? YES

14. ARE THERE ANY EXISTING FLOODING PROBLEMS IN THE SURROUNDING AREAS? NO

Section 4

CERTIFICATION

15. I HEREBY CERTIFY THAT ALL LAND DISTURBING CONSTRUCTION AND ASSOCIATED ACTIVITY PERTAINING TO THIS SITE SHALL BE ACCOMPLISHED PURSUANT TO AND IN KEEPING WITH THE TERMS AND CONDITIONS OF THE APPROVED PLANS. I ALSO CERTIFY THAT A RESPONSIBLE PERSON WILL BE ASSIGNED TO THE PROJECT FOR DAY-TO-DAY CONTROL. I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHERED AND EVALUATED THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.

WALT D. MARTIN
PRINTED NAME
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

SIGNATURE
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

16. I HEREBY GRANT AUTHORIZATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND/OR THE LOCAL IMPLEMENTING AGENCY THE RIGHT OF ACCESS TO THE SITE AT ALL TIMES FOR THE PURPOSE OF ON SITE INSPECTIONS DURING THE COURSE OF CONSTRUCTION AND TO PERFORM MAINTENANCE INSPECTIONS FOLLOWING THE COMPLETION OF THE LAND DISTURBING ACTIVITY.

WALT D. MARTIN
PRINTED NAME
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

SIGNATURE
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

17. DESIGNER CERTIFICATION - FIVE COPIES OF THE PLANS, ALL SPECIFICATIONS AND SUPPORTING CALCULATIONS, FORMS, AND REPORTS ARE HEREWITH SUBMITTED AND MADE A PART OF THIS APPLICATION. I HAVE PLACED MY SIGNATURE AND SEAL ON THE DESIGN DOCUMENTS SUBMITTED SIGNIFYING THAT I ACCEPT RESPONSIBILITY FOR THE DESIGN OF THE SYSTEM. FURTHER, I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE DESIGN IS CONSISTENT WITH THE REQUIREMENTS OF TITLE 48, CHAPTER 14 OF THE CODE OF LAWS OF SC, 1976 AS AMENDED, AND PURSUANT REGULATION 72-300.

Steven D. Whitel
SIGNATURE

9437
S.C. REGISTRATION NUMBER

ENGINEER ✓
TIER B, LAND SURVEYOR
LANDSCAPE ARCHITECT

DHEC 3306 (07/1998)

5786
SD 8-12-01

DHEC
PROMOTE PROTECT PROSPER

STANDARD APPLICATION FORM FOR CONSTRUCTION SITES DISTURBING MORE THAN 2 ACRES
SOUTH CAROLINA DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL
STORMWATER MANAGEMENT
(See Reverse for Instructions) PIN 10-01-01-23

Submission of this application constitutes notice that the party identified in Section 2 of this form intend ... ted for storm water discharges associated with construction activity in the State of South Carolina. Becoming ... comply with the terms and conditions of the permit.

SW-PN
Qual flagged
WW/WS flagged
BJW

ALL NECESSARY INFORMATION MUST BE PROVIDED ON TH

Section 1

DATE: JANUARY 29, 2001

1. FACILITY NAME OR PROJECT NAME: PARKHILL PLACE PHASES
   COUNTY: CHARLESTON CITY/TO
   LOCATION (also shown on location map): GREENRIDGE RD.
   LATITUDE: 32° 56' 58" LONGITUDE: 80° 02' 02"
   TAX MAP #: 484-00-00-079 USGS QUADNAME: LADSON

2. NEAREST RECEIVING WATERBODY:
   DISTANCE TO NEAREST RECEIVING WATERBODY:
   NEXT KNOWN RECEIVING WATERBODY:

Section 2

3. PROPERTY OWNER OF RECORD: CENTEX HOMES
   ADDRESS: 2430 MALL DRIVE SUITE 450, N. CHARLESTON, SC 29406
   PHONE (DAY): 740-7270 (NIGHT): (FAX): 740-7280

4. PERSON FINANCIALLY RESPONSIBLE FOR THE LAND DISTURBING ACTIVITY: SAME AS ABOVE
   (If different than above)
   ADDRESS:
   PHONE (DAY): (NIGHT): (FAX):

5. AGENT OR CONTACT PERSON (If applicable): N/A
   ADDRESS:
   PHONE (DAY): (FAX): (MOBILE):

6. ENGINEER, TECHNICAL REPRESENTATIVE OR FIRM: SEAMON, WHITESIDE & ASSOCIATES, INC.
   ADDRESS: 508 WANDO PARK BLVD #100, MT. PLEASANT, SC 29464
   PHONE (DAY): 884-1667 (FAX): 884-6944 (MOBILE):

7. CONTRACTOR OR OPERATOR (If known): UNKNOWN
   ADDRESS:
   PHONE (DAY): (NIGHT): (MOBILE):

Section 3

8. SIZE, TOTAL (acres): 36.23 SURFACE AREA OF LAND DISTURBANCE (acres): 22.35

9. IS THIS PART OF A LARGER COMMON PLAN FOR DEVELOPMENT OR SALE? NO
   IF YES, WHAT IS THE STATE PERMIT NUMBER? N/A
   WHAT IS THE NPDES PERMIT NUMBER (If applicable)? N/A
   HAS A NOTICE OF TERMINATION BEEN SUBMITTED? N/A

10. SIC CODE: 1521 (SIC code only required if site disturbs 5 acres or more)
    IS THE SITE LOCATED ON INDIAN LANDS? (If site disturbs 5 or more acres) NO

11. TYPE OF PROJECT & FEES (please circle the type of activity):
    a. Federal - State - Local - School (Exempt from STATE fees, NPDES fee may apply):
    b. Industrial - Commercial - Residential - Part of a Larger Common Plan for Development or Sale ($50 per disturbed acre, max. $1,000 state fee per project): $1,000 —
    (In addition a $125 NPDES administration fee will be required on all Projects disturbing 5 acres or more)

    TOTAL FEE: $ 1,125.00

DHEC 3308 (07/1998)

EXHIBIT
5
FORM AD 600-521-0289
00002413 GEER

12. START DATE: MAY 1, 2001 COMPLETION DATE: 1/1/01

13. ARE THERE ANY FRESHWATER WETLANDS LOCATED ON THE PROPERTY? YES

IF YES, HAVE THE WETLANDS BEEN DELINEATED? YES

ARE ANY WETLANDS BEING IMPACTED BY THIS PROJECT? YES

14. ARE THERE ANY EXISTING FLOODING PROBLEMS IN THE SURROUNDING AREAS? NO

Section 4

CERTIFICATION

15. I HEREBY CERTIFY THAT ALL LAND DISTURBING CONSTRUCTION AND ASSOCIATED ACTIVITY PERTAINING TO THIS SITE SHALL BE ACCOMPLISHED PURSUANT TO AND IN KEEPING WITH THE TERMS AND CONDITIONS OF THE APPROVED PLANS. I ALSO CERTIFY THAT A RESPONSIBLE PERSON WILL BE ASSIGNED TO THE PROJECT FOR DAY-TO-DAY CONTROL. I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHERED AND EVALUATED THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.

WALT D. MARTIN
PRINTED NAME
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

x
SIGNATURE
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

16. I HEREBY GRANT AUTHORIZATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND/OR THE LOCAL IMPLEMENTING AGENCY THE RIGHT OF ACCESS TO THE SITE AT ALL TIMES FOR THE PURPOSE OF ON SITE INSPECTIONS DURING THE COURSE OF CONSTRUCTION AND TO PERFORM MAINTENANCE INSPECTIONS FOLLOWING THE COMPLETION OF THE LAND DISTURBING ACTIVITY.

WALT D. MARTIN
PRINTED NAME
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

x
SIGNATURE
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

17. DESIGNER CERTIFICATION - FIVE COPIES OF THE PLANS, ALL SPECIFICATIONS AND SUPPORTING CALCULATIONS, FORMS, AND REPORTS ARE HEREWITH SUBMITTED AND MADE A PART OF THIS APPLICATION. I HAVE PLACED MY SIGNATURE AND SEAL ON THE DESIGN DOCUMENTS SUBMITTED SIGNIFYING THAT I ACCEPT RESPONSIBILITY FOR THE DESIGN OF THE SYSTEM. FURTHER, I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE DESIGN IS CONSISTENT WITH THE REQUIREMENTS OF TITLE 48, CHAPTER 14 OF THE CODE OF LAWS OF SC, 1976 AS AMENDED, AND PURSUANT REGULATION 72-300.

SIGNATURE

9437
S.C. REGISTRATION NUMBER

ENGINEER ✓
TIER B, LAND SURVEYOR
LANDSCAPE ARCHITECT

DHEC 3308 (07/1998)

D H E C

PROMOTE PROTECT PROSPER
S.C. Department of Health and Environmental Control

Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 744-5838 FAX (843) 744-5847

May 15, 2001

Mr. Walt D. Martin
Centex Homes
2430 Mall Dr., Suite 450
N. Charleston, SC 29406

Re: Parkhill Place, Phases 3, 4, & 5
P/N# 10-01-01-25
Charleston County
Stormwater

Dear Mr. Martin:

The staff of the Bureau of Ocean and Coastal Resource Management (OCRM) certifies that the plans submitted for the above referenced project, dated October 29, 2000, meet the minimum requirements of the S.C. Storm Water Management and Sediment Reduction Act. This project is also found to be consistent with the S. C. Coastal Zone Management Program. In addition, this project has been granted coverage under the NPDES General Permit for stormwater discharges, permit # SCR100,000. Upon completion of construction activities at this site, a Notice of Termination (NOT) must be forwarded to the SCDHEC's Stormwater and Agricultural Permitting Section to terminate NPDES coverage. This land disturbance permit is contingent on the following special conditions:

(a) Included with the engineer's copy of this permit is an initiation of construction notice to be completed and returned to the appropriate OCRM staff person. Once this initiation of construction notice is received by OCRM, a construction placard will be issued. This placard must be placed in a conspicuous place at the construction site. No work can commence until the placard is posted.

(b) The responsible day-to-day contact must have an OCRM stamped set of plans on site at all times.

(c) Prior to final project approval, a registered professional responsible for construction will submit a statement certifying that construction is complete and in accordance with approved plans and specifications. The permit number must be referenced on this request. OCRM staff will then conduct a final site inspection for design compliance.

(d) The person responsible for maintenance shall perform or cause to be performed preventive maintenance of all completed storm water management practices to ensure proper functioning. OCRM will conduct periodic maintenance inspections.

EXHIBIT
6
1415/23/13 GEER
PENGAD 800-631-6989
P000244

(e) Approved plans remain valid for five (5) years from the date of an approval. Extensions or renewals of the plan approvals may be granted by the OCRM upon written request by the person responsible for the land disturbing activity.

(f) This approval is only applicable for the plans that were submitted and approved for this project. Any additional construction or grading beyond the scope of these plans is not authorized.

(g) Any direct or indirect impacts to freshwater wetlands not permitted by the US Army Corps of engineers, shall be considered a violation of this permit and certification, and are subject to enforcement and possibly fines.

(h) No Critical Areas as determined by OCRM shall be disturbed or altered without the Agency authorization.

The South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management reserves the right to impose additional conditions on this permit to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State Coastal Zone and Stormwater Management standards.

Failure to comply with any of the conditions of this permit may result in enforcement actions and/or penalties. The receipt of this permit does not relieve you of the responsibility of acquiring any other state, federal or local permits that may be required. Interested parties are provided thirty (30) days from receipt of this letter to appeal the action of the OCRM.

Sincerely,

Joe Fersner /AMH

Joe Fersner, P.E.
Manager, Engineering and
State Certification

AMH/5786/amh

cc: Mr. Gregory Forthofer

"D 14
SID 32204

D H E C
PROMOTE PROTECT PROSPER
South Carolina Department of Health and Environmental Control

STANDARD APPLICATION FORM FOR LAND DISTURBING ACTIVITIES STORMWATER PERMITTING

PIN 10-04-03-11

SECTION 1 - Administrative Information
(To Be Completed By All Applicants)

Date: 3-8-04

1. Facility or project name: PARKHILL PLACE PHASE 6
County: CHARLESTON City/Town: N. CHARLESTON
Location (also shown on location map): I 26 / 52/78 CONNECTOR CORRIDOR, EXT. OF PHP PH. 3
Latitude: 32° 56' 42" N Longitude: 80° 03' 11" W
Tax map #: 484-00-00-079 USGS Quad Name: LADSMAN

2. Nearest receiving water body: GOOSE CREEK RESERVOIR
Distance to nearest receiving water body: 7000'
Ultimate receiving water body: COOPER RIVER

3. Are there any wetlands located on the property? YES If yes, have they been delineated? YES
Are any federally jurisdictional wetlands being impacted by this project? YES If yes, has a Corps permit been issued? YES
Corps permit #: 26-2000-01673 Are any federally non-jurisdictional (state) wetlands being impacted by this project? NO
What is the total acreage of federally jurisdictional and state wetland impacts? 0.24 (Juris.) 0 (Non-juris.)
On an 8 ½" X 11" copy of a site plan indicate the wetland impacts and the proposed mitigation.

4. Are there any existing flooding problems in the downstream watershed? NO

5. Property owner of record: PARKHILL, LLC
Address: 759 JOHNNIE DODDS BLVD. STE B, MT. PLEASANT, SC 29464
Phone (day): (843) 971-9558 (night): (fax): (843) 971-4918

6. Person financially responsible for the land disturbing activity: SAME AS #5
(if different than above)
Address:
Phone (day): (night): (fax):

7. Agent or day-to-day contact (if applicable):
Address:
Phone (day): (night): (fax):

8. Plan preparer, engineer, or technical representative: SEAMON, WHITESIDE & ASSOC. INC.
Address: 503 IWANDO PARK BLVD. STE 100, MT. PLEASANT, SC 29464
Phone (day): (843) 884-1667 (night): (fax): (843) 884-6944

9. Contractor or operator (if known):
Address:
Phone (day): (night): (fax):

10. Size, total (acres): 23.02 Surface area of land disturbance (acres): 11.00

11. Start date: MAY 4, 2004 Completion date: FEB, 2005

SECTION 2A - For Projects That Disturb Less Than One (1) Acre Which Are Not Part of a Larger Common Plan for Development or Sale and Which Are Not Located Within ¼ Mile of a Receiving Waterbody in the Coastal Counties

12. Description of control plan to be used during construction. (Must also be shown on plan sheets or sketch drawing):

This plan does not have to be prepared by a professional engineer, tier b surveyor, or a landscape architect and there is **NO STATE REVIEW FEE** associated with this type of project. On a case-by-case basis, an NPDES permit with a $125 fee may be required.

13. For this form to be complete, the applicant must sign item 23.

DHEC 3306 (08/2003)

PENGAD 800-631-6989
EXHIBIT
R000246
445/23/13

4272

SECTION 2B - For Projects That Disturb One (1) Acre or More But Less Than or Equal to Two (2) Acres Which Are Not Part of a Larger Common Plan for Development or Sale or Projects That Are Located Within ½ Mile of a Receiving Waterbody in the Coastal Counties (See Special Requirements for Coastal Zone Projects on Instructions Sheet)

14. Description of control plan to be used during construction. (Must also be shown on plan sheets or sketch drawing):

This plan must be prepared by a professional engineer, tier b land surveyor, or a landscape architect

15. Fee: $125 NPDES General Permit coverage fee applies. exempt from state review fee.

16. SIC code: _____ Is the site located on Indian lands? _____

17. For this form to be complete, the applicant must sign items 23 and 24 and the plan preparer must sign item 25.

SECTION 2C - For Projects Disturbing More Than Two (2) Acres and/or Projects That Are a Part of a Larger Common Plan for Development or Sale

18. Is this part of a larger common plan for development or sale? NO
If yes, what is the state permit number for the previous approval? N/A
What is the NPDES permit coverage number? N/A
Has a Notice of Termination (NOT) been submitted for the NPDES permit coverage? N/A.

19. The stormwater management and sediment and erosion control plan for projects of this size must be prepared by a professional engineer, tier b land surveyor, or a landscape architect.

20. SIC code: _____ Is the site located on Indian lands? NO

21. Type of project and fees (please circle the type of activity):
a. Federal - State - Local - School (exempt from State fees, $125 NPDES fee applies): $125
b. Industrial - Commercial - Residential - Part of a larger common plan for development or sale [$100 per disturbed acre State fee (max. $2000)] plus $125 NPDES fee. (Maximum total for any project is $2125): $100

22. For this form to be complete, the applicant must sign items 23 and 24 and the plan preparer must sign item 25.

SECTION 3 - Signatures and Certifications

23. I hereby certify that all land disturbing construction and associated activity pertaining to this site shall be accomplished pursuant to and in keeping with the terms and conditions of the approved plans. I also certify that a responsible person will be assigned to the project for day-to-day control. I hereby grant authorization to the Department of Health and Environmental Control and/or the local implementing agency the right of access to the site at all times for the purpose of on site inspections during the course of construction and to perform maintenance inspections following the completion of the land disturbing activity.

CHRISTOPHER K. PHILLIPS, JR.
Printed Name
Owner/Person Financially Responsible

Signature
Owner/Person Financially Responsible

24. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in the application, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

CHRISTOPHER K. PHILLIPS, JR.
Printed Name
Owner/Person Financially Responsible

Signature
Owner/Person Financially Responsible

25. Designer Certification - One copy of the plans, all specifications and supporting calculations, forms, and reports are herewith submitted and made a part of this application. I have placed my signature and seal on the design documents submitted signifying that I accept responsibility for the design of the system. Further, I certify to the best of my knowledge and belief that the design is consistent with the requirements of Title 48, Chapter 14 of the Code of Laws of SC, 1976 as amended, and pursuant to Regulation 72-300. (Five sets of plans are required for final approval.)

Signature

9437
S. C. Registration Number

Check appropriate registration: Engineer ✓ Tier B Land Surveyor _____ Landscape Architect _____

PIN 10-03-01-12

8232
1-27-03

D H E C
PROMOTE PROTECT PROSPER

STANDARD APPLICATION FORM FOR CONSTRUCTION SITES DISTURBING MORE THAN 5 ACRES
SOUTH CAROLINA DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL
STORMWATER MANAGEMENT
(See Reverse for Instructions)

RECEIVED
JAN 9 2003
DHEC-OCRM
CHARLESTON OFFICE

Submission of this application constitutes notice that the party identified in Section 2 of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with construction activity in the State of South Carolina. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit.

ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

DATE: 9 JAN 03

Section 1

1. FACILITY NAME OR PROJECT NAME: STALL HIGH SCHOOL / BIRNEY MIDDLE SCHOOL
   COUNTY: CHARLESTON CITY/TOWN: NORTH CHARLESTON
   LOCATION (also shown on location map): 7749 PINEHURST ST
   LATITUDE: 32° 56' 32" LONGITUDE: 80° 03' 24"
   TAX MAP #: 484-00-00-006 USGS QUADNAME: LADSON

2. NEAREST RECEIVING WATERBODY: GOOSE CREEK RESERVOIR
   DISTANCE TO NEAREST RECEIVING WATERBODY: ~5000 ft
   NEXT KNOWN RECEIVING WATERBODY: COOPER RIVER

Section 2

3. PROPERTY OWNER OF RECORD: CHARLESTON COUNTY SCHOOL DISTRICT
   ADDRESS: C/O HEERY; 3999 BRIDGEVIEW DRIVE; N. CHARLESTON, SC 29406
   PHONE (DAY): 566-8168 (NIGHT): (FAX): 566-8124

4. PERSON FINANCIALLY RESPONSIBLE FOR THE LAND DISTURBING ACTIVITY: SAME AS ABOVE
   (If different than above)
   ADDRESS:
   PHONE (DAY): (NIGHT): (FAX):

5. AGENT OR CONTACT PERSON (if applicable): A.J. DEAL / HEERY
   ADDRESS: 3999 BRIDGEVIEW DRIVE; N. CHARLESTON, SC 29406
   PHONE (DAY): 566-8168 (FAX): 566-8124 (MOBILE):

6. ENGINEER, TECHNICAL REPRESENTATIVE OR FIRM: SEAMON, WHITESIDE + ASSOCIATES
   ADDRESS: 503 WANDO PARK BLVD #100; MT. PLEASANT, SC 29464
   PHONE (DAY): 884-1667 (FAX): 884-6944 (MOBILE):

7. CONTRACTOR OR OPERATOR (if known): UNKNOWN
   ADDRESS:
   PHONE (DAY): (NIGHT): (MOBILE):

Section 3

8. SIZE, TOTAL (acres): 42.831 SURFACE AREA OF LAND DISTURBANCE (acres): 31.50

9. IS THIS PART OF A LARGER COMMON PLAN FOR DEVELOPMENT OR SALE? NO
   IF YES, WHAT IS THE STATE PERMIT NUMBER?
   WHAT IS THE NPDES PERMIT NUMBER (If applicable)?
   HAS A NOTICE OF TERMINATION BEEN SUBMITTED?

10. SIC CODE: 1542 (SIC code only required if site disturbs 5 acres or more)
    IS THE SITE LOCATED ON INDIAN LANDS? (if site disturbs 5 or more acres) NO

11. TYPE OF PROJECT & FEES (please circle the type of activity):
    a. Federal - State - Local - School (Exempt from STATE fees, NPDES fee may apply):
    b. Industrial - Commercial - Residential - Part of a Larger Common Plan for Development or Sale ($50 per disturbed acre, max. $1,000 state fee per project):
    (In addition a $125 NPDES administration fee will be required on all Projects disturbing 5 acres or more)

    TOTAL FEE: $ 125.00

DHEC 3306 (07/1998)

EXHIBIT
R008248
8
KH 5/23/13 EER
PENGAD 800-631-6989

12. START DATE: 2/3/3[redacted] COMPLETION DATE: [redacted]6/3/3

13. ARE THERE ANY FRESHWATER WETLANDS LOCATED ON THE PROPERTY? YES

IF YES, HAVE THE WETLANDS BEEN DELINEATED? YES

ARE ANY WETLANDS BEING IMPACTED BY THIS PROJECT? YES

14. ARE THERE ANY EXISTING FLOODING PROBLEMS IN THE SURROUNDING AREAS? NO

Section 4

CERTIFICATION

15. I HEREBY CERTIFY THAT ALL LAND DISTURBING CONSTRUCTION AND ASSOCIATED ACTIVITY PERTAINING TO THIS SITE SHALL BE ACCOMPLISHED PURSUANT TO AND IN KEEPING WITH THE TERMS AND CONDITIONS OF THE APPROVED PLANS. I ALSO CERTIFY THAT A RESPONSIBLE PERSON WILL BE ASSIGNED TO THE PROJECT FOR DAY-TO-DAY CONTROL. I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHERED AND EVALUATED THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.

W. H. Lewis
PRINTED NAME
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

W. H. Lewis 12/16/02
SIGNATURE
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

16. I HEREBY GRANT AUTHORIZATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND/OR THE LOCAL IMPLEMENTING AGENCY THE RIGHT OF ACCESS TO THE SITE AT ALL TIMES FOR THE PURPOSE OF ON SITE INSPECTIONS DURING THE COURSE OF CONSTRUCTION AND TO PERFORM MAINTENANCE INSPECTIONS FOLLOWING THE COMPLETION OF THE LAND DISTURBING ACTIVITY.

W. H. Lewis
PRINTED NAME
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

W. H. Lewis 12/16/02
SIGNATURE
OWNER/PERSON FINANCIALLY RESPONSIBLE
(Engineer may not sign for the owner)

17. DESIGNER CERTIFICATION - FIVE COPIES OF THE PLANS, ALL SPECIFICATIONS AND SUPPORTING CALCULATIONS, FORMS, AND REPORTS ARE HEREWITH SUBMITTED AND MADE A PART OF THIS APPLICATION. I HAVE PLACED MY SIGNATURE AND SEAL ON THE DESIGN DOCUMENTS SUBMITTED SIGNIFYING THAT I ACCEPT RESPONSIBILITY FOR THE DESIGN OF THE SYSTEM. FURTHER, I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE DESIGN IS CONSISTENT WITH THE REQUIREMENTS OF TITLE 48, CHAPTER 14 OF THE CODE OF LAWS OF SC, 1976 AS AMENDED, AND PURSUANT REGULATION 72-300.

Thomas D. Whitten
SIGNATURE

9437
S.C. REGISTRATION NUMBER

ENGINEER ✓
TIER B, LAND SURVEYOR
LANDSCAPE ARCHITECT

DHEC 3306 (07/1998)

DHEC

PROMOTE PROTECT PROSPER

STANDARD APPLICATION FORM FOR CONSTRUCTION SITES DISTURBING MORE THAN 2 ACRES
SOUTH CAROLINA DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL
STORMWATER MANAGEMENT
(See Reverse for Instructions)

SW P/N QUAD FILE 7-10

Submission of this application constitutes notice that the party identified in Section 2 of this form intends to be authorized [illegible] orm water discharges associated with construction activity in the State of South Carolina. Becoming a permittee obligates such [illegible] rms and conditions of the permit.

ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

Section 1

DATE: 7/15/01

1. FACILITY NAME OR PROJECT NAME: Northwoods Townhomes
   COUNTY: Charleston CITY/TOWN: North Charleston
   LOCATION: (also shown on location map): Crossroads Drive, N. Chas
   LATITUDE: 32-56-40 LONGITUDE: 80-03-05
   TAX MAP #: 484-00-00-149 USGS QUADNAME: Ladson, SC

2. NEAREST RECEIVING WATERBODY: Goose Creek Reservoir
   DISTANCE TO NEAREST RECEIVING WATERBODY: 6100 lf
   NEXT KNOWN RECEIVING WATERBODY: Cooper River

Section 2

3. PROPERTY OWNER OF RECORD: Portrait Homes
   ADDRESS: 710 Northside Drive Suite 107 N. Charleston, SC 29406
   PHONE (DAY): 843-824-8667 (NIGHT): (FAX): 843-824-0289

4. PERSON FINANCIALLY RESPONSIBLE FOR THE LAND DISTURBING ACTIVITY:
   (if different than above)
   ADDRESS:
   PHONE (DAY): (NIGHT): (FAX):

5. AGENT OR CONTACT PERSON: Ron Schultz
   ADDRESS: Same as owner
   PHONE (DAY): (FAX): (MOBILE):

6. ENGINEER, TECHNICAL REPRESENTATIVE OR FIRM: Thomas & Hutton Engineering Co.
   ADDRESS: 935 Houston Northcutt Blvd
   PHONE (DAY): 843.849.0200 (NIGHT): (MOBILE):

7. CONTRACTOR OR OPERATOR (if known): unknown
   ADDRESS:
   PHONE (DAY): (FAX): (MOBILE):

Section 3

8. SIZE, TOTAL (acres): 31.64 SURFACE AREA OF LAND DISTURBANCE (acres): 31

9. IS THIS PART OF A LARGER COMMON PLAN FOR DEVELOPMENT OR SALE? no
   IF YES, WHAT IS THE STATE PERMIT NUMBER?
   WHAT IS THE NPDES PERMIT NUMBER (if applicable)? N/A
   HAS A NOTICE OF TERMINATION BEEN SUBMITTED?

10. SIC CODE: 1542 (SIC code only required if site disturbs 5 acres or more)
    IS THE SITE LOCATED ON INDIAN LANDS? (if site disturbs 5 or more acres) no

11. TYPE OF PROJECT & FEES (please circle the type of activity):
    a. Federal – State – Local – School (Exempt from STATE fees, NPDES fee may apply):
    b. Industrial – Commercial – Residential – Part of a Larger Common Plan for Development or Sale ($50 per disturbed acre, max. $1,000 state fee per project): $1,000
    (In addition a $125 NPDES administration fee will be required on all Projects disturbing 5 acres or more)

    TOTAL FEE: $ 1,125.00

DHEC 3306 (07/1996)

T:\FORMS\DHEC\2AC-MORE

EXHIBIT 9 R000250 KLS 5/23/13 GEEN

12. START DATE: September 2001 COMPLETION DATE: March 2001

13. ARE THERE ANY FRESHWATER WETLANDS LOCATED ON THE PROPERTY? yes

IF YES, HAVE THE WETLANDS BEEN DELINEATED? yes

ARE ANY WETLANDS BEING IMPACTED BY THIS PROJECT? no

14. ARE THERE ANY EXISTING FLOODING PROBLEMS IN THE SURROUNDING AREAS? no

Section 4

CERTIFICATION

15. I HEREBY CERTIFY THAT ALL LAND DISTURBING CONSTRUCTION AND ASSOCIATED ACTIVITY PERTAINING TO THIS SITE SHALL BE ACCOMPLISHED PURSUANT TO AND IN KEEPING WITH THE TERMS AND CONDITIONS OF THE APPROVED PLANS. I ALSO CERTIFY THAT A RESPONSIBLE PERSON WILL BE ASSIGNED TO THE PROJECT FOR DAY-TO-DAY CONTROL. I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHERED AND EVALUATED THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.

Ron Schulz	
PRINTED NAME OWNER/PERSON FINANCIALLY RESPONSIBLE (Engineer may not sign for the owner)	SIGNATURE OWNER/PERSON FINANCIALLY RESPONSIBLE (Engineer may not sign for the owner)

16. I HEREBY GRANT AUTHORIZATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND/OR THE LOCAL IMPLEMENTING AGENCY THE RIGHT OF ACCESS TO THE SITE AT ALL TIMES FOR THE PURPOSE OF ON SITE INSPECTIONS DURING THE COURSE OF CONSTRUCTION AND TO PERFORM MAINTENANCE INSPECTIONS FOLLOWING THE COMPLETION OF THE LAND DISTURBING ACTIVITY.

Ron Schulz	
PRINTED NAME OWNER/PERSON FINANCIALLY RESPONSIBLE (Engineer may not sign for the owner)	SIGNATURE OWNER/PERSON FINANCIALLY RESPONSIBLE (Engineer may not sign for the owner)

17. DESIGNER CERTIFICATION – FIVE COPIES OF THE PLANS, ALL SPECIFICATIONS AND SUPPORTING CALCULATIONS, FORMS, AND REPORTS ARE HEREWITH SUBMITTED AND MADE A PART OF THIS APPLICATION. I HAVE PLACED MY SIGNATURE AND SEAL ON THE DESIGN DOCUMENTS SUBMITTED SIGNIFYING THAT I ACCEPT RESPONSIBILITY FOR THE DESIGN OF THE SYSTEM. FURTHER, I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE DESIGN IS CONSISTENT WITH THE REQUIREMENTS OF TITLE 48, CHAPTER 14 OF THE CODE OF LAWS OF SC, 1976 AS AMENDED, AND PURSUANT REGULATION 72-300.

	14545
SIGNATURE	S.C. REGISTRATION NUMBER

ENGINEER X
TIER B. LAND SURVEYOR
LANDSCAPE ARCHITECT

T:\FORMS\DHEC\2AC-MORE

Water Quality Design Considerations

PROJECT: Northwoods Townhomes
JOB NO.: J-14484
CLIENT: Portrait Homes
DATE: 7/16/2001
REVISED:

I. DETERMINE DESIGN CRITERIA

Section 72-307 C. (5) of the South Carolina Stormwater Management and Sediment Reduction Regulations establishes minimum standards and specifications for the design of water quality control devices in the State of South Carolina. As provided in section 72-307 C. (5) (g), additional water quality requirements have been established for the eight coastal counties. These additional requirements are contained in the Coastal Zone Management Program Refinements For Stormwater Management Regulations. The requirements of section 72-307 C. (5) as modified by the Coastal Zone Refinements as they apply to the present project are summarized as follows:

(1) Permanent water quality ponds having a permanent pool shall be designed to store and release the first 1/2 inch of runoff from the site over a 24 hour period. The storage volume shall be designed to accommodate, at least, 1/2 inch of runoff from the entire site.
(2) For all projects, regardless of size, which are located within one-half (1/2) mile of a receiving water body in the coastal zone, criteria (1) shall be storage of the first 1/2 inch of runoff from the entire site or storage of the first one (1) inch of runoff from the built-upon portion of the property, whichever is greater.
(3) In addition, for those projects which are located within 1,000 (one thousand) feet of shellfish beds, the first one and one half (1 1/2) inches of runoff from the built-upon portion of the property must be retained on site.
(4) Permanent water quality ponds, not having a permanent pool, shall be designed to release the first inch of runoff from the site over a 24-hour period.

This project:
(a) Has permanent water quality ponds with permanent pools.
(b) Is located within the coastal zone.
(c) Is not within one-half (1/2) mile of a receiving water body.
(d) Is not located within 1,000 (one thousand) feet of shellfish beds.

Therefore, the water quality control design criteria for this specific project are as follows:
*Release the first half-inch of runoff from the site over a 24-hour period.

II. DETERMINE STORAGE VOLUME REQUIRED

31.9 ac = Area contributing runoff to detention basin
0.5 in = Volume of runoff over site to place in water quality pond
1.33 ac-ft = Volume of runoff to place in water quality pond
0.47 ac-ft = 35% Pond 1
0.09 ac-ft = 7% Pond 2
0.77 ac-ft = 58% Pond 3

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III. DETERMINE INITIAL STAGE OF WATER QUALITY PONDS

If the volume of water calculated in Section II. is placed in the water quality pond, the initial stage of the ponds can be calculated as follows:

Given the following stage-area-storage relationship for the on-site ponds:

Pond 1

Stage (ft)	Surface Area (ac)	Incremental Storage (ac-ft)	Total Storage (ac-ft)
12	0.32	0.00	0.00
13	0.39	0.36	0.36
15	0.51	0.90	1.26

Interpolation yields an initial stage of:

Stage (ft)	Total Storage (ac-ft)
12	0.00
13.12	0.47
15	1.26

Pond 2

Stage (ft)	Surface Area (ac)	Incremental Storage (ac-ft)	Total Storage (ac-ft)
11	0.06	0.00	0.00
13	0.10	0.16	0.16
15	0.13	0.23	0.39

Interpolation yields an initial stage of:

Stage (ft)	Total Storage (ac-ft)
11	0.00
11.92	0.09
15	0.39

Pond 3

Stage (ft)	Surface Area (ac)	Incremental Storage (ac-ft)	Total Storage (ac-ft)
9	0.90	0.00	0.00
10	1.00	0.95	0.95
12	1.20	2.20	3.15

Interpolation yields an initial stage of:

Stage (ft)	Total Storage (ac-ft)
9	0.00
9.73	0.77
12	3.15

IV. DEMONSTRATE THAT THE DESIGN CRITERIA ARE MET

1. Model the water quality pond and outfall structures in adICPR.
2. Set the initial stage at the elevation determined in Section III.
3. Analyse how long it takes the pond to drain or return to normal water elevation.

See adICPR data following these calculations:

A. Input Report
B. Results: Node Graphical Results
Node Time Series by Node

After 24 hours of draining, the water surface elevation in each pond is still above the NWL indicating that it takes longer than 24 hours to release the required 0.5" runoff. Thus, the design criteria determined in Section I. are met.

