(4)

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY

Anderson M. Griffith, Master-In-Equity

RECEIVED
JUN 16 2017
SC Court of Appeals

Appellate Case No.:2016-002102

Canadian River Farms, LTD,
Colt Farms, Inc., B C Farms, Inc.
n/k/a B C Farms of South Carolina
Inc., Outback Farms, Ltd.,

Respondent(s)/Appellant(s),

v.

Becky J. Gonshorowski, The South
Carolina Department of Transportation,
Aiken County South Carolina, a body
politic and political subdivision of the
State of South Carolina

Respondent(s).

and

Ex Parte: Carolyn Barrett and Robert Barrett,
and Save Windsor, SC, Proposed Intervenors,

Appellant(s)/Respondent(s)

RECORD ON APPEAL

JAMES D. MOSTELLER, III (SC BAR# 12008)
THE MOSTELLER LAW FIRM, LLC
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AIKEN, SC 29802
PHONE: 803-226-0396
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ATTORNEY FOR APPELLANT(S)/
RESPONDENT(S)

Co-Counsel: BRADFORD M. OWENSBY
319 PARK AVE, SE
AIKEN, SC 29801
PHONE: 803-648-5777
ATTORNEY FOR APPELLANT(S)/
RESPONDENT(S)

Respondent(s)/Appellant(s) Counsel:

Mary Olivia Guynn, Attorney for Respondent/Appellant, Canadian River Farms, Ltd.
210 Colony Pkwy
Aiken, SC 29803

J. Calhoun Watson, Attorney for Respondent/Appellant, Canadian River Farms, Ltd.
P.O. Box 11449
Columbia, SC 29211

Tina Marie Cundari, Attorney for Respondent/Appellant, Canadian River Farms, Ltd.
1310 Gadsden Street
Columbia, SC 29201

Benjamin R. Gooding, Attorney for Respondent/ Appellant; Canadian River Farms. Ltd., 1310 Gadsden Street, Columbia, SC 29201

Respondent(s):

James M. Holly, Attorney for Respondent, Aiken County, South Carolina
P.O. Box 5925
Aiken, SC 29804

Natalie Jean Moore, Attorney for Respondent, Department of Transportation
P.O. Box 191
Columbia, Sc 29202

Becky J. Gonshorowski, Pro Se
183 Old Bell Road
Aiken, SC 29803

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)

CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD.,

PLAINTIFFS,

vs.

BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body politic and political subdivision of the State of South Carolina,

DEFENDANTS

ORDER OF REFERENCE

Case Number: 2016-CP-02-00511

RECEIVED OF Mary Guynn
THE SUM OF $ 150.00
AS THE ORIGINAL DEPOSIT IN
THIS CASE. A REFERENCE HAS
BEEN SCHEDULED FOR
May 31, 2016 @ 10:00 A.M.
M. Anderson Griffith
MASTER, AIKEN CO.
May 12, 2016
DATE

It appearing that this is an action to abandon a road right of way on real estate situate, lying and being in Aiken County, South Carolina and it further appearing that no party to the action requested a jury trial,

NOW, THEREFORE, upon motion of Mary O. Guynn, attorney for the Plaintiffs,

IT IS ORDERED, that this action be, and the same hereby is referred to M. Anderson Griffith, Master-in-Equity to conduct an evidentiary hearing, make his findings of fact and conclusions of law and in accordance with the provisions of Circuit Court Rule 53, to make a final judgment and Order thereon, with Appeal, if any, to the Court of Appeals of South Carolina.

Aiken, South Carolina

May 12, 2016

Lisa Goddard by Sandra Gibbs
~~PRESIDING JUDGE~~ CLERK OF COURT

FILED May 12 2016
310
Sandra Gibbs
Deputy Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD.,	)	**MOTION FOR ORDER OF REFERENCE**
PLAINTIFFS,	)	Case Number: 2016-CP-02-00511
vs.	)	
BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body politic and political subdivision of the State of South Carolina,	)	FILED May 12 2016 C.C.P. & G.S. 310 Deputy Clerk
DEFENDANTS	)	

TO THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Plaintiffs will move before the Court of Common Pleas of the Second Judicial Circuit on the 10th day after service hereof for an Order of Reference referring the aforesaid matter to the Honorable M. Anderson Griffith, Master-in-Equity for Aiken County, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

This case involves a request to abandon a road right-of-way located on real estate in Aiken County, South Carolina which is an appropriate matter for hearing by the Master-in-Equity. Accordingly, this is a proper matter to be heard by the Master-in-Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure. Based upon the foregoing, Plaintiff respectfully requests that this Court issue its Order referring the matter to the Honorable M.

Anderson Griffith, Master-in-Equity for Aiken County, for the purpose of conducting a trial in this case and for such further and other relief as this Honorable Court may deem just and proper.

SMITH, MASSEY, BRODIE, GUYNN & MAYES, LLC

April 20, 2016

By: _____

Mary O. Guynn
Post Office Box 519
Aiken, South Carolina 29802
(803) 643-4110
Attorney for Plaintiffs

CONSENTED:

James M. Holly by _____ (with express consent)

James M. Holly
Aiken County Attorney
1930 University Parkway Suite 3600
Aiken, South Carolina 29801
Attorney for Defendant, Aiken County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Motion for Order of Reference was forwarded to the Defendants listed below by depositing a copy of same in the United States Mail with proper postage affixed thereto this 12 day of April, 2016:

Becky J. Gonshorowski
183 Old Bell Road
Aiken, South Carolina 29801

South Carolina Department of Transportation
Attention: Linda C. McDonald, Esquire
Post Office Box 191
Columbia, South Carolina 29201

Aiken County, South Carolina
Attention: James M. Holly, Esquire
1930 University Parkway Suite 3600
Aiken, South Carolina 29801

Mary O. Guynn

FILED May 12 2016
C.C.P. & G.S.
Deputy Clerk

MAG Way

STATE OF SOUTH CAROLINA COUNTY OF Aiken	)	IN THE COURT OF COMMON PLEAS Second JUDICIAL CIRCUIT CASE NO.: 2016-CP-02-00511
Canadian River Farms, ltd, Colt Farms, Inc., B C Farms, Inc. nka B C Farms of South Carolina, Inc. and Outback Farms, Ltd. Plaintiff, vs. Becky J. Gonshorowski, The South Carolina Department of Transportation and Aiken County, South Carolina Defendant.	)	**MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET** FILED May 12 2016 310 Deputy Clerk

Plaintiff's Attorney:	Defendant's Attorney:
Mary Guynn, Bar No. 69678 Address: 210 Colony Pkwy Aiken SC 29803 Phone: 803-643-4110Fax 803-643-8140 E-mail: mguynn@smbgm.comOther: ____	____, Bar No. ____ Address: ____ Phone: ____ Fax____ E-mail: ____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: ____
Estimated Time Needed: ____ 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.

Signature of Attorney for ☒ Plaintiff /☐ Defendant — 4/20/16 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. ☐ Other: ____	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: SA Date Filed:

☒ MOTION FEE COLLECTED: $ CB# 4566

☐ CONTESTED – AMOUNT DUE: $ _____

FILED May 13 20 13

310

SCCA 233 (11/2003)

Deputy Clerk

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP0200511

PLAINTIFF(S)		DEFENDANT(S)	
Canadian River Farms Ltd	Colt Farms Inc	Becky J Gonshorowski	Department Of Transportation South Carolina
B C Farms Inc	B C Farms Of South Carolina Inc	Aiken County South Carolina	
Outback Farms Ltd			

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

Filed: May 17, 16
Amy Godard
CCP & GS 310
Deputy Clerk

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

5/13/2016

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on **05-12-2016**, and a copy mailed first class or placed in the appropriate attorney's box on **05-13-2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Mary Olivia Guynn
210 Colony Pkwy
Aiken, SC 29803-7468 BK

James M. Holly
PO Box 5925
Aiken, SC 29804 BK

Natalie Jean Moore
PO Box 191
Columbia, SC 29202 Mail

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Sandra Gillis

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Canadian River Farms, Ltd., Colt Farms, Inc., B C Farms, Inc. n/k/a B C Farms of South Carolina, Inc., and Outback Farms, Ltd. Plaintiffs,	)	CASE NO.: 2016-CP-02-00511
Vs.	)	ORDER
Beck J. Gonshorowski, The South Carolina Department of Transportation and Aiken County, South Carolinia, a body politic and political subdivision of the State of South Carolina Defendants,	)	FILED 6-27-16 C.C.P.&G.S. Deputy Clerk

Hearing Date:	May 31, 2016
Plaintiff Attorney:	Mary O. Guynn
Aiken County Attorney:	James M. Holly
S. C. DOT Attorney:	Natalie More
Court Reporter:	Valerie McFarland

Procedure

1. The original Summons and Complaint was filed on March 10, 2016.

2. Pursuant to 57-9-10 S.C. Code Annotated, the plaintiff published the Notice of Filing Petition of Abandonment three times in the Aiken Standard. A Notice was also mailed to the abutting landowners. Finally, a Notice was posted pursuant to the statute on the property.

3. A letter of protest was filed by Robert E. Barrett and Carolyn Barrett on March 15, 2016.

4. A petition was filed objecting to the road closing on March 21, 2016.

5. Aiken County accepted service on March 10, 2016. It filed an answer on April 19, 2016 and did not object to the road closing.

6. South Carolina Department of Transportation was served on March 14, 2016 and the South Carolina Attorney General was served on March 15, 2016. A general answer was filed on April 20, 2016. In the second defense, this defendant denies it has any interest in the roads and had no objection to the road closure action.

MAG#1

7. Becky Gonshorowski was served on March 12, 2016. She filed a letter/answer on April 12, 2016.

8. An Order of Reference was filed on May 12, 2016.

9. The hearing was held on May 31, 2016. Brandon Woody and the Plaintiff's attorney, Mary O. Guynn were present on behalf of the plaintiffs. Aiken County was represented by its attorney, James M. Holly. No appearance was made by South Carolina Department of Transportation or Becky Gonshorowski.

10. The plaintiff informed the court that an agreement had been reached with Becky Gonshorowski, an abutting landowner.

11. The Court inquired as to any members of the public who wished to testify based on the advertisement and/or public notice. Carolyn Garrett, Vickie Long and Michael Cave advised the court they wished to testify.

Statement of Facts

1. The plaintiffs and Becky Gonshorowski are abutting property owners whose property would be affected by the abandonment and closure of the road(s).

2. The following is a description of the roads maintained by Aiken County that plaintiff seeks to close:

> ALL that certain portion of an unpaved county roadway known as Oak Ridge Club Road (C-800) located between Charleston Highway (US Highway 78) and Cedar Branch road (S-576) being 10,576 linear feet, more or less, TOGETHER WITH ALL that certain portion of an unpaved county roadway known as Old Bell Road (C-774) located between Oak Ridge Club Road (C-800) and Weyerhaeuser Road (C-776) being 6,034 linear feet, more or less
>
> The aforesaid portions of the unpaved county roadways that are proposed to be closed are also shown on that certain plat prepared for Candian River Farms LLC by All Surveying Co., Inc. Dated February 11, 2015 and recorded February 17, 2015 in Plat Book 58, Pages 359-360, Aiken County Records.
>
> Tax Map Parcel Numbers: 207-00-01-003
> 207-00-05-001

3. The plaintiff presented the testimony of Tyler Stone. Mr. Stone is a contractor who worked for the plaintiffs. He is familiar with the roads. He used the roads three to four days a week when he was doing work on the property. When he started work in the area, the unpaved roads were surrounded by heavily wooded areas. Visibility was limited in some areas. As part

MAG#2

of the process of creating working farms, the wooded areas around the roads were cleared. After this, he noticed an increase in the speed of the vehicles traveling on those roads. He believes travel on the roads is unsafe at times due to the speed of the vehicles. Since the plaintiffs own property on both sides of the road, farm equipment cross and use the roads, which creates dangerous situations. He testified about a specific incident where one worker walking around some equipment was almost struck by a passing car.

The roads are unpaved and are slick when wet. The Aiken County Sheriff's Department was notified but that did not help with the speed of vehicles on the road. There are no signs to regulate the speed of vehicles on the roads. He testified that trash has been dumped on different areas of the proeprty. There have also been episodes of vandalism where unknown parties drive through the fields. A fire was also started on the property near one of the roads. Tires have been dumped off of Oak Ridge Club Road. Finally, there was some damage to the sign posted about the road closing. A mailbox was dumped in one of the fields. The plaintiff introduced several police reports that have been filed.

The witness said the plaintiffs were concerned about installing wells, transformers and irrigation systems due to the vandalism. Some improvements were not completed due to this concern. He believes the vandalism would be hindered if the roads are closed. There are still paved roads that would serve the area. He had a meeting with representatives of Aiken County and was aware of the Aiken County Resolution that it had no objections to the abandonment of the roads. Aiken County does maintain the roads. Closing Oak Ridge Club Road does not prevent any owners from having accress to Highway 78 or other paved roads. He has the same opinion in regards to Old Bell Road.

The plaintiffs then presented the testimony of Brandon Woody. His family owns the real estate. He drives and observes the roads five to six days each week. The area around the roads were heavily wooded when the real estate was purchased. He did not notice vehicles traveling at excessive speeds at that time. After the trees were removed, he noticed that traffic on the roads and the speed of those vehicles traveled has increased. He agreed that visibility was better but he feels many vehicles travel at unsafe speeds on the roads. The sheriff department presence has helped but that department cannot stay in the area.

Since the property is a working farm, equipment is moved across the road. His concern is that there are hils and areas on the roads where it is difficult to see traffic approaching. He is

MAG#3

worried that the increased speed and the limited visibility in the same areas lead to an unsafe condition.

Mr. Woody reviewed the photographs that were previously introduced into evidence. The photographs showed fields and crops damaged when someone drove a vehicle through the fields on those roads. The photographs also showed other vandalism where unknown parties dumped tires on the property, damaged a sign, dumped a mailbox in the field. The vandalism started about one year ago and he believes some incident occurs almost every week.

If the roads are abandoned and closed, the plaintiff will install gates or dirt berms. He believes this would end the vandalism and the vehicles traveling at unsafe speeds. Although Aiken County has maintained the roads, the deeded owners acturally own the real estate. Becky Gonshorowski is the only other owner with real estate abutting the road(s). No owner would be land locked if the roads are closed. There is still access to paved roads in the area. Mr. Woody also offered testimony about not planting some fields and the economic impact to the plaintiffs and the suppliers for the farms.

Aiken County offered no testimony and is not opposed to the court granting the plaintiff's action to abandon and close the roads. Ms. Gonshorowski did not appear at the trial and appears to have reached an agreement with the plaintiffs. The South Carolina Department of Transportation stated that it has no interest in the roads and has not opposed the plaintiffs being granted the requested relief.

Although numerous citizens appeared for the hearing, only three wished to testify. The plaintiffs objected to these individuals offering testimony since they are not named parties and no named party called them as witnesses. The court allowed the testimony. The statute requires public posting and three weeks of advertisement. The court must also determine if closing the road is in the best interest of all concerned. This process indicates that the court should allow members of the public to offer testimony about their concern of the road(s) being closed.

Carolyn Barrett is concerned about the response time of emergency vehicles in the area. The Windsor Fire Station serves the area. In responding to any emergency, it is 5.1 miles if the unpaved roads are used that the plaintiffs wish to close. It is 7.5 miles if the other paved roads are used. She believes this difference puts the public safety at risk. She does admit that vehicles may be able to travel at a higher rate of speed on the paved roads.

MAG#4

She believes a survey establishes that the plaintiffs wanted the roads closed when they purchased the property. In his rebuttal testimony, Mr. Woody testified that the owners had asked the county about relocating the roads. However, he testified that would not correct the safety issues or the vandalism. He is not willing to re-locate the roads and there is no testimony the county has ever agreed to that action.

Mrs. Barrett has not observed any vehicles traveling at a high rate of speed other than suppliers vehicles that are performing work for the plaintiffs. She also pointed out that the notice listed Old Bell Road as C-744, instead of the correct Road C-774. The posted signs provide a telephone number and notify the public of a pending road closure. The advertisement also included the names of the road.

She lives on Old Bell Road and would not be landlocked if the portion of the road was closed as requested by the plaintiffs.

Dr. Vickie Long owns property in the area, but outside of the area map introduced at the hearing. She testified about her concerns of 911 emergency response times without the use of Oak Ridge Club Road and Old Bell Road. She did agree that emergency vehicles would still be able to use U. S. Highway 78 and other paved roads in the area.

Michael Cave lives on Old Bell Road. He has a difficult time making a left hand turn into his property due to the traffic. He believes the biggest contributor to this problem is contractors and suppliers working for the plaintiffs. He has experienced significant problems with dust on his home and vehicle. He was not aware of any police reports about vandalism. However, the plaintiffs did introduce some police reports.

Conclusion of Law

1. The Court has jurisdiction of this matter. All parties were property served.
2. The parties were properly notified of the hearing date.
3. The plaintiffs complied with the S. C. Code Ann. § 57-9-10 (2012) by filing the Notice by publication, mailing the Notice to all abutting property owners, and posting the correct signage as required by the statute.
4. Aiken County does not contest the plaintiffs request for relief.
5. South Carolina Department of Transportation did not attend the hearing. The answer filed states that the agency has no interest in the roads that are the subject of this action.

MAG#5

6. Becky Gonshorowski filed an answer but did not attend the hearing. The plaintiff advised the court that the plaintiffs had reached an agreement with this defendant.

7. S. C. Code Ann. § 57-9-20 states that the court shall determine if it is in the best interest of all concerned whether a road should be abandoned or closed.

8. Title to the property is already in the name of the private owner. Aiken County did not contest this testimony.

9. No defendant opposed closing the following section of Oak Ridge Club Road and Old Bell Road.

10. The specific legal description of the proposed road closing is:

> ALL that certain portion of an unpaved county roadway known as Oak Ridge Club Road (C-800) located between Charleston Highway (US Highway 78) and Cedar Branch road (S-576) being 10,576 linear feet, more or less, TOGETHER WITH ALL that certain portion of an unpaved county roadway known as Old Bell Road (C-774) located between Oak Ridge Club Road (C-800) and Weyerhaeuser Road (C-776) being 6,034 linear feet, more or less
>
> The aforesaid portions of the unpaved county roadways that are proposed to be closed are also shown on that certain plat prepared for Candian River Farms LLC by All Surveying Co., Inc. Dated February 11, 2015 and recorded February 17, 2015 in Plat Book 58, Pages 359-360, Aiken County Records.
>
> Tax Map Parcel Numbers: 207-00-01-003
> 207-00-05-001

11. Carolyn Barrett and Dr. Vickie Long presented testimony about their concern of emergency vehicles having to travel further to respond to a call. However, it is not disputed that the roads at issue are not paved. The alternate routes are paved and no owner is land locked if the roads are closed.

12. Michael Cave issues appear to be primarily caused by more traffic on the road. If the road is closed, the traffic on that road should decrease.

13. The plaintiffs introduced evidence through testimony and exhibits about a safety issue due to the increased speed of vehicles on the road combined with the equipment used by the plaintiffs on the roads and crossing the roads. In addition, a fire was set on the plaintiffs property, trash has been dumped in the fields and vehicles have driven off of the roads and into the fields owned by the plaintiffs. The plaintiffs entered some police reports about these issues and photographs to substantiate the problems.

MAG#6

14. None of the defendants contest the roads being closed. All of the parties who testified agreed that owners would still have access to public paved roads. While interested parties filed documents prior to the trial only three testified about their opposition to the proposed closing of the roads as described above. While the distance for emergency vehicles may be longer there is still access over public roads. The routes that remain are paved roads. There was also no testimony from anyone with emergency services that any service use the unpaved roads.

15. The court finds the testimony about the financial impact to the plaintiffs is not relevant to the roads being closed.

16. Under S. C. Code Ann. § 57-9-20, the court may close road(s) if it is in the best interest of all concerned. Based on the testimony of the contractor and one of the owners, there are concerns for public safety considering the flow of traffic and the work being performed in the area. The plaintiff also established the vandalism, litter and arson on portions of the roads to be closed through testimony, photographs and reports. The other abutting landowner did not contest the relief requested by the plaintiffs. Aiken County has passed a resolution to support closing the road and presented no testimony. The three interested parties raised legitimate concerns but there is no dispute that emergency vehicles will be able to use the paved roads.

17. The court finds it is in the best interest of all concerned that the roads described on page 2 paragraph 2 be closed. However, the plaintiffs will take no action to close the roads until forty days after this order is filed. Based on the testimony, the property is already titled in the private owners.

ITS IS THEREFORE ORDERED.

The areas of Oak Ridge Club Road and Old Bell Road described in page 2, paragraph 2 are to be closed forty days from the date of this order. The plaintiff will not make any changes until after forty days from the date of this order.

MAG#7

ITS SO ORDERED

June 27, 2016

M. A. Griffith

M. Anderson Griffith
Master-in-Equity for Aiken County

MAG#8

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP0200511

PLAINTIFF(S)		DEFENDANT(S)	
Canadian River Farms Ltd Outback Farms Ltd	Colt Farms Inc B C Farms Of South Carolina Inc	Becky J Gonshorowski Aiken County South Carolina	Department Of Transportation South Carolina

Submitted by: Mary O. Guynn

Attorney for: ☒ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

FILED
6-27-16
Liz Hadard
C.C.P.&G.S.
Deputy Clerk

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		See Order

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

M. Anderson Griffith, Master-in-Equity — 3076 Judge Code — 6/27/2016 Date

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

This judgment was entered on **06/27/2016**, and a copy mailed first class or placed in the appropriate attorney's box on 6/27/16, to attorneys of record or to parties (when appearing pro se) as follows:

Mary Olivia Guynn 210 Colony Pkwy Aiken, SC 29803-7468

James M. Holly PO Box 5925 Aiken, SC 29804
Natalie Jean Moore PO Box 191 Columbia, SC 29202

MIE

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

- Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Canadian River Farms, Ltd., Colt Farms, Inc., B C Farms, Inc. n/k/a B C Farms of South Carolina, Inc., and Outback Farms, Ltd. Plaintiffs,	)	CASE NO.: 2016-CP-02-00511
Vs.	)	ORDER DENYING MOTION FOR RECONSIDERATION
Beck J. Gonshorowski, The South Carolina Department of Transportation and Aiken County, South Carolina, a body politic and political subdivision of the State of South Carolina Defendants,	)	FILED 9.15.16 COPIES Anita Knowell 11:20 Deputy Clerk

Procedural History

The Summons and Complaint were filed on March 10, 2016. Robert E. Barrett and Carolyn Barrett filed a letter of protest on March 15, 2016. A petition with twenty-five signatures objecting to the road closing was filed on March 21, 2016. The movants are not named defendants in this action. The hearing was held on May 31, 2016. The Order was filed on June 27, 2016. A Motion to Reconsider pursuant to Rule 59(e) was filed by the movants on July 8, 2016. Rule 59(e), SCRCP, provides that "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."

The plaintiffs filed a Memorandum in Opposition to the Motion to Reconsider on August 9, 2016. The movants Motion to Intervene and Amending the Prior Motion was filed on August 1, 2016. The plaintiffs filed a Memorandum in Opposition to the Motion to Intervene on August 8, 2016. The motion hearing was held on August 12, 2016.

Exhibits

Both parties submitted affidavits prior to the motion hearing on August 12, 2016. However, the movants also produced another affidavit, some maps of Aiken County and Barnwell County, Minutes from two Barnwell County Council meetings and a letter related to those public meetings.

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The plaintiffs objected to the submission of those documents based on Rule 6, SCRCP. The plaintiffs were allowed to file a Supplemental Memorandum to the motion to Intervene and Motion to Reconsider on August 25, 2016. The objection was granted as to the affidavit. The court issued an Order following the hearing specific to this issue. The Court allowed the introduction of the maps that were public records. It also allowed the minutes from the meeting and the letter. However, the Court does not find the minutes of the meetings or the letter to be relevant to this matter. Those documents include a brief summary and a letter of actions at two Barnwell County Council meetings that do not involve the portions of the roads closed in Aiken County. The letter does not discuss the area in Aiken County. No evidence of any legal actions filed in Barnwell County were submitted.

The movants also raised the issue that the Aiken County Clerk of Court had the movants who sent letters and submitted a petition listed as "other party to the case". This label is believed to be required with the public filing system when a letter or document is filed with the Clerk of Court by someone who is not a named party. It does not change the status of parties named in the lawsuit or provide any special status for someone filing a letter.

"Relevant evidence means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE, *State v Spears*, 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011). Based on that definition, the court does not find the Barnwell County Council minutes or the letter to be relevant. The moving parties did make a proffer to preserve the record.

Argument

The movants have requested that the Court alter or amend the Order filed on June 27, 2016. The movants believe that the Court should give greater weight to the testimony of the three interested parties who testified at the hearing. Carolyn Barrett and Dr. Vickie Long were concerned about emergency vehicles having longer response times if those portions of the roads were closed. Mr. Cave did not testify about that particular issue. The witnesses did agree that emergency vehicles would still be able to use paved roads in the area to respond to any emergency. There was no testimony from anyone with any emergency service. The movants also believe that the public use of the road should outweigh the testimony of speeding, property damage, littering, damage to the fields and a fire on the property. However, there were only three individuals who testified about

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their use of the road. It was undisputed that the public can use paved roads in the area and there was no testimony of any owner being landlocked due to the proposed road closure.

In their written motion, the movants argued that the letter and/or the petition submitted by Carolyn Barrett should have been considered an answer or as a motion to intervene. Those documents did not request or move for intervention. No movants were parties and no motion had been filed. A *pro se* litigant or interested party must comply with the procedural and substantive requirements. *State v. Burton*, 356 S.C. 259, 589 S.E.2d 6 (2003). The movants who testified at the hearing did not raise this issue. "A party cannot for the first time raise an issue by way of a Rule 59(e), motion which could have been raised at trial." *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

The movants also argue in the written motion that they were not provided with an opportunity to attend the hearing and testify. They submitted affidavits to support their position that the office of the plaintiffs' attorney advised those individuals that they did not need to appear at the hearing. However, those affidavits do not say if those individuals were provided with the hearing information or if those individuals attended the hearing. At the hearing, the Court allowed any interested party to testify but only three individuals testified.

The final argument appears to be that the movants believe the history of title to the road was not presented to the Court. This process is controlled by statute and the statutory scheme does not require the history of title except for what information is needed if the Court needs to determine who should receive title to the property if the road, street or highway is found to be abandoned or closed. There was testimony that Aiken County maintained the roads. Aiken County did not object to the relief sought by the plaintiffs. This issue of the history of title was not raised at the hearing.

The plaintiffs argue that the movants lack standing to file the motion to reconsider since they are not parties to the action. The plaintiffs rely on *Ex Parte South Carolina Department of Motor Vehicles*, 390 S.C. 457, 702 S.E. 2d 568 (2010). The plaintiffs are correct that no additional defendants joined this action. However, the process for finding if a road should be abandoned or closed is controlled by statute. The statutory scheme in this matter requires a notice to be published in the newspaper and a public posting. The purpose of this process is to allow interested parties to be advised that an action has been or will be filed concerning that portion of the road. Three interested parties attended the hearing and testified. The basis for granting any relief to a plaintiff in this type of action is to find that it is the best interest of all concerned and not just the named

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parties. Therefore, the court will not find that the three individuals who appeared at the hearing lack standing in the motion to reconsider. The Court does find that any movants that did not testify lack standing to now file a motion to reconsider.

Conclusion

This Court has jurisdiction in this matter. The Court allowed any interested party to testify at the hearing. Only three interested parties testified. The affidavits submitted by the movants do not state if the hearing information was provided or if each of those individuals appeared at the hearing. Carolyn L. Barrett is the only person to submit an affidavit and testify at the hearing. The notice argument and the history of title arguments were not raised at the hearing. "A party cannot for the first time raise an issue by way of a Rule 59(e), motion which could have been raised at trial." *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

The court will not find that the three individuals who appeared at the hearing lack standing in the motion to reconsider. The Court does find that any movants that did not testify lack standing to now file a motion to reconsider.

Based on a review of the prior order, the arguments presented and the exhibits, the movants Motion to Alter or Amend the Order is denied.

ITS SO ORDERED

September 15, 2016

M. A. Griffith

M. Anderson Griffith
Master-in-Equity for Aiken County

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Canadian River Farms, Ltd., Colt Farms, Inc., B C Farms, Inc. n/k/a B C Farms of South Carolina, Inc., and Outback Farms, Ltd. Plaintiffs,	)	CASE NO.: 2016-CP-02-00511
Vs.	)	ORDER DENYING MOTION FOR INTERVENTION
Beck J. Gonshorowski, The South Carolina Department of Transportation and Aiken County, South Carolina, a body politic and political subdivision of the State of South Carolina Defendants,	)	FILED 9.15.16

Procedural History

The Summons and Complaint were filed on March 10, 2016. The parties moving for intervention received notice by the newspaper advertisement and the public posting. Robert E. Barrett and Carolyn Barrett filed a letter of protest on March 15, 2016. A petition with twenty-five signatures objecting to the road closing was filed on March 21, 2016. The hearing was held on May 31, 2016. Prior to that time, no party had filed a motion to intervene. The Order was filed on June 27, 2016. A Motion to Reconsider pursuant to Rule 59(e) was filed by the movants on July 8, 2016. The plaintiffs filed a Memorandum in Opposition to the Motion to Reconsider on August 9, 2016. The movants Motion to Intervene and Amending the Prior Motion was filed on August 1, 2016. The plaintiffs filed a Memorandum in Opposition to the Motion to Intervene on August 8, 2016. The motion hearing was held on August 12, 2016.

Exhibits

Both parties submitted affidavits prior to the motion hearing on August 12, 2016. However, the movants also produced another affidavit, some maps of Aiken County and Barnwell County, Minutes from two Barnwell County Council meetings and a letter related to those public meetings. The plaintiffs objected to the submission of those documents based on Rule 6, SCRCP. The plaintiffs were allowed to file a Supplemental Memorandum to the motion to Intervene and Motion to Reconsider on August 25, 2016. The objection was granted as to the affidavit. The court issued an Order following the hearing specific to this

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issue. The Court allowed the introduction of the maps that were public records. It also allowed the minutes from the meeting and the letter. However, the Court does not find the minutes of the meetings or the letter to be relevant to this matter. Those documents include a brief summary and a letter of actions at two Barnwell County Council meetings that do not involve the portions of the roads closed in Aiken County. The letter does not discuss the area in Aiken County. No evidence of any legal actions filed in Barnwell County were submitted.

The movants also raised the issue that the Aiken County Clerk of Court had the movants who sent letters and submitted a petition listed as "other party to the case". This label is believed to be required with the public filing system when a letter or document is filed with the Clerk of Court by someone who is not a named party. It does not change the status of parties named in the lawsuit or provide any special status for someone filing a letter.

"Relevant evidence means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE, *State v Spears*, 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011). Based on that definition, the court does not find the Barnwell County Council minutes or the letter to be relevant. The moving parties did make a proffer to preserve the record.

Motion to Intervene

To prevail on Rule 24 SCRCP motion, the moving party must establish the following:

(1) Establish timely application.

(2) Assert an interest relating to the property or transaction which is the subject of the action;

(3) Demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and

(4) Demonstrate that its interest is inadequately represented by other parties. *Horry County State Bank v. Flemington Properties, LLC*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004).

"Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of the rights of all parties who may be affected. However, this does not mean intervention should always be granted. Instead, we must consider the pragmatic consequences of a decision to permit or deny intervention an avoid setting up rigid applications of Rule 24 (a) (2)." *Horry County State Bank v. Flemington Properties, LLC*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). "Failure to satisfy any one of the four requirements precludes intervention." *Ex Parte Reichlyn: In Re: SCDHEC v. Columbia Organic Chemical Co, Inc.*, 310 S.C. 495, 500, 427 S.E. 2d 661,664 (1993)

Timely Application

"In South Carolina, the factors to examine to determine if a timely application has been made are: 1) the time that has passed since the applicant knew or should have known of his or her interest in the suit;2)

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the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention." *Ex Parte Reichlyn: In Re: SCDEC v. Columbia Organic Chemical Co., Inc.*, 310 S.C. 495, 500, 427 S.E. 2d 661,664 (1993).

The movants are parties whose property abuts the road but the property does not abut the portion of the road that was closed in the Order filed on June 27, 2016. The movants argue that South Carolina Section 57-9-10 requires notice be sent by mail, return receipt, to the last known address of all abutting property owners even if it is not on the portion of the proposed area to be closed. This is regardless of the length of the road or how many counties the road passes through. Based on this argument, the moving parties argue that anyone who lives on the road is entitled to notice by certified mail with no limitations. The Order closed approximately 10,576 linear feet (approximately two miles)of unpaved road on Oak Ridge Club Road and an unpaved portion of Old Bell Road (approximately 6,034 linear feet). This argument is apparently submitted to explain the delay in filing the motion of intervention and to argue that these individuals should have been named as parties in the lawsuit.

They also argue that the newspaper publication must be printed in every county that the road may pass through even if the portion that may be closed is just in one county. Finally, the movants argue that the public posting must be made throughout the entire length of the road even if it is not a portion of the road that is the subject of the action or if the road extends into other counties.

The Plaintiff's argue that the moving parties did receive notice of the hearing as required in the statute. The plaintiffs published the notice required by the statute and posted the area as required by the statute. The parties who attended the hearing were given an opportunity to testify. The plaintiff argues that the appellate courts have not interpreted the statute to require that every owner whose property abuts the road should receive notice by certified mail. Also, the courts in South Carolina have not interpreted the statute to require that type of notice for everyone who has property that abuts the road even if it extends to another county or the road changes names. The plaintiffs also argue that the language of the statute does not require the newspaper publication or the public posting to be performed in the manner suggested by the movants. Finally, in reference to the telephone calls, the attorney for the plaintiff just advised the people that called that they were not required to attend the hearing as opposed to they should not attend the hearing.

The exact language of that portion of 57-9-10 states, "Any interested person, the State or any of its political subdivisions or agencies may petition a court of competent jurisdiction to abandon or close any street, road or highway whether opened or not. Prior to filing the petition, notice of intention to file shall be published once a week for three consecutive weeks in a newspaper published in the county where such street, road or highway is situated. Notice also shall be sent by mail requiring a return receipt to the last known address of all abutting property owners whose property would be affected by any such change and

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posted by the petitioning party along the street, road or highway, subject to approval of the location of the posting by the governmental entity responsible for maintenance of the street, road or highway." Both the moving parties and the plaintiff agreed that there are no South Carolina cases cited that have ruled on this particular issue.

The movants argue that if the legislature only wanted the certified mailing portion of the statute to apply to the area where the road is closed, the statute would contain that specific language. However, the language in the statute does say "all abutting property owners whose property would be affected by any such change...". The language of the statute does specify that only those persons whose property abuts the road and who would be affected receive the notice by certified mail. The term "affect" has been defined as "to act on: produce an effect or change in: *http://www.dictionary.com.*

"In construing a statute, it's words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Bryant v. City of Charleston*, 295 S.C.408, 368 S.E. 2d 899 (1988). *First Baptist Church of Mauldin V. City of Mauldin*, 308 S.C. 226, 417 S.E. 2d 592 (1992). "When interpreting a statute, this Court's primary function is to ascertain the intention of the Legislature." *Holley v. Mt.Vernon Mills, Inc.*, 312 S.C. 320, 440 S.E. 2d 373 (1994).

The moving parties filed several affidavits with the motion to intervene. Deborah L. Dixon's affidavit states that she left two messages with the office of the plaintiff's attorney requesting the hearing information. She did not receive a response. The affidavit does not state if the hearing information was provided or if she attended the hearing.

Wylie's Hutson's affidavit states that he contacted the office for the attorney for the plaintiff and was told "it was not necessary for me to come to the hearing." The affidavit does not state if the hearing information was provided or if he attended the hearing.

Patrick Martin's affidavit states that he contacted the office for the attorney for the plaintiff and was told "it was not necessary for me to come to the hearing." The affidavit does not state if the hearing information was provided or if he attended the hearing.

William A. Smith's affidavit states that he was told when the hearing would be held when he contacted the office of the attorney for the plaintiff. It does not state if Mr. Smith attended the hearing.

Robert E. Barrett's affidavit states that he contacted the office for the attorney for the plaintiff and was told "it was not necessary for me to come to the hearing." The affidavit does not state if the hearing information was provided or if he attended the hearing. Mr. Barrett also was provided with hearing information from the plaintiffs' attorney based on a letter provided to the clerk of court prior to the hearing.

Carolyn L. Barrett's affidavit states that she contacted the office for the attorney for the plaintiff and was told "it was not necessary for me to come to the hearing". The affidavit does not say she was not provided with the hearing information. Mrs. Barrett also was provided with hearing information from the

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plaintiffs' attorney based on a letter provided to the clerk of court prior to the hearing. She appeared and testified at the hearing.

None of the affidavits offer any information as to where those parties live in relation to the area of the road that was ordered closed or how their property was affected. An owner, whose property abuts the portion of a road to be closed, clearly would be affected by the action. The language of the statute does not limit or specify that those are the only parties whose property interest may be affected. The language also cannot be construed to include all parties who live on the road, regardless of distance from the portion being closed. There may be special circumstances that may affect property owners whose property does not abut the portion of the road being closed. An example may be if it affects the ingress and egress to the property. However, there are no affidavits submitted to establish any special circumstances for any of the movants to be "abutting property owners whose property would be affected by any such change...". Therefore, the court finds that the movants were not entitled to notification by mail requiring a return receipt to the last known address. They did receive notification by the newspaper advertisement and the public posting. In regards to the newspaper publication, the plaintiffs filed the notice in the Aiken Standard, a newspaper published in Aiken County. The Court interprets the statutory language to require publication in the county where the portion of the road that is the subject of the action (to be closed or abandoned) is located. The statute uses the language, "where such street, road or highway is situated". The public posting is required to be along the street, road or highway subject to the approval of the location of the posting by the department that is responsible for the maintenance of that road, street or highway. There are no affidavits, answers of the defendants or legal arguments to establish that the public posting was not done in accordance with the language of the statute. Having decided that issue, the factors for determining a timely application can be reviewed.

The summons and complaint was filed on March 10, 2016. The parties moving for intervention received notice by the newspaper advertisement and the public posting. Robert E. Barrett and Carolyn Barrett filed a letter of protest on March 15, 2016. A petition with twenty-five signatures objecting to the road closing was filed on March 21, 2016. Clearly, many of the movants knew or could have known that the action was filed and could have filed a motion to intervene. The hearing was held on May 31, 2016. Prior to that time, no party had filed a motion to intervene. The order was filed on June 27, 2016. The motion to intervene was filed on August 1, 2016.

Based on the letters and the petition filed with the Aiken County Clerk of Court, many of the movants knew that the action was filed. Other than the manner in which they were notified, it is not clear why the motion to intervene was not filed prior to the hearing date. As a result, the litigation had progressed through the hearing and a final order being issued before the movants filed a motion to intervene.

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The movants believe all of the reasons for their opposition to the road closing was not established at the hearing. This may include the history of the use of the road and the notice the parties received. However, a review of the affidavits does not specify those reasons to any particular movant. The plaintiffs submitted the affidavit of Brandon Woody about the financial issues the plaintiffs would suffer if the motion to intervene is granted. The movants reply to the affidavit of Mr. Woody was that the equipment and material were purchased before the order was issued to close the road. Also, a motion was filed pursuant to Rule 59(e), SCRCP shortly after the Order was filed. The court would also note that no changes were to be made to the roads for forty days after the Order was filed.

Reviewing all of the evidence submitted, the affidavits and reviewing the statutes, rules and cases the court finds that the movants have not established that a timely application was made to intervene in this action. While there may be circumstances to support filing for intervention after the hearing is held and a decision is filed, the movants have not established valid reasons based on the evidence before the Court.

Movants Interest in The Property or Transaction

The movants assert that they do have an interest since their property abuts the road. Based on the affidavits, the exact nature of any interest other than the information submitted is speculative at this point but clearly the individuals do have some interest in the action.

Movants to Demonstrate That Without Intervention, Disposition of The Action May Impair Their Ability to Protect Their Interest

The movants must also establish that without intervention, they may not be able to adequately protect their interest. The movants again argue that they were not able to attend the hearing or did not receive notice of the hearing. Also, even though three of the movants did appear and testify at the hearing, the remaining movants do not believe that testimony protected their interest in this matter. The affidavits submitted do discuss the information provided by the plaintiffs' attorneys office about the hearing.

The Movants Should Be Able to Demonstrate That Their Interest Is Inadequately Represented by The Other Parties

"Factors to consider in determining whether the existing representation is adequate: 1) whether the existing parties will undoubtedly make all of the interveners' arguments 2) whether the existing parties are capable and willing to make such arguments and 3) whether the intervener offers different knowledge, experience or prospective on the proceeding that would otherwise be absent." *Berkeley Electric v. Town of Mt. Pleasant*, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990).

The movants interest will not be protected by the named parties in this action. Aiken County did not object to the relief requested by the plaintiff's in its answer and at the hearing. The South Carolina Department of Transportation filed an answer but did not attend the hearing. In the second defense of the answer, this defendant denied it had any interest in the roads and had no objection to the road closure.

Becky Gonshorowski filed a letter/answer but did not attend the hearing. The plaintiffs informed the court that those parties had reached an agreement. Since the motion to intervene was filed after the hearing, it is clear that the interest of the movants was not protected by any of the named parties. Three of the movants did testify at the hearing over the plaintiffs' objection. Those individuals are not named parties in this action and the Court cannot assume that the testimony of those interested persons protects the other movants. Also, the language used in prior cases specifically discusses whether the movants interests are protected by other "parties".

Rule 24(c), SCRCP

The plaintiffs raised the issue that the movants failed to attach a pleading "setting forth the claim or defense for which intervention is sought". The movants responded by arguing that the motion contains sufficient details of the movants claims. The movants' motion is four pages and does provide details of the basis for the motion.

Rule 24(c), SCRCP is entitled "Procedure; Notice to State When Validity of Statute Questioned". The movants properly served the motion to intervene and provided the grounds of the motion. A pleading was not attached to the motion. The rule does use the term "shall" when the pleading requirement is discussed. "Ordinarily, the use of the word "shall" in a statutory provision indicates the provision is *mandatory." Charleston Cty. Parents for Pub. Such., Inc. v. Moseley, 343 S.C. 509, 541 S.E. 2d 533 (2001).* There are no cases that discuss whether this term is mandatory when used in Rule 24, SCRCP.

Since there are no cases commenting on the term shall in this type of motion, the court examines the detail of the motion. The purpose of attaching the pleading, based on the language in the rule, is to set forth the claim or defense that is the basis for the intervention motion. In this case, the detailed motion does supply sufficient information. Therefore, the court will not dismiss the motion based on the language of Rule 24(c).

Conclusion

To prevail on Rule 24 SCRCP motion, the moving party must establish the following:

(1) Establish timely application;

(2) Assert an interest relating to the property or transaction which is the subject of the action;

(3) Demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and

(4) Demonstrate that its interest is inadequately represented by other parties. *Horry County State Bank v. Flemington Properties, LLC*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004).

"Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of the rights of all parties who may be affected. However, this does not mean intervention should always be granted. Instead, we must consider the pragmatic consequences of a decision to permit or

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deny intervention an avoid setting up rigid applications of Rule 24 (a) (2)." *Horry County State Bank v. Flemington Properties, LLC*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004).

"Failure to satisfy any one of the four requirements precludes intervention." Ex Parte Reichlyn: In Re: *SCDHEC v. Columbia Organic Chemical Co. Inc.*, 310 S.C. 495, 500, 427 S.E. 2d 661,664 (1993). In this motion, the movants have failed to establish that a timely application was filed in this matter. Failure to satisfy this element is critical in a motion for intervention. The movants motion for intervention is denied.

ITS SO ORDERED

September 15, 2016

M. A. Griffith

M. Anderson Griffith
Master-in-Equity for Aiken County

IMAG# 8

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STATE OF SOUTH CAROLINA)
)
COUNTY OF Aiken)
)
Canadian River Farms, Ltd., Colt Farms, Inc., B C Farms, Inc. nka B C Farms of South Carolina, Inc. and Outback Farms, ltd.)
Plaintiff(s))
)
vs.)
)
Becky J. Gonshorowski, South Carolina Department of Transportation and Aiken County, South Carolina)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 02- 00511

FILED 3-10 20 16
C.C.P. & G.S.
Deputy Clerk

Submitted By: Mary Guynn
Address: 210 Colony Pkwy
Aiken SC 29803

SC Bar #: 69678
Telephone #: 803 643 4
Fax #: 803 643 8140
Other:
E-mail: mguynn@smbgm.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)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/ Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____

Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case # 20____-NI-_____-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____

Torts – Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ 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) Road Abandonment

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) _____
☐ Sexual Predator (510)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 3/10/16

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.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, 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.

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
	)	
COUNTY OF AIKEN	)	
	)	
CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD.,	)	**SUMMONS AND NOTICES**
	)	
PLAINTIFFS,	)	**ABANDONMENT AND CLOSURE OF ROADS (Non-Jury Trial)**
	)	
vs.	)	
	)	
BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body politic and political subdivision of the State of South Carolina,	)	Case Number: 2016-CP-02-0051
	)	FILED 3-10 20 16 C.P. & G.S. Deputy Clerk 8:15
DEFENDANTS	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber at her offices, 210 Colony Parkway, Post Office Box 519, Aiken, South Carolina, 29802, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

March 10, 2016

Aiken, South Carolina

SMITH, MASSEY, BRODIE, GUYNN & MAYES

BY: _____

MARY Q. GUYNN (SC BAR 69678)
ATTORNEY FOR PLAINTIFFS
P.O. BOX 519
AIKEN, S.C. 29802-0728

STATE OF SOUTH CAROLINA COUNTY OF AIKEN CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD., PLAINTIFFS, vs. BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body politic and political subdivision of the State of South Carolina, DEFENDANTS	)	IN THE COURT OF COMMON PLEAS **COMPLAINT** **ABANDONMENT AND CLOSURE OF ROADS** **(Non-Jury Trial)** Case Number: 2016-CP-02-0051 FILED 3-10 2016 C.C.P. & G.S. Deputy Clerk $10 1:15

NOW COME THE PLAINTIFFS alleging unto this Honorable Court as follows:

1. This action is brought pursuant to Section 57-9-10, et seq., Code of Laws of South Carolina 1976, as amended. to abandon and close the Roads described below.

2. The Plaintiff, Canadian River Farms, Ltd., a Texas limited partnership, owns an undivided percentage interest in property abutting the Roads that are proposed to be abandoned and closed (together with the remaining Plaintiffs).

3. The Plaintiff, Colt Farms, Inc., a domesticated South Carolina corporation, owns an undivided percentage interest in property abutting the Roads that are proposed to be abandoned and closed (together with the remaining Plaintiffs).

4. The Plaintiff, B C Farms, Inc. n/k/a B C Farms of South Carolina, Inc., a domesticated South Carolina corporation, owns an undivided percentage interest

in property abutting the Roads that are proposed to be abandoned and closed (together with the remaining Plaintiffs).

5. The Plaintiff, Outback Farms, Ltd, a Texas limited partnership authorized to transact business in South Carolina, owns an undivided percentage interest in property abutting the Roads that are proposed to be abandoned and closed (together with the remaining Plaintiffs).

6. The Defendants, Becky J. Gonshorowski and the South Carolina Department of Transportation, are abutting property owners whose property would be affected by the abandonment and closure of the Roads.

7. Aiken County, South Carolina is a body politic and political subdivision of the State of South Carolina and is named as a party to this action because it currently maintains the Roads proposed to be abandoned and closed as part of its roadway system despite the fact that there is no formal dedicated right of way to said County.

8. The Roads which are the subject of this action are located entirely in Aiken County, South Carolina.

9. This Court has appropriate jurisdiction over the parties as well as the subject matter of this action and venue is proper.

10. Plaintiffs seek permanent closure and abandonment as public, county-maintained roads certain portions of those certain roadways described as follows (the "Roads"):

ALL that certain portion of an unpaved county roadway known as Oak Ridge Club Road (C-800) located between Charleston Highway (US Highway 78) and Cedar Branch Road (S-576) being 10,576 linear feet, more or less, TOGETHER WITH ALL that certain portion of an unpaved county roadway known as Old Bell

Road (C-774) located between Oak Ridge Club Road (C-800) and Weyerhaeuser Road (C-776), being 6,034 linear feet, more or less.

The aforesaid portions of the unpaved county roadways that are proposed to be closed are also shown on that certain plat prepared for Canadian River Farms LLC by All Surveying Co., Inc. dated February 11, 2015 and recorded February 17, 2015 in Plat Book 58, Pages 359-360, Aiken County Records.

TAX MAP PARCEL NUMBERS: 207-00-01-003
207-00-05-001

11. A copy of the plat referenced in Paragraph 10 above is attached hereto as Exhibit "A" and incorporated herein by reference.

12. Pursuant to Section 57-9-10, Code of Laws of South Carolina 1976, as amended, a Notice of Filing Petition for Abandonment (the "Notice") was published once a week for three consecutive weeks in the Aiken Standard, a newspaper of general circulation in Aiken County, South Carolina, where such Roads are situated. The Notice was published on February 16, 2016, February 23, 2016 and March 1, 2016. A copy of the Notice is attached hereto as Exhibit "B" and incorporated herein by reference.

13. Pursuant to Section 57-9-10, Code of Laws of South Carolina 1976, as amended, Plaintiffs also mailed a notice by certified mail, return receipt requested, to the last known address of all abutting property owners on those portions of the Road to be abandoned and closed whose property could be affected by any such action. A copy of the certified mailings and copies of the United States Postal Service return receipts are attached hereto as Exhibit "C" and incorporated herein by reference.

14. Pursuant to Section 57-9-10, Code of Laws of South Carolina 1976, as amended, notices were posted by the Plaintiffs pursuant to South Carolina Department of

Transportation regulations on the portions of the Road proposed to be abandoned and closed. Photographs of the posted notices are attached hereto and Exhibit "D" and incorporated herein by reference.

15. Plaintiffs are informed and believe that it is in the best interests of all concerned for the Roads to be abandoned and closed as:

a. Plaintiffs are experiencing high rights of vandalism to their property adjoining the Roads proposed to be abandoned and closed which would likely be mitigated if the Roads were abandoned and closed;

b. Traffic is driving down these Roads at an extremely high and dangerous rate of speed that is well in excess of posted speed limits, and given the number of slow moving farm machines that cross the Roads between the fields, an severe and tragic accident is imminent;

c. Closure of the Roads will not deny any land owner access to their property;

d. Defendant, Aiken County, will be freed of the burden and responsibility to maintain the Roads, particularly given that it has no dedicated right of way for the Roads; and

e. It is in the public's best interests to close the Roads.

16. Plaintiffs are informed and believe that after the Roads are abandoned and closed, it is in the best interests of all parties for this Court to convey or confirm fee simple title to the Roads to those owners upon whose property the Roads lie and to extinguish any further claim of easement that Aiken County may have in the Roads.