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NORTHWOODS TOWNHOMES POST DEVELOPMENT

********** Input Report **********

--------Class: Node--------

Name: BNDRY1 Base Flow(cfs): 0 Init Stage(ft): 9
Group: BASE Length(ft): 0 Warn Stage(ft): 12
Comment: Wetland Boundary

Time(hrs)	Stage(ft)
0	9
9	9
12.5	9
15	9
24	9

--------Class: Node--------

Name: NT1 Base Flow(cfs): 0 Init Stage(ft): 13.12
Group: BASE Length(ft): 0 Warn Stage(ft): 0
Comment: Stormwater Lagoon

Stage(ft)	Area(ac)
12	0.32
15	0.51

--------Class: Node--------

Name: NT2 Base Flow(cfs): 0 Init Stage(ft): 11.92
Group: BASE Length(ft): 0 Warn Stage(ft): 0
Comment: Stormwater Lagoon

Stage(ft)	Area(ac)
11	0.06
15	0.13

--------Class: Node--------

Name: NT3 Base Flow(cfs): 0 Init Stage(ft): 9.73
Group: BASE Length(ft): 0 Warn Stage(ft): 0
Comment: Stormwater Lagoon

Stage(ft)	Area(ac)
9	0.9
12	1.2

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NORTHWOODS TOWNHOMES POST DEVELOPMENT

********** Input Report **********

--------Class: Pipe--------

Name:	P1	From Node: NT1	Length(ft): 60
Group:	BASE	To Node: BNDRY1	Count: 1

	UPSTREAM	DOWNSTREAM		
			Equation:	Average K
Geometry:	Circular	Circular	Flow:	Both
Span(in):	18	18	Entrance Loss Coef:	1.5
Rise(in):	18	18	Exit Loss Coef:	0
Invert(ft):	12.1	12.1	Bend Loss Coef:	0
Manning's N:	0.013	0.013	Outlet Cntrl Spec:	Use dc or tw
Top Clip(in):	0	0	Inlet Cntrl Spec:	Use dn
Bottom Clip(in):	0	0	Stabilizer Option:	None

Upstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

Downstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

--------Class: Pipe--------

Name:	P2	From Node: NT2	Length(ft): 50
Group:	BASE	To Node: BNDRY1	Count: 1

	UPSTREAM	DOWNSTREAM		
			Equation:	Average K
Geometry:	Circular	Circular	Flow:	Both
Span(in):	12	12	Entrance Loss Coef:	1.5
Rise(in):	12	12	Exit Loss Coef:	0
Invert(ft):	11	11	Bend Loss Coef:	0
Manning's N:	0.013	0.013	Outlet Cntrl Spec:	Use dc or tw
Top Clip(in):	0	0	Inlet Cntrl Spec:	Use dn
Bottom Clip(in):	0	0	Stabilizer Option:	None

Upstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

Downstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

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NORTHWOODS TOWNHOMES POST DEVELOPMENT

********** Input Report **********
--------Class: Pipe--------

Name: P3 From Node: NT3 Length(ft): 50
Group: BASE To Node: BNDRY1 Count: 1

	UPSTREAM	DOWNSTREAM		
Geometry:	Circular	Circular	Equation:	Average K
Span(in):	12	12	Flow:	Both
Rise(in):	12	12	Entrance Loss Coef:	1.5
Invert(ft):	9.2	9.2	Exit Loss Coef:	0
Manning's N:	0.013	0.013	Bend Loss Coef:	0
Top Clip(in):	0	0	Outlet Cntrl Spec:	Use dc or tw
Bottom Clip(in):	0	0	Inlet Cntrl Spec:	Use dn
			Stabilizer Option:	None

Upstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

Downstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

--------Class: Pipe--------

Name: P4 From Node: NT3 Length(ft): 50
Group: BASE To Node: BNDRY1 Count: 1

	UPSTREAM	DOWNSTREAM		
Geometry:	Circular	Circular	Equation:	Average K
Span(in):	12	12	Flow:	Both
Rise(in):	12	12	Entrance Loss Coef:	1.5
Invert(ft):	9.7	9.7	Exit Loss Coef:	0
Manning's N:	0.013	0.013	Bend Loss Coef:	0
Top Clip(in):	0	0	Outlet Cntrl Spec:	Use dc or tw
Bottom Clip(in):	0	0	Inlet Cntrl Spec:	Use dn
			Stabilizer Option:	None

Upstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

Downstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

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NORTHWOODS TOWNHOMES POST DEVELOPMENT

********** Input Report **********
--------Class: Pipe--------

Name: P5 From Node: NT1 Length(ft): 60
Group: BASE To Node: BNDRY1 Count: 1

	UPSTREAM	DOWNSTREAM		
Geometry:	Circular	Circular	Equation:	Average K
Span(in):	15	15	Flow:	Both
Rise(in):	15	15	Entrance Loss Coef:	1.5
Invert(ft):	12	12	Exit Loss Coef:	0
Manning's N:	0.013	0.013	Bend Loss Coef:	0
Top Clip(in):	0	0	Outlet Cntrl Spec:	Use dc or tw
Bottom Clip(in):	0	0	Inlet Cntrl Spec:	Use dn
			Stabilizer Option:	None

Upstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

Downstream FHWA Inlet Edge Description:
Circular Concrete: Groove end projecting 1 3

--------Class: Channel--------

Name: CHAN1 From Node: NT1 Length(ft): 20
Group: BASE To Node: BNDRY1 Count: 1

	UPSTREAM	DOWNSTREAM		
Geometry:	Trapezoidal	Trapezoidal	Equation:	Aver Conveyance
Invert(ft):	14.1	14	Flow:	Both
TOB(ft):	18	18	Eddy Contrac Coef:	0.6
Manning's N:	0.035	0.035	Eddy Expans Coef:	0
TClip(ft):	0	0	Entrance Loss Coef:	1.5
BClip(ft):	0	0	Exit Loss Coef:	0
Main Xsec:			Outlet Cntrl Spec:	Use dc or tw
AxEl1(ft):			Inlet Cntrl Spec:	Use dn
Aux Xsec1:			Stabilizer Option:	None
AxEl2(ft):				
Aux Xsec2:				
TWidth(ft):				
Depth(ft):				
BWidth(ft):	5	5		
LSdSlp(h/v):	3	3		
RSdSlp(h/v):	3	3		

outfall channel

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NORTHWOODS TOWNHOMES POST DEVELOPMENT

********** Input Report **********

--------Class: Weir--------

Name: WEIR1 From Node: NT3
Group: BASE To Node: BNDRY1
Count: 1

Type: Fread Flow: Both Geometry: Trapezoidal

Bottom Width(ft): 10
Left Side Slope(h/v): 2
Right Side Slope(h/v): 2
Invert(ft): 12
Control Elev(ft): 12
Structure Opening(ft): 999 TABLE
Bottom Clip(ft): 0
Top Clip(ft): 0
Weir Discharge Coef: 3.2
Orifice Discharge Coef: 0.6

Lagoon Overflow Weir

--------Class: Weir--------

Name: WEIR2 From Node: NT3
Group: BASE To Node: BNDRY1
Count: 1

Type: Fread Flow: Both Geometry: Trapezoidal

Bottom Width(ft): 100
Left Side Slope(h/v): 2
Right Side Slope(h/v): 2
Invert(ft): 12.3
Control Elev(ft): 12.3
Structure Opening(ft): 999 TABLE
Bottom Clip(ft): 0
Top Clip(ft): 0
Weir Discharge Coef: 3.2
Orifice Discharge Coef: 0.6

Lagoon Overflow Weir

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Northwoods Townhomes Postdevelopment Model
6/4/01

********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow: Base Q (cfs)	Inflow: Onsite (cfs)	Inflow: Offsite (cfs)	Inflow: Endry Q (cfs)	Inflow: Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
*** Group: BASE		Node: ENDRY1								
0.000	9.00	0.00	0.00	0.00	0.00	0.00	7.55	0.00	0.0000	0.0000
0.083	9.00	0.00	0.00	0.00	0.00	0.00	6.45	0.00	0.0482	0.0000
0.167	9.00	0.00	0.00	0.00	0.00	0.00	5.52	0.00	0.0895	0.0000
0.250	9.00	0.00	0.00	0.00	0.00	0.00	4.76	0.00	0.1248	0.0000
0.334	9.00	0.00	0.00	0.00	0.00	0.00	4.14	0.00	0.1555	0.0000
0.417	9.00	0.00	0.00	0.00	0.00	0.00	3.63	0.00	0.1823	0.0000
0.500	9.00	0.00	0.00	0.00	0.00	0.00	3.22	0.00	0.2059	0.0000
0.584	9.00	0.00	0.00	0.00	0.00	0.00	2.87	0.00	0.2269	0.0000
0.667	9.00	0.00	0.00	0.00	0.00	0.00	2.58	0.00	0.2457	0.0000
0.751	9.00	0.00	0.00	0.00	0.00	0.00	2.34	0.00	0.2627	0.0000
0.834	9.00	0.00	0.00	0.00	0.00	0.00	2.13	0.00	0.2781	0.0000
0.917	9.00	0.00	0.00	0.00	0.00	0.00	1.96	0.00	0.2921	0.0000
1.000	9.00	0.00	0.00	0.00	0.00	0.00	1.80	0.00	0.3051	0.0000
1.085	9.00	0.00	0.00	0.00	0.00	0.00	1.67	0.00	0.3172	0.0000
1.168	9.00	0.00	0.00	0.00	0.00	0.00	1.56	0.00	0.3283	0.0000
1.251	9.00	0.00	0.00	0.00	0.00	0.00	1.45	0.00	0.3386	0.0000
1.334	9.00	0.00	0.00	0.00	0.00	0.00	1.36	0.00	0.3483	0.0000
1.418	9.00	0.00	0.00	0.00	0.00	0.00	1.28	0.00	0.3574	0.0000
1.501	9.00	0.00	0.00	0.00	0.00	0.00	1.21	0.00	0.3660	0.0000
1.583	9.00	0.00	0.00	0.00	0.00	0.00	1.15	0.00	0.3740	0.0000
1.668	9.00	0.00	0.00	0.00	0.00	0.00	1.09	0.00	0.3818	0.0000
1.752	9.00	0.00	0.00	0.00	0.00	0.00	1.04	0.00	0.3892	0.0000
1.834	9.00	0.00	0.00	0.00	0.00	0.00	0.99	0.00	0.3961	0.0000
1.919	9.00	0.00	0.00	0.00	0.00	0.00	0.95	0.00	0.4029	0.0000
2.001	9.00	0.00	0.00	0.00	0.00	0.00	0.91	0.00	0.4093	0.0000
2.084	9.00	0.00	0.00	0.00	0.00	0.00	0.87	0.00	0.4153	0.0000
2.167	9.00	0.00	0.00	0.00	0.00	0.00	0.84	0.00	0.4212	0.0000
2.253	9.00	0.00	0.00	0.00	0.00	0.00	0.81	0.00	0.4270	0.0000
2.335	9.00	0.00	0.00	0.00	0.00	0.00	0.78	0.00	0.4324	0.0000
2.417	9.00	0.00	0.00	0.00	0.00	0.00	0.75	0.00	0.4376	0.0000
2.503	9.00	0.00	0.00	0.00	0.00	0.00	0.73	0.00	0.4429	0.0000
2.586	9.00	0.00	0.00	0.00	0.00	0.00	0.70	0.00	0.4478	0.0000
2.668	9.00	0.00	0.00	0.00	0.00	0.00	0.68	0.00	0.4525	0.0000
2.754	9.00	0.00	0.00	0.00	0.00	0.00	0.66	0.00	0.4573	0.0000
2.835	9.00	0.00	0.00	0.00	0.00	0.00	0.64	0.00	0.4616	0.0000
2.920	9.00	0.00	0.00	0.00	0.00	0.00	0.63	0.00	0.4661	0.0000
3.000	9.00	0.00	0.00	0.00	0.00	0.00	0.61	0.00	0.4702	0.0000
3.085	9.00	0.00	0.00	0.00	0.00	0.00	0.59	0.00	0.4744	0.0000
3.167	9.00	0.00	0.00	0.00	0.00	0.00	0.58	0.00	0.4784	0.0000
3.251	9.00	0.00	0.00	0.00	0.00	0.00	0.56	0.00	0.4823	0.0000
3.335	9.00	0.00	0.00	0.00	0.00	0.00	0.55	0.00	0.4862	0.0000
3.419	9.00	0.00	0.00	0.00	0.00	0.00	0.54	0.00	0.4900	0.0000
3.503	9.00	0.00	0.00	0.00	0.00	0.00	0.52	0.00	0.4936	0.0000
3.589	9.00	0.00	0.00	0.00	0.00	0.00	0.51	0.00	0.4973	0.0000
3.673	9.00	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.5009	0.0000
3.750	9.00	0.00	0.00	0.00	0.00	0.00	0.49	0.00	0.5040	0.0000

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Northwoods Townhomes Postdevelopment Model
6/4/01

********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
3.834	9.00	0.00	0.00	0.00	0.00	0.00	0.48	0.00	0.5074	0.0000
3.918	9.00	0.00	0.00	0.00	0.00	0.00	0.47	0.00	0.5107	0.0000
4.002	9.00	0.00	0.00	0.00	0.00	0.00	0.46	0.00	0.5139	0.0000
4.091	9.00	0.00	0.00	0.00	0.00	0.00	0.45	0.00	0.5173	0.0000
4.170	9.00	0.00	0.00	0.00	0.00	0.00	0.44	0.00	0.5202	0.0000
4.257	9.00	0.00	0.00	0.00	0.00	0.00	0.43	0.00	0.5233	0.0000
4.336	9.00	0.00	0.00	0.00	0.00	0.00	0.43	0.00	0.5261	0.0000
4.423	9.00	0.00	0.00	0.00	0.00	0.00	0.42	0.00	0.5292	0.0000
4.502	9.00	0.00	0.00	0.00	0.00	0.00	0.41	0.00	0.5319	0.0000
4.589	9.00	0.00	0.00	0.00	0.00	0.00	0.40	0.00	0.5348	0.0000
4.670	9.00	0.00	0.00	0.00	0.00	0.00	0.40	0.00	0.5375	0.0000
4.757	9.00	0.00	0.00	0.00	0.00	0.00	0.39	0.00	0.5404	0.0000
4.834	9.00	0.00	0.00	0.00	0.00	0.00	0.38	0.00	0.5428	0.0000
4.921	9.00	0.00	0.00	0.00	0.00	0.00	0.38	0.00	0.5456	0.0000
5.009	9.00	0.00	0.00	0.00	0.00	0.00	0.37	0.00	0.5483	0.0000
5.085	9.00	0.00	0.00	0.00	0.00	0.00	0.37	0.00	0.5506	0.0000
5.173	9.00	0.00	0.00	0.00	0.00	0.00	0.36	0.00	0.5532	0.0000
5.260	9.00	0.00	0.00	0.00	0.00	0.00	0.35	0.00	0.5558	0.0000
5.337	9.00	0.00	0.00	0.00	0.00	0.00	0.35	0.00	0.5580	0.0000
5.419	9.00	0.00	0.00	0.00	0.00	0.00	0.34	0.00	0.5603	0.0000
5.500	9.00	0.00	0.00	0.00	0.00	0.00	0.34	0.00	0.5626	0.0000
5.596	9.00	0.00	0.00	0.00	0.00	0.00	0.33	0.00	0.5653	0.0000
5.678	9.00	0.00	0.00	0.00	0.00	0.00	0.33	0.00	0.5675	0.0000
5.760	9.00	0.00	0.00	0.00	0.00	0.00	0.32	0.00	0.5697	0.0000
5.842	9.00	0.00	0.00	0.00	0.00	0.00	0.32	0.00	0.5719	0.0000
5.924	9.00	0.00	0.00	0.00	0.00	0.00	0.31	0.00	0.5741	0.0000
6.006	9.00	0.00	0.00	0.00	0.00	0.00	0.31	0.00	0.5762	0.0000
6.088	9.00	0.00	0.00	0.00	0.00	0.00	0.31	0.00	0.5783	0.0000
6.170	9.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.5803	0.0000
6.252	9.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.5824	0.0000
6.334	9.00	0.00	0.00	0.00	0.00	0.00	0.29	0.00	0.5844	0.0000
6.429	9.00	0.00	0.00	0.00	0.00	0.00	0.29	0.00	0.5867	0.0000
6.511	9.00	0.00	0.00	0.00	0.00	0.00	0.29	0.00	0.5886	0.0000
6.593	9.00	0.00	0.00	0.00	0.00	0.00	0.28	0.00	0.5906	0.0000
6.668	9.00	0.00	0.00	0.00	0.00	0.00	0.28	0.00	0.5923	0.0000
6.754	9.00	0.00	0.00	0.00	0.00	0.00	0.28	0.00	0.5943	0.0000
6.839	9.00	0.00	0.00	0.00	0.00	0.00	0.27	0.00	0.5962	0.0000
6.924	9.00	0.00	0.00	0.00	0.00	0.00	0.27	0.00	0.5981	0.0000
7.010	9.00	0.00	0.00	0.00	0.00	0.00	0.26	0.00	0.6000	0.0000
7.095	9.00	0.00	0.00	0.00	0.00	0.00	0.26	0.00	0.6018	0.0000
7.180	9.00	0.00	0.00	0.00	0.00	0.00	0.26	0.00	0.6037	0.0000
7.266	9.00	0.00	0.00	0.00	0.00	0.00	0.26	0.00	0.6055	0.0000
7.334	9.00	0.00	0.00	0.00	0.00	0.00	0.25	0.00	0.6069	0.0000
7.419	9.00	0.00	0.00	0.00	0.00	0.00	0.25	0.00	0.6087	0.0000
7.505	9.00	0.00	0.00	0.00	0.00	0.00	0.25	0.00	0.6104	0.0000
7.590	9.00	0.00	0.00	0.00	0.00	0.00	0.24	0.00	0.6122	0.0000
7.675	9.00	0.00	0.00	0.00	0.00	0.00	0.24	0.00	0.6139	0.0000

Advanced Interconnected Channel & Pond Routing (ICPR Ver 2.10) [3]
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********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
7.761	9.00	0.00	0.00	0.00	0.00	0.00	0.24	0.00	0.6156	0.0000
7.846	9.00	0.00	0.00	0.00	0.00	0.00	0.24	0.00	0.6172	0.0000
7.932	9.00	0.00	0.00	0.00	0.00	0.00	0.23	0.00	0.6189	0.0000
8.017	9.00	0.00	0.00	0.00	0.00	0.00	0.23	0.00	0.6205	0.0000
8.085	9.00	0.00	0.00	0.00	0.00	0.00	0.23	0.00	0.6218	0.0000
8.171	9.00	0.00	0.00	0.00	0.00	0.00	0.23	0.00	0.6234	0.0000
8.256	9.00	0.00	0.00	0.00	0.00	0.00	0.22	0.00	0.6250	0.0000
8.341	9.00	0.00	0.00	0.00	0.00	0.00	0.22	0.00	0.6266	0.0000
8.427	9.00	0.00	0.00	0.00	0.00	0.00	0.22	0.00	0.6281	0.0000
8.512	9.00	0.00	0.00	0.00	0.00	0.00	0.22	0.00	0.6297	0.0000
8.597	9.00	0.00	0.00	0.00	0.00	0.00	0.21	0.00	0.6312	0.0000
8.683	9.00	0.00	0.00	0.00	0.00	0.00	0.21	0.00	0.6327	0.0000
8.768	9.00	0.00	0.00	0.00	0.00	0.00	0.21	0.00	0.6342	0.0000
8.853	9.00	0.00	0.00	0.00	0.00	0.00	0.21	0.00	0.6356	0.0000
8.918	9.00	0.00	0.00	0.00	0.00	0.00	0.21	0.00	0.6367	0.0000
9.003	9.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.6382	0.0000
9.088	9.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.6396	0.0000
9.174	9.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.6410	0.0000
9.259	9.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.6424	0.0000
9.344	9.00	0.00	0.00	0.00	0.00	0.00	0.19	0.00	0.6438	0.0000
9.430	9.00	0.00	0.00	0.00	0.00	0.00	0.19	0.00	0.6451	0.0000
9.515	9.00	0.00	0.00	0.00	0.00	0.00	0.19	0.00	0.6465	0.0000
9.600	9.00	0.00	0.00	0.00	0.00	0.00	0.19	0.00	0.6478	0.0000
9.686	9.00	0.00	0.00	0.00	0.00	0.00	0.19	0.00	0.6492	0.0000
9.771	9.00	0.00	0.00	0.00	0.00	0.00	0.19	0.00	0.6505	0.0000
9.835	9.00	0.00	0.00	0.00	0.00	0.00	0.18	0.00	0.6515	0.0000
9.921	9.00	0.00	0.00	0.00	0.00	0.00	0.18	0.00	0.6527	0.0000
10.006	9.00	0.00	0.00	0.00	0.00	0.00	0.18	0.00	0.6540	0.0000
10.091	9.00	0.00	0.00	0.00	0.00	0.00	0.18	0.00	0.6553	0.0000
10.177	9.00	0.00	0.00	0.00	0.00	0.00	0.18	0.00	0.6565	0.0000
10.262	9.00	0.00	0.00	0.00	0.00	0.00	0.18	0.00	0.6578	0.0000
10.347	9.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00	0.6590	0.0000
10.433	9.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00	0.6602	0.0000
10.518	9.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00	0.6614	0.0000
10.603	9.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00	0.6626	0.0000
10.667	9.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00	0.6635	0.0000
10.753	9.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00	0.6647	0.0000
10.849	9.00	0.00	0.00	0.00	0.00	0.00	0.16	0.00	0.6660	0.0000
10.929	9.00	0.00	0.00	0.00	0.00	0.00	0.16	0.00	0.6671	0.0000
11.009	9.00	0.00	0.00	0.00	0.00	0.00	0.16	0.00	0.6682	0.0000
11.089	9.00	0.00	0.00	0.00	0.00	0.00	0.16	0.00	0.6692	0.0000
11.169	9.00	0.00	0.00	0.00	0.00	0.00	0.16	0.00	0.6703	0.0000
11.276	9.00	0.00	0.00	0.00	0.00	0.00	0.16	0.00	0.6717	0.0000
11.356	9.00	0.00	0.00	0.00	0.00	0.00	0.16	0.00	0.6727	0.0000
11.436	9.00	0.00	0.00	0.00	0.00	0.00	0.15	0.00	0.6737	0.0000
11.516	9.00	0.00	0.00	0.00	0.00	0.00	0.15	0.00	0.6747	0.0000
11.596	9.00	0.00	0.00	0.00	0.00	0.00	0.15	0.00	0.6757	0.0000

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********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
11.676	9.00	0.00	0.00	0.00	0.00	0.00	0.15	0.00	0.6767	0.0000
11.756	9.00	0.00	0.00	0.00	0.00	0.00	0.15	0.00	0.6777	0.0000
11.836	9.00	0.00	0.00	0.00	0.00	0.00	0.15	0.00	0.6787	0.0000
11.943	9.00	0.00	0.00	0.00	0.00	0.00	0.15	0.00	0.6800	0.0000
12.023	9.00	0.00	0.00	0.00	0.00	0.00	0.15	0.00	0.6810	0.0000
12.103	9.00	0.00	0.00	0.00	0.00	0.00	0.14	0.00	0.6819	0.0000
12.183	9.00	0.00	0.00	0.00	0.00	0.00	0.14	0.00	0.6829	0.0000
12.263	9.00	0.00	0.00	0.00	0.00	0.00	0.14	0.00	0.6838	0.0000
12.343	9.00	0.00	0.00	0.00	0.00	0.00	0.14	0.00	0.6848	0.0000
12.423	9.00	0.00	0.00	0.00	0.00	0.00	0.14	0.00	0.6857	0.0000
12.503	9.00	0.00	0.00	0.00	0.00	0.00	0.14	0.00	0.6866	0.0000
12.609	9.00	0.00	0.00	0.00	0.00	0.00	0.14	0.00	0.6878	0.0000
12.689	9.00	0.00	0.00	0.00	0.00	0.00	0.14	0.00	0.6887	0.0000
12.769	9.00	0.00	0.00	0.00	0.00	0.00	0.14	0.00	0.6896	0.0000
12.849	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6905	0.0000
12.930	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6914	0.0000
13.010	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6923	0.0000
13.090	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6932	0.0000
13.170	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6940	0.0000
13.256	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6949	0.0000
13.356	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6960	0.0000
13.423	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6967	0.0000
13.523	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6978	0.0000
13.590	9.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.6984	0.0000
13.690	9.00	0.00	0.00	0.00	0.00	0.00	0.12	0.00	0.6995	0.0000
13.756	9.00	0.00	0.00	0.00	0.00	0.00	0.12	0.00	0.7002	0.0000
13.856	9.00	0.00	0.00	0.00	0.00	0.00	0.12	0.00	0.7012	0.0000
13.923	9.00	0.00	0.00	0.00	0.00	0.00	0.12	0.00	0.7018	0.0000
14.023	9.00	0.00	0.00	0.00	0.00	0.00	0.12	0.00	0.7028	0.0000
14.257	9.00	0.00	0.00	0.00	0.00	0.00	0.12	0.00	0.7051	0.0000
14.523	9.00	0.00	0.00	0.00	0.00	0.00	0.12	0.00	0.7077	0.0000
14.757	9.00	0.00	0.00	0.00	0.00	0.00	0.11	0.00	0.7099	0.0000
15.024	9.00	0.00	0.00	0.00	0.00	0.00	0.11	0.00	0.7124	0.0000
15.257	9.00	0.00	0.00	0.00	0.00	0.00	0.11	0.00	0.7145	0.0000
15.524	9.00	0.00	0.00	0.00	0.00	0.00	0.11	0.00	0.7168	0.0000
15.757	9.00	0.00	0.00	0.00	0.00	0.00	0.10	0.00	0.7189	0.0000
16.041	9.00	0.00	0.00	0.00	0.00	0.00	0.10	0.00	0.7213	0.0000
16.291	9.00	0.00	0.00	0.00	0.00	0.00	0.10	0.00	0.7234	0.0000
16.541	9.00	0.00	0.00	0.00	0.00	0.00	0.10	0.00	0.7254	0.0000
16.791	9.00	0.00	0.00	0.00	0.00	0.00	0.10	0.00	0.7274	0.0000
17.041	9.00	0.00	0.00	0.00	0.00	0.00	0.09	0.00	0.7294	0.0000
17.291	9.00	0.00	0.00	0.00	0.00	0.00	0.09	0.00	0.7313	0.0000
17.541	9.00	0.00	0.00	0.00	0.00	0.00	0.09	0.00	0.7332	0.0000
17.791	9.00	0.00	0.00	0.00	0.00	0.00	0.09	0.00	0.7351	0.0000
18.041	9.00	0.00	0.00	0.00	0.00	0.00	0.09	0.00	0.7369	0.0000
18.291	9.00	0.00	0.00	0.00	0.00	0.00	0.09	0.00	0.7387	0.0000
18.541	9.00	0.00	0.00	0.00	0.00	0.00	0.08	0.00	0.7404	0.0000

Advanced Interconnected Channel & Pond Routing (ICPR Ver 2.10) [5]
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********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
18.791	9.00	0.00	0.00	0.00	0.00	0.00	0.08	0.00	0.7421	0.0000
19.042	9.00	0.00	0.00	0.00	0.00	0.00	0.08	0.00	0.7438	0.0000
19.302	9.00	0.00	0.00	0.00	0.00	0.00	0.08	0.00	0.7455	0.0000
19.510	9.00	0.00	0.00	0.00	0.00	0.00	0.08	0.00	0.7469	0.0000
19.771	9.00	0.00	0.00	0.00	0.00	0.00	0.08	0.00	0.7486	0.0000
20.031	9.00	0.00	0.00	0.00	0.00	0.00	0.08	0.00	0.7502	0.0000
20.292	9.00	0.00	0.00	0.00	0.00	0.00	0.07	0.00	0.7518	0.0000
20.500	9.00	0.00	0.00	0.00	0.00	0.00	0.07	0.00	0.7531	0.0000
20.761	9.00	0.00	0.00	0.00	0.00	0.00	0.07	0.00	0.7546	0.0000
21.021	9.00	0.00	0.00	0.00	0.00	0.00	0.07	0.00	0.7562	0.0000
21.282	9.00	0.00	0.00	0.00	0.00	0.00	0.07	0.00	0.7577	0.0000
21.542	9.00	0.00	0.00	0.00	0.00	0.00	0.07	0.00	0.7592	0.0000
21.751	9.00	0.00	0.00	0.00	0.00	0.00	0.07	0.00	0.7603	0.0000
22.011	9.00	0.00	0.00	0.00	0.00	0.00	0.07	0.00	0.7618	0.0000
22.272	9.00	0.00	0.00	0.00	0.00	0.00	0.07	0.00	0.7632	0.0000
22.545	9.00	0.00	0.00	0.00	0.00	0.00	0.06	0.00	0.7646	0.0000
22.806	9.00	0.00	0.00	0.00	0.00	0.00	0.06	0.00	0.7660	0.0000
23.001	9.00	0.00	0.00	0.00	0.00	0.00	0.06	0.00	0.7670	0.0000
23.262	9.00	0.00	0.00	0.00	0.00	0.00	0.06	0.00	0.7683	0.0000
23.522	9.00	0.00	0.00	0.00	0.00	0.00	0.06	0.00	0.7696	0.0000
23.783	9.00	0.00	0.00	0.00	0.00	0.00	0.06	0.00	0.7709	0.0000
24.011	9.00	0.00	0.00	0.00	0.00	0.00	0.06	0.00	0.7720	0.0000
*** Group: BASE		Node: NT1								
0.000	13.12	0.39	0.00	0.00	0.00	0.00	0.00	5.42	0.0000	0.0000
0.083	13.03	0.39	0.00	0.00	0.00	0.00	0.00	4.65	0.0000	0.0347
0.167	12.95	0.38	0.00	0.00	0.00	0.00	0.00	4.00	0.0000	0.0646
0.250	12.89	0.38	0.00	0.00	0.00	0.00	0.00	3.46	0.0000	0.0902
0.334	12.83	0.37	0.00	0.00	0.00	0.00	0.00	3.00	0.0000	0.1125
0.417	12.78	0.37	0.00	0.00	0.00	0.00	0.00	2.62	0.0000	0.1319
0.500	12.73	0.37	0.00	0.00	0.00	0.00	0.00	2.30	0.0000	0.1488
0.584	12.69	0.37	0.00	0.00	0.00	0.00	0.00	2.03	0.0000	0.1637
0.667	12.65	0.36	0.00	0.00	0.00	0.00	0.00	1.80	0.0000	0.1769
0.751	12.62	0.36	0.00	0.00	0.00	0.00	0.00	1.60	0.0000	0.1886
0.834	12.59	0.36	0.00	0.00	0.00	0.00	0.00	1.44	0.0000	0.1990
0.917	12.57	0.36	0.00	0.00	0.00	0.00	0.00	1.29	0.0000	0.2084
1.000	12.54	0.36	0.00	0.00	0.00	0.00	0.00	1.17	0.0000	0.2169
1.085	12.52	0.35	0.00	0.00	0.00	0.00	0.00	1.06	0.0000	0.2246
1.168	12.50	0.35	0.00	0.00	0.00	0.00	0.00	0.97	0.0000	0.2316
1.251	12.48	0.35	0.00	0.00	0.00	0.00	0.00	0.89	0.0000	0.2380
1.334	12.47	0.35	0.00	0.00	0.00	0.00	0.00	0.81	0.0000	0.2439
1.418	12.45	0.35	0.00	0.00	0.00	0.00	0.00	0.75	0.0000	0.2493
1.501	12.44	0.35	0.00	0.00	0.00	0.00	0.00	0.69	0.0000	0.2542
1.583	12.42	0.35	0.00	0.00	0.00	0.00	0.00	0.64	0.0000	0.2587
1.668	12.41	0.35	0.00	0.00	0.00	0.00	0.00	0.60	0.0000	0.2631
1.752	12.40	0.35	0.00	0.00	0.00	0.00	0.00	0.55	0.0000	0.2670
1.834	12.39	0.35	0.00	0.00	0.00	0.00	0.00	0.52	0.0000	0.2707

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6/4/01

********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
1.919	12.38	0.35	0.00	0.00	0.00	0.00	0.00	0.48	0.0000	0.2742
2.001	12.37	0.34	0.00	0.00	0.00	0.00	0.00	0.45	0.0000	0.2774
2.084	12.36	0.34	0.00	0.00	0.00	0.00	0.00	0.43	0.0000	0.2804
2.167	12.35	0.34	0.00	0.00	0.00	0.00	0.00	0.40	0.0000	0.2833
2.253	12.34	0.34	0.00	0.00	0.00	0.00	0.00	0.38	0.0000	0.2860
2.335	12.34	0.34	0.00	0.00	0.00	0.00	0.00	0.36	0.0000	0.2885
2.417	12.33	0.34	0.00	0.00	0.00	0.00	0.00	0.34	0.0000	0.2909
2.503	12.32	0.34	0.00	0.00	0.00	0.00	0.00	0.32	0.0000	0.2932
2.586	12.32	0.34	0.00	0.00	0.00	0.00	0.00	0.30	0.0000	0.2954
2.668	12.31	0.34	0.00	0.00	0.00	0.00	0.00	0.29	0.0000	0.2974
2.754	12.31	0.34	0.00	0.00	0.00	0.00	0.00	0.27	0.0000	0.2994
2.835	12.30	0.34	0.00	0.00	0.00	0.00	0.00	0.26	0.0000	0.3012
2.920	12.29	0.34	0.00	0.00	0.00	0.00	0.00	0.25	0.0000	0.3030
3.000	12.29	0.34	0.00	0.00	0.00	0.00	0.00	0.24	0.0000	0.3046
3.085	12.28	0.34	0.00	0.00	0.00	0.00	0.00	0.23	0.0000	0.3063
3.167	12.28	0.34	0.00	0.00	0.00	0.00	0.00	0.22	0.0000	0.3078
3.251	12.28	0.34	0.00	0.00	0.00	0.00	0.00	0.21	0.0000	0.3093
3.335	12.27	0.34	0.00	0.00	0.00	0.00	0.00	0.20	0.0000	0.3107
3.419	12.27	0.34	0.00	0.00	0.00	0.00	0.00	0.19	0.0000	0.3121
3.503	12.26	0.34	0.00	0.00	0.00	0.00	0.00	0.19	0.0000	0.3134
3.589	12.26	0.34	0.00	0.00	0.00	0.00	0.00	0.18	0.0000	0.3147
3.673	12.26	0.34	0.00	0.00	0.00	0.00	0.00	0.17	0.0000	0.3159
3.750	12.25	0.34	0.00	0.00	0.00	0.00	0.00	0.17	0.0000	0.3170
3.834	12.25	0.34	0.00	0.00	0.00	0.00	0.00	0.16	0.0000	0.3181
3.918	12.25	0.34	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.3192
4.002	12.24	0.34	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.3202
4.091	12.24	0.34	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.3213
4.170	12.24	0.34	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.3222
4.257	12.23	0.34	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.3232
4.336	12.23	0.34	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.3241
4.423	12.23	0.34	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.3250
4.502	12.23	0.34	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.3258
4.589	12.22	0.34	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.3267
4.670	12.22	0.34	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.3274
4.757	12.22	0.34	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.3283
4.834	12.22	0.33	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.3290
4.921	12.22	0.33	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.3297
5.009	12.21	0.33	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.3305
5.085	12.21	0.33	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.3311
5.173	12.21	0.33	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.3318
5.260	12.21	0.33	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.3325
5.337	12.21	0.33	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.3331
5.419	12.20	0.33	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.3337
5.500	12.20	0.33	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.3343
5.596	12.20	0.33	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.3350
5.678	12.20	0.33	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.3356
5.760	12.20	0.33	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.3361

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********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow: Base Q (cfs)	Inflow: Onsite (cfs)	Inflow: Offsite (cfs)	Inflow: Bndry Q (cfs)	Inflow: Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
5.842	12.19	0.33	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.3367
5.924	12.19	0.33	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.3372
6.006	12.19	0.33	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.3377
6.088	12.19	0.33	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3382
6.170	12.19	0.33	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3387
6.252	12.19	0.33	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3392
6.334	12.19	0.33	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3397
6.429	12.18	0.33	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3402
6.511	12.18	0.33	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3407
6.593	12.18	0.33	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3411
6.668	12.18	0.33	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3415
6.754	12.18	0.33	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3420
6.839	12.18	0.33	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3424
6.924	12.18	0.33	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3428
7.010	12.17	0.33	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3432
7.095	12.17	0.33	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3436
7.180	12.17	0.33	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3440
7.266	12.17	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3444
7.334	12.17	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3447
7.419	12.17	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3451
7.505	12.17	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3455
7.590	12.17	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3458
7.675	12.17	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3462
7.761	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3466
7.846	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3469
7.932	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3472
8.017	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3476
8.085	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3478
8.171	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3482
8.256	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3485
8.341	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3488
8.427	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3491
8.512	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3494
8.597	12.16	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3497
8.683	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3500
8.768	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3503
8.853	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3506
8.918	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3508
9.003	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3511
9.088	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3513
9.174	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3516
9.259	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3519
9.344	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3521
9.430	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3524
9.515	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3526
9.600	12.15	0.33	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.3529
9.686	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3531

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********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
9.771	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3534
9.835	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3536
9.921	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3538
10.006	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3540
10.091	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3543
10.177	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3545
10.262	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3547
10.347	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3549
10.433	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3551
10.518	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3554
10.603	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3556
10.667	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3557
10.753	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3559
10.849	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3562
10.929	12.14	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3563
11.009	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3565
11.089	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3567
11.169	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3569
11.276	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3571
11.356	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3573
11.436	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3575
11.516	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3577
11.596	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3578
11.676	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3580
11.756	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.3582
11.836	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3583
11.943	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3586
12.023	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3587
12.103	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3589
12.183	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3590
12.263	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3592
12.343	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3594
12.423	12.13	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3595
12.503	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3597
12.609	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3599
12.689	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3600
12.769	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3602
12.849	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3603
12.930	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3605
13.010	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3606
13.090	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3607
13.170	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3609
13.256	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3610
13.356	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3612
13.423	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3613
13.523	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3615
13.590	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3616

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********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
13.690	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3618
13.756	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3619
13.856	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3620
13.923	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3621
14.023	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3623
14.257	12.12	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3627
14.523	12.11	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3631
14.757	12.11	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3634
15.024	12.11	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3638
15.257	12.11	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3641
15.524	12.11	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3645
15.757	12.11	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3648
16.041	12.11	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3652
16.291	12.11	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3656
16.541	12.11	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3659
16.791	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.3662
17.041	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3665
17.291	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3668
17.541	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3671
17.791	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3674
18.041	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3677
18.291	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3679
18.541	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3682
18.791	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3685
19.042	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3687
19.302	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3690
19.510	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3692
19.771	12.10	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3694
20.031	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3697
20.292	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3699
20.500	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3701
20.761	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3703
21.021	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3705
21.282	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3708
21.542	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3710
21.751	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3712
22.011	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3714
22.272	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3716
22.545	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3718
22.806	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3720
23.001	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3721
23.262	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3723
23.522	12.09	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3725
23.783	12.08	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3727
24.011	12.08	0.33	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.3729

*** Group: BASE Node: NT2

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********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
0.000	11.92	0.08	0.00	0.00	0.00	0.00	0.00	1.56	0.0000	0.0000
0.083	11.79	0.07	0.00	0.00	0.00	0.00	0.00	1.23	0.0000	0.0096
0.167	11.69	0.07	0.00	0.00	0.00	0.00	0.00	0.96	0.0000	0.0171
0.250	11.61	0.07	0.00	0.00	0.00	0.00	0.00	0.75	0.0000	0.0230
0.334	11.54	0.07	0.00	0.00	0.00	0.00	0.00	0.60	0.0000	0.0277
0.417	11.49	0.07	0.00	0.00	0.00	0.00	0.00	0.49	0.0000	0.0315
0.500	11.45	0.07	0.00	0.00	0.00	0.00	0.00	0.40	0.0000	0.0345
0.584	11.41	0.07	0.00	0.00	0.00	0.00	0.00	0.33	0.0000	0.0370
0.667	11.38	0.07	0.00	0.00	0.00	0.00	0.00	0.28	0.0000	0.0392
0.751	11.35	0.07	0.00	0.00	0.00	0.00	0.00	0.24	0.0000	0.0409
0.834	11.33	0.07	0.00	0.00	0.00	0.00	0.00	0.21	0.0000	0.0425
0.917	11.31	0.07	0.00	0.00	0.00	0.00	0.00	0.18	0.0000	0.0438
1.000	11.29	0.07	0.00	0.00	0.00	0.00	0.00	0.16	0.0000	0.0450
1.085	11.27	0.07	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.0460
1.168	11.26	0.07	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.0469
1.251	11.25	0.06	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.0477
1.334	11.24	0.06	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.0484
1.418	11.23	0.06	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.0491
1.501	11.22	0.06	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.0496
1.583	11.21	0.06	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.0502
1.668	11.20	0.06	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.0507
1.752	11.20	0.06	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.0511
1.834	11.19	0.06	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.0515
1.919	11.18	0.06	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.0519
2.001	11.18	0.06	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.0523
2.084	11.17	0.06	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.0526
2.167	11.17	0.06	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.0529
2.253	11.16	0.06	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.0532
2.335	11.16	0.06	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.0535
2.417	11.15	0.06	0.00	0.00	0.00	0.00	0.00	0.04	0.0000	0.0537
2.503	11.15	0.06	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.0540
2.586	11.15	0.06	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.0542
2.668	11.14	0.06	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.0544
2.754	11.14	0.06	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.0546
2.835	11.14	0.06	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.0548
2.920	11.13	0.06	0.00	0.00	0.00	0.00	0.00	0.03	0.0000	0.0550
3.000	11.13	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0551
3.085	11.13	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0553
3.167	11.13	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0555
3.251	11.12	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0556
3.335	11.12	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0558
3.419	11.12	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0559
3.503	11.12	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0560
3.589	11.12	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0562
3.673	11.11	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0563
3.750	11.11	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0564
3.834	11.11	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0565

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********** Node Time Series by Node - 02POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
3.918	11.11	0.06	0.00	0.00	0.00	0.00	0.00	0.02	0.0000	0.0566
4.002	11.11	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0567
4.091	11.10	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0568
4.170	11.10	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0569
4.257	11.10	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0570
4.336	11.10	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0571
4.423	11.10	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0572
4.502	11.10	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0572
4.589	11.10	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0573
4.670	11.10	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0574
4.757	11.09	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0575
4.834	11.09	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0575
4.921	11.09	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0576
5.009	11.09	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0577
5.085	11.09	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0577
5.173	11.09	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0578
5.260	11.09	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0579
5.337	11.09	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0579
5.419	11.09	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0580
5.500	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0581
5.596	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0581
5.678	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0582
5.760	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0582
5.842	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0583
5.924	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0583
6.006	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0584
6.088	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0584
6.170	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0585
6.252	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0585
6.334	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0585
6.429	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0586
6.511	11.08	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0586
6.593	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0587
6.668	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0587
6.754	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0588
6.839	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0588
6.924	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0588
7.010	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0589
7.095	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0589
7.180	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0589
7.266	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.01	0.0000	0.0590
7.334	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0590
7.419	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0590
7.505	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0591
7.590	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0591
7.675	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0591
7.761	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0592

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********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
7.846	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0592
7.932	11.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0592
8.017	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0593
8.085	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0593
8.171	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0593
8.256	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0594
8.341	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0594
8.427	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0594
8.512	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0594
8.597	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0595
8.683	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0595
8.768	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0595
8.853	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0596
8.918	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0596
9.003	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0596
9.088	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0596
9.174	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0596
9.259	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0597
9.344	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0597
9.430	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0597
9.515	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0597
9.600	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0598
9.686	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0598
9.771	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0598
9.835	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0598
9.921	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0598
10.006	11.06	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0599
10.091	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0599
10.177	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0599
10.262	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0599
10.347	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0599
10.433	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0600
10.518	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0600
10.603	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0600
10.667	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0600
10.753	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0600
10.849	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0601
10.929	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0601
11.009	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0601
11.089	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0601
11.169	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0601
11.276	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0601
11.356	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0601
11.436	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0602
11.516	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0602
11.596	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0602
11.676	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0602

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6/4/01

********** Node Time Series by Node - OZPOST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
11.756	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0602
11.836	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0602
11.943	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0603
12.023	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0603
12.103	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0603
12.183	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0603
12.263	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0603
12.343	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0603
12.423	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0603
12.503	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0603
12.609	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0604
12.689	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0604
12.769	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0604
12.849	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0604
12.930	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0604
13.010	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0604
13.090	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0604
13.170	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0604
13.256	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0605
13.356	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0605
13.423	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0605
13.523	11.05	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0605
13.590	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0605
13.690	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0605
13.756	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0605
13.856	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0605
13.923	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0605
14.023	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0606
14.257	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0606
14.523	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0606
14.757	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0606
15.024	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0607
15.257	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0607
15.524	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0607
15.757	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0608
16.041	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0608
16.291	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0608
16.541	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0608
16.791	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0609
17.041	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0609
17.291	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0609
17.541	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0609
17.791	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0609
18.041	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0610
18.291	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0610
18.541	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0610
18.791	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0610