WHEREFORE, the Plaintiffs pray that the Court issue its Order as follows:

(i) That the portions of the Roads as shown on Exhibit "A" and further described herein be forever abandoned, discontinued, vacated and closed as public county-maintained roads and that the maintenance of such Roads by the County be terminated;

(ii) That fee simple title to the Roads be vested in the owners of the property over which the Roads pass; and

(iii) For such other and further relief as the Court may deem just and proper.

March 10, 2016

Aiken, South Carolina

SMITH, MASSEY, BRODIE, GUYNN & MAYES

BY: _____

MARY O. GUYNN (SC BAR 69678)
ATTORNEY FOR PLAINTIFFS
P.O. BOX 519
AIKEN, S.C. 29802-0728

Exhibit A

20160202 00511

AIKEN COUNTY GIS
Tax Map:
207-00-01-003
Date: 02/20/2015

COURSE	BEARING	DISTANCE
1-2	N 39°37'33"E	209.99'
2-3	N 39°34'46"E	282.27'
3-4	N 39°38'14"E	93.40'
4-5	N 12°23'43"W	2037.31'
5-6	N 09°04'40"W	109.67'
6-7	N 13°06'59"W	869.51'
7-8	N 19°37'23"E	75.84'
8-9	N 29°56'45"W	25.44'
9-10	N 16°00'06"E	412.91'
11-12	S 33°34'50"E	183.88'
12-13	S 34°20'41"E	297.14'
14-15	N 23°31'00"E	25.00'
15-16	N 65°00'31"W	38.21'
16-17	N 70°40'31"W	101.15'
18-19	S 46°11'24"E	256.83'
19-20	S 72°04'40"E	554.09'
20-21	S 70°42'39"E	443.22'
21-22	S 68°34'39"E	737.41'
22-23	S 65°00'10"E	243.34'
24-25	S 23°19'21"W	1432.78'
25-26	S 24°06'08"W	26.91'
26-27	N 70°20'26"E	40.02'
28-29	S 43°10'08"	19.50'
29-30	N 57°08'01"W	134.00'
30-31	N 63°22'40"W	260.73'
31-32	N 67°37'50"W	814.84'
32-33	N 63°18'41"W	132.02'
33-34	N 67°37'43"W	282.65'
34-35	N 73°20'28"W	201.02'
35-36	N 67°37'48"W	2100.00'
36-37	N 22°22'12"E	10.00'

COURSE	BEARING	DISTANCE
37-38	N 67°37'48"W	445.99'
38-39	S 22°25'34"W	10.00'
39-40	N 67°37'49"W	1795.00'
40-41	N 49°37'34"W	98.96'
41-42	N 35°59'00"E	90.69'
42-43	N 50°23'15"E	200.00'
43-44	N 39°36'45"W	90.00'
44-45	S 51°13'35"W	341.73'
45-46	N 67°57'29"W	614.49'
46-47	S 20°38'41"W	20.00'
47-48	N 72°36'12"W	649.22'
48-49	N 75°47'27"W	169.81'
49-50	N 07°51'14"E	9.95'
50-51	N 75°49'38"W	650.00'
51-52	S 14°10'24"W	10.00'
52-53	N 75°49'38"W	577.14'

GRAPHIC SCALE - FEET
500 0 500 1000 1500
1" = 500'

FILED 3-10 2016

Lisa Ledford
C.C.C.P. & G.S.

Deputy Clerk

1.15 SW

N/F WEYERHAEUSER NR COMPANY
DEED BOOK 1515, PAGE 23
DEED BOOK 4230, PAGE 815

BELL RIDGE PHASE II

N/F KANDALE CAVE ETAL
DEED BOOK 4098, PAGE 2452
MISC BOOK 707, PAGE 220

N/F KELLY L. WELLS
DEED BOOK 4530, PAGE 2437
TM 190-00-11-007

N/F DONALD M.BENHASE
DEED BOOK 1750, PAGE 3

N/F
CHARLES F. GONSHOROWSKI ETAL
DEED BOOK 611, PAGE 1

N/F BRUCE B.
CAMERON TRUSTEE
DEED BOOK 4322, PAGE 1670
PLAT BOOK 0, PAGE 02

1853.25 ACRES

OWNERSHIP TABLE

8 & 9- TM 190-00-12-032 & 31
N/F SABRINA L. JACOBS
DEED BOOK 4041, PAGE 1972
MISC BOOK 1028, PAGE 3
PLAT BOOK 46, PAGE 294-1

10- TM 190-00-12-029
N/F DEBORORAH E. WETZEL ETAL
DEED BOOK 4334, PAGE 1107
MISC BOOK 1042, PAGE 25
190-00-12-026

11- TM 190-00-12-028
N/F TERESA A. KANE ETAL
DEED BOOK 4072, PAGE 2380
PLAT BOOK 51, PAGE 509

12- TM 190-00-12-064
(INFORMATION NOT FOUND)

13- TM 190-00-12-026
N/F F. CLAYTON MEADOWS ETAL
DEED BOOK 4286, PAGE 272
PLAT BOOK 27, PAGE 182-1

14- TM 190-00-12-025
N/F KAREN C. UNDERWOOD ETAL
MISC BOOK 747, PAGE 184

15- TM 190-00-12-024
N/F HELEN L. DERRICK ETAL
MISC BOOK 531, PAGE 198

16- TM 190-00-12-023
N/F TERRI ERDLE
DEED BOOK 4000, PAGE 1126
MISC BOOK 531, PAGE 38

17- TM 190-00-12-022
N/F SC PUBLIC SERVICE AUTHORITY

18 & 19- TM 190-00-12-065 & 060
NO INFORMATION FOUND

20- TM 190-00-12-019
N/F VINCENCIA TROWELL ETAL
DEED BOOK 2463, PAGE 174

21- TM 190-00-12-015
N/F CHARLES A. TROWELL ETAL
DEED BOOK 2463, PAGE 174

22- TM 190-00-12-014
N/F TERESA TROWELL
DEED BOOK 2673, PAGE 346

23- TM 190-00-12-012
N/F JEREMIAH B. BELL
DEED BOOK 315, PAGE 497

24- TM 190-00-12-005
N/F ROBERT P. VOIGT
DEED BOOK 4236, PAGE 2186
MISC BOOK 802, PAGE 128

25- TM 190-00-11-011
N/F SONYA J. YELDELL ETAL
DEED BOOK 4179, PAGE 1628
MISC BOOK 845, PAGE 227

26- TM 190-00-12-010
N/F POPE

27- TM 190-00-11-001
N/F MARIE VICKERS ETAL
PLAT BOOK 37, PAGE 108-1

28- TM 190-00-11-011
N/F ISABELLA R. VANDERVELDE
DEED BOOK 4428, PAGE 1393
PLAT BOOK 56, PAGE 856

29- TM 190-00-11-010
N/F DEBBIE BURT ETAL
DEED BOOK 4310, PAGE 1451
PLAT BOOK 26, PAGE 118

30- TM 190-00-11-009
N/F VIRGINIA R. STUDEBAKER ETAL
DEED BOOK 2355, PAGE 325
MISC BOOK 887, PAGE 216

2015003506
PLAT
RECORDING FEES $10.00
PRESENTED & RECORDED
02-17-2015 04:20 PM
JUDITH WARNER
BY: LYNN STEMBRIDGE DEPUTY
BK: PL 58
PG: 359 - 359

NOTE:
RIGHT OF WAY TAKEN FROM SCDOT PRELIMINARY PLANS SEE FILE 02-258 AND DEED BOOK 2387, PAGES 1-12
THE EXISTING PAVEMENT WAS USED FOR FIELD FITTING.

PLAT PREPARED FOR
CANADIAN RIVER FARMS LLC

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS C SURVEY AS SPECIFIED THEREIN.

ALL SURVEYING CO., INC
P. O. BOX 56
BARNWELL, S.C. 29812
(803) 259-3656

RICHARD L. ALL, P.L.S. REG. NO. 16497
DATE: FEBRUARY 11, 2015 JOB 2785

This plat is approved in accordance with Chapter 26 Land Development Regulations of the Aiken County Code of Ordinances for purposes of RECORDATION ONLY. This approval does not imply approval of any particular land use or zoning classification that may be applicable to the property. Building Permits may be required.
Aiken County Planning & Development Department — Date 2-16-15

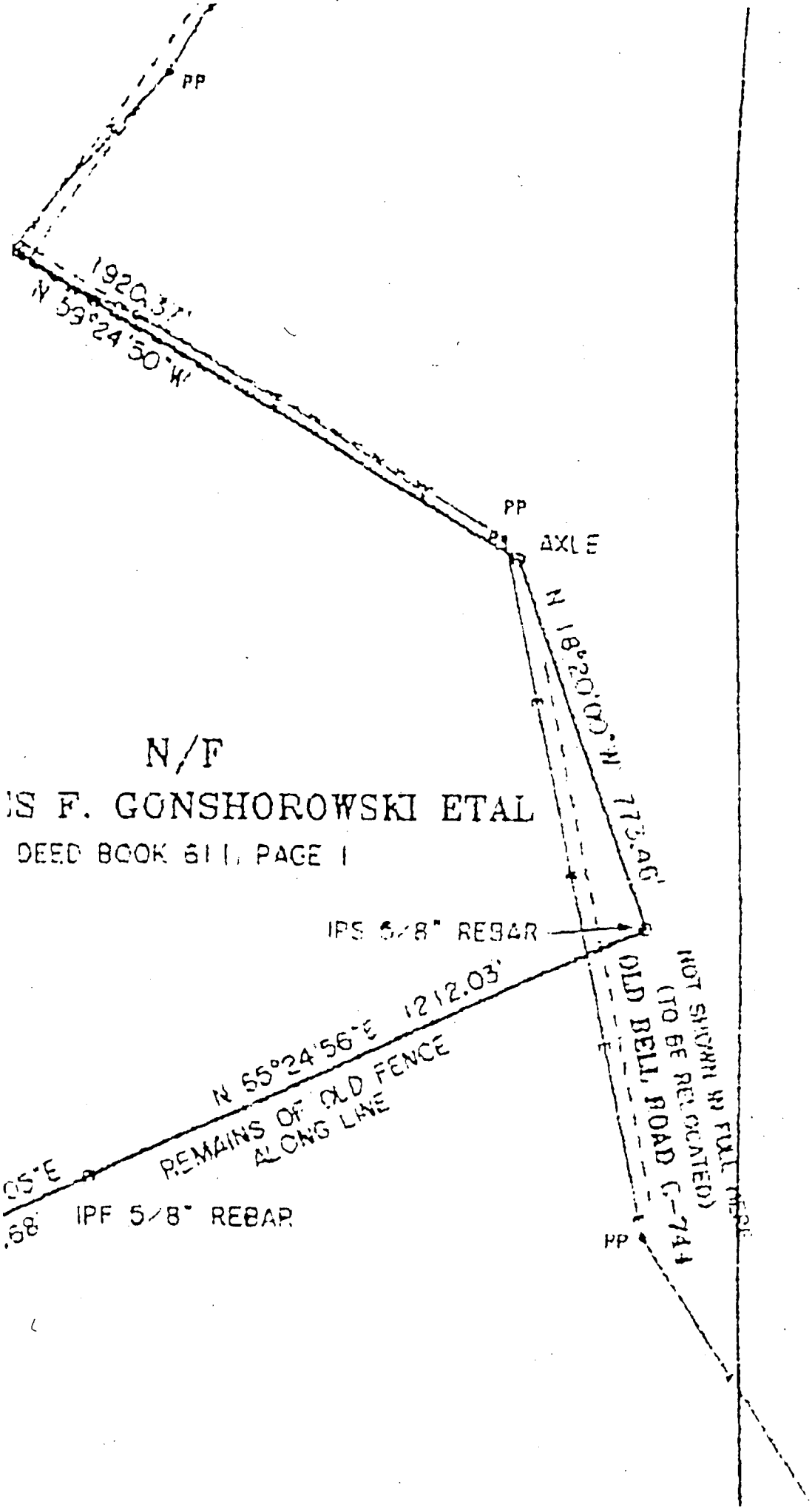
This property/parcel/tract is not subject to the Aiken County Land Development Regulations as amended, Chapter 26, Article 3, Divisions, Subdivision, Exempt, Item No. 3, of the Aiken County Code of Ordinances.
Aiken County Planning & Development Department — Date 2-16-15

MATCH LINE

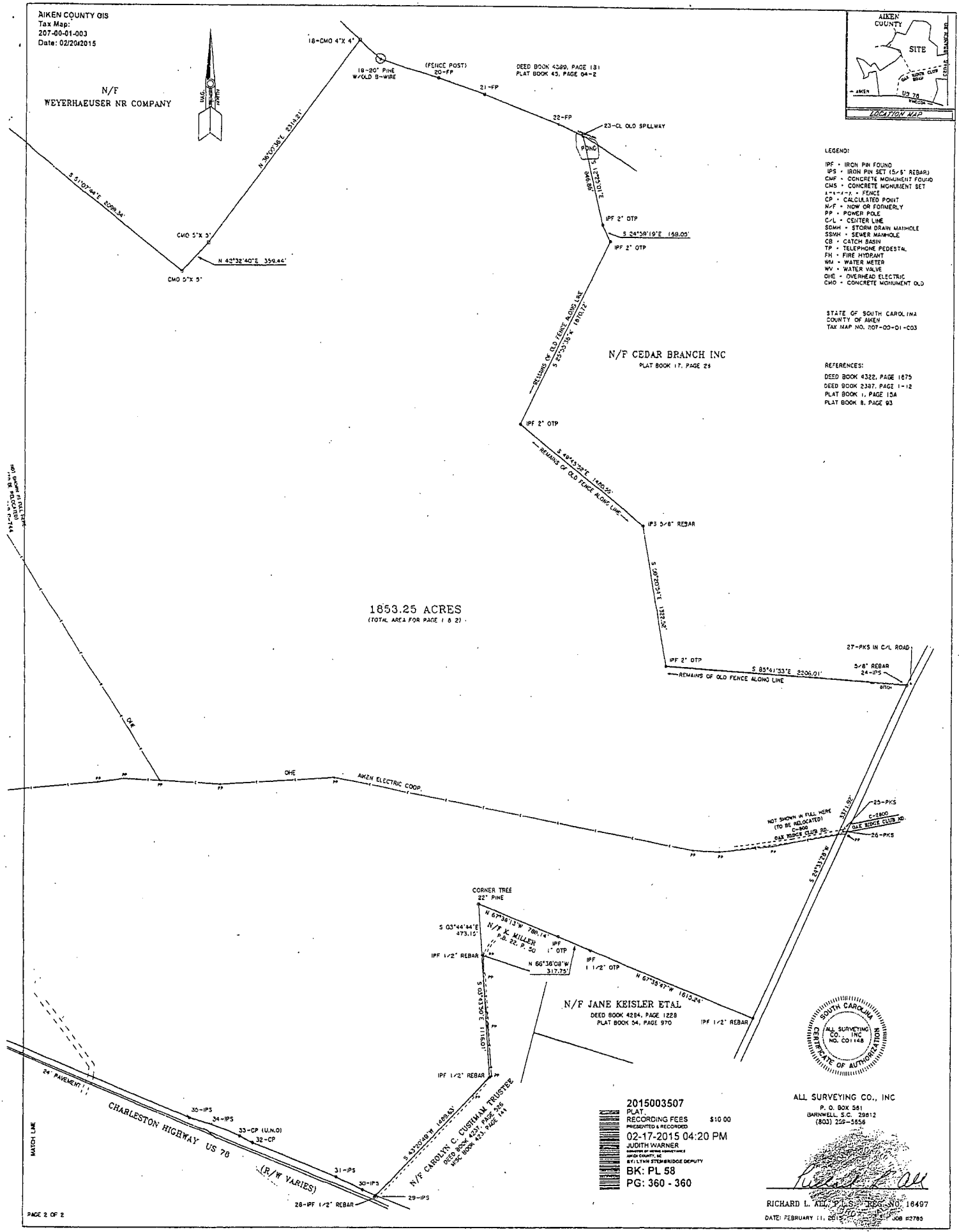
PAGE 1 OF 2

Book 58 Page 359

10


PP
1920.3'
N 59°24'30"W
PP
AXLE
N 18°20'00"W 773.66'
N/F
S F. GONSHOROWSKI ETAL
DEED BOOK 611, PAGE 1
IPS 5/8" REBAR
N 55°24'56"E 1212.03'
REMAINS OF OLD FENCE
ALONG LINE
05'E
.68 IPF 5/8" REBAR
OLD BELL ROAD (C-744
(TO BE RELOCATED)
NOT SHOWN IN FULL HERE
PP

40a


AIKEN COUNTY GIS
Tax Map:
207-00-01-003
Date: 02/20/2015
N/F
WEYERHAEUSER NR COMPANY
18-CMO 4"X 4"
19-20" PINE
W/OLD B-WIRE
(FENCE POST)
20-FP
DEED BOOK 4389, PAGE 131
PLAT BOOK 45, PAGE 64-2
21-FP
22-FP
23-CL OLD SPILLWAY
POND
N 36°07'36"E 2314.21'
S 51°07'44"E 2299.34'
CMO 5"X 5"
N 62°32'40"E 359.44'
CMO 5"X 5"
S 12°25'01"E
846.88'
IPF 2" OTP
S 24°58'19"E 148.05'
IPF 2" OTP
REMAINS OF OLD FENCE ALONG LINE
S 25°03'36"W 1870.12'
N/F CEDAR BRANCH INC
PLAT BOOK 17, PAGE 29
IPF 2" OTP
S 49°43'32"E 1420.55'
REMAINS OF OLD FENCE ALONG LINE
IPS 5/8" REBAR
S 21°05'29"E 1326.32'
1853.25 ACRES
(TOTAL AREA FOR PAGE 1 & 2)
IPF 2" OTP
S 85°41'53"E 2206.01'
REMAINS OF OLD FENCE ALONG LINE
27-PKS IN C/L ROAD
5/8" REBAR
24-IPS
DITCH
OHE
AIKEN ELECTRIC COOP.
NOT SHOWN IN FULL HERE
(TO BE RELOCATED)
C-800
OAK RIDGE CLUB RD.
25-PKS
C-2800
OAK RIDGE CLUB RD.
26-PKS
S 24°33'28"W 371.92'
CORNER TREE
22" PINE
N 67°38'13"W 786.14'
S 03°44'44"E 473.15'
N/F K. MILLER
P.B. 82, P. 50
IPF 1" OTP
IPF 1/2" REBAR
N 66°36'08"W 317.75'
IPF 1 1/2" OTP
N 67°38'47"W 1613.24'
IPF 1/2" REBAR
S 03°43'06"E 1116.01'
N/F JANE KEISLER ETAL
DEED BOOK 4284, PAGE 1228
PLAT BOOK 54, PAGE 970
IPF 1/2" REBAR
24' PAVEMENT
CHARLESTON HIGHWAY US 70
(R/W VARIES)
35-IPS
34-IPS
33-CP (U.N.O)
32-CP
31-IPS
30-IPS
29-IPS
28-IPF 1/2" REBAR
S 43°29'48"W 1499.83'
N/F CAROLYN C. CUSHMAN TRUSTEE
DEED BOOK 423Y, PAGE 325
MISC BOOK 423, PAGE 141
MATCH LINE
PAGE 2 OF 2
AIKEN COUNTY
SITE
AIKEN
US 78
BRIDGE
LOCATION MAP
LEGEND:
IPF - IRON PIN FOUND
IPS - IRON PIN SET (5/8" REBAR)
CMF - CONCRETE MONUMENT FOUND
CMS - CONCRETE MONUMENT SET
FENCE
CP - CALCULATED POINT
N/F - NOW OR FORMERLY
PP - POWER POLE
C/L - CENTER LINE
SDMH - STORM DRAIN MANHOLE
SSMH - SEWER MANHOLE
CB - CATCH BASIN
TP - TELEPHONE PEDESTAL
FH - FIRE HYDRANT
WM - WATER METER
WV - WATER VALVE
OHE - OVERHEAD ELECTRIC
CMO - CONCRETE MONUMENT OLD
STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
TAX MAP NO. 207-00-01-003
REFERENCES:
DEED BOOK 4322, PAGE 1675
DEED BOOK 2387, PAGE 1-12
PLAT BOOK 1, PAGE 15A
PLAT BOOK 8, PAGE 93
2015003507
PLAT
RECORDING FEES $10.00
PRESENTED & RECORDED
02-17-2015 04:20 PM
JUDITH WARNER
BY: LYNN STEMBRIDGE DEPUTY
BK: PL 58
PG: 360 - 360
SOUTH CAROLINA
ALL SURVEYING CO., INC
NO. C01148
CERTIFICATE OF AUTHORIZATION
ALL SURVEYING CO., INC
P. O. BOX 581
BARNWELL, S.C. 29812
(803) 259-5656
RICHARD L. ALL, P.L.S. REG. NO. 16497
DATE: FEBRUARY 11, 2015
JOB #2765

41

Exhibit B

2016CP0200511

FILED 3-10 2016

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

Deputy Clerk

SRO 1:15

LEGAL NOTICE

Legal notice is hereby given of the intention of Canadian River Farms, Ltd., Cat Farms, Inc., BC Farms, Inc. and Outback Farms, Ltd. to file a Summons and Complaint in the Court of Common Pleas for Aiken County, South Carolina for the abandonment and closure of those certain roadways described as follows: **ALL** that certain portion of an unpaved county roadway known as Oak Ridge Club Road (C-800) located between Charleston Highway (US Highway 78) and Cedar Branch Road (S-576) being 10,376 linear feet, more or less, TOGETHER WITH ALL that certain portion of an unpaved county roadway known as Old Bell Road (C-744) located between Oak Ridge Club Road (C-800) and Weyerhaeuser Road (C-776), being 6,034 linear feet, more or less. The aforesaid portions of the unpaved county roadways that are proposed to be closed are also shown on that certain plat prepared for Canadian River Farms, LLC by All Surveying Co., Inc. dated February 11, 2015 and recorded February 17, 2015 in Plat Book 58, Pages 359-360, Aiken County Records. TAX MAP PARCEL NUMBERS 207-00-01-003 and 207-00-05-001.

The abutting property owners will be named as defendants in this action.

Mary O. Guyon, Attorney for Plaintiffs
PO Box 519, Aiken, SC 29802
(803) 643-4110.

February 16, 23 & March 1, 2016

Exhibit C 2016CP02 00511

FILED 3-10 2016
Liz Hodges
C.C.P. & G.S.
Wilds
Deputy Clerk
1:15 SN

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Becky J. Gonshorowski
183 Old Bell Rd
Aiken SC 29801

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Becky J. Gonshorowski ☐ Agent ☐ Addressee

B. Received by (Printed Name) Becky Gonshorowski C. Date of Delivery 2/13

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7009 1410 0001 2487 1807

PS Form 3811, July 2013 Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Linda C. McDonald, Esq
SC DOT
Chief Legal Counsel
PO Box 191
Columbia SC 29201

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7009 1410 0001 2487 1814

PS Form 3811, July 2013 Domestic Return Receipt

EXHIBIT D

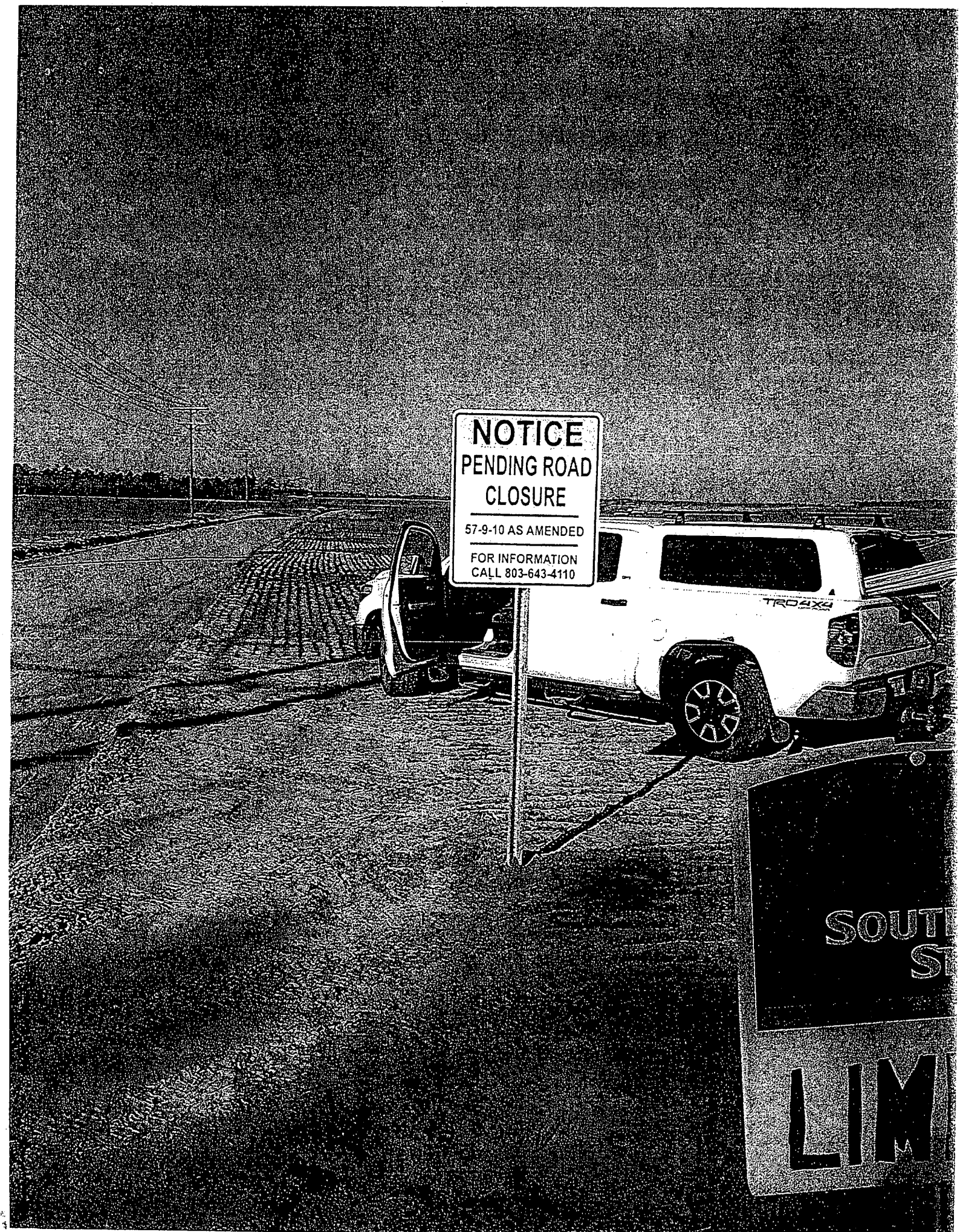
2016CP020051

FILED 3-10 2016

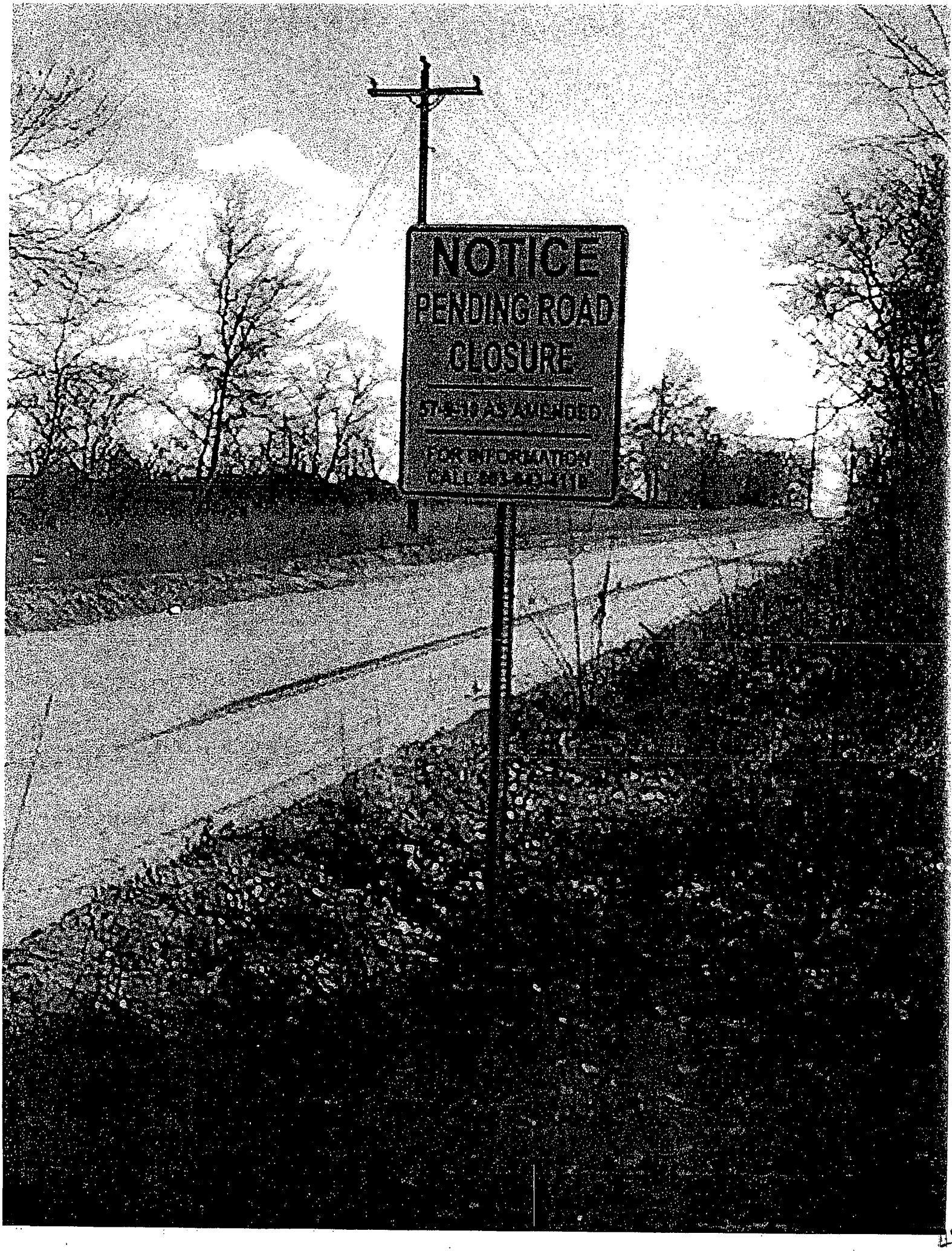
Liz Godard
C.C.P. & G.S.

1:15
SW

Deputy Clerk


NOTICE
PENDING ROAD
CLOSURE
57-9-10 AS AMENDED
FOR INFORMATION
CALL 803-643-4110
TRD 4X4


NOTICE
PENDING ROAD
CLOSURE
57-9-10 AS AMENDED
FOR INFORMATION
CALL 803-643-4110


NOTICE
PENDING ROAD
CLOSURE
574-10 AS AMENDED
FOR INFORMATION
CALL 634-0411


NOTICE
PENDING ROAD
CLOSURE
57-9-10 AS AMENDED
FOR INFORMATION
CALL 803-643-4110


NOTICE
PENDING ROAD
CLOSURE
57-9-10 AS AMENDED
FOR INFORMATION
CALL 803-643-4110


NOTICE
PENDING ROAD
CLOSURE
57-9-10 AS AMENDED
FOR INFORMATION
CALL 303-643-4110

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	) IN THE COURT OF COMMON PLEAS) CASE NO: 2016-CP-02-00511)
CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD PLAINTIFFS, vs. BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body Politic and political subdivision of the State of South Carolina, Defendants.	) ANSWER OF THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

FILED 4.20.16
Liz Godard
C.C.C.P.&G.S.
Deputy Clerk

COMES NOW, the South Carolina Department of Transportation (SCDOT) answers the Petition herein as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of Petition which is not hereinafter specifically admitted, modified or explained is denied and strict proof is demanded thereof.
2. Defendant SCDOT lacks sufficient information either to admit or deny the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15(a), (b), (c), (d), (e) and 16 of the Petition and, therefore, denies same and demands strict proof thereof.

FOR A SECOND DEFENSE

3. Further answering the Complaint herein and as a second defense thereto, Defendant SCDOT reiterates all of the allegations contained in the First Defense above, as fully as if repeated herein.

4. Defendant SCDOT does not claim any interest in the subject road and interposes no objection to this road closure action.

WHEREFORE, having fully answered, Defendant SCDOT prays this Honorable Court issue whatever Order it deems is in the best interest of all concerned.

WHEREFORE, having fully answered, Defendant SCDOT prays that the court inquire into the issues raised by the pleadings and issue such order as it deems just and proper.

The South Carolina Department of Transportation

Natalie J. Moore

Natalie J. Moore
Assistant Chief Counsel
P. O. Box 191
Columbia, SC 29202
S.C. Bar No. 4058
moorenj@scdot.org
803.737-1252 (dd)
803.737-2071 (fax)

April 12, 2016
Columbia, SC

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	) IN THE COURT OF COMMON PLEAS) CASE NO: 2016-CP-02-00511)
CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD PLAINTIFFS, vs. BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body Politic and political subdivision of the State of South Carolina, Defendants.	) ANSWER OF THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

FILED 4.20.16
Liz Gedard
C.C.C.P.&G.S.
Deputy Clerk

I, Lamonica Jamison, an employee of the South Carolina Department of Transportation, hereby certify that I have this 12th day of April, 2016, served a copy of the Answer of SCDOT and Certificate of Service, upon the party named below by mailing a copy of same, in the United States mail, first-class postage prepaid, addressed as shown below:

Mary O. Guynn, Esq.
Smith Massey Brodie Guynn & Mayes, LLC
PO Box 519
Aiken, SC 29802-0728

Lamonica Jamison
Paralegal

SWORN to before me this
12th day of April, 2016

Notary Public for South Carolina
My Commission Expires: 10/28/2024

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
Case No.: 2016-CP-02-00511

Canadian River Farms, Ltd.; Colt Farms, Inc.; B C Farms, Inc. n/k/a B C Farms of South Carolina, Inc.; and Outback Farms, Ltd.,

Plaintiffs,

v.

Becky J. Gonshorowski; The South Carolina Department of Transportation, and Aiken County, South Carolina, etc.,

Defendants.

ANSWER OF DEFENDANT AIKEN COUNTY

FILED 4.19.16
C.C.P.&G.S.

Now comes Defendant Aiken County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and answers the allegations in the Complaint herein as follows:

1. Any allegation in the Complaint not specifically admitted, qualified or otherwise explained is denied and strict proof demanded thereof.

2. Defendant admits the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, and 14 of the Complaint.

3. With respect to the allegations in Paragraphs 10, 15 and 16 of the Complaint, Defendant has no objection to the relief sought in the Complaint.

WHEREFORE, Defendant Aiken County prays that the Court inquire into the matters raised in this action and issue such orders and judgment as it determines is supported by the law and facts.

April 19, 2016

James M. Holly (SC Bar No. 2572)
Aiken County Attorney
1930 University Parkway, Suite 3600
Aiken, SC 29801
803-642-3628
jholly@aikencountysc.gov
Attorney for Defendant Aiken County

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
Case No.: 2016-CP-02-00511

Canadian River Farms, Ltd.; Colt Farms, Inc.; B C Farms, Inc. n/k/a B C Farms of South Carolina, Inc.; and Outback Farms, Ltd.,

Plaintiffs,

v.

Becky J. Gonshorowski; The South Carolina Department of Transportation, and Aiken County, South Carolina, etc.,

Defendants.

CERTIFICATE OF SERVICE

FILED 4.19.16
Liz Godard
C.C.P.&G.S.
Anita Knapple 1:30 am
Deputy Clerk

I certify that, on this date, April 19, 2016, I served the Answer of Defendant Aiken County in this action on the following parties or counsel of record, by mailing the said document to them by depositing the aforesaid document in the U.S. Mail, in an envelope with sufficient first class postage affixed, addressed as follows or by personally delivering the aforesaid document to them:

Mary O. Guynn, Esquire
P.O. Box 519
Aiken, SC 29802
Attorney for Plaintiffs

Linda McDonald, Esquire
Chief Legal Counsel
SCDOT
P.O. Box 191
Columbia, SC 29201

Betty J. Gonshorowski
183 Old Bell Road
Aiken, SC 29801

James M. Holly
1930 University Parkway
Suite 3600
Aiken, South Carolina 29801
Phone: 803-642-3628
Attorney for Defendant Aiken County

7 April 2016

Mary O. Guynn
Post Office Box 519
210 Colony Parkway Southeast
Aiken, South Carolina 29802

Dear Ms. Guynn,

This is my reply in regards to copies of the Summons and Complaint for road abandonment action, civil action number 2016-CP-02-0051 1.

I agree with paragraph 6.

I disagree with paragraph 15; it is not in my best interest that the roads be abandoned and closed. That would change a way of life I have had for over 40 years. I will also be losing property value because of losing a substantial amount of road frontage. Also, closing the roads will change the way my home is accessed. Therefore, in my best interest the road should stay open.

Best Regards,

Becky Gonshorowski

Becky Gonshorowski

FILED 4-12 2016
Liz Leland
C.C.P. & G.S.
1235
Deputy Clerk

50

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD.,	)	**NOTICE OF HEARING**
	)	
	)	Case Number: 2016-CP-02-00511
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body politic and political subdivision of the State of South Carolina,	)	
	)	
DEFENDANTS	)	

TO: Becky J. Gonshorowski
The South Carolina Department of Transportation
Aiken County, South Carolina
Robert E. Barrett and Carolyn L. Barrett

Please be informed that a hearing in the above captioned case will be held before the Master in Equity, at 10:00 a.m. on May 31, 2016, in his office at 109 Park Avenue, Aiken, South Carolina.

Smith, Massey, Brodie, Guynn & Mayes

Aiken, South Carolina
May 13, 2016

BY: _____
MARY O. GUYNN
ATTORNEY FOR PLAINTIFFS
P.O. Box 519
Aiken, S.C. 29802
(803) 643-4110

FILED May 17 20 16
C.C.C.P. & G.S.
Deputy Clerk

1040A
60it

57

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD.,	)	**CERTIFICATE OF MAILING**
	)	Case Number: 2016-CP-02-00511
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body politic and political subdivision of the State of South Carolina,	)	
	)	
DEFENDANTS	)	

I, Mary O. Guynn, attorney, hereby certify that I have this the 13th day of May, 2016, mailed, postage prepaid, to below-listed Defendants and persons a **Notice of Hearing** a copy of which is hereby attached, by depositing in the U.S. Post Office, Aiken, South Carolina contained in envelopes addressed as follows:

Ms. Becky J. Gonshorowski
183 Old Bell Road
Aiken, South Carolina 29801

South Carolina Department of Transportation
Attention: Linda C. McDonald, Esquire
Post Office Box 191
Columbia, South Carolina 29201

Aiken County, South Carolina
Attention: James M. Holly, Esquire
1930 University Parkway Suite 3600
Aiken, South Carolina 29801

FILED May 17 2016
C.C.C.P. & G.S.
Deputy Clerk

1040A
10H

Mr. Robert E. Barrett
Ms. Carolyn L. Barrett
252 Old Bell Road
Aiken, South Carolina 29801

Mary O. Guynn

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN)	
Canadian River Farms, LTD. Colt Farms, Inc. BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd.)	CASE NO.: 2016-CP-02-00511
)	
)	**NOTICE OF MOTION AND MOTION**
Plaintiff,)	**and Notice of Representation**
vs.)	RULE 59, SCRCP
Becky J Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina,)	FILED July 8 2016 Liz Godsey 410 C.C.P. & O.S. Sandra Wells Deputy Clerk
)	
Defendant.)	

TO: Canadian River Farms, LTD. Colt Farms, Inc. BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd. Becky J Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina, their respective counsel.

You will please take notice that we, Carolyn Barrett, Michael Cave, Deborah Dixon, Patrick Martin Kandace Cave, Angie Martin, Vicki Long, Christopher Bowman, Nilda Burke, Ashley Taylor, Sherry Taylor, Lou Bertha Price, Rev. John Price, Jessica Davenport, Arthur Davenport, Robert E. Barrett, Terry Kane, Erla Davis, Gary Itzstein, Jeff Jennings, Melinda Jennings, Cassy Jennings, Brittany Jennings, Brantley Byars, Kevin LeClerk, Greg Watts, Katherine Williamson, Melissa Rich, April Hall, Marion Pope, Clarence Pope, Betty Pope, Ernistine Jenkins, Shelia Robinson Darius Robinson, James Pope, Louise Pope, Rena Clark, Janice L. Williams, Debbie Grice, Anthony N. Fernandez, Tracie W. Fernandez, Robin Saunders, Donnie Moulton, Alice Moulton, Erin Moultin, Kelly Moulton, Chris Vaughn, Deana Vaughn, Deana Vaughn, Cleve Koon, Wallace Kitchings, Kathy Batcheldor, Mimi Cullinan, John Doe and Jane Roe as fictitious persons how have or may have an interest in any undisclosed estates or persons

who have or may have an interest in the property subject to this action hereby give notice of our Motion before this Court under Rule 59 of the South Carolina Rules of Civil Procedure for reconsideration of the Courts decision in the above captioned action, or in the alternative, a new trial or amendment to the judgment issued by the Court in the above styled action. Please also take notice of the undersigned representation of the above named individuals. Any pleadings or correspondence should eb directed to the undersigned at 319 Park Ave. SE., Aiken SC 29801

Motion

The Parties, above named hereby move under Rule 59 of the South Carolina Rules of Civil Procedure for reconsideration of the judgment entered June 28, 2016 by this Court, or in the alternative, a new trial or amendment to judgment based on the following:

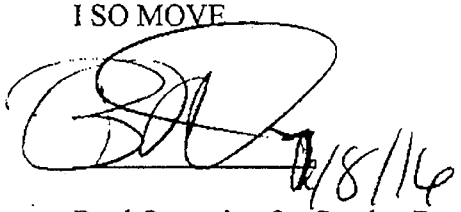
`The above named persons, including John Doe and Jane Roe, representing persons directly effected by the decision to close the subject road for the benefit of the private companies named as Plaintiffs in this action were, based on information and belief, not given opportunity to present testimony in at trial due to some person or persons, said persons believed to be agent or agents of the Plaintiffs, which contacted them and stated that they did not need to attend said hearing. Based on information and belief, at least on individual who did testify at trail stated the same to the Court. As the matter in question concerns a road closure, in use for decades, maintained by the county

and for said use becoming a public road, therefore of public interest, justice cannot be served unless the interested parties have an opportunity to be heard in equity regarding said road closure.

The above named individuals, including John Doe and Jane Roe, hereby allege that the history of title was not disclosed to the Court, that it would have been proper in this instance to name John Doe and Jane Roe as Parties to represent persons are unknown heirs or persons with interest in the property, and said persons were not named.

A petition was filed with this Court on March 21, 2016 by Carolyn Barrett, et al and said petition being from pro se individuals should have been treated as a motion to intervene by said individuals, or in the alternative an answer to the complaint requesting inclusion to the action and the record is deplete of any adjudication of said petition/motion.

I SO MOVE



4/8/16

Brad Owensby, for Carolyn Barrett, Michael Cave, Deborah Dixon, Patrick Martin
Kandace Cave, Angie Martin, et al
803.648.5777
319 Park Ave. SE
Aiken SC 29801

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Canadian River Farms, LTD. Colt Farms, Inc. BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd. Plaintiff, vs. Becky J Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina, Defendant.	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT CASE NO.: 2016-CP-02-00511 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET** FILED July 8 16 Liz Godard 410 C.C.P. & G.S. Deputy Clerk

Plaintiff's Attorney: Mary Guynn 210 Colony Park Way, Aiken SC 29803 E-mail:: _____	Defendant's Attorney: Brad M. Owensby, Bar No. 77636_____ Address: 319 Park Avenue SE, Aiken, SC 29801 Phone: 803.648.5777 Fax803.648.5228 E-mail: bmowensby@gmail.comOther: _____

X**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: Rule 59
Estimated Time Needed: _____ Court Reporter Needed: **XYES/☐ NO**

SECTION II: Motion/Order Type

XWritten motion attached
☐Form Motion/Order
I hereby ~~move for relief or~~ action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ ~~Defendant~~ Date submitted 7/8/16

SECTION III: Motion Fee

X 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: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

Common Pleas

Clerk : Liz Godard
P O Box 583
Aiken, SC 29802
Phone:(803) 642-1715 Fax:(803) 642-1718

DUPLICATE

Received From: Gonshorowski, Becky J

Date: 7/ 8/2016
Receipt #: 50870
Clerk: c02awiley

Paying for: Barrett, Carolyn
Transaction Type: Payment
Payment Type: Check $25.00
Total Paid: $25.00

Reference #: 1482
Comment:
Non-Refundable

You may check the status of your Aiken case at:
http://www.sccourts.org/caseSearch/

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2016CP0200511	Canadian River Farms Ltd , plaintiff, et al VS Becky J Gonshorowski , defendant, et al	**$25.00**	**$25.00**	**$0.00**
Total Cases:	**1**	**$25.00**	**$25.00**	**$0.00**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Canadian River Farms, LTC, Colt Farms, Inc., BC Farms Inc., f/k/a BC Farms of South Carolina, Inc., Outback Farms, LTD,

Plaintiffs,

vs.

Becky J. Gonshowski, SC Dept. Of Transportation, Aiken County, South Carolina,

Defendants.

CASE NO. 2016-CP-02-511

NOTICE OF MOTION AND MOTION TO INTERVENE AND AMENDEDING THE PRIOR MOTION FILED JULY 8, 2016

FILED 8.1.16
C.C.P.&G.S.
Deputy Clerk

TO: M. Anderson Griffith III, and Counsel of Record:

By and through their undersigned attorneys, Brad Owensby, Esq., and James D. Mosteller II, Esq., the "inactive" parties, and Save Windsor SC, as well as all intervenors named below seek to intervene in this action pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, as indispensable parties defined by Rule 19 of the South Carolina Rules of Civil Procedure. The Parties herein join the prior Motion filed with this Court July 8, 2016 and further amend said motion as follows:

1. The intervenor, Save Windsor SC, is an unincorporated association of approximately 55 residents in the Windsor area, formed in response to the activities of the plaintiffs, including but not limited to plaintiff's action to close roads, but also due to serious concerns about depletion of the aquifer by plaintiffs' farming operations, and wells going

dry in the vicinity of plaintiffs' farm. However, Save Windsor SC, seeks to appear in this action only with respect to the issues raised by closing the roads.

2. The intervenors Michael Cave, Kandace Cave, Deborah Dixon, Patrick Martin, Angie Martin, Dr. Vicki Long, Christopher W. Bowman, Lou Bertha Price, Rev. John H. Price, Jessica Davenport, Arthur Davenport, Robert E. Barrett, Carolyn L. Barrett, Terry Kane, Ernestine Jenkins, James Pope, Louise Pope, Rena Clark, Janice L. Williams, Debbie Grice, Anthony N Fernandez, Tracie W. Fernandez are hereby so named due to said Parties ownership of real property abutting Old Bell Road, a county road, and Oak Ridge Club Road, a county road, and seek to intervene due to Plaintiff's failure to provide notice in accordance with South Carolina Code of Laws Sec. 57-9-10, thereby depriving them of their rights to notice and as necessary and indispensable Parties under Rule 19,. SCRCP.

3. John Do and Jane Roe, fictitious persons representing a class of persons or entities not herein named that have an interest in or ownership in properties which abut Old Bell Road and Oak Ridge Club Road as well as other Parties within the communities who are commuters on the subject county roads.

4. Further, Deborah L. Dixon seeks to intervene pursuant to her affidavit dated July 29, 2016, indicating that she lives on Old Bell Road, Aiken South Carolina, and asserts irregularities with proper notice of the final hearing. Robert E. Barrett seeks to intervene based upon his affidavit signed July 25, 2016, which indicates that he was told by plaintiffs' counsel attendance at the hearing was not necessary. Carolyn Barrett's affidavit reflects the same information as Robert Barrett's affidavit. Patrick Martin lives on Old Bell Road, and his affidavit reflects he was contacted by plaintiffs' counsel and

instructed not to attend the hearing. Wyles Hutson was contacted prior to the hearing and instructed that he did not need to attend. In contradistinction to the prior mentioned affidavits, William A Smith (who is not intervening) was told of the date of the hearing and that he could attend., affidavits are attached.

5. If allowed to intervene, Save Windsor SC, and the individual intervenors, believe they will be able to show unto the court the roads in question have been dedicated to public use for decades, and that Oak Ridge Road, travels through Aiken County, into Barnwell County; therefore, the notice published prior to the commencement of the action was insufficient pursuant to SC Code § 57-9-10 which requires that prior to bringing an action to close a road, notice of the closing must be published in a newspaper of record within the county in which the road passes. In this case, Intervenors are informed and believe that Oakridge Club Road passes through Aiken County into Barnwell County. It is referred to as the old Charleston Road by local residents, and has been in existence for more than 5 decades.

6. Intervenors are informed and believe that notice was not properly served because it was not published in a paper of record in Barnwell County. Intervenors also believe that the road sought to be closed has been dedicated to the public by continuous use for more than twenty years, and that it is a necessary road for both the convenience of local residents, and their safety. They are informed and believe that as users and commuters on the road, they are "so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest" and that their interests are not "adequately represented by existing parties". Rule 24 SCRCP.

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Canadian River Farms, LTC, Colt Farms, Inc., BC Farms Inc. f/k/a BC Farms of South Carolina, Inc., Outback Farms, LTD Plaintiff, vs. Becky J. Gonshowski, SC Dept. Of Transportation, Aiken County, South Carolina, Defendant.	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT CASE NO.: 2016-CP-02-511 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Mary Guynn, Bar No. _____ Address: 210 Colony Pkwy,Aiken, SC 29801 Phone: 803-643-4110 Fax _____ E-mail: _____ Other: _____	Bradford M. Owensby , Bar No. 77636 Address: 319 Park Avenue SE, Aiken SC 29801 Phone: 803.648.56777 Fax803.648.5228 E-mail: bmowensby@gmail.com Other: _____

X 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: Intervention Rule 24, Rule 19
Estimated Time Needed: 2 HOUR _____ Court Reporter Needed: X YES/☐ NO

SECTION II: Motion/Order Type

X Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ August 1, 2016
Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

X 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. ☐ Other:	JUDGE CODE _____ Date: _____

FILED
8 L 16
C.C.P.&G.S.
Deputy Clerk

State of South Carolina)
)
County of Aiken)

Affidavit

Personally appeared before me, Deborah L. Dixon, who currently resides at 330 Old Bell Road, Aiken, South Carolina 29801 and stated under oath that she left two (2) messages at the law offices of Smith, Massey, Brodie, Guynn and Mayes to be notified of the date of the Old Bell Road and Oak Ridge Club Road closing hearing as directed by the sign posted at the point on Old Bell Road that would be closed. Ms. Dixon was not notified by Ms. Guynn's office of a hearing date by phone, email or voice mail.

Based on information and belief the following matters are true and correct to the best of my knowledge.

I certify under the laws of the State of South Carolina that the foregoing is true and correct.

Deborah L. Dixon

Deborah L. Dixon

SWORN and subscribed to before me
this 28 day of July, 2016.

Notary Public for South Carolina
My Commission Expires: 7/7/2019

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

AFFIDAVIT
Case No.: 2016-CP-02-00511

I, Wyles Hutson, attest the following is true and accurate to the best of my knowledge:

I was contacted by Mary Guynn's attorney's office the week before the hearing on the above case and was told it was not necessary for me to come to the hearing.

She has my name and phone number on file because I had called and complained about the road closure.

SWORN to before me this
28 day of July, 2016

Notary Public of South Carolina.
My Commission Expires: 7/7/2019

Affiant

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

AFFIDAVIT
Case No.: 2016-CP-02-00511

I, Patrick Martin, of 294 Old Bell Road Aiken South Carolina, attest the following is true and accurate to the best of my knowledge:

I was contacted by Mary Guynn's attorney's office the week before the hearing on the above case and was told it was not necessary for me to come to the hearing.

She has my name and phone number on file because I had called and complained about the road closure.

SWORN to before me this
25 day of July, 2016

Notary Public of South Carolina.
My Commission Expires: 7/7/2019

Affiant

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

AFFIDAVIT
Case No.: 2016-CP-02-00511

I, William A. Smith, attest the following is true and accurate to the best of my knowledge:

I was contacted by Mary Guynn's attorney's office the week before the hearing on the above case and was told ~~it was not necessary for me to come to the hearing~~ when the hearing would be held. I AS

She has my name and phone number on file because I had called and complained about the road closure.

SWORN to before me this
28 day of July, 2016

Notary Public of South Carolina.
My Commission Expires: 7/7/2019

William A Smith
Affiant

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

AFFIDAVIT
Case No.: 2016-CP-02-00511

I, Robert E. Barrett, attest the following is true and accurate to the best of my knowledge:

I was contacted by Mary Guynn's attorney's office the week before the hearing on the above case and was told it was not necessary for me to come to the hearing.

She has my name and phone number on file because I had called and complained about the road closure.

SWORN to before me this
25th day of July, 2016

Sarah Felton
Notary Public of South Carolina.
My Commission Expires: February 11, 2020
Sarah Felton

Affiant

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

AFFIDAVIT
Case No.: 2016-CP-02-00511

I, Carolyn L. Barrett, attest the following is true and accurate to the best of my knowledge:

I was contacted by Mary Guynn's attorney's office the week before the hearing on the above case and was told it was not necessary for me to come to the hearing.

She has my name and phone number on file because I had called and complained about the road closure.

SWORN to before me this
26th day of July, 2016

Darlene Champagne
Notary Public of South Carolina.
My Commission Expires: June 19, 2022

Carolyn L. Barrett
Affiant

DARLENE CHAMPAGNE
Notary Public, South Carolina
My Commission Expires
June 19, 2022

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Canadian River Farms, LTC, Colt Farms, Inc., BC Farms Inc. f/k/a BC Farms of South Carolina, Inc., Outback Farms, LTD Plaintiff, vs. Becky J. Gonshowski, SC Dept. Of Transportation, Aiken County, South Carolina, Defendant.	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **AFFIDAVIT OF MAILING** Docket No. 2016-CP-02-511

Personally appeared Sarah Felton, Legal Assistant to Brad M. Owensby, who states that she served Cal Watson, with a copy of NOTICE OF MOTION AND MOTION TO INTERVENE AND AMENDING THE PRIOR MOTION FILED JULY 8, 2016, by placing in the United States Mail, General Service, Postage Pre Paid as addressed below:

Cal Watson
Sowell Gray Stepp & Laffite
1310 Gadsen Street
Columbia, SC 29201

Attorney for Aiken County
James Holly
PO Box 5295
Aiken, SC 29804

City Administrator for Aiken County
Jay Clay Killian
1930 University Pkwy
Aiken, SC 29801

SC DOT
PO Box 191
Columbia, SC 29202

Becky Gonshorowski
183 Old Bell Rd
Aiken, SC 29801
CERTIFIED MAILING

1st day of August, 2016.

Notary Public of South Carolina

My Commission expires: 7/7/2019

SCCA 406 (12/2009)

Sarah Felton
Affiant

FILED 8.1.16
Liz Hedard
J.C.C.P.&G.S.
Ruth Monaco 4:30
DEPUTY CLERK

76

2016CP0200511

April 6, 2016

Mary Guynn, Attorney

210 Colony Pkwy

Aiken, SC 29803

Ref: Case # 2016CP02-00511

Canadian River Farms, Inc, Colt Farms, B.C. Farms, Inc.nka BC Farms of South Carolina,Inc and Outback Farms, ltd.

I am asking by means of this letter that you notify me when the hearing date is set on the above case. My address is: 252 Old Bell Rd, Aiken, SC 29801

My telephone is 803-649-0626 or 803-645-5202.

Thank You.

Carolyn L. Barrett

Carolyn L. Barrett

Aiken, SC

FILED 4-7 2016

Liz Godard 11:30
C.C.P. & G.S.

Deputy Clerk

77

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY

Anderson M. Griffith, Master-In-Equity

Case No.: 2010-CP-02-175=2

Canadian River Farms, LTD, Colt Farms, Inc., BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd.,

Appellant,

v.

Becky J. Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina.

Respondent(s).

NOTICE OF APPEAL

The Intervener, "Save Windsor", et. al. including those individuals set forth in the Motion to Intervene and the Barretts, by and through its undersigned counsel, appeals the Order of the Honorable M. Anderson Griffith, dated September 15, 2016, which had been denied motion for intervention following a road closure by Appellant.

Canadian River Farms, Ltd., et. al. V. Beck J. Gonshorowski, et. al.
Case No.: 2016-CP-02-00511
NOTICE OF APPEAL

Respectfully submitted,

October 7, 2016

JAMES D. MOSTELLER, III (SC BAR# 12008)
THE MOSTELLER LAW FIRM, LLC
P.O. DRAWER 328
AIKEN, SC 29802
PHONE: 803-226-0396
FACSIMILE: 803-226-0493
mostellerlaw@gmail.com
ATTORNEY FOR INTERVENER

Co-Counsel: BRADFORD M. OWENSBY
319 PARK AVE, SE
AIKEN, SC 29801
PHONE: 803-648-5777
ATTORNEY FOR INTERVENER

Plaintiff's Counsel:

Mary Olivia Guynn
210 Colony Pkwy
Aiken, SC 29803

J. Calhoun Watson
P.O. Box 11449
Columbia, SC 29211

Tina Marie Cundari
1310 Gadsden Street
Columbia, SC 29201

James M. Holly
P.O. Box 5924
Aiken, SC 29804

Natalie Jean Moore
P.O. Box 191
Columbia, Sc 29202

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY

Anderson M. Griffith, Master-In-Equity

Case No.: 2010-CP-02-175=2

Canadian River Farms, LTD,
Colt Farms, Inc., BC Farms, Inc.
nka BC Farms of South Carolina
Inc. Outback Farms, Ltd.,

Appellant,

v.

Becky J. Gonshorowski, South
Carolina Department of
Transportation, Aiken County
South Carolina.

Respondent(s).

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent(s) by depositing a copy of same in the United States mail, postage prepaid, on October 7, 2016, addressed to Respondents attorneys of record Mary Olivia Guynn, 210 Colony Pkwy, Aiken, SC 29803; J. Calhoun Watson, P.O. Box 11449, Columbia, SC 29211; Tina Marie Cundari, 1310 Gadsden Street, Columbia, SC 29201; James M. Holly, P.O. Box 5924, Aiken, SC 29804; Natalie Jean Moore, P.O. Box 191, Columbia, SC 29202.

Canadian River Farms, Ltd., et. al. V. Beck J. Gonshorowski, et. al.
Case No.: 2016-CP-02-00511
NOTICE OF APPEAL

October 7, 2016

James D. Mosteller, III (SC BAR# 12008)
The Mosteller Law Firm, LLC
P.O. Drawer 328
Aiken, SC 29802
Telephone: 803-226-0396
Facsimile: 803-226-0493
mostellerlaw@gmail.com
Attorney for Intervener

Co-Counsel: Bradford M. Owensby
319 Park Ave, SE
Aiken, SC 29801

Plaintiff's Counsel:

Mary Olivia Guynn
210 Colony Pkwy
Aiken, SC 29803

J. Calhoun Watson
P.O. Box 11449
Columbia, SC 29211

Tina Marie Cundari
1310 Gadsden Street
Columbia, SC 29201

James M. Holly
P.O. Box 5924
Aiken, SC 29804

Natalie Jean Moore
P.O. Box 191
Columbia, Sc 29202

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 13 2016
SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, III, Master-In-Equity

Appellate Case No. 2016-002102 2016CP0200511

Canadian River Farms, Ltd., Colt Farms, Inc., BC Farms, Inc. n/k/a BC Farms of South Carolina Inc., and Outback Farms, Ltd., ... Respondents-Appellants,

v.

Becky J. Gonshorowski, South Carolina Department of Transportation, and Aiken County South Carolina, ... Defendants.

Save Windsor SC.....Appellant-Respondent.

NOTICE OF APPEAL

Pursuant to Rule 203(c), SCACR, Canadian River Farms, Ltd., Colt Farms, Inc., BC Farms, Inc. n/k/a BC Farms of South Carolina Inc., and Outback Farms, Ltd. (Respondents-Appellants) appeal the order of the Honorable M. Anderson Griffith, III, dated September 15, 2016, denying the motion for intervention. Respondents-Appellants received written notice of entry of the order on September 15, 2016. Accordingly, this cross-appeal is timely filed. *See* Rule 203(b), SCACR (providing that a notice of appeal must be served within 30 days after receipt of written notice of entry of the order); Rule 203(c), SCACR (providing that a notice of appeal in a cross-appeal must be filed within 5

Copy FILED 10.17.16
Liz Godard
C.C.C.P.&G.S.
Deputy Clerk

days of service of receipt of appellant's notice of appeal or within the time prescribed b Rule 203(b), whichever last expires).

In the event the Court dismisses the appeal initiated by Appellant as requested by Respondents-Appellants in the Motion to Dismiss filed today, this cross-appeal will become moot.

Respectfully submitted,

J. Calhoun Watson (S.C. Bar No. 10089)
Tina Cundari (S.C. Bar No. 71951)
SOWELL GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
(803) 929-0300 Fax
cwatson@sowellgray.com
tcundari@sowellgray.com

Attorneys for Respondents-Appellants

Columbia, South Carolina
October 13, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Canadian River Farms, Ltd., Colt Farms, Inc., B C Farms, Inc. n/k/a B C Farms of South Carolina, Inc., and Outback Farms, Ltd. Plaintiffs,	)	CASE NO.: 2016-CP-02-00511
Vs.	)	ORDER DENYING MOTION FOR INTERVENTION
Beck J. Gonshorowski, The South Carolina Department of Transportation and Aiken County, South Carolinia, a body politic and political subdivision of the State of South Carolina Defendants,	)	

RECEIVED
OCT 13 2016
SC Court of Appeals
FILED 9.15.16
C.C.P.&G.S.

Procedural History

The Summons and Complaint were filed on March 10, 2016. The parties moving for intervention received notice by the newspaper advertisement and the public posting. Robert E. Barrett and Carolyn Barrett filed a letter of protest on March 15, 2016. A petition with twenty-five signatures objecting to the road closing was filed on March 21, 2016. The hearing was held on May 31, 2016. Prior to that time, no party had filed a motion to intervene. The Order was filed on June 27, 2016. A Motion to Reconsider pursuant to Rule 59(e) was filed by the movants on July 8, 2016. The plaintiffs filed a Memorandum in Opposition to the Motion to Reconsider on August 9, 2016. The movants Motion to Intervene and Amending the Prior Motion was filed on August 1, 2016. The plaintiffs filed a Memorandum in Opposition to the Motion to Intervene on August 8, 2016. The motion hearing was held on August 12, 2016.

Exhibits

Both parties submitted affidavits prior to the motion hearing on August 12, 2016. However, the movants also produced another affidavit, some maps of Aiken County and Barnwell County, Minutes from two Barnwell County Council meetings and a letter related to those public meetings. The plaintiffs objected to the submission of those documents based on Rule 6, SCRCP. The plaintiffs were allowed to file a Supplemental Memorandum to the motion to Intervene and Motion to Reconsider on August 25, 2016. The objection was granted as to the affidavit. The court issued an Order following the hearing specific to this

MAGH

issue. The Court allowed the introduction of the maps that were public records. It also allowed the minutes from the meeting and the letter. However, the Court does not find the minutes of the meetings or the letter to be relevant to this matter. Those documents include a brief summary and a letter of actions at two Barnwell County Council meetings that do not involve the portions of the roads closed in Aiken County. The letter does not discuss the area in Aiken County. No evidence of any legal actions filed in Barnwell County were submitted.

The movants also raised the issue that the Aiken County Clerk of Court had the movants who sent letters and submitted a petition listed as "other party to the case". This label is believed to be required with the public filing system when a letter or document is filed with the Clerk of Court by someone who is not a named party. It does not change the status of parties named in the lawsuit or provide any special status for someone filing a letter.

"Relevant evidence means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE, *State v Spears*, 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011). Based on that definition, the court does not find the Barnwell County Council minutes or the letter to be relevant. The moving parties did make a proffer to preserve the record.

Motion to Intervene

To prevail on Rule 24 SCRCP motion, the moving party must establish the following:

(1) Establish timely application;

(2) Assert an interest relating to the property or transaction which is the subject of the action;

(3) Demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and

(4) Demonstrate that its interest is inadequately represented by other parties. *Horry County State Bank v. Flemington Properties, LLC*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004).

"Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of the rights of all parties who may be affected. However, this does not mean intervention should always be granted. Instead, we must consider the pragmatic consequences of a decision to permit or deny intervention an avoid setting up rigid applications of Rule 24 (a) (2)." *Horry County State Bank v. Flemington Properties, LLC*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). "Failure to satisfy any one of the four requirements precludes intervention." *Ex Parte Reichlyn: In Re: SCDHEC v. Columbia Organic Chemical Co. Inc.*, 310 S.C. 495, 500, 427 S.E. 2d 661,664 (1993)

Timely Application

"In South Carolina, the factors to examine to determine if a timely application has been made are: 1) the time that has passed since the applicant knew or should have known of his or her interest in the suit;2)

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the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention." *Ex Parte Reichiyn: In Re: SCDEC v. Columbia Organic Chemical Co., Inc.*, 310 S.C. 495, 500, 427 S.E. 2d 661,664 (1993).

The movants are parties whose property abuts the road but the property does not abut the portion of the road that was closed in the Order filed on June 27, 2016. The movants argue that South Carolina Section 57-9-10 requires notice be sent by mail, return receipt, to the last known address of all abutting property owners even if it is not on the portion of the proposed area to be closed. This is regardless of the length of the road or how many counties the road passes through. Based on this argument, the moving parties argue that anyone who lives on the road is entitled to notice by certified mail with no limitations. The Order closed approximately 10,576 linear feet (approximately two miles)of unpaved road on Oak Ridge Club Road and an unpaved portion of Old Bell Road (approximately 6,034 linear feet). This argument is apparently submitted to explain the delay in filing the motion of intervention and to argue that these individuals should have been named as parties in the lawsuit.

They also argue that the newspaper publication must be printed in every county that the road may pass through even if the portion that may be closed is just in one county. Finally, the movants argue that the public posting must be made throughout the entire length of the road even if it is not a portion of the road that is the subject of the action or if the road extends into other counties.

The Plaintiff's argue that the moving parties did receive notice of the hearing as required in the statute. The plaintiffs published the notice required by the statute and posted the area as required by the statute. The parties who attended the hearing were given an opportunity to testify. The plaintiff argues that the appellate courts have not interpreted the statute to require that every owner whose property abuts the road should receive notice by certified mail. Also, the courts in South Carolina have not interpreted the statute to require that type of notice for everyone who has property that abuts the road even if it extends to another county or the road changes names. The plaintiffs also argue that the language of the statute does not require the newspaper publication or the public posting to be performed in the manner suggested by the movants. Finally, in reference to the telephone calls, the attorney for the plaintiff just advised the people that called that they were not required to attend the hearing as opposed to they should not attend the hearing.

The exact language of that portion of 57-9-10 states, "Any interested person, the State or any of its political subdivisions or agencies may petition a court of competent jurisdiction to abandon or close any street, road or highway whether opened or not. Prior to filing the petition, notice of intention to file shall be published once a week for three consecutive weeks in a newspaper published in the county where such street, road or highway is situated. Notice also shall be sent by mail requiring a return receipt to the last known address of all abutting property owners whose property would be affected by any such change and

MAG#3

posted by the petitioning party along the street, road or highway, subject to approval of the location of the posting by the governmental entity responsible for maintenance of the street, road or highway." Both the moving parties and the plaintiff agreed that there are no South Carolina cases cited that have ruled on this particular issue.

The movants argue that if the legislature only wanted the certified mailing portion of the statute to apply to the area where the road is closed, the statute would contain that specific language. However, the language in the statute does say "all abutting property owners whose property would be affected by any such change...". The language of the statute does specify that only those persons whose property abuts the road and who would be affected receive the notice by certified mail. The term "affect" has been defined as "to act on: produce an effect or change in: *http:/www.dictionary.com*.

"In construing a statute, it's words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Bryant v. City of Charleston*, 295 S.C.408, 368 S.E. 2d 899 (1988), *First Baptist Church of Mauldin V. City of Mauldin*, 308 S.C. 226, 417 S.E. 2d 592 (1992). "When interpreting a statute, this Court's primary function is to ascertain the intention of the Legislature." *Holley v. Mt Vernon Mills, Inc.*, 312 S.C. 320, 440 S.E. 2d 373 (1994).

The moving parties filed several affidavits with the motion to intervene. Deborah L. Dixon's affidavit states that she left two messages with the office of the plaintiff's attorney requesting the hearing information. She did not receive a response. The affidavit does not state if the hearing information was provided or if she attended the hearing.

Wylie's Hutson's affidavit states that he contacted the office for the attorney for the plaintiff and was told "it was not necessary for me to come to the hearing." The affidavit does not state if the hearing information was provided or if he attended the hearing.

Patrick Martin's affidavit states that he contacted the office for the attorney for the plaintiff and was told "it was not necessary for me to come to the hearing." The affidavit does not state if the hearing information was provided or if he attended the hearing.

William A. Smith's affidavit states that he was told when the hearing would be held when he contacted the office of the attorney for the plaintiff. It does not state if Mr. Smith attended the hearing.

Robert E. Barrett's affidavit states that he contacted the office for the attorney for the plaintiff and was told "it was not necessary for me to come to the hearing." The affidavit does not state if the hearing information was provided or if he attended the hearing. Mr. Barrett also was provided with hearing information from the plaintiffs' attorney based on a letter provided to the clerk of court prior to the hearing.

Carolyn L. Barrett's affidavit states that she contacted the office for the attorney for the plaintiff and was told "it was not necessary for me to come to the hearing". The affidavit does not say she was not provided with the hearing information. Mrs. Barrett also was provided with hearing information from the

MAG#4

plaintiffs' attorney based on a letter provided to the clerk of court prior to the hearing. She appeared and testified at the hearing.

None of the affidavits offer any information as to where those parties live in relation to the area of the road that was ordered closed or how their property was affected. An owner, whose property abuts the portion of a road to be closed, clearly would be affected by the action. The language of the statute does not limit or specify that those are the only parties whose property interest may be affected. The language also cannot be construed to include all parties who live on the road, regardless of distance from the portion being closed. There may be special circumstances that may affect property owners whose property does not abut the portion of the road being closed. An example may be if it affects the ingress and egress to the property. However, there are no affidavits submitted to establish any special circumstances for any of the movants to be "abutting property owners whose property would be affected by any such change...". Therefore, the court finds that the movants were not entitled to notification by mail requiring a return receipt to the last known address. They did receive notification by the newspaper advertisement and the public posting. In regards to the newspaper publication, the plaintiffs filed the notice in the Aiken Standard, a newspaper published in Aiken County. The Court interprets the statutory language to require publication in the county where the portion of the road that is the subject of the action (to be closed or abandoned) is located. The statute uses the language, "where such street, road or highway is situated". The public posting is required to be along the street, road or highway subject to the approval of the location of the posting by the department that is responsible for the maintenance of that road, street or highway. There are no affidavits, answers of the defendants or legal arguments to establish that the public posting was not done in accordance with the language of the statute. Having decided that issue, the factors for determining a timely application can be reviewed.

The summons and complaint was filed on March 10, 2016. The parties moving for intervention received notice by the newspaper advertisement and the public posting. Robert E. Barrett and Carolyn Barrett filed a letter of protest on March 15, 2016. A petition with twenty-five signatures objecting to the road closing was filed on March 21, 2016. Clearly, many of the movants knew or could have known that the action was filed and could have filed a motion to intervene. The hearing was held on May 31, 2016. Prior to that time, no party had filed a motion to intervene. The order was filed on June 27, 2016. The motion to intervene was filed on August 1, 2016.

Based on the letters and the petition filed with the Aiken County Clerk of Court, many of the movants knew that the action was filed. Other than the manner in which they were notified, it is not clear why the motion to intervene was not filed prior to the hearing date. As a result, the litigation had progressed through the hearing and a final order being issued before the movants filed a motion to intervene.

MAG#5

The movants believe all of the reasons for their opposition to the road closing was not established at the hearing. This may include the history of the use of the road and the notice the parties received. However, a review of the affidavits does not specify those reasons to any particular movant. The plaintiffs submitted the affidavit of Brandon Woody about the financial issues the plaintiffs would suffer if the motion to intervene is granted. The movants reply to the affidavit of Mr. Woody was that the equipment and material were purchased before the order was issued to close the road. Also, a motion was filed pursuant to Rule 59(e), SCRCP shortly after the Order was filed. The court would also note that no changes were to be made to the roads for forty days after the Order was filed.

Reviewing all of the evidence submitted, the affidavits and reviewing the statutes, rules and cases the court finds that the movants have not established that a timely application was made to intervene in this action. While there may be circumstances to support filing for intervention after the hearing is held and a decision is filed, the movants have not established valid reasons based on the evidence before the Court.

Movants Interest in The Property or Transaction

The movants assert that they do have an interest since their property abuts the road. Based on the affidavits, the exact nature of any interest other than the information submitted is speculative at this point but clearly the individuals do have some interest in the action.

Movants to Demonstrate That Without Intervention, Disposition of The Action May Impair Their Ability to Protect Their Interest

The movants must also establish that without intervention, they may not be able to adequately protect their interest. The movants again argue that they were not able to attend the hearing or did not receive notice of the hearing. Also, even though three of the movants did appear and testify at the hearing, the remaining movants do not believe that testimony protected their interest in this matter. The affidavits submitted do discuss the information provided by the plaintiffs' attorneys office about the hearing.

The Movants Should Be Able to Demonstrate That Their Interest Is Inadequately Represented by The Other Parties

"Factors to consider in determining whether the existing representation is adequate: 1) whether the existing parties will undoubtedly make all of the interveners' arguments 2) whether the existing parties are capable and willing to make such arguments and 3) whether the intervener offers different knowledge, experience or prospective on the proceeding that would otherwise be absent." *Berkeley Electric v. Town of Mt. Pleasant*, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990).

The movants interest will not be protected by the named parties in this action. Aiken County did not object to the relief requested by the plaintiff's in its answer and at the hearing. The South Carolina Department of Transportation filed an answer but did not attend the hearing. In the second defense of the answer, this defendant denied it had any interest in the roads and had no objection to the road closure.

MAG#6

Becky Gonshorowski filed a letter/answer but did not attend the hearing. The plaintiffs informed the court that those parties had reached an agreement. Since the motion to intervene was filed after the hearing, it is clear that the interest of the movants was not protected by any of the named parties. Three of the movants did testify at the hearing over the plaintiffs' objection. Those individuals are not named parties in this action and the Court cannot assume that the testimony of those interested persons protects the other movants. Also, the language used in prior cases specifically discusses whether the movants interests are protected by other "parties".

Rule 24(c), SCRCP

The plaintiffs raised the issue that the movants failed to attach a pleading "setting forth the claim or defense for which intervention is sought". The movants responded by arguing that the motion contains sufficient details of the movants claims. The movants' motion is four pages and does provide details of the basis for the motion.

Rule 24(c), SCRCP is entitled "Procedure; Notice to State When Validity of Statute Questioned". The movants properly served the motion to intervene and provided the grounds of the motion. A pleading was not attached to the motion. The rule does use the term "shall" when the pleading requirement is discussed. "Ordinarily, the use of the word "shall" in a statutory provision indicates the provision is *mandatory." Charleston Cty. Parents for Pub. Such., Inc. v. Moseley, 343 S.C. 509, 541 S.E. 2d 533 (2001).* There are no cases that discuss whether this term is mandatory when used in Rule 24, SCRCP.

Since there are no cases commenting on the term shall in this type of motion, the court examines the detail of the motion. The purpose of attaching the pleading, based on the language in the rule, is to set forth the claim or defense that is the basis for the intervention motion. In this case, the detailed motion does supply sufficient information. Therefore, the court will not dismiss the motion based on the language of Rule 24(c).

Conclusion

To prevail on Rule 24 SCRCP motion, the moving party must establish the following:

(1) Establish timely application:

(2) Assert an interest relating to the property or transaction which is the subject of the action;

(3) Demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and

(4) Demonstrate that its interest is inadequately represented by other parties. *Horry County State Bank v. Flemington Properties, LLC*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004).

"Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of the rights of all parties who may be affected. However, this does not mean intervention should always be granted. Instead, we must consider the pragmatic consequences of a decision to permit or

MAG#7

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deny intervention an avoid setting up rigid applications of Rule 24 (a) (2)." *Horry County State Bank v. Flemington Properties, LLC*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004).

"Failure to satisfy any one of the four requirements precludes intervention." Ex Parte Reichlyn: In Re: *SCDHEC v. Columbia Organic Chemical Co. Inc.*, 310 S.C. 495, 500, 427 S.E. 2d 661,664 (1993). In this motion, the movants have failed to establish that a timely application was filed in this matter. Failure to satisfy this element is critical in a motion for intervention. The movants motion for intervention is denied.

ITS SO ORDERED

September 15, 2016

M. A. Griffith

M. Anderson Griffith
Master-in-Equity for Aiken County

IMAGE 8

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, III, Master-In-Equity

RECEIVED
OCT 13 2016
SC Court of Appeals

Appellate Case No. 2016-002102

Canadian River Farms, Ltd., Colt Farms, Inc., BC Farms, Inc. n/k/a BC Farms of South Carolina Inc., and Outback Farms, Ltd., ... Respondents-Appellants,

v.

Becky J. Gonshorowski, South Carolina Department of Transportation, and Aiken County South Carolina,..... Defendants.

Save Windsor SC.....Appellant-Respondent.

PROOF OF SERVICE

I, the undersigned, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Respondents-Appellants, certify that I have served all counsel of record in this action with a copy of the Notice of Appeal by placing a copy of same by U.S. Mail and electronic mail, on October 13, 2016, to:

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FILED 10.17.16
C.C.C.P.&G.S.

Tina M. Cundari

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY

Anderson M. Griffith, Master-In-Equity

FILED 10-17 20 16 4:48 SP
C.C.P. & G.S.
Deputy Clerk

Case No.:2016-CP-02-00511

Canadian River Farms, LTD,
Colt Farms, Inc., BC Farms, Inc.
nka BC Farms of South Carolina
Inc., Outback Farms, Ltd.,

Respondent(s)/Appellant(s),

v.

Becky J. Gonshorowski, South
Carolina Department of
Transportation, Aiken County
South Carolina.

Respondent(s).

and

Carolyn Barrett and Robert Barrett,
Save Winsor, SC

Appellant(s)/Respondent(s)

AMENDED NOTICE OF APPEAL

Appellants, Carolyn Barrett and Robert Barrett, listed as "inactive" and as other parties to the case hereby appeal the Court's Order Denying Motion for Reconsideration of September 15, 2016, and the Order

of the Court filed June 27, 2016. The Barretts' status in the case from the court docket is set forth as an exhibit from the Public Index.

The intervenors collectively known as Save Windsor and whose names are set forth below, appeal the Order Denying Intervention, also attached hereto.

Save Windsor: Glen Duxbury, Mary Duxbury, Cleve Koon, Earldell Trowell, Bruce Berret, Jr, Wallace Kitchings, Arthur Davenport, Jessica Davenport, Dr. Vicki Long, Leslie Avery, Terry Kane, Bruce Barrett, William A. Smith, Donnie Moulton, Merle VanGee, Linda VanGee, Robert E. Barrett, Carolyn L. Barrett, Peter DeLorme, Colleen Wittenborn, Sue Dougherty, Paul Dougherty, Betty Pope, Julie Worley, Ron Petrisin, Barbara Petrisin, Rev. John H. Price, Lou Price, Patrick Martin, Joanie Schisler, Matt Wizovek, Tonya Wizovek, Rev. Don Studebaker, Virginia Studebaker, Jerry Rowe, Sue Rowe, Miguel Rodriguez, Esteban Negrete, Marc Carney, Pat Carney.

Respectfully submitted,

October 17, 2016

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STATE OF SOUTH CAROLINA

AIKEN COUNTY

IN THE COURT OF
COMMON PLEAS

CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., BC FARMS, INC. n/k/a BC FARMS OF SOUTH CAROLINA, INC., and OUTBACK FARMS, LTD.,

Plaintiffs,

-VS-

BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body politic and political subdivision of the State of South Carolina,

Defendants.

CASE NO:
2016-CP-02-00511

HEARING

BEFORE:	Honorable M. Anderson Griffith
DATE:	Tuesday, May 31, 2016
LOCATION:	Aiken County Courthouse
	109 Park Avenue
	Aiken, South Carolina
BEGINNING AT:	10:03 a.m.

APPEARANCES

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ALSO PRESENT:

Tyler Stone
Brandon Woody
Carolyn Barrett
Vicky Long
Michael Cave

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LEGEND OF THE TRANSCRIPT

dashes [--]	intentional or purposeful interruption
[ph]	denotes phonetically written
[*]	As spoken

PROCEEDINGS

THE COURT: We're here this morning on Canadian River Farms and others versus Becky J. Gonshorowski -- I'm not sure of the pronunciation.

MS. GUYNN: Gonshorowski.

THE COURT: All right. Gonshorowski, South Carolina Department of Transportation and Aiken County. This is a road abandonment case. This is case number 2016-CP-02-511. Summons complaint filed March 10, 2016. I do note there was a letter filed from a Robert E. and Carolyn Barnett [sic] that's in the file, March 15, 2016. Answers filed by the Defendants, one in the form of a *pro se* letter which I considered an answer. And then the Notice of Hearing was mailed out and the Order of Reference to give this Court jurisdiction was filed on May 12, 2016. We did have a short telephone conference last week with the parties and it's my understanding that the Department of Transportation -- is anyone present for the Department of Transportation this morning? All right. And that was the information that was provided at the telephone conference that, although, they had answered, they did not anticipate anyone being present. I'd ask for the Plaintiff,

Ms. Guynn, if you'd provide your full name on the record and your clients who are present here today.

MS. GUYNN: Yes, your honor. My name is Mary Guynn, G-u-y-n-n. I have here with me today, Brandon Woody, Truman Woody to my far right, Vicky Woody who's sitting behind me and Lynn Woody.

THE COURT: I believe you indicated you may have -- I'm not going to hold you to that, I think two witnesses you said at the pre-trial conference. Is that still the case?

MS. GUYNN: Yes, Your Honor. Mr. Woody will be called as a witness. I have Tyler Stone in the hallway who will also be called as a witness.

THE COURT: That was Kyler, first name?

MS. GUYNN: Tyler.

THE COURT: Tyler Stone, okay.

MS. GUYNN: T-y-l-e-r.

THE COURT: All right. Mr. Holly on behalf of Aiken County.

MR. HOLLY: Yes, Your Honor.

THE COURT: All right. Any witnesses you intend to call?

MR. HOLLY: No, Sir.

THE COURT: All right. How about Ms. Gonshorowski?

MS. GUYNN: Your Honor, we -- I have an agreement. If I may approach, for a moment, the bench?

THE COURT: All right.

MS. GUYNN: Ms. Gonshorowski has consented to the road closer. Her original is on top. The Plaintiff's signatures are on the bottom. She will not be here.

THE COURT: All right. I note her signature on the original.

INTERESTED PARTY: Your Honor, is it okay if I see a copy of that?

THE COURT: Do you have an extra copy. Well, I don't know what your position is since this is an agreement between the parties. And you are, ma'am?

INTERESTED PARTY: Carolyn Barrett. I'm listed as a person of interest, my husband Robert Barrett and I.

THE COURT: All right. Well, Ms. Guynn, I'm going to leave that up to your position in regards to that. This is not a party, ma'am. The reason I'm issuing that is because you are an interested party, you're not a named party in the lawsuit. So you're in a different position than the parties here. And I'm gonna get to those in just a minute.

MS. GUYNN: Your Honor, I have no objection to her seeing the agreement. I only have the original presented to you and one copy in my files. So I would ask that she not take it. I would be glad to provide her with a copy after the hearing provided Ms. Gonshorowski consents.

THE COURT: Okay. All right. So I think that's where we're gonna leave that, ma'am, since they are the -- that's an agreement between them that doesn't involve the Court. So I'm not going to get involved and tell them they have to produce that to a third-party. If they want to consent to that, then that's fine by them.

INTERESTED PARTY: Thank you.

THE COURT: All right. Now, will the other parties here who I assume some are in the same category as Ms. Barrett, is that the way I pronounce the last name?

INTERESTED PARTY: Yes, Sir.

THE COURT: As an interested party, my position on that in the road closings is that road closing statutes a little different than other statutes. And the proceedings a little bit different in that it requires prior to filing the petition a Notice of Intention to be published once a week for three

consecutive weeks in the paper. And I believe in reviewing the file you had attachments that that was done. Is that right, Ms. Guynn?

MS. GUYNN: Yes, Your Honor. We did file an affidavit of publication.

THE COURT: Also requires that a notice be sent to the last known address of the abutting property owners whose property would be affected by any such change. Again, Ms. Guynn, I'd ask just as a preliminary matter was that done?

MS. GUYNN: Yes, Your Honor.

THE COURT: And finally the notice posted along the roadway. Was that done?

MS. GUYNN: Yes, Your Honor.

THE COURT: All right. So those things are required by 57-9-10. That's a little bit different than filing other civil actions that may not require those activities. My interpretation of that although statutes do not strictly state that is that since the standard is, does the Court find this in the interest of all parties. And it allows interested parties to have some standing under 57-9-10, that interested parties will be allowed to be -- offer some testimony. You also will be subject in the cross-examination in that regard. So

I'm going to take those as they come at the end. I'm going to give the attorneys their chance to put their position about that on the record. And you would be subject to cross-examination. But procedure here is the Plaintiff's going to present its case. I don't believe there's going be any now, any parties who are gonna call any witnesses to contest the action. And so then I would be glad to hear from the interested parties following that. And we'll handle that, I'll handle that procedure when we get to that. Ms. Guynn, understanding that and I think I told the position in our pre-trial conference that we had last week with the parties. Anything you want to put on the record in regards to that?

MS. GUYNN: Yes, Your Honor. I do wish to file a blanket notice that I do disagree with that position. The folks that are here were given notice of the action by the various means that the law requires. The law does set forth a mechanism for them to file a motion with the Court to be joined as a party. And that would then allow me to depose them. As it stands, I have no idea who's going to be up testifying. I have no idea what they're going to say because they have not followed the proper

procedures to become parties to this case. So I do object to them being witnesses. I would also request that if any do want to testify that they, like my witness, wait outside.

THE COURT: Okay. All right. We'll address that in a minute then. Mr. Holly, any position county takes on that?

MR. HOLLY: No, sir.

THE COURT: Okay. All right. I believe and I note the objection by Ms. Guynn in regards to that. I'm still going to proceed in the same fashion for those reasons I've stated. I will -- I will, though, state that if parties are going to testify that they would be outside the courtroom until the time they're gonna testify if they want to present testimony in the case. That is for the purpose, of course, excluding witnesses so it's their testimony so it's not that they don't listen to what everybody else says and then form their testimony around that. So, Ms. Barrett, I'll ask you since you're sitting at the counsels table there, we're, kind of, filled up in the rows, are you intending to testify?

INTERESTED PARTY: Yes, Sir.

THE COURT: All right. All right. Could I have a show of hands of other parties who like to

testify here today? All right. Ma'am, on the end could you give me your name?

INTERESTED PARTY: Vicky Long, L-o-n-g.

THE COURT: And, sir, I believe you raised your hand?

INTERESTED PARTY: Yes, Michael Cave.

THE COURT: Michael Cave?

INTERESTED PARTY: Yes.

THE COURT: C-a-v-e?

INTERESTED PARTY: Yes.

THE COURT: Anyone else? All right. Then I'll ask you three, I would grant the motion requested then if I'm going to allow the testimony that they be treated in that fashion. So I need y'all to wait outside. We'll call you in when it's time to testify. Now, let me make sure I make myself clear by having you wait outside that does not mean that anyone in the courtroom should step outside and start talking to any of the three of you about what the testimony is inside. Again, the purpose of this is to have everybody offer their own testimony. I'll also say after a party testifies please don't go back outside and tell people here's the questions they asked, here's the topics we discussed. It needs to be your testimony about your position in

regards to this action. So having that information, I'm assuming we won't have any problem with that. So I'm glad to have the parties testify. I've noted the objection by Ms. Guynn, and we'll proceed in that fashion. So if you three would wait outside. We'll have two witnesses testimony and then I think we'll start calling you in.

(INTERESTED PARTIES LEAVE THE COURTROOM)

THE COURT: All right. Any comments from the Plaintiff in regards to my instruction to those potential witnesses?

MS. GUYNN: No. We appreciate it, Your Honor.

THE COURT: All right. Mr. Holly, anything you want me to add?

MR. HOLLY: No, Sir.

THE COURT: Okay. All right. Any other pre-trial matters before we start?

MS. GUYNN: No.

THE COURT: All right. Not required to give a opening. Obviously, it's non-jury. Ms. Guynn, if you want to give us your brief opening, that's fine. If not, you can call your first witness.

MS. GUYNN: Thank you, Your Honor. We are here today to ask that the -- approximately a two foot -- two mile long section of Oak Ridge Club Road as well

as approximately a one mile section of Old Bell Road be abandoned by the Court. We have a number of different reasons for this request from safety concerns both for persons and property as well as maintenance issues. I am gonna call first to the stand Tyler Stone, he's waiting out in the hallway.

THE COURT: All right.

(WITNESS ENTERS COURTROOM)

THE COURT: Good morning, Mr. Stone. If you'd come right over here and raise your right-hand before you sit down, please.

Whereupon,

TYLER STONE

being duly sworn, testified as follows:

THE COURT: All right. Have a seat right here. Plaintiff may proceed.

DIRECT EXAMINATION

BY MS. GUYNN:

Q. Good morning. Could you please state and spell your name for the record?

A. My name is Robert Tyler Stone, III. R-o-b-e-r-t T-y-l-e-r S-t-o-n-e.

Q. Mr. Stone, are you familiar with the roads that the Plaintiff is petitioning to be closed?

A. I am.

Q. And how are you familiar with these roadways?
A. I'm a contractor for the Woody's.
Q. And in that capacity on a weekly basis, on average, how often would you be on these roads?
A. When we were doing work probably three to four days a week.
Q. Thank you.

MS. GUYNN: Your Honor, I have a large graphic.

THE COURT: Okay.

MS. GUYNN: I don't know the best way for everybody to see it.

THE COURT: You can have the witness come around --

MS. GUYNN: Okay.

THE COURT: -- if you want to.

MS. GUYNN: That would be good.

THE COURT: And I'll stand over there where everybody out here can see it as well.

MS. GUYNN: If you could come up here please.

THE WITNESS: Okay.

MS. GUYNN: And this I'd like to introduce as Plaintiff's exhibit 1.

(Whereupon, the above-described Large Graphic was marked Plaintiff's Exhibit No. 1.)

THE COURT: Mr. Holly, any objections?

MR. HOLLY: No, sir, Your Honor.

THE COURT: All right. So introduced as Plaintiff's No. 1.

RESUMING BY MS. GUYNN:

Q. Mr. Stone, could you please show to me on this map the two sections of roadway proposed to be closed?

A. On the junction of Old Bell, Weyerhaeuser to Oak Ridge, Highway 78 and Oak Ridge Club Road to Cedar Branch.

Q. Thank you. And can you show me the boundary lines of the Plaintiff's property surrounding this road?

A. It's outlined in blue. Goes here (indicating on map), here, way down Weyerhaeuser all the way to Cedar Branch, down Cedar Branch cuts in, goes to Highway 78 all the way across Oak Ridge to the Equestrian Center.

Q. And besides the Plaintiff, are there any other persons or parties that have property on the road proposed to be closed?

A. Just Ms. Gonshorowski.

Q. Thank you. And are you aware of Ms. Gonshorowski has consented to the road closure?

A. I am.

Q. Thank you. That's all with this map.

THE COURT: Come back and have a seat, sir.

Q. When did you first become familiar with this property approximately?

A. Probably January of last year.

Q. And when you first saw the property, what was the condition of the property, timber?

A. Heavily -- heavily wooded timber property.

Q. Does the -- that aerial map depict your understanding of how the property looked at the time?

A. Yes.

Q. And at the time when you became familiar with it, did you have a chance to observe traffic traveling over the sections of roadway that are proposed to be closed?

A. On numerous occasions, yes, ma'am.

Q. And what was your opinion of the traffic at the time?

A. I mean, it was normal traffic on dirt roads. Normal being people typically driving at a normal rate of speed. The visibility is -- was limited in places.

Q. And what does the property look like now?

A. It is completely cleared. And it is a working farm.

Q. And have you had a chance to observe the traffic since the property's been cleared?

A. Yes, ma'am, I have.
Q. And what is your opinion of the traffic now?
A. The rates of speed have increased at an unsafe speed, at times, in my opinion. I can't attest to whether traffic has increased at all, but that's attracting traffic, people curious as to what's going on.
Q. And do you have an opinion as to why it appears the rates of speed have increased?
A. Well, you can see a long way now. You can see, literally, once you hit a rise, you can see all the way to the other end of the property and it just seems people are taking that into account and driving at higher rate of speed.
Q. Even with the increased visibility, is the road any safer for faster travel?
A. No, it's not, not by my opinion.
Q. And with regard to this high rate of speed, you said that it's an active farm on both sides of the road?
A. Yes, ma'am.
Q. Is farm equipment traveling the road and crossing the road?
A. Yes, ma'am.
Q. And farm equipments rate of speed is?
A. One to two miles an hour.

Q. Okay. And is that compatible with vehicles traveling at a high rate of speed?

A. No, ma'am.

Q. Have you had a chance to observe any dangerous situations?

A. I have.

Q. Could you please tell the Court?

A. On a couple of occasions while we were doing work in late 2016 [sic] we were waiting to get some heavy equipment off of Oak Ridge Club Road onto the property and we were having to stage on the side of the road and waiting to turn a lowboy and an 18-wheeler truck in and we had on a couple of occasions people going by, at, I would estimate at 55 miles an hour. And on one occasion my business partner was walking around the front of the truck and almost got hit.

Q. And would it be possible to farm one side of the road or the other without the farm equipment crossing over?

A. No, ma'am, it's an impossibility.

Q. You just mentioned you saw somebody going approximately 55 miles an hour, could you talk about the condition of the roadway?

A. Well, it is what we call washboard most of the time,

a large percentage of the time. When there is rain event it gets relatively slick in places and there's also some standing water. That has been the case since early of last year. Occasionally we have people -- mud in the road, but it's -- it's typically washboard. When the county -- if the county scraps it, it's good for a day or two and then it goes back to a washboard condition.

Q. Have you noticed any affects on your vehicles from driving on the road?

A. Yes, I have. I have numerous unidentified squeaks from my roof and my dashboard from -- on traveling these roads.

Q. From your knowledge of the roads what would you estimate a safe speed to travel on the road today?

A. In predominant conditions, 25 to 30 miles an hour max.

Q. And it's correct there is no speed limit on those roads -- no speed sign posted, correct?

A. No, there is not.

Q. And do you know why a speed sign is not posted on the roads?

A. It's my understanding that county ordinances do not allow speed limit signs on county roads, maintained roads.

Q. Do you know whether any action's been taken to slow folks down along the road such as calling the Sheriff's Department?

A. I believe it has, yes.

Q. And has that produced any long-term slowing of the traffic?

A. It has not, no.

Q. Now, if we may turn to another incident you all have experienced on the road. Since the property has been cleared besides the excessive speed have you observed any other adverse affects?

A. We have, of several incidents of trash being dumped on the property. We had one incidence of arson on the property and several instances of vandalism where people have come off the road done donuts in the fields once they were complete.

Q. I'm going to show you a series of pictures. And I would just ask that you look at them, if you could identify what we are looking at. And for efficiency's sake if it's one incident I'm providing multiple pictures.

MS. GUYNN: May I approach?

THE COURT: Yes.

MS. GUYNN: And this I'd ask to be marked as Plaintiff's exhibits 2, 3, 4 and 5.

THE COURT: Any objection, Mr. Holly?

MR. HOLLY: No, sir, Your Honor.

THE COURT: All right. So admitted as Plaintiff's 2 through 5.

Q. And, Mr. Stone, could you please look at these pictures and tell me whether you are familiar with what is shown in these pictures?

A. I am.

Q. And what are we -- if you could please describe for the Court what this is.

THE COURT: Before he starts that, are these pictures marked where he's going to be able to reference whether it's 2, 3, 4, 5 he's looking at?

THE WITNESS: Are they in order?

MS. GUYNN: They are -- they're all in the exact same order and they are the same event, but I can mark -- I'd be glad to mark --

THE COURT: Let's mark them --

MS. GUYNN: Okay.

THE COURT: -- because they won't be in the same order if other people are looking at them.

MS. GUYNN: Okay. Let me -- I apologize.

THE COURT: That's all right.

(Whereupon, the above-described Photos were marked Plaintiff's Exhibit Nos. 2, 3,

4, 5.)

RESUMING BY MS. GUYNN:

Q. And I'll just -- if you could describe what we are looking at with the pictures, Plaintiff's 2 through 5?

A. Exhibit 2 is someone four-wheeling or mudding off I believe at the junction of Cedar Branch and Oak Ridge Club Road into the farm field. Exhibit 3 is someone traveling down the farm field paralleling Oak Ridge Club Road. Exhibit 4 is the same. Someone going through the farm fields I believe after a rain. And then Exhibit 5 is someone coming off of Oak Ridge Club Road into Woody property on the farm field and four-wheeling.

Q. And are you familiar with approximately the time frame that these pictures were taken?

A. I believe they were in late 2016 or early -- late 2015, I believe. After we had completed development of the fields.

MS. GUYNN: Four more photos to be Plaintiff's 6, 7, 8 and 9.

(Whereupon, the below-described Photographs were marked Plaintiff's Exhibit Nos. 6, 7, 8, 9 and 10.)

COURT REPORTER: Ten?

MS. GUYNN: I'm sorry. And ten.

Q. And, Mr. Stone, if you could look at these and please tell me what the pictures depict?

A. Someone coming off of Oak Ridge Club Road doing donuts in a planted field. And that is someone coming off of Oak Ridge Club Road doing donuts in a planted field of cover crop. Exhibit 8 is multiple donuts in the planted field off Oak Ridge Club Road. Exhibit 9 is the same. And Exhibit 10 is entry point off of Oak Ridge Club Road where someone had done donuts on the field.

Q. And timing wise is it accurate to say this is after the first photographs I showed you?

A. Yes. These were in 2016, after the cover crop had been planted.

MS. GUYNN: And then Plaintiff's 11.

(Whereupon, the below-described Photograph was marked Plaintiff's Exhibit No. 11.)

Q. And if you could please identify that.

A. This was -- and I don't know where the access point of this was, but this was a separate incident I believe on multiple donuts in a field after a rain event.

Q. So it's definitely a different time -- it appears to be a different time than the --

A. Yes.
Q. -- prior photographs?
A. Yes.
Q. And can you tell where they accessed this -- the property?
A. I believe this is off of -- close to the junction of Oak Ridge Club Road and Old Bell.

MS. GUYNN: Plaintiff's 12 and 13.

(Whereupon, the below-described Photographs were marked Plaintiff's Exhibit No. 12 and 13.)

THE COURT: Mr. Holly, do you have any objections to these second, third and last set of photos coming in?

MR. HOLLY: No, Your Honor.

THE COURT: All right. So admitted.

Q. And, again, if you could identify what you are looking at?
A. This is where somebody has come off of the road and had accessed the fields.
Q. And is this a separate incident from the prior photographs?
A. To my knowledge this one is.

MS. GUYNN: And this would be 14 and 15.

(Whereupon, the below-described

Photographs were marked Plaintiff's Exhibit Nos. 14 and 15.)

Q. And if you could please identify what these photographs demonstrate?

A. Exhibit 14 was a large tire trash dump that occurred off of Oak Ridge Club Road I believe in early December of 2015. And Exhibit 15 is another tire that was dumped off of Oak Ridge Club Road on the same day.

Q. Thank you.

MS. GUYNN: This will be 16 through -- Plaintiff's 16 through 19.

(Whereupon, the below-described Photographs were marked Plaintiff's Exhibit Nos. 16, 17, 18 and 19.)

THE COURT: Any objections on those from the County?

MR. HOLLY: No. No, Your Honor.

THE COURT: All right. So admitted.

Q. If you could please identify these photos for me.

A. So the 16 is a road closure sign that I put up and that was vandalized. Someone tried to rip it off the post. That was at the junction of Old Bell and Oak Ridge Club Road. Exhibit 17 is the same. Someone tried to rip the sign off. Exhibit 18 is

the same. And Exhibit 19 is the same.

Q. And based upon when you put these signs up, when would you estimate that this vandalism was done?

A. Probably two weeks after I put the signs up.

MS. GUYNN: This is the last of the photographs will be Plaintiff's 20.

(Whereupon, the below-described Photograph was marked Plaintiff's Exhibit No. 20.)

THE COURT: Any objection on this one?

MR. HOLLY: No, Your Honor.

Q. Could you identify this photograph?

A. It appears to be a mailbox that was thrown out into the field, dumped into the field.

Q. Thank you. And have you all taken any action as a result of this vandalism and called the police?

A. We've called the Sheriff on several occasions. I think the litter patrol has been out and been called on a couple of occasions as well.

MS. GUYNN: I'm now going to...

THE COURT: Okay.

(Whereupon, the below-described Copy of Sheriff's Office Incident Report was marked Plaintiff's Exhibit No. 21.)