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********** Node Time Series by Node - 02POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow: Base Q (cfs)	Onsite (cfs)	Offsite (cfs)	Bndry Q (cfs)	Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
19.042	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0610
19.302	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0611
19.510	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0611
19.771	11.04	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0611
20.031	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0611
20.292	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0611
20.500	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0611
20.761	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0612
21.021	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0612
21.282	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0612
21.542	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0612
21.751	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0612
22.011	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0612
22.272	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0612
22.545	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0613
22.806	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0613
23.001	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0613
23.262	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0613
23.522	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0613
23.783	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0613
24.011	11.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.0000	0.0614
*** Group: BASE		Node: NT3								
0.000	9.73	0.97	0.00	0.00	0.00	0.00	0.00	0.57	0.0000	0.0000
0.083	9.73	0.97	0.00	0.00	0.00	0.00	0.00	0.56	0.0000	0.0039
0.167	9.72	0.97	0.00	0.00	0.00	0.00	0.00	0.55	0.0000	0.0078
0.250	9.72	0.97	0.00	0.00	0.00	0.00	0.00	0.55	0.0000	0.0116
0.334	9.71	0.97	0.00	0.00	0.00	0.00	0.00	0.54	0.0000	0.0153
0.417	9.71	0.97	0.00	0.00	0.00	0.00	0.00	0.53	0.0000	0.0190
0.500	9.71	0.97	0.00	0.00	0.00	0.00	0.00	0.52	0.0000	0.0226
0.584	9.70	0.97	0.00	0.00	0.00	0.00	0.00	0.51	0.0000	0.0262
0.667	9.70	0.97	0.00	0.00	0.00	0.00	0.00	0.51	0.0000	0.0297
0.751	9.70	0.97	0.00	0.00	0.00	0.00	0.00	0.50	0.0000	0.0331
0.834	9.69	0.97	0.00	0.00	0.00	0.00	0.00	0.49	0.0000	0.0366
0.917	9.69	0.97	0.00	0.00	0.00	0.00	0.00	0.48	0.0000	0.0399
1.000	9.69	0.97	0.00	0.00	0.00	0.00	0.00	0.48	0.0000	0.0432
1.085	9.68	0.97	0.00	0.00	0.00	0.00	0.00	0.47	0.0000	0.0465
1.168	9.68	0.97	0.00	0.00	0.00	0.00	0.00	0.46	0.0000	0.0497
1.251	9.68	0.97	0.00	0.00	0.00	0.00	0.00	0.46	0.0000	0.0529
1.334	9.67	0.97	0.00	0.00	0.00	0.00	0.00	0.45	0.0000	0.0560
1.418	9.67	0.97	0.00	0.00	0.00	0.00	0.00	0.44	0.0000	0.0591
1.501	9.67	0.97	0.00	0.00	0.00	0.00	0.00	0.44	0.0000	0.0622
1.583	9.66	0.97	0.00	0.00	0.00	0.00	0.00	0.43	0.0000	0.0651
1.668	9.66	0.97	0.00	0.00	0.00	0.00	0.00	0.43	0.0000	0.0681
1.752	9.66	0.97	0.00	0.00	0.00	0.00	0.00	0.42	0.0000	0.0711
1.834	9.65	0.97	0.00	0.00	0.00	0.00	0.00	0.42	0.0000	0.0739
1.919	9.65	0.97	0.00	0.00	0.00	0.00	0.00	0.41	0.0000	0.0768

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********** Node Time Series by Node - OZPOST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
2.001	9.65	0.97	0.00	0.00	0.00	0.00	0.00	0.40	0.0000	0.0796
2.084	9.65	0.97	0.00	0.00	0.00	0.00	0.00	0.40	0.0000	0.0823
2.167	9.64	0.96	0.00	0.00	0.00	0.00	0.00	0.39	0.0000	0.0850
2.253	9.64	0.96	0.00	0.00	0.00	0.00	0.00	0.39	0.0000	0.0878
2.335	9.64	0.96	0.00	0.00	0.00	0.00	0.00	0.38	0.0000	0.0904
2.417	9.63	0.96	0.00	0.00	0.00	0.00	0.00	0.38	0.0000	0.0930
2.503	9.63	0.96	0.00	0.00	0.00	0.00	0.00	0.37	0.0000	0.0957
2.586	9.63	0.96	0.00	0.00	0.00	0.00	0.00	0.37	0.0000	0.0982
2.668	9.63	0.96	0.00	0.00	0.00	0.00	0.00	0.36	0.0000	0.1007
2.754	9.62	0.96	0.00	0.00	0.00	0.00	0.00	0.36	0.0000	0.1032
2.835	9.62	0.96	0.00	0.00	0.00	0.00	0.00	0.35	0.0000	0.1056
2.920	9.62	0.96	0.00	0.00	0.00	0.00	0.00	0.35	0.0000	0.1081
3.000	9.62	0.96	0.00	0.00	0.00	0.00	0.00	0.35	0.0000	0.1104
3.085	9.61	0.96	0.00	0.00	0.00	0.00	0.00	0.34	0.0000	0.1128
3.167	9.61	0.96	0.00	0.00	0.00	0.00	0.00	0.34	0.0000	0.1151
3.251	9.61	0.96	0.00	0.00	0.00	0.00	0.00	0.33	0.0000	0.1174
3.335	9.61	0.96	0.00	0.00	0.00	0.00	0.00	0.33	0.0000	0.1197
3.419	9.60	0.96	0.00	0.00	0.00	0.00	0.00	0.32	0.0000	0.1220
3.503	9.60	0.96	0.00	0.00	0.00	0.00	0.00	0.32	0.0000	0.1242
3.589	9.60	0.96	0.00	0.00	0.00	0.00	0.00	0.32	0.0000	0.1265
3.673	9.60	0.96	0.00	0.00	0.00	0.00	0.00	0.31	0.0000	0.1287
3.750	9.59	0.96	0.00	0.00	0.00	0.00	0.00	0.31	0.0000	0.1306
3.834	9.59	0.96	0.00	0.00	0.00	0.00	0.00	0.31	0.0000	0.1328
3.918	9.59	0.96	0.00	0.00	0.00	0.00	0.00	0.30	0.0000	0.1349
4.002	9.59	0.96	0.00	0.00	0.00	0.00	0.00	0.30	0.0000	0.1370
4.091	9.59	0.96	0.00	0.00	0.00	0.00	0.00	0.29	0.0000	0.1391
4.170	9.58	0.96	0.00	0.00	0.00	0.00	0.00	0.29	0.0000	0.1410
4.257	9.58	0.96	0.00	0.00	0.00	0.00	0.00	0.29	0.0000	0.1431
4.336	9.58	0.96	0.00	0.00	0.00	0.00	0.00	0.28	0.0000	0.1450
4.423	9.58	0.96	0.00	0.00	0.00	0.00	0.00	0.28	0.0000	0.1470
4.502	9.58	0.96	0.00	0.00	0.00	0.00	0.00	0.28	0.0000	0.1488
4.589	9.57	0.96	0.00	0.00	0.00	0.00	0.00	0.27	0.0000	0.1508
4.670	9.57	0.96	0.00	0.00	0.00	0.00	0.00	0.27	0.0000	0.1527
4.757	9.57	0.96	0.00	0.00	0.00	0.00	0.00	0.27	0.0000	0.1546
4.834	9.57	0.96	0.00	0.00	0.00	0.00	0.00	0.27	0.0000	0.1563
4.921	9.57	0.96	0.00	0.00	0.00	0.00	0.00	0.26	0.0000	0.1582
5.009	9.56	0.96	0.00	0.00	0.00	0.00	0.00	0.26	0.0000	0.1601
5.085	9.56	0.96	0.00	0.00	0.00	0.00	0.00	0.26	0.0000	0.1617
5.173	9.56	0.96	0.00	0.00	0.00	0.00	0.00	0.25	0.0000	0.1636
5.260	9.56	0.96	0.00	0.00	0.00	0.00	0.00	0.25	0.0000	0.1654
5.337	9.56	0.96	0.00	0.00	0.00	0.00	0.00	0.25	0.0000	0.1670
5.419	9.56	0.96	0.00	0.00	0.00	0.00	0.00	0.25	0.0000	0.1686
5.500	9.55	0.96	0.00	0.00	0.00	0.00	0.00	0.24	0.0000	0.1703
5.596	9.55	0.96	0.00	0.00	0.00	0.00	0.00	0.24	0.0000	0.1722
5.678	9.55	0.96	0.00	0.00	0.00	0.00	0.00	0.24	0.0000	0.1738
5.760	9.55	0.96	0.00	0.00	0.00	0.00	0.00	0.23	0.0000	0.1754
5.842	9.55	0.96	0.00	0.00	0.00	0.00	0.00	0.23	0.0000	0.1770

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********** Node Time Series by Node - OZPOST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
5.924	9.54	0.96	0.00	0.00	0.00	0.00	0.00	0.23	0.0000	0.1786
6.006	9.54	0.95	0.00	0.00	0.00	0.00	0.00	0.23	0.0000	0.1801
6.088	9.54	0.95	0.00	0.00	0.00	0.00	0.00	0.23	0.0000	0.1817
6.170	9.54	0.95	0.00	0.00	0.00	0.00	0.00	0.22	0.0000	0.1832
6.252	9.54	0.95	0.00	0.00	0.00	0.00	0.00	0.22	0.0000	0.1847
6.334	9.54	0.95	0.00	0.00	0.00	0.00	0.00	0.22	0.0000	0.1862
6.429	9.54	0.95	0.00	0.00	0.00	0.00	0.00	0.22	0.0000	0.1879
6.511	9.53	0.95	0.00	0.00	0.00	0.00	0.00	0.21	0.0000	0.1893
6.593	9.53	0.95	0.00	0.00	0.00	0.00	0.00	0.21	0.0000	0.1908
6.668	9.53	0.95	0.00	0.00	0.00	0.00	0.00	0.21	0.0000	0.1921
6.754	9.53	0.95	0.00	0.00	0.00	0.00	0.00	0.21	0.0000	0.1936
6.839	9.53	0.95	0.00	0.00	0.00	0.00	0.00	0.21	0.0000	0.1950
6.924	9.53	0.95	0.00	0.00	0.00	0.00	0.00	0.20	0.0000	0.1965
7.010	9.52	0.95	0.00	0.00	0.00	0.00	0.00	0.20	0.0000	0.1979
7.095	9.52	0.95	0.00	0.00	0.00	0.00	0.00	0.20	0.0000	0.1993
7.180	9.52	0.95	0.00	0.00	0.00	0.00	0.00	0.20	0.0000	0.2007
7.266	9.52	0.95	0.00	0.00	0.00	0.00	0.00	0.20	0.0000	0.2021
7.334	9.52	0.95	0.00	0.00	0.00	0.00	0.00	0.19	0.0000	0.2032
7.419	9.52	0.95	0.00	0.00	0.00	0.00	0.00	0.19	0.0000	0.2045
7.505	9.52	0.95	0.00	0.00	0.00	0.00	0.00	0.19	0.0000	0.2059
7.590	9.51	0.95	0.00	0.00	0.00	0.00	0.00	0.19	0.0000	0.2072
7.675	9.51	0.95	0.00	0.00	0.00	0.00	0.00	0.19	0.0000	0.2085
7.761	9.51	0.95	0.00	0.00	0.00	0.00	0.00	0.18	0.0000	0.2098
7.846	9.51	0.95	0.00	0.00	0.00	0.00	0.00	0.18	0.0000	0.2111
7.932	9.51	0.95	0.00	0.00	0.00	0.00	0.00	0.18	0.0000	0.2124
8.017	9.51	0.95	0.00	0.00	0.00	0.00	0.00	0.18	0.0000	0.2137
8.085	9.51	0.95	0.00	0.00	0.00	0.00	0.00	0.18	0.0000	0.2147
8.171	9.51	0.95	0.00	0.00	0.00	0.00	0.00	0.18	0.0000	0.2159
8.256	9.50	0.95	0.00	0.00	0.00	0.00	0.00	0.17	0.0000	0.2172
8.341	9.50	0.95	0.00	0.00	0.00	0.00	0.00	0.17	0.0000	0.2184
8.427	9.50	0.95	0.00	0.00	0.00	0.00	0.00	0.17	0.0000	0.2196
8.512	9.50	0.95	0.00	0.00	0.00	0.00	0.00	0.17	0.0000	0.2208
8.597	9.50	0.95	0.00	0.00	0.00	0.00	0.00	0.17	0.0000	0.2220
8.683	9.50	0.95	0.00	0.00	0.00	0.00	0.00	0.17	0.0000	0.2232
8.768	9.50	0.95	0.00	0.00	0.00	0.00	0.00	0.16	0.0000	0.2243
8.853	9.50	0.95	0.00	0.00	0.00	0.00	0.00	0.16	0.0000	0.2255
8.918	9.49	0.95	0.00	0.00	0.00	0.00	0.00	0.16	0.0000	0.2264
9.003	9.49	0.95	0.00	0.00	0.00	0.00	0.00	0.16	0.0000	0.2275
9.088	9.49	0.95	0.00	0.00	0.00	0.00	0.00	0.16	0.0000	0.2286
9.174	9.49	0.95	0.00	0.00	0.00	0.00	0.00	0.16	0.0000	0.2297
9.259	9.49	0.95	0.00	0.00	0.00	0.00	0.00	0.16	0.0000	0.2309
9.344	9.49	0.95	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.2320
9.430	9.49	0.95	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.2330
9.515	9.49	0.95	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.2341
9.600	9.49	0.95	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.2352
9.686	9.48	0.95	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.2362
9.771	9.48	0.95	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.2373

Advanced Interconnected Channel & Pond Routing (ICPR Ver 2.10) [17]
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********** Node Time Series by Node - O2POST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow Base Q (cfs)	Inflow Onsite (cfs)	Inflow Offsite (cfs)	Inflow Bndry Q (cfs)	Inflow Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
9.835	9.48	0.95	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.2381
9.921	9.48	0.95	0.00	0.00	0.00	0.00	0.00	0.15	0.0000	0.2391
10.006	9.48	0.95	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.2401
10.091	9.48	0.95	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.2412
10.177	9.48	0.95	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.2422
10.262	9.48	0.95	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.2432
10.347	9.48	0.95	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.2441
10.433	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.2451
10.518	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.2461
10.603	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.2471
10.667	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.14	0.0000	0.2478
10.753	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.2487
10.849	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.2498
10.929	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.2507
11.009	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.2515
11.089	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.2524
11.169	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.2533
11.276	9.47	0.95	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.2544
11.356	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.2552
11.436	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.13	0.0000	0.2561
11.516	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2569
11.596	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2577
11.676	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2585
11.756	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2593
11.836	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2601
11.943	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2612
12.023	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2620
12.103	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2628
12.183	9.46	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2636
12.263	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2643
12.343	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.12	0.0000	0.2651
12.423	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2659
12.503	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2666
12.609	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2676
12.689	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2684
12.769	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2691
12.849	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2698
12.930	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2705
13.010	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2713
13.090	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2720
13.170	9.45	0.95	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2727
13.256	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2735
13.356	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.11	0.0000	0.2743
13.423	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2749
13.523	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2758
13.590	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2764
13.690	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2772

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6/4/01

********** Node Time Series by Node - OZPOST **********

Time (hrs)	Stage (ft)	Surface Ar.(ac)	Inflow: Base Q (cfs)	Inflow: Onsite (cfs)	Inflow: Offsite (cfs)	Inflow: Bndry Q (cfs)	Inflow: Link Q (cfs)	Link Outflow (cfs)	Cumulative Volume In (ac.ft)	Cumulative Volume Out (ac.ft)
13.756	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2778
13.856	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2786
13.923	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2792
14.023	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2800
14.257	9.44	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2819
14.523	9.43	0.94	0.00	0.00	0.00	0.00	0.00	0.10	0.0000	0.2840
14.757	9.43	0.94	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.2858
15.024	9.43	0.94	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.2879
15.257	9.43	0.94	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.2896
15.524	9.43	0.94	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.2916
15.757	9.42	0.94	0.00	0.00	0.00	0.00	0.00	0.09	0.0000	0.2933
16.041	9.42	0.94	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.2953
16.291	9.42	0.94	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.2970
16.541	9.42	0.94	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.2987
16.791	9.42	0.94	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.3004
17.041	9.41	0.94	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.3020
17.291	9.41	0.94	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.3036
17.541	9.41	0.94	0.00	0.00	0.00	0.00	0.00	0.08	0.0000	0.3052
17.791	9.41	0.94	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3067
18.041	9.41	0.94	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3083
18.291	9.41	0.94	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3097
18.541	9.40	0.94	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3112
18.791	9.40	0.94	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3126
19.042	9.40	0.94	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3141
19.302	9.40	0.94	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3155
19.510	9.40	0.94	0.00	0.00	0.00	0.00	0.00	0.07	0.0000	0.3166
19.771	9.40	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3180
20.031	9.40	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3194
20.292	9.39	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3208
20.500	9.39	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3218
20.761	9.39	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3231
21.021	9.39	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3244
21.282	9.39	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3257
21.542	9.39	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3269
21.751	9.39	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3279
22.011	9.39	0.94	0.00	0.00	0.00	0.00	0.00	0.06	0.0000	0.3291
22.272	9.38	0.94	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3303
22.545	9.38	0.94	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3316
22.806	9.38	0.94	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3327
23.001	9.38	0.94	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3336
23.262	9.38	0.94	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3347
23.522	9.38	0.94	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3358
23.783	9.38	0.94	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3369
24.011	9.38	0.94	0.00	0.00	0.00	0.00	0.00	0.05	0.0000	0.3378

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Tipperary Sales, d/b/a La-Z-Boy Furniture Gallery,	)	
Plaintiff,	)	
v.	)	Case No. 12-CP-10-6922
South Carolina Department of Transportation, *et. al.*,	)	
Defendants.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on January 7, 2014, before The Honorable R. Markley Dennis in Courtroom 3A of the Charleston County, 100 Broad Street, Charleston, South Carolina; attended by counsel:

APPEARANCES:

Yancey A. McLeod, III, Esq.
LEATH BOUCH & SEEKINGS
Appearing for Plaintiff

Phillip S. Frederigos, Esq.
Appearing for

Wade Cooper, Esq.
Appearing for Charleston Water System

Jason Daigle, Eq.
Appearing for South Carolina Department of Transportation

Andrew Halio, Esq.
Appearing for DHEC

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

1 THE COURT: All memos are
2 incorporated for the purpose of review, and
3 each of you may rely on your memos fully.
4 Any Motions been resolved, or are they all
5 still viable?
6 MR. MCLEOD: Your Honor, there
7 are four Motions and they are all still
8 viable. They are all basically very similar.
9 THE COURT: Very well. The
10 Motions to dismiss are based on the pleadings
11 alone.
12 MR. COOPER: Yes, Your Honor,
13 as far as my client.
14 THE COURT: Mr. ---
15 MR. COOPER: And, uh, -- yes.
16 The City of North Charleston's Motion, Motion
17 for judgment, -- I represent the Charleston
18 Water System. Also a Motion for judgment on
19 the pleadings or in the alternative a Motion
20 for summary judgment.
21 THE COURT: You understand that,
22 Mr. McLeod, as well, that it would be -- if
23 it is not on that, that I could go outside,
24 basically, the pleadings if necessary?
25 MR. MCLEOD: Yes, Your Honor.

1 THE COURT: Okay. That's fine.
2 Be happy to hear from you. Start with this
3 one first. The simple one.
4 MR. FREDERIGOS: Yes, Your
5 Honor, if it would please the Court, just a
6 little bit of quick background, ---
7 THE COURT: Sure.
8 MR. FREDERIGOS: This case
9 involves La-Z-Boy, which is a tenant in the
10 Northwoods area and plumbing events that
11 occurred in 2003, 2004, 2005, 2008, 2009.
12 The pleadings were filed in 2010.
13 Your Honor, if I could pick the low-
14 lying fruit first, in 2003, 2004, 2005, those
15 are barred by the statute of limitations,
16 because they sued in 2010. So we're moving
17 solely as to the statute of limitation at
18 this time as to the 2003, 2004, 2004 and 2005
19 allegations of the Complaint.
20 Your Honor, the other low-lying
21 fruit -- I would presume they would concede
22 that. Maybe not. We'll find out.
23 But the other low-lying fruit, Your
24 Honor, is a cause of action that is alleged
25 solely against the City of North Charleston,

1 which is my case, which is a South Carolina
2 Code, Annotated, 5-31-450 violation. If you
3 look at the pleadings, La-Z-Boy pleads that
4 it is a tenant, that it is not a landowner.
5 The statute itself is for a landowner, not a
6 tenant. It requires notice from the land-
7 lord, not a tenant. So the pleadings are
8 deficient as to that statute. The case law
9 says that unless the landowner -- against the
10 tenant, not the landowner here -- pleads and
11 proves an overt act against a municipality
12 proximately causing the damages complained
13 of, there is no cause of action under the
14 statute and that the cause of action is in
15 favor of an adjacent landowner's property
16 that has been damages by surface water cast
17 upon it as a result of construction. So
18 that's the second low-lying fruit.
19 And, Your Honor, the remaining
20 Motion. To dismiss pursuant to 12(c)is based
21 on the *Hawkins* decision. The Hawkins
22 decision is the law of the land. I know that
23 the plaintiffs don't like the Hawkins
24 decision and try to distinguish the Hawkins
25 decision, but the Hawkins decision is pretty

1 clear and Your Honor, it's scary how on point
2 the case actually is. I think that's the
3 first time that's ever happened for me.
4 If I could just quote two parts of
5 the Hawkins decision, that's all I will say.
6 Quoting from the decision, (reading):
7 "Most of the City's acts supports
8 the condemnation claim are merely failures to
9 act. Specifically, Hawkins asserts the City
10 improperly allowed the development of
11 neighboring parcels of commercial property,
12 which altered the elevation of the area and
13 added strain to the Laurel Creek drainage
14 pipes beyond their capacity and then failed
15 to replace those pipes."
16 It goes on to say, (reading): "These
17 allegations are not affirmative, positive or
18 aggressive acts by a governmental agency.
19 Allegations of a mere failure to act are
20 insufficient."
21 Your Honor, it goes on ---
22 THE COURT: I understand the logic
23 behind that.
24 MR. FEDERIGOS: Well, Your Honor,
25 I will just go ahead and stop while I am

1 ahead, because ---
2 THE COURT: It is what it is.
3 MR. FREDERIGOS: Yes, sir.
4 THE COURT: All right. Mr.
5 McLeod, let's argue that. Let me get that
6 one out of the way first, then we can deal
7 with the rest of them.
8 MR. MCLEOD: Yes, sir.
9 THE COURT: Why shouldn't the
10 Hawkins decision -- well, first of all, do
11 you argue anything concerning 2003, 2004,
12 2005? That's the statute.
13 MR. MCLEOD: Only to the extent
14 that of our damages is the diminution of our
15 property value.
16 THE COURT: If you extend it, it
17 attributed to those years and you can't have
18 it because the statute of limitations would
19 have run. So I grant it on the statute of
20 limitations issue as to any damages accruing
21 from 2003 through 2005. Okay.
22 COURT REPORTER: I apologize, but
23 please remind me of your name.
24 MR. MCLEOD: Yancey McLeod. I am
25 not on the docket but I'm here for the

1 plaintiffs. I am not surprised that he
2 brought up the Hawkins decision, Judge. I
3 think we need to look very carefully at the
4 Hawkins decision, because the facts are
5 distinguishable.
6 THE COURT: Okay.
7 MR. MCLEOD: First of all,
8 THE COURT: Well, I would agree
9 with you in the sense that they may be
10 distinguishable facts. Don't have any
11 problem with that, because very seldom are
12 you going to have a factual situation which
13 is exactly the same.
14 What -- the logic behind the Hawkins
15 decision makes perfect sense. I mean, --
16 sorry. I understand what you're claiming but
17 you can't say that a City allowed development
18 to take place and if that development --
19 assuming that it is all in compliance with
20 everything, which it has to be, to meet the
21 Hawkins decision, because it's simply not
22 stepping in and stopping development. I'm
23 just paraphrasing. But that's what it is
24 saying.
25 If that is causing you problems with

1 water, that's fine. It really kinda stems --
2 I had one surface water with clients that I
3 had when I was practicing law, and I found
4 out about pits, collecting water. You can
5 get popped with that one, because we did.
6 When you collect it, concentrate it
7 and dump, you've done something. That's an
8 affirmative act. That's something that they
9 did, and they could prove.
10 If a person simply improves their
11 property and the water runs off, so -- so
12 what? That is basically the same logic that
13 Hawkins says, but it even goes a step
14 further. The municipality can't be
15 responsible for damages that is done in
16 compliance with any -- I assume you're not
17 alleging any code violation here, anything
18 that they did improperly insofar as -- I
19 mean, I think those are the kinds of things
20 that you would have to prove to get them --
21 that they didn't -- that they allowed
22 something to be done that they would have
23 otherwise prohibited, or should have
24 prohibited.
25 In this one, it's nothing other than

1 development. I mean, that's all that you
2 haven't, isn't it?
3 MR. MCLEOD: Your Honor, just if I
4 -- if I may briefly, ---
5 THE COURT: You briefed it
6 thoroughly, Mr. McLeod, -- I appreciate that
7 -- and you may rely on your brief.
8 Let's do this. You save that one
9 for -- you've briefed your position
10 thoroughly, you've distinguished the case,
11 you've said this really doesn't control here.
12 If I use Hawkins as a controller,
13 then I've protected you and you have a right
14 to get that overturned, if you chose to. But
15 they're going to have to overturn. They
16 don't need my support but, as I just said, I
17 think that the logic makes perfect sense. I
18 mean, you can't have a municipality develop
19 it, then do something in the confines --
20 everything within the law and it results in a
21 person's damages.
22 Public nuisance? Maybe.
23 Inverse condemnation, I understand.
24 But there's something that you've got to --
25 that you've done, other than just permit it

1 to happen.
2 I mean, if that's all -- I under-
3 stand inverse condemnation. I understand it.
4 But in every single one -- the one that we
5 did was in Hanahan. They built a ditch and
6 changed how the water flowed. But it was for
7 drainage purposes. They created a tremendous
8 flood at the end. Well, you've kinda got a
9 -- that's an affirmative act that they were
10 involved in. We don't have that here. I
11 mean, they didn't do anything other than
12 permit it to happen. I mean, they didn't
13 develop the property. Did they?
14 MR. MCLEOD: No, sir, they just
15 allowed the development.
16 THE COURT: Well, why should they
17 not allow it? Just because it may cause
18 somebody's property to have a problem.
19 That's okay. You take actions, too.
20 MR. MCLEOD: I think in this
21 situation that it's different because the
22 City ---
23 THE COURT: I appreciate your
24 position. It's stated fully in your brief.
25 I've read it. Thank you. I can't -- I'm not

1 going to reverse the Hawkins decision. I
2 think that the Hawkins decision controls it.
3 So I grant your Motion. Draw me the Order
4 based on the Hawkins decision, so it's -- I
5 think that's really the thrust of your
6 argument.
7 MR. FREDEROGIS: Absolutely, thank
8 you, Your Honor.
9 THE COURT: And that way, Mr.
10 McLeod, you now have it framed for future
11 purposes. Thank you sir.
12 Now let's go to the next Motion to
13 dismiss and/or summary judgment.
14 COUNSEL: Again, ---
15 THE COURT: Your name, for the
16 record.
17 MR. COOPER: Wade Cooper on behalf
18 of the Charleston Water System, formerly
19 known as the Charleston Commission of Public
20 Works. Your Honor, our memoranda -- we filed
21 our Motion and it is based in part on the
22 two-year statute of limitations argument,
23 which I have already hear your ruling on
24 that.
25 THE COURT: I will be consistent

1 with that.
2 MR. COOPER: As to 2005, we would
3 ask that those be dismissed.
4 THE COURT: They are.
5 MR. COOPER: As to the four causes
6 of action filed against the Charleston Water
7 System as a governmental entity, they are
8 exactly the same except for one -- which they
9 didn't file against us, the municipal cause
10 of action. They've sued under inverse
11 condemnation, negligence and trespass, three
12 of four of which were directly addressed by
13 the Hawkins decision.
14 THE COURT: Correct.
15 MR. COOPER: It goes without saying
16 that if you read the claim, the allegations
17 are a failure to act on a part of the
18 Charleston Water System as opposed to an
19 overt and aggressive act which caused the
20 flooding.
21 THE COURT: Yeah.
22 MR. COOPER: All of the property
23 owned and maintained by the Water System is
24 downstream from this area, i.e. the Goose
25 Creek reservoir. Charleston Water System is

1 not in the business of handling or managing
2 storm water, rather they are in the business
3 or delivering water -- and sewer. That's the
4 only powers given to it by the legislature.
5 So, you know, at the risk of just
6 simply making it brief, the Hawkins decision
7 is controlling here for the very same reasons
8 that it was for the City of North Charleston
9 and should be applied to the Charleston Water
10 System. For that reason, we would ask that
11 the Court render judgment on the pleadings
12 based on the Hawkins decision.
13 THE COURT: The Hawkins decision
14 (affirmative nod) and -- and the statute of
15 limitations?
16 MR. COOPER: (Affirmative nod), and
17 the statute of limitations.
18 THE COURT: All right. Mr.
19 McLeod. Anything further than what we have
20 already -- than what is in your brief and --
21 basically, it's the same argu--, -- I mean,
22 it's the same position. But what in the
23 world -- help me here. The City -- this
24 development occurred within the city, so I
25 guess -- putting on your hat for awhile,

1 'yeah, the city needs to be' -- but what in
2 the world can they do?
3 MR. MCLEOD: Charleston Water?
4 THE COURT: Yeah.
5 MR. MCLEOD: Well, I -- I think
6 that it's a question of what they do when the
7 rain comes.
8 THE COURT: Yeah, but they don't
9 do anything. They just receive it. That's
10 basically what it amounts to.
11 MR. MCLEOD: Well, Your Honor, I --
12 look, ---
13 THE COURT: Did Charleston Water &
14 Sewer, did they put in the storm system?
15 MR. MCLEOD: They are responsible
16 for maintaining the ditches, Your Honor, and
17 they're also ---
18 THE COURT: Are you alleging that
19 -- is there any allegation that there was no
20 maintenance? That they failed to maintain
21 it?
22 MR. MCLEOD: Absolutely. That's
23 one of the causes of action here.
24 THE COURT: That's fine. So you
25 failed to maintain the ditches adequately

1 and, therefore, the water backed up. That's
2 an affirmative act.
3 MR. MCLEOD: We don't know the ---
4 THE COURT: Well, I understand
5 that.
6 MR. MCLEOD: The discovery -- I
7 haven't even deposed anybody.
8 THE COURT: Well, I appreciate
9 that. As to the City, you don't have to
10 depose anybody with that one. They didn't do
11 anything.
12 Mr. Cooper, what about that? The
13 ditches?
14 MR. COOPER: Now, I guess we're
15 getting outside of the pleadings.
16 THE COURT: We are. But because
17 we ---
18 MR. COOPER: The Charleston Water
19 System did not design nor are they charged
20 within maintaining the ditches.
21 THE COURT: Well, he just said
22 that they are.
23 MR. COOPER: (Affirmative nod),
24 that's what he has alleged in his pleadings.
25 THE COURT: Okay.

1 MR. COOPER: He is alleging that we
2 failed to do something.
3 THE COURT: Well, if you didn't
4 maintain the ditches properly, then you
5 failed to do something.
6 MR. COOPER: Allegations of mere
7 failure to act are insufficient.
8 THE COURT: Okay.
9 MR. COOPER: That is from the
10 Hawkins case.
11 THE COURT: Well, failure to step
12 in and do something else, but -- where you
13 didn't have a duty to do anything, that's --
14 that's what Hawkins says to me. You didn't
15 have a duty to do anything at all other than
16 basically provide an overall -- for the sake
17 of going back to the municipality -- scheme
18 for development. Basically, I don't know
19 that you even had a duty to do that either.
20 But, I mean, just for the sake of discussion.
21 But where you're assigned, you have
22 a task, and that is to maintain the drainage
23 system. If you fail to maintain it, that's a
24 failure to act. It's not just sitting by,
25 but you had a duty to do it in the first

1 place.
2 MR. COOPER: To be clear, this is
3 the City of Charleston. It is the City of
4 North Charleston's drainage system.
5 THE COURT: I understand.
6 MR. COOPER: It is not the
7 Charleston Water System's, CPW's, drainage
8 system.
9 THE COURT: That's what I am
10 asking. Is this area -- is that their
11 responsibility.
12 MR. MCLEOD: In our Complaint, we
13 allege ---
14 THE COURT: I understand that,
15 but what I have is a matter of fact that says
16 that they -- that they do have that
17 responsibility. Why in the world would CPW
18 have any responsibility in the confines of
19 the Charleston municipality?
20 MR. COOPER: North Charleston.
21 MR. MCLEOD: I would argue that the
22 -- that Charleston Water has a responsibility
23 to control any water than they back up water
24 on. Judge, this is not necessarily just a
25 drainage ditch. I would argue that this

1 ditch is an extension of the Goose Creek
2 reservoir. It never goes anywhere. So this
3 is a tremendous ---
4 THE COURT: Well, let's go back to
5 Hawkins and the City. Whose responsibility
6 is it to maintain it in the city? Who has
7 the duty to maintain the drainage system in
8 the city?
9 MR. MCLEOD: Certainly the City,
10 and I believe the owner, the Department of
11 Transportation, I believe, has the easement
12 through this ditch. I think just about
13 everybody is responsible here. There's -- I
14 mean, for example, Judge, ---
15 THE COURT: Let's go back and
16 let's revisit North Charleston then. How are
17 we going to -- how is that not a failure?
18 That you should have done something, when you
19 have a duty to do it as a city?
20 MR. MCLEOD: Your Honor, our
21 position is ---
22 THE COURT: No, I'm asking Mr.
23 Frederigos.
24 MR. FREDERIGOS: Your Honor, my
25 understanding is that the City had no

1 responsibility or duty with the drainage
2 system at all other than it is located within
3 the city.
4 THE COURT: Well, somebody has.
5 Who has it? I mean, based on the scintilla,
6 who has it? I have to deny your Motion.
7 MR. FREDERIGOS: Hawkins was
8 specifically for the city, Your Honor. So I
9 don't understand ---
10 THE COURT: But if the City has a
11 duty and there's anything that contributed to
12 the failure to maintain the ditches, which it
13 sounds like to me at first blush that there
14 is, then Hawkins doesn't apply to that. It
15 applies to -- it applies to anything when
16 your argument overall is that this thing
17 developed everything. But how do you get by
18 -- but the City -- the City's inverse
19 condemena--, -- and you've raised the statute
20 too. How do you get by that as a tenant
21 versus a landowner?
22 MR. FREDERIGOS: Your Honor, I
23 would just argue that in terms of that, is
24 that ---
25 THE COURT: You can argue that

1 one. I think that one nails you. Because I
2 -- I don't -- I think the landowner is the
3 person who has got to make the claim. The
4 tenant has a cause of action, maybe, against
5 the landowner but no inverse condemnation.
6 MR. FREDERIGOS: Your Honor, if I
7 may respond to the question that you asked,
8 all I can do is cite the Hawkins case, which
9 says that the duty is of the municipal
10 authority, which would be us, "in adopting a
11 general plan of drainage and when and where
12 sewer shall be building, what size and to
13 what level is not subject to revision by the
14 court or jury … not sufficient in draining a
15 particular lot of land" and that extends to -
16 --
17 THE COURT: I agree with you ---
18 MR. FREDERIGOS: And maintenance.
19 THE COURT: And maintenance?
20 MR. FREDERIGOS: (Affirmative nod).
21 THE COURT: Okay.
22 MR. FREDERIGOS: Specifically says
23 "and maintenance."
24 THE COURT: Then it probably does
25 apply.

1 MR. MCLEOD: This case is not about
2 the general plan.
3 THE COURT: But Hawkins says
4 maintenance.
5 MR. MCLEOD: We are here alleging
6 more than just maintenance. We're ---
7 THE COURT: That's fine. You can
8 allege more, but it doesn't apply to the
9 City. Hawkins seals the City. And just for
10 the sake of it, since it deals with that, I
11 think CPW is a -- you've got to go down the
12 road and back it back up to get to CPW. So I
13 agree with you, Mr. Cooper.
14 Just so that -- might as well be
15 consistent with my decision, because when we
16 argue -- if Hawkins is right, then they're
17 right. If Hawkins is wrong, then you are
18 right.
19 MR. MCLEOD: Just so that I can
20 protect the record ---
21 THE COURT: Sure.
22 MR. MCLEOD With regards to the
23 Hawkins case, the Hawkins case was purely
24 about the design. In this case, it's
25 different.

1 THE COURT: I appreciate that.
2 But if it is not about maintenance, then you
3 don't have anything against these people
4 under Hawkins. You really don't.
5 MR. MCLEOD: But, Your Honor, the
6 Tort Claims Act specifically provides this
7 exemption for licensing/permitting by
8 governmental bonds.
9 THE COURT: That's fine but --
10 you're -- licensing and permitting for what?
11 That you can't grant the development? Thank
12 you, sir. Take that one up. We'll see where
13 we go with that. That's going to be an
14 interesting day for -- I don't know how
15 you've going to develop -- if the people who
16 want to spend the money to develop say,
17 'well...' -- and the City says 'Oh, no, I don't
18 think I'm going to develop anything if my
19 liability is there.' That doesn't make any
20 sense. There's just no logic to it.
21 Thank you very much. Draw them both
22 on the Hawkins decision and the statute of
23 limitations, please.
24 All right. Now we have Motions for
25 summary judgment. Whatever order you want.

1 MR. HALIO: May it please the
2 Court, Andrew Halio for DHEC. We are purely
3 a permitting authority. We issued the permit
4 on the project and that's all that we did.
5 THE COURT: What is the basis for
6 issuing -- why is that wrong, issuing a
7 permit? What's wrong with issuing the
8 permit?
9 MR. MCLEOD: Your Honor, the basis
10 of the claims are that this problem has been
11 ongoing for thirty years. This case reeks of
12 gross negligence. All of these governmental
13 entities ---
14 THE COURT: What is the problem?
15 MR. MCLEOD: --- turned their ---
16 THE COURT: I appreciate it. The
17 problem is that you've got a development that
18 is in -- what? A low area? Where water
19 gathers? That is the problem.
20 MR. MCLEOD: Partially.
21 THE COURT: Partially? Water runs
22 downhill until it gets to its lowest point
23 and then it will start growing, and everybody
24 that builds knows that. But when somebody
25 grants a permit, they are just saying what we

1 are going to permit -- what are you permit?
2 What did you permit?
3 MR. HALIO: We permitted a sub-
4 division.
5 THE COURT: All right. I'll --
6 what is your basis for them -- what is the
7 negligent act of granting it?
8 MR. MCLEOD: We would argue that it
9 was grossly negligent for them to permit all
10 of the developments upstream of --
11 THE COURT: Based on what
12 information that was said, that they acted
13 irrationality and unreasonably. What
14 objections were filed to it?
15 MR. MCLEOD: To their Motion?
16 THE COURT: To the permit.
17 MR. MCLEOD: No objections that I
18 know of.
19 THE COURT: Why didn't your people
20 do file an objection to it? Why didn't you
21 go challenge it and say, 'Look, here, man,
22 you can't do that. You're going to ruin me.'
23 MR. MCLEOD: Your Honor, I am not
24 going ---
25 THE COURT: Okay. I agree with

1 you. That's why there is no basis for it.
2 There's no logic, they don't have any
3 standing to do that in the first place.
4 Just what I said, this is a great
5 case for changing the law in South Carolina.
6 You're a good man to do it. Good luck with
7 it.
8 I am going to grant that. There is
9 no basis -- there was no duty that you had to
10 do anything.
11 Did you file a memorandum in
12 conjunction with your Motion?
13 MR. HALIO: No, sir.
14 THE COURT: What is your basis
15 for granting it?
16 MR. HALIO: The basis -- what was
17 in the Motion was the Hawkins decision.
18 THE COURT: So you relied on
19 Hawkins?
20 MR. HALIO: Yes, sir.
21 THE COURT: Then you're -- you
22 cited Hawkins, so I think it applies to you,
23 too. All right.
24 MR. HALIO: Thank you.
25 THE COURT: The next one?