MS. GUYNN: Plaintiff's 21.

Q. And if you could take a moment, I know there's a lot

of writing there, and see if you can identify that for me.

THE COURT: Any objection on this one, Mr. Holly?

MR. HOLLY: No, Your Honor.

THE COURT: So admitted then as Plaintiff's No. 21.

A. Can I put my glasses on? This is the arson case. We had someone light a pile or stump off of Oak Ridge Club Road.

THE COURT: I'm sorry. Did what?

A. They lit a -- some trees off Oak Ridge Club Road.

Q. And this is the police report from that incident?

A. Yes, it is.

MS. GUYNN: I have another report I'd like to show you which we'd ask to be entered as Plaintiff's 22.

(Whereupon, the below-described Copy of Sheriff's Office Incident Report was marked Plaintiff's Exhibit No. 22.)

Q. And, again, if you'll take a minute and see if you can identify this for me please.

A. This is one of the trash dumping incidents incident report that we called in.

THE COURT: Any objection on this one, Mr.

Holly?

MR. HOLLY: No, Your Honor.

THE COURT: All right.

MS. GUYNN: The next, Plaintiff's 23.

(Whereupon, the below-described Aiken County Litter Control Incident Report was marked Plaintiff's Exhibit No. 23.)

Q. I know it's a few pages. If you could take a minute and review it.

A. This is the litter control report on I think related to this incident of dumping. We had an individual dump a bunch of house garbage on the property.

Q. And he was ultimately arrested, correct?

A. Yes, he was.

THE COURT: Any objection on this one, Mr. Holly?

MR. HOLLY: No, Your Honor.

THE COURT: So admitted as Plaintiff's No?

MS. GUYNN: 23.

THE COURT: 23.

MS. GUYNN: And the next would be Plaintiff's 24.

(Whereupon, the below-described Aiken County Litter Control Incident Report was marked Plaintiff's Exhibit No. 24.)

Q. And if you could also identify this please.
A. This is the litter control incident report related to the dumping of tires off of Oak Ridge Club Road.
Q. And, Mr. Stone, in this situation what is the concern with the vehicles driving through the field?
A. We've been concerned while we were doing our work and as well as witnessing the Woody's working their farm that the high rate of speeds going down Oak Ridge that there's gonna -- there's going to be an accident at some point in time.
Q. And in terms of driving through the fields with the four-wheelers and the vehicles as those photos show, what -- can that cause problems for the fields?
A. Absolutely. I mean it's a -- it cost a lot of money to plant crops and maintain crops and grow crops. And with the trespassing and vandalizing it just -- it cost a lot of money. It represents a loss to the Woody's.
Q. And if they drove through the fields and tore up what was planted are those crops of any value?
A. They're of no value.
Q. With regard to the vandalism, have the Woody's, besides clearing the field and planting, have they or you made any structural improvements in the field?

A. There's been significant improvements to the fields. There's wells, transformers and irrigation pivots have been put up.

Q. And is there any concern about the safety of those improvements?

A. There is real concern.

Q. As a result of the vandalism has any action been taken or have actions not been taken because of the vandalism?

A. Well, because of what we witnessed, we've had discussions about not planting crops that are easily accessible from the road because it seems to be that's a cause for people to four-wheel and do donuts in the fields. So they have not been planted.

Q. And at this point are we getting past the optimum time for planting of those particular crops?

A. We're well past optimum time.

Q. And is money being lost because the crops are not planted?

A. Yield is being sacrificed and money is being lost.

Q. And have improvements not been finished at this point because of vandalism concerns?

A. They are not finished.

Q. Thank you. If the roads were closed, in your

opinion, would that hinder the vandalism?

A. Yes.

Q. And as I look at that, the property is still bordered by some -- some other roads, Highway 78 and Cedar Branch. How would the vandals -- why would they not just access by those roads?

A. Most of the property borders we left buffers, wooded buffers, around, but for visibility and for security. But the interior roads we've -- there is no security.

Q. And in the course of all of this have you had the opportunity to meet with the County about this road?

A. I have.

Q. And about the problems that you're experiencing?

A. Yes, ma'am. I have.

Q. And as a result of that are you aware whether the County passed a resolution?

A. I am.

MS. GUYNN: This would be Plaintiff's 25.

(Whereupon, the below-described Resolution No. 16-02-33 was marked Plaintiff's Exhibit No. 25.)

Q. And if you could look at this and identify what this is?

A. It's a County resolution stating that Council has no

objection to the closing of the road.

Q. And at the bottom of the page there is an impact statement. Could you read that?

A. Aiken County Council states that it has no -- is that?

Q. No.

A. Oh, oh, impact. I'm sorry. Impact statement: Reduction in maintenance costs for these roads.

Q. Are you aware who owns the land underneath the roads?

A. I am.

Q. And who owns the land under the roads?

A. The Woody family.

Q. So the County does not own the land on which the roads are situated?

A. No, ma'am.

Q. What's the County's involvement with the roads?

A. Only maintenance.

Q. Thank you. And they have expressed an opinion -- a desire not to maintain?

A. Yes, they have.

Q. Do you know the approximate length of Oak Ridge Club Road that we are seeking to have closed?

A. I think it's about two miles.

Q. And if that were closed would any parties be

landlocked?

A. No, ma'am.

Q. Is there an alternate route?

A. Yes, ma'am.

Q. And what is that route?

A. That's down the Highway 78 and take a left on Cedar Branch depending on your direction of travel.

Q. And the alternate route, are those roads paved or dirt?

A. They're paved.

Q. Do you know -- are you aware of the speed limit on those two sections of road?

A. 78 is 55 and I believe Cedar Branch is 55 as well.

Q. And I believe you testified earlier that in your opinion the maximum safe speed on Oak Ridge Club Road was 25 to 30 miles an hour?

A. Yes, ma'am.

Q. Have you had an opportunity to do the math, two miles at 25 to 30 miles an hour versus two and a half miles at 55?

A. That's easy to do.

Q. And which way -- which route is faster?

A. Down 78 and up Cedar Branch.

Q. And also, if you were taking Oak Ridge how many turns would you have to make?

A. One, two.
Q. And if you took the alternate route, the paved route, how many turns would you have to make?
A. Just one.
Q. So in your opinion it's not actually faster to go down Oak Ridge Club Road?
A. No, ma'am.
Q. And then if we may speak about Old Bell. When we initially started this action where was it proposed to have Old Bell closed?
A. At the beginning of the Woody property.
Q. So not having impacted Ms. Gonshorowski's property at all?
A. Correct.
Q. And when the petition was filed the closure was moved up to Weyerhaeuser, correct?
A. Correct.
Q. And what's your understanding of why that was done?
A. Ms. Gonshorowski did not want a dead-end cul-de-sac in front of her property because she has similar concerns, trespass, vandalism, loitering.
Q. And Old Bell, I believe you've already stated, the entire portion that we are seeking to have closed is dirt at this point, correct?
A. That is correct.

Q. And does Old Bell -- is it dirt the entire length or does it become paved?

A. It becomes paved at the -- just past the junction of Weyerhaeuser.

Q. And the closing of Old Bell, would that landlock anyone?

A. No.

Q. What would be their alternative route?

A. To go out Old Bell and I'm not familiar with the name of the road that Old Bell runs, junctions into.

Q. Does Hatchaway Bridge sound familiar?

A. Hatchaway Bridge, yes. That's it.

Q. And to your knowledge is that route paved?

A. Yes, it is.

MS. GUYNN: Thank you. That's all that I have for this witness, Your Honor.

THE COURT: Mr. Holly?

MR. HOLLY: No questions.

THE COURT: All right. Let me get a couple of things straight in my mind on this.

CROSS-EXAMINATION

BY THE COURT:

Q. Plaintiff's 2, 3, 5, these photographs are these all from one, the same area, incident?

A. Yes.

Q. Okay. Second set, Plaintiff's 6 through 10 or -- yeah, 6 through 10, I have the same question. Are those from the same incident in the area?

A. Yes, sir.

Q. All right. And, of course, 11 was separate. 12 and 13, are those from the same incident?

A. I believe those are the same incident, but separate from the first two.

Q. Okay. I don't have questions about the tires or the signs. Give me one second. The trees burned, was that a debris pile or was that actual trees, you know, live trees being burned?

A. No, it was a debris pile.

Q. Okay. And that was not on this property, it was across the road, is that what I understood?

A. It was on the -- the Woody's own both sides of the road --

Q. Okay.

A. -- so it was on their property, yes, sir.

THE COURT: Okay. That's all the questions I have. Thank you. I'm sorry, did Plaintiff want to ask any additional questions based on the Courts questions?

MS. GUYNN: No, Your Honor.

THE COURT: All right. Mr. Holly?

MR. HOLLY: No, Your Honor.

THE COURT: All right.

MS. GUYNN: And the Plaintiff would now call Brandon -- Brandon Woody to the stand.

THE COURT: All right. Would you come forward. Raise your right-hand for me.

Whereupon,

BRANDON WOODY

being duly sworn, testified as follows:

THE COURT: All right. Have a seat.

DIRECT EXAMINATION

BY MS. GUYNN:

Q. And could you please state and spell your name for the record?

A. Brandon Woody. Excuse me. B-r-a-n-d-o-n W-o-o-d-y.

Q. Mr. Woody, would you like some water?

A. I -- yes, ma'am.

Q. And, Mr. Woody, are you familiar -- I'll allow you to drink for a minute.

A. Thank you.

Q. Are you familiar with the roads that we're petitioning to have closed?

A. Yes, ma'am.

Q. And in what capacity are you familiar with those roads?

A. They run right through the center of the property that my family has purchased.
Q. And approximately how many acres of property are we talking about on this tract?
A. There's just over 1900.
Q. And when you purchase the property was it timbered or was it -- I mean was there timber or was it cleared?
A. Heavily timbered. Yes, ma'am.
Q. Did you have an opportunity to observe traffic on the roads when you purchased the property?
A. Yes, ma'am.
Q. And what was your observation of the traffic?
A. Not excessive speeds. Traffic was not heavy at all.
Q. And since that time what have you done to the property?
A. We have removed the trees and transformed it into a working farm.
Q. And since then have you had a chance to observe the traffic?
A. Yes, ma'am.
Q. And what's your observation of the traffic now?
A. The amount of traffic has increased significantly along with the speed, is increasing.
Q. Do you have any opinion as to why the speed and the

amount of traffic has increased since you've cleared the property?

A. I think the amount has increased because of the activity that's been going on so far as clearing and getting the land so that we can farm it. The speed has probably increased because the visibility is better, but the condition of the road is not better. Just the visibility is better so people think that they can travel faster.

Q. With the increased visibility is it your opinion that it's any safer for the cars to travel faster?

A. No, ma'am.

Q. You said the road runs right through the middle of your working farm?

A. That's correct.

Q. Is it necessary for you to move equipment from one side of the field to the other?

A. Yes, ma'am.

Q. Is there any way to avoid crossing the road with farm implements?

A. No, ma'am.

Q. Do you have any concerns about your machinery and your employees crossing the road?

A. I do.

Q. And could you please describe what your concern is?

A. Even though the land is cleared there's still hills and valleys going down the road, traveling down the road. So if I have a piece of equipment, excuse me, that needs to cross the road, excuse me, you can't always see. Maybe there's a hill to one side of it and you can't always see. Tractors move slow, combines move slow. When I say slow I'm talking five miles an hour, three to five. Sometimes seven miles an hour. And if there's someone traveling at a high rate of speed I'm scared to death there's gonna be a collision. And it's a liability on us.

Q. And do you have occasion to ever drive this equipment?

A. Yes, ma'am.

Q. Do you have employees that have occasion to drive this equipment?

A. Yes, ma'am.

Q. Are you scared for your personal safety?

A. Yes, ma'am.

Q. Are you scared for your employees --

A. Yes, ma'am.

Q. -- personal safety? How often do you have a chance to observe these roads, say on average? How many times a week?

A. Probably five times a week, five to six.

Q. And in your opinion what's the maximum safe speed on these roads?

A. Twenty-five miles an hour is the maximum.

Q. Do you observe vehicles traveling above that speed?

A. Yes, ma'am.

Q. With what regularity, occasionally?

A. Daily.

Q. And have you tried to take action to curb the excessive speed?

A. Yes, ma'am.

Q. And what did you do?

A. Called the Sheriff's Department. They sent a deputy out and that seemed to curb it for a short time frame, but they are very limited on their manpower. So it might get visited every ten days, fifteen days by Sheriff's patrol.

Q. And would it minimize your concern for your safety and the safety of your employees if safe speeds were maintained once every ten to fifteen days?

A. No.

Q. In front of you are a series of Exhibits and I'm gonna just ask you if you could identify them and if you're familiar, again, since the first package is Exhibits 2, 3, 4 and 5.

A. Okay.

Q. And are you familiar with what these pictures depict?
A. Yes, ma'am.
Q. And what is that?
A. Someone driving through the property after a rain storm.
Q. And so I'm not going to belabor the point, we had Mr. Stone go through them, but Exhibits 6, 7, 8, 9 and 10?
A. Someone driving through the property, again, after the crops were planted. They ruined the crops.
Q. And when, you've mentioned they -- when somebody drives through like this what's the impact on -- on you and your business?
A. Our business is to grow a crop and sell it. So they have destroyed part of my growing crops. So it has an economic impact on me.
Q. Could with the damage like that, would that crop not ever be viable this year?
A. No, ma'am.
Q. Number 11 which is a -- Plaintiff's 11, it's not clipped.
A. Number 11 is that someone entered the property off of Old Bell Road and drove out there after a rainstorm, again, to do their mud bogging or

four-wheeling or whatever you want to call it.

Q. And the next set of photos, 12 and 13?

A. Again, that is off -- let's see, actually 12 is off of Weyerhaeuser Road entering onto our property and 13 is off of Old Bell Road entering on our property.

Q. And more vandalism to the fields?

A. Yes, ma'am. Driving over the growing crops.

Q. And then the next set of photographs, 14 and 15. If you could identify those.

A. Those were the old tires that were dumped. That was probably back in, I don't know, December of 2015, I believe is when that occurred.

Q. And in 14 there looks like some kind of panel?

A. Yes.

Q. Are those improvements that you have constructed on the property?

A. Yes, ma'am.

Q. And then we've got 16, 17, 18 and 19.

A. Those are the road closure signs, the Notice of Intent to close the roads. 16 is on Oak Ridge Club Road off of Highway 78. 17, 18 and 19, I believe are on Old Bell Road just off of Oak Ridge Club Road. Vandalism, again.

Q. And then the last photograph if you can identify this?

A. That is a mailbox that someone deposited out in the middle of one of our fields off of Oak Ridge Club Road.

Q. And when did this occur?

A. Saturday night, last Saturday.

Q. So the vandalism is still ongoing?

A. Continues weekly.

Q. And when did you first notice the vandalism starting approximately?

A. Probably just over a year ago when they -- when the fires were lit. So I just say just over a year ago.

Q. Did it coincide with the clearing of the property?

A. Yes. Exactly.

Q. And I believe you said it's happened approximately on a weekly basis since then?

A. Yes, ma'am.

Q. The police that you had called out to come and patrol, have those had any chilling effect on the vandalism?

A. Doesn't seem to.

Q. And the police reports, the incident reports, have those had any effect on the vandalism?

A. Does not seem to. No, ma'am.

Q. And in terms of closing the roads, if you were able to close the roads do you think that that would curb

the vandalism in your fields?

A. Yes, ma'am.

Q. And why is that?

A. We would have a dirt berm put up. Well, the majority of the property has trees around it so that would stop it. And then where there's not trees we would put up a dirt berm and we would have controlled access points with gates to open and close as needed. So that would be the only access points into the farm.

Q. When you purchased this property what was your understanding of who owned the land under the roads that we're proposing to close?

A. We own it. My family owns it.

Q. And what's the County's roll with regard to the roads?

A. Maintenance.

Q. But they do not own them, correct?

A. Correct.

Q. And with regard to the sections of road that we're proposing to close besides your family, who else owns property that is on those sections of road?

A. Becky, I can't say her last name, I'm sorry.

Q. Gonshorowski?

A. Gonshorowski.

Q. And has Ms. Gonshorowski agreed to the road closure as it affects her property?
A. Yes, ma'am.
Q. Would the road closure landlock anyone?
A. No, ma'am.
Q. And is it -- the roads that are proposed to be closed, they're all dirt, correct?
A. That's correct.
Q. And are there viable alternate routes of travel if those roads are closed?
A. Yes, ma'am.
Q. Do you know if the viable routes of travel are dirt or are they paved?
A. I believe they're all paved.
Q. You previously mentioned that the vandalism is a problem for you to farm those fields. And, in fact, you have not planted portions of the field, correct?
A. That's correct.
Q. And that is directly because of vandalism, correct?
A. That is correct.
Q. And in addition I know you -- there are a number of improvements you need to make to the property and those have not been completed either, have they?
A. That's correct.
Q. Again, is it because of the vandalism?

A. That's correct.

Q. Mr. Woody, where is your family originally from?

A. New Mexico.

Q. And what was your business in New Mexico?

A. My dad farmed and he also owned a glass shop.

Q. Why South Carolina? Why did you decide to relocate the family and the business to South Carolina?

A. We -- we talked to the Ag commissioner and he was very confident that we would like South Carolina. He said South Carolina was an Ag friendly state. Land prices were getting very, very competitive where we were. So after talking with the Ag commissioner and we also talked with Amick Farms and Columbia Farms which own feed mills in Monetta for their chicken houses. They claimed that the locally grown corn produces a bigger chicken, faster. So they have a better rate of return on their investment if they can buy locally grown corn versus corn that is shipped in out of the Midwest. So we put all those factors together and we decided this was a move that we needed to make.

Q. Before you came to South Carolina were you aware of whether there was an adequate supply of local corn for the poultry industry?

A. No, ma'am.

Q. You -- you -- you were not aware?
A. I was not aware of anything.
Q. Okay.
A. What I --
Q. Since you've lived in South Carolina have you learned whether there's an adequate supply of corn for the poultry industry?
A. I have learned, yes.
Q. And what's your understanding?
A. There is a very big deficit of corn for the poultry in this area.
Q. So your crop is necessary in this state?
A. That's correct.
Q. In fact, your crop is necessary right in this region?
A. That's correct.
Q. And it is being -- your sole consumer is, or your primary consumer is -- is where?
A. It's gonna be in Monetta.
Q. So you're going to be supplying locally?
A. Yes, ma'am.
Q. In terms of the investment that you have made locally, approximately how much have you spent in real estate?
A. We have spent close to ten million dollars on real

estate.

Q. And on this tract alone, this one tract alone, how much have you spent?

A. We've spent just over five million.

Q. And the land alone is not enough for the corn, is it?

A. That's correct.

Q. You need a number of improvements?

A. Correct.

Q. And you did commence with the improvements, although, as we heard they're not done?

A. That's correct.

Q. What more roughly, how much have you spent in improvements to the fields?

A. We've spent another four and a half million on improvements.

Q. And in terms of contractors were they local?

A. Local. Yes, ma'am.

Q. And if these roads aren't closed is that gonna render a lot of the use of that field obsolete to you?

A. Yes, ma'am.

Q. Would that investment be in large part wasted?

A. Exactly, yes.

Q. If you are able to farm these fields what do you

estimate you'd spend annually in terms of maintenance, fertilizer, planting and so forth?

A. We'll spend about two and a half million dollars a year on -- cost.

Q. And where would you be getting the materials? The 2.5 million dollars worth of materials from?

A. We'll get it all in the State of South Carolina.

Q. And if you can't farm those fields are you going to be spending two and a half million dollars?

A. No, ma'am.

MS. GUYNN: That's all I have for this witness.

THE COURT: All right. Well, given those, Mr. Holly, you have any questions?

MR. HOLLY: No, sir.

THE COURT: All right. I've got a couple based on those last questions then.

CROSS-EXAMINATION

BY THE COURT:

Q. Out of that two and a half million based on the fields that you're not growing stuff, how much does that represent out of the two and a half million that you're not going to be buying in material?

A. We've got about $700,000 tied up in those fields. It will not be --

Q. That you won't plant?

A. It's not producing right now.

Q. Okay. And is that the entire field that's obsolete? You're not planting any of those particular fields?

A. That's correct.

Q. Based on the vandalism?

A. That's correct.

THE COURT: Okay. All right. Ms. Guynn, anything else in response to my questions?

MS. GUYNN: Nothing, Your Honor.

THE COURT: Mr. Holly?

MR. HOLLY: No, Your Honor.

THE COURT: All right. Sir, you can have a seat. Thank you. All right. Anything else from the Plaintiff?

MS. GUYNN: Nothing, Your Honor.

THE COURT: That completes the Plaintiff's case?

MS. GUYNN: Yes.

THE COURT: All right. Well, we have Ms. Barrett, Carolyn Barrett. If you could bring her in please.

(WITNESS ENTERS THE COURTROOM)

THE COURT: Step forward right here, Ms. Barrett. Before you sit down, let me get you to raise your right-hand for me.

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Whereupon,

CAROLYN BARRETT

being duly sworn, testified as follows:

THE COURT: All right. You can have a seat. Now, let me say a couple of things as we get started here because I know you've been sitting outside. Obviously we've had some testimony from some witnesses. I'm going to give you an opportunity to give your position as an interested party in this regard on the road. I see you brought some stuff up with you. Let me just say that if you review that and you're reading from that in your testimony and the Counsels, either one of them, say I want to see what she's looking at, they ask some questions. They're entitled to do that in my opinion, okay?

THE WITNESS: Okay.

THE COURT: All right. So I'm going to let you, if you please state your full name for the court reporter.

THE WITNESS: Carolyn Little Barrett, B-a-r-r-e-t-t.

THE COURT: And you are coming forward this morning as an interested party in regards to this proposed road closing; is that --

THE WITNESS: Yes.

THE COURT: -- correct?

THE WITNESS: Yes, sir. I am. And I represent approximately 70 families --

THE COURT: Now, you don't --

THE WITNESS: -- Old Bell Road.

THE COURT: -- represent, ma'am. You're an attorney?

THE WITNESS: Okay. No, I'm not.

THE COURT: Okay. Then you don't represent anybody, but yourself.

THE WITNESS: Okay. Well, I'm speaking for myself.

THE COURT: Okay. That's fine and I --

THE WITNESS: That this --

THE COURT: I'm gonna let you go ahead and state what your position is and the reasons why you're either for or against this road closing or anything else you think would be significant for the road to be closed.

THE WITNESS: Okay. First of all, it's not an abandoned road. We use the road and our biggest primary number one concern is safety. I have been talking with the fire department and I have information here. The fire department calls for our area are all answered from the Windsor Fire Station.

So when a 9-1-1 call goes through it goes to Windsor. All right. As the road is right now, if the Old Bell Road is left open I have a chart and a map here that shows that the fire department would have to come 5.1 miles the way my house is now, but if that road is closed they would have to come 7.5 miles. I have talked with Assistant Fire Chief for Aiken County and he has told me --

MS. GUYNN: Your Honor, I'm going to object, hearsay.

THE COURT: Sustained. They're not here to testify, ma'am. You can't talk about what somebody else who's not here to be cross-examined.

THE WITNESS: Okay. Okay. All the calls for emergency situations are answered from the Windsor Fire Department. So if we have a situation where our house is on fire, a person is trapped in a house fire, if they have a fire from a accident, a piece of farm equipment or an auto accident or anything like that, all of those calls are answered from Windsor. So the biggest problem that I have with it is the safety involved. And if that road is closed, we have a much longer route that has to be taken to get to us. And I feel like that it's gonna put 70, at least, lives in danger if that is done because

we're gonna all have the same problem. The fire department is not gonna be able to enter our property through Windsor. They're gonna have to come all the way around 78 to Hatchaway Bridge Road and back. And if my life is on the line I'd really like the shortest route possible to be available.

THE COURT: All right. Have anything else?

THE WITNESS: I have copies of a survey. I'm sure Ms. Guynn has copies of the survey that was done on the property when the property was purchased. And what I would like to show the Court is that it was known that those roads be taken at the time of this survey. And at the time this land was purchased someone told them that they could have the road because up here on -- where it's got Old Bell marked on the survey, it says to be relocated. Down here on Oak Ridge Club Road it's got to be relocated.

THE COURT: Have you seen this, Ms. Guynn?

MS. GUYNN: No, Your Honor.

THE WITNESS: So the fact was made to take our road before the purchase was made on that property. Which this survey is dated 2/15 of seven -- of '15. I just blew it up so you could read the writing.

THE COURT: And what's the significance of that

related to the road, the proposed road closing?

THE WITNESS: The significance of that is the farm, attorney or the farm owners decided in advance that they were gonna close that road before they ever even bought the property. And I don't think that's fair. I think that the people that live on that road -- and we've had our property 20 plus years and so has most of the people sitting out here in this courtroom that's from Old Bell Road have had our property for a long time. And it's not fair for that decision to be made prior to talking with any of us.

And the County attorney, he didn't call us or tell us anything about it. The other thing that I wanted to talk about having to do with the safety out there, which safety is -- would be my number one concern being a retired law enforcement officer I can tell you safety is key.

They spoke about vandalism. I have talked with, and there, again, he's not here to testify, but I've talked with a deputy that covers that area and he said he had no reports of vandalism on that property and if there was a high --

MS. GUYNN: Objection, Your Honor, hearsay.

THE COURT: Sustained.

THE WITNESS: I feel like if there was a high rate of vandalism on that property there would be something to substantiate it, perhaps incident reports where the police had been contacted. Because I don't think the police has been contacted on any of those incidents and that's based on what I know.

The other issue that I want to talk about and their objective, one of the reasons for Mr. Woody -- and Mr. Woody wanting to close the road was the high rate of traffic on that road. The people were going at fast rates of speed and it put everybody in danger.

Farm tractors moving slow might cause an accident, but the only people that we have -- that I have witnessed going fast on that road has been farm equipment. Farm trucks, the concrete trucks, construction company trucks, electrical company trucks, semis hauling deliveries. All those trucks have been driving way in excess of 55 miles an hour. And anybody that lives on the road could testify to that.

Now, what I did is call Argos Concrete Company and asked them to please slow the trucks down because they were driving at least 55 miles an hour.

That street is a residential street. We have children, kids on bicycles and we don't need that kind of a danger. Okay. It still continued so the next day at seven o'clock in the morning the concrete trucks were still coming full speed 55, at least, miles an hour every five minutes.

So I called the Sheriff's Department and they said they would monitor it. It still continued. We still continued to see trucks flying down that road. So I then spoke with our Aiken County Sheriff and asked Mr. Hunt to please monitor that situation on the road because those trucks are causing us a problem. And the danger is from their trucks, not from our vehicles.

Now, there is a another issue having to do with the traffic. I have some pictures. These are farm roads. Farm has roads that they could use in the farm, so. And their objective was that trucks, tractors crossing from field to field might cause a problem. But if they organize the traffic within their farm those tractors will not have to be crossing Old Bell Road very, very seldom. And as you can see they have roads off of the farm. They also put in a gravel road --

THE COURT: You stipulate there are other roads

on the farm other than the public roads or the roads we're talking about?

THE WITNESS: Yes.

MS. GUYNN: Yes, Your Honor, there are other paths on the property.

THE COURT: Okay. All right.

THE WITNESS: And those roads could be used to take the danger and the traffic off of Old Bell Road. That's what I'm saying.

THE COURT: Okay.

THE WITNESS: And I would also like to show there are some stipulation with the paperwork because this is a picture of Old Bell Road, it's County Road C774. And the ad in the paper it said 744 when it was advertised.

THE COURT: All right. Give me that one more time please.

THE WITNESS: Okay. At Old Bell Road, it's County Road C774. I took a picture of the sign and I confirmed that with the county. Okay and the ad, this is the ad that was run in the paper. I've got an original. It refers to it as C744.

THE COURT: Does that also give the name of the road?

THE WITNESS: Yes, sir.

THE COURT: Okay.

THE WITNESS: Okay. And --

THE COURT: Any dispute in that regard from any of the parties?

MS. GUYNN: I honestly haven't reviewed it, Your Honor.

THE COURT: Okay. Mr. Holly?

MR. HOLLY: I haven't reviewed it either.

THE COURT: All right. Okay. Go ahead, ma'am.

THE WITNESS: Also in the survey in -- in that same regard in the survey that was done on the plat at the time they bought the property it was listed as C744.

THE COURT: All right. Anything --

THE WITNESS: And also, Your Honor, I'd like to say that I have already done a petition and made it a part of the papers that you have which has 25 names on it of residents on that road that do not want --

MS. GUYNN: Objection, Your Honor. She cannot testify for those individuals.

THE COURT: Right. Yeah, everybody's got a chance today to testify, ma'am. Three people, you and two other people --

THE WITNESS: Yeah.

THE COURT: -- raised their hands so they would testify. So that's -- that's where we're at as far as anybody else testifying.

THE WITNESS: Okay. The other thing that I wanted to mention, more of those people could be here today if it wasn't for two things, one; we're a working community and sometimes their work schedule doesn't permit them to come to a hearing and, two; Ms. Guynn's office called most of them and told them they didn't have to come to this hearing today.

THE COURT: All right. Anything else?

THE WITNESS: That's it, sir.

THE COURT: All right. Ms. Guynn, any cross-examination?

MS. GUYNN: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. GUYNN:

Q. Ms. Barrett, could you show me on this map where you live?

A. I live at 252 Old Bell which is the third house before Weyerhaeuser. You see Weyerhaeuser Road?

Q. Right here?

A. All right. I live just a little short distance up from there.

Q. Am I pointing to the correct?

A. I don't know.

THE COURT: You can walk around there, ma'am.

Q. So here's Weyerhaeuser. Could you point to where you live? And here's Ms. Gonshorowski's house and this is the field where the Plaintiff's have recently cleared.

A. Okay. Well, I don't know the plat number of our property, but we've got two plats of land and I'm thinking it's right here.

Q. Yes, ma'am.

A. That's it right there, because that's our shop building. You know, we own that and we own this strip over here. We own two lots.

Q. So for the record you're saying the tax parcels are 190-0009001 and 190-0009003?

A. Yes.

Q. Thank you. And -- that's all with regard this.

THE COURT: You can have a seat, ma'am.

Q. And is Old Bell in front of your house paved?

A. Yes.

Q. And the Plaintiff's have not petitioned to close the road in front of your house, correct?

A. No.

Q. And if the road is closed you will not be landlocked, correct?

A. No, personally as far as our property, no. We will not be landlocked because we have a driveway off of Old Bell Road, but where the problem would come in is we can't go the other way to Windsor, which we do on a daily basis. And fire trucks and emergency's and people like that will not be able to get to us fast.

Q. And you previously mentioned if Old Bell were closed, I think you said the difference for the fire department would be 7.5 miles versus 5.1, did I accurately state that?

A. 7.4, I think. So basically they'd have to come 2.4 miles further to get to us in an emergency situation.

Q. And how would -- if Old Bell is closed, would they travel down Highway 78 to Hatchaway to Old Bell to get to your home? And are all of those paved roads?

A. Yes.

Q. And are you familiar with the speed limits that are posted on those roads?

A. It's 55 on Highway 78 and 35 on Old Bell and it's 50 on Hatchaway Bridge.

Q. Okay. And then on Old Bell, the dirt portion that's proposed to be closed, do you have an estimate of the safe speed on that piece of property?

A. Thirty-five.
Q. And have you had an opportunity to do the math and see whether 5.1 miles at 35 versus 7.4 at 55 would be faster or slower?
A. It -- it will make a difference of how quick they get to us, yes. Because they're literally two blocks away from us.
Q. Does the math support that or is that your opinion?
A. That's my opinion.
Q. Thank you. With regard to the plat that you pulled out that I walked up and looked at, what was the language on the plat regarding the roads? Did it say to be relocated?
A. Yes.
Q. It did not say to be closed?
A. It said to be relocated.
Q. It did not say to be abandoned, correct?
A. No.
Q. Okay. And then you made reference to some Argos trucks driving at a high rate of speed. Where did you -- were you at your home when you saw them driving at a high rate of speed? And it's paved in front of your home, correct?
A. (Nods head).
THE COURT: You need to say yes or no --

A. Yes.

THE COURT: -- so the court reporter can get it down.

A. Yes.

THE COURT: Thank you.

A. Yes, it is paved.

Q. In addition, you mentioned to the Court that there are some other farm tracks on this property. Is there any way on these farm tracks that they could get from this field to the field on the other side of Old Bell without crossing either Old Bell or Oak Ridge Club Road?

A. No.

Q. And then the last, you made mention of the county road being designated at 774 versus 744. It appears you're with us today so that did not impede your ability to find out about this hearing or this case, correct?

A. Right.

MS. GUYNN: I have nothing further.

THE COURT: Mr. Holly?

MR. HOLLY: No questions, Your Honor.

THE COURT: All right. Ma'am, you can have a seat. You can remain in the courtroom, though.

THE WITNESS: Okay.

THE COURT: I believe the next individual that raised their hand, I took the name as Vicky Long.

(WHEREUPON WITNESS ENTERS THE COURTROOM)

THE COURT: Ms. Long, you can come forward here.

THE WITNESS: Yes, Your Honor.

THE COURT: Right here.

MS. GUYNN: I'm fine with Ms. Barrett staying in the courtroom if she's not going to be testifying again. If she -- I would like to call a rebuttal witness based on some testimony that she gave.

THE COURT: All right. Ms. Barrett, they're gonna call and anticipate recall or calling a rebuttal witness based on your testimony. She's going to have to be present when that rebuttal witness testifies.

MS. GUYNN: And I'm fine with that, Your Honor.

THE COURT: So what are you asking the Court to do?

MS. GUYNN: While Dr. Long is testifying to ask her to step out and then while Mr. Cave testifies.

THE COURT: All right. If you would like the opportunity, ma'am, to testify I'm going to let you come in and hear the rebuttal witness, because that's going to be apparently in response to your

testimony so I want you to be able to hear it. So I'm going to give you an opportunity if you want to come back and testify after that. So if you'll step out while we take these witnesses testimony. Thank you, ma'am. All right. Ms. Long, if I could you have you stand up for one second and raise your right-hand for me.

Whereupon,

VICKY LONG

being duly sworn, testified as follows:

THE COURT: Have a seat. Now, I'll tell you as I told the last witness and as I explained before I excused you from the courtroom. This is a little bit unusual situation here. I'm gonna let you -- I'm gonna ask you to put your full name on the record in a minute and then I'm gonna let you testify as to your position in regards to the road closing that's been proposed. If you have any documents that you're not imparting and so not admitting documents, but if you've got any documents that you're looking at please understand the other attorneys can look at that as well in that regard. But you certainly can testify and then they'll have a chance to cross-examine you, okay?

THE WITNESS: All right.

THE COURT: All right. Would you state your full name for the record please?

THE WITNESS: My name is Dr. Vicky Elizabeth Long.

THE COURT: And, Dr. Long, you can proceed with your testimony in regard to the proposed road closing.

THE WITNESS: Okay. First of all, I'm here wearing two hats. I'm a resident on Oak Ridge Club Road and have owned property there for almost ten years and I'm also a health care professional.

I'm licensed in the State of South Carolina as what's called an advanced practice registered nurse. And those are nurses that meet the criteria of either being certified as a nurse midwife, a nurse practitioner, a nurse anesthetist or a clinical specialist. I also teach nursing and my doctorate is in nursing and that is what I teach at University of South Carolina Aiken.

I go through that explanation because one of the things I teach is civic responsibility and advocacy to senior nursing students. And so, I feel I would be remiss as a resident, but also as a health care professional to not state my concern about 9-1-1 access.

I have many things I could say that I'm not happy about with changes in my community, but I'm not here to speak about that. I just want to speak to the 9-1-1 access.

Oak Ridge Club Road triangulates from Route 78 heading East and then Old Bell Road comes off of that. And those two roads, again, do not have a large number of citizens, but one of the things we know about 9-1-1 access is that, although, calls may come in to one station they may be, you know, monitored and pushed onto another station if those people are not busy or I'm reading -- I'm sorry, I'm getting a little confused -- are too busy. And also when you call, if you call for the sheriff they may be coming from any place in Aiken County. So it's unpredictable how 9-1-1 may access an area. And that greatly concerns me in terms of just community safety. That really is what I have to say. That's my primary concern as both someone who lives there and may need those services and also my concern for my community that people may be denied quick access. And, again, I'm open to any questions you might have from me.

THE COURT: Hold on one second. All right. Cross-examination?

MS. GUYNN: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. GUYNN:

Q. Dr. Long, could you tell me where do you live on Oak Ridge Club Road?

A. Sure.

Q. And I'm not sure this will show.

A. Yeah, I'm at 906. So if this is Cedar Branch here, I would be off the map. I'm actually right across from Walter's farm or right in that area right there. So my address, primary address is 906 Oak Ridge Club Road.

Q. Okay. Thank you. So you are not impacted -- you do not live on the portion of Oak Ridge that we're --

A. No, I don't live on that portion of the road.

Q. Okay. Thank you. And have you had an opportunity to measure the distance of Oak Ridge Club Road that's proposed to be closed?

A. I've not measured it except in terms of driving time and it does -- it takes longer, I mean, it's one -- and, again, I'm not saying that the only emergency services would come this way, because we don't know where they would come. But it's longer to go down 78 and come up this way than it is to cut across. So in terms of actual time, I wouldn't be driving at

the speed of an emergency vehicle so I couldn't -- couldn't compare it to that. Just the laws of geometry give me a sense that it takes me longer, probably takes me about five minutes longer if I'm driving at a normal speed.

Q. Okay. That's all of that. I did have the opportunity to measure it before we came to court and the measurements say that Oak Ridge Club Road is two miles.

A. Okay.

Q. The Highway 78 to Cedar Branch is approximately 2.5 miles. Are you aware of the speed limit on 78?

A. Yes, I am.

Q. And what is that?

A. Fifty-five.

Q. And are you aware of the speed limit on Cedar Branch?

A. Well, Cedar Branch, you know, I'm -- I'm actually not. I'm familiar with the speed limit on Oak Ridge Club since it's been paved which is 40 except in the miles, about a half a mile before state park and a mile after that where's it's 35 because of the density of population.

Q. And I know because I drove out there --

A. Okay.

Q. -- there's not a sign on Cedar Branch. As so I looked at state law and --

A. It's 55 if there's not a sign.

Q. Correct. So the alternate route is two and a half miles at 55 versus two miles at 40. Have you had an opportunity to do the math and calculate two and a half at 55 versus two at 40?

A. No, I haven't, but I would say I'm not an emergency vehicle and that would -- and I can't say what speed an emergency vehicle drives at. I would assume that they will go faster if necessary, but I can't -- I can't speak to that. But, no, I haven't done the math.

MS. GUYNN: Okay. That's all I have. Thank you.

THE COURT: Mr. Holly?

MR. HOLLY: No questions, Your Honor.

THE WITNESS: Sir, may I say one more thing?

THE COURT: Yes, ma'am. Go ahead.

THE WITNESS: As I stated, my concern about the community, it's not just my residence on Oak Ridge Club Road, it's the people on Bell Road --

MS. GUYNN: I'm going to object, Your Honor. The other folks could be here to testify about their concerns today.

THE COURT: Yeah, you can't speak for other people here. You can just give your concerns in regards to this.

THE WITNESS: But my concern as a health care professional is advocacy for my community.

THE COURT: Okay. Fair enough. All right. You can have a seat, ma'am. You don't have to go back out unless --

THE WITNESS: Pardon?

THE COURT: -- you don't plan any rebuttal witness --

MS. GUYNN: No, I don't.

THE COURT: -- Dr. Long, so you can stay here and have a seat if you want to. All right. I think our last party was Michael Cave.

(WITNESS ENTERS THE COURTROOM)

THE COURT: Right up here, Mr. Cave. Raise your right-hand for me before you have a seat.

Whereupon,

MICHAEL CAVE

being duly sworn, testified as follows:

THE COURT: All right. Have a seat, Mr. Cave. Mr. Cave, I talked a little bit about how it's unusual in this case for interested parties in my position in regards to hearing from them and, of

course, you came forward and said you wanted to testify. Glad to have you testify. What I'll have you do is put your full name on the record and then I'm gonna let you go ahead and offer your testimony as your position in regards to this proposed road closing, okay. You don't have any documents so I'm not gonna say what I said to the other parties who came forward and were carrying things. State your full name for the record please.

THE WITNESS: I -- Michael Gerard Cave.

THE COURT: All right. And just get matters flowing here, what's your address, Mr. Cave?

THE WITNESS: My address is 236 Old Bell Road.

THE COURT: All right. If you'll proceed with your testimony on your position in regards to the proposed road closing.

THE WITNESS: Okay. Currently I stay at the end of Old Bell Road right before the paved road turns into a dirt road. This is adjacent to the actual -- the newest silo that this farm is actually building right now. From a safety standpoint I think the road should actually stay open.

THE COURT: Okay.

THE WITNESS: When it comes to actual respect as to what's actually being done in this here field.

They actually building silos or whatnot. And they actually talking about bringing in a propane -- some type of propane or whatnot and they're actually gonna be storing it on that property or whatnot. Being the fact that I stay across the street from it or whatnot I feel like if you're gonna actually do that you should have actual safety measures in place or whatnot to protect me and the actual families in that area. Also, I've called this lawyer's office back in March to actually talk about what's actually going in this area or whatnot. They told me the lawyer would get back in contact with me. Until last week the lawyer had just got back in contact with me. Also, in concerns to this actual road, also, when I initially talked to the lawyer or whatnot they were -- when I initially talked to the lawyer they were building a silo or whatnot that's adjacent to Ms. Gonshorowski's property or whatnot and that road they said it didn't exist. Just that and the dirt, but anyway, as a result of --

MS. GUYNN: I'm going to object to this. I'm not -- he's talking about what somebody else has said and I'm honestly not certain who.

THE WITNESS: Somebody else with the lawyer, but --

THE COURT: Disregard --

THE WITNESS: -- only like --

THE COURT: Wait a minute, Mr. Cave.

THE WITNESS: Okay.

THE COURT: You need to talk about what you have personal knowledge of and what your concern is not what anybody else told you who's not here to be questioned.

THE WITNESS: Okay.

THE COURT: It has to be of your personal knowledge. All right. Go ahead.

THE WITNESS: And being of my personal knowledge that I was actually seeing the road being paved. I called them and I was, like, why are you all paving this here road? This -- I called them and asked them why don't you all have a stop sign at the end of this road. This --

THE COURT: You called who?

THE WITNESS: The lawyer's office.

THE COURT: All right. Can't say what was said. Go ahead. As a result of that what happened?

THE WITNESS: I got nowhere with this thing.

THE COURT: Okay.

THE WITNESS: And just like I'm going on to say, if you've got a dirt road coming into a -- if

you've got a road coming into another road or whatnot, don't you feel that there should be some type of stop sign or whatnot to stop whoever's on the actual Old Bell Road or whatnot from hitting the oncoming traffic or whatnot? I think so. I also think that currently it seems as if the road is being narrowed or whatnot. If -- if I'm on that road in my Dodge pickup truck and there's a semi, I have to actually stop in order to be able to do what I need to do on this road. And also, as -- let's see --

THE COURT: Go ahead.

THE WITNESS: Also, as you're coming down Old Bell Road or whatnot, coming to the site across the street from my property or whatnot it's, kind of, like a blind corner or whatnot. Once you do -- all right. My property is on the left-hand side. There -- they got property on both sides of the road or whatnot. But for me to enter my property or whatnot I often times have to make a left-hand turn or whatnot.

Well, you know, as -- as for traffic coming through that's normal or whatnot. I -- you know, if traffic is coming or whatnot I do have to stop, I have to give them the right of way, this, that and

the third or whatnot. But there's a lot of mornings where I'm coming into my property or whatnot and you have tractor trailers with rebar filled up on them. You've got cement trucks, you've got rock trucks. They're all stopping me from actually getting onto my property. And I feel like this being an actual infringement of my rights or whatnot. When -- when you -- talking about me being a property owner or whatnot being here in Aiken County or whatnot.

Also, I like to speak on the fact that this company is actually working at nighttime. I actually work a swing shift job at AGY right here in Aiken or whatnot. I might get off four o'clock in the evening, I might get off 12 o'clock at night. I might get off eight o'clock in the morning. Constantly, you know what I'm saying where somebody be in there at those times. I can actually come home and you got workers out there working two a.m. in the morning. If you all want to see any type of documentation I do have it on my phone.

Also, I've talked to the lawyer back in March about the fact that the land next door to me or whatnot they bought their property, also. It -- prior to them actually clear cutting their self property, it acted as a buffer to -- to -- to my

property or whatnot. And how I actually felt, buffer, I mean, it kept the signs down, you know, this is an actual clay dirt road. So you've got people up and down the dirt road, their trucks up and down the dirt road. And just like that there now, as a result my mobile looks as if it's a clay dirt road or whatnot, you know. My cars or whatnot, my automobiles they're filled with clay or whatnot. I have -- I don't drive -- I don't drive up that dirt road that in my wife's car, but I -- obviously, all the time, you know, I'm saying I'm having to clean it or whatnot because of the fact that this here road or whatnot. I mean because of the fact that they actually cleared out all this land, but.

THE COURT: All right. Anything else?

THE WITNESS: Also, I actually looked at the -- their documents as far as coming to court or whatnot and it stated as far as a -- a -- I guess safety issues or whatnot and vandalism. I would like to know have any of these things been founded or whatnot and if you said it's been actually vandalized, where's the police report, this, that and the third?

THE COURT: All right. Anything else?

THE WITNESS: Once again, I'm not here to

actually cause no problems or whatnot. I feel like this is actually a great thing as far as this company coming to the area or whatnot. But if they're supposed to be actual stewards to the environment why -- why -- why -- why are we having these -- this type of disputes or whatnot? Why they putting people out of the area who actually been in this area for all of this time? I mean I wouldn't call that an actual steward to the -- of the environment, would you?

THE COURT: Anything else, Mr. Cave?

THE WITNESS: No, that's it.

THE COURT: All right. Anything on cross?

MS. GUYNN: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. GUYNN:

Q. Mr. Cave, could you step up to this map and show me where you live?

A. Okay.

Q. If you'll wait til the Judge can get around to see.

THE COURT: Go ahead.

Q. Okay.

A. I'm right here.

Q. You're the 2070006002?

A. I'm not sure what those numbers are --

Q. Okay.
A. -- but I know my property.
Q. So this is your property that I'm pointing to?
A. Yes.
Q. And it does have the numbers on it that I just read to you?
A. Yes.
Q. That's the tax parcel number.
A. Yeah.
Q. Thank you. You can sit down.
THE COURT: You can have a seat, Mr. Cave.
Q. And, Mr. Cave, I noticed some of the time you said you stayed at that property. Do you own that land or --
A. Yes, I do.
Q. Okay. And you're --
A. There's no need for me to be here if I don't own my actual property, right?
Q. Just a question, sir. And you are -- your property is on the paved road it appears from that aerial map?
A. Yes.
Q. Okay. And --
A. Which is maybe 40 feet from the actual dirt road.
Q. Okay. You mentioned a couple of complaints about

traffic. And one was dirt and dust being blown up, correct?

A. Yeah.

Q. The other was that it's sometimes difficult for you to make a turn out of your driveway, correct?

A. Into my driveway.

Q. Into your driveway. And if the road were closed off wouldn't that eliminate some of that traffic?

A. Not if you have a road coming out the backside of it. Maybe if you all put that road on the front side, I wouldn't have no problem with you all closing the dirt road off or whatnot, but you all are gonna come right in front of my actual property where there's a 35 mile an hour speed limit. So with that being said if I walk out into my driveway or whatnot and your truck is coming out of that field at a high rate of speed or whatnot, that kind of put me in grid.

Q. If we close that road the construction traffic can't proceed through there. There will no longer be a road.

A. What -- what do you mean?

Q. If the road is closed isn't it accurate that if there is no road there can be no traffic on that road?

A. Yeah, but you all got road leading to your silos, so upon night there's gonna be big equipment that's gonna be up and down that dirt road that's gonna be prohibiting me from actually being to my property like I stated before.

Q. You drive down -- do you drive down the paved portion of Old Bell on a regular --

A. And the dirt -- and the dirt road portion.

Q. Okay.

A. On a regular basis.

Q. And have you noticed on tract -- a large gravel road, I think you made -- you may have made mention to a new large gravel road? I think when you were talking about that there was not a stop sign?

A. Yes.

Q. Are you aware that that's the new road to go to the silo?

A. Well, yes.

Q. You are aware?

A. Yeah, but just like that if you all got a road to go to the silo and just like that if from -- from looking on google earth or whatnot from about that area where that silo at to Old Bell Road, that's a further distance than from 278 to the actual silo. Do you understand? So --

Q. I'm sorry. I don't -- I don't --
A. What -- what -- what don't you understand?
Q. -- understand what you're saying. If you could rephrase?
A. Okay. You've got a silo in the middle of that field, right? Right?
Q. I'm not the witness, sir. You are.
THE COURT: Go ahead and say what -- make your point, again, about the silo if you're on the road. You can step up to the map if you want to.
A. There's a silo in this field. I can't exactly point to where the actual silo is located at or whatnot, but seems to me looking at it or whatnot it would be much more of a convenience for you all to have your all's road or whatnot -- that gravel road or whatnot, come through on the front side because you actually -- you know, this is a residential area. You've got people and their kids or whatnot, this, that and the third, but you're putting me, my neighbor's kids and everyone else at risk by actually continuing to have this here road, right here. Also, on top of that or whatnot prior to them putting that road there or whatnot, there was drainage on both sides of that road or whatnot. Now, as a -- as a result of you all putting that

road there, we don't have any drainage no more. The water just settles or whatnot.

Q. I'm confused, sir. First, you said --

A. Well --

THE COURT: Mr. Cave, let her ask the question.

MS. GUYNN: And you can sit back down.

THE COURT: Sit back down.

Q. First, you say you don't want the construction traffic driving in front of your house --

A. I don't.

Q. -- and then -- and then I tell you it's not going to.

A. But it is. It is. What you're telling me is a lie.

Q. Sir, what is the source of your knowledge that their construction traffic is going to continue to drive in front of your home?

A. If currently all of the traffic that goes in that field is coming from right in front of my house, I don't expect it to change. If you --

Q. If --

A. -- you all haven't done anything to change that.

Q. Is Old Bell open at this point?

A. Yes.

Q. And are we not petitioning to have Old Bell closed?

A. Yeah, but at the same time you are actually now and

at the same time, too, so how I'm supposed to feel about that?

Q. But you don't have any firsthand knowledge of what this company plans to do with their traffic? That is your opinion, correct?

A. What you mean?

Q. You -- you have stated to this Court that even if the road's closed to the construction traffic and the farming traffic will continue?

A. Yeah.

Q. You do not have any firsthand knowledge the traffic will --

A. I mean you --

Q. -- continue?

A. -- all right. All right.

Q. Yes or no, sir?

A. What you mean firsthand knowledge? I talked to --

THE COURT: Of your own personal knowledge.

A. Yeah. I've seen -- silo -- I've seen on these blueprints or whatnot that the construction worker showed me. Would that be personal?

Q. You've seen construction drawings of the silos?

A. Yeah. And just like that, the guy who cut the road had actually parked his car in my yard for over a week. He was from some -- somewhere in Sumter,

South Carolina.

Q. But you -- if we -- if we could reduce traffic in front of your home, you'd be in favor of it?

A. I wouldn't really be in favor. It -- it -- it'll go down a little bit better.

MS. GUYNN: Okay. Thank you. Nothing further, Your Honor.

THE COURT: All right. Mr. Holly, anything?

MR. HOLLY: No, sir.

THE COURT: All right. Mr. Cave, you can have a seat. You gonna plan on any rebuttal witnesses on -- for Mr. Cave?

MS. GUYNN: No, Your Honor, I do not.

THE COURT: All right. That was the last individual that I have so we'll call the rebuttal witness you indicated, Counsel. Go ahead, let's do that.

MS. GUYNN: Your Honor, I'm going to call Tyler Stone back to the stand.

THE COURT: All right.

MS. GUYNN: I've lost my witness. Let me go find him.

THE COURT: All right.

MS. GUYNN: Mr. Stone apparently has left so we're going to call Mr. Woody back to the stand.

THE COURT: All right, sir, you're still under oath. Have a seat.

REDIRECT EXAMINATION

BY MS. GUYNN:

Q. Mr. Woody, you heard some testimony earlier about a plan that was done for you and it referred to relocating of some roads, is that --

A. Yes.

Q. When you all purchased this property is it accurate that you did discuss with the County --

THE COURT: Wait a minute, wait a minute, wait a minute. We don't have --

MS. GUYNN: Oh.

THE COURT: -- Ms. Barrett in here. Come in and have a seat, Ms. Barrett. Ms. Barrett, they were gonna call -- recall Mr. Stone. He apparently has left so they called Mr. Woody. They asked him a question about I think plat in regards to testimony --

MS. GUYNN: And I'll repeat it, Your Honor.

THE COURT: She's gonna repeat the question. That's the first question and then I realized I had not brought you back in, okay?

THE WITNESS: All right.

THE COURT: All right. Go ahead.

RESUMING BY MS. GUYNN:

Q. Mr. Woody, you heard some testimony from Ms. Barrett regarding a plat with a reference to a road to be relocated, correct?

A. Correct.

Q. When you purchased this property you did have discussions with the county about relocating the roads, correct?

A. That's correct.

Q. And those discussions were not closing the road, correct?

A. That's correct.

Q. And Oak Ridge Club Road would have stayed open, correct?

A. That's correct.

Q. And hence, the reason that the plat referred to relocation not closure?

A. Exactly, yes.

Q. Given what you know now would relocation of the road have stopped the excessive speed issue?

A. No, ma'am.

Q. And given what you know now, would relocation of the road stop the vandalism?

A. No, ma'am.

Q. So is relocation of the road a viable alternative?

A. No, ma'am.
Q. Would your -- would you or your employees be any safer with a relocated road?
A. No, ma'am.
Q. Thank you. One other question. We heard a couple of witnesses testify to -- to longer distance for 9-1-1 vehicles to travel. Did you hear that testimony?
A. Yes, ma'am.
Q. And I believe you indicated that you are at the property approximately five days a week?
A. Yes, ma'am.
Q. Have you ever observed an emergency vehicle pass over any of the roads that are proposed to be abandoned?
A. Not to my knowledge.

MS. GUYNN: Thank you. I have nothing further, Your Honor.

THE COURT: Mr. Holly?

MR. HOLLY: Nothing, Your Honor.

THE COURT: All right. Have a seat. All right. Given that testimony, Ms. Barrett, do you want to offer any additional testimony? You don't have to I'm just asking, giving you the opportunity.

THE WITNESS: Yes.

THE COURT: All right. Come forward. You're still under oath, ma'am. Have a seat.

THE WITNESS: I would just like to say when I notified the Sheriff's Department of the problem we were having with farm vehicles, it was endangering us and our children on that road, they came through that way. So I think the deputy or state trooper, they're working with the state patrol to try and monitor that area, is an emergency vehicle. And it is the Windsor Fire Department, the one that's owned through the Town of Windsor, on the left that would respond to us if we have a fire. I don't know of any fire in the last year since they've had this problem. I also do not know of any farm related accidents in the last year.

THE COURT: All right. Anything else?

THE WITNESS: That's it.

THE COURT: All right. Any questions for this witness then?

MS. GUYNN: Just one, Your Honor.

THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MS. GUYNN:

Q. Ms. Barrett, were you aware that the Plaintiff actually called the Sheriff's Department and asked

them to monitor the roadways?

A. No, ma'am, I was not aware of that. I know I called myself twice. And the second time I spoke with Sheriff Hunt.

MS. GUYNN: Thank you.

THE COURT: All right. You can have a seat, ma'am. Thank you. Anything else from the Plaintiff?

MS. GUYNN: Nothing further, Your Honor.

THE COURT: Anything else from the County?

MR. HOLLY: No, Your Honor.

THE COURT: All right. I've got some photographs and testimony to review. Don't forget that original agreement because I don't need that. That's not part of the evidence. And I've got the information from the interested parties and their testimony that I'll review and then I'll prepare an order and notify the parties in regards to this and enter a decision on that. But I need to look at some things before I make that decision. All right. I'd like to thank everybody for being here, for hearing testimony and, also, those parties that appeared and offered testimony as interested parties. I hope I clearly stated my position on that and everyone was given the opportunity. We had

three individuals who wished to come forward and that's fine. Typically in this Court decisions are not made or rulings are not made when evidence is submitted before the Court. And, of course, I hadn't seen any of this evidence or heard the testimony before now. So I will go back and review the record, do any research I need to do in regards to the applicable statutes, prior cases and then the Court will reach a decision and prepare a written order for the parties. All right. I would ask the Plaintiff, please make sure I've got all the Exhibits up here. If you'll go back through the numbers just to make sure I've got everything and for the court reporter, I'll maintain those while I reach that decision.

MS. GUYNN: And we'll need to mark --

THE COURT: And we'll need to mark, this will be Plaintiff's No. 1 that we'll mark here. All right. Anything else from the Plaintiff after that?

MS. GUYNN: Nothing, Your Honor.

THE COURT: Anything from County?

MR. HOLLY: No, sir.

THE COURT: All right. I hesitate to do this, any questions from the parties who are present here today about anything the Court has stated at the end

of the trial? I don't want any questions about the evidence or anything else. Anything about the process I've stated at the end that anybody has a question on? Yes, sir?

THE WITNESS: (Mr. Cave)How much longer will it -- will it -- will it take before the decision is actually reached?

THE COURT: Well, I wish I could tell you exactly, Mr. Cave. I've got a lot of contested cases that come through here as well as some uncontested that I have to rotate through on foreclosures, approximately probably about 40 a month in that regard, so. But I'll try and have it done -- I always try and have it done within 60 days. I'll try and have this one done a little bit quicker because of the interest I see of the parties in the area there. So I'll try to take a look at that. But I don't have an exact date that I can give you. That's a fair question. Okay. Any other questions? All right. Yes, sir?

THE WITNESS: I'm unable to -- I just want to say that those trucks --

THE COURT: Can't hear anything on that, sir.

THE WITNESS: Okay.

THE COURT: Anything about the comments I made

about the process? I gave everybody a chance who wanted to come forward to testify. You can't stand up and make comments now. That wouldn't be fair to the parties involved. All right. Hearing nothing else, I'll conclude the hearing now. Thank you, ladies and gentlemen.

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(Whereupon, the hearing concluded at 12:05 p.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

I hereby certify that the foregoing transcript consisting of page numbers 1 through 97 is a true and correct transcript of the proceeding held before me;

I further certify that I am not counsel or kin to any of the parties to the case, am not in the regular employ of counsel or said parties, nor am I otherwise interested in the result of said case.

In Witness whereof, I have hereunto set my hand this 16th Day of July, 2016.

Valerie T. McFarland, CVR, CCR
Notary Public For South Carolina
My Commission Expires: 9/17/2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
Canadian River Farms, LTD., Colt Farms Inc., BC Farms, Inc. n/k/a BC Farms of South Carolina Inc., Outback Farms, Ltd.	)	
Plaintiffs,	)	
vs.	)	CASE NO. 2016-CP-02-00511
Becky J. Gonshowski, South Carolina Department of Transportation, Aiken County, South Carolina,	)	
Defendant.	)	

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HEARING

held before the Honorable Anderson Griffith

before Sharon DeHart, Certified Court Reporter

at the Aiken County Courthouse

109 Park Avenue, SE, Aiken, South Carolina

on Friday, the 12th day of August 2016

commencing at 10:12 a.m.

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EXHIBITS

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THE COURT: All right, Ladies and Gentleman, we're here on the Canadian Farms, Limited, Colt Farms, Inc., and others, Plaintiffs v. Ms. Gonshowski, South Carolina Department of Transportation, Aiken County, as Defendants. We're here today on a Motion to Intervene and a Motion to Reconsider. Plaintiffs' attorneys that are present today, I believe, are Mr. J. Calhoun Watson, Mary O. Guynn. Also are the attorneys for the moving parties as Bradford Owensby and James D. Mosteller, III. I would ask on the moving parties, can you place on the record since there was a not-named party that you represent, your clients in this regard?

MR. MOSTELLER: Yes, sir, Your Honor. In an effort to consolidate the fifty-plus people that are involved up and down these roads that are being closed, they banded together an unincorporated association known as Sade Windsor SC. That unincorporated association met and elected a president, Ms. Barrett, Thursday a week ago, Your Honor. And Thursday, July 28th, I believe it was, the names of the people that attended that meeting considerably overlap the names of people that were

originally involved or listed in the petition that was filed by Ms. Barrett early on in this litigation. Then in the Motion to Intervene, those names are listed out in the Motion to Intervene. At present, given the fact that it's an unincorporated association, I believe that Mr. Owensby and I represent all of those people but --

THE COURT: The individuals you've listed in the Motion?

MR. MOSTELLER: Yes, sir, Your Honor.

THE COURT: Okay.

MR. MOSTELLER: But collectively, they're known as Sade Windsor SC.

THE COURT: All right. But that would be the limit of your representation of the individuals named?

MR. MOSTELLER: Yes, sir, Your Honor.

THE COURT: All right.

MR. WATSON: Your Honor, just as a point of clarification, is that the -- are those the names listed in the Motion to Intervene or the Motion to Reconsider; the Motion to Reconsider having additional names that are not listed in the Motion to Intervene?

THE COURT: That's a fair question. Are we

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talking about the most recent filed?

MR. MOSTELLER: We're talking about the most recent motion filed, Your Honor.

THE COURT: Notice of Motion and Motion to Intervene and Amending the Prior Motion filed July 8th, 2016 is the heading. That was filed August 1st, 2016.

MR. MOSTELLER: Your Honor, I believe that we represent anyone in -- named in both motions because some of the people in the first motion were not able to attend the meeting for Sade Windsor SC.

THE COURT: Okay. Does that satisfy?

MR. WATSON: So, the people in the first motion do belong to the association that aren't listed in the second motion?

MR. MOSTELLER: We are hopeful that they will belong.

THE COURT: I think he's saying they represent those individuals both --

MR. MOSTELLER: Yes, sir.

THE COURT: -- in the first and second, whoever differs, they still represent the individuals named.

MR. WATSON: All right. Thank you, Your Honor.

THE COURT: Let me make one announcement. I know we've got the media here today and I'm happy for that but I'm also aware that other people maybe brought some cameras or other things in the courtroom. Individuals, we don't allow any -- cell phones should be off, those should not be going off during the hearing. Shouldn't be using anything for a camera or a recording device. We've got a court reporter here and so I would caution everybody in regards to that, so if you need to silence, turn off your phones, please do that.

All right. From the moving parties, are there any other preliminary matters before we hear the Motion?

MR. MOSTELLER: No, sir, Your Honor. At some point, we had discussed in chambers a proffer of evidence. I don't know what portion of this hearing the --

THE COURT: I think I'll let you get to that stage, wherever it is in your argument, make your objections and I'll allow the proffer, as I said, so you can have a complete record but I just want it all on the record as far as the nature of the objection and then your proffer.

MR. MOSTELLER: Thank you, Your Honor.

THE COURT: Okay. Anything for the Plaintiffs before we get started?

MR. WATSON: No, Your Honor.

THE COURT: Okay. All right. All right, Mr. Mosteller, we'll be glad to hear from you.

MR. MOSTELLER: Your Honor, this is a -- I'm going to start with the Motion to Intervene.

THE COURT: Okay.

MR. MOSTELLER: The first barrier that the intervenors face is the timeliness of the Motion which I think kind of subsumes some of the other of the four elements set forth. Our parties have indicated that they live up and down these roads being closed and/or that they use the roads. They are -- in the Motion to Intervene, they are abutting landowners who actually live along the road, a portion of which has been closed. We believe the statute is fairly clear even though we may be arguing a novel version of it, but 57-9-10 states that notice shall be sent by mail requiring a return receipt of the last known address of all abutting property owners whose property would be affected by any such change. There are some other provisions requiring newspaper notice and posting of signs but the statute does not specifically

state that it's only people across the road or the portion of the road being closed. Now, this is a pretty lengthy road and some of the material we're going to proffer later indicates that it's been in use for decades if not centuries. But the bottom line is, Your Honor, is that these parties seeking to intervene were not given written notice of the pending road closure in accordance with the statute.

In the Motion, we also filed several affidavits where some of the people did actually call the phone number on the sign and they got conflicting instructions and conflicting information from Plaintiff's counsel's office as to what was going on and when to show up and when the hearing was or whether or not they should show up and I am aware that there is an affidavit from Plaintiffs' counsel that denies those inconsistencies but I would note for the record that those are not affidavits of the actual people that answered the phone and made the responses. It's the affidavit of the Plaintiffs' attorney and so it contains hearsay as opposed to the affidavits or the receptionist and/or paralegals that may have taken these phone calls. Our affidavits are direct

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testimony as to the information they received. So, we believe that there has been a lack of proper notice based on the statute which says that abutting landowners whose interests may be affected. It doesn't say closed -- the road closed in front of them -- whose interest may be affected, in other words, being able to ride up and down the road that they've ridden up and down since they moved there or lived there, some of them for all their lives.

THE COURT: The exact language is, "Notice also shall be sent by mail requiring a return receipt for the last known address of all abutting property owners whose property would be affected by any such changes," is that correct?

MR. MOSTELLER: That's correct.

THE COURT: So, not interests, it says property?

MR. MOSTELLER: Yes, sir.

THE COURT: Okay. All right. For whatever distinction that is. Okay.

MR. MOSTELLER: The Motion to Move is that -- or the requirement is that the action be timely. This court still has jurisdiction over this case due to the Rule 59 that was filed. And then

secondly, we don't believe that the other side has been unduly prejudiced. They haven't been able to use that center pivot in the way that they discussed since they bought the farm. They bought the farm with the road already on it. They knew the road was there when they bought the farm. The affidavit in opposition to our motion does not indicate when they bought the fertilizer or when the center pivot was put in but those center pivots have been there for some time, a lot of corns are on there, what appear to be potatoes. I don't know what a potato plant looks like but I'm pretty sure that those are potatoes growing out there.

Our clients -- the second prong of intervention is asserting an interest. Our clients have asserted an interest in this litigation.

The third prong is that their ability to protect their interests has been impeded. They were not able to attend the hearing, they didn't get notice of the hearing, and that their interests were not adequately represented. From what I understand at the hearing, Mrs. Barrett was allowed to testify and maybe one or two other individuals. They were not represented. Their testimony did not adequately reflect the testimony that we believe

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the intervenors will be introducing and that will be part of our proffer at a later point in this Motion.

And so, we believe that all four prongs of intervention have been met and I would cite to the case of Berkley Electric Coop vs. the Town of Mt. Pleasant. I do have a copy here for the Court.

THE COURT: Okay.

MR. MOSTELLER: Which indicates that Right to Intervene should be liberally permitted to avoid duplicative litigation.

May I approach the bench, Your Honor?

THE COURT: Yes, sir.

MR. MOSTELLER: And Your Honor, based upon the posture of this case and the notice, if the Court were to agree with the position taken by Plaintiffs' counsel that these owners on down the road are not required to be given written notice, I do not think that a simple notice in the newspaper and a posting of the sign is going to be enough to use offensive collateral stopple to stop a second lawsuit. These individuals are prepared to file a second lawsuit and request injunctive relief.

And in what -- the case I just handed to the Court, the Berkely Coop case, indicates that

duplicity of litigation is to be avoided for judicial economy. We don't believe that proper judicial economy would be served if the intervenors lose here and then we're filing suit Monday or Tuesday of next week starting yet another case and/or appealing this decision. So, we believe that the best result for the court system for judicial economy and also to give more speedy relief to the Plaintiffs is to reopen this case and allow it to be litigated on its merits by the intervenors.

And Your Honor, we have some additional information that we can present to the Court. Copies were just given this morning, very recently, to opposing counsel and I understand that but we would proffer the information at least to preserve the record but we would like to introduce at this time some information from Barnwell County, Barnwell County maps, and then Mr. Owensby has full maps of the rode in question from the US -- the Official Road Atlas of Aiken County, Your Honor, and some plats that need to be introduced.

THE COURT: All right. Opposing counsel?

MR. WATSON: Your Honor, I would object to any additional material being introduced today pursuant

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to South Carolina Rule of Civil Procedure 6d requires two days' notice and obviously it was just a few minutes notice. I have not even had a chance to look at this material before now.

THE COURT: All right. Let me just ask one question. Do we all agree that those were submitted to opposing counsel this morning?

MR. MOSTELLER: That is correct and I think Mr. Watson has had at least 15 minutes to review the material.

THE COURT: All right. Give me one second.

MR. MOSTELLER: And Your Honor, I would note this is predominantly public records of both Aiken and Barnwell Counties except for one affidavit.

THE COURT: All right. And you wish to proffer that evidence to form a complete record?

MR. MOSTELLER: Yes, sir, Your Honor, and then --

THE COURT: All right. I'm going to note the objection and I would say, based on the rule, that it was submitted this morning, I would grant that objection but I'm going to allow the proffer so you can complete the record and put that into evidence.

MR. MOSTELLER: Yes, sir, Your Honor, I would make one additional argument.

THE COURT: Yes, sir?

MR. MOSTELLER: That because these are public records of Aiken County, Plaintiffs' counsel and the Plaintiffs themselves were on notice that these documents existed --

THE COURT: Okay.

MR. MOSTELLER: -- even prior to starting this litigation.

THE COURT: Did you say you had one affidavit?

MR. MOSTELLER: One affidavit, yes, sir.

THE COURT: Let me amend that prior -- I'll look at the issue in regards to the public record argument you're making, but in regards to any affidavits of individuals, anything that's not public record, I'm granting that motion in regards to that. I'll let you complete the record. You can add the other things.

MR. MOSTELLER: Yes, sir.

THE COURT: I'll take a look at it on the public record issue.

MR. WATSON: And I would just object to the public record to hold Counsel to actual knowledge of the public record wherever in different counties and throughout the state or wherever it maybe is not permitted by the rules either.

THE COURT: Thank you. All right.

MR. MOSTELLER: May I approach the bench, Your Honor?

THE COURT: Could you please identify the documents, as you're submitting those.

[EXHIBIT NUMBER 1 IS MARKED FOR IDENTIFICATION]

MR. MOSTELLER: Your Honor, the first document would be the affidavit of Cole Page, Jr.

THE COURT: And we're going to mark those just for identification?

MR. MOSTELLER: Yes, sir, Your Honor.

THE COURT: Okay. And I'm sorry, give me the name on that affidavit again.

MR. MOSTELLER: Cole Page, as in page of a book.

THE COURT: Okay.

MR. MOSTELLER: Jr.

[EXHIBIT NUMBER 2 IS MARKED FOR IDENTIFICATION]

MR. MOSTELLER: The next item would be a letter to Barnwell County from Walther Farms which farms a similar type of farming operation in Barnwell County which sets forth very similar allegations as to damage to equipment and vandalism and that sort of thing that's set forth in this lawsuit.

And then Minutes of Meetings of Barnwell County dated October 24th, 2014 and November 11th, 2014 where the County initially agreed to close the road for Walther Farms and then decided in November not to close that road. And I don't know -- I think these should be two separate exhibits.

THE COURT: Okay. So, you're marking the letter and the Minutes --

MR. MOSTELLER: As separate exhibits, Your Honor.

THE COURT: Each one of those meetings is a separate exhibit?

MR. MOSTELLER: Yes, sir.

THE COURT: Okay.

[EXHIBIT NUMBERS 3&4 ARE MARKED FOR IDENTIFICATION]

MR. MOSTELLER: And finally, Your Honor, an official copy of the Courtroom Maps of Barnwell County showing that New Forest Road goes into Aiken County along with Big Buck Road, and those are the roads that are being mentioned in the Barnwell County letters and Minutes for closure.

THE COURT: Okay.

[EXHIBIT NUMBER 5 IS MARKED FOR IDENTIFICATION]

MR. MOSTELLER: And I believe that Mr. Owensby has some additional Aiken County material to

proffer.

THE COURT: Mr. Owensby, come and identify those and submit those.

MR. OWENSBY: Yes, Your Honor. Opposing counsel has already been given copies. First is a plat, Aiken County, RMC office certified copy filed in Plat Book 58 at page 359, Your Honor. This is a 1977 plat. This does depict part of the property. At the time, it was 64 acres, which now makes up part of the actual farm the plaintiff owns. It clearly indicates that 1977, this was a dirt county road, not a county-maintained road.

[EXHIBIT NUMBER 6 IS MARKED FOR IDENTIFICATION]

MR. OWENSBY: And Your Honor, the second is the official Road Atlas of Aiken County, for Aiken County, South Carolina. Each portion of this atlas does contain a legend. In the legend, it indicates what roads are city paved, what roads are county and city paved, which ones are county, which ones are private, paved and unpaved, as well as state paved and unpaved roads, Your Honor. The reason we're submitting this for both Old Bell and Oak Ridge Club Road, each one is indicated throughout this atlas as being not a county-maintained road but a county road, Your Honor. The reason we're

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submitting this is because in the prior pleadings, it was very clear that they were asserting this is a county-maintained road. A county-maintained road does have a connotation of private ownership. It's private ownership versus the public owns it. It's clearly indicated in this atlas and all -- firehouses for that matter that these two roads are county roads, therefore public roads.

[EXHIBIT NUMBER 7 IS MARKED FOR IDENTIFICATION]

THE COURT: All right. Anything else on the Motion to Intervene?

MR. WATSON: Your Honor, can I just --

THE COURT: I'm sorry, go ahead.

MR. WATSON: Just for the record --

THE COURT: Yes, sir.

MR. WATSON: -- if Your Honor does take this in whatever form and it becomes necessary, you know, we would obviously like to respond --

THE COURT: Be able to respond?

MR. WATSON: -- to some of the characterizations that --

THE COURT: Correct. Yeah, I'm not going to ask -- put you in the position of having to respond to something you just received this morning.

MR. WATSON: Great. Thank you, Your Honor.

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THE COURT: I just noted that exception on the submission on there and I'll look at that map. Okay. Anything else on the Motion to Intervene?

MR. MOSTELLER: Yes, Your Honor, there is a doctrine that intervention should be liberally granted. That is set forth in the case of Bockus vs. South Carolina, and the citation on that is -- I've got a Westlaw citation on it, Your Honor, but it cites TPI Corporation vs. Merchant Mart of South Carolina. This is Federal Court case 61, Federal Rules of Decision FRD, 61-FRD-684 at page 688. Your Honor, I do believe that given the Berkely County case that we set forth and this case that This Court should consider granting a Motion to Intervene. In Rule 24, subsection (c), there is a procedural note that is addressed by plaintiff's memorandum that subsection C is procedure and notice to the statement of validity of the statute is questioned. The Rule indicates that the Motion to Intervene should be served and it should be accompanied by a pleading setting forth the reasons for which intervention is sought. I don't believe there is any confusion as to the reasons that intervention is sought because our motion is more complete and lengthy than a simple two paragraph

Motion to Intervene, so I don't believe that there is any surprise or undue prejudice or delay caused by the format of our motion. And given the fact that motions to intervene are being liberally construed, I don't think that the form should be elevated over substance. Thank you, Your Honor.

THE COURT: Thank you. One second. Is Mr. Holly present in the courtroom? I'm sorry, Mr. Holly. For the court reporter, let me also note for the record that Mr. James Holly is here on behalf of Aiken County, and I apologize for that, Mr. Holly. All right. I'd like to hear Plaintiffs' response to the Motion to Intervene?

MR. WATSON: Your Honor, Cal Watson here for the plaintiffs along with Mary Guynn. Your Honor, we prepared a memorandum which I believe we've filed and I --

THE COURT: Correct, I've looked at that.

MR. WATSON: -- if you need an additional copy, I have that for you. We actually filed -- we've only addressed the Motion to Intervene in that brief. We had already prepared a brief on the Motion to Reconsider, which we then filed later not knowing exactly what was before the Court. But Your Honor, whether this is considered a Motion to

Intervene or a Motion to Reconsider, this is kind of the classic different -- distinction without a difference. The movements argue about notice. They say they didn't have notice or there's some problem with notice. The fact of the matter is you've already had a hearing. Many of these people of the movements were here. They were all offered the opportunity to testify. Three of them testified in full. Many of them signed a petition that was referenced by the movements' counsel. We have a copy of the petition with all the names. But many of them signed a petition. So notice was not a problem. This was reported in the news. The signs were posted. You found that that was proper. The notice of publication was published in the Aiken Standard. You found that was proper. And the landowner whose land adjoins the portion of the road being closed was notified properly and you found that was proper. So, Your Honor, you have heard these arguments. The Movements had notice in multiple ways. They came to the hearing, they testified, or some of them testified, but all were given the opportunity. In your Order, you've referenced their testimony. You've referenced their position. You included it in your analysis

and it's in your June 27th Order, so for that reason alone, it is the classic distinction without a difference. Motion -- both motions should be denied.

Now, short of that, there are some substantive and procedure issues, any of which would lead to a decision to deny both motions. Substantively, as I understand it, there seem to be three different reasons that notice may not have been proper or the argument is that notice was not proper. One is that the nearby landowners whose property abuts portions of roads that were not closed should have received a notice of the hearing. Now, put aside the fact that they -- they -- the notice was published in the paper, there were signs, they signed a petition, many of them attended, they were all given an opportunity to testify, putting aside that, the statute simply doesn't say that and you were correct, Your Honor, when you pointed out the word whose property would be affected by any such change. Their property abuts a portion of the road that is not closed. The testimony was that no one would be landlocked. Their property abuts a portion that is not affected by the closing. It is still there. So, Your Honor, that in and of itself

is enough to lead the Court to deny the Motion.

Also the Supreme Court has never interpreted this statute in that way. And I have -- and I'll hand up at the end of my presentation -- the cases that are listed in the annotations in the South Carolina Code that talk about and annotate the -- how the Court has interpreted the statute. None of those cases talk about or adopt this theory. This is not a theory that the Supreme Court has ever -- has ever allowed or acknowledged or sanctioned.

Your Honor, also, the plaintiffs seem at least -- I mean, the movements in their motions at least -- in the Motion seem to indicate that newspapers in adjoining counties as roads continue into another county, there should have been some sort of notice there. Again, the statute does not say that. The Court has never interpreted it that way. That would be a novel ruling because that is simply not mentioned in the statute. Again, the people in the neighboring counties certainly would have been subject to seeing signs, the media counts and -- I don't know -- we don't know the addresses of some of the people but they could live there, but for both those arguments, Your Honor, the Court has simply not ever done that and this would be an

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interpretation that no court has ever made.

Finally, Your Honor, as far as notice goes, there's some indication that the calls to the Plaintiff counsel's office were somehow defective or deficient. What was said, both what they say was said and what the affidavit said, is that when asked if it was required for people to attend -- in other words, "Is this something that I have to, under penalty of perjury, go to?" The answer is, "No, you are not required to attend. You are welcome to attend. It's your option. It's not a mandatory requirement; it's something you, as a citizen, are allowed to do." And obviously, Your Honor, you were here, you saw that many people came. In fact, Mr. and Mrs. Barrett got actual -- they were two of the affiants and they actually got a notice of the hearing, the actual notice came and Ms. Barrett testified. So, again, the distinction without a difference.

One other thing, Your Honor, about the argument that -- and before I move on, the argument that landowners who adjoin portions of the road that aren't closed should receive notice or even notice should be published in nearby counties. Your Honor, it's not really logical to interpret it

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that way in that, where does it stop? If you just have this broad anybody who could be affected in anyway, do you stop 10 feet away, 100, a mile, 10 miles, 100 miles? And we'd be litigating this forever and ever if that were the interpretation. And I think there's good reason that is not the interpretation because the simple -- you notify by notice, by written notice, the landowner whose land abuts the portion of the road being closed, so for that reason, Your Honor, I don't think, from a substantive standpoint any of these arguments make a difference. The Court hadn't interpreted them, the Court has not adopted them, and they really just frankly don't make a difference.

From a procedural standpoint, Your Honor, and those are the kind of substantive reasons that both of those motions should be denied, but from a procedural standpoint, intervention, as you know, is governed by Rule 24a under the South Carolina Rules of Civil Procedure. And that says, "Upon timely application, anyone shall be permitted to intervene in an action when the statute confers an unconditional right to intervene, which it does not, or when the applicant claims an interest relating to the property or transaction which is

the subject of the action and so situated that the disposition of the action made as a practical matter impair or impede his ability to protect that interest unless the applicant's interest is adequately represented by existing parties." So, what they have to do is establish timely application and they have to demonstrate that they're in a position without intervention that the disposition of action may impede or impair their right to protect their interest. What Mr. Mosteller talked about was the motion -- the timely argument we made in our brief. The courts have dealt with and have set out the factors that a court, a trial court, looks at to see if a Motion to Intervene is timely. And those factors are the time that has passed since the applicant knew or should have known of his or her interest in the suit. Well, Your Honor, that's been a number of months. It could date back to the publication of the newspaper, it could date back to the time of all of the movements before the Court signed that petition well before the hearing. It could go back to the time notice was published along the streets, but in any event, it was months and months ago.

The reason for the delay, there's no reason

given. We don't know why they didn't act back at the time the notice was given by publication and by signs or when the petition was filed. The stage to which the litigation has progressed. You've entered an Order. You've had a hearing. They've come. They've been allowed to testify. They did testify. You considered their arguments. You included them in the Order.

And finally, the prejudice the original parties would suffer from granting intervention and the outcome would suffer from denying intervention. Well, the prejudice that my client would suffer is outlined in the affidavit that we filed. And I understand, Your Honor, that prejudice to my client is not necessarily part of the original inquiry you made to close the road but it is very much a factor in whether this is a timely motion. And as the affidavit states, and you have a copy of it, Your Honor, my client will be prejudiced to the tune of several hundred thousand dollars and for that reason, the motion is not timely.

And finally, the third element is that the applicant is so situated that the disposition of the action made as a practical matter impairing -- impede his ability to protect that interest. Well,

they've protected that interest. They've been here. They were given the opportunity to testify and some did. The issues that were raised were -- have already been -- have already been subject of testimony and, Your Honor, you cross-examined them where you asked them questions and they were subject to cross-examination. Everybody had a right to participate and three did. So, Your Honor, from that procedural standpoint, the motion to intervene is not timely and the applicant has had an adequate ability to protect themselves because they did, they came.

Now, the last thing I wanted to mention, Your Honor, is Rule 19. Mr. Mosteller indicated that -- or I'm sorry, it's Rule 24c, and that is the portion of the South Carolina rules that is mandatory. It's not permissive, it's mandatory and that is the part that says that "the motion shall state the ground therefor," they did that, "and shall be," not may be but, "shall be accompanied by a pleading setting forth the claimant offense for which intervention is sought." That was not -- that did not happen and I have an order here, Your Honor, if you'd like to see it, just from another trial court that the court -- one of the reasons

the court denied the Motion to Intervene is because the parties didn't do that.

Now, Mr. Mosteller says that doesn't apply because of the way the Rule 24c is written, "Notice to state when validity of statute is questioned." I think the writers of this ruling -- Your Honor, you can read it for yourself, but the writers of this rule simply put those two things together because the last sentence talks about what you do if you are challenging the constitutionality of the statute and that is, you have the additional step of serving the Attorney General. So, that's -- I think that's what the title is referencing; the first part about setting forth the pleading that must and shall be accompanied is not -- you know, is not part of that part of the analysis. So, for that reason, that's a procedural flaw, that reason, in and of itself, is enough to deny this motion.

But Your Honor, I think the bigger picture here is that you had the hearing, they've been here, they've had notice, they've had the opportunity to testify and three of them did. That including all the substantive and procedural reasons and the other reasons we set forth in our memoranda, we ask the Court to deny the Motion.

Your Honor, I do have these cases that I can pass up to you. I have a copy for the other side as well.

THE COURT: And I'll certainly be glad to take the cases. As far as an order issued by another court, I'm assuming that's not an Appellate Court Order you've got?

MR. WATSON: Right, Your Honor. It was just as I was reviewing this, I saw -- I saw a trial court went through the same analysis and realized that that was a reason. I will say this, Your Honor, and I would like to direct your attention to First Baptist Church of Mauldin vs. City of Mauldin. It's 308 South Carolina 226. It's a 1992 case. There, a road was bordered on both sides by property owned by the First Baptist Church of Mauldin. The First Baptist Church wanted to expand its daycare center and sought to close that road. In that case, the City of Mauldin didn't -- objected it and the court went through the analysis but it was the same sort of thing where they dealt with safety and dealt with the issues of people cutting through property and that sort of thing. But it's just a case that doesn't necessarily go to these motions but it's very similar in facts as to

the safety issues and the convenience of the parties that you consider before --

THE COURT: I'll let you submit the cases again. I don't need the trial court order. I don't think that would be fair to the other side --

MR. WATSON: Sure.

THE COURT: -- in regards to that.

MR. WATSON: And these are just printed -- they just printed right off Westlaw.

THE COURT: Okay.

MR. WATSON: And these are the ones -- they're -- I think 18 annotations to this but they all come back to these five or six cases.

THE COURT: Thank you.

MR. WATSON: If I could have one minute to consult with my co-counsel.

THE COURT: Yes, sir.

MR. WATSON: Your Honor, the notice of requirement to add the signage was amended in 2012 and the legislative history of that indicates the reason that was done is to give notice to people who may not have land that adjoins or abuts the portion of the road being closed. So, that goes back to 2012 and that gives the Court some indication of the legislative intent which would be

contrary to the movements' argument.

THE COURT: All right. Anything else?

MR. MOSTELLER: Your Honor --

MR. WATSON: No, Your Honor, that's all.

THE COURT: I'll give you a chance to respond, Mr. Mosteller.

MR. MOSTELLER: Yes, thank you, Your Honor. Just briefly, the legislature knows how to use language and could have easily said that written notice only be given to the property owners who abut the portion of the road being closed, which is the argument of esteemed counsel on the other side. They did not choose to do that. They said "whose property would be affected." That is much broader than a portion of the road being closed or abutting portion of the road being closed.

I believe that the 30-something people who are now in this Motion to Intervene, only 22 signed the original petition. I'm not sure how many of those 22 showed up. But if you look at the affidavit of Debra Dixon, she called Plaintiffs' counsel's office twice, left messages that she would like to know when the hearing would take place and she did not get a return phone call, an email or voicemail letting her know when the hearing took place. So,

that's one out of the affidavits we filed along with the petition which indicates that she did not get any information whatsoever.

But if the argument of opposing counsel is that all people involved in this petition should be foreclosed because 22 of them had signed the previous petition, I don't think that applies. I can see if the Court wants to look at those 22 original names and exclude them from the Intervention based on the argument of counsel. I don't agree with that but I could understand it if the Court ruled that way. However, we've got roughly 30 more people that did not participate in that original petition who are folks that use that road and live along the roads that are being closed and I would argue that just because it's more burdensome, if you're closing a very lengthy road, it is going to be more burdensome than if you're closing a very short road. And the legislature could have easily stated that only those living along the portion being closed deserve written notice but it's a much broader standard. Just because a case is a first impression or an argument is being made on the basis of the clear statutory language that hasn't been made before and decided

before by the Supreme Court does not mean that it is incorrect or that we are arguing against precedent, it just clearly hasn't been addressed.

THE COURT: You agree that there's no Appellate Court decision that supports what you're submitting on the argument?

MR. MOSTELLER: I agree that I have not been able to find one, Your Honor.

THE COURT: Okay.

MR. MOSTELLER: I can say that.

THE COURT: That's good enough. All right.

MR. MOSTELLER: With respect to the harm, I believe that the record is going to show that the center pivots were purchased long before this road was closed. The purchase of fertilizer is not referenced when it was purchased. This Rule 59e was filed very quickly after the --

THE COURT: Order --

MR. MOSTELLER: -- ruling of the Court and perhaps the fertilizer was bought within those seven days, but anytime you have a ruling from a Court, you've got 30 days from which it can be appealed and you have 10 days from which a Rule 59 should be issued -- can be issued. So, if he bought the fertilizer during that time, it was at

his own risk.

Secondly, any information proffered to the Court, a very similar farm doing a very similar work in Barnwell County, they were denied the road closing by Barnwell County. Barnwell County Council chose not to allow them to close the road. They're still in operation. Going back to our original Rule 59, we would request the Court reopen that --

THE COURT: Are you moving to argue under Rule 59 now? Because I'm going to get to that.

MR. MOSTELLER: Well, we -- I mean, if it pleases the Court.

THE COURT: Well, I don't want you moving to Rule 59 yet.

MR. MOSTELLER: Okay, okay. The initial allegations of the plaintiffs in this case involve some speeding cars up and down the road, some vandalism, pretty much every farmer in South Carolina has to deal with that if they've got a large property. They really allege nothing unique as to why this road should be closed. And the prejudice set forth in the affidavit of Brandon Woody is something they knew when they bought the property, Your Honor. It's nothing new. The

center pivots are still there. The fertilizer, I'm not sure when it was purchased but they can't demonstrate significant prejudice if this case had been litigated and discovery been going on, you wouldn't have reached a decision as quickly --

THE COURT: Well, as I understand it on the financial, I believe I ruled in the Order or I had a section in the Order where I said I found the testimony about any financial investments that the party had made to move to close the road was irrelevant. I think there's case law that supports that.

MR. MOSTELLER: And I was just getting to that.

THE COURT: My understanding on this is that they're saying the affidavit with this information now just goes to the prejudice element of the Motion. So -- am I understanding that?

MR. WATSON: That's correct, Your Honor. That's -- the Court, the Supreme Court, has set out in case law exactly what the Trial Court should look at to determine if something is timely filed and that's one of the factors there. You are correct about your other ruling but this is as --

THE COURT: Okay.

MR. WATSON: -- to whether it is a timely motion with the Motion to Intervene.

THE COURT: And I only raise that, Mr. Mosteller, because it seemed like you were going back into what was decided at the Court --

MR. MOSTELLER: I was about to raise the issue of what the Court had ruled on financial --

THE COURT: Okay.

MR. MOSTELLER: -- because that's the same prejudice they had six months ago, two months ago, last month, and unless they can show that they materially offer to change their position in response to this Court's ruling, I think the motion is still timely.

THE COURT: Okay.

MR. MOSTELLER: And their affidavit did not show a substantial change of position since the Court's ruled. And furthermore, I would argue that if they have substantially changed their position in reliance on the Court's ruling, it was premature because of the 10-day period and the 30-day period. That's all I was getting at with the financial --

THE COURT: Okay.

MR. WATSON: Your Honor, if I could respond briefly just to --

THE COURT: Yes, sir.

MR. WATSON: -- a couple of things? One of the opposition's affidavit that -- I think she's the lady who indicated she made a call. She actually was here on the -- back in May. She attended the hearing, so she was in the group.

THE COURT: Let me say this about attended the hearing. I can't speculate as to who was there who's not identified. I can't speculate as to whether they were on -- there for the Plaintiff or whether they were there for the Moving Parties. We were in a much smaller courtroom and I'm sure some of the parties here may have been at the hearing as well. It was pretty much filled up on the two benches. The Court inquired as to any interested party who wished to testify to raise their hand and identify themselves and I don't think anybody would contest that only three people raised their hand to testify. But it's a little difficult on the Motion argument for me to say, "Well, so and so was there," I mean, I don't know that.

MR. WATSON: Right.

THE COURT: Unless we have an affidavit from somebody who says, "I was at the hearing," I'm not sure how I can take that into consideration. I

understand the argument. I'm just letting both sides know I don't think I can speculate on that part of it as far as reaching a decision in regards to that.

MR. WATSON: Well, Your Honor, if that point is important to you, Ms. Guynn talked to her at that hearing, that's why we know she, of everybody, was there. So, we can submit an affidavit if that's important to you, Your Honor. But I just raised that because that was not included in the affidavit. And I wanted to say something about this prejudice. You are exactly right, the prejudice goes to the timeliness of this Motion to Intervene and it's what prejudice will a party suffer if the Motion to Intervene is granted. It's not what happened six months ago. If this Motion to Intervene is granted, not only will my client have to pay the legal expenses to redo something that's already been done and all the costs and fees associated with that, but going forward, he can't use those pivots. We're not talking about what happened -- if the Motion to Intervene is denied, then the case stops and he can farm the land completely as he intended. But it doesn't have anything to do with what he knew before or in past

or when he purchased it or what he did or didn't do. It's talking about what happens if this Motion to Intervene is granted or what happens if it's denied. That's the prejudice argument.

And Your Honor, I'll just say very briefly, I have not had a chance to review this information about the farm in Barnwell County that you've got in proffer that I've objected to but I would just simply say that they are totally different operations. I think my understanding is that Barnwell County declined to accept ownership of that road and that's why -- but each of these cases is completely different, that's why we have a hearing, that's why we have the statute that allows Your Honor to do exactly what you did do and that's hear testimony. So, I just say that without having seen or talked to anyone associated with that but I would point that out in the event Your Honor believes that's appropriately presented today.

THE COURT: All right.

MR. WATSON: Thank you.

THE COURT: Let me address a question, if I could, to the Moving Party's counsel. The affidavits that were submitted and attached, the Notice of Motion, Motion to Intervene, and amending

THE COURT: Okay, go ahead.

MR. MOSTELLER: Part of the reason, I believe, that if the Court were to adopt our analysis that written notice is required, phone calls are very informal. Written notice from the lawyer notifying somebody of the road closing is much more formal and would be more conducive to someone concluding that they might need to get an attorney to represent their interest in a matter and I just don't believe that simple phone calls give the kind of notice that the statute was contemplating. But --

THE COURT: But to both sides --

MR. MOSTELLER: Yes, sir.

THE COURT: -- I mean, this is an interpretation of the statutory language.

MR. MOSTELLER: Yes, sir.

THE COURT: That's really the entire argument regards to this notice issued.

MR. MOSTELLER: Correct.

THE COURT: Everybody agree with that?

MR. MOSTELLER: Correct.

MR. WATSON: Yes, Your Honor, and I would also add the statute doesn't say this either.

THE COURT: Well, that's why I was trying to

the prior Motion. You referenced Ms. Dixon, I believe it was, her affidavit and, of course, I have read all of these affidavits. You would agree that besides Ms. Dixon's and besides Mr. Smith's, I believe, struck through and added some different language in there, that those affidavits say that they "contacted Mary Guynn's office before the hearing and was told it was not necessary for me to come to the hearing." That's the language that's in each of those affidavits, correct?

MR. MOSTELLER: That is correct, Your Honor. And at no time were they informed if they wanted to protect their rights, they should be at the hearing.

THE COURT: And they weren't informed that they should not go to the hearing, just that it was not necessary.

MR. MOSTELLER: That is correct.

THE COURT: Okay. All right. I've looked through all the evidence in regards to the Motion to Intervene. I am ready to hear the Motion to Reconsider pursuant to 59e.

MR. MOSTELLER: Yes, Your Honor. May it please the Court, I did have one other initial observation on the prior motion before we move --

get to that point. And I understand the point you're trying to make but I'm just saying, as far as a decision by the Court, it really comes down to interpretation of the statutory language. I understand the purpose that if they receive the certified letter, they may take different steps to that but it still comes back that the language in the statute isn't required by reading that, how do you interpret that language and how the Court's interpreted that language.

MR. WATSON: I think they're trying to put a duty on plaintiff's counsel that is not recognized by the law but is over and above anything the statute requires and there are many many cases that talk about what duties, which are very minimal, a plaintiffs' counsel -- or a plaintiff owes to defendant or to another party or someone other than the plaintiff is that they're in a different sort of -- could be adverse or not consistent relationship.

THE COURT: Well, I think I understand the argument on both sides. He's relying on the language and saying here's what he interprets the language to be. You're relying your interpretation in regards to language and that as far as the

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people that live on the road but not who are abutting just for the area disclosed and that's what -- that's the essence of the notice argument in this thing but my point was rather than having all these other arguments, I mean, it really comes down to me interpreting that court language, the language of the statute, because this is created by statute and making a determination in that.

MR. WATSON: Yes, Your Honor, I think that's exactly right.

THE COURT: All right. Anything else, Mr. Mosteller?

MR. MOSTELLER: Nothing on that, Your Honor.

THE COURT: Okay. All right. I'll be glad to hear the Motion to Reconsider.

MR. MOSTELLER: Your Honor, in the Rule 59e, I believe that we would respectfully request the Court alter or amend its judgement to take into -- to give greater weight to the concerns of the three people who did testify. There's a safety issue as to the immediacy or ability of emergency responders, ambulances, firetrucks, police, which would be able to drive through Oak Ridge Club Road or Old Bell Road to respond more quickly to the needs of the residents.

There's the public use of the road that was testified to and there's some information in our proffer that indicates that this road is more than just a few decades old. And it's essentially been public -- dedicated to the public possibly for centuries. But on -- that wasn't testified to at Court, the age of it necessarily.

I think that the Court gave too much weight to the testimony of the Plaintiff about what appear to be fairly minor inconveniences suffered by farmers throughout this state. Yes, if there is vandalism, that happens in any large tract of land. People speeding up and down the road happens throughout this state. But safety of the residents and the public use of the road should outweigh and be given greater weight than the inconveniences testified to by the plaintiffs. And so we would respectfully request that the Court reconsider its ruling and keep the road open for those considerations because it's been a public road for a very long time and the difference in a few minutes when an ambulance is responding, having to go all the way around to get to somebody's house, could be the difference of life and death. The --

THE COURT: You're aware of the testimony

about the different speeds on the roads and this dirt road as opposed to paved road that was given at the trial --

MR. MOSTELLER: Yes, sir.

THE COURT: -- and questions that were asked?

MR. MOSTELLER: Yes, sir, Your Honor.

THE COURT: Okay. All right. Okay, go ahead.

MR. MOSTELLER: So, that's the reason for our Rule 59 request.

THE COURT: Okay.

MR. WATSON: Your Honor, we would also oppose the Motion to Reconsider and if it's okay with the Court, I'd like to just incorporate what I argued previously about Motion to Intervene because I think many of those arguments are exactly the same and many of the reasons that Motion to Intervene should be denied are also reasons that the Motion to Reconsider should be denied.

And I will say that there are some procedural reasons the Motion to Reconsider should be denied in addition to the same substantive things we've already talked about. I think from a substantive standpoint, Your Honor did an excellent job conducting the hearing. I was not here, as you know, but I did read the transcript and I think the

questions were fair and I think you reached a correct decision.

Two particular points though, Your Honor. One is the movements weren't parties to the action and I cited the case on the standing to now file a Motion to Reconsider in order to which they were not a party. So, I raise that to the Court. But more importantly, Your Honor, as you know under Rule 59, that the only issues that were raised at the hearing can be raised on a Motion to Reconsider. None of these -- the issues that were raised, you dealt with in a fair and responsible and complete way. The issues that were not raised that are now being proffered were not raised and under the rules, they should not be considered in a Motion to Reconsider anyway.

But Your Honor, I just think from a substantive standpoint, you've heard the arguments, you've made the right decision, there was complete testimony, everybody had an opportunity to offer.

And I would ask the Court just from a public record standpoint, that if you do -- there are calculators on the internet that tell you the amount of time it takes at certain speeds and distances and the calculation of the amount of time

it takes going for 7.5 miles at 55 miles per hour on a paved road with the opportunity to go faster versus 5.1 miles at 35 miles an hour on the unpaved road, that is a calculation, a public record calculation, that I think should be undertaken because that argument, the longer 7.5 miles takes, according to these calculations, eight minutes, 10.9 seconds. The shorter at the lower speed takes eight minutes, 44.57 seconds. So, Your Honor's observation and Your Honor's conclusion that you reached in the lower -- at the trial was absolutely correct.

So, for all those reasons and the reasons that I outlined with respect to the Motion to Intervene, Your Honor, we'd ask that both motions be denied.

THE COURT: Let me just say one thing before you respond. I think in regards to the speed and the dirt road and the paved road, my point was that there was testimony and that issue was addressed at the trial. I understand the motion that I gave too much weight to one side as opposed to the other. I don't think it's proper for the Court -- that's up to parties to submit if they had a calculation they wanted to submit. It wouldn't be proper for me to go out and do an investigation on my own outside of

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what's submitted at the hearing. So -- and I wouldn't do that for the Motion purpose either. I just want to make that clear.

MR. WATSON: Your Honor, I understand and I'll withdraw that part of it and I just wanted to indicate that the reasoning you used at the hearing was adequate for purposes of the Rule 59 in motion.

THE COURT: Okay. I just wanted to clarify that point. Mr. Mosteller, go ahead.

MR. MOSTELLER: Your Honor, I'd just like to briefly rebut. In the Court's electronic docketing of this case --

THE COURT: The Clerk of Court?

MR. MOSTELLER: The Clerk of Court's, yes, sir. The Barretts are listed as inactive parties to the case. I don't know what that means, so they are parties. They had filed documents with the Clerk. So, I've never seen an interpretation of Rule 59e that distinguishes between, quote, active parties and inactive parties because I'm not sure what an inactive party is but they did in fact appear in the case with a filing pro se and they are listed on the Court website as being inactive parties. So, I don't think procedurally it is wrong for them to file a Rule 59e.

Secondly, as to the safety issue, Ms. Barrett, I believe, testified that only one mile of the road was dirt and, of course, emergency vehicles are not required to go the posted speed limit when they're responding to a heart attack, potential cardiac case, or a house burning down. So -- or even domestic violence. So, I don't believe a calculation of the speed, even though the Court just said it wasn't going to address those, I think greater weight should have been given to emergency vehicle access to these residents going down a short road which only one mile of it was dirt.

And then that's all we're asking and we're certainly not saying that the Court did anything improper in the conduct of the case and we agree the Court was quite appropriate in everything except for the weight given to certain testimony and that's all we're asking the Court to reconsider.