1 MR. DAIGLE: Your Honor, Jason
2 Daigle, for the South Carolina Department of
3 Transportation. Our argument is based on the
4 statute of limitation and Hawkins as well,
5 identical to Mr. Cooper's.
6 THE COURT: You got it. All
7 State agencies need to be treated the same.
8 I think Hawkins applies across the board.
9 I agree with you that certainly the
10 Tort Claims Act allows some litigation but it
11 has to be a basis other than just simply
12 permitting things to happen. As long as the
13 law is complied with -- somebody applied for
14 permit, nobody objected; they looked at it,
15 I'm sure that it met everything insofar as
16 the development was concerned; -- (pause).
17 Mr. McLeod, I appreciate your
18 position and you've got an opportunity here.
19 It says, 'We are going to be our brother's
20 keeper as a government. We are going to sit
21 here and we're -- when somebody applies,
22 we're going to go out and we're going to
23 conduct this massive investigation as to how
24 this is going to affect the surrounding
25 areas, and we're going to employ all these

1 people -- it'll be great, we're going to
2 increase employment.' Except for one little
3 problems, 'I think our tax dollars are going
4 to have to be raised because it's going to
5 cause like the devil to accomplish what you
6 want.'
7 It's a grand idea, a wonderful
8 concept. In a perfect world it'd work. I
9 hope that the Court will take all these
10 words. I think they'll apply -- I think the
11 law is logical. I think Hawkins applies. If
12 they want to -- if they, in Columbia, want to
13 change it, so be it. I'll be the first
14 person to enforce it down -- every time that
15 it comes before me after that. Thank you,
16 sir.
17 Let's prepare all of them consis-
18 tent: Hawkins and the statue of limitations.
19 Thank you for allowing me to ramble.
20 MR. HALIO: Do you want separate
21 Orders or do you want one Order?
22 THE COURT: Separate Orders, since
23 they're separate clients. You can use the
24 same Order -- I'll sign them, it doesn't
25 matter if they look alike. Insert the name.

1 I just think -- but I think it would make
2 sense to do a separate one for each, just for
3 the sake of discussion in the future. There
4 are some differences with CPW as well,
5 Transportation probably, and DHEC. You have
6 an involvement but it's not the same
7 involvement. Thank you, Andy. Appreciate
8 it.
9 MR. HALIO: Thank you.
10 (HEARING CONCLUDED)
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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on January 7, 2014, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

D. Garrison

Deborah Garrison

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	C/A No. 12-CP-10-06922
Plaintiff,	)	
Versus	)	CHARLESTON WATER SYSTEM'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS / MOTION FOR SUMMARY JUDGMENT
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC,	)	
Defendants.	)	

FILED
2014 JAN -2 PM 3: 41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: MICHAEL S. SEEKINGS, ESQUIRE AND YANCEY A. McLEOD, III, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

Defendant Charleston Water System ("CWS") hereby respectfully submits its brief Memorandum in Support of its Motion to Dismiss Pursuant to SCRCP 12(c) or, in the alternative, Motion for Summary Judgment. CWS moves for a dismissal of the Plaintiff's Amended Complaint as a matter of law based on the statute of limitations set forth in the S.C. Tort Claims Act and the *Hawkins v. City of Greenville* decision (attached as Exhibit 1 to co-defendant City of North Charleston's memorandum).

Essentially, CWS' argument in support of its motion to dismiss / motion for summary judgment is the same as that set forth in City of North Charleston's memorandum. As Plaintiff concedes in its Amended Complaint, CWS is a governmental entity of the State of South Carolina. [Amended Complaint, ¶ 5]. Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act.[1] S.C. Code Ann. §15-

[1] The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See Murphy v. Richland Mem'l Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998). "The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-20(b) (Supp. 2002) (emphasis added). "[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of

7810, *et seq.* The Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). The provisions of the Tort Claims Act establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State. S.C. Code Ann. §15-78-20 (f). Any action brought pursuant to the Tort Claims Act is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered. S.C. Code Ann. §15-78-110.

Plaintiff initially filed the instant action against Defendants on April 8, 2010. Plaintiff's Amended Complaint alleges loss due to heavy flood events between the years 2003 and 2009. Considering that Plaintiff did not file a verified claim within the two year statute of limitations (and thus extending the statute of limitations for filing suit an additional year), Plaintiff is barred from seeking recovery from alleged injuries that occurred more than two years prior to April 8, 2010, and such claims should be dismissed as a matter of law.

Additionally, CWS moves for judgment on the pleadings, or in the alternative, for summary judgment as to all causes of action against CWS, which include:

(1) Inverse Condemnation;

(2) Negligent & Grossly Negligent Design, Construction, & Maintenance;

(3) Negligent & Grossly Negligent Failure to Manage Storm Water Runoff; and,

(4) Trespass.

CWS argues that the Court of Appeals' decision in *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), is directly on point with the instant case and determinative of the legal issues involved herein.

---

governmental entity." S.C. Code Ann. § 15-78-20(a) (Supp. 2002) (emphasis added). According to the Act, "[n]ot withstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200 (Supp. 2002) (emphasis added).

I. There is no evidence that any affirmative, positive, aggressive act on the part of CWS caused or contributed to Plaintiff's alleged injuries.

First, with regard to Plaintiff's inverse condemnation cause of action against CWS, the *Hawkins* decision makes clear that in order to maintain a cause of action against a government agency for inverse condemnation, a Plaintiff must prove evidence of "an affirmative, positive, aggressive act" on the part of the government. *Hawkins*, at 291. Here, although Plaintiff may have used the phrase "affirmative and aggressive act" in its pleadings, the gravamen of its cause of action against CWS is essentially that it "failed to act." Allegations of mere failure to act are insufficient to support an inverse condemnation claim. *Id.* Furthermore, to the extent Plaintiff's cause of action for inverse condemnation is premised upon the theory that CWS' negligent design of the drainage system in and around Northwoods Mall / Northwoods Pointe constituted the requisite "affirmative, positive, aggressive" action, the *Hawkins* Court held that the design and planning of a sewage/drainage system by a governmental entity are, by their very nature, quasi-judicial, discretionary functions for which a governmental entity is not liable. *Id.*, at 294. *See also*, S.C. Code Ann. §15-78-60 (1), (2), (4), (5), (7), (9), (13), and (20). Thus, no cause of action for inverse condemnation may lie against CWS, and dismissal of Plaintiff's cause of action or summary judgment is appropriate as a matter of law.

II. CWS is not liable for Plaintiffs' tort claims of negligence/gross negligence.

As to Plaintiff's Sixth and Seventh causes of action alleging tort negligence on the part of CWS for negligent design/maintenance and negligent management of storm water runoff, the *Hawkins* decision is equally informative. In analyzing the causes of action against the City, the Court of Appeals discussed the exceptions to the waiver of sovereign immunity within the Tort Claims Act. The relevant portions of the Tort Claims Act state:

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

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

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

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

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

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

...

(7) a nuisance;

...

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

...

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

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.

Code 1976 § 15-78-60

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. *Madison ex rel. Bryant v. Babcock Center, Inc.,* 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). When a governmental entity asserts various exceptions to the waiver of immunity under the state Tort Claims Act, the correct approach is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard. *Steinke v. South Carolina Dept. of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit liability. *Id.* However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. *Id.*

The Tort Claims Act immunity provisions (1), (2), (3-5), (7), (9), (13), and (20) bar this present tort claim against CWS. The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a city's drainage system has been addressed before by South Carolina courts. In *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims. In *Hawkins*, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: 'legislative, judicial, or quasi-judicial action or inaction[.]'" *Id.* at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the *Hawkins* case, the Supreme Court of

Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable. *City of Tyler v. Likes*, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in *City of Tyler* opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the *Hawkins* case to exercise the measured policy judgments required <u>to build and maintain</u> an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the design <u>and maintenance</u> of the drainage system in the Laurel Creek Basin. *Hawkins,* 358 S.C. at 293-94, 594 S.E.2d at 564. *Hawkins* stands for the proposition that a city's design <u>and maintenance</u> of its drainage system are provided absolute discretionary immunity under the Tort Claims Act. The *Hawkins* decision's broad language affords a governmental entity such as CWS absolute immunity for design and maintenance decisions. CWS therefore moves for dismissal of Plaintiff's Sixth and Seventh causes of action, or, in the alternative an Order granting summary judgment in its favor as a matter of law.

III. There is no affirmative and intentional act by CWS to support Plaintiff's trespass cause of action.

Plaintiff's Eighth cause of action alleges that CWS is liable for the common law tort of trespass. Here, too, the *Hawkins* decision is directly on point. The essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that

invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. *See* Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; *Cedar Cove Homeowners Association, Inc. vs. DiPietro*, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, S.C. Code Ann. § 15-78-60 (9) and (17) bar Plaintiff's trespass claim against CWS. The Plaintiff alleges that this Defendant "intentionally and knowingly directed storm water runoff to La-Z-Boy's premises" (Am. Comp. ¶ 108) and this Defendant "knowingly, willfully, and wantonly permitted the intrusion on La-Z-Boy's premises and chattels" (Am Comp. ¶ 111). Subsection (9) bars a trespass claim against a governmental entity for entry upon any property where entry is expressly or impliedly authorized by law and Subsection (20) bars any action against a governmental entity for conduct constituting an "intent to harm." As trespass requires an intent to enter upon the premises (and the entry itself is the "harm"), it is axiomatic that the intentional, unwarranted entry, which is the wrong itself, necessarily satisfies the "intent to harm" provision of subsection (20), and Tort Claims Act bars Plaintiff's claim for trespass as a matter of law. Further, for the same reasons outlined in the *Hawkins* decision, the trespass claim allegations in this case against CWS fail as a matter of law.

CONCLUSION

For the reasons stated herein, Defendant Charleston Water System respectfully requests this Honorable Court grant its Motion to Dismiss or, in the alternative, Motion for Summary

Judgment based on the South Carolina Tort Claims Act and the *Hawkins* decision discussed above.

Respectfully submitted,

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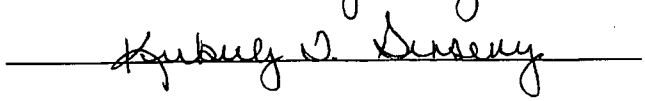
Attorneys for Defendant
Charleston Water System

January 2, 2014
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ emailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 2nd day of January, 2014.



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January 2, 2014

Via Hand Delivery
Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Suite 106
Charleston, SC 29401

Re: Tipperary Sales d/b/a La-Z-Boy Furniture Gallery v. South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC
C/A No. 12-CP-10-6922
BSLF File No. 10.73

Dear Ms. Armstrong:

Enclosed for filing please find an original and one copy of Defendant Charleston Water System's Memorandum in Support of Motion to Dismiss/Motion for Summary Judgment in the above-referenced case. Please file the original and return a clocked-in copy to me.

By copy of this letter, I am serving counsel with a copy of our Motion.

With kind regards,

Yours truly,

G. Wade Cooper

GWC:kts
Enclosure
cc: Yancey A. McLeod, III, Esquire
Elliott Halio, Esquire
Roy P. Maybank, Esquire
Duke R. Highfield, Esquire
Phillip S. Ferderigos, Esquire
Leslie S. Riley, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No.: 12-CP-10-6922
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
Plaintiff,	)	**CITY OF NORTH CHARLESTON'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS**
vs.	)	
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC,	)	
Defendants.	)	

FILED
2014 JAN -2 PM 4:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: MICHAEL S. SEEKINGS, ESQUIRE AND YANCEY A. MCLEOD III, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

Defendant City of North Charleston hereby respectfully submits its Memorandum in Support of its Motion to Dismiss Pursuant to SCRCP 12(c). Defendant City of North Charleston moves for a dismissal of the Plaintiff's Amended Complaint as a matter of law based on the statute of limitations and the Hawkins decision (attached as Exhibit 1).

I. ALLEGATIONS OF PLAINTIFF'S COMPLAINT

In relevant parts, the Amended Complaint alleges the following allegations against Defendant City of North Charleston[1]:

The South Carolina Department of Transportation (hereinafter "SCDOT") is a governmental subdivision of the State of South Carolina charged by law with the design, construction, and maintenance of the State's highways, byways, and thoroughfares. Plaintiff brings its claims against SCDOT, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq., and under common law. Am. Comp. ¶2

The South Carolina Department of Health and Environmental Control (hereinafter "DHEC") is a governmental subdivision of the State of South Carolina, with regulatory powers set forth in S.C. Code Ann. § 48-10-70, et seq. DHEC has promulgated regulations regarding storm water runoff management to promote water quantity control. S.C. Code Ann. Reg. 72-100 through 72-445. Plaintiff brings its claims against DHEC, in relevant part, pursuant to the South

[1] The specific allegations against Defendant City of North Charleston are underlined for the Court's ease of reference.

Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq., and under the common law. Am. Comp. ¶3

The City of North Charleston (hereinafter "North Charleston") is a municipal corporation and claims brought against it are brought, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq., § 5-31-450, and under common law. North Charleston is responsible for the maintenance and implementation of a storm water system in the City and for approving and inspecting drainage plans for construction in designated flood areas. Moreover, North Charleston is required to provide for sufficient drainage for surface water from any city street. S.C. Code Ann. § 5-31-450. Am. Comp. ¶4

The Charleston Water System, f/k/a Charleston Commissioners of Public Works (hereinafter "CWS"), is, upon information and belief, a governmental subdivision that owns, operates, and maintains the Goose Creek Reservoir, and, upon information and belief, has responsibility for controlling the discharge of water from the Reservoir into the Cooper River. CWS is believed to have designed, built, maintained, owned and controlled the drainage system running from the Northwoods Mall and Northwoods Pointe Shopping Center area to the Reservoir. Plaintiff brings its claims against CWS, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq., and under common law. Am. Comp. ¶5

Plaintiff La-Z-Boy has a leasehold interest in its store facilities at Northwoods Pointe Shopping Center in North Charleston. La-Z-Boy has leased the space since 2000. Prior to taking possession of the space, La-Z-Boy had no knowledge or information regarding any prior flooding events at the premises. La-Z-Boy upfitted the space for its business purposes and installed fixtures and various interior upgrades at its own expense. Am. Comp. ¶8

Unbeknownst to La-Z-Boy, the Northwoods Mall area was prone to flooding. As is reflected in a 1980 E.M. Seabrook, Jr., Inc. study, the Northwoods Mall parking lot has had a long history of flooding. The Seabrook study noted that the flooding issues were discussed with SCDOT and with North Charleston. Seabrook also determined that the flooding would take place upstream of the Highway 52 Connector in any 50-year storm due to the sizing of the pipes under the highways and downstream to two 84" pipes laying beneath the Northwoods Mall parking lot, which were and are grossly undersized and form a constriction point and obstruction to storm water drainage for the entire watershed. As such, as early as 1980, SCDOT and North Charleston knew that the facilities were inadequate to handle any heavy rainfall event. Am. Comp. ¶9

The Seabrook study also revealed that more than 1,900 acres drained to the twin 84" pipes running beneath the Northwoods Mall parking lot – 900 acres more that any previous drainage calculation had projected. The Seabrook study put SCDOT and North Charleston on notice that the twin 84" pipes were even more of a choke point for the storm water drainage system than previously believed. Still SCDOT did nothing, and, upon information and belief, made it clear to Seabrook that it intended to do nothing. Am. Comp. ¶10

THE DRAINAGE BASIN NEAR AND AROUND THE LA-Z-BOY STORE

Immediately downstream from Parkhill Place subdivision, storm water is channeled through a box culvert beneath the Highway 52 Connector. The box culvert was installed by SCDOT. Upon information and belief, the box culvert is not sufficiently sized to handle upstream storm water runoff. Am. Comp. ¶11 Just downstream from the box culvert are the

twin 84" pipes that are intended to carry storm water beneath the Northwoods Mall parking lot until they empty into an open ditch. The twin 84" pipes have never been adequate for managing storm water runoff since they were installed by SCDOT. Am. Comp. ¶12 Upon information and belief, CWS owns and controls the open ditch running through the lower part of the Northwoods Mall parking lot. Am. Comp. ¶13 The drainage basin then flows down an open ditch or streambed, believed to be owned and controlled by CWS, to its outflow terminus at the Goose Creek Reservoir, which itself is believed to be owned, controlled, managed, and operated by the CWS. Am. Comp. ¶14 The outflow point at the Reservoir, which is under CWS' control, is actually at a higher elevation than the intake point for the entire drainage system at SCDOT's twin 84" pipes. As a result, the entire drainage system remains approximately one-half full even during dry conditions. This lack of appropriate slope dramatically reduces the volume of water that can be carried by the entire drainage system, such that its capacity is substantially less than was intended. Am. Comp. ¶15 Though SCDOT has repeatedly been warned of the inadequacy of its 84" pipes, and the attendant risks of severe flooding, SCDOT has refused to correct their inadequate facilities. In fact, the twin 84" pipes act as a dam, preventing the flow of storm water to the Goose Creek Reservoir. Am. Comp. ¶16

In addition to the drainage from upstream of the Highway 52 Connector, storm water also flows down the road bed of Northwoods Boulevard from Ashley Phosphate Road. This storm water also flows to the intake of the drainage system at the twin 84" pipes. Am. Comp. ¶17 When there is a heavy rainfall, the storm water runoff flows down from the Parkhill Place Subdivision and points upstream to the rear of the La-Z-Boy store as well as from Ashley Phosphate Road down Northwoods Boulevard to the front of the La-Z-Boy store. The entire flow of storm water, both from the front and rear of the building, is intended to enter SCDOT's 84" pipes and to flow down the CWS-owned watershed to the Goose Creek Reservoir. The La-Z-Boy store is situated at the low point of the entire watershed. As Defendant Earth Tech reported to SCDOT and to Davis & Floyd, the La-Z-Boy store is the lowest point in the area around the mall and shopping center, and the store will tend to flood before any other surrounding stores or the mall itself. Am. Comp. ¶18 Instead of being channeled down the drainage watershed, the storm water runoff backs up at the constriction point at the opening of SCDOT's twin 84" pipes. Am. Comp. ¶19 Further, because of the incorrect design, construction and maintenance of the CWS drainage system, which is either flat or has negative drainage between the Northwoods Mall/Northwoods Pointe Shopping Center and the Goose Creek Reservoir, the entire drainage system is inadequate to the task of moving water away from the La-Z-Boy store and to the Reservoir. Am. Comp. ¶20

IMPROVEMENT OF THE ASHLEY PHOSPHATE ROAD / HIGHWAY 52 CONNECTOR / I-26 INTERCHANGE

In September, 2002, SCDOT began construction to improve the interchange at I-26, Ashley Phosphate Road, and the Highway 52 Connector in North Charleston. Am. Comp. ¶21

Upon information and belief, SCDOT conducted no significant analysis of the effect the planned improvement would have on downstream flooding, which SCDOT knew or should have known was a recurring problem. Am. Comp. ¶22 On or about March 20, 2003, while construction was ongoing, there was a heavy rainfall that resulted in considerable flooding downstream from the interchange improvements with maximum effect at the La-Z-Boy store. As a result of the inundation, the La-Z-Boy store suffered damage to its fixtures, improvements,

and loss of inventory. La-Z-Boy also suffered a loss of revenue because the store was forced to close for 6 days due to the flood and the clean-up, as well as the time required to restock ruined inventory. Am. Comp. ¶23

After the deluge, various merchants in the Northwoods Mall and Northwoods Pointe Shopping Center, including La-Z-Boy, notified SCDOT, the City of North Charleston, the Charleston County Public Works Department, the North Charleston Public Words Department, the Charleston Commissioners of Public Works (now Charleston Water System), and complained about the extensive flooding and notified all governmental agencies of its concern over future flooding and insisted that the responsible government agencies immediately investigate the cause of the flooding and take steps to remedy the problems causing the flooding that imperiled the livelihoods of the businesses affected by the torrent. Am. Comp. ¶24 In response to its demand for investigation into the cause of the flooding, La-Z-Boy was informed that "extensive roadwork in the area coupled with extraordinary rainfall were the contributing factors" in the flooding that damaged the La-Z-Boy store and inventory. Upon information and belief, the only roadwork that could have exacerbated and increased the flooding was the Ashley Phosphate / I-26 / Highway 52 Connector improvements being built by SCDOT. Am. Comp. ¶25

Rather than accept any responsibility for the flood, SCDOT wrongly contended that the only source of the flood was runoff down Northwoods Boulevard from Ashley Phosphate Road to the front of the La-Z-Boy store. SCDOT contended that the flood waters traversed the parking lot and collected in a retention pond at the rear of the store after which it passed into SCDOT's drainage pipes, which SCDOT wrongly believed were adequate and operating properly. Am. Comp. ¶26 Contrary to SCDOT's contention, the upstream watershed also extended uphill from SCDOT's expanded Highway 52 Connector through Parkhill Place Subdivision and other upstream commercial and residential developments, all of which drained directly to SCDOT's inadequate 84" pipes. Am. Comp. ¶27 Additionally, all runoff from the added impervious acreage of the expanded highway and interchange likewise flowed to the twin 84" pipes located in SCDOT's right-of-way and within SCDOT's exclusive control. Am. Comp. ¶28 SCDOT had long known that the 84" pipes were inadequate to the task of carrying away even a modest amount of storm water, yet SCDOT refused to make requisite improvements to the choke point in the drainage system at the mouth of the 84" pipes. Am. Comp. ¶29

After the March 20, 2003 flood, La-Z-Boy notified the City of North Charleston of its concern with storm water management, and demanded that North Charleston take any necessary and appropriate steps to correct the condition and to prevent future flooding. Am. Comp. ¶30 La-Z-Boy also contacted SCDOT's resident engineers on the I-26/Ashley Phosphate Road/Highway 52 Connector project, Davis & Floyd and Earth Tech, to notify them of the flooding problem and demanding that Davis & Floyd take such steps as were necessary to remedy the problem. Am. Comp. ¶31

Davis & Floyd commissioned Earth Tech n/k/a AECOM, SCDOT's design engineers for the improvement project, to study the impact of the interchange improvements on downstream storm water management. Earth Tech concluded that the Highway 52 Connector improvements would add 13.7 acres of impermeable material directly adjacent to the choke point in SCDOT's right-of-way at the inadequate twin 84" pipes. In fact, Earth Tech notified SCDOT that "the double pipe system under the [Northwoods] Mall parking lot is not adequately sized to handle the flows that the upstream box culvert [under the Highway 52 Connector] can handle." Earth Tech determined that when the 84" pipes' capacity was exceeded, the water level seeks the low

point – adjacent to the back of the La-Z-Boy store. Am. Comp. ¶32 SCDOT ignored all warnings from merchants, their own engineers, and others affected by the flooding, and determined not to correct the cause of the flooding – the inadequacy of the twin 84" pipes lying within SCDOT's right-of-way. Am. Comp. ¶33 The fears of the merchants in Northwoods Pointe Shopping Center wee born out in July, 2005, when there was another flood. SCDOT was still constructing the improvements to the interchange and to the Highway 52 Connector at the time – yet SCDOT did nothing to remedy the inadequate drainage provided by the twin 84" pipes in its drainage right-of-way. Am. Comp. ¶34 As a result of the July, 2005 flood, La-Z-Boy again suffered inundation of its premises, damage to its store, fixtures, and inventory, and loss of business. Am. Comp. ¶35

THE DEVELOPMENT OF PARKHILL PLACE SUBDIVISION

In 2001, Centex Homes began development of 36.2 acres of land that became known as Phases 3, 4, and 5 of Parkhill Place subdivision. Am. Comp. ¶37 In 2003, Centex added 21 additional acres of improved property and an additional 151 residential lots. Am. Comp. ¶38 Parkhill Place Subdivision is just upstream from the choke point at SCDOT's 84" pipes and the La-Z-Boy store. Am. Comp. ¶39 Associated Developers, and Parkhill, as developers, developed a residential subdivision in North Charleston known as Parkhill Place in the early 2003 began development of Phase 6 in which they transformed wooded property into 48 residential lots. Am. Comp. ¶40 In 2004, Associated Developers, and Parkhill began developing the last phase of Parkhill Subdivision, known as Phase 6. Am. Comp. ¶41 North Charleston and DHEC are and were the permitting agencies whose permits were necessary for the development of Parkhill Place Phases 3, 4, 5, and 6 (hereinafter "the Subdivision"), without which the Subdivision's construction could not have taken place. At all times herein, North Charleston and DHEC were acting in a ministerial capacity with respect to the issuance of construction and other necessary permits. Am. Comp. ¶42 Additionally, North Charleston was charged with the legal duty of maintaining the watershed and ensuring adequate drainage for implementation of a storm water system in the City and for approving and inspecting drainage plans for construction in designated flood areas. Moreover, North Charleston is required to provide for sufficient drainage for surface water from any city street. Am. Comp. ¶43 The watershed flows directly to the box culverts running underneath the Highway 52 Connector and to constriction point at SCDOT's twin 84" pipes running beneath the Northwoods Mall parking lot. Am. Comp. ¶44 The area of land that became the Subdivision, and the land downstream to and including the Northwoods Mall and Northwoods Pointe parcels, has an extensive history of severe and recurring flooding. This history of damaging flood events has been well-chronicled in reports generated for North Charleston by Davis & Floyd in 2007 (revised following the October, 2008 flood event); reports by Earth Tech in 2003; and a report by E.M. Seabrook, Inc., in 1980. These reports chronicled flooding dating back more than 30 years. Am. Comp. ¶45 Associated Developers and Parkhill failed to conduct any examination into potential flooding, either within the Subdivision or downstream, although they had been involved in the Subdivision for many years and were on notice of the previous flooding problems. Am. Comp. ¶46 The 2007 Davis & Floyd Report had been provided to North Charleston in January 2007, and the City had been on notice for years about the flooding in the Northwoods Mall and Northwoods Pointe area. Davis & Floyd recommended repairs and rebuilding of the Highway 52 culverts and the drainage system downstream in order to mitigate, lessen, and reduce the flooding in the Subdivision, at

Northwoods Mall, and at the Northwoods Pointe Shopping Center. Am. Comp. ¶47 In October, 2008, a heavy rain event took place and the flood envisioned and predicted, though wholly ignored by the defendants, took place and inundated the entire area, including Phase 6 of the Subdivision, the La-Z-Boy store, and the Northwoods Pointe Shopping Center. Am. Comp. ¶48 The La-Z-Boy store was flooded to a depth of several feet; its inventory ruined just as the Christmas shopping season was beginning; the store fixtures and displays were destroyed; and, the store was forced to close for a significant period to effect repairs and to develop a plan to attempt to prevent additional flooding. Am. Comp. ¶49

DHEC PERMITTING

DHEC and its Office of Ocean and Coastal Resource Management (hereinafter "OCRM") are charged with a statutory and regulatory obligation to ensure that storm water runoff will not have an adverse impact, including an increased risk of flooding. Upon information and belief, DHEC is responsible for managing South Carolina's storm water management program and for ensuring that developments obtaining DHEC storm water permits do not result in increased risk of flooding. Am. Comp. ¶50 DHEC issued permits for construction and development immediately upstream in the watershed that ended at the constriction point at SCDOT's inadequate 84" pipes, numerous times between 2000, when La-Z-Boy first took up occupancy of its leasehold in the store, and 2009. Am. Comp. ¶51 DHEC did no investigation into the adverse impact each of these developments would have on the existing flooding problems downstream. Am. Comp. ¶52

FOR A THIRD CAUSE OF ACTION
(Inverse Condemnation)
[City of North Charleston]

North Charleston constructed or participated in the construction of the streets and roads surrounding Northwoods Mall and Northwoods Pointe Shopping Center, including Northwoods Boulevard, extending from Ashley Phosphate Road to the Mall and Shopping Center parking lots, and Northwoods Boulevard. Am. Comp. ¶72 Northwoods Boulevard and the parking lots of Northwoods Mall are graded and improved as streets or thoroughfare suitable for public travel, and North Charleston has caused them to become the permanent and established grade. That grade results in storm water flowing and collecting directly to the front and rear of the La-Z-Boy store. Am. Comp. ¶73 La-Z-Boy was deprived of the use of its property and store numerous times because of the following flooding and near flood events, the effects of which were magnified and made worse by North Charleston's affirmative act of constructing, maintaining, and operating streets and thoroughfares graded such that storm water flowed and collected directly in the front and rear of the La-Z-Boy store

a. March 20, 2003;
b. June 16, 2004;
c. July 22, 2005;
d. July 16, 2008;
e. October 24, 2008;
f. April 2, 2009;
g. July 8, 2009;

h. July 29, 2009;
i. August 26, 2009;
j. October 28, 2009;
k. December 18-19, 2009

Am. Comp. ¶74

The flooding, and attendant damage, constitutes a taking of La-Z-Boy's property for public use. Am. Comp. ¶75 The reasonable value of La-Z-Boy's property has been diminished as a result of the repeated past floods, and for inevitable future floods in an amount to be determined at trial. Am. Comp. ¶76 La-Z-Boy also demands reimbursement for its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action, and for such other and further relief as is just and proper. Am. Comp. ¶77

FOR A FIFTH CAUSE OF ACTION
(Violation of S.C. Code Ann. §5-31-450)
[City of North Charleston]

The City of North Charleston has been and continues to violate S.C. Code Ann. §5-31-450 in the following:

a. In failing and refusing to ensure adequate and appropriate drainage from the Northwoods Mall site, when, as early as the E.M. Seabrook, Inc. drainage study in 1980, it was well known that the level of the Northwoods drainage system was *below* the mean water level of the outflow of the entire drainage system at the Goose Creek Reservoir.
b. In failing and refusing to take steps to remedy and correct the inadequate drainage from the entire Northwoods area, though on notice of the existing problem and future exacerbating factors of increased development and the addition of vast areas of impermeable material causing increased water flow to the low points of the watershed – at the front door and rear loading dock of the La-Z-Boy store.
c. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being placed on notice of the necessary remedial action as recently as the 2007 Davis & Floyd Report, which set forth specific measures that could be taken to prevent further flooding.
d. In reviewing, inspecting, and approving ill-conceived and factually erroneous drainage plans for construction upstream from the designated and well-known flood areas in and around Northwoods Mall and Northwoods Pointe Shopping Center to account for increased drainage from Ashley Phosphate Road and the La-Z-Boy store and other merchants having businesses along Northwoods Boulevard.
e. In failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Boulevard, which surface drainage flows directly to the doors of the La-Z-Boy store.
f. In failing and refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.
g. In failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area and

downstream to the discharge of the flood plain at the Goose Creek Reservoir.

h. In failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

Am. Comp. ¶90

As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of North Charleston, Plaintiffs have suffered property losses, damage to inventory and fixtures, and loss of used of the retail business because of flood events or near-flood events of:

a. March 20, 2003;
b. June 16, 2004;
c. July 22, 2005;
d. July 16, 2008;
e. October 24, 2008;
f. April 2, 2009;
g. July 8, 2009;
h. July 29, 2009;
i. August 26, 2009;
j. October 28, 2009;
k. December 18-19, 2009

Am. Comp. ¶91

La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir. Am. Comp. ¶92

FOR AN EIGHTH CAUSE OF ACTION
(Trespass)
[SCDOT, City of North Charleston, CWS]
{South Carolina Tort Claims Act}

La-Z-Boy is entitled to possession of its leasehold interest in the store and its fixtures and other improvements as well as to its inventory, equipment, and other property housed within the walls of the store. Am. Comp. ¶107 SCDOT, North Charleston, and CWS separately intentionally and knowingly directed storm water runoff to La-Z-Boy's premises. Am. Comp. ¶108 Such invasion of La-Z-Boy's interest was without permission. Am. Comp. ¶109 As a direct and proximate result of the trespass by SCDOT, North Charleston, and CWS, La-Z-Boy has suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;
b. June 16, 2004;
c. July 22, 2005;
d. July 16, 2008;
e. October 24, 2008;
f. April 2, 2009;

g. July 8, 2009;
h. July 29, 2009;
i. August 26, 2009;
j. October 28, 2009;
k. December 18-19, 2009

Am. Comp. ¶110

SC[D]OT, North Charleston, and CWS knowingly, willfully, and wantonly permitted the intrusion on La-Z-Boy's premises and chattels. Am. Comp. ¶111 La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until SCDOT, North Charleston, and CWS take reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot. Am. Comp. ¶112

FOR A TWELFTH CAUSE OF ACTION
(Negligence/Gross Negligence)
[City of North Charleston]
{South Carolina Tort Claims Act}

The City of North Charleston has been and continues to be negligent, willful, wanton, and grossly negligent in the following:

a. In failing and refusing to ensure adequate and appropriate drainage from the Northwoods Mall site, when, as early as the E.M. Seabrook, Inc. drainage study in 1980, North Charleston knew the level of the Northwoods drainage system was *below* the mean water level of the outflow of the entire drainage system at the Goose Creek Reservoir.
b. In failing and refusing to take steps to remedy and correct the inadequate drainage from the entire Northwoods area, though on notice of the existing problem and future exacerbating factors of increased development and the addition of vast areas of impermeable material causing increased water flow to the low points of the watershed – at the front door and rear loading dock of the La-Z-Boy store.
c. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being placed on notice of the necessary remedial action as recently as the 2007 Davis & Floyd Report, which set forth specific measures that could be taken to prevent further flooding.
d. In negligently reviewing, inspecting, and approving ill-conceived and factually erroneous drainage plans for construction upstream from the designated and well-known flood areas in and around Northwoods Mall and Northwoods Pointe Shopping Center to account for increased drainage from Ashley Phosphate Road and the increased commercial development between Ashley Phosphate
e. In failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Boulevard, which surface drainage flows directly to the doors of the La-Z-Boy store.
f. In failing and refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.
g. In failing to design and maintain a reasonably adequate surface water drainage system

in the Northwoods Mall and Northwoods Pointe Shopping Center area and downstream to the discharge of the flood plain at the Goose Creek Reservoir.

h. In failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

Am. Comp. ¶118

As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of North Charleston, Plaintiffs have suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;
b. June 16, 2004;
c. July 22, 2005;
d. July 16, 2008;
e. October 24, 2008;
f. April 2, 2009;
g. July 8, 2009;
h. July 29, 2009;
i. August 26, 2009;
j. October 28, 2009;
k. December 18-19, 2009

Am. Comp. ¶119

La-Z-Boy will continue to suffer, flooding; drainage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir. Am. Comp. ¶120

II. THE PLAINTIFF'S CLAIMS FOR ANY FLOODING PRIOR TO APRIL 8, 2008 ARE BARRED BY THE STATUTE OF LIMITATIONS AS A MATTER OF LAW.

For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Eighth and Twelfth claims are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[2] For the Plaintiff's remaining claims (Third and Fourth), a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[3] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might

[2] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[3] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[4] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[5]

In this case, pursuant to S.C. Code Ann. § 15-3-530 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against Defendant within two years after Plaintiff knew or should have known it had a claim. Further, for all non-tort claims, a three year statute of limitations applies. Here, the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when

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[4] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

[5] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id. "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

each flood occurred in 2003, 2004, 2005, 2008 and 2009.[6] As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010. As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003 – 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

III. THE PLAINTIFF'S CLAIMS FOR (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, (3) S.C. CODE ANN. § 5-31-450 VIOLATION, (4) TRESPASS AGAINST DEFENDANT CITY OF NORTH CHARLESTON ARE BARRED BY THE HAWKINS DECISION

1. SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a government is governed by the South Carolina Tort Claims Act.[7] The Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). The relevant portions of the Tort Claims Act state:

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

(1) legislative, judicial, or quasi-judicial action or inaction;
(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
(3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
(4) adoption, enforcement, or compliance with any law or failure to adopt or

[6] Defendant City of North Charleston reserves its right to assert that the alleged flooding events were not abatable and the statute of limitations bars Plaintiff's claims for all alleged flooding events; such motion, if necessary, will be asserted as a summary judgment motion at the appropriate time.

[7] The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See Murphy v. Richland Mem'l Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998). "The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-20(b) (Supp. 2002) (emphasis added). "[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-20(a) (Supp. 2002) (emphasis added). According to the Act, "[n]ot withstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200 (Supp. 2002) (emphasis added).

enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

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

...

(7) a nuisance;

...

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

...

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

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.

Code 1976 § 15-78-60

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). When a governmental entity asserts various exceptions to the waiver of immunity under the state Tort Claims Act, the correct approach is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit liability. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999).

The Tort Claims Act immunity provisions (1), (2), (3-5), (7), (9), (13), and (20) bar this present tort claim. The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a city's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[8] In

[8] More specifically, in Hawkins, a business owner brought an action against the city alleging that the city's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. As alleged in the La-Z-Boy Complaint, Hawkins' property was located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the

Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: 'legislative, judicial, or quasi-judicial action or inaction[.]'" Id. at 293, 594 S.E.2d 564.[9]

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the design and maintenance of the drainage system in the Laurel Creek Basin. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. Hawkins stands for the proposition that a city's design and maintenance of its drainage system are provided absolute discretionary immunity under the Tort Claims Act.[10] The Hawkins decision's broad language affords a city absolute

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city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a municipality will not be held liable for damages allegedly resulting from the overall design or maintenance of its systems for handling surface water absent a positive, overt act which proximately causes damages to a landowner's property.

[9] Specifically, under § 15-78-60, the City is not liable for a loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003).

[10] Accordingly, the Hawkins' court found that the City was immune from liability for negligence under the Tort Claims Act. Id. ("We find a comparable degree of discretion was granted to the City in the present case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville.")

immunity for design and maintenance decisions.

Here, Amended Complaint Paragraphs 4, 9, 10, 24, 30, 42-47 and 118 do not allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff's allegations that the City of North Charleston's "failing and refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 118 (a)), "in failing and refusing to take steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 118 (b)), "in failing and refusing to ensure adequate drainage for implementation of a stormwater system" (Am. Comp. ¶ 118 (c)), "in negligently reviewing, inspecting, and approving ill conceived and factually erroneous drainage plans for construction upstream from the designated well-known flood areas" (Am. Comp. ¶ 118 (d)), "in failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Blvd." (Am. Comp. ¶ 118 (e)), "in failing and refusing to take any substantive steps to mitigate or prevent future flooding" (Am. Comp. ¶ 118 (f)), "in failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe shopping center area" (Am. Comp. ¶ 118 (g)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 118 (h)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claim fails as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim also fails pursuant to the Hawkins decision. Hawkins argued that the city was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the city's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim. The court held that Hawkins had:

> "[f]ailed to allege any affirmative acts by the city damaged the Service Master property or otherwise diminished his rights in the property. Most of the city's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the city improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be approved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's on Main, Inc. vs. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray vs. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct. App. 1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the government agency"). (Emphasis added).

The only affirmative acts Hawkins cited as forming the basis for his inverse condemnation claim were the replacement of the double box culvert and the installation of the rip rap material by the city, both of which did not constitute an "affirmative, positive, aggressive act on the part of the city which would tend to prove the city's actions caused or precipitated the flooding of the property."

Hawkins is particularly instructive in analyzing the merits of Plaintiff's inverse condemnation claim. In Hawkins, Plaintiff filed suit claiming the City of Greenville improperly and negligently designed and maintained its municipal drainage system in the area where his business was located. Hawkins' ServiceMaster business was located in a low-lying area of Greenville that had been heavily developed with retail businesses and other large commercial developments. Id. at 560. In 1991, and again in 1997, his ServiceMaster business was flooded and damaged following a heavy rainstorm. Id. at 561. After the rainstorm in 1991, Hawkins filed suit for the alleged damages resulting from the flood and ultimately reached a settlement with the City. Id. at 560.