THE COURT: And both parties have reviewed the transcript, though, since we're going to get into this issue apparently on both sides about the dirt road and the paved road, everybody agrees there was nobody from any emergency unit or department who came in to testify about whether they would use the

dirt road or paved road. That all came from the parties' testimony. There was nobody actually involved in responding to those who gave testimony. Would you agree with that, Mr. Mosteller?

MR. MOSTELLER: From what I understand, yes, sir, Your Honor.

THE COURT: Do you agree with that, Counselor?

MR. WATSON: Yes, sir.

THE COURT: Okay. All right. Gentleman, Ladies, I've been presented with some cases here to review of both sides. And before I rule on the Motion to Intervene, I'll review those and give those weight as necessary before issuing the Order in regards to that on the Motion to Intervene. The Motion to Reconsider, I'm a little more positive on but I think we have a unique situation here where I don't want to rule on -- I'm going to issue an order on both at the same time and only because it may affect some -- depending on how the rulings come down, it could affect some appellate time and I don't want to issue one and kind of puts one side into limbo as to what may happen on the other. So, I think, to protect both parties, I'll issue those orders at the same time and I'll go back and review the Motion to Reconsider which is a little bit

briefer in argument from each side. But the Motion to Intervene was a little more detailed in regards to statutory interpretation in the cases that were submitted and so I'm going to need to review those before I issue an order. If I issue one now, it's obviously -- be an issue without ever even considering the cases that are submitted by the parties, so I'm not going to do that. So, I will issue a ruling, issue a written order and provide that to the parties. All right. Is there anything else from the Moving parties?

MR. MOSTELLER: Nothing Your Honor.

THE COURT: All right. Anything else from the Plaintiff?

MR. WATSON: No, sir.

THE COURT: All right. I appreciate everyone presenting that information and presenting your arguments and the Court will issue a ruling shortly.

MR. MOSTELLER: Thank you, Judge.

MR. WATSON: Thank you.

THE COURT: Thank you. That will conclude the hearing.

[HEARING CONCLUDED AT 11:17 A.M.]

C-E-R-T-I-F-I-C-A-T-E

S O U T H C A R O L I N A

AIKEN COUNTY

I hereby certify that the foregoing hearing was reported, as stated in the caption, by means of Stenomask and speech recognition, with backup, and the proceeding was reduced to written form by me or under my direction; that the foregoing pages 1 through 53 represent a true, correct, and complete transcript of the evidence given on August 12, 2016; that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I financially interested in the action.

This, the 30th day of August 2016.

Sharon DeHart

SHARON DEHART, CVR-M

CERTIFIED COURT REPORTER

NVRA CERTIFIED

2460

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Canadian River Farms, LTC, Colt Farms, Inc., BC Farms Inc., f/k/a BC Farms of South Carolina, Inc., Outback Farms, LTD,

Plaintiffs,

vs.

Becky J. Gonshowski, SC Dept. Of Transportation, Aiken County, South Carolina,

Defendants.

CASE NO. 2016-CP-02-511

AFFIDAVIT OF COLE PAGE JR.

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Personally appeared before me, Cole Page Jr., who being duly sworn deposes and says that:

1. He is 68 years of age, and is a retired engineer from the South Carolina Department of Transportation having worked approximately 35 years there.
2. That while he worked for the Department of Transportation, he was assigned to Aiken County as its resident engineer for both maintenance and construction for approximately 18 years.
3. He grew up in the White Pond community of Aiken not far from the roads which are the subject matter of this lawsuit, and currently lives on Edisto Church Road which is in Barnwell County, near New Forrest Road in Barnwell County.
4. In Aiken and Barnwell Counties, Oak Ridge Club, Christmas Tree Road and New Forrest Road in Barnwell are one continuous road and have been one continuous road his entire life. As county engineer and again recently, he has reviewed map after map going back decades to 1972 when he became the resident engineer that show the road to be one

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continuous road.

5. The road actually continues to Bamberg County, South Carolina and becomes the Augusta Charleston Highway.

6. He has reviewed an old map of the Barnwell District and the road existed prior to Aiken and Barnwell Counties and has been known as the Old Charleston Road.

7. In his community, it is legend that the road was actually an old American Indian trail prior to settlement in this part of the State.

8. He is a regular reader of the Barnwell People-Sentinel and does not recall ever seeing a notice published in the paper in Barnwell that the road or a portion of the road was being closed.

Affiant Sayeth Further Not.

Cole Page Jr.

Sworn and subscribed to before me
on this the 11th day of August, 2016

Notary Public for SC: 08/08/18

I certify this to be a true and exact copy of the original filed in the Barnwell County Administrator's Office.

Pickens Williams, Jr., Administrator
8/11/16

Pickens Williams
Barnwell County Administrator

Dear Mr. Williams,

Walther farms developed the Wiley Fork Farm in Barnwell County South Carolina in 2014. Since that time we have had numerous problems with trespassers on the property accessing the farm off of New Forest Rd. New Forest Rd is a seldom used dirt road that splits the property and does not have any recorded Right of Way. SCDOT currently has historical maintenance responsibilities and have stated that they would like to pursue closing the road from the Aiken/Barnwell County line to the eastern boundary of our property at the bridge on New Forest Rd. It is our understanding that SCDOT cannot do so unless they first hand the road maintenance responsibilities over to Barnwell County. Walther Farms will gladly take over road maintenance responsibilities from Barnwell County for our use on the farm.

We understand that Barnwell County does not want any further maintenance responsibilities on top of the current work load but we are asking for the County's assistance in helping with the road closure due to continued and rampant trespassing, theft, and vandalism off of New Forest Rd. We have had multiple instances of trespassing by people looking for arrow heads. This activity in our crop fields has resulted in damaged crops, littering, and confrontations with our employees. In one instance the Sheriff was called because the person was a repeat offender. The individual left in a rush and while doing so he ran through numerous crop fields damaging and destroying crops along the way.

We have had two deer hunting trail cameras stolen. Last July copper wire was stolen out of an irrigation system close to the road at a cost to Walther Farms of $10,000. Most recently, someone was spotlighting deer on the property and got their vehicle stuck. They used one of our tractors to pull their vehicle out resulting in significant damage to the bat wing mower that was attached to the tractor. Dragging the mower across the farm also resulted in road and crop damage, the repair of which costs us significant money in man hours and parts to fix all the damage to the equipment and property.

It should be noted that we rescinded our initial request to close New Forest Rd when it became evident that there was very vocal resistance from the general public. However, this seldom used road is nothing but a pathway for individuals to inflict damage upon our property. We are very frustrated with the total disregard for our property and investment we have made to the land in Barnwell County.

With it being in a remote location we cannot be there 24/7 to monitor the property and are left with no other choice but to pursue the closing of the road. This is not only a problem of vandalism but also a liability concern to our business and family. We ask for your assistance in this matter of closing New Forest Rd as soon as possible.

Thank you,

Jeremy Walther

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I certify this to be a true and exact copy of the original filed in the office of the Barnwell County Clerk...

Kim Futrell, Clerk to Council

BARNWELL COUNTY COUNCIL
October 14, 2014
Council Meeting Minutes

Pursuant to the Freedom of Information Act, the news media was notified & notice was posted 24 hours prior to the meeting.

Barnwell County Council met on October 14, 2014 at 6 pm for its regularly scheduled Council Meeting. In attendance were Councilman Harold Buckmon, Councilman Jerry Creech, Chairman Freddie Houston, Vice-Chairman David Kenner, Councilman Keith Sloan, Councilman Joe Smith, Administrator Pickens Williams Jr., and County Attorney JD Mosteller. Also in attendance were Danny Black with the SCA and Will Whaley with the People Sentinel. Councilman Loweil Jowers and Clerk to Council Kim Futrell were unable to attend.

Call to Order, Invocation, Declaration of a Quorum, Approval of Agenda and Minutes, Public Comments
The meeting was called to order, the invocation given and a quorum declared. A motion was made to approve the agenda. The motion was seconded and it passed. Councilman Smith moved to approve the minutes for the September 9th, 27th, and October 6th Council meetings. Councilman Sloan seconded motion and it passed.
Chairman Houston welcomed everyone to the meeting and asked for public comments. There were none.

Updates
County Administrator
Administrator Williams gave an update on various departments and said an arborist had inspected the oak tree in front of the Administration Building and it had been trimmed due to its dropping both dead and live limbs. A claim would be filed with the insurance company to recoup a portion of the money spent. Council discussed the need for an updated website to provide more information for the public and requested a cost estimate be obtained.

Committee Reports
Boards & Commissions, Government, Healthcare, Housing, Science Technology & Regulatory Matters, and SCRDA
There were no appointments for Boards & Commissions and no reports for the above Committees.

Economic Development
Councilman Creech moved that County Council members, the Mayors of Barnwell, Blackville, and Williston give depositions of their knowledge of the EDC Board's actions, giving County assets to the three municipalities, and the director and assistant director receiving $640,000 of Barnwell County EDC funds. Councilman Buckmon seconded the motion. Councilman Sloan said that he did not believe Council or the Mayors giving depositions would change public perception, that it may interfere with the ongoing investigation, and that all mentioned would probably be deposed eventually. Attorney Mosteller said that would best be discussed with Attorney Buchanan during the Executive Session portion of the meeting. Councilman Creech said he would table his motion until after the Executive Session.

Finance
County Administrator reviewed the financial report with Council.

Financial Update
Councilman Sloan said there would be a Financial Committee meeting on October 17th at 10 am.

Judicial
Councilman Buckmon said that the room on the second floor of the Courthouse, which the Solicitor's office had planned to use, was unavailable as the Clerk of Court needed the additional space. There was discussion regarding the need to find additional space for the Solicitor's office.

Personnel
Councilman Kenner said updated job descriptions from department heads and elected officials were needed by the end of November. Chairman Houston asked that the elected official's salaries be compared to those in other Counties also.

Safety
Councilman Creech asked that the Finance Committee give consideration to paving the substations driveways.

Services
Councilman Smith asked for input from the public on recycling ideas.

Transportation
Councilman Creech said Curtis Drive and the parking lot in Hilda were complete, construction would start soon on Rainbow Drive and Kimberwick and Stagecoach would begin at the start of 2015.

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New Business

Resolution Related to Leasing the "Denmark Tech Bldg" to the YMCA

Councilman Creech moved to approve the lease agreement with the YMCA at a $1.00 per year for 25 years. Councilman Buckmon seconded the motion. Councilman Sloan moved to amend the motion, by revising the lease to a 5 year lease at $1.00 per year with the potential of four 5 year extensions so that at the end of each 5 year lease Council could possibly renegotiate the fee per year based on how well financially the YMCA was doing. There was discussion was held regarding the amount of money the YMCA was investing and the need to recoup the loss of revenue. There was no second on the amended motion. County Attorney Mosteller said that the lease had to be revised because it listed the fee at $1.00 for 25 years, not at $1 00 per year. A vote was taken on the original motion and it passed.

1st Reading of an Ordinance Related to Leasing the Denmark Tech Bldg to the YMCA

This Ordinance was read in name only.

Resolution Related to the Treasurer Using Setoff Debt Collection

Councilman Sloan moved to approve this Resolution. Councilman Buckmon seconded the motion and it passed.

County Acceptance of Abandoned Road

Councilman Creech moved to approve this agenda item. Councilman Smith seconded the motion and it passed.

Interagency Narcotics Agreement with Aiken County

Councilman Buckmon moved to approve this agenda item. Councilman Smith seconded the motion and it passed.

Resolution Regarding the Local Government Fund

Councilman Sloan moved to approve this Resolution. Councilman Smith seconded the motion and it passed.

Old Business

2nd Reading of an Ordinance Related to the EDC

Councilman Sloan moved to approve the 2nd Reading of this Ordinance. Councilman Smith seconded the motion. A roll call vote was requested.

Chairman Houston-Yes	Councilman Creech-Yes	Councilman Kenner-Yes	Councilman Smith-Yes
Councilman Buckmon-No	Councilman Jowers-Absent	Councilman Sloan-Yes	

The motion passed.

A motion was made to enter into Executive Session. The motion was seconded and it passed.

Executive Session

There was no action taken in Executive Session.

Councilman Sloan moved that the incentive package for Project Flower be accepted. Councilman Smith seconded the motion and it passed.

Councilman Creech restated the motion that was tabled during the Economic Development update. Councilman Sloan moved to amend the motion to have it tabled until the November 11th Council meeting. Councilman Smith seconded the motion and the motion did not carry. Attorney Mosteller asked if Council was waiving their legislative privilege which was allowed and required by Supreme Court decisions. There was discussion concerning the legal advice received in Executive Session. A roll call vote was requested on the original motion.

Chairman Houston-No	Councilman Creech-Yes	Councilman Kenner-Yes	Councilman Smith-No
Councilman Buckmon-Yes	Councilman Jowers-Absent	Councilman Sloan-No	

The motion did not carry

A motion was made to adjourn. The motion was seconded and it passed.

The meeting adjourned at 7:04 pm.

Respectfully submitted,

Pickens Williams Jr.
Barnwell County Administrator

Freddie Houston
Council Chairman

I certify this to be a true and exact copy of the original filed in the office of the Barnwell County

Kim Futrell, Clerk to Council

BARNWELL COUNTY COUNCIL
November 11, 2014
Council Meeting Minutes

Pursuant to the Freedom of Information Act, the news media was notified & notice was posted 24 hours prior to the meeting.

Barnwell County Council met on November 11, 2014 at 6 pm for its regularly scheduled meeting. Attending were Chairman Freddie Houston, Vice-Chairman David Kenner, Councilman Harold Buckmon, Councilman Jerry Creech, Councilman Lowell Jowers, Councilman Keith Sloan, Councilman Joe Smith, Administrator Pickens Williams Jr., County Attorney JD Mosteller and Clerk to Council Kim Futrell. Attending also were Clerk of Court Rhonda McElveen, Matt Mullan with the YMCA, and Will Whaley with the People Sentinel.

Public Hearing, Call to Order, Invocation, Declaration of a Quorum, Approval of Agenda, Approval of Minutes, and Public Comments

A Public Hearing was held prior to the 3rd Reading of an Ordinance to lease the Denmark Tech Bldg to the YMCA. Lisa Fermender with Generations Unlimited commended everyone for their work in bringing the YMCA to Barnwell County. The meeting was called to order, the invocation given and a quorum declared. Councilman Sloan moved to approve the agenda. Councilman Jowers seconded the motion and it passed. Councilman Sloan moved to approve the minutes for the October 14th and October 21st Council meetings. Councilman Smith seconded the motion and it passed. Chairman Houston welcomed everyone to the meeting and asked for public comments. Matt Mullen, YMCA Branch Director, updated Council on the YMCA's progress.

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Updates

Clerk of Court

Rhonda McElveen distributed a report and gave an update on the terms of Court and the amount of filed cases. Councilman Sloan noted the decrease in cases and requested a breakdown explaining the reduction.

County Administrator

Administrator Williams gave an update on various departments.

Committee Reports

Boards & Commissions

Chairman Houston said a job description for an EDC director was needed and suggested Administrator Williams, Councilman Jowers, and Councilman Creech meet with Danny Black for his assistance in creating one.

Economic Development

Councilman Jowers said the SLED investigation was being reviewed by the Captain and would be sent to the Solicitor's Office. Council discussed the Council Chair sending a letter of inquiry to the Solicitor and/or the Attorney General regarding the status. Councilman Jowers said that the Towns had turned over a check for $90,000 which were the funds transferred to them by the previous Economic Development Commission and a check for $91,000 which was for property leases. Council discussed possible guidelines for the County's appointments on the EDC Board.

Finance

Councilman Sloan said the Finance Committee had met on October 17th. Coming as recommendations from the Finance Committee, Councilman Sloan moved for the following:

- That Council advance up to $18,000 for paving the driveway/parking area at the Hwy 300 substation and the Patterson Mill Rd substation which would be reimbursed to the County by the Fire Commission in FY '15-'16. Councilman Creech seconded the motion and it passed.

- That the County engage an outside firm to develop a framework to transition the financial policies to a unified accounting system and solicit an RFP for the cost of implementation. This would unify the Finance Department data with the Treasurer's Office data making the financial statements more up to date. Councilman Kenner seconded the motion and it passed.

Councilman Sloan moved to accept the FY '12-'13 audit saying the audit had received a clean opinion on its financial statements but was non-conformant on the government wide statements because an audit for the EDC was not done for FY '12-'13. Councilman Smith seconded the motion and it passed. Councilman Sloan moved to approve the creation of a new County website at the following cost: Construction - $3,000, annual domain fee $195, monthly hosting and security fee - $35, additional site work/changes beyond normal maintenance - $75 hourly. Councilman Creech seconded the motion and it passed. Administrator Williams said money in the pooled interest account would cover the costs.

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Financial Update
County Administrator reviewed the financial report for September.

Government, Healthcare, Housing, Safety, Science Technology & Regulatory Matters, Services, and SCRDA
There were no reports for the above Committees.

Judicial
Councilman Buckmon said he would be meeting with the Clerk of Court and the Solicitor's Office regarding space issues.

Personnel
Councilman Kenner said the Personnel Committee had met on November 6th and asked that Department Heads turn in updated employee job descriptions. Comparable salary information for elected officials was provided in the Council packet. Coming as a recommendation from the Personnel Committee, Councilman Kenner moved to approve that the Personnel Manual be amended to included the Clean Air Policy. Councilman Smith seconded the motion and it passed.

Transportation
Councilman Creech said a bid on Rainbow Drive had been accepted on October 31st.

Old Business
3rd Reading of an Ordinance Related to Leasing the Denmark Tech Bldg to the YMCA
Councilman Smith moved to approve the 3rd Reading of the above Ordinance. Councilman Jowers seconded the motion. A roll call vote was requested.

Chairman Houston-Yes	Councilman Creech-Yes	Councilman Kenner-Yes	Councilman Smith-Yes
Councilman Buckmon-Yes	Councilman Jowers-Yes	Councilman Sloan-Yes	

The motion passed.

New Business
Acceptance of the FY '12-'13 Audit
This action item was handled during the Finance Committee report.

Resolution Related to Interagency Narcotics Agreement with Aiken County
Councilman Buckmon moved to approve the above Resolution. Councilman Sloan seconded the motion and it passed.

Reconsideration of County Acceptance of a Section of New Forest Road
Chairman Houston asked for public comment. A petition with 140 signatures requesting the road continue to be owned and maintained by the State was given to Council. Several citizens said the road was needed as an alternate access and was still in use. Councilman Creech moved that Council rescind their previous acceptance of the road and that it continue to be owned and maintained by the SCDOT. Councilman Sloan seconded the motion. A roll call vote was requested.

Chairman Houston-Yes	Councilman Creech-Yes	Councilman Kenner-Yes	Councilman Smith-Yes
Councilman Buckmon-Yes	Councilman Jowers-Yes	Councilman Sloan-Yes	

The motion passed.

Councilman Sloan moved that prior to any future considerations by Council of closing any road, they would first seek input from property owners living on the road. Councilman Smith seconded the motion and it passed.

Consideration of Finance Committee Recommendations
This action item was handled during the Finance Committee report.

Resolution Announcing Results of Capital Projects Sales Tax Referendum
Councilman Sloan moved to approve the above Resolution. Councilman Smith seconded the motion and it passed.

Amendment to Animal Shelter Policies and Procedures
Councilman Sloan moved to approve the above Resolution. Councilman Smith seconded the motion and it passed.

Amendment to Personnel Manual – Clean Air Policy
This agenda item was handled during the Personnel Committee report.

A motion was made to enter into Executive Session. The motion was seconded and it passed.

Executive Session
There was no action taken in Executive Session.

Councilman Creech moved to support Head Start as described in a letter presented to Council at the beginning of the meeting. Council Buckmon seconded the motion and it passed.

Councilman Jowers moved to approve the Chair sending a letter regarding the Promise Zone. Councilman Sloan seconded the motion and it passed.

Councilman Jowers moved to approve the Resolution related to deeding 40 acres to project Flower. Councilman Sloan seconded the motion and it passed.

A motion was made to adjourn. The motion was seconded and it passed.

The meeting adjourned at 8:20 pm.

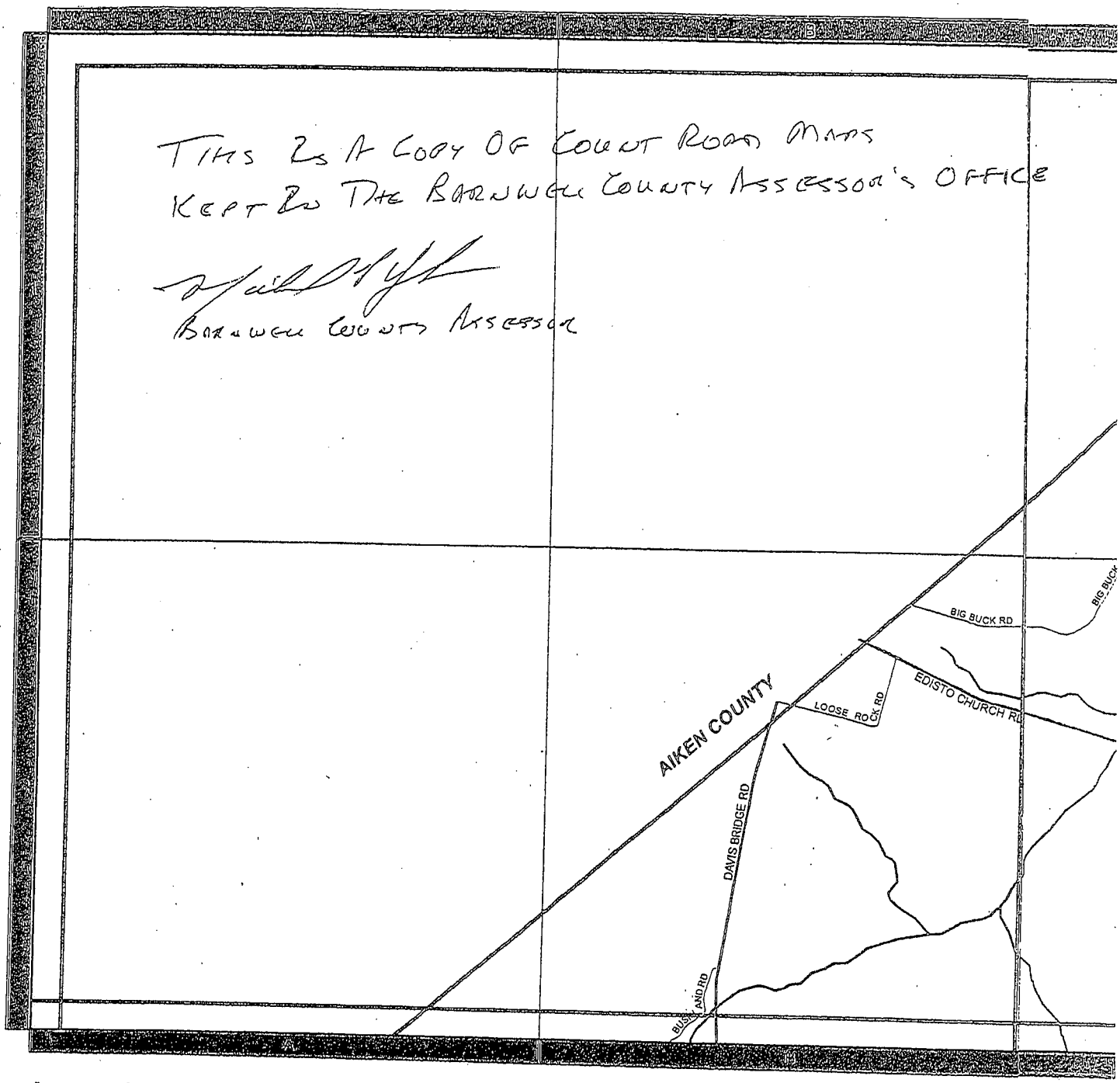
Respectfully submitted.

Kim Futrell
Clerk to Council

Freddie Houston
Council Chairman

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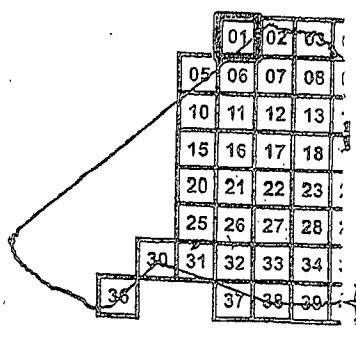
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- FIRE DEPARTMENT
- EMS STATION
- AIRPORT
- CITY HALL
- COURTHOUSE
- HOSPITAL
- LIBRARY
- MUSEUM
- NATIONAL GUARD
- POST OFFICE
- CEMETERY
- CHURCH
- SCHOOL
- LANDING ZONE
- FIRE HYDRENT
- WATER SUCTION POINT
- CONVENIENCE SITE
- DIRT ROAD
- PAVED ROAD
- STATE HIGHWAY
- US HIGHWAY
- RIVER
- STREAM
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- FEDERAL PROPERTY
- CITY BOUNDARY
- COUNTY BOUNDARY

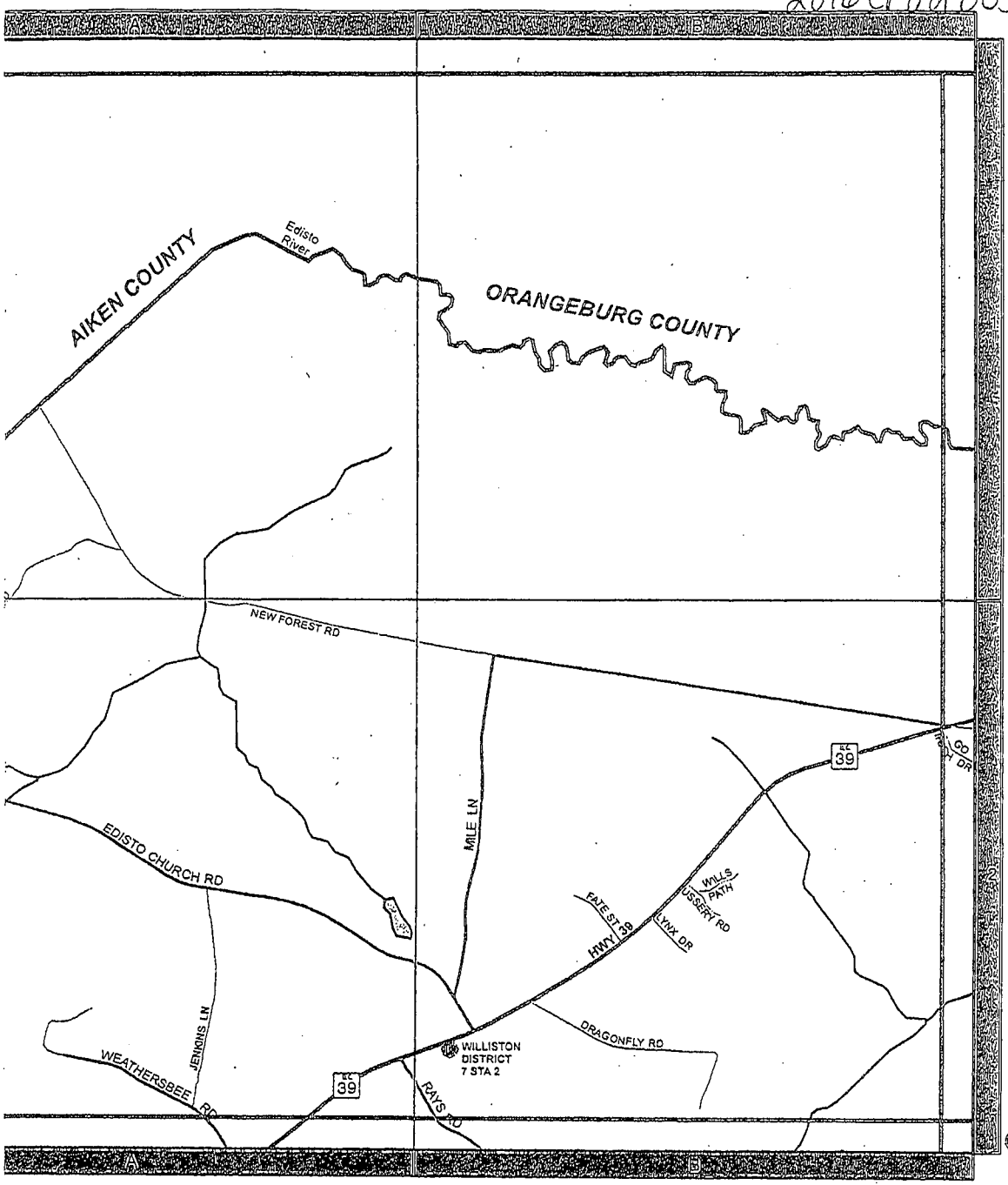
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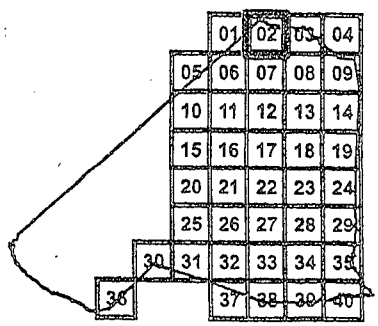
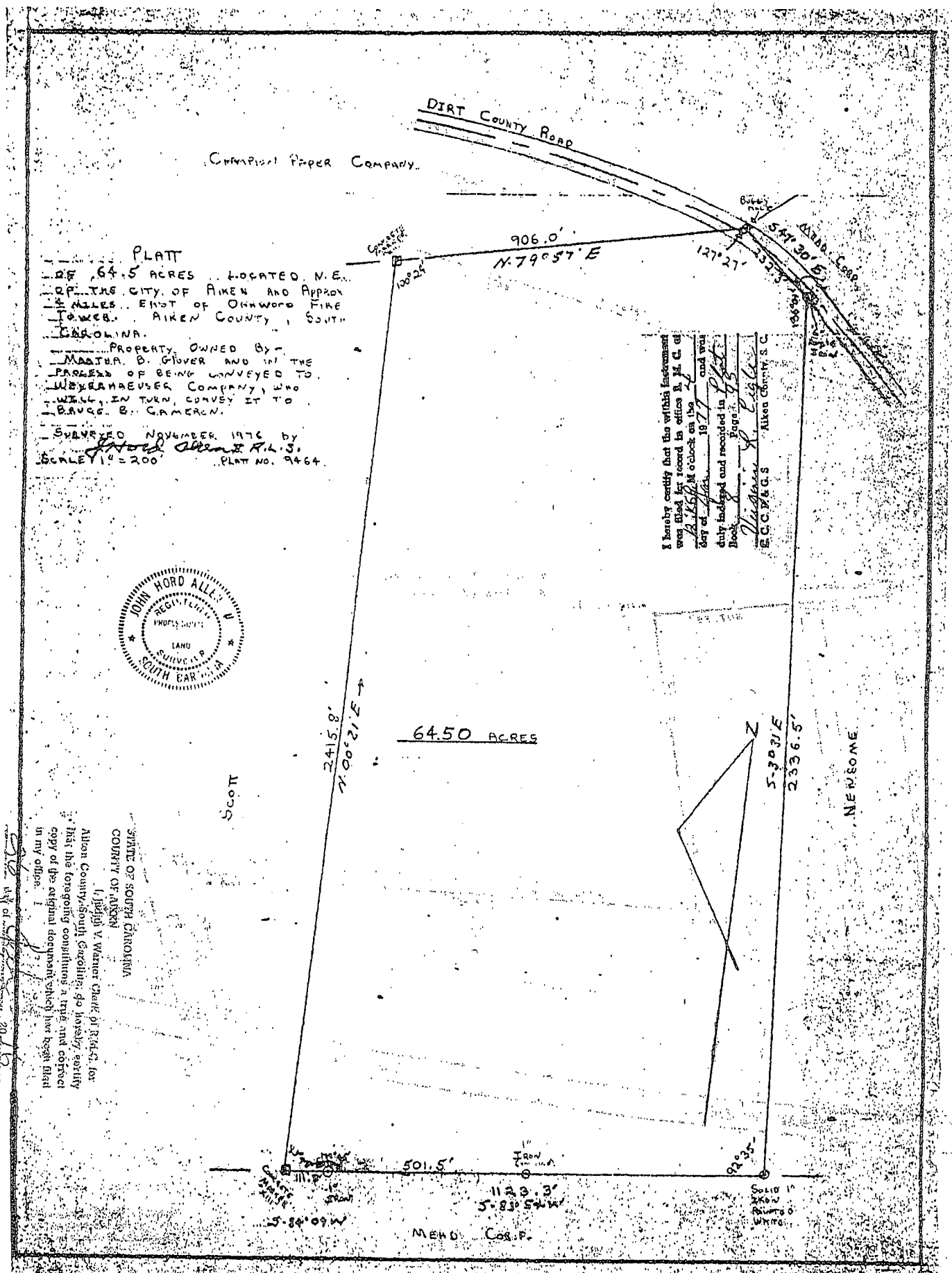


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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
Canadian River Farms, LTD. Colt Farms, Inc., BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd.,)	Civil Action No. 2016-CP-02-00511
Plaintiffs,)	
vs.)	**MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE**
Becky J. Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina,)	
Defendants.)	

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CLERK OF COURT

This matter is before the Court on a Motion to Intervene dated August 1, 2016, which purports to amend a prior Motion for Reconsideration of this Court's June 27, 2016 Order, filed July 8, 2016. The Motion to Intervene is brought by an unincorporated association known as "Save Windsor," along with Michael Cave, Kandace Cave, Deborah Dixon, Patrick Martin, Angie Martin, Dr. Vicki Long, Christopher W. Bowman, Lou Bertha Price, Rev. John H. Price, Jessica Davenport, Arthur Davenport, Robert E. Barrett, Carolyn L. Barrett, Terry Kane, Ernestine Jenkins, James Pope, Louise Pope, Rena Clark, Janice L. Williams, Debbie Grice, Anthony N. Fernandez, and Tracie W. Fernandez (collectively "Movants").

Plaintiffs oppose the motion for a number of reasons, including that this Motion to Intervene is not timely and does not otherwise meet the requirements of South Carolina Rule of Civil Procedure 24. In addition, the issues purportedly raised by the Movants lack merit. For these reasons and those set forth more fully below, the Motion to Intervene should be denied.

BACKGROUND

This matter stems from a June 27, 2016 Order issued by this Court ordering portions of two unpaved county roadways known as Bell Road and Oak Ridge Club Road to be closed within 40 days of the date of the Order. At the non-jury hearing on May 31, 2016, the Court heard testimony from Tyler Stone (contractor who worked for Plaintiffs), Brandon Woody (representative of the family members who own the surrounding property as well as the road itself), and three interested persons who attended the hearing who oppose the road closing. Several members of the public attended the hearing but declined to testify.

Defendant Aiken County, which maintains the roads, appeared but offered no testimony, and Defendant South Carolina Department of Transportation did not appear and did not oppose the petition. The only other defendant, an abutting landowner, Becky Gonshorowski, reached an agreement with Plaintiffs and did not oppose the petition.

After hearing testimony and argument and receiving evidence, the Court found that Plaintiffs complied with S.C. Code Ann. § 57-9-10 (2012) by filing the Notice of Road Closing by publication in the *Aiken Standard*, by mailing the Notice to all abutting property owners, and by posting the correct signage as required by the statute. The Court further found that title to the property was in the name of the private owner and that it is in the best interest of all concerned that the roads be closed.

After the Court issued its June 27 Order memorializing the Court's findings and conclusions, the Movants and others filed a Motion for Reconsideration. Thereafter, another motion was filed that purported to amend the Motion for Reconsideration and was labeled a Motion to Intervene. For the reasons set forth below, this Motion must be denied.

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ARGUMENT

1. **The Motion is not timely and does not comply with Rule 24.**

The Motion to Intervene should be denied is because it is late and does not comply with Rule 24 of the South Carolina Rules of Civil Procedure.

Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action. *See* Black's Law Dictionary 826 (7th ed. 1999). Intervention of right is governed by Rule 24(a), SCRCP, which provides:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Thus, a party seeking to intervene must (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993).

As an initial matter, this Motion to Intervene is not timely. When determining whether a motion to intervene is timely, a court considers the following factors:

> (1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3), the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.

Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

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In this case, the hearing is over and this Court has already determined that notice was properly given. This Court considered evidence, heard testimony, and has already issued an order. Movants Barrett, Long, and Cave all testified in full regarding their opposition to the road closure. In addition, Movants were either actually or constructively aware of this issue over five months ago when Plaintiffs placed signs on the property and published notice in the *Aiken Standard*. Movants do not give a reason for the delay in bringing this Motion.

Moreover, Plaintiffs would be greatly prejudiced from the further delay and unnecessary expense associated with a new proceeding which raises the exact same issues to which Movants Barrett, Long, and Cave have already testified.

In addition to the expense of an additional proceeding, Plaintiffs are prejudiced because they cannot use the property for planting crops as long as the portions of these roads are open and run across the fields. Further, Plaintiffs have spent approximately $490,000 for center pivot irrigation and $100,000 for fertilizer that cannot be utilized if the property is not planted. Attached as **Exhibit A** is the affidavit of Brandon Woody detailing the specific prejudice Plaintiffs will suffer from further delay. For all of these reasons, intervention is not timely, and this Motion should be denied.

On top of this, Movants cannot satisfy the third prong of Rule 24 because they cannot show that "the disposition of the action may impair or impede (their) ability to protect that interest." Three of the Movants testified in full at the hearing and therefore protected their own interests and those who are similarly situated. And although the road closing statute directs the Court to consider the interests of all concerned, the statute does not require that the Court allow "all concerned" to be parties to the action.

Rather, this Court properly followed the law by offering to hear testimony from any interested citizen. Although most of the Movants chose *not* to testify, Carolyn Barrett, Vicky Long, and Michael Cave did testify. They offered testimony of how they believed the road closure would result in emergency vehicles having to take a longer route to their homes, of their views of safety concerns and limited 9-1-1 access, and their respective understandings of the applicable speed limits and the status of the roads that are not impacted by the petition. Each, however, conceded that the petition would not land-lock their property and would have no impact on the roads in front of their homes. The Court considered this testimony in analyzing whether closure of the roads was in the best interests of all concerned. Accordingly, the Movants had the opportunity to be heard, and the Court heard and considered their testimony in reaching its decision, even making their positions part of the June 27 Order.

Finally, Movants fail to comply with Rule 24(c) which requires Movants to attach a proposed "pleading setting forth the claim or defense for which intervention is sought." Rule 24(c), SCRCP. Without a proposed pleading attached, Movants failed to interpose a proper motion under which intervention could be granted.

For any of these reasons, this Motion must be denied.

3. **The issues raised by the Motion to Intervene lack merit.**

Even if the Court were to consider the arguments raised, the Motion should be denied because the issues raised by Movants are irrelevant. First, Movants appear to dispute the notice requirement of S.C. Code Ann. § 57-9-10, claiming in identical affidavits that four Movants were contacted and "told that it was not necessary . . . to come to the hearing." Even if these statements are true – which Plaintiffs strongly dispute – Carolyn Barrett obviously disregarded the alleged phone call because she attended the hearing and, in fact testified. Both Carolyn and

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Robert Barrett received *actual* notice of the hearing because both were served with Plaintiffs' Notice of Hearing on May 13, 2016. Attached as **Exhibit B** is Plaintiffs' Notice of Hearing.

Moreover, no one told Movants not to attend the hearing. Attached as **Exhibit C** is the affidavit of Mary Guynn detailing the procedures used by her office when interested citizens made inquiry. Each person who left contact information was contacted and informed of the hearing date.[1] No one was told that they should not attend the hearing.

In any event, the hearing was public and Movants knew when and where it was taking place. Many people showed up, all were given the opportunity to testify, and three chose to testify. Their testimony was heard and considered. The testimony of others likely would have been similar. Although most Movants declined to testify, Movants Barrett, Long, and Cave all testified in full regarding their opposition to the road closure. There is no indication that, even if now allowed to testify, the remaining Movants would actually testify and would say anything different than the testimony already received from Barrett, Long, and Cave.

In addition, the law does not does not require a plaintiff to provide this type of individual notice to all interested citizens, and Movants cannot offer any supporting authority or case law that Plaintiffs have duties to Movants, or anyone else, over and above the statutory directives. *See* S.C. Code Ann. § 57-9-10. In short, the Court has already received evidence and found that Plaintiffs complied in full with the notice requirements of S.C. Code Ann. § 57-9-10 (2012).

Movants next argue that Plaintiffs should have placed ads in Barnwell County newspapers because portions of Oak Ridge Road – which are not at issue and were not ordered to be closed – continue into Barnwell County. This argument fails because S.C. Code Ann. § 57-

[1] Because three callers either failed to leave the necessary contact information for a return call, did not answer a return call, or left an invalid telephone number, it was impossible to contact these individuals without further information being provided.

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9-10 *does not* require a petitioner to publish notice in the neighboring counties through which unaffected portions of the road may continue. No case or other authority has construed S.C. Code Ann. § 57-9-10 in this manner, and it would be illogical to do so. If Movants' interpretation of the law were accepted, a petitioner may conceivably have to publish notice in multiple distant counties with no connection to the portion of the road which a petitioner seeks to close.

Because the portion of Oak Ridge Road that Plaintiffs sought to close is completely within Aiken County, Plaintiffs properly published "notice of intention to file . . . once a week for three consecutive weeks in a newspaper published in the county where such street, road or highway is situated." *Id.* Thus, as the Court has already determined, notice in the *Aiken Standard* was proper and complied in full with S.C. Code Ann. § 57-9-10.

Finally, Movants appears to claim that Plaintiffs should have served the petition on landowners who live on or near the portions of Bell Road or Oak Ridge Road that are *not* at issue in this matter. Again, S.C. Code Ann. § 57-9-10 only requires a petitioner provide notice to "abutting property owners whose property would be affected by any such change." The statute has never been construed to require notice to owners of property that abuts portions of the road that are *not* closed. As indicated previously, the Court has already determined that the only landowner whose property abuts the closed road is Becky Gonshorowski, who reached an agreement with Plaintiffs and did not oppose the petition. For this reason, Movants' third reason for intervening in this action should be disregarded.

CONCLUSION

The Motion to Intervene should be denied because it is procedurally and substantively flawed. The motion is not timely nor does it comply with the other requirements of Rule 24 of

the South Carolina Rule of Civil Procedure. Even if this Court determines that the motion is appropriate, Movants ask this Court to interpret S.C. Code Ann. § 57-9-10 in a manner that no Court has ever before adopted. This Court has already received evidence and found that Plaintiffs complied in full with the requirements of S.C. Code Ann. § 57-9-10 (2012).

For these reasons and the reasons stated above, the Motion to Reconsider and Motion to Intervene should be denied.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: J. Calhoun Watson by [illegible]

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cwatson@sowellgray.com
Tina M. Cundari (SC Bar No. 71951)
tcundari@sowellgray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400 Telephone
(803) 929-0300 Facsimile

AND

Mary O. Guynn (SC Bar No. 69678)
mguynn@smbgm.com
Smith, Massey, Brodie, Guynn & Mayes
Post Office Box 519
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(803) 643-4110 Telephone
(8093) 643-8140 Facsimile

Attorneys for Plaintiffs

Columbia, South Carolina
August 8, 2016

2165

CERTIFICATE OF SERVICE

I, the undersigned, attorneys for plaintiffs, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents:

MEMORANDUM IN OPPOSITION TO MOTION TO RECONSIDER

Counsel Served:

Becky J. Gonshorowski
183 Old Bell Road
Aiken, South Carolina 29801

Linda C. McDonald, Esquire
Natalie Jean Moore, Esquire
South Carolina Department of Transportation
Post Office Box 191
Columbia, South Carolina 29201

James M. Holly
Aiken County Attorney
1930 University Parkway, Suite 3600
Aiken, SC 29801

Bradford M. Owensby, Esquire
Banks & Owensby, LLC
319 Park Ave. SE
Aiken, SC 29801

James D. Mosteller, III, Esquire
The Mosteller Law Firm, LLC
Post Office Drawer 328
Aiken, SC 29801

August 8, 2016

COPY
ORIGINAL FILED
AUG 08 2016
AIKEN COUNTY
CLERK OF COURT

Exhibit A

FILED 8/8 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
Canadian River Farms, LTD. Colt Farms, Inc., BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd.,	)	Civil Action No. 2016-CP-02-00511
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF BRANDON WOODY**
Becky J. Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina,	)	
Defendants.	)	

Personally appeared before Brandon Woody who first being duly sworn, deposes and says as follows:

1. My name is Brandon Woody. I am over the age of eighteen (18) years, and I submit this affidavit based upon my personal knowledge.

2. I am an owner of the Plaintiffs and speak for the Plaintiffs.

3. My family purchased property in Aiken County in February 2015 for use as a farm and to grow crops. The portions of Oak Ridge Road and Old Bell Road at issue are dirt roads that run across the fields I intend to use for planting crops. Although the portions of these roads at issue are maintained by Aiken County, the County has never held an easement for these roads and Plaintiffs holds fee simple title.

4. If the individuals who seek to intervene in this matter are successful, I will be greatly prejudiced by the delay. Specifically, because I wish to use the property as a farm and to grow crops, any further delay prevents me from utilizing this property in the complete manner that we intend.

5. In short, I installed center pivot irrigation after the fields were cleared. Pivot irrigation is a method of crop irrigation in which equipment rotates around a pivot and crop are watered with a sprinkler. The cost of these pivots was approximately $490,000.

6. Pivots are designed for the layout of the land itself, and they cannot cross roads. Unless the portions of these roads are closed as ordered by the Court, the pivots cannot be fully utilized because they cannot cross these dirt roads. If the fields cannot be irrigated, they cannot be fully used to produce crops or revenue.

7. In anticipation of being able to farm this property, we applied approximately $100,000 of fertilizer to this field. Because the fields cannot be fully planted without irrigation, the fertilizer has not been utilized.

8. My insurance carrier has informed me that if the roads continue to run through the farm, the carrier cannot continue to cover the risk. At this time, I do not have information about an alternate carrier or whether I will be obtain insurance coverage and if so, at what cost.

9. In addition, as I testified at the hearing, we have experienced vandalism as people drive off these dirt roads into and through the crops that we are able to plant.

10. As I further testified at the hearing, we have significant concerns about the dangers posed by vehicles traveling at a high rate of speed over the roads either colliding with farm workers or farm implements working near the roads.

11. In the days preceding the hearing, I am aware of media accounts of this matter which included the hearing date and time. A number of interested citizens attended the hearing on June 27, 2016.

2108

CERTIFICATE OF SERVICE

I, the undersigned, attorneys for plaintiffs, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents:

AFFIDAVIT OF BRANDON WOODY

Counsel Served:

Becky J. Gonshorowski
183 Old Bell Road
Aiken, South Carolina 29801

Linda C. McDonald, Esquire
Natalie Jean Moore, Esquire
South Carolina Department of Transportation
Post Office Box 191
Columbia, South Carolina 29201

James M. Holly
Aiken County Attorney
1930 University Parkway, Suite 3600
Aiken, SC 29801

Bradford M. Owensby, Esquire
Banks & Owensby, LLC
319 Park Ave. SE
Aiken, SC 29801

James D. Mosteller, III, Esquire
The Mosteller Law Firm, LLC
Post Office Drawer 328
Aiken, SC 29801

August 8, 2016

COPY
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AUG 08 2016
AIKEN COUNTY
CLERK OF COURT

Exhibit B

COPY
ORIGINAL FILED
AUG 08 2016
AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF AIKEN CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD., PLAINTIFFS, vs. BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body politic and political subdivision of the State of South Carolina, DEFENDANTS	IN THE COURT OF COMMON PLEAS **NOTICE OF HEARING** Case Number: 2016-CP-02-00511

TO: Becky J. Gonshorowski
The South Carolina Department of Transportation
Aiken County, South Carolina
Robert E. Barrett and Carolyn L. Barrett

Please be informed that a hearing in the above captioned case will be held before the Master in Equity, at 10:00 a.m. on May 31, 2016, in his office at 109 Park Avenue, Aiken, South Carolina.

Smith, Massey, Brodie, Guynn & Mayes

Aiken, South Carolina
May 13, 2016

BY: _____
MARY O. GUYNN
ATTORNEY FOR PLAINTIFFS
P.O. Box 519
Aiken, S.C. 29802
(803) 643-4110

FILED May 17 20 16
Liz Leland
C.C.C.P. & G.S.
Leslie D Henson
Deputy Clerk

10404
60P

270

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
CANADIAN RIVER FARMS, LTD., COLT FARMS, INC., B C FARMS, INC. n/k/a B C FARMS OF SOUTH CAROLINA, INC., AND OUTBACK FARMS, LTD.,	)	**CERTIFICATE OF MAILING**
	)	Case Number: 2016-CP-02-00511
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
BECKY J. GONSHOROWSKI, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION and AIKEN COUNTY, SOUTH CAROLINA, a body politic and political subdivision of the State of South Carolina,	)	
	)	
DEFENDANTS	)	

I, Mary O. Guynn, attorney, hereby certify that I have this the 13th day of May, 2016, mailed, postage prepaid, to below-listed Defendants and persons a **Notice of Hearing** a copy of which is hereby attached, by depositing in the U.S. Post Office, Aiken, South Carolina contained in envelopes addressed as follows:

Ms. Becky J. Gonshorowski
183 Old Bell Road
Aiken, South Carolina 29801

South Carolina Department of Transportation
Attention: Linda C. McDonald, Esquire
Post Office Box 191
Columbia, South Carolina 29201

Aiken County, South Carolina
Attention: James M. Holly, Esquire
1930 University Parkway Suite 3600
Aiken, South Carolina 29801

FILED May 17 2016
C.C.C.P. & G.S.
Deputy Clerk

1040A
LOH

Mr. Robert E. Barrett
Ms. Carolyn L. Barrett
252 Old Bell Road
Aiken, South Carolina 29801

Mary O. Guynn

Exhibit C

COPY
ORIGINAL FILED
AUG 08 2016
AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
Canadian River Farms, LTD. Colt Farms, Inc., BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd.,)	Civil Action No. 2016-CP-02-00511
Plaintiffs,)	
vs.)	**AFFIDAVIT OF MARY O. GUYNN**
Becky J. Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina,)	
Defendants.)	

Personally appeared before Mary O. Guynn who first being duly sworn, deposes and says as follows:

1. My name is Mary O. Guynn. I am over the age of eighteen (18) years, and I submit this affidavit based upon my personal knowledge.

2. I am a lawyer practicing in Aiken County and surrounding areas. I am a partner at Smith, Massey, Brodie, Guynn & Mayes, located at 210 Colony Parkway SE, Aiken, S.C.

3. I represent Canadian River Farms, LTD. Colt Farms, Inc., BC Farms, Inc. n/k/a BC Farms of South Carolina Inc. and Outback Farms, Ltd. in the above referenced matters.

4. In connection with this representation, I arranged for notice to be published in the *Aiken Standard* for three weeks notifying the public of my client's intention to seek closure of portions of Oak Ridge Road and Old Bell Road located in Aiken County.

5. In addition, I arranged for signs to be posted at various locations on the portions of the roads that my client sought to close. While not required by S.C. Code Ann. § 57-9-10, I included my office telephone number on the signs.

6. After the signs were posted, the assistants in my office received several telephone calls from interested citizens. Attached as **Exhibit A** are the notes compiled from the telephone calls received by my assistants.

7. Of the calls we received, several persons asked if they were required to attend the hearing. My assistants informed each caller that attendance was not mandatory, but no one was instructed "not to attend." In fact, each person with whom my assistants spoke was informed of the hearing date. If a person left a voicemail, my assistant returned the call.

8. Three persons who left voicemails could not be reached. One person (who is not a proposed intervenor) left a voicemail, but he never answered our return call and does not have voicemail capability. One person (who is not a proposed intervenor) left a return telephone number that is no longer valid. One person hung up without leaving any contact information.

9. In the days preceding the hearing, I am aware of media accounts of this matter which included the hearing date and time. A number of interested citizens attended the hearing on May 31, 2016.

FURTHER AFFIANT SAYETH NOT.

Mary O. Guynn

SWORN to and subscribed before me

this 8th day of August, 2016

Crystal Brown (L.S.)

Notary Public for South Carolina

My Commission Expires: 1-29-25

CRYSTAL BROWN
Notary Public-State of South Carolina
My Commission Expires
January 29, 2025

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2016 CP02-00511

stewart

Tues, May 31 10:00
109 Park

Exhibit A to Affidavit of Mary O. Guynn

✓ [illegible] 507-2932
- gave 2 sets road alley easy to follow maps
- left a road closed

Michael Cave - 270-1030 - 236 Old Belle Rd
- uses road to get to house
- BC's trucks / farm equipment blocking driveway daily
- workers are making noise all night

L/M Carolyn Barrett - 649-0626 - 252 Old Belle Rd
- uses road daily
- said she has spoken w/ all 49 of the other property owners on Old Belle & all object to the road closure & to the work BC Farms is doing

Call # 645-8202 L/M

L/M Gary Etheridge - 641-7227
- has family that lives on this road
- uses road frequently
- objects to its closure

✓ Katherine Williamson - 803-646-1245
- uses road on a daily/weekly basis to get to family

✓ William Anderson - 803-507-1229
- objects to closure, uses road frequently

X Jacob Moody - 646-2750 # No Longer in Service
- objects

✓ Jeff Bacon - 646-3747

275

stewart

✓ Patrick Martin- 706-306-7014
- objects to closure
- using road for years
- complaints & BC are false
- filed petition w/ ct to oppose

X Timothy Fulmer- 803-643-0982 - NOVM set up
- objects
- uses road very often to get home/work
- doesn't feel owners have this right

LM Wyles Hutson- 803-266-7927
- objects
- uses road daily, live on road
- owners knew condition of road prior to purchase & has no right to change
- their farm equipment has drastically damaged the road
- owner should take other means to protect the property besides rd. closure

✓ William Anderson- 803-507-1229
- objects uses road
- will create hardship must drive miles out of the way to get around

XM William Centerfeit 6404645
- objects -

✓ Marion Avery- 803-439-6007
- objects- several family members live on road would have to out of way to get to them he lives at one end & they live at other- 8710

stewart

✓ Dr. Vicki Long -240-416-4012
-objects- in event of emergency, henders ability to get there
farm equiptment driving too fast themselves
& have ruined the roads

CERTIFICATE OF SERVICE

I, the undersigned, attorneys for plaintiffs, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents:

AFFIDAVIT OF MARY O. GUYNN

Counsel Served:

Becky J. Gonshorowski
183 Old Bell Road
Aiken, South Carolina 29801

Linda C. McDonald, Esquire
Natalie Jean Moore, Esquire
South Carolina Department of Transportation
Post Office Box 191
Columbia, South Carolina 29201

Aiken County, South Carolina
Attention: James M. Holly, Esquire
Post Office Box 5925
Aiken, SC 29804

Bradford M. Owensby, Esquire
Banks & Owensby, LLC
319 Park Ave. SE
Aiken, SC 29801

James D. Mosteller, III, Esquire
The Mosteller Law Firm, LLC
Post Office Drawer 328
Aiken, SC 29801

Mary O. Guynn

August 8, 2016

COPY
ORIGINAL FILED
AUG 08 2016
AIKEN COUNTY
CLERK OF COURT

278

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
Canadian River Farms, LTD. Colt Farms, Inc., BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd.,)	Civil Action No. 2016-CP-02-00511
Plaintiffs,)	
vs.)	
Becky J. Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina,)	**MEMORANDUM IN OPPOSITION TO MOTION TO RECONSIDER**
Defendants.)	

COPY
ORIGINAL FILED
AUG 09 2016
AIKEN COUNTY
CLERK OF COURT

This matter is before the Court on a Motion for Reconsideration of this Court's June 27, 2016 Order brought by Carolyn Barrett, Michael Cave, Deborah Dixon, Patrick Martin Kandace Cave, Angie Martin, Vicki Long, Christopher Bowman, Nilda Burke, Ashley Taylor, Sherry Taylor, Lou Bertha Price, Rev. John Price, Jessica Davenport, Arthur Davenport, Robert E. Barrett, Terry Kane, Erla Davis, Gary Itzstein, Jeff Jennings, Melinda Jennings, Cassy Jennings, Brittany Jennings, Brantley Byars, Kevin LeClerk, Greg Watts, Katherine Williamson, Melissa Rich, April Hall, Marion Pope, Clarence Pope, Betty Pope, Ernistine Jenkins, Shelia Robinson Darius Robinson, James Pope, Louise Pope, Rena Clark, Janice L. Williams, Debbie Grice, Anthony N. Fernandez, Tracie W. Fernandez, Robin Saunders, Donnie Moulton, Alice Moulton, Erin Moultin, Kelly Moulton, Chris Vaughn, Deana Vaughn, Deana Vaughn, Cleve Koon, Wallace Kitchings, Kathy Batcheldor, Mimi Cullinan, and John Doe and Jane Roe as fictitious persons (collectively "Movants").

Plaintiffs oppose the motion for a number of reasons, including that Movants are not parties to the case, did not raise these issues prior to filing the motion, and the issues raised lack merit. For these reasons and those set forth more fully below, the motion should be denied.

BACKGROUND

This matter stems from a June 27, 2016 Order issued by this Court ordering portions of two unpaved county roadways known as Bell Road and Oak Ridge Club Road to be closed within 40 days of the date of the Order. At the non-jury hearing on May 31, 2016, the Court heard testimony from Tyler Stone (contractor who worked for Plaintiffs), Brandon Woody (representative of the family members who own the surrounding property as well as the road itself), and three interested persons who attended the hearing who oppose the road closing. Several members of the public attended the hearing but declined to testify.

Defendant Aiken County, which maintains the roads, appeared but offered no testimony, and Defendant South Carolina Department of Transportation did not appear and did not oppose the petition. The only other defendant, an abutting landowner, Becky Gonshorowski, reached an agreement with Plaintiffs and did not oppose the petition.

After hearing testimony and argument and receiving evidence, the Court found that Plaintiffs complied with S.C. Code Ann. § 57-9-10 (2012) by filing the Notice of Road Closing by publication, by mailing the Notice to all abutting property owners, and by posting the correct signage as required by the statute. The Court further found that title to the property was in the name of the private owner and that it is in the best interest of all concerned that the roads be closed.

After the Court issued its June 27 Order memorializing the Court's findings and conclusions, the Movants filed this Motion.

ARGUMENT

1. The Movants lack standing.

As an initial matter, the motion should be denied because the Movants are not parties to this case and therefore lack standing to bring a Motion for Reconsideration of an Order issued for a trial to which they are not parties. *Ex Parte South Carolina Department of Motor Vehicles*, 390 S.C. 457 (2010) (dismissing appeal on the grounds that SCDMV was not a named party to the underlying matter and noting a denial of the SCDMV's motions for reconsideration for lack of standing.) As a non-party to the case, Movants cannot file and pursue a Motion for Reconsideration when they are not named parties to the proceeding.

Even if the Movants do have standing, several of the Movants were present at the hearing and were given an opportunity to testify. Although most of the Movants chose *not* to testify, Carolyn Barrett, Vicky Long, and Michael Cave did testify. They offered testimony of how they believed the road closure would result in emergency vehicles having to take a longer route to their homes, of their views of safety concerns and limited 9-1-1 access, and their respective understandings of the applicable speed limits and the status of the roads that are not impacted by the petition. Each, however, conceded that the petition would not land-lock their property and would have no impact on the roads in front of their homes. The Court considered this testimony in analyzing whether closure of the roads was in the best interests of all concerned. Accordingly, the Movants had the opportunity to be heard, and the Court heard and considered their testimony in reaching its decision.

2. It is too late to raise the issues raised.

Moreover, even if the Movants were parties to this case and had standing, it is too late to raise the issues raised.

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A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. *See Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (finding issue raised for first time in Rule 59, SCRCP, motion is not preserved for review); *Kiawah Prop. Owners Grp. v. Public Serv. Comm'n*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (stating an issue raised for first time in petition for rehearing not preserved).

At the hearing, the three individuals who testified did not contend that they should be permitted to intervene in the case and that it was error for the Court to not treat the March 21, 2016 petition filed by Carolyn Barrett as a motion to intervene. Additionally, none of the individuals who testified contended that it was error for the history of the title to the property to not be presented to the Court. Finally, no one argued it was error for the Court to not consider testimony of people who did not even appear at the hearing. Because these issues were not raised at the hearing, or sometime before the Court issued its ruling, it is too late for the Movants to raise them in a motion to reconsider.

3. The issues raised lack merit.

Even if the Court were to consider the arguments raised, the motion should be denied. First, it is irrelevant whether a history of title of the property was disclosed to the Court. S.C. Code Ann. § 57-9-10 (2012) says nothing about the necessity of considering the title history of the property prior to ordering the road closed. In an event, the Court heard and considered evidence regarding the ownership of the property. The Court heard evidence that Plaintiffs own 1900 acres of land which is used to grow corn, and that the roads in question run through the middle of the property, and that the roads, although maintained by Aiken County, are owned by

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Plaintiffs. Who owned the property before Plaintiffs purchased it makes no difference for purposes of deciding whether the Court should have ordered the roads closed.

Second, Movants did not present any admissible evidence showing that other interested parties were told that they did not need to attend the hearing. The testimony from Barrett was hearsay. In any event, Movants could have decided for themselves whether they should attend the hearing. If the matter was so important to them—even though not a single one of them owns property abutting the road and no person will be landlocked as a result of the closure—they could have and should have attended. The hearing was public and Movants knew when and where it was taking place. Many people showed up, but only three chose to testify. Their testimony was heard and considered. The testimony of others likely would have been similar. Even if it were true that Plaintiffs' counsel told Movants they did not need to attend, many attended and all were given the opportunity to testify. Although most Movants declined to testify, Movants Barrett, Long, and Cave all testified in full regarding their opposition to the road closure. There is no indication that, even if now allowed to testify, that any of the remaining Movants would elect to testify, and if so. that any their additional testimony would not duplicate the testimony already received from Barrett, Long, and Cave.

Regardless, though, the Court has already received evidence and found that Plaintiffs complied in full with the notice requirements of S.C. Code Ann. § 57-9-10 (2012). Movants cannot offer any supporting authority or case law that Plaintiffs have duties to Movants, or anyone else, over and above the statutory directives. Thus, in addition to the fact that this argument is irrelevant, Plaintiffs do not owe the duties to Movants that they now attempt to impose.

Third, and finally, Barrett's letter should not be considered a motion to intervene. As an initial matter, Barrett was required to attach, but did not, a proposed "pleading setting forth the claim or defense for which intervention is sought." Rule 24(c), SCRCP.11 Without a proposed pleading, Barrett procedurally failed to interpose a proper motion under which intervention could be granted. Thus, even if this Court were so inclined, it cannot convert Barrett's correspondence because her correspondence does not meet the requirements of a motion to intervene or an answer. It is well established that "[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with the substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 n.5 (2003). For this reason alone, this argument must be rejected.

Even if this Court overlooks the procedural and substantive flaws, Barrett's correspondence should not now be converted to a Motion to Intervene.

Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action. *See* Black's Law Dictionary 826 (7th ed. 1999). Intervention of right is governed by Rule 24(a), SCRCP, which provides:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Thus, a party seeking to intervene must (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or

284

impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993).

In this case, Barrett cannot show that "the disposition of the action may impair or impede (her) ability to protect that interest" because she testified in full at the hearing and therefore protected her own interest. And although the road closing statute directs the Court to consider the interests of all concerned, the statute does not require that the Court allow "all concerned" to be parties to the action.

In short, this Court properly followed the law by offering to hear testimony from any interested citizen, by hearing Barrett's testimony, and by making her positions part of the June 27 Order. Thus, even if Barrett had been a party to the proceeding, she has already formally lodged her opposition to the road closing through her testimony.

CONCLUSION

Movants are not parties to the case, and therefore do not have standing to bring this Motion. Regardless, Movants did not raise these issues prior to filing the motion and the issues raised simply lack merit. For these reasons and the reasons stated above, the Motion to Reconsider must be denied.

285

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: J. Calhoun Watson by MB

J. Calhoun Watson (SC Bar No. 10089)
cwatson@sowellgray.com
Tina M. Cundari (SC Bar No. 71951)
tcundardi@sowellgray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400 Telephone
(803) 929-0300 Facsimile

AND

Mary O. Guynn (SC Bar No. 69678)
mguynn@smbgm.com
Smith, Massey, Brodie, Guynn & Mayes
Post Office Box 519
Aiken, SC 29802-0728
(803) 643-4110 Telephone
(8093) 643-8140 Facsimile

Attorneys for Plaintiffs

Columbia, South Carolina
August 9, 2016

2816

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for plaintiffs, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents:

MEMORANDUM IN OPPOSITION TO MOTION TO RECONSIDER

Counsel Served:

Becky J. Gonshorowski
183 Old Bell Road
Aiken, South Carolina 29801

Linda C. McDonald, Esquire
Natalie Jean Moore, Esquire
South Carolina Department of Transportation
Post Office Box 191
Columbia, South Carolina 29201

James M. Holly
Aiken County Attorney
1930 University Parkway, Suite 3600
Aiken, SC 29801

Bradford M. Owensby, Esquire
Banks & Owensby, LLC
319 Park Ave. SE
Aiken, SC 29801

James D. Mosteller, III, Esquire
The Mosteller Law Firm, LLC
Post Office Drawer 328
Aiken, SC 29801

Christine L. Skalamera

August 9, 2016

March 15, 2016

FILED 3-15 2016
Liz Godard
C.C.C.P. & G.S.
11:10 SW
Deputy Clerk

To: Aiken County Court of Common Pleas

Aiken County Road Dept

Ref: Case #2016CP02-00511 ROAD CLOSURE- OLD BELL RD & OAKRIDGE CLUB ROAD

Plaintiff: BC Farms,Inc, Canadian River Farms, ltd,Outback Farms,Ltd,Colt Farms, Inc.

I was told yesterday that a trial date for the above case had not been set so I would like to file this complaint prior to that hearing. There are approximately 50 residents on this road and we do not want our road closed or taken away. Yesterday I called the law office of Mary O. Guynn at the phone number on the road closure sign (643-4110) and this is what I was told.

(1) The residents of Old Bell Road requested this road be closed as there is too much traffic and people are driving too fast

I told this law office that this was not true. If a resident on Old Bell Rd requested the street be closed, the plaintiff in this case would be that resident not the above farms. Mrs.Guynn was hired by this farm to close this road.

Then I was told the Court was given this information and the road would be closed. This is not true. The Property owner on Old Bell Rd whose property is surrounded by this farm is a 57 acre tract owned by Becky Gonshorowski. I talked to her last week and this is what happened: She was contacted by the law firm of Mrs. Guynn and was told the road was going to be closed. She was not given an option so they told her she would get a certified letter in the mail and she did. Then she was contacted by the law firm again and was asked which end of the road did she prefer them to close and she told them the Weyerhouser Road end.

I am requesting that the other 50 residents on this road that use this road and want it to remain open, be given a voice before this is forced on us.

We also want to be advised of the trial date.

Robert E Barrett Carolyn L. Barrett 649-0626

Robert E. Barrett and Carolyn L. Barrett, 252 Old Bell Rf, Aiken, SC 29801

March 17, 2016

Ref: Case # 2016-CP02-00511 Road closure of Old Bell Road and Oakridge Club Road

PETITION

This Petition has been made by the residents of Old Bell Road and Oakridge Club Road for the purpose of objecting to this section of our road being closed. These two sections are traveled by us and we do not want it closed.

#252 Robert E Barnett
ROBERT E BARNETT

#353 Lewis Hatcher Sr.
Lewis Hatcher SR

#353 Robert Heverly
Robert Heverly

#353 John Heverly
John Heverly

(1)

FILED 3.21.16
Kay Hedard
C.C.C.P.&G.S.
Deputy Clerk

#240 A. Fernandez
A. Fernandez

#272 Jessica Davenport
Jessica Davenport

#248 Brian A. Melton
Brian A. Melton

#236 Michael J cave
Michael J cave

#415 Tilda L. Scott
Tilda L. Scott

#457 Ronnie Lightsey
Ronnie Lightsey

#427 Brad Griffin
Brad Griffin

#2030 Jesus Espinoza
Jesus Espinoza

#2051 MANUEL C MARTINEZ
MANUEL C MARTINEZ

#305 Maeghan Cook
Maeghan Cook

#305 James Cook
James Cook

#921 Windsor Rd Craig Newell
Craig Newell

(2)

290

#1075 CRISTOBAL NEGRETE

#315 Mellissa Hawkins
Mellesa Hawkins

#330 Deborah Dixon
Deborah Dixon

#456 Rev. John H. Price SR.
Rastor John H. Price, Sr.

#452 Michellprice
Michell Price

#294 Angela Martin
Angela Martin

#_____

#_____

#_____

#_____

#_____

#_____

(3)

89

383 Patrick Rapp

3027 Gonzalo R Negrete

217 Esteban Negrete
Weyerhauser Rd.

#_____

#_____

#_____

#_____

#_____

#_____

#_____

#_____

#_____

Exhibit C

FILED 8/8 2016
Lei Godard
Clerk of Court
William M. Payne
3:45

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Canadian River Farms, LTD. Colt Farms, Inc., BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd., Plaintiffs, vs. Becky J. Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina, Defendants.	)	Civil Action No. 2016-CP-02-00511 **AFFIDAVIT OF MARY O. GUYNN**

Personally appeared before Mary O. Guynn who first being duly sworn, deposes and says as follows:

1. My name is Mary O. Guynn. I am over the age of eighteen (18) years, and I submit this affidavit based upon my personal knowledge.

2. I am a lawyer practicing in Aiken County and surrounding areas. I am a partner at Smith, Massey, Brodie, Guynn & Mayes, located at 210 Colony Parkway SE, Aiken, S.C.

3. I represent Canadian River Farms, LTD. Colt Farms, Inc., BC Farms, Inc. n/k/a BC Farms of South Carolina Inc. and Outback Farms, Ltd. in the above referenced matters.

4. In connection with this representation, I arranged for notice to be published in the *Aiken Standard* for three weeks notifying the public of my client's intention to seek closure of portions of Oak Ridge Road and Old Bell Road located in Aiken County.

5. In addition, I arranged for signs to be posted at various locations on the portions of the roads that my client sought to close. While not required by S.C. Code Ann. § 57-9-10, I included my office telephone number on the signs.

6. After the signs were posted, the assistants in my office received several telephone calls from interested citizens. Attached as **Exhibit A** are the notes compiled from the telephone calls received by my assistants.

7. Of the calls we received, several persons asked if they were required to attend the hearing. My assistants informed each caller that attendance was not mandatory, but no one was instructed "not to attend." In fact, each person with whom my assistants spoke was informed of the hearing date. If a person left a voicemail, my assistant returned the call.

8. Three persons who left voicemails could not be reached. One person (who is not a proposed intervenor) left a voicemail, but he never answered our return call and does not have voicemail capability. One person (who is not a proposed intervenor) left a return telephone number that is no longer valid. One person hung up without leaving any contact information.

9. In the days preceding the hearing, I am aware of media accounts of this matter which included the hearing date and time. A number of interested citizens attended the hearing on May 31, 2016.

FURTHER AFFIANT SAYETH NOT.

Mary O. Guynn

SWORN to and subscribed before me

this 8th day of August, 2016

Crystal Brown (L.S.)

Notary Public for South Carolina

My Commission Expires: 1-29-25

CRYSTAL BROWN
Notary Public-State of South Carolina
My Commission Expires
January 29, 2025

294

2016 CP02-00511

stewart

Tues, May 31 10:00
109 Park

Exhibit A to Affidavit of Mary O. Guynn

✓ [illegible] 507-2932
- dairy farm and daily trips from [illegible]
- Object to road closing

HM Michael Cave - 270-1030 - 236 Old Belle Rd
- uses road to get to house
- BC's trucks / farm equitment blocking driveway dailey
- workers are making noise all night

HM Carolyn Barrett - 649-0626 - 252 Old Belle Rd
- uses road dailey
- said she has spoken w/ all 49 of the other property owners on Old Belle & all object to the road closure & to the work BC Farms is doing

Call # 645-3202 HM

HM Gary Etheridge - 644-7227
- has family that lives on ther road
- uses road frequenty
- objects to its closure

✓ Katherine Williamson - 803-646-1245
- uses road on a dailey/weekly basis to get to family

✓ William Anderson - 803-507-1229
- objects to closure, uses road frenquently

X Jacob Moody - 646-2750 # No Longer in Service
- objects

✓ Jeff Bacon - 646-3747
- objects

295

stewart

✓ Patrick Martin 706-306-7014
- objects to closure
- using road for years
- complaints of BC are false
- filed petition w/ ct to oppose

X Timothy Fulmer 803-643-0982 - NOVM set up
- objects
- uses road very often to get home/work
- does't feel owners have this right

LM Wyles Hutson - 803-266-7927
- objects
- uses road daily, live on road
- owners knew condition of road prior to purchase & has no right to change
- their farm equipment has drastically damaged the road
- owner should take other means to protect the property besides rd. closure

✓ William Anderson - 803-507-1229
- objects uses road
- will create hardship must drive miles out of the way to get around

LM William Centerfeit 6404645
- objects -

✓ Marion Avery - 803-439-6007
- objects - several family members live on road would have to out of way to get to them he lives at one end & they live at other - rd. closure in the middle

296

stewart

✓ Dr. Vicki Long - 240-416-4012
- objects - in event of emergency, hinders ability to get there
farm equipment driving too fast themselves
+ have ruined the roads

CERTIFICATE OF SERVICE

I, the undersigned, attorneys for plaintiffs, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents:

AFFIDAVIT OF MARY O. GUYNN

Counsel Served:

Becky J. Gonshorowski
183 Old Bell Road
Aiken, South Carolina 29801

Linda C. McDonald, Esquire
Natalie Jean Moore, Esquire
South Carolina Department of Transportation
Post Office Box 191
Columbia, South Carolina 29201

Aiken County, South Carolina
Attention: James M. Holly, Esquire
Post Office Box 5925
Aiken, SC 29804

Bradford M. Owensby, Esquire
Banks & Owensby, LLC
319 Park Ave. SE
Aiken, SC 29801

James D. Mosteller, III, Esquire
The Mosteller Law Firm, LLC
Post Office Drawer 328
Aiken, SC 29801

Mary O. Guynn

August 8, 2016

FILED 8/8 2016
Lisa Hazard
C.C.P. & G.S.
William M. Payne
3:43

898

Exhibit A

FILED 8/8 2016
Lei Godard
CLERK
Aiken Co. S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
Canadian River Farms, LTD. Colt Farms, Inc., BC Farms, Inc. nka BC Farms of South Carolina Inc. Outback Farms, Ltd.,	)	Civil Action No. 2016-CP-02-00511
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF BRANDON WOODY**
Becky J. Gonshorowski, South Carolina Department of Transportation, Aiken County South Carolina,	)	
Defendants.	)	

Personally appeared before Brandon Woody who first being duly sworn, deposes and says as follows:

1. My name is Brandon Woody. I am over the age of eighteen (18) years, and I submit this affidavit based upon my personal knowledge.

2. I am an owner of the Plaintiffs and speak for the Plaintiffs.

3. My family purchased property in Aiken County in February 2015 for use as a farm and to grow crops. The portions of Oak Ridge Road and Old Bell Road at issue are dirt roads that run across the fields I intend to use for planting crops. Although the portions of these roads at issue are maintained by Aiken County, the County has never held an easement for these roads and Plaintiffs holds fee simple title.

4. If the individuals who seek to intervene in this matter are successful, I will be greatly prejudiced by the delay. Specifically, because I wish to use the property as a farm and to grow crops, any further delay prevents me from utilizing this property in the complete manner that we intend.

5. In short, I installed center pivot irrigation after the fields were cleared. Pivot irrigation is a method of crop irrigation in which equipment rotates around a pivot and crop are watered with a sprinkler. The cost of these pivots was approximately $490,000.

6. Pivots are designed for the layout of the land itself, and they cannot cross roads. Unless the portions of these roads are closed as ordered by the Court, the pivots cannot be fully utilized because they cannot cross these dirt roads. If the fields cannot be irrigated, they cannot be fully used to produce crops or revenue.

7. In anticipation of being able to farm this property, we applied approximately $100,000 of fertilizer to this field. Because the fields cannot be fully planted without irrigation, the fertilizer has not been utilized.

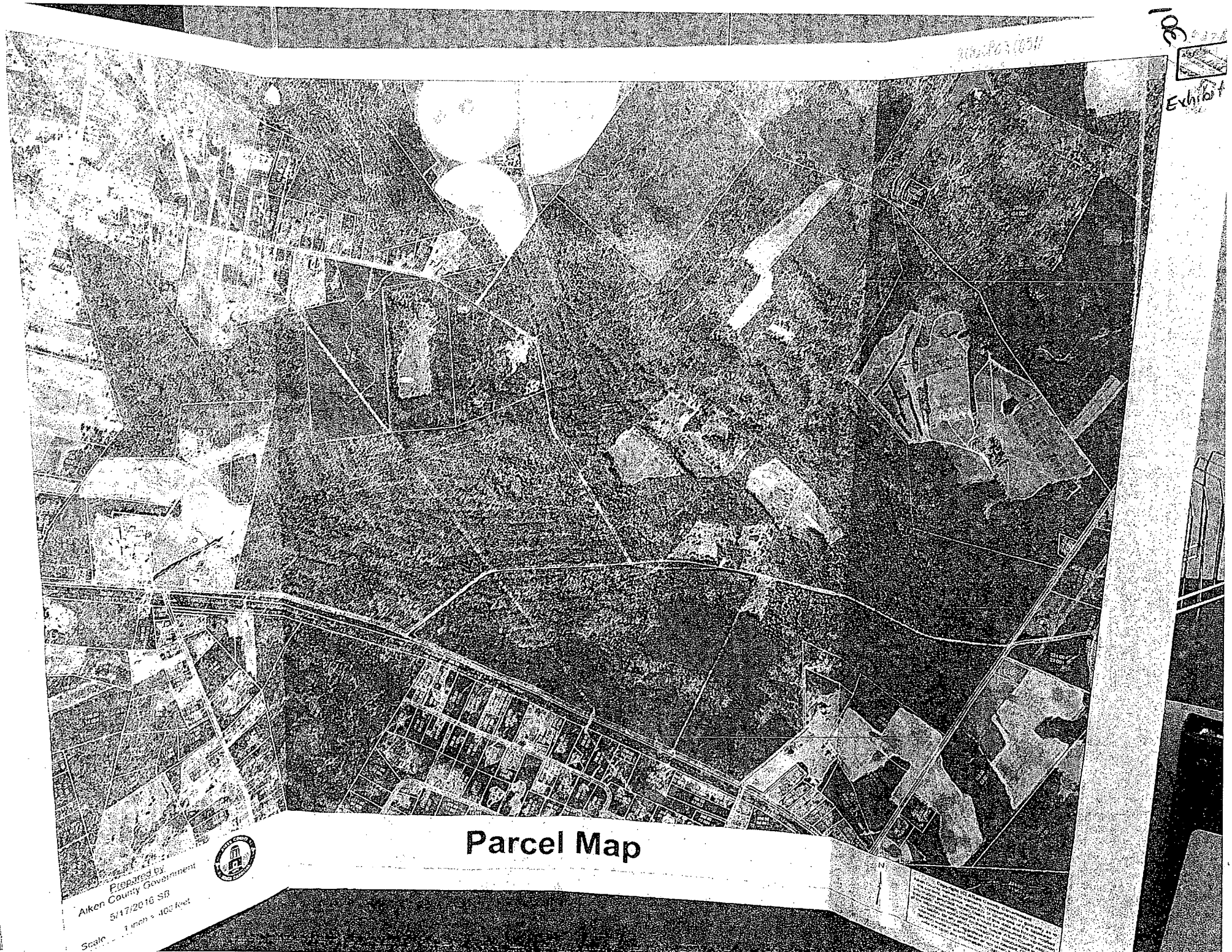
8. My insurance carrier has informed me that if the roads continue to run through the farm, the carrier cannot continue to cover the risk. At this time, I do not have information about an alternate carrier or whether I will be obtain insurance coverage and if so, at what cost.

9. In addition, as I testified at the hearing, we have experienced vandalism as people drive off these dirt roads into and through the crops that we are able to plant.

10. As I further testified at the hearing, we have significant concerns about the dangers posed by vehicles traveling at a high rate of speed over the roads either colliding with farm workers or farm implements working near the roads.

11. In the days preceding the hearing, I am aware of media accounts of this matter which included the hearing date and time. A number of interested citizens attended the hearing on June 27, 2016.

300


Exhibit
Parcel Map
Prepared by
Aiken County Government
5/17/2016 SB
Scale: 1 inch = 400 feet



FILED

EXHIBIT

Deponent

Date

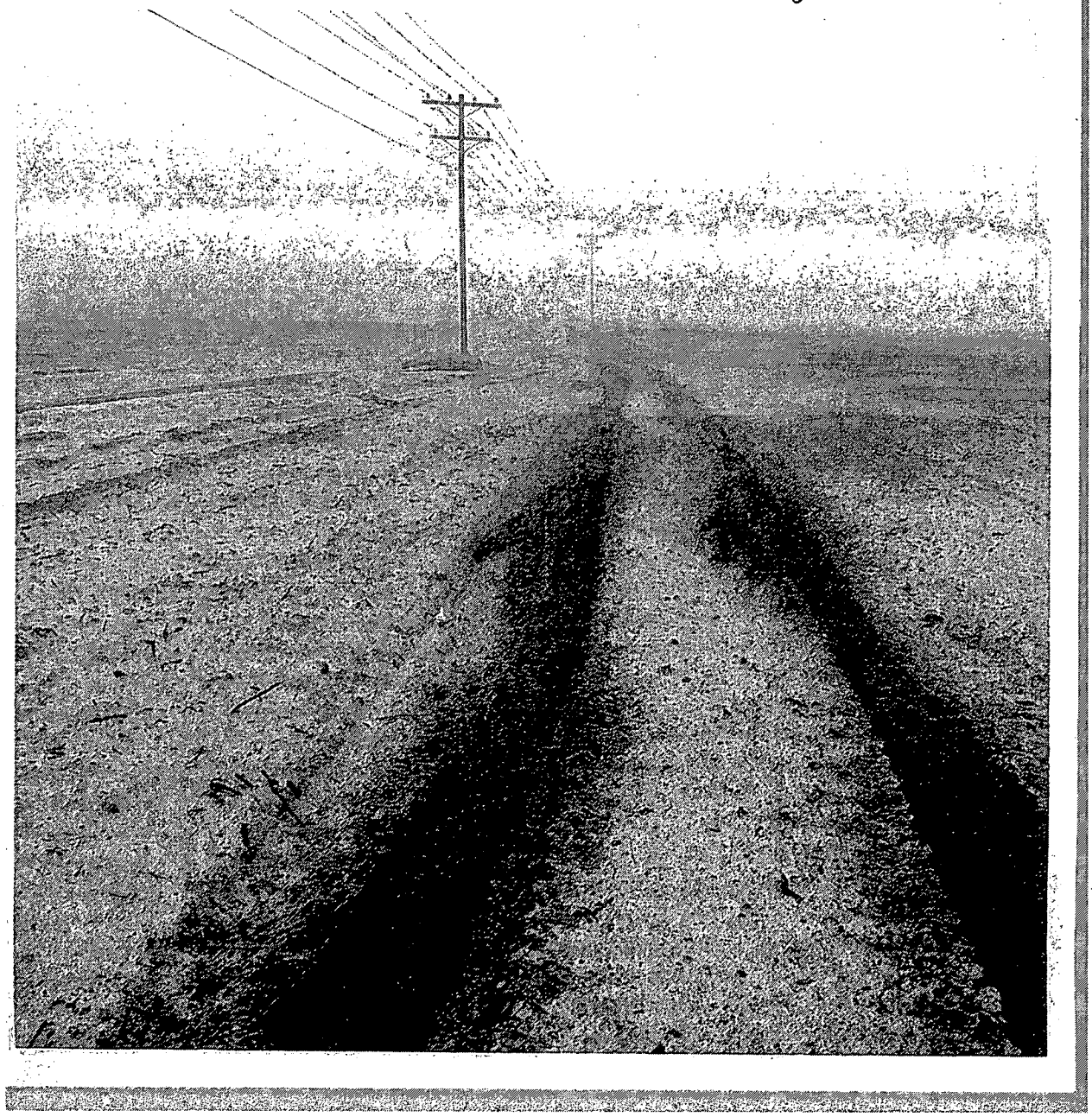
Cert. Rptr.

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FILE EXHIBIT 3
Deponent Ken Stone
Date 2/11/16 RDR VTM



6.27.16

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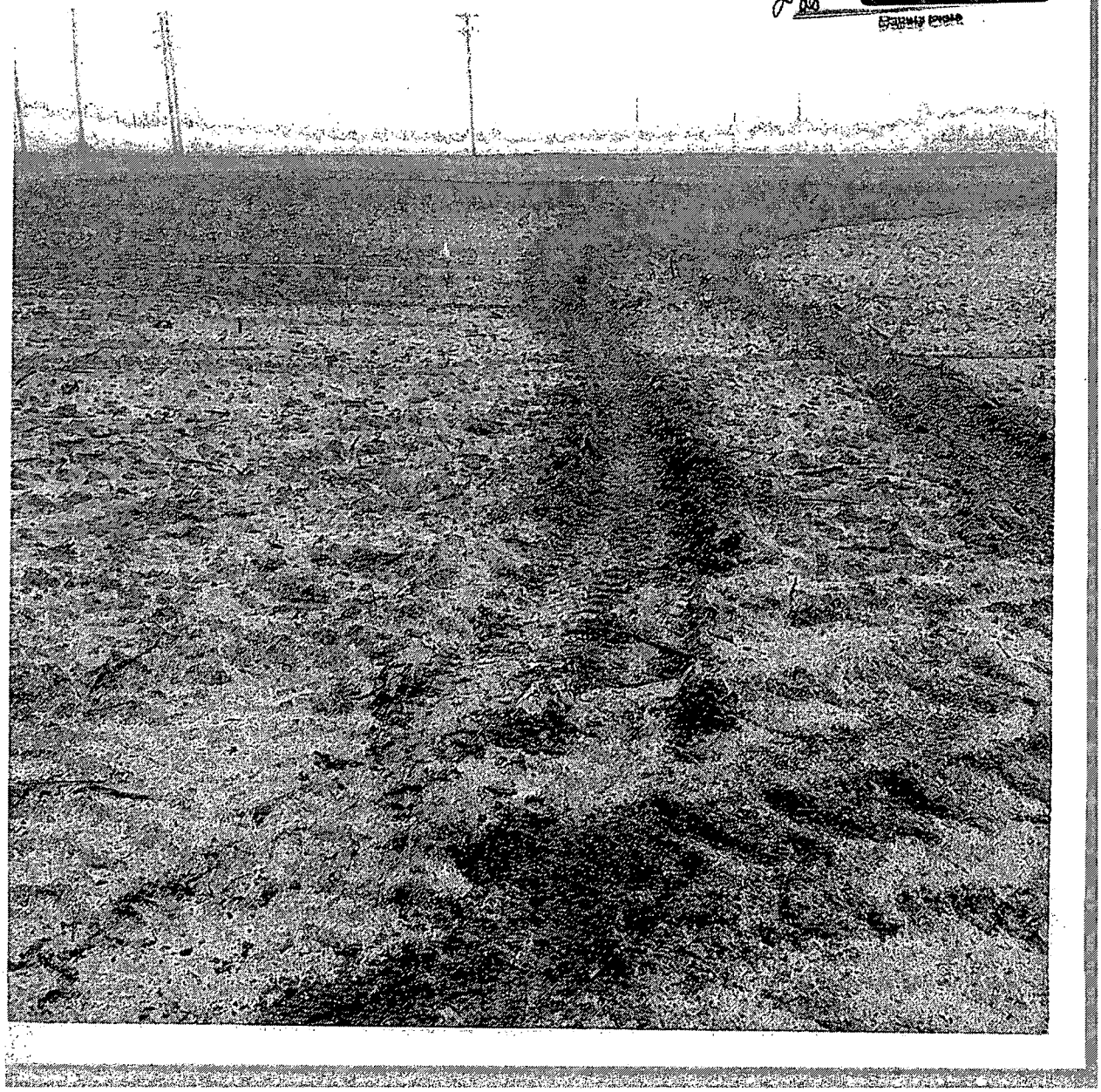
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Deponent Stone

Gonzales, Rptr. VTM

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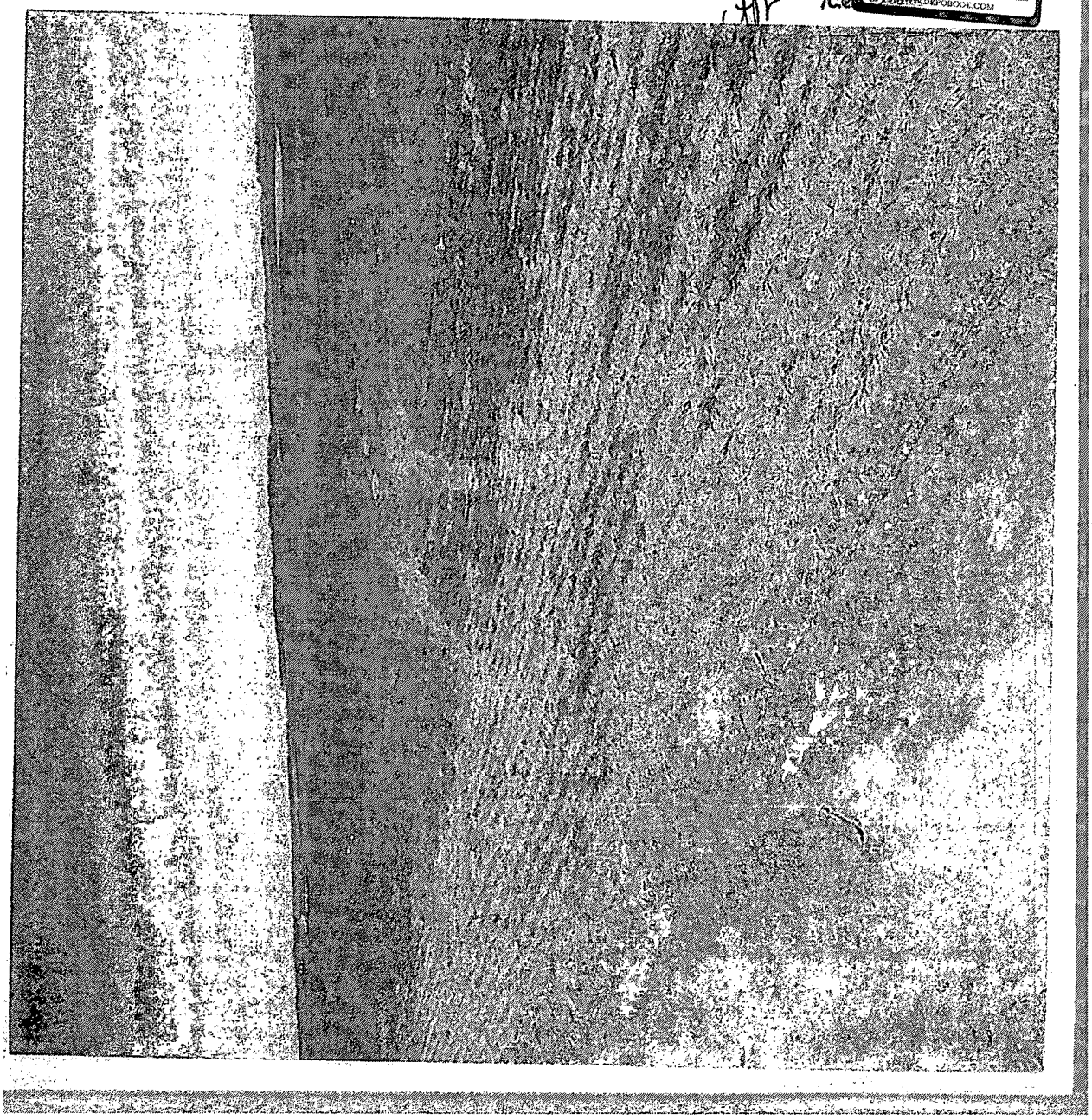


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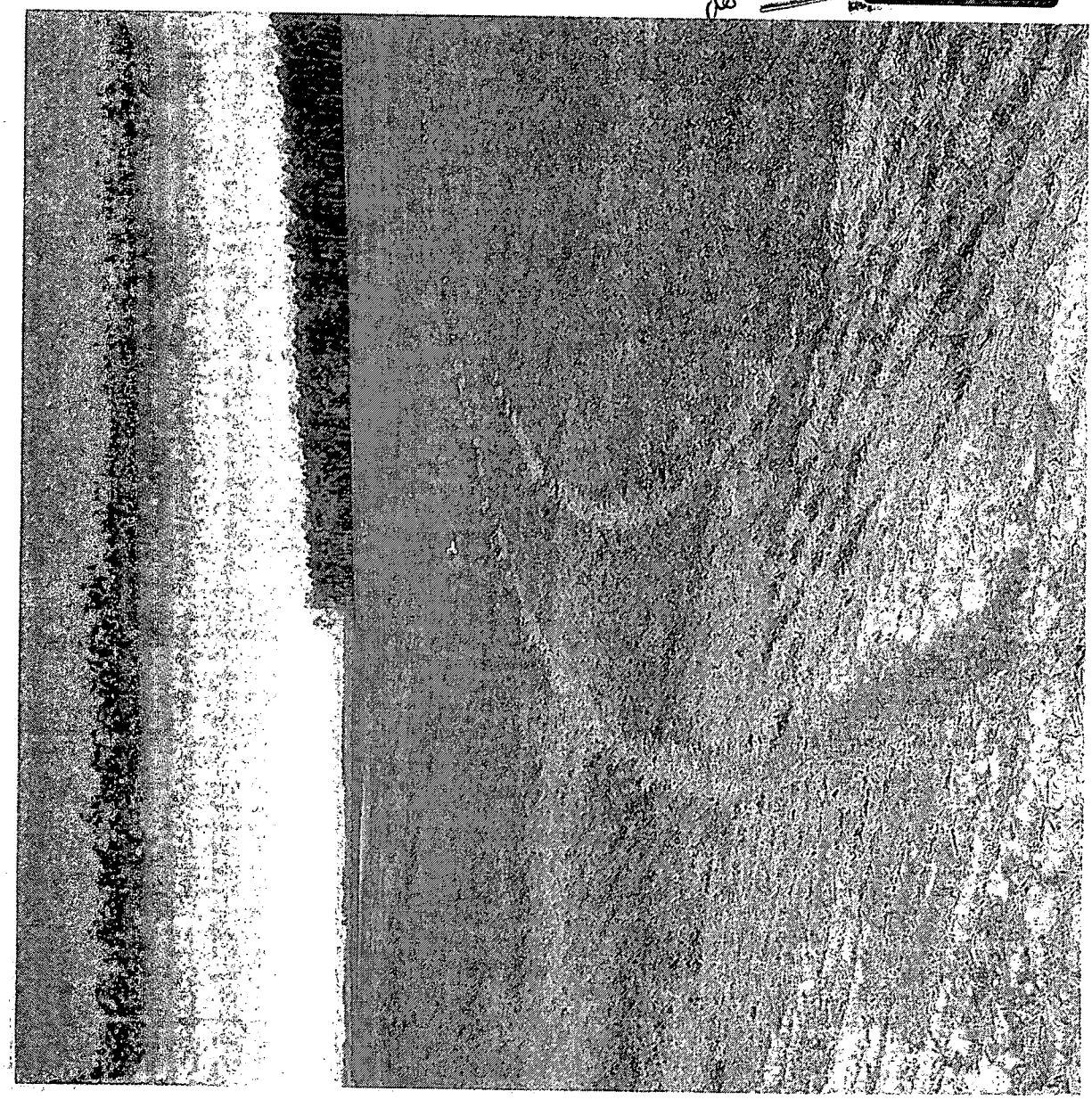
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Date 2016 Rptr VTM
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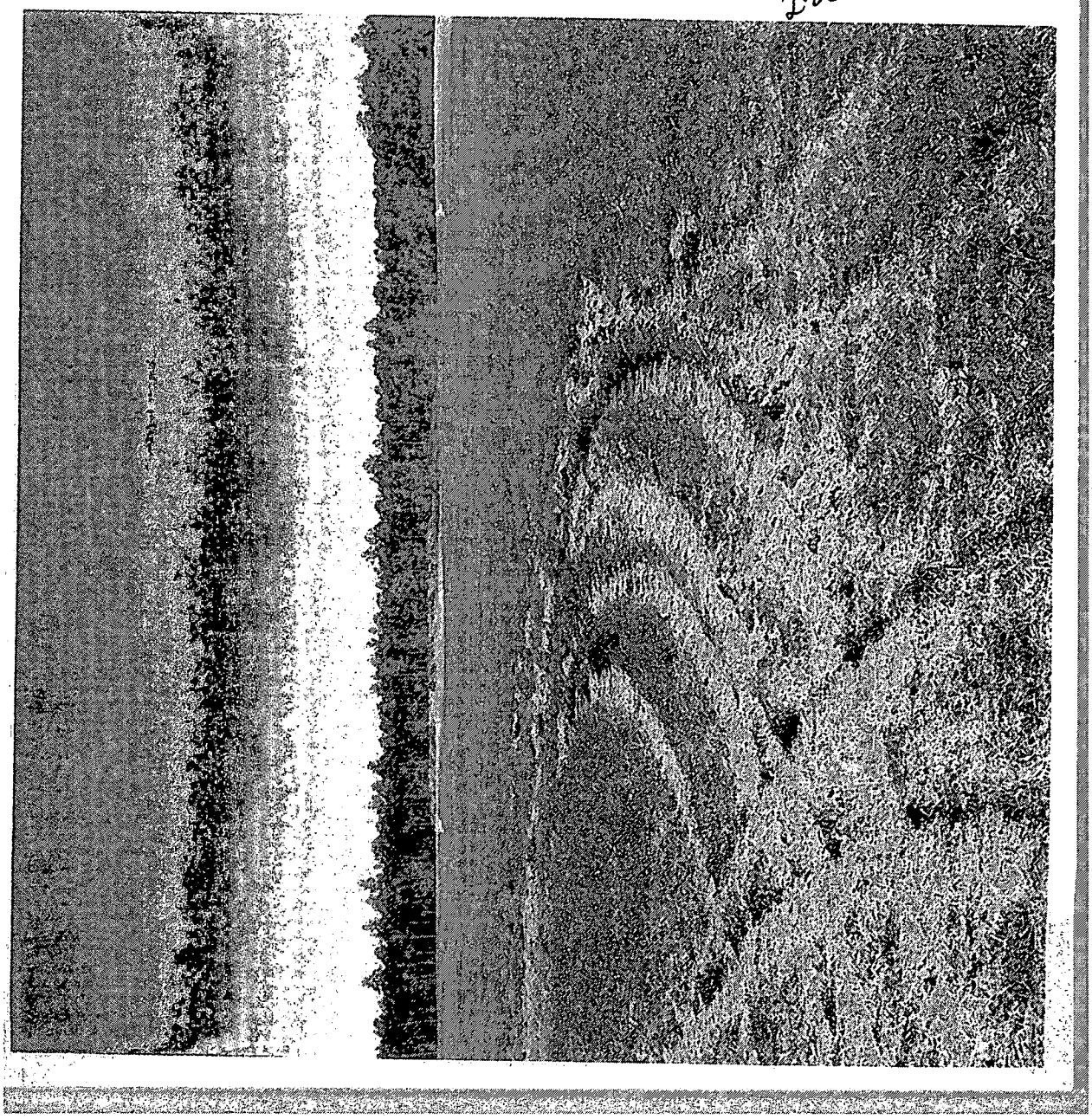