Six years later in 1997, a record amount of rain fell in and around Greenville in a short period of time. Stormwater draining into Laurel Creek overwhelmed the creek's capacity, causing water to flood onto the ServiceMaster property and several nearby businesses. Id. at 561. Hawkins once again filed suit against the City of Greenville for inverse condemnation claiming that the City improperly and negligently designed and maintained its municipal drainage system in the area where his business was located. Id.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the

part of the City of North Charleston. Complaint Paragraphs 4, 9, 10, 24, 30, 42-47, 72-74 do not allege any "affirmative positive aggressive act" on the part of this Defendant. The allegations of the City's mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the City of North Charleston giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the City's permitting of developments upstream from its location at Northwoods Pointe, along with its failure to remedy certain drainage defects, proximately caused flooding on its premises. (Am. Comp. ¶¶ 9, 10, 24, 30, 42-47). However, pursuant to the Hawkins' court's ruling, the City's actions in "allow[ing] the development of neighboring parcels of commercial property" which allegedly "added strain" to the existing upstream watershed, as well as its alleged failure to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the City's actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. *Id.*; *see also*, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim). Further, Amended Complaint Paragraphs 72-74 contain allegations where North Charleston "constructed or participated in the construction of the streets and roads surrounding Northwoods Mall and Northwoods Pointe shopping center" ... "[causing] them to become the permanent and established grade" ... [resulting] "in storm water flowing and collecting directly to the front and rear of the La-Z-Boy store"; such allegations, however, do not suffice as an "affirmative, positive, aggressive" act by this Defendant as a matter of law. As such, Plaintiff's inverse condemnation claim fails as a matter of law.

3. S.C. CODE § 5-31-450

S.C. Code Ann. § 5-31-450 reads in full:

> "Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person."

In applying Hawkins' S.C. Code § 5-31-450 claim, the Hawkins court held that liability does not exist under such section absent some affirmative act by the municipality which alters the course or increases the amount of storm water runoff onto private property:

> Applying this statute, our courts have held that liability does not obtain under section 5-31-450 absent some affirmative act by the municipality which alters the course or increases the amount of storm water runoff onto private property. See Brown v. Sch. Dist. of Greenville County, 251 S.C. 220, 225, 161 S.E.2d 815, 817 (1968) (holding that unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute). "The statute does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. By the same token, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off." Hall v. City of Greenville, 227 S.C. 375, 386, 88 S.E.2d 246, 251 (1955). "The statute does not make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Therefore, unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute." Taleff v. City of Greer, 284 S.C. 510, 512, 327 S.E.2d 363, 364 (Ct. App. 1985) (citations omitted). "Under this statute proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction." Hall, 227 S.C. 386, 88 S.E.2d 251. This section apodictially contemplates positive action by a municipality to render it liable for damages. Brown, 251 S.C. 225, 161 S.E.2d 817. (Emphasis added).

Initially, S.C. Code Ann. §5-31-450 requires a "demand from the owner of such private lands," not the tenant of the property owner. Here, the pleadings are deficient in alleging a cause of action pursuant to the statute because the Plaintiff does not allege that the land owner of the property (as opposed to the tenant) demanded the City of North Charleston to take any action. Even if such requirement were met, however, similar to Hawkins, Plaintiff has failed to allege any affirmative, positive acts of any damage resulting from the municipality's works (i.e., no overt acts by which the land owner's property has been damaged by surface water cast upon it as a result of the city's construction.)[11] Complaint Paragraphs 4, 9, 10, 24, 30, 42-47 and 90 do not allege any "affirmative positive, aggressive act" on the part of this Defendant. Based on Hawkins, the City of North Charleston's act in approving the plat or permits is not the type of

[11] The Hawkins court summarily dismissed that a city "improperly" allowing the development of neighboring parcels of commercial property which alters the elevation of an area and adds strain to the drainage pipes beyond their capacity amounts to an affirmative act. Similar to the analysis it applied to affirming the dismissal of Hawkins' inverse condemnation claim, the South Carolina Court of Appeals affirmed the trial court's dismissal of Hawkins' claim that the City violated § 5-31-450 on ground the City of Greenville did not engage in an "overt act" or "positive action" that caused the flooding. Id.

"positive action" or "overt act" contemplated by the statute to render it liable. The allowance of construction upstream from an affected area or a municipality's failure to take steps to alleviate downstream flooding, as alleged by La-Z-Boy and by Hawkins in their Complaints, is not the type of acts which give rise to liability under § 5-31-450 or the other causes of actions alleged against the City of North Charleston. See also Brown v. School District of Greenville County, 161 S.E.2d 815, 817 251 S.C. 220 (1968) (City's construction of a "catch basin" to lessen downstream water flow is not the type of "positive action by a municipality to render it liable for damages under the terms of [§ 59-224, predecessor to 5-31-450].").

Further, Plaintiff's allegations that the City of North Charleston's "failing and refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 90 (a)), "in failing and refusing to take steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 90 (b)), "in failing and refusing to ensure adequate drainage for implementation of a stormwater system" (Am. Comp. ¶ 90 (c)), "in reviewing, inspecting, and approving ill conceived and factually erroneous drainage plans for construction upstream from the designated well-known flood areas" (Am. Comp. ¶ 90 (d)), "in failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Blvd." (Am. Comp. ¶ 90 (e)), "in failing and refusing to take any substantive steps to mitigate or prevent future flooding" (Am. Comp. ¶ 90 (f)), "in failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe shopping center area" (Am. Comp. ¶ 90 (g)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 90 (h)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's § 5-13-450 claim fails as a matter of law.

4. TRESPASS

As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, S.C. Code Ann. § 15-78-60 (9) and (17) bar Plaintiff's trespass claim. The Plaintiff alleges that this Defendant "intentionally and knowingly directed stormwater runoff to La-Z-Boy's premises" (Am. Comp. ¶ 108) and this Defendant "knowingly, willfully, and wantonly permitted the intrusion on La-Z-Boy's premises and chattels" (Am Comp. ¶ 111). Subsection (9) bars a trespass claim against a governmental entity for entry upon any property where entry is expressly or impliedly authorized by law and Subsection (20) bars any action against a governmental entity for conduct constituting an "intent to harm." As trespass requires an intent

to enter upon the premises (and the entry itself is the "harm"), it is axiomatic that the intentional, unwarranted entry, which is the wrong itself, necessarily satisfies the "intent to harm" provision of subsection (20), and Tort Claims Act bars Plaintiff's claim for trespass as a matter of law. Further, for the same reasons outlined in the Hawkins decision, the trespass claim allegations in this case fail as a matter of law.

5. CONCLUSION

For the reasons stated herein, Defendant City of North Charleston respectfully requests this Honorable Court grant its Motion to Dismiss based on the South Carolina Tort Claims Act and the Hawkins decision.

Respectfully submitted,

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Dated: Dec. 31 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of DECEMBER, 2013, I mailed a copy of the foregoing Memorandum to all counsel of Record, with sufficient postage affixed, correctly addressed as follows:

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West Reporter Image (PDF)

358 S.C. 280, 594 S.E.2d 557

Judges and Attorneys

Court of Appeals of South Carolina.
Louie D. HAWKINS, Individually and d/b/a Servicemaster of Greenville, Servicemaster of Greenville, LLC, and Dixie P. Hawkins, Appellants,
v.
CITY OF GREENVILLE, Respondent.

No. 3764.
Submitted Feb. 11, 2004.
Decided March 22, 2004.

Background: Business owner brought action against the city alleging that city's improper and negligent design and maintenance of its drainage system caused his business to flood. The Circuit Court, Greenville County, Joseph J. Watson, J., granted summary judgment to city. Business owner appealed.

Holdings: The Court of Appeals, Anderson, J., held that:
(1) city's design and maintenance of drainage system did not constitute inverse condemnation;
(2) city was not liable under Tort Claims Act;
(3) city was not liable for trespass; and
(4) city was not liable for conversion.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.18 k. Drains and sewers. Most Cited Cases
(Formerly 148k2(3))

City's design and maintenance of drainage system did not constitute affirmative, positive, aggressive act on part of city as required to support business owner's claim for inverse condemnation claim when his business property near drainage system flooded during rainstorm; city's replacement of double-box culvert with large arched pipe and installation of riprap material along banks of creek near owner's business did not cause flooding of business, and business owner's own expert testified that installation of large arched pipe likely improved drainage situation in stormwater basin.

[2] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

An action for inverse condemnation is appropriate where the government takes private property for public use.

DEFENDANT'S EXHIBIT
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[3] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

"Inverse condemnation" is a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.

[4] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such formal proceedings.

[5] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

"Inverse condemnation" describes an action grounded, not on statutory condemnation power, but on the constitutional proscription against the taking or damaging of property for public use without just compensation.

[6] KeyCite Citing References for this Headnote

148 Eminent Domain
148III Proceedings to Take Property and Assess Compensation
148k175 Parties
148k176 k. Petitioner or complainant. Most Cited Cases

148 Eminent Domain KeyCite Citing References for this Headnote
148IV Remedies of Owners of Property; Inverse Condemnation
148k289 k. Parties, process, and appearance. Most Cited Cases

One basic difference between condemnation and inverse condemnation is that in condemnation proceedings, the governmental entity is the moving party, whereas, in inverse condemnation, the property owner is the moving party.

[7] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

Inverse condemnation is not based on tort, but on the constitutional prohibition of the taking of property without compensation.

[8] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

An inverse condemnation occurs when a government agency commits a taking of private property without exercising its formal powers of eminent domain.

[9] KeyCite Citing References for this Headnote

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and grounds in general. Most Cited Cases

To establish an inverse condemnation, a plaintiff must show: (1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence.

[10] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

City's design and maintenance of drainage system was quasi-judicial function subject to governmental immunity under Tort Claims Act, and thus, city was not liable under act when business owner's property near drainage system flooded during rainstorm. Code 1976, § 15-78-10 et seq.

[11] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k742 Actions
268k742(5) k. Evidence. Most Cited Cases

Governmental entity asserting the Tort Claims Act as an affirmative defense bears the burden of establishing a limitation upon liability or an exception to the waiver of immunity. Code 1976, § 15-78-10 et seq.

[12] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k723 k. Nature and grounds of liability. Most Cited Cases

Tort Claims Act does not create a new substantive cause of action against a governmental entity. Code 1976, § 15-78-10 et seq.

[13] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k723 k. Nature and grounds of liability. Most Cited Cases

Plaintiff must present evidence of governmental entity's duty to act in order to recover under the Tort Claims Act. Code 1976, § 15-78-10 et seq.

[14] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k723 k. Nature and grounds of liability. Most Cited Cases

Tort Claims Act expressly preserves all existing common law immunities. Code 1976, § 15-78-10 et seq.

[15] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k723 k. Nature and grounds of liability. Most Cited Cases

Tort Claims Act is a limited waiver of governmental immunity. Code 1976, § 15-78-10 et seq.

[16] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k728 k. Discretionary powers and duties. Most Cited Cases

A finding of immunity under exceptions to waiver of immunity in the Tort Claims Act turns on whether the acts in question were discretionary rather than ministerial, and thus is contingent on proof that government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards. Code 1976, § 15-78-60.

[17] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k742 Actions
268k742(5) k. Evidence. Most Cited Cases

Governmental entity bears the burden of establishing discretionary immunity as an affirmative defense under the Tort Claims Act. Code 1976, § 15-78-10 et seq.

[18] KeyCite Citing References for this Headnote

268 Municipal Corporations

268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k840 k. Proximate cause of injury. Most Cited Cases

City was not liable, under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, when business owner's property flooded during rainstorm, where business owner failed to offer proof of any affirmative, positive acts which tended to show that actions of city caused flooding of his business property. Code 1976, § 5-31-450.

[19] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k827 Nature and Grounds of Liability
268k827(1) k. In general. Most Cited Cases

The statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Code 1976, § 5-31-450.

[20] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off. Code 1976, § 5-31-450.

[21] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k845 Actions for Injuries
268k845(3) k. Issues, proof, and variance. Most Cited Cases

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute. Code 1976, § 5-31-450.

[22] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction. Code 1976, § 5-31-450.

[23] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

City was not liable for trespass, when business owner's property flooded during rainstorm, for designing and maintaining municipal drainage system, where business owner failed to show any affirmative and intentional act necessary to sustain action for trespass.

[24] KeyCite Citing References for this Headnote

386 Trespass
386I Acts Constituting Trespass and Liability Therefor
386k1 k. Nature and elements of trespass in general. Most Cited Cases

"Trespass" is any intentional invasion of the plaintiff's interest in the exclusive possession of his property.

[25] KeyCite Citing References for this Headnote

386 Trespass
386I Acts Constituting Trespass and Liability Therefor
386k9 Trespass to Real Property
386k10 k. In general. Most Cited Cases

To constitute actionable trespass there must be an affirmative act, invasion of land must be intentional, and harm caused must be the direct result of that invasion.

[26] KeyCite Citing References for this Headnote

386 Trespass
386II Actions
386II(A) Right of Action and Defenses
386k20 Possession or Right of Possession of Plaintiff
386k20(1) k. Necessity and effect in general. Most Cited Cases

The gist of trespass is the injury to possession, and generally either actual or constructive possession is sufficient to maintain an action for trespass.

[27] KeyCite Citing References for this Headnote

386 Trespass
386I Acts Constituting Trespass and Liability Therefor
386k9 Trespass to Real Property
386k10 k. In general. Most Cited Cases

For a trespass action to lie, the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion.

[28] KeyCite Citing References for this Headnote

268 Municipal Corporations
268XII Torts
268XII(D) Defects or Obstructions in Sewers, Drains, and Water Courses
268k835 k. Obstruction or diversion of flow of surface water. Most Cited Cases

City was not liable for conversion, when business owner's property flooded during rainstorm, for designing and maintaining municipal drainage system; business owner provided no evidence that city seized, disposed, denied use, or wrongfully took control of any goods or personal chattels belonging to him or his business.

[29] KeyCite Citing References for this Headnote

97C Conversion and Civil Theft
97CI Acts Constituting and Liability Therefor
97Ck100 k. In general; nature and elements. Most Cited Cases
(Formerly 389k1 Trover and Conversion)

"Conversion" is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights.

[30] KeyCite Citing References for this Headnote

97C Conversion and Civil Theft
97CI Acts Constituting and Liability Therefor
97Ck110 Detention of Property
97Ck111 k. In general. Most Cited Cases
(Formerly 389k7 Trover and Conversion)

97C Conversion and Civil Theft KeyCite Citing References for this Headnote
97CI Acts Constituting and Liability Therefor
97Ck115 k. Use or disposition of property. Most Cited Cases
(Formerly 389k10 Trover and Conversion)

Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property.

[31] KeyCite Citing References for this Headnote

97C Conversion and Civil Theft
97CI Acts Constituting and Liability Therefor
97Ck109 k. Taking of property. Most Cited Cases
(Formerly 389k5 Trover and Conversion)

97C Conversion and Civil Theft KeyCite Citing References for this Headnote
97CI Acts Constituting and Liability Therefor
97Ck110 Detention of Property

97Ck111 k. In general. Most Cited Cases
(Formerly 389k7 Trover and Conversion)

"Conversion" is a wrongful act which emanates by either a wrongful taking or wrongful detention.

[32] KeyCite Citing References for this Headnote

97C Conversion and Civil Theft
97CI Acts Constituting and Liability Therefor
97Ck103 Property Subject of Conversion or Theft
97Ck104 k. In general. Most Cited Cases
(Formerly 389k2 Trover and Conversion)

97C Conversion and Civil Theft KeyCite Citing References for this Headnote
97CII Actions
97CII(A) Right of Action and Defenses
97Ck120 k. In general; nature and scope of remedy. Most Cited Cases
(Formerly 389k13 Trover and Conversion)

A conversion action does not lie when alleging the exercise of dominion or control over real property.

***560 *285** Robert C. Childs, III, of Greenville, for Appellants.

W. Howard Boyd, Jr., Luanne L. Runge and Fred W. Suggs, III, all of Greenville, for Respondent.

ANDERSON, J.:
Louie D. Hawkins brought this action, claiming the city of Greenville ("City") improperly and negligently designed and maintained its municipal drainage system in the area where his business was located. He alleged the City's malfeasance caused his property to flood after a rainstorm in 1997. The trial court granted summary judgment in favor of the City on all of Hawkins' claims. We affirm.[FN1]

FN1. We decide this case without oral argument pursuant to Rule 215, SCACR.

FACTS/PROCEDURAL BACKGROUND

On July 24, 1997, Hawkins' business, Servicemaster of Greenville, was flooded during a heavy rainfall, causing substantial damage to the business and surrounding property. Hawkins blamed the City for the damage, arguing the flooding ***286** was caused by the City's neglect in designing and maintaining its stormwater drainage system. Accordingly, he brought the present action asserting various causes of action stemming from the City's alleged acts and failures to act.

I. The Servicemaster Property and Surrounding Drainage System

The Servicemaster property is located in a low-lying area on the east side of Greenville. This part of Greenville has been heavily developed with retail businesses and other large commercial developments.

The immediate area surrounding the Servicemaster property forms a 3.24-square-mile stormwater basin. Rainwater falling into the basin drains downhill into nearby Laurel Creek. Over the years, the City and private developers made several improvements to the drainage system in the basin. When Hawkins moved Servicemaster to its Haywood Road location, drainage around the property was handled primarily by two ninety-six-inch pipes installed in Laurel Creek to expand the creek's ability to effectively handle runoff in the area. After a severe storm in 1991 caused flooding in the area, the City installed an additional large, elliptical arched pipe in Laurel Creek to further increase the creek's stormwater capacity. In early July 1997, the City installed "riprap" along the banks of the creek to

stem erosion that had occurred. FN2

FN2. "Riprap" is an industry term for piles of loose stone or angular boulders built seaward of the shoreline to prevent erosion by waves or currents.

II. The 1991 Flood, Lawsuit and Settlement

A heavy rainstorm in July 1991 caused the Servicemaster property and surrounding area to flood. The Servicemaster property suffered substantial damage when the excess runoff flooded into the building, bringing mud and other debris. As in the present case, Hawkins brought suit against the City, claiming its actions caused the flooding. Hawkins specifically alleged the City was negligent "in failing to design" and "maintain a reasonably adequate surface water drainage system" and "in failing to properly supervise the surface water ***287** drainage system to ensure adequate flow of water during periods of inc[l]ement weather."

The case was settled in 1994. The City paid Hawkins $4,000 in exchange for a "full, complete and final release of all damages arising out of the design, construction, maintenance, and operation of the water drainage system on or adjacent to Bryland [sic] Drive." This release was executed in March 1994. It provides:

> [Servicemaster] does hereby release, relieve and forever acquit the City of Greenville, South Carolina, a municipal corporation, their agents, employees, officers, successors, and assigns from any and all liability arising out of or in any way connected with the water and mud damage to [Hawkins'] place of business located at 1 Byrdland Drive which occurred on or about July 30, 1991 and it is the intention in executing this Release to forever discharge the City of Greenville ****561** from any and all claims, demands, actions or causes of action which may exist, known or unknown, of any and all damages, past, present and future, in any way connected with or arising out of the aforesaid damages.
>
> ...
>
> It is acknowledged and understood that this is a full, complete and final release of all damages arising out of the design, construction, maintenance, and operation of the water drainage system on or adjacent to Bryland [sic] Drive, that no future or further payments will be paid as a result thereof and that the persons and corporations in whose favor this Release runs are herewith fully finally and forever discharged from any and all liability with respect to the aforementioned property.

III. The 1997 Flood and the Present Action

On July 24, 1997, a record amount of rain fell in and around Greenville in a short period of time.FN3 Stormwater draining into Laurel Creek overwhelmed the creek's capacity, causing water to flood onto the Servicemaster property and several nearby businesses.

FN3. Testimony was offered at the summary judgment hearing that the National Climatic Data Center recorded that 2.51 inches fell in Greenville during a one-hour period on July 24, 1997.

***288** In July 1999, Hawkins brought the present action against the City, alleging causes of action for: (1) inverse condemnation, (2) negligence in the City's design and maintenance of its stormwater drainage system, (3) violation of South Carolina Code section 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. Finding no genuine issue of material fact with respect to any of these claims, the trial court granted the City's motion for summary judgment.

STANDARD OF REVIEW

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law." Rule 56(c), SCRCP; *accord* Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001); Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct.App.1998); *see also* Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997) ("Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.").

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." McNair v. Rainsford, 330 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct.App.1998) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991); Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990)). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." Lanham v. Blue Cross & Blue Shield of South Carolina, Inc., 349 S.C. 356, 361-62, 563 S.E.2d 331, 333 (2002) (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)); *accord* Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." ***289** Lanham, 349 S.C. at 362, 563 S.E.2d at 333 (citing Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000)).

"All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." Hall v. Fedor, 349 S.C. 169, 173, 561 S.E.2d 654, 656 (Ct.App.2002) (citing Young v. South Carolina Dep't of Corr., 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999)). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Id. at 173-74, 561 S.E.2d at 656. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly****562** deprived of a trial of the disputed factual issues." Murray v. Holnam, Inc., 344 S.C. 129, 138, 542 S.E.2d 743, 747 (Ct.App.2001) (citing Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing & Regulation, 337 S.C. 476, 523 S.E.2d 795 (1999)).

In reviewing the grant of a summary judgment motion, this court applies the same standard which governs the trial court: Summary judgment is proper when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *accord* Baughman, 306 S.C. at 114-15, 410 S.E.2d at 545; Murray, 344 S.C. at 138, 542 S.E.2d at 747 (citing Brockbank, 341 S.C. 372, 534 S.E.2d 688; Wells, 331 S.C. at 301, 501 S.E.2d at 749).

LAW/ANALYSIS

Hawkins contends genuine issues of fact exist for each of his claims that should have compelled the trial court to deny the City's motion for summary judgment. We disagree.

I. Inverse Condemnation

[1] Hawkins first argues the trial court erred in granting summary judgment to the City on his inverse condemnation claim, contending he was deprived of his full rights to the Servicemaster property without just compensation as a result of the City's design and maintenance of the drainage system. We disagree.

***290** [2] [3] [4] [5] [6] [7] An action for inverse condemnation is appropriate where the government takes private property for public use. Quality Towing Inc. v. City of Myrtle Beach, 340 S.C. 29, 38, 530 S.E.2d 369, 373 (2000). Inverse condemnation is a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency. Horry County v. Ins. Reserve Fund, 344 S.C. 493, 498, 544 S.E.2d 637, 640 (Ct.App.2001). While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such formal proceedings. Horry County, 344 S.C. at 498, 544 S.E.2d at 640. "The term 'inverse condemnation'

describes an action grounded, not on statutory condemnation power, but on the constitutional proscription against the taking or damaging of property for public use without just compensation." Vick v. South Carolina Dep't of Transp., 347 S.C. 470, 480, 556 S.E.2d 693, 698 (Ct.App.2001). "One basic difference between condemnation and inverse condemnation is that in condemnation proceedings, the governmental entity is the moving party, whereas, in inverse condemnation, the property owner is the moving party." South Carolina State Highway Dep't v. Moody, 267 S.C. 130, 136, 226 S.E.2d 423, 425 (1976) (quoting 27 Am. Jur. 2d Eminent Domain § 829 (1996)). The action is not based on tort, but on the constitutional prohibition of the taking of property without compensation. Horry County, 344 S.C. at 498, 544 S.E.2d at 640.

[8] [9] An inverse condemnation occurs when a government agency commits a taking of private property without exercising its formal powers of eminent domain. To establish an inverse condemnation, a plaintiff must show: "(1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence." Marietta Garage, Inc. v. South Carolina Dep't of Pub. Safety, 352 S.C. 95, 101, 572 S.E.2d 306, 308 (Ct.App.2002); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1992).

***291** In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the Servicemaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage ****563** pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. *See, e.g.*, Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency").

The only affirmative acts Hawkins cites as forming the basis of his inverse condemnation claim are the replacement of the double-box culvert with the large arched pipe in Laurel Creek in 1994 and the installation of the riprap material along the banks of the creek in 1997. The record contains no evidence that either of these acts caused the flooding of the Servicemaster property in 1997. Hawkins' own expert testified that the installation of the large arched pipe likely improved the drainage situation in the stormwater basin. Regarding the effect of the riprap material on drainage in the Laurel Creek basin, experts for both the City and Hawkins either offered no opinion on the impact of the riprap or opined that it was impossible to determine whether installing the riprap negatively or positively affected drainage.

Based on the lack of any evidence showing an affirmative, positive, aggressive act on the part of the City which would tend to prove the City's actions caused or precipitated the flooding of the Servicemaster property, we are compelled to ***292** affirm the trial court's grant of summary judgment on Hawkins' inverse condemnation claim.

II. Negligence

[10] Hawkins argues the trial court erred in finding his negligence claim against the City was barred under the South Carolina Tort Claims Act. S.C.Code Ann. §§ 15-78-10 to 15-78-200 (Supp.2003). We disagree.

[11] [12] [13] [14] [15] The Tort Claims Act governs all tort claims against governmental entities. Flateau v. Harrelson, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct.App.2003). It is the exclusive civil remedy available for any tort committed by a governmental entity or its

employees or agents. S.C.Code Ann § 15-78-70(b) (Supp.2003); *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 215, 544 S.E.2d 38, 49 (Ct.App.2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct.App.1998). The Tort Claims Act provides that the State, its agencies, political subdivisions, and other governmental entities are "liable for their torts in the same manner and to the same extent as a private individual under like circumstances," subject to certain limitations and exemptions provided in the Act. S.C.Code Ann. § 15-78-40 (Supp.2003). "Governmental entity" is defined by the act as "the State and its political subdivisions." S.C.Code Ann. § 15-78-30(d) (Supp.2002); *Flateau*, 355 S.C. at 204, 584 S.E.2d at 416. The provisions of the Act establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting liability of the State. S.C.Code Ann § 15-78-20(f) (Supp.2003); *Steinke v. South Carolina Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999); *Arthurs v. Aiken County*, 338 S.C. 253, 270, 525 S.E.2d 542, 551 (Ct.App.1999); *Staubes v. City of Folly Beach*, 331 S.C. 192, 205, 500 S.E.2d 160, 167 (Ct.App.1998). The governmental entity asserting the Act as an affirmative defense bears the burden of establishing a limitation upon liability or an exception to the waiver of immunity. *Strange v. South Carolina Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994); *Steinke*, 336 S.C. at 393, 520 S.E.2d at 152; *Arthurs*, 338 S.C. at 270, 525 S.E.2d at 551. The Act does not create a new substantive cause of ***293** action against a governmental entity. *Moore v. Florence Sch. Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994); ****564** *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 121, 542 S.E.2d 736, 739 (Ct.App.2001). The Plaintiff must present evidence of the governmental entity's duty to act in order to recover under the Act. *Arthurs*, 338 S.C. at 270, 525 S.E.2d at 551. The Tort Claims Act expressly preserves all existing common law immunities. *Williams v. Condon*, 347 S.C. 227, 246, 553 S.E.2d 496, 507 (Ct.App.2001). The Tort Claims Act is a limited waiver of governmental immunity. *Arthurs*, 338 S.C. at 270, 525 S.E.2d at 551. Section 15-78-60 sets out thirty-seven "exceptions" to this waiver of sovereign immunity. These exceptions significantly limit the tort liability of government entities.

Several of these exceptions bear directly upon the alleged acts and failures to act by the City with respect to the municipal drainage system. Specifically, under section 15-78-60, the City is not liable for a loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (3) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (4) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (5) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C.Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003).

[16] [17] For each of these specific provisions, the determination of immunity from tort liability turns on the question of whether the acts in question were discretionary rather than ministerial. A finding of immunity under the Act "is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards." ***294** *Wooten ex rel. Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999). "The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense." *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002).

Although our courts have not applied the Tort Claims Act to facts similar to those of the present case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable. *City of Tyler v. Likes*, 962 S.W.2d 489, 501 (Tex.1997). The court in *City of Tyler* opined:

The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

Id. We find a comparable degree of discretion was granted to the City in the present case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the City is immune from liability for negligence claims arising out of the design and maintenance of the drainage system in the Laurel Creek Basin.

III. Liability Under South Carolina Code Section 5-31-450

[18] Hawkins next appeals the trial court's grant of summary judgment as to his claim under ****565** South Carolina Code section 5-31-450. We find no error with the trial court's ruling.

Section 5-31-450 mandates:

***295** Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person.

[19] [20] [21] [22] Applying this statute, our courts have held that liability does not obtain under section 5-31-450 absent some affirmative act by the municipality which alters the course or increases the amount of stormwater runoff onto private property. *See Brown v. Sch. Dist. of Greenville County*, 251 S.C. 220, 225, 161 S.E.2d 815, 817 (1968) (holding that unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute). "The statute does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. By the same token, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off." *Hall v. City of Greenville*, 227 S.C. 375, 386, 88 S.E.2d 246, 251 (1955). "The statute does not make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Therefore, unless the landowner ***296** pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute." *Taleff v. City of Greer*, 284 S.C. 510, 512, 327 S.E.2d 363, 364 (Ct.App.1985) (citations omitted). "Under this statute proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction." *Hall*, 227 S.C. at 386, 88 S.E.2d at 251. This section apodictically contemplates positive action by a municipality to render it liable for damages. *Brown*, 251 S.C. at 225, 161 S.E.2d at 817.

Hawkins failed to offer proof of any affirmative, positive acts which would tend to show the actions

of the City caused the flooding of the Servicemaster property. We approve the trial court's finding that Hawkins' claim under section 5-31-450 fails.

IV. Trespass

[23] Hawkins appeals the trial court's grant of summary judgment as to his claim for trespass against real property. We find no error with the trial court's ruling.

[24] [25] [26] "[T]respass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property...." *Hedgepath v. Am. Tel. Tel. Co.*, 348 S.C. 340, 356, 559 S.E.2d 327, 337 (Ct.App.2001) (quoting *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 286, 543 S.E.2d 563, 566 (Ct.App.2001), *cert. denied* (citing *Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct.App.1993))). "To constitute actionable trespass, however, there must be an affirmative act, invasion of land must be intentional, ***566** and harm caused must be the direct result of that invasion." *Snow v. City of Columbia*, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct.App.1991); *accord Mack v. Edens*, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (Ct.App.1995). The gist of trespass is the injury to possession, and generally either actual or constructive possession is sufficient to maintain an action for trespass. ***297** *Macedonia Baptist Church v. City of Columbia*, 195 S.C. 59, 71, 10 S.E.2d 350, 355 (1940).

[27] For a trespass action to lie, "the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion." *Mack v. Edens*, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (Ct.App.1995). Hawkins argues the same acts that he claims warrant a finding of inverse condemnation also compel a finding of civil trespass. Hawkins did not offer proof that any action by the City caused the flooding of the Servicemaster property.

Having failed to show any affirmative and intentional act necessary to sustain an action for trespass, we hold the trial court properly granted summary judgment.

V. Conversion

[28] Hawkins next argues the trial court erred in granting summary judgment on his claim for conversion. We disagree.

[29] [30] [31] [32] "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Crane v. Citicorp Nat'l Servs., Inc.*, 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property." *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct.App.2003). Conversion is a wrongful act which emanates by either a wrongful taking or wrongful detention. *Id.* It is well settled that a conversion action does not lie when alleging the exercise of dominion or control over real property. *See* 18 Am. Jur. 2d *Conversion* § 7 (1998) (commenting that "an action for conversion ordinarily lies only for personal property which is tangible, or at least represented by or connected with something tangible" and "will not lie for such indefinite, intangible, and incorporeal species of property as a ... leasehold estate or interest"). Therefore, to the extent Hawkins' conversion claim pertains to the actions of the City with respect to real property, the claim clearly fails as a matter of law. Additionally, Hawkins provided no evidence that the City seized, disposed, denied use, or wrongfully took control of ***298** any goods or personal chattels belonging to him or his business.

We affirm the trial court's decision to grant summary judgment on Hawkins' conversion claim.

CONCLUSION

Finding no genuine issue of material fact with respect to any of Hawkins' causes of action, we conclude summary judgment in favor of the City was proper. The judgment of the trial court is therefore

AFFIRMED.

HEARN, C.J. and BEATTY, J., concur.

S.C.App.,2004.
Hawkins v. City of Greenville
358 S.C. 280, 594 S.E.2d 557

Judges and Attorneys (Back to top)

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Judges

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State of South Carolina Circuit Court, 12th Circuit
Florence, South Carolina 29501
Litigation History Report | Judicial Reversal Report | Profiler

- **Beatty, Hon. Donald W.**
State of South Carolina Supreme Court
Columbia, South Carolina 29201
Litigation History Report | Judicial Reversal Report | Judicial Expert Challenge Report | Profiler

- **Hearn, Hon. Kaye G.**
State of South Carolina Supreme Court
Columbia, South Carolina 29201
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Code 1976 § **5-31-450**

Code of Laws of South Carolina 1976 Annotated Currentness
Title 5. Municipal Corporations (Refs & Annos)
Chapter 31. Electricity, Water, Natural Gas and Sewerage Systems
Article 5. Acquisition and Condemnation of Lands
§ 5-31-450. Drains for surface water.

Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person.

CREDIT(S)

HISTORY: 1962 Code § 59-224; 1952 Code § 59-224; 1942 Code § 7301; 1932 Code § 7301; Civ. C. '22 § 4449; Civ. C. '12 § 3026; 1902 (23) 1038; 1953 (48) 272.

LIBRARY REFERENCES

Eminent Domain ⚷31.
Municipal Corporations ⚷829, 835.
Westlaw Key Number Searches: 148k31; 268k829; 268k835.
C.J.S. Eminent Domain § 44.
C.J.S. Municipal Corporations §§ 780, 790 to 791.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Actions § 27, Demand.

S.C. Jur. Adjoining Landowners § 6, Actions Brought Pursuant to Statute.

S.C. Jur. Adjoining Landowners § 10, Water Accumulation--Publicly Owned Adjoining Land.

S.C. Jur. Eminent Domain § 16, Municipalities.

NOTES OF DECISIONS

In general 1
Condemnation 4
Demand 2
Liability 3

1. In general

Cited in Faust v Richland County, 117 SC 251, 109 SE 151 (1921). Triplett v Columbia, 111 SC 7, 96 SE 675 (1918).

Appellant's contention that a municipality had exclusive liability in an inverse condemnation case . would not be considered on appeal, where he did not raise such defense in his pleadings, but, rather, chose to answer the complaint on its merits. Watson v. Town of Pendleton (S.C. 1986) 289 S.C. 315, 345 S.E.2d 489.

The foundation of recovery under this section [Code 1962 § 59-224] is damage resulting from overt acts of the municipality, which it has failed to remedy after notice. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

Proof of negligence. Under this section [Code 1962 § 59-224] proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare, is not an essential ingredient of the cause of action in favor of an adjacent landowner, whose property has been damaged by surface water cast upon it as the result of such construction. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

Quoted in Belue v. City of Greenville (S.C. 1954) 226 S.C. 192, 84 S.E.2d 631.

Applied in Holliday v. City of Greenville (S.C. 1953) 224 S.C. 207, 78 S.E.2d 279.

2. Demand

The purpose of a demand is to notify the municipality, through its appropriate agency, of the damage done or threatened by surface water from its streets as the result of the construction of its street improvements, and of the need for more adequate drainage. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

It need not be in writing--This section [Code 1962 § 59-224] does not require that a demand be in writing, and does not specify the agency of the municipality to which it should be addressed. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

Sufficiency of demand is jury issue. Whether the action of affected property owners at a meeting with the city's board of health was sufficient demand upon the city for relief was, under the testimony, an issue for determination by the jury. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

3. Liability

This section [Code 1962 § 59-224] plainly contemplates positive action by a municipality to render it liable for damages. Hill v Greenville, 223 SC 392, 76 SE2d 294 (1953). Brown v School Dist., 251 SC 220, 161 SE2d 815 (1968).

For additional related cases, as to allegations of damage from surface water, see Columbia v Melton, 81 SC 356, 62 SE 245, 399 (1908). Macedonia Baptist Church v Columbia, 195 SC 59, 10 SE2d 350 (1940).

City was not liable, under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, when business owner's property flooded during rainstorm, where business owner failed to offer proof of any affirmative, positive acts which tended to show that actions of city caused flooding of his business property. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations ⚭ 840

The statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage does not purport to make the municipality an insurer of

the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations ⚷ 827(1)

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations ⚷ 835

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations ⚷ 835

City was not liable for trespass, when business owner's property flooded during rainstorm, for designing and maintaining municipal drainage system, where business owner failed to show any affirmative and intentional act necessary to sustain action for trespass. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations ⚷ 835

City was not liable for conversion, when business owner's property flooded during rainstorm, for designing and maintaining municipal drainage system; business owner provided no evidence that city seized, disposed, denied use, or wrongfully took control of any goods or personal chattels belonging to him or his business. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations ⚷ 835

The municipality is not an insurer of the landowner against damage from surface water under § **5-31-450**; it is only for such damage as results from the municipality's works that a landowner may recover. Therefore, unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute. Taleff v. City of Greer (S.C.App. 1985) 284 S.C. 510, 327 S.E.2d 363.

When cause of action complete. The cause of action of an adjacent landowner is complete if, after demand, the municipality has failed to provide, along or under the street on which the drainage work has been done, sufficient drainage to prevent the passage of the surface water from such street over the landowner's property. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

It does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246. Municipal Corporations ⚷ 829

Diversion of surface water into inadequate watercourse. A municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

It creates no liability where the damage resulted from highway construction and improvement carried out by the State Highway Department years before annexation of the road and land in question to the city. Hill v. City of Greenville (S.C. 1953) 223 S.C. 392, 76 S.E.2d 294.

City is liable for injury caused by negligent construction of drain pipes. Mayrant v. City of Columbia (S.C. 1907) 77 S.C. 281, 57 S.E. 857.

4. Condemnation

City's design and maintenance of drainage system did not constitute affirmative, positive, aggressive act on part of city as required to support business owner's claim for inverse condemnation claim when his business property near drainage system flooded during rainstorm; city's replacement of double-box culvert with large arched pipe and installation of riprap material along banks of creek near owner's business did not cause flooding of business, and business owner's own expert testified that installation of large arched pipe likely improved drainage situation in stormwater basin. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Eminent Domain 2.18

Code 1976 § **5-31-450**, SC ST § **5-31-450**

Current through End of 2012 Reg. Sess.

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PATTERSON & HELMS LLC
75 YEARS 1938-2013
Attorneys for businesses & professionals since 1938

Phillip S. Ferderigos, Member
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December 31, 2013

The Honorable Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Tipperary Sales, d/b/a La-z-Boy Furniture Gallery v City of North Charleston, et al.
Case No. 2012-CP-10-6922
Our File No. 1.498

Dear Julie:

Enclosed please find an original and one copy of the City of North Charleston's Memorandum in Support of its Motion to Dismiss in the above-referenced matter. Please file the original and return the clocked copy to us in the enclosed, self-addressed, stamped envelope.

By copy of this letter, and pursuant to the Certificate of Service, I am simultaneously serving a copy of the same on counsel of Record.

Thank you for your assistance.

With kind regards,

Phillip S. Ferderigos

Enc.
Cc w/enc.: Michael S. Seekings, Esq., Yancey McLeod, Esq.
G. Wade Cooper, Esq.
Leslie S. Riley, Esq.
Roy P. Maybank, Esq.
Duke R. Highfield, Esq.
Elliott Halio, Esq.

PSF/bbm

{Client Matter\000001\0498\CSP\00446828.DOC}

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NUMBER: 12-CP-10-6922

TIPPERARY SALES d/b/a LA-Z-BOY FURNITURE GALLERY,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEM; ASSOCIATED DEVELOPERS, INC.; and PARKHILL, LLC.,

Defendants.

FILED
2014 JAN -6 AM 10: 23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiff's Memorandum in Opposition to the Defendants' Motions

The Plaintiff, Tipperary Sales d/b/a La-Z-Boy Furniture Gallery submits this Memorandum in Opposition to Defendants' Motions. Specifically, Plaintiff submits this memorandum in opposition to the following motions: 1) City of North Charleston's Motion to Dismiss pursuant to Rule 12(c), SCRCP; 2) South Carolina Department of Transportation's ("SCDOT") Motion for "Summary Judgment" pursuant to Rule 12(b)(6), Rule 12(c), and Rule 56, SCRCP; 3) South Carolina Department of Health and Environmental Control's ("SCDHEC") Motion for Summary Judgment; and 4) Charleston Water System's ("Charleston Water") Motion to Dismiss pursuant to Rule 12(c), or in alternative, for Summary Judgment. As further stated herein, the facts and pleadings of the instant case are distinguishable from *Hawkins v. City of Greeneville*, 358 S.C. 280, 594 S.E.2d. 557 (2004), and the Defendants' various motions should be denied.

The facts of this case, including Plaintiff's causes of action, are thoroughly described and pleaded in Plaintiff's Amended Complaint. (Attached herein as Exhibit "A"). Briefly, this case arises from the ongoing catastrophic flooding issues at the Northwoods Pointe Shopping Center in the city of North Charleston. The Plaintiff has a leasehold interest in its store facilities at the Mall. The Plaintiff has leased the space since 2000. Prior to taking possession of the space, Plaintiff had no knowledge or information regarding any prior flooding events at the premises. Plaintiff up-fitted the space for its business purposes and installed fixtures and various interior upgrades at its own expense. Unbeknownst to Plaintiff, the Mall area was prone to catastrophic flooding. To this day, despite obvious duties, these Defendants have done absolutely nothing to remedy the problem. Indeed, these Defendants have intentionally ignored the problem and their actions have in fact made the flooding problem much worse and have caused the Plaintiff to suffer the damages alleged in the Amended Complaint.

I. LEGAL STANDARD

A judgment on the pleadings is a drastic remedy. *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). When considering such motion for a judgment on the pleadings under Rule 12(c), SCRCP, "the court must regard all properly pleaded factual allegations as admitted." *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000); *Russell*, 305 S.C. 86, 406 S.E.2d 338. On review of the motion, the court may not consider matters outside the pleadings. *Firemen's Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 394 S.E.2d 855 (Ct. App.1990). "A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment." *Falk*, 341 S.C. 281,

286, 533 S.E.2d 350, 353. "[A] complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever." *Id.*

In reviewing a 12(b)(6) motion, the question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the alleged facts and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case, then dismissal under Rule 12(b)(6) is improper. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995).

Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). "This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321-22, 548 S.E.2d 854, 857 (2001).

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. *See also Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988).

II. THE HAWKINS DECISION

The Defendants' are asking the court to essentially dismiss the case based on the pleadings, relying primarily on *Hawkins v. City of Greeneville*, 358 S.C. 280, 594 S.E.2d. 557 (2004). This reliance is predictable, but misplaced. Although *Hawkins* was another flood/property damage case against a governmental entity, the facts, procedural posture, and pleadings in *Hawkins* are distinguishable from the instant case.

In *Hawkins*, the property at issue continued to flood despite the numerous attempts by Greenville to abate the situation.[1] *Id.* at 285-289, 291. Specifically, the Defendant city of Greenville attempted to remedy the flooding problems by installing additional pipes and rocks along the banks of the watershed. *Id.* After his property flooded a second time, the *Hawkins* Plaintiff again brought suit against Greenville for property damage associated with the flood, even though Hawkins had previously signed a "full, complete and final release." *Id.* at 291. Based on the facts and the specific pleadings in *Hawkins*, the trial court granted summary judgment to the city of Greenville. *Id.* at 298. A different result is mandated in the present case for the following reasons.

A. Negligence/Gross Negligence/Tort Claims Act Claims

The *Hawkins* Plaintiff brought a claim against Greenville for simple negligent design and maintenance of its drainage system. *Id.* at 288. The Defendants' arguments incorrectly assume that the facts and pleadings in the current case are the same. They are not. Here, unlike *Hawkins*, the Plaintiff has pleaded gross negligence. (Exhibit A).

[1] The *Hawkins* case represented Mr. Hawkin's second suit against the city of Greenville for damages related to the flooding of his property. *Id.* The first suit ended in a settlement. *Id.*

Here, unlike *Hawkins*, the Plaintiff has alleged that the Defendants' affirmative acts (primarily the building/approval of roads and issuance of permits) are the cause of Plaintiff's injuries. (Exhibit A). Most importantly, these well-pleaded allegations of gross negligence trigger sections of the Tort Claims Act not mentioned by the Defendants. *See* S.C. CODE ANN. § 15-78-60 (12) (providing exception to government immunity for the issuance of permits or similar authority where exercised in a grossly negligent manner); S.C. CODE ANN. § 15-78-60 (10) (providing exception to government immunity for the natural conditions of unimproved property of the governmental entity, "unless the defect or condition causing a loss is not corrected by the entity responsible for the property within a reasonable time after actual or constructive notice"): S.C. CODE ANN. § 15-78-60 (15) (providing exception to government immunity for "maintenance . . . of any public property, intended or permitted to be used . . . for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance . . . within a reasonable time after actual notice of the defect or condition").

Hawkins simply did not involve the same facts and allegations as the present case, and predictably the Defendants have failed to acknowledge this critical difference. The Defendants are not permitted to hide behind a few exceptions to the waiver of sovereign immunity while ignoring others. *See Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 312, 628 S.E.2d 496, 514 (Ct. App. 2006) ("Therefore, because Proctor proceeded under a theory of gross negligence as provided in section 15-78-60(12), the other subsections of that statute do not provide immunity from DHEC's acts of gross negligence."). The Defendants' motions, therefore, must be denied. In any event,

whether any exception under section 15-78-60 applies is question for the jury. *See, e.g., Steinke v. S.C. Dept. of Labor*, Licencing, and Regulation, 336 S.C. 373, 3393-94 (1999) (exception under 15-78-60(12) properly submitted to jury); *Proctor*, 368 S.C. 279 (same).

B. Inverse Condemnation Claim

The *Hawkins* court affirmed the grant summary judgment in favor of Greenville on the inverse condemnation claim because the Plaintiff "failed to allege any affirmative acts by the city which damaged the . . . property or otherwise diminished [Plaintiff's] rights." *Hawkins*, 358 S.C. at 291-92. In the present case, the Plaintiff has alleged affirmative acts against each Defendant. (Exhibit A). These affirmative acts, coupled with the prior knowledge and utter failure to abate the problem, are more than sufficient to meet the "affirmative, positive, aggressive" act necessary for an inverse condemnation claim. *See, e.g., Berry's On Main, Inc. v. City of Columbia*, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (finding city's removal of a public sidewalk and support in the course of an urban redevelopment project constituted the affirmative, positive, aggressive act required for unconstitutional taking).

C. Violation of S.C. Code Ann. 5-31-450

Unlike *Hawkins*, the plaintiff's well-pleaded Amended Complaint alleges sufficient facts and claims under S.C. Code Ann. § 5-31-450. In *Hawkins*, the section 5-31-450 claim was dismissed because "Hawkins failed to offer proof of any affirmative, positive acts which would tend to show the actions of the City caused the flooding." *Hawkins*, 358 S.C. at 296. Here, the Plaintiff has alleged affirmative and positive acts against the City. *See* Exhibit A ¶ 90 (d) (listing the city's "reviewing, inspecting, and

approving ill-conceived and factually erroneous drainage plans for construction). In any event, discovery is ongoing. The Plaintiff has not even deposed the city of North Charleston in this case. The Defendant's Motion must be denied.

D. Trespass

The Plaintiff's complaint sufficiently pleads and alleges a cause of action for trespass. "For a trespass action to lie, 'the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion." *Hawkins*, 358 S.C at 297. In *Hawkins*, the court affirmed summary judgment in favor of the city because the city "failed to show any affirmative and intentional act necessary to sustain an action fro trespass." *Id.* Here, the Amended Complaint alleges sufficient affirmative and intentional acts on behalf of these Defendants for trespass. The Defendants' motions must be denied.

III. The Defendants' Statute of Limitations Defense is without Merit.

Finally, the Defendants' statute of limitations defense is without merit. Initially, it is important to note – and remind these Defendants – that Plaintiff's alleged damages include the diminution of its property value. The flooding issues, as alleged in the Amended Complaint, are on going. They will continue as long as these Defendants refuse to abate the problem that they have created and are responsible for. The Plaintiff's damages continue; the statute of limitations does not apply. Moreover, the event that caused the majority of Plaintiff's other damages (loss of inventory and loss of business) occurred in October of 2008. The Complaint was filed in April of 2010, less than two years later in compliance with section 15-78-110 (2005).

Based on the foregoing, the Defendants' motions should be denied.

Respectfully Submitted,

LEATH, BOUCH, & SEEKINGS, LLP

By: _____

Michael S. Seekings
Yancey A. McLeod III
92 Broad Street
Post Office Box 59
Charleston, South Carolina 29402
(843) 937-8811

Attorney for the Plaintiff

Charleston, South Carolina

Dated: Jan 6. 2014

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,)
Plaintiff(s))
)
vs.)
)
South Carolina Department of Transportation, et al)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 -CP- 10 - 6922

Submitted By: Yancey A. Mcleod III
Address: 92 Broad Street, Charleston, SC, 29402

SC Bar #: 80911
Telephone #: 843-513-1074
Fax #: 843-937-0606
Other:
E-mail: ymcleod@leathbouchlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

If Action is Judgment/Settlement do not complete

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date: October 24, 2012**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

R000367

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

R000368

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NUMBER: 2012-CP-10-6922

FILED
2012 OCT 24 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TIPPERARY SALES d/b/a LA-Z-BOY FURNITURE GALLERY,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEM; ASSOCIATED DEVELOPERS, INC.; PARKHILL, LLC,

Defendants.

AMENDED SUMMONS

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to the Complaint on the subscriber, 92 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service, exclusive of the date of service. If you fail to answer the Complaint within this time, judgment by default will be rendered against you for the relief demanded in the Complaint.

LEATH, BOUCH, & SEEKINGS, LLP

By: _____

Michael S. Seekings
Yancey A. McLeod III (S.C. Bar No.: 80911)
92 Broad Street
Post Office Box 59

Charleston, South Carolina 29402
(843) 937-8811

Attorney for the Plaintiff

Charleston, South Carolina

Dated:_____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NUMBER: 2012-CP-10-6922

TIPPERARY SALES d/b/a LA-Z-BOY FURNITURE GALLERY,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEM; ASSOCIATED DEVELOPERS, INC.; AND PARKHILL, LLC

Defendants.

AMENDED COMPLAINT
(Jury Trial Demanded)

FILED
2012 OCT 24 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NOW COMES Tipperary Sales d/b/a La-Z-Boy Furniture Gallery (hereinafter, La-Z-Boy) who complains as follows:

PARTIES

1. Tipperary Sales is a corporation organized pursuant to the laws of Georgia and having its principal place of business in Augusta, Georgia. Tipperary Sales operates La-Z-Boy Furniture Gallery locations in numerous locations including one located at 7671 Northwoods Boulevard in North Charleston in the Northwoods Pointe Shopping Center adjacent to Northwoods Mall. Tipperary Sales is authorized to do business in the State of South Carolina.

2. The South Carolina Department of Transportation (hereinafter "SCDOT") is a governmental subdivision of the State of South Carolina charged by law with the design,

construction, and maintenance of the State's highways, byways, and thoroughfares. Plaintiff brings its claims against SCDOT, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.*, and under common law.

3. The South Carolina Department of Health and Environmental Control (hereinafter "DHEC") is a governmental subdivision of the State of South Carolina, with regulatory powers set forth in S.C. CODE ANN. §48-10-70, *et seq.* DHEC has promulgated regulations regarding storm water runoff management to promote water quantity control. S.C. CODE ANN. REG. 72-100 through 72-445. Plaintiff brings its claims against DHEC, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. §15-78-10, *et seq.*, and under common law.

4. This City of North Charleston (hereinafter "North Charleston") is a municipal corporation and claims brought against it are brought, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. §15-78-10, *et seq.*, §5-31-450, and under common law. North Charleston is responsible for the maintenance and implementation of a storm water system in the City and for approving and inspecting drainage plans for construction in designated flood areas. Moreover, North Charleston is required to provide for sufficient drainage for surface water from any city street. S.C. CODE ANN. §5-31-450.

5. The Charleston Water System, f/k/a Charleston Commissioners of Public Works (hereinafter "CWS"), is, upon information and belief, a governmental subdivision that owns, operates, and maintains the Goose Creek Reservoir, and, upon information and belief, has responsibility for controlling the discharge of water from the Reservoir into the Cooper River. CWS is believed to have designed, built, maintained, owned and controlled the drainage system running from the Northwoods Mall and Northwoods Pointe Shopping Center area to the

Reservoir. Plaintiff brings its claims against CWS, in relevant part, pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.*, and under common law.

6. Associated Developers, Inc. (hereinafter "Associated Developers") is a corporation organized and existing pursuant to the laws of the Commonwealth of Virginia. Associated Developers is authorized to conduct business in this State.

7. Parkhill, LLC (hereinafter "Parkhill") is a limited liability company organized pursuant to the laws of the State of South Carolina and is authorized to do business in this State.

FACTUAL BACKGROUND

8. Plaintiff La-Z-Boy has a leasehold interest in its store facilities at Northwoods Pointe Shopping Center in North Charleston. La-Z-Boy has leased the space since 2000. Prior to taking possession of the space, La-Z-Boy had no knowledge or information regarding any prior flooding events at the premises. La-Z-Boy upfitted the space for its business purposes and installed fixtures and various interior upgrades at its own expense.

9. Unbeknownst to La-Z-Boy, the Northwoods Mall area was prone to flooding. As is reflected in a 1980 E.M. Seabrook Jr., Inc. (hereinafter "Seabrook") study, the Northwoods Mall parking lot has had a long history of flooding. The Seabrook study noted that the flooding issues were discussed with SCDOT and with North Charleston. Seabrook also determined that flooding would take place upstream of the Highway 52 Connector in any 50-year storm due to the sizing of the pipes under the highways and downstream to two 84" pipes laying beneath the Northwoods Mall parking lot, which were and are grossly undersized and form a constriction point and obstruction to storm water drainage for the entire watershed. As such, as early as 1980, SCDOT and North Charleston knew that the facilities were inadequate to handle any heavy rainfall event.

10. The Seabrook study also revealed that more than 1,900 acres drained to the twin 84" pipes running beneath the Northwoods Mall parking lot - 900 acres more that any previous drainage calculation had projected. The Seabrook study put SCDOT and North Charleston on notice that the twin 84" pipes were even more of a choke point for the storm water drainage system than previously believed. Still, SCDOT did nothing, and, upon information and belief, made it clear to Seabrook that it intended to do nothing.

THE DRAINAGE BASIN NEAR AND AROUND THE LA-Z-BOY STORE

11. Immediately downstream from Parkhill Place subdivision, storm water is channeled through a box culvert beneath the Highway 52 Connector. The box culvert was installed by SCDOT. Upon information and belief, the box culvert is not sufficiently sized to handle upstream storm water runoff.

12. Just downstream from the box culvert are the twin 84" pipes, which are the intake point for the drainage system that runs below and through Northwoods Mall parking lot. SCDOT installed, owns, and maintains, the twin 84" pipes that are intended to carry storm water beneath the Northwoods Mall parking lot until they empty into an open ditch. The twin 84" pipes have *never* been adequate for managing storm water runoff since they were installed by SCDOT.

13. Upon information and belief, CWS owns and controls the open ditch running through the lower part of the Northwoods Mall parking lot.

14. The drainage basin then flows down an open ditch or streambed, believed to be owned and controlled by CWS, to its outflow terminus at the Goose Creek Reservoir, which itself is believed to be owned, controlled, managed, and operated by the CWS.

15. The outflow point at the Reservoir, which is under CWS' control, is actually at a higher elevation than the intake point for the entire drainage system at SCDOT's twin 84" pipes. As a

result, the entire drainage system remains approximately one-half full even during dry conditions. This lack of appropriate slope dramatically reduces the volume of water that can be carried by the entire drainage system, such that its capacity is substantially less than was intended.

16. Though SCDOT has repeatedly been warned of the inadequacy of its 84" pipes, and the attendant risks of severe flooding, SCDOT has refused to correct their inadequate facilities. In fact, the twin 84" pipes act as a dam, preventing the flow of storm water to the Goose Creek Reservoir.

17. In addition to the drainage from upstream of the Highway 52 Connector, storm water also flows down the road bed of Northwoods Boulevard from Ashley Phosphate Road. This storm water also flows to the intake of the drainage system at the twin 84" pipes.

18. When there is a heavy rainfall, the storm water runoff flows down from the Parkhill Place Subdivision and points upstream to the rear of the La-Z-Boy store as well as from Ashley Phosphate Road down Northwoods Boulevard to the front of the La-Z-Boy store. The entire flow of storm water, both from the front and rear of the building, is intended to enter SCDOT's 84" pipes and to flow down the CWS-owned watershed to the Goose Creek Reservoir. The La-Z-Boy store is situated at the low point of the entire watershed. As Defendant Earth Tech reported to SCDOT and to Davis & Floyd, the La-Z-Boy store is the lowest point in the area around the mall and shopping center, and the store will tend to flood before any other surrounding stores or the mall itself.

19. Instead of being channeled down the drainage watershed, the storm water runoff backs up at the constriction point at the opening of SCDOT' s twin 84" pipes.

20. Further, because of the incorrect design, construction and maintenance of the CWS drainage system, which is either flat or has negative drainage between the Northwoods Mall/Northwoods Pointe Shopping Center and the Goose Creek Reservoir, the entire drainage system is inadequate to the task of moving water away from the La-Z-Boy store and to the Reservoir.

IMPROVEMENT OF THE ASHLEY PHOSPHATE ROAD / HIGHWAY 52 CONNECTOR / 1-26 INTERCHANGE

21. In September, 2002, SCDOT began construction to improve the interchange at 1-26, Ashley Phosphate Road, and the Highway 52 Connector in North Charleston.

22. Upon information and belief, SCDOT conducted no significant analysis of the effect the planned improvement would have on downstream flooding, which SCDOT knew or should have known was a recurring problem.

23. On or about March 20, 2003, while construction was ongoing, there was a heavy rainfall that resulted in considerable flooding downstream from the interchange improvements with maximum effect at the La-Z-Boy store. As a result of the inundation, the La-Z-Boy store suffered damage to its fixtures, improvements, and loss of inventory. La-Z-Boy also suffered a loss of revenue because the store was forced to close for 6 days due to the flood and the clean-up, as well as the time required to restock ruined inventory.

24. After the deluge, various merchants in the Northwoods Mall and Northwoods Pointe Shopping Center, including La-Z-Boy, notified SCDOT, the City of North Charleston, the Charleston County Public Works Department, the North Charleston Public Works Department, the Charleston Commissioners of Public Works (now Charleston Water System), and complained about the extensive flooding and notified all governmental agencies of its concern over future flooding and insisted that the responsible government agencies immediately

investigate the cause of the flooding and take steps to remedy the problems causing the flooding that imperiled the livelihoods of the businesses affected by the torrent.

25. In response to its demand for investigation into the cause of the flooding, La-Z-Boy was informed that "extensive roadwork in the area coupled with extraordinary rainfall were the contributing factors" in the flooding that damaged the La-Z-Boy store and inventory. Upon information and belief, the only roadwork that could have exacerbated and increased the flooding was the Ashley Phosphate *I* 1-26 *I* Highway 52 Connector improvements being built by SCDOT.

26. Rather than accept any responsibility for the flood, SCDOT wrongly contended that the only source of the flood was runoff down Northwoods Boulevard from Ashley Phosphate Road to the front of the La-Z-Boy store. SCDOT contended that the flood waters traversed the parking lot and collected in a retention pond at the rear of the store after which it passed into SCDOT's drainage pipes, which SCDOT wrongly believed were adequate and operating properly.

27. Contrary to SCDOT's contention, the upstream watershed also extended uphill from SCDOT's expanded Highway 52 Connector through Parkhill Place Subdivision and other upstream commercial and residential developments, all of which drained directly to SCDOT's inadequate 84" pipes.

28. Additionally, all runoff from the added impervious acreage of the expanded highway and interchange likewise flowed to the twin 84" pipes located in SCDOT's right-of-way and within SCDOT's exclusive control.

29. SCDOT had long known that the 84" pipes were inadequate to the task of carrying away even a modest amount of storm water, yet SCDOT refused to make requisite improvements to the choke point in the drainage system at the mouth of the 84" pipes.

30. After the March 20, 2003, flood, La-Z-Boy notified the City of North Charleston of its concern with storm water management, and demanded that North Charleston take any necessary and appropriate steps to correct the condition and to prevent future flooding.

31. La-Z-Boy also contacted SCDOT's resident engineers on the I-26/Ashley Phosphate Road/Highway 52 Connector project, Davis & Floyd and Earth Tech, to notify them of the flooding problem and demanding that Davis & Floyd take such steps as were necessary to remedy the problem.

32. Davis & Floyd commissioned Earth Tech n/k/a AECOM, SCDOT's design engineers for the improvement project, to study the impact of the interchange improvements on downstream storm water management. Earth Tech concluded that the Highway 52 Connector improvements would add 13.7 acres of impermeable material directly adjacent to the choke point in SCDOT's right-of-way at the inadequate twin 84" pipes. In fact, Earth Tech notified SCDOT that "the double pipe system under the [North woods] Mall parking lot is not adequately sized to handle the flows that the upstream box culvert [under the Highway 52 Connector] can handle." Earth Tech determined that when the 84" pipes' capacity was exceeded, the water level seeks the low point- adjacent to the back of the La-Z-Boy store.

33. SCDOT ignored all warnings from merchants, their own engineers, and others affected by the flooding, and determined not to correct the cause of the flooding- the inadequacy of the twin 84" pipes lying within SCDOT's right-of-way.

34. The fears of the merchants in Northwoods Pointe Shopping Center were born out in July, 2005, when there was another flood. SCDOT was still constructing the improvements to the interchange and to the Highway 52 Connector at the time - yet SCDOT did nothing to remedy the inadequate drainage provided by the twin 84" pipes in its drainage right-of-way.

35. As a result of the July, 2005 flood, La-Z-Boy again suffered inundation of its premises, damage to its store, fixtures, and inventory, and loss of business.

RENOVATION OF STALL HIGH SCHOOL

36. In June 2002, construction began on the Stall High School renovation, a site with 43 acres of impermeable material. DHEC permitted the project without ever requiring accurate data that was available to it as to the obvious impacts of down-gradient properties, including North-Woods Mall.

THE DEVELOPMENT OF PARKHILL PLACE SUBDIVISION

37. Upon information and belief, in 2001 Centex Homes began development of 36.2 acres of land that became known as Phases 3, 4, and 5 of Parkhill Place subdivision.

38. Upon information and belief, in 2003, Centex added 21 additional acres of improved property and an additional 151 residential lots.

39. Parkhill Place Subdivision is just upstream from the choke point at SCDOT's 84" pipes and the La-Z-Boy store.

40. Upon information and belief, Associated Developers, and Parkhill, as developers, developed a residential subdivision in North Charleston known as Parkhill Place in the early 2003 began development of Phase 6 in which they transformed wooded property into 48 residential lots.

41. In 2004 Associated Developers, and Parkhill began developing the last phase of Parkhill Subdivision, known as Phase 6.

42. North Charleston and DHEC are and were the permitting agencies whose permits were necessary for the development of Parkhill Place Phases 3, 4, 5, and 6 (hereinafter "the Subdivision"), without which the Subdivision's construction could not have taken place. At all

times herein, North Charleston and DHEC were acting in a ministerial capacity with respect to the issuance of construction and other necessary permits.

43. Additionally, North Charleston was charged with the legal duty of maintaining the watershed and ensuring adequate drainage for implementation of a storm water system in the City and for approving and inspecting drainage plans for construction in designated flood areas. Moreover, North Charleston is required to provide for sufficient drainage for surface water from any city street.

44. The watershed flows directly to the box culverts running underneath the Highway 52 Connector and to constriction point at SCDOT's twin 84" pipes running beneath the Northwoods Mall parking lot.

45. The area of land that became the Subdivision, and the land downstream to and including the Northwoods Mall and Northwoods Pointe parcels, has an extensive history of severe and recurring flooding. This history of damaging flood events has been well-chronicled in reports generated for North Charleston by Davis & Floyd in 2007 (revised following the October, 2008 flood event); reports by Earth Tech in 2003; and a report by E.M. Seabrook, Inc., in 1980. These reports chronicled flooding dating back more than 30 years.

46. Associated Developers and Parkhill failed to conduct any examination into potential flooding, either within the Subdivision or downstream, although they had been involved in the Subdivision for many years and were, upon information and belief, on notice of the previous flooding problems.

47. The 2007 Davis & Floyd Report had been provided to North Charleston in January 2007, and the City had been on notice for years about the flooding in the Northwoods Mall and Northwoods Pointe area. Davis & Floyd recommended repairs and rebuilding of the Highway 52

culverts and the drainage system downstream in order to mitigate, lessen, and reduce the flooding in the Subdivision, at Northwoods Mall, and at the Northwoods Pointe Shopping Center.

48. In October, 2008, a heavy rain event took place and the flood envisioned and predicted, though wholly ignored by the defendants, took place and inundated the entire area, including Phase 6 of the Subdivision, the La-Z-Boy store, and the Northwoods Pointe Shopping Center.

49. The La-Z-Boy store was flooded to a depth of several feet; its inventory ruined just as the Christmas shopping season was beginning; the store fixtures and displays were destroyed; and, the store was forced to close for a significant period to effect repairs and to develop a plan to attempt to prevent additional flooding.

DHEC PERMITTING

50. DHEC and its Office of Ocean and Coastal Resource Management (hereinafter "OCRM") are charged with a statutory and regulatory obligation to ensure that storm water runoff will not have an adverse impact, including an increased risk of flooding. Upon information and belief, DHEC is responsible for managing South Carolina's storm water management program and for ensuring that developments obtaining DHEC storm water permits do not result in increased risk of flooding.

51. Upon information and belief, DHEC issued permits for construction and development immediately upstream in the watershed that ended at the constriction point at SCDOT's inadequate 84" pipes, numerous times between 2000, when La-Z-Boy first took up occupancy of its leasehold in the store, and 2009.

52. Upon information and belief, DHEC did no investigation into the adverse impact each of these developments would have on the existing flooding problems downstream.

FOR A FIRST CAUSE OF ACTION
(Inverse Condemnation)
[SCDOT]

53. Plaintiff incorporates by reference Paragraphs 1 through 52 above as if restated fully herein.

54. SCDOT caused the twin 84" pipes to be installed in its right of way adjacent to the current Northwoods Mall site. The 84" pipes were inadequate when installed and constitute a choke point for drainage of storm water flowing down the watershed from upstream of the Northwoods Mall/Northwoods Pointe Shopping Center site.

55. In 2002, SCDOT commenced work on the Ashley Phosphate *I* 1-26 *I* Highway 52 Connector interchange and the expansion and improvement of the Highway 52 Connector.

56. SCDOT's improvement project added considerably to the impermeable material immediately upstream from its inadequate 84" pipes. Virtually all water from the roadway will flow directly to the choke point at SCDOT's drainage pipes.

57. SCDOT was made aware of the inadequacy of its 84" pipes as early as 1980 and again after Earth Tech analyzed the drainage system in 2003, after complaints by La-Z-Boy and other merchants about downstream flooding.

58. By reason of SCDOT' s installation of inadequate and insufficient drainage and its addition of more than 13 acres of impermeable material immediately adjacent to and upstream from the La-Z-Boy store, La-Z-Boy has been deprived of its property and the value of its property has been greatly diminished. La-Z-Boy has been adversely impacted by continual and repeated flooding, resulting in total or partial loss of inventory; substantial damage to fixtures; and interruption of its business during the following flood and near flood events:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

59. SCDOT has steadfastly refused since 2003, when La-Z-Boy notified it of flooding damage to its store, to compensate La-Z-Boy for the deprivation of access and use of its property although compensation has been demanded.

60. SCDOT has also refused to remedy the drainage in its right of way, resulting in repeated flooding of the La-Z-Boy and deprivation of its use and access to its property.

61. The flooding, and attendant damage, constitutes a taking of La-Z-Boy's property for public use.

62. The reasonable value of La-Z-Boy's property has been diminished as a result of the repeated past floods, and for inevitable future floods in an amount to be determined at trial.

63. La-Z-Boy also demands reimbursement for its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action, and for such other and further relief as is just and proper.

FOR A SECOND CAUSE OF ACTION
(Inverse Condemnation)
[DHEC]

64. Plaintiff incorporates by reference Paragraphs 1 through 63 above as if restated fully herein.

65. DHEC is and was a permitting agency whose permits were necessary for the construction and development of numerous developments upstream from the La-Z-Boy store, including, but not limited to, Parkhill Place subdivision (all phases), Northwoods Townhomes, Stall High School, and Springhill Suites.

66. DHEC's issuance of permits to applicants whose permit applications failed to account for any potential flooding downstream from the respective sites constituted an affirmative and aggressive act by DHEC.

67. La-Z-Boy was deprived of the use of its property and store numerous times because of the following flooding and near flood events, the effects of which were magnified and made worse by DHEC's permitting upstream developments without any analysis of the adverse impact those developments would have on downstream property.

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

68. The flooding, and attendant damage, constitutes a taking of La-Z-Boy's property for public use.

69. The reasonable value of La-Z-Boy's property has been diminished as a result of the repeated past floods, and for inevitable future floods in an amount to be determined at trial.

70. La-Z-Boy also demands reimbursement for its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action, and for such other and further relief as is just and proper.

FOR A THIRD CAUSE OF ACTION
(Inverse Condemnation)
[City of North Charleston]

71. Plaintiff incorporates by reference Paragraphs 1 through 70 above as if restated fully herein.

72. North Charleston constructed or participated in the construction of the streets and roads surrounding Northwoods Mall and Northwoods Pointe Shopping Center, including Northwoods Boulevard, extending from Ashley Phosphate Road to the Mall and Shopping Center parking lots, and Northwoods Boulevard.

73. Northwoods Boulevard and the parking lots of Northwoods Mall are graded and improved as streets or thoroughfare suitable for public travel, and North Charleston has caused them to become the permanent and established grade. That grade results in storm water flowing and collecting directly to the front and rear of the La-Z-Boy store.

74. La-Z-Boy was deprived of the use of its property and store numerous times because of the following flooding and near flood events, the effects of which were magnified and made worse by North Charleston's affirmative act of constructing, maintaining, and operating streets and thoroughfares graded such that storm water flowed and collected directly in the front and rear of the La-Z-Boy store

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

75. The flooding, and attendant damage, constitutes a taking of La-Z-Boy's property for public use.

76. The reasonable value of La-Z-Boy's property has been diminished as a result of the repeated past floods, and for inevitable future floods in an amount to be determined at trial.

77. La-Z-Boy also demands reimbursement for its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action, and for such other and further relief as is just and proper.

FOR A FOURTH CAUSE OF ACTION
(Inverse Condemnation)
[Charleston Water System]

78. Plaintiff incorporates by reference Paragraphs 1 through 77 above as if restated fully herein.

79. The drainage system running from the Northwoods Mall site to its outflow at the Goose Creek Reservoir is controlled and maintained by the Charleston Water System f/k/a Commissioners of Public Works.

80. CWS also controls the level of the Goose Creek Reservoir and, as it is believed to have occurred in December, 2009, can lower the level of the reservoir to that the drainage system and watershed upstream to above Northwoods Mall and Northwoods Pointe Shopping Center will adequately and effectively drain during a torrential downpour.

81. Upon information and belief, CWS owns, controls, maintains, and operates the drainage watershed from the Northwoods Mall parking lot to the outflow at Goose Creek Reservoir. CWS's drainage system throughout is either flat or ascending from the Mall parking lot to the reservoir, the result of which is that, because CWS maintains the level of the Reservoir above the level of the drainage basin, the drainage watershed remains approximately half full and does not properly drain any storm water.

82. CWS' operation and maintenance of the Goose Creek Reservoir and its maintaining the level of the Reservoir above the level of the drainage watershed outflow resulted in the following floods and near flood events, the effects of which could have been nullified or abated had the Reservoir been lowered:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

83. As a direct and proximate result of CWS' affirmative and aggressive act of constructing, maintaining, and controlling a drainage system that is flat or ascending, rather than descending, La-Z-Boy has repeatedly been deprived of the use of its property and business.

84. Such deprivation of property constitutes a taking for public use.

85. As a direct and proximate result of CWS' affirmative act of refusing to lower the water level of Goose Creek Reservoir to prevent upstream flooding, La-Z-Boy has repeatedly been deprived of the use of its property and business.

86. CWS has been on notice for many years regarding the problems existing in its drainage watershed and the resulting flooding of the La-Z-Boy store and has failed and refused to correct its problems or to compensate La-Z-Boy for the loss of use of its property.

87. The reasonable value of La-Z-Boy's property has been diminished as a result of the repeated past floods, and for inevitable future floods in an amount to be determined at trial.

88. La-Z-Boy also demands reimbursement for its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action, and for such other and further relief as is just and proper.

FOR A FIFTH CAUSE OF ACTION
(Violation of S.C. CODE ANN. §5-31-450)
[City of North Charleston]

89. Plaintiff incorporates by reference Paragraphs 1 through 88 above as if restated fully herein.

90. The City of North Charleston has been and continues to violate S.C. Code Ann. §5-31-450 in the following:

a. In failing and refusing to ensure adequate and appropriate drainage from the Northwoods Mall site, when, as early as the E.M. Seabrook, Inc. drainage study in 1980, it was well known that the level of the Northwoods drainage system was *below* the mean water level of the outflow of the entire drainage system at the Goose Creek Reservoir.

b. In failing and refusing to take steps to remedy and correct the inadequate drainage from the entire Northwoods area, though on notice of the existing problem and future exacerbating factors of increased development and the addition of vast areas of impermeable material causing increased water flow to the low points of the watershed- at the front door and rear loading dock of the La-Z-Boy store.

c. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being placed on notice of the necessary remedial action as recently as the 2007 Davis &

Floyd Report, which set forth specific measures that could be taken to prevent further flooding.

d. In reviewing, inspecting, and approving ill-conceived and factually erroneous drainage plans for construction upstream from the designated and well-known flood areas in and around Northwoods Mall and Northwoods Pointe Shopping Center to account for increased drainage from Ashley Phosphate Road and the increased commercial development between Ashley Phosphate Road and the La-Z-Boy store and other merchants having businesses along Northwoods Boulevard.

e. In failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Boulevard, which surface drainage flows directly to the doors of the La-Z-Boy store.

f. In failing and refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.

g. In failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area and downstream to the discharge of the flood plain at the Goose Creek Reservoir.

h. In failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

91. As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of North Charleston, Plaintiffs have suffered property losses,

damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

92. La-Z-Boy will continue to suffer, flooding; damage to its -store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir.

FOR A SIXTH CAUSE OF ACTION
(Negligent and Grossly Negligent Design, Construction, and Maintenance)
[Charleston Water System]

93. Plaintiff incorporates by reference Paragraphs 1 through 92 above as if restated fully

94. CWS owns, controls, and is responsible for the maintenance of the drainage system running between the outflow of the inadequate 84" pipes in SCDOT's right of way and the mouth of the drainage system at the Goose Creek Reservoir.

95. CWS, therefore, owes adjoining property owners, businesses, and leaseholders a duty to maintain and operate the drainage system with reasonable care and to avoid flooding adjoining land, homes, and businesses.

96. The drainage system under CWS' control, was designed, constructed, and has been maintained such that water does not drain from the watershed in and around Northwoods Mall and Northwoods Pointe Shopping Center, but instead remains approximately half filled at all times because the level of the Goose Creek Reservoir is generally higher than the level of the drainage system.

97. Further, upon information and belief, CWS can manipulate the level of the Goose Creek Reservoir to prevent flooding of upstream properties by lowering the level of the Reservoir to allow water collected in the drainage system in and around Northwoods Mall and Northwoods Pointe Shopping Center to drain properly into the Reservoir.

98. CWS breached its duty to exercise reasonable care in the following particulars:

a. Failing to design, maintain, and operate the drainage system under its control to prevent or mitigate flooding resulting from even moderate rainfall;

b. Failing to institute protocols and procedures by which the level of the Goose Creek Reservoir would be lowered in the event of significant rainfall resulting in potential for flooding;

99. As a direct and proximate result of CWS' negligent and grossly negligent construction, maintenance and operation of the drainage watershed downstream from Northwoods Mall and Northwoods Pointe Subdivision, the La-Z-Boy store suffered considerable damage in the flood events of 2003, 2004, 2005, 2008, and 2009, including but not limited to, loss of inventory, damage to fixtures and improvements, business interruption and loss of sales.

FOR A SEVENTH CAUSE OF ACTION

(Negligent and Grossly Negligent Failure to Manage Storm Water Runoff)
[Charleston Water System]

100. Plaintiff incorporates by reference Paragraphs 1 through 99 above as if restated fully herein.

101. Upon information and belief, the level of the Goose Creek Reservoir is under the purview and control of the Charleston Water System and can be lowered when necessary to abate or prevent flooding upstream from the reservoir.

102. La-Z-Boy is informed and believes that the near-flood event on December 18-19, 2008, was avoided because CWS took appropriate steps to lower the water level of the Goose Creek Reservoir to permit storm water to drain from the Northwoods Mall area down the water course owned and maintained by CWS to its outflow at the Goose Creek Reservoir.

103. Though CWS had the ability to prevent upstream flooding during heavy rainfalls, it failed or refused to do so resulting in flooding in the Northwoods Mall/ Northwoods Pointe Shopping Center area during the following flood events:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. October 24, 2008;

e. July, 18 2009;

f. July 29, 2009;

104. The storm water runoff and management thereof is an abatable condition that has recurred and CWS's predecessor was on notice of the storm water management issues in the Northwoods Mall and Northwoods Pointe Shopping Center area as early as May, 2003, when La-

Z-Boy wrote to CWS's predecessor, as well as other private and governmental entities, alerting them to its concern regarding the March 20, 2003 flood event.

105. As a direct and proximate result of CWS's failure or refusal to take appropriate steps to manage storm water runoff through its drainage basin terminating at the Goose Creek Reservoir, La-Z-Boy suffered considerable damage in the flood events of 2003, 2004, 2005, 2008, and 2009, including but not limited to, loss of inventory, damage to fixtures and improvements, business interruption and loss of sales.

FOR AN EIGHTH CAUSE OF ACTION
(Trespass)
[SCDOT, City of North Charleston, CWS]
{South Carolina Tort Claims Act}

106. Plaintiff incorporates by reference Paragraphs 1 through 105 above as if restated fully herein.

107. La-Z-Boy is entitled to possession of its leasehold interest in the store and its fixtures and other improvements as well as to its inventory, equipment, and other property housed within the walls of the store.

108. SCDOT, North Charleston, and CWS separately intentionally and knowingly directed storm water runoff to La-Z-Boy's premises.

109. Such invasion of La-Z-Boy's interest was without permission.

110. As a direct and proximate result of the trespass by SCDOT, North Charleston, and CWS, La-Z-Boy has suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

111. Upon information and belief, SCOOT, North Charleston, and CWS knowingly, willfully, and wantonly permitted the intrusion on La-Z-Boy's premises and chattels.

112. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until SCDOT, North Charleston, and CWS take reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot.