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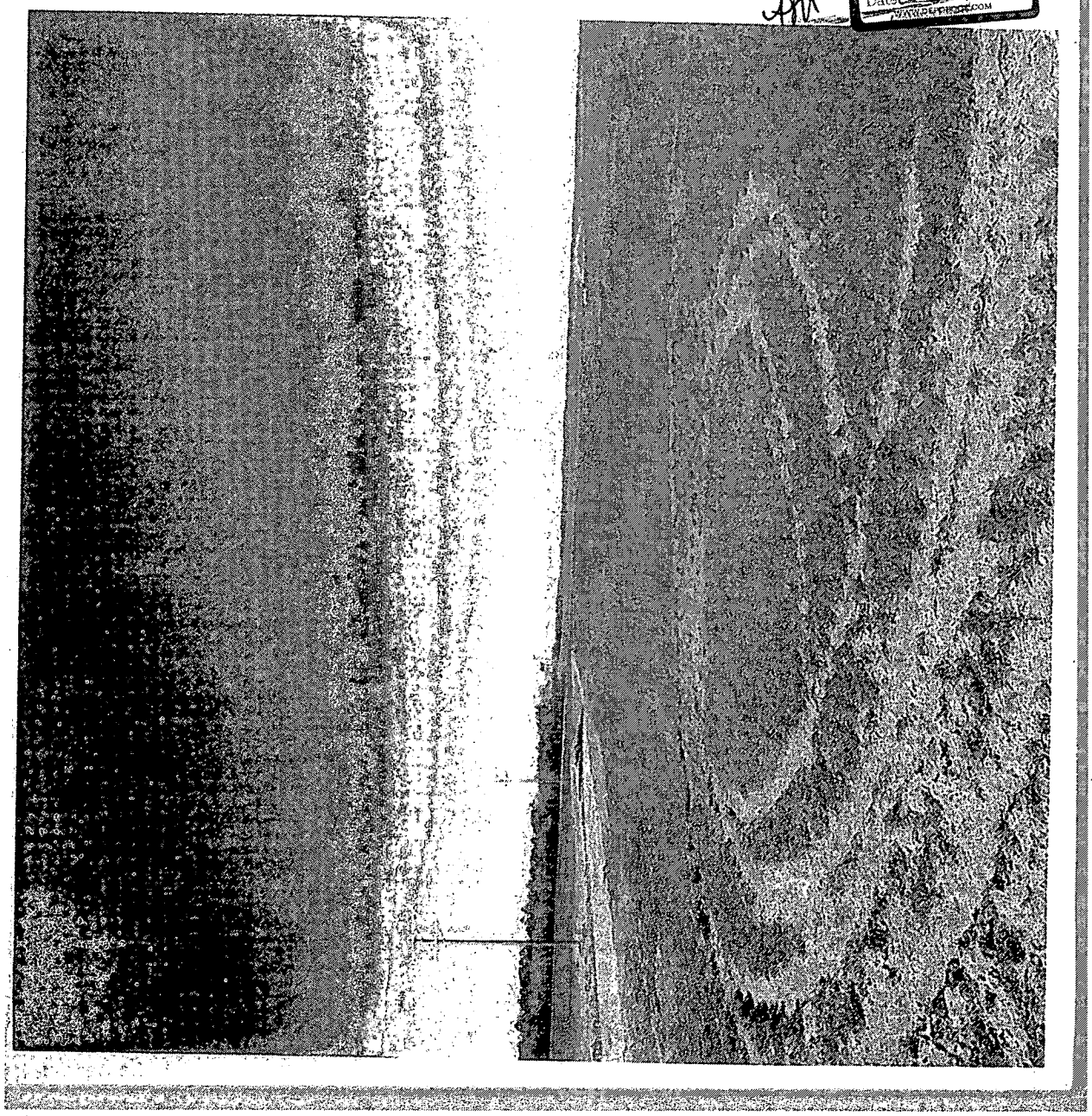
FILED 6-27-16
EXHIBIT 8
Deponent
C.P.
Date 2016 Reporter VM

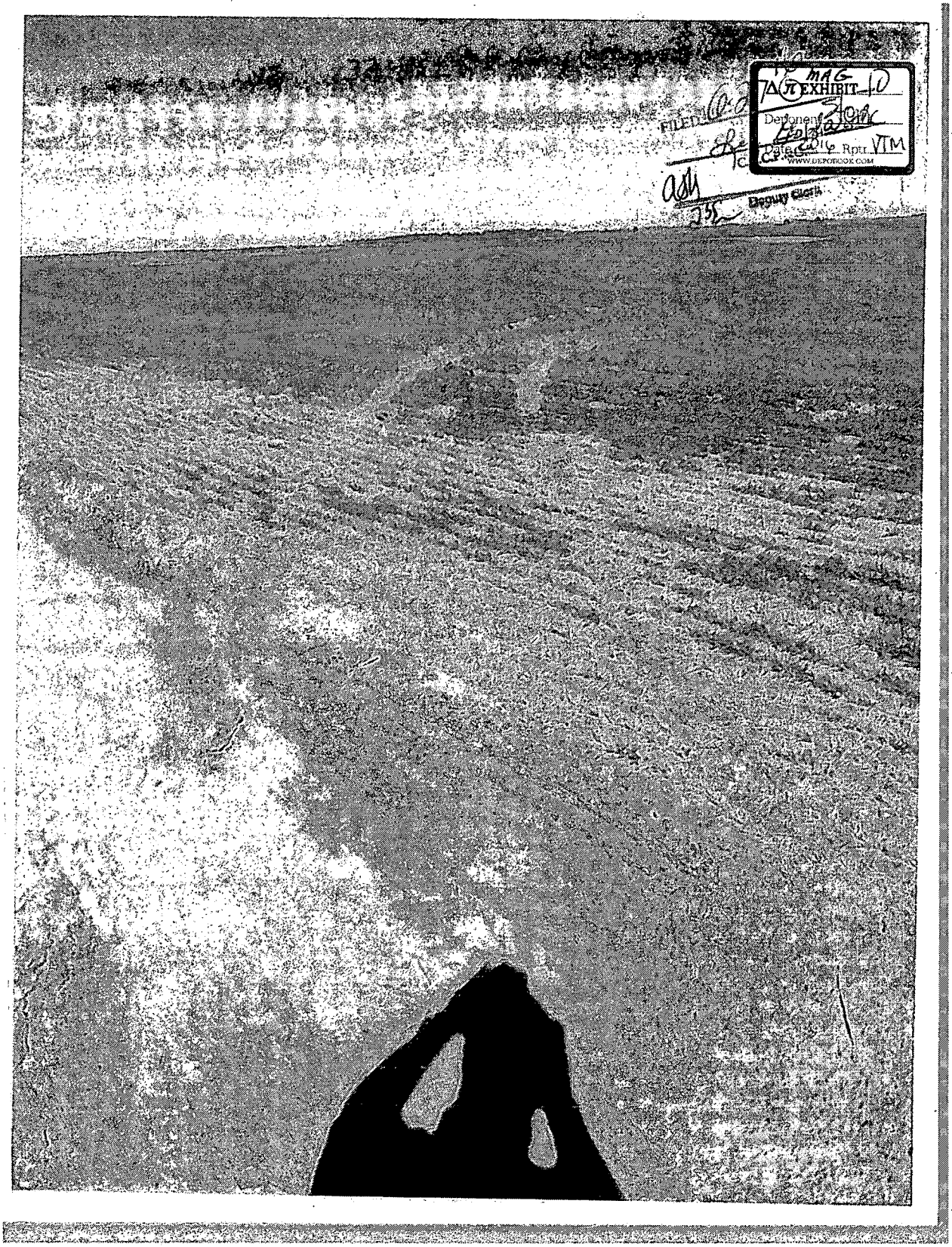


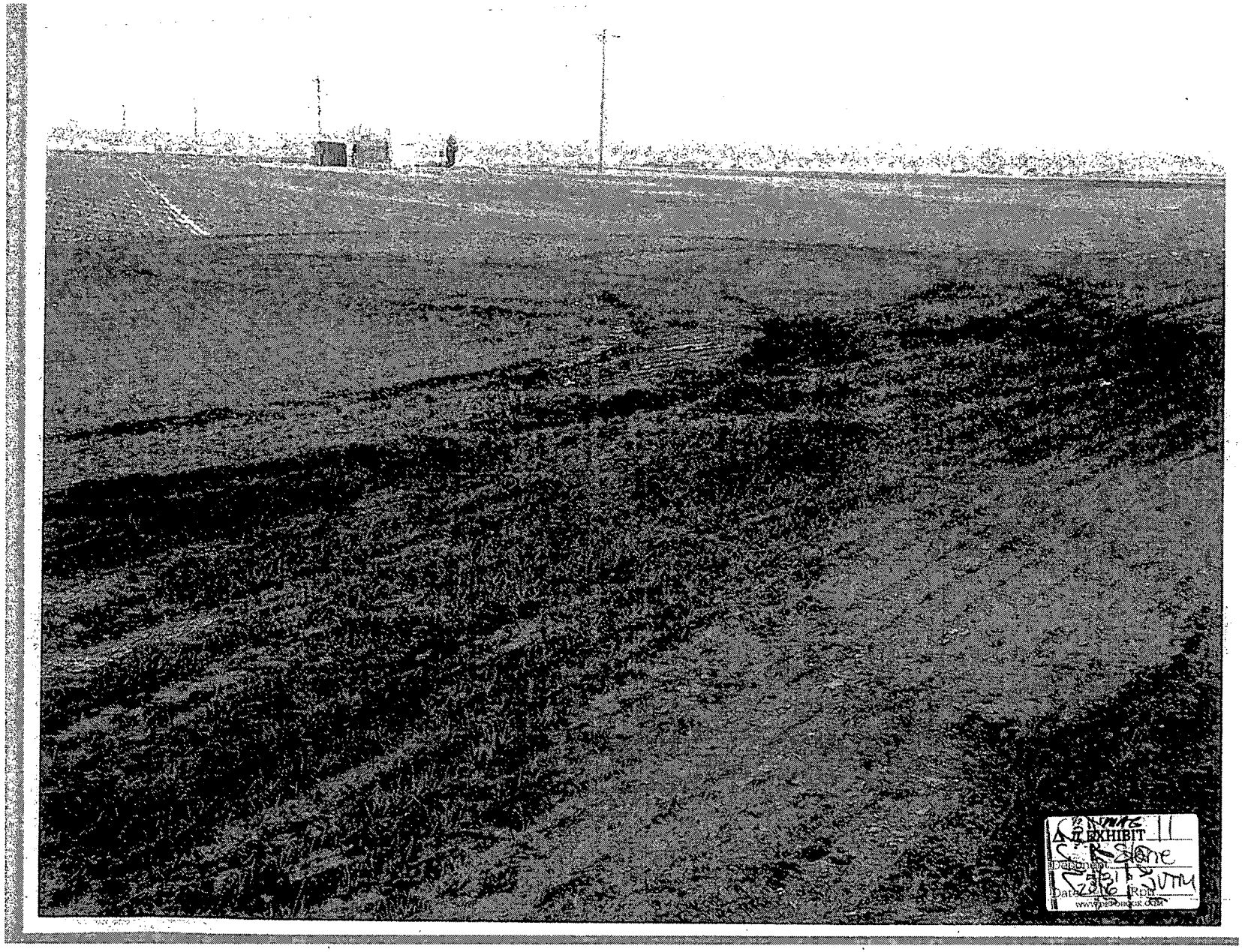
6-27-16

FILED

EXHIBIT 9




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EXHIBIT 10
Deponent
Date
WWW.DEPOBOOK.COM
Deputy Clerk


EXHIBIT
Date



0.-17 16
V. Ward
Filed
232
AL
EXHIBIT 12
Deponent Jones
Date 2016 Rptr VTM
WWW.PETOBOOK.COM



6.27.16

FILED

EXHIBIT 15

Deponent Stone

3/31/2016

WWW.DEPOBOOK.COM

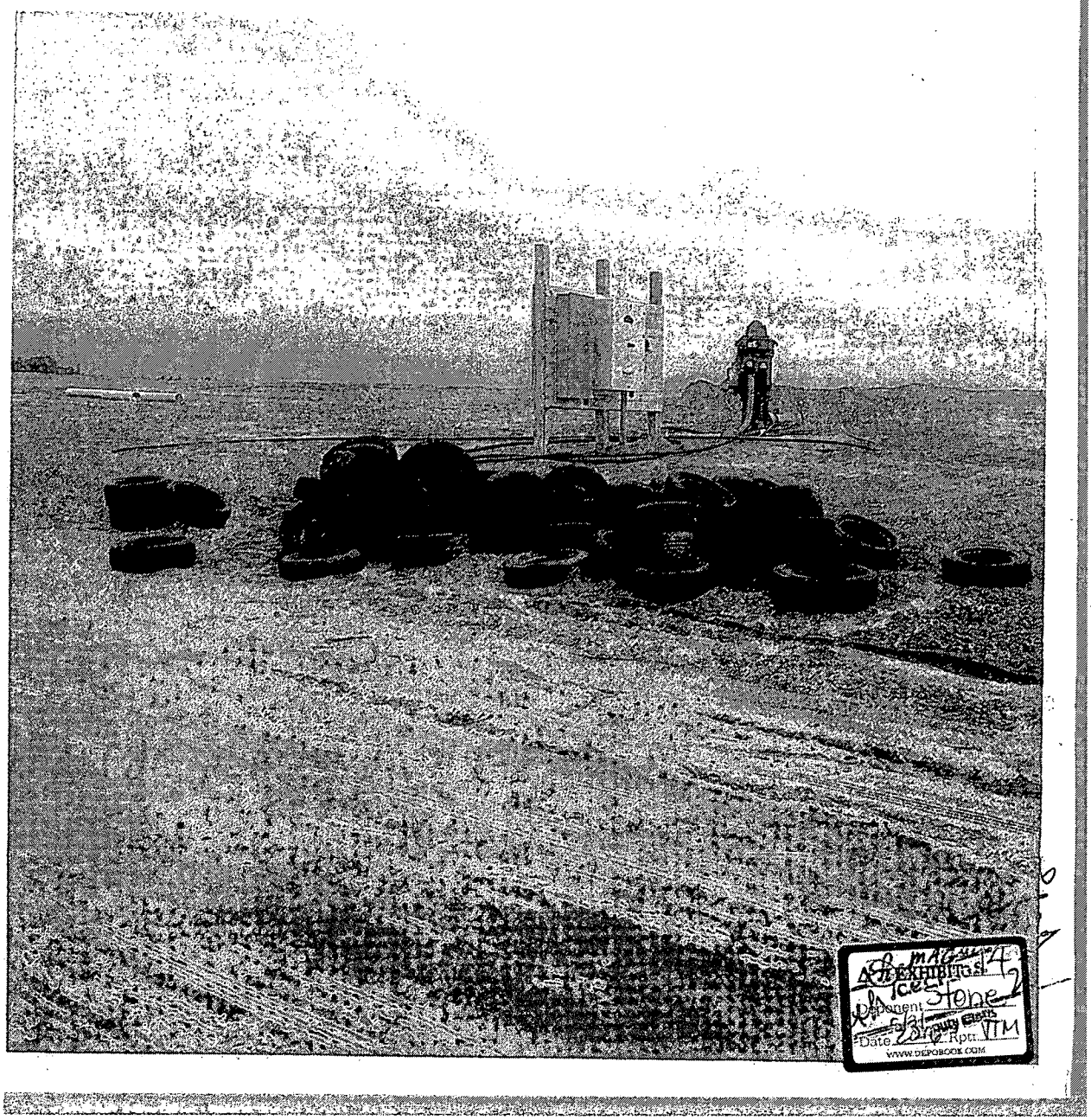
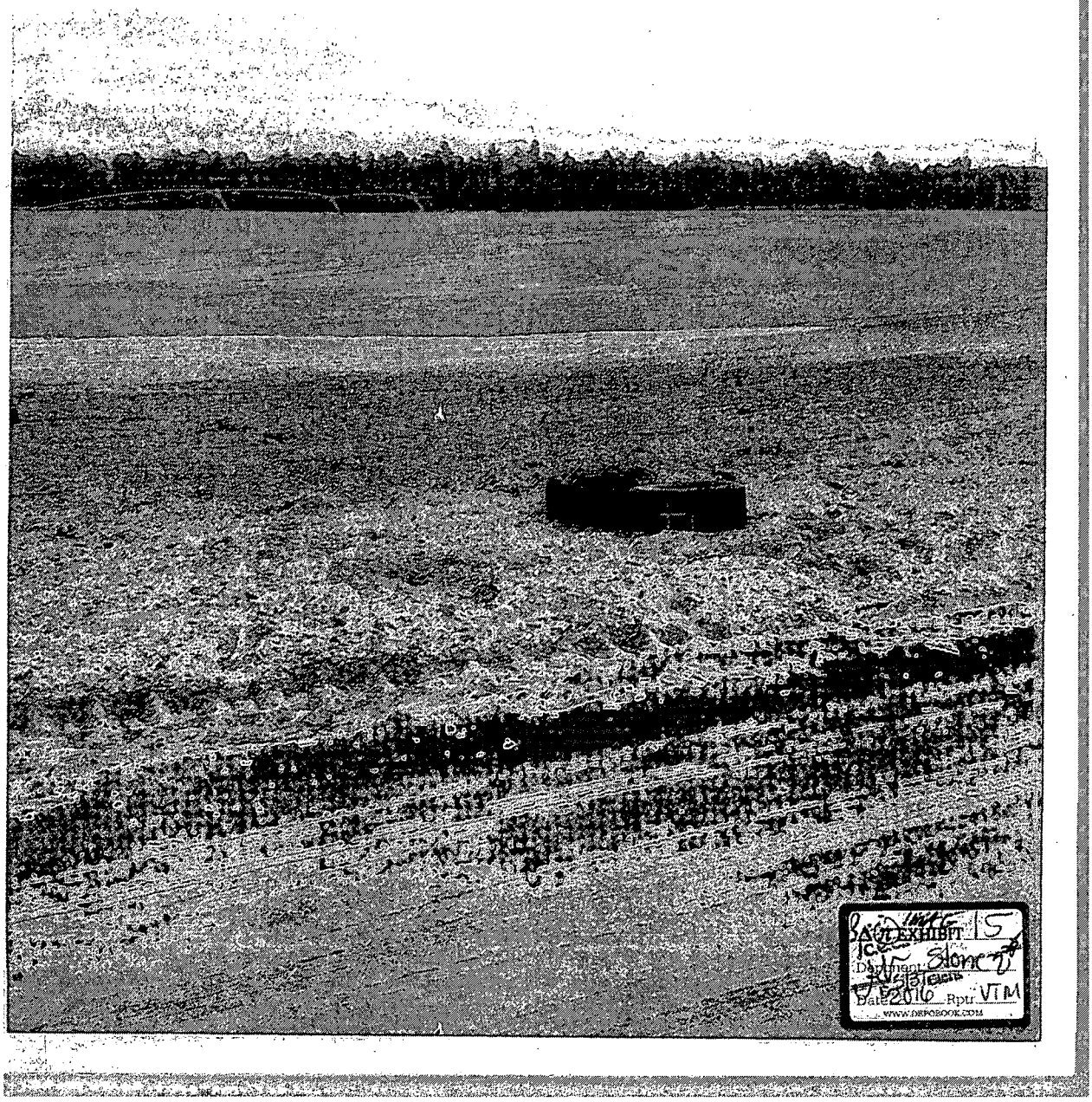


EXHIBIT 14
Deponent Stone
Date 2-21-17 Rptr. TM
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EXHIBIT 15
Stone
Date 2016 Rptr VTM
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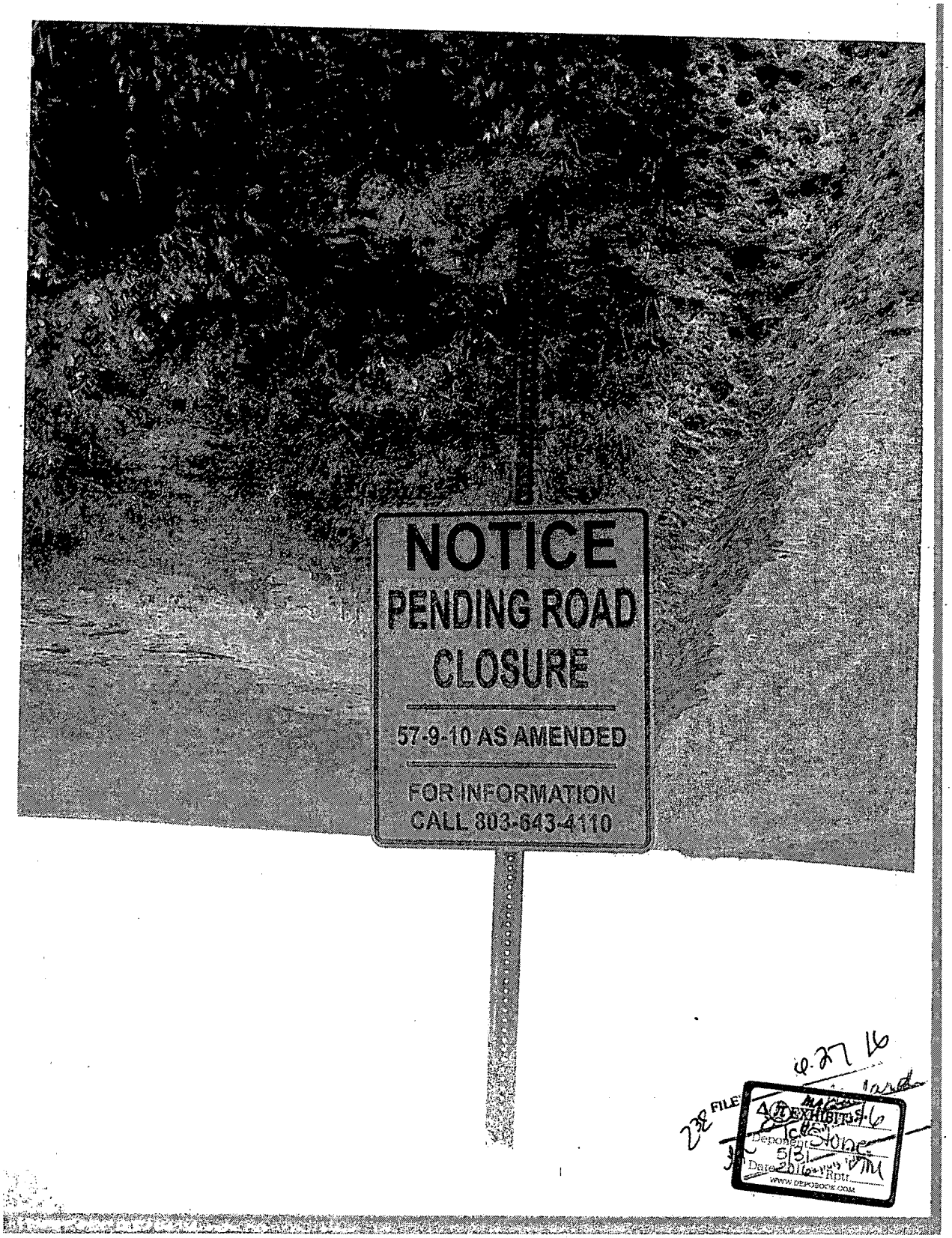
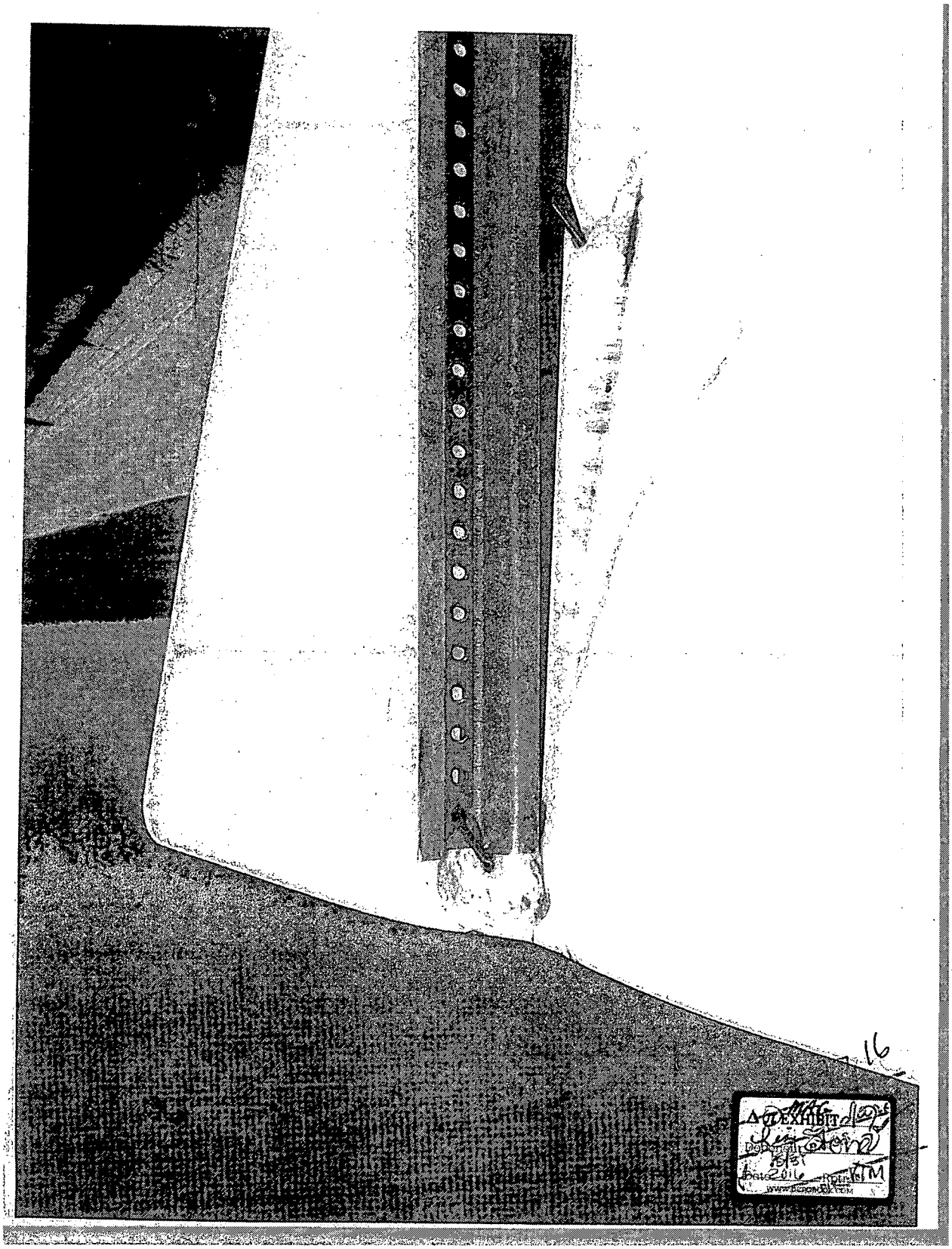
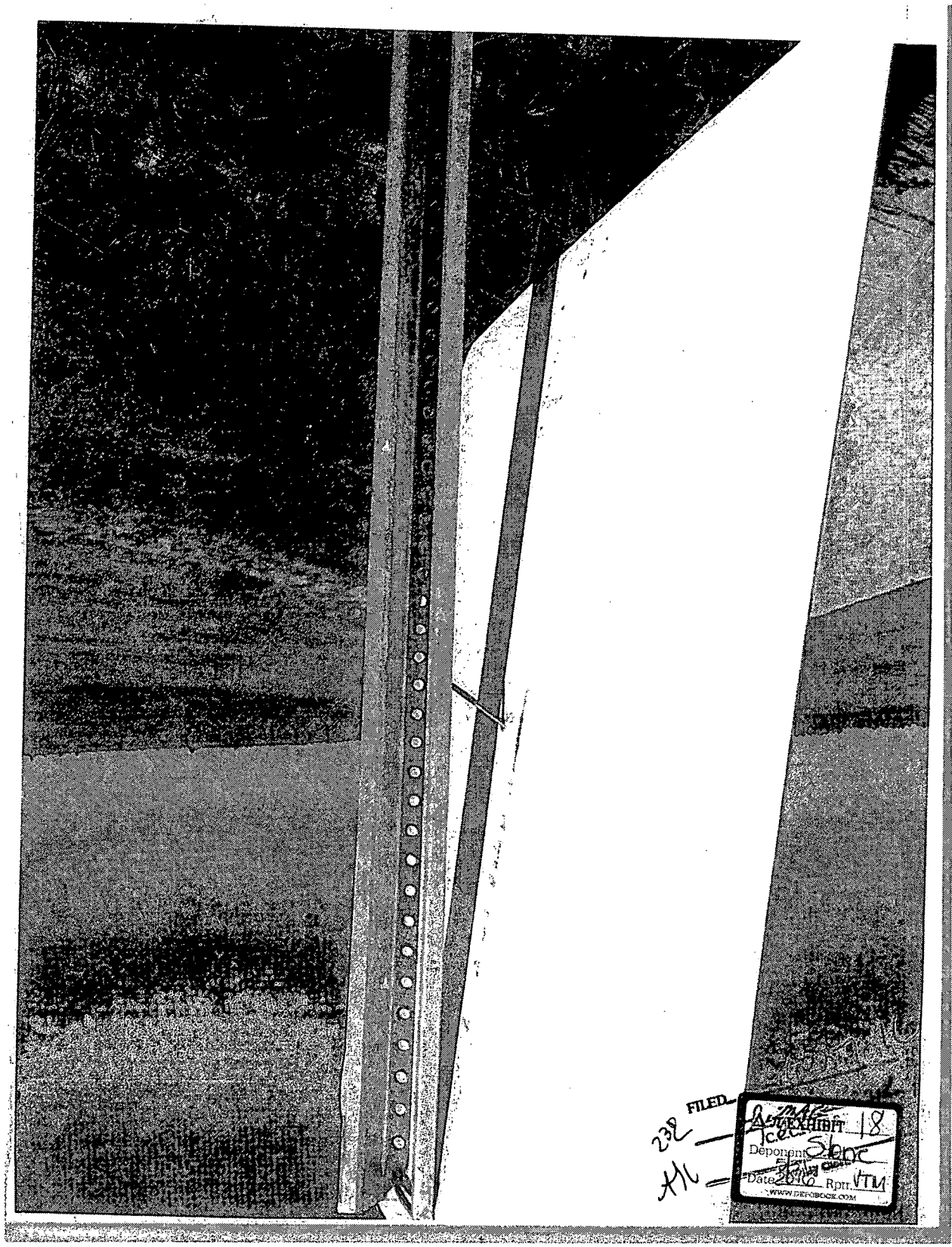


EXHIBIT 6
Deponent
Date
Rptr.
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16
EXHIBIT
Deposition
2016


FILED
EXHIBIT 18
Deponent
Date
Rptr.


FILED
EXHIBIT 19
Deponent
Date
Rptr
WWW.DEPOBOOK.COM
NOTICE
PENDING ROAD
CLOSURE
57-9-10 AS AMENDED
FOR INFORMATION
CALL 803-643-4110



Exhibit 2801
Reporter
#551
Date 2-14-18 Initials VTM
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AGENCY I.D. SC0020000

AIKEN COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

INC. | ENTD.

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. Suspicious Activity	☑ YES ☐ NO	☐ YES ☑ NO	FIE	
2.	☐ YES ☐ NO	☐ YES ☐ NO		
3.	☐ YES ☐ NO	☐ YES ☐ NO		

TYPE VICTIM: ☐ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST ☐ GOVERNMENT ☐ RELIGIOUS ORG ☑ SOCIETY/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFF.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): Oak Ridge Club Rd. & Wanderer Rd

ZIP CODE: 29856

WEAPON TYPE: UNK

INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	DISP DATE	DISP TIME	TIME ARRIVE	TIME DEPART	LOCATION #
3-11-15	1230				3-11-15	1246	1255	1310	10003

COMPLAINANT NAME (LAST, FIRST, MIDDLE): Crockett David

RELATIONSHIP TO SUBJECT: #1 Rel | #2 | #3

RESIDENT	RACE	SEX	AGE	ETH	DAY PHONE	NIGHT PHONE
☑ S O U	W	M	62	N	(H) (843) 599-3331 (B)	(H) (B)

ADDRESS | CITY | STATE | ZIP CODE | LOCATION #

VICTIM 1

VICTIM NAME (LAST, FIRST, MIDDLE): Society Public

VICTIM RELATIONSHIP TO SUBJECT: #1 | #2 | #3

RESIDENT	RACE	SEX	AGE	ETH
* J S O U				

HEIGHT | WEIGHT | HAIR | EYES | FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.

ADDRESS | CITY | STATE | ZIP CODE | LOCATION # | DAY PHONE (H / B) | NIGHT PHONE (H / B)

☐ VISIBLE INJURY ☐ YES ☑ NO

VICTIM 1 USING ALCOHOL ☐ YES ☑ NO ☐ UNK

TWO MAN VEH. ☐ ONE MAN VEH ☐ DETECTIVE/PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐

DRUGS ☐ YES ☑ NO ☐ UNK. TYPE:

COMPLAINT OF NON-VISIBLE INJURIES ☐ YES ☑ NO

* J - THIS JURISDICTION S-STATE O-OUT OF STATE U-UNKNOWN

SUBJECT 1

☐ SUBJECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST, FIRST, MIDDLE): Unknown

RACE	SEX	AGE	ETH	D.O.B.	HGT.	WGT.	HAIR	EYES

FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.

ADDRESS | CITY | STATE | ZIP CODE | LOCATION #

SUBJECT USING ALCOHOL ☐ YES ☐ NO ☑ UNK. DRUGS ☐ YES ☐ NO ☑ UNK.

ARRESTED NEAR OFFENSE SCENE ☐ YES ☑ NO TOTAL # ARRESTED: 0

DATE/TIME OF OFFENSE | DATE/TIME OF ARREST

NARRATIVE

CHARGE #1 | CHARGE #2 | CHARGE #3

R/o met with Coop on Oak Ridge Club Rd in Reference to Suspicious Activity. Coop states he works for a Private Contractor and their Conducting a Controlled burn between Oak Ridge Club Rd and Charleston Hwy. Coop states he believes Someone started a fire on the opposite Side of Oak Ridge Club Rd. Coop States they plan on burning that Side of Oak Ridge but haven't got to it yet. Both the fire department and the Coop had no idea how the opposite Side of land became Caught fire. R/o Completed Report for documentation. Coop would like R/o with information Regarding his address.

JURISDICTION OF THEFT / LAW ENFORCEMENT AGENCY | JURISDICTION OF RECOVERY / LAW ENFORCEMENT AGENCY

PROPERTY EST.

TYPE						
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						

EXHIBIT 1 Date 2-25-21

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☑ NO | SUBJECT LOCATED ☐ YES ☑ NO | ☐ ACTIVE ☐ ADM. CLOSED ☒ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

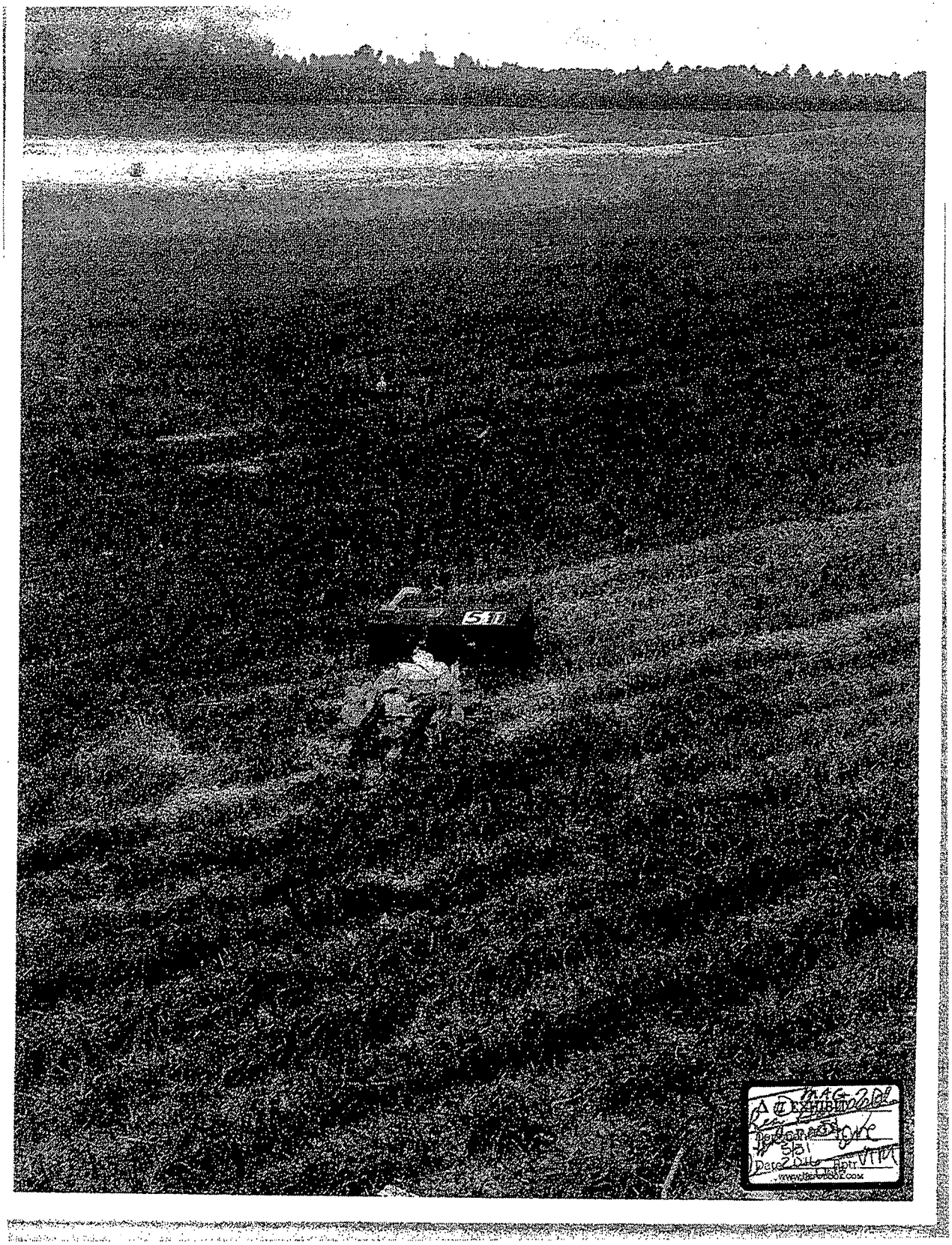
REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE – NO CUSTODY

REPORTING OFFICERS	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
T. Roberts	3-11-15	6U29	A. D. [illegible]	3-11-15	5988

FOLLOW-UP INVESTIGATION ☐ YES ☑ NO

OFFICER

ACSO Form AD1003 (04/19/07)


SRT

AGENCY I.D. SC0020000

AIKEN COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

15-05606

INC. | ENTD.

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. Trespass	☒ YES ☐ NO	☐ YES ☒ NO	FIE	Ø
2.	☐ YES ☐ NO	☐ YES ☐ NO		
3.	☐ YES ☐ NO	☐ YES ☐ NO		

TYPE VICTIM: ☒ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST. ☐ GOVERNMENT ☐ RELIGIOUS ORG. ☐ SOCIETY/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFF.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): 125 Oak Ridge Club rd Windsor SC

ZIP CODE: 29856 | WEAPON TYPE: N/A

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISP DATE	DISP TIME	TIME ARRIVE	TIME DEPART	LOCATION #
5-27-15	1600		5-27-15	1700	5-27-15	1814	1834	1850	100D6

COMPLAINANT NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH.	DAY PHONE	NIGHT PHONE
Same as Vict				J S O U					H B	H B

ADDRESS | CITY | STATE | ZIP CODE | LOCATION #

VICTIM 1

VICTIM NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH.
Crockett, David	RU			R S O U	W	M	62	N

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.
6'00	235	BLK	Bro	DOB 1-20-53

ADDRESS	CITY	STATE	ZIP CODE	LOCATION #	DAY PHONE	NIGHT PHONE
125 Oak Ridge Club rd	Windsor	SC	29856	100D6	843 579-9331 (H)	/ H B

☐ VISIBLE INJURY ☐ YES ☒ NO — COMPLAINT OF NON-VISIBLE INJURIES ☐ YES ☒ NO

VICTIM 1 USING ALCOHOL ☐ YES ☒ NO ☐ UNK. — DRUGS ☐ YES ☒ NO ☐ UNK. TYPE:

TWO MAN VEH. ☐ ONE MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ — *J - THIS JURISDICTION S-STATE O-OUT OF STATE U-UNKNOWN

SUBJECT 1

☒ SUBJECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	D.O.B.	HGT	WGT	HAIR	EYES
Unk									

FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.

ADDRESS | CITY | STATE | ZIP CODE | LOCATION #

SUBJECT 1 USING ALCOHOL ☐ YES ☐ NO ☒ UNK — DRUGS: ☐ YES ☐ NO ☒ UNK. — ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO — TOTAL # ARRESTED 0 — DATE/TIME OF OFFENSE — DATE/TIME OF ARREST

NARRATIVE

CHARGE #1 | CHARGE #2 | CHARGE #3

R10 responded to I/L and spoke with David who stated that he is having a problem with people trespassing on his two thousand acre's and they are dumping garbage David stated he has set up cameras, David wanted this documented. R10 has no further.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY | JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

6-2 JC

MAG EXHIBIT 22 and 32 Date 2016

PROPERTY EST.

TYPE						
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☒ NO — SUBJECT LOCATED ☐ YES ☒ NO — ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED — ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER — ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE – NO CUSTODY

REPORTING OFFICERS	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
J. Frantz	5-27-15	6407	Cleared	05/28/15	456

FOLLOW-UP INVESTIGATION ☐ YES ☒ NO — OFFICER

ACSO Form AD1003 (04/19/07)

MAY 2 8 2015

322

AIKEN COUNTY LITTER CONTROL

Incident Report

Case# 15L-05-021

Date Received: 5-27-15 Time: 1400 Received by: RAD Date Issued: 5-27-15
Code: _____

Complainant: DAVID CROCKETT Phone: _____ (h) 843-599-9331 (w)

Address: OAK RIDGE CLUB RD.

Directions: OAK RIDGE CLUB RD. APPROX. 1 MILE FROM CHARLESTON HWY

Complaint: LARGE PILE OF H/H GARBAGE DUMPED ON PROPERTY

Household ✓ Tires _____ Construction _____ Trees/Limbs _____
Possibly Hazardous ✓ Furniture/Appliances _____ Other _____

Did complainant witness violation ? Yes _____ No ✓
Is complainant willing to go to court ? Yes ✓ No _____

Complainant's Signature: _____

****

Offender: TYLER RYAN ROULK Phone: _____ (h) _____ (w)

Address: 324 W EISENHAUSER RD. AIKEN, S.C.

Vehicle Information: _____

NOTES: R/O OUT 5-27. LEFT CARD AT HOME. SPOKE WITH MOTHER 5-28. MADE CONTACT 6-5, ISSUED CITATION. SITE CLEANED UP BY DEF.

Charges: LITTERING / MORE THAN 15 LBS.

Court Date: 6-17-15 Witness: _____

Judge: SULLIVAN Disposition: $55.00 + 40 HRS. C.S.

Officer's Signature: _____ Date Closed: 6-17-15

10.27.10

FILED

EXHIBIT

Deppo

Date

323

New Ellenton Summary Court

CASE HISTORY FOR CASE 10732HA

The State of South Carolina VS Tyler Ryan Rourk

FILED DATE: 6/8/2015
INDICTMENT NUMBER:

CASE TYPE: CR
ASSIGNED JUDGE: Sullivan, Patrick Dorn
DISPOSITION JUDGE: Sullivan, Patrick Dorn
ARRESTING AGENCY: Aiken Codes Enforcement

STATUS: Disposed

CASE PARTIES:

Defendant Rourk, Tyler Ryan
324 Weyerhaeuser Rd, Aiken, SC 29801-6500

Officer Heath, Rick
1930 University Parkway, Aiken, SC 29801

CASE HISTORY FOR CASE 10732HA

Rourk, Tyler Ryan
324 Weyerhaeuser Rd

Aiken, SC 29801-6500

Age: 20
DL#: 103141126

DOB: 11/3/1995
SSN: 251-97-1724

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
2326	Littering / Littering, 15 to 500 lbs. or 27 to 100 cu. ft.	5/27/2015	Pled Guilty	6/17/2015
SENTENCING				
Mandatory Court Costs				

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Littering / Littering, 15 to 500 lbs. or 27 to 100 cu. ft.				
Victim Conviction Surcharge $100 / $2:	$25.00	$0.00	$25.00	999
Law Enforcement Funding Surcharge $	25.00	0.00	25.00	999
SC Criminal Justice Academy Training	5.00	0.00	5.00	999
Littering Fine in lieu of Pickup	40.00	0.00	40.00	999
Fine to General Fund	500.00	0.00	500.00	999
Victim Services Asm 38.0013% / 5.783	60.00	0.00	60.00	999
State Assessment	477.50	0.00	477.50	999
Total:	$1,132.50	$0.00	$1,132.50	

DATE	TIME	EVENT DESCRIPTION
/17/2015	10:00 AM	Court event: Criminal/Traffic Court
/17/2015	12:00 AM	C02SPRUETT recorded the following Case Note: Def. pled guilty - $55.00 C/C to be paid by 07-30-2015 + 40 hours Comm. Serv. to be completed by 08-18-2015 - sp
/30/2015	11:41 AM	Received payment of $55 from Tyler Ryan Rourk for Tyler Ryan Rourk . Printed receipt #66422.
/18/2015	12:00 AM	C02SPRUETT recorded the following Case Note: Def. failed to complete Community Service - Show Cause Hearing scheduled for 09-02-2015 - sp
/18/2015	12:00 AM	Filing recorded: Archived Court Summons
/2/2015	12:00 AM	Filing recorded: Failure to Comply

Print Date: 05/06/2016
Print Time: 3:44:56PM
Requested By: C02SPRUETT

CASE HISTORY FOR CASE 10732HA

9/2/2015	11:00 AM	Court event: Show Cause Hearing with Document
9/2/2015	12:00 AM	C02SPRUETT recorded the following Case Note: Def. failed to appear for Show Cause Hearing - B/W issued - 30Days or $1092.50 + $40.00 fee in lieu of pickup = $1132.50 - sp
9/2/2015	12:00 AM	C02SPRUETT recorded the following Case Note: Def. paid $55.00 Court cost on 07-30-2015 - Current amount do on B/W = $1077.50 = $1132.50 - $55.00 - sp
2/17/2016	12:00 AM	Filing recorded: Archived Discharge
2/17/2016	1:31 PM	Received payment of $1077.5 from Tyler Ryan Rourk for Tyler Ryan Rourk . Printed receipt #66997.

THIS IS A CERTIFIED COPY OF
THE ORIGINAL DOCUMENT
THAT IS ON FILE IN THE
NEW ELLENTON SUMMARY COURT
AIKEN COUNTY, SOUTH CAROLINA
ON THE 9th DAYOF
May , 2016
Susan Pruett

AIKEN COUNTY LITTER CONTROL

Incident Report

Case# _____

Date Received: ____/____/____ Time: 1000 Received by: L. HEATH Date Issued: _____
Code: _____

Complainant: DAKTA CROCKETT Phone: _____ (h) 843-599-9351 (w)

Address: OAK RIDGE CLUB RD.

Directions: OAK RIDGE CLUB 1 MILE FROM CHARLESTON HWY

Complaint: APPROX 100 TIRES DUMPED & SCATTERED ALONG OAK RIDGE CLUB RD.

Household _____ Tires ✓ Construction _____ Trees/Limbs _____
Possibly Hazardous _____ Furniture/Appliances _____ Other _____

Did complainant witness violation ? Yes ____ No ✓
Is complainant willing to go to court ? Yes ____ No ____

Complainant's Signature: _____

****

Offender: UNKNOWN Phone: _____ (h) _____ (w)

Address: _____

Vehicle Information: _____

NOTES: SENT 96 & INMATES TO PICKUP

Charges: _____

Court Date: _____ Witness: _____

Judge: _____ Disposition: P/U - 96 6.11.16

Officer's Signature: Lee Heath Date Closed: _____

FILED
A-11 EXHIBIT 24
ACP. 3:18-cv-3014-MGL
Deposition 3:18-cv-3014-MGL
Date 2-21-19 Reporter VTM
SWAY.DEPONOOK.COM

Sponsor(s)	: Development Committee
Committee Referral	: Development Committee
Committee Consideration Date	: February 16, 2016
Committee Recommendation	: Approval
Effective Date	: February 17, 2016

RESOLUTION NO. 16-02-33

COUNCIL ADMINISTRATOR FORM OF GOVERNMENT FOR AIKEN COUNTY

(To State that Aiken County Government Has No Objection to the Closing of Portions of Oak Ridge Club Road (C-800) and Old Bell Road (C-774)in County Council District 1.)

WHEREAS:

1. Aiken County Council has been advised that legal proceedings will be undertaken to close portions of Oak Ridge Club Road (C-800) and Old Bell Road (C-774) located in County Council District 1; and

2. The petition to the courts for this abandonment will be filed by Canadian River Farms, Ltd., Colt Farms, Inc., BC Farms, Inc. and Outback Farms, Ltd. and they have requested County Council input on the petition; and

3. Subject to court approval the portion of Oak Ridge Club Road to be closed is from U.S. Highway 78/Charleston Highway to Cedar Branch Road and the portion of Old Bell Road to be closed is from Oak Ridge Club Road to Weyerhaeuser Road; and

4. These roads, while traditionally maintained by the County, Aiken County has no dedicated right-of-way along this road; and

5. All property along these portions of roadway is owned by the petitioners seeking the closure and motorists have alternative means of traversing the area; and

6. Council has no objection to the closing of this road.

NOW THEREFORE BE IT RESOLVED BY THE AIKEN COUNTY COUNCIL THAT:

1. The Aiken County Council states that it has no objection to the closing of portions of Oak Ridge Club Road (C-800) and Old Bell Road (C-774) in County Council District 1as described above.

Adopted at the regular meeting of Aiken County Council on February 16, 2016.

ATTEST:

Tamara Sullivan, Council Clerk

SIGNED:

Ronnie Young, Chairman

IMPACT STATEMENT: Reduction in maintenance costs for these roads

COUNCIL VOTE: Unanimous
ABSENT: Smith, Siders

FILED

K:\Council Clerk\Council Meetings\2016 Mtg\02 16 mtg\res road closing (Oak Ridge Club and Old Bell).doc

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY

Anderson M. Griffith, Master-In-Equity

RECEIVED
JUN 16 2017
SC Court of Appeals

Appellate Case No.:2016-002102

Canadian River Farms, LTD,
Colt Farms, Inc., BC Farms, Inc.
nka BC Farms of South Carolina
Inc., Outback Farms, Ltd.,

Respondent(s)/Appellant(s),

v.

Becky J. Gonshorowski, South
Carolina Department of
Transportation, Aiken County
South Carolina.

Respondent(s).

and

Carolyn Barrett and Robert Barrett,
Save Windsor, SC

Appellant(s)/Respondent(s)

CERTIFICATION OF COUNSEL

The undersign counsel for the Appellant hereby certifies that the Record on Appeal complies with the Rule 210 SCACR.

Farms, Ltd., et. al. v. Beck J. Gonshorowski, et. al.
Case No.: 2016-CP-02-00511

addressed to:

Mary Olivia Guynn, Attorney for (s)/Respondent(s)/Appellant(s)
210 Colony Pkwy
Aiken, SC 29803

J. Calhoun Watson, Attorney for (s)/Respondent(s)/Appellant(s)
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Columbia, SC 29211

Tina Marie Cundari, Attorney for (s)/Respondent(s)/Appellant(s)
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Columbia, SC 29201

James M. Holly, Attorney for County of Aiken, SC/ Respondent
P.O. Box 5925
Aiken, SC 29804

Natalie Jean Moore, Attorney for SCDOT/Respondent
P.O. Box 191
Columbia, SC 29202

Becky J. Gonshorowski, Pro Se/Respondent
183 Old Bell Road
Aiken, SC 29803

May 25, 2017

James D. Mosteller, III (SC BAR# 12008)
The Mosteller Law Firm, LLC
P.O. Drawer 328
Aiken, SC 29802
Telephone: 803-226-0396
Facsimile: 803-226-0493
mostellerlaw@gmail.com
Attorney for Intervener

Co-Counsel: Bradford M. Owensby
319 Park Ave, SE
Aiken, SC 29801

Respondent(s)/Appellant(s) Counsel:

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Aiken, SC 29803

RECEIVED
JUN 16 2017
SC Court of Appeals