FOR AN ELEVENTH CAUSE OF ACTION
(Negligent Design, Permitting, and Construction of Parkhill Phase 6)
[Associated Developers, Parkhill]

113. Plaintiff incorporates by reference Paragraphs 1 through 112 above as if restated fully herein.

114. The actions of the defendants as set forth above were negligent, reckless, willful, and wanton in the following particulars:

a. As to the Developer Defendants, Associated Developers, and Parkhill:

i. In removing forestation and in constructing and developing the homes, roads, driveways, and impermeable surfaces in a known flood plain in which

flood events were known to occur and which development would increase the downstream flooding problems, including those at Northwoods Pointe Shopping Center and, in particular, at the La-Z-Boy store;

ii. In failing or refusing to take any precautions to ascertain the suitability of the property in and around Phase 6 for development of additional homesites when they were on notice of the history of flooding and knew or should have known of the detrimental impact of new development on the existing downstream buildings;

iii. In failing to exercise due care;

115. As a direct and proximate result of the negligence, recklessness, willfulness, and wantonness of Parkhill and Associated Developers with respect to the design, permitting, and construction of Phase 6, La-Z-Boy has suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because offload events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

116. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store as a result of storm water runoff from Parkhill Place Phase 6.

FOR A TWELFTH CAUSE OF ACTION
(Negligence/Gross Negligence)
(City of North Charleston]
{South Carolina Tort Claim Act}

117. Plaintiff incorporates by reference Paragraphs 1 through 116 above as if restated fully herein.

118. The City of North Charleston has been and continues to be negligent, willful, wanton, and grossly negligent in the following:

a. In failing and refusing to ensure adequate and appropriate drainage from the Northwoods Mall site, when, as early as the E.M. Seabrook, Inc. drainage study in 1980, North Charleston knew the level of the Northwoods drainage system was *below* the mean water level of the outflow of the entire drainage system at the Goose Creek Reservoir.

b. In failing and refusing to take steps to remedy and correct the inadequate drainage from the entire Northwoods area, though on notice of the existing problem and future exacerbating factors of increased development and the addition of vast areas of impermeable material causing increased water flow to the low points of the watershed- at the front door and rear loading dock of the La-Z-Boy store.

c. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being placed on notice of the necessary remedial action as recently as the 2007 Davis &

Floyd Report, which set forth specific measures that could be taken to prevent further flooding.

d. In negligently reviewing, inspecting, and approving ill-conceived and factually erroneous drainage plans for construction upstream from the designated and well known flood areas in and around Northwoods Mall and Northwoods Pointe Shopping Center to account for increased drainage from Ashley Phosphate Road and the increased commercial development between Ashley Phosphate

e. In failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Boulevard, which surface drainage flows directly to the doors of the La-Z-Boy store.

f. In failing and refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.

g. In failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area and downstream to the discharge of the flood plain at the Goose Creek Reservoir.

h. In failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

119. As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of North Charleston, Plaintiffs have suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

120. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir.

FOR A THIRTEENTH CAUSE OF ACTION
(Negligence/ Gross Negligence)
[DHEC]
{South Carolina Tort Claim Act}

121. Plaintiff incorporates by reference Paragraphs 1 through 120 above as if restated fully herein.

122. DHEC has been and continues to be negligent, willful, wanton, and grossly negligent in the following:

a. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being on notice of severe and repeated flooding.

b. In negligently reviewing, inspecting, and approving ill-conceived and factually erroneous drainage plans for construction upstream from the designated and well known flood areas in and around Northwoods Mall and Northwoods Pointe Shopping Center.

c. In failing and refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.

d. In failing to properly supervise the surface water drainage in the Northwoods Mall and Northwoods Pointe Shopping Center area to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

123. As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of DHEC, Plaintiffs have suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

124. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir.

FOR A FOURTEENTH CAUSE OF ACTION
(Negligence/ Gross Negligence)
[SCDOT]
{South Carolina Tort Claim Act}

125. Plaintiff incorporates by reference Paragraphs 1 through 124 above as if restated fully herein.

126. SCDOT has been and continues to be negligent, willful, wanton, and grossly negligent in the following:

a. In refusing to ensure adequate and appropriate drainage from the Northwoods Mall site, when, as early as the E.M. Seabrook, Inc. drainage study in 1980, SCDOT knew that its twin 84" pipes were woefully inadequate to provide adequate drainage in the area surrounding Northwoods Mall and Northwoods Point Shopping Center.

b. In refusing to take any steps to remedy and correct the inadequate drainage from the entire Northwoods area, though on notice of the existing problem and future exacerbating factors of increased development and the addition of vast areas of

impermeable material causing increased water flow to the low points of the watershed- at the front door and rear loading dock of the La-Z-Boy store.

c. In failing and refusing to ensure adequate drainage for implementation of a storm water system in the Northwoods Mall and Northwoods Pointe area after being placed on notice of the necessary remedial action as recently as the 2007 Davis & Floyd Report, which set forth specific measures that could be taken to prevent further flooding.

d. In designing, constructing and maintaining the Highway 52 Connector improvements without providing for sufficient drainage of surface water from the highway, which surface drainage flows directly to the La-Z-Boy store, as is reflected in the Earth Tech study of 2003.

e. In refusing to take any substantive steps to mitigate or prevent future flooding after the October, 2008 flood event.

f. In failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area, including its twin 84" pipes, to ensure adequate flow of water through the drainage system to the Goose Creek Reservoir during periods of inclement weather.

127. As a direct and proximate result of the negligence, recklessness, willfulness, wantonness, and gross negligence of SCDOT, Plaintiffs have suffered property losses, damage to inventory and fixtures, and loss of use of the retail business because of flood events or near-flood events of:

a. March 20, 2003;

b. June 16, 2004;

c. July 22, 2005;

d. July 16, 2008;

e. October 24, 2008;

f. April 2, 2009;

g. July 8, 2009;

h. July 29, 2009;

i. August 26, 2009

j. October 28, 2009;

k. December 18-19, 2009;

128. La-Z-Boy will continue to suffer, flooding; damage to its store, inventory, fixtures and improvements; loss of business and loss of use of the store unless and until North Charleston takes reasonable steps to correct the inadequate drainage in and around the Northwoods Pointe Shopping Center parking lot and downstream to the Goose Creek Reservoir.

WHEREFORE, Plaintiff La-Z-Boy prays that judgment be entered in its favor and against the defendants as follows:

a. That That La-Z-Boy be awarded the diminution of the value of its leasehold, premises, improvements, equipment, and loss of business based upon the taking of its property for public use resulting from the following flood and near-flood events:

1. March 20, 2003;
2. June 16, 2004;
3. July 22, 2005;
4. July 16, 2008;

5. October 24, 2008;
6. April 2, 2009;
7. July 8, 2009;
8. July 29, 2009;
9. August 26, 2009;
10. October 28, 2009;
11. December 18-19, 2009;

b. That La-Z-Boy be awarded the value of all lost business and interruption of business operations sustained as a result of the taking of its property for public use during above-mentioned flood and near-flood events.

c. That La-Z-Boy be awarded its reasonable expenses, costs, attorney's fees, costs of appraisal and engineering fees incurred due to having to institute this action to recover for the inverse condemnation of its property.

d. That La-Z-Boy be compensated for its actual and consequential damages proximately resulting from North Charleston's violation of S.C. CODE ANN. §5-31-450 in each of the above mentioned flood and near-flood events.

e. That La-Z-Boy be awarded its actual and consequential damages directly and proximately resulting from Charleston Water System's improper design, construction, and maintenance of the drainage watershed flowing from Northwoods Mall to the Goose Creek Reservoir.

f. That La-Z-Boy be awarded its actual and consequential damages directly and proximately resulting from Charleston Water System's willful and knowing

failure or refusal to lower the level of the Goose Creek Reservoir during significant rainfall events.

g. That La-Z-Boy be awarded actual, compensatory, and punitive damages as a result of the intentional, willful, and wanton trespass to its property and chattels in reckless and knowing disregard of La-Z-Boy's rights in each of the abovementioned flood and near-flood events.

h. That La-Z-Boy be awarded actual, consequential, and punitive damages as a result of the negligence, gross negligence, willful, and wanton conduct of Parkhill, and Associated in the development of Parkhill Place Phases 3, 4, 5, and 6.

i. That La-Z-Boy be awarded actual and consequential damages proximately resulting from the negligence, gross negligence, and willful and wanton conduct of each of the governmental defendants, SCDOT, DHEC, CWS, and North Charleston.

j. That La-Z-Boy be awarded actual, consequential, and punitive damages proximately resulting from the negligence, gross negligence, and willful and wanton conduct of each of the non-governmental defendants.

l. That La-Z-Boy be awarded its costs, including reasonable attorney's fees, resulting from the defendants' wrongful conduct.

m. That La-Z-Boy be awarded such other and further relief as is just and proper.

LEATH, BOUCH, & SEEKINGS, LLP

By: _____

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(843) 937-8811

Attorneys for the Plaintiff

Charleston, South Carolina

Dated: Oct 24, 2012

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 24 day of October, 2012

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF THE COMMON PLEAS CIVIL ACTION NO: 2012-CP-10-6922
TIPPERARY SALES D/B/A LA-Z-BOY FURNITURE GALLERY PLAINTIFFS,	)	
V.	)	DEFENDANT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; CITY OF NORTH CHARLESTON; CHARLESTON WATER SYSTEM; ASSOCIATED DEVELOPERS, INC.; PARKHILL, LLC; DEFENDANTS.	)	

FILED
2014 JAN -7 AM 9: 13
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: MICHAEL S. SEEKINGS, ESQUIRE AND YANCEY A. MCLEOD, III, ESQUIRE, COUNSEL FOR THE PLAINTIFF

The Defendant, the South Carolina Department of Transportation, (hereinafter "SCDOT"), respectfully submits this Memorandum in Support of its Motion for Summary Judgment pursuant to South Carolina Rules of Civil Procedure 12 (b)(6), 12 (c) and 56. SCDOT moves for summary judgment as a matter of law based on the statute of limitations set forth in the S.C. Tort Claims Act, S.C. Code Ann. §§ 15-78-10, *et. seq.,* and the Hawkins v. City of Greenville decision (attached as Exhibit 1 to co-defendant City of North Charleston's memorandum).

The Plaintiff's Amended Complaint sets forth three causes of action against SCDOT: Inverse Condemnation; Trespass, and; Negligence/Gross Negligence.

SCDOT's argument in support of Summary Judgment is the essentially the same as that of co-defendant City of North Charleston's.

Statute of Limitations

Plaintiff concedes in its Amended Complaint that SCDOT is a governmental entity and subject to the S.C. Tort Claims Act (the "Act"), S.C. Code Ann. §§ 15-78-10, *et. seq.* [Amended Complaint ¶2]. The Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). The Act must be liberally construed in favor of limiting the liability of the State and governmental entity. S.C. Code Ann §15-78-20 (f). The Act states that all causes of action brought pursuant to the Act must be commenced within two years after the date the loss was discovered or should have been discovered. S.C. Code Ann §15-78-110.

Plaintiff filed its initial Complaint on April 8, 2010. Accordingly, Plaintiff is barred from recovery from any loss that was discovered or should have been discovered prior to April 8, 2008.

Hawkins v. City of Greenville

SCDOT also moves for summary judgment on all the Plaintiff's causes of action against it based on the Court of Appeals decision in Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004).

Inverse Condemnation

The Court in Hawkins holds that in order for a Plaintiff to maintain a cause of action for inverse condemnation against a governmental entity that the Plaintiff must show "an affirmative, positive, aggressive act" on the part of the governmental entity. Id. at 29. The Plaintiff's Amended Complaint contends only that SCDOT failed to act and/or failed to abate the alleged flooding problem. Allegations of failure to act are insufficient to support a claim for inverse condemnation. Id. To the extent the Plaintiff is attempting to hold SCDOT liable for inverse condemnation based on SCDOT's alleged involvement with the planning and design of the drainage system in question; the Court in Hawkins held that design and planning of a drainage system by a governmental entity are quasi-judicial, discretionary functions for which a governmental entity is not liable. Id. See also S.C. Code Ann §15-78-60 (1), (2), (4), (5), (7), (9), (13), and (14). Accordingly, the Plaintiff may not maintain a cause of action for inverse condemnation against SCDOT.

Trespass

The Court in Hawkins also addresses the common law intentional tort of trespass. The essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the

damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, S.C. Code Ann. § 15-78-60 (9) and (17) bar Plaintiff's trespass claim. The Plaintiff alleges that SCDOT "intentionally and knowingly directed stormwater runoff to La-Z-Boy's premises" (Am. Comp. ¶ 108) and SCDOT "knowingly, willfully, and wantonly permitted the intrusion on La-Z-Boy's premises and chattels" (Am Comp. ¶ 111). Subsection (9) bars a trespass claim against a governmental entity for entry upon any property where entry is expressly or impliedly authorized by law and Subsection (20) bars any action against a governmental entity for conduct constituting an "intent to harm." As trespass requires an intent to enter upon the premises (and the entry itself is the "harm"), it is axiomatic that the intentional, unwarranted entry, which is the wrong itself, necessarily satisfies the "intent to harm" provision of subsection (20), and Tort Claims Act bars Plaintiff's claim for trespass as a matter of law. Further, for the same reasons outlined in the Hawkins decision, the trespass claim allegations in this case fail as a matter of law.

Negligence/Gross Negligence

The Plaintiff's Amended Complaint claims that SCDOT is negligent/grossly for its failure to act and/or failure to abate the alleged flooding problem. The Plaintiff's Amended Complaint also alleges that SCDOT is liable for the alleged flooding based on its designing, constructing, and maintaining the Highway 52 Connector. (Am Comp. ¶ 126). The Court of Appeals opinion in Hawkins addresses this cause of action as well. The Act also provides for exceptions to waivers of immunity.

> The governmental entity is not liable for a loss resulting from:
>
> (1) legislative, judicial, or quasi-judicial action or inaction;
> (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
> (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
> (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
> (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
>
> ...
>
> (7) a nuisance;
>
> ...
>
> (9) entry upon any property where entry is expressly or impliedly authorized by law;
>
> ...
>
> (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.

Code 1976 § 15-78-60.

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). When a governmental entity asserts various exceptions to the waiver of immunity under the state Tort Claims Act, the correct approach is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit liability. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999).

The Tort Claims Act immunity provisions (1), (2), (3-5), (7), (9), (13), and (20) bar this present tort claim. The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a city's drainage system has been

addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims. In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: 'legislative, judicial, or quasi-judicial action or inaction[.]'" Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the design and maintenance of the drainage system in the Laurel Creek Basin. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. Hawkins stands for the proposition that a city's design and maintenance of its drainage system are provided absolute discretionary immunity under the Tort Claims Act. The Hawkins decision's broad language affords a city absolute immunity for design and maintenance decisions. Plaintiff may not maintain a cause of action for negligence/gross negligence against SCDOT.

For the reasons stated herein, Defendant SCDOT respectfully requests this Honorable Court grant its Motion for Summary Judgment based on the South Carolina Tort Claims Act and the Hawkins decision.

Respectfully submitted,

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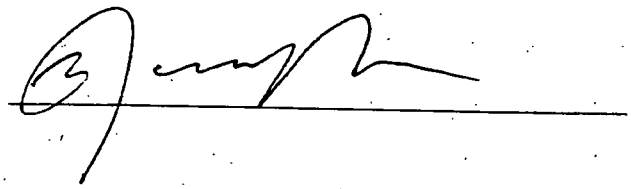
Charleston, South Carolina
1/6, 2014

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ mailing, ☐ e-mailing, ☐facsimile, or ☑hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 7 day of Jan., 2013



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2014 JAN -7 AM 9: 13
JULIE J. ARMSTRONG
CLERK OF COURT
BY_____

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

MAR 19 20
SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-6922

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery ..... Appellant,

v.

South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC. ..... Respondents.

NOTICE OF APPEAL

Appellant appeals (1) the Order of the Honorable R. Markley Dennis, Jr., filed February 18, 2014, dismissing the claims against Respondent City of North Charleston; (2) the Order of the Honorable R. Markley Dennis, Jr., filed February 18, 2014, dismissing the claims against Respondent Charleston Water System; (3) the Order of the Honorable R. Markley Dennis, Jr., filed February 18, 2014, grating Summary Judgment in favor of Respondent South Carolina Department of Health and Environmental Control; and (4) the Order of the Honorable R. Markley Dennis, Jr., filed February 18, 2014, granting Summary Judgment in favor of Respondent South Carolina Department of Transportation.

March 17, 2014

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED
MAR 19 2014
SC COURT OF APPEALS

Case No. 2012-CP-10-6922

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery ..... Appellant,

v.

South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC. ..... Respondents.

PROOF OF SERVICE

I certify that I served the Notice of Appeal on March 17, 2014, by depositing a copy of it in the United State Mail, postage prepaid, addressed as follows:

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March 17, 2014

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No.: 12-CP-10-6922
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
	)	**ORDER GRANTING DHEC'S MOTION FOR SUMMARY JUDGMENT**
Plaintiff,	)	
vs.	)	
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC,	)	
Defendants.	)	

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Court of Appeals

FILED
2014 FEB 18 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing on January 7, 2014 on Defendant South Carolina Health and Environmental Control's (DHEC) Motion for Summary Judgment. Present in the courtroom were the Plaintiff's counsel: Yancey A. McLeod, III, Esquire; Defendant Charleston Water System's counsel, G. Wade Cooper, Esquire, and Leslie S. Riley, Esquire; Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire; Andrew S. Halio, Esquire, counsel for DHEC; and Jason A. Daigle, Esquire, counsel for South Carolina Department of Transportation.

As to DHEC, Plaintiff alleges two causes of action: negligence/gross negligence and inverse condemnation. These causes of action arise out of DHEC's issuance of various land disturbance permits, which are alleged to have resulted in the flooding of the Plaintiff's property. After reviewing the pleadings, the motion, and the Plaintiff's opposing memorandum, and considering the arguments of counsel, the Court hereby grants DHEC's Motion for Summary Judgment for the reasons set forth below.[1]

1. SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act, which is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

[1] The various governmental entity Defendants filed separate motions on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders for each Defendant. In support of its motion for summary judgment, DHEC relies on all of the materials generated in the case, including the materials generated in discovery. The Court also notes that DHEC did not move on the basis of the statute of limitations, but had it done so, the result would have been the same as the Court's ruling with respect to the other governmental entities on that issue.

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

(1) legislative, judicial, or quasi-judicial action or inaction;
(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
...
(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
...
(7) a nuisance;
...
(12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
(13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit the liability of the State. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Id.

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a governmental entity's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[2]

[2] More specifically, in Hawkins, a business owner brought an action against the City alleging that the City's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse

Pmd 2

In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered to be inherently quasi-judicial, discretionary functions for which a governmental entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found that a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the design and maintenance of the drainage system at issue in that case. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language

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condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a governmental entity will not be held liable for damages allegedly resulting from the overall design, construction, or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by the governmental entity and which proximately causes damages to a person's property. The Hawkins decision controls in this case.

affords a governmental entity absolute immunity for design, construction, and maintenance decisions. The rationale of Hawkins is also applicable to DHEC, which is alleged to have negligently reviewed, inspected and approved erroneous drainage plans, failed to mitigate flooding problems, and failed to supervise surface water drainage near the Plaintiff's property, all of which is precluded by the exceptions to waiver of immunity provisions in the Tort Claims Act cited above and by Hawkins. Additionally, S.C. Code § 15-78-60 (12) provides immunity to DHEC for the issuance of the permits, and Plaintiff was unable to provide any evidence that the permits at issue were issued in a grossly negligent manner. For these reasons, Plaintiff's negligence/gross negligence claims against DHEC fail as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim against DHEC also fails under Hawkins. Hawkins argued that the City was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the City's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, Plaintiff has failed to allege or show any "affirmative, positive, aggressive act" on the part of DHEC in this case. The allegations setting forth the basis for the inverse condemnation claim against DHEC are found in Paragraphs 65 - 70 of the Amended Complaint. The mere allegation that DHEC issued permits without accounting for potential downstream flooding is insufficient to support a claim for inverse condemnation. No proof of an "affirmative, positive, aggressive act" on the part of DHEC has been presented to the Court. As such, Plaintiff's inverse condemnation claim against DHEC fails as a matter of law.

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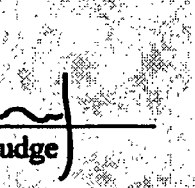
CONCLUSION

For the reasons stated herein, this Court hereby grants DHEC'S Motion for Summary Judgment.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

RMD 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	C/A No. 12-CP-10-06922
Plaintiff,	)	
Versus	)	ORDER GRANTING CHARLESTON WATER SYSTEM'S MOTION TO DISMISS
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC,	)	
Defendants.	)	

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing January 7, 2014 on Defendant Charleston Water System's (CWS)[1] Motion to Dismiss Pursuant to SCRCP Rule 12(c), or, in the alternative, Motion for Summary Judgment. Present in the court were the Plaintiff's counsel: Yancey A. McLeod, III, Esquire; Defendant Charleston Water System's counsel, G. Wade Cooper, Esquire, and Leslie S. Riley, Esquire; Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire; Andrew S. Halio, Esquire, counsel for South Carolina Department of Health and Environmental Control; and Jason A. Daigle, Esquire, counsel for South Carolina Department of Transportation.

As to the CWS, Plaintiff alleges four causes of action:

(1) Inverse Condemnation;
(2) Negligent and grossly negligent design, construction, and maintenance;
(3) Negligent and grossly negligent failure to manage storm water runoff; and,
(4) Trespass.

After reviewing the pleadings, the Motions to Dismiss, the Memoranda in support of the Motions and opposing the Motions, reviewing the pleadings, and considering the arguments of counsel, the Court hereby grants Defendant Charleston Water System's Motion to Dismiss based on the pleadings.[2]

[1] The legal name for CWS is the Commissioners of Public Works of the City of Charleston, which does business as CWS.

[2] The various governmental entity Defendants filed Motions for Dismissal Pursuant to SCRCP Rule 12(c) on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders of Dismissal for each separate Defendant.

PMP 1

I. THE PLAINTIFF'S CLAIMS FOR DAMAGES ARISING OUT OF ANY FLOODING EVENT PRIOR TO APRIL 8, 2008 ARE DISMISSED PURSUANT TO THE STATUTE OF LIMITATIONS.

Initially, based upon the pleadings, the Plaintiff's allegations asserting claims against Defendant Charleston Water System for the March 20, 2003, June 16, 2004 and July 22, 2005 flood events are time-barred pursuant to the statute of limitations. For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Sixth, Seventh, and Eighth causes of action (negligence and trespass) are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[3] For the Plaintiff's remaining claim for inverse condemnation (Fourth cause of action), a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[4] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[5] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333

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[3] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[4] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

[5] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[6]

Here, pursuant to S.C. Code Ann. § 15-78-110 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against CWS within two years after Plaintiff knew or should have known it had a claim. Further, for all non-tort claims, a three year statute of limitations applies pursuant to S.C. Code Ann. §15-3-530. It is self evident that the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when each flood occurred in 2003, 2004, 2005, 2008 and 2009. As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff failed to do so, and Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010.

As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003, 2004, and 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

II. THE PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF FOR ITS (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, AND (3) TRESPASS CAUSES OF ACTION AGAINST CHARLESTON WATER SYSTEM PURSUANT TO THE HAWKINS DECISION AND THE SOUTH CAROLINA TORT CLAIMS ACT.

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[6] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id. "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

pmn 3

1. NEGLIGENCE/GROSS NEGLIGENCE & SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act, which is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

> S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.
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> The governmental entity is not liable for a loss resulting from:
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> (1) legislative, judicial, or quasi-judicial action or inaction;
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> (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
> ...
> (7) a nuisance;
> ...
> (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
>
> Code 1976 § 15-78-60.

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit the liability of the State. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Id.

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a governmental entity's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App.

MMD 4

2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[7] In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered to be inherently quasi-judicial, discretionary functions for which a governmental entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required

[7] More specifically, in Hawkins, a business owner brought an action against the City alleging that the City's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a governmental entity will not be held liable for damages allegedly resulting from the overall design, construction, or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by the governmental entity and which proximately causes damages to a person's property. The Hawkins decision controls in this case.

Pm 15

to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the *design and maintenance of* the drainage system at issue in the case. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language affords a governmental entity absolute immunity for design, construction, and maintenance decisions, and the Tort Claims Act immunity provisions (1), (2), (4), (5), (7), and (13) bar Plaintiff's present tort claims against Charleston Water System.

With regard to CWS, there is an additional statutory basis for dismissal on this basis. CWS is a statutorily-created Commissioners of Public Works pursuant to S.C. Code Ann. §5-31-210 *et seq*. Section 5-31-250 sets forth specific powers of any commissioners of public works as follows:

> The board of commissioners of public works of any city or town may purchase, build or contract for building any waterworks or electric light plant authorized under Article 7 of this chapter and may operate them and shall have full control and management of them. It may supply and furnish water to citizens of the city or town and also electric, gas or other light and may require payment of such rates, tolls and charges as it may establish for the use of water and light.

Given that CWS has only the powers invested in it by the Legislature as set forth above, CWS does not and cannot have control of any design, construction or maintenance of any drainage system, much less a drainage system located outside of the corporate limits of the City of Charleston.

Here, Plaintiff's Amended Complaint Paragraphs 5 - 52 and Fourth, Sixth, Seventh, and Eighth causes of action do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff alleges liability due to CWS' "incorrect design, construction, and maintenance" of its drainage system (Am. Comp. ¶ 20); its refusal "to lower the water level of the Goose Creek Reservoir to prevent upstream flooding" (Am. Comp. ¶ 85); its failure "to design, maintain, and operate the drainage system under its control to prevent or mitigate flooding resulting from even moderate rainfall" (Am. Comp. ¶ 98 (a)); its failure "to institute protocols and procedures by which the level of the Goose Creek Reservoir would be lowered in the event of significant rainfall resulting in potential for flooding" (Am. Comp. ¶98 (b)); and CWS' "failure or refusal to take appropriate steps to manage storm water runoff through its drainage basin terminating at the Goose Creek Reservoir" (Am. Comp. ¶ 105). As for the allegations regarding "the drainage system under [CWS'] control," it is clear from §5-31-250 that CWS does not have any control over storm water or drainage systems and therefore cannot fail to maintain such. With regard to the remaining allegations, they, at most, are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claims against Charleston Water System fail as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim against CWS also fails pursuant to the Hawkins decision. Hawkins argued that the City was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the City's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. *Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes.* The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the part of the Charleston Water System. Complaint Paragraphs 5 - 52, and 7-88 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. The allegations of the CWS' mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the CWS giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct (or lack thereof) absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the CWS' failure to mitigate upstream flooding by lowering the level of the downstream Goose Creek Reservoir proximately caused flooding on its premises. (Am. Comp. ¶¶ 85, 97, 98, 99, 101, 103, 105). However, pursuant to the Hawkins' court's ruling, the failure to act or to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the CWS' actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. *Id.; see also*, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim).

MD7

3. TRESPASS

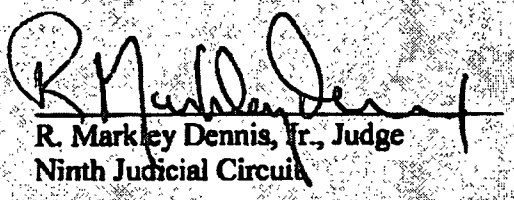
As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, for the same reasons outlined in the Hawkins decision and pursuant to the Tort Claims Act, the trespass claim allegations (¶¶ 108-111) in this case fail to set forth sufficient facts to constitute a claim for relief against this Defendant.

CONCLUSION

For the reasons stated herein, this Court hereby grants Defendant Charleston Water System's Motion to Dismiss Pursuant to SCRCP Rule 12(c) based on the South Carolina Tort Claims Act and the Hawkins decision.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

PMD 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	C/A No. 12-CP-10-06922
Plaintiff,	)	
Versus	)	ORDER GRANTING SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION'S MOTION FOR SUMMARY JUDGMENT
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC,	)	
Defendants.	)	

FILED
2014 FEB 18 PM 2:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing January 7, 2014 on Defendant South Carolina Department of Transportation's (SCDOT) Motion for Summary Judgment pursuant to SCRCP Rule 12(b)(6), 12(c), and 56. Present in the court were the Plaintiff's counsel: Yancey A. McLeod, III, Esquire; Defendant Charleston Water System's counsel, G. Wade Cooper, Esquire, and Leslie S. Riley, Esquire; Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire; Andrew S. Halio, Esquire, counsel for South Carolina Department of Health and Environmental Control; and Jason A. Daigle, Esquire, counsel for South Carolina Department of Transportation.

As to SCDOT, Plaintiff alleges three causes of action:

(1) Inverse Condemnation;
(2) Trespass; and,
(2) Negligence/Gross Negligence.

After reviewing the pleadings, the Motion for Summary Judgment, the Memoranda in support of the Motions and opposing the Motions, reviewing the pleadings, and considering the arguments of counsel, the Court hereby grants Defendant South Carolina Department of Transportation's Motion for Summary Judgment based on the pleadings.[1]

[1] The various governmental entity Defendants filed Motions for Dismissal Pursuant to SCRCP Rule 12(c) on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders of Dismissal for each separate Defendant.

Rcvd 2/1

I. THE PLAINTIFF'S CLAIMS FOR DAMAGES ARISING OUT OF ANY FLOODING EVENT PRIOR TO APRIL 8, 2008 ARE DISMISSED PURSUANT TO THE STATUTE OF LIMITATIONS.

Initially, based upon the pleadings, the Plaintiff's allegations asserting claims against the SCDOT for the March 20, 2003, June 16, 2004 and July 22, 2005 flood events are time-barred pursuant to the statute of limitations. For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Eighth and Fourteenth causes of action (trespass and negligence/gross negligence) are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[2] For the Plaintiff's remaining claim for inverse condemnation (First cause of action), a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[3] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[4] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333

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[2] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[3] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

[4] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

RMD

S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[5]

Here, pursuant to S.C. Code Ann. § 15-78-110 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against the SCDOT within two years after Plaintiff knew or should have known it had a claim. Further, for all non-tort claims, a three year statute of limitations applies pursuant to S.C. Code Ann. §15-3-530. It is self evident that the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when each flood occurred in 2003, 2004, 2005, 2008 and 2009. As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff failed to do so, and Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010.

As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003, 2004, and 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

II. THE PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF FOR ITS (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, AND (3) TRESPASS CAUSES OF ACTION AGAINST THE SCDOT PURSUANT TO THE HAWKINS DECISION AND THE SOUTH CAROLINA TORT CLAIMS ACT.

1. NEGLIGENCE/GROSS NEGLIGENCE & SOUTH CAROLINA TORT CLAIMS ACT

[5] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id. "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act, which is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

> S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.
>
> The governmental entity is not liable for a loss resulting from:
>
> (1) legislative, judicial, or quasi-judicial action or inaction;
> (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
> ...
> (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
> (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
> ...
> (7) a nuisance;
> ...
> (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
>
> Code 1976 § 15-78-60.

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit the liability of the State. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Id.

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a governmental entity's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[6]

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[6] More specifically, in Hawkins, a business owner brought an action against the City alleging that the City's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse

In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered to be inherently quasi-judicial, discretionary functions for which a governmental entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required *to build and maintain* an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the *design and maintenance of* the drainage system at issue in the case. Hawkins

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condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a governmental entity will not be held liable for damages allegedly resulting from the overall design, construction, or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by the governmental entity and which proximately causes damages to a person's property. The Hawkins decision controls in this case.

358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language affords a governmental entity absolute immunity for design, construction, and maintenance decisions, and the Tort Claims Act immunity provisions (1), (2), (4), (5), (7), and (13) bar Plaintiff's present tort claims against the SCDOT.

Here, Plaintiff's Amended Complaint Paragraphs 2 - 52 and First, Eighth and Fourteenth causes of action do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff alleges liability due to SCDOT's "refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 126 (a)), "in refusing to take any steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 126 (b)), "in failing and refusing to ensure adequate drainage for implementation of a storm water system" (Am. Comp. ¶ 126 (c)), "in designing, constructing and maintaining the Highway 52 Connector improvements without providing for sufficient drainage of surface water from the highway" (Am. Comp. ¶ 126 (d)), "in refusing to take substantive steps tomitigate or prevent future flooding" (Am. Comp. ¶ 126 (e)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 126(f)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claim fails as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim against the SCDOT also fails pursuant to the Hawkins decision. Hawkins argued that the City was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the City's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. *Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes.* The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149,

427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the part of the SCDOT. Complaint Paragraphs 2 – 63 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. The allegations of the SCDOT's mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the SCDOT giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct (or lack thereof) absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the SCDOT's construction and installation of developments upstream from its location at Northwoods Pointe, along with its failure to remedy certain drainage defects, proximately caused flooding on its premises. (Am. Comp. ¶¶ 9 - 12, 16, 24, 29 – 34, 60). However, pursuant to the Hawkins' court's ruling, the failure to act or to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the SCDOT's actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. *Id.*; *see also*, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim).

3. TRESPASS

As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, for the same reasons outlined in the Hawkins decision and pursuant to the Tort Claims Act, the trespass claim allegations (¶¶ 108-111) in this case fail to set forth sufficient facts to constitute a claim for relief against this Defendant.

CONCLUSION

For the reasons stated herein, this Court hereby grants Defendant South Caolina Department of Transportation's Motion for Summary Judgment pursuant to SCRCP Rule 12(b)(6), 12(c), and 56 based on the South Carolina Tort Claims Act and the Hawkins decision.

IT IS SO ORDERED!

R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No.: 12-CP-10-6922
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
Plaintiff,	)	**ORDER GRANTING CITY OF NORTH CHARLESTON'S MOTION TO DISMISS**
vs.	)	
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC,	)	
Defendants.	)	

FILED
2014 FEB 18 PM 2:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing on January 7, 2014 on Defendant City of North Charleston's Motion to Dismiss Pursuant to SCRCP Rule 12(c). Present in the court were the Plaintiff's counsel Yancey A. McLeod, III, Esquire, Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire, G. Wade Cooper, Esquire counsel for Charleston Water System, Andrew S. Halio, Esquire counsel for South Carolina Department of Health and Environmental Control, and Jason A. Daigle, Esquire counsel for South Carolina Department of Transportation.

After reviewing the pleadings, the Motions to Dismiss, the Memoranda in support of the Motions and opposing the Motions, reviewing the pleadings, and considering the arguments of counsel, the Court hereby grants Defendant City of North Charleston's Motion to Dismiss based on the pleadings.[1]

I. THE PLAINTIFF'S CLAIMS FOR DAMAGES ARISING OUT OF ANY FLOODING EVENT PRIOR TO APRIL 8, 2008 ARE DISMISSED PURSUANT TO THE STATUTE OF LIMITATIONS.

Initially, based upon the pleadings, the Plaintiff's allegations asserting claims against Defendant City of North Charleston for the March 20, 2003, June 16, 2004 and July 22, 2005 flood events are time-barred pursuant to the statute of limitations. For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Fifth, Eighth, and Twelfth

[1] The various governmental entity Defendants filed Motions for Dismissal Pursuant to SCRCP Rule 12(c) on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders of Dismissal for each separate Defendant.

claims are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[2] For the Plaintiff's remaining Third claim for inverse condemnation, a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[3] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[4] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[5]

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[2] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[3] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

[4] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

[5] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id.

Here, pursuant to S.C. Code Ann. § 15-78-110 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against Defendant within two years after Plaintiff knew or should have known it had a claim. Further, pursuant to S.C. Code Ann. § 15-3-530 for all non-tort claims, a three year statute of limitations applies. It is self evident that the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when each flood occurred in 2003, 2004, 2005, 2008 and 2009. As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff failed to do so, and Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010.

As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003 – 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

II. THE PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF FOR ITS (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, (3) S.C. CODE ANN. § 5-31-450 VIOLATION, AND (4) TRESPASS CAUSES OF ACTION AGAINST DEFENDANT CITY OF NORTH CHARLESTON PURSUANT TO THE HAWKINS DECISION

1. SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a government is governed by the South Carolina Tort Claims Act. The Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

(1) legislative, judicial, or quasi-judicial action or inaction;
(2) administrative action or inaction of a legislative, judicial, or quasi-judicial

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"The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

nature;

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

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

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

...

(7) a nuisance;

...

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

...

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

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.

Code 1976 § 15-78-60

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). When a governmental entity asserts various exceptions to the waiver of immunity under the state Tort Claims Act, the correct approach is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit liability. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999).

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a city's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[6] In Hawkins, Louie

[6] More specifically, in Hawkins, a business owner brought an action against the city alleging that the city's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse condemnation; (2)

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Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the design and maintenance of the drainage system in the Laurel Creek Basin. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language affords

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city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a municipality will not be held liable for damages allegedly resulting from the overall design or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by a governmental agency which proximately causes damages to a person's property. The Hawkins decision controls in this case.

a governmental entity, such as a city, absolute immunity for design and maintenance decisions, and the Tort Claims Act immunity provisions (1), (2), (3-5), (7), (9), (13), and (20) bar Plaintiff's present tort claim.

Here, Amended Complaint Paragraphs 4 - 52 and 118 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff's allegations that the City of North Charleston's "failing and refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 118 (a)), "in failing and refusing to take steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 118 (b)), "in failing and refusing to ensure adequate drainage for implementation of a stormwater system" (Am. Comp. ¶ 118 (c)), "in negligently reviewing, inspecting, and approving ill conceived and factually erroneous drainage plans for construction upstream from the designated well-known flood areas" (Am. Comp. ¶ 118 (d)), "in failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Blvd." (Am. Comp. ¶ 118 (e)), "in failing and refusing to take any substantive steps to mitigate or prevent future flooding" (Am. Comp. ¶ 118 (f)), "in failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe shopping center area" (Am. Comp. ¶ 118 (g)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 118 (h)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claim fails as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim also fails pursuant to the Hawkins decision. Hawkins argued that the city was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the city's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency");

Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the part of the City of North Charleston. Complaint Paragraphs 4 - 52, and 72-74 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. The allegations of the City's mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the City of North Charleston giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the City's permitting of developments upstream from its location at Northwoods Pointe, along with its failure to remedy certain drainage defects, proximately caused flooding on its premises. (Am. Comp. ¶¶ 9, 10, 24, 30, 42-47). However, pursuant to the Hawkins' court's ruling, the City's actions in "allow[ing] the development of neighboring parcels of commercial property" which allegedly "added strain" to the existing upstream watershed, as well as its alleged failure to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the City's actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. Id.; see also, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim).

3. S.C. CODE § 5-31-450

S.C. Code Ann. § 5-31-450 reads in full:

> "Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person."

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In applying S.C. Code § 5-31-450, the Hawkins court held that liability does not exist under such section absent some affirmative act by the municipality which alters the course or increases the amount of storm water runoff onto private property:

> Applying this statute, our courts have held that liability does not obtain under section 5-31-450 absent some affirmative act by the municipality which alters the course or increases the amount of storm water runoff onto private property. See Brown v. Sch. Dist. of Greenville County, 251 S.C. 220, 225, 161 S.E.2d 815, 817 (1968) (holding that unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute). "The statute does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. By the same token, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off." Hall v. City of Greenville, 227 S.C. 375, 386, 88 S.E.2d 246, 251 (1955). "The statute does not make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Therefore, unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute." Taleff v. City of Greer, 284 S.C. 510, 512, 327 S.E.2d 363, 364 (Ct. App. 1985) (citations omitted). "Under this statute proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction." Hall, 227 S.C. 386, 88 S.E.2d 251. This section apodictically contemplates positive action by a municipality to render it liable for damages. Brown, 251 S.C. 225, 161 S.E.2d 817. (Emphasis added).

Initially, S.C. Code Ann. §5-31-450 requires a "demand from the owner of such private lands," not the tenant of the property owner. Here, the pleadings are deficient in alleging a cause of action pursuant to the statute because the Plaintiff does not allege that the land owner of the property (as opposed to the tenant) demanded the City of North Charleston to take any action. In addition, S.C. Code Ann. §5-31-450 creates a cause of action in favor of a landowner, not a tenant, and requires that a landowner plead and prove an overt act against a municipality. As S.C. Code Ann. §5-31-450 does not create a cause of action in favor of a tenant and otherwise requires a "demand from the owner of such private lands," Plaintiff's Complaint fails to allege facts to sufficiently set forth a cause of action against this Defendant pursuant to S.C. Code Ann. §5-31-450. Accordingly, the Plaintiff's §5-31-450 claim, as pled, does not set forth a claim for relief and such claim is dismissed.

As an alternate sustaining ground, however, similar to Hawkins, Plaintiff has failed to factually allege any "affirmative, positive, aggressive acts" of any damage resulting from the

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municipality's works.[7] Complaint Paragraphs 4 – 52 and 90 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Based on Hawkins, the City of North Charleston's act in approving permits is not the type of "positive action" or "overt act" contemplated by the statute to render it liable. The allowance of construction upstream from an affected area or a municipality's failure to take steps to alleviate downstream flooding, as alleged by La-Z-Boy and by Hawkins in their Complaints, is not the type of acts which give rise to liability under § 5-31-450 or the other causes of actions alleged against the City of North Charleston.

Further, Plaintiff's allegations that the City of North Charleston's "failing and refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 90 (a)), "in failing and refusing to take steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 90 (b)), "in failing and refusing to ensure adequate drainage for implementation of a stormwater system" (Am. Comp. ¶ 90 (c)), "in reviewing, inspecting, and approving ill conceived and factually erroneous drainage plans for construction upstream from the designated well-known flood areas" (Am. Comp. ¶ 90 (d)), "in failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Blvd." (Am. Comp. ¶ 90 (e)), "in failing and refusing to take any substantive steps to mitigate or prevent future flooding" (Am. Comp. ¶ 90 (f)), "in failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe shopping center area" (Am. Comp. ¶ 90 (g)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 90 (h)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's § 5-13-450 claim fails as a matter of law.

4. TRESPASS

As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, for the same reasons outlined in the Hawkins decision and pursuant to the Tort Claims Act, the trespass claim allegations (¶¶ 108-111) in this case fail to set forth sufficient

[7] The Hawkins court summarily dismissed that a city "improperly" allowing the development of neighboring parcels of commercial property which alters the elevation of an area and adds strain to the drainage pipes beyond their capacity amounts to an affirmative act. Similar to the analysis it applied to affirming the dismissal of Hawkins' inverse condemnation claim, the South Carolina Court of Appeals affirmed the trial court's dismissal of Hawkins' claim that the City violated § 5-31-450 on such grounds.

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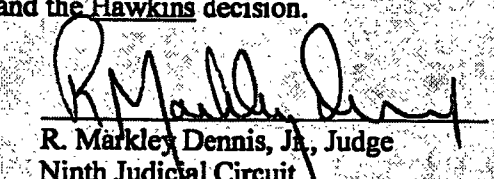
facts to constitute a claim for relief against this Defendant.

CONCLUSION

For the reasons stated herein, this Court hereby grants Defendant City of North Charleston's Motion to Dismiss Pursuant to SCRCP Rule 12(c) based on the South Carolina Tort Claims Act, S.C. Code Ann. ¶ 5-31-450, and the Hawkins decision.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
APR 04 2014
SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-6922

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery ..... Appellant,

v.

South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control, City of North Charleston, Charleston Water System, and Associated Developers, Inc.... ..... Defendants,

of which South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control, City of North Charleston, and Charleston Water System are ....Respondents.

AMENDED NOTICE OF APPEAL

Appellant appeals (1) the Order of the Honorable R. Markley Dennis, Jr., filed February 18, 2014, dismissing the claims against Respondent City of North Charleston; (2) the Order of the Honorable R. Markley Dennis, Jr., filed February 18, 2014, dismissing the claims against Respondent Charleston Water System; (3) the Order of the Honorable R. Markley Dennis, Jr., filed February 18, 2014, granting Summary Judgment in favor of Respondent South Carolina Department of Health and Environmental Control; and (4) the Order of the Honorable R. Markley Dennis, Jr., filed February 18, 2014, granting Summary Judgment in favor of Respondent South Carolina Department of Transportation.

April 2, 2014

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
APR 04 2014
SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-6922

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery ..... Appellant,

v.

South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control, City of North Charleston, Charleston Water System, and Associated Developers, Inc.... ..... Defendants,

of which South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control, City of North Charleston, and Charleston Water System are .... Respondents.

PROOF OF SERVICE

I certify that I served the Amended Notice of Appeal on April 2, 2014, on Respondents and Defendants by depositing a copy of it in the United State Mail, postage prepaid, addressed as follows:

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April 2, 2014

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No.: 12-CP-10-6922
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	
Plaintiff,	)	ORDER GRANTING DHEC'S MOTION FOR SUMMARY JUDGMENT
vs.	)	
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC,	)	
Defendants.	)	

FILED
2014 FEB 18 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

THIS MATTER came before me for a hearing on January 7, 2014 on Defendant South Carolina Health and Environmental Control's (DHEC) Motion for Summary Judgment. Present in the courtroom were the Plaintiff's counsel: Yancey A. McLeod, III, Esquire; Defendant Charleston Water System's counsel, G. Wade Cooper, Esquire, and Leslie S. Riley, Esquire; Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire; Andrew S. Halio, Esquire, counsel for DHEC; and Jason A. Daigle, Esquire, counsel for South Carolina Department of Transportation.

As to DHEC, Plaintiff alleges two causes of action: negligence/gross negligence and inverse condemnation. These causes of action arise out of DHEC's issuance of various land disturbance permits, which are alleged to have resulted in the flooding of the Plaintiff's property. After reviewing the pleadings, the motion, and the Plaintiff's opposing memorandum, and considering the arguments of counsel, the Court hereby grants DHEC's Motion for Summary Judgment for the reasons set forth below.[1]

1. SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act, which is the exclusive civil remedy available in an action against a governmental entity or its employees. Plateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

[1] The various governmental entity Defendants filed separate motions on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders for each Defendant. In support of its motion for summary judgment, DHEC relies on all of the materials generated in the case, including the materials generated in discovery. The Court also notes that DHEC did not move on the basis of the statute of limitations, but had it done so, the result would have been the same as the Court's ruling with respect to the other governmental entities on that issue.

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

(1) legislative, judicial, or quasi-judicial action or inaction;
(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
...
(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
...
(7) a nuisance;
...
(12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
(13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit the liability of the State. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Id.

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a governmental entity's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[2]

[2] More specifically, in Hawkins, a business owner brought an action against the City alleging that the City's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse

Page 2

In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered to be inherently quasi-judicial, discretionary functions for which a governmental entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found that a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the design and maintenance of the drainage system at issue in that case. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language

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condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a governmental entity will not be held liable for damages allegedly resulting from the overall design, construction, or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by the governmental entity and which proximately causes damages to a person's property. The Hawkins decision controls in this case.

Pend 3

affords a governmental entity absolute immunity for design, construction, and maintenance decisions. The rationale of Hawkins is also applicable to DHEC, which is alleged to have negligently reviewed, inspected and approved erroneous drainage plans, failed to mitigate flooding problems, and failed to supervise surface water drainage near the Plaintiff's property, all of which is precluded by the exceptions to waiver of immunity provisions in the Tort Claims Act cited above and by Hawkins. Additionally, S.C. Code § 15-78-60 (12) provides immunity to DHEC for the issuance of the permits, and Plaintiff was unable to provide any evidence that the permits at issue were issued in a grossly negligent manner. For these reasons, Plaintiff's negligence/gross negligence claims against DHEC fail as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim against DHEC also fails under Hawkins. Hawkins argued that the City was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the City's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, Plaintiff has failed to allege or show any "affirmative, positive, aggressive act" on the part of DHEC in this case. The allegations setting forth the basis for the inverse condemnation claim against DHEC are found in Paragraphs 65 - 70 of the Amended Complaint. The mere allegation that DHEC issued permits without accounting for potential downstream flooding is insufficient to support a claim for inverse condemnation. No proof of an "affirmative, positive, aggressive act" on the part of DHEC has been presented to the Court. As such, Plaintiff's inverse condemnation claim against DHEC fails as a matter of law.

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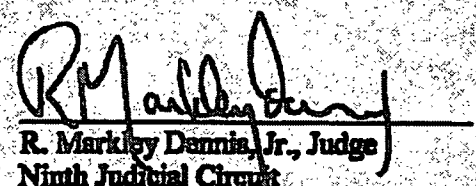
CONCLUSION

For the reasons stated herein, this Court hereby grants DHEC'S Motion for Summary Judgment.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

RMD 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	C/A No. 12-CP-10-06922
Plaintiff,	)	
Versus	)	ORDER GRANTING CHARLESTON WATER SYSTEM'S MOTION TO DISMISS
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC,	)	
Defendants.	)	

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing January 7, 2014 on Defendant Charleston Water System's (CWS)[1] Motion to Dismiss Pursuant to SCRCP Rule 12(c), or, in the alternative, Motion for Summary Judgment. Present in the court were the Plaintiff's counsel: Yancey A. McLeod, III, Esquire; Defendant Charleston Water System's counsel, G. Wade Cooper, Esquire, and Leslie S. Riley, Esquire; Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire; Andrew S. Halio, Esquire, counsel for South Carolina Department of Health and Environmental Control; and Jason A. Daigle, Esquire, counsel for South Carolina Department of Transportation.

As to the CWS, Plaintiff alleges four causes of action:

(1) Inverse Condemnation;
(2) Negligent and grossly negligent design, construction, and maintenance;
(3) Negligent and grossly negligent failure to manage storm water runoff; and,
(4) Trespass.

After reviewing the pleadings, the Motions to Dismiss, the Memoranda in support of the Motions and opposing the Motions, reviewing the pleadings, and considering the arguments of counsel, the Court hereby grants Defendant Charleston Water System's Motion to Dismiss based on the pleadings.[2]

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[1] The legal name for CWS is the Commissioners of Public Works of the City of Charleston, which does business as CWS.

[2] The various governmental entity Defendants filed Motions for Dismissal Pursuant to SCRCP Rule 12(c) on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders of Dismissal for each separate Defendant.

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I. THE PLAINTIFF'S CLAIMS FOR DAMAGES ARISING OUT OF ANY FLOODING EVENT PRIOR TO APRIL 8, 2008 ARE DISMISSED PURSUANT TO THE STATUTE OF LIMITATIONS.

Initially; based upon the pleadings, the Plaintiff's allegations asserting claims against Defendant Charleston Water System for the March 20, 2003, June 16, 2004 and July 22, 2005 flood events are time-barred pursuant to the statute of limitations. For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Sixth, Seventh, and Eighth causes of action (negligence and trespass) are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[3] For the Plaintiff's remaining claim for inverse condemnation (Fourth cause of action), a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[4] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[5] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333

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[3] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[4] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[I]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

[5] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Griffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

Page 2

S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[6]

Here, pursuant to S.C. Code Ann. § 15-78-110 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against CWS within two years after Plaintiff knew or should have known it had a claim. Further, for all non-tort claims, a three year statute of limitations applies pursuant to S.C. Code Ann. §15-3-530. It is self evident that the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when each flood occurred in 2003, 2004, 2005, 2008 and 2009. As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff failed to do so, and Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010.

As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003, 2004, and 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

II. THE PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF FOR ITS (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, AND (3) TRESPASS CAUSES OF ACTION AGAINST CHARLESTON WATER SYSTEM PURSUANT TO THE HAWKINS DECISION AND THE SOUTH CAROLINA TORT CLAIMS ACT.

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[6] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id. "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

page 3

1. NEGLIGENCE/GROSS NEGLIGENCE & SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act, which is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

(1) legislative, judicial, or quasi-judicial action or inaction;
(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

...

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

...

(7) a nuisance;

...

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

Code 1976 § 15-78-60.

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit the liability of the State. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Id.

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a governmental entity's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App.

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2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[7] In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered to be inherently quasi-judicial, discretionary functions for which a governmental entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required

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[7] More specifically, in Hawkins, a business owner brought an action against the City alleging that the City's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a governmental entity will not be held liable for damages allegedly resulting from the overall design, construction, or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by the governmental entity and which proximately causes damages to a person's property. The Hawkins decision controls in this case.

to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the *design and maintenance of* the drainage system at issue in the case. Hawkins 358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language affords a governmental entity absolute immunity for design, construction, and maintenance decisions, and the Tort Claims Act immunity provisions (1), (2), (4), (5), (7), and (13) bar Plaintiff's present tort claims against Charleston Water System.

With regard to CWS, there is an additional statutory basis for dismissal on this basis. CWS is a statutorily-created Commissioners of Public Works pursuant to S.C. Code Ann. §5-31-210 *et seq*. Section 5-31-250 sets forth specific powers of any commissioners of public works as follows:

> The board of commissioners of public works of any city or town may purchase, build or contract for building any waterworks or electric light plant authorized under Article 7 of this chapter and may operate them and shall have full control and management of them. It may supply and furnish water to citizens of the city or town and also electric, gas or other light and may require payment of such rates, tolls and charges as it may establish for the use of water and light.

Given that CWS has only the powers invested in it by the Legislature as set forth above, CWS does not and cannot have control of any design, construction or maintenance of any drainage system, much less a drainage system located outside of the corporate limits of the City of Charleston.

Here, Plaintiff's Amended Complaint Paragraphs 5 - 52 and Fourth, Sixth, Seventh, and Eighth causes of action do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff alleges liability due to CWS' "incorrect design, construction, and maintenance" of its drainage system (Am. Comp. ¶ 20); its refusal "to lower the water level of the Goose Creek Reservoir to prevent upstream flooding" (Am. Comp. ¶ 85); its failure "to design, maintain, and operate the drainage system under its control to prevent or mitigate flooding resulting from even moderate rainfall" (Am. Comp. ¶ 98 (a)); its failure "to institute protocols and procedures by which the level of the Goose Creek Reservoir would be lowered in the event of significant rainfall resulting in potential for flooding" (Am. Comp. ¶98 (b)); and CWS' "failure or refusal to take appropriate steps to manage storm water runoff through its drainage basin terminating at the Goose Creek Reservoir" (Am. Comp. ¶ 105). As for the allegations regarding "the drainage system under [CWS'] control," it is clear from §5-31-250 that CWS does not have any control over storm water or drainage systems and therefore cannot fail to maintain such. With regard to the remaining allegations, they, at most, are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claims against Charleston Water System fail as a matter of law.

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2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim against CWS also fails pursuant to the Hawkins decision. Hawkins argued that the City was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the City's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. *Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes.* The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the part of the Charleston Water System. Complaint Paragraphs 5 - 52, and 7-88 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. The allegations of the CWS' mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the CWS giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct (or lack thereof) absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the CWS' failure to mitigate upstream flooding by lowering the level of the downstream Goose Creek Reservoir proximately caused flooding on its premises. (Am. Comp. ¶¶ 85, 97, 98, 99, 101, 103, 105). However, pursuant to the Hawkins' court's ruling, the failure to act or to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the CWS' actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. *Id.; see also*, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim).

MD7

3. TRESPASS

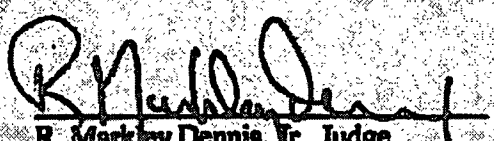
As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, for the same reasons outlined in the Hawkins decision and pursuant to the Tort Claims Act, the trespass claim allegations (¶ 108-111) in this case fail to set forth sufficient facts to constitute a claim for relief against this Defendant.

CONCLUSION

For the reasons stated herein, this Court hereby grants Defendant Charleston Water System's Motion to Dismiss Pursuant to SCRCP Rule 12(c) based on the South Carolina Tort Claims Act and the Hawkins decision.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

PMD 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,	)	C/A No. 12-CP-10-06922
Plaintiff,	)	
Versus	)	ORDER GRANTING SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION'S MOTION FOR SUMMARY JUDGMENT
South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc.; Parkhill, LLC,	)	
Defendants.	)	

FILED
2014 FEB 18 PM 2:46
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before me for a hearing January 7, 2014 on Defendant South Carolina Department of Transportation's (SCDOT) Motion for Summary Judgment pursuant to SCRCP Rule 12(b)(6), 12(c), and 56. Present in the court were the Plaintiff's counsel: Yancey A. McLeod, III, Esquire; Defendant Charleston Water System's counsel, G. Wade Cooper, Esquire, and Leslie S. Riley, Esquire; Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire; Andrew S. Halio, Esquire, counsel for South Carolina Department of Health and Environmental Control; and Jason A. Daigle, Esquire, counsel for South Carolina Department of Transportation.

As to SCDOT, Plaintiff alleges three causes of action:

(1) Inverse Condemnation;
(2) Trespass; and,
(2) Negligence/Gross Negligence.

After reviewing the pleadings, the Motion for Summary Judgment, the Memoranda in support of the Motions and opposing the Motions, reviewing the pleadings, and considering the arguments of counsel, the Court hereby grants Defendant South Carolina Department of Transportation's Motion for Summary Judgment based on the pleadings.[1]

[1] The various governmental entity Defendants filed Motions for Dismissal Pursuant to SCRCP Rule 12(c) on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders of Dismissal for each separate Defendant.

I. THE PLAINTIFF'S CLAIMS FOR DAMAGES ARISING OUT OF ANY FLOODING EVENT PRIOR TO APRIL 8, 2008 ARE DISMISSED PURSUANT TO THE STATUTE OF LIMITATIONS.

Initially, based upon the pleadings, the Plaintiff's allegations asserting claims against the SCDOT for the March 20, 2003, June 16, 2004 and July 22, 2005 flood events are time-barred pursuant to the statute of limitations. For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Eighth and Fourteenth causes of action (trespass and negligence/gross negligence) are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[2] For the Plaintiff's remaining claim for inverse condemnation (First cause of action), a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[3] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[4] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333

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[2] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[3] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

[4] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

RMD 4/3

S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[5]

Here, pursuant to S.C. Code Ann. § 15-78-110 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against the SCDOT within two years after Plaintiff knew or should have known it had a claim. Further, for all non-tort claims, a three year statute of limitations applies pursuant to S.C. Code Ann. §15-3-530. It is self evident that the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when each flood occurred in 2003, 2004, 2005, 2008 and 2009. As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff failed to do so, and Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010.

As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003, 2004, and 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

II. THE PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF FOR ITS (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, AND (3) TRESPASS CAUSES OF ACTION AGAINST THE SCDOT PURSUANT TO THE HAWKINS DECISION AND THE SOUTH CAROLINA TORT CLAIMS ACT.

1. NEGLIGENCE/GROSS NEGLIGENCE & SOUTH CAROLINA TORT CLAIMS ACT

[5] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Boyle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id. "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Mostes v. Robb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Mostes, 322 S.C. at 176, 470 S.E.2d at 404.

Under South Carolina law, any tort action against a governmental entity is governed by the South Carolina Tort Claims Act, which is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

> S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.
>
> The governmental entity is not liable for a loss resulting from:
>
> (1) legislative, judicial, or quasi-judicial action or inaction;
> (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
>
> ...
>
> (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
> (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
>
> ...
>
> (7) a nuisance;
>
> ...
>
> (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
>
> Code 1976 § 15-78-60.

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit the liability of the State. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Id.

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a governmental entity's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[6]

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[6] More specifically, in Hawkins, a business owner brought an action against the City alleging that the City's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse

In Hawkins, Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered to be inherently quasi-judicial, discretionary functions for which a governmental entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required *to build and maintain* an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the *design and maintenance of* the drainage system at issue in the case. Hawkins,

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condemnation; (2) city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a governmental entity will not be held liable for damages allegedly resulting from the overall design, construction, or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by the governmental entity and which proximately causes damages to a person's property. The Hawkins decision controls in this case.

358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language affords a governmental entity absolute immunity for design, construction, and maintenance decisions, and the Tort Claims Act immunity provisions (1), (2), (4), (5), (7), and (13) bar Plaintiff's present tort claims against the SCDOT.

Here, Plaintiff's Amended Complaint Paragraphs 2 - 52 and First, Eighth and Fourteenth causes of action do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff alleges liability due to SCDOT's "refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 126 (a)), "in refusing to take any steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 126 (b)), "in failing and refusing to ensure adequate drainage for implementation of a storm water system" (Am. Comp. ¶ 126 (c)), "in designing, constructing and maintaining the Highway 52 Connector improvements without providing for sufficient drainage of surface water from the highway" (Am. Comp. ¶ 126 (d)), "in refusing to take substantive steps tomitigate or prevent future flooding" (Am. Comp. ¶ 126 (e)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 126(f)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claim fails as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim against the SCDOT also fails pursuant to the Hawkins decision. Hawkins argued that the City was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the City's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. *Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes.* The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency"); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149,

427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the part of the SCDOT. Complaint Paragraphs 2 – 63 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. The allegations of the SCDOT's mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the SCDOT giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct (or lack thereof) absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the SCDOT's construction and installation of developments upstream from its location at Northwoods Pointe, along with its failure to remedy certain drainage defects, proximately caused flooding on its premises. (Am. Comp. ¶¶ 9 - 12, 16, 24, 29 – 34, 60). However, pursuant to the Hawkins' court's ruling, the failure to act or to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the SCDOT's actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. *Id.; see also*, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim).

3. TRESPASS

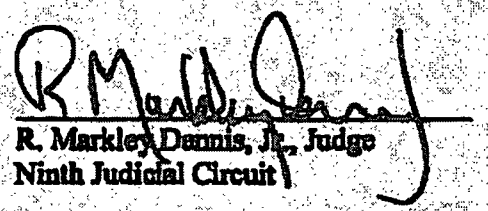
As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, for the same reasons outlined in the Hawkins decision and pursuant to the Tort Claims Act, the trespass claim allegations (¶¶ 108-111) in this case fail to set forth sufficient facts to constitute a claim for relief against this Defendant.

CONCLUSION

For the reasons stated herein, this Court hereby grants Defendant South Caolina Department of Transportation's Motion for Summary Judgment pursuant to SCRCP Rule 12(b)(6), 12(c), and 56 based on the South Carolina Tort Claims Act and the Hawkins decision.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE No.: 12-CP-10-6922

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery,

Plaintiff,

vs.

South Carolina Department of Transportation; South Carolina Department of Health and Environmental Control; City of North Charleston; Charleston Water System; Associated Developers, Inc., Parkhill, LLC,

Defendants.

ORDER GRANTING CITY OF NORTH CHARLESTON'S MOTION TO DISMISS

FILED
2014 FEB 18 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me for a hearing on January 7, 2014 on Defendant City of North Charleston's Motion to Dismiss Pursuant to SCRCP Rule 12(c). Present in the court were the Plaintiff's counsel Yancey A. McLeod, III, Esquire, Defendant City of North Charleston's counsel Phillip S. Ferderigos, Esquire, G. Wade Cooper, Esquire counsel for Charleston Water System, Andrew S. Halio, Esquire counsel for South Carolina Department of Health and Environmental Control, and Jason A. Daigle, Esquire counsel for South Carolina Department of Transportation.

After reviewing the pleadings, the Motions to Dismiss, the Memoranda in support of the Motions and opposing the Motions, reviewing the pleadings, and considering the arguments of counsel, the Court hereby grants Defendant City of North Charleston's Motion to Dismiss based on the pleadings.[1]

I. THE PLAINTIFF'S CLAIMS FOR DAMAGES ARISING OUT OF ANY FLOODING EVENT PRIOR TO APRIL 8, 2008 ARE DISMISSED PURSUANT TO THE STATUTE OF LIMITATIONS.

Initially, based upon the pleadings, the Plaintiff's allegations asserting claims against Defendant City of North Charleston for the March 20, 2003, June 16, 2004 and July 22, 2005 flood events are time-barred pursuant to the statute of limitations. For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered. See S.C. Code Ann. § 15-78-110 (2005). Plaintiff's Fifth, Eighth, and Twelfth

[1] The various governmental entity Defendants filed Motions for Dismissal Pursuant to SCRCP Rule 12(c) on similar grounds; however, as the factual allegations against each Defendant governmental entity are somewhat distinct, the Court has adopted separate Orders of Dismissal for each separate Defendant.

PMB7

claims are governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a governmental entity.[2] For the Plaintiff's remaining Third claim for inverse condemnation, a three year statute of limitations applies.

Additionally, under South Carolina law, the discovery rule applies to this action.[3] According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).[4] Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).[5]

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[2] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Plaintiff did not allege that it filed a verified claim; therefore, the applicable statute of limitations is two years.

[3] See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under § 15-3-530, we apply the 'discovery rule'").

[4] Under South Carolina law, "'[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it.' Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) modified Santee Portland Cement v. Daniel Internat'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston v. Sims, supra"; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

[5] The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id.

Here, pursuant to S.C. Code Ann. § 15-78-110 for claims arising under the Tort Claims Act, Plaintiff was required to commence its action against Defendant within two years after Plaintiff knew or should have known it had a claim. Further, pursuant to S.C. Code Ann. § 15-3-530 for all non-tort claims, a three year statute of limitations applies. It is self evident that the operative date Plaintiff had notice and knew or should have known a cause of action may exist against this Defendant was, at the latest, when each flood occurred in 2003, 2004, 2005, 2008 and 2009. As such, for both the Tort Claims Act and non-Tort Claims Act claims, Plaintiff was required to at least file its Summons and Complaint within three years after each flood event to comply with the statute of limitations. Plaintiff failed to do so, and Plaintiff missed the statute of limitations for the alleged flood events in 2003, 2004 and 2005 by filing his Summons and Complaint on April 8, 2010.

As such, Plaintiff's Summons and Complaint in this action were not filed prior to the three year expiration of the statute of limitations, which, at the latest, expired for the alleged 2003, 2004 and 2005 flood events. As the Plaintiff failed to file its Summons and Complaint until April 8, 2010, well after the statute of limitations had been expired for the 2003 – 2005 flood events, Plaintiff failed to commence its action within the mandatory time period for the statute of limitations and the statute of limitations bars Plaintiff's claims for such events.

II. THE PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF FOR ITS (1) TORT CLAIM NEGLIGENCE/GROSS NEGLIGENCE, (2) INVERSE CONDEMNATION, (3) S.C. CODE ANN. § 5-31-450 VIOLATION, AND (4) TRESPASS CAUSES OF ACTION AGAINST DEFENDANT CITY OF NORTH CHARLESTON PURSUANT TO THE HAWKINS DECISION

1. SOUTH CAROLINA TORT CLAIMS ACT

Under South Carolina law, any tort action against a government is governed by the South Carolina Tort Claims Act. The Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Among other portions, the Tort Claims Act sets forth:

S.C. Code Ann. § 15-78-60. Exceptions to waiver of immunity.

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

(1) legislative, judicial, or quasi-judicial action or inaction;
(2) administrative action or inaction of a legislative, judicial, or quasi-judicial

"The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. "One purpose of a statute of limitations is to 'relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

MMD 3

nature;

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

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

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

...

(7) a nuisance;

...

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

...

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

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.

Code 1976 § 15-78-60

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (S.C. 2006). When a governmental entity asserts various exceptions to the waiver of immunity under the state Tort Claims Act, the correct approach is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit liability. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). However, the burden of establishing a limitation upon liability or an exception to the state's waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999).

The application of the Tort Claims Act to allegations arising out of design and/or maintenance of a city's drainage system has been addressed before by South Carolina courts. In Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), the Court of Appeals held that the Tort Claims Act immunity provisions bar such claims.[6] In Hawkins, Louie

[6] More specifically, in Hawkins, a business owner brought an action against the city alleging that the city's improper and negligent design and maintenance of its drainage system caused his business to flood. The Court of Appeals held that (1) the city's design and maintenance of the drainage system did not constitute inverse condemnation; (2)

RMD 4

Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. The Court affirmed the trial court's grant of summary judgment in favor of the City by noting that, among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (5) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (13) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13) (Supp.2003); Id. at 293, 594 S.E.2d 564.

The Court of Appeals stated that, although South Carolina courts had previously not applied the Tort Claims Act to facts similar to those of the Hawkins case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The Texas court in City of Tyler opined:

> The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The South Carolina appellate court held that it found a comparable degree of discretion was granted to the City in the Hawkins case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the Court found that the City was immune from liability for negligence claims arising out of the design and maintenance of the drainage system in the Laurel Creek Basin. Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564. The Hawkins decision's broad language affords

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city was not liable under Tort Claims Act; (3) city was not liable for trespass; and (4) city was not liable for conversion. Similar to the allegations in the La-Z-Boy Complaint, Hawkins' property was also located in a low-lying area and had been heavily developed with retail businesses and other large commercial developments. In his lawsuit, Hawkins brought his action against the city, alleging causes of action for (1) inverse condemnation, (2) negligence in the city's design and maintenance of its storm water drainage system, (3) violation of S.C. Code § 5-31-450, (4) trespass, (5) conversion, and (6) nuisance. As a whole, Hawkins stands for the proposition that a municipality will not be held liable for damages allegedly resulting from the overall design or maintenance of its systems for handling surface water absent an "affirmative, positive, aggressive act" by a governmental agency which proximately causes damages to a person's property. The Hawkins decision controls in this case.

PMD 5

a governmental entity, such as a city, absolute immunity for design and maintenance decisions, and the Tort Claims Act immunity provisions (1), (2), (3-5), (7), (9), (13), and (20) bar Plaintiff's present tort claim.

Here, Amended Complaint Paragraphs 4 - 52 and 118 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Specifically, Plaintiff's allegations that the City of North Charleston's "failing and refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 118 (a)), "in failing and refusing to take steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 118 (b)), "in failing and refusing to ensure adequate drainage for implementation of a stormwater system" (Am. Comp. ¶ 118 (c)), "in negligently reviewing, inspecting, and approving ill conceived and factually erroneous drainage plans for construction upstream from the designated well-known flood areas" (Am. Comp. ¶ 118 (d)), "in failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Blvd." (Am. Comp. ¶ 118 (e)), "in failing and refusing to take any substantive steps to mitigate or prevent future flooding" (Am. Comp. ¶ 118 (f)), "in failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe shopping center area" (Am. Comp. ¶ 118 (g)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 118 (h)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's negligence/gross negligence tort claim fails as a matter of law.

2. INVERSE CONDEMNATION

Plaintiff's inverse condemnation claim also fails pursuant to the Hawkins decision. Hawkins argued that the city was liable for his inverse condemnation claim, contending he was deprived of his full rights to his property without just compensation as a result of the city's design and maintenance of the drainage system. The court summarily rejected Hawkins' claim.

In affirming the dismissal of Hawkins' inverse condemnation claim, the Court of Appeals held that the City of Greenville's conduct was insufficient to render it liable for inverse condemnation:

> In the present case, Hawkins has failed to allege any affirmative acts by the City which damaged the ServiceMaster property or otherwise diminished his rights in the property. Most of the City's "acts" he avers support his inverse condemnation claim are merely failures to act. Specifically, Hawkins asserts the City improperly allowed the development of neighboring parcels of commercial property which altered the elevation of the area and added strain to the Laurel Creek drainage pipes beyond their capacity and then failed to replace these pipes. The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by "affirmative, positive, aggressive" acts by the governmental agency. Allegations of mere failure to act are insufficient. See, e.g., Berry's On Main, Inc. v. City of Columbia, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding that proof of inverse condemnation requires that "there must be an affirmative, positive, aggressive act on the part of the governmental agency");

PMD 6

Gray v. South Carolina Dep't of Highways & Pub. Transp., 311 S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1993) (listing as an element of inverse condemnation the requirement that there be "an affirmative, positive, aggressive act on the part of the governmental agency"). Id. at 562 (Emphasis added).

Similarly, here, Plaintiff fails to allege any "affirmative, positive, aggressive act" on the part of the City of North Charleston. Complaint Paragraphs 4 - 52, and 72-74 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. The allegations of the City's mere failure to act are insufficient as a matter of law. Here, the alleged conduct by the City of North Charleston giving rise to Plaintiff's inverse condemnation claim is practically the same as the City of Greenville's conduct absolved by the court in Hawkins. La-Z-Boy repeatedly alleges in its Complaint that the City's permitting of developments upstream from its location at Northwoods Pointe, along with its failure to remedy certain drainage defects, proximately caused flooding on its premises. (Am. Comp. ¶¶ 9, 10, 24, 30, 42-47). However, pursuant to the Hawkins' court's ruling, the City's actions in "allow[ing] the development of neighboring parcels of commercial property" which allegedly "added strain" to the existing upstream watershed, as well as its alleged failure to remedy the drainage defects, do not constitute the type of "'affirmative, positive, aggressive' acts by [a] governmental agency" to render it liable for inverse condemnation. At most, the City's actions amount to a "mere failure to act," which Hawkins holds is an insufficient basis to render a municipality liable for inverse condemnation. Id.; see also, Kiriakides v. School District of Greenville County, 675 S.E.2d 439, 443 (S.C. 2009) ("regulatory takings exist only in conjunction with affirmative governmental restrictions on the use of land.") (affirming Master-in-Equity's dismissal of inverse condemnation claim).

3. S.C. CODE § 5-31-450

S.C. Code Ann. § 5-31-450 reads in full:

"Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person."

PMD 7

In applying S.C. Code § 5-31-450, the Hawkins court held that liability does not exist under such section absent some affirmative act by the municipality which alters the course or increases the amount of storm water runoff onto private property:

> Applying this statute, our courts have held that liability does not obtain under section 5-31-450 absent some affirmative act by the municipality which alters the course or increases the amount of storm water runoff onto private property. See Brown v. Sch. Dist. of Greenville County, 251 S.C. 220, 225, 161 S.E.2d 815, 817 (1968) (holding that unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute). "The statute does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. By the same token, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off." Hall v. City of Greenville, 227 S.C. 375, 386, 88 S.E.2d 246, 251 (1955). "The statute does not make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality's works that he may recover. Therefore, unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute." Taleff v. City of Greer, 284 S.C. 510, 512, 327 S.E.2d 363, 364 (Ct. App. 1985) (citations omitted). "Under this statute proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction." Hall, 227 S.C. 386, 88 S.E.2d 251. This section apodictically contemplates positive action by a municipality to render it liable for damages. Brown, 251 S.C. 225, 161 S.E.2d 817. (Emphasis added).

Initially, S.C. Code Ann. §5-31-450 requires a "demand from the owner of such private lands," not the tenant of the property owner. Here, the pleadings are deficient in alleging a cause of action pursuant to the statute because the Plaintiff does not allege that the land owner of the property (as opposed to the tenant) demanded the City of North Charleston to take any action. In addition, S.C. Code Ann. §5-31-450 creates a cause of action in favor of a landowner, not a tenant, and requires that a landowner plead and prove an overt act against a municipality. As S.C. Code Ann. §5-31-450 does not create a cause of action in favor of a tenant and otherwise requires a "demand from the owner of such private lands," Plaintiff's Complaint fails to allege facts to sufficiently set forth a cause of action against this Defendant pursuant to S.C. Code Ann. §5-31-450. Accordingly, the Plaintiff's §5-31-450 claim, as pled, does not set forth a claim for relief and such claim is dismissed.

As an alternate sustaining ground, however, similar to Hawkins, Plaintiff has failed to factually allege any "affirmative, positive, aggressive acts" of any damage resulting from the

PMD 8

municipality's works.[7] Complaint Paragraphs 4 – 52 and 90 do not factually allege any "affirmative, positive, aggressive act" on the part of this Defendant. Based on Hawkins, the City of North Charleston's act in approving permits is not the type of "positive action" or "overt act" contemplated by the statute to render it liable. The allowance of construction upstream from an affected area or a municipality's failure to take steps to alleviate downstream flooding, as alleged by La-Z-Boy and by Hawkins in their Complaints, is not the type of acts which give rise to liability under § 5-31-450 or the other causes of actions alleged against the City of North Charleston.

Further, Plaintiff's allegations that the City of North Charleston's "failing and refusing to ensure adequate and appropriate drainage" (Am. Comp. ¶ 90 (a)), "in failing and refusing to take steps to remedy and correct the inadequate drainage" (Am. Comp. ¶ 90 (b)), "in failing and refusing to ensure adequate drainage for implementation of a stormwater system" (Am. Comp. ¶ 90 (c)), "in reviewing, inspecting, and approving ill conceived and factually erroneous drainage plans for construction upstream from the designated well-known flood areas" (Am. Comp. ¶ 90 (d)), "in failing to provide for sufficient drainage for surface water from Ashley Phosphate Road and down Northwoods Blvd." (Am. Comp. ¶ 90 (e)), "in failing and refusing to take any substantive steps to mitigate or prevent future flooding" (Am. Comp. ¶ 90 (f)), "in failing to design and maintain a reasonably adequate surface water drainage system in the Northwoods Mall and Northwoods Pointe shopping center area" (Am. Comp. ¶ 90 (g)), and "in failing to properly supervise the surface water drainage system in the Northwoods Mall and Northwoods Pointe Shopping Center area" (Am. Comp. ¶ 90 (h)) are mere "failures to act" which do not constitute "an affirmative, positive, aggressive act" on the part of this Defendant pursuant to the Hawkins decision. As such, Plaintiff's § 5-13-450 claim fails as a matter of law.

4. TRESPASS

As addressed in Hawkins, the essential elements of a trespass cause of action are that (1) "the act must be affirmative, (2) the invasion of the land must be intentional, and (3) the harm caused by the invasion of the land must be the direct result of that invasion." Trespass does not lie for nonfeasance or failure to perform a duty. Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. In South Carolina, to maintain a trespass action, an action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong. See Anderson S.C. Requests to Charge – Civil § 31-13; 4-41; Cedar Cove Homeowners Association, Inc. vs. DiPietro, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2007).

Here, for the same reasons outlined in the Hawkins decision and pursuant to the Tort Claims Act, the trespass claim allegations (¶¶ 108-111) in this case fail to set forth sufficient

[7] The Hawkins court summarily dismissed that a city "improperly" allowing the development of neighboring parcels of commercial property which alters the elevation of an area and adds strain to the drainage pipes beyond their capacity amounts to an affirmative act. Similar to the analysis it applied to affirming the dismissal of Hawkins' inverse condemnation claim, the South Carolina Court of Appeals affirmed the trial court's dismissal of Hawkins' claim that the City violated § 5-31-450 on such grounds.

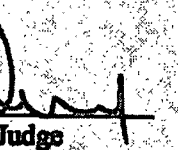
page 9

facts to constitute a claim for relief against this Defendant.

CONCLUSION

For the reasons stated herein, this Court hereby grants Defendant City of North Charleston's Motion to Dismiss Pursuant to SCRCP Rule 12(c) based on the South Carolina Tort Claims Act, S.C. Code Ann. ¶ 5-31-450, and the Hawkins decision.

IT IS SO ORDERED!



R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: February 7, 2014
Charleston, South Carolina

PMD 10

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2014-000582

Tipperary Sales d/b/a La-Z-Boy Furniture Gallery. . . . . .Appellant,

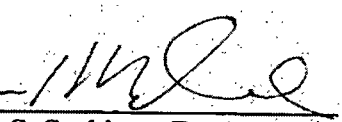
v.

South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control, City of North Charleston, Charleston Water System, and Associated Developers, Inc. . . . . .Defendants,

Of which South Carolina Department of Transportation, South Carolina Department of Health and Environmental Control, City of North Charleston, and Charleston Water System are . . . . . Respondents.

Certificate of Counsel

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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October 8, 2015

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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PROOF OF SERVICE

I certify that I served the Record on Appeal on October 9, 2015, by deposition a copy of it in the United States Mail, postage pre-paid, addressed as follows:

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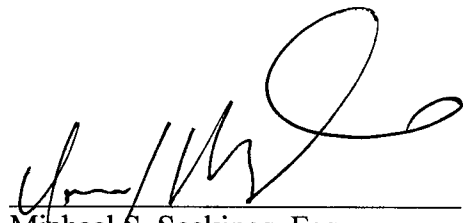

